

Final

**Framework Adjustment 16 to the
Northeast Multispecies Fishery Management Plan**

to address fishing for bait in the harbor porpoise closure areas

Prepared by

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

Initial Framework Meeting:	June 6, 1996
Final Framework Meeting:	August 20, 1996
Submitted by NEFMC:	September 12, 1996

TABLE OF CONTENTS

1.0	Introduction	1
2.0	Purpose and Need	2
2.1	Background	2
2.2	Need for Adjustment	2
2.3	Need for Final Rule	3
3.0	Proposed Action and Rationale	3
4.0	Alternatives to the Proposed Action	3
4.1	No Action	3
4.2	Option 1	3
4.3	Option 2	4
5.0	Environmental Assessment	4
5.1	Purpose and Need for Proposed Action	4
5.2	Description of the Proposed and Alternative Actions	4
5.3	Description of the Physical Environment	5
Habitat	.....	5
5.4	Description of the Biological Environment	5
Marine Mammals and Endangered Species	.....	5
5.5	Description of the Human Environment	5
Gillnet Fishery	.....	5
Social and Cultural Aspects	.....	5
5.6	Biological Impacts of the Proposed Action	5
Impacts of the Proposed Action on Endangered Species	.....	5
Impacts of the Proposed Action on Harbor Porpoise	.....	6
Impacts of the Proposed Action on Groundfish	.....	6
Impacts of Alternatives	.....	7
5.7	Economic Impacts	7
5.8	Social Impacts	8
5.9	Finding of No Significant Environmental Impact (FONSI) :	8
FONSI Statement	.....	9

6.0 Applicable Law	10
6.1 Magnuson Fishery Conservation and Management Act	10
6.2 National Environmental Policy Act (NEPA).	10
6.3 Regulatory Impact Review.	10
6.4 Executive Order 12866.	10
6.5 Regulatory Flexibility Act.	11
6.6 Marine Mammal Protection Act and Endangered Species Act.	11
6.7 Coastal Zone Management Act (CZMA).	11
6.8 Paperwork Reduction Act (PRA)	11

7.0 Appendices

- Appendix I. Biological Analyses
- Appendix II. Public Comments
- Appendix III. Background Information

1.0 Introduction

In 1994, the New England Fishery Management Council (Council) adopted a management objective for the Gulf of Maine harbor porpoise and included it in Amendment #5 to its Northeast Multispecies Fishery Management Plan (FMP). The goal was to reduce the porpoise bycatch in the sink gillnet fishery to a level not to exceed 2 percent of the population, based on the best estimates of abundance and bycatch. Amendment #7 to the FMP, implemented in July, 1996, included a revised objective for porpoise to address new provisions in the Marine Mammal Protection Act (MMPA), reauthorized in late spring, 1994. To be consistent with these new requirements the Council adopted the language below:

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 Council's intent is to reduce the bycatch to the PBR level, 403 animals, through a series of time and area closures implemented as framework adjustments to the Multispecies Plan. The Council also has recommended the use of acoustic deterrents or "pingers" in several experimental fisheries on order to evaluate their use as a mitigation tool.

The most recent estimate of porpoise mortality in Gulf of Maine sink gillnets was 2,000 animals. Since that figure was calculated using data collected only through 1994, and did not take into account the recent expansion of both the time periods and geographic areas subject to closures, it may not reflect a probable decrease in the bycatch as a result of Council actions. Preliminary analysis of more recent information does indicate, however, that the updated figure does not approach PBR.

Recently a concern has arisen over small mesh pelagic gillnets used in bait fisheries in the Gulf of Maine. Most are either anchored or fished on the surface of the water and are used seasonally to collect herring, menhaden, mackerel and whiting by tuna and lobster fishermen. Periods of highest use overlap both in time and area with the harbor porpoise closures. Because they are not governed by the current groundfish rules, pelagic gillnets may be fished in the areas otherwise closed to gillnet fishing for the purpose of reducing the porpoise bycatch. Potential problems created by the lack of restrictions on this gear type include an increased likelihood of porpoise entanglements and the dilemma of enforcing the porpoise measures for one type of gillnet while exempting another that may be fished in much the same manner.

At this time porpoise bycatch in pelagic gillnets used in bait fisheries is not a significant problem. Given their use is unrestricted, however, along with

documentation indicating the gear type does entangle porpoises along with several other marine mammal species, the Council seeks to specify the size and other characteristics of the net and method of deployment. These restrictions would apply to pelagic gillnets deployed in any of the porpoise areas when closed to fishing with sink gillnets.

2.0 Purpose and Need

2.1 Background

At its April 18 meeting the Council requested that, as part of comments on the Amendment #7 proposed rule, the National Marine Fisheries Service incorporate language specifying the conditions for fishing with bait net as an additional *Exception* under the provisions for the harbor porpoise closed areas. In the event that the National Marine Fisheries Service (NMFS) did not act on the request because the issue was deemed to be sufficiently controversial as to warrant greater public input, the Council also voted to initiate Framework Adjustment 16 to the Multispecies Plan. The action would prohibit the use of all gillnets, including pelagic gillnets, in the harbor porpoise time/area closures with an exception for nets meeting certain requirements. Subsequently, the Council was notified by NMFS in early June that a framework adjustment would be necessary.

2.2 Need for Adjustment

Under Framework Adjustments 4, 12 and 14 to the Multispecies FMP, sink gillnets vessels were not allowed in defined areas and at certain times based on the historic bycatch of porpoise in that fishery. Bottom-tending or sink gillnets were defined as:

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.

For enforcement purposes, nets used to catch small pelagic species, for bait or otherwise, were included in the prohibition because it is possible to anchor them to fish in the same manner as a sink gillnet.

An inconsistency was created when Amendment #7 to the FMP was implemented on July 1. According to the new regulations, pelagic gillnets are among the gears exempted from the multispecies management measures, including the closures to reduce porpoise bycatch. The Council's intent in the amendment was to avoid applying groundfish rules to large mesh, offshore drift gillnets, which are not anchored, target large pelagic species and have no bycatch of groundfish. A potential solution would be to establish a measure which again closed the porpoise areas to *all* gillnet fishing, as was the case prior to the exemption in Amendment #7. Such an action could hamper the prosecution of several bait fisheries, such as the live tuna bait and lobster bait fisheries for mackerel, herring, menhaden and possibly whiting.

Framework 16 is proposed to allow the continued operation of these fisheries under certain conditions.

2.3 Need for Final Rule

Opportunities for public review were provided for at two meetings of the Marine Mammal Committee and three full Council meetings, held on April 17, June 5, and August 20. In view of the desirability of allowing bait fishing continue in a manner that approximates industry practices and for the reasons cited below, the Council requests the publication of the proposed management measures as a final rule.

3.0 Proposed Action and Rationale

The Multispecies FMP includes a framework adjustment process that allows the Council to modify management measures in a more timely manner than is usually associated with the development of a management plan or plan amendment. Using that procedure, the Council developed a strategy to address the porpoise bycatch issue by integrating a mitigation plan with fishery management measures. The following action, Framework Adjustment 16, is proposed to avoid compromising the substantial efforts already undertaken to reduce the porpoise bycatch by reducing the potential for entanglement in nets associated with unrestricted bait fisheries and to enhance enforcement of the porpoise closures:

the use of all gillnets is prohibited in the harbor porpoise time/area closures except as allowed under previous frameworks; in addition vessels may fish with a single net, not longer than 300 feet and not greater than 6 feet deep, with a maximum mesh size of 3 inches; the net must be tended at all times, that is, when in the water it must be attached to the boat; the net also must be marked with the owner's name and vessel identification number. The net must be fished in the upper two thirds of the water column.

4.0 Alternatives to the Proposed Action

4.1 No Action

The No Action alternative would allow operation of a bait fishery and possibly fisheries for several small pelagic species in the porpoise closure areas without either groundfish or marine mammal restrictions.

4.2 Option I

The Marine Mammal Committee forwarded a recommendation to the Council following its April 2, 1996 meeting: that the use of pelagic and other gillnets be prohibited during the harbor porpoise time/area closures, as has been the case

under Amendment 5, but with the following exception --- vessels participating in bait fisheries may fish with a single pelagic gillnet only, with mesh less than the regulated size, not longer than 900 feet and not anchored to the bottom; the nets must be tended at all times, that is, when in the water it must be attached to the vessel.

This recommendation was modified with input from the Groundfish Committee and at the April 18 Council meeting to state (changes underscored):

vessels may fish with a single pelagic gillnet only, with mesh less than the regulated size, not longer than 900 feet and not anchored to the bottom; the net must be tended at all times, that is, when in the water it must be attached to the vessel; the net must have surface floats and depth may not be greater than one third the depth of water in which it is set and may only be set in the top third of the water column.

After several discussions by the full Council, the issue was referred back to the Marine Mammal Committee for further consideration.

4.3 Option II

The Marine Mammal Committee met on July 30 to further discuss the proposed action. At that time the language was further revised to read:

the use of all gillnets is prohibited in the harbor porpoise time/area closures except as allowed under previous frameworks; in addition vessels may fish with a single net, not longer than 300 feet and not greater than 6 feet deep, with a maximum mesh size of 3 inches; the net must be tended at all times, that is, when in the water it must be attached to the boat or anchored not more than 1/2 mile from the vessel; the net also must be marked with the owner's name and vessel identification number.

The committee agreed to forward this motion to the Multispecies (Groundfish) Committee for review and possible modification. On August 13, 1996 the Groundfish Committee voted to further modify the above iteration. Their recommendation was approved by the full Council has been stated in Section 3.0.

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; and Volume I, SEIS for Amendment #7 to the FMP, E.6.3.4, pages 116-118 and the associated NMFS Biological Opinion issued on February 16, 1996. Also see Frameworks 4, 12 and 14 to the Northeast Multispecies FMP.

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; and Volume I, SEIS for Amendment #7 to the FMP, Section E.6.4.1, pages 119-121.

Social and Cultural Aspects: See Volume I, FSEIS for Amendment #5 to the Northeast Multispecies FMP, Section E.6.4.3. and Volume I, SEIS for Amendment #7 to the FMP, Section E6.4.3, pages 169-179.

5.6 Biological Impacts

Impacts of the Proposed Action on Endangered Species: The Council discussed the biological impacts of FMP measures on threatened and endangered species in Volume I, Amendment #5, Section E.7.1 of the FSEIS, pages 310-322 and in the SEIS for Amendment #7, Section E.7.1.2, pages 213-215. NMFS also issued a Biological Opinion for the plan, most recently in February, 1996. NMFS concluded that existing fishing activities and related Amendment #5 and #7 management measures were not likely to jeopardize the continued existence of any threatened or endangered species. The impacts of the harbor porpoise closures were specifically discussed in Frameworks 4, 12 and 14.

NMFS records document entanglements of fin and humpback whales in bait nets (See Appendix I). The fact that a number of these encounters involved juvenile animals may indicate that young whales are more susceptible to the gear, possibly because of the "curiosity factor" associated with that age group.

Given the speculation that bait fisheries may have been prosecuted in past years despite the prohibition on all gillnets in the porpoise closed areas, the measure proposed would not increase the likelihood of interactions with threatened and endangered species and could contribute toward a decrease in the potential for entanglement. The factors that lead to this conclusion include a limit on the length of the nets to 300 feet, the practice of setting nets for about fifteen minutes because, in the case of the tuna bait fishery live bait is desirable (see Appendix III), and in particular the requirement that bait nets be attached to the vessel. Vessel operators would be aware of an entanglement because of the proximity of the net to the boat. These same factors would apply to white-sided dolphins, the only other cetacean species reported in this gear type besides harbor porpoise, as well as other non-endangered marine mammals.

The limited number of days at sea available to fishermen under Amendment #7, particularly in 1997, may also contribute to a reduction in the possibility of marine mammal entanglements because of an overall reduction in opportunities to fish. Additionally, the Council has included a provision in Amendment #7 to allow the closure of areas to protect marine mammal species other than porpoise, but which also interact with gear used in the multispecies fishery.

The probability of entanglements as a result of the implementation of Framework 16, therefore, will not change from levels described in the 1996 Biological Opinion. Accordingly, the proposed action will not likely jeopardize the continued existence of any endangered or threatened species nor will it alter the basis for the NMFS Biological Opinion. The Council seeks the concurrence of NMFS with this assessment.

Impacts of the Proposed Action on Harbor Porpoise:

Harbor porpoise mortality may be similarly affected by the proposed measure. Although porpoise bycatch in bait nets appears to be minimal at this time, this measure would ensure the continuance of that trend by placing constraints on the use of bait nets in the areas where porpoise are most susceptible to entanglement. The requirement that the net be attached to the vessel and its size essentially guarantees that vessel operators would be aware of any marine mammal interactions. Accommodating the bait fisheries while providing for bycatch mitigation through specific requirements should also eliminate problems that might be associated with shifts in effort.

Impacts of the Proposed Action on Groundfish: Nets used to fish for bait in the Gulf of Maine are not likely to have negative impacts on groundfish conservation or undermine the current management measures. Nets are set for short periods of time, typically 15 or 20 minutes. If the proposed action is approved they will be limited to a length of 300 feet with mesh no larger than 3 inches. Each of these characteristics would contribute to an overall net configuration that is unlikely to catch any substantial quantities of groundfish.

Impacts of Alternatives

No Action: The No Action alternative would allow unrestricted use of pelagic gillnets in the porpoise closure areas without mitigating the potential for bycatch of the species the closure is intended to protect. Although a burgeoning fishery is not anticipated, increased risks of entanglement may be expected as a result of the Amendment #7 exemption for this gear type.

Option I: The initial Marine Mammal Committee recommendation would have allowed vessels participating in bait fisheries to fish with a pelagic gillnet that is 900 feet long. It is difficult to assert that a 900 foot net, fished in areas where harbor porpoises are seasonally abundant, is not likely pose an entanglement threat. Tending and anchoring would not improve this assessment because of the difficulty in detecting an entangled animal from as far away as 900 feet. Even if the event were witnessed, porpoises hold their breath only for a maximum of five or six minutes, affording little time to haul a net of that length and remove the animal.

Option II: While the net in this alternative is limited to 300 feet, it may be attached to the vessel or anchored provided the vessel is not more than 1/2 mile away. An anchored net is effectively a sink gillnet which is prohibited in the harbor porpoise closure areas because of their historic porpoise bycatch problem. Detection of a marine mammal from a distance of 1/2 mile also would not likely occur. A record already exists in which a fisherman anchored a bait net, left it to pursue giant bluefin tuna and returned to find a juvenile humpback whale, a species listed as endangered, in the gear.

5.7 Economic Impacts

Information on which to base an economic analysis for the proposed action is not available. Although a survey of gillnet effort was conducted by NMFS in 1990 and 1991 and included information on the use of bait nets, few conclusions could be drawn other than observations about fishing patterns See Appendix I. One hundred and eighty-two vessels occasionally used gillnet gear to fish for bait. Most were located in Maine with far fewer in New Hampshire, Massachusetts, Rhode Island and Connecticut. A recent summary using more current information indicates that the greatest effort probably occurs in Maine during the summer by lobster fishermen. Tuna fishermen fish for bait during the summer and fall months, but the extent of their effort is not known.

Compounding the lack of data is the fact that an unknown number of vessels fish exclusively in state waters without federal permits and retain bait for personal use, or sell their catch to other vessels or to dealers who does not have a federal dealer's permit. Because in these cases logs are not submitted, the activities of such vessels are

not captured by the mandatory reporting system. Bait fisheries also are not subject to any federal observer program that would yield additional information.

The proposed action is not expected to have any negative economic impacts because it allows sufficient opportunity for the continuation of a small scale bait fishery for pelagic species. Although the action restricts the size of the net to 300 feet and requires that it be attached to the vessel, many comments received at public meetings indicate there is still sufficient opportunity for boats to catch enough bait to meet their own needs and perhaps those of several other vessels.

The proposed action is not expected to increase administrative or enforcement costs. Gillnet fishing in the harbor porpoise protection areas already is prohibited by federal regulation or monitored through the NMFS observer program. Enforcement officials maintain that a requirement to attach the net to the vessel is an effective means of determining compliance.

5.8 Social Impacts

Social impacts are described in Volume I, FSEIS for Amendment #5, Section E.7.4. and in Volume I, SEIS for Amendment #7, Section E.7.2. Because the proposed action is likely to result in operational adjustments rather than any economic consequences for the gillnet fleet, the range of social impacts of the proposed action is fully within the range of those described both documents.

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 places restrictions on the bait net fishery is not expected to affect coastal or ocean habitat since the management measures will result in either the status quo or 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 Amendments #5 and #7, 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 #7. 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 #7 and Frameworks 4 and 12 and 14 to the Northeast Multispecies FMP. The proposed action, therefore, does not have significant impacts beyond those already analyzed.

The degree of controversy has been minimal in that most fishermen agree that action to protect harbor porpoise is necessary.

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 Amendments #5 and the SEIS for Amendment #7 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 and Volume IV of Amendment #7, 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 these actions. 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, the SEIS for Amendment #7 and the Environment Assessments contained in Frameworks Adjustments 4, 12 and 14 and 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 the Amendment #5 FEIS to the Northeast Multispecies FMP, in Volume I of the Amendment #7 SEIS and the associated NMFS Biological Opinions issued in November 1993 and February, 1996.

6.7 Coastal Zone Management Act (CZMA)

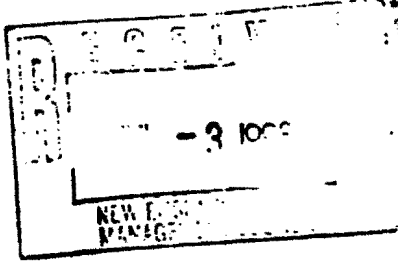
See Section 8.5, Volume IV of Amendment #5 and Section 8.5, Volume I, SEIS for Amendment #7 to the Northeast Multispecies FMP.

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.

Appendices

H.



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

June 28, 1996

Patricia M. Fiorelli
New England Fishery Management Council
5 Broadway
Saugus, MA 01906-1097

Dear Ms. Fiorelli:

As per your telephone request to Chris Mantzaris on 06/14/96, I have compiled the following information regarding entanglement of cetaceans in gillnet gear which may be attributable to the small pelagic bait gillnet fisheries in the Gulf of Maine and Mid-Atlantic. In interpreting this information, it is important to note that these records do not come from the observer program. Rather, these opportunistic sightings usually come from the U.S. Coast Guard, whale watch vessels, commercial fishing vessels, or private boaters. Therefore the records do not contain the same degree of detail and represent an unknown percentage of effort which cannot be extrapolated to total mortality estimates. Most of the fisheries which use bait gillnets are Category III fisheries and have either not been covered by the sea sampling program or have had a very low percentage of observer coverage geared toward fish sampling.

1. On September 1, 1986, a juvenile humpback whale was disentangled from gear described as line, a net, and a tuna float. The event occurred on Nantucket Shoals, but the whale was free-swimming, so the original point of entanglement is unknown. The record does not contain enough detail at this time to determine what type of net was involved.
2. The regional office received a Category III report from a southern New Jersey vessel reporting the take of a harbor porpoise on 03/29/91. The gear was described as surface gillnet. The hard copy of the report cannot be located at this time, so we cannot say at this point whether the porpoise was only harassed or whether it was taken in the net and was released, injured, or killed.
3. A second Category III report was received from a different vessel reporting the take of a harbor porpoise on 04/03/91 off southern New Jersey. The original record cannot be located at this time.
4. In June of 1994, a juvenile humpback whale was reported entangled in Cape Cod Bay and was released by divers. The agency has no information at this time on whether the whale



was completely freed of gear or on the degree of injury sustained by the whale. The gear was identified as a small pelagic/surface gillnet set for mackerel. The gear was anchored, i.e., not tended.

5. After the above-mentioned disentanglement, the net was retrieved and found to contain a dead Atlantic white-sided dolphin and a dead seabird.
6. In July of 1994, a juvenile finback whale was reported off Cape Porpoise, Maine, trailing "tuna gear" including a buoy, which was referred to as a "tuna ball". The entanglement was not examined closely enough to determine whether there could have been a tuna bait gillnet trailing as well. The whale was first reported as struggling to get free and then swimming with the gear trailing, so the gear may have been anchored initially. The identification on the buoy was that of a vessel which had a general category tuna permit but had other Northeast permits as well including multispecies (gillnet), squid-mackerel-butterfish, and American lobster. (The regional office does have several records of entanglement of whales in tuna hand lines, including three injuries to humpback whales in the summer of 1989 on Stellwagen Bank.)
7. On 08/29/95, the U.S. Coast Guard removed a tuna bait gillnet from a humpback whale calf. The event is described in the attached memorandum.
8. The regional office also has approximately 100 records of entanglement in marine mammals in "gillnet" or "net" from 1975-1995. These records come from sources outside the sea sampling/observer program. The majority of these records are not specific enough to identify the particular fishery involved, and could be from any number of fisheries, although we believe that most of the net entanglements involve gillnets of some sort rather than trawl nets, particularly the large whale entanglements.

As we mentioned at the last New England Whale Recovery Plan Implementation Team meeting, we are in the process of analyzing these data more closely and attempting to make the database as complete as possible by obtaining supporting information such as photographs, additional notes, and samples of gear from original reporting sources.

I hope this information will of use to you in completing the framework adjustment package(s). If you have any further questions, please feel free to contact me at (508) 281-9138.

Sincerely,



Kimberly Thounhurst
Protected Species Program

Attachment



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

June 25, 1996

MEMORANDUM FOR: The Files

FROM: Kim Thounhurst - F/NEO2

SUBJECT: Update on Entanglement of Humpback Calf in Bluefin Tuna Bait Gillnet

This memo updates the record of an entangled humpback whale sighted on August 29, 1995. The entanglement was reported to the U.S. Coast Guard (USCG) by a tuna fisherman, whose anchor line had been snagged by the gear trailing from the whale, resulting in the vessel being dragged. This second vessel radioed in to the USCG to request assistance. (Position given was 42° 59.66' N/70° 05.23' W.) When the USCG GRAND ISLE arrived, the entangled vessel had come free and was no longer with the whale. A whale watch vessel had stayed on scene to assist with monitoring the whale's position.

The initial entanglement report described a small buoy on the right pectoral flipper with line trailing. When the USCG sent an inflatable out to take a closer look, they realized that there was also a gillnet trailing.

From the identification on the buoy recovered by the USCG, we were able to contact the fisherman to whom the gear belonged. He has sent a written description and requested that it be filed as a Category III report. He writes that he had set his bait gillnet 5 miles east of Halibut Point, Gloucester, Massachusetts, on approximately August 27, 1995. He had left the gillnet anchored about 200 yards from where he was fishing for tuna. When he returned from fighting a tuna for two hours, the gillnet was gone, and he assumed that it had been stolen.

Two days later and about 35 miles north off Kennebunk, Maine, the USCG removed the gear from a humpback whale calf. The calf was accompanied by a larger whale.

Gear Description

The gear was retrieved from the Portland USCG station and measured and photographed at the regional office. The gear was a small gillnet with the following characteristics:

- 2 ½" stretch mesh monofilament



- approximately 37 yards long by 1 yard deep
- 5" hard black plastic floats strung every 3 feet on green 3/16" float line
- 1 7/16" leads crimped or strung every 10 inches along green 3/16" lead line
- bridles were black synthetic line (approximately 1/2")
- buoy warp was yellow polypropylene (approximately 1/2")
- buoy was a red poly ball (a.k.a. tuna ball or Norwegian float)
- anchor weights retrieved with the gear included a 12" x 12" square weight on one end and a 14" pencil weight on the other end
- gillnet was set to catch live bait for the bluefin tuna hook-and-line fishery
- when retrieved by the USCG, net was found to contain a lot of herring and a small number of other species including dogfish, cod, and sculpin

Degree of Injury

The whale was initially reported as actively attempting to disentangle itself by thrashing around. Two larger whales were nearby, and "nose-to-nose" contact was reported.

The USCG personnel were never able to get a close look at the actual point of entanglement on the whale. They believed, however, that the entanglement was a simple drape over the right pectoral flipper and that the remaining gear (assumed to be only the yellow buoy warp) would fall away since they had removed the gillnet, two weights, buoy, and some of the buoy warp. When they cut the gillnet, the buoy slid backward and they cut it and some of the buoy warp off.

cc: USCG - GRAND ISLE
USCG - Steve Austin
CCS

File: 1514-08(A)(2)(a) - 1995 MM Entanglements

Appendix one.

