

Federal Communications Commission.
William F. Caton,
Acting Secretary.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 950124025-5255-02; I.D. 100395B]

Northeast Multispecies Fishery; Framework Procedure to Protect Harbor Porpoise

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to correct and clarify certain sections of the regulations that implement the framework procedures for adjusting regulatory measures to protect harbor porpoise under the Northeast Multispecies Fishery Management Plan (FMP). This action is necessary to make these measures consistent with the intent of Amendment 5 to the Northeast Multispecies Fishery Management Plan submitted by the New England Fishery Management Council (Council).

EFFECTIVE DATE: October 25, 1995.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 508-281-9272.

SUPPLEMENTARY INFORMATION:

Regulations implementing Amendment 5 to the FMP were published on March 1, 1994 (59 FR 9872), and corrected on February 2, 1995 (60 FR 6447). Amendment 5, among other provisions, implemented a framework adjustment procedure for the purpose of achieving harbor porpoise mortality reduction goals. The section of the regulations implementing Amendment 5, pertaining to the "reduction of take" measures in the harbor porpoise bycatch of the Gulf of Maine sink gillnet fishery, does not reflect clearly the intent of the Council with respect to the role of the Harbor Porpoise Review Team (HPRT) and the number of meetings required to conclude the procedure.

As written, § 651.32(b)(4) can be read to mean that the recommendations of the HPRT must be published in the Federal Register without analysis or refinement by the Council. This final

rule/technical amendment corrects and clarifies the regulation and relieves the HPRT of the unintended requirement to analyze and refine its own recommendations for publication in the Federal Register.

Section 651.32(b)(4) also can be read to mean that the Regional Director is required to provide the public with any necessary analysis and opportunity to comment on any recommended changes or additions by the HPRT, before the Council adopts them. This final rule/technical amendment corrects and clarifies the regulation and assigns the Council with the responsibility for providing the public with any necessary analysis and opportunity to comment on any changes recommended by the HPRT, as originally intended.

Finally, section 651.32(b)(5) seems to require a minimum of three Council meetings, instead of two, as intended, before the Council shall determine whether to recommend changes or additions to the "reduction of take" measures in the harbor porpoise bycatch of the Gulf of Maine sink gillnet fishery. This final rule clarifies that at least two meetings are required, instead of three, making it consistent with the framework adjustment provisions included elsewhere in the Northeast Multispecies FMP and other FMPs.

Classification

Because this rule only corrects and clarifies the Council's intent regarding a section of an existing regulation for which prior notice and opportunity for public comment were provided, under 5 U.S.C. 553(b)(B) it is unnecessary to provide additional notice and opportunity for comment. Further, in that this rule is merely a clarification with no substantive effect, it is not subject to the 30-day delay in effective date provision of 5 U.S.C. 553(d).

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 24, 1995.

Richard H. Schaefer,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. In § 651.32, paragraphs (b)(4) and (b)(5) are revised to read as follows:

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

* * * * *

(b) * * *
(4) Upon receiving the recommendation of the HPRT of any changes or additions to the "reduction of take" measures, the Council will provide the public with any necessary analysis and opportunity to comment on any recommended changes or additions.

(5) After receiving public comment, the Council shall determine whether to recommend changes or additions to the "reduction of take" measures at a Council meeting following the meeting at which it received the HPRT's recommendations.

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[FR Doc. 95-26758 Filed 10-25-95; 10:10 am]

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50 CFR Part 651

[Docket No. 951023256-5256-01; I.D. 101695E]

Northeast Multispecies Fishery; Framework Adjustment 12

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 12 to the Northeast Multispecies Fishery Management Plan (FMP). This rule expands and redefines the Mid-coast Closure Area for sink gillnet gear, in both area and time during 1995, to reduce the bycatch of harbor porpoise, while minimizing the loss of fishing opportunity to harvesters using sink gillnet gear.

EFFECTIVE DATE: November 1, 1995.

ADDRESSES: Copies of Amendment 5 to the Northeast Multispecies Fishery Management Plan (Amendment 5), its regulatory impact review (RIR) and the final regulatory flexibility analysis contained with the RIR, its final supplemental environmental impact statement, and Framework Adjustment 12 document are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, NMFS, Fishery Policy Analyst, 508-281-9272.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing Amendment 5 to the FMP were published on March 1, 1994 (59 FR 9872). One of Amendment 5's principal objectives is to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by the end of year 4 of implementation to a level not to exceed 2 percent of the population, based on the best available estimates of abundance and bycatch. In addition, Amendment 5 requires that by September 15 of each year, the Council's Harbor Porpoise Review Team (HPRT) complete an annual review of harbor porpoise bycatch and abundance data in the Gulf of Maine and evaluate the impacts of other measures that reduce harbor porpoise take. It also encouraged the HPRT to make recommendations on other "reduction-of-take" measures to achieve the harbor porpoise mortality reduction goals and established a framework procedure for timely implementation of appropriate measures.

