

aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either

(i) Require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or

(ii) Terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

1852.228-71 [Amended]

10. In the introductory text to section 1852.228-71, the citation "1828.311-270" is revised to read "1828.311-2".

1852.228-74, 1852.228-77 [Removed]

11. Sections 1852.228-74 and 1852.228-77 are removed.

1852.231-71 [Removed]

12. Section 1852.231-71 is removed.

1852.232-12, 1852.232-70, 1852.232-83, 1852.232-84 [Removed]

13. Sections 1852.232-12, 1852.232-70, 1852.232-83, and 1852.232-84 are removed.

[FR Doc. 96-26338 Filed 10-28-96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961021289-6289-01; I.D. 100196C]

RIN 0648-AJ26

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 19

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 19 to the Northeast Multispecies Fishery Management Plan (FMP). This rule changes the time and area of the current multispecies Mid-coast Closure Area within the Gulf of Maine (GOM) and establishes an exemption to allow sink gillnet vessels to fish in the reopened area when utilizing acoustic devices (pingers) on their nets. The intent of this action is to reduce the overall economic impact of the area closure while achieving the objectives of the FMP.

EFFECTIVE DATE: October 24, 1996.

ADDRESSES: Copies of Amendment 7 to the Northeast Multispecies Fishery Management Plan (Amendment 7), its regulatory impact review (RIR) and the final regulatory flexibility analysis (RFA) contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 19 documents are available upon request from Christopher B. Kellogg, Acting Executive Director, New England

Fishery Management Council (Council), 5 Broadway, Saugus, MA, 01906-1097.

FOR FURTHER INFORMATION CONTACT:

Susan A. Murphy, NMFS, Fishery Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION:

Amendment 7 to the FMP (61 FR 27710, May 31, 1996), effective on July 1, 1996, established comprehensive measures to rebuild the important multispecies stock complex primarily through effort reduction controls and area closures. In addition to the year-round closure areas on Georges Bank and Southern New England, several alternative GOM area closures were considered by the Council during the development of Amendment 7. However, due to the controversy and complication of developing additional area closures and because of the need to have measures in place as soon as possible, the Council adopted the existing GOM harbor porpoise protection closures as the default closures for multispecies until such time that these closures could be modified through the framework adjustment procedure.

At the July 17-18, 1996, meeting, the Council initiated action to replace the default GOM Mid-coast Area Closure with the intent to minimize the time period and the size of the area. The purpose of this action was to reduce the overall economic impact of the area closure while achieving equivalent conservation value and to address concerns about the distribution of economic impacts of the existing closure, which may disproportionately affect small inshore vessels.

Based on the Northeast Fisheries Science Center analysis, several alternatives to the current default closure were found to have equivalent conservation value but resulted in significantly improved revenues. At the final framework meeting on this action, held on September 9, 1996, the Council proposed to close an area referred to as Jeffreys Ledge (bounded by the following lines of coordinates: 43°30' N. lat., 70°00' W. long., 42°30' N. lat., and 70°30' W. long.) for the period May 1 through May 31, 1997, and, for 1998 and beyond, to close the existing Mid-coast Closure Area but with a change in time period to May 10 through May 30. Both of these alternatives improve revenues by well over \$2 million relative to the existing time/area closure, without changing the impact on GOM cod. By replacing the existing November through December Mid-coast Area Closure with a spring closure, small vessels that are more constrained by winter weather will be able to fish on their traditional grounds in November

and December when alternatives are fewer than in May.

Although Council members were generally in agreement regarding the Jeffreys Ledge closure in May, concern that vessels may be displaced to a relatively small area shoreward of the Jeffreys Ledge area, possibly resulting in increased gear conflicts, induced the Council to propose a different closure for 1998 and beyond to address this potential problem. To prevent the current default closure from taking effect on November 1, 1996, the Council believed it necessary to move forward with this alternative to alleviate unnecessary economic impacts until such time as the Council is able to develop a proposal to satisfy all concerns. In the unlikely event that the Council is unable to reach a consensus in time for the 1998 fishing year, the revised closure would serve as a fallback measure. Further explanation of this second-year closure can be found in the comment and response section of this preamble.

