recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A matter is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

(c) A supporting activity is any action that is not a case or matter, including management and general, and fundraising.

§ 1635.3 Timekeeping requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Such time records for full-time attorneys and paralegals must also provide the date for time spent on each case, matter or supporting activity. Such time records for part-time attorneys and paralegals who also work for an organization that engages in restricted activities must also provide the date and exact time of day for time spent on each case, matter or supporting activity for the recipient. Finally, such time records must be consistent with the time and attendance records used for payroll purposes.

(2) Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be implemented within 30 days of the effective date of this regulation or within 30 days of the effective date of a grant or contract, whichever is later.

(d) The timekeeping system must be able to aggregate time record information from the time of implementation on both closed and pending cases by legal problem type.

§ 1635.4 Administrative provisions.

Time records required by this section shall be available for examination by auditors and representatives of the Corporation, and by any other person or entity statutorily entitled to access to such records. The Corporation shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

Dated: October 16, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–28229 Filed 10–21–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 921232–2332; I.D. 092192B]

Endangered and Threatened Species; Proposed Threatened Status for the Gulf of Maine Population of Harbor Porpoise

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: National Marine Fisheries Service (NMFS) is reopening the comment period on the proposed rule to list the Gulf of Maine/Bay of Fundy (GOM/BOF) harbor porpoise, (*Phocoena phocoena*), as a threatened species under the Endangered Species Act (ESA). Due to the passage of time since the close of the previous comment period, the availability of new/additional information and the desire to review the best scientific information available during the decision-making process, the comment period is being reopened.

DATES: Comments must be received by November 23, 1998.

ADDRESSES: Comments, requests for copies of this notice or a complete list of references should be addressed to the Chief, Marine Mammal Division (PR2), Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, F/PR2, NMFS, (301) 713–2322, Laurie Allen, Northeast Region, NMFS, (978) 281–9291, or Kathy Wang, Southeast Region, NMFS, at (727) 570–5312.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1993, NMFS published a proposed rule (with a 90-day comment period) to list the GOM population of harbor porpoise as threatened under the ESA (58 FR 3108). The listing was proposed in response to an ESA petition submitted by the Sierra Club Legal Defense Fund, on behalf of the International Wildlife Coalition and 12 other organizations (notice of receipt of petition to list published on December 13, 1991 (56 FR 65044). It was also based on NMFS' research findings at the time, which demonstrated that (a) the rate of bycatch of harbor porpoise in commercial gillnet fisheries (extending from the Bay of Fundy, Canada, south throughout the Gulf of Maine) might reduce this population to the point where it would become threatened throughout all or a portion of its range and that (b) there were no regulatory measures in place to reduce this bycatch.

Following publication of the proposed rule, NMFS received several comments requesting that public hearings be held throughout New England. In response to these requests, NMFS extended the comment period on the proposed rule until August 7, 1993 (58 FR 17569, April 5, 1993).

During the extended comment period, NMFS completed analyses of sighting data from the 1992 porpoise abundance surveys and analyses of the 1992 observer data used to determine total estimated bycatch in the GOM gillnet fishery. These data were presented and discussed at a meeting of the New England Fishery Management Council (NEFMC) Groundfish Committee, Harbor Porpoise Subgroup, on June 16, 1993. After the Harbor Porpoise Subgroup meeting, NEFMC forwarded comments to NMFS requesting a 6-month extension of the final decision-making period on the proposed rule to

list harbor porpoise. An extension was believed to be appropriate because, according to the NEFMC and others present at the June 16 meeting, the data presented by NMFS cast doubt on whether the GOM/BOF porpoise population was distinct and, thus, was a species under the ESA.

Under section 4 of the ESA, if there is a substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, NMFS may extend the 1-year period of determination. On November 8, 1993 (58 FR 59230),in accordance with this provision, the date for the final determination on the proposal was extended for 6 months to allow for further review of the bycatch trend, analysis of the 1993 bycatch data prior to final determination, and further consideration of all data, including the abundance survey data, relevant to the final determination. NMFS reopened the comment period for an additional 30 days following completion of these analyses (59 FR 36158, July 15, 1994) to close on August 11, 1994.

