

inconsistent with the MSA, the FMP, and the Court order.

Normally, the Council decides on its summer flounder and scup specification recommendations in August and provides its analytical documentation in support of those recommendations to NMFS in September. NMFS reviews the recommendations and analyses for consistency with applicable law and other requirements, and then conducts notice-and-comment rulemaking over the course of October, November, and early December. The process typically culminates in a final rule to implement specifications in December. Even under ideal circumstances, the rulemaking associated with a typical specification process from Council decision to agency rulemaking usually requires NMFS to waive the 30-day delay in effectiveness to ensure these management measures are in place by January 1.

The introduction of new summer flounder and scup stock status information in late October presents a substantial complication in the specification process. The Council and NMFS are obligated by the MSA and National Standard 2 to utilize the best available scientific information in fisheries management. The updated stock status information for both species indicates that the Council's previous specification recommendations would result in overfishing both stocks in 2012. Under the MSA, NMFS may not authorize a level of catch that would knowingly result in overfishing a stock; thus, it would not be appropriate to implement the Council's initial specification recommendations for these two species. Nor would it be appropriate to maintain the status quo, as the 2011 catch levels would also be too high and would require rulemaking to maintain (*i.e.*, they cannot be automatically carried over year-to-year).

Following the release of the new information in late October, there was insufficient time for the Council to convene its collective committees and its full membership to consider the new information and reconsider its recommendation to NMFS.

Announcement of Council and Council committee meetings are required to provide specific advance notice in the **Federal Register**. Here, even had the Council been able to convene quickly and provide NMFS revised recommendations for summer flounder and scup sufficient to ensure that overfishing would not occur in 2012, there would have been insufficient time for NMFS to review the recommendations and to conduct notice-and-comment rulemaking with an effective date on or before January 1,

2012. This is true even if an abbreviated public comment period and waiver of the 30-day delay in effectiveness were used by NMFS.

The Council proposed revised recommendations for summer flounder and scup during its December 13–15, 2011, meeting. NMFS is soliciting public comment on the interim measures contained in this rule and will issue final measures, if necessary, as soon as possible in early 2012 that respond to both the Council's revised recommendation and comments received on the interim measures.

While this procedure is not completely comparable to the notice-and-comment process typically used, NMFS views this as the only tenable solution to implement measures that ensure overfishing does not occur. This process will ensure that appropriate measures are implemented for the start of the fishing year and provides a meaningful way for the public to comment on those measures as part of the development process for final measures. NMFS recognizes this is not ideal; however, for the unforeseeable reasons outlined above, it would be impracticable to conduct standard notice-and-comment rulemaking for the 2012 specifications, and failing to implement them would undermine the intent of the MSA, and prevent NMFS from undertaking its legal duties. The delay that would result from doing so would allow the fishery to begin with no effective catch constraints in place and would violate the MSA, the FMP, and introduce significant complications in the fishery management program. While less than ideal, the alternative of putting in measures through an interim rule at least ensures that catch constraints are in place at the start of the fishing year and provides a process for public input on final measures to be implemented at a later date.

The Assistant Administrator further finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the reasons outlined above. These specifications must be in place on January 1, 2012, to ensure catch constraints are in place for the start of the fishing year.

These interim specifications are exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

Dated: December 22, 2011.

**Samuel D. Rauch III**,  
Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 111128700–1702–01]

RIN 0648–BB66

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Recreational Accountability Measures

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

**ACTION:** Interim rule; request for comments.

**SUMMARY:** This interim final rule implements a possession limit and increases the minimum fish size for haddock caught in the Gulf of Maine by recreational anglers aboard private or charter/party vessels. This action is intended to address an overage of the fishing year 2010 GOM haddock sub-annual catch limit by the recreational fishery, and prevent a similar overage from occurring in the future. NMFS implements this interim final rule pursuant to its authority under the Magnuson-Stevens Fishery Conservation and Management Act and the Northeast Multispecies Fishery Management Plan and its implementing regulations.

