

**Framework Adjustment 14 to the
Northeast Multispecies Fishery Management Plan**

**To Reduce the Bycatch of Harbor Porpoise
in the Gulf of Maine Sink Gillnet Fishery**

Prepared by

**New England Fishery Management Council
in consultation with the
National Marine Fisheries Service**

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1.0 Introduction

Amendment #5 to the New England Fishery Management Council's Northeast Multispecies Fishery Management Plan (FMP) became effective in March, 1994. In addition to implementing conservation measures to eliminate the overfished condition of several multispecies finfish stocks, one of the principal management objectives was to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery to a level not to exceed 2 percent of the population, based on the best estimates of abundance and bycatch. This was to be accomplished over a period of four years. Amendment #5 included a framework that allowed the Council to adjust management measures in a more timely manner than the amendment process. The Council's intent was to revise those measures as needed to accomplish annual reductions in the porpoise bycatch.

The first adjustment, implemented through Framework 4 to the Multispecies Plan, occurred in 1994 and included thirty-day closures for areas defined as Massachusetts Bay, Mid-coast and the adjacent Jeffreys Ledge Area and the Northeast. The removal of all sink gillnets was required in the defined areas.

Framework 12, implemented in November, 1995, expanded the size of the Mid-coast Closure Area to include the Jeffreys Ledge or "Z-band" west of $69^{\circ} 30'W$, but excluded an area defined as Tillies Bank (see Mid-coast Closure Area map, Appendix I). The action also extended the duration of the closure, initially November 1-30, through November and December, 1995. The area was closed to fishing with sink gillnets during that two month period.

Framework 14 is proposed to accomplish further reductions in the porpoise bycatch by implementing a spring closure in the Mid-coast and Jeffreys Ledge (or Z-band) Areas west of $69^{\circ}30'$ from March 25 through April 25 inclusive; As in Framework 12, Tillies Bank would be exempt from this closure. In addition, the Council requested that the National Marine Fisheries Service (NMFS) Regional Director investigate additional fishing opportunities in this closure area by considering experimental work on the use of pingers to mitigate the harbor porpoise bycatch.

The Council also proposes to close an area south of Cape Cod, defined by a boundary extending from the Massachusetts shore south along $70^{\circ}30'W$, west on $40^{\circ}40'N$ and north on $71^{\circ}45'W$ to the Rhode Island coast, from March 1 through March 30 to all sink gillnet gear. This proposed action includes the same request request as above, that the NMFS Regional Director investigate additional fishing opportunities by considering experimental work on the use of pingers to reduce the harbor porpoise bycatch.

2.0 Purpose and Need

2.1 Background

The 1988 amendments to the Marine Mammal Protection Act (MMPA) classified the Gulf of Maine multispecies sink gillnet fishery as Category I, a classification which denotes fisheries with "frequent incidental takes of marine mammals." Accordingly, the sink gillnet fleet has been subject to observer coverage through the Northeast Fisheries Science Center (NEFSC) Sea Sampling Observer Program since 1989.

Annual estimates of porpoise bycatch reflect seasonal distribution of the species and of sink gillnet fishing effort. Estimated annual bycatch (CV in parentheses) is as follows: 2,900 in 1990 (0.32); 2,000 in 1991 (0.35); 1,200 in 1992 (0.21); and 1,400 in 1993 (0.18). The bycatch in the northern Gulf of Maine occurs between June and September. In the southern Gulf of Maine bycatch takes place from January to May and again during September through December.

The most recent scientific information on marine mammal stock assessments (NOAA Technical Memorandum NMFS-SEFSC-363, U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments) states a minimum population estimate for porpoises in the Gulf of Maine/Bay of Fundy of 40,297 animals based on abundance surveys completed in 1991 and 1992. There is not sufficient information to determine population trends, although the NEFSC has recently completed a third survey and the results are anticipated very soon.

Estimates of potential population growth rates have ranged from 10% per year, based on a modified human survival model, to 4% annually. A National Marine Fisheries Service-appointed team of independent scientists and representatives from the fishing industry, convened as a Scientific Review Group in 1994, assumed a value of 0.04 as the maximum net productivity rate based on theoretical calculations showing that cetacean populations may not generally grow at rates much greater than 4% given the constraints of their reproductive life history.

In 1994, the Council agreed to develop a management strategy to reduce porpoise mortality by integrating a plan with fishery management measures. In Framework 4 to the Multispecies Plan, it adopted a four year phased-in time/area closure program designed to meet the objective of reducing the bycatch to a level not to exceed 2% of the population based on estimates of abundance and bycatch. This objective assumes a recruitment rate of approximately 4% and a conservative fisheries bycatch level that should not exceed 50 percent of the recruitment rate for marine mammals.

Several important caveats modified the Amendment #5 objective. The Council acknowledged that the porpoise bycatch in the Gulf of Maine sink gillnet fleet should not *exceed* the two percent ceiling by the end of the fourth year of the program, and further, should be maintained at a point below that level. This modification was

added chiefly because the same stock of porpoises ranges seasonally from the southern Bay of Fundy to North Carolina and animals are taken incidentally in fisheries in both the mid-Atlantic region and in Canada. A two percent bycatch goal for the Gulf of Maine fishery alone would ignore these other sources of mortality.

The most recent information for Canada indicates the total bycatch estimate for the 1993 summer period was between 222 and 424 porpoise in the western Bay of Fundy near Grand Manan Island. The 1994 estimate was between 80 and 120 animals. Although evidence from stranded animals and observer coverage indicates porpoise incidental takes in some mid-Atlantic coastal net fisheries, bycatch estimates are not yet available for that region.

The Framework 4 program called for a 20% reduction in the porpoise bycatch in the Gulf of Maine sink gillnet fishery for 1994. To monitor progress toward its bycatch reduction goals, the Council appointed a Harbor Porpoise Review Team (HPRT). The team was charged with evaluating the effectiveness of the Council's mitigation measures and, if necessary, recommending changes at least annually, based on the Framework 4 goals outlined below.

Although timing and areas were not defined for years other than 1994 in Framework 4, the goal of the program was to achieve a 60% reduction in the bycatch from current levels (using the available data prior to 1994) over a three-year period. In addition to the 20% target in year one of the plan, the Council adopted a target of an additional 20% for both years two and three. For example, 20% of 1,300 (an average of the two most recent years for which bycatch estimates are available) is 260 animals. Therefore, the year one (1994-1995) target was 1,040. The year two (1995-1996) and three (1996-1997) targets are 780 and 520, respectively.

The 1997 target was held in abeyance in consideration of targets not met in any given year. For example, if the 20% target was not met in any of the first three years, the program allowed some portion of the overage to be added to the target for the next year or allowed deferment until year four of the program. The Council stipulated, however, that the fourth year target should not exceed 20 percent of the total reductions required to ensure annual progress toward its goals.

Additionally, the fourth year target was not specified in early 1994 because of anticipated MMPA requirements (the Act was reauthorized later in 1994) that would, and subsequently have, affected the Council's actions. As amended, the MMPA now requires the development, review and implementation of Take Reduction Plans for strategic stocks (of which harbor porpoise is one) in about 12 months from the present time (see 11/9/95 memorandum, Appendix V).

Although it has not yet been finalized, Amendment #7 to the Multispecies Plan will include a revised objective for harbor porpoise that reflects the changes required by the reauthorization. At its December, 1995 meeting, the Council approved the following for inclusion in the draft amendment:

to reduce proportionately, consistent with the Magnuson Fishery Conservation and Management Act and the Marine Mammal Protection Act guidelines, the incidental mortality and serious injury of harbor porpoise in the Gulf of Maine sink gillnet fishery to the potential biological removal (PBR) level identified for this stock through the process described in section 117 of the MMPA by April 1, 1997, the date required for compliance with section 118(f)(5)(A) of the MMPA.

The MMPA goal for harbor porpoise is very similar to the one that has adopted by the Council, *to reduce the bycatch to levels that are less than the potential biological removal level (PBR) specified for the stock. The date for compliance with the PBR figure for the Gulf of Maine harbor porpoise is identified in the MMPA as April 1, 1997.* Based on current population and life history information, the PBR is 403 animals for Gulf of Maine porpoise.

The Council's language reflects concern about further restrictions on the Gulf of Maine sink gillnet fleet because of porpoise mortality in other regions. The bycatch that occurs in the mid-Atlantic and Canadian fisheries has impacts on the same stock of animals found in New England waters. To date, it is unclear how this situation will be resolved relative to the PBR. The Council, as well as the fishermen who are affected already by take reduction measures, urges a resolution that does not hold the Gulf of Maine fleet accountable for uncontrolled mortalities in these other areas.

2.2 Need for Adjustment

The time/area closures for Framework 4 were based on a Northeast Fisheries Science Center (NEFSC) analysis of harbor porpoise bycatch using the NMFS weighout database and sea sampling program, information on the distribution of sink gillnet activity and the seasonal and spatial distribution of harbor porpoise in the Gulf of Maine. The Gulf of Maine was divided into three areas: the Northeast (from Penobscot Bay to Eastport, Maine), Mid-coast (from Cape Ann to Penobscot Bay) and Massachusetts Bay (from Cape Cod to Cape Ann) (see map, Framework Adjustment 4 to the Northeast Multispecies Fishery Management Plan, Appendix V). Framework 4 established 30-day closures for each of these areas which corresponded to periods when porpoise bycatch would most likely occur.

As stated earlier, Framework 12 extended both the timing and size of the Mid-coast Area closure area by incorporating the Jeffreys Ledge Band east of 69°30' and adding the month of December. This action was based on 1995 biological analyses provided by the NEFSC and the recommendations of the HPRT which was asked to evaluate the effectiveness of the first-year closures. The HPRT concurred with the NEFSC statement that a higher kill rate observed in fall, 1994 may have raised the total annual bycatch in the U.S. fishery by about 50-60% relative to the bycatch in 1991-1993.

The HPRT offered several recommendations that relate to the framework now under consideration:

a) The time and area closures, as currently configured, are neither large enough nor long enough to achieve the Council's bycatch reduction goals. The group agreed that the first year goals were not met and that the porpoise bycatch was very likely higher in 1994 than in 1993. The HPRT was unable to evaluate the degree of effectiveness of the individual closures chiefly due to the lack of data on the fine-scale spatial distribution of fishing effort.

b) There is substantial between-year variability in the timing of peak bycatch, with less variation in the areas in which bycatch occurs. In any given year, the inter-annual variability could exceed the Council's 20% reduction goal. This may explain the 1994 results. The advice of the HPRT, therefore, was to expand the timing of the closures to achieve bycatch reductions, and secondarily, to expand areas spatially to include locations which have historically accounted for bycatch, but were not included in the first year closures.

c) For the Mid-coast Area in 1996, the HPRT recommended the Council adjust and expand the time frame of the closure as indicated by further analyses and define an area in which fishing activity would be allowed if nets were deployed with pingers. Because the Mid-coast accounts for a large share of the porpoise bycatch, the HPRT suggested pinger use for the Jeffreys Ledge Band or other limited area in which studies could be conducted to answer questions about habituation and exclusion of animals, but in a manner that would not jeopardize the Council's bycatch reduction goals.

d) For the Mass Bay Area, the HPRT recommended the Council adjust the time frame as indicated by more refined analyses of the data and allow gillnet vessels to fish within the entire closure area if nets are outfitted with pingers and deployed according to defined protocols. This closure would allow an evaluation of operational characteristics of acoustic devices in a commercial fisheries environment. This recommendation is, in part, based on the low bycatch rates for this area (i.e. if pingers do not perform according to expectations and more porpoises are caught, the impact on total bycatch should be relatively small.)

e) The recommendation was to request a more detailed analysis of the area south of Cape Cod to determine the possible need for a closure.

Based on these recommendations (see 9/25/95 memorandum, Appendix V) and the most recent NEFSC analyses discussed at a meeting of its Marine Mammal Committee, the Council proposes implementation of a spring closure in the Mid-coast Area and establishment of an additional closure area in southern New England. This action is necessary in order to make further progress toward the bycatch reduction goals for year two (1995-1996) of the program. The target adopted by the Council was a 40% reduction in the bycatch or approximately 780 animals. Because of the increase in bycatch in the Mid-coast region, preliminary estimates for 1994 indicate the incidental take of harbor porpoise is still upwards of 1,500 animals.

2.3 Need for a Final Rule

The Council requests publication of these management measures as a final rule after considering the required factors stipulated under Framework Adjustments to Management Measures in the Northeast Multispecies FMP, 59 CFR Section 651.40., and has provided supporting analyses for each factor considered. The Council has taken into account information, views and comments at a meeting of its Marine Mammal Committee held in Saugus, Massachusetts on November 28, 1995, at an informal meeting between Council staff and southern New England gillnet fishermen in Tiverton, Rhode Island on December 7, 1995 and at a full Council meeting held in Danvers, Massachusetts on December 13, 1995. A decision on whether to finalize this framework adjustment took place at the January 25, 1996 Council meeting in Danvers.

Considering the need for further resource protection as indicated by the disparity between the Council's goals and estimates of bycatch, this recent effort to mitigate the incidental take of porpoise should be initiated as soon as possible. The Council requests waiver of the proposed rule and additional comment period and publication of the proposed management measures as a final rule.

3.0 Proposed Action and Rationale

The following action is proposed under the framework for abbreviated rulemaking procedure established by Amendment #5 to the Northeast Multispecies FMP. The framework adjustment was initiated at the December 13, 1995 Council meeting in Danvers, Massachusetts. The final meeting was held on January 25, 1996.

To reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery, the Council recommends initiation of a framework adjustment to close the Mid-coast Area (as modified by Framework Adjustment 12 to the Multispecies FMP to include the Jeffreys Ledge Band west of 69°30') from March 25 through April 25 inclusive; the area known as Tillies Bank, also described in Framework 12, shall be exempt from this closure. During this period the area would be closed to fishing with sink gillnets.

For the same purpose, the Council also recommends closure of an area to sink gillnets south of Cape Cod (referred to from this point as the Southern New England Closure Area) from March 1 through March 30. The boundary extends from the Massachusetts shore south along 70°30'W, west on 40°40'N and north on 71°45'W to the Rhode Island coast.

In 1994, it was estimated that reductions of 20 to 40 percent might be realized in the first year of the closure program if the boundaries discussed in the initial NEFSC analysis (see Framework 4 submission document, Biological Impact Analyses, Appendix III) were used in conjunction with 30-day closures for each area. The Council's modifications to those boundaries altered the estimates of bycatch

reductions to an unknown degree because of the potential displacement of gillnet fishing effort to open areas where porpoise would still be subject to entanglement. Analyses completed in 1995 for the period 1990 through 1994 considered bycatch rates by area, chiefly because of the absence of 1994 port sampling information. That data was used previously to calculate the fine-scale distribution of gillnet fishing effort and allowed stratification of the bycatch by area. At this time, therefore, estimates of the percentage of reductions potentially achieved in the various closed areas are not available.

The re-analysis of the 1990-1994 bycatch data did allow the Council to make some judgments on the basis of rates. That information indicated the targets were not met, particularly in the Mid-coast and Jeffreys Ledge Areas. Analysis suggested a threefold increase in this area in the fall, a situation which has obvious impacts on the overall numbers of animals taken in the gillnet fishery. Compounding a situation in which the bycatch has likely exceeded target levels is the fact that porpoise takes have been well-documented in late March, April and May in the Mid-coast region. Prior to this proposal, there have been no closures during this period to reduce entanglement as animals move northward into the northern Gulf of Maine and the Bay of Fundy.

Within the Jeffreys Ledge Band, the area east of 69°30'W was again excluded from the closure based on historic low levels of sink gillnet activity. This region and Tillies Bank (excluded from management by this action as well as Framework 12) will be monitored to determine whether displaced gillnet activity, if it occurs, results in increased porpoise takes.

The proposed Southern New England Closure is based on sea sampling in 1993 and 1994. While it was assumed that takes there were infrequent, recent information indicates that bycatch rates are somewhat higher than in Mass Bay where a closure was implemented in 1995. The question of whether a closure was necessary was raised during HPRT discussions and prompted that group to recommend more detailed analytical work. The boundaries defined for the area in this framework enclose most of sampled effort and require the removal of nets during the thirty-day period accounting for the highest level of takes. This action should ensure a significant reduction in the bycatch in that region. Because of the occurrence of porpoise takes in April, however, the Council may modify this action in the future based on more information.

The Mass Bay gillnet fishery accounts for approximately 4% to 5% of the total Gulf of Maine porpoise bycatch and is closed from March 1 to March 30. The pattern and level of bycatch in 1994 was not very different from previous years — sporadic during February and March and highly variable in January and April. The Council recommends no change to this closure. An expansion of time or area would be disproportionate in relation to the level of takes relative to the other areas. Mass Bay was closed initially in 1995 and will be closed during the month of March each year.

4.0 Alternatives to the Proposed Action

4.1 No Action - spring closure in Mass Bay only

The time and area closure restrictions described in Framework Adjustments 4 and 12 to the Multispecies Plan apply to sink gillnets for each fishing year unless modified by the Council. Without further action, the Mass Bay Area will continue to be closed to fishing with sink gillnet gear from March 1 through March 30. The Southern New England Area, a region in which porpoise bycatch rates are higher than Mass Bay, will remain open. The Mid-coast and Jeffreys Ledge Areas have the highest bycatch rates of all of the regions during the January through May period, and also would be open to fishing with sink gillnets throughout the spring months.

4.2 Other Alternatives

The Marine Mammal Committee discussed the necessity of modifying the Mass Bay Area. Bycatch rates were consistently low over the period 1990 through 1994 and the area accounts for a small percent of the porpoise takes relative to all other areas except Southern New England. Rates were highest between February 19 and April 28 and exhibited no discernible pattern that might offer a basis for modification of the closure. The committee determined that a change to the current measure was not warranted.

5.0 Environmental Assessment

5.1 Purpose and Need for the Proposed Action

See Section 2.0 of this document.

5.2 Description of Proposed and Alternative Actions

See Section 3.0 and 4.0 of this document.

5.3 Description of the Physical Environment

Habitat: See Volume I, Final Environmental Impact Statement (FSEIS) for Amendment #5 to the Northeast Multispecies FMP, Section E.6.2, page 105 for a description of the Gulf of Maine.

5.4 Description of the Biological Environment

Marine Mammals and Endangered Species: See Volume I, FSEIS for Amendment #5 to the Northeast Multispecies FMP, Section E.6.3, pages 167-168 for a listing of affected species and the associated National Marine Fisheries Service (NMFS) Biological Opinion issued on November 30, 1993.

5.5 Description of the Human Environment

Gillnet Fishery: See Volume I, FSEIS for Amendment #5 to the Northeast Multispecies FMP, Section E.6.4, pages 176-177 for a description of the New England fleet.

Social and Cultural Aspects: See Volume I, FSEIS for Amendment #5 to the Northeast Multispecies FMP, Section E.6.4.3.

5.6 Biological Impacts

Impacts of the Proposed Action on Endangered Species: The Council discussed the biological impacts of Amendment #5, as reported in Section E.7.1 of the FSEIS, pages 310-322. NMFS also issued a Biological Opinion to the Council on November 30, 1993, in accordance with Section 7(a)(2) of the Endangered Species Act. NMFS concluded that existing fishing activities and related Amendment #5 management measures were not likely to jeopardize the continued existence of any threatened or endangered species. The time/area closures were discussed but had not been developed at the time of the consultation, but the impacts of Frameworks 4 and 12 were discussed in each of those documents.

The action now proposed represents a change to the Northeast Multispecies FMP and is expected to accomplish reductions in porpoise bycatch by initiating a Mid-coast Area closure in the spring and by establishing a closure in southern New England. In the absence of bycatch estimates, bycatch rates were calculated for the years 1990-1994. A comparison of rates by area included information obtained from sea sampling and the NMFS weighout database in the Mid-coast, Jeffreys Ledge, Mass Bay and Southern New England Areas. During the time period January through May, the rate of harbor porpoise bycatch is highest in the Mid-coast and second highest in the Jeffreys Ledge Band. Southern New England and Mass Bay are similar, but low in comparison to the other areas.

There is considerable variation between estimated bycatch rates in different years, months and regions, perhaps reflecting changes in fishing practices such as shifts in gear type or fish abundance. In general, January and May have lower rates than February, March and April. Since porpoise demonstrate seasonal north/south movements, January and May could reflect periods when animals are most likely to be absent from the regions where the incidental takes occur. Animals begin to appear in New England in early spring and a significant portion of the population is known to spend the summer in the northern Gulf of Maine and the Bay of Fundy.

Since neither the Mid-coast or southern New England Areas have been closed to sink gillnet gear during this time period in previous years, it is difficult to predict the impact of a spring closure. Effort in the Mid-coast Area could shift into the portion of the Jeffreys Ledge Band that is not closed (east of 69°30'W). The region has not been well sampled but the existing information documents few, if any porpoise takes. The

Tillies Bank area has a statistically significant lower rate of harbor porpoise bycatch in the fall. This also could be the case in the spring, since maps depicting locations of observed porpoise takes for the January -May period show no takes.

The most common endangered species to inhabit the proposed closed areas are right, humpback and fin whales. Animals generally begin to appear in March and increase in numbers until the end of May when sightings begin drop off. The March 25 through April 25 Mid-coast closure could reduce the potential for entanglement, particularly for humpback whales, during that period. Right whales aggregate in and around Cape Cod Bay and the Great South Channel and therefore would not be affected by the proposed Mid-coast closure. The Mass Bay closure was configured to encompass right whale critical habitat area to reduce potential encounters with gear (see Framework 4, Appendix V). Displacement of gillnet effort in southern New England will probably not affect any of these species since it is not a high use area in March.

The Council concludes that displacement of gillnet effort resulting from the proposed closures will not occur at time or in an area of higher use by endangered species of whales. The Mid-coast/Jeffreys Closure Area may reduce the possibility of whales encountering sink gillnet gear. Therefore, the probability of whale entanglements will not change from levels determined in the Biological Opinion. Accordingly, the proposed action will not likely jeopardize the continued existence of any endangered or threatened species. This framework adjustment should not alter the basis for the initial NMFS Biological Opinion. With the submission of this assessment, the Council seeks the concurrence of NMFS.

Impacts of the Proposed Action on Harbor Porpoise: Closure periods were selected by identifying 30-day blocks of time and areas which exhibited high bycatch rates relative to "outside" areas in which there were either very low rates or no observed takes at all. Overall porpoise bycatch per haul during the January through May period in the areas affected by the closures is highest during February, March and April. Bycatch rates were lowest in January and May. Differences in rates for the years 1990 -1991 and the 1992-1994 illustrate the inter-annual variability which characterizes the harbor porpoise bycatch in the Gulf of Maine.

Results of the biological analyses also demonstrate the spatial differences in bycatch rates. Rates were lowest in the "outside zone" (see Appendix II, Biological Analyses) which has not been subject to closures, intermediate in Mass Bay and southern New England and highest in Mid-coast Area and Jeffreys Ledge Band. The Mid-coast and Jeffreys Ledge Band, collectively, were markedly higher than other areas. The rates were higher in the area defined as Mid-coast when compared to the Jeffreys Ledge Band.

Given these results, the Council's proposed closure areas should provide an effective means of reducing porpoise incidental takes during the months January through May. There is variability in the rates during the months when closures are

not in effect, but any significant changes in these patterns can be addressed in future Council actions. The experimental use of pingers in the sink gillnet fishery may provide an additional means of accomplishing reductions.

Impacts of Alternatives

The alternatives were identified in section 4.0, that is, no further action beyond the current closure for the Mass Bay Area from March 1-30. Expansion of the closure in either time and/or area would not achieve much more of a reduction in the porpoise bycatch beyond the 4 to 5% that is currently attributed to Mass Bay closure. Historically, it has been an area with low numbers of takes.

The No Action alternative, however, would ignore other areas of known, and in one case, rather significant bycatch in approximately the same time period. The status quo also would probably contribute toward a failure to reach Council's second year reduction target. As noted by the Harbor Porpoise Review Team, the first year mortality reduction goals were not met, and the porpoise bycatch was very likely higher in 1994 than in 1993. Achievement of the second year target, therefore, would require more effective measures than the status quo.

An earlier biological analysis (see Framework 12, Appendix V) indicates that the Tillies Bank area accounts for porpoise bycatch rates that are much lower than elsewhere in the Mid-coast area in the fall. While there has been no analysis for the spring period, mapping of the spring takes indicates no takes. Its exclusion from the closure is not expected to result in any increases in bycatch in 1996.

5.7 Economic Impacts

Sink gillnets capture a substantial amount of pollock, cod and white hake, several other groundfish species, and other species such as dogfish and monkfish (goosefish). Over ninety percent of gillnet vessels are less than 50 gross tons and use other gear for about 20 percent of the year, usually otter trawls and shrimp trawls, and to some extent hook gear. According to commercial fisheries data more than 42 percent of gillnetters fished in more than one statistical area compared to 24 percent 10 years ago. Annual revenues for the period 1987 through 1992 from gillnetting averaged about \$60,000 for vessels less than 50 tons and about \$83,000 for vessels larger than 50 tons. Individual vessels may have earned substantially more or less than the average. Average crew sizes range from about 2.7 for smaller vessels to about 4 for vessels over 50 tons.

The closures proposed in this framework are expected to reduce gillnet fleet profits by \$123,250 and the total crew shares by \$59,255. These estimates assume that boats that would have fished in the closed areas do not fish elsewhere during the closures with another type of gear (a worst case assumption). In this case, the estimated loss in producer surplus will amount to \$182,505.

Net economic benefits are determined by changes in the producer and the consumer surpluses as a result of the closures proposed in Framework Adjustment 14 (relative to the status quo). It is not possible, however, to predict the change in the consumer surplus because there is no precise estimate of the expected reduction in harbor porpoise mortality from the proposed closures. If the expected reduction in mortality is negligible and if there is no revenue replacement from alternative fisheries, then the net economic loss will be around \$182,505. If the harbor porpoise mortality is reduced by 1 percent or more, on the other hand, the net benefits from implementation of Framework Adjustment 14 will be positive because of the high value placed on harbor porpoise by society.

The economic analysis on which these assumptions are based and which includes an explanation of assumptions is contained in Appendix III.

Distribution of Economic Impacts: The proposed action will affect gillnet vessels that fish in the inshore areas of the Mid-coast and Southern New England Areas during the time/area closures. These vessels are expected to lose a substantial amount of groundfish revenues while gillnetters fishing farther offshore an either north or south of these areas will not be affected.

5.8 Social Impacts

The social impacts of 50 percent effort and fishing mortality reductions in the Northeast multispecies fishery are described in Volume I, FSEIS for Amendment #5, Section E.7.4. Because the proposed action has a more positive economic impact on the gillnet fishery than this alternative, the range of social impacts of the proposed action is fully within the range of those described in the social impact analysis of Amendment #5.

5.9 Finding of No Significant Environmental Impact (FONSI)

NOAA Administrative Order 216-6 provides guidance for the determination of significance of the impacts of fishery management plans and amendments. The five criteria to be considered are addressed below.

1) Can the proposed action be reasonably expected to jeopardize the long-term productive capability of any stocks that may be affected by the action?

One of the principal objectives of Amendment #5 is to reduce the bycatch of harbor porpoise in the sink gillnet fishery. To the extent that the proposed action is effective, the Council expects to protect the Gulf of Maine/Bay of Fundy porpoise population by reducing interactions with commercial fishing vessels to a level that is sustainable. Other marine mammal stocks could be affected by a displacement of effort resulting from the constraints on gillnet fishing, but the fleet is still subject to monitoring by onboard observers under

the terms of the 1994 MMPA reauthorization. Any increased bycatch of other species, therefore, will be reported and subject to the provisions of the MMPA.

2) Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats?

The proposed action which limits the bycatch of harbor porpoise is not expected to affect coastal or ocean habitat since the management measures will result in a reduction in fishing gear use.

3) Can the proposed action be reasonably expected to have an adverse impact on public health or safety?

The measure is not expected to have any impact on public health or safety.

4) Can the proposed action be reasonably expected to have an adverse effect on endangered or threatened species or marine mammal populations?

The NMFS Biological Opinion for Amendment #5, issued under authority of Section 7(a)(2) of the Endangered Species Act indicated that the "existing fishing activities and related management measures proposed . . . are not likely to jeopardize the continued existence of any threatened or endangered species under [NMFS] jurisdiction." The proposed measure does not change that finding.

5) Can the proposed action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target resource species or any related stocks that may be affected?

The proposed action is intended to be a part of the overall groundfish management program implemented through Amendment #5. As such, the cumulative effect is expected to be consistent with that of the Multispecies FMP. The proposed action is not expected to add to the effect of the FMP on other stocks.

The guidelines on the determination of significance also identify two other factors to be considered: degree of controversy and socio-economic effects. The socio-economic impacts and the scope of the proposed action fall within the range of impacts and the scope of the harbor porpoise and groundfish catch reductions analyzed in Amendment 5 and Frameworks 4 and 12 to the Northeast Multispecies FMP. The proposed action, therefore, does not have significant impacts beyond those already analyzed.

The time/area closure issue has been debated, but the degree of controversy has been minimal in that most fishermen agree that action to protect harbor porpoise is necessary. It has also been agreed that the only tool currently available to managers is

a time/area closure plan, although it is hoped that acoustic devices could prove useful in the future.

According to NAO 216-6, no action should be deemed significant solely on the basis of its controversial nature, but that the degree of controversy should be considered in determining the level of analysis needed to comply with NEPA regulations. Based on this guidance and the evaluation of the preceding criteria, the Council proposes a finding of no significant impact.

FONSI Statement

In view of the analysis presented in this document and in the FSEIS for Amendment #5 to the Northeast Multispecies Fishery Management Plan, it is hereby determined that the proposed action would not significantly affect the quality of the human environment with specific reference to the criteria contained in NDM 02-10 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed action is not necessary.

Assistant Administrator
for Fisheries, NOAA

Date

6.0 Applicable Law

6.1 Magnuson Fishery Conservation and Management Act Consistency with National Standards

See pages 52-57, Volume I of Amendment #5 to the Northeast Multispecies FMP for a summary of the Council's determination of consistency with the National Standards. This framework adjustment is a change to the rules promulgated under that amendment. The Council does not find cause to reconsider that earlier determination.

6.2 National Environmental Policy Act (NEPA)

There are no economic and social impacts from this action beyond the extent of those identified and discussed in the FSEIS included in Amendment #5 and the Environment Assessment contained in this document. The economic and social impacts of the proposed action are indeterminate.

6.3 Regulatory Impact Review

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866, the Regulatory Flexibility Act and the National Environmental Policy Act. The purpose and need for management (statement of the problem) is described in Section 2.0 of this document. The alternative management measures to the proposed regulatory action are described in Section 4.0. The economic and social impact analysis is contained in Sections 5.7 and 5.8 and is summarized below. Other elements of the Regulatory Impact Review are included below.

6.4 Executive Order 12866

The proposed action does not constitute a significant regulatory action under Executive Order 12866. (1) It will not have an annual effect on the economy of more than \$100 million (see Table 1.). (2) The proposed action will not adversely affect in a material way the economy, productivity, competition and jobs. (3) It will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect this fishery. (5) The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients. (6) The proposed action does not raise novel legal or policy issues. Time/area closures have long been used to manage fisheries in the Northeast.

