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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 161220999-7467-01]

RIN 0648-BG52

Magnuson-Stevens Fishery Conservation and Management Act Provisions;

Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Fishing Year 2017; Recreational Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to modify recreational management measures for Gulf of Maine cod and haddock for the 2017 fishing year. This action proposes to prohibit recreational possession of cod, reduce the haddock bag limit, and implement a new closed season for haddock in the fall. The intended effect of this action is to reduce catch of cod and haddock. This action is necessary to ensure fishing year 2017 recreational catch limits are not exceeded.

DATES: Comments must be received by *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0048, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0048*
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

Mail: Submit written comments to: John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Fishing Year 2017 Groundfish Recreational Measures.”

Instructions: 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the analyses supporting this rulemaking, including the Framework Adjustment 55 environmental assessment (EA) prepared by the New England Fishery Management Council, a supplemental EA to Framework Adjustment 55 prepared by the Greater Atlantic Regional Fisheries Office and Northeast Fisheries Science Center, and the supplemental information report (SIR) are available from: John K. Bullard, Regional

Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. The Framework Adjustment 55 EA, supplemental EA, and SIR are also accessible via the Internet at:

<http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/>.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Sector Policy Analyst, phone: 978-281-9145; e-mail: Mark.Grant@noaa.gov.

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1. Proposed Recreational Management Measures for Fishing Year 2017

Background

The recreational fishery for Gulf of Maine (GOM) cod and haddock is managed under the Northeast Multispecies Fishery Management Plan (FMP). Under the FMP, specific sub-annual catch limits (sub-ACL) for the recreational fishery are established for each fishing year for GOM cod and haddock. These sub-ACLs are a portion of the overall catch limit for each stock. The multispecies fishery opens on May 1 each year and runs through April 30 of the following calendar year. The FMP also contains recreational accountability measures to prevent the recreational sub-ACLs from being exceeded, or to correct the cause if an overage of one occurs.

The proactive accountability measure provision in the FMP indicates that the Regional Administrator shall, in consultation with the New England Fishery Management Council, develop recreational management measures for the upcoming fishing year

necessary to ensure that the sub-ACL is achieved, but not exceeded. The provisions authorizing this action can be found in § 648.89(f)(3) of the FMP's implementing regulations. This action also proposes additional measures necessary to facilitate enforcement of recreational management measures. These measures and corrections to other regulations also in this action are proposed under the authority of § 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which states that the Secretary of Commerce may promulgate regulations necessary to ensure that FMPs are implemented in accordance with the Magnuson-Stevens Act.

Recreational catch and effort data are estimated by the Marine Recreational Information Program (MRIP), a comprehensive, multi-faceted survey system administered by NMFS that collects data from recreational anglers and captains. In 2016, the recreational sub-ACL for GOM cod increased 30 percent, and the recreational sub-ACL for GOM haddock increased 149 percent. Accordingly, the recreational measures set for 2016 were more liberal than the 2015 measures to increase recreational fishing opportunities and catch. However, in 2016, cod catch increased more than predicted and the recreational sub-ACL was exceeded by 92 percent. Haddock catch slightly exceeded the sub-ACL (by 15 percent). For 2017, the recreational sub-ACL for GOM haddock increases 25 percent, from 928 mt to 1,160 mt, and the recreational sub-ACL for GOM cod remains unchanged at 157 mt. As specified in Table 1, compared to the 2016 catch, the 2017 sub-ACLs would allow for a 9-percent increase in haddock catch, but would require a 48-percent reduction in cod catch.

Table 1. Fishing Year 2016 Catch Compared to Fishing Year 2016 and 2017 sub-ACLs.

GOM Stock	2016 Catch (mt)	2016 sub-ACL (mt)	Catch of 2016 sub-ACL (percent)	2017 sub-ACL (mt)	Change in 2016 Catch to reach 2017 sub-ACL (percent)
Cod	302	157	192	157	-48
Haddock	1,066	928	115	1,160	+9

Analysis of Measures for Fishing Year 2017

A peer-reviewed bioeconomic model, developed by the Northeast Fisheries Science Center, was used to estimate 2017 recreational GOM cod and haddock mortality under various combinations of minimum sizes, possession limits, and closed seasons. Even when incorporating zero possession of GOM cod, the model estimates that the status quo measures for GOM haddock are not expected to constrain the catch of haddock, or the bycatch of cod, to the 2017 catch limits. The model estimates that the status quo haddock measures would result in cod catch of 292 mt and haddock catch of 1,299 mt (see Table 3), which would be 186 percent of the cod sub-ACL and 112 percent of the haddock sub-ACL.