**DATES:** Effective January 6, 2012 through December 30, 2012. Comments must be received by January 17, 2012.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2011–0252, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “Submit a Comment” icon, then enter “FDMS Docket Number NOAA–NMFS–2011–0252” in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Mail:** Submit written comments to Daniel Morris, Acting Regional

Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: "Comments on NE Multispecies Recreational AMs."

• *Fax:* (978) 281-9135; *Attn:* Douglas Christel.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

The analysis of the impacts of the measures implemented by this action is included in the Final Environmental Impact Statement (FEIS) prepared for Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and summarized in the Classification section of the preamble of this interim final rule. Copies of Amendment 16, its Regulatory Impact Review (RIR), and the FEIS are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street Mill 2, Newburyport, MA 01950. The FEIS/RIR is also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html>.

**FOR FURTHER INFORMATION CONTACT:**

Douglas Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

In 2007, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was reauthorized to require that fishery management councils establish a mechanism for specifying annual catch limits (ACLs) for each managed fishery such that overfishing does not occur in the fishery. The reauthorized Magnuson-Stevens Act also required that FMPs include measures to ensure accountability in case ACLs were

exceeded, and to prevent future overages from occurring. The final rule implementing Amendment 16 to the NE Multispecies FMP (April 9, 2010, 75 FR 18262) established a process to set and distribute ACLs among the various components of the fishery that catch regulated NE multispecies and ocean pout (also known as groundfish) stocks. Amendment 16 also established accountability measures (AMs) that would be implemented if any ACL is exceeded during a particular fishing year (FY).

The recreational groundfish fishery consists of anglers on private recreational and charter/party vessels. This fishery is responsible for nearly 30 percent of haddock catch in the Gulf of Maine (GOM) in recent years. Accordingly, Amendment 16 allocated the recreational fishery 27.5 percent of the GOM haddock ACL available to the groundfish fishery. Amendment 16 also specified that if the sub-ACL allocated to the recreational fishery is exceeded, the Regional Administrator must implement the appropriate AMs in the subsequent FY to address the overage and prevent such an overage from occurring in the future following consultation with the New England Fishery Management Council (Council). The recreational AM may include adjustments to season, minimum fish size, or possession limits. Separate AMs may be specified for the private boat and charter/party components of the recreational fishery. Due to the availability of recreational catch data, Amendment 16 anticipated that an overage would be implemented by January of the FY following the overage, and may remain in effect for an undefined period of time.

In FY 2010, the recreational fishery was allocated 324 mt of GOM haddock as part of Framework Adjustment 44 to the FMP (April 9, 2010, 75 FR 18356). Based on available information, NMFS has determined that the recreational fishery caught 396.3 mt of GOM haddock during FY 2010. This represents an overage of 72.3 mt, or 22.3 percent. In November 2011, NMFS consulted with the Council and its Recreational Advisory Panel to seek input on the appropriate AMs to address this overage. The Recreational Advisory Panel recommended that NMFS implement increases in the GOM haddock size limit to address the overage, while the Council recommended that NMFS consider a possession limit first, adjustments to the current minimize fish size second, and additional closed seasons last in developing recreational AMs to address the overage.

**Management Measures Implemented by This Interim Final Rule**

This interim final rule implements a 9-fish possession limit (a reduction, as previously there was no constraint on possession) and increases the minimum fish size for haddock caught in the GOM Regulated Mesh Area from 18 inches (45.72 cm) to 19 inches (48.26 cm) total length. These measures will remain in effect until changed in a future action. Based on the flexibility provided in Amendment 16, as codified at § 648.89(f), the effective period of such measures could be modified through notice consistent with the Administrative Procedure Act if it is determined that such measures are not necessary to prevent overfishing or ensure that a similar overage does not occur during future FYs. NMFS is specifically interested in public input regarding the duration necessary for these measures.