In the meantime, the New England Harbor Porpoise Working Group (HPWG) met on July 21, 1994, to discuss the 1992 bycatch data under consideration with regard to the ESA listing proposal. The HPWG, formed in 1990, was a group of fishermen, environmentalists, and scientists whose purpose was to define the extent of the harbor porpoise problem and to identify solutions to reduce the incidental take of harbor porpoise in gillnets while minimizing the impacts on the fishery. The HPWG recommended that the updated bycatch estimates should be more fully explained so that public review and comment could provide more meaningful input to NMFS prior to the final listing determination. NMFS prepared a document in August 1994 that addressed HPWG concerns. Given that the comment period on the proposed listing was scheduled to close on August 11, 1994, and that this would not allow enough time for public review of the NMFS document regarding HPWG concerns, the comment period on the proposed rule was further extended until September 11, 1994 (59 FR 41270). NMFS had not yet made a final determination when, in fiscal year 1996, Congress imposed a 1-year moratorium on listing species under the ESA.

The Agency has not yet issued a final determination. The final determination will need to consider new population abundance and bycatch data, NEFMC/NMFS' ongoing fishery management efforts to reduce harbor porpoise bycatch, and the progress expected through the Marine Mammal Protection Act (MMPA) Section 118 Take Reduction Team process. Since publication of the proposed rule, the following information has become available to supplement our understanding of the species' status and factors affecting the species.

Stock Definition and Geographic Range Data

Recent analyses involving mitochondrial DNA (Wang, 1996), organochlorine contaminants (Westgate, 1997), heavy metals (Johnston, 1995), and life history parameters (Read and Hohn, 1995) support the currently accepted hypothesis that there are four separate populations in the western North Atlantic: the Gulf of Maine/Bay of Fundy, Gulf of St. Lawrence, Newfoundland, and Greenland populations.

Abundance Data

Three abundance surveys were conducted during the summers of 1991, 1992, and 1995. The population estimates were 37,500 harbor porpoises in 1991 (coefficient of variation (CV) = 0.29, 95% confidence interval (CI) = 26,700–86,400) (Palka, 1995a), 67,500 harbor porpoises in 1992 (CV = .23, 95 percent CI = 32,900–104,600) (Palka, 1996), and 74,000 harbor porpoises in 1995 (CV = 0.20, 95 percent CI = 40,900–109,100) (Palka, 1996). The inverse variance weighted-average abundance estimate was 54,300 harbor porpoises (CV = 0.14, 95 percent CI = 41,300–71,400). Possible reasons for inter-annual differences in abundance and distribution include experimental error and inter-annual changes in water temperature and availability of primary prey species (Palka, 1995b).

Population Viability Analysis

Several recent analyses have concluded, using various measures, that the current level of mortality/bycatch of GOM/BOF harbor porpoise is too high. Current bycatch/mortality levels exceed the calculated PBR for the population, which is why the population has been designated as ''strategic'' under the MMPA. Additionally, a recent uncertainty analysis (Caswell *et al.*, In press) concluded that current rates of bycatch/mortality are a threat to the GOM/BOF harbor porpoise population. Neither of these analyses, however, directly calculates the risk of extinction to the population that is relevant for consideration of listing under the ESA. To directly examine the potential risk of extinction of GOM/BOF harbor porpoise, a population viability analysis (PVA) was recently prepared (Preliminary analyses, PR2 draft report). A PVA is used to estimate future trends of a population to estimate the probability of extinction of the population given certain assumptions. Using 1991, 1992, and 1995 abundance data and 1992–1996 bycatch data, stochastic population dynamics models of the GOM/BOF harbor porpoise population were developed to evaluate the probability of persistence of the population over the foreseeable future (the next 20 to 100 years). Each of the models predicted a very high probability of extinction within 100 years under the current levels of mortality/bycatch, whereas the probability of extinction within 20 years was estimated to be low. Reducing the current mortality/bycatch level by one-half would decrease, but not eliminate, the probability of extinction in 100 years, but was estimated to eliminate any probability of extinction within 20 years. Finally, reducing the current mortality/bycatch to one-quarter of the current level was estimated to make the risk of extinction within 100 years very low.