Proposed Measures

Because the recreational measures currently in place for GOM cod and haddock are not expected to constrain fishing year 2017 catch to the sub-ACLs, the proactive accountability measure requires adjustment of the management measures. The proposed measures are slightly more restrictive than the current measures. Recreational possession of GOM cod would be prohibited. The minimum size for GOM haddock would be unchanged, but the bag limit would be reduced from 15 fish to 12 fish, and a fall closed season would be added to the existing spring closure. We are soliciting comment on two different fall closures, as described in more detail below. The proposed fishing year 2017

recreational measures for GOM cod and haddock are specified in Table 2, along with information on fishing year 2016 measures for comparison.

Table 2. Proposed GOM Cod and Haddock Recreational Management Measures for Fishing Year 2017 and Status Quo (Fishing Year 2016) Measures.

2017 Measures	Haddock			Cod		
	Haddock Possession Limit	Minimum Fish Size	Closed Season	Cod Possession Limit	Minimum Fish Size	Closed Season
Council Recommended	12 fish per angler	17 inches	3/1 - 4/14 9/17 - 10/31	N/A	N/A	5/1 - 4/30
Additional NMFS Option	12 fish per angler	17 inches	3/1 - 4/14 9/1 - 9/30	N/A	N/A	5/1 - 4/30
Status Quo	15 fish per angler	17 inches	3/1 - 4/14	1 fish per angler	24 inches	5/1 - 7/31 10/1 - 4/30

Council Recommendations

We consulted with the Council, and its Recreational Advisory Panel (RAP), in January 2017. The RAP met on January 18, 2017, to review catch projections under various scenarios of changed measures for fishing year 2017. The RAP discussed a number of alternatives, and specifically decided against any options that would include closures in May or that would set different measures for private anglers and for-hire vessels. Ultimately, the RAP recommended the option that prohibited cod possession, and for haddock maintained the 17-inch minimum size, reduced the bag limit from 15 to 12 fish, and added a fall closure from September 17 through October 31 to the existing spring closure. On January 25, 2017, the Council discussed recreational measures for 2017. The Council declined the Groundfish Oversight Committee’s suggestion to implement separate measures for the private and for-hire modes at this time in deference to having a larger public process to consider the concept. Ultimately, the Council recommended we implement the RAP’s recommended option (see Table 2).

The proposed measures are projected to result in fishing year 2017 recreational GOM cod and haddock catches that do not exceed the sub-ACLs (see Table 3), as explained further below. The analyses supporting this action are available as outlined in the **ADDRESSES** section of this rule’s preamble.

Table 3. Projected Fishing Year 2017 Recreational Cod and Haddock Catch under Proposed Measures and Status Quo

2017 Measures	Haddock Possession Limit	Minimum Fish Size	Closed Season	Predicted Haddock Catch (mt)	Probability Haddock Catch Below sub-ACL (percent)	Predicted Cod Catch (mt)	Probability Cod Catch Below sub-ACL (percent)
Council Recommended	12 fish per angler	17 inches	3/1 - 4/14	1,160	50	147	78
			9/17-10/31				
Additional NMFS Option	12 fish per angler	17 inches	3/1 - 4/14	1,137	70	149	78
			9/1 - 9/30				
Status Quo	15 fish per angler	17 inches	3/1 - 4/14	1,299	0	292	0

The bioeconomic model’s predicted probabilities that catch will remain at or below the sub-ACLs are informative. However, we are using preliminary MRIP data that will change when vessel trip report data from the for-hire fleet is incorporated (after June 15). MRIP estimates are highly variable from year to year. This combination of factors makes it difficult for the model to produce consistent predictions and to assess the underlying reasons for the discrepancies between predicted and actual catch. Historically, while the model’s predictive power increases each year, the model underestimates recreational catch. Recent measures have generally resulted in catch close to the sub-ACLs; however, a number of overages have still occurred.