New England Gillnet Effort Survey.

GILLNET EFFORT STUDY QUESTIONNAIRE

DATE: _____ STATE: _____ PORT: _____

VESSEL NAME: _____ OFFICIAL NUMBER: _____

Did vessel fish gillnets in 1990?: _____ 1991?: _____ 1992?: _____ (Yes, No)

Name and address of owner: _____

Vessel's home port? _____

Months vessel fished or intended to fish gillnets by year.

1990: 1 2 3 4 5 6 7 8 9 10 11 12. (Circle months

1991: 1 2 3 4 5 6 7 8 9 10 11 12. fished or in-

1992: 1 2 3 4 5 6 7 8 9 10 11 12. tending to fish)

Statistical areas usually fish? _____, _____, _____, _____, _____.
(511, 512, etc.)

What does the vessel do when not fishing gillnets? _____

Gear fished? Number of strings _____ Number of sections or
half-nets per string: _____ Mesh size _____

Target? GROUND FISH _____ SM. PELAGICS _____ DOGFISH _____ BAIT _____

How did/do they market their fish? consignment, auction, peddled
brokered, etc? _____

Who buys most of their fish? _____

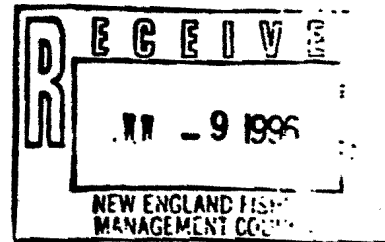
Do we get this vessels weighouts? YES _____ NO _____

Why are we missing their weighouts? _____

What would we have to do to get weighouts on them? _____

Other Comments: _____

Note: This is an experimental one-time study.



The New England Gillnet Effort Study

by

John B. Walden

National Marine Fisheries Serv., Woods Hole, MA 02543

**U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Northeast Region
Northeast Fisheries Science Center
Woods Hole, Massachusetts**

June 1996

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This report may be cited as: Walden, J.B. 1996. The New England gillnet effort study. *Northeast Fish. Sci. Cent. Ref. Doc.* 96-10; 38 p. Available from: National Marine Fisheries Service, 166 Water St., Woods Hole, MA 02543-1026.

ABSTRACT

A field survey was conducted to collect vessel and effort information on the New England gillnet fleet. Gillnet vessels either sold their catch for human consumption, sold fish to the bait market, or kept their catch for personal use. Most vessels which sold their catch for human consumption fished seasonally and used other gear types during the year. Most vessels which supplied seafood markets were from Massachusetts, followed by Maine. Maine had the greatest number of gillnet vessels which fished for bait. Study results were combined with external data sources to estimate the number of vessels in the New England gillnet fleet and to identify "gaps" in existing data collection systems.

INTRODUCTION

The New England gillnet fleet is comprised of vessels which use gillnet gear to harvest a variety of shellfish and finfish species. Gillnets are walls of netting suspended vertically in the ocean by the use of floats and weights and are fished at different depths depending on the species targeted (von Brandt 1984). Gillnets are highly selective because they generally take fish of a uniform size which depends on the mesh size used (von Brandt 1984). Generally, gillnets need to be set where the current is not strong and where there is no floating vegetation. Vessels which fish with gillnet gear either tend their nets or leave and return to retrieve their gear after a certain number of hours. In the Northeast Region (Maine through Virginia) during 1993, sink gillnet gear accounted for six percent of the total landings and four percent of the total value by identifiable vessels (NEFSC 1995).

Marine mammals, notably harbor porpoise, are sometimes entangled and killed in gillnet gear. Gillnet vessels also harvest several species covered under the Northeast Multispecies Plan (NEFMC, 1996). Current amendments to this plan are designed to reduce fishing mortality on demersal groundfish species as well as harbor porpoise bycatch, and include regulations on the gillnet fleet. These have generated a great deal of interest in gillnet vessels and their fishing activity.

This report summarizes results from a field survey conducted

under Marine Mammal Protection Act (MMPA) funding which was designed to identify gillnet vessels, gather information on seasonal and spatial dimensions of their fishing operations, and collect data on gear characteristics. Other data sources were utilized along with the survey database to identify vessels which were missed in the survey and to estimate fleet size.

METHODS

In March of 1992, the former Statistics Investigation of the Northeast Fisheries Science Center (NEFSC) began a study of the New England gillnet fleet. Objectives of the study were to identify all gillnetters fishing from New England ports, and to collect detailed information on fleet operations and gillnet effort. Four temporary samplers were hired and placed in the ports of Rockland, Maine, Gloucester and New Bedford, Massachusetts, and Point Judith, Rhode Island. The sampler in Maine was assigned coverage for all Maine and New Hampshire ports; the person in Gloucester covered from the New Hampshire border through Cape Ann; the New Bedford sampler covered from Cape Cod to the Rhode Island border; and the Point Judith sampler was responsible for all ports in Rhode Island. The permanent port agent from Chatham, Massachusetts covered all of Cape Cod, and the area between Boston and the Cape was covered by the permanent Boston port agent.

The questionnaire which was used in this study is given in Appendix I. Samplers were provided with lists of possible gillnet vessels which were based on federal and state permit files. They were then instructed to use the questionnaire to interview all permit holders, in person if possible, on these

¹ Vessels included in the federal files were from the Marine Mammal Exemption Program (MMEP). At the time of the study, the MMEP required that boats which fish using gillnet gear in the Gulf of Maine register their craft and submit log books documenting effort and marine mammal takes.

lists. In most cases, vessels appeared on both the federal and state lists.

The survey collected basic vessel information such as vessel name, state registration or Coast Guard number, name and address of owner and home port. It also collected data on fishing activity in 1990 and 1991 by asking for the months in which gillnet gear was used, areas fished, and alternative fishing activity when the vessel was not fishing with gillnets. Gear information collected included the number of strings typically fished, number of nets per string, and mesh size. Target species sought were divided into four categories -- groundfish, small pelagics, dogfish and bait. Information on marketing and vessel weighout availability was also collected². These last two questions were intended to provide a check on the completeness of data collection procedures under the weighout system. Unfortunately, data on weighout availability are unavailable for many interviews.

The initial survey collected information on gillnet vessel activity during 1990 and 1991. Some survey activity also occurred in 1992, but as this was not completed, only 1990 and 1991 data are used in this report.

The survey was not designed to give managers information which could be used for decisions regarding time and area

² A "weighout" is information collected from dealers in the ports who buy a vessel's catch. Data collected includes pounds and value of each species landed by the vessel. By examining the weighouts from all vessels which use gillnets, a unique vessel count should be obtainable.

closures. Rather, it attempted to gather information on the number of gillnetters in each year, and their activities and geographic distribution. For example, data were gathered which could be used to generate statistics about the number of gillnet vessels fishing in a month or area from a given port, but the two could not be linked together.

RESULTS

Vessel Totals

Captains or owners of 468 gillnet vessels were surveyed. Of these, 286 were identified as commercial vessels which targeted finfish for sale in the seafood sector. The remaining 182 vessels occasionally fished with gillnet gear for bait or personal use. The analysis presented here accordingly classifies vessels as commercial or bait gillnetters, further divided into "fleets" based on state and county which the respondent listed as containing home port.

Table 1 provides the number of commercial gillnet vessels stratified by area (fleet). There were 54 vessels from northeastern Maine counties (north of Cumberland county) and 33 vessels from southern Maine counties (Cumberland and York county). New Hampshire had 26 vessels and there were 67 vessels from northern Massachusetts ports (Essex, Suffolk, Norfolk and Plymouth counties). Southeastern Massachusetts, which included ports from Cape Cod southward (Barnstable, Dukes, Nantucket, and Bristol counties), had 66 vessels. Finally, there were 40 Rhode

Island vessels.

Gillnet vessels which fished for bait or personal consumption were primarily located in Maine (Table 1). Because there were fewer of these vessels, fleets were configured differently. Northeastern Maine counties (northeast of Cumberland county) had 83 vessels and southern Maine contained 60 vessels. Fourteen vessels were identified from New Hampshire and 12 vessels from Massachusetts. Rhode Island and Connecticut accounted for 11 vessels and there were two vessels from unspecified ports.

Seasonal Trends in Effort

Figures 1, 3, 5, 7, 9 and 10 show the monthly percentage of vessels fishing by fleet for commercial gillnetters during the years 1990 and 1991³. This was determined by dividing the number of respondents who stated that their vessel was fishing gillnets in a given month by the total number of vessels from the fleet which fished gillnets during that year. There appeared to be a seasonal component to fishing activity based on fleet. The highest percentage of vessels fishing from northeastern Maine occurred between April and October (Figure 1), while in southern Maine effort peaked in June, fell slightly between July and December, and then dropped sharply in the winter months (Figure 3). New Hampshire Vessels (Figure 5) fished at relatively

³ Survey work was not completed during 1992, and therefore analysis was limited to 1990 and 1991.

constant levels, with the exception of January and February. There were slight seasonal peaks between October and December, and April and June. Northern Massachusetts vessels showed seasonal peaks of activity in spring and fall (Figure 7); activity for southeastern Massachusetts vessels increased to a peak in May and June (Figure 9). Rhode Island vessels were the most active from November through May (Figure 10).

Figures 2, 4, 6, 8 and 11 provide monthly percentages of activity for bait gillnet vessels in 1990 and 1991. In contrast to directed operations for the commercial food fish market, this activity occurs primarily during warmer months in most areas. Northeastern Maine and New Hampshire bait gillnetters were most active in July and August (Figures 2 & 6) while southern Maine vessels were most active in June and July (Figure 4). Massachusetts bait gillnetters had the highest percent of vessels fishing in May, June or July depending on the year (Figure 8). Rhode Island and Connecticut bait gillnetters were most active between June and August (Figure 11).

Distribution of Effort by Statistical Area

Figures 12-22 show distribution of effort by statistical area in terms of average numbers of commercial and bait gillnet vessels fishing during 1990 and 1991. Because the survey requested information only by statistical area, one cannot determine finer breakouts, e.g. locations fished within each statistical area. Consequently, only general patterns are

evident.

Although commercial vessels from some fleets can be found in several different areas, a tendency is evident for the majority of vessels in each fleet to fish in one or two statistical areas in the immediate vicinity of their home port. Most fish close to shore, although some vessels fish offshore in areas such as Georges Bank. Commercial vessels from Rhode Island seemed to stay closer to their home ports than those from other states (Figure 21). Vessels from southeastern Massachusetts appeared to have the widest range of fishing areas (Figure 20).

The tendency to fish in local waters tends to be more distinct for the bait vessels than the commercial fleet (Figures 13, 15, 17, 19, 22). Northeastern Maine vessels appeared to be most widely dispersed (Figure 13). Both northeastern and southern Maine vessels were found in offshore areas (Figures 13 and 15) while those from the other states were found in inshore statistical areas only. Bait vessels have less incentive to travel to offshore areas because the prices received in the bait market are lower than those sold to the retail market, making trips for bait less profitable.

Gear Configuration

Table 2 shows the average number of strings fished, and the average nets per string for the commercial and bait gillnet

fleets'. Among the commercial gillnetters, the average number of strings fished ranged between 3.6 and 7.4 and the average nets per string were between 6 and 16.6. The standard deviation of strings fished was between 1 and 5.2, and between 3.7 and 7 for nets fished per string.

The average strings fished by bait vessels were between 1.3 and 1.7 and the average nets per string were between 1.3 and 2.1. The standard deviation of strings fished ranged between 0.7 and 0.9, and between 0.8 and 2.4 for nets fished per string. Overall, there was less variability for the bait gillnet fleet than for the commercial fleet. Because these vessels only use gillnets occasionally, this result is not surprising.

In a separate study, DeAlteris and Lazar (1992) found that gillnet vessels fish between 3.5 and 8 strings, with each string containing between 11 and 17 nets with the average section of net between 200 and 300 feet long. With the exception of the Rhode Island fleet, the mean values obtained from this survey are consistent with these figures.

Alternative Fisheries

Results confirmed other surveys which showed that the gillnet fleet is mostly a part-time fleet with only 16 percent of the respondents reported fishing gillnets exclusively. This

⁴ A "string" is several individual gillnets attached together at their bridles.

total may in fact be biased downward because of ambiguity on the survey questionnaire which may have led to a high non-response rate by full-time gillnetters.

Figure 23 shows the major alternative gear types fished by commercial gillnet vessels, broken down by fleet. There was a large variety of responses, and not all answers were included. Instead, the three major alternative gear types plus responses by tuna fishermen are shown in the graph. As Figure 23 shows, responses varied among the different fleets. For example, the majority of New Hampshire vessels also fished for tuna, while those from northern Massachusetts lobstered. In southeastern Massachusetts, the majority of vessels also used hook gear, while those from Rhode Island lobstered. These results indicate that gillnetters are often very opportunistic, and will switch to other gear types when resource availability or market conditions warrant.

Marketing Methods

Figure 24 shows the breakdown of marketing methods for gillnet vessels by fleet. The two major methods reported were sales to dealers and auctions. Dealers buy from vessels at dockside and subsequently sell to wholesalers and processors, who then supply the retail market. This category also included fish that was trucked to major markets, such as the Fulton fish market and sold on consignment. At auctions, fishermen may realize

higher prices, by selling directly to wholesalers and processors. Often, fish can command a premium price at auction depending on quality and freshness. The auction in Portland, Maine is one such place where this occurs.

As Figure 24 shows, the majority of gillnet vessels sell their catch through dealers. The exception was for southern Maine vessels where the Portland fish auction is located. Reliance on dealers could be expected for many gillnetters as they are located at some distance from major fish markets in New England (New Bedford, Gloucester, Portland and Point Judith). Transportation costs probably discourage marketing of fish through auctions in most cases. Alternatively, these vessels could be supplying local fresh fish markets and may be able to obtain a higher price by selling to a dealer.

Total Number of Gillnet Vessels

Although many vessels were surveyed, concerns were raised about whether some gillnet vessels were missed. In order to address this issue, vessel listings were obtained from the Northeast Fisheries Science Center's (NEFSC) weighout database (WO) and the sea sampling contractor, Manomet Observatory (MO), and compared to the listings for the present survey. Subsequent to the original analysis, vessels which were part of the Marine Mammal Exemption Program (MMEP) were also included.

Until June 1994, the WO was a voluntary system which

collected data on species and value landed by vessels at the point of first sale to dealers. These data were often supplemented by interviews with vessel captains to gain additional knowledge about fishing areas and time fished. Ideally, this system should allow one to determine the number of gillnet vessels and their fishing patterns. However, because the system was voluntary, and because of manpower limitations in the Fishery Statistics Investigation, it didn't always contain a complete census of a vessel's activity. This problem was often compounded by dealers who combined trip information from one or more vessels onto a single weighout form or who sometimes refused to furnish information. Aggregation problems tended to be greater among the gillnet fleet than the mobile gear fleet because many gillnet vessels land in small, remote ports where port agents visit only once or twice per month. Some trips were missed entirely in such situations. For these reasons, determinations of numbers of gillnet vessels based on WO files therefore likely resulted in underestimates of the true number of gillnet vessels.

A new system of mandatory reporting for dealers and mandatory logbooks for vessels replaced the WO in June 1994. Dealers are now required to report the amount of fish bought from each vessel and captains required to fill out trip logs which are submitted monthly. In theory, this system should capture all vessel activity and allow managers to determine the extent of gillnet activity and number of vessels deploying the gear.

However, a vessel which fishes exclusively in state waters without any federal permits and sells their catch to either other vessels, or to a dealer which doesn't have a federal dealers permit would not be required to submit trip logs. This means that bait gillnet vessels may not have their activity captured by the mandatory reporting system.

Manomet Observatory (MO) is the contractor responsible for placing observers on gillnet vessels to document incidental take of marine mammals. MO, therefore, maintains extensive contacts with industry and listings of all gillnet vessels contacted in New England ports. This database is used to select vessels for carrying observers.

The Marine Mammal Exemption Permit (MMEP) database included vessel information for those vessels registered under the MMEP program. All vessels fishing with sink gillnet gear in the Northeast Region were required to obtain an MMEP permit, at a cost of \$30 per year, and to submit logbooks documenting fishing activity and marine mammal takes. Thus, a complete census of gillnet vessels and their activities in the Northeast Region should be available from this data source.

During 1990-1992, 468 vessels were included in the survey database, 498 vessels in the MMEP database, 345 vessels in the WO database and 262 vessels in the MO database. Because of the differences in numbers of gillnet vessels found in the various datasets, concerns were raised about their completeness, and accordingly as to the adequacy of available information for

planning sea sampling coverage. As stated previously, the MMEP data was not part of the original analysis, but are presented here for comparative purposes.

Table 3 shows the results of a comparison between listings of gillnet vessels obtained in the New England gillnet effort study and listings of gillnet vessels obtained from vessel weighout data files, Marine Mammal Exemption Permit files and Manomet Observatory files. In order to reconcile these differences, a workshop was held in February 1994, at the NEFSC in Woods Hole, Massachusetts to review these data sets which was attended by NEFSC and Manomet Observatory personnel. Representatives from the NEFSC included members of the Statistics Investigation, Economics Investigation, and Marine Mammal Investigation. Vessel lists were generated which showed differences between databases by state. This gave NEFSC survey personnel from each state a compilation of the vessels in their area of responsibility for which there were questions. Discrepancies were discussed among workshop participants and additional information from the federal permit database was used as necessary. Results showed that coding errors existed which accounted for the majority of differences between the databases. For example, 41 vessels were coded as gillnetters in the WO system which in reality used another gear type. Additionally, surveying in 1992 was not completed meaning there were some vessels which still needed to be surveyed. Following reviews of information available to workshop participants, and comparison of

all vessel lists, it was determined that there were 343 commercial gillnetters fishing in Maine, New Hampshire, Massachusetts and Rhode Island in 1992.

Although comparison of vessels in the MMEP files with the other databases wasn't part of the original analysis, subsequent work has shown that there are a large number of vessels in the MMEP database which do not appear in other databases. This may have occurred for several reasons. For example, many owners appear to have registered their vessels under the MMEP program simply to preserve their right to fish with gillnet gear in the future. There may also be vessel coding errors which have not been identified. Implementation of mandatory reporting will provide an opportunity to examine vessels captured under both the new mandatory reporting system and the MMEP program for consistency.

Summary

A field survey was conducted which collected information from 463 gillnet vessels. This total included 286 commercial gillnet vessels for which catches were sold in the foodfish market and an additional 182 vessels which used gillnets to fish for bait or for personal consumption. Among both commercial and bait vessels there were distinct seasonal patterns of fishing effort, which depended on geographic location. Bait gillnet vessels generally fished closer to shore for briefer periods than did the commercial fleet. The average number of nets deployed also varied among both commercial and bait gillnet vessels. A large percentage of the commercial fleet used other gear types besides gillnets during the year. Although most commercial vessels sold their catch to dealers, there were some who sold through auctions. This generally depended on the vessels proximity to major seafood markets and available auctions. Seasonal and spatial fishing patterns, gear configuration, alternative fishing opportunities and marketing methods all were found to vary by home port.

To assess the completeness of survey results, different vessel listings were compared in a workshop including NEFSC survey personnel and staff from the Manomet Observatory. Final tabulation showed there were approximately 343 commercial gillnetters fishing from New England states in 1992. This number may have fluctuated since that time.

The New England gillnet effort study was useful in identifying fishing patterns by area and season for different segments of the fleet, and for identifying discrepancies between different databases. With the initiation of mandatory reporting in the northeast region, the universe of gillnet vessels fishing should become clear. Additionally, comparisons between the MMEP data and the mandatory reporting data need to be made to check for discrepancies between the two databases. There may also be a need to collect additional data from those gillnet vessels which fish for bait or for personal consumption. Because their catch usually does not enter the market through traditional channels, there may be a need to survey bait gillnet vessels again in the future. Whether bait gillnet vessels inadvertently kill marine mammals is also unclear because they never carry observers. Further research is needed to determine the full extent of their gillnet activity.

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von Brandt, Andres. 1984. Fish catching methods of the world, 3rd edition. Fishing News Books, Ltd. Farnham, Surrey England.

Table 1. Number of commercial and bait gillnet vessels surveyed by area (fleet) in the New England Gillnet Effort Study in 1990 & 1991.

Area (Fleet)	Number		Totals
	Commercial Vessels	Bait Vessels	
Northeastern Maine	54	83	137
Southern Maine	33	60	93
New Hampshire	26	14	40
Northern Massachusetts	67	12 ¹	79
Southeastern Massachusetts	66		66
Rhode Island and Connecticut	40 ²	11	51
Total	286	182	468

¹ Includes all Massachusetts bait gillnet vessels.

² Rhode Island Only

Table 2. Number of strings and nets per string fished by commercial and bait gillnet vessels observed in the New England sink gillnet effort study in 1990-1991

Commercial:

Area (feet)	Strings				Nets/String			
	Min	Max	Mean	Standard Deviation	Min	Max	Mean	Standard Deviation
Northeastern Maine	2	8	4.8	1.1	1	21	14.5	4.3
Southern Maine	1	6	3.6	1.4	1	25	15.6	7
New Hampshire	3	8	5.1	1	4	20	16.6	5.2
Northern Massachusetts	1	15	7.2	3.6	1	35	11.2	6.2
Southeastern Massachusetts	2	12	7	2.4	1	22	10.3	4.2
Rhode Island	1	30	7.4	5.2	1	14	6	3.7

Bait:

Area (feet)	Strings				Nets/String			
	Min	Max	Mean	Standard Deviation	Min	Max	Mean	Standard Deviation
Northeastern Maine	1	5	1.3	0.7	1	5	1.6	1
Southern Maine	1	6	1.3	0.8	1	4	1.6	0.8
New Hampshire	1	4	1.7	0.9	1	10	2.1	2.4
Massachusetts	1	3	1.5	0.8	1	4	1.8	1
Rhode Island and Connecticut	1	4	1.3	0.9	1	3	1.3	0.7

Table 3 Differences in lists of gillnet vessel found in different databases for the years 1990-92

	Not In			
	Weighout	Survey	Manomet	Marine Mammal Exemption Program
In Weighout	-	196	200	167
Survey	275 (1)	-	260	243
Manomet	147	96	-	70
Marine Mammal Exemption Program	319	316	307	-

1. For example 275 vessels were located in this survey which did not appear in weighout data files for 1990-1992.

Figure 1. Percentage of commercial gillnet vessels active by month from northeastern Maine ports in 1990 and 1991

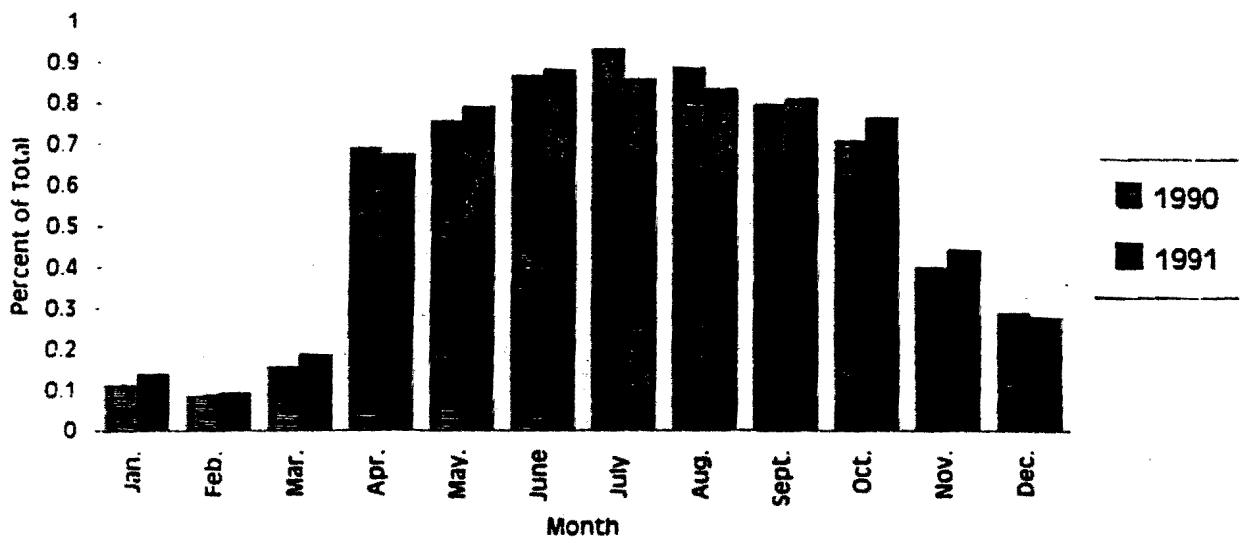


Figure 2. Percentage of bait gillnet vessels active by month from northeastern Maine ports in 1990 and 1991