With the enactment of Framework Adjustment 4 to the Northeast Multispecies Fishery regulations (59 FR 26972, May 25, 1994), a series of time and area closures to sink gillnet gear were implemented based on an analysis by the Northeast Fisheries Science Center (NEFSC) of the seasonal and spatial distribution of harbor porpoise and sink gillnet fishing activity in the Gulf of Maine. The time and area closures established by Framework 4 remain in place except as modified by this action.

On September 8, 1995, the HPRT met to complete its annual review and to develop recommendations concerning future measures that would allow the Council to achieve the "reduction-of-take" goals stated in Framework Adjustment 4. The HPRT also discussed the possible use of acoustic devices as part of a bycatch mitigation strategy, because independent research has shown that sound emitting devices placed on sink gillnet gear can be effective in deterring harbor porpoise.

At this meeting, the HPRT reviewed data collected since 1990 from analyses prepared by the NEFSC and compared it with 1994, the first year in which the Council implemented time/area closures. Bycatch estimates for 1994 were not available from the NEFSC, but preliminary information on bycatch rates, including rates from previous years for comparison purposes, were used in addition to information on the location of incidental takes in the southern Gulf of Maine. The HPRT

concluded that: (1) The time and area closures, as currently configured, are neither long enough nor large enough to achieve the bycatch reduction goals; (2) the first year goals were probably not met and the porpoise bycatch was very likely higher in 1994 than in 1993 based on the higher bycatch rate in 1994 as an indicator; (3) the degree of effectiveness of existing measures cannot be fully evaluated until additional information of the distribution of fishing effort is available and; (4) the potential increase in bycatch appears to have been caused by an increase in the bycatch rates in the Mid-coast area in the fall.

The recommendation of the HPRT, therefore, is to extend the timing of the Mid-coast closure as a means to achieve the bycatch rate reduction goals, and secondarily, to expand this area to include locations that have historically accounted for bycatch but were not included in the first year closures. The proposed area of expansion is directly to the east and south of the current area, incorporating an oceanographic feature described on nautical charts as "Jeffreys Ledge." The specific area is found in Figure 8 of this rule. For the purposes of this action, the area of expansion is referred to as the "Jeffreys Ledge Band."

On September 11, 1995, the HPRT forwarded its recommendations to the Council, which initiated a framework procedure to adopt certain measures in response to the HPRT's recommendations. The Council did not adopt the recommendation regarding the Mid-coast area verbatim, because the regulatory process for implementing framework measures requires an opportunity for public comment and, therefore, would not allow completion of this process until approximately November 1, 1995. Thus, the framework measures proposed by the Council during its meeting to initiate Framework 12 on September 13-14, 1995, were to expand the closure area during 1995 by incorporating the Jeffreys Ledge Band into the Mid-coast Closure Area, and to close this reconfigured area to sink gillnet gear during the period November 1 through December 31, 1995. An alternative was requested by a member of the public to exempt a small portion of the Jeffreys Ledge Band known as Tillies Bank. The Council agreed to consider this request, pending further analysis. The Council also requested the Director, Northeast Region (Regional Director), to investigate the possibilities for additional experimental work on the use of acoustic devices, particularly in the Jeffreys Ledge Band, to mitigate harbor porpoise bycatch. The Regional Director agreed to investigate the

feasibility of these devices in a separate action.

On October 11, 1995, the Council held the second public meeting during which it adopted the framework adjustment measures. NMFS concurs with the Council's recommendation; this final rule implements Framework Adjustment 12 to address harbor porpoise bycatch by expanding the size of the Mid-coast Closure Area (including the Jeffreys Ledge Band but excluding Tillies Bank) during 1995 and by extending the duration of the Mid-coast Closure for 1995 (initially November 1-30) through November and December. While the Council and NMFS are concerned about other areas that were under consideration for closure but not closed by this action, e.g., the area east of 69°30' W. long. and Tillies Bank, the Council noted that it will review these areas specifically during the next annual review.

