

Our commissioned study was not designed to evaluate the pattern of 6-AM test results over time. Its scope was “\* \* \* to verify the atypical results obtained by the laboratories, to determine if other drug or metabolites present in the specimens could explain the absence of morphine, and to determine if something other than heroin use could explain the presence of 6-AM.” [77 FR 26472] The study’s findings were presented and discussed in the IFR. [77 FR 26472] We would note that the rise in 6-AM positives was predicted, and a rise seems to have become the trend over time.

For the reasons discussed above and outlined in the IFR, we are adopting the rule text in the IFR as final.

### Regulatory Analyses and Notices

#### Authority

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 et seq.) and the Department of Transportation Act (49 U.S.C. 322).

#### Executive Order 12866 and Regulatory Flexibility Act

This Final Rule is not significant for purposes of Executive Order 12866 or the DOT’s regulatory policies and procedures. It finalizes modifications, already in effect, to our procedures that do not increase costs on regulated parties. The rule will impose no new burdens on any parties, and will actually decrease the burden upon the laboratories and the MROs. I hereby certify, under the Regulatory Flexibility Act, that this rule does not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Accordingly, the Interim Final Rule amending 49 CFR Part 40 which was published at 77 FR 26471 on May 4, 2012 is adopted as a final rule without change.

Issued on September 20th, 2012, at Washington DC

**Ray LaHood,**

*Secretary of Transportation.*

[FR Doc. 2012-24337 Filed 10-2-12; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

RIN 0648-XC099

#### Harbor Porpoise Take Reduction Plan; Coastal Gulf of Maine Closure Area Established With a Temporary Shift of Its Effective Date

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

**ACTION:** Establishment of the Coastal Gulf of Maine Closure Area; temporary shift of its effective date.

**SUMMARY:** Through this notice, NOAA’s National Marine Fisheries Service (NMFS) announces the establishment of the Coastal Gulf of Maine Closure Area under the Harbor Porpoise Take Reduction Plan (Plan), and temporarily shifts the effective date of year 1 of its implementation from October 1, 2012, to February 1, 2013. Recent information suggests that harbor porpoise bycatch is higher in February and March than in October and November since the implementation of sectors in May 2010, warranting a temporary shift of the closure in year 1 to a time period that would provide greater conservation benefit to harbor porpoises and allow time for more complete consideration of updated information on harbor porpoise bycatch, harbor porpoise abundance, and fishing effort by the Harbor Porpoise Take Reduction Team (Team). As such, this area will be closed to gillnet fishing in February and March of 2013 rather than October and November of 2012.

**DATES:** Year 1 effective February 1, 2013; Year 2 and beyond effective October 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kate Swails, NMFS, Northeast Region, 978-282-8481, [kate.swails@noaa.gov](mailto:kate.swails@noaa.gov); or Kristy Long, NMFS, Office of Protected Resources, 301-427-8402, [kristy.long@noaa.gov](mailto:kristy.long@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Harbor Porpoise Take Reduction Plan (Plan) was implemented in late 1998 pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of the Gulf of Maine/Bay of Fundy (GOM/BOF) stock of harbor porpoises (63 FR 66464, December 2, 1998). NMFS amended the

Plan in 2010 (75 FR 7383, February 19, 2010) to address increased mortalities of harbor porpoises in New England and Mid-Atlantic commercial gillnet fisheries due to non-compliance with the Plan requirements and observed interactions occurring outside of existing management areas.

The 2010 amendments, based largely on consensus recommendations from the Team, included the expansion of seasonal and temporal requirements within the Plan’s management areas, the incorporation of additional management areas, and the creation of three closure areas off the coast of New England that would prohibit the use of gillnet gear if certain levels of harbor porpoise bycatch are exceeded (consequence closure area strategy).

For New England, the 2010 amendments to the Plan implemented a “consequence” closure strategy, which would close specific areas to gillnet gear during certain times of the year if observed average bycatch rates exceed specified target bycatch rates over the course of two consecutive management seasons. If observed bycatch rates exceeded the target rates, the following three areas would become closed: the Coastal Gulf of Maine, Eastern Cape Cod, and Cape Cod South Expansion Consequence Closure Areas. This measure was intended to provide an incentive for the gillnet industry to comply with pinger requirements in areas with historically high harbor porpoise bycatch levels resulting from relatively low levels of compliance. The consequence closures, if implemented, would further reduce harbor porpoise mortalities due to the times and areas chosen for their implementation.