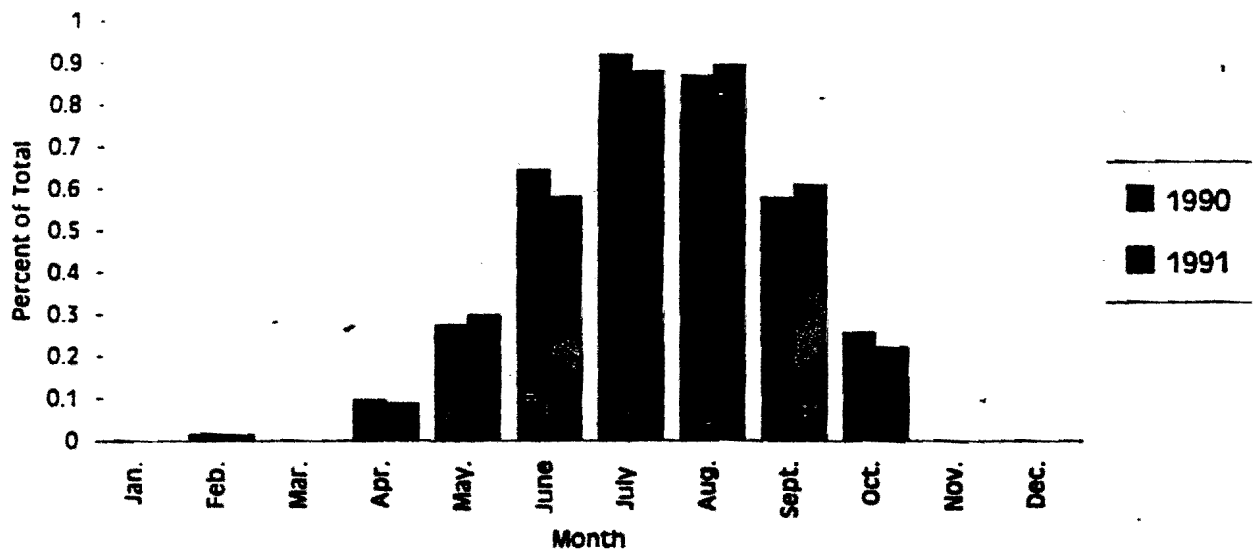


Figure 3. Percentage of commercial gillnet vessels active by month from southern Maine ports in 1990 and 1991

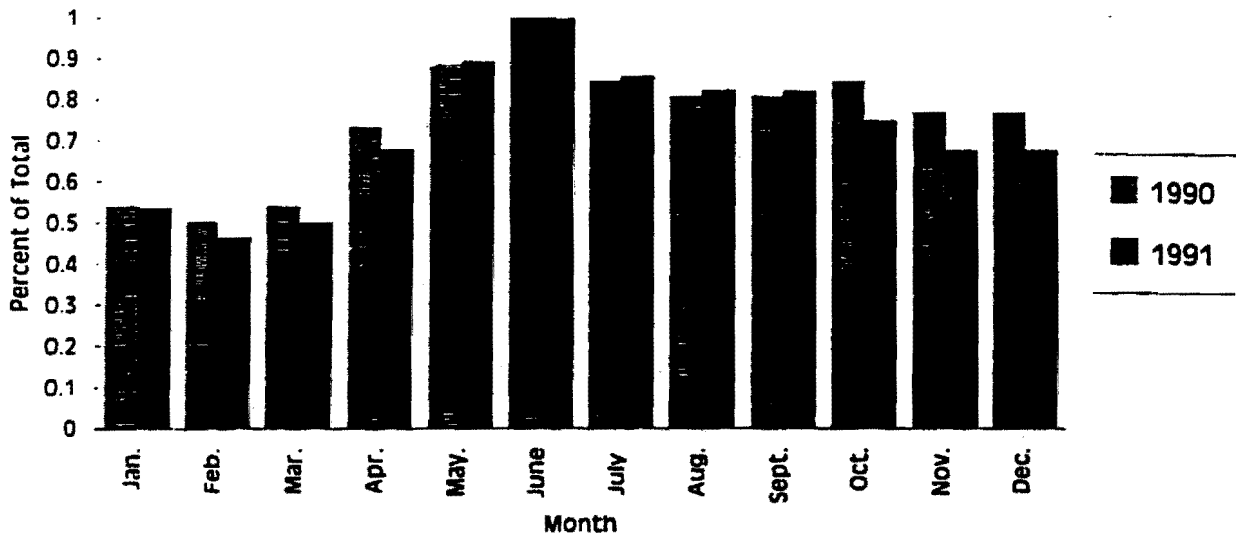


Figure 4. Percentage Of bait gillnet vessels active by month from southern Maine ports in 1990 and 1991

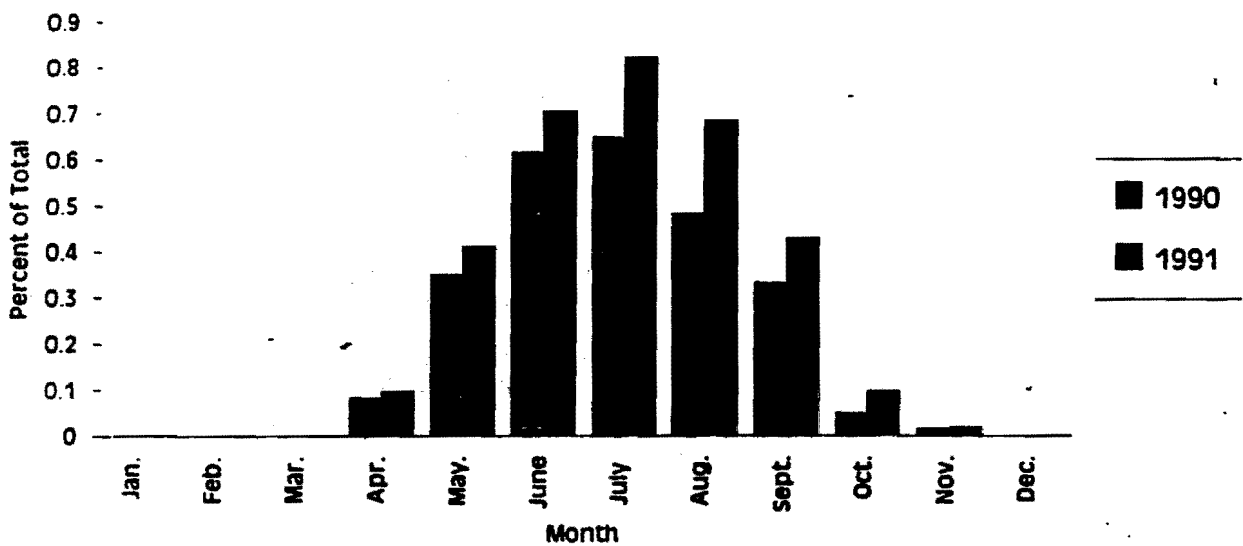


Figure 5. Percentage of commercial gillnet vessels active by month from New Hampshire ports in 1990 and 1991

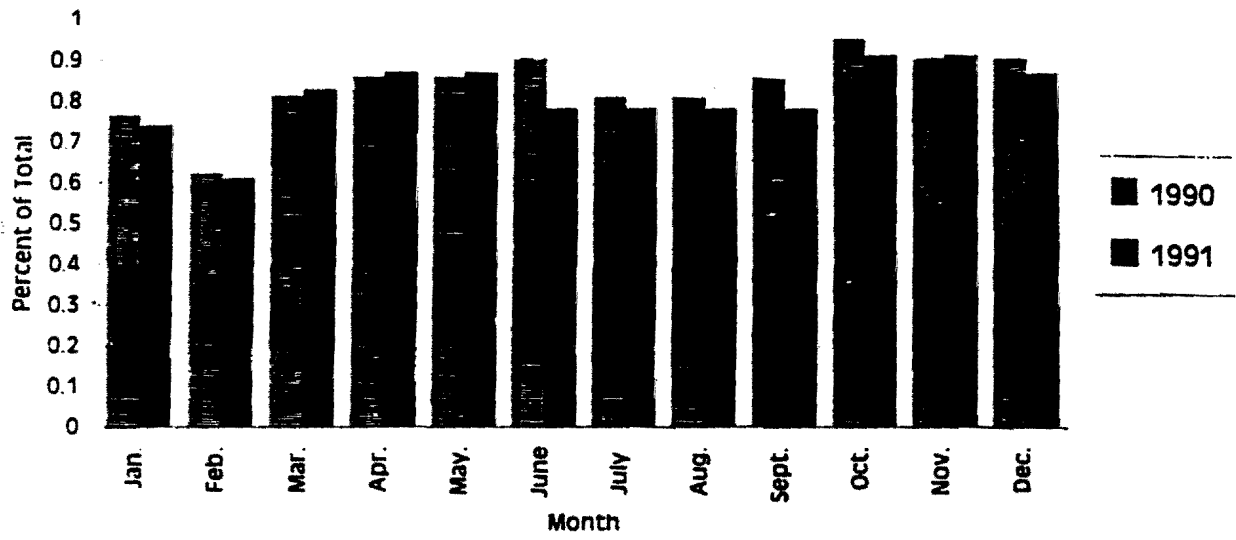


Figure 6. Percentage of bait gillnet vessels active by month from New Hampshire ports in 1990 and 1991

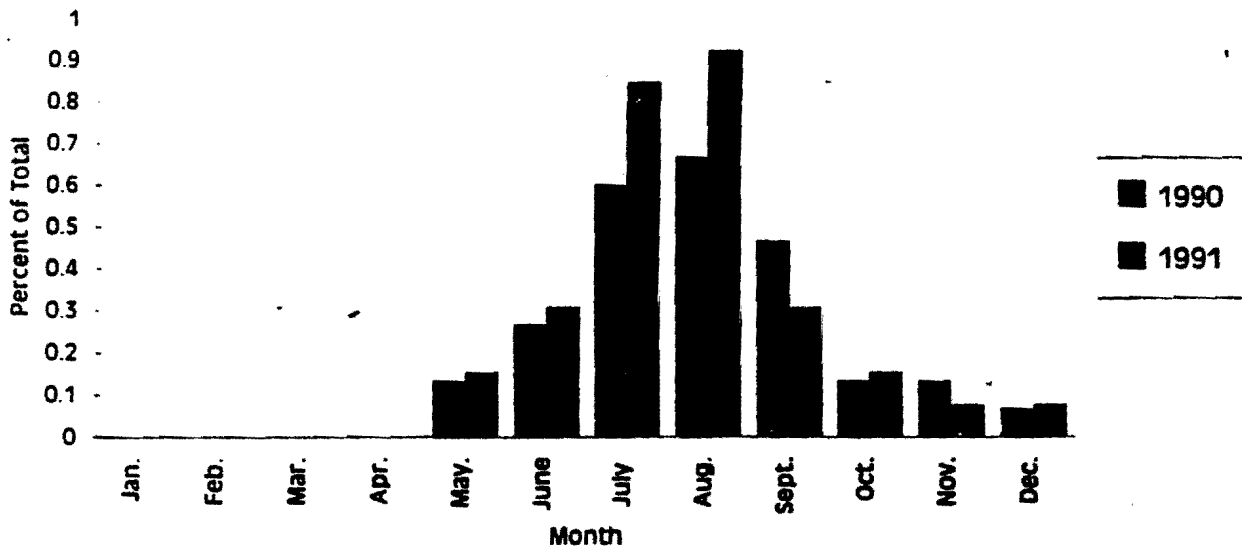


Figure 7. Percentage of commercial gillnet vessels active by month from northern Massachusetts ports in 1990 and 1991

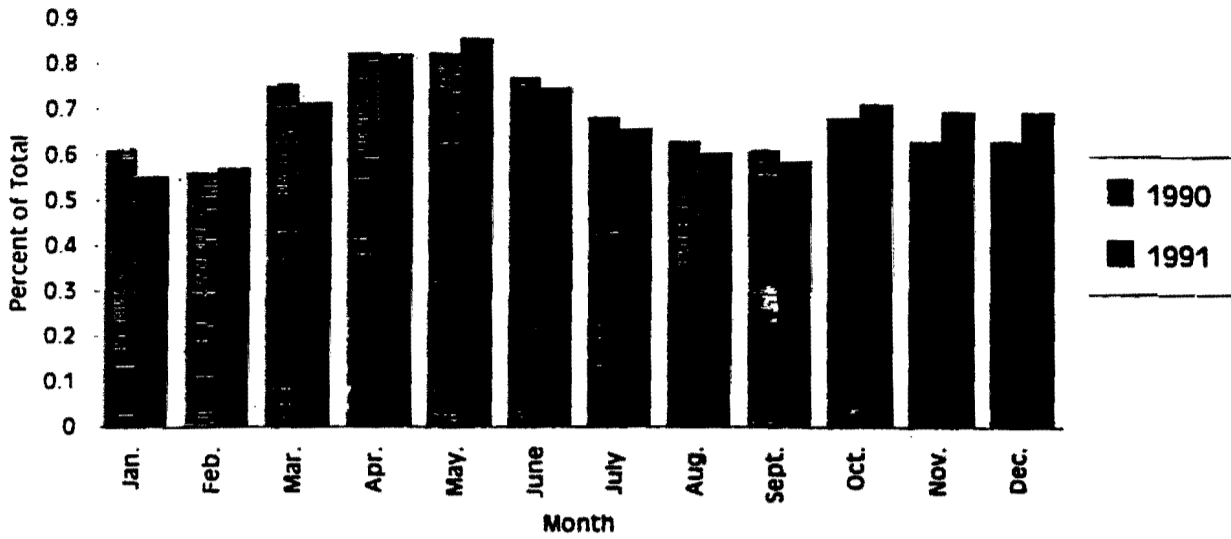


Figure 8. Percentage of bait gillnet vessels active by month from Massachusetts ports in 1990 and 1991

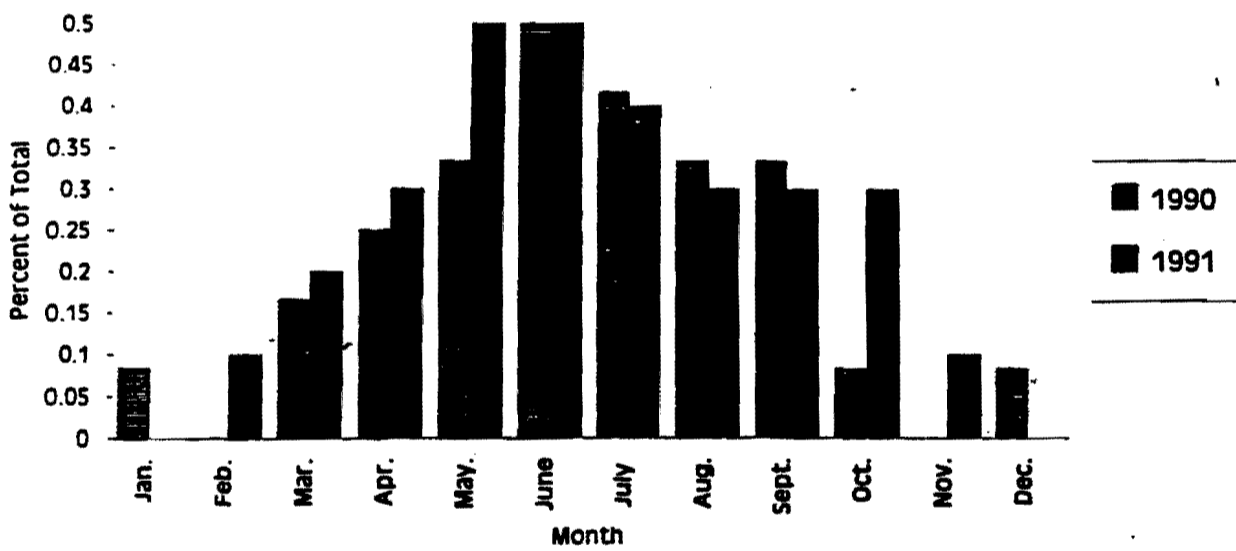


Figure 9. Percentage of commercial gillnet vessels active by month from southeastern Massachusetts ports in 1990 and 1991

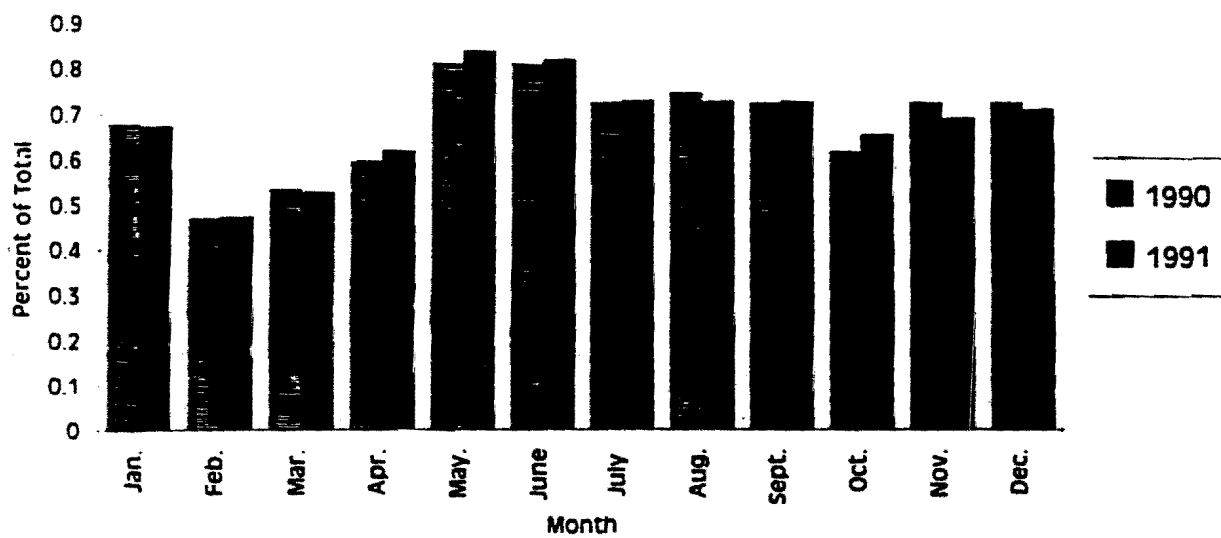


Figure 10. Percentage of commercial gillnet vessels active by month from Rhode Island Ports in 1990 and 1991

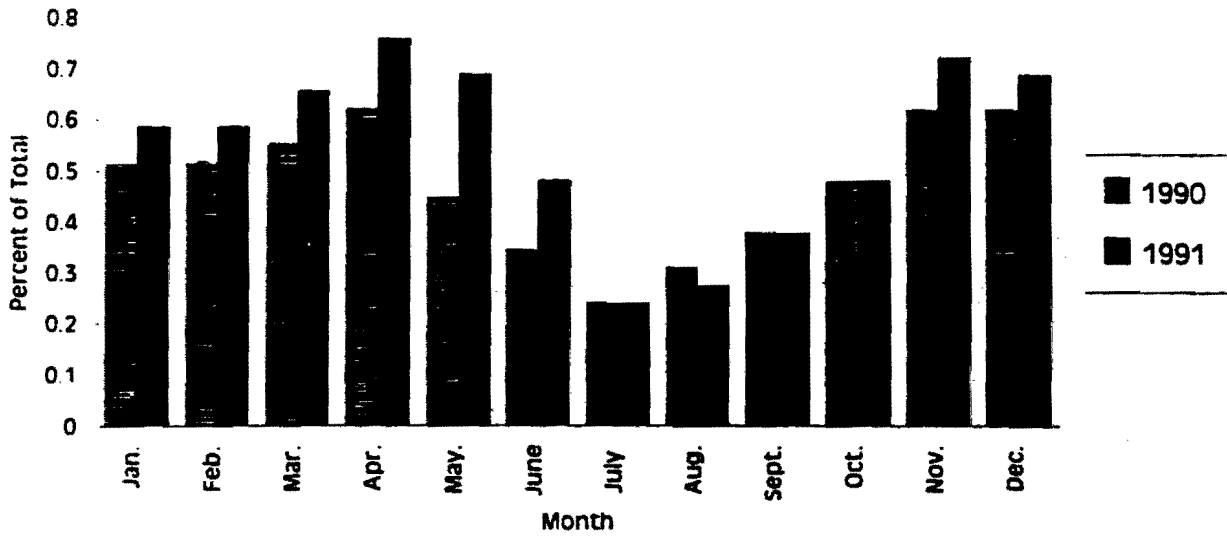
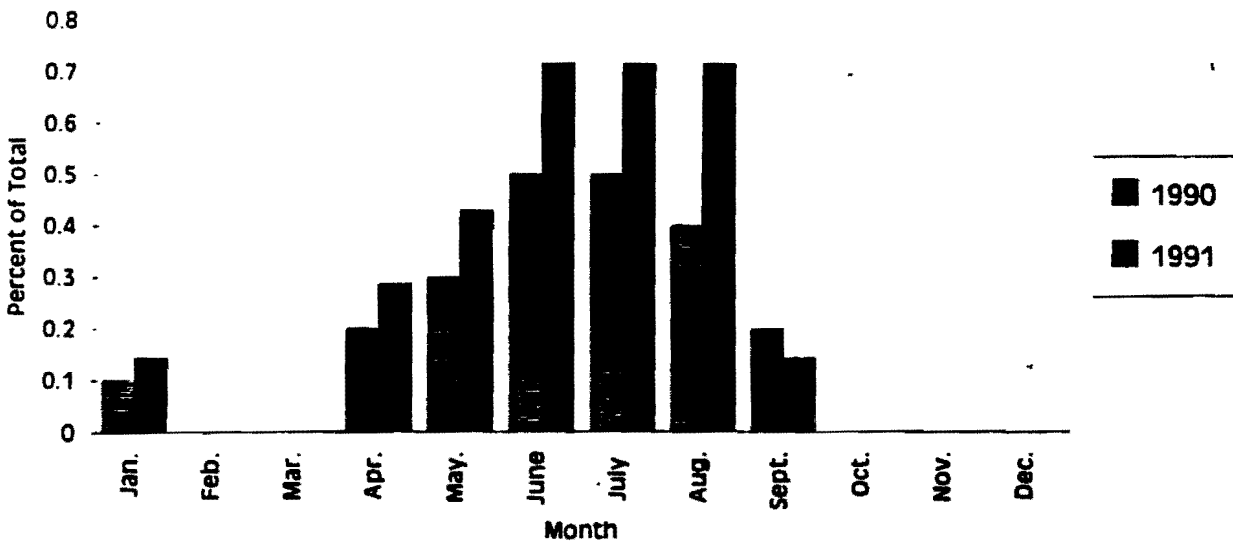


Figure 11. Percentage of bait gillnet vessels active by month from Rhode Island and Connecticut ports in 1990 and 1991



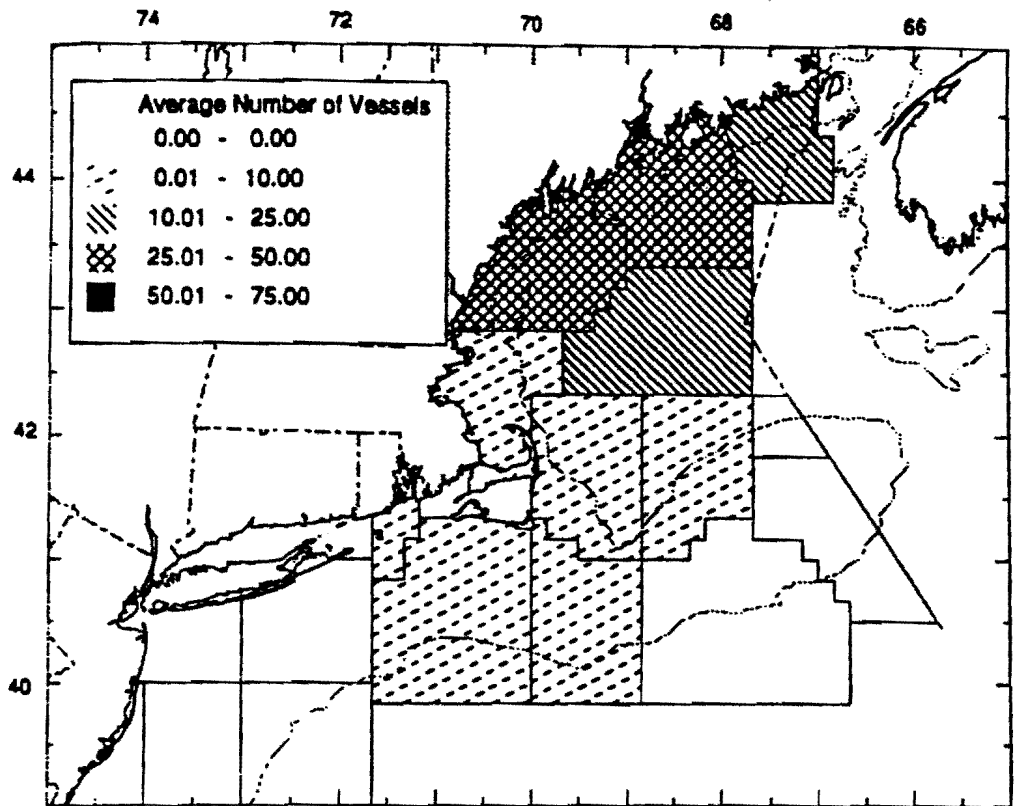


Figure 12. Areas fished by commercial gillnet vessels from northeastern Maine ports in 1990 and 1991