NMFS Additional Option

The Magnuson-Stevens Act requires accountability measures to ensure compliance with ACLs. In 2014, the U.S. District Court for the District of Columbia in *Guindon v. Pritzker*, 2014 WL 1274076 (D.D.C. Mar. 26, 2014) ruled against the agency's recreational fishery measures in the Gulf of Mexico red snapper fishery because the measures did not include a sufficient buffer, or additional accountability measures, to account for the management uncertainty represented by repeated ACL overages in past years. In light of the bioeconomic model's prediction that the Council's recommended measures have only a 50-percent probability of preventing haddock catch from exceeding the sub-ACL, the model's history of underestimating catch, and multiple overages over the past five years it may be prudent to implement more conservative measures.

Therefore, in addition to the Council's recommended haddock measures, we are requesting comment on a set of measures with the same minimum size and bag limit, but a different fall closure (Additional NMFS Option in Table 2). As shown in Table 3, the model predicts shifting from a 6-week fall closure (9/17-10/31), as recommended by the Council, to a 4-week September closure (9/1-9/30), would slightly reduce haddock catch and increase the probability that haddock catch would not exceed the sub-ACL. The key difference is that closing the entirety of September eliminates high catches associated with Labor Day weekend. Thus, a shorter fall closure could be a more conservative approach; however, this closure would be at the expense of a holiday weekend that is popular with private anglers and economically important to a portion of the for-hire fleet.

We are particularly interested in comments on the effects of the different fall closures of the Council's recommended option and NMFS additional option.

2. Regulatory Corrections and Other Measures Under Regional Administrator Authority

In § 648.89(b), we have added an exception to the minimum fish sizes for GOM cod and haddock to allow vessels to transit the GOM Regulated Mesh Area while in possession of cod and haddock caught outside the area, provided those fish meet the minimum sizes specified for fish caught outside the area. Amendment 16 to the FMP included seasonal closures of the GOM recreational fishery for cod and haddock, and also implemented a possession limit exemption to allow vessels to transit the GOM when it was closed while in possession of fish legally caught outside the area. At that time, there was a single minimum size for cod, and a single minimum size for haddock, regardless of where the fish were caught and the transiting provision included in Amendment 16 did not address minimum fish size restrictions.

Subsequently, we have changed the minimum sizes for GOM cod and haddock as part of the proactive accountability measures. We adjust the recreational measures for only GOM cod and haddock because these are the only stocks allocated a recreational sub-ACL. This has created a complicated system in which vessels may transit the GOM Regulated Mesh Area with fish legally caught outside the area in excess of the GOM possession limits, but those vessels must comply with the most restrictive minimum size of the two areas, rather than the minimum size applicable to where the fish were caught. The intent of this change is to simplify the existing transiting exemption by allowing any cod and haddock legally caught outside the GOM to be possessed by vessels transiting the GOM to ensure consistent implementation of the existing transiting provision.

In § 648.89(e), we have revised the text specifying the requirements for the letters of authorization allowing charter and party boats to fish in the GOM closed areas and the Nantucket Lightship Closed Area to improve readability. In paragraph (e)(3), we have also corrected the name of the NMFS office issuing letters of authorization from the “Northeast Regional Office” to the “Greater Atlantic Regional Fisheries Office.”

In § 648.89(f)(2)(ii), we removed text prohibiting the Regional Administrator from adjusting the possession limit for GOM cod while recreational possession of GOM cod was prohibited by the Northeast Multispecies FMP. In 2016, Framework Adjustment 55 removed this prohibition, but the final rule implementing Framework Adjustment 55 inadvertently failed to remove this text. This change is intended to correct the regulations to accurately reflect the Council’s intent in Framework Adjustment 55.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic

impact this proposed rule, if adopted, would have on small entities, and also determines ways to minimize these impacts. The IRFA includes sections of the preamble **(SUPPLEMENTARY INFORMATION)** and analyses supporting this rulemaking, including the Framework Adjustment 55 EA, the supplemental EA to Framework Adjustment 55, and the supplemental information report. A summary of the analysis follows (see **ADDRESSES**).