The Coastal Gulf of Maine Consequence Closure would be triggered if the observed average bycatch rates of harbor porpoises in the Mid-Coast, Stellwagen Bank, and Massachusetts Bay Management Areas (combined) exceed the target bycatch rate of 0.031 harbor porpoise takes/metric tons of fish landed (takes/mtons) (1 harbor porpoise taken per 71,117 pounds of fish landed) after two consecutive management seasons. If triggered, the use of gillnet gear would be prohibited during the months of October and November, which historically have been the months with the highest amount of observed harbor porpoise bycatch. When this area is not closed, the seasonal requirements of the three overlapping management areas, including the March gillnet closure in the Massachusetts Bay Management Area, would remain in effect.

The Cape Cod South Expansion and Eastern Cape Cod Consequence Closures

would be triggered if the observed average bycatch rate of harbor porpoises in the Southern New England Management Area exceeded the target bycatch rate of 0.023 takes/mtons (1 harbor porpoise taken per 95,853 pounds of fish landed) after two consecutive management seasons. If triggered, both areas would prohibit the use of gillnet gear annually from February 1 through April 30. When the consequence closure areas are not

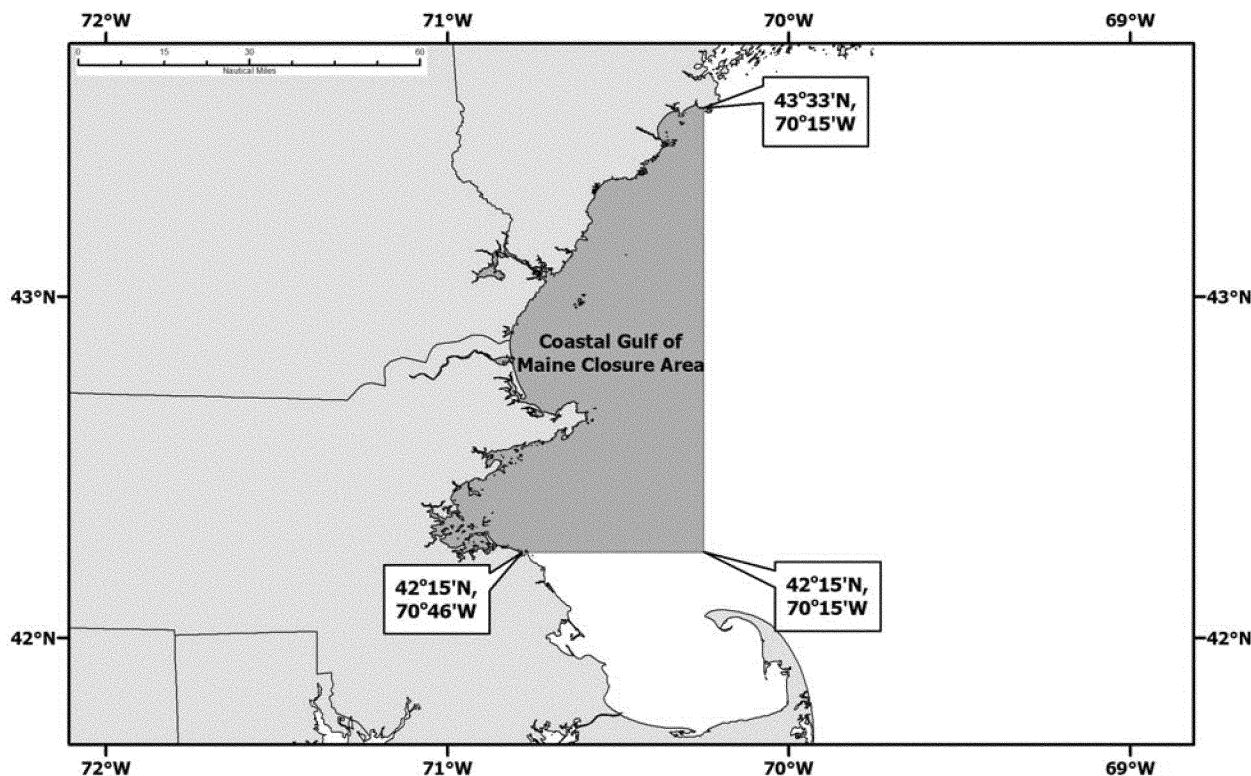
closed, the seasonal pinger requirements of the overlapping Southern New England Management Area would remain in effect.

Consequence closure area monitoring began with the start of first full management season after implementation of the 2010 amendments. The first monitoring season occurred from September 15, 2010 through May 31, 2011, and the

second occurred from September 15, 2011 through May 31, 2012.

The two-year average observed harbor porpoise bycatch rate for the areas associated with the Coastal Gulf of Maine Consequence Closure Area is 0.057 takes/mtons (Orphanides, 2012). This is above the target bycatch rate (0.031 takes/mtons), triggering the implementation of the Coastal Gulf of Maine Closure Area (Figure 1).