Supplemental Summary of ESA Factors Affecting the Species

Species may be determined to be threatened or endangered due to one or more of five factors described in section 4(a)(1) of the ESA. These factors are discussed here, as they apply to the GOM/BOF harbor porpoise in light of additional/new information that has become available since the species was originally proposed for listing. This information is intended to supplement the information on the status of the species contained in the proposed rule.

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Although the shoreline bordering the nearshore habitat of this species along the eastern U.S. coastline is developed in many areas and is potentially threatened with further destruction or physical modification, there is no new/additional evidence to indicate that such modification or destruction has contributed to a decline of this population or that the range of this species has changed significantly as a result of habitat loss. This factor was not a basis for the proposed listing.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

One of the principal factors for proposing to list the GOM/BOF population of harbor porpoise as

threatened under the ESA was the level of harbor porpoise bycatch in commercial fisheries in the GOM/Bay of Fundy/Mid-Atlantic. GOM/BOF harbor porpoise takes have been documented in the U.S. New England multispecies sink gillnet, Mid-Atlantic coastal gillnet, and Atlantic pelagic drift gillnet fisheries, and in the Canadian Bay of Fundy sink gillnet fishery and herring weir fishery. The average annual mortality estimate from 1992 to 1996 for the above U.S. fisheries is 1,667 (CV = 0.09) harbor porpoise. The average annual mortality estimate in Canada from 1993 to 1996 is 162 harbor porpoise.

Recent data on incidental takes in U.S. fisheries are available from observer programs monitoring the New England multispecies sink gillnet fishery, U.S. Atlantic coastal gillnet fisheries, the Atlantic pelagic drift gillnet fishery, the North Atlantic bottom trawl fishery, Canada's Bay of Fundy sink gillnet fishery, and Canada's herring fishing weirs.

New England multispecies sink gillnet fishery: Most of the harbor porpoise takes in U.S. fisheries are from the New England multispecies sink gillnet fishery. In 1990, NMFS started an observer program to investigate marine mammal takes in this fishery. Between 1990 and 1996, 362 harbor porpoise mortalities related to this fishery were observed. In 1993, there were approximately 349 full and part-time vessels in the New England multispecies sink gillnet fishery, which covered the Gulf of Maine and southern New England. An additional 187 vessels were reported to occasionally fish in the Gulf of Maine with gillnets for bait or personal use; however, these vessels were not covered by the observer program (Walden, 1996) and their fishing effort was not used in estimating mortality. Observer coverage in terms of trips has been 1, 6, 7, 5, 7, 5, and 4 percent for years 1990 to 1996, respectively. Annual estimates of harbor porpoise by-catch in the New England multispecies sink gillnet fishery reflect seasonal distribution of the species and of fishing effort. By-catch estimates include a correction factor for the under-recorded number of by-caught animals that occurred during unobserved hauls on trips with observers on the boat, when applicable. Need for such a correction became evident following a 1994 re-analysis of data from the sea sampling program indicating that, for some years, by-catch rates from unobserved hauls were lower than for observed hauls (Palka, 1994; CUD, 1994; and Bravington and Bisack, 1996). These revised by-catch estimates replace those published earlier (Smith et al., 1993). These estimates remain negatively biased because they do not include harbor porpoises that may have fallen out of the net while still underwater. This bias cannot be quantified at this time. Estimated annual by-catch (CV in parentheses) from this fishery during 1990–1996 was 2,900 in 1990 (0.32), 2,000 in 1991 (0.35), 1,200 in 1992 (0.21), 1,400 in 1993 (0.18) (Bravington and Bisack 1996; CUD 1994), 2100 in 1994 (0.18), 1400 in 1995 (0.27) (Bisack, 1997a), and 1200 (0.23) in 1996. Average estimated harbor porpoise mortality and serious injury in the New England multispecies sink gillnet fishery during 1992–1996 was 1,460 (0.10).

Differential mortality by age or sex in animals collected before 1994 was not evident in U.S. or Canadian gillnet fisheries; no pattern/propensity could be discerned based on available data. In addition, substantial inter-annual variation in the age and sex composition of the by-catch existed (Read and Hohn, 1995). However, with a larger sample, from the harbor porpoises that were examined by necropsy or from tissues received from sea sampling observers (n=171 between 1989 and 1997), the sex ratio is now 0.34 females per male (A. Read, pers. comm.). Investigations are currently underway to determine spatial-temporal patterns in the sex ratio.