6.5 Regulatory Flexibility Act

The proposed action does not require a regulatory flexibility analysis because it does not affect more than 20 percent of the small business entities in the multispecies fishery. In 1993, NMFS issued 4,442 multispecies permits. Of these, 442 were issued to gillnet vessels and it is estimated that about 140, or about 3 percent, would be restricted by the proposed action.

6.6 Marine Mammal Protection Act and Endangered Species Act

An adequate discussion of protected species is contained in Section E.6.3.4, Endangered Species and Marine Mammals, Volume I of Amendment #5 to the Northeast Multispecies FMP and the associated NMFS Biological Opinion issued on November 30, 1993.

6.7 Coastal Zone Management Act (CZMA)

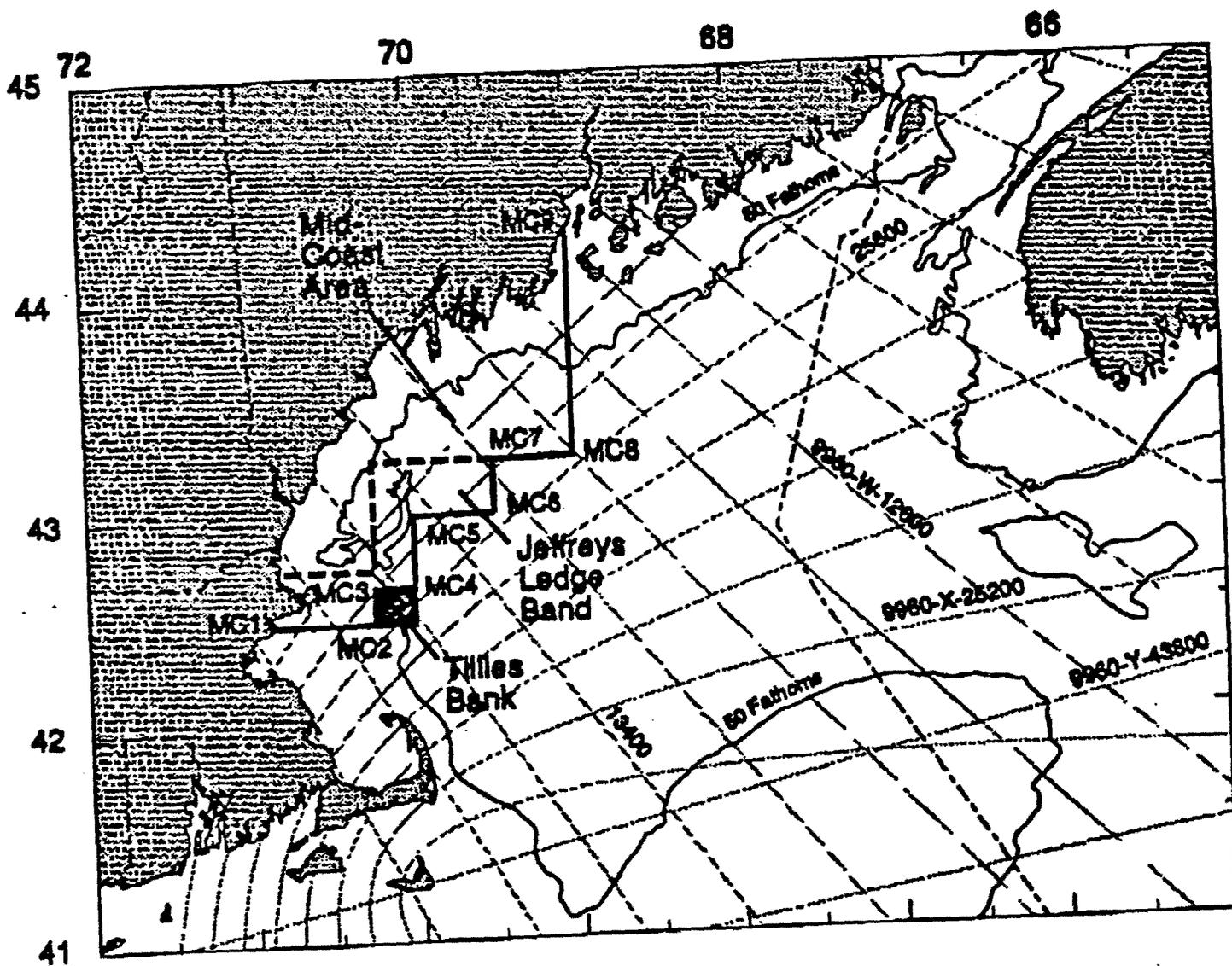
See Section 8.5, Volume IV of Amendment #5 to the Northeast Multispecies FMP.

6.8 Paperwork Reduction Act (PRA)

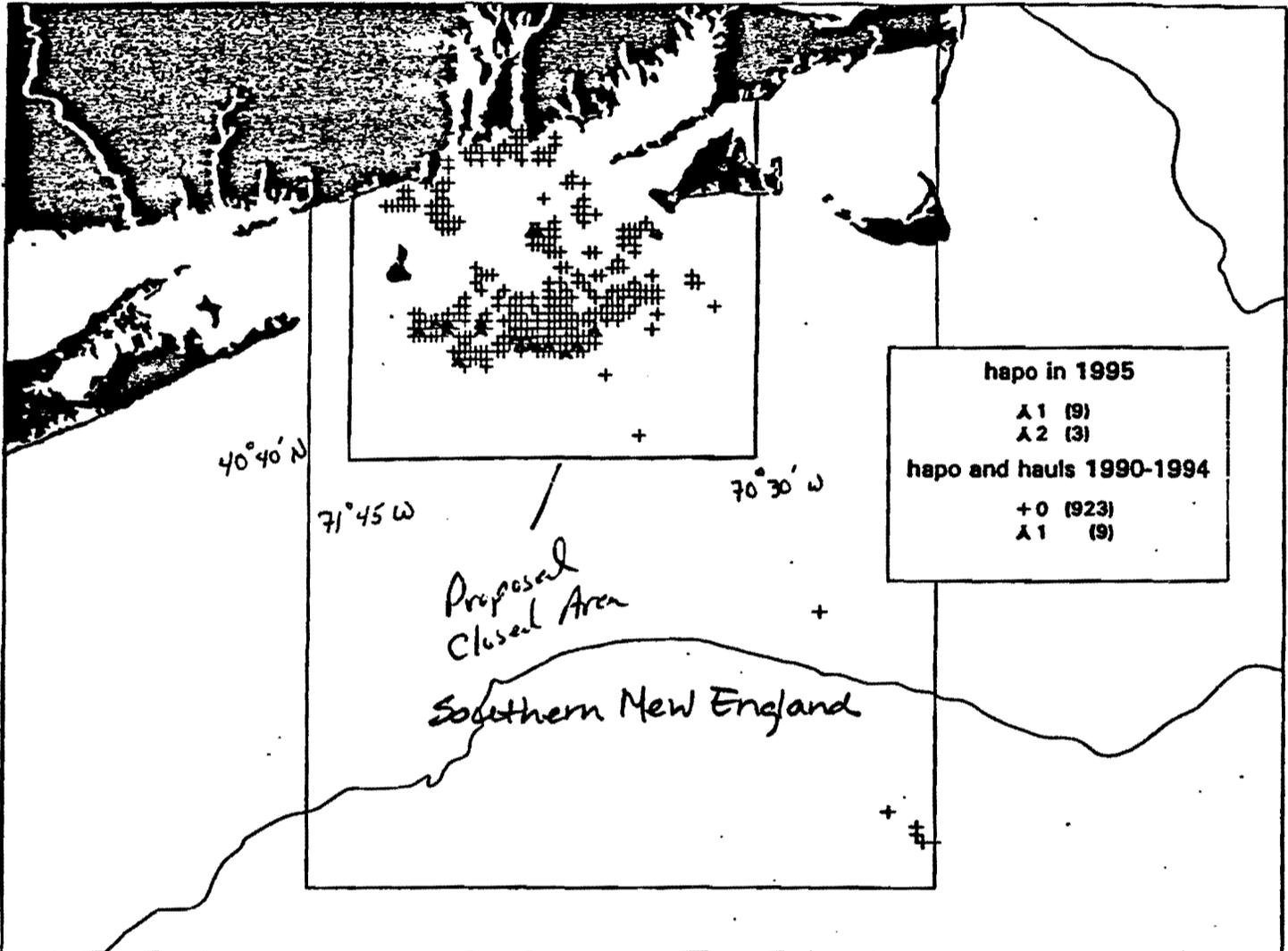
Copies of the PRA analysis for Amendment #5 to the Northeast Multispecies FMP are available from the NMFS Regional Office, Gloucester, Massachusetts. No new collection of information is required.

Appendix I
Figures

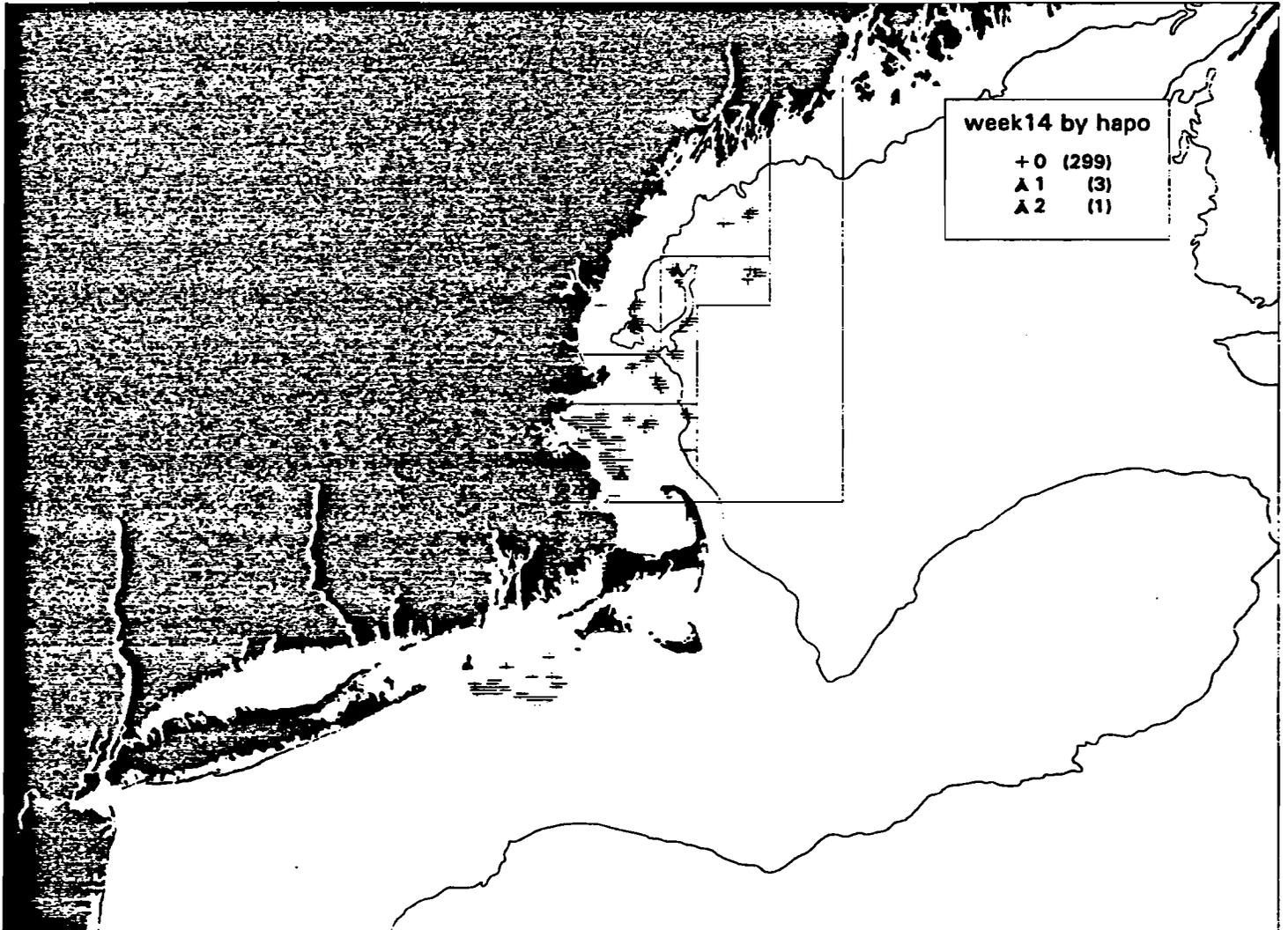
1995 Mid-Coast Closure Area



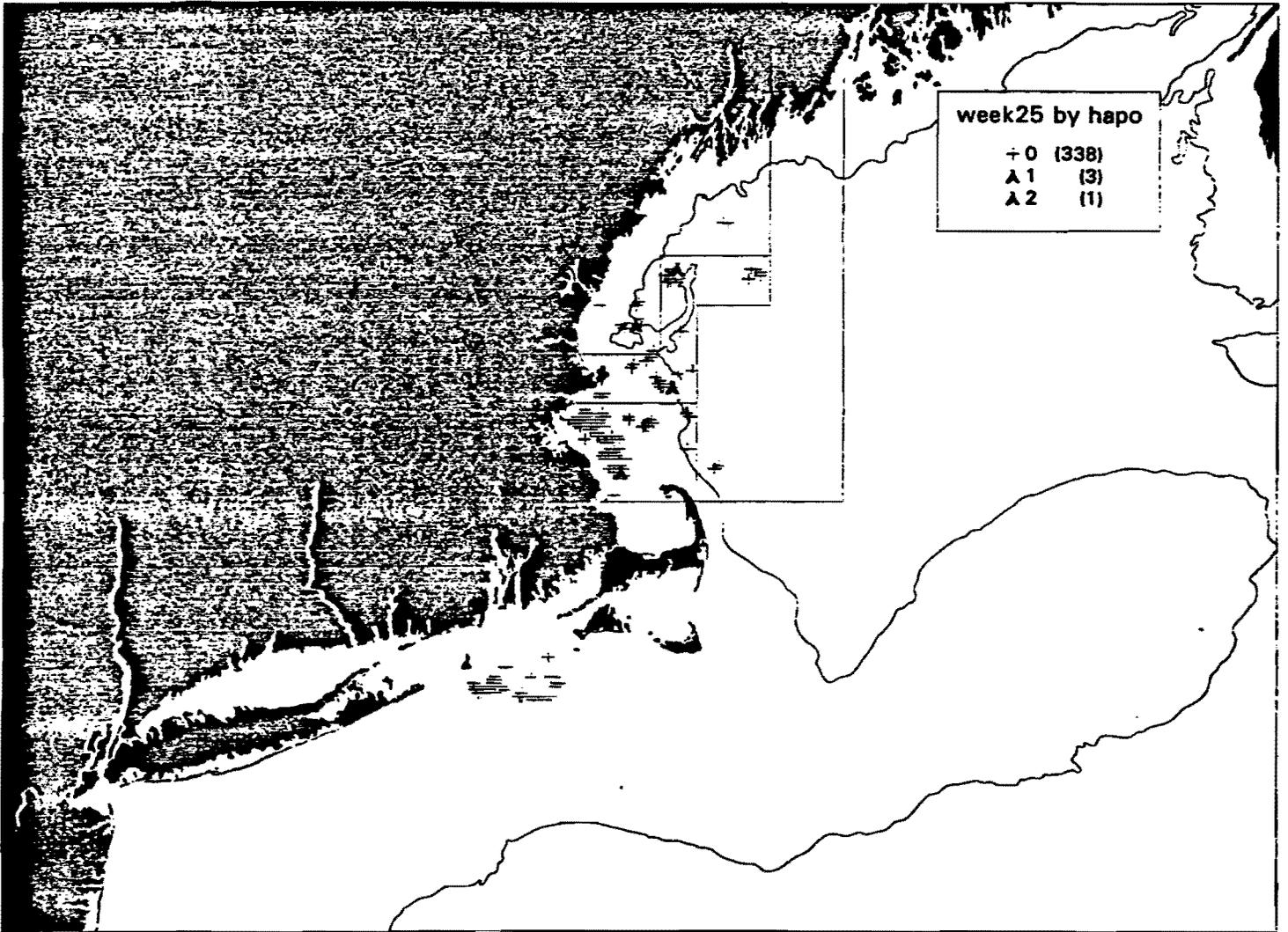
Sink Gillet 1990-1995 SS Data Jan - May



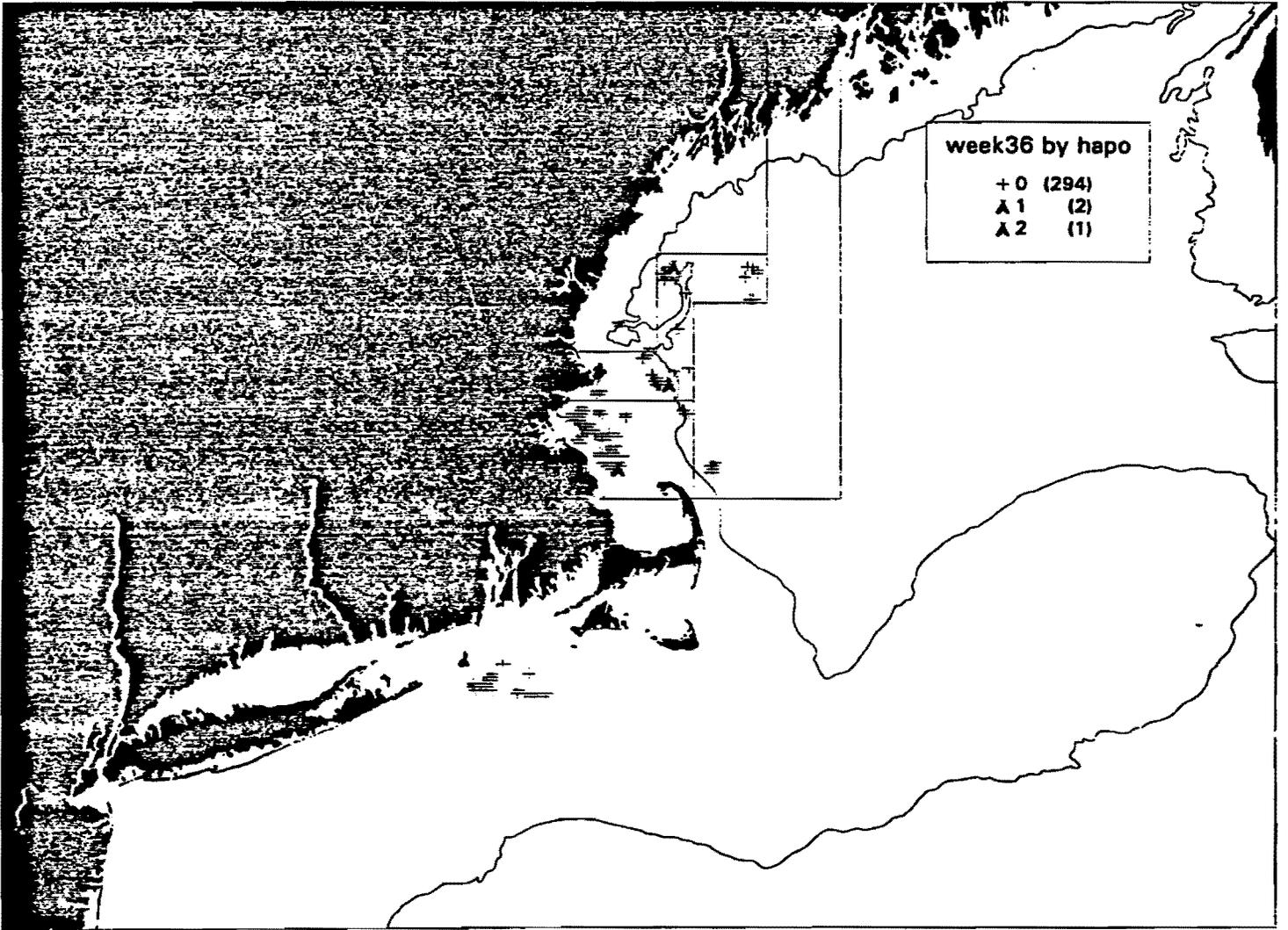
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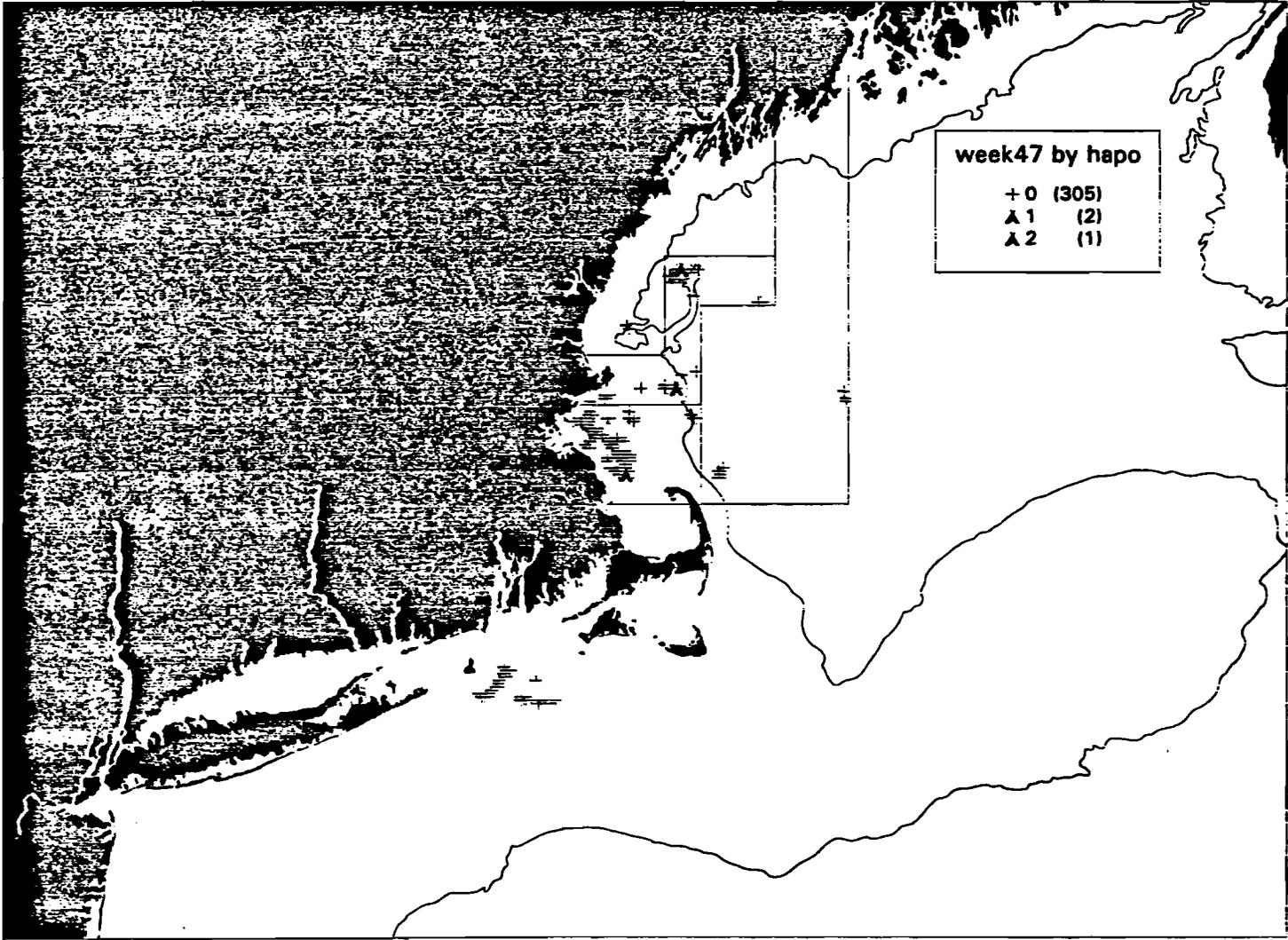
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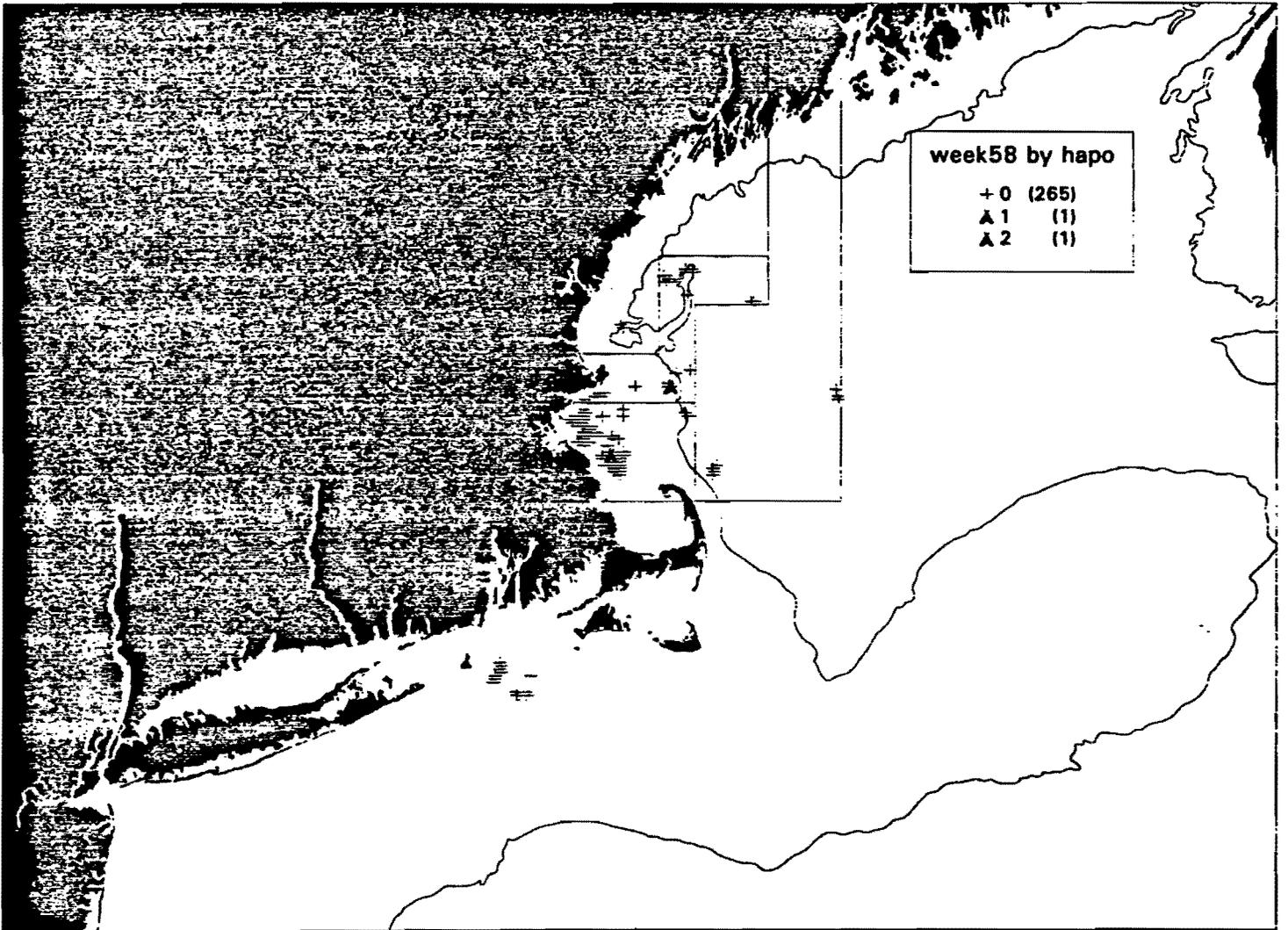
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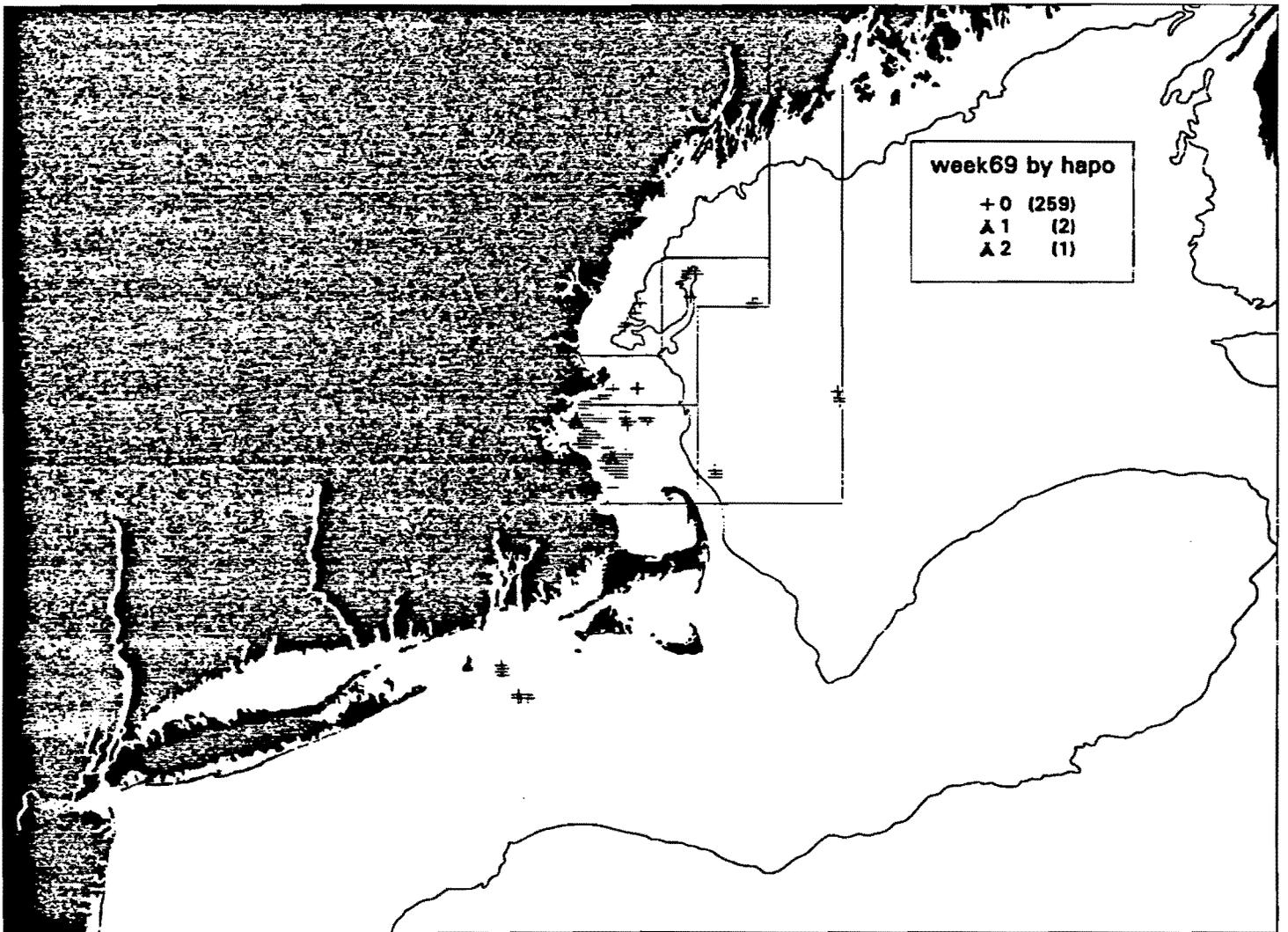
Sink Gillnet 1990-1994 SS Data Jan 22- Feb 18