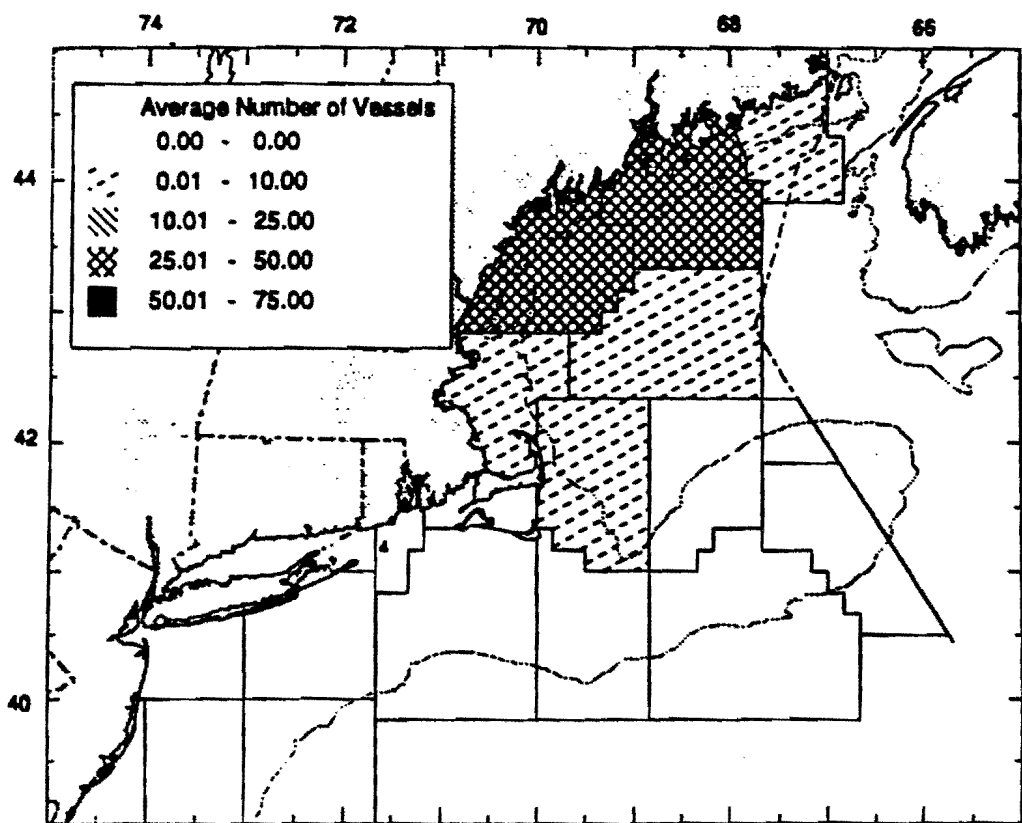


Figure 13. Areas fished by bait gillnet vessels from northeastern Maine ports in 1990 and 1991

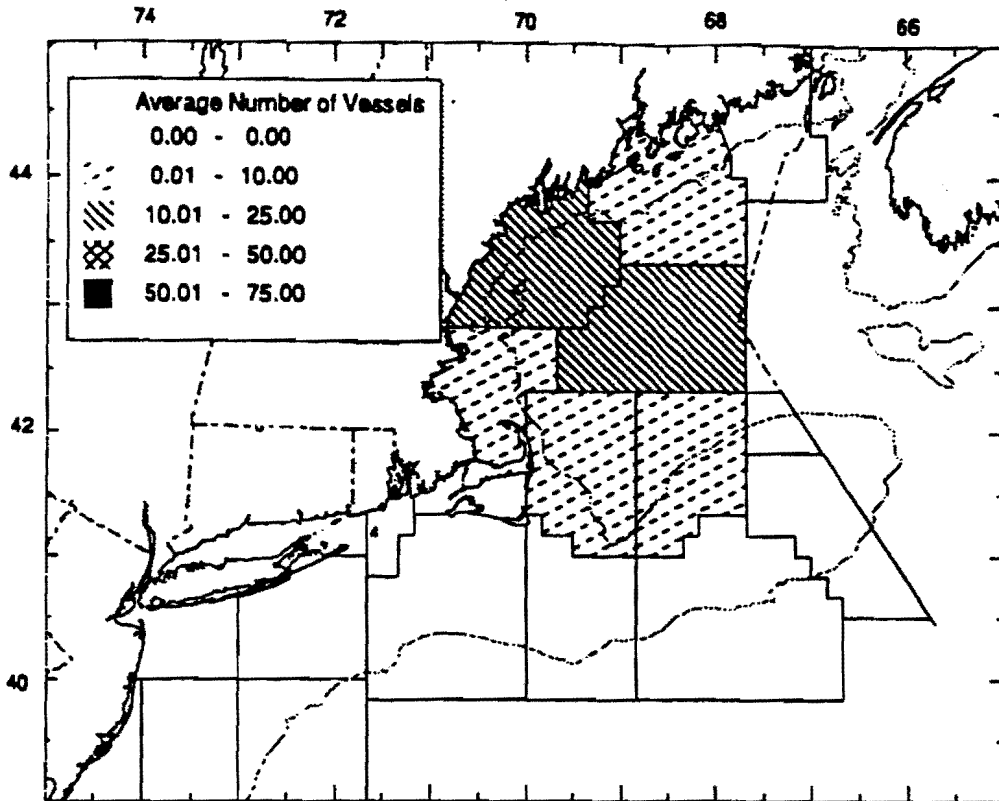


Figure 14. Areas fished by commercial gillnet vessels from southern Maine ports in 1990 and 1991

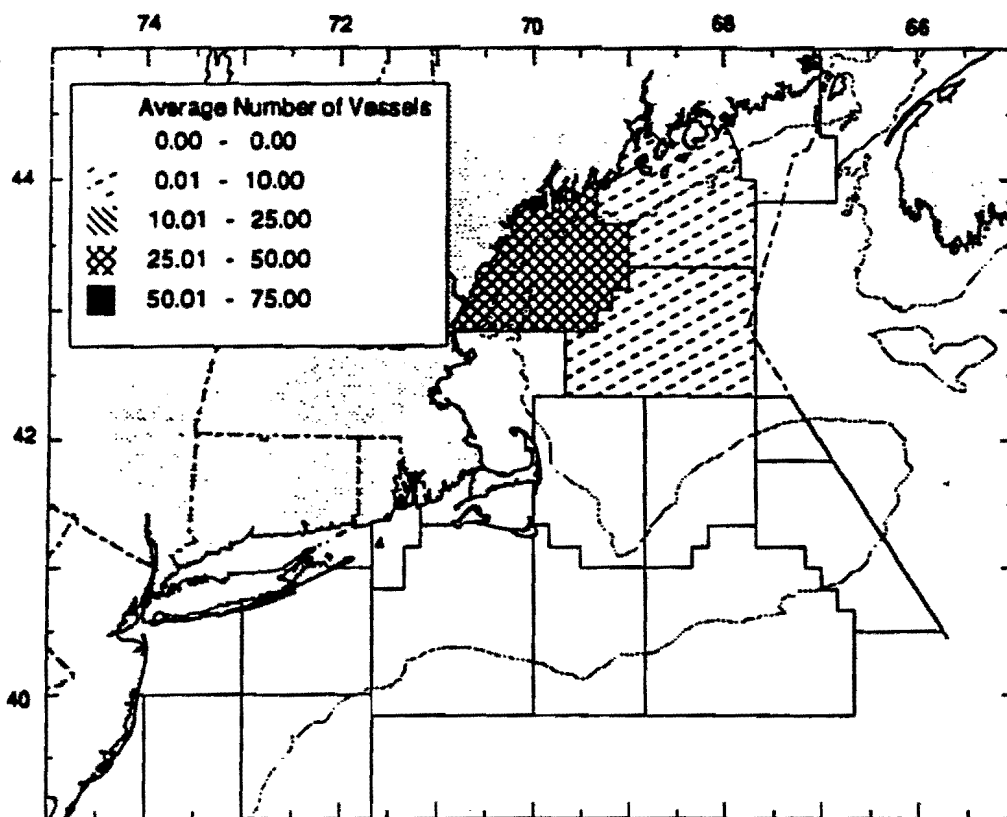


Figure 15. Areas fished by bait gillnet vessels from southeastern Maine ports in 1990 and 1991

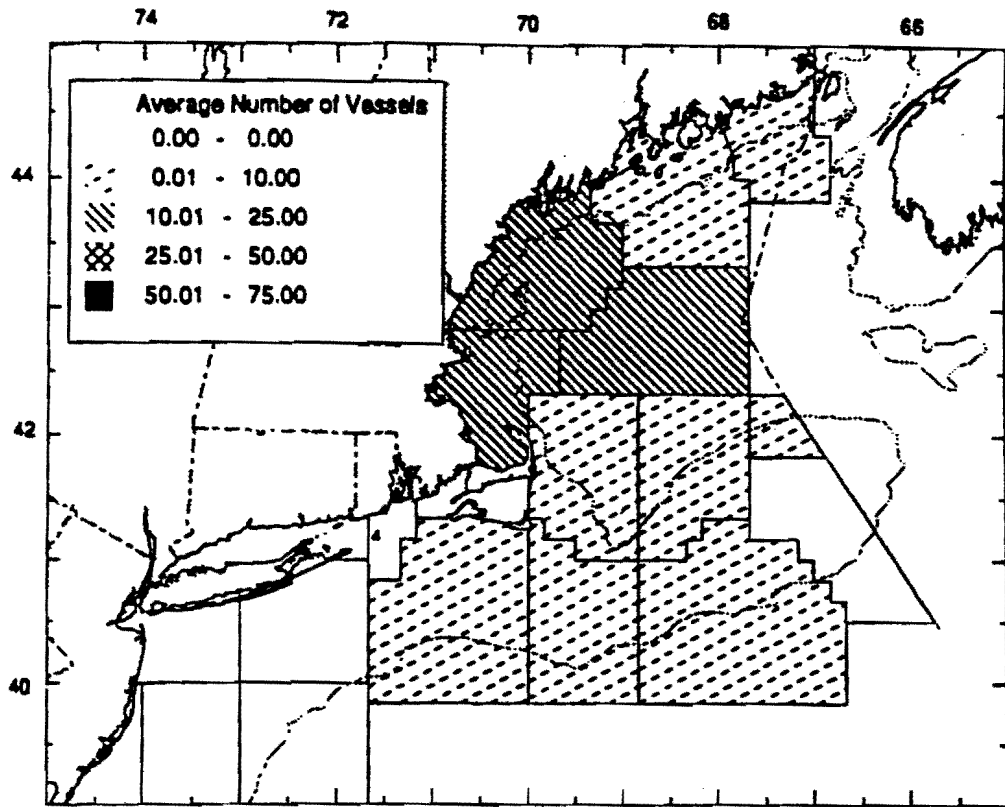


Figure 16. Areas fished by commercial gillnet vessels from New Hampshire ports in 1990 and 1991

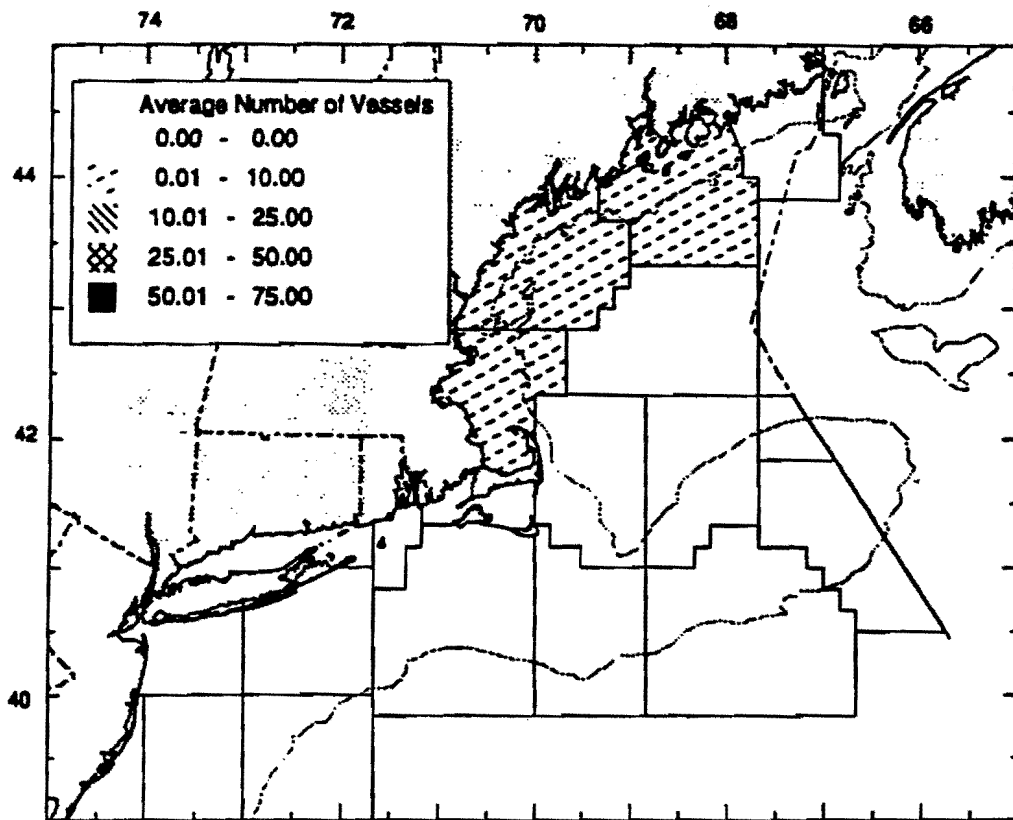


Figure 17. Areas fished by bait gillnet vessels from New Hampshire ports in 1990 and 1991

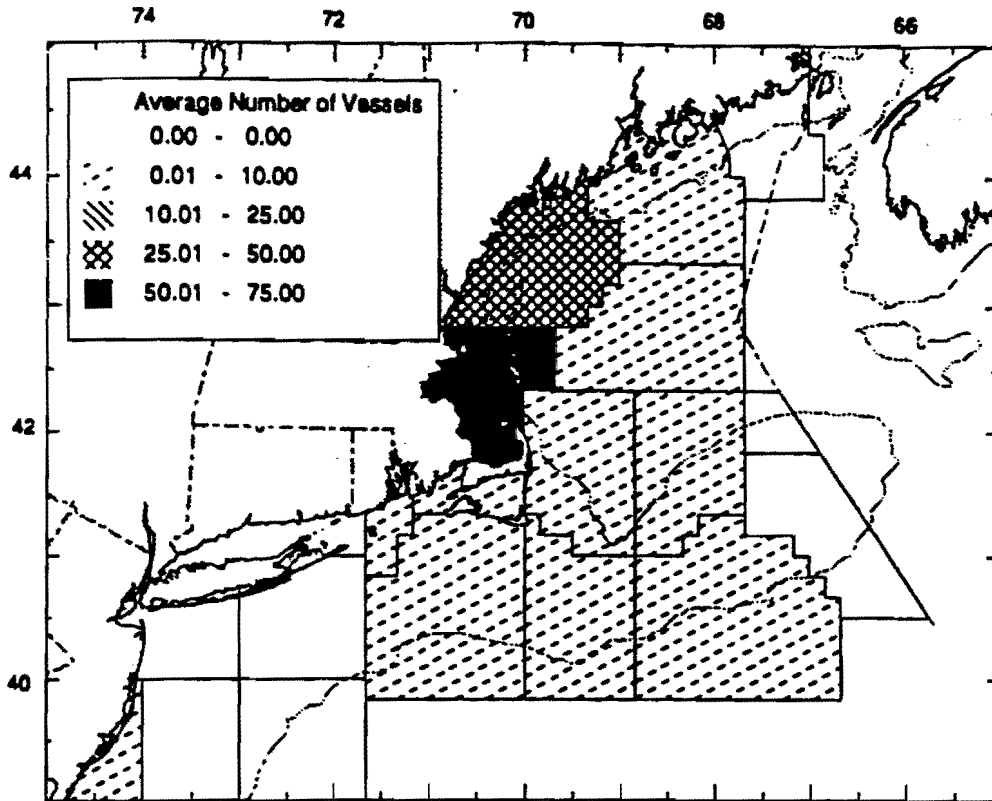


Figure 18. Areas fished by commercial gillnet vessels from northern Massachusetts ports in 1990 and 1991

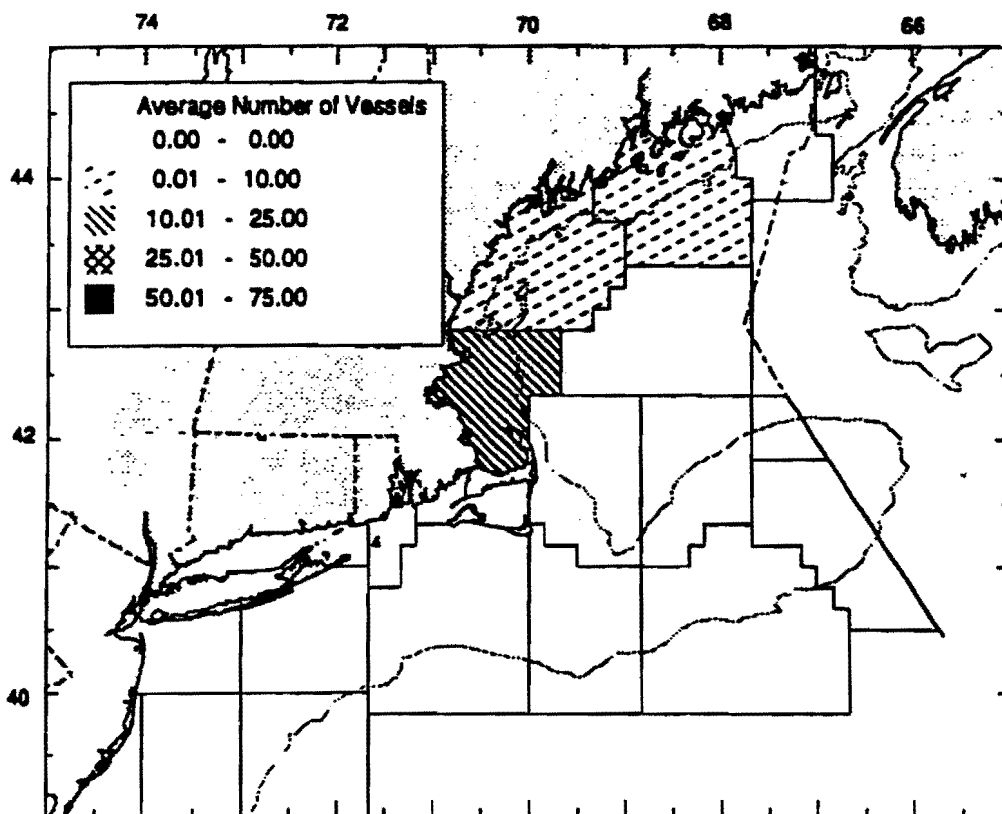


Figure 19. Areas fished by bait gillnet vessels from Massachusetts ports in 1990 & 1991

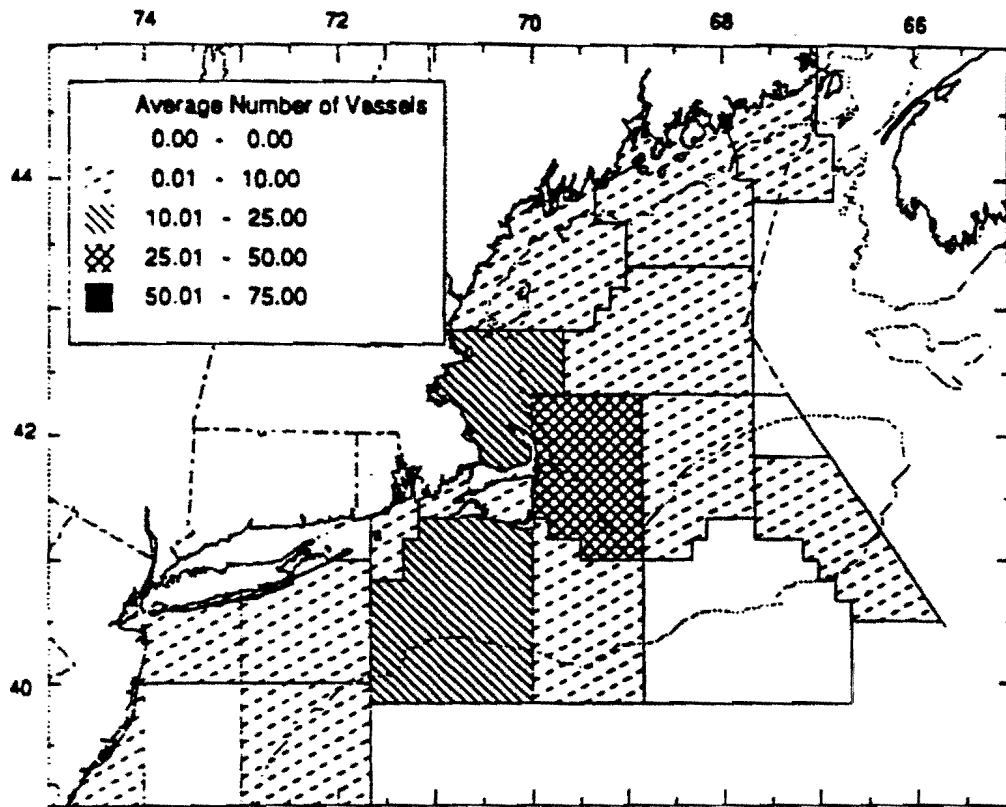


Figure 20. Areas fished by commercial gillnet vessels from southeastern Massachusetts ports in 1990 and 1991

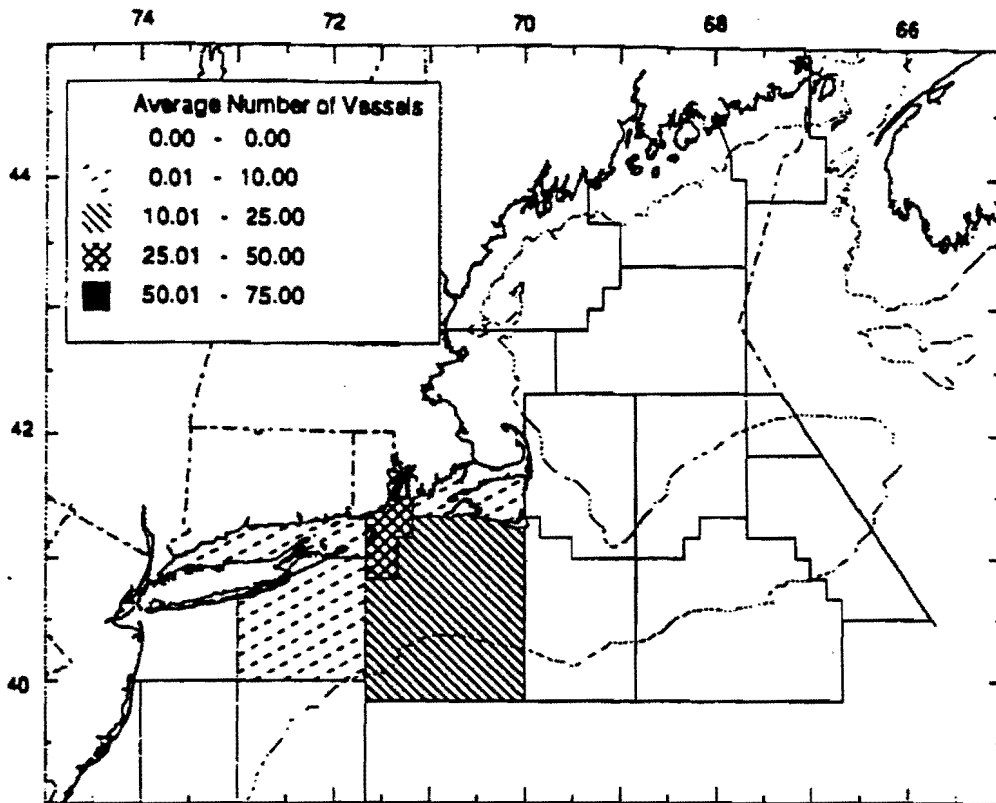


Figure 21. Areas fished by commercial gillnet vessels from Rhode Island ports in 1990 and 1991

