MODIFICATIONS

TO THE

HARBOR PORPOISE TAKE REDUCTION PLAN

Supplement to the Final Environmental Assessment

February 2010

United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Northeast Region

Draft Environmental Assessment:	Completed March 2009
Final Environmental Assessment:	September 24, 2009
Supplemental Environmental Assessment:	February 23, 2010

INTRODUCTION

This supplemental Environmental Assessment (EA) updates the previously approved Final EA (September 24, 2009; attached) that analyzed the environmental effects of implementing modifications to the Harbor Porpoise Take Reduction Plan (HPTRP) to reduce the serious injury and mortality of the Gulf of Maine/Bay of Fundy stock of harbor porpoises due to interactions with commercial gillnet fisheries in the New England and Mid-Atlantic regions. On February 19, 2010 (75 FR 7383), NOAA's National Marine Fisheries Service (NMFS) finalized an amendment to the HPTRP which implemented a suite of additional measures in both New England and the Mid-Atlantic that will reduce harbor porpoise mortality to below the stock's current potential biological removal (PBR) level. For New England, the final rule expands HPTRP management areas and seasons in which pingers are required to reduce harbor porpoise injuries and mortalities due to gillnet gear. These areas and seasons correspond to areas and times of recently observed harbor porpoise interactions with gillnet gear and include areas that were not regulated under the original HPTRP. In the Mid-Atlantic, the rule includes an additional management area within the Waters off New Jersey Management Area and modifies the large mesh tie-down requirement. Additional technical corrections were incorporated, as well as a scientific research component. According to the February 19, 2010 final rule, the modifications to the HPTRP were to become effective on March 22, 2010.

In New England, the final rule implements two new management areas with seasonal pinger requirements, namely the Stellwagen Bank and Southern New England Management Areas. The management season for pinger requirements occurs from November through May within the Stellwagen Bank Management Area, and from December through May within the Southern New England Management Area. As such, the final rule effective date implements new pinger requirements within both of these management areas for the remainder of March, and through April and May.

Following the publication of the final rule, the gillnet fishing industry expressed concern over the availability of pingers and the time needed for new gillnet vessels to complete their required NMFS pinger authorization training by the March 22, 2010 effective date. Due to a lack of demand for pingers prior to the publication of the final rule, both pinger manufacturers and gear suppliers have not kept large quantities of pingers in stock and may not be able to fulfill orders for large quantities of pingers to be produced and delivered by March 22. In addition, fishermen may not receive or be able to properly install their pingers until the March 22 effective date has passed. Further, new gillnet vessels that fish in the HPTRP Management Areas that require the use of pingers are required to complete pinger authorization training (provided by NMFS) prior to conducting gillnet activities in these areas. Similarly, fishermen may not receive their pinger authorization training until after the pinger requirements become effective.

Since the publication of the final rule, NMFS has monitored the availability of pingers and progress made on the pinger authorization training. Based on its findings, NMFS has determined that additional time to purchase and incorporate pingers onto gillnet gear and

for gillnet vessel operators to receive the required pinger authorization training is warranted. This action is warranted given the lack of availability of pingers for purchase off-the-shelf and the high demand for pinger purchases being experienced, and the additional time needed for new gillnet vessels to complete the required pinger authorization training.

As such, this action would extend the effective date for the new pinger requirements for the Stellwagen Bank and Southern New England Management Areas from March 22, 2010, to September 15, 2010, to provide additional time for fishermen to comply with these conservation measures. NMFS has chosen September 15, 2010 as the revised effective date for the new pinger requirements to coincide with the first full HPTRP management season after publication of the final rule. Therefore, after this date, seasonal pinger requirements will be in effect for all New England HPTRP management areas.

The delay of effective dates will apply only to the new pinger requirements within the Stellwagen Bank and Southern New England Management Areas. All other modifications to the HPTRP implemented through the February 19, 2010 final rule will become effective on March 22, 2010. NMFS has prepared this supplemental EA to analyze the effects of delaying implementation of the new pinger requirements. Unless otherwise noted below, the initial EA finalized on September 24, 2009, and attached to this supplement, remains applicable. The revised preferred alternative and accompanying analysis should be considered within the context of the initial EA.