Two preliminary experiments, using acoustic alarms (pingers) attached to gillnets, that were conducted in the Gulf of Maine during 1992 and 1993 took 10 and 33 harbor porpoises, respectively. During fall 1994, a controlled scientific experiment was conducted in the southern Gulf of Maine where all nets with and without active pingers were observed (Kraus et al. 1997). In this experiment, 25 harbor porpoises were taken in 423 strings with non-active pingers (controls), and two harbor porpoises were taken in 421 strings with active pingers. In addition, 17 other harbor porpoises were taken in nets with pingers that were not in the experiment. During 1995 to 1996, experimental fisheries were conducted where all nets in a designated area used pingers and only a sample of the nets were observed. During November through December 1995, the experimental fishery was conducted in the southern Gulf of Maine (Jeffreys Ledge) region where no harbor porpoises were observed taken in 225 pingered nets. During April 1996, three other experimental fisheries occurred. In the Jeffreys Ledge area, in 88 observed hauls using pingered nets, nine harbor porpoises were taken. In the Massachusetts Bay region, in 171 observed hauls using pingered nets, two harbor porpoises were taken. And, in a region just south of Cape Cod, in 53 observed hauls using pingered nets, no harbor porpoises were taken. All takes from pingered nets were added directly to the estimated total bycatch for the rest of that year in the rest of the fishery. As a result of seeming inconsistency in spring results compared to fall results, the GOMTRT recommended an additional scientific experiment in the spring of 1997. Again, there were similar mean fish catch rates and similar numbers of seals caught between all treatments; zero harbor porpoise were caught in nets with active pingers, demonstrating that pingers reduced the incidental catch of harbor porpoise in sink gillnets during spring (Kraus et al., 1997).

U.S. Mid-Atlantic coastal gillnet fisheries: In July 1993, an observer program was initiated in the U.S. Atlantic coastal gillnet fishery by the Northeast Fisheries Science Center (NEFSC) Sea Sampling program. Twenty trips were observed during 1993. During 1994 and 1995, 221 and 382 trips were observed, respectively. This fishery, which extends from North Carolina to the New York/Connecticut/Rhode Island border, is actually a combination of small vessel fisheries that target a variety of fish species, some of which operate right off the beach. The number of vessels in this fishery is unknown because records which are held by both state and Federal agencies have not been centralized and standardized. Observer coverage, expressed as percent of tons of fish landed, was 5 percent and 4 percent for 1995 and 1996. During 1995 and 1996, respectively, 6 and 19 harbor porpoises were observed taken. During 1995 and 1996, observed fishing effort was concentrated off NJ and scattered between DE and NC from 1 to 50 miles (1500 meters) off the beach. All documented by-catches during 1995 and 1996 were from January to April. By-catch estimates were determined by using methods similar to that used for by-catch estimates in the New England multispecies gillnet fishery (Bravington and Bisack, 1996; Bisack, 1997a). Using the observed takes, the estimated annual mortality (CV in parentheses) attributed to this fishery was 103 (0.57) and 311 (0.31) for 1995 and 1996, respectively. Average annual estimated harbor porpoise mortality and serious injury from the Mid-Atlantic coastal gillnet fishery during 1995 and 1996 was 207 (CV=0.27).

Atlantic pelagic drift gillnet fishery: One harbor porpoise was observed taken from the 1991–1996 Atlantic pelagic

drift gillnet fishery. Although the estimated total number of hauls in this fishery increased from 714 in 1989 to 1,144 in 1990, effort was severely reduced, thereafter, with the introduction of quotas.

