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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 161220999-7682-02]

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: Final rule.

SUMMARY: This action sets the recreational management measures for Gulf of Maine cod and haddock for the remainder of the 2017 fishing year. This action prohibits recreational possession of cod, reduces the haddock bag limit, and implements a new closed season for haddock in the fall. The intended effect of this action is to reduce catch of cod and haddock in order to ensure that fishing year 2017 recreational catch limits are not exceeded.

DATES: Effective July 27, 2017.

ADDRESSES: Copies of a supplemental environmental assessment (EA) to Framework Adjustment 55 to the Northeast Multispecies Fishery Management Plan prepared by the Greater Atlantic Regional Fisheries Office and Northeast Fisheries Science Center; and the Framework 55 EA prepared by the New England Fishery Management Council for

this rulemaking are available from: John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. The

Framework 55 EA and supplement are also accessible via the Internet at:

<https://www.greateratlantic.fisheries.noaa.gov/regs/2016/March/16mulfw55ea.pdf>

and

https://www.greateratlantic.fisheries.noaa.gov/regs/2016/March/160212_rec_measures_draft_ea.pdf. These documents are also accessible via the Federal eRulemaking Portal:

<http://www.regulations.gov>.

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1. Fishing Year 2017 Recreational Management Measures

Background

Statutory Authority

Under the Northeast Multispecies Fishery Management Plan (FMP), sub-annual catch limits (sub-ACL) for the recreational fishery are established for each fishing year for Gulf of Maine (GOM) cod and haddock. The regulations at 50 CFR 648.89(f)(3) authorize the Regional Administrator, in consultation with the New England Fishery Management Council (NEFMC), to modify the recreational management measures for the upcoming fishing year to ensure that the recreational fishery achieves, but does not

exceed, the recreational fishery sub-ACLs. The proposed rule for this action (82 FR 24086; May 25, 2017) provides details on the consultation with the NEFMC and how the NEFMC developed its recommendations; that information is not repeated here.

Council's Proposed Measures

Because of repeated recreational fishery sub-ACL overages (haddock the last five years and cod three of five years) and the model's prediction that the NEFMC's recommended measures have only a 50-percent probability of keeping haddock catch below the sub-ACL, we considered whether it may be prudent to implement a more conservative fall closure that would likely have a higher probability of constraining haddock catch to the sub-ACLs. There are four primary reasons that the Council's proposed measures would sufficiently constrain catch to the sub-ACL's and were more consistent with the FMPs goals and objectives than the closed area measure we presented: 1) The Council's measures include a new fall closed season, cod prohibition, and a more conservative haddock bag limit; 2) improved information used in the bioeconomic model this year provides greater confidence in its predictions compared to previous years; 3) the interactions between GOM cod and haddock and the status of each of these stocks; and 4) newly available commercial catch data show a strong likelihood that overall GOM haddock catch will be under the total ACL for 2016 and, that the recreational sub-ACL and AM system combined with the overall ACL is effectively constraining catch.

We presented a more conservative closure season for comments to closely consider whether the Council's proposed accountability measures would sufficiently account for management uncertainty, prevent GOM cod and haddock catch overages, and

provide an opportunity for the fishery to attain its allowable catch. We have determined that the more conservative measure is not necessary. The measures