REVISED PREFERRED ALTERNATIVE

The preferred alternative as described in the final EA intended for all modifications to the HPTRP, once finalized through issuance of a final rule, to be implemented simultaneously in both the New England and Mid-Atlantic regions, providing immediate benefits to harbor porpoises by reducing the levels of interactions with gillnet gear. This action would revise the preferred alternative in that it delays implementation of the new pinger requirements within two new management areas (Stellwagen Bank and Southern New England Management Areas) to allow additional time for gillnet fishermen, not previously subjected to pinger requirements, to purchase and install pingers on their fishing gear, as well as receive pinger authorization training provided by NMFS. As such, the preferred alternative is modified in that not all of the new conservations measures will become effective simultaneously.

IMPACTS OF THE REVISED PREFERRED ALTERNATIVE

Delaying implementation of the new pinger requirements for the Stellwagen Bank and Southern New England Management Areas would delay protective measures for harbor porpoises for the remainder of March and through the end of May, possibly resulting in harbor porpoise interactions with gillnet gear that may otherwise have been prevented due to the required use of pingers on gillnet gear in these areas. Historically, in the area south of Cape Cod (which includes the Cape Cod South Closure Area and the area to its south), harbor porpoise bycatch has been observed during the months of December

through May, with bycatch rates highest in this region during February and April (Palka et al., 2009). In the area recently implemented as the Stellwagen Bank Management Area, harbor porpoise bycatch has been observed from December through March, with bycatch rates highest during February. No observed takes occurred in this area in April and May (Palka et al., 2009).

This action will not modify NMFS' strategy for monitoring those areas that are associated with consequence closure areas. As noted in the February 19, 2010 final rule, monitoring of those areas will begin during the first full management season after publication of the final rule. In other words, NMFS will begin consequence closure area monitoring beginning on September 15, 2010; this date begins the seasonal pinger management season within the Mid-Coast Management Area. The seasonal pinger requirements within all other New England management areas begin after this date. Monitoring full management seasons is necessary to ensure that harbor porpoise bycatch rates are calculated using the observer data that are collected over the course of a complete management season so that these rates can be compared to the target bycatch rates established by NMFS for the consequence closure areas.

While interactions between harbor porpoises and gillnet gear could occur as a result of the delay, it is important to ensure that gillnet fishermen are able to acquire pingers and receive the required pinger authorization training provided by NMFS prior to fishing within HPTRP management areas. This training educates new fishermen on the HPTRP requirements and instructs them on the proper usage and placement of pingers on their gillnet gear. An analysis of harbor porpoise bycatch data confirms the effectiveness of pingers as a deterrence method when they are properly deployed (e.g., functioning batteries, proper pinger placement, and required number of pingers). This same analysis also demonstrated that improper use of pingers (e.g., lacking the required number and/or using non-functioning pingers) may result in harbor porpoise bycatch levels that are similar to bycatch levels for gillnet gear that did not use any pingers (Palka et al., 2008).

Delaying the new pinger requirements within the Stellwagen Bank and Southern New England Management Areas may provide slight economic benefits in the near-term to those gillnet fishermen that are now required to purchase pingers. It will provide them with additional time to purchase and incorporate pingers onto their gear, and to acquire the necessary pinger authorization training from NMFS. Without this delay, gillnet fishermen that are unable to acquire pingers before March 22, 2010 could be forced to cease fishing within these areas, or could continue to fish with non-compliant gear and risk being fined. The delay will not reduce the costs associated with complying with the pinger requirements and therefore does not change the economic analysis described in the final EA. Pinger manufacturers and gear suppliers will benefit from the additional time they need to respond to the increased demand for pingers.

FINDING OF NO SIGNIFICANT IMPACT

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a

proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact (FONSI) and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the Proposed Action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?

Response: The Proposed Action expands the areas in which closures, pingers, and other gear modifications are required in Northeast and Mid-Atlantic commercial gillnet fisheries. Gillnets are not believed to adversely affect benthic habitats, nor to affect the structures that support copepod and plankton abundance. Gillnets do not cause substantial disturbance of sediments, alteration of water flow, impacts to vegetation, nor other changes to the physical environment. This measure is not likely to modify current gillnet fishing practices in a manner that would adversely affect habitat. See Section 3.2.1, Essential Fish Habitat, Habitat Areas of Particular Concern, and Critical Habitat, for more information. The action to delay the implementation of new pinger requirements in two New England management areas from March 22, 2010, to September 15, 2010, does not change this conclusion as described in the FONSI described in the final EA.