The expanded and redefined Mid-coast Closure Area with the Jeffreys Ledge Band depicted in Figure 8 of this part incorporated into it, is defined as follows:

Revised Mid-Coast Closure Area

This area will be closed from November 1 through December 31, 1995.

Point	Latitude	Longitude
MC1	42°30' N	Massachusetts shoreline
MC2	42°30' N	70°15' W.
MC3	42°40' N	70°15' W.
MC4	42°40' N	70°00' W.
MC5	43°00' N	70°00' W.
MC6	43°00' N	69°30' W.
MC7	43°15' N	69°30' W.
MC8	43°15' N	69°00' W.
MC9	Maine shoreline.	69°00' W.

Comments and Responses

This issue was discussed at a Marine Mammal Committee meeting held on September 12, 1995, and at the first of two Council meetings, required under the Amendment 5 framework adjustment process, held in Portland, ME, on September 13, 1995. Documents summarizing the Council's proposed action, the biological analyses upon which this decision was based and potential economic impacts were available for public review at least 5 days prior to the second meeting as required under the framework adjustment process, which was held on October 11, 1995. Written comments were accepted until October 10, 1995. Comments on the Council's proposal were received from several individuals

and from representatives of the following organizations: International Wildlife Coalition (IWC) and Humane Society of the United States/Marine Mammal Conservation Coalition (MMCC).

Comment: Several individuals did not comment in opposition to the closure, but rather in support of keeping Tillies Bank open to gillnetting.

Response: Tillies Bank has been excluded from the area incorporated into the closure because available data indicates that the harbor porpoise bycatch rate in this area appears to be substantially lower than elsewhere in the Jeffreys Ledge Band.

Comment: The representative from IWC asked whether opening Tillies Bank and the area east of 69°30' W. would hurt the chances for meeting the stated porpoise bycatch goals for 1995.

Response: NMFS is aware that the closed area may have the effect of displacing effort to the area east of 69°30' W. and to Tillies Bank and will monitor these areas to the extent possible with the observer and at-sea enforcement programs. NMFS did not have sufficient justification to disapprove the Council's recommendation to leave these areas open and further notes that no harbor porpoise bycatch has been observed in these areas during the regular monitoring period from 1990–1994.

Comment: Several commentators indicated concern that leaving open Tillies Bank and the area east of 69°30' W. long. would not provide an alternative fishing area for all gillnetters displaced due to the extended closure. Their comments are summarized as follows: The area east of 69°30' W. long. is not good gillnet bottom and is already fully utilized; Tillies Bank may sustain some additional effort, but it would be restricted to larger vessels from New Hampshire; mobile gear would move into the closed area and provide such disruption that the porpoise would be displaced into the open areas where gillnets would still be operating; and increasing conflict with mobile gear has forced gillnetters to concentrate their gear in the high relief areas (such as Jeffreys Ledge), which are not readily found outside the closed area.

Response: NMFS recognizes that both the harbor porpoise fall distribution and changes in fishing strategies due to the closed area will be highly variable. These complicated variabilities make it difficult to predict the effects of this closure to either harbor porpoise bycatch or the fishery that is displaced by this action. The extension of the closure in both area and time is based on the best available information on

observed harbor porpoise bycatch over the past 4 years. The analyses of economic effects of the extended closure is also based on the historic use of the areas. NMFS assessed such impacts to the extent possible in the Framework document. Effects of the closure, including any resulting displacement of fishing effort and of harbor porpoise, will be investigated by ongoing observer effort and reported to the Council for further consideration.

Comment: A commentator pointed out that while some gillnetters do switch to hook gear, they do not switch to otter trawls or shrimp trawls as stated in the Framework Adjustment 12 document.

Response: While some, mostly larger vessels are capable of switching to different alternative fishing gears, NMFS agrees that most gillnet vessels would only be capable of switching to hook gear.

Comment: A commentator asked whether NMFS could keep the option to incorporate a trigger mechanism into the closure, which would allow the area to remain open until it could be determined that harbor porpoise have moved into the area. He added that an analysis of the use of a trigger mechanism for porpoise closures was to be provided to the Council by November 30.

Response: No trigger mechanisms can be developed in time for the 1995 closure. The analysis of trigger mechanisms will be made available to the Council for its consideration in devising measures to reduce harbor porpoise bycatch in the future.

Comment: A commentator noted that the closure was for 1995 and asked about 1996 and beyond.