Description of the Reasons Why Action by the Agency is Being Considered

Because the recreational measures currently in place for GOM cod and haddock are not expected to constrain fishing year 2017 catch to the sub-ACLs, this action proposes new measures, as required by the FMP, to ensure that the sub-ACL is achieved, but not exceeded.

Statement of the Objectives of, and Legal Basis for, this Proposed Rule

The accountability measures outlined in the FMP indicate that the Regional Administrator may, in consultation with the Council, modify the recreational management measures for the upcoming fishing year to ensure that the sub-ACL is achieved, but not exceeded. The provisions authorizing this action can be found in § 648.89(f)(3) of the FMP's implementing regulations. The intended effect of this action is to reduce catch of cod and haddock. This action is necessary to ensure fishing year 2017 recreational catch limits are not exceeded.

Additional measures necessary to facilitate enforcement of these accountability measures, consistent with the FMP, are authorized by section 305(d) of the Magnuson-Stevens Act. In § 648.89(b), we have added an exception to the minimum fish sizes for GOM cod and haddock to allow vessels to transit the GOM Regulated Mesh Area while

in possession of cod and haddock caught outside the area, provided those fish meet the minimum sizes specified for fish caught outside the area.

In § 648.89(e), we have revised the text specifying the requirements for the letters of authorization allowing charter and party boats to fish in the GOM closed areas and the Nantucket Lightship Closed Area to improve readability.

In § 648.89(f)(2)(ii), we removed text prohibiting the Regional Administrator from adjusting the possession limit for GOM cod while recreational possession of GOM cod was prohibited by the Northeast Multispecies FMP to accurately reflect the Council's intent in Framework Adjustment 55.

Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply

The Small Business Administration (SBA) defines a small commercial finfishing or shellfishing business as a firm with annual receipts (gross revenue) of up to \$11.0 million. A small for-hire recreational fishing business is defined as a firm with receipts of up to \$7.5 million. Having different size standards for different types of fishing activities creates difficulties in categorizing businesses that participate in multiple fishing related activities. For purposes of this assessment business entities have been classified into the SBA-defined categories based on which activity produced the highest percentage of average annual gross revenues from 2013-2015, the most recent three-year period for which data are available. This classification is now possible because vessel ownership data have been added to Northeast permit database. The ownership data identify all individuals who own fishing vessels. Using this information, vessels can be grouped together according to common owners. The resulting groupings were treated as a fishing

business for purposes of this analysis. Revenues summed across all vessels in a group and the activities that generate those revenues form the basis for determining whether the entity is a large or small business.

The proposed regulations include closed seasons in addition to possession limits and size limits. For purposes of this analysis, it is assumed that for-hire businesses are directly affected by all three types of recreational fishing restrictions. According to the FMP, it is unlawful for the owner or operator of a charter or party boat issued a valid multispecies permit, when the boat is carrying passengers for hire, to:

- Possess cod or haddock in excess of the possession limits.
- Fish with gear in violation of the regulations.
- Fail to comply with the applicable restrictions if transiting the GOM Regulated Mesh Area with cod or haddock on board that was caught outside the GOM Regulated Mesh Area.

As the for-hire owner and operator can be prosecuted under the law for violations of the proposed regulations, for-hire business entities are considered directly affected in this analysis. Anglers are not considered “entities” under the RFA and thus economic impacts on anglers are not discussed here.

For-hire fishing businesses are required to obtain a Federal charter/party multispecies fishing permit in order to carry passengers to catch GOM cod or haddock. Thus, the affected businesses entities of concern are businesses that hold Federal multispecies for-hire fishing permits. While all business entities that hold for-hire permits could be affected by changes in recreational fishing restrictions, not all business that hold for-hire permits actively participate in a given year. Those who actively

participate, i.e., land fish, would be the group of business entities that are impacted by the regulations. Latent fishing power (in the form of unfished permits) has the potential to alter the impacts on a fishery, but it's not possible to predict how many of these latent business entities will or will not participate in this fishery in fishing year 2017. The Northeast Federal landings database (i.e., vessel trip report data) indicates that a total of 645 party/charter vessels held a multispecies for-hire fishing permit in 2015 (the most recent full year of available data). Of the 645 for-hire permitted vessels, however, only 208 actively participated in the for-hire Atlantic cod and haddock fishery in fishing year 2015 (i.e., reported catch of cod or haddock).