Figure 1. Coastal Gulf of Maine Closure Area.



The two-year average observed harbor porpoise bycatch rate in the Southern New England Management Area is 0.020 takes/mtons (Orphanides, 2012), indicating that the two-year average does not exceed the target bycatch rate (0.023 takes/mtons).

**Temporary Shift of the Coastal Gulf of Maine Closure Area Effective Date**

In April 2012, NMFS sent letters to gillnet fishermen notifying them that NMFS planned to implement the Coastal Gulf of Maine Closure Area beginning October 1, 2012. Following this notification, in August 2012, NMFS received a letter from a fishing industry representative requesting that the agency review harbor porpoise bycatch and fishing effort information in the coastal Gulf of Maine area after the 2010

implementation of the amendments to the Plan, and New England Multispecies Fishery Management Plan Amendment 16, which implemented sector management and greatly modified the way New England groundfish fishermen could fish. The letter specifically requested that the timing of the closure be shifted from October and November to mid-February through March, and that the area be modified to be slightly smaller. This request highlighted a conservation benefit to harbor porpoises that would occur by shifting the timing, as well as an economic benefit for the fishing industry by allowing them to fish in the area during October and November. In considering this request, NMFS examined available harbor porpoise bycatch and fishing information from 2010 through 2012.

Within the boundaries of the Coastal Gulf of Maine Closure Area, harbor porpoise bycatch data indicated that a higher number of observed takes occurred during the spring, particularly in February and March, than in the fall (October and November), equating to a higher estimated total bycatch in the spring. Additionally, the bycatch rate during the spring was higher than in the fall.

Since the implementation of groundfish sectors in May 2010, it is possible that fishing effort distribution has shifted, thus affecting the distribution and timing of harbor porpoise bycatch. Alternatively, this change may reflect a shift in harbor porpoise distribution. However, this information has not yet been fully analyzed.

According to 50 CFR 229.33(f)(2), the Assistant Administrator for Fisheries may revise the requirements of the Plan through notification published in the **Federal Register** if NMFS determines that the boundaries or timing of a closed area is inappropriate. After consideration of this recent information, NMFS will temporarily shift the implementation of year 1 of the Coastal Gulf of Maine Closure Area from October 1, 2012 through November 30, 2012, to February 1, 2013 through March 31, 2013. This temporary shift will be for year 1 only, and will include the entire Coastal Gulf of Maine Closure Area as identified in the regulations for the full two-month time period. This temporary shift of the closure will provide greater conservation benefits to harbor porpoises. During October, the Team will convene to consider data generated since the last Team meeting in late 2007. New information includes: new harbor porpoise abundance estimates, the most recent harbor porpoise bycatch information that indicates that harbor porpoise bycatch is exceeding allowable levels under the MMPA, and fishing effort and distribution information within the consequence closure area boundaries as well as throughout the entire range of the Plan. The Team will also assess how the implementation of groundfish sectors has affected gillnet effort and distribution and any related effects on harbor porpoise bycatch. This information will allow the Team to develop a comprehensive management strategy to further reduce the bycatch of harbor porpoises to acceptable levels under the MMPA. After year 1, the closure area timing will revert to October and November, pending the implementation of revised conservation measures resulting from the Team's deliberations this fall.

Despite the shift in the timing of the Coastal Gulf of Maine Closure to February and March of 2013, NMFS stresses the importance of fully complying with the Plan's pinger requirements (i.e., proper number of fully functional pingers present on each net string) to reduce harbor porpoise bycatch. Pingers are still required on gillnet fishing gear in the Mid-Coast Management Area from September 15 through May 31 and the Massachusetts Bay and Stellwagen Bank Management Areas from November 1 through May 31. Additionally, the entire Massachusetts Bay Management Area is closed during March.

#### References

Orphanides C.D. 2012. New England harbor porpoise bycatch rates during

2010–2012 associated with Consequence Closure Areas. US Dept. of Commerce, Northeast Fisheries Science Center Reference Doc 12–19; 15 pp.

Dated: September 27, 2012.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the, Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012–24410 Filed 9–28–12; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC270

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2012 total allowable catch of pollock for Statistical Area 620 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 2012, through 2400 hrs, A.l.t., December 31, 2012. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 15, 2012.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2012–0187, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA–NMFS–2012–0187 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on that line.

- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

- *Fax:* Address written comments to Glenn Merrill, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 45,808 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

As of September 27, 2012, approximately 5,200 mt of pollock remain in the 2012 TAC for pollock in Statistical Area 620 of the GOA. Based on fleet capacity and potentially high levels of fleet participation in this fishery, the Administrator, Alaska Region (Regional Administrator) has determined that the pollock TAC for Statistical Area 620 of the GOA could be