2) Can the Proposed Action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: The Proposed Action to modify the HPTRP is not expected to have any impact on biodiversity and/or ecosystem function within the affected areas. The additional seasonal closure and management areas, expanded pinger requirements, and modifications to gillnet gear that are proposed may benefit marine species that overlap in distribution with harbor porpoises. While the action to delay the implementation of new pinger requirements in two New England management areas from March 22, 2010, to September 15, 2010, does not change this conclusion, the benefits to other marine species for these two areas may be delayed. Atlantic sturgeon, seals, and large whales may benefit from the proposed February 1 through March 15 large and small mesh gillnet closure of the Mudhole South Management Area offshore of New Jersey (Section 3.2.2, Protected Species); however, since gillnet vessels may shift effort into adjacent waters, the benefits of the closure may be limited or negligible.

Increased gillnet fishing effort, which could impact a number of marine species, is not anticipated to result from the proposed measures. Pinger use has been shown to have little effect on target species or on the proportion of non-target species captured (Kraus et al., 1997a). Although concerns have been expressed about the possibility that pingers might attract seals to gillnets, the number of seals captured in nets with pingers has not

increased over time in management areas in which pingers are required, suggesting that seals are not responding to the pingers as "dinner bells" (see Palka et al. (2008) in Appendix D and Section 3.2.2.1.3, Pinnipeds). No changes are therefore expected in the effects of gillnet operations on biodiversity, ecosystem functions, or predator/prey relationships.

3) Can the Proposed Action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: Nothing in the Proposed Action nor the action to delay new pinger requirements can be reasonably expected to have a substantial adverse impact on public health or safety. The Proposed Action does not cause an abbreviated fishing season that would encourage gillnet fishermen to work in unsafe weather conditions. Closures and pinger requirements may encourage vessels to shift effort away from HPTRP management areas and transit farther from home ports (Section 4.2.1.3, Closed Area Model); however, nothing in this action forecloses safer behavior, such as changes in home ports, adoption of gear modification requirements, or changes in gear used during HPTRP management periods. Gillnet fishermen participating on the HPTRT helped develop the proposed measures. Additionally, gillnet fishermen were instrumental in developing and testing pingers prior to implementation of the HPTRP in December 1998. Therefore, the Proposed Action was developed with the gillnet fishermen's understanding of fishing practices and techniques and does not include any unsafe fishing practices.

4) Can the Proposed Action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: The purpose of the Proposed Action is to reduce the serious injury and mortality of harbor porpoises incidental to commercial gillnet fisheries in New England and the Mid-Atlantic to levels below the stock's PBR level. Measures to expand management and closure areas and periods are proposed. In response to these measures, gillnet fishermen are expected to purchase and fish with pingers or otherwise modify gear as required in the expanded management areas, and relocate effort when areas are closed to gillnet fishing. No overall reduction in gillnet effort is anticipated. The action to delay the implementation of new pinger requirements in two New England management areas from March 22, 2010, to September 15, 2010, does not change this conclusion nor will it result in harbor porpoise bycatch levels that will negatively affect the population. These changes are not expected to adversely affect any endangered or threatened species or critical habitat (Section 3.2, Biological Environment). Although there may be slight benefits to species that overlap with harbor porpoises in distribution, no adverse effects to marine mammals or other non-target species are expected. An ESA section 7 consultation has been initiated and will be completed prior to implementation of a final rule.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: The final and supplemental EAs document no significant social or economic impacts associated with natural or physical effects resulting from implementation of the Proposed Action. The Action is designed to reduce the effects of Northeast and Mid-Atlantic gillnet fisheries on harbor porpoises. The potential social and economic impacts of the Proposed Action are analyzed in Section 4.2 (Economic Impacts of the Alternatives) of this EA as well as in the E.O. 12866 review (Section 5.1). The gillnet fishery had annual revenues of approximately $40 million in 2006. The proposed action is estimated to have an annual impact between $0.3 and $1.9 million, a reduction of between <1% and 5% of industry revenues. The action to delay implementation of new pinger requirements will not change the social and economic impacts analyzed in the final EA.

The level of impacts on vessels and the locations of the vessels impacted will depend on whether or not consequence closure areas are triggered by bycatch rates that exceed specified target compliant bycatch rates. While no closures are triggered, the impacts are focused primarily on vessels in ports between East of Cape Cod and New Jersey. If consequence closure areas are triggered, the impacts will extend up to Maine (Section 4.2.2.1, Vessel Impacts).