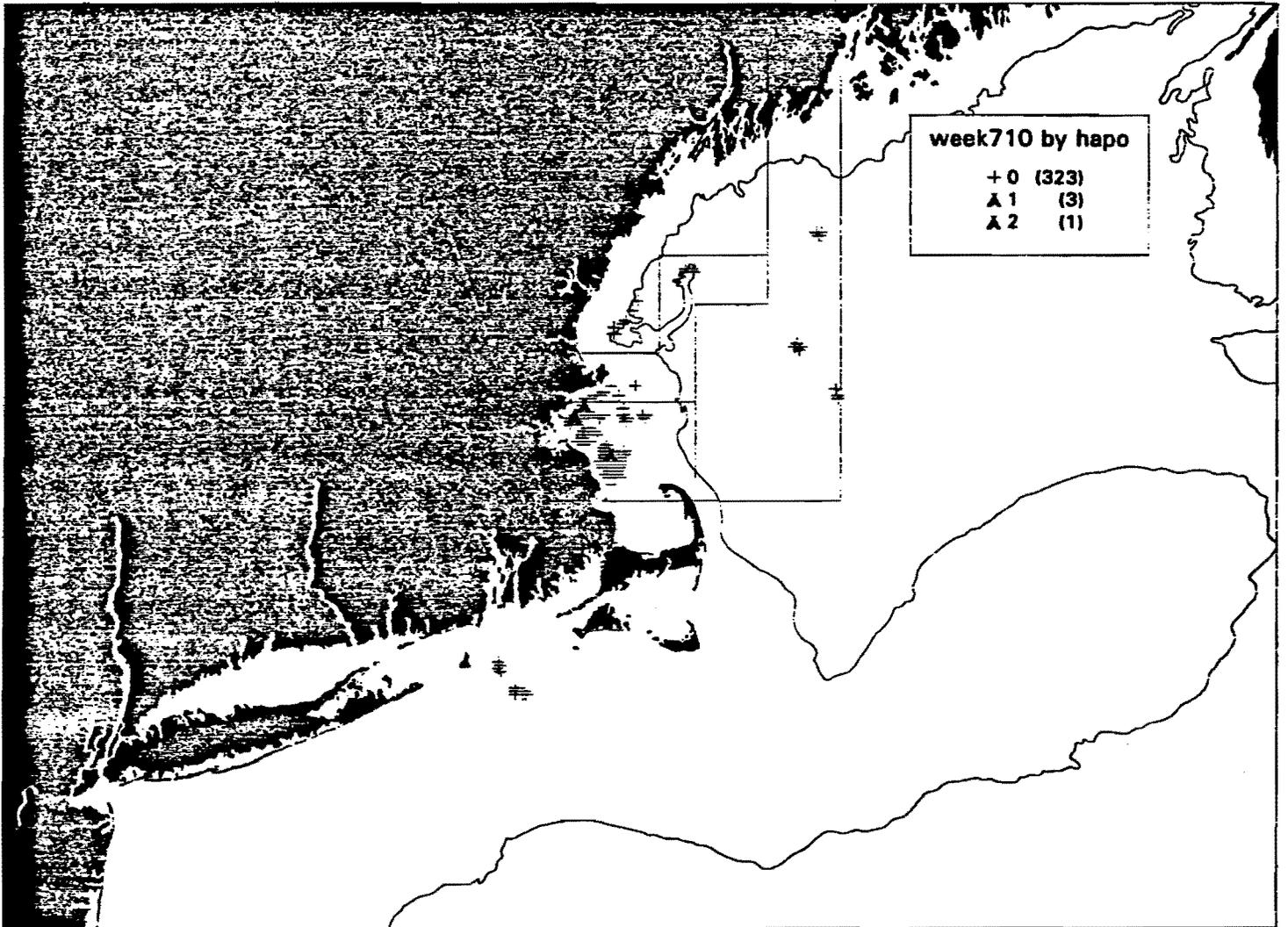
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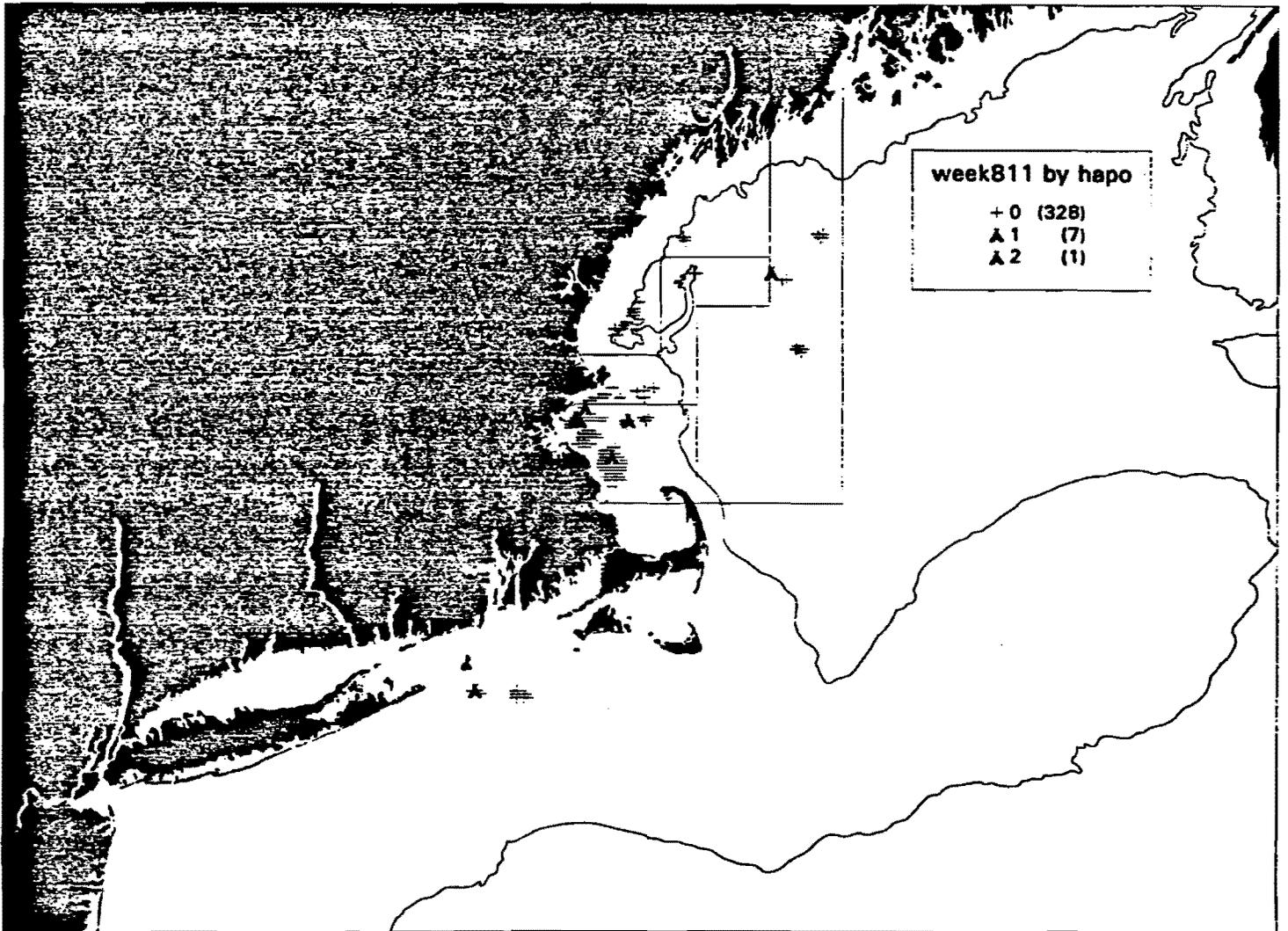
Sink Gillnet 1990-1994 SS Data Feb 5 - Mar 3



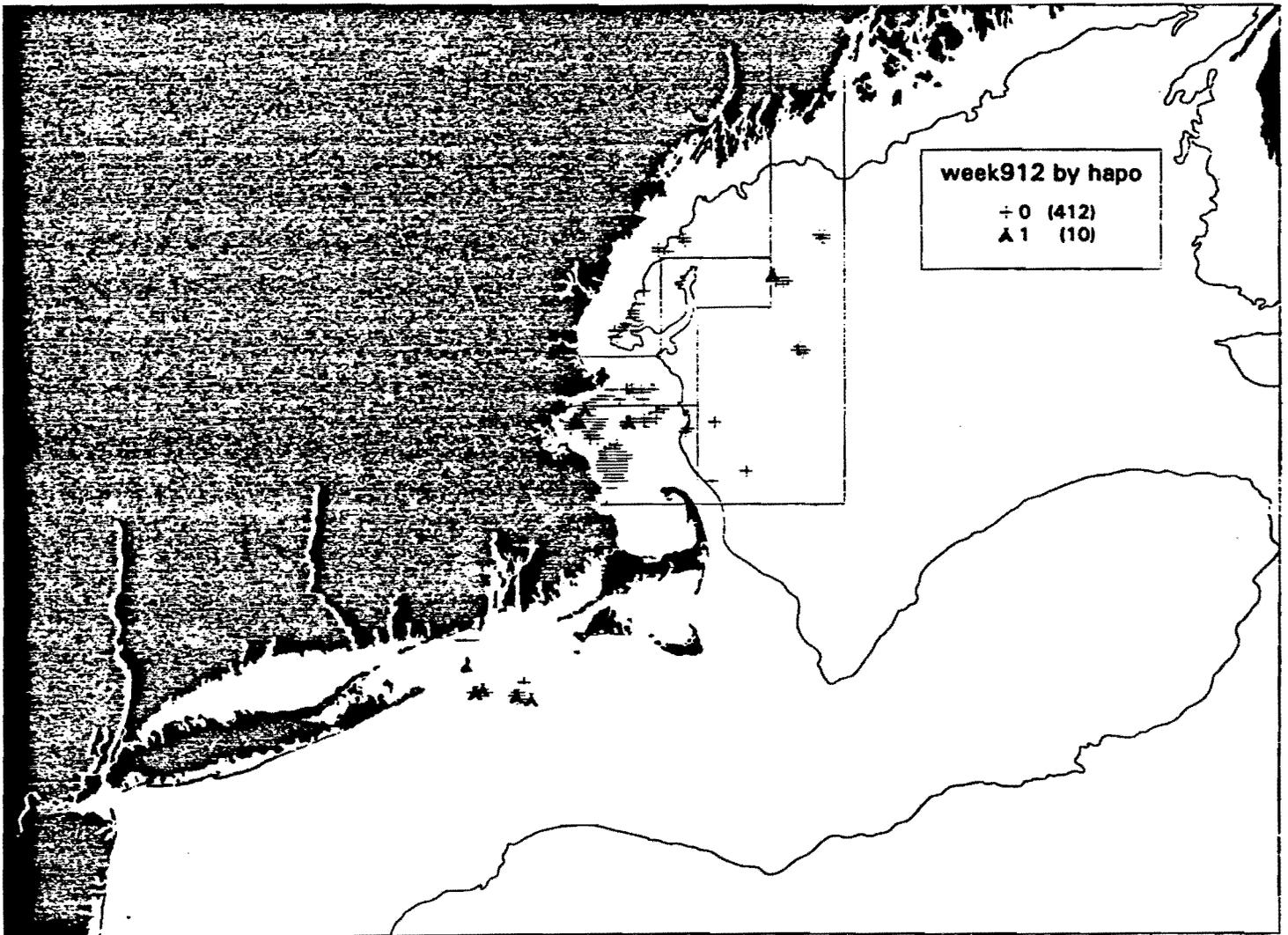
Sink Gillnet 1990-1994 SS Data Feb 12 - Mar 10



Sink Gillnet 1990-1994 SS Data Feb 19 - Mar 17

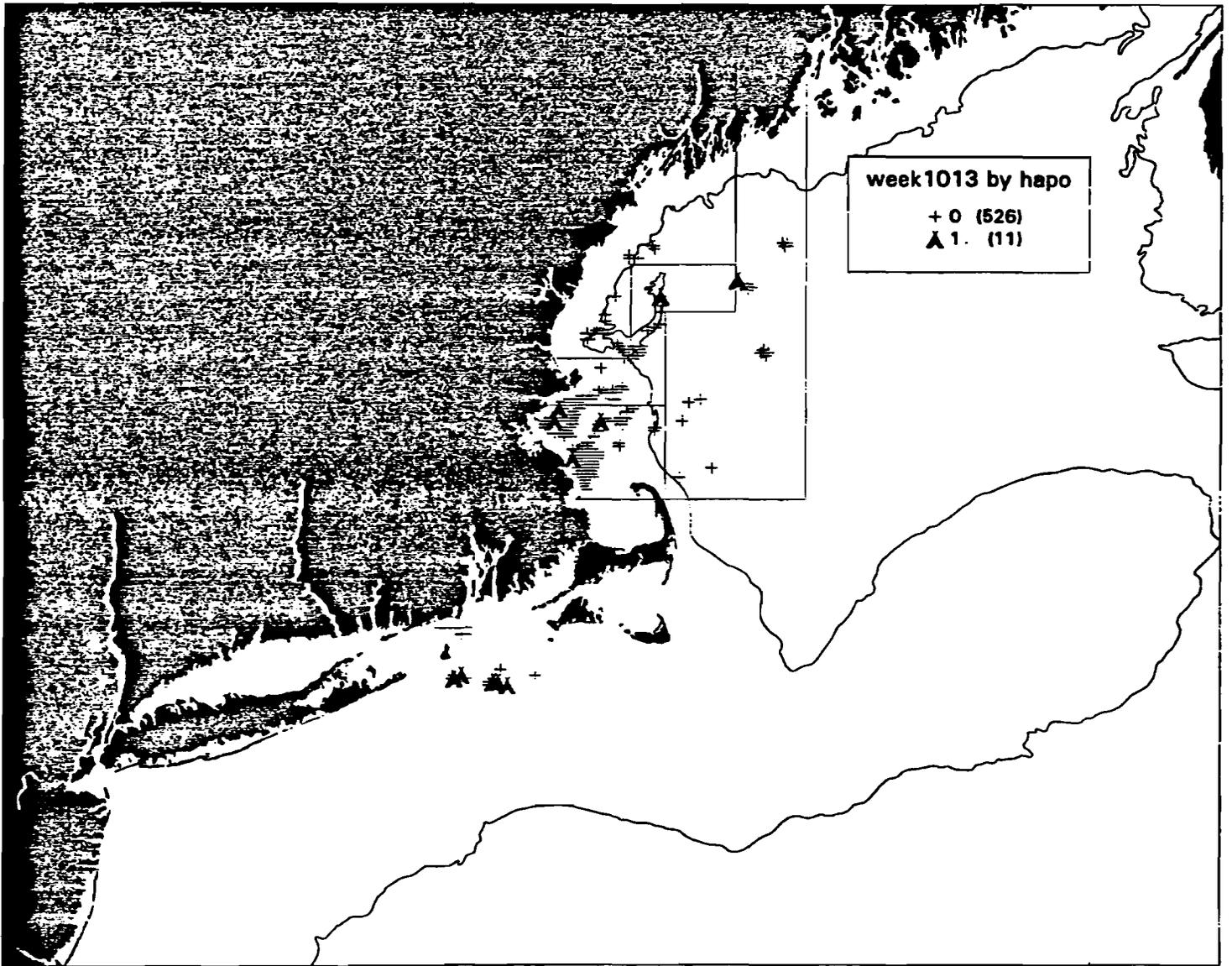


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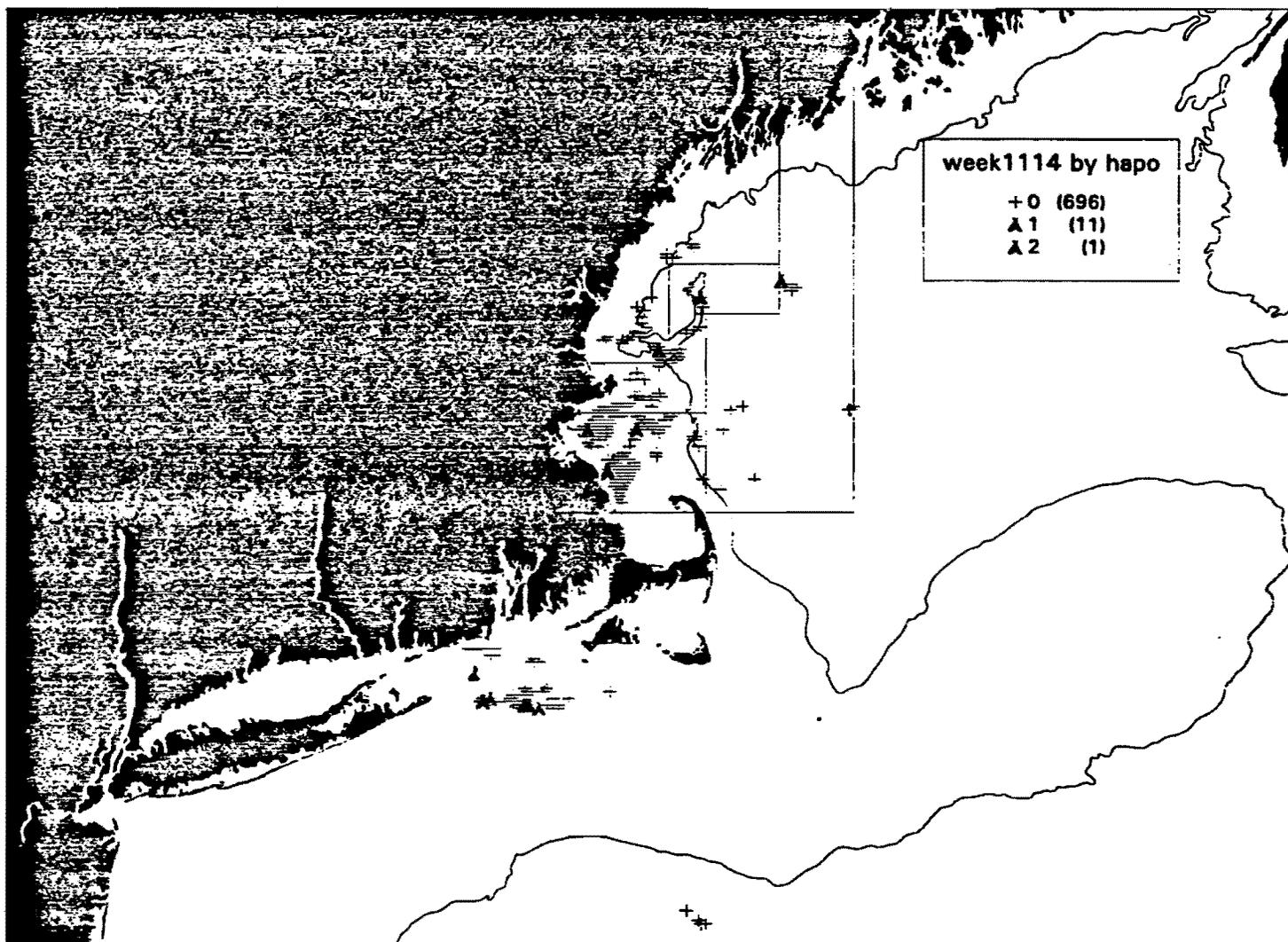
Sink Gillnet 1990-1994 SS Data

Mar 4 - Apr 1

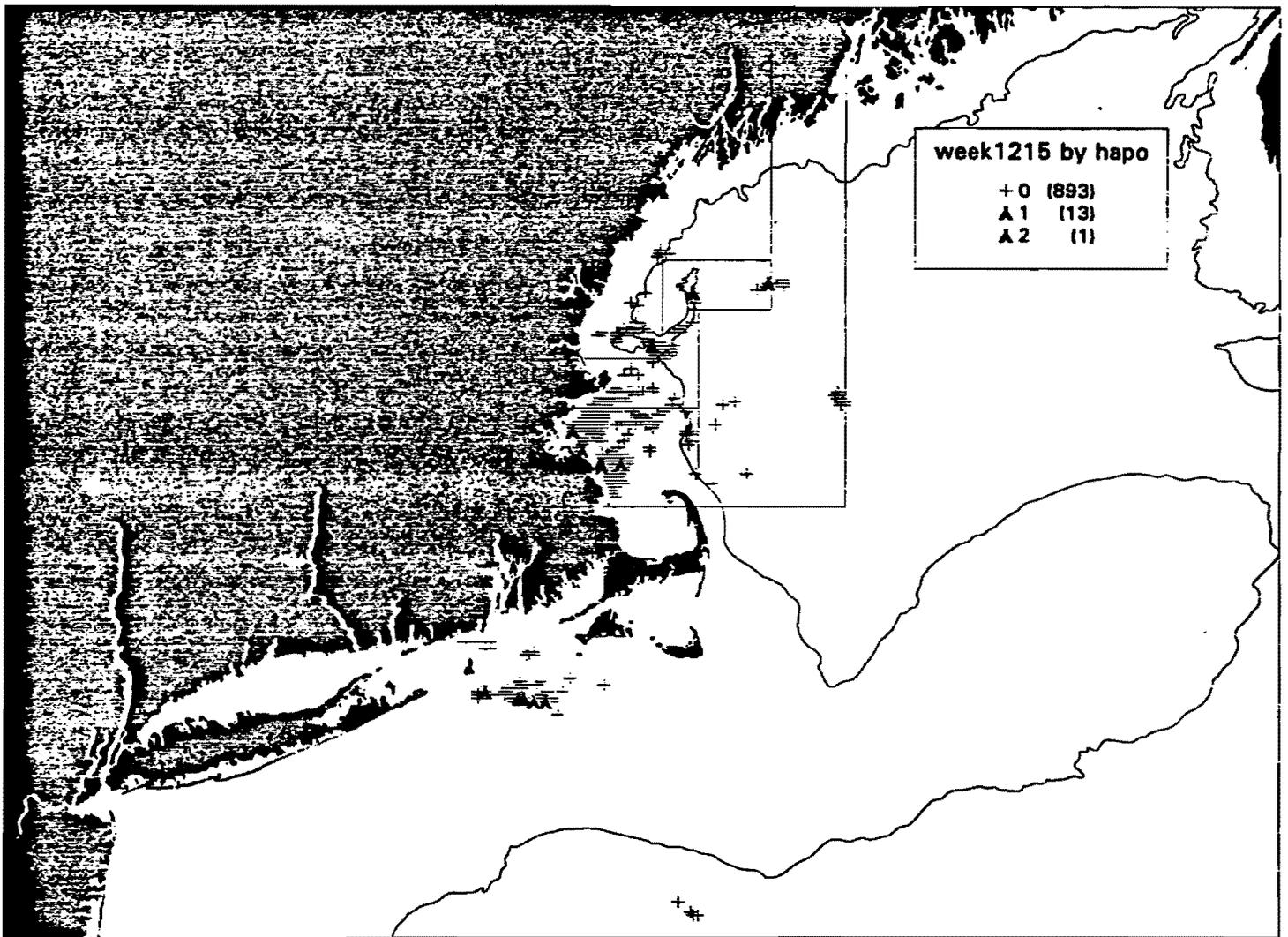


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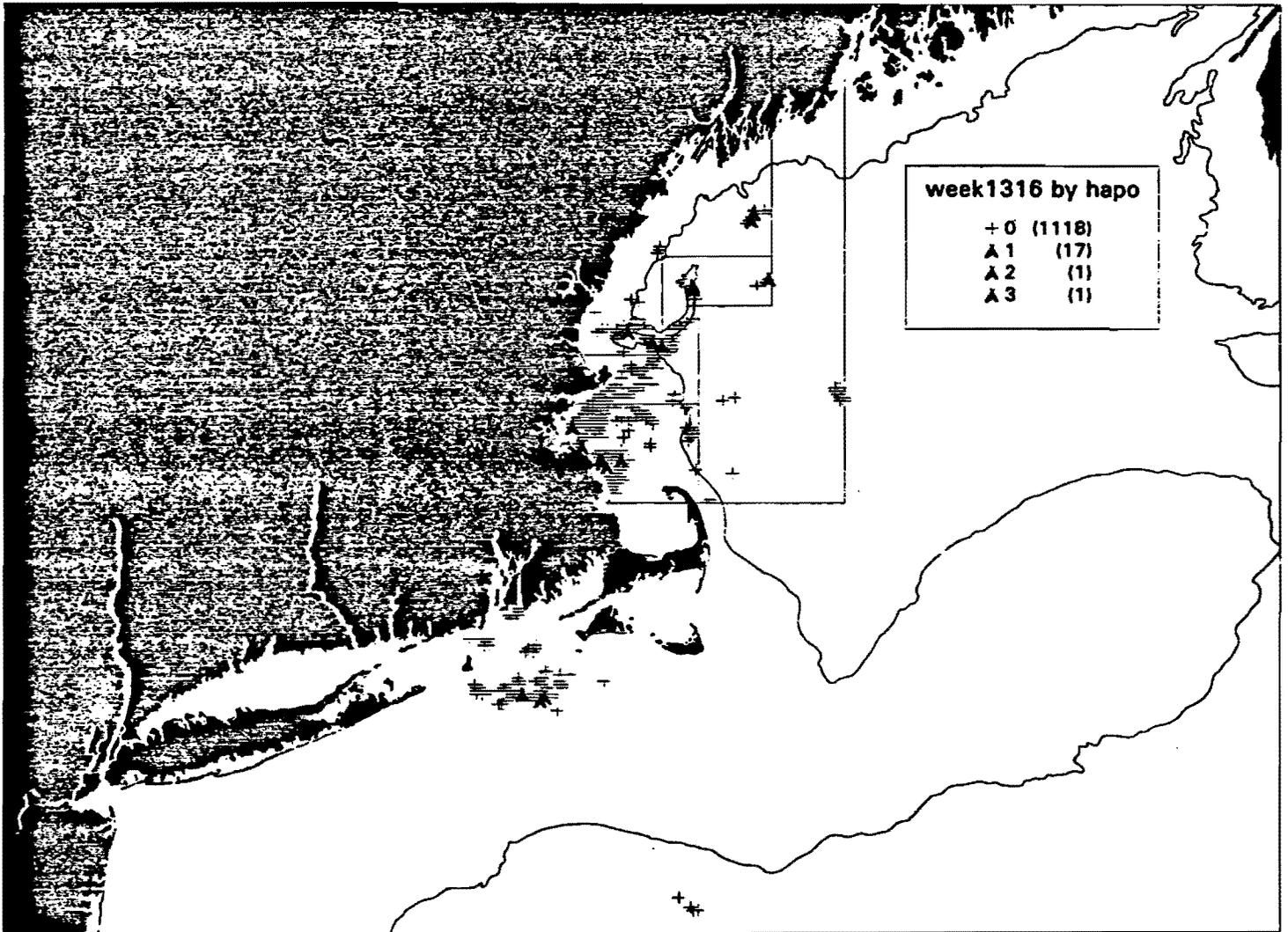
Mar 11 - Apr 7



Sink Gillnet 1990-1994 SS Data Mar 18 - Apr 14

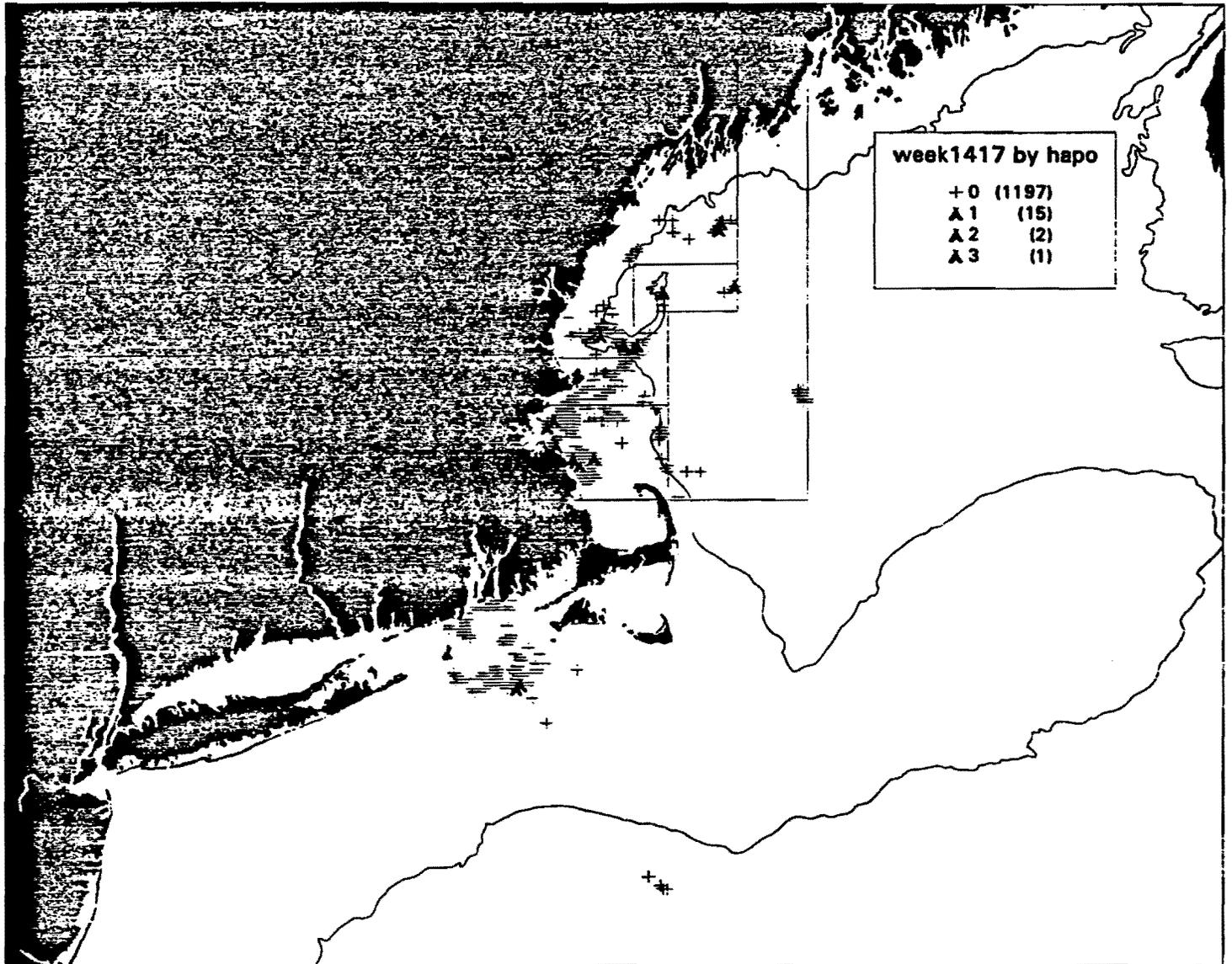


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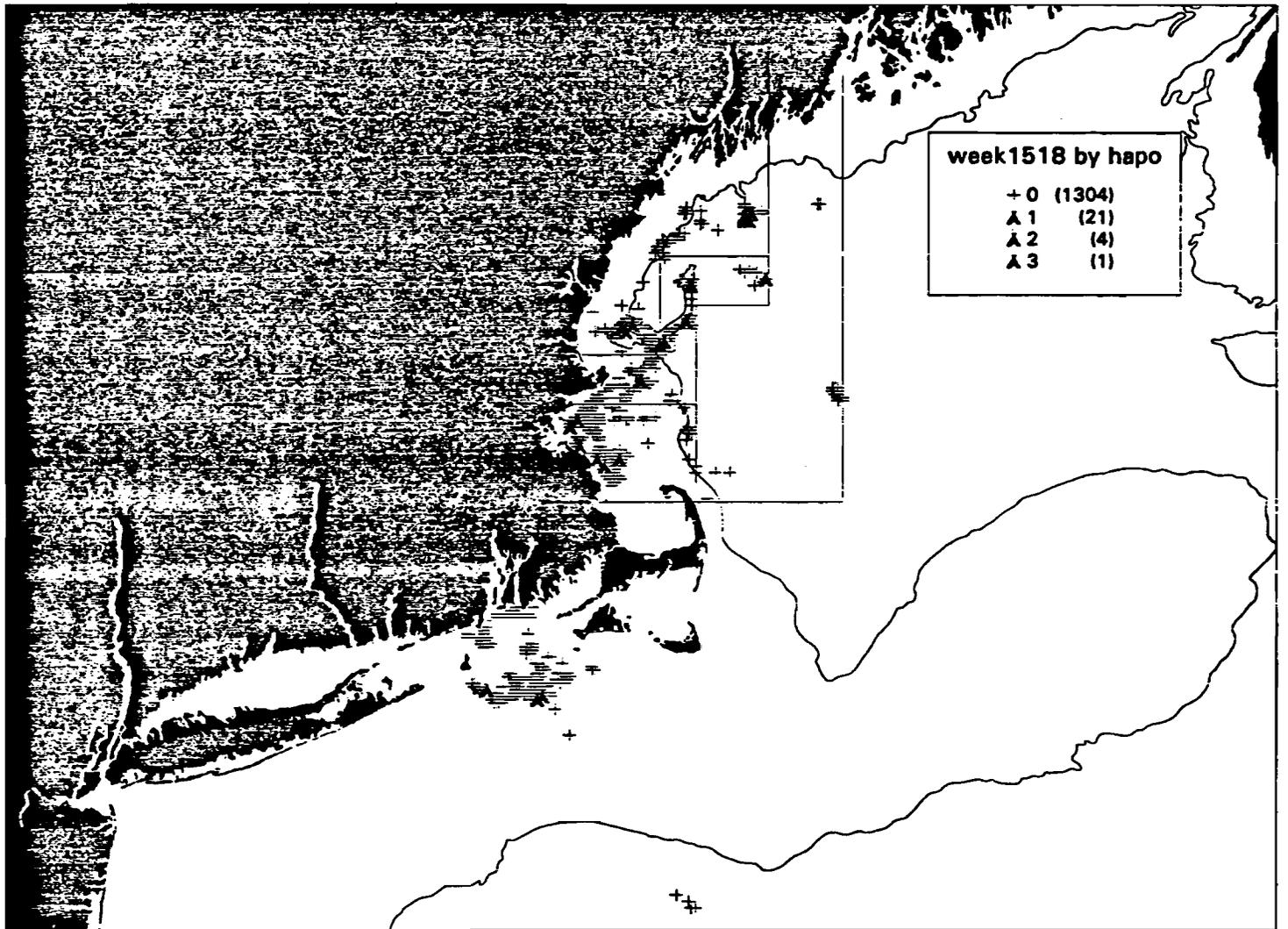