Response: The Council will be discussing new closure measures combined with phased-in pinger use in subsequent years, as discussed by the HPRT. If no new action is forthcoming, the Council has indicated its intent that the closure measures of Framework Adjustment 4 be the default.

Experimental Fishery

The Regional Director is considering an experimental fishery in the "Jeffreys Ledge Band." This experimental fishery would gather information pertaining to the use of acoustic devices called "pingers" in a commercial fishery, including insights on pinger usage, durability and failure rate under commercial fisheries conditions, and additional data on pinger effectiveness in mitigating bycatch. The following comments were received on issues related to this experiment:

Comment: The representative from IWC asked why an operational "pinger"

pilot study was planned for a high bycatch area when it could be delayed for testing in a lower bycatch time/area. The representative from MMCC requested that the planned study be conducted in a lower bycatch time/area.

Response: While Framework Adjustment 12 does not implement an operational "pinger" study, the Council recommended further study of deterrent devices, specifically in the Jeffreys Ledge Band. Some Council members thought, and NMFS agrees, that if approved, the experiment should occur in an area where fishing activity and harbor porpoise concentrations occur concurrently in order to be effective. NMFS believes, based on an analysis of available information, that this experiment would not preclude attainment of the harbor porpoise mortality reduction goals specified in Amendment 5 (Framework Adjustment 4).

Comment: The representative from MMCC asked how NMFS will coordinate reporting requirements if a new 48 hour Marine Mammal Reporting Form, which is being developed for reporting mortalities under the Marine Mammal Protection Act (MMPA), is implemented.

Response: Fishers are already required to submit Fishing Vessel Trip Report forms. If the new MMPA forms become effective during the experimental fishery, if implemented, they will have to be submitted under the time frames stipulated by that statute.

Comment: A commentator stated that the small day trip vessels operating out of Portsmouth, NH, who participated in the 1994 pinger experiment, would be unable to fish outside the extended closure area.

Response: An experimental fishery is presently under consideration that would permit such vessels meeting the requirements of the experimental design to participate. If approved, NMFS recognizes, however, that some vessels may not be able to participate due to the location of the experimental fishery area and pinger availability.

Adherence to Framework Procedure Requirements

The Council considered the public comments prior to making its recommendation to the Regional Director under the framework provisions for the 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 Northeast Multispecies FMP, 50 CFR 651.40, and has provided supporting analyses for each factor

considered. NMFS determined that the framework adjustment to the FMP that this rule would implement is consistent with the national standards, other provisions of the Magnuson Conservation and Management Act, and other applicable law. NMFS, in making that determination, has taken into account the information, views, and comments received during the comment period of the FMP's framework adjustment mechanism in 50 CFR 651.40.

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive prior notice and an 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; further comment is unnecessary. The AA finds that under 5 U.S.C. 553(d)(3) the need to have this regulation in place by November 1, 1995, to avoid delay that would likely impede the achievement of harbor porpoise mortality reduction goals constitutes good cause to waive the 30-day delay in effectiveness of this regulation.

In that this regulation is not subject to the requirements to prepare a proposed rule under 5 U.S.C. 553 or any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 24, 1995.
Richard H. Schaefer,
*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. In § 651.32 paragraph (a)(1)(ii) is revised to read as follows:

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) * * *

(1) * * *

(ii) *Mid-coast Closure Area.* (A)

During the period November 1 through December 31 of each fishing year, except as specified in paragraph (B) of this section, the restrictions and requirements specified in the introductory text of paragraph (a) of this section shall apply to an area known as the Mid-coast Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 4 of this part).

MID-COAST CLOSURE AREA

Point	Latitude	Longitude
MC1	42°45' N	Massachusetts shoreline.
MC2	42°45' N	70°15' W.
MC3	43°15' N	70°15' W.

MID-COAST CLOSURE AREA—Continued

Point	Latitude	Longitude
MC4	43°15' N	69°00' W.
MC5	Maine shoreline.	69°00' W.

(B) Notwithstanding any other provisions in this part, during the period November 1 through December 31, 1995, the restrictions and requirements specified in the introductory text of paragraph (a) of this section shall apply to an area known as the Revised Mid-Coast Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 8 of this part).

REVISED MID-COAST CLOSURE AREA

Point	Latitude	Longitude
MC1	42°30' N	Massachusetts shoreline.
MC2	42°30' N	70°15' W.
MC3	42°40' N	70°15' W.
MC4	42°40' N	70°00' W.
MC5	43°00' N	70°00' W.
MC6	43°00' N	69°30' W.
MC7	43°15' N	69°30' W.
MC8	43°15' N	69°00' W.
MC9	Maine shoreline.	69°00' W.