Observer coverage, expressed as percent of sets observed was 8 percent in 1989, 6 percent in 1990, 20 percent in 1991, 40 percent in 1992, 42 percent in 1993, 87 percent in 1994, 99 percent in 1995, and 64 percent in 1996. (The decline in observer coverage in 1996 is attributable to trips made by vessels that were deemed unsafe (size/condition) for observers.) Estimates of the total by-catch, for each year from 1989 to 1993, were obtained using the aggregated (pooled 1989–1993) catch rates, by strata (Northridge, 1996). Estimates of total annual by-catch for 1994, 1995, and 1996 were estimated from the sum of the observed caught and the product of the average by-catch per haul and the number of unobserved hauls as recorded in logbooks. Variances were estimated using bootstrap re-sampling techniques (Bisack, 1997b). Estimated annual fishery-related mortality (CV in parentheses) attributable to this fishery was 0.4 in 1992 (1.00), 1.5 in 1993 (0.34), 0 in 1994, and 0 in 1996. The average estimated harbor porpoise mortality and serious injury in the Atlantic pelagic drift gillnet fishery during 1992–1996 was 0.4 (0.34) (Waring et al., in review).

North Atlantic bottom trawl fishery: One harbor porpoise was observed incidentally captured in the North Atlantic bottom trawl fishery between 1989 and 1996. The animal was clearly dead prior to being taken by the trawl because it was severely decomposed and the tow duration of 3.3 hours was insufficient to allow extensive decomposition; therefore, there is no estimated by-catch for this fishery (Waring et al., in review).

Canadian Bay of Fundy sink gillnet fishery: During the 1980s, total harbor porpoise by-catch in the Canadian Bay of Fundy sink gillnet fishery was thought to be low, based on casual observations and discussions with fishermen. The estimated harbor porpoise by-catch in 1986 was 94 to 116, and, in 1989, it was 130 (Trippel et al., 1996). The Canadian gillnet fishery occurs mostly in the western portion of the Bay of Fundy during the summer and early autumn months when the density of harbor porpoises is the highest. Polacheck (1989) reported there were 19 gillnetters active in 1986; 28 active in 1987; and 21 in 1988.

More recently, an observer program implemented in the summer of 1993 provided a total by-catch estimates of 424 harbor porpoises. No measure of variability was estimated. The observer program was expanded in 1994, and the by-catch was estimated to be between 80 and 120 harbor porpoises where the fishing fleet consisted of 28 vessels (Trippel et al., 1996). During 1995, due to groundfish quotas being exceeded, the gillnet fishery was closed during July 21 to August 31, 1995. During the open fishing period of 1995, 89 percent of the fishing trips were observed, all in the Swallowtail region. Approximately 30 percent of these observed trips used pingered nets. The estimated by-catch was 87 harbor porpoises (Trippel et al., 1996). No confidence interval was able to be computed due to lack of coverage in the Wolves fishing grounds. During 1996, the Canadian gillnet fishery was closed from August 20 to September 30, 1996. Preliminary estimates of by-catch from 1996 were in the range of 20 to 50 harbor porpoises. By-catch estimates are currently not available for the 1997 observer program.

Canadian herring fishing weirs: Harbor porpoise takes have been observed in Canadian fishing weirs, though not in U.S. fishing weirs. However, no program has been set up to observe U.S. fishing weirs. In the Bay of Fundy, weirs are presently operating from May to September each year. Weirs are found along the southwestern shore of the Bay of Fundy and scattered along the western Nova Scotia and northern Maine coasts. There were 180 active weirs in the western Bay of Fundy and 56 active weirs in Maine in 1990 (Read, 1994). It is unknown how many herring weirs currently exist in U.S. and Canadian waters. Smith et al. (1983) estimated that approximately 70 harbor porpoises become trapped annually, an average of 27 die, and the rest are released alive. At least 43 harbor porpoises were trapped in Bay of Fundy weirs in 1990, but the number killed is unknown. In 1993, after a cooperative program between fishermen and Canadian biologistsbegan, over 100 harbor porpoises were released alive, and an unknown number died (Read, 1994).

C. Disease or Predation

There continues to be no indication, from stranding data or tissue analyses, that disease has had a measurable impact on GOM/BOF harbor porpoise. Likewise, there is no new evidence, since the proposed listing, to indicate that predation has contributed to the decline of GOM/BOF porpoise. This particular factor was not a basis for the proposed listing.

D. The Inadequacy of Existing Regulatory Mechanisms

This factor and Factor B formed the basis for the proposed listing. Discussed here in chronological order of implementation are the regulatory mechanisms that have gone into effect since publication of the proposed rule. In addition, those proposed regulations that may go into effect in the near future through the MMPA Section 118 Take Reduction Team process are described.