The AMs implemented by this action were selected because they are expected to achieve the necessary fishing mortality reduction due to the overage of the FY 2010 sub-ACL for this stock, reflect the Council's general preference for recreational AMs, are similar to measures in place for this stock until recently, and could be implemented in a timely manner. For example, a 10-fish possession limit was in effect for GOM haddock until 2004, and the minimum size limit for GOM haddock was only recently reduced from 19 inches (48.26 cm) to 18 inches (45.7 cm) in 2009. Because these AMs have already been analyzed under the Amendment 16 FEIS, no additional analysis is necessary for such measures. This minimizes unnecessary delays in implementing this action. Implementation of these measures in a timely manner is critical to enabling charter/party operations to finalize business plans and advertising strategies as quickly as possible.

These AMs conflict with the Recreational Advisory Panel's recommendation to address the 2010 overage using only increases in size limits. However, during the discussion at the Recreational Advisory Panel, private anglers supported possession limits in conjunction with an increased size limit as an acceptable AM, despite opposition from charter/party vessel operators.

The 9-fish possession limit and 19-inch (48.26 cm) minimum size limit for GOM haddock were originally considered during the development of Amendment 16 as one of several options designed to reduce the fishing mortality rate (F) on GOM haddock by the recreational fishery. Amendment 16

considered such measures in the context of effort reductions that would have been necessary if other options to distribute the GOM haddock ACL between the commercial and recreational groundfish fisheries were adopted by the Council. However, such measures can also be used to reduce recreational catch as part of AMs, as described in this action.

The biological and economic impacts of the AMs implemented by this action were analyzed in Section 7.2.2.3.2.3 and 7.5.2.3.2.3 of the Amendment 16 FEIS, respectively. The F reduction resulting from the measures implemented by this action is nearly identical to the amount of overage of the GOM haddock sub-ACL during FY 2010 (22.3 percent), and is expected to result in the necessary reduction in catch once implemented.

The Amendment 16 analysis does not quantify the precise economic impacts of these measures, but indicates that a 9-fish possession limit and a 19-inch (48.26 cm) minimum fish size may result in greater negative economic impacts than increasing the minimum fish size to 21 inches (53.34 cm) to reduce recreational catch of GOM haddock, and less economic impacts than implementing a 7-fish possession limit and an 18-inch (45.72 cm) minimum fish size. The analysis notes that anglers likely prefer options that focus on maintaining a higher possession limit because of the reliance upon high possession limits to attract customers for charter/party trips. However, it was suggested that because haddock do not grow as large as cod, exclusive reliance upon size limits to achieve the necessary F reductions for GOM haddock may reduce the probability of catching and being able to keep a legal-sized fish to such an extent that anglers may prefer a lower possession limit to a higher size limit.

#### Classification

The Administrator, Northeast Region, NMFS, determined that the management measures implemented by this interim final rule are necessary for the conservation and management of the NE multispecies fishery, and that they are consistent with the Magnuson-Stevens Act and other applicable law.

There is good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive prior notice and opportunity for public comment, and the 30-day delay in effective date, respectively, for the measures implemented by this interim final rule because such a delay would be impracticable and contrary to the public interest. This interim final rule is necessary to implement AMs to address an overage of the FY 2010 GOM

haddock sub-ACL by the recreational groundfish fishery and prevent a similar overage from occurring in the future. Data available to estimate the recreational catch of GOM haddock come from the Marine Recreational Fisheries Statistics Survey (MRFSS), a telephone and shore-side intercept survey of fishing effort and angler catch. This process results in "waves" (a 2-month period) of data that estimate catch throughout the year. Catch data through the end of a particular FY (April of each year) are only available in June or July. These data must then be analyzed based on the distribution of anglers and fishing effort to estimate the catch of haddock in the GOM and on Georges Bank, the two stocks of haddock managed under the FMP. An estimate of the recreational catch of GOM haddock during FY 2010 (May 2010–April 2011) was made available to NMFS and the Council just before the September Council meeting. However, because the issue was not on the published Council agenda and there was no information available on which to base potential AMs at the time of the meeting, the Council did not offer recommendations about the appropriate AMs to address the FY 2010 overage by the recreational fishery. Further, there were substantial concerns raised by the Council about the accuracy of the recreational data, primarily because the existing MRFSS process is expected to be replaced in the near future by a more accurate and thorough process for estimating recreational catch. It is unclear at this time whether the updated methodology will result in different estimates of recreational catch of GOM haddock during FY 2010, or other years. As a result, it was not until November that the Council or its advisory bodies were able to discuss the recreational overage of the FY 2010 GOM haddock sub-ACL, and recommend appropriate AMs to NMFS, as required by the existing regulations. Thus, it was impracticable for NMFS to publish rulemaking soliciting public comment on appropriate AMs in the recreational fishery until first consulting with the Council at its November 15–17, 2011, meeting.