Using vessel ownership information developed from Northeast Federal permit data and Northeast vessel trip report data, it was determined that the 208 actively participating for-hire vessels are owned by 191 unique fishing business entities. The vast majority of the 208 fishing businesses were solely engaged in for-hire fishing, but some also earned revenue from shellfish and/or finfish fishing. The highest percentage of annual gross revenues though for all but 18 of the fishing businesses was from for-hire fishing. In other words, the revenue from for-hire fishing was greater than the revenue from shellfishing and the revenue from finfish fishing for all but 18 of the business entities.

According to the SBA size standards, small for-hire businesses are defined as firms with annual receipts of up to \$7.5 million, and small commercial finfishing or shellfishing business as firms with annual receipts (gross revenue) of up to \$11.0 million. Average annual gross revenue estimates calculated from the most recent three years (2013-2015) indicate that none of the 191 for-hire business entities had annual receipts of

more than \$5.2 million from all of their fishing activities (for-hire, shellfish, and finfish). Therefore, all of the affected for-hire business entities are considered “small” by the SBA size standards and thus this action will not disproportionately affect small versus large for-hire business entities.

Description of the Projected Reporting, Record-Keeping, and Other Compliance

Requirements of this Proposed Rule

There are no proposed reporting, recordkeeping, or other compliance requirements.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

The proposed action is authorized by the regulations implementing the NE Multispecies FMP. It does not duplicate, overlap, or conflict with other Federal rules.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

A total of seven combinations of recreational measures were presented to the Recreational Advisory Panel, the Groundfish Oversight Committee, and the Council. This included the status quo and an option (presented to the Panel, Committee, and Council as Option 1) that prohibited cod possession while retaining the current haddock measures that would not have restrained catch to the quotas, and thus, would not have accomplished the objective. The proposed options that would accomplish the objectives were the Council recommended option (presented to the Panel, Committee, and Council as Option 2) and the additional NMFS option (presented to the Panel, Committee, and Council as Option 3), which are discussed in detail in the preamble. The remaining three

options (Options 4, 5, and 6 in Table 4) that would accomplish the objective were discussed by all three groups. These remaining options were rejected either because implementation was viewed as confusing to the public (e.g., implementing a May closure shortly after the start of the fishing year on May 1) or in deference to having a larger public process to consider the concept (i.e., separate measures for the private anglers and the for-hire fleet).

Table 4. Projected Fishing Year 2017 Recreational Cod and Haddock Catch under Alternative Measures Not Proposed

2017 Measures	Haddock			Cod			Predicted Haddock Catch (mt)	Probability Haddock Catch Below sub-ACL (percent)	Predicted Cod Catch (mt)	Probability Cod Catch Below sub-ACL (percent)
	Haddock Possession Limit	Minimum Fish Size	Closed Season	Cod Possession Limit	Minimum Fish Size	Closed Season				
Option 4	15	17	3/1 - 4/14 2 weeks in May	N/A	N/A	5/1 - 4/30	1,118	73	153	61
Option 5	10	17	3/1 - 4/14 2 weeks in May	N/A	N/A	5/1 - 4/30	1,149	68	157	51
Option 6 Private	12	17	3/1 - 4/14 9/17 - 10/31	N/A	N/A	5/1 - 4/30	1,159	51	153	55
Option 6 For Hire	10	17	3/1 - 4/14	N/A	N/A	5/1 - 4/30				

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 19, 2017

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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.*

2. In § 648.89:

a. Revise paragraphs (b)(2) and (c)(1);

b. Remove paragraph (c)(2);

c. Redesignate paragraphs (c)(3) through (c)(8) as paragraphs (c)(2) through (c)(7), respectively;

d. Revise newly redesignated paragraph (c)(7); and

e. Revise paragraphs (e) and (f).

The revisions and additions read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) ***

(2) *Exceptions*—(i) *Fillet size*. Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(ii) *Transiting*. Vessels in possession of cod or haddock caught outside the GOM Regulated Mesh Area specified in § 648.80(a)(1) may transit this area with cod and haddock that meet the minimum size specified for fish caught outside the GOM Regulated Mesh Area specified in § 648.80(b)(1), provided all bait and hooks are removed from fishing rods, and any cod and haddock on board has been gutted and stored.