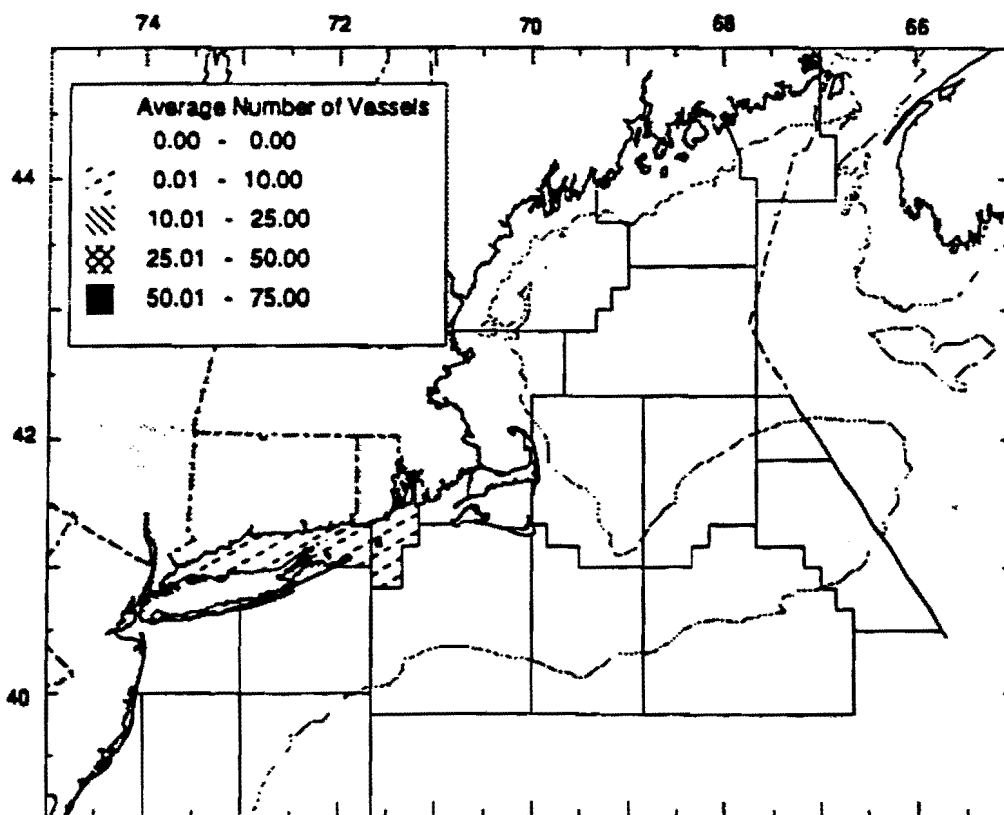


Figure 22. Areas fished by bait gillnet vessels from Rhode Island & Connecticut ports in 1990 and 1991

Figure 23. Alternative fishing gear and activities of commercial gillnet Vessels

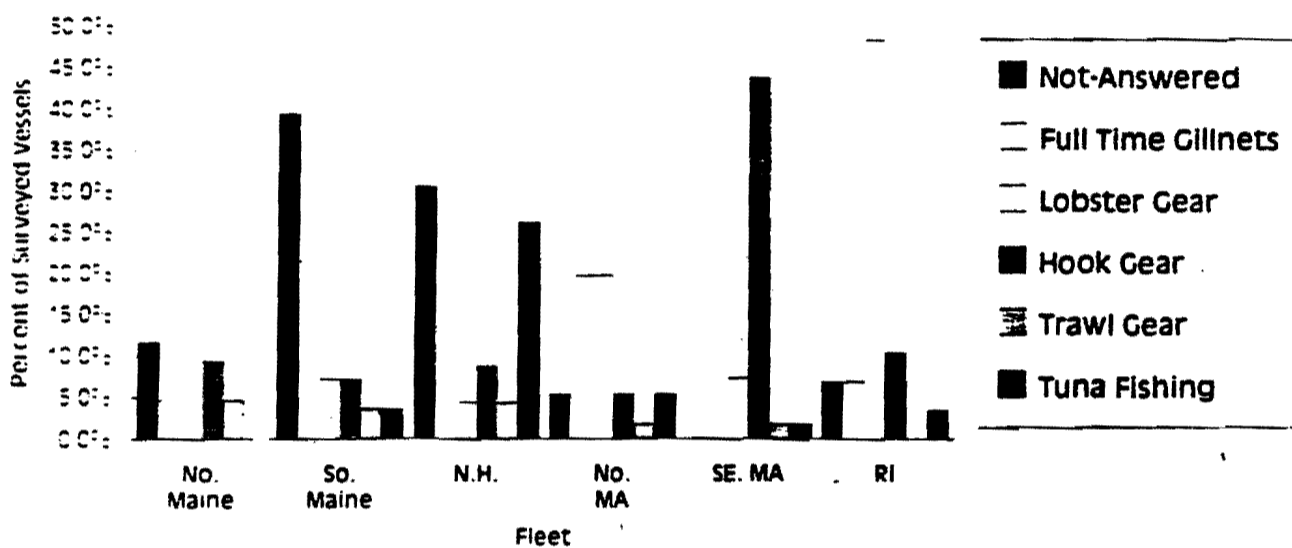
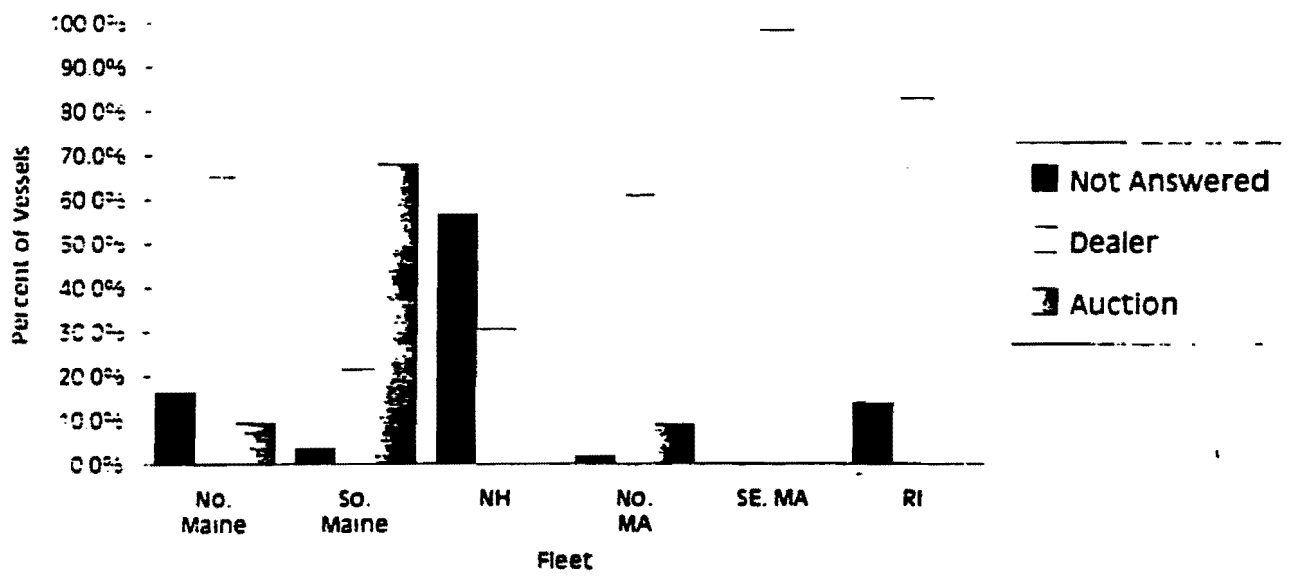


Figure 24. Marketing methods used by commercial gillnet vessels



II.

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

FRAMEWORK COMMENTS

**Providence Biltmore, Providence, RI
April 18, 1996**

Thursday, April 18, 1996

Marine Mammal Committee Report

Mr. Nelson: Among the items, one of them is an update on the harbor porpoise population and another is the use of pelagic gillnets in closed areas. We also discussed modifications to the northeast closure and had a discussion on right whales and the situation associated with them. Finally, there is one more point that needs to be brought up, which we did not bring up, but it probably will be important from the standpoint of who is doing what in the future and that involves what the Harbor Porpoise Review Team (HPRT) and the Council process is in comparison with the take reduction team when their plan goes into effect. So if we can get into that last, I will go into more detail on that.

For the first part, I will move along on this as quickly as I can, in your binder under Tab 11, there are a number of items one of which is the update on the harbor porpoise population. Roughly there is an estimate of about 74,000 animals with a confidence intervals running from about 40,000 to 109,000. Statistically, we would probably say that there is not too much difference from what we have seen from the last estimate back in 1992, which is about 6,000 or 7,000 (or 67,000) animals. There is a discussion in there also on how the survey was done and for those that are really interested in statistics, they can delve into that.

One of the issues that was brought to our attention was a request to look at the use of pelagic gillnets in closed areas. The committee was asked to look at the issue of fishing with pelagic gillnets inside of closed areas due to the harbor porpoise closures, and there are definitions listed on the memorandum of April 10 from Doug. What appears to be happening is that when we do have a closed area, we have been using the verbiage in our recommendation for sink gillnets. Sink gillnets as defined in the groundfish plan are "any bottom-tending gillnet which is a gillnet anchored or is designed to be or is fished on or near the bottom in the lower third of the water column." Apparently, what the National Marine Fisheries Service (NMFS) is doing is interpreting the definition to mean all the gillnets so that when there is a closure for marine mammals of harbor porpoise, then all gillnets are being closed from that area. We also received information that the porpoise bycatch has been documented in pelagic surface gillnets over the last several years and also that a humpback whale became entangled in a pelagic gillnet. In Amendment 7 to the groundfish plan, there is an exemption for pelagic gillnets from the

multispecies management measures.

What we were asked to do is to take a look at what would be appropriate for allowing gillnetting to take place there specifically for pelagic baitfish activities and we discussed that at some length and came up with an overall recommendation for the Council to consider. This is in your binder under Item 11, under Council actions, but I will quickly read it. Under Number A we recommended "that the use of pelagic and other gillnets be prohibited during the harbor porpoise time/area closures, as has been the case under Amendment 5, but with the following exception: vessels participating in bait fisheries may fish with a single pelagic gillnet only, with mesh less than the regulated size, not longer than 1,000 feet and not anchored to the bottom; the net must be tended at all times, that is, when in the water it must be attached to the vessel." This will allow not only for minimal exposure to marine mammals but also allow tuna fishermen to obtain bait to pursue their fishery.

I note in the Groundfish Committee meeting that there were some additional thoughts to this particular motion and I will quickly read that. Apparently there was a consensus that "the committee supports the Marine Mammal Committee recommendation on the use of bait nets in harbor porpoise closed areas with the modification that the nets be defined as also having floats visible on the surface and the height of the net is less than 1/3rd of the depth of the water." I think Priscilla has the general recommendation if you want to put that up on the board, but we do all have it in our binders if we want to refer specifically to the binders. With that, Mr. Chairman, I would open it up to discussions as far as modifying the allowance for bait gillnetting in the harbor porpoise closed areas.

Mr. Brancaleone: Is this a motion?

Mr. Nelson moved and Mr. Coates seconded:

that the use of pelagic and other gillnets be prohibited during the harbor porpoise time/area closures, as has been the case under Amendment 5, but with the following exception: vessels participating in bait fisheries may fish with a single pelagic gillnet only, with mesh less than the regulated size, not longer than 1,000 feet and not anchored to the bottom; the net must be tended at all times, that is, when in the water it must be attached to the vessel.

Mr. Coates: I would ask the motioner if he would be amenable to incorporate in the language, as was suggested by the Groundfish Committee to move things along and further clarifying the definition of a bait net.

The motion was clarified to read:

that the use of pelagic and other gillnets be prohibited during the harbor porpoise time/area closures, as has been the case under Amendment 5, but with the following exception: vessels participating in bait fisheries may fish with a single pelagic gillnet only, with mesh less than the regulated size, not longer than 1,000 feet and not anchored to the bottom; the net must be tended at all times, that is, when in the water it must be attached to the vessel and that the nets be defined as having floats visible on the surface and the height of the net be less than 1/3rd the depth of the water.

Mr. Coates: That might warrant some discussion, but that is an enforceable provision. It does require that the depth of the net be measured at the point that the net is, and that the water depth be looked at. Most fishing boats have depth sounders and it shouldn't be an overwhelming problem. Our only intent here was to make sure that this is indeed a net designed to take bait and not masqueraded as a bottom gillnetter.

Dr. Rosenberg: For clarification on the proposal, it says "the harbor porpoise time/area closures." As you know there is currently two types of time/area closures and this could be potentially confusing. We have used some of the time/area closures as groundfish time/area closures in the Gulf of Maine and we have used some for additional closures such as the mid-coast area for harbor porpoise only, in other words it only affects the sink gillnet fleet, although vessels are allowed to fish there experimentally with pingers. To clarify do you mean "for all closed areas" or do you mean for "harbor porpoise closures" which have nothing to do with the groundfish closures per se and what happens to things such as use of pingers and so on.

Mr. Nelson: We were referring to specifically to the harbor porpoise closures for the harbor porpoise only. We were not referring to it as groundfish measures. There was no discussion, no concern about changing anything else, that is we have no problem with the pingers being used on nets because they do seem to be successful. So we were just trying to address a group of fishers that apparently are taking place out there, who are not really participating in any program such as the use of pingers, and have some history of perhaps having some takes either of whales and harbor porpoises. This is a way to try to address that plus allow legitimate bait fish activities take place and if they are attached to the boat, we felt that there was not going to be a problem associated either from the harbor porpoise standpoint or any other groundfish issue.

Dr. Rosenberg: I think I understand the intent and agree with it, but I just want to make sure that I am really clear on at what times this exemption, which is an exemption for pelagic gear, would apply. For example, during the current mid-coast closure, which

has an experimental fishery which is a harbor porpoise closure, you could fish with a pelagic gillnet as long as it was in this manner. But for the downeast closure that happens in August, this is assuming that there isn't a change from the default closures. You could not because that is a groundfish closure as well, so you could not fish for bait with a pelagic gillnet during that time.

Mr. Martin: That is on the exempted list.

Dr. Rosenberg: Okay, so you could for both groundfish closures and for any additional harbor porpoise closures. That is what I am trying to make sure I understand.

Mr. Nelson: We were basing it specifically for the harbor porpoise closures because our time frame was looking at trying to protect the harbor porpoise. Not knowing what is going to happen with groundfish closures, we left that issue totally alone. So if the area is closed, if the Northeast area, for example, remains as it is and is closed during the month of August, I don't think there is any problem because groundfish is essentially exempting it but the harbor porpoise closure, I would think, have its own regulations or specifics associated with it which would restrictions that would cover that same area.

Dr. Rosenberg: Then after checking with Kathi, my understanding is that the same definition would apply whether you exempt it from a groundfish closure because you were a pelagic gillnet, this would be the definition of a pelagic gillnet, or if you were exempted from a harbor porpoise closure, this would be the definition. I just want to make sure that we don't have different definitions of pelagic gillnet in different situations. Phil is saying "no" and Kathi is saying "yes" so we better get it straight.

Mr. Haring: Originally I think the people who developed the pelagic gillnet exemption package were thinking in terms of the offshore drift gillnet fishery that bears no resemblance to these nets in size and configuration or whatever. Those were the exemptions in the areas, Area 1, Area 2, Nantucket Lightship, or wherever they want it to be offshore like that, and then the other type of pelagic gillnet for mackerel, herring, whiting, and a subset of that is a bait fishery, so I don't think that you could apply this definition to all pelagic gillnets in all areas with exemptions for the groundfish plan.

Mr. Kellogg: I think there is a fairly simple solution which is you prohibit all gillnets from the harbor porpoise area closures with the exception of the net that John just defined and I think that solves the problem. Then just leave the rest of the groundfish regulations as they are.

Dr. Rosenberg: I am not sure that I think that that clearly solves the problem. As long as I understand that the intent is that for a pelagic bait gillnet that this is how you are defining that kind of gillnet and that gillnet will be exempted from area closures for

either groundfish or harbor porpoise, then that's fine. There are other types of gillnets which are exempted for the offshore areas but there needs to be a clear distinction so that enforcement knows what the requirements are for different fisheries and so that it is very clear which circumstances you are exempting and which you are not. I am not trying to make this more complicated, but I can see that there is a potential problem if we had groundfish closures and people thought that they were exempted from those and it was not clear on the record that the intent of the Council was to exempt them from both types of closures.

Mr. Haring: I didn't remember seeing it in the motion, but during the discussion another parameter that was included was mesh size and that these would be less than the regulated mesh size. I don't know if that is still there because I didn't hear it come up in the discussion.

Ms. Alden: Again, just to make sure what we are all agreeing to here, my understanding of the groundfish rules is that pelagic nets are exempt. If we are talking about making the definitions consistent, are we ending up restricting the exemption to pelagic nets in the groundfish closures only to nets that are 1,000 feet, a third of the water column, etc.?

Mr. Martin: I think Chris' suggestion is the way to go about this and that is don't get into the business of defining pelagic gillnet in terms of what is being allowed in the harbor porpoise closed area. Just say "all gillnets are prohibited except a net that meets these requirements," without calling it a gillnet or anything else. They just have to meet these requirements. Then define pelagic gillnet for the other areas as to what qualifies for the exemption in the other closed areas.

Ms. Alden: And I can see why that's clear. The consequence of going that route may be that in harbor porpoise areas that have been drawn larger than they were at the time when we called them groundfish closures, when we decided to use them for groundfish closures additionally, there will be periods of time around those groundfish closures when in one portion of a closure you will be allowed to use any kind of pelagic gillnet and a little area or a little period of time when you are only allowed to use nets like this. I think that is okay but it is going to be one of those things that is confusing on the ground.

Mr. Martin: If the harbor porpoise area is larger, I don't think you have that problem because all gillnets will be prohibited in the entire area, which will encompass the smaller area.

Ms. Alden: You are absolutely correct.

Mr. Gibson: I would just ask John, where did you come up with the 1,000 feet number and do you know what type bait gillnets people are currently using? I am just trying to get a feeling whether this is a bigger net than what people are using now. It is my understanding that the nets, the ones that I am familiar with that are used out in the tuna bait fishery, are much smaller, but I don't know that for other types of bait.

Mr. Nelson: The information that came to us was that a 1,000 foot certainly would accommodate the various users that are out there. As you mentioned, tuna fishermen certainly are not going to use anything larger than that. So that's why we used that particular cutoff and it was recommendations from industry on what is actually happening out there and the types of nets they are using during these particular times already.

Mr. Anderson: It was only expressed in the downeast area where this would have the most effect because the month of August is currently the month in question and that there was a possible bait fishery, not only for the tuna fishermen, but for other lobstermen. We didn't actually know the size of it but we knew it was present and it seems to be relatively small. But as John said, we tried to encompass the whole bait fishery in this thing. We both realized that the tuna fishery, when they are looking for bait, is going to prosecute it with a lot smaller net. With this bait fishery that takes place downeast for the lobster fishery where they are going to try to go out and get their own bait, we tried to encompass that. So it does exist.

Ms. Fiorelli: I hope I am not stating the obvious or restating the obvious. The fix that is proposed in the April 10 memo applies only to the harbor porpoise closure areas because it is under the exception provision under the closure areas for harbor porpoise. It accepts these bait nets from the harbor porpoise closures wherever and whenever those porpoise closures occur. At the time of the committee meeting discussion, it had nothing to do with the groundfish closures even though there is some overlap there. So I just want to make sure that I am on the same wavelength as you are.

Mr. Gibson: Maybe Erik can answer this, what are they catching in these bait nets downeast? And are they in the top third of the water column where they are currently setting them now? Is that where they are fishing them?

Mr. Anderson: I would imagine that it could be anything from herring to poggies, with probably a lot of it in state waters. So maybe I am not sure what the applicability of it and I am not sure how much of it would be in the EEZ. But only with respect that we knew that it existed in a very small way. We wanted to account for that group of people that weren't represented there at the meeting that this was discussed. So I don't think that we really went overboard with the fact that stating that 1,000 feet is being over-excessive. It is still relatively small.

Mr. Coates: This problem came to light at the Marine Mammal Committee meeting where a NMFS staffer identified upwards of 200 individuals in the downeast closure fishing with various types of gillnets in various configurations for various kinds of bait. These range from nets that were not being tended and left out overnight. One group, that was represented by lobstermen, go back and haul their net and take their bait and go out with it. So what the committee attempted to do was to put a definition on what is an appropriate baitnet in these harbor porpoise areas so that there wouldn't be a take of harbor porpoise. This should eliminate a potential problem if not a real problem. Or a regulatory action would just eliminate them, so we are trying to accommodate the needs of the folks that legitimately are seeking bait while at the same time trying to get an appropriate definition on the net so it isn't this variety of gear that was being fished out there, probably in some cases illegally. This was the characterization that was given us so we tried to work with that. The Groundfish Committee further refined it because they were a little bit concerned about some of the aspects of the net hence the 1/3rd depth in the net flow requirement to make sure that these nets are indeed being fished on the surface.

Mr. Brancaleone: Further comments on the motion?

Mr. Martin: I wanted to reiterate a couple of comments that I made at the Groundfish Committee meeting when they discussed this proposal. One is that I think leaving the terms that this has to be a "bait fishery" in the definition of what is going to be exempted may be problematic in that you are going to have to define bait fishery. I am not sure you need that in there as long as you define the gear that is allowed. Does the Coast Guard then further have to determine that not only do they have the right gear but they are actually in a bait fishery which is a problematic term to describe. So I think you can do without leaving that term in there as long as you think your definition of the gear captures what you want to do. The other thing is, and I was not meet with any support on this when I brought this up in the groundfish meeting, is that you cannot have a net larger than the regulated mesh size which means that the Coast Guard goes out there, boards a guy who has a 6" net that meets all these definitions and they will have to haul them in because his mesh size is too large. I don't know if the reason for that is because a net larger than the regulated mesh size would never be used or that it is more problematic for the harbor porpoise, but I guess I am not understanding why that requirement is going to be in there because I think it sets up a kind of violation that would be hard to support. Maybe if the record could just show why that is necessary.

Mr. Brancaleone: This one doesn't have any mention of small mesh.

Mr. Martin: It mentions mesh less than the regulated size.

Mr. Nelson: Gene has a good point as far as the bait fish and defining that and I have

no problem if that clarifies it a little bit legally so that everyone is on board. I think that the mesh size aspect, the less than regulated size, is reflected of our intent that it was directed towards someone who wants to out and get some bait and if they are going to go after bait, they really are using a mesh size that is less than the regulated mesh. For that simple reason, that is why it is in there. There doesn't seem to be any reason for someone to use a large than regulated mesh size to get bait and if that is all we are trying to allow happen out there under these types of restrictions attached to the boat, limited size, etc., then it makes sense to try to give some clarity that it should be a small mesh gillnet out there.

Mr. Martin: One potential problem is when you have a groundfish area closure that is going to be smaller than the harbor porpoise area closure which is possible given some of the recommendations that are coming down. You are going to be able to possess groundfish in the segment that is not part of the groundfish closure which means, theoretically, you have got small gillnets out there that are likely not to catch them in the top third of the water column, I understand, but all of that is sort of problematic in what they are really doing with these gears. So you have got vessels out there, and I guess if they have smaller than the regulated mesh they can't have groundfish on board, but if they wanted to be out there with larger than regulated mesh fishing in the top of the water column, they couldn't do so.