Sink Gillnet 1990 - 1994 SS Dat

Apr 1 - Apr 28

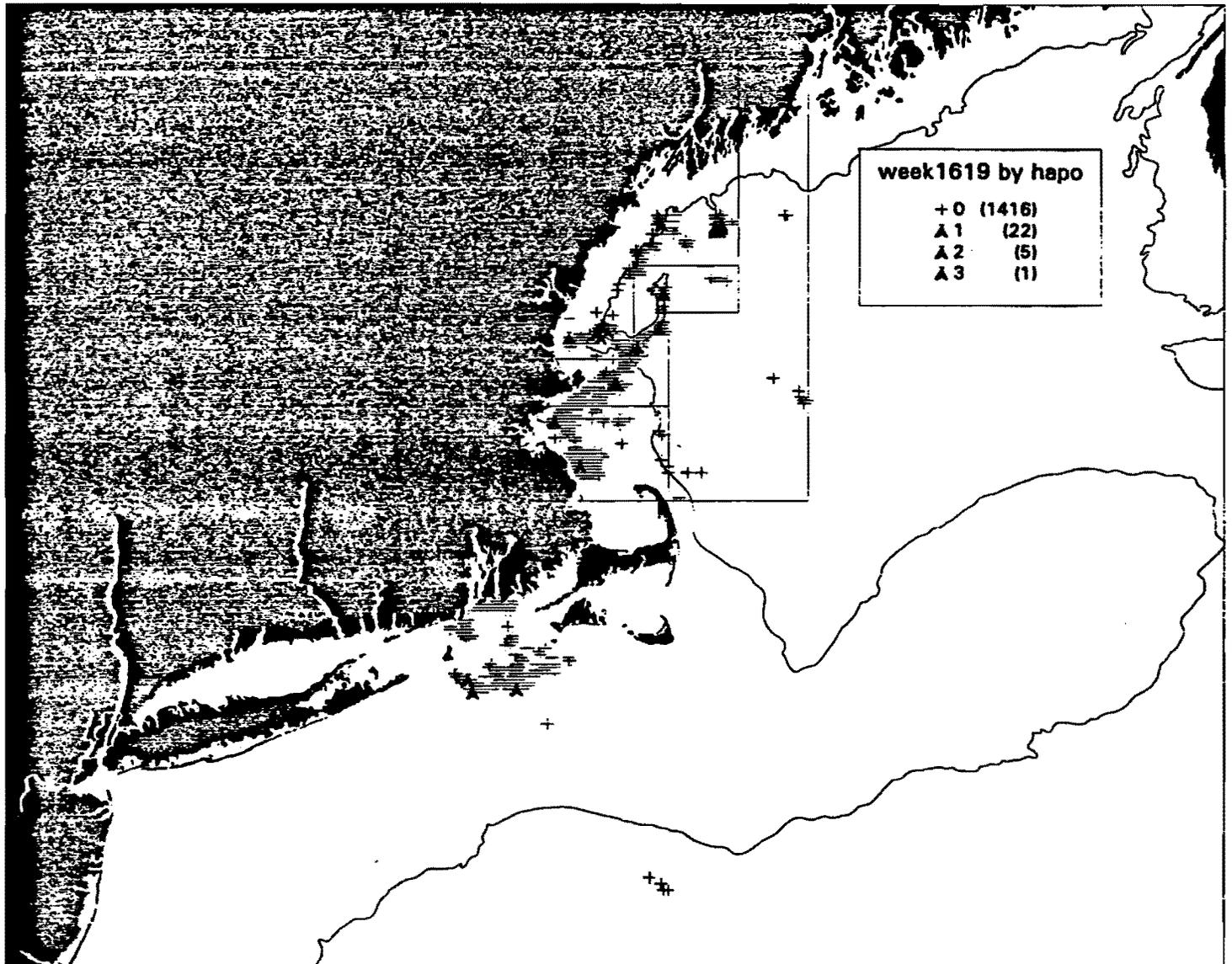


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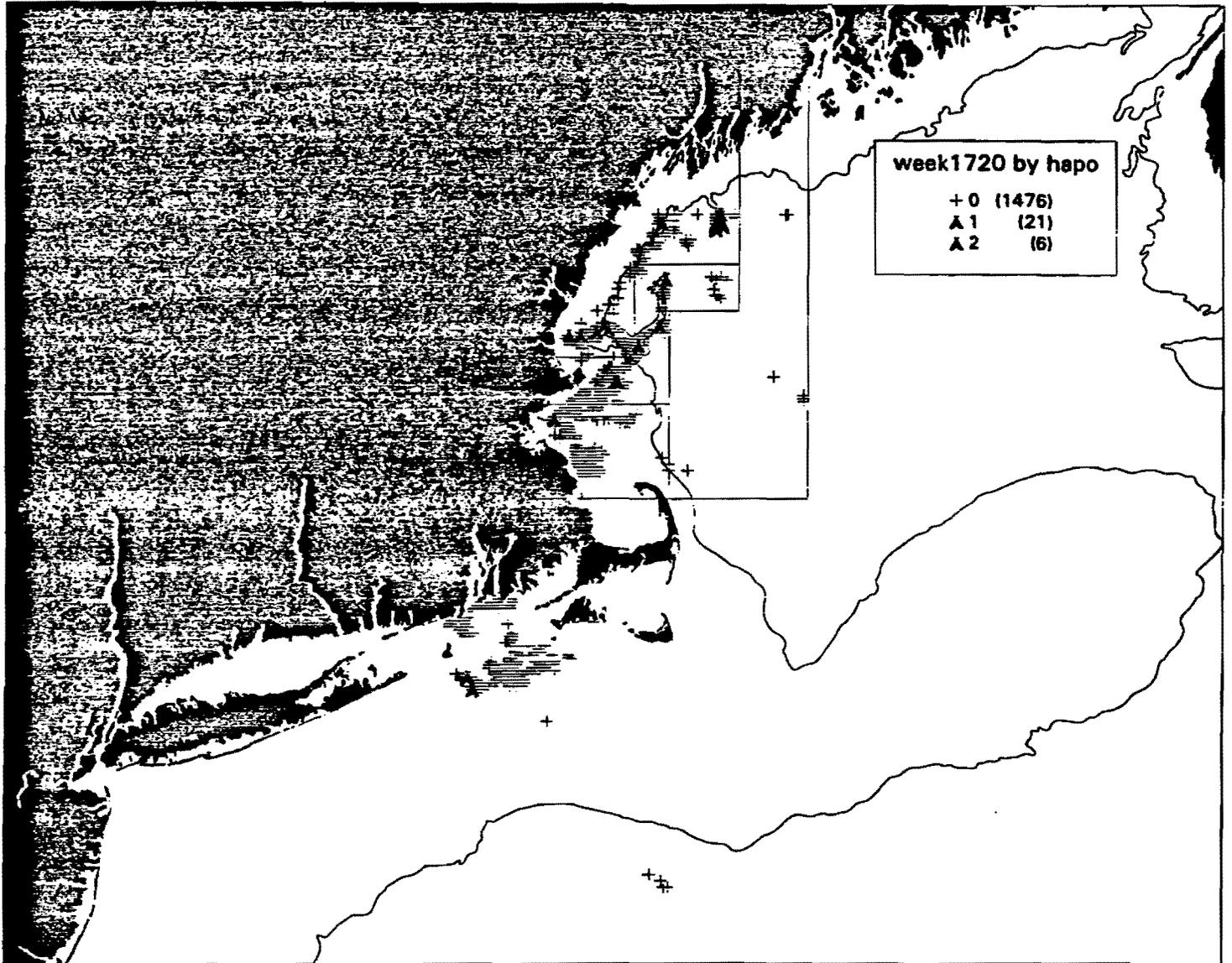


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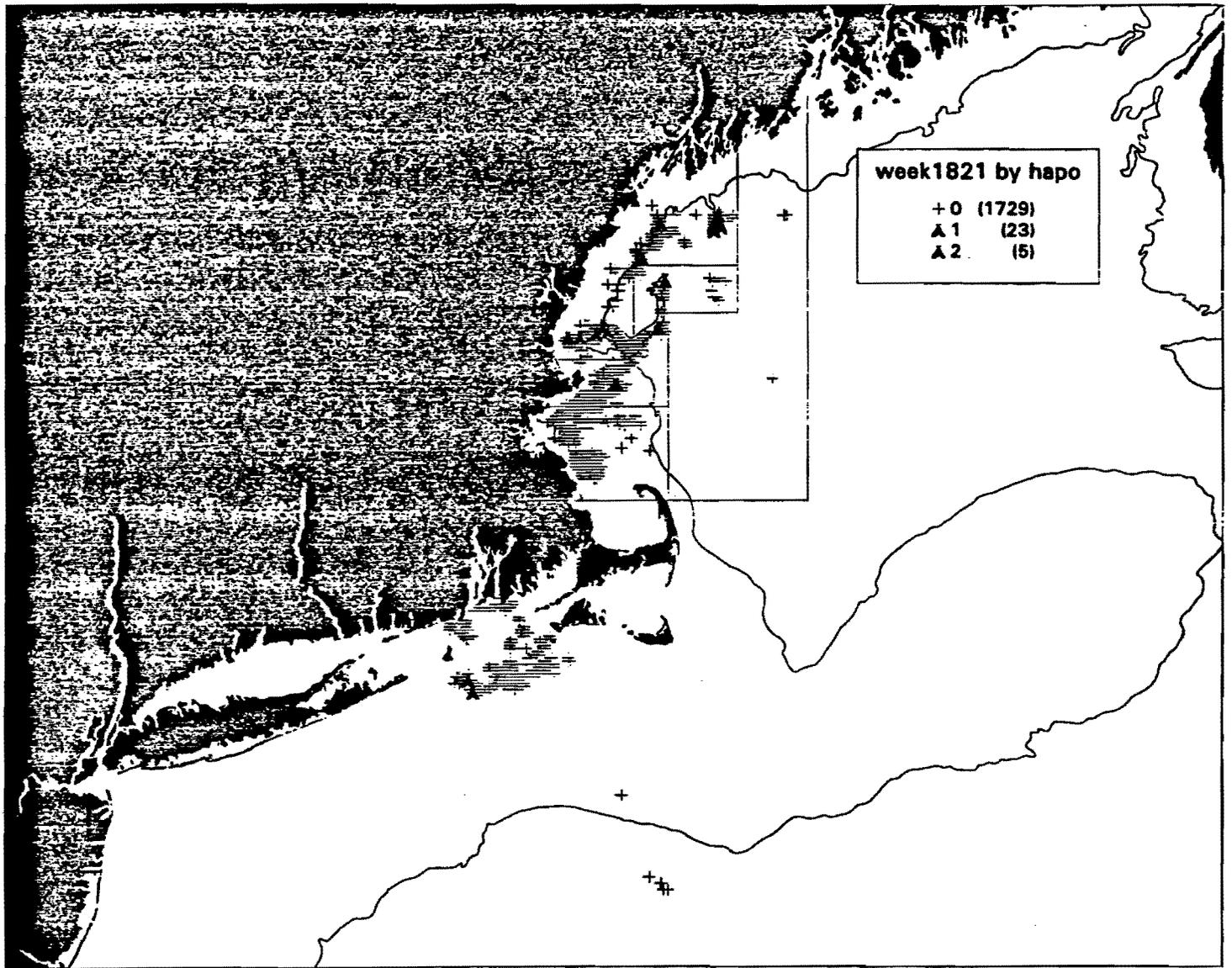
Apr15 - May 13



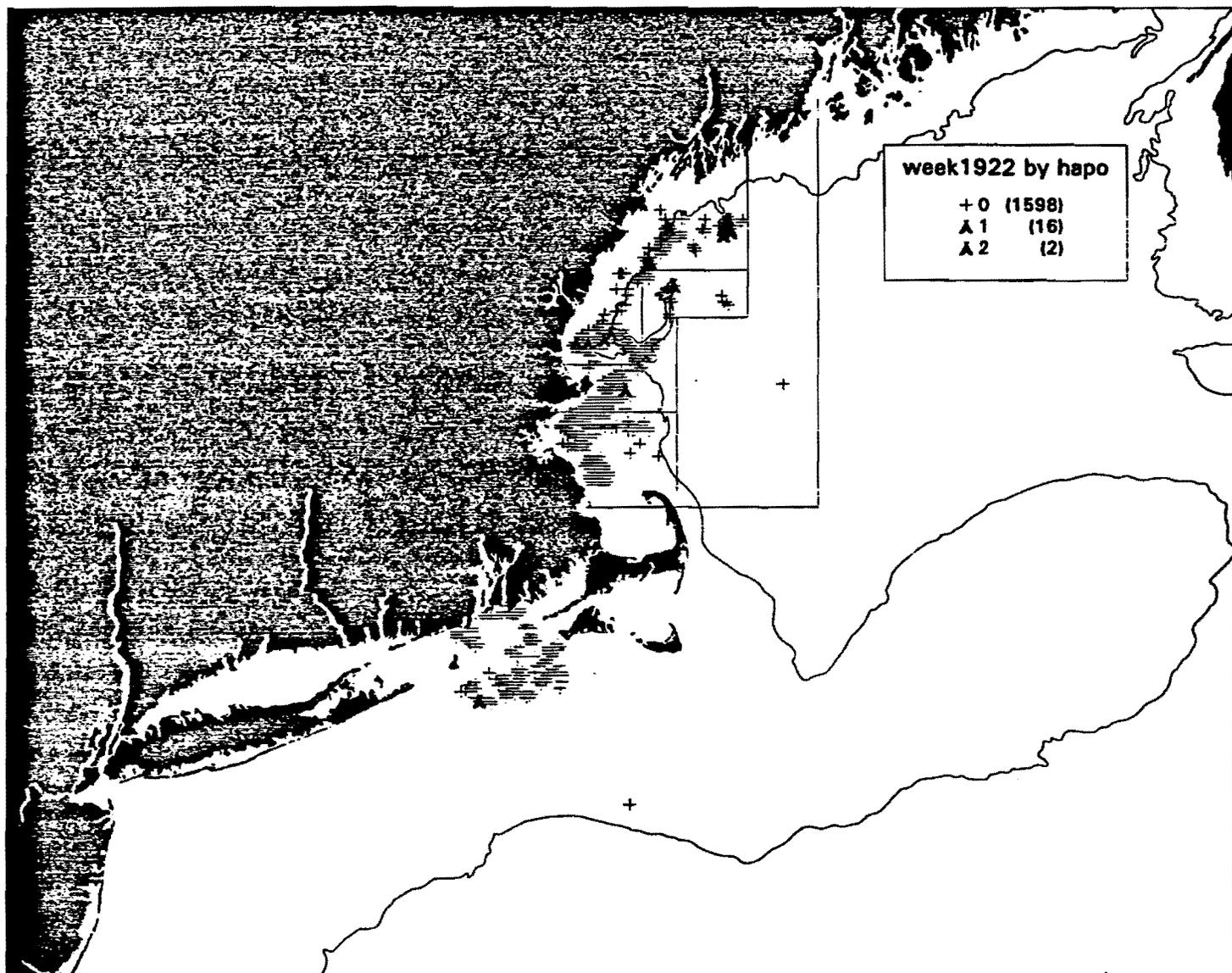
Sink Gillnet 1990-1994 SS Data Apr 22 - May 20



Sink Gillnet 1990-1994 SS Data Apr 29 - May 27



Sink Gillnet 1990-1994 SS Data May 7 - May 31



Appendix II
Biological Analyses



**ANALYSES CONDUCTED TO INVESTIGATE
HARBOR PORPOISE BYCATCH IN THE SPRING**

November 28, 1995

Northeast Fisheries Science Center

- I. Monthly bycatch rates**
- II. Trend analysis**
- III. 4-week running analysis and maps**

I. MONTHLY BYCATCH RATES

A. Purpose: determine bycatch rates for different areas

B. Data

1. 1990 to 1994 SS data
2. January to May
3. Penobscot Bay to S. of Cape Cod
 - a. Mass Bay
 - b. S. of Cape Cod
 - c. Mid-coast
 - d. Z-band
 - e. Outside
4. Methods

$$Rate = \frac{\sum h_{apo_{on}} + \sum h_{apo_{off}}}{\sum h_{auls_{on}} + \beta \cdot \sum h_{auls_{off}}}$$

II. TREND ANALYSIS

A. Similar to that done for the fall Mid-coast analysis

B. Purpose:

1. Investigates trends in bycatch per haul
2. How bycatch rate varies by year, month, and area

C. Data

1. 1990 to 1994 Sea Sample data
2. January through May
3. Penobscot Bay to S. of Cape Cod
 - a. Mass Bay
 - b. S. of Cape Cod
 - c. Mid-coast
 - d. Z-band
 - e. Outside

D. Reference point was 1991 March Mass Bay bycatch rate

E. Analysis methods used standard statistical techniques

1. generalized linear models
2. bootstrapping

III. RUNNING 4-WEEK ANALYSIS

- A. Similar to analysis done last year for the Mass Bay region
- B. Purpose: For 4-week periods ...
 - 1. calculate observed bycatch rates
 - 2. and predicted percent of harbor porpoises caught
- C. Data
 - 1. 1990 to 1994 SS data
 - 2. 1990 to 1993 WO data
 - 3. January to May
 - 4. Penobscot Bay to S. of Cape Cod
 - a. Mass Bay
 - b. S. of Cape Cod
 - c. Mid-coast
 - d. Z-band
 - e. Outside
- D. Maps of SS hauls with and without harbor porpoise takes
- E. Calculate the average bycatch rate
 - 1. used Sea Sample data
 - 2. bycatch rate corrected for on/off watch effect
 - 3. average rates over years = ABR
- F. Calculate the predicted percent caught
 - 1. used Weighout and SS data
 - 2. % caught = total estimated number caught/1900
 - 3. number caught = ABR * estimated hauls in WO
 - 4. Est. Hauls = WO tons / (SS hauls/ton)

MASS BAY AREA monthly bycatch rates (number of harbor porpoises caught/effective number of hauls) using the Sea Sampling data for the years 1990 to 1994.

- indicates no sampling for that year-month.
 0 indicates no observed harbor porpoise bycatch.

YEAR	MONTH				
	JAN	FEB	MARCH	APRIL	MAY
1990	0	.120	.094	.028	0
1991	.072	.162	0	0	0
1992	0	0	.009	.035	0
1993	0	0	.014	.007	0
1994	0	.091	0	0	0

Z-BAND AREA monthly bycatch rates (number of harbor porpoises caught/effective number of hauls) using the Sea Sampling data for the years 1990 to 1994.

- indicates no sampling for that year-month.
 0 indicates no observed harbor porpoise bycatch.

YEAR	MONTH				
	JAN	FEB	MARCH	APRIL	MAY
1990	.325	0	0	.321	0
1991	0	0	0	0	-
1992	0	0	0	.014	0
1993	0	0	0	.077	.035
1994	0	.333	.042	0	.043

MID-COAST AREA monthly bycatch rates (number of harbor porpoises caught/effective number of hauls) using the Sea Sampling data for the years 1990 to 1994.

- indicates no sampling for that year-month.
 0 indicates no observed harbor porpoise bycatch.

YEAR	MONTH				
	JAN	FEB	MARCH	APRIL	MAY
1990	0	-	0	0	0
1991	.367	-	0	.106	.197
1992	.087	-	-	.146	.005
1993	0	-	0	0	.062
1994	0	-	0	.065	.031

S. CAPE COD monthly bycatch rates (number of harbor porpoises caught/effective number of hauls) using the Sea Sampling data for the years 1990 to 1994.

- indicates no sampling for that year-month.
 0 indicates no observed harbor porpoise bycatch.

YEAR	MONTH				
	JAN	FEB	MARCH	APRIL	MAY
1990	-	-	-	-	-
1991	-	-	-	-	-
1992	-	-	-	.014	0
1993	0	0	.027	.013	0
1994	0	0	.100	0	.013

RESULTS OF TREND ANALYSIS

Estimated effects of year, month and zone on harbor porpoise bycatch per haul. The standard errors (SE) summarize the uncertainty in each estimate of mean effect compared with its reference (year 1991, month March, and zone Mass Bay), not the variability of bycatch per haul from year to year.

The reference bycatch rate (for March 1991 in Mass Bay) is 0.033 harbor porpoises/haul, CV=61%

YEAR	1990	1991	1992	1993	1994
Effect (%)	67	100	25	41	38
SE	67	-	24	40	34

Results: there is inter-annual variability, with 1990 and 91 having the higher bycatch rate and 1992-1994 having lower rate. The 1991 bycatch rate is significantly higher than the other years.

MONTH	Jan	Feb	Mar	Apr	May
Effect (%)	67	146	100	97	52
SE	64	123	-	56	33

Results: The bycatch rates are lowest at the two end time periods, Jan and May, and highest in Feb to Apr. The month of May is significantly less than March (the reference month). There is a 70% probability that the bycatch rate is higher in Feb than in March.

RESULTS OF TREND ANALYSIS

Estimated effects of year, month and zone on harbor porpoise bycatch per haul. The standard errors (SE) summarize the uncertainty in each estimate of mean effect compared with its reference (year 1991, month March, and zone Mass Bay), not the variability of bycatch per haul from year to year.

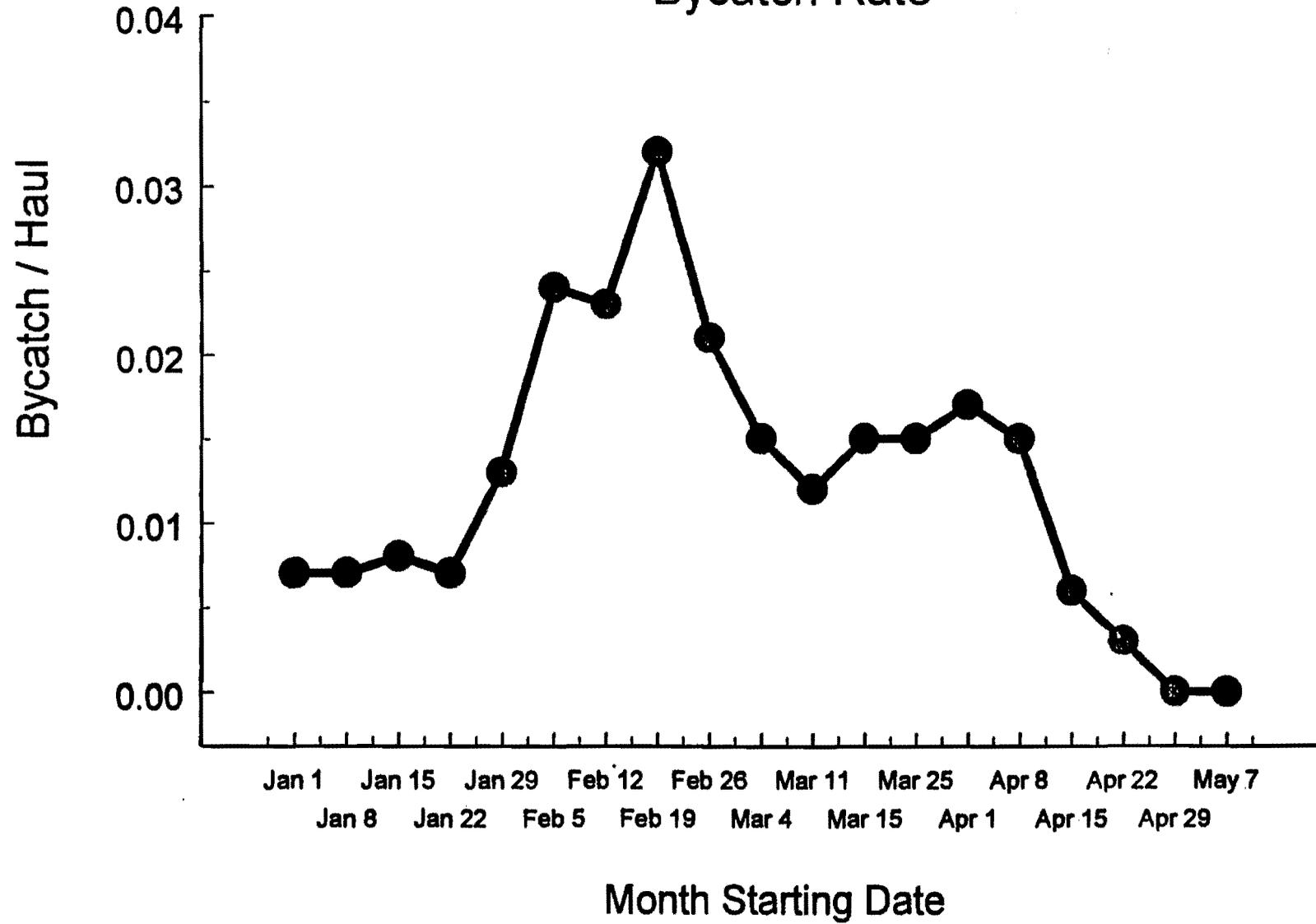
The reference bycatch rate (for March 1991 in Mass Bay) is 0.033 harbor porpoises/haul, CV=61%

AREA	Mid-Coast	Z-band	S. Cape	Outside	Mass Bay
Effect (%)	467	352	131	60	100
SE	223	175	80	115	-

Results: There is spatial differences in the bycatch rates. The bycatch rates are lowest in the outside zone, intermediate in Mass Bay and S. of Cape Cod and highest in the Mid-coast and Z-band zones. The Mid-coast and Z-band regions are significantly higher than the Mass Bay region (the reference region).

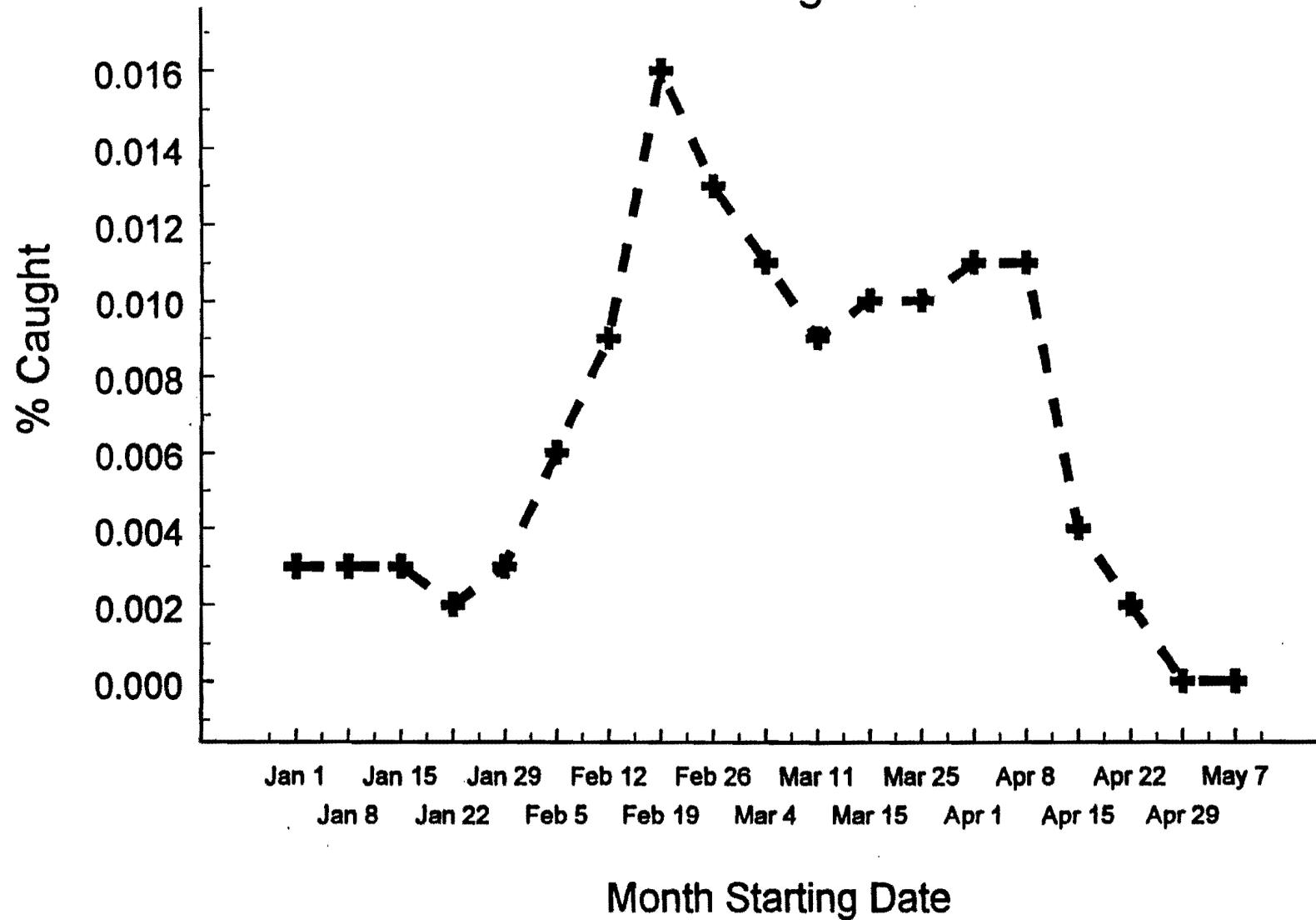
The inter-zone differences are larger than the differences within years or months.