(c) *Possession Restrictions*— (1) *Cod*-- (i) *Outside the Gulf of Maine*—(A) *Private recreational vessels*. Each person on a private recreational vessel may possess no more than 10 cod per day in, or harvested from, the EEZ when fishing outside of the GOM Regulated Mesh Area specified in § 648.80(a)(1).

(B) *Charter or party boats*. Each person on a charter or party fishing boat permitted under this part, and not fishing under the NE multispecies DAS program or on a sector trip, may possess unlimited cod in, or harvested from, the EEZ when fishing outside of the GOM Regulated Mesh Area specified in § 648.80(a)(1).

(ii) *Gulf of Maine*—(A) *Private recreational vessels*. When fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1), persons aboard private recreational fishing vessels may not fish for or possess cod, except that each person on a private

recreational vessel in possession of cod caught outside the GOM Regulated Mesh Area may transit this area with cod up to the possession limit specified at § 648.80(c)(1)(i)(A), provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

(B) *Charter or party boats.* When fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1), persons aboard a charter or party fishing boat may not fish for or possess cod, except that each person on a charter or party fishing boat permitted under this part, and not fishing under the NE multispecies DAS program or on a sector trip, in possession of cod caught outside the GOM Regulated Mesh Area specified in § 648.80(a)(1) may transit this area in possession of cod caught outside the GOM Regulated Mesh Area with cod up to the possession limit specified at § 648.80(c)(1)(i)(B), provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

(iii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iv) Cod harvested by recreational fishing vessels in or from the EEZ with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(v) Cod must be stored so as to be readily available for inspection.

(7) *Haddock*—(i) *Outside the Gulf of Maine*—(A) *Private recreational vessels*.

Each person on a private recreational vessel may possess unlimited haddock in, or harvested from, the EEZ when fishing outside of the GOM Regulated Mesh Area specified in § 648.80(a)(1).

(B) *Charter or party boats*. Each person on a charter or party fishing boat permitted under this part, and not fishing under the NE multispecies DAS program or on a sector trip, may possess unlimited haddock in, or harvested from, the EEZ when fishing outside of the GOM Regulated Mesh Area specified in § 648.80(a)(1).

(ii) *Gulf of Maine*—(A) *Private recreational vessels*. Each person on a private recreational vessel in possession of haddock caught outside the GOM Regulated Mesh Area specified in § 648.80(a)(1) may transit this area with more than the GOM haddock possession limit specified at paragraph (c)(8)(ii) of this section up to the possession limit specified at paragraph (c)(8)(i) of this section, provided all bait and hooks are removed from fishing rods and any haddock on board has been gutted and stored.

(1) *May 1 through September 17*. Each person on a private recreational fishing vessel, fishing from May 1 through September 17, may possess no more than 12 haddock per day in, or harvested from, the EEZ when fishing in the GOM Regulated Mesh Area specified in §648.80(a)(1).

(2) *September 18 through October 31*. When fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1), persons aboard private recreational fishing vessels may not fish for or possess any haddock from September 18 through October 31.

(3) *November through February.* Each person on a private recreational fishing vessel, fishing from November 1 through February 28 (February 29 in leap years), may possess no more than 12 haddock per day in, or harvested from, the EEZ when fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1).

(4) *March 1 through April 14.* When fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1), persons aboard private recreational fishing vessels may not fish for or possess any haddock from March 1 through April 14.

(5) *April 15 through April 30.* Each person on a private recreational fishing vessel, fishing from April 15 through April 30, may possess no more than 12 haddock per day in, or harvested from, the EEZ when fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1).

(B) *Charter or party boats.* Each person on a charter or party fishing boat permitted under this part, and not fishing under the NE multispecies DAS program or on a sector trip, in possession of haddock caught outside the GOM Regulated Mesh Area specified in § 648.80(a)(1) may transit this area with more than the GOM haddock possession limit specified at paragraph (c)(8)(ii) of this section up to the possession limit specified at paragraph (c)(8)(i) of this section, provided all bait and hooks are removed from fishing rods and any haddock on board has been gutted and stored.