Ms. Stevenson: I am not going to oppose this motion but I personally have a lot of concerns about allowing this mesh in a harbor porpoise closure area because intuitively it seems to me that these kind of nets would tend to catch more and not less harbor porpoises and I would hope that if we allow this exemption that everyone recognizes that it is an exemption and it can be taken back and that the people looking after harbor porpoises will keep track of this.

Ms. Alden: To Barbara's point, I have no doubt that this will be kept track of. I don't think that we were aware of the number of people with permits, or whatever, that NMFS was aware was involved in this. Our understanding of what type of fishery this is most prevalent when we have poggies in shore and you have lobstermen who go out and basically circle-set a pelagic gillnet around a small school of poggies up in a bay. So that is the primary thing. Also in the tuna fishery there are people who set nets such as this on their way out tuna fishing and Barry is right, they are usually smaller nets. That is our understanding of what this is. I circulated this proposal on the waterfront this weekend and I have not had a chance to talk to a lot of people, but my understanding is that aside from some inconvenience to tuna people who would rather set a net, go off fishing and come back and check their net so that the tending is an inconvenience, then this is perfectly fine. I just wanted to allay Barry's fear that we don't have the whole downeast area strung with gillnets right now.

Mr. Coates: It is my sense that the issue of this problem within the harbor porpoise closure areas with the definition that we put on this a lot of these netters will probably be deterred from netting like the folks that are now using this array of gear that was described to us, including bottom gillnets, untended nets, etc. So I think that a lot of the perceived problems are going to go away. I don't think that there are going to be a lot of people that will continue to want to net in these areas. A tuna fishermen is going to be in a situation if he has a 1,000 foot net hanging off his boat and six lines overboard. It is not going to happen. We had a discussion in our area where the people procure their bait, that is an early morning activity, then they put their net away and then they go off and fish for tuna. I think this is probably something we are trying to encourage rather than have this other type of situation taking place. We are probably going to hear from people that feel aggrieved and feel that we have taken away their so-called "bait fishery," but on the other hand as it was described to us, there are people out there that were setting these bottom nets for bait without any realization. In fact they were violating the current regulations and it was just a matter of getting around to them with regard to an enforcement presence. We have heard the indication that there was going to be a much higher presence both near shore and on the water this year, so what we are doing is hopefully forestalling some problems among a lot of people that are unaware that they are in trouble.

Dr. Rosenberg: Just to Barbara's point, yes, this is an exemption but the way that it is being proposed would be an exemption that could only be changed by framework. So you are going to institute it by framework, as I understand it, and then if you decided that it was not working or needed modification it would have to be by framework just so you don't have the impression that this is like the other exempted programs that are at my discretion. This is not one of those, the way that you have currently phrased it.

Mr. Nelson: Just to that point for clarification, I think we were looking at this as a comment to the Amendment 7 Final Rule so that it could be incorporated in that before the review period is up rather than going through a framework process at this time.

Mr. Gibson: John, does the motion say something about the depth of the net. I would be much more comfortable if we had some language in there that said that the nets must be set only in the top third of the water column. I think that the description of the net, as I see it, does not necessarily prevent somebody from putting the net down on the bottom.

Mr. Brancaleone: It's not up there but I understand that the maker of the motion accepted the perfection from the groundfish committee, which basically says what you just said.

Mr. Gibson: The specifications may be there but was there any language as to the fact

that these nets must only, or may only be set in the top third of the water column. I would like to see that in there because the specifications of the net, as far as I am concerned, does not in itself prevent...

Mr. Coates: No, somebody could hang a 50' lines off the floats...

Mr. Gibson: And they are going to do it.

Mr. Coates: I have no problem putting that in, but there may be some concerns by law enforcement because it then adds an additional aspect. But that is the intent, it is to keep the net on the surface to the top upper 1/3rd of the water column and to keep the net depth at such a level that it doesn't intrude down. Obviously common sense says that if you are not going to be fishing in as little as 30' of water, their net depth will not be more than 10'.

Mr. Gibson: So you wouldn't have any problem in just adding some language to the motion.

Mr. Coates: No, I don't have a problem with it. If that clarifies our intent, that's good, as long as it doesn't create a real enforcement problem, which it shouldn't. The specifications set up the basis for a pelagic net, so obviously if an enforcement officer comes upon a net with 30' lines attached to floats and a lot of weight on the net, I suppose they can deal with that.

Dr. Rosenberg: You are free to make any comment you choose on the proposed rule for Amendment 7 and I am not suggesting you do or don't make the comment. I didn't understand that that's what you are intending here therefore I will abstain on the motion since it is a comment on the proposed rule. My initial reading is that this is not a change you can make for the Final Rule of Amendment 7. You will probably have to do this by framework action.

Mr. Nelson: Based on the advice we have been given, I would say that this is then the first meeting of the framework.

Mr. Brancalone: I don't know if we can do that, John, because I don't think it was advertised as so.

Mr. Kellogg: I think you can do that as long as you understand that it goes to a proposed rule after the second meeting.

Ms. Stevenson: I just want to go back to the net definition for a second because the definition that came out of the groundfish committee said that the floats had to be on

the surface. As far as I know, the way that you measure a net is from the float line to the latline. So if it is from the floatline to the latline, yes they can have 50' between before the mesh starts but those 50' count in the no more than 1/3rd.

Mr. Marshall: John, are you changing your motion to move that this be instituted in the regulations through a framework procedure? Is that your intent?

Mr. Nelson: It is based on what we are hearing from NMFS that the other approach, which I thought we could do would not be feasible. We think it is something that does need to be addressed and if we have to do it through framework and if it is appropriate to have this as the first meeting of the framework, then we would like to do that. If it is not, we can do it at the next Council meeting. But we would like to get this addressed so that it clarifies it for people who are currently out there doing this and not realizing that they are illegal doing this.

Mr. Coates: The seconder is amenable to that change.

The motion was further clarified to read:

that the use of pelagic and other gillnets be prohibited during the harbor porpoise time/area closures, as has been the case under Amendment 5, but with the following exception: vessels may fish with a single pelagic gillnet only, with mesh less than the regulated size and not longer than 900 feet and not anchored to the bottom; the net must be tended at all times, that is, when in the water it must be attached to the vessel. Add specifications as per Groundfish Committee recommendation. Net must have surface floats and depth may not be greater than 1/3rd the depth of water in which set. Net may only be set in the top third of the water and this will be the first meeting of the framework action.

Mr. McCauley: Going back to what Andy said a while ago about this being done under framework and it would have to be removed under framework, when we talked about it in groundfish, I guess I was thinking that if this turned out to be some kind of a disaster and they started catching harbor porpoise, then it could be withdrawn quickly as most things like this. I know it is not necessarily experimental because people have been using it but nevertheless, if it turned out that it blew the whole harbor porpoise plan because of this particular allowance, then it seems like we need to have some trigger that allowed it to be withdrawn and if it is not going to be the Regional Director then we should incorporate some kind of language that does trigger the possibility of withdrawing this exception. I am not suggesting how to do it, but I think we should do it somehow.

Ms. Fiorelli: Just so you know what the upshot is of this discussion, then because pelagic gillnets are exempted under Amendment 7 and as soon as Amendment 7 is implemented, pelagic gillnets of whatever ilk, depending on how you define them, will be allowed in the harbor porpoise closure areas whether you like it or not, I am not sure. But that is the outcome if you are going in the direction that you are discussing right now.

Mr. McCauley: When you were thinking about what that pelagic gillnet looked like, though, are you talking about something for swordfish or something along those lines or were you talking about any size, any small mesh net.

Ms. Fiorelli: No, the discussion centered strictly on bait net fisheries. There was no contemplation of prohibiting pelagic gillnets that are used for swordfish, tuna and whatever. Large nets offshore, large mesh didn't have anything to do with it. These are menhaden, mackerel and herring nets and possibly whiting that were small mesh and that was all we were discussing. As it is now, they are not allowed under Amendment 5 in the harbor porpoise closure areas because they are prohibiting all gillnets. Under Amendment 7 they are exempting pelagic gillnets from all groundfish regulations, which means that they can be used in the harbor porpoise closure areas. So you have a disparity which is how we got to this business and we were trying to fix that by allowing those bait-net-only bait fisheries to go forward assuming that there is not much evidence, particularly in the downeast area, that there is any interaction with harbor porpoise and that we would allow those to go forward under the provisions mentioned in the motion.

Mr. McCauley: Again, I think that supports what I am trying to say is that if it is something that is different and as Robin said, "we will monitor it very closely," well it doesn't do much good if you monitor it very closely but you don't have a mechanism to stop it.

Mr. Haring: I think that we are not all clear on exactly what is the current rule and what is in Amendment 7. The current rule prohibits pelagic gillnetting in Area 1, Area 2 and the Nantucket Lightship. There are no other closed areas and therefore it is not an issue. The current rule does exempt pelagic longlining, lobster pot fishing, hagfish pot fishing, or pot fishing of any kind, and a couple of things like that. In Amendment 7 the only change is to the newly established groundfish closed areas. The other closed areas contain only the current exemptions. The list of gears includes weirs and stopnets and fike nets and pelagic longlines and pelagic gillnets applies only to the northeast mid-coast and Mass. Bay groundfish closed areas which were implemented. I am not sure how it is treated right now in the subsequent frameworks for harbor porpoise but however you define pelagic gillnet, I don't think they are going to be fishing inshore. Currently these exemptions only apply to the three new groundfish closed areas in

Amendment 7 and if it is not an issue you could continue to prohibit pelagic gillnets in there unless that gillnet meets this definition. It is not an issue with the other types of gear because they are not in there fishing.

Mr. Martin: Just to clear up something that I think I heard at the beginning of this discussion, right now pelagic gillnets are not prohibited in the harbor porpoise closed areas. It is only sink gillnets that are.

Mr. Haring: But they are prohibited from the other groundfish closed areas.

Ms. Fiorelli: I am so confused right now, but let me just say that when I talked to NMFS' staff when this issue came up, they said that they are enforcing it as if it were any kind of gillnet, pelagic or otherwise, currently under Amendment 5. Any sort of gillnet is prohibited from the harbor porpoise closure areas no matter what the definition is for enforcement purposes. That's what I was told.

Captain Howard: We also have small mesh Areas 1 and 2, Andy, that are open for small mesh fishing at the same time that you have closures for the harbor porpoise and then you have groundfish closures. So you have three areas within each other and it is very, very confusing. My question is "can you bait fish any other way than with this single net?" The answer is probably "yes," inside a small mesh area which is inside a harbor porpoise area which is inside a groundfish closure area. I think we need to send this back to the committee.

Ms. Stevenson: Captain Howard and I are almost on the same wavelength. I would suggest that we comment on the proposed rule and say that we do not want to allow, at this moment, pelagic gillnets in harbor porpoise closed areas. I don't mind them in groundfish closed areas, but specifically in harbor porpoise closed areas. Then let's send the question back to the committee and the next meeting would be our first framework and then we could address all of these issue.

Mr. Nelson: I thought this was pretty straight forward in the beginning and I still don't understand these problems. I'm not confused.

Mr. Brancaleone: Let's do this. Let's take a break and if you could caucus and then come up with a motion that you think will encompass what we are trying to do, then let's do it.

Mr. Nelson: I would like to separate this issue and I think that if we separate the issue from groundfish and marine mammals that there is a clarity associated with it that shows that there is indeed some logic to what we are proposing. Number one, the harbor porpoise closure areas are totally separate in legality from the groundfish

closures. We don't care what the groundfish closures are. They just happen to coincide because that is a fall back position. The reality of the situation is that we are not talking about groundfish here. We are not interested in them and we don't care what the definitions are for various nets associated with groundfish. I suppose this sounds like sacrilege but that is the way it is. We are not interested and we don't care. This doesn't deal with groundfish.

Having said that, this is dealing strictly with what recommendations we are coming up with that will protect the harbor porpoise and meet the goals of what the Council has stated its goals are. The restrictions that we have in the harbor porpoise closure areas are the restrictions that everyone has to abide by. They are probably going to be more restrictive than what might be in groundfish, if the groundfish closure coincides with it. Nevertheless, whatever the harbor porpoise closure restrictions are, that is what you have to abide by if you are fishing in that area. Therefore, we are merely looking that in a harbor porpoise closure area we do not allow any gillnetting except as allowed by the Regional Director, through the use of pingers, and the only other exception for gillnetting that we allow in the closed areas is for a gillnet that is going to be used for the taking of small fish and is has the other definitions associated with it, such as having 1,000 foot, only fishing in the top third, that type of thing.

I hope that that does help separate the two issues out because they are two separate issues and quite frankly, in my mind, we don't have to deal with the groundfish one at all. You can define anything you want under groundfish and deal with that when you come up with the closure areas associated with that. But for the harbor porpoise, we are saying no gillnets, except as allowed by the RD, and this simple allowance for a net that is going to be tied off the boat and has other restrictions association with it. I would recommend that the Council send that type of comment to the RD for Amendment 7 and also, in case he cannot deal with that, I would recommend that this be the first meeting of the framework to initiate this type of framework adjustment.

Mr. Coates: I almost hesitate to bring this up, but this surfaced after I had a couple of discussions with people in the audience, does this closure apply to all fishermen or people with federal groundfish permit permits? In other words, a non-groundfish permitted lobsterman fishing under the provisions of the lobster plan, can he set a gillnet in the harbor porpoise closure area?

Mr. Martin: Only in state waters.

Mr. Coates: So anybody with any kind of a federal permit is covered under this plan. I am trying to think of somebody setting nets for bait that might not be covered under the provisions of this action, and there is no one in your opinion, in the federal zone and in the federal waters of the harbor porpoise closure, there isn't anyone that wouldn't be

covered by this definition?

Mr. Brancaleone: They have to be fishing on the top of the water.

Mr. Coates: I'm just asking if there are any exceptions. Is there any fisherman fishing in the harbor porpoise closure areas that would not be subject to this restriction?

Mr. Martin: Not in federal waters. If the harbor porpoise encompasses state waters, then a vessel that does not have a federal multispecies permit is not subject to these restrictions in state waters.

Mr. Coates: But it does cover every fisherman fishing in federal waters.

Mr. Martin: Right.

Mr. Finlayson: I would like to address this motion from the perspective of the Harbor Porpoise Take Reduction Team. There was some discussion earlier about inclusion of a trigger mechanism which would cancel this exemption if takes exceeded a certain number. The reason is that by law the Harbor Porpoise Take Reduction Team's actions must meet potential biological removal (PBR) by a certain date. This is a very hard number. Presumably any takes in this bait fishery would be deducted from that, would count against that number, and would be subject to some unknown multiplier effect. So an observed take would be considered as some multiple of that which would be deducted from PBR. I don't think it is too much to say that meeting PBR in the future of the gillnet fishery in the Gulf of Maine is at stake. That's what is at stake here. I am concerned that if there is a harbor porpoise in the bait fishery that lack of a mechanism to immediately cancel this exemption, should there be a problem, would have repercussions for the whole gillnet fishery

Mr. Nelson: Certainly that point is well taken, however, the evidence that we had presented to the Marine Mammal Committee was the sense that this type of exemption is probably not going to be a problem for marine mammals, whereas if the nets were left unattended, that was the area that was going to be a problem. Further, I would point out that we need to look at what is the process between the Council and the Take Reduction Team. The Take Reduction Team folks are going to come up with their own plan and that plan, whatever the components are of it, will probably be the ones that we are going to have to abide by. So it doesn't matter what plan the Council might have in effect but I think that is something that we need to discuss later. But I think that Chris' concerns are addressed under that type of discussion and not here.

Captain Howard: The dates for the mid-coast area closure and the Mass. Bay closure are by us if we look towards Amendment 7. Let's say Amendment 7 becomes effective

June 1 or July 1, then you have to look at the Northeast Area closure which is August 15 to September 13. If the fallback position comes into effect July 1, that area is then closed to groundfish, correct? I know you don't care about it but under Amendment 7 that area will be closed to all fishing.

Mr. Nelson: That's right and we will deal with it.

Captain Howard: Then why permit the type of net you are describing if it won't be permitted under Amendment 7? Or will it?

Mr. Haring: It will.

Mr. Gibson: I had suggested some language a while back to go on the end of this motion about setting the net on the top third of the water column only and it was in there and then taken out somehow. I would like to see it put back in. What I would like to add back in was that "the net must only be set in the top third of the water column." Clearly that is the intention due to the specifications of the net and I would just like that reinforced.

Mr. Smith: My words were wrong that I gave so adding that is what I think people wanted to do.

Mr. Coates: May I suggest just one perfection, and I can't recall the details of why we settled on a 1,000 foot net but that is not consistent with current netting practices. I believe that fishermen set their nets and configurations at half nets or full nets and I believe that a half net is a 50 fathom length and the full net is a 100 fathom length. So I would recommend that we perfect this and add "to not more than 600 feet which conforms to one full net," rather than have fishermen having to cut their net. It might facilitate enforcement and there may be a fairly easier way to delineate a 50 fathom section rather than a portion of a 50' fathom section.

Ms. Stevenson: Does that now mean that you don't have to have the floats on the surface?

Mr. Gibson: You would have to have the floats on the surface.

Mr. Anderson: If you are going to change it from 1,000 down to 600, and it was structured off a 350 fathom net, so it would be 150 fathom that more or less reflects how the fishery prosecutes right now. If we are going to get down to that detail, let's just make the adjustment and call the question.

The motion was perfected to read:

that the use of pelagic and other gillnets be prohibited during the harbor porpoise time/area closures, as has been the case under Amendment 5, but with the following exception: vessels may fish with a single pelagic gillnet only, with mesh less than the regulated size and not longer than 900 feet, 350 fathom nets, and not anchored to the bottom; the net must be tended at all times, that is, when in the water it must be attached to the vessel. Add specifications as per Groundfish Committee recommendation. Net must have surface floats and depth may not be greater than 1/3rd the depth of water in which set. Net may only be set in the top third of the water column. This will be the first meeting of the framework action.

Mr. Dan Cohen: A couple of quick comments, and one is that this fishery is a real concern because it is being prosecuted in a time and area manner that would be expected to take harbor porpoise as being fished in some of the high abundance areas. I think Barbara's concern earlier was really appropriate, which is that if this is found to be a problem, that there be some mechanism for changing the framework. The problem is that there is no mechanism for determining the take in this fishery so right now it is not included in any of the take estimates. One of my questions is "what is the mechanism you are going to use to determine if this fishery is a problem?" If there isn't such thing then it becomes really important to have the framework in place in a way that it can be expected to minimize any impact.

I think the original thought of a 1,000 foot net tended was that you would be able to determine if a porpoise entered your nets and take the appropriate action. I think there are real concerns about the idea of seeing a porpoise hit your net 1,000 or 900 feet away. If you limit it substantially to maybe 300 feet, you would be in a much better position to say that "yes, a porpoise has hit the net and I can take the appropriate action." A net of this length can certainly be expected to take harbor porpoise but it cannot be expected to free an animal. As the Take Reduction Team has brought up earlier, if there is not a decision made that really seems logically to safeguard the animals, then what would probably happen is that this fishery is going to have to be given an allocation which then would be taken from the gillnet fishery and that may not necessarily be in the best interest of the gillnet fishery. Right now I would be real concerned that this measure does not provide adequate protection for purpose.

Mr. Brancaleone: This motion does state that the nets must be tended and attached to the vessel.

Mr. Cohen: I understand that but if the net is 1,000 or 900 feet long, I would really question whether that would be effective at the other ends of that net. With a 300 foot net, I would have no question about it; a 600 foot net I may have concerns but would

be able to accept it. But certainly you are getting at a length that would prohibit any action on the part of the fishermen tending the net.

Ms. Fiorelli: I just need to point out to the Council, and this is to Chris Finlayson's point, the Council needs to also realize before you go figuring out how you are going to deal with it, this plan is only going to be in place for another nine months, if the Take Reduction Team comes up with a plan. If they do not reach consensus, then we may have to look at this again. But this is only going to be in place for this season in the downeast area, which seems to be the place where the issue is at all. We are looking at nine months so I don't know how complicated you want to get about it at this point in time.

The motion carried on a voice vote with one abstention, Dr. Rosenberg.

Mr. Nelson: The next issue deals with the northeast closure. There was a mailing to the Council members which had a good amount of information in it as far as the takes associated with that particular area over the past number of years.

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

FRAMEWORK COMMENTS

Kings Grant Inn, Danvers, MA
June 5, 1996

Wednesday, June 5, 1996

Marine Mammal Committee Report - Bait Nets

Mr. Nelson: To refresh everyone's memory - to allow a certain type of bait gillnet out in the areas which would be closed for harbor porpoise gillnets. I believe at the time we had suggested to send that in as a recommendation for consideration by NMFS to see if they could get it in under the comment period. From what I understand, Friday, the Council was told that they were not able to get it in under the comment period. So, in order to move this along we would have to do it under frameworking.

Mr. Nelson moved and Mr. Coates seconded:

that the use of pelagic and other gillnets be prohibited during the harbor porpoise time/area closures, as has been the case under Amendment 5, but with the following exceptions: vessels may fish with a single pelagic gillnet only, with mesh less than the regulated size, not longer than 900 feet and not anchored to the bottom; the net must be tended at all times, that is, when in the water it must be attached to the vessel. Add specifications as per Groundfish Committee recommendations. Net must have surface floats and depth may not be greater than 1/3 the depth of water in which set. Net may only be set in the top third of the water.

Obviously a long motion, Mr. Chairman, but we had a lot of discussion on it, so on behalf of the committee I would move this motion and also point out that this would then be the first meeting of the framework.

Mr. Brancaleone: Discussion on the motion?

Dr. Rosenberg: We certainly need to look at this for a minute from an enforcement perspective for the Coast Guard and our enforcement people to see whether they could enforce such a provision. I could see potentially that may be difficult. But, to forewarn you there certainly is a question of enforceability with respect to this.

Captain Howard: Mr. Chairman, would these vessels have some type of a permit that

could be identified?

Mr. Haring: It depends upon what species they're retaining. If they're keeping whiting, they need, at this point, to have a limited access multispecies permit and after, if and when, the non regulated multispecies permit is approved they would have to have that.

Dr. Rosenberg: I don't know how you would specifically enforce this unless you know what vessels are the bait vessels. Mr. Chairman, even if they had a permit, which obviously would be another administrative issue, there are a lot of vessels in the area and it would be very difficult, I would imagine, for Captain Howard's people to track them and for our people to track them. How many will abstain on the motion? Because, I think those questions have to be addressed before we could move forward with a measure like this. It's not clear to me if anybody's thought about it.

Mr. McCauley: Your specifying that they have to be anchored to the bottom, 900 feet. Suppose they don't do it that way. What are you going to do to them. If they don't have a permit you can't take something away that they don't have. That's usually what happens. They take your permit. Or fine you or something like that. That's always the ultimate thing hanging over you that if you have a permit, they'll take it away if you create a violation. There's no teeth in it without it. I think those are pretty definite restrictions.

Mr. Martin: In response to Jim McCauley's statement. They would still have to have some type of permit if they're fishing in an area that requires them to have a permit. So, if they weren't abiding by restrictions they would be in violation of the groundfish regulations or the net restrictions in the area that they're fishing in and would be subject to violations as well as permit sanctions if they have a permit for groundfish, lobster, scallops, or whatever. Even tuna fishing. Whatever they're fishing for.

Captain Howard: As for enforceability, it can be enforced if I know the names of the vessels, where their home port is, etc. We have aircraft that fly over certain areas and when they're sighted then we can target to enforce these regulations. But, if I don't know who they are, and there isn't a specific list of these vessels that are allowed to fish in this manner, then enforcement would be very difficult.

Mr. Coates: This problem was identified by folks in NMFS I believe at the marine mammal meeting. I believe that NMFS permit staff identified the fact that under amendment 5 there are several hundred boats fishing illegally in the Gulf of Maine using nets of any configuration, that nobody really had a handle on, in areas of

harbor porpoise closures collecting bait. So, anything that the coast guard does will be an improvement over what's gone on in the past, or NMFS. Apparently there was a huge crack through which all these folks fishing in the lobster and tuna fisheries were able to go out and get their bait, as in the case of the tuna guys, looking for real fresh live whiting or herring and the case of the lobster guys looking for lobster bait. These were the two major categories identified. There are probably some bass fishermen fishing there. Oh no, they can't fish in the EEZ. But, people that would be fishing using bait. They're presumably people in the other fisheries and this is a means to an end. So what we did is we sat down and crafted what we thought would be an appropriate net for them to fish because it was identified that they were fishing all kinds of nets, including unattended nets overnight. Leaving them overnight and hauling them the next day. There was no way to get a handle. Here is our first cut in the way of making sure that they don't cause major problems in regard to taking of groundfish and perhaps minimize their potential for interacting with marine mammals. We are open to suggestions as to how to improve this.