An issue of concern involves the fact that both the proposed change to the current November/December Mid-coast Closure Area, and its proposed default for 1998 and beyond, occur in the month of May. Since May represents the beginning of the 1997 multispecies fishing year, implementation of this proposal would result in the elimination of the closure for the 1996 fishing year and the conservation benefits for multispecies, particularly for GOM cod, would be foregone both for the 1996 calendar year and the fishing year. However, while delay of this closure may negatively impact the target 1996 total allowable catches (TACs) in the GOM, the conservation benefits that would accrue from this area would be realized at the beginning of the 1997 fishing year, a 6-month deferral as opposed to a full year. Also, since May

represents a period of time when catch rates are at their highest and fish prices are at their lowest, a May replacement closure would be the least economically burdensome to the fishing industry while still achieving equivalent conservation benefits in relation to a November/December closure.

Nevertheless, a likely consequence resulting from the delay of these management measures is the possibility that the target TACs will be exceeded. Due to this possibility, the Multispecies Monitoring Committee will need to take these postponed reductions into account when recommending target TACs for the 1997 fishing year.

In addition to changing the time/area closure for the Mid-coast area, this action enables sink gillnet vessels to fish in the harbor porpoise Mid-coast Closure Area provided pingers are employed on the gear. The Council agreed to this based on information resulting from a 1994 experiment conducted by the New England Aquarium, Woods Hole Oceanographic Institution, and the New Hampshire Commercial Fishermen's Association and a 1995 experimental fishery that evaluated the effectiveness of pinger use in the GOM sink gillnet fishery. Both of these efforts indicated that, with the use of pingers, in the months of November and December the harbor porpoise bycatch in the Mid-coast area was reduced to insignificant levels. Based on the results of these experiments, NMFS agrees that an exemption program is warranted in this area during the November through December time period, provided the nets are equipped with pingers as prescribed in the 1995 and 1996 NMFS-authorized experimental fisheries.

This final rule changes the season termination date for Small Mesh Area 1 from October 31 to November 15 for the 1997 fishing year. With the

implementation of Amendment 7 to the FMP, the harbor porpoise Mid-coast Closure Area was expanded to all gear types capable of catching multispecies. Due to this action, the termination date for Small Mesh Area 1 was changed from November 15 to October 31 as this exemption area lay completely within the November/December Mid-coast Closure Area. This rule reestablishes the original season for this exempted small mesh area. Additionally, since part of Small Mesh Area 2 lies within and takes place during the 1998 default Mid-coast Closure Area, this rule reduces the area of Small Mesh Area 2 during the time period May 10 through May 30.

NMFS is making this adjustment 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 FMP, 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 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 Regional Administrator that the measures be published as a final rule if certain conditions are met. The Regional Administrator may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

The public was provided the opportunity to express opinions at numerous meetings beginning in February 1996. The following list indicates the 1996 meetings at which this action was on the agenda, discussed, and public comment was heard:

Date	Meeting	Location
February 27–28	Council	Danvers, MA.
Apr. 11	Multispecies O/S	Peabody, MA.
Apr. 17–18	Council	Danvers, MA.
June 5–6	Council	Danvers, MA.
June 11	Multispecies O/S	Portland, ME.
July 9	Multispecies O/S	Peabody, MA.
July 17–18	Council	Peabody, MA.
Aug. 5	Subcommittee	Saugus, MA.
Aug. 13	Multispecies O/S	Peabody, MA.
Aug. 21–22	Council	Danvers, MA.
Aug. 27	Multispecies O/S	Woods Hole, MA.
Sept. 9	Council	Peabody, MA.

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 5 days prior to the Council's final September 9,

1996, meeting, which is required under the framework adjustment process. Also, written comments were accepted

up to and at the September 9, 1996, Council meeting.

Comments and Responses

Comment 1: A Council member presented comments from small-boat fishers in New Hampshire and Newburyport, MA, that the proposed Jeffreys Ledge Closure Area for the month of May could force a large number of small boats inshore to the area known as Ipswich Bay, because they are physically limited from fishing elsewhere. The fishers are concerned that the increased density of fishing activity would be detrimental to the resource in Ipswich Bay and would increase the incidence of gear conflicts.

