

responsible parties, EPA has corrected the final rule by adding procedures to serve Federal agencies at § 305.5(b)(1)(v). The amended rule provides that "(S)ervice upon an officer or agency of the United States shall be made by delivering a copy of the document to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the document shall be served as prescribed in paragraph (iii) of this section." Like the rest of the rule, the new service provision is modeled on 40 CFR part 22.

The commenter also raised a "related question" regarding the manner and means by which Federal agencies are to be compensated for the costs they incur pursuant to the NCP and related plans. Such comment does not relate to the interim final rule and has been directed to the appropriate EPA official for response.

III. Summary of Supporting Analyses

Proposed and final rules issued by Federal Agencies are subject to several statutes and executive orders. These include Executive Order 12291 (superseded by Executive Order 12866 on September 1, 1993), the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order Review

This rulemaking was submitted and reviewed by the Office of Management and Budget under Executive Order 12291. The rulemaking was non-major under the requirements of that Executive Order. Therefore, no Regulatory Impact Analysis was prepared.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant economic impact on a substantial number of small entities." EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because all authorized costs and expenses are payable from the Fund. Further, this final rule imposes no capital expenditures, nor any compliance requirements on any business.

C. Paperwork Reduction Act

The final rule contains no information collection requirements which require approval by the Office of Management and Budget pursuant to 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 305

Environmental protection, Administrative practice and procedures, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: December 16, 1993.

Carol M. Browner,
Administrator.

40 CFR part 305 is amended as follows:

PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ADMINISTRATIVE HEARING PROCEDURES FOR CLAIMS AGAINST THE SUPERFUND

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 9601 et seq.; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

2. Section 305.5 is amended by adding paragraph (b)(2)(v) to read as follows:

§ 305.5 Filing, service, and form of pleadings and documents.

* * * * *

(b) * * *

(2) * * *

(v) Service upon an officer of agency of the United States shall be made by delivering a copy of the document to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the document shall be served as prescribed in paragraph (b)(2)(iii) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 931243-3343; I.D. No. 112293A]

Northeast Multispecies Fishery

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations implementing the Fishery Management Plan for the Northeast Multispecies

Fishery (FMP). This emergency interim rule implements: A 500-pound (226.8 kg) possession limit of haddock for all vessels permitted under 50 CFR 651.4 and to all vessels in possession of haddock from or in the exclusive economic zone (EEZ), except scallop dredge vessels, which are prohibited from possessing or landing haddock; a January through May closure of the area known as Closed Area II, except for lobster pot vessels and scallop dredge vessels; an expansion of Closed Area II by 20 minutes longitude to the west and 15 minutes latitude to the south, along its existing western and southern boundaries, intersecting with the Regulated Mesh Boundary line; a suspension of the February through May closure of the area known as Closed Area I, except for vessels using sink gillnet gear; a prohibition on transfer of fish at sea; and a ban on pair trawling in the multispecies fishery. The intended effect of this rule is to provide protection to depleted haddock and cod stocks.

EFFECTIVE DATES: January 3, 1994, through April 2, 1994.

ADDRESSES: Copies of the Environmental Assessment (EA) supporting this action may be obtained from Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Kurkul (Senior Fishery Policy Analyst, Northeast Region, NMFS), 508-281-9252.

SUPPLEMENTARY INFORMATION:

The primary Northeast multispecies (groundfish) species have declined to record or near record low levels of stock abundance due largely to record high fishing mortality caused by increased fishing effort. To correct this, the New England Fishery Management Council (Council) developed Amendment 5 to the FMP, which has been submitted to the Secretary for review under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. Amendment 5 contains proposals that the Council believes will eliminate the overfished condition of cod and yellowtail flounder over a 5-year period and haddock over a 10-year period. The measures proposed include: Reductions in fishing time; a moratorium on new permits; an increased minimum net mesh size; modifications to existing closed areas; additional closed areas and control areas for juvenile fish; possession limits on regulated species when possessing small mesh on board; and a possession limit on haddock. A proposed rule to implement these measures was

published on October 27, 1993 (58 FR 57774). However, a proposed possession limit of 5,000 pounds (2,268 kg) for haddock contained in Amendment 5 was disapproved on September 30, 1993. The Director, Northeast Region, NMFS (Regional Director) advised the Council on September 30, 1993, that the proposed haddock possession limit offered inadequate protection for that species, and the Council should seriously consider whether any haddock should be landed.