Mr. O'Malley: A quick technical question. During these discussions there were lengthy references, repeated references to 350 fathom nets together. Does this requirement here for a single pelagic gillnet only contradict that?

Mr. Coates: No, I think that's three 1/2 nets. I believe. A half net being 50 fathoms total length times 6 equals 900 feet. That's the maximum allowed length.

Mr. O'Malley: If three nets are put together is that a single net?

Mr. Coates: As far as we're concerned, yes.

Dr. Rosenberg: I didn't mean to get into a discussion on the details of this proposal but specifically to raise the needs of addressing the enforcement concerns whether permitting or letters of authorization are needed, or other measures are needed. Technically, I'm not sure that the coast guard is carrying a lot of 900 foot tapes around. There has to be a simple way that they can determine whether the nets are being used properly or improperly. I'm sure that the committee will deal with that when they try to flush out this as a framework action.

The motion carried on a voice vote with one abstention, Dr. Rosenberg.

Mr. Coates: Other items regarding the harbor porpoise closures will be addressed under marine mammal as per the Chairman's request.

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

FRAMEWORK COMMENTS

Holiday Inn, Peabody, MA

July 17, 1996

Wednesday, July 17, 1996

Marine Mammal Committee Report - Bait Net Discussion

Mr. Nelson: The next recommendation dealt with the use of pelagic gillnets for bait in the harbor porpoise closed areas. The document has been handed out to the Council this morning and there are some on the back table. To refresh everybody's memory, back in the beginning of April this issue was brought up to the Marine Mammal Committee as an activity that was ongoing in the harbor porpoise closed areas and that under Amendment 5 it was not a practice that was being allowed. There were two concerns associated with this; one is that there was a possibility of harbor porpoise entanglement with the nets; but the other thing was that it was a consideration to allow a legitimate bait fish activity to take place even with the closure took place. For that reason, we debated a number of things, brought them forth to the Council. There were more discussions associated with it such as the nets being secured to the boats, how long and deep they would be and that sort of thing.

With Amendment 7 the pelagic gillnets were exempted from the multispecies measures. However, to avoid the harbor porpoise entanglement issue by these nets, the Council has been discussing what type of pelagic gillnets to allow in the closure areas. In the document there are two options, one is dealing with using a 300' net and the other one is dealing with using a 900' net. Recognizing the Council hasn't had a chance to review the document, I am wondering if it is appropriate to delay putting a motion on the floor at this time until the Council has had a chance to review it, either tomorrow or more probably the next Council meeting in August to bring this up for the final framework consideration. But I think it would be helpful if we could get some additional input either from the public, because I know the public was notified that this issue would be coming up, and get some input specifically on the 300' to 900' options and any other thoughts that they might have.

Captain Howard: Just a few comments about enforcement, one is that the length of nets is not enforceable at sea; whether it is in the top one-third of the column is not enforceable and whether or not it is anchored is not enforceable at sea. Whether it has surface floats is enforceable and if it is attached to the vessel, that is enforceable. Having said that, I think that the way we do our business now in enforcement, if we get enough information that there is widespread abuse in a certain area or if there are certain vessels that are violating this regulation, we can target those individuals or

target an area and do a large enforcement effort. So there can be some enforcement although it is not 100%. Also I think that additional information is needed for the Council before they can vote. How many boats are we talking about and can you catch bait in the top one-third of the water or may there be widespread abuse because most of the bait is in the bottom? I think those are the discussions the Council should have before they vote on this.

Mr. Amaru: I can explain one aspect that you asked, Paul, and that is that at no time is this net ever anchored but it always attached to the vessel and it is always on the surface of the water. So why would that be a problem to determine whether it is anchored at sea? It is always going to be attached to the vessel, that almost excludes it being anchored to the bottom. In fact, if you were going to check a vessel that had the net on it you would pull the net into the boat. It is a short net and it is not going to take a lot of time to do it and at the other end there should be no anchor or anchor line. Therefore it is not anchored. Whether or not it is attached to the boat, it is always attached to the boat or it is a violation. So at least those two aspects of the question should be fairly straight forward.

Ms. Stevenson: I just need somebody to explain to me why surface gillnets would tend less to catch harbor porpoises than gillnets on the bottom. I just don't get that.

Mr. Anderson: I think when this whole issue came up, we knew the fishery existed but there was no documentation of the fishery and we don't know how many people were in it. The answer to your question of whether entanglement takes place in the upper part of the water column or the lower part, I don't think there is any particular documentation that supports it except that the net is in the water and this is all structured for a time period that coincides with the closed areas as they are presently designed. So there is no information and if anybody who put this together can tell me that there is, it has been basically antidotal. That's the only this thing has been built on. Other than that there was very little knowledge of the size of the fishery, how it prosecutes itself or the number of takes, if any.

Ms. Fiorelli: Erik is correct, there is not a lot of information about why animals are not caught in the top third of the net. However, what we do know is that there are several surface gillnet fisheries along the Atlantic coast, none of which have a significant bycatch of marine mammals. There certainly has been occasional reports and those reports have been forwarded to NMFS. I believe most, if not all of them, are in Category 3 under the MMPA which has no specific requirements other than reporting so historically, fisheries prosecuted in that manner have not had a history of high bycatch.

Mr. O'Malley: The key element in this was the fact that the vessel was tending the gear and the question was how long is the net so that the guy fishing could see

whether there were porpoises in the area and get to one if it had a problem.

Mr. Amaru: The vessel stays attached to the net, it doesn't want to see the net destroyed. He goes to the end of the net which has the animal in it and releases it.

Ms. Stevenson: Is there a maximum mesh size associated with this? If it is a bait fishery then you would have a small mesh and the marine mammals would be less likely to get entangled I would think.

Mr. Brancaleone: This is small mesh.

Ms. Stevenson: But it doesn't say so in here.

Mr. Gibson: What kind of bait are they catching and what is the target bait species?

Mr. Anderson: From every indication that we have, we couldn't really identify it. It kind of tended to be a fishery that might exist. Nobody knows quite the size nor the volume. Like I said earlier, there is very little information on this fishery, if any at all, except for what is around antidotally. If it is anything, it is mackerel, poggies or herring. That's the extent of it and nobody knows the size and the nature of the fishery. Whether that is going to reflect how we vote on the motion, I am not sure, but this thing has been built on a tremendous amount of assumptions and hopefully to cure and reduce the bycatch of harbor porpoise.

Mr. Gibson: I guess I don't understand. Who is behind this? Who is lobbying for this exemption? There must be people who have come forward and said that we need to prosecute this fishery. It seems to me that we are not sure what they are going to catch yet if they are going to fish in 50 fathom of water, they are going to have a net that is 100' feet deep and anywhere to 300' to 1,000' long. I find this a little problematic given that we don't know what they are fishing for and that brings me back to Captain Howard's comment. If they are fishing for herring, who spend much of their time on the bottom, and these nets are supposed to be catching herring and they are only fishing the top third of the water column, something doesn't click here. Or if it does, it would seem to be an awful inducement to rig these nets so that they could fish down at the bottom where the herring are. Maybe someone knows more about this than I do, but I still don't understand what they are fishing for, where and why.

Mr. Coates: Just a little background, this issue first came to light about a year and a half ago when a permit person from NMFS identified the fact that in the array of permits that had been issued there were upwards of 300-400 permits that had been issued for the taking of bait. In a review of the information in the applications and survey work, it was revealed that what was happening was that there was a variety

of nets purporting to be gillnets being fished tended and untended, surface, bottom drift, anchored, etc., in the hands of people for the use of taking everything from lobster bait to tuna bait to striped bass bait, whatever. My understanding of the intent of this outcome with this proposed bait net would be to allow the taking of the so-called pelagic bait fish, such as mackerel, menhaden, herring, alewives, if possible, and we have these permitted fisheries in Massachusetts for inside harbor areas where people can get a permit to hang a net off the back of their boat to get poggies and things like that. The tuna fishermen are interested in whiting. Whiting aren't going to come to a net on the surface so that will be a problem, but I know that some of the tuna fishermen down our way like fresh whiting or even live whiting. So that may be an impact. My understanding is that this would be designed to take those migratory small pelagics such as the quopiads and the mackerels and things like that.

Mr. Anderson: Just getting back to something that is of your concern is that with the tuna fishery, since it is with mesh less than the regulated size, it is not allowed at all. I think we expressed our concern to a possible exemption for this fishery to the agency and I think it wasn't granted basically because there is zero information just because of the way that it is done. That kind of addresses your problem for the fact of how do you know whether there are nets on the top, bottom or that type of thing. Where you see this type of fishery with somebody with a quarter net or a net that is 25 fathom trying to get some bait for tuna fishing, there is no tolerance for them at all.

Mr. O'Malley: On the mesh size, on page 3 it does say that "mesh less than the regulated size." So the wording would prohibit a large mesh fishery. I think we may be dealing in the fairly near future with significantly more than the bait fishery. If the price of mackerel held at 14 cents throughout most of this winter, and market analysts are saying a straight 20 next year, it is entirely possible that somebody could make a living going out and getting 3,000 or 4,000 pounds of mackerel by this method of fishing. I would suspect we will be dealing with that pretty quickly.

Ms. Jan Anderson: I don't know if this is helpful or not, but I used to own a lobster boat and I have made and fished baitnets. The two fishnets I fished were 10 fathoms each, on the bottom. I have made nets that are 20-30 fathoms that sit off the bottom basically fishing for mackerel, but anything small that you can put in a bait net. I think that the size of this fishery is so insignificant when we are talking about gillnetting and gillnets that half nets being 300' long and fished in strings of 10 up. I would caution that yes, there could be a mackerel fishery that develops out of it, so if you are considering regulations for a baitnet fishery that can still allow lobster boats or tuna boats to fish for bait, then just limit the amount of nets that they can fish. Two or three nets is plenty for bait. Also the mesh is around 3" and the gauge is lighter. If I can help you in any other way or if you have any questions about it I'll be glad to help.

Mr. Rich Ruais, East Coast Tuna Association: Tuna fishermen are hoping that this exemption will go through. One of the most effective ways today of catching giant bluefin tuna is livelining herring or any other bait that you can get. The baitnets are very important for that. In the tuna fishery the bait nets are generally about 50' long. Somebody might string two together but that is the exception, most of the time they are about 50'. They are not attached to the boat; they are anchored; they are fished for a very short period of time. Typically the fishermen will get to the fishing grounds in the middle of the night, set the net for as short a period of time as possible, 50 to 20 minutes maximum, because the idea is to try to get live bait, they haul it back on board and then they move to their anchor ball. Erik was right, right now the fisherman is prohibited from doing that so we are hoping that the Council can act as rapidly as possible to put an exemption in place.

As far as tending, that isn't the current practice right now. It is a very small net and I can't conceive of a way physically that the fisherman could pull that off. But if there is a way that he could actually stay attached to the net, recognizing that it is only a 50' net, then I am sure that something could be worked out.

Mr. Gibson: I am not against this, I am just trying to figure out what they are targeting and the size of the net that is appropriate. Given the fact that you say that these nets are anchored on the bottom for a short period of time and that they are generally not tended, is this language here going to satisfy the needs of these people that are fishing in this manner.

Mr. Ruais: The nets are anchored to the bottom, but the net is not on the bottom. The net is actually fishing up in the water column. I don't know physically how they do it, but somehow they tie a line to the bottom. They identify where the herring is in the water column, which is typically what they do on the machine, and then they set the nets at that depth.

Mr. Gibson: Given that, is this language going to suffice for these people to continue? It doesn't sound like it will.

Mr. Ruais: I don't have it except for what I see on the agenda. What I see on the agenda actually looked as though that was adequate, but I don't have the language that you have in front of you.

Mr. Gibson: I don't have it right here, but it was basically a "floating net attached to the boat in the upper third of the water column." Are people going to be able to catch bait under this stipulations?

Mr. Ruais: If it is attached to the vessel, I don't know. The fact that it has to be floating in the top third of the water column, that may or may not be a problem.

Dr. Rosenberg: This is a fairly confusing discussion, maybe only to me, but right now under the regulations, pelagic gillnets are an exempted gear and this is intended to allow vessels to work with that exempted gear in closed areas because they are not exempted from the closed area provisions. So it is not true that you can't do this now, the question is whether you can do it in the closed area during either the harbor porpoise closures or certainly during the groundfish closures. So people can fish for bait, but they may not be able to fish for bait between September 15 and on within that closed area. I presume Rich or Jan or somebody else does want to fish within that mid-coast area during that time period because that is prime grounds for bluefin and I assume that is the issue. So it is working within the closed area, it is not a matter of not being able to fish for bait and there are other means for fishing for bait in addition to just buying it from a number of fishermen who make a living selling bait.

There are a couple of things that have worried me substantially in what people have said, such as that we don't have any idea how big a fishery this is in terms of number of people and there is not a lot of information about it, but we are going to exempt it. I understand what Rich said, but the net he is talking about is entirely different from the net described in this document. So I'm getting a little confused as to whether the provision is for the net described in this document within the closed areas, which is some fishery which we feel is appropriate for exemption because it will have no impact on groundfish or harbor porpoise during that period of time, or if we are talking about a different fishery. The needs here don't coincide with what people in the industry and the audience have been describing.

Mr. Anderson: Andy is right in that regard. This is considered very different than what Rich was requesting. If we are describing something here that is taking place within August 15 to September 15 in a downeast area, because that is the closure there, that is the only possible place I think that there would be any tuna fishery that coincides with this type of description. Other than that it doesn't really affect the tuna fishery right at this particular time. We have been discussing two issues here. This particular discussion is for the time/area closures that exist at this particular moment and the other issue is a whole different issue in itself and that is the allowability of baitnets in a tuna fishery. That is the allowability of a baitnet and a tuna fishery which is not allowed at this particular moment and they are two separate issues.

Mr. Martin: I think there is some confusion, this framework does two things. First of all it bans all gillnets which is not currently the case for harbor porpoise closed areas. It is only sink gillnets that are banned. So there is recognition, and Pat can expand on this, that swordfish drift gillnets and so forth can be hazardous to harbor porpoise. So the idea is not to ban just sink gillnets but to ban other types of gillnets that may interact with harbor porpoise and then the bait gillnet follows up on that

initial purpose of the framework to exempt a certain subset of those drift gillnets as they are defined in the swordfish FMP on grounds that if the nets meet these criteria, then they are not likely to take harbor porpoise and it allows this small fishery to continue. So I am just trying to stack up here the purpose of this framework to understand what we are talking about here. We can't lose sight of the fact that one of the purposes of this framework is to ban the types of gillnets that are not currently prohibited under the harbor porpoise closure. These bait gillnets could continue to fish under current law even with the expanded area.

Ms. Stevenson: Gene just covered part of what I wanted to cover because if we do nothing, then you can use anything that you define as pelagic. One of the concerns I have heard with all of the people who want this fishery, and a lot of lobstermen claim that they have gear that they catch bait with, is that they want it untended. I don't see how we can do that. For the tuna fishery, if we had small mesh nets, and 900' feet to me is way beyond what you need, then attaching to the vessel appears okay. In my mind, if you need it away from the boat, it doesn't say how near the vessel it has to be which is maybe something we need to address such as if you have 1/2 a mile of line, is it still attached?

Mr. Brancaleone: Yes, it is.

Ms. Stevenson: And I wouldn't be opposed to that if the net is small enough, but I think that we have to be sure of what we are doing and that we are addressing someone's problem and not just confusing everything.

Ms. Alden: I think we need to be clear about what the purpose of this is and reading the document that Pat passed out this morning, my understanding is that the reason that we are concerned about these nets is because of harbor porpoise bycatch, and that this is not a groundfish issue. There is language on page 3 which says "in view of the need to allow traditional bait fisheries to continue without compromising the porpoise mortality reduction goal or groundfish conservation." I am not sure that that is appropriate language or I am not sure that we may not be muddying the water. Harbor porpoise bycatch is the issue here. Do we have a problem that we need to solve? What do we know about bycatch in this area with these nets?

Dr. Rosenberg: As far as I can tell, the only information we had available is contained in a letter upon request to Council staff to my staff which is in the back of this dated June 28 which sort of lists the antidotal information that we have on catches of marine mammals, including harbor porpoise. In many cases, there just isn't anything to indicate whether it is a bait net, a pelagic net or whatever. So you are looking at it and that is the information we have about this problem. I am not saying that there is not a problem, but I don't have anything else to give you other than our search of the records that staff did.

Ms. Alden: First of all, if we proceed with this I think we need to make sure that we are clear which closures we are talking about exempting from. If the harbor porpoise is the purpose then it ought to be the harbor porpoise closures and not the groundfish harbor porpoise closures as they start to diverge. Second of all, given that we do have not a lot of information about problems here and we suspect that we probably have a diverse set of practices in the interest of not just over-regulating, or nit-picking this industry to death, it seems to me that we should look at some issues such as the size of the net and get away from the strict operational requirements. If we can come up with some defining of what is a small baitnet, differently than what we have so far, and get away from the attachment and whether it is anchored and whether it is in the top third or not. Maybe we can solve the problem with less of a sledgehammer.

Mr. MacKinnon: A little background on the mackerel baitnet - - it wasn't a baitnet, they used it as a fishery. It existed in Gloucester and it existed in Provincetown and there was a small fishery out of Scituate. They go lay the nets in the evening because the mackerel come up to the surface at night. They put lanterns on the nets so boats could see them and they would haul them in the morning. That is how the mackerel fishery works with the gillnet. I tried in the past using a small mesh net to try to fish herring and it was very effective. You could drop it right on a school of herring, pick it right back up and have enough herring for bait if you were a lobsterman. I would like to try the whiting fishery the same way, but we can't do it now. I tried mackerel and I got permission from the State years and years ago to get the net off the bottom, keep it off the bottom, use 3" mesh, and set it on a school of mackerel. This net would be 400' long and 15' high and you could set on a school of mackerel and bring it right back up. It would be interesting to have an experimental fishery with observer coverage and see if we can get something on a whiting fishery with a small net -- you wouldn't need a big net. It would be an instant net on the school of fish and you could bring that net right back. That's another way to make some money.

Ms. Fiorelli: Just to help a little bit, I sent out lots and lots of notices to every gillnetter that we had on our mail list, every gillnet association, lobster associations and tuna associations in order to get information. The information that I received back was scant at best but from what I understand no one uses a 900' net. In fact people barely even use a 300' net. As Rich said, the tuna bait people use 50' or 100' net and the rest of the lobstermen say that a 300' limit wouldn't bother them at all. There is no hard information out there because of the occasional nature of the fishery, so I don't know that we are going to get much better information than what we have. It seems that with 900', most people said "what for, we don't need that." So if you have a restriction that says 300', that's fine, however, we wanted to get further input. I called around and tried to urge people to come to the meeting if they had a concern. I hope I am not overstating it, but it seems like there isn't a concern, at least if it is less than 300' or less. Robin, to your question, as the committee constructed

the motion, these restrictions were to apply to the harbor porpoise closure areas, when and where they existed, so that there wasn't an unrestricted baitnet fishery with nets of any sort of length. Whether they use it or not, this was intended to close a loophole.

Mr. Brancaleone: But it was for two reasons, am I correct? One was to keep it on top of the water not to interfere with groundfish; and the other issue is the harbor porpoise. So if that answers your question, too, is that we are dealing with two issues here. We didn't want the net on the bottom catching groundfish and then we are concerned about the harbor porpoise.

Mr. Williamson: Talking to Maine lobstermen, the closure periods for harbor porpoise that affect them down east mid-August/mid-September and now upcoming in the Mid-coast area which would be the southern half of the State of Maine. They are fishing for poggies, they are using a fairly short net, it is usually a surface net, they leave it for a period of two hours while they go off and haul some gear and come back. They use it to supplement their base supply or if the supply of bait gets a little scanty, they depend on that, but there is not a significant large number of lobstermen that do anything more than 10%. It is very much a near shore thing. It is those that have multispecies permits but they are fishing in state waters that are the most concerned about it. The tuna bait issue is an entirely separate thing because I think most of the time people who are fishing for bait for tuna are doing so on the bottom.

Dr. Rosenberg: Currently you can use a pelagic net in the closed areas, or outside of the closed areas you can use a pelagic gillnet. You can't retain groundfish, but what Rich is talking about is being able to use a bottom gillnet for bait in the closed areas for the tuna season. What John is talking about and what I think Bob is talking about is using a bait net, not necessarily for the tuna fishery, but in a number of different configurations, which they currently can do, as long as it is not on the bottom. The concern of the committee was to close, as Pat described it, a loophole where someone can use a pelagic net within those closed areas. You could potentially, if you weren't using a sink gillnet, have quite a lot of gear in the water that may or may not impact upon harbor porpoise. So this thing then is to address closing the loophole and prevent a large increase in use of pelagic gillnets during what is ostensibly a gillnet closure in the harbor porpoise closed areas. It would restrict the size of those nets in some way or other, which doesn't do anything at all for what Rich Ruais and his folks want to do, because they want to put a net on the bottom. In fact, it doesn't have anything to do with that -- his problem is related to both groundfish and harbor porpoise because sink gillnets are prohibited unless they have pingers on them in experimental fisheries.

Tape 3

So this would allow the lobstermen and some other people who want to fish for bait with a small net, given that you are going to shut off everybody else. That is what Gene was trying to explain and what Barbara was trying to get around to. If you don't take any action you would continue to allow pelagic nets of any description as long as they comported with whatever the swordfish thing is to continue to fish, whether they be baitnets or anything else, and you would continue to prohibit any sink gillnet that didn't meet the specifications for a pinger experiment or whatever. Clearly if the Council is going to do that, it would be helpful to say that. I have the impression from a number of people that are speaking in the audience that they are concerned that they can't do something now that they actually can do if there is a change in the regulations that might be prohibited without a specific exemption that restricted the size of the net.

Mr. Avila: If the concern here is swordfish pelagic driftnets, I can't imagine anybody taking a swordfish net and setting it up in there because that would be our worse nightmare. That's why we keep asking the National Marine Fisheries Service down in Silver Spring, Maryland for a one season, to start in July, to let all the mammals get up through where we fish. We would not want to go in and set in there if that is the problem.

Mr. Amaru: Just to be able to move along and get one thing out of the way, can we just go to the second page in our folder here and see the next to the last sentence stating "an alternative would require a net length of not longer than 300'." It is already an alternative because we identified this problem earlier. It doesn't seem like we are going real fast towards the direction of whether it should be anchored, how it is going to be held to the boat and all the rest of that stuff, but at least we can talk about limiting the length of the thing so it does represent a true baitnet. Three hundred feet (300') seems to be extremely liberal but at least we have that thing out of the way. Whether or not you want to put it in the mid-water or top of the water, I thought we had this stuff pretty much worked out and it is amazing to me that we are spending this much time on it. We are still on the agenda line, so we are not going behind yet, so I would like to move along. Three hundred feet (300') seems adequate and we shouldn't pinch anybody and we can get rid of this idea of 900' which is totally beyond what anybody would ever use. Since it is in the framework already, do we have to make a motion to do that?

Mr. Brancaleone: It is already there.

Mr. Smith: On the face value, I don't mind the change to 300' but I am still trying to get some thought on to what Andy had said. If we leave things the way they are now, the lobster bait fishery, which is truly surface probably from menhaden and things like that, right now they can fish any size net they want and all those lobstermen will fish whatever they want. They won't have, I gather, any harbor

porpoise interaction and they won't have any groundfish interaction, so we don't care. If we follow with this framework amendment and get into the gory details of it, you may have a whole bunch of lobstermen who are not having any impact where we are concerned about the impact, but they are going to be impacted by that framework. So I don't know if this really what Robin was getting at before since I missed the whole point of it, but it seems to me that this framework ought to preserve the lobster bait part of this, unaffected, because we weren't concerned about that, and it ought to focus on the tuna bait issue where we are concerned. In that regard, I think the 300' is appropriate and I think the water column issue that is in the proposal now is close to where we want it to be except for the enforcement problems that Captain Howard pointed out that once it gets down in the water column, you can't really enforce where it is very well. I don't think we are ever going to get this proposal to the point where we say you can fish a 300' baitnet on the bottom for tuna because that is where the impacts are going to be and I see that as a dilemma that we probably can't solve. So that's where I am now, I want to leave the lobster bait surface net aside and then deal with the tuna.