Management Actions Since the Proposed Listing

In 1994, as part of Amendment 5 to the Northeast Multispecies Fishery Management Plan (NE Multispecies FMP), the NEFMC proposed,under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) a 4-year program to reduce the harbor porpoise bycatch off New England to 2 percent of the estimated harbor porpoise population size per year. To achieve this goal, the NEFMC recommended phasing in time and area closures to sink gillnet gear, such that take levels would be reduced by 20 percent each year over the 4-year period. NMFS adopted and implemented NEFMC's first-year closure recommendations on May 25, 1994 (59 FR 26972).

In the fall of 1994, NMFS authorized and provided support for a cooperative experiment by New England gillnet fishermen and for scientists to develop methods to deter harbor porpoise away from fishing nets. Building on work in previous years, the experiment sought to evaluate the effectiveness of acoustic deterrent devices or ''pingers'' attached to gillnets to prevent entanglement of harbor porpoise. The experiment was conducted in the Mid-Coast Closed Area (closed under Amendment 5 to the NE Multispecies FMP) off the New Hampshire-Massachusetts border. The result of that experiment showed that pingers can reduce the bycatch of porpoise substantially during the fall in this area (Kraus et al., 1995).

Harbor porpoise bycatch rates increased in 1994 despite the new time-area gillnet fishing closures enacted by NMFS on May 25, 1994. The increased rate occurred before the fall area closure and occurred in waters that are adjacent to the closure area, in an area known as Jeffreys ledge. Based on this information, the NEFMC recommended expanding both the time and area of the fall closure around Jeffreys ledge. NMFS adopted a rule to do so on October 30, 1995 (60 FR 57207).

In November 1995, NMFS adopted NEFMC's recommendations to expand

the closures contained in Framework Adjustment 4 to the NE Multispecies FMP for sink gillnet gear by implementing Framework Adjustment 14 (60 FR 55207). Framework 14 enlarged and redefined the Mid-Coast Closure Area in both time and area during 1995 in an effort to achieve the necessary reductions in harbor porpoise bycatch. The Mid-Coast closure was closed to fishing with sink gillnets from March 25 through April 25. Framework Adjustment 14 also required closure of an area in southern New England, south of Cape Cod, from March 1 to 30.

Amendment 7 to the NE Multispecies FMP, implemented in July 1996, included a revised objective to address new provisions in the MMPA (61 FR 27709). With Amendment 7, NMFS adopted and implemented NEFMC's recommendations concerning marine mammal gillnet closures as additional groundfish conservation closures for all types of gear other than gillnets capable of catching multispecies, as part of an overall groundfish effort reduction program. In addition, the NEFMC recommended the use of pingers in several experimental fisheries to evaluate their use as bycatch reduction tools.

In February 1996, NMFS convened the Gulf of Maine Take Reduction Team (GOMTRT) to develop a plan to reduce the incidental take of harbor porpoise in sink gillnets (61 FR 5384). The 1994 amendments to the MMPA require the preparation and implementation of Take Reduction Plans (TRPs) for certain marine mammals stocks. The GOMTRT convened with the understanding that a separate take reduction team would meet to address the harbor porpoise bycatch problem in the Mid-Atlantic. The GOMTRT included representatives of the Northeast multispecies sink gillnet fishery, NMFS, state marine resource management agencies, NEFMC, environmental organizations, and academic and scientific organizations. The environmental organizations included the Center for Marine Conservation and the Humane Society of the United States. The GOMTRT met five times between February and July 1996 and submitted a consensus draft TRP to NMFS in August of 1996.

A proposed rule to implement the GOMTRP was published on August 13, 1997 (62 FR 43302). The proposed rule would outline a schedule of time/area closures and periods during which acoustic deterrents or ''pingers'' would be required for each of the established management areas.