In summary, prior to consequence closures, profits of affected vessels are reduced between two and 16% due to 1) the cost of purchasing pingers, 2) profit reductions if vessels choose not to fish in areas that now require pingers, and 3) closure in the Mudhole South Management Area (Section 4.2.2.1, Vessel Impacts). Some vessels like those in New Jersey are affected only by the addition of the Mudhole South Management Area, while some vessels, such as those in New York, may be affected by both the pinger expansion in the Southern New England Management Area, as well as closure actions. For vessels from New Jersey and New York, implementation of consequence closure areas results in the percent of affected vessels decreasing or staying the same, as these vessels only incur the cost for the pinger expansion. Closure of the Coastal Gulf of Maine Consequence Closure Area has a greater impact on smaller vessels than larger vessels, while closure of the Cape Cod South Expansion Consequence Closure Area tends to have a greater impact on larger vessels than smaller vessels.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: The effects on the quality of the human environment are not likely to be highly controversial. In the highly regulated environment of the Northeast and Mid-Atlantic gillnet fisheries, the imposition of additional regulations contributes to an increasingly difficult work environment for fishermen and the communities they support. However, the Proposed Action was developed in consultation with the HPTRT, which includes Northeast and Mid-Atlantic gillnet fishermen or their representatives, members from an appropriate agency in each affected coastal State, Federal agency representatives, fishery management organizations, as well as participants from conservation and academic groups. Most of the elements within Alternative 4 (Preferred) received consensus or broad support from these team members (Section 2.2.4, Alternative 4: Preferred), who

represent a broad spectrum of interested constituents. The action to delay the implementation of new pinger requirements may offset the difficulty in complying with new pinger requirements by providing fishermen with additional time needed to purchase and install pingers, and receive NMFS pinger certification training.

7) Can the Proposed Action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: The Proposed Action and action to delay new pinger requirements cannot be reasonably expected to result in substantial impacts to unique or ecologically critical areas. Right whale critical habitat, designated HAPCs, EFH for 67 fish species, and the Stellwagen Bank National Marine Sanctuary all occur within the broad management areas of the HPTRP. Although few studies have been conducted on the effects of New England and Mid-Atlantic gillnets on benthic habitats, EFH and associated benthic species and life stages are not considered to be very vulnerable to harm by sink gillnets (Stevenson et al., 2004). Additionally, the structures that support the copepod and plankton abundance that provide the habitat's value to right whales are not likely to be affected by gillnets (Section 3.2.1, Essential Fish Habitat, Habitat Areas of Particular Concern, and Critical Habitat). Additionally, none of the proposed measures presented in Section 2 of this EA are likely to modify fishing practices in a manner that would adversely affect EFH, HAPC, right whale critical habitat, or Stellwagen Bank National Marine Sanctuary.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: The Proposed Action and action to delay the implementation of new pinger requirements is not expected to result in highly uncertain effects on the human environment or to involve unique or unknown risks. The Proposed Action expands areas and seasons for closures, pinger use, and other gear modifications already implemented under the HPTRP. No unique actions are proposed that may result in unknown risks. While there is a degree of uncertainty over how fishermen will react to the proposed measures, and there is some uncertainty over the total reduction in harbor porpoise takes by serious injury and mortality in gillnets, particularly in waters adjacent to the management areas, the analytical tools used to evaluate the proposed measures attempt to take that uncertainty into account and reflect the results as a range of possible outcomes. The data considered, including observer, effort, and economic data, have been used to evaluate countless previous management actions. Overall, the impacts of the Proposed Action can be, and are, described with a relative amount of certainty.

9) Is the Proposed Action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: The cumulative impacts of past, present, and reasonably foreseeable future actions associated with harbor porpoises and Northeast and Mid-Atlantic gillnet fisheries

on the natural or physical environment are evaluated in Section 4.3. These actions were not found to result in significant cumulative impacts when analyzed together with the Proposed Action. The incidental take of harbor porpoises by serious injury and mortality in Northeast and Mid-Atlantic gillnet fisheries is expected to be reduced to below PBR under the Proposed Action, and this is not expected to change with the action to delay the implementation of new pinger requirements. No effects to listed and protected marine species, critical habitat, EFH, HAPC, and the Stellwagen Bank National Marine Sanctuary are anticipated, and takes of some protected species will be reduced by other ongoing actions such as the ALWTRP and the BDTRP. The Proposed Action, when assessed in conjunction with the many other actions listed in Section 4.3, would not have significant impacts on the natural or physical environment.