The Council previously recommended that an emergency action implemented last June, which prohibited the use of pair trawls and imposed a 2,500-pound (1,134 kg) haddock trip limit, be extended for an additional 90 days. This request was denied and the emergency action expired on September 7, 1993. The disapproval was based on the fact that haddock are not concentrated during the period of time covered by the extension and, therefore, the recommended management measures were not warranted under emergency rulemaking. The Regional Director requested the Council to consider more restrictive measures, including a meaningful trip limit for haddock. This was reiterated when the Council was informed that the 5,000-pound (2,268 kg) haddock trip limit proposed in Amendment 5 had been disapproved.

Of particular concern are the haddock stocks on both Georges Bank and in the Gulf of Maine, which are at all-time low levels of abundance. Adult stock biomass is lower now than at any point since the inception of stock assessments. Haddock landings in 1993, which reflect stock condition, are expected to be the lowest in recorded history. The stock condition and landings will continue to decline until such time that meaningful measures are implemented that will eliminate the overfished condition of the stocks and reduce the exploitation rate to levels that will allow significant rebuilding to take place.

The Council discussed this issue at its October 1993 meeting in conjunction with its discussion of an amendment to replace the disapproved portions of Amendment 5. The Council voted to develop an amendment to implement a 4,000-pound (1,814 kg) haddock trip limit and to increase the annual Closed Area II closed season from February through May, to January through June. The Council also voted to rescind the geographical expansion of Closed Area II proposed in Amendment 5, in part, as a compromise to the industry for imposing a longer time period for the closure. This represented a departure from Amendment 5, which calls for

immediate expansion of the size of Closed Area II and, in year 3 and thereafter, an expansion in the duration of the closed season.

After adopting amended language for the disapproved measure in Amendment 5, the Council voted to request emergency Secretarial action to implement the same measures beginning January 1, 1994. In addition, the Council requested emergency implementation, beginning January 1, 1994, of a suspension of the closure of Closed Area I to vessels using other than sink gillnet gear and a prohibition on pair trawling, both of which are proposed in Amendment 5. NMFS determined, however, that some of the emergency measures recommended by the Council were inadequate to provide sufficient protection of these stocks, and that more restrictive measures must be implemented to provide essential protection particularly in light of new analysis of the condition of the haddock stocks.

The Regional Director presented the new analysis of the condition of the stocks to the Council at its November 23 Multispecies Oversight Committee meeting and at its December 8-9 Council meeting and, in response, the Council amended its recommendation on emergency action. The Council proposed: An immediate closure of the expanded Closed Area II (beginning January 1, 1994); a prohibition on pair trawling; a haddock possession limit between 500 (226.8 kg) and 1,000 pounds (453.6 kg); at the discretion of the Regional Director; and a request that the Regional Director consider whether scallop dredges should be prohibited from the haddock spawning area during the closure of Area II.

The Secretary concurs with the Council's recommendation and the Regional Director's determination that the haddock possession limit should be 500 pounds (226.8 kg). In making these determinations, the Secretary took into consideration that the haddock stocks are severely depleted. The 1992 spawning stock level for the Georges Bank stock is estimated to be 13,000 metric tons (mt), which is significantly lower than the 130,000 mt required to provide a maximum sustainable yield of 50,000 mt. The most recent assessment of the Georges Bank haddock stock conducted by the NMFS Stock Assessment Workshop determined that the fishing mortality rate in 1991 was 0.52. More recent information from a Canadian assessment indicates that the 1992 fishing mortality rate was 0.6 and is likely to be higher in 1993.

