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Dated: May 16, 2002.

Stephen A. Perry,

Administrator of General Services.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080-2134-03; I.D. 052402C]

RIN 0648-AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS publishes this interim final rule to amend the regulations governing the Northeast multispecies fishery to bring them into compliance with a Court Order. On May 23, 2002, the U.S. District Court for the District of Columbia (Court) issued an Order in *Conservation Law Foundation, et al. v. Evans*, which granted the motions for reconsideration submitted to the Court by NMFS and several other parties to the lawsuit in response to the Court's April 26, 2002, Remedial Order. In granting the motion for reconsideration, the Court ordered NMFS to implement, by June 1, 2002, an amended interim rule to bring the regulations into conformance with the Settlement Agreement Among Certain Parties (Settlement Agreement) that was filed earlier with the Court. Therefore, NMFS is making the following changes to the regulations: The year-round Cashes Ledge East and Cashes Ledge West Area Closures (blocks 128 and 130) are removed; the requirement to use a minimum of 6-inch (15.2-cm) spacing between the fairlead rollers of de-hooking gear ("crucifiers") is removed; and the minimum fish size for cod that may be lawfully sold is decreased from 22 inches (55.9 cm) to 19 inches (28.3 cm).

DATES: Effective June 1, 2002, except for an amendment to § 648.83 paragraph (a)(3), which is effective from June 1,

2002, through July 31, 2002. Comments on this interim final rule must be received no later than 5 p.m., local time, on July 5, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the June Interim Final Rule for Groundfish." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978-281-9347, fax: 978-281-9135; email: thomas.warren@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2001, a decision was rendered by the Court on a lawsuit brought by the Conservation Law Foundation (CLF), Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al. v. Evans*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Fishery Conservation and Management Act (18 U.S.C. 1801 *et seq.*), as amended by the Sustainable Fisheries Act (SFA). The Court granted Plaintiffs' Motion for Summary Judgment on all counts. The Court had not yet imposed a remedy, but it did ask the parties to the lawsuit to propose remedies consistent with the Court's findings. Additional background on the lawsuit is contained in the preamble to the interim rules published by NMFS on April 29, 2002 (67 FR 21140) and May 6, 2002 (67 FR 30331) and is not repeated here.

From April 5-9, 2002, Plaintiffs, Defendants and Intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement on April 16, 2002. In addition to NMFS, the parties signing the agreement include CLF, which is one of the plaintiff conservation groups, all four state intervenors, and two of three industry intervenors.

In order to ensure the implementation of protective management measures by May 1, 2002, NMFS, notwithstanding that the Court had not yet issued its Remedial Order, filed an interim final rule with the Office of the **Federal Register** on April 25, 2002, for publication on April 29, 2002. The interim final rule that was published on April 29, 2002, implemented measures identical to the short-term measures contained in the Settlement Agreement filed with the Court.

On April 26, 2002, the Court issued a Remedial Order that ordered the promulgation of two specific sets of management measures—one to be effective from May 1, 2002, to July 31, 2002, and the other from August 1, 2002, until promulgation of Amendment 13 to the FMP. The Court-ordered measures for the first set of measures were, in the majority, identical with those contained in the Settlement Agreement and the measures contained in NMFS' April 29, 2002, interim final rule. However, the Court-ordered measures included additional provisions and an accelerated schedule of effectiveness for all measures, which were not contained in either the Settlement Agreement or the April 29, 2002, interim final rule. According to the Court, these additional provisions were included to strengthen the Settlement Agreement provisions "in terms of reducing overfishing and minimizing bycatch without risking the lives of fishermen or endangering the future of their communities and their way of life" (Remedial Order, p.13). Further, the Court ordered that NMFS publish in the *Federal Register*, as quickly as possible, an "amended interim rule and an amended second interim rule" that would "include the departures from the Settlement Agreement incorporated in the Remedial Order." To comply with the Court Order, NMFS published a second interim final rule ("amended interim rule") to modify the measures implemented through the April 29, 2002, interim final rule and to accelerate the effectiveness of the gear restrictions, as required by the Remedial Order.