Mr. Nelson: I did open this up for getting Council input and public input on various aspects of this and I think the input has been helpful because there are a number of facets here. Whether it is confusing or not, there are certainly a number of facets that this does address. We wanted to try and make sure that we generated as much discussion as possible. I would suggest that we take the document to the Marine Mammal Committee and review the document with the input that we received today and try to see what we can iron out as far as any confusing areas. I think we have good input and I think that we probably have enough guidance to move ahead with this.

Mr. Brancaleone: In committee?

Mr. Nelson: Yes, in committee, and then bring it back to the Council for discussion.

Mr. Gibson: I think that is a good idea and I want to echo what Robin said earlier. I would like to see us accommodate the tuna bait fishery and I don't think that this language does. I think the committee may want to look at even smaller than 300'. I don't know if people are using bottom tending small mesh gillnets for herring that are anywhere near 300'. I would be very comfortable if it was 100' or 50' or whatever they are actually using and then just allow them to possess and use a net of that size. I don't think it would have a tremendous impact on groundfish if they are just using it for bait. It doesn't really seem to matter whether it is connected to the boat or not, so maybe the committee could look at that and come up with an appropriate size and then just let it go at that. I don't really think there is going to be a big conservation problem.

Mr. Williamson: Since it is headed back to committee, all I can say that in either case, for pelagic, gillnet or for sink gillnet baitnet, if we are talking about mesh size in the order of 2-1/2" to 3", it is hard for me after several years of watching videotapes of harbor porpoise interacting with gillnets in pools to think that we have a big problem with harbor porpoise entanglement in these bait nets. In the videos I have seen, I have repeatedly watched harbor porpoise going into these much larger mesh nets and hit them repeatedly before there is an entanglement. We are talking about mesh this size that is big enough for a herring but not very big for a harbor porpoise. Since we have no data for harbor porpoise being entangled in this small mesh type net, I would think that whether it be a pelagic net or sink net, there is no reason for us to make a harbor porpoise mitigation measure for these.

Mr. Anderson: It is probably better to revert this back to the committee for any other discussion, but once again we are on two particular issues here. If we are talking about a baitnet fishery that accommodates the tuna fishery, this is going to have to be a separate framework that would have to be started because it has little relation to this framework right now. Right now there are no harbor porpoise closures in the Mid-coast area or where a lot of the tuna fishery is prosecuting itself right now. The baitnets that are used in the tuna fishery today are not allowed. They are mesh less than a regulated mesh and it simply not allowed. So if we want to address this tuna bait issue, I did at one particular time when I did ask for an exemption, but unfortunately there was no information to allow this exemption to take place. The tuna bait fishery is a separate issue and it is going to require a separate framework and that is just the way it is. It has some relation to this framework right here, but not a lot. We have to understand the difference with this, there are differences of what we are talking about here, and I hope everybody does. If we allow a bait fishery for the tuna fishermen, or for the tuna fishery, it will be a separate framework. Am I right?

Dr. Rosenberg: This one, which we haven't taken any action on, doesn't even address that fishery as far as I can tell.

Mr. Martin: I don't think it necessarily requires a different framework. Again, this is to close this so-called "loophole" that would allow certain types of gillnets that may interact with harbor porpoise to be in a closed area based upon protection of harbor porpoise. The bait gillnet thing, which is getting all the discussion here, is just an exception to this larger prohibition that this framework is trying to put forward. I haven't had a chance to read this, but I think it mentions tuna bait in here as falling under this pelagic bait exception. So I don't see why this would require a separate framework. If you are doing it in the context of exempting for harbor porpoise purposes, certain types of drift gillnets from this overall protection, when you begin a framework you are not bound to not consider possible alternatives and options that weren't first considered when the framework was commenced. That is part of the

reason why framework actions are supposed to occur over at least two meetings, why you get public comment, why you have analysis and committee discussion about it. It is to discuss all issues so that all possible alternatives and needs can be addressed in that framework.

Mr. Anderson: The document says on the first page entitled "Purpose and Background" that "this framework is to only affect the harbor porpoise time/area closures." Today in the Mid-coast area there is no harbor porpoise closure for July 17. There is no closure right now. We are not in a time/area closure for harbor porpoise.

Mr. Martin: We are talking about the harbor porpoise closed area time in this framework.

Mr. Anderson: That's right.

Mr. Martin: We are talking about exempting these gears during that time period not at other times. If you are talking about taking pelagic gillnets off the exempted fishery list, that is another issue for groundfish purposes.

Mr. Anderson: But I am trying to address the condition that was expressed by Rich and expressed by Barry on the allowability of sink gillnets less than the regulated mesh to be used in the tuna fishery for procuring bait and they are sink gillnets.

Mr. Martin: If they are sink gillnets, then you are right, it doesn't come under this description.

Mr. O'Malley: The needs of the bait fishery may be met by a 50' or a 100' net but I would ask the committee to try to leave open the door, if possible, for a normal commercial mackerel fishery by using the maximum length of net that would still allow the protection of harbor porpoise. I just wouldn't want to see that door accidentally closed.

Ms. Alden: I was going to agree with Erik's interpretation that the tuna bait fishery, as Rich was describing it, is a sink gillnet fishery and, therefore, my understanding is that it is not part of this. It would be a separate action.

Mr. Martin: There are other kind of tuna bait fisheries, apparently, and he was talking about tuna bait in a generic sense. If you are talking about altering the definition of a sink gillnet, that is a totally different issue.

Mr. Smith: I think I see this thing going back to committee for further work and what I would suggest that it needs is clarity in what is in this document, but it didn't

come across loud and clear until Gene said it. The framework is really to prohibit the use of pelagic gillnets as well as the other ones in these sensitive areas. Then we are dealing with exemptions and we should deal with two exemptions; one of them should be the lobster bait fishery and define it by mesh and by on the surface and length of net, or however you want to do it to clarify that that one is not a problem and it is exempted. Then another sub-section exemption would be the tuna bait issue and do the same thing; define the net for that fishery the way you need to.

The sticking point will be that we won't want it to be on the bottom and some of the tuna fishermen will want it to be on the bottom and that is where it has to be worked out in committee. Maybe you will end up with the top third of the water column or the top half or however, but that needs to be hashed out among the people who want something here. If you do it structurally, you do it that way and you leave open the possibility that Jim O'Malley asked for that in the future, with more information or change in the fishery, you might add to that list additional fisheries if they can be shown to not have the kind of impacts you are concerned about. Really, one of the other ways to deal with what Jim is talking about is kind of under the plan itself in terms of exempted fisheries and 5% rules and all of those kinds of things, so there are a couple of different ways to deal those things. Right now, it would be helpful to me to see the clarity that you prohibiting pelagic nets and there are two exemptions and then define what they are.

Mr. Ruais: I hesitate to make this clarification, but if I didn't say it clear the first time, the gear supplier that I spoke to says that this is not a sink gillnet, it is anchored to the bottom, but it is a pelagic net that is set at depths where they locate the herring, or whatever the bait fish is that they are chasing at the time. I don't know if that helps, but I wanted to bring this up again.

Mr. Wiley: I would be kind of concerned about this fishery as I am hearing it because you are dropping it right down into the schools of herring which are what is being targeted upon by the harbor porpoise. So you are going into the areas that the harbor porpoise are already considered to be sensitive in at the time that they are likely to be there and then dropping down a net right into the very spot that you would expect them to be in the highest concentrations. So it might be more problematic than at the surface.

Mr. MacLeod: With all due respect to Bob MacKinnon, I know very little about gillnets, but I certainly know quite a bit about herring, menhaden, mackerel and especially in purse seining. I know that as far as the movement of menhaden are concerned, when they move up the coast, they come on the outside of Cape Cod and then they begin to move in. When they first arrive here they are in deep water; then when they move in and the water is still cold in June, those fish are very, very lively and purse seiners that have 1,000' in length and 20 fathom in depth have a tough job

catching those fish. When the water starts to warm up and the wind comes off the shore westerly, those fish surface, then they are available to the purse seiners and the purse seiners do catch the fish. But at one point they go into the inner harbors and then they go into the rivers. Now I am saying this for your particular information, Captain Howard, with offshore harbors and rivers on herring I never had purse seiners bring me herring during the day time. I am talking about boats that fish primarily in Jeffrey's Ledge and in Ipswich Bay. Most of those fish that were caught during the day time were caught by draggers on the bottom. At night time, that's when the fish came off the bottom and came up and that is when the Canadian purse seiners and all other purse seiners started to take and harvest fish.

In regards to mackerel, of course the traps catch them on their northern movement and the purse seiners have caught some mackerel in their northern movement, but most of the catching was done at night when the fish were "ringing." I am saying all of this to you because I think that the problem that you are going to have is in saying that you have a net that is one-third of the water column because you have fish that move offshore, inshore, into rivers to the harbors and then you have tides to take and contend with and I think that the Coast Guard would be wasting a heck of a lot of time measuring different nets when they are fishing in different nets because you are never going to run into depths on a net, in all probability, on a gillnet that is going to be the same unless they fish in a specific area at a specific tide for a specific species. So I think when the committee meets they ought to take and re-address that particular issue.

Mr. Rathbun: Like everything, we start out doing something simple and it is becoming increasingly complex. I do agree with Erik Anderson and Eric Smith that we are talking about two different issues under the same umbrella. There is a need for a tuna bait fishery for catching non-pelagic, because whiting are not considered pelagic so you can't call it a pelagic net if it is fishing for whiting. I ran into this in a document I am working on. Look up the word "pelagic" in the dictionary and it doesn't exactly mean what I always thought it meant all my life, so we really need to be careful when we are talking about a pelagic net using it for herring as opposed to a pelagic net using it for whiting. But I think we are trying to address two things in one document here and we have ourselves all confused. Apparently there is a need to pursue a tuna bait fishery for the tuna fishermen fishing for live bait. If we can accommodate that for this season we can maybe put the other thing on the back burner and do it the right way.

Mr. McCauley: The thing that puzzles me about this whole issue is that you send out a notice that encourages tuna and gillnet fishermen, lobstermen and others who could be affected and nobody is here to talk about this. How serious is this? When somebody sends out a notice like that, the hair would raise on the back of my neck. That's what came out as a notice and I haven't heard anybody, except Rich Ruais,

come up and say anything about it and I believe rich is second hand, because I don't believe he personally does it. I would hope that the next time it is discussed we have some expertise who will actually state their case and their concerns, otherwise they are not going to have a fishery.

Ms. Fiorelli: To Jim's point, I called the Mass. Lobstermen's Association and the Maine Lobstermen's Association in addition to sending out this notice because I had not heard from anybody. In each case they said that this, for them, is a non-issue. The lobstermen are able to fish within the parameters that we require here. They don't use nets longer than 300' and all the other things. They don't care about it. They said "fine, we don't care. If you want to protect harbor porpoise go for it. We don't do anything much different than what this calls for." So for them, at least according to them the last time we spoke and I did speak to Pat White yesterday who had some minor concern, it was a non-issue. Hence they are not here. I did talk to Rich and he has some problems that maybe we can work out and that is why he is here. But for the rest of them, I really did try very hard to drag them here, if there was a problem, to get some input. So I think your assessment is correct.

Mr. Coates: As a committee member I guess I am prepared to take this back and look at it again. I apologize to the Council for the way that this has developed. I think Andy had the right tact. There were two things that created the focus on this; one was the report by the NMFS permit person regarding this dilemma they had with all these people with permits and non-permits, as a result of a survey, which I think was done by State of Maine in terms of trying to characterize these nets. They came up with a significant amount of people doing all these diverse things. The second issue was supposedly a take of a harbor porpoise in a so-called bait net. Andy began to focus on this saying "let's identify the scope of the problem." But I think we better go back and identify the extent of the problem, first, and then we will go from there. This may be a non-issue. We may need to put something in place that acts as a deterrent from expansion and a potential problem and I think that's what we need to look at.

Mr. Brancaleone: All right, I think you have, John, to go on so if you will call a meeting of the Marine Mammal Committee and deal with this.

End of Marine Mammal Committee Report

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

MINUTES

King's Grant Inn, Danvers, MA
August 21, 1996

Wednesday, August 21, 1996

Marine Mammal Committee Report

Mr. Nelson: Under Tab 11 there is a summary and also under a separate mailing was the final draft of Framework 16. As I am sure everyone recalls at the last meeting on July 17 and 18, we had asked for a discussion on the baitnets in the closed harbor porpoise areas. We received a good amount of input and went back to our committee on July 30 to further discuss the proposed action. The committee has come up with revised language that would allow or give guidance to certain types of gillnets being allowed in the harbor porpoise time/area closures. In our verbiage that we had generated, it said that "the use of all gillnets is prohibited in the harbor porpoise closed areas, time/area closures, except as allowed under previous frameworks. In addition, vessels may fish with a single net, not longer than 300' nor greater than 6' deep, with a maximum mesh of 3". The net must be tended at all times, that is when in the water it must be attached to the boat or anchored not more than 1/2 mile from the vessel. The net also must be marked with the owner's and vessel identification number." After we developed this language, we forwarded it to the multispecies groundfish committee for review. Their review resulted in a modification of that language.

There is some concern about surface pelagic gillnets which are allowed under Amendment 7 in harbor porpoise closed areas. There is also a concern that they do catch marine mammals since there is documentation of various takes associated with marine mammals. In not allowing those types of nets to be fished in those areas, we would inadvertently remove the opportunity for smaller nets, such as the baitnets, that are operated by tuna fishermen or lobster bait fishermen. The intent was to provide some type of guidance to allow this type of activity to occur. With the revised verbiage that was provided to us, I would move on behalf of the committee that this be accepted by the Council. This also would be the final meeting of the framework.

Mr. Nelson moved and Mr. Amaru seconded:

that the use of all gillnets be prohibited in the harbor porpoise time/area closures that the use of all gillnets be prohibited in the harbor porpoise time/area closures except as allowed under previous frameworks; in addition vessels may fish with a single net, not longer than 300' and not greater than 6' deep, with a maximum mesh size of 3"; the net must be

tended at all times, that is, when in the water it must be attached to the boat; the net also must be marked with the owner's name and vessel identification number. Also, the net must be fished in the upper two-thirds of the water column.

Mr. Brancaleone: Discussion on the motion? Audience?

The motion carried on a voice vote with one abstention, Ms. Kurkul.

Mr. Nelson: That's all that we have under marine mammals.

State Gillnet Fisheries and Bait Gillnet Fisheries - Preliminary Report to the TRT

Vessels engaged in state only gillnet fisheries, or using gillnets to capture bait, are not enrolled in the federal observer program for monitoring marine mammal bycatch. Therefore, the size of the fisheries, and the degree to which they may interact with porpoises is unknown. Additionally, any incidental kill by these fisheries is not included in bycatch estimates. This may be problematic, as these fisheries operate in a manner that could be expected to take porpoise, and often occur at times and in areas where the potential for interaction is high. These vessels may not be included in any data base or registration program, making it difficult to identify and monitor them, or to supply them with regulatory information.

It is likely that considerable numbers of undocumented vessels engage in fisheries using gillnet-type gear. Tuna fishermen prefer live bait, often herring or mackerel. In the Gulf of Maine, tuna fishermen characteristically search for schools of bait using echo sounder technology. Once a bait school has been located, a 50 to 100 foot, small mesh (~3 inch monofilament) net is dropped into the school. The net is anchored to, but not necessarily on, the bottom. Because the captured fish are desired live, soak time is minimal, usually 15 to 30 minutes. Nets are usually, but not always, tended

Because this fishery is specifically directed at harbor porpoise prey (e.g. schools of herring), the interaction potential could be high. However, the small mesh and short soak times may reduce the potential for entanglement. The most likely times of interaction would be in the Northeast area during the summer, and the Mid-coast area during the late summer and fall.

Lobster fishermen use herring, menhaden and other schooling fish for trap bait. These nets are usually bottom set for several hours, often left untended while the fishermen check traps. Sets are usually made in estuarine or near-shore waters, and are usually less than 300 feet in length. Such nets could pose a problem, particularly in Maine during the summer, when porpoise are in near-shore waters. They could also pose a problem in Massachusetts and New Hampshire during the spring, when porpoise are in near-shore waters.

In the years 1990 and 1991, Walden (1996) identified 182 vessels as "bait" gillnetters. Bait gillnetters are vessels that do not sell their catch commercially, but retain the catch for bait or personal consumption. Of these vessels, 143 were identified in Maine, 14 in New Hampshire, 12 in Massachusetts, and 11 from Rhode Island and Connecticut, combined. Two vessels were from unspecified ports. Bait fisheries in all states occurred primarily during the summer months. Most vessels fished one or two net strings between 300 and 600 feet in length. Since registration requirements are unclear, additional vessels likely participate in the fishery (see Massachusetts state information), or use other methods.

Walden (1996) used data compiled by the National Marine Fisheries Service (NMFS). Some state marine fishery agencies also attempt to track gillnet effort emanating from their ports, providing an additional measure of effort.

Massachusetts - In Massachusetts, fishermen must obtain permits to fish with gillnets. To obtain permits, fishermen must fill out reports that include catch and effort data summarized by month. In 1993, 181 fishermen obtained permits to fish with gillnets (Anderson et. al 1995). However, not all fishermen with permits necessarily fished in state waters. Of the fishermen with permits, 68 claimed they did not fish with gillnets in 1993 and 12 did not file reports. The 101 fisherman providing information reported fishing a total 15,669 half-nets (300 foot) in 1,390 strings (Anderson et al., 1995). However, these figures include effort outside of state waters

Information obtained from the Massachusetts Division of Marine Fisheries indicated that the state had most recently (1995) issued 166 limited entry gillnet licenses for territorial waters (D. McCarron, Massachusetts Department of Marine Fisheries, Salem, MA 01970. Personal commun., July 1996). Ninety-two of those licensees appeared to also hold federal permits. Seventy-four did not hold

11

federal permits. The state is currently in the process of determining the status and activities of fishermen that hold state, but not federal permits. However, it is likely that the number is higher than the 12 reported by Walden (1996)

Most Massachusetts state water effort occurred in a band running from the town of Gloucester south to the town of Plymouth, with a substantial portion of that occurring during the winter and spring months when the fishery is targeting cod and winter flounder. The cod and flounder fisheries are known to interact with porpoise in other parts of the Gulf of Maine during this same time period, and substantial number of porpoise have been observed within state waters, particularly during March and April. Anderson et al. (1995) reported that Gloucester was the largest port with 11.1 million pounds of fish caught by gillnetters, followed by Scituate with 2.3 million pounds.

Bait Fishery - Bait fishery gillnets are included in the above mentioned registration process. Some confusion may exist, because the fishery reporting form is configured to deal primarily with groundfish. It is possible that bait fishermen do not think the process applies to them, therefore they do not apply for a permit, or do not fill out the reports. The fishermen who stated that they did not fish or did not report their catch may be bait fishermen. In Massachusetts, gillnets of less than 300 square feet in area are considered recreational and do not need to be permitted.

Rhode Island - In Rhode Island, a license is required to fish with gillnets. There are 26 known gillnetters working out of Rhode Island ports. Most are seasonally active, and fish in both state and federal waters. Under the constraints of Amendment #7 of the NEFMC, an unknown number may fish exclusively in state waters.

Bait Fishery - The extent of the bait fishery in Rhode Island is unknown, but thought to be of minor significance. Neither lobster or tuna fishermen are believed to obtain bait with gillnets, preferring to use fish supplied by druggers (A. Valliere, Department of Environmental Management, Wakefield, Rhode Island, 02879. Personal commun., July 1996). Since the lobster and tuna fisheries occur primarily during the summer months, their gillnet activities, if existing, would not be expected to interact with porpoise.

New Hampshire - Almost all commercial gillnet effort originating from ports in New Hampshire occurs in offshore federal waters. However, a substantial bait fishery does exist, primarily as bait for sport fishing (e.g., striped bass) or lobster. This fishery targets river herring in May and June, and menhaden in July, August and September. If menhaden do not move into the estuaries where the fishery occurs, small pollack or tinker mackerel may be targeted. The fishery is primarily estuarine, rarely moving into coastal waters. Bait gillnets must be tended.

The Jefferys Ledge and Basin areas (located in federal waters off the New Hampshire coast) are important for the capture of giant blue fin tuna, particularly from July through September. As mentioned earlier, bait fisheries supplying fishermen targeting tuna may interact with porpoises.

Maine - Maine requires licenses for fishing gillnets in state waters, although there seems to be some disagreement about this requirement. There are primarily 3 groups of gillnet users in Maine: groundfish, seasonal full time bait fishermen, and lobstermen seeking bait. Key bait species are suckers, menhaden, and herring. Since the number of lobster fishermen is in the thousands, the number of gillnets in nearshore waters could be substantial. The main bait fishing periods are June through September, and coincide with the occurrence of porpoises.

Maine has a variety of gillnet fisheries that occur in state waters. There is an andromedous fishery for species such as alewives, blueback herring and shad. This fishery occurs primarily in upper estuaries, in water depths of less than 30 feet. Nets are fished at the surface, usually are less than 100 yards in length, and have a mesh size not exceeding 3.5 inches. The number of gillnetters participating in this fishery is unknown, but most fishermen targeting these species use fish traps, not gillnets (L. Flagg, Maine Division of Marine Fisheries, ?????, Personal commun., July 1996).

Herring are also captured with gillnets, although the amount varies from year to year. In 1994, 19 metric tonnes of herring were landed by gillnets, however, in 1995, no gillnet herring catch was recorded. In 1995, 117 metric tonnes were landed by undocumented gear types, usually for the bait fishery. This fishery uses primarily small purse seines or gillnets, but the percent of catch attributable to specific gear types is unknown (E. Brewer, Maine Division of Marine Fisheries, Booth Bay Harbor, Personal commun., July 1996). NMFS placed substantial effort into characterizing the gillnet fleet in 1994, using personal interview techniques. This may have resulted in a more accurate portrayal of the herring fishery in 1994, or a substantial shift in the fishery may have occurred in 1995. It is possible that most bait fishing for lobster occurs on Sundays, as it is evidently illegal to fish for lobsters on that day. It is likely that most bait is purchased through dealers, not caught by individuals.

As this preliminary investigation indicates, the gillnet effort that occurs in state waters, particularly as it relates to the capture of bait, is difficult to ascertain. The greatest effort likely occurs in the state of Maine during the summer months, where large amounts of bait are used by the lobster industry. Effort by fisherman seeking bait for blue fin tuna is even more difficult to characterize. However, since most fisherman prefer using live bait, the number could be substantial.

New England Fishery Management Council - The New England Fishery Management Council has proposed regulations concerning the use of non-sink gillnets within the harbor porpoise closure areas. A notice concerning those regulations is attached. In general, the Council proposes to prohibit the use of all gillnets, including pelagic gillnets, in the harbor porpoise time/area closures with the following exceptions:

- A vessel may fish with a single gillnet, with mesh of less than regulated size, not longer than 300 feet in length, if:
 - the net is not anchored to the bottom
 - the net is attached to the vessel
 - the net has surface floats
 - the depth of the net is not greater than one third the depth of the water in which it is set
 - The net is set in the top third of the water column

These regulations would not necessarily deal with potential interaction by the tuna bait fish segment.

Additional gillnet fisheries - The TRT may want to ensure that new gillnet fisheries do not develop within the harbor porpoise closed areas. For example, there has been discussion of increasing the surface gillnet effort directed at mackerel. Mackerel stocks are high, and projected prices in the range of \$0.15 to \$0.20 per pound may be sufficient incentive for the development of this fishery. This is particularly likely as other fisheries become more restricted for the purposes of fisheries conservation. The surface mackerel gillnet fishery has been documented to take porpoises (NMFS, unpublished data) and, if expanded, increased interaction should be expected.

Anderson, C.O. T.B. Hoops, D.C. McCarron and G.M. Nash. 1995. Final report to the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Northeast Region Management Division, State-Federal Relations Branch, Massachusetts Division of Marine Fisheries, 100 Cambridge Street, Boston, MA 02202, 21 p.

Walden, J.B. 1996. The New England Gillnet Effort Study. United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Northeast Fisheries Science Center. Woods Hole, MA 02543, 19p.