In determining an overfishing definition for the Georges Bank haddock

stock, the Council chose a percent maximum spawning potential (%MSP) of 30 percent, which is equivalent to a fishing mortality rate of 0.4. If this rate were achieved, it would maintain the stock at its present level over the long term. Given the low stock level, though, this would not be enough to allow rebuilding to take place. Rebuilding can only be achieved if the fishing mortality rate is reduced well below this level. Based upon past history, it is estimated that an exploitation rate of about 0.1 (10 percent annual removal of the stock each year) would allow rebuilding to occur. This occurred for several years prior to a large incoming year class of haddock in 1975, which allowed the spawning stock to rebuild.

The current exploitation rate of haddock is approximately 0.37. A 500-pound (226.8 kg) haddock possession limit is expected to reduce the exploitation rate to about 0.1. Achieving this rate will be possible only if the trip limit is low enough to discourage targeting of haddock and highgrading, and it does not compromise enforcement efforts. The 500-pound (226.8 kg) possession limit is considered to be the average number of pounds of haddock per trip that would still be caught incidental to fishing for other species. Although any possession limit can provide incentive to target a species, 500 pounds (226.8 kg) is believed to be low enough to discourage targeting if vessel operators comply with the limit. A trip limit could also encourage "highgrading," (i.e., filling the trip limit with the highest value fish and discarding the rest). The prevalence of this problem will depend to some extent on the willingness of vessel operators to move out of an area with concentrations of haddock. Both of these potential situations will be closely monitored and appropriate action taken by the Regional Director in the event they are determined to be problems. Finally, a trip limit is expected to make enforcement of these haddock measures problematic. Compliance with the measures will also be closely monitored, and should enforceability become compromised, appropriate action will be taken by the Regional Director, including the possibility of implementing a prohibition on the possession of haddock by all vessels. To improve enforceability, this rule prohibits transfer of fish at sea, requires haddock to be stored separately from other fish, and requires all vessels to carry a standardized tote so the amount of haddock on board can be measured at sea.

The expansion of Closed Area II in area and time will provide additional

protection to the concentrations of haddock that occur in the area in this time period. The January closure will ensure that haddock beginning to concentrate in the area are provided the fullest protection. The expansion in size of the closed area is based on information obtained from interviews with fishermen, which indicate that large amounts of haddock are taken just outside the closed area.

Allowing the use of mobile gear in Closed Area I is justified because there have been few if any haddock present in the area for the last 10 years. This has been confirmed by research trawl surveys conducted by the NMFS Northeast Fisheries Science Center (NEFSC). The closure remains in effect for sink gillnet gear because of possible interaction between the gear and endangered or threatened marine mammals.

In addition to the expansion and early closure, the Secretary has determined that, because scallop vessels fish in Closed Area II during the period when haddock are congregated to spawn, all scallop dredge vessels should be prohibited from landing or possessing haddock to ensure that such vessels do not target these concentrations of haddock. While the Council requested that the Regional Director consider the question of whether scallop dredges should be prohibited from the area during the closure, and not a prohibition on landings, the information provided by the NEFSC does not support precluding scallopers from the closed area. Therefore, the lesser action is taken to reduce the impact on scallopers yet provide some protection to spawning haddock.

The Secretary has determined that it is appropriate to include a pair trawl prohibition in this emergency rule. Many in the fishing industry believe that a prohibition on pair trawl gear in the multispecies fishery is warranted as an emergency measure because it is a highly efficient gear, and its unlimited use during a period of severely declining haddock and cod stocks is counterproductive to the goal of reducing effort in an overfished fishery. Information from the NEFSC for 1992 indicates that, for some vessel classes, catch rates increase by a factor of 5.85 when using the gear. As a result, there has been an increase in its use in recent years. This prohibition is also included in proposed Amendment 5.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent

with the Magnuson Act and other applicable law.