As noted above, this interim final rule immediately reduces fishing mortality on GOM haddock by the recreational fishery in order to address an overage of the FY 2010 recreational sub-ACL. This is important for preventing overfishing from occurring, as required in the Magnuson-Stevens Act, especially considering that the biomass for GOM haddock is expected to continue to decline over the next few years. The

recreational fishing season, particularly for charter/party vessels, begins in earnest in March and April of each year. Charter/party operations advertise and try to book fishing trips prior to the start of the fishing season as part of their yearly business plans. As a result, it is important to implement recreational AMs in a timely manner and before the recreational fishing begins to not only increase the effectiveness of such measures at achieving desired F reductions in the recreational fishery, but also to enable charter/party vessel operators to effectively plan, advertise, and book trips for the upcoming fishing season. Delays in implementing recreational AMs to consider additional public input for the measures implemented by this action will only complicate business plans currently being developed by charter/party operations for the upcoming fishing season. Further, delays in implementing such measures could result in the AMs becoming effective midway into the spring recreational fishing season. This could result in unanticipated negative economic impacts to charter/party vessel operators and associated supporting businesses due to confusion in applicable regulations, changes to advertisements, and potentially cancelled trips. In addition, mid-season implementation may undermine compliance with such measures and reduce the effectiveness of the AMs and their benefits to the GOM haddock stock. If such measures are not effective at reducing recreational catch and, therefore, F on this stock, further measures may be necessary in the future to ensure that overfishing does not occur, as required by the Magnuson-Stevens Act. Therefore, it is contrary to the public interest to unnecessarily delay the implementation of such measures due to the potential biological and economic impacts that may result.

The measures implemented by this interim final rule have already been considered by the public as part of Amendment 16 to the FMP. During the development of Amendment 16, several public meetings were held in which these measures were discussed. Further, the public had an opportunity to comment on these measures as part of the public review of the notices of availability for both the Amendment 16 Draft Environmental Impact Statement (DEIS) and FEIS that were published in the **Federal Register** on April 24, 2009 (74 FR 18705), and October 30, 2009 (74 FR 56194), respectively. During both comment periods, public comments were received concerning recreational measures considered in Amendment 16,

including specific comments regarding the haddock minimum size limit and the recreational AMs. These comments were considered during the decision by the Council to adopt final measures in Amendment 16 (DEIS comments only), and by the Secretary in the partial approval of Amendment 16. Moreover, the public also had an opportunity to discuss such measures during the comment period for the proposed rule to implement measures adopted by the Council in Amendment 16 (December 31, 2009, 74 FR 69382). As noted above, NMFS consulted with the Council, the Groundfish Recreational Advisory Panel, and the Groundfish Oversight Committee at meetings in November 2011 to elicit their input into

appropriate AMs to address the recreational fishery overage of the GOM haddock sub-ACL during FY 2010. During the Advisory Panel and Committee meetings, the measures implemented by this interim final rule were specifically discussed as potential AMs to address the overage. The public, including both private recreational anglers and charter/party vessel operators, provided input into their preference for AMs to address this overage during these meetings. Finally, additional public comment on these measures is being sought through the implementation of this action as an interim final rule.

Pursuant to the procedures established to implement section 6 of

E.O. 12866, the Office of Management and Budget has initially determined that this interim rule is not significant.

This interim final rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

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

Dated: December 22, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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