Response: The Council adopted a second-year plan that would close the entire Mid-coast Closure Area from May 10 through May 30. While this may result in requiring some vessels to tie up during this period, the time of the closure is reduced by 11 days as compared to the 1997 Jeffreys Ledge closure, and it applies over a broader area. This is a risk-averse approach that will implement a more conservative measure unless the Council determines that the measure for 1997 is effective and does not have the effort-displacement problems anticipated by some fishers. If the Council makes such a determination, it would have to make an adjustment through the framework process before May 1998.

Comment 2: One commentor stated that this proposed action would change the Mid-coast Closure Area for all vessels capable of catching multispecies, it does not automatically open this area to gillnetting since the area is also closed to protect harbor porpoise. The NMFS-authorized experiment to test the use of pingers in this area indicated that they are effective in reducing harbor porpoise bycatch.

Response: The Council added a measure that would allow gillnets equipped with pingers to fish in the area during November and December as supported by experimental fishery results.

Comment 3: Two inshore trawl fishers from Gloucester commented that they supported the Multispecies Committee's recommendation to close just Jeffreys Ledge, and that the closure of the larger 1998 default Mid-coast Closure Area would force them to fish offshore.

Response: The Council noted that the proposed action retains the committee's recommendation for the first year but that it is including the broader closure for the second year as a conservative default strategy to address concerns of other industry members about increased density of fishing activity in a small

inshore area. The Council will monitor the area for effort shifts during 1997 and may adjust the second-year measure if the problem anticipated by those fishers does not occur in the first year.

Comment 4: A member of the industry commented that an area closure unfairly impacts only those vessels displaced by the closure and those that fish in nearby areas where the displaced boats will fish. He suggested that a fairer system would be to reduce days-at-sea equally for all vessels.

Response: The Council recognizes that area closures may have differential impacts on vessels that fish in or near the affected area. However, the area closures are designed as a conservation measure to protect fish in that area, and closures exist throughout the region that affect only segments of the entire fleet. The Council also indicated that it had considered the days-at-sea reduction schedule in the development of Amendment 7 and that it was not going to adjust the schedule at this early point in the amendment's implementation.

Comment 5: An industry representative from Maine and a representative of the fishing industry in Gloucester, MA, commented that fishing for pelagic species with a mid-water trawl is still prohibited in the proposed closure area(s) despite its insignificant bycatch of multispecies and that it should be allowed.

Response: The Council has directed the Multispecies Committee to address this issue and make a recommendation that could be implemented before the May closure. Adherence to Framework Procedure Requirements

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

The Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and an opportunity for public comment to be heard and considered; therefore, further notice and opportunity to comment is unnecessary. The AA finds that under 5 U.S.C. 553(d), the need to have this regulation in place by

November 1, 1996, is good cause to waive the 30-day delay in effectiveness of this regulation. Implementation of this regulation by November 1, 1996, would relieve a restriction on vessels that have traditionally fished in the Mid-coast Closure Area during the months of November and December.

Because a general notice of proposed rulemaking is not required to be published for this rule by 5 U.S.C. 553 or by any other law, this rule is exempt from the requirement to prepare an initial or final RFA under the Regulatory Flexibility Act. As such, none has been prepared. The primary intent for this action is to reduce economic impacts on small fishing vessels by changing the timing and location of the area closure, which will allow small vessels to be able to fish on their traditional grounds in November and December when fishing alternatives are fewer.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 23, 1996.

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

For the reasons set out in the preamble, 50 CFR part 648 is amended to read 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, paragraph (a)(52) is revised and paragraph (a)(89) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81 (f)(1) through (i)(1) during the time period specified, except as provided in § 648.81(d), (f)(2), (g)(2), (h)(2), and (i)(2).

* * * * *

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

3. In § 648.80, paragraph (a)(8) is revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(8) *Small Mesh Area 1/Small Mesh Area 2.* (i) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size specified from July 15 through November 15 when fishing in Small Mesh Area 1, and from January 1 through June 30 when fishing in Small Mesh Area 2 in 1997 and in 1998 and beyond, except as specified in paragraph (a)(8)(ii) of this section. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a map depicting these areas are available from the Regional Director upon request):

SMALL MESH AREA 1

Point	N. lat.	W. long.
SM1	43°03'	70°27'
SM2	42°57'	70°22'
SM3	42°47'	70°32'
SM4	42°45'	70°29'
SM5	42°43'	70°32'
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'
SM10	42°55'	70°40'
SM11	42°59'	70°32'
SM1	43°03'	70°27'