The Secretary finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for public comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of sections 553(b) and (d) of the Administrative Procedure Act. However, all of the measures have received some public comment during Council meetings and in connection with the development of Amendment 5 to the FMP. Implementation of these emergency measures will provide much needed immediate protection to the declining haddock and cod stocks.

This rule is exempt from the requirements of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment, and none has been prepared.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: December 27, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 651—NORTHEAST MULTISPECIES FISHERY

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

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

2. In § 651.2, the definitions for *bottom-tending gillnet or sink gillnet gear, dredge or dredge gear, offload, pair trawl or pair trawling, scallop dredge vessel, standard box, standard tote, and transfer* are temporarily added, in alphabetical order, effective January 3, 1994 through April 2, 1994, to read as follows:

§ 651.2 Definitions.

* * * * *

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

Dredge or dredge gear means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design,

that can or is used in the harvest of Atlantic sea scallops.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Pair trawl or pair trawling means to tow or towing a single net between two vessels for the purpose of, or that is capable of, catching multispecies finfish.

Scallop dredge vessel means any fishing vessel that uses or is equipped for using dredge gear and that has been issued or has applied for a Federal scallop permit.

Standard box means a box, typically constructed of wax-saturated cardboard or wood, designed to hold 125 pounds (56.6 kg) of fish plus ice, and that has a volume of not more than 5,100 cubic inches (2.95 cubic feet or 83.57 cubic dm).

Standard tote means a box typically constructed of plastic, designed to hold 100 pounds (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 liters, or a volume of not more than 4320 cubic inches (2.5 cubic feet or 70.79 cubic dm).

Transfer means to begin to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another conveyance.

* * * * *

3. In § 651.7, paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (b)(15), (b)(16), (b)(17), (b)(18), (b)(19), (b)(20), and (b)(21) are temporarily added and paragraph (b)(11) is temporarily suspended effective January 3, 1994, through April 2, 1994, to read as follows:

§ 651.7 Prohibitions.

(a) * * *

(3) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.28(a).

(4) Land, or possess on board a vessel, more than 500 pounds (226.8 kg) of haddock as specified in § 651.28(b) or violate any of the other provisions specified in § 651.28(b).

(5) Land or possess multispecies finfish harvested by means of pair trawling except under the provisions of § 651.20(d).

(6) Fish for multispecies finfish by means of pair trawling.

(7) Land, offload, remove, or otherwise transfer or attempt to land, offload, remove, or otherwise transfer fish from one vessel to another vessel.

(b) * * *

(15) Use, set, haul back, fish with, or have on board a vessel a sink gillnet in the area and during the time period described in § 651.21(c)(1).

(16) Enter the area described in § 651.21(c)(2) on a fishing vessel during the time period specified in § 651.21(c)(2), except as specified in § 651.21(c)(3).

(17) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.28(a).

(18) Land, or possess on board a vessel, more than 500 pounds (226.8 kg) of haddock in, or harvested from, the EEZ as specified in § 651.28(b) or violate any of the other provisions specified in § 651.28(b).

(19) Land or possess multispecies finfish harvested in, or from, the EEZ by means of pair trawling, except under the provisions of § 651.20(d).

(20) Fish for multispecies finfish in the EEZ by means of pair trawling.

(21) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless the multispecies finfish were harvested by a recreational fishing vessel or such vessels have not been issued a Federal multispecies permit and fish for multispecies finfish exclusively in state waters.

4. In § 651.20, paragraph (g) is temporarily added effective January 3, 1994, through April 2, 1994, to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

(g) No vessel issued a permit under § 651.4 may pair trawl for multispecies finfish, as defined under § 651.2, except under the provisions of paragraph (d) of this section.