10) Is the Proposed Action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: The Proposed Action and action to delay the implementation of new pinger requirements are not likely to affect objects listed in the National Register of Historical Places or cause significant impacts to scientific, cultural, or historical resources. The managed gillnet fisheries are remote and have no effect on most of the listed Historical Places. The steamship "Portland" located within the Stellwagen Bank National Marine Sanctuary is the only object listed on the National Register of Historical Places that occurs within the affected environment. Although current regulations allow fishing within the Sanctuary, vessels typically avoid fishing near shipwrecks or bottom obstructions in order to avoid tangling and losing expensive fishing gear. None of the elements of the Proposed Action would change fishing practices in any manner that would make gillnet fishermen more likely to set their gear in the vicinity of the "Portland."

11) Can the Proposed Action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: None of the elements of the Proposed Action nor the action to delay the implementation of new pinger requirements would result in the introduction or spread of non-indigenous species. The Proposed Action will not result in U.S. vessels leaving regional waters, or result in foreign vessels operating in U.S. waters.

12) Is the Proposed Action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: The Proposed Action essentially expands existing management measures to reduce the incidental take of harbor porpoises by serious injury and mortality in Northeast and Mid-Atlantic gillnet fisheries to below PBR as required by the MMPA, and the new action delays implementation of new pinger requirements until September 15, 2010. No novel management actions are proposed, nor do the proposed measures represent a decision that compels novel future management actions with significant

effects. The Proposed Action expands the New England management areas within which pingers are required, but pingers have been used since 1999 within this area. Area closures, expanded within the Proposed Action, are routinely used for both protected species and fish management actions. The consequence closure areas identified in the Proposed Action implement a trigger mechanism that is new to the HPTRP (Section 2.2.4, Alternative 4: Preferred). However, seasonal and annual catch limits trigger closures in numerous species, and right whale densities have been used to trigger dynamic management under the ALWTRP.

13) Can the Proposed Action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: Neither the Proposed Action nor the action to delay the implementation of new pinger requirements are expected to violate Federal, State, or local environmental laws. Rather, the purpose of the Proposed Action is to bring the Northeast and Mid-Atlantic gillnet fisheries into compliance with MMPA requirements through modification of the HPTRP. The MMPA requires the implementation of measures, through a take reduction plan, to reduce the serious injury and mortality of marine mammals in U.S. commercial fisheries to levels that are below each stock's PBR. After implementation of the HPTRP in 1999, harbor porpoise takes remained below PBR until 2004. The Proposed Action is designed to again reduce the incidental take of harbor porpoises in Northeast and Mid-Atlantic gillnet fisheries to below PBR to allow the fisheries to continue without violating the requirements of the MMPA. Federal, State, and fishery management agency representatives participated on the HPTRT, helping to ensure consistency with Federal, State and local laws. Additionally, NMFS forwarded the draft EA to the coastal zone management programs in each coastal state to ensure compliance with State land, water use, and natural resource management programs. Any comments received suggesting the proposed changes to the HPTRP may result in violations of environmental laws will be addressed in the final EA and final rule.

14) Can the Proposed Action reasonably be expected to result in cumulative adverse affects that could have a substantial effect on the target species or non-target species?

Response: Neither the Proposed Action nor the action to delay the implementation of new pinger requirements can be reasonably expected to result in cumulative adverse affects that could have a substantial effect on any of the target or non-target species caught in Northeast and Mid-Atlantic gillnet fisheries. No increase in effort and harvest levels would be caused by the Proposed Action. Some measures may actually result in a slight reduction in effort. Shifts in fishing effort into waters adjacent to managed or closed areas are not likely to increase total harvest of target or non-target species. Harvest of target and non-target species is managed under the relevant FMPs or state management plans, rather than through the Proposed Action. Nothing in the Proposed Action or the action to delay new pinger requirements would hamper the conservation benefits of these FMPs.

DETERMINATION

In view of the information presented in this document to supplement the analysis contained in the original Environmental Assessment prepared for the Harbor Porpoise Take Reduction Plan Modifications, it is hereby determined that the proposed actions analyzed in this supplemental Environmental Assessment will not significantly impact the quality of the human environment as described above and in the original Environmental Assessment. In addition, all beneficial and adverse impacts of the Proposed Action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

Patricia A. Kurkul
Regional Administrator
National Marine Fisheries Service
Northeast Region
55 Great Republic Drive
Gloucester, MA 01930

FEB 23, 2010
Date