NMFS convened the Mid-Atlantic Take Reduction Team (MATRT) on February 25, 1997, to address the interactions between strategic marine mammal stocks and the Mid-Atlantic coastal gillnet fisheries (62 FR 8428). The MATRT met five times between January 1997 and August 1997 and delivered a draft report to NMFS on August 23, 1997. The MATRT report consists of the take reduction measures, both regulatory and non-regulatory, which the MATRT agreed to by consensus, and a discussion of several non-consensus issues. Because the MATRT did not reach consensus on the use of a pinger experiment in the Mid-Atlantic, it was not able to deliver a consensus TRP to NMFS.

NMFS re-convened the GOMTRT in December 1997 to evaluate new bycatch data that had become available since the GOMTRP was proposed by NMFS (62 FR 65402). The new bycatch data suggested that the measures proposed under the August 13 GOMTRP proposed rule would not be sufficient to achieve potential biological removal (PBR) for harbor porpoise. NMFS reopened the public comment period on the proposed rule for 1-month during the deliberations of the GOMTRT. At the December meeting, the GOMTRT developed new recommendations and agreed on a number of additional measures for bycatch reduction that were presented to NMFS in the form of a report on January 14, 1998 (RESOLVE, 1998).

Framework 25 to the NE Multispecies FMP (63 FR 15326, March 31, 1998), was implemented on May 1, 1998. Framework 25 implements gillnet fishing closures throughout the GOM to conserve cod (*Gadus morhua*). Framework 25 implements management measures that include 1-month sequential closures for each of four Gulf of Maine inshore areas starting in Massachusetts Bay and extending to Penobscot Bay and for an offshore area comprising Cashes Ledge; a year-round closure encompassing parts of Stellwagen Bank, Jeffreys Ledge, and Wildcat Knoll; and a reduction in the Gulf of Maine cod landing limit.

On September 11, 1998 (63 FR 48670), NMFS proposed a Harbor Porpoise Take Reduction Plan (HPTRP) to replace the GOMTRP proposed on August 13, 1997. The GOMTRP is proposed to be replaced due to three developments. First, new bycatch information became available which indicates that significant changes to the August 13 GOMTRP are needed to achieve the PBR level for harbor porpoise. Second, some of the cod fishery closures under Framework 25 are expected to indirectly provide harbor porpoise conservation. Third, the MATRT submitted its report to NMFS which presented new information on the level of harbor porpoise bycatch in the Mid-Atlantic region. The combination of these actions led NMFS to integrate the initially separate plans into one comprehensive TRP and to replace the GOMTRP proposed rule.

The proposed HPTRP would require a wide range of management measures to reduce the bycatch and mortality of harbor porpoise. In the Gulf of Maine, the proposed HPTRP included time and area closures and time/area periods during which pinger use would be required in the Northeast, Mid-coast, Massachusetts Bay, Cape Cod south and Offshore Closure Areas. In the Mid-Atlantic area, the proposed HPTRP included time/ area closures and modifications to gear characteristics. NMFS expects that the proposed HPTRP will reduce bycatch to the PBR level.

NMFS intends to issue a final rule to implement the HPTRP on or about December 1, 1998.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Sixty-four harbor porpoise strandings were reported from Maine to North Carolina between January and June 1993. Fifty of those harbor porpoise were reported stranded in the U.S. Atlantic region from New York to North Carolina between February and May. Many of the carcasses recovered in this area during this time period had cuts and body damage suggestive of net marking (Haley and Read, 1993). Five out of eight carcasses and fifteen heads from the strandings that were examined showed signs of human interactions (net markings on skin and missing flippers or flukes). Decomposition of the remaining animals prevented determination of the cause of death. Earlier reports of harbor porpoise entangled in gillnets in the Chesapeake Bay and along the New Jersey coast and reports of apparent mutilation of harbor porpoise carcasses raised concern that the 1993 strandings were related to a coastal net fishery, such as the American shad coastal gillnet fishery (Haley and Read, 1993).

Between 1994 and 1996, 107 harbor porpoise carcasses were recovered from beaches in Maryland, Virginia, and North Carolina. Only juvenile harbor porpoises were present in this sample. Of the 40 harbor porpoises for which cause of death could be established, 25 displayed definitive evidence of entanglement in fishing gear. In four cases, it was possible to determine that the animal was entangled in monofilament nets (Cox et al., in press).