(1) *May 1 through September 17.* Each person on a charter or party fishing boat permitted under this part, and not fishing under the NE multispecies DAS program or on a sector trip, fishing from May 1 through September 17, may possess no more than 12 haddock per day in, or harvested from, the EEZ when fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1).

(2) *September 18 through October 31.* When fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1), persons on a charter or party fishing boat permitted under this part, and not fishing under the NE multispecies DAS program or on a sector trip, may not fish for or possess any haddock from September 18 through October 31.

(3) *November through February.* Each person on a charter or party fishing boat permitted under this part, and not fishing under the NE multispecies DAS program or on a sector trip, fishing from November 1 through February 28 (February 29 in leap years), may possess no more than 12 haddock per day in, or harvested from, the EEZ when fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1).

(4) *March 1 through April 14.* When fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1), persons aboard a charter or party fishing boat permitted under this part, and not fishing under the NE multispecies DAS program or on a sector trip, may not fish for or possess any haddock from March 1 through April 14.

(5) *April 15 through April 30.* Each person on a charter or party fishing boat permitted under this part, and not fishing under the NE multispecies DAS program or on a sector trip, fishing from April 15 through April 30, may possess no more than 12 haddock per day in, or harvested from, the EEZ when fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1).

(iii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iv) Haddock harvested in or from the EEZ by private recreational fishing boats or charter or party boats with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(v) Haddock must be stored so as to be readily available for inspection.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area—(1) GOM Closed Areas.* (i) A vessel fishing under charter/party regulations may not fish in the GOM closed areas specified in § 648.81(d)(1), (e)(1), and (f)(4) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(5)(v) and paragraph (e)(3) of this section. If the vessel fishes or intends to fish in the GOM cod protection closures, the conditions and restrictions of the letter of authorization must be complied with for a minimum of 3 months. If the vessel fishes or intends to fish in the year-round GOM closure areas, the conditions and restrictions of the letter of authorization must be complied with for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization.

(ii) A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(n)(1) during the time period specified in

that paragraph, unless the vessel complies with the requirements specified at § 648.81(n)(2)(iii).

(2) *Nantucket Lightship Closed Area.* A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(c)(2)(iii) and paragraph (e)(3) of this section.

(3) *Letters of authorization.* To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the NMFS Greater Atlantic Regional Fisheries Office, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel may not fish on a sector trip, under a NE multispecies DAS, or under the provisions of the NE multispecies Small Vessel Category or Handgear A or Handgear B permit categories, as specified at §648.82, during the period of participation.

(f) *Recreational fishery AM* — (1) *Catch evaluation*. As soon as recreational catch data are available for the entire previous fishing year, the Regional Administrator will evaluate whether recreational catches exceed any of the sub-ACLs specified for the recreational fishery pursuant to § 648.90(a)(4). When evaluating recreational catch, the components of recreational catch that are used shall be the same as those used in the most recent assessment for that particular stock. To determine if any sub-ACL specified for the recreational fishery was exceeded, the Regional Administrator shall compare the 3-year average of recreational catch to the 3-year average of the recreational sub-ACL for each stock.

(2) *Reactive AM adjustment*. If it is determined that any recreational sub-ACL was exceeded, as specified in paragraph (f)(1) of this section, the Regional Administrator, after consultation with the NEFMC, shall develop measures necessary to prevent the recreational fishery from exceeding the appropriate sub-ACL in future years.

Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the **Federal Register** no later than January when possible. Separate AMs shall be developed for the private and charter/party components of the recreational fishery.

(3) *Proactive AM adjustment*. When necessary, the Regional Administrator, after consultation with the New England Fishery Management Council, may adjust recreational measures to ensure the recreational fishery achieves, but does not exceed any recreational fishery sub-ACL in a future fishing year. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or

possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the **Federal Register** prior to the start of the fishing year where possible. In specifying these AMs, the Regional Administrator shall take into account the non-binding prioritization of possible measures recommended by the Council: For cod, first increases to minimum fish sizes, then adjustments to seasons, followed by changes to bag limits; and for haddock, first increases to minimum size limits, then changes to bag limits, and then adjustments to seasons.

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