SMALL MESH AREA 2

Point	N. lat.	W. long.
SM13	43°20.3'	69°59.4'
SM14	43°25.9'	69°45.6'
SM15	42°49.5'	69°40'
SM16	42°41.5'	69°40'
SM17	42°34.9'	70°00'
SM13	43°20.3'	69°59.4'

(ii) In 1998 and thereafter, the portion of Small Mesh Area 2 that is north of 43°00.0' N. lat. shall be closed to all fishing during the period May 10

through May 30 to coincide with the Mid-coast Closure Area specified in § 648.81(g)(1). Therefore, during the May 10 through May 30 time period in 1998 and beyond, Small Mesh Area 2 is defined by straight lines connecting the following points in the order stated:

SMALL MESH AREA 2

[May 10–May 30, 1998 and beyond]

Point	N. lat.	W. long.
SM18	43°00.0'	69°41.6'
SM15	42°49.5'	69°40'
SM16	42°41.5'	69°40'
SM17	42°34.9'	70°00'
SM19	43°00.0'	69°59.7'
SM18	43°00.0'	69°41.6'

* * * * *

4. In § 648.81, paragraphs (d) and (g)(1) are revised and paragraph (i) is added to read as follows:

§ 648.81 Closed areas.

* * * * *

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the NE Closure Area, the Mid-coast Closure Area, the Massachusetts Bay Closure Area, and the Jeffreys Ledge Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), and (i)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

* * * * *

(g) * * * (1) For the calendar year 1997, vessels are subject to the Jeffreys Ledge Closure Area restrictions specified under paragraph (i) of this section. For all other years beyond 1997, during the period May 10 through May 30, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in, the area known as the Mid-coast Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (g)(2) of this section: (Copies of a map depicting this area are available from the Regional Director upon request):

MID-COAST CLOSURE AREA

Point	N. lat.	W. long.
MC1	42°30'	(¹)
MC2	42°30'	70°15'
MC3	42°40'	70°15'
MC4	42°40'	70°00'
MC5	43°00'	70°00'
MC6	43°00'	69°30'

**MID-COAST CLOSURE AREA—
Continued**

Point	N. lat.	W. long.
MC7	43°15'	69°30'
MC8	43°15'	69°00'
MC9	(²)	69°00'

¹ Massachusetts shoreline.

² Maine shoreline.

* * * * *

(i) *Jeffreys Ledge Closure Area.* (1) For the calendar year 1997, during the period May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in, the area known as the Jeffreys Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (i)(2) of this section (copies of a map depicting this area are available from the Regional Director upon request):

JEFFREYS LEDGE CLOSURE AREA

Point	N. lat.	W. long.
JL8	43°30'	(¹)
JL9	43°30'	70°00'
JL10	42°30'	70°00'
JL11	42°30'	70°30'
JL12	(¹)	70°30'

¹ Maine shoreline.

(2) Paragraph (i)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section.

5. In § 648.87, paragraph (b)(1) is revised to read as follows:

§ 648.87 Sink gillnet requirements to reduce harbor porpoise takes.

* * * * *

(b) * * *

(1) *Mid-coast Closure Area.* (i) From March 25 through April 25 and from September 15 through December 31 of each fishing year, the restrictions and requirements specified in this paragraph (b) apply to the Mid-coast Closure Area, as defined under § 648.81(g)(1), except as provided in paragraph (b)(1)(ii) of this section.

(ii) Sink gillnet vessels subject to the restrictions and regulations specified in this paragraph (b) may fish in the Mid-coast Closure Area, as defined under § 648.81(g)(1), from November 1 through December 31 of each fishing year, provided that an acoustic deterrent device ("pinger") is attached at the end of each string of nets and at the bridle of every net within a string of nets, and

is maintained as operational and functioning. Each pinger, when immersed in water, must broadcast a $10\text{kHz} \pm 2\text{kHz}$ sound at $132\text{ dB} \pm 4\text{dB}$ re 1 micropascal at 1 m. This sound must last 300 milliseconds and repeat every 4 seconds.

* * * * *

[FR Doc. 96-27730 Filed 10-24-96; 4:44 pm]

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