Mass Bay -- 4 Weeks Running Bycatch Rate



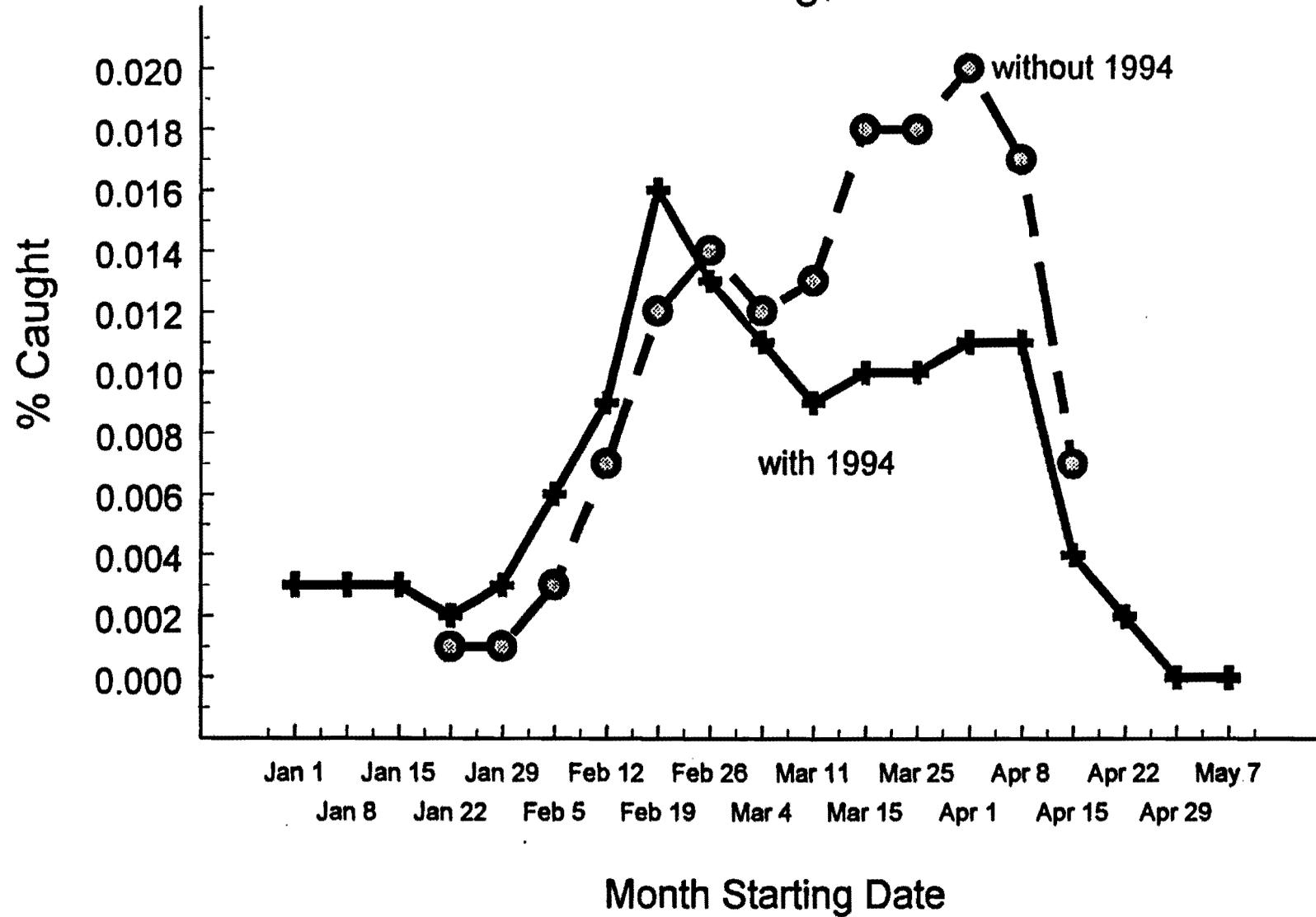
Mass Bay -- 4 Weeks Running

% Caught

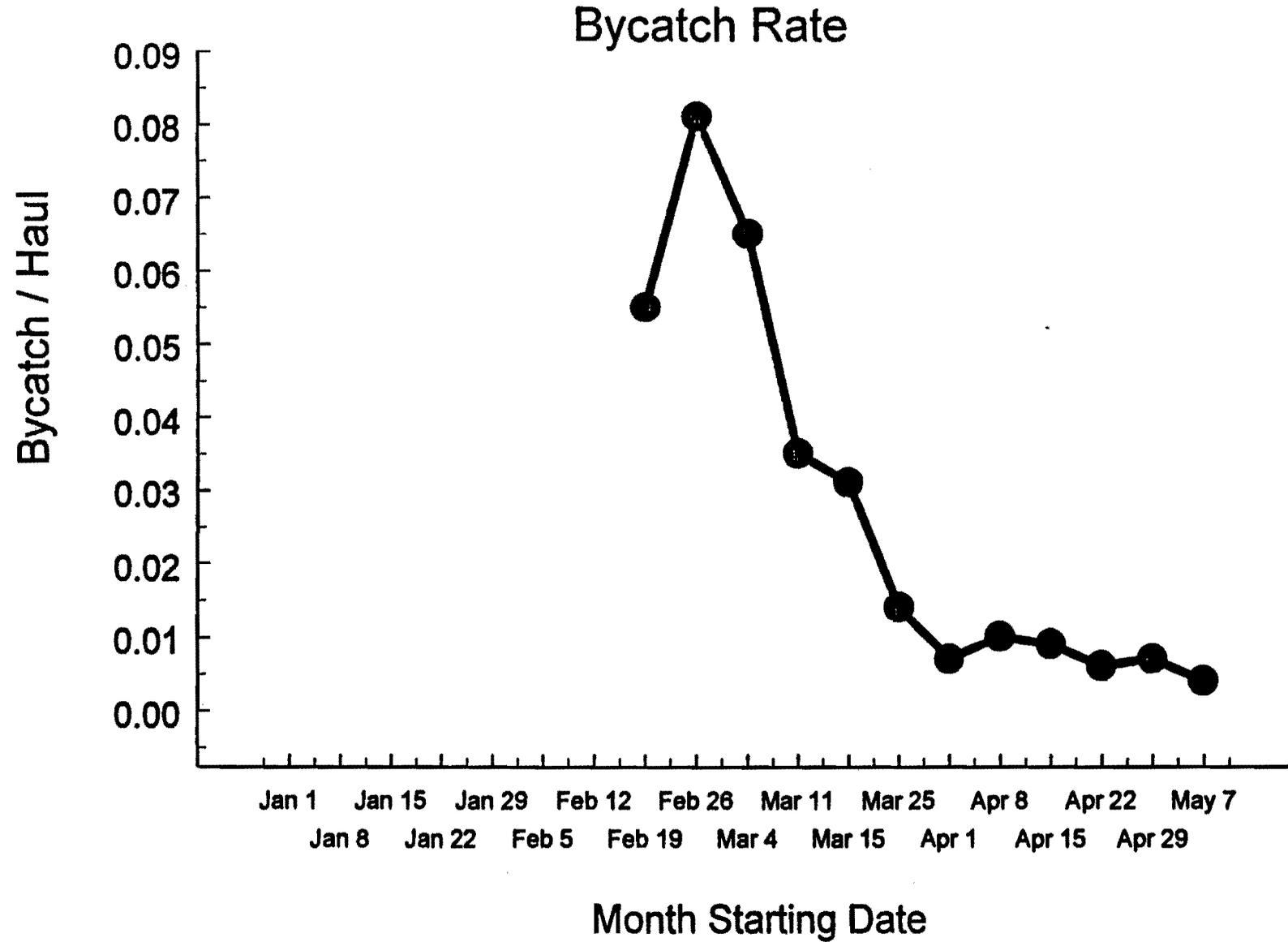


Mass Bay -- 4 Weeks Running

% Caught

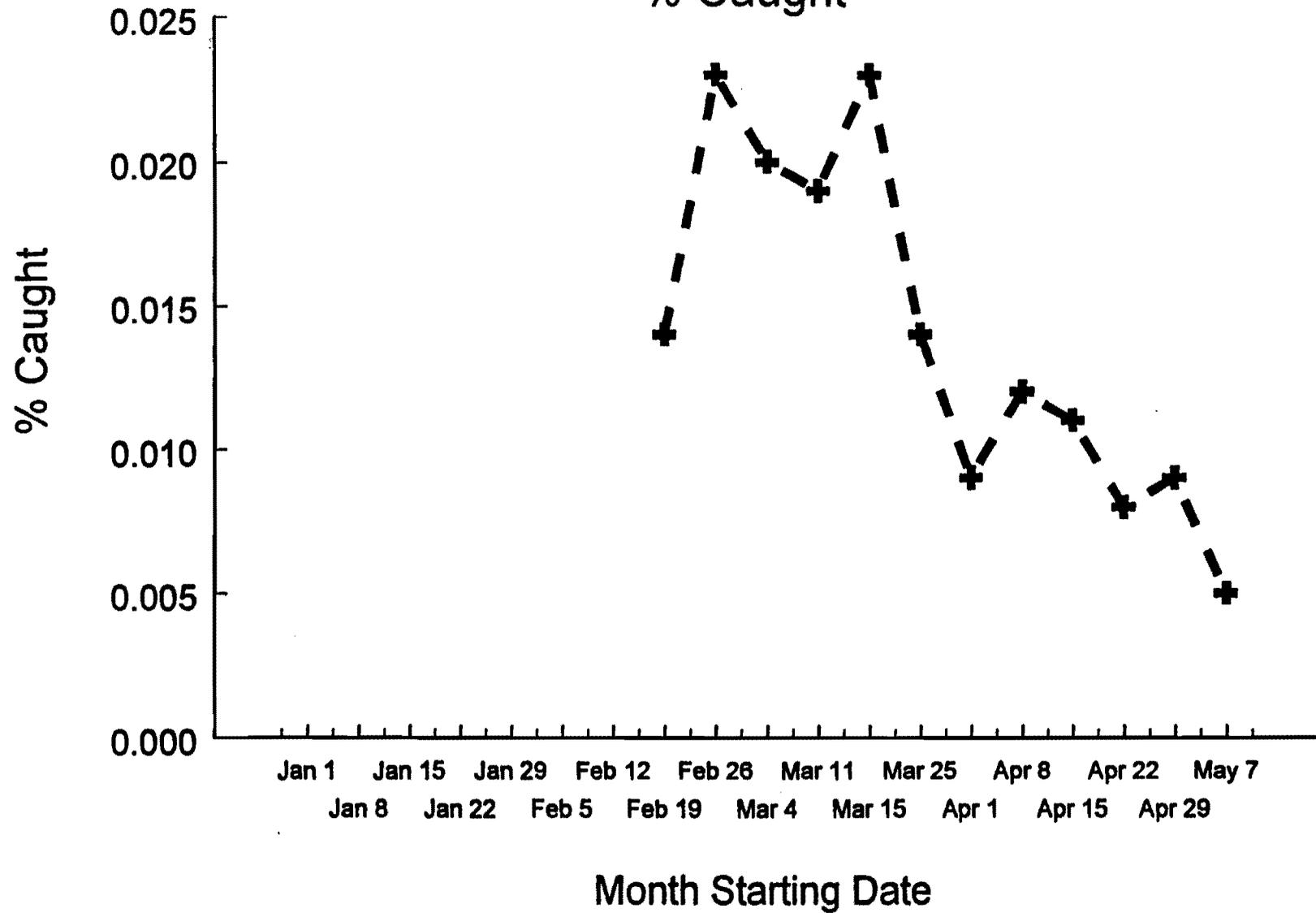


S. of Cape Cod -- 4 Weeks Running



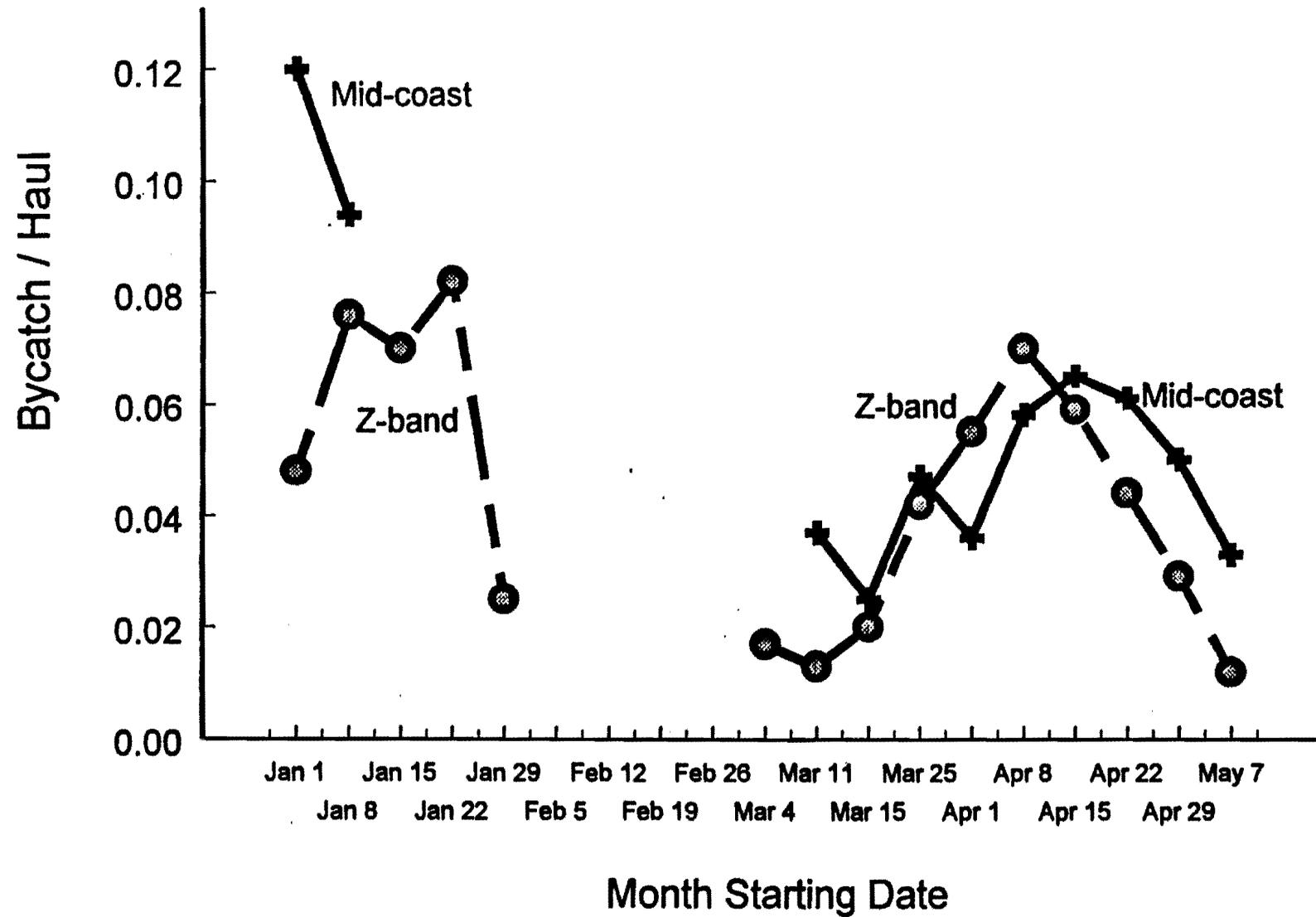
S. of Cape Cod -- 4 Weeks Running

% Caught



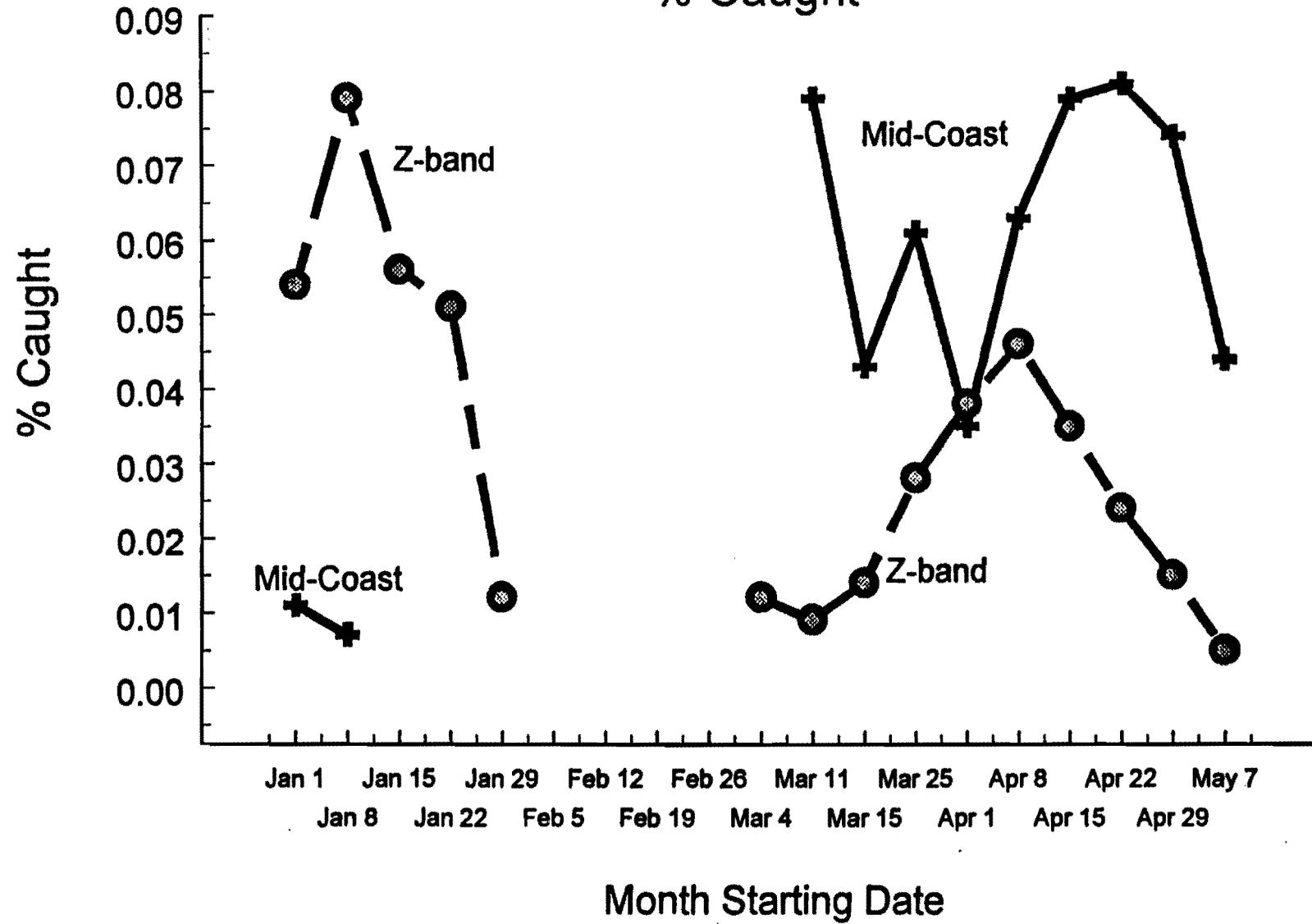
Mid-Coast & Z-band -- 4 Weeks Running

Bycatch Rate



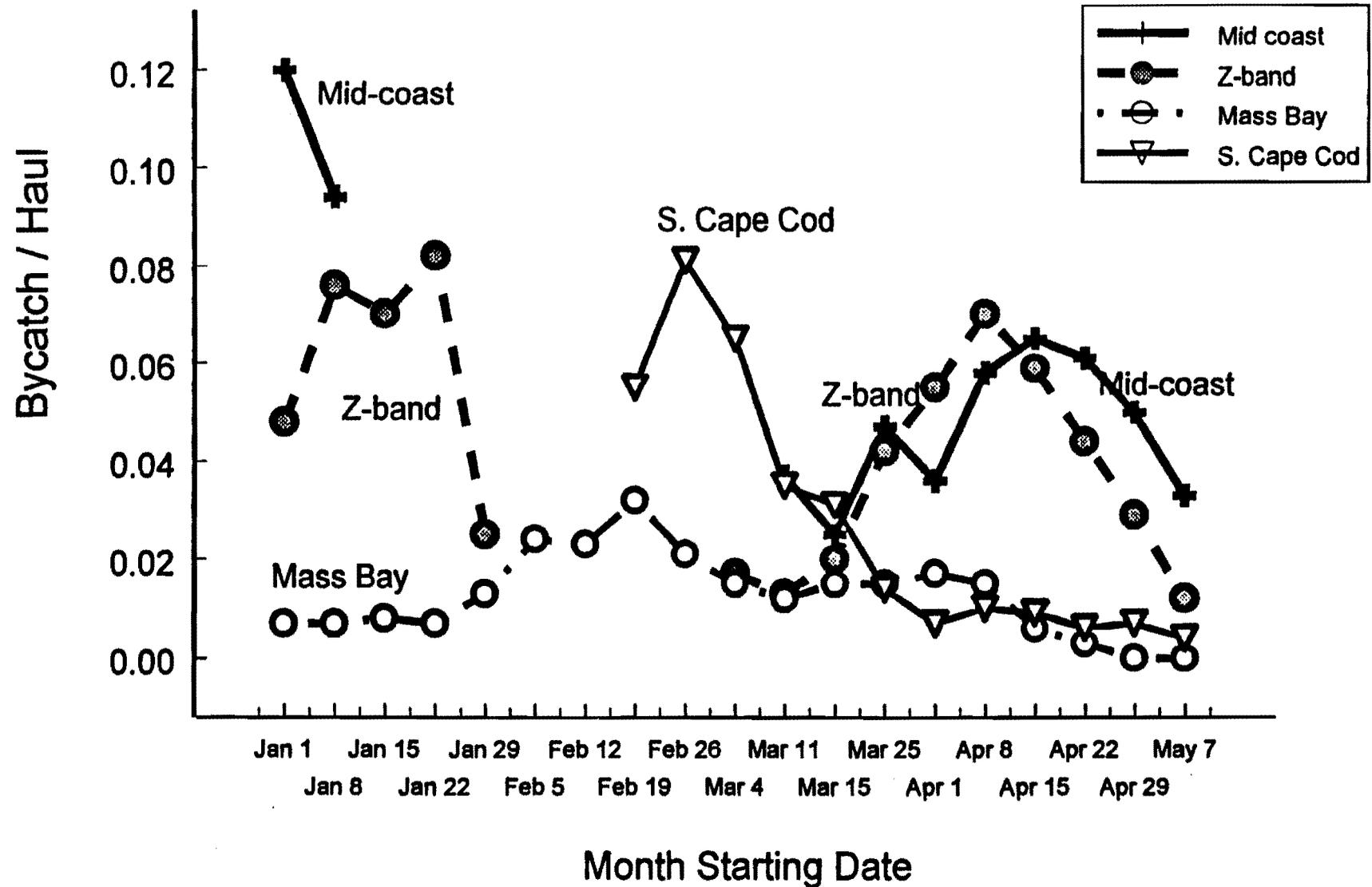
Mid-Coast and Z-band -- 4 Weeks Running

% Caught

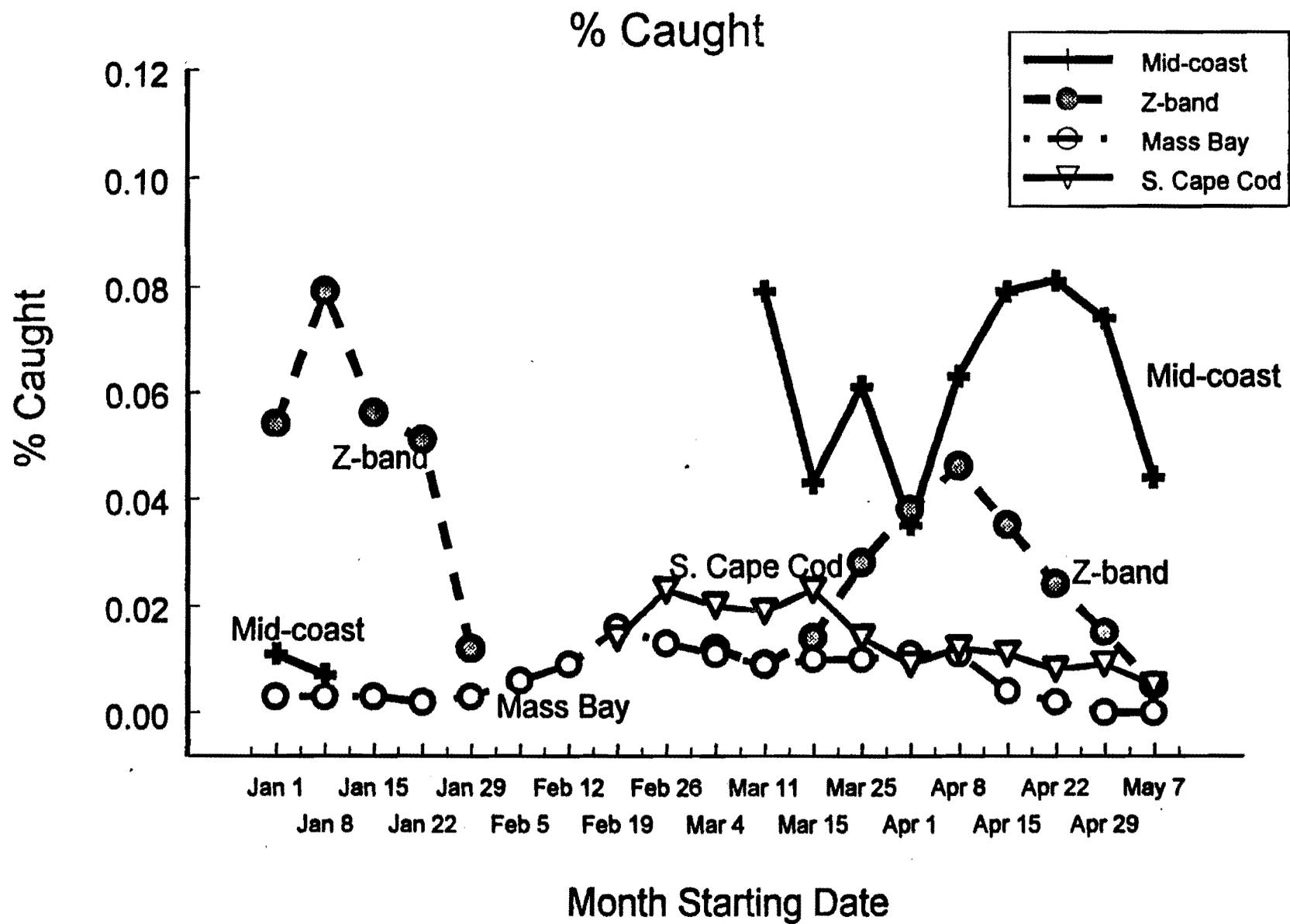


All Areas -- 4 Weeks Running

Bycatch Rate



All Areas -- 4 Weeks Running



CONCLUSIONS:

- 1. There is inter-annual, inter-month, and between region differences. The differences between regions is larger than differences between years and months.**
- 2. In general, January and May have lower bycatch RATES than February, March and April. The rates during March and April are similar, and February is highest.**
- 3. In general, 1991 had the highest bycatch RATES, while 1992 had the lowest rates. These inter-annual differences are statistically significant.**
- 4. Within Mass Bay, the time frame from Feb 19 to Apr 28 has the greatest bycatch of harbor porpoises. It is difficult to determine within this time frame which 4 week period has the highest bycatch. This is probably because of the inter-annual variability.**
- 5. The Mid-coast region has the highest bycatch of all the regions. Within the Mid-coast region the highest bycatch is during March and part of April. During these two months the bycatch is fairly consistently high.**
- 6. The Z-band region has the second highest bycatch of the regions studied. Within the Z-band, high bycatch was during mid-January to mid-February and during the middle of March to the middle of April.**
- 7. The bycatch in the S. Cape Cod region, which is similar to the Mass Bay region, is low relative to the Mid-coast and Z-band areas. Within the S. Cape Cod region, bycatch is highest during March.**

**Appendix III
Economic Analysis**

Cost Benefit Analysis for Framework Adjustment 14

1. Introduction

This analysis provides a cost-benefit assessment of the proposed time-area closures in Framework Adjustment 14 to reduce the harbor porpoise bycatch in the Gulf of Maine sink gillnet fishery. Specifically, these proposed closures cover; a) Southern New England (defined by the boundary extending from the Massachusetts shore south along 70°45'W, west on 40°40'N and north on 71°45' W to the Rhode Island coast, from March 1 through March 30; and b) The Mid-coast and Jeffrey's Ledge (or Z-band) Areas west of 69°30' from March 25 through April 25 inclusive. The area known as Tillies Bank, described in Framework 12 to the Multispecies FMP, will be exempt from this closure.

In a cost-benefit analysis, the economic benefits to consumers and producers are measured by the changes in consumer and producer surpluses with and without the proposed action. Accordingly, the net benefits of Framework Adjustment 14 would be the difference in benefits and costs between the proposed closures and the status quo. This analysis is similar to the earlier analyses prepared by NEFSC staff for Framework Adjustments 4 and 12, previously implemented to reduce harbor porpoise bycatch.

2. Consumer Surplus

Consumer surplus is defined as the difference between what a good is worth to consumers and what they actually pay. A fishery management action would affect the consumer surplus if it results in a change in seafood prices. In this case, the retail prices of fish are not likely to change since the gillnet fleet lands only 7 percent of the total catch in New England. Therefore, the proposed framework adjustment is not expected to affect the consumer surplus in the seafood sector.