5. In § 651.21, paragraphs (a) introductory text, (a)(1), (a)(2), and (a)(3) are temporarily suspended, and paragraph (c) is temporarily added effective January 3, 1994, through April 2, 1994, to read as follows:

§ 651.21 Closed areas.

(c) *Georges Bank.* No person or vessel may fish within the following areas subject to the conditions and/or exceptions of this section.

(1) *Closed Area I.* No fishing vessel or person on a fishing vessel may use, set, haul back, fish with, or have on board a vessel a sink gillnet during the months

of February through May in the area known as Closed Area I (Figure 6), which is bounded by six straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
CI1	40°53' N.	68°53' W.
CI2	41°35' N.	68°30' W.
CI3	41°50' N.	68°45' W.
CI4	41°50' N.	69°00' W.
CI5	41°30' N.	69°00' W.
CI6	41°30' N.	69°23' W.
CI1	40°53' N.	68°53' W.

(2) *Closed Area II.* No fishing vessel or person on a fishing vessel may fish in, or be in, the area known as Closed Area II (Figure 6) during the months of January through May, except as specified in paragraph (c)(3) of this section. Closed Area II is bounded by four straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
CI11	41°00' N.	67°20' W.
CI12	41°00' N.	66°35.8' W.
G5	41°18.8' N.	66°24.8' W. (the U.S.-Canada Maritime Boundary)
CI13	42°22' N.	67°20' W. (the U.S.-Canada Maritime Boundary)
CI11	41°00' N.	67°20' W.

(3) *Exceptions.* Paragraph (c)(2) of this section does not apply to persons on fishing vessels or fishing vessels:

- (i) Fishing with or using pot gear designed and used to take lobsters;
- (ii) Fishing with or using dredges designed and used to take scallops; or
- (iii) Seeking safe haven from storm conditions in waters adjacent to the western edge of Closed Area II. Such fishing vessels may transit through Closed Area II providing that:
 - (A) Gale, storm or hurricane conditions are posted for the area by the National Weather Service;
 - (B) Such vessels do not fish in the area;
 - (C) Fishing gear is stowed in accordance with § 651.20(f); and
 - (D) The vessel provides notice to patrolling U.S. Coast Guard aircraft or vessel in the vicinity of Georges Bank by high-frequency radio (2.182 khz) of its

intention to transit the closed area and the time and position when the vessel enters the area and the time and position when the vessel exits the closed area.

6. Sections 651.28 and 651.29 are temporarily added effective January 3, 1994, through April 2, 1994, to read as follows:

§ 651.28 Haddock possession limits.

(a) *Scallop dredge vessels.*

(1) No person owning or operating a scallop dredge vessel issued a permit under § 651.4 may land, or possess on board a vessel, haddock.

(2) No person operating a scallop dredge vessel may possess haddock in, or harvested from, the EEZ.

(b) *Other vessels.*

(1) No person owning or operating a vessel issued a permit under § 651.4 may land, or possess on a vessel, more than 500 pounds (226.8 kg) of haddock.

(2) No person may possess on a vessel more than 500 pounds (226.8 kg) of haddock in, or harvested from, the EEZ.

(3) Vessels subject to the haddock possession limit shall have on board the vessel at least one standard box or one standard tote.

(4) The haddock stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the haddock in a standard box or standard tote if requested by an authorized officer.

(5) The haddock possession limit is equal to 500 pounds (226.8 kg) or its equivalent as measured by the volume of 4 standard boxes or 5 standard totes.

§ 651.29 Transfer-at-sea.

(a) Vessels permitted under § 651.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel.

(b) All vessels are prohibited from transferring or attempting to transfer multispecies finfish from one vessel to another vessel.

7. Figure 2 to part 651 is temporarily suspended, effective January 3, 1994, through April 2, 1994, and Figure 6 is temporarily added effective January 3, 1994, through April 2, 1994.