Because the Court's Remedial Order was not entirely consistent with the terms of the Settlement Agreement, NMFS, CLF, and the Intervenors filed motions for reconsideration with the Court, requesting that the Court implement the terms of the Settlement Agreement without change. On May 23, 2002, the Court issued an Order granting the motions for reconsideration on the basis that "the important changes made by the Court in the complex and carefully crafted Settlement Agreement

Among Certain Parties ... would produce unintended consequences." The Court ordered that the Settlement Agreement be implemented according to its terms; that the Secretary of Commerce (Secretary) publish an interim rule, effective no later than June 1, 2002, to reduce overfishing in the first quarter of the 2002–2003 fishing year; that the Secretary publish another interim rule to be effective no later than August 1, 2002, to reduce overfishing beginning with the second quarter of the 2002–2003 fishing year, and continuing until implementation of Amendment 13 to the FMP, which complies with the overfishing, rebuilding, and bycatch provisions of the SFA; and that, no later than August 22, 2003, the Secretary promulgate such an amendment to the FMP.

Changes to Management Measures

Through this interim final rule, NMFS, on behalf of the Secretary, makes the changes ordered by the Court to be implemented by June 1, 2002, and thus brings the regulations governing the Northeast multispecies fishery into full conformance with the terms of the Settlement Agreement. Specifically, three measures that were not in the Settlement Agreement, but that were ordered by the April 26, 2002, Remedial Order and implemented by the May 6, 2002, interim final rule, are removed from the regulations. They are:

1. The year-round Cashes Ledge East and Cashes Ledge West Area Closures (blocks 128 and 130);

2. The requirement to use a minimum of 6-inch (15.2-cm) spacing between the fairlead rollers of de-hooking gear ("crucifiers"); and

3. The 22-inch (55.9-cm) minimum fish size limit for cod that may be lawfully sold (the minimum size limit for cod that may be lawfully sold is decreased to 19 inches (28.3 cm), consistent with the regulations that were in place prior to the Court's Remedial Order).

Classification

This rulemaking is required to be made effective by June 1, 2002, by the May 23, 2002, Order issued by the Court in Conservation Law Foundation, et al., v. Evans, Case No. 00CV01134 (D.D.C., Dec. 28, 2001). This Order leaves NMFS with no discretion as to whether or when to promulgate this interim final rule.

This rule has been determined to be significant for purposes of Executive Order 12866. NMFS has not prepared an assessment of the potential costs and benefits of this rule as required by the Executive Order. However, in the April

29, 2002, interim final rule, which implemented the short-term measures contained in the Settlement Agreement, NMFS conducted an assessment of the potential costs and benefits of the measures contained in that rule.

Accordingly, the analyses contained in the April 29, 2002, interim final rule continue to be pertinent as NMFS is implementing the management measures contained in the Settlement Agreement. This interim final rule will relieve restrictions on the fishing industry.

Because the Court mandated on May 23, 2002, that this rule must be made effective by June 1, 2002, it is impracticable for NMFS to provide prior notice and an opportunity for public comment. Such procedures would prevent NMFS from timely implementation of the Court's order. Accordingly, the Assistant Administrator for Fisheries (AA) finds that there exists good cause to waive the notice and comment requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(b)(B). The AA is also waiving the 30 day delay in effective date under 5 U.S.C.(d)(1), as this rule relieves a restriction on the fishing industry.

Since notice and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, this rule is not subject to the analytical requirements of the Regulatory Flexibility Act. As such, no regulatory flexibility analysis is required for this rulemaking, and none has been prepared. 5 U.S.C. 603.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 31, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

§ 648.14 [Amended]

2. In § 648.14, paragraphs (a)(149) through (151) are removed.

§ 648.80 [Amended]

3. In § 648.80, paragraph (n)(6) is removed.

4. In § 648.81, the heading of paragraph (u) and paragraph (u)(1) are revised to read as follows:

§ 648.81 Closed areas.

* * * * *

(u) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (s) and (u)(2) of this section:

CASHES LEDGE CLOSURE AREA¹

Point	N. Lat.	W. Long.
CL1	43°07'	69°02'
CL2	42°49.5'	68°46'
CL3	42°46.5'	68°50.5'
CL4	42°43.5'	68°58.5'
CL5	42°42.5'	69°17.5'
CL6	42°49.5'	69°26'
CL1	43°07'	69°02'

¹A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter).

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5. In § 648.83, paragraph (a)(3) is revised to read as follows (paragraph (a)(3) expires on July 31, 2002):

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(3) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

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