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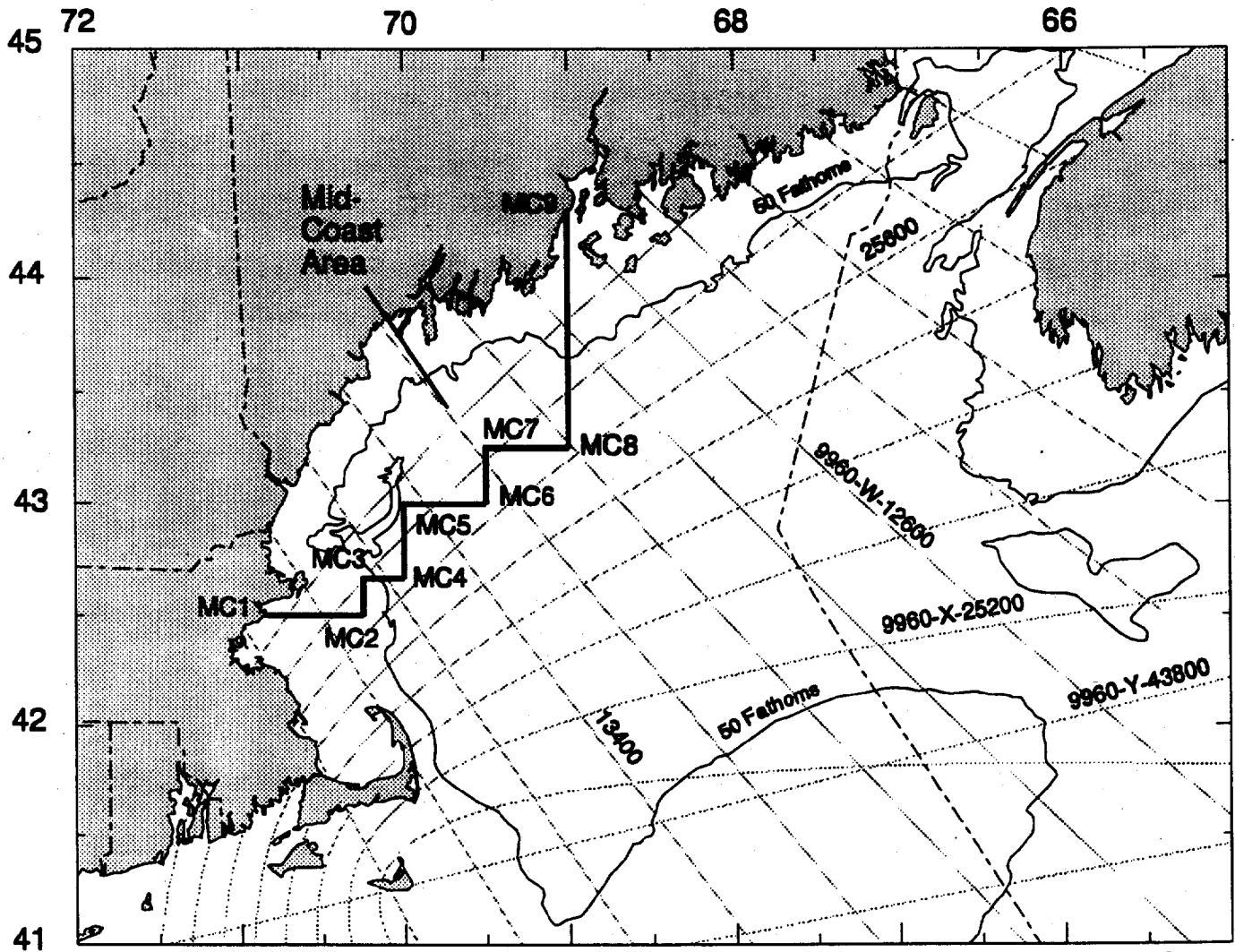
3. The heading to Figure 4 to part 651 is revised to read as follows: "Figure 4 to part 651—Closure Areas for Protection of Harbor Porpoise".

PART 651—[AMENDED]

4. Figure 8 to part 651 is added to read as follows:

BILLING CODE 3510-22-W

Figure 8 to Part 651—Revised Mid-Coast Closure Area for Protection of Harbor Porpoise



[FR Doc. 95-26759 Filed 10-25-95; 10:11 am]

BILLING CODE 3510-22-C