Stranding data may be misleading, however, because not all of the marine

mammals that die or are seriously injured may wash ashore, nor will all of those that do wash ashore necessarily show clear signs of the cause of death. Finally, the level of technical expertise among stranding network personnel varies widely as does the ability to recognize signs that indicate the cause of death.

Other potentially human-induced factors that may be affecting this harbor porpoise population include high levels of contaminants in their tissues. Concentrations of organochlorine contaminants from 110 GOM/BOF harbor porpoises were recently measured (Westgate, 1995). Polychlorinated biphenyl (PCB) levels, the most prominent contaminant, and dichloro-diphenyl trichloroethane (DDT) levels were both higher in the Gulf of Maine/Bay of Fundy harbor porpoises than in the Gulf of St. Lawrence and Newfoundland harbor porpoises, although they are now much lower than that found in animals 10 years ago, as reported in Gaskin et al. (1983). Trace metal contaminants were also measured, and it was found that mean concentrations of copper, zinc, and mercury were similar to values previously reported for harbor porpoises in other regions of the world (Johnston, 1995). No obvious pathology has been noted in more than 300 necropsies of harbor porpoises incidentally captured in gillnets in the Bay of Fundy (A.J. Read, unpublished data). Although it is not known whether these contaminants have other effects, the presence of these contaminants in harbor porpoise tissues does not appear to pose a serious threat to this population.

Critical Habitat

NMFS has not completed the analysis necessary for the designation of critical habitat. A decision regarding critical habitat will be made in a separate rulemaking, as warranted, in accordance with the final listing determination.

Public Comments Solicited

Due to the availability of new/additional information, the passage of time since the close of the previous comment period, and the desire to review the best scientific information available during the decision-making process, the public comment period for the proposed ESA listing of GOM/BOF harbor porpoise as a threatened species is being reopened. All comments will be considered in NMFS' final determination (see **DATES**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 15, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 100698A]

RIN 0648–AL40

Fisheries of the Exclusive Economic Zone off Alaska; Description and Identification of Essential Fish Habitat

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 55 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area;

Amendment 55 to the FMP for Groundfish of the Gulf of Alaska; Amendment 8 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs; Amendment 5 to the FMP for Scallop Fisheries off Alaska; and Amendment 5 to the FMP for the Salmon Fisheries in the EEZ off the Coast of Alaska. These amendments would describe and identify essential fish habitat in Alaska, and risks to that habitat, for groundfish, scallops, salmon, and king and Tanner crabs. This action is intended to strengthen the ability of the Council to protect and conserve habitat used by these species at crucial stages of their life cycles.

DATES: Comments on Amendments 55/55/8/5/5 must be submitted by December 21, 1998.

ADDRESSES: Comments on the FMP amendments should be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 55/55/8/5/5 and the Environmental Assessment prepared for the amendments are available from the Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809. The following reports, which are referenced in the amendments, are also available from the Council:

1. Essential Fish Habitat Report for the Groundfish Resources of the Bering Sea and Aleutian Islands, April 1, 1998.
2. Essential Fish Habitat Report for the Groundfish Resources of the Gulf of Alaska Region, April 1, 1998.
3. Essential Fish Habitat Report for the Bering Sea and Aleutian Islands King and Tanner Crabs, March 31, 1998.
4. Essential Fish Habitat Report for the Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska, March 31, 1998.
5. Essential Fish Habitat Report for the Scallop Fisheries off the Coast of Alaska, March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, 907–586–7312 cindy.hartmann@noaa.gov; or Nina Mollett, 907–586–7492, nina.mollett@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment. Therefore, NMFS solicits comments on the approval, disapproval, or partial approval of these amendments.

The Magnuson-Stevens Act emphasizes the need for increased attention to habitat considerations in conserving and managing the Nation's fisheries. Regional Fishery Management Councils are directed to amend their FMPs with information on EFH, which is defined as ''those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.'' Councils must also identify potential adverse impacts on essential fish habitat (EFH) and make suggestions for minimizing those impacts and for conserving and enhancing EFH.

Background

The NMFS Alaska Region established a Core Team composed of NMFS employees and one person from the Council, which in turn established four Technical Teams (one each for salmon, crab, scallop and groundfish), comprised of Federal and state biologists. These teams developed habitat assessment reports for each FMP, that were distributed for public