The benefits, however, also depend on the region's valuation of harbor porpoise protection. Although harbor porpoise never enter the market directly, society still values their existence as shown by economists at the University of Maryland (Strand, McConnell and Bockstael 1994).¹ The study demonstrated that the public is willing to incur costs for the protection of harbor porpoise. According to the estimates, the mean willingness to pay (in the form of a one-time hypothetical tax) per household ranged from \$176 to \$364 for a reduction in human-induced

¹Since this study was already reviewed in the Benefits/Cost Analysis of Framework Adjustment 12, only the results will be summarized here.

mortality. Taking the lower figure for a conservative estimate, converting it to an annual cost of \$12.74 by amortizing it at seven percent discount rate over a 50-year time horizon and then multiplying the annual cost by the number of Massachusetts households, the total willingness to pay is \$28.6 million. This figure represents the amount households would pay to compensate gillnet vessel owners for not fishing in order to eliminate this human-induced source of mortality.

These results can be interpreted to indicate that people would also be willing to pay to reduce the mortality from the present levels. If the relationship between mortality and cost the public is willing to incur is assumed to be linear, total willingness to pay for a 1 percent decrease in harbor porpoise mortality would be \$286,000 per year. Table 2 shows the corresponding numbers for a decrease in mortality from 1 to 5 percent. As an example, to reduce mortality from 5 percent to 2 percent, a 3 percent difference, the public would be willing to pay \$858,000. If this framework adjustment accomplishes such a reduction in mortality, \$858,000 would be considered a benefit to society.

There are some difficulties, however, in using these numbers for the total benefit calculations. Since the current level of the mortality reduction from the proposed closures cannot be predicted, the benefits to the public from harbor porpoise protection could only be included for a range of conceivable reductions in mortality. In addition, the numbers shown in Table 1 should be taken as a lower bound on the valuation of harbor porpoise protection since the study includes only Massachusetts households. The estimated benefits are combined in Section 4 with the expected changes in the producer surplus to compute a range of values for net national benefits attributable to implementation of Framework Adjustment 14.

Table 1. Consumer Benefits Based on Reductions in Harbor Porpoise Mortality

Decrease in Mortality	Cumulative Benefits
1%	286,000
2%	572,000
3%	858,000
4%	1,144,000
5%	1,430,000

Producer Surplus

The change in producer surplus includes the change in revenues and the corresponding change in variable costs under the proposed closures compared to taking no action. Equivalently, the change in producer surplus is the change in economic rents obtained by vessel owners, the captain and the crew as a result of the management scheme. Non-wage variable costs include operating expenses such as fuel, ice and oil which will decrease if the vessels are tied up at the dock. Labor expenses are generally considered to be part of the total variable costs and a decrease in labor costs would increase a vessel's profitability. In the fishing industry, however, crews are compensated on the basis of shares of the vessel revenues and if these shares exceed the opportunity cost of labor (income from comparable employment) crew members earn an economic rent. Then any reduction in crew income due to the management action reduces the producer surplus. Since the closures proposed in this framework are only for a month, it is assumed that crew members will be unable to find alternative employment. Therefore, any reduction in share payments to crew members will be counted as a loss (i.e., a reduction in the producer surplus) rather than savings in variable costs.

The discussion can perhaps be clarified by expressing the two methods of calculating producer surplus in equation form:

- 1) $\text{Change in Producer Surplus} = \text{Change in Gross Revenues} - \text{Change in Total Variable Costs}$
- 2) $\text{Change in Producer Surplus} = \text{Change in Vessel Profits} + \text{Change in Crew Shares}$

Table 2 shows the changes in the producer surplus from these two perspectives for the proposed time-area closures. Gross stock is defined as the sum of the revenue received from each species landed during the period of interest. The estimated reduction in gross stock (1993) for the two areas is provided by Northeast Fisheries Science Center (NEFSC) staff using the geographic information system (GIS) located at the Woods Hole Laboratory. Non-wage variable costs are trip costs such as crew share, fuel, oil, ice and food and they are assumed to be 23 percent of the gross stock based on the economic analysis by NEFSC staff (see Benefit-Cost Analysis, Framework Adjustment 12). As Table 2 demonstrates, the estimated savings from these items are deducted from the change in gross stock to calculate the change in the producer surplus by method one. The results show that closing the Mid-Coast and Southern New England Areas for the corresponding periods will reduce the producer surplus by \$182,505.

Crew shares are assumed to be 25 percent of the gross stock and they were deducted from gross stock along with other variable costs to estimate the change in

vessel profits. The closures proposed in Framework Adjustment 14 are expected to reduce crew shares by \$59,255 and vessel profits by \$123,000 (Columns five and four, Table 2). The sum of these losses amount to a loss in producer surplus again by \$182,505 (Method 2).

Table 2. Estimated Changes in Revenues, Costs and Producer Surplus

Time Period	Area	Change in Gross Stock (1)	Variable Cost Savings (2)	Change in Producer Surplus (3)	Change in Vessel Profits (4)	Reduction in Crew Share (5)
March 25 -April 25	Mid-Coast Closure	- 175,854	40,446	-135,408	-91,444	-43,964
March 1-March 30	Southern New England Closure	- 61,165	14,068	-47,097	-31,806	-15,291
Total		-237,019	54,514	-182,505	-123,250	-59,255

Table 3. Loss in Producer Surplus under Various Assumptions

Percentage Revenue Replacement from Other Areas During Closures	Net Revenue From Other Areas (Gross Stock-Operating Costs)	Net Reduction in Producer Surplus
0%	0	-182,505
10%	18,251	-164,255
25%	45,626	-136,879
50%	91,253	-91,253
75%	136,879	-45,626
90%	164,255	-18,251
100%	182,505	0

The figures shown in Table 2 were based on the assumption that there will be no effort displacement during the closures. If it is possible to catch fish in other areas and recover some part of the lost income resulting from the closures, the reduction in producer surplus will be less than predicted in Table 2.² Table 3 shows the net reduction in surplus under various assumptions about the proportion of revenue recovered by fishing in other areas. Although the degree of actual revenue replacement from other fisheries can not be estimated, the chances of recovering a small percentage of revenues (such as 10 to 25 percent) are higher than recovering a higher proportion of revenues (such as 90 or 100 percent).

4. Net Benefits

The consumer benefits (Table 1) are combined with the changes in producer surplus (Table 3) to estimate the net benefits associated with Framework Adjustment 14. Table 4 shows the net benefits given different assumptions about reductions in bycatch and the extent of revenue replacement. The rows indicate the percentage of revenue recovered by fishing in other areas. The columns show percent reductions in harbor porpoise mortality. Each cell in the tables represents the net benefits given a reduction in bycatch and the degree to which vessels can offset losses by fishing in other areas. For example, given a one percent reduction in mortality and a 10 percent revenue recovery, net benefits under the proposed alternative are \$122,000 (column 1, row 2, Table 4). A five percent reduction in harbor porpoise mortality, however, would amount to \$1,248,000 in net benefits even if no revenue is obtained by switching to other fisheries (column 5, row 1, Table 4).

Given the uncertainty about harbor porpoise mortality and revenue replacement from alternative fisheries, it is not possible to determine precisely the net economic benefits of this framework adjustment. If gillnetters cannot switch to other fisheries during the closures, they will lose \$237,000 in gross revenues and \$123,000 of profits (Total of gillnet fleet, Table 2). The net benefits will still be positive, however, as long as harbor porpoise mortality is reduced by 1 percent or more as a result of the proposed closures (Table 4).

² When vessels fish in other areas during closures instead of tying at the dock, their operating costs will increase, thus cost savings attributable to closures will decrease. For this reason, the numbers given in Table 3 represent the change in producer surplus, i.e., in this case net revenue including crew shares, after taking into account the increase in operating costs due to fishing in other areas.

Table 4. Net Benefits of the Proposed Action Given Different Levels of Revenue Replacement and Reductions in Harbor Porpoise Mortality

Percentage Revenue Replacement from Other Areas During Closures	Decrease in Harbor Porpoise Mortality				
	1%	2%	3%	4%	5%
0%	104,000	390,000	676,000	962,000	1,248,000
10%	122,000	408,000	694,000	980,000	1,266,000
25%	149,000	435,000	721,000	1,007,000	1,293,000
50%	195,000	481,000	767,000	1,053,000	1,339,000
75%	240,000	526,000	812,000	1,098,000	1,384,000
90%	268,000	554,000	840,000	1,126,000	1,412,000
100%	286,000	572,000	858,000	1,144,000	1,430,000

References

McConnell, Kenneth E.(1994). "A Contingent Valuation of Northeast Harbor Porpoises." In Commercial Fisheries Harvesting, Conservation and Pollution: Preferences and Conflicts. Chapter 6. Nov.1994.

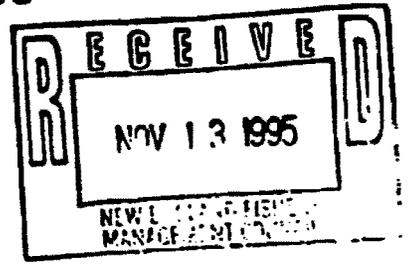
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Appendix IV
Written Comments

**Massachusetts Netters Association
65 Elm Street
Marshfield, Massachusetts 02050
November 8, 1995**



**Marine Mammal Committee
New England Fishery Management Council
5 Broadway
Saugus, Massachusetts
Attn: Patricia Fiorelli**

Dear Pat,

We have been asked by the Council staff to make recommendations regarding an appropriate plan for Harbor Porpoise in Massachusetts Bay for this year. We wish to recommend that the closure remain the same as last year (March 1 - March 31 1996).

Gillnetters also recommend the committee endorse an experimental fishery in the area during the closure for nets equipped with Saunders Pingers. These pingers are the type originally used in Jon Liens experiments and have the lasting power to remain active during months at a time.

Please feel free to contact me at any time regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Janice".

**Janice Comeau Anderson - Clerk
Massachusetts Netters Association
Harbor Porpoise Working Group**

December 12, 1995

Dear Pat,

The consensus was favorable overall to the gillnet proposal forwarded to me. The following are our recommendations.

Because of the proposed March closure of southern New England to reduce the bycatch of harbor porpoise in the gillnet fishery and the difficulty of the local fleet to remove nets and fish in one trip, it is recommended that boats opting to fish seventy-five nets or less be removed from the days at sea category.

It would be better to give up additional fishing days, if biologically sound, than to be forced to fish two days and then remove all nets for a non-fishing day. Sea conditions and carrying capacity make this program impractical for our small boat fleet.

We recommend that the mammal closure month be the last two weeks in February and the first two weeks in March.

Sakonnet Point has two boats over 45 feet fishing the same amount of nets and the same locations as the 45 feet and under boats. We do not want to put the 45 foot restriction in if the boats agree to fish 75 nets or less as the rest of the fleet has agreed to do.

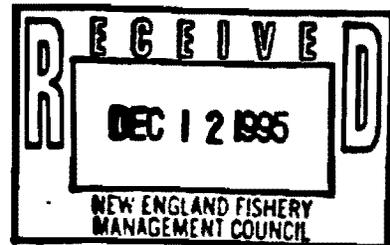
I will attempt to contact David Borden tonight with our recommendations. Feel free to contact me with any questions you may have.

Thank you,
Bill Mackintosh
401-635-4615

e-mail: 103234.3457@compuserve.com

Distribution:

To: Pat Fiorelli > FAX:16175658937



**Comments from David Laist, Marine Mammal Commission staff
Member, Harbor Porpoise Review Team**

Mr. Laist noted that, with respect to the Mid-coast Area, comparable harbor porpoise bycatch levels have been reported in both April and May in some years and that given the greater than expected temporal variability in bycatch periods, an April only closure could prove ineffective. He therefore suggested that for the Mid-coast Area (including the Z-band), the Council should consider extending the closure period to cover both April and May with the same recommendations that it made to NMFS regarding the Z-band last winter (i.e. NMFS allow fishing with nets equipped with alarms and representative observer coverage). Given the apparent absence of reported bycatch in alarm equipped nets monitored by observers in the winter fishery and previous experimental results, he thought the alternative approach would be more likely to lower bycatch than the proposed action, and it also would be consistent with the desires expressed by some fishermen wishing to move towards the use of alarms as an alternative to outright closures.

Table 3.
MID-COAST AREA

Percentage of by-caught harbor porpoises, trips, and landed groundfish with respect to the amount from:

THE ENTIRE YEAR FOR THE GULF OF MAINE REGION.

TIME	% PORPOISE		% TRIPS		% FISH	
	91	92	91	92	91	92
April	2.5	2.0	4.1	2.6	2.6	1.2
May	0.5	2.0	5.1	5.8	4.9	4.6
TOTAL	3.0	4.0	9.2	8.4	7.5	5.8

THE ENTIRE YEAR FOR THE MID-COAST AREA.

TIME	% PORPOISE		% TRIPS		% FISH	
	91	92	91	92	91	92
April	3.0	3.6	9.4	6.2	9.2	3.9
May	0.6	3.7	11.7	13.8	17.4	14.9
TOTAL	3.6	7.3	21.1	20.0	26.6	18.8

Table 5.
NORTHEAST AREA

Percentage of by-caught harbor porpoises, trips, and landed groundfish with respect to the amount from:

THE ENTIRE YEAR FOR THE GULF OF MAINE REGION.

TIME	% PORPOISE		% TRIPS		% FISH	
	91	92	91	92	91	92
June	5.2	7.4	2.2	2.0	3.9	3.1
July	5.5	1.9	2.6	2.6	5.1	6.6
Aug	0	11.4	3.1	3.3	5.0	6.9
Sept	1.6	10.7	2.5	2.5	3.2	3.6
TOTAL	12.3	31.4	10.4	10.4	17.2	20.2

THE ENTIRE YEAR FOR THE NORTHEAST AREA.

TIME	% PORPOISE		% TRIPS		% FISH	
	91	92	91	92	91	92
June	28.7	23.0	18.1	19.3	19.9	14.0
July	30.0	5.9	20.5	25.0	25.9	30.1
Aug	0	35.4	24.3	31.0	25.6	31.6
Sept	8.7	33.2	19.8	24.2	16.5	16.5
TOTAL	67.4	97.5	82.7	99.5	87.9	92.2

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Table 2.
MASS. BAY AREA

Percentage of by-caught harbor porpoises, trips, and landed groundfish with respect to the amount from:

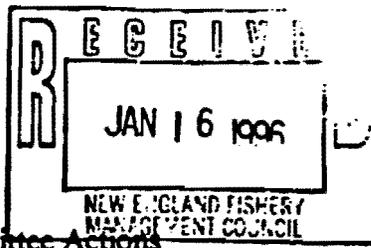
THE ENTIRE YEAR FOR THE GULF OF MAINE REGION.

TIME	% PORPOISE		% TRIPS		% FISH	
	91	92	91	92	91	92
March	0	1.9	0.3	1.4	0.1	0.4
April	0	4.8	0.8	0.9	0.3	0.4
TOTAL	0	6.7	1.1	2.3	0.4	0.8

THE ENTIRE YEAR FOR THE MASS. BAY AREA.

TIME	% PORPOISE		% TRIPS		% FISH	
	91	92	91	92	91	92
March	0	27.2	3.5	12.5	5.7	14.2
April	0	70.6	8.8	8.7	11.1	12.6
TOTAL	0	97.8	12.3	21.2	16.8	26.8

To: Patricia Fiorelli, HPRT Co-ordinator
From: Andrew Read
Date: 09 January 1995
Re: Comments on Marine Mammal Committee Actions



1. It is not clear why the Mass Bay closure should not be extended from February 01-March 30. The NEFSC analysis indicates that there is a 70% probability that the bycatch rate is higher in February than March, as indicated by the accompanying Figures. I recognize that the catch rates are low in Mass Bay compared to Jeffreys Ledge or the Z-band, but I question why we would limit the time of this closure, when we have not done so in other areas. Given that the Regional Director will be investigating 'additional fishing opportunities' in this area using pingers, it seems unlikely that expanding the closure in time would place an undue hardship on the fishery.
2. The other closures appear adequate, although it may be necessary to extend the timing of the spring closures south of Cape Cod, on Jeffreys Ledge, and the Z-band once more data become available.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

January 26, 1996

MEMORANDUM FOR: Chris Mantzaris - F/NEO2
FROM: Doug Beach - F/NEO2 *D. Beach*
SUBJECT: HPRT Review of Framework #14 Actions

The Council's Harbor Porpoise Review Team (HPRT), of which I am a member, was asked to review the recommendations of the Marine Mammal Committee (MMC) regarding harbor porpoise bycatch reduction to be voted on at the upcoming meeting on January 25 - 26, 1996. The HPRT was asked to comment on the following four motions that are before the Council:

1. To incorporate the general bycatch reduction goal set out in the 1994 Amendments to the MMPA into the Council's goal in Amendment #7;
2. Maintain the existing March closure for Massachusetts Bay, but consider allowing an experimental fishery using pingers;
3. Close a new area south of Cape Cod (largely off Rhode Island to out past Block Island) in March, but consider allowing an experimental fishery using pingers; and
4. Close the Mid-Coast area as currently defined (including the JLB west of 69° 30'W and excluding Tillie's Bank) from March 25 until April 25, but consider allowing an experimental fishery using pingers.

We were also asked to include suggestions we may have for trigger mechanisms for consideration by the MMC.

Since the NMFS is both a voting member on the Council and will be the agency implementing any measure that is approved, I had not responded to Council staff. In addition, the trigger mechanism issue is undoubtedly best answered by the NEFSC staff who are also members. However, per your request, here are my comments for use at the Council meeting.

In general I believe that, until we have better data upon which to gauge the effectiveness of previous closures, and therefore to predict the potential effectiveness of any further closure or other regulatory measure, the proposed closures are the best action that the Council can take to continue moving toward the harbor porpoise bycatch reduction goal. There seems to be



adequate rationale for allowing an experimental fishery with pingers in the new closure areas as we did with the Mid-Coast area in Fall 1994 and the JLB in November-December 1995. However, we do need to balance any real or perceived step back on any bycatch reduction achieved with past closures against the future gains that may be achieved by conducting a phased-in analysis of this and any other promising bycatch reduction technology.

Regarding trigger mechanisms, I recollect that the NEFSC staff suggested at the last HPRT meeting that certain changes in harbor porpoise distribution may have been correlated with sea surface temperature changes. This was seen by the HPRT as a promising hypothesis to investigate a trigger mechanism for the Mid-Coast area in the fall. However, the HPRT was aware that other untested trigger mechanisms had been proposed in the past, and many more could probably be developed for testing. As I understand it, the idea was for a full list of possibilities to be put together for the HPRT to prioritize and recommend for further study. I would favor a mechanism that could be easily observed (i.e. sea surface temperature changes or actual harbor porpoise migration into a certain area) and would be applied to a large closure or regulated area, over other proposed triggers such as observed harbor porpoise takes resulting in small area closures.

cc:

F/NEO - Chu
F/NEC1 - Clark, Potter
F/PR2 - Payne
F/NEO2 - Thounhurst

Appendix V
Background Information

regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20. The commercial summer flounder quota for the 1994 calendar year, adopted to ensure achievement of the appropriate fishing mortality rate of 0.53 for 1994,

is set to equal 16,005,560 lb (7.3 million kg) (59 FR 10586, March 7, 1994).

Section 625.20(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota will be deducted from that state's annual quota for the following year. Based on dealer reports and other available information, the following states were determined to have exceeded their 1993 quotas: Maine, Massachusetts, New Jersey, Delaware,

Maryland, Virginia, and North Carolina. The remaining states of New Hampshire, Rhode Island, Connecticut, and New York did not exceed their 1993 quotas and, therefore, no adjustments are necessary for these states. Table 1 shows the 1993 quotas adjusted for authorized transfers made between states during the year, 1993 landings, 1993 overage amounts, 1994 quotas, and the adjusted 1994 quotas taking into account 1993 overage amounts, by state.

TABLE 1. ADJUSTED 1994 COMMERCIAL QUOTA FOR THE SUMMER FLOUNDER FISHERY
(Parentheses indicate a Negative Amount)

	1993 quota (lb)	1993 landings (lb)	1993 overage (lb)	Initial 1994 quota (lb)	Adjusted 1994 quota	
					(lb)	(kg)
ME	5,874	6,023	149	7,612	7,463	3,385
NH	57	0	0	74	74	34
MA	842,327	902,786	60,459	1,091,653	1,031,194	467,746
RI	1,945,851	1,942,451	0	2,510,149	2,510,149	1,138,596
CT	278,749	224,620	0	361,258	361,258	163,865
NY	944,405	849,376	0	1,223,943	1,223,943	555,177
NJ	2,323,354	2,466,452	143,098	2,676,928	2,533,830	1,149,338
DE	2,197	6,403	4,206	2,847	(1,359)	(616)
MD	251,829	254,081	2,252	326,369	324,117	147,018
VA	2,882,623	3,052,136	169,513	3,411,867	3,242,354	1,470,722
NC	2,871,750	2,894,835	23,085	4,392,860	4,369,775	1,982,117

Classification

This action is required by 50 CFR part 625 and is exempt from OMB review under E.O. 12866.

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

Dated: May 19, 1994.

Charles Karrella,

Acting Program Management Officer,
National Marine Fisheries Service.

[FR Doc. 94-12714 Filed 5-20-94; 12:21 pm]
BILLING CODE 3510-22-P

50 CFR Part 651

[Docket No. 94-552-4152; I.D. 051294A]

Northeast Multispecies Fishery

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 4 to the Northeast Multispecies Fishery Management Plan (FMP). The measures contained in this rule are a series of time and area closures for sink gillnet gear to reduce bycatch of harbor porpoise. These measures replace blocks of time during each month during which all sink gillnets would be

required to be removed from the water. The intent of this rule is to reduce significantly the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery.

EFFECTIVE DATE: May 20, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the final regulatory flexibility analysis (FRFA) contained with the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment #4 and its environmental assessment are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

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

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) submitted Amendment 5 to NMFS on September 27, 1993. One of its principal objectives was to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by the end of year 4 of implementation of the Amendment to a level not to exceed 2 percent of the population, based on the best estimates of abundance and bycatch.

The Council was requested by NMFS in October 1992 to take action to reduce the harbor porpoise bycatch within the context of Amendment 5. The Council agreed to develop fishery management measures that would address the issue on the basis that the sink gillnet fishery was subject to regulation under the FMP, there were no existing regulatory mechanisms to reduce porpoise takes, and the current level of bycatch in the fishery was not sustainable.

Additionally, on January 7, 1993, NMFS published a proposed rule (58 FR 3108) to list the Gulf of Maine population of harbor porpoise as threatened under the Endangered Species Act (ESA), due primarily to the level of incidental takes in the sink gillnet fishery and the lack of an adequate regulatory mechanism to accomplish bycatch reductions. As NMFS noted in the rule, the Marine Mammal Exemption Program contained in the 1988 amendments to the Marine Mammal Protection Act (MMPA) did not set bycatch limits.

The Council subsequently adopted the goal of achieving reductions in harbor porpoise bycatch, so that the actual amount of harbor porpoise caught as bycatch in the sink gillnet fishery would not exceed 2 percent of the estimates of the harbor porpoise population, in part to avoid the pending ESA listing. This objective was based on

a recruitment rate for harbor porpoise that is about 4 percent per year, and a conservative fisheries bycatch level that should not exceed 50 percent of the recruitment rate for marine mammals. The 1991/1992 pooled harbor porpoise population abundance estimate is 47,200. Using the lower bound of the 95-percent confidence interval for that estimate, 39,500, the 1990, 1991, and 1992 ratios of bycatch to average population abundance were approximately 6 percent, 4.3 percent and 2.2 percent, respectively. A 2-percent goal allocated solely to the Gulf of Maine sink gillnet fishery did not take into account the unknown level of harbor porpoise takes in the Mid-Atlantic region and in adjacent Canadian waters.

Because the 1992 abundance and bycatch information was not available until June 1993, however, development of effective measures based on the best scientific information lagged behind the formulation of the overall Amendment 5 package. The harbor porpoise bycatch mitigation measure implemented by the final rule for the Amendment required the removal of all sink gillnets from the water during 4-day blocks of time each month in year 1 after implementation of Amendment 5. Years 2 and 3 of Amendment 5 called for 8-day blocks each month. Year 4 required 12-day blocks and year 5 required 16-day blocks. The Council supported, and NMFS approved, the use of blocks of time as an interim measure on the assumption that appropriate time and area management measures would be developed as soon as possible.

The rationale for the interim measure was based largely on the lack of information concerning the sink gillnet fishery. By "masking" periods of time monthly, during which all sink gillnets must be removed from the water, the time during which harbor porpoise would be exposed to that gear would be reduced. In a simulation analyzing the effect of closing the Gulf of Maine sink gillnet fishery for 4 consecutive random days per month, approximately 8.5 percent of the fish would not be landed and 9.3 percent of the harbor porpoise bycatch would be avoided. The effect of choosing random days, however, produced very different values of harbor porpoise bycatch for the different trials.

Because of the imprecise nature of the impacts of the blocks of time, and upon

receipt of the NMFS Northeast Fisheries Science Center's (NEFSC) comprehensive spatial and temporal analysis of the bycatch in the fall of 1993, the Council voted to support the development of a time and area closure management system. The intent was to replace the existing gillnet alternative (nets removed from the water for specified blocks of time) as the harbor porpoise bycatch mitigation measure. The Council decided, and NMFS agreed, that the gillnet fleet would not be subject to groundfish effort reductions until the effect of the harbor porpoise bycatch reduction measures could be evaluated for their impacts on groundfish fishing effort (approximately 1 year after implementation of Amendment 5).

NMFS is amending the regulations under the framework abbreviated rulemaking procedure established by Amendment 5 and codified at 50 CFR part 651, subpart C. 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 the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Director of NMFS that the measures be published as a final rule if certain conditions are met. The Director, Northeast Region, NMFS, (Regional Director) may publish the measures as a final rule or as a proposed rule if additional public comment is needed.

The Council complied with the procedural requirements and submitted the rule to NMFS, and NMFS concurs with the provisions of the Council's submission. This final rule implements time and area closures based on an analysis by the NEFSC of harbor porpoise bycatch using NMFS weighout and observer program data on the distribution of sink gillnet activity and the seasonal and spatial distribution of harbor porpoise in the Gulf of Maine. Extensive discussions among the Council, the fishing industry and scientists led to the measures outlined below.

For purposes of the management measures contained in this final rule for

Framework Adjustment #4, the Gulf of Maine is divided into three areas: The Northeast (from Penobscot Bay to Eastport, ME); Mid-coast (from Cape Ann to Penobscot Bay); and Massachusetts Bay (from Cape Cod to Cape Ann). The Council recommended 30-day closures for each of these areas. The timing of the closures corresponds to periods when harbor porpoise bycatch is most likely to occur. The duration accounts for the variability of harbor porpoise movements. The Council recognizes that the Mid-coast and Northeast areas account for more of the bycatch than Massachusetts Bay. At this time, however, harbor porpoise bycatch mitigation measures are being applied uniformly across all regions in the Gulf of Maine.

The NEFSC estimated that reductions of 20 to 40 percent might be realized in the first year of implementation of Framework Adjustment #4 if boundaries discussed in its initial analysis of a time and area management system for the Gulf of Maine were used in conjunction with the proposed 30-day closures. The Council's boundary modifications could alter that estimate to some unknown degree because of the potential displacement of gillnet fishing effort to areas where harbor porpoise are still subject to some level of bycatch. It is reasonable, however, to anticipate the minimum estimate of approximately 20 percent, given that the timing of the closures occurs in seasons of highest bycatch of harbor porpoise in their respective areas. It is also reasonable to conclude that the continued annual target reductions may be accomplished by modifications to the same measures.

The Council adopted the approach of integrating effort reductions for key species of groundfish stocks with harbor porpoise bycatch mitigation measures after the first year of program implementation. If the measures, or any future approach that is adopted, accomplish the harbor porpoise objective without reducing gillnet fishing effort sufficiently to reach the 50 percent effort reduction target, the Council will impose additional fishing restrictions.

A. Northeast Closure Area

This area will be closed to fishing with sink gillnets from August 15 through September 13 of each fishing year.

Point	Latitude	Longitude
NE1	Maine shoreline	68°55.0' W.
NE2	43°29.6' N.	68°55.0' W.
NE3	44°04.4' N.	67°48.7' W.
NE4	44°06.9' N.	67°52.8' W.

Point	Latitude	Longitude
NE5	44°31.2' N.	67°02.7' W.
NE6	Maine shoreline	67°02.7' W.

B. Mid-coast Closure Area

This area will be closed to fishing with sink gillnets from November 1 through November 30 of each fishing year.

Point	Latitude	Longitude
MC1	42°45' N.	Massachusetts shoreline.
MC2	42°45' N.	70°15' W.
MC3	43°15' N.	70°15' W.
MC4	43°15' N.	69°00' W.
MC5	Maine shoreline	69°00' W.

C. Massachusetts Bay Closure Area

This area will be closed to fishing with sink gillnets from March 1 through March 30 of each fishing year.

Point	Latitude	Longitude
MB1	42°30' N.	Massachusetts shoreline.
MB2	42°30' N.	70°30' W.
MB3	42°12' N.	70°30' W.
MB4	42°12' N.	70°00' W.
MB5	Massachusetts shoreline	70°00' W.

There is a band outside the Mid-coast closure area that encompasses Jeffreys Ledge and is described relative to the Mid-coast area as east on 42°30' N. from the shore to 70°00' W., north along 70°00' W. to 43°00' N., on 43°00' N. to 69°00' W., then north on 69°00' W. to the shore. According to the sea sampling data base, harbor porpoise bycatch in this band has been relatively high during the last 3 years. Concerns focus on whether a displacement of more fishing effort into this region might account for a kill rate as high as or potentially higher than in previous years. Under provisions of this final rule, the band will remain open, but the Council recommended mandatory observer coverage for vessels fishing in the area if funds are available.

D. Open Areas:

Areas shown on Figure 4 to part 651, but not enclosed by the boundary lines described above, would not be subject to closure at this time.

The Council program calls for a 20-percent reduction in the Gulf of Maine harbor porpoise bycatch in year 1 of implementation of Amendment 5. To ensure continued efforts to reduce the bycatch, Amendment 5 states that a Harbor Porpoise Review Team (HPRT), appointed by the Council, will evaluate the effectiveness of the Council's mitigation measures annually by September 15 of each year and, if necessary, recommend changes to ensure that the bycatch reduction goals are met.

Future management measures will be designed to achieve a 60-percent reduction in the bycatch of harbor porpoise from current levels over a 3-year period. Based on a bycatch of 1,300 animals (a figure that constitutes a rough average of the bycatch estimates over the last 2 years), the bycatch in years 1, 2, and 3 would be reduced to 1,040, 760, and 520 animals, respectively.

Such a reduction schedule might surpass the goal of reducing the harbor porpoise bycatch to a level not to exceed 2 percent of the estimates of population abundance and bycatch (39,500 and approximately 1,300, respectively). The use of the lower bound of the 95-percent confidence interval for the abundance estimate, 39,500, adds a level of conservatism that in part addresses the problem of the confidence intervals surrounding the bycatch estimates. As previously discussed, the entire 2 percent bycatch cannot be allocated solely to the Gulf of Maine sink gillnet fleet.

A specific target for year 4 will be established by the HPRT after consideration of previous targets not met in any given year or because of possible increased bycatch reductions required by the 1994 amendments to the Marine Mammal Protection Act. For example, if the 20 percent target is missed in any of the first three years, the fourth year allows the flexibility to add that portion of the target reductions not achieved in any of the first three years to be deferred until the next year or until year four of the program. The year-4 target, however, cannot exceed 20 percent of the total reduction required over the entire 4-year period.