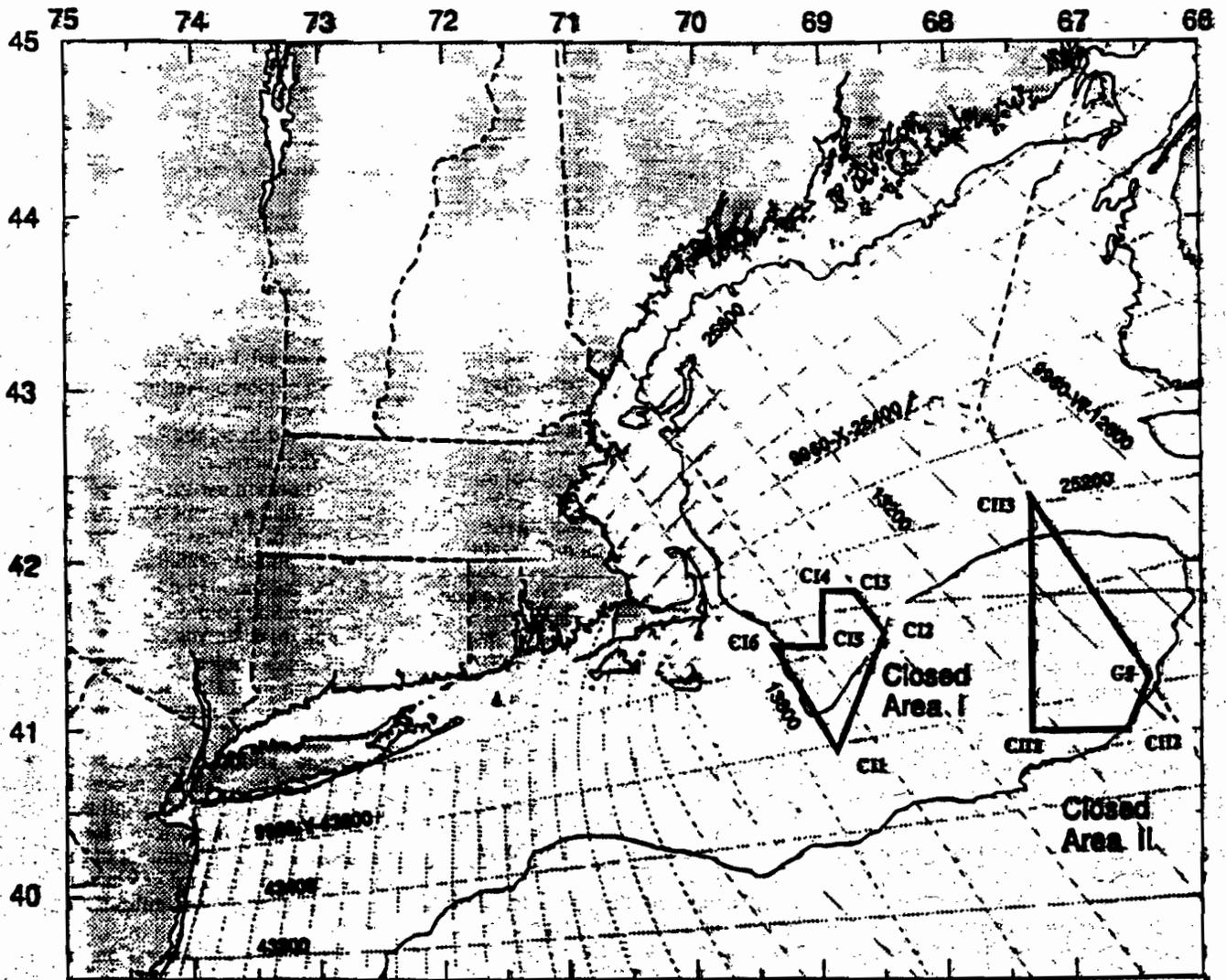


Figure 6: Closed Areas

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