Comments and Responses

The Council held the first of two meetings required under the Amendment 5 framework adjustment process on February 17, 1994. Two public hearings were subsequently held on March 9, 1994, in Portsmouth, NH, and on March 10, 1994, in Ellsworth, ME. The Council approved the closures for the Northeast and Mid-coast areas at the second Council meeting held on March 17, 1994. On April 6, 1994, the Council adopted boundaries and a 30-day closure period for the Massachusetts Bay area.

In addition to the meetings held within the formal framework period, the public was notified of all Marine Mammal Committee meetings held between September 1993 and March 1994, for the purpose of developing the time and area closure plan. For scoping purposes, the issue also was included in the Amendment 5 public hearing document and was reviewed at a series of coastwide meetings held in the spring of 1993.

Comments on the Council's proposal were received from Maine Congressional Rep. Olympia J. Snowe and the following organizations: Cape Ann Gillnetter's Association, Beverly, MA; Coonamessett Farm, Falmouth, MA; International

Hampshire Commercial Fishermen's Association, Rye, NH.

Comment: Numbers of fishermen had serious concerns about the quality of the data used to determine time and area closures.

Response: Measures contained in Framework Adjustment #4 are based on the best scientific information available. NMFS has conducted two population surveys of harbor porpoise abundance in the Gulf of Maine/Bay of Fundy region. Additionally, bycatch estimates have been calculated from observed gillnet trips, based on sea sampling data collected since 1989. Since June 1991, observers have made trips on roughly 9 percent of the Gulf of Maine gillnet trips. All available information on the biology, seasonal distribution, abundance and bycatch was reviewed at two international workshops convened by the NEFSC in Woods Hole, MA in May 1992 and February 1994.

Comment: Several commenters expressed concern over the harbor porpoise abundance estimates for the Gulf of Maine/Bay of Fundy population and the disparity between the point estimates for 1991 and 1992. They urged the Council to ask NMFS to conduct ongoing surveys in order to better refine the data.

Response: Again, the estimates are based on the best scientific information available. NMFS abundance estimates for 1991 and 1992 are 37,500 (% coefficient of variation (CV)=28.8, 95% confidence interval (CI)=26,700 to 86,400) and 67,500 (%CV=23.1, 95% CI=32,900 to 104,600), respectively. The reason for the nearly twofold, but statistically insignificant, increase between 1991 and 1992 is unknown. Although the increase is statistically insignificant, it may reflect a real change in abundance due to a distribution change or methodological sampling error. Methods to investigate this difference were recommended at the February 23-25 NEFSC workshop to evaluate the status of harbor porpoise in the western North Atlantic. An abundance survey has been recommended for 1995.

Comment: A suggestion was made to divide the Northeast closure area in half, longitudinally, or simply to make the entire area smaller.

Response: The Northeast area proposed for closure from August 15 through September 13 already represents a compromise forged between fishermen and the Council. But concerns still exist that animals will move into adjacent areas where vessels may concentrate and increase the likelihood of takes, rather than reduce that possibility. Also, NMFS survey data

indicate that harbor porpoise usually frequent the same general areas of the Gulf of Maine, but not always at the same time every year. Because of this variability, shorter closures in smaller areas could result in little or no reduction in bycatch, if animals are not present during the closure period. This would result in lost fishing time with no benefit.

Comment: Commenters expressed concern about Northeast time and area closures that would eliminate fishing in the Schoodic Ridge area, a region vital to the "downeast" fishermen.

Response: The Council's final decision took into account the fact that the time and area plan would be phased in over 4 years. During the first year of implementation, the Schoodic Ridge fishing grounds will be left open. Further changes to the area will be based on the harbor porpoise bycatch estimates derived from sea sampling program and other relevant data submitted to the Council.

Comment: Commenters from Maine questioned why Jeffreys Ledge, an area located off the coasts of Massachusetts and New Hampshire that accounts for a relatively high level of bycatch, was being left open in the first year of the plan.

Response: The Council's Mid-coast closure area incorporates an area known as Jeffreys Basin, but excludes Jeffreys Ledge. In past years, the basin area has represented a higher level of bycatch than Jeffreys Ledge. Concerns focus on whether the displacement of more fishing effort onto Jeffreys Ledge might account for a kill rate as high as or potentially higher than, in previous years. As with the Northeast area, however, the Council considered the boundaries adequate for year one of implementation of Framework Adjustment #4. Bycatch of harbor porpoise will be monitored and the need to adjust the boundaries can be accomplished under the framework system.

Comment: One individual asked for an exemption for small-boat operators who fish inshore only, and who are responsible for little or no harbor porpoise bycatch. Otherwise, they would effectively be excluded from the fishery as of the November 1-30 Mid-coast closure because they are too small to fish in offshore conditions. Another commenter suggested that these vessels fish under the 500-pound (226.8 kg) possession limit for regulated species of groundfish.

Response: Harbor porpoise throughout the Gulf of Maine are distributed both inshore and offshore and become entangled in gillnets,

regardless of vessel size. Additionally, all sink gillnet vessels fishing under a Federal multispecies permit, regardless of where they are fishing, are subject to the porpoise bycatch reduction measures.

Comment: Gillnet gear should be given credit, one commenter said, for being size-selective and for resulting in discards of juvenile finfish.

Response: Once the time and area program has been in place (approximately 1 year from the date of implementation), the Council will evaluate the impact of the gillnet fishery on the mortality of groundfish stocks and develop management measures that are appropriate for the gillnet sector.

Comment: Some commenters felt the harbor porpoise bycatch reduction program was a mechanism being used by other interests to close the sink gillnet fishery.

Response: The Council's measures are designed to minimize impacts on the sink gillnet fishery, while at the same time achieve the stated harbor porpoise bycatch reduction objectives. The Council has held 16 public meetings since its initial commitment to incorporate bycatch measures in Amendment 5 and has involved the fishing community, conservation groups and interested parties in the development of the FMP.

Comment: Several commenters felt it was inappropriate to use the harbor porpoise time and area closure plan to protect endangered whales.

Response: As part of the Council's obligations under section 7 of the ESA, a consultation with NMFS is required if a fishery affects, either directly or indirectly, endangered or threatened species or any designated critical habitat. Because this framework adjustment represents a change in management measures for a gear type that has interactions with endangered species, the Council re-initiated the section 7 consultation developed for Amendment 5, identified potential interactions and has addressed them in the context of this framework adjustment.

Comment: Many fishermen supported the use of "pingers," sound emitting devices that increase an animal's awareness of nets, as a bycatch mitigation measure. A suggestion was made to use pingers in year 1 of implementation of Amendment 5 in conjunction with four-day blocks of time, but with no subsequent expansion of the days during which nets would be removed from the water in future years.

Response: The 4-day blocks of time during which all gillnets would be removed from the water each month

throughout the range of species covered by the Northeast Multispecies FMP was almost universally rejected by commenters who attended public meetings and by those who submitted written comments. The Council and NMFS are aware that initiatives are underway which involve acoustical alarm research and possible modifications to gillnet gear to reduce porpoise bycatch. If any of these approaches produce scientifically supportable results that can be incorporated into a management strategy, the Council would recommend them through a framework adjustment with a minimum of regulatory delay.

Comment: Several commenters questioned why the Council rejected the use of an industry proposal based on a reduction in the number of gillnets in use.

Response: At this time, it is not possible to determine the relationship between the number of nets and fishing or harbor porpoise mortality. It is known only that there is a relationship that is not linear. Even a simple estimation of the number of nets in use is impossible, at present, because of the variability of length of nets, numbers of nets in a string, soak time and the variable numbers of both full- and part-time vessels participating in the fishery. Moreover, enforcement of a reduction in the number of nets in the ocean, as opposed to a time and area prohibition, would be very difficult, if not impossible, to accomplish at this time.

Classification

This regulation is not subject to the requirements to prepare a proposed rule under the conditions met by this framework action that have provided adequate prior public comment when the action was proposed and discussed over the course of several Council meetings. Therefore, a regulatory flexibility analysis was not prepared for this action because it is exempt from such an analysis under the Regulatory Flexibility Act.

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 under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate opportunity for public comment to be considered. Thus, additional opportunity for public comment is unnecessary.

The AA also finds that under section 553(d)(1) of the APA, because immediate implementation of this rule relieves a restriction that would require 4 days out of the water by all vessels using sink gillnet gear in May and June, there is no need to delay for 30 days the effectiveness of this regulation.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 20, 1994.

Charles Karmella,
Acting Program Management Officer,
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. 1601 et seq.

2. Section 651.2 is amended by removing the definition of "bottom-tending gillnet or sink gillnet" and adding a definition of "sink gillnet" in alphabetical order to read as follows:

§ 651.2 Definitions.

Sink gillnet means any gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

3. Section 651.9 is amended by revising paragraphs (a)(13) and (e)(31) to read as follows:

§ 651.9 Prohibitions.

(a) * * *

(13) Fish with, set, haul back, possess on board a vessel, or fail to remove a sink gillnet from the areas and for the times specified in § 651.32(a), unless authorized in writing by the Regional Director.

* * * * *

(e) * * *

(31) Fish with, set, haul back, possess on board a vessel, or fail to remove a sink gillnet from the EEZ portion of the areas, and for the times specified in § 651.32(a), unless authorized in writing by the Regional Director.

* * * * *

4. Section 651.32 is amended by revising paragraphs (a) and (b) (1) and (2) to read as follows:

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *General.* In addition to the measures specified in §§ 651.20 and 651.21, persons owning or operating vessels using, possessing on board a vessel, or fishing with, sink gillnet gear are subject to the following restrictions, unless otherwise authorized in writing by the Regional Director:

(1) *Areas closed to sink gillnets.* All persons owning or operating vessels must remove all of their sink gillnet gear from, and may not use, set, haul back fish with, or possess on board a vessel a sink gillnet in, the EEZ portion of the areas and for the times specified in paragraphs (a)(1) (i) through (iii) of this section; and, all persons owning or operating vessels issued a Federal Multispecies Limited Access Permit must remove all of their sink gillnet gear from, and, may not use, set, haul back fish with or possess on board a vessel a sink gillnet in, the entire areas and for the times specified in paragraphs (a)(1) (i) through (iii) of this section.

(i) *Northeast Closure Area.* During the period August 15 through September 13 of each fishing year, the restrictions and requirements specified in the introductory text of paragraph (a)(1) of this section shall apply to an area known as the Northeast Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 4 of this part).

NORTHEAST CLOSURE AREA

Point	Latitude	Longitude
NE1	Maine shoreline	68°55.0' W.
NE2	43°29.6' N.	68°55.0' W.
NE3	44°04.4' N.	67°48.7' W.
NE4	44°06.9' N.	67°52.8' W.
NE5	44°31.2' N.	67°02.7' W.
NE6	Maine shoreline	67°02.7' W.

(ii) *Mid-coast Closure Area.* During the period November 1 through November 30 of each fishing year, the restrictions and requirements specified in the introductory text of paragraph (a)(1) 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.
MC4	43°15' N.	69°00' W.
MCS	Maine shoreline	69°00' W.

(iii) *Massachusetts Bay Closure Area.* During the period March 1 through March 30 of each fishing year, the restrictions and requirements specified in the introductory text of paragraph (a)(1) of this section shall apply to an area known as the Massachusetts Bay Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 4 of this part).

MASSACHUSETTS BAY CLOSURE AREA

Point	Latitude	Longitude
MB1	42°30' N.	Massachusetts shoreline.
MB2	42°30' N.	70°30' W.
MB3	42°12' N.	70°30' W.
MB4	42°12' N.	70°00' W.
MB5	Massachusetts shoreline	70°00' W.

(b) * * * (1) By September 15 of each year, the Council's Harbor Porpoise Review team (HPRT) shall complete an annual review of harbor porpoise bycatch and abundance data in the Gulf of Maine sink gillnet fishery, evaluate the impacts on other measures that reduce harbor porpoise take, and may

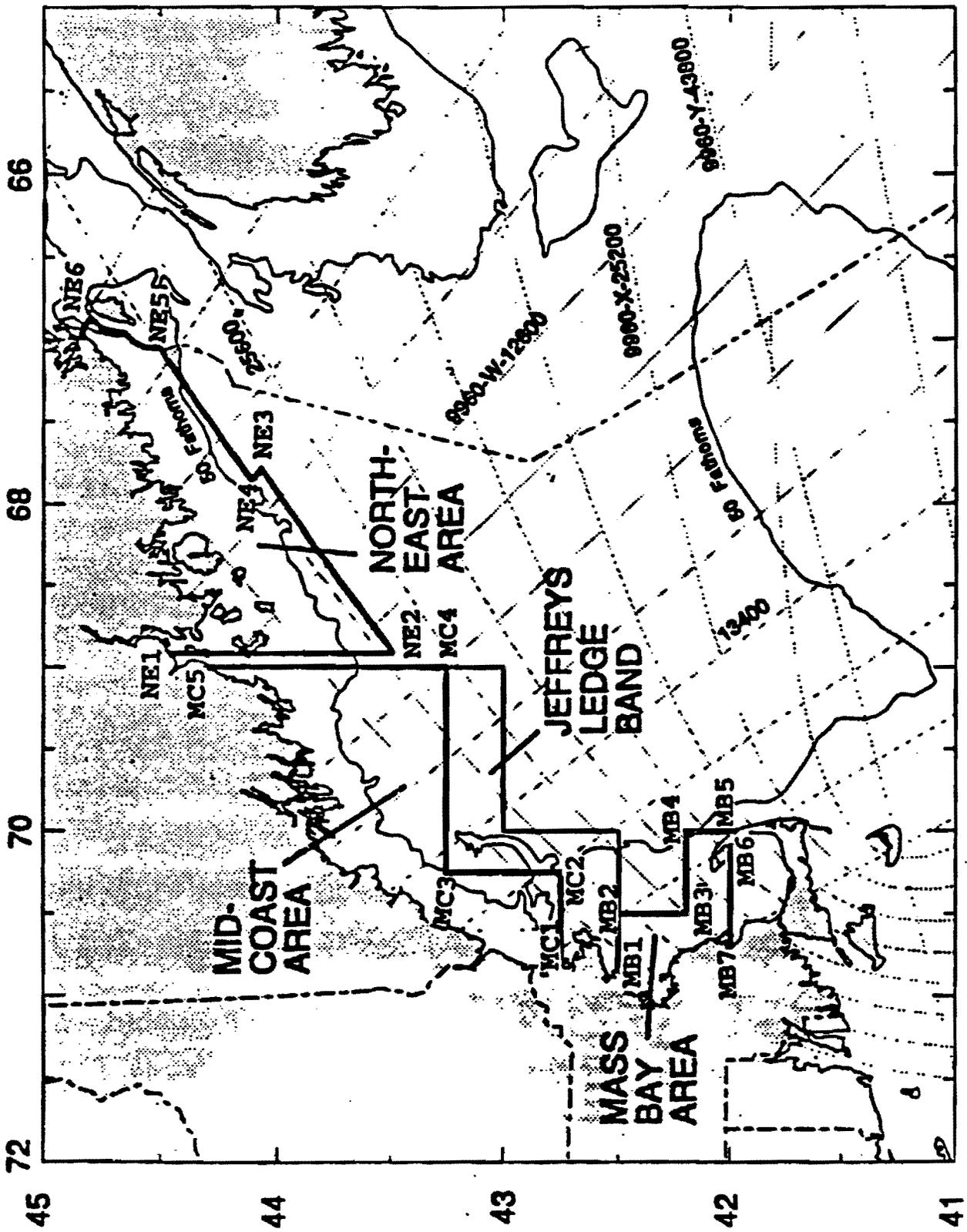
make recommendations on other "reduction-of-take" measures in light of the harbor porpoise mortality reduction goals.

(2) At the first Council meeting following the HPRT annual meeting, the team shall make recommendations to the Council as to what adjustments or

changes, if any, to the "reduction-of-take" measures should be implemented in order to meet harbor porpoise mortality reduction goals.

* * * * *
5. Figure 4 is added to the part as follows:

BILLING CODE 3510-22-P



SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-219, adopted June 21, 1994, and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 298A and adding Channel 296C3 at Brillion.

Federal Communications Commission.
John A. Karousos,
Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 94-16552 Filed 7-7-94; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 94C552-4152; I.D. 05T204A]

Northeast Multispecies Fishery; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on May 25, 1994 (59 FR 26972), which is related to Framework Adjustment 4 to the Northeast Multispecies Fishery Management Plan (FMP). This document corrects the specifications of the Massachusetts Bay Closure Area.
EFFECTIVE DATE: July 8, 1994.

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

Correction of Publication

The publication on May 25, 1994, of the final rule (I.D. 051294A), which was the subject of FR Doc. 94-12782, is corrected as follows:

§ 651.32 [Corrected]

On page 26977, in § 651.32(a)(1)(iii), in the table "Massachusetts Bay Closure Area", the entry "MB5" under the heading "Point", is revised and the entries MB6 and MB7 are added to read as follows:

Point	Latitude	Longitude
MB5 ..	Cape Cod shoreline.	70°00' W.
MB6 ..	42°00' N	Cape Cod shoreline.
MB7 ..	42°00' N	Massachusetts shoreline.

Date: July 1, 1994.
Henry R. Beasley,
Acting Program Management Officer,
National Marine Fisheries Service.
[FR Doc. 94-16499 Filed 7-7-94; 8:45 am]
BILLING CODE 3510-22-P

50 CFR Part 672

[Docket No. 931199-4042; I.D. 070194B]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 (between 159° and 170° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 2, 1994, until 12 noon, A.l.t., October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907-586-7228.
SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery

Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 61 is 4,827 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv). The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that this third quarterly allowance soon will be reached. The Regional Director has established a directed fishing allowance of 4,200 mt, and has set aside the remaining 627 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 61 is prohibited, effective from 12 noon, A.l.t., July 2, 1994, until 12 noon, A.l.t., October 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*
Dated: July 1, 1994.

David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 94-16480 Filed 7-5-94; 8:45 am]
BILLING CODE 3510-22-F

50 CFR Part 675

[Docket No. 931100-4043; I.D. 070594B]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary because the first seasonal apportionment of the Pacific halibut bycatch mortality allowance specified for the trawl yellowfin sole fishery has been reached.
EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), July 5, 1994, until 12 noon, A.l.t., August 3, 1994.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95-26749 Filed 10-27-95; 8:45 am]
BILLING CODE 6712-01-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 651

[Docket No. 950124025-5255-02; LD.
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.

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

BILLING CODE 2610-22-F

50 CFR Part 651

[Docket No. 951023256-5256-01; LD.
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 commentors 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 commentor 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 commentor 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 commentor 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 commentor 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), 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.

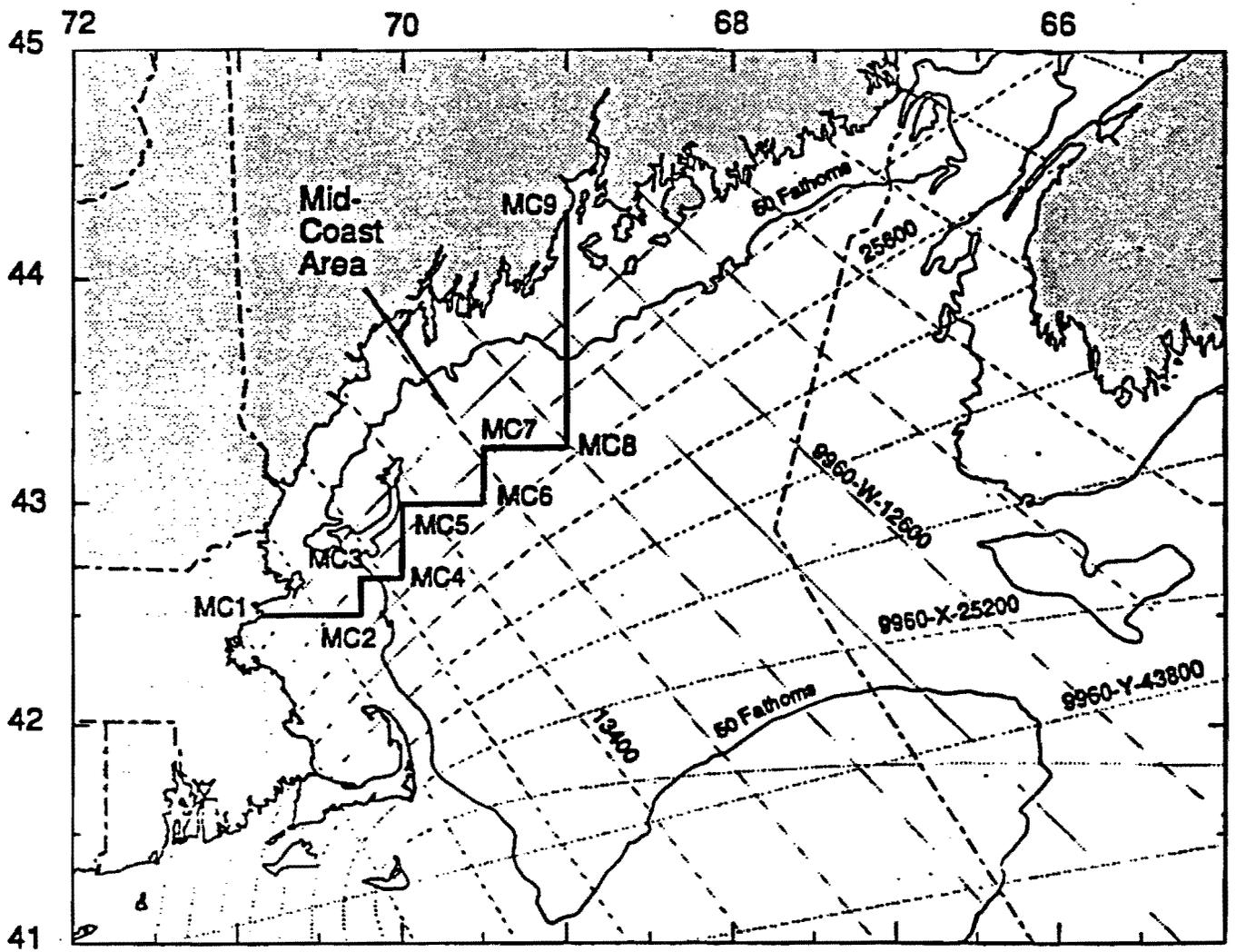
3. The heading to Figure 4 to part 651 is revised to read as follows: "Figure 4 to part 651—Closure Areas for Protection of Harbor Porpoise".

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

New England Fishery Management Council

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Chairman
Joseph M. Brancaleone

Executive Director
Douglas G. Marshall

MEMORANDUM

September 25, 1995

TO: John Nelson, Marine Mammal Committee Chairman
FROM: Patricia Fiorelli
SUBJECT: Recommendations from 9/8/95 HPRT Meeting - Final

The Harbor Porpoise Review Team (HPRT) met on Friday, September 8, 1995 to develop recommendations concerning: a) the effectiveness of the 1994-1995 time/area closures implemented to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery; b) future measures that would allow the Council to achieve the goals as stated in Framework 4 to the Northeast Multispecies Fishery Management Plan; and c) the possible use of acoustic devices as part of a bycatch mitigation strategy.

Analyses prepared by the Northeast Fisheries Science Center allowed the group to review data collected since 1990 and compare it to 1994, the first year in which the New England Fishery Management Council implemented time/area closures. Because a high percentage of the bycatch occurs in the Mid-coast/Jeffreys Ledge area in the fall, it was targeted initially for more detailed review. Similar information will be made available for the other closure areas in the near future. The HPRT agreed, by consensus, on several key points:

- The time and area closures, as currently configured, are neither large enough nor long enough to achieve the Council's stated bycatch reduction goals. There was agreement that the first year goals were not met and that the porpoise bycatch was very likely higher in 1994 than in 1993. Additionally, the HPRT was unable to evaluate the degree of effectiveness of the individual closures chiefly due to the lack of data on the fine-scale spatial distribution of fishing effort previously available through the NEFSC's port sampling program. Instead, bycatch rates were calculated and employed as indicators of bycatch.
- While information in the analyses did not provide an estimate of the total number of porpoise taken in 1994, there is a good basis for the statement that the bycatch could be 50 to 60 percent higher than in previous years (see Allen Peterson letter dated August 9, 1995). Rates increased significantly in the Mid-coast and Jeffreys Ledge Areas during the fall months and were approximately three times higher south of Cape Cod, indicating the possible need for management measures in that region. Bycatch rates,

Mid-coast Area, 1996 - adjust and expand the time frame of the closure as indicated by further analyses and define an area in which fishing activity would be allowed if nets were deployed with pingers. Because the Mid-coast accounts for a majority of the porpoise bycatch, the HPRT recommends pinger use for the Jeffreys Ledge Z-Band or other limited area in which studies could be conducted to answer questions about habituation and exclusion of animals but in a manner that would not jeopardize the Council's bycatch reduction goals.

- The Council may wish to explore the use of a "trigger" mechanism and, if so, should request the appropriate analyses from the NEFSC. This includes the potential for an environmental trigger, such as sea surface temperature. If feasible, such a management tool would allow for more precise timing of closures or other management measures without the bracketing currently necessary to account for the high degree of variability in porpoise movements. Data indicate that the mid-coast bycatch generally peaks in October and November, but that variability can extend into September and/or December.

Other HPRT recommendations

To provide the Marine Mammal Committee with more complete information on which to base a management strategy, the Council should request the following items from the Northeast Fisheries Science Center which are listed in order of priority:

- analyses for the Mass Bay and Northeast Areas (similar to the Mid-coast information) characterizing the bycatch information in terms of rates in order to compare 1994 information with previous years;
- an estimate of the 1994 bycatch using landings by port as an estimator in the absence of port sampling information; and development of alternative methods to determine the fine-scale distribution of gillnet fishing effort (perhaps data collected via overflights or other means if this is not feasible);
- a more detailed analysis of the area south of Cape Cod to determine the possible need for a closure in that area;
- the 1995 abundance estimate; and
- expanded observer coverage and additional studies to evaluate the use of pingers.

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Chairman
Joseph M. Brancaleone

Executive Director
Douglas G. Marshall

MEMORANDUM

November 9, 1995

TO: Douglas G. Marshall, Executive Director
FROM: Patricia Fiorelli
SUBJECT: Take Reduction Teams

Per your request I am providing a review of our discussion about the NMFS-appointed Take Reduction Teams (TRTs) established by the 1994 amendments to the MMPA. Council members received information on this already via the sections of the MMPA included in the October 25-26 meeting binders.

Background

TRTs will be established in a manner which allows for representation of all stakeholders. A professional facilitator will run the meetings and decisions will be reached by consensus. The Gulf of Maine Harbor Porpoise Team will be charged with development of a plan to reduce porpoise bycatch to a number below the Potential Biological Removal (PBR) level by no later than April 1, 1997. This is also the same objective suggested for inclusion in Amendment #7 to the Groundfish Plan.

There are a number of steps in the TRT process. The benchmarks are discussed below, but as the timeline indicates, the Council's porpoise take reductions measures will be in place until around February or March, 1997.

Take Reduction Team Process

For strategic stocks like harbor porpoise, the TRTs must report back to the Secretary of Commerce within six months after convening. The first meeting of the porpoise TRT is scheduled, tentatively, for early January, 1996. A plan, therefore, must be submitted by the end of June, 1996. It must contain measures which reduce, within six months of implementation, "mortality and serious injury" to a level below PBR. PBRs have been set for all species by independent regional scientific review groups as called for in the Act (one of those the other Acts, that is). PBR is set at 403 and the porpoise bycatch in the Gulf of Maine sink gillnet fishery has averaged over 1,000 animals annually for a number of years.

Once the plan has been submitted, the Secretary has up to 60 days to publish the TRT plan in the *Federal Register*, along with any Secretarial changes and draft regs. This brings us up to the end of August, 1996. The public comment period on this notice may not exceed 90 days. This step then will be completed by the end of November, 1996.

The Secretary is required to issue a final take reduction plan with implementing regulations not later than 60 days after the close of the comment period — or by the end of January, 1997. The Secretary then has 30 days after publication of the final take reduction plan to properly notify the affected parties. Roughly speaking, the entire process should be completed by February, 1997 at which time a take reduction plan should be in place.

If the team fails to accomplish its task within six months, the Secretary is required to publish his take reduction plan in the *Federal Register* not later than eight months after establishment of the team. More plainly, proposed Secretarial regs must be on the street by September, 1996. The public comment period is not to exceed 90 days — or the end of December. Then the Secretary has 60 days to issue a final plan and an additional 30 days to notify the appropriate parties. This brings us to the end of March, 1997, for implementation of Secretarial plan. As you can see, there is no significant difference in the timing of plan development for either the TRT or the Secretary.

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

MEETING MINUTES
DECEMBER 13, 1995
DISCUSSION OF FRAMEWORK 14

Wednesday, December 13, 1995

Marine Mammal Committee Report

Mr. Nelson: Behind Tab 11 is the material for marine mammals. There are also other materials that have been mailed to you earlier that I trust everyone has with them and has had a chance to run through. The Marine Mammal Committee met on the 28th of November to look at a series of things. One was to possibly adjust the harbor porpoise objective which is included in Amendment 5 at the present time. We currently do not have one proposed for Amendment 7 in the Goundfish Plan. Also, we were planning to look at several areas for potential adjustment in either the area or time of closure. Also, not included in the meeting but as part of this overall presentation, I understand that the staff would like to present a little bit of information on right whales. There is some correspondence on right whales in the folder under Tab 11. The staff would like to make a presentation afterwards.

Amendment 5 has in it an objective for harbor porpoise which is to reduce the bycatch to a level not to exceed 2% of the population based on the best available estimate of abundance, etc. With the passage of the Marine Mammal Protection Act (MMPA) there are some changes that have come about because of that. In particular, it is based on the potential biological removal (PBR) level. Numbers change and the intent, as far as time table, has also changed. Given that, the committee decided to take a look at a proposed objective for Amendment 7 for the Council to consider. To move this right along, I will refer to the first page under Item 11.a.

Mr. Nelson moved and Mr. Coates seconded:

that the Council consider the following objective for harbor porpoise in Amendment 7 to the Northeast Multispecies Fishery Management Plan to reduce proportionately, consistent with the Magnuson Fishery Conservation and Management Act and the Marine Mammal Protection Act guidelines, the incidental mortality and serious injury of harbor porpoise in the Gulf of Maine sink gillnet fishery to the potential biological removal (PBR) level identified for this stock through the process described in section 117 of the MMPA by April 1, 1997, the date required for compliance with section 118(f)(5)(A) of the MMPA.

Mr. Smith: Discussion on the motion?

Mr. Anderson: I raised some questions in reference to this at the committee meeting and just so that the rest of the Council is aware of what goes on with this situation. The MMPA, as we all know, is rather a restrictive act and, on occasion, is in conflict with the Magnuson Act, only for the fact that there is no economic consideration for management decisions in the Marine Mammal Protection Act, where that is not so in the Magnuson Act. To caution the Council, and not to say that I would vote against the motion, but the intent here is the fact that we really, and maybe we can get some advice from Andy or Gene on this, but on which act actually dictates what the Council will do in reference to this situation. At a time that we have to make future decisions in this regard, do we take the Magnuson Act and throw it in the corner and pick up the MMPA because it is the most restrictive act? It deals specifically with the number of individual species within that Act.

Other questions raised were the fact that this Council has a specific geographic region of responsibility. It is not within its guidelines to exceed outside the geographic region where this Marine Mammal Protection Act is or goes outside the jurisdiction of this Council. As a matter of fact, what we are passing here now for the date of April 1, 1997, is a fixed figure of approximately 401 animals throughout the range. It goes down into the Mid-Atlantic and it also extends into Canadian waters. It is a very fixed figure, one that this Council loses control of with respect that they have, or we have, a responsible management plan in regard to harbor porpoise takes. If another region outside our responsibility does not, do we have to pay the price for that? If the Canadians, for example, took 450 animals does that shut down our fishery? If the Mid-Atlantic took 450 animals does that shut down the Northeast? I almost think that it does and it is a consideration we have to think about. Once again, I'd accept some interpretation on that.

Another thing is future assessment work. Right now we will be working in 1997 with assessment work that will have been done in 1994 and 1995 figures are not out yet, such as total population, etc. That is going to be what the basic calculation is based off of, when you get down to that finite number of 401 or 397, whatever. That is something we cannot predict. Just a consideration also, that assessment work in the future, when this whole process started off, there were 3500 animals. Using the best available science, we were caught in the dilemma. As long as we know that these will be some of the problems that come up in the future and whether assessment work and the best available data is as current as we can have to make some management decisions. That's my comment on it. I think it is legitimate with knowing the difference between the MMPA and the Magnuson Act and what our responsibilities are with passing this motion.

Mr. Smith: Gene, do you want to address that?

Mr. Martin: I think one of the questions you are asking is "does the MMPA override concerns under the Magnuson Act?" To some extent it does. If the requirements of the MMPA are not being met, then the law requires that certain actions, certain measures be put into place to remedy the problems that are not being met regardless of what the Council is doing. In that particular case, the Council does not necessarily have the legal statutory mandate to correct those problems, but NMFS does. Therefore, NMFS could impose measures that affect the fisheries that you are managing and maybe effect them in a very restrictive way that is not totally conducive or compatible with the fishery conservation measures. We would try to make them compatible, but they may not be as compatible as you would suggest if you took the lead on this and came up with the measures before the MMPA mandate dictates that NMFS does it. So, I think your two questions were "does the MMPA take precedent over the Magnuson Act for addressing harbor porpoise," and "does the Council have to do it?" My answer went to those two questions.

Mr. Nelson: As Erik mentioned, we wanted to try to convey a message in the objective here by mentioning both Acts and the guidelines associated with them, realizing that there are various limitations to what we can do. Also looking at a proportional amount of reduction and recognizing the amount that we would need to reduce does not take into consideration the total amount of reductions that needs to be accomplished under the Marine Mammal Protection Act. We also wanted to make sure that since we do not have authority over Canadian waters or even Mid-Atlantic waters that if the measures that we were taking were in good faith in reaching a level that was in concurrence with what is looked at under the MMPA, that if there is more stringent activity that needs to be taken in the future because of action in other areas that NMFS would take that into consideration.

Dr. Rosenberg: To the various comments, I would add to Gene's if it was not clear. It is not that NMFS can take action under the MMPA, we have to. In response to Erik's question, we cannot pick and choose which law we are going to obey. We have to obey them all. That means that we would have to try to make the case that we are complying with the MMPA and the Magnuson Act at the same time, and those things will interact. It would seem to me that this motion tries, at least makes an attempt, to prevent that conflict from occurring. Where the Council is working to one set of objectives and we, NMFS, or the Secretary of Commerce is required to work toward a different set of objectives, therefore we have to do something with respect to our objectives overriding what you have already been trying to do. It seems to me that it would at least indicate that a common set of objectives is being worked on for the level of take and at least allows the Council deliberations on how to achieve that, with respect to fishery management, be done in such a way that it is addressing the MMPA concerns as we move down the road. Otherwise, Congress does not give us the authority to say that we have decided not to obey the MMPA in this instance because we think the Council is doing a good job. It does give us the

right to say that we think the Council has addressed both concerns and, therefore, we concur. So, I would support the motion as moving towards working to a common set of objectives in the interest of not having a divergent set of directions. That does not mean that we are looking beyond what the law requires to get the management plan to go in one direction or another, but just that we know that it is a requirement that we need to meet under the law.

Mr. Brancaleone: Further discussion on the motion?

The motion carried on a voice vote.

Mr. Nelson: Following our discussion on the objective, the Fisheries Center staff provided us with updated information for the Mass Bay area and areas south of Cape Cod and also the Mid-coast Area. We do thank the staff for having that available to us in a timely manner. I will take them one at a time; first we reviewed the Mass Bay Area. The information for that and other areas is found in the December 11, 1995 memo from Pat Fiorelli to myself and it has the motions of the Marine Mammal Committee as the top few pages. After a review of the data it was felt that the closure time was appropriate and that it is currently in effect for the Mass Bay area. We had a good discussion as far as the use of pingers and the success we are seeing so far associated with the current closure in the Mid-coast Area.

Mr. Nelson moved and Mr. Rathbun seconded:

that the Council maintain the existing time and area (March 1-30) for the Mass Bay Closure Area (as described in Framework Adjustment 4 to the Multispecies FMP) to reduce the bycatch of harbor porpoise in the sink gillnet fishery; and also request that the NMFS Regional Director investigate additional fishing opportunities in this closure area by considering experimental work on the use of pingers in the gillnet fishery to mitigate the harbor porpoise bycatch.

Mr. Brancaleone: Discussion on the motion? Andy?

Dr. Rosenberg: I understand that you are going to be requesting, or the motion suggests that you request, that I look at additional fishing opportunities. I would like to point out that as far as the information we have today on the experimental work in the Mid-coast Area does look very favorable. My understanding is that there have been no takes. We have had a higher than expected level of observer coverage because of the fishing pattern. I think that level of observer coverage is about 25% but Terry Smith may know better than I.

With respect to this motion, you will recall with the other closed area the concern was that we had to make some advance beyond the initial, last year's reduction,

assuming there were some reductions last year. That is the reason for the extension of the closed area. Then allowing work with pingers within the extended portion. To some extent my response on additional experimental work will depend on how the whole set of closures works out. I am in favor of this motion but I want everyone to be aware that does not necessarily indicate whether I will or will not agree to additional experimental work. I think there have been some very favorable results but I cannot prejudge that at this stage. I would like to speak in favor of the motion as long as it is understood that I am not prejudging the experimental fishery.

Mr. Nelson: We recognize the need for the Regional Director to have the time to look at this carefully and that is why we are requesting he investigate the possibility of the additional fishing in that area.

Mr. Anderson: One quick comment on the experimental fishery that took place, or basically conducted, out of New Hampshire and that was where the available pingers were. With over 10,000 net days at hand, to confirm what Andy said, there had been zero takes. Reporting and compliance was, I believe, well within or over 90% if not 100%. For informational purposes, with zero takes, we felt it was successful this year. For operational purposes, this type of opportunity should extend into other areas that have not had the opportunity to use the devices.

Mr. Brancaleone: Further discussion on the motion?

The motion carried unanimously on a voice vote.

Mr. Nelson: The next area we were given an update on by the Center staff was in an area reclassified as south of Cape Cod. The HPRT (Harbor Porpoise Review Team) which met in September had highlighted as one of their recommendations that a more detailed analysis of the area south of Cape Cod be accomplished to determine the possible need for a closure there. Therefore, we had asked the Center staff to examine that area and see if there was a need for some action. There appeared to be, based on the information that was provided to us, a need to define the area and also to put a time frame for a closure in that area. The area that was ultimately determined to be the area considered for the closure can be found about two pages beyond the first page in the binder. It is labeled the sink gillnet 1990-1995 data, January through May and it shows two boxes. I am sure everyone will recognize Nantucket and Martha's Vineyard. The smaller box is the one that we would be talking about as far as the area closure.

Mr. Nelson moved and Mr. Amaru seconded:

that the Council initiate a framework adjustment to the Multispecies FMP to close an area to sink gillnets south of Cape Cod, defined by a boundary

tending from the Massachusetts shore south along 70°30'W, west on 40°40'N and north on 71°45'W to the Rhode Island coast, from March 1 through March 30 to reduce the bycatch of harbor porpoise; also request that the NMFS Regional Director investigate additional fishing opportunities in this closure area by considering experimental work on the use of pingers in the gillnet fishery to mitigate the harbor porpoise bycatch.

Mr. Nelson: This would be the first meeting of the framework process.

Mr. Amaru: I think the Westport Scallop Experimental Aquaculture area, the 3 x 3 mile area, falls in that closure. That requires a tremendous amount of buoyed off gear, etc. Is there going to be a problem with that?

Dr. Rosenberg: This only applies to sink gillnet vessels. It does not apply to other vessels or other gear types and I am not sure whether there is any conflict. But that closed area, for the experimental on scallops, does that include all of the gear?

Mr. Amaru: It does gillnets, at least in the memorandum that I read.

Dr. Rosenberg: I thought it only precluded mobile gear.

Mr. Nelson: It doesn't. It precluded gillnets at certain times of the year when they were harvesting scallops which I am not sure if it coincides. I would have to check.

Dr. Rosenberg: It is not clear to me if they are in conflict. If gillnets are prohibited from the area and they are also prohibited from a subset of the area, then they are prohibited from the area, I think. I am not making light of this.

Mr. Amaru: I am not so much concerned about the gillnets. If you are closing an area for the protection of harbor porpoise, are gillnets the only thing you are concerned about? Because, there's going to be a lot of gear in there.

Dr. Rosenberg: You are concerned about entanglement and other fixed gears?

Mr. Amaru: I am sort of concerned, that is the issue. Frankly, I am concerned about lantern nets and suspended lantern nets.

Dr. Rosenberg: We have already done a consultation as to whether we think there is a problem with marine mammal species for that experiment. It should be covered under that part of it.

Mr. Amaru: I would just hate to see a wrench get thrown in the works on that for those guys. That is a big project and they are underway.

Dr. Rosenberg: I do not think this effects that.

Mr. Smith: Andy may have said this on the last motion and pardon me if I missed it, but the words "investigate additional fishing opportunities" in all three of these motions, B, C and D, I just want to be clear that what we are really saying is that he can consider authorizing an experimental fishery based on the pingers or anything else.

Mr. Brancaleone: Further discussion on the motion?

Dr. Rosenberg: Two points, Mr. Chairman, the first of which is that this is to go into place March 1st. That is a very short time line to actually get this done and I guess this is the first framework meeting and it was notified as such in the *Federal Register*. The second framework meeting would need to be in January with a completed document which would then have to come to us immediately after that because it is giving us a very short time for review. I have already had concerns expressed from Washington that is pushing things very fast given at the end of the year the number of actions that are stacked up. In the first quarter, everyone is trying to clear up all the available actions so I would caution the Council that this framework, should you approve it at the January meeting, has to go out the door (with me at the end of the meeting) as fast as you can. I cannot guarantee getting it in place with sufficient notice in time for March 1st. This does not mean that I do not support it in concept, but that is just a caution.

The second item which plays into that is that the next motion that I think you are going to make on another closed area really should be discussed by the Harbor Porpoise Review Team, according to the regulations. I understand that this is difficult to schedule because of the short time frame, but I think it is important that there be a real meeting and we follow that process, if at all possible. In fact, it is a requirement. Gene, can speak more to that, that there be a formal recommendation from the HPRT, I believe.

Mr. Martin: We discussed this at the committee level. It is written in a way where it does not appear to be a hard and fast requirement, but it seems to me that was the intent. The team was formed in order to help the Council ensure that the recommendations that they are making make sense, according to this team's objective. The committee did come up with a compromise if they cannot get the team together, but I do not see it expressed here. I think it needs to be on the record that they would send these recommendations to the members of the HPRT for comment.

Dr. Rosenberg: I would say that I support the motion conditionally upon the very difficult timeline. In the review process I would certainly look for the HPRT's recommendation as part of the package. Again, that does not prejudge whether we

would approve a framework, but I support it in concept.

Mr. Nelson: To that point, Mr. Chairman, we do appreciate the time frame that NMFS would be under. We had discussed that to make sure that we all recognize what we could do or could not do and have put forth recommendations that we have recognized are very tight, but we have gotten as much assurance as possible that the material that NMFS would need to review would be put together in a timely fashion and be ready for them for their complete review. We would hope that this is really one of the last times that we would be behind the time frame of hurrying. I think the other areas are able to be addressed in a more timely fashion. We should not have that problem again.

Dr. Rosenberg: On that point, the second of these motions, the one on the board and the one you are going to make in a minute, are less problematic because there is a longer lead time. I do not want the staff to go through the work of putting together this framework if I do not think there is sufficient time to process it to put it in place for March 1. I am very concerned about that. If there is going to be substantial work, even following that January meeting, that may be a real problem and you would be potentially wasting staff time. I was not kidding when I said I have to have it in my hand as I walk out of the Council meeting, otherwise there is no chance at all. That is the guidance that I have received.

Mr. Nelson: We discussed that in great length. The answers I got, and I think the rest of the committee understood, was that indeed this would be done and the package would be available. I hope that would be the case. The other point I would like to make is that we did discuss the HPRT and their contribution to this type of discussion. We did concur that we would make sure that they had a chance to provide whatever additional input they wanted to provide on this particular aspect given the recommendation that we are putting forth. I want to make sure that it is clear that the HPRT highlighted this particular area at their September meeting. Their recommendation was that a more detailed analysis should be conducted so a decision could be made on that particular area. I think a lot of us feel that it is already living within the framework of what was necessary, but we will take that extra step to make sure that all the "I"'s are dotted and "T"'s are crossed.

There is one last thing, Mr. Chairman. This particular motion, to make sure the people had a chance to discuss adequately and based on the Center's analysis, was the recommendation to use the March 1st time frame for the closure. We also asked the industry in that area to review it and see if there was some other time frame or some other recommendation that they would be looking at. There is a letter under the groundfish packet from Bill MacKintosh to the Council staff and in there is a sentence that says "we recommend that the mammal closure month be the last two weeks of February and the first two weeks of March". If Pat wants to elaborate a little bit more on that I would be happy to have her do that. I think though that the sense of the Center and the committee was that looking at the data, March 1st was the

appropriate time to start the closure. Pat would you like to add anything to this?

Ms. Fiorelli: I am not sure it is really necessary. It is my understanding that the committee chose that time frame because that was the optimal time to protect harbor porpoise. The dot on the charts you are looking at indicates four week periods. The dot indicates the beginning of the four week period so we were advised by the Center staff, who were explaining the analyses, that if you avoid the areas where there are steep slopes, you are much more likely to capture the timing of the bycatch than otherwise if you are in that steep slope area. If you move the closure back into February, I think you are in that category where you are looking at not optimizing the time frame for the closure.

Dr. Rosenberg: Just very briefly, there is no chance of getting this done by February anyway so there is no possibility that you can consider that for this year. It is something you may not want to spend a lot of time on because there is no way you can get that in place.

Mr. Rathbun: A question on the wording, it says "to the Rhode Island coast". Shouldn't it say "to the Rhode Island state waters" because we don't have jurisdiction over Rhode Island state waters or Massachusetts state waters. Am I incorrect in that assumption? Do we have the right to impose the closure on Rhode Island state waters?

Mr. Martin: We have the right on federally permitted fishermen in those waters.

Mr. Rathbun: That doesn't answer my question entirely.

Mr. Martin: We do not have the right to just unilaterally regulate Rhode Island waters within three miles if it does not affect any federal interest or federally permitted fishermen.

Mr. Rathbun: But the gillnetters would be federally permitted, so that is a moot question.

Mr. Martin: Some may, some may not.

Mr. O'Malley: Is this measure to protect groundfish?

Mr. Martin: No.

Mr. O'Malley: I thought we couldn't use these plans as sideways measures to benefit other things such as lobsters and monkfish.

Dr. Rosenberg: Except in this case, the measures for harbor porpoise were

considered to be deemed as part of Amendment 5. Part of the reduction on the gillnet sector also benefits groundfish.

Mr. Martin: The MMPA states that the Council shall have the authority and the opportunity to regulate these measures to affect marine mammals in the last amendment, the 1990 amendment.

Mr. Coates: To plug any loopholes that might be created by state waters only permitted groundfishermen, people without federal permits, two instances now and this will be the third if it goes into effect, have closed those waters within the relevant marine mammal protection area to all netting. Half the licensed gillnetters in Massachusetts do not hold federal permits, so they could conceivably participate in a fishery, they could conceivably take harbor porpoise. I do not think that serves the good of the order.

Mr. Brancaleone: Further discussion on the motion?

The motion carried unanimously on a voice vote.

Mr. Nelson: Finally, the last area that we addressed now moves back up the coast and that looked at the Mid-coast and the Z-band. If you need to refresh your memory as far as what the area looked like, under Tab 3 of the groundfish section there is the Mid-coast and Z-band sketched out for you. Again, based on the Centers' presentation and their recommendation and also looking at what the HPRT had proposed as far as needing to look at additional time and area closures, during the spring it seemed to be clear that there was a need to have a closure in the Z-band and Mid-coast area during the spring from March 25th through April 25th inclusive.

Mr. Nelson moved and Mr. Coates seconded:

that the Council include in this same framework adjustment a closure in the Mid-coast and Jeffreys Ledge (or Z-band) areas west of 69°30' from 3/25-4/25 inclusive; the area known as Tillies Bank, described in Framework 12 to the Multispecies FMP, shall be exempt from this closure; and also request that the NMFS Regional Director investigate additional fishing opportunities in this closure area by considering experimental work on the use of pingers in the gillnet fishery to mitigate the harbor porpoise bycatch.

Mr. Brancaleone: Discussion on the motion?

Mr. Anderson: I did not understand completely what Andy had mentioned earlier as far as the parameters he would use to allow an experimental fishery. Please run them by me again so that I may get them a little clearer.

Dr. Rosenberg: I did not specifically say the parameters. I would look at a couple of things such as "what is the likely possibility of observer coverage," and "what level of observer coverage we can have," which is likely to be low but I cannot tell how low. I cannot prejudge that. If I feel we have sufficient funds to monitor an operational experiment then I may be comfortable with moving forward in that regard. If I feel that there is sufficient information to allow this specific experiment in line with what I consider to be the sort of pilot study that we have done this fall in the Z-band, obviously that would be supporting information. I would urge the Council to realize that this will not be 100% observer coverage so no one should be under the impression that it will be. We do not have the funding to have 100% observer coverage for this number of experimental fisheries and following this motion, whether it passes or not, I would suggest that the Council write to manufacturers who are currently making pingers of the design that we are using in the current experiment, since those seem to be the ones that we have information on, and find out whether they will be able to produce pingers for these experiments. That is an issue that came up. I will not decide on a different experiment based on the availability of pingers so that's something that will have to be addressed before March 1st if people are actually going to be able to participate in this experimental fishery.

Finally, the main criteria is will we receive some useful information here as well as provide an opportunity for fishermen on both the level of reduction of harbor porpoise bycatch and the efficiency of using pingers in an operational way. That is what I did for the experimental fishery this fall and I will basically look at it in that way. There is not a specific list of criteria but I urge you to consider both observer problems and availability of pinger problems.

Mr. Brancaleone: Further discussion on the motion?

The motion carried unanimously on a voice vote.

Mr. Nelson: Just a couple of notes. Again, I did want to reiterate my appreciation for the Center to get the data to us in as timely a fashion as possible. We are looking for data in a couple of more areas and as quick a turnaround as possible that includes the 1995 data as well. The Center was able to provide to us, at least, an outline of what they were seeing in 1995 and that was very helpful to the committee. We do appreciate that and we do look for that timeliness to continue.

I would also like to point out to the Council that we think that with the changes that have been made over the last number of closures and adjustments that we are getting well in line to meeting our goal. Especially the new goal that has been outlined for 1997. We essentially have just next year to meet that and I think that the sense of the committee is that major areas have been addressed and that we may still have to fine tune certain other areas but we are very hopeful of not only

meeting that goal but probably doing better than that goal. With that, it completes my portion of the report for Marine Mammals. Pat has information that she would like to convey to the Council on right whales so I will turn it over to her unless there are any other questions.

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

MARINE MAMMAL
DISCUSSION OF FRAMEWORK 14
JANUARY 25, 1996

Marine Mammal Committee Report

Mr. Nelson: Our next issue is on Marine Mammals under Tab #11. At our last meeting, December 13th, 1995, we initiated the action on Framework Adjustment #14 to the Northeast Multispecies Fishery Management Plan. It is intended to reduce the bycatch of harbor porpoise. We have several motions that were made at that last meeting, two that deal with the framework and this will be the second meeting of the framework. The first one is letter (a) under Council action. That is "that the Council finalize a framework adjustment to the Multispecies FMP to close an area to sink gillnet fishing south of Cape Cod defined by a boundary extending from the Mass shore south along 70°30' west, west on 40°40' north and north on 71°45' west to the Rhode Island coast from March 1 through March 30 to reduce the bycatch of harbor porpoise. Also, we request the Regional Director investigate the additional fishing opportunities in this closure area by considering experimental work on the use of pingers in the gillnet fishery to mitigate the harbor porpoise bycatch. We could also address the second one if you wish, at this time, Mr. Chairman or we could take them separately. It's up to you.

Mr. Brancaleone: We'll take them separately.

Mr. Nelson moved and Mr. Coates seconded:

that the Council finalize a framework adjustment to the Multispecies FMP to close an area to sink gillnet fishing south of Cape Cod, defined by a boundary extending from the Massachusetts shore south along 70°30' west, west on 40°40' north and north on 71°45' west to the Rhode Island coast from March 1 through March 30 to reduce the bycatch of harbor porpoise. And also request the NMFS Regional Director to investigate additional fishing opportunities in this closure area by considering experimental work on the use of pingers in the gillnet fishery to mitigate the harbor porpoise bycatch.

Mr. Nelson: I will point out that the draft document, Framework Adjustment 14, which was previously mailed out to Council members, has the data and the rationale for the areas to be closed. We also have various communications from various members of the HPRT that reviewed the recommendations and came up with suggestions for us to consider. Several of them were dealing with the time frame and expanding that time frame, in one particular instance into February. We,

at our last Council meeting and during the committee meetings, felt that we would not be able to respond to a February closure because of the time frame involved in the meeting and, therefore, we were not considering a February closure. Also, the Center's recommendation, as I recall in looking through the document, basically the committee had gone along with their recommendation on the time frames of the closures.

Mr. Brancaleone: Any comments on the closure for harbor porpoise south of Cape Cod?

Dr. Rosenberg: I am in general support of the motion. I have to again warn you that because of the time period required to actually review and put this into place, I cannot guarantee that we would have it in place by March 1st but we will do the best we can. If the framework is passed by the Council, it should be submitted by sometime next week, if I'm going to have any chance of getting it in by March 1. There is a request for me to investigate additional fishing opportunities with pingers in this area. I am going to vote for the motion even though you are making a recommendation to me on that. First of all I have investigated that and am inclined to try to move forward with an experiment, if I'm able to and have a budget, and if I have observers, etc. So there is a caveat there that if I don't have any budget, then I am not going forward with an experiment. I would be happy to address the results of the last experiment if anyone wishes at any time during this discussion.

The motion carried on a voice vote.

Mr. Nelson: The Council action (b) deals with a closure in the Mid-coast.

Mr. Nelson moved and Mr. Coates seconded:

that the Council include in this same Framework Adjustment (#14) a closure of the Mid-coast and Jeffreys Ledge (or Z-band) areas west of 69°30' from March 25 through April 25 inclusive; the area known as Tillies Bank, described in Framework 12 to the Multispecies FMP, shall be exempt from this closure; and also request that the NMFS Regional Director investigate additional fishing opportunities in this closure area by considering experimental work on the use of pingers in the gillnet fishery to mitigate the harbor porpoise bycatch.

Mr. Brancaleone: Discussion on the motion? Any comments?

Dr. Rosenberg: (same comment as above) .

The motion carried on a voice vote.

Mr. Nelson: I do appreciate the time frame that Dr. Rosenberg is also under and the financial commitments and we do understand that and we appreciate whatever effort he can put forth. There are other things that we have already voted on, which I will give a quick summary on. We did vote to have the Mass Bay closure remain the same as last year and, therefore, would be closed from March 1st through March 30th. Again, pingers would be used in that area if the RD is so inclined.

The other thing I would mention is that we do need to try to stay ahead of this curve and, therefore, we request that the data on the Northeast section be made available as soon as possible from the Center. We are looking at February to try and hold a Marine Mammal Committee meeting. We would appreciate it if that data could be available. We would also need the data on the Mid-coast area by April. Obviously, whatever the results that they could include from the 1995 experiment, we certainly would appreciate that and I understand from the information that I have received that there was zero takes for November and December. Dr. Rosenberg may want to discuss that a little bit further. I believe, Mr. Chairman, that is all I have at this time.

Dr. Rosenberg: First of all with the experimental fishery that occurred this fall, I did get a data summary prior to this meeting for that fishery. This was in the Z-band area of the Mid-coast closure only. The total number of trips that we had reported there were 134 and we observed 64 of those for a 48% coverage rate. As you recall, I told you we would not have 100% coverage but we would do the best we can with the allocated days. We observed 225 hauls and we did not observe any harbor porpoise takes. We did observe one harbor seal take. We would have predicted, by statistical analysis, a take of 12.6 animals in that area for that number of trips during that time without pingers. For comparison, in other words, that is what you would have expected in that area for that number of trips using a relatively straight forward statistical model - we observed none.

I have some details about the actual characteristics of the trip, including the amount of cod, pollack, dogfish, etc. that were landed. There was a fairly significant loss of gear, significant to me looking at it. I don't know if it is significant but the gillnetters could tell you that; 32 pingers were lost, 30 nets were lost, one whole string and the usual high flyers, floats, etc. were lost. This was an operational experiment so that is of interest to us as well. If there are any particular problems that were noted with gear loss, that analysis has not been completed yet. We hope to hear from the industry about that in terms of the actual use of pingers. Was it hard, easy, or were there other things that could be done and so on? That is a very brief summary of the experimental fishery observed. I will give that to Council staff to be sent out afterwards if people would like to see that basic data. We will obviously try to do some additional analysis later on.

The second point that I have to raise is there was a comment made by the

committee chairman about experimental fishery in the Mass Bay Closure Area. The committee has recommended to me that I consider an experimental fishery there. As you will recall, in the Mid-coast area closure I only went forward with an experimental fishery in that part of the closure that was new. The Mass. Bay closure is not a new closure. The information that I have from my staff, however, indicates that there is not, potentially, it could undermine conservation of harbor porpoise, a very high risk. It would be inconsistent to allow an experimental fishery in that closed area. So, I would seek Council comment on that if you have particular comments to that effect. I will consider an experimental fishery in the Mass Bay Closure Area with pingers, as in the other areas, during the closed period. But, I would seek comment. It's a little bit different from what we did in the fall Mid-coast closure are where we did not go forward with an experiment in the existing closed area, only in the extended closed area. Just by way of background, in proposals under groundfish there's a question of whether in the future some or all of those closed areas would be closed to all gear types. If I went ahead with an experiment in this existing area, I don't want anyone to anticipate that sets a precedent where every year in the future you would always be allowed to fish in that area with pingers. That depends on groundfish protection measures. I want that clear on the record. I hope I'm not being too circular here. I would appreciate it if there is any additional Council comment for or against allowing experimental fishery in that area.

Mr. Nelson: We certainly appreciate Dr. Rosenberg's position on what restrictions might take place as far as related to the groundfishing in the future and I think we certainly understand that and anyone who's been following our Council process understands that also. In regard to the use of having an experimental fishery using pingers in the Mass Bay - I would say that the sense of the committee's discussion was that we did not consider whether it was a new area to be closed or an old area to be closed. I believe we had picked on the Z-band to be an area to do some experimenting in because that seemed to be an area that boasts a pretty high take and also gave the folks, the federal folks, the opportunity to have a basically restricted area to start looking at what's the impact here. We did not distinguish between new and old. When we looked at these other areas that we felt should be closed and the time frame associated with them and the use of the pingers, we also didn't take into consideration whether they were new or old. We, at that time, took into consideration the initial information we had from the fishermen, the Center and that it seemed that the pingers were effective and, therefore, it would be appropriate to extend them to other areas. Again, not distinguishing whether they were previously an old or new closed area. I would urge the Regional Director to not give consideration to new vs. old but to the fact that it is seems to be effective and the more information we get on this is going to be more helpful to us in reaching our goal which is to get the take reduced substantially from even the 400 that we are shooting for over the entire range. I would say that this would be an opportunity I think, if we can get the information in, would be helpful because we do want to extend this further, we envision other areas and certainly other time frames being

closed in the near future. The HPRT would pretty much echo that. They're pretty much encouraged so far and don't seem to have, at least in a recent communication, a concern about using the pingers in any of these areas.

Mr. Anderson: To follow up what John said for my support for the Mass Bay area in allowing this whole particular area to be used or a pinger experiment to be allowed. I recognize your concerns as far as some of your administrative problems where you don't know where your budget is going to be or whether you're going to have observers. But as soon as this can be decided to let the participants of this area know. So, they can go out and decide if they would like to make the financial commitment into the devices, which is no small order. The only vendor that is sanctioned for this particular device at this time is in production to make sufficient quantities available to those participants. But, the participants have to have as much lead time to make those decisions. I hope you take that into consideration in allowing this whole area, the Mid-coast area, which would be the first opportunity and potentially the last, because if the default goes further in future years it won't go forward in 1996 but in 1997. If the default is not replaced by another area then there'll be no fishing activity. So, this could be potentially the last time the Mass Bay area could have fishing activity in the month of March and the first time for these people to use these devices.

Dr. Rosenberg: I appreciate what you're saying. I do not want anyone to go away with the impression that this would be the only opportunity. Obviously I would expect that the default would not stand for all times in terms of groundfish protection measures. It would be useful to have information on the Mass Bay area. My concerns are a number of things other than administrative reasons. One being equity. We did not allow that in an old area before. Probably, more to the point the argument made before was that clearly for the extending area allowing pinger use would, hopefully, provide the additional conservation without impacting the fishery, but to allow pingers throughout the area it would be hard to make the argument that you're achieving additional conservation for the fall closure of the Mid-coast area. In this case, however, you have added two very substantial closures during the spring period and so that concern is somewhat mitigated. We should get additional conservation benefit from the additional closures that the Council is proposing. So, the fact that I may allow an experimental fishery in the Mass Bay Area should not compromise the objective of achieving additional conservation. If that makes any sense to you. My understanding about the production of pingers is that the company is working to produce pingers at a lower price, longer battery life. I do appreciate your concern to inform people as quickly as possible and I would endeavor to do so. I can't help but note that it would be really useful if somebody could inform me as to whether I would have a budget a month from now to know whether I can have observers out there. I will probably predicate any experiment on having sufficient funding to allow some observers and this is not 100% coverage. But, I will try to inform people as quickly as possible when I make a decision on this.

I don't anticipate that will be very long after the document is submitted and approved.

Mr. MacKinnon (Mass.Assoc.): I would like to go on record as in favor of an experimental fishery in the Mass Bay area. I can reflect what Erik and John's saying. I think it's the right thing to do. We'll never know unless we do use them there whether they work. They do work, in my estimation and all the other gill netters. Secondly, in this draft form, the economic impacts - all those figures are obviously wrong on the amount of the impact that it's going to have on the gill netters. On page 11 and 13 there are two tools available, one is a pinger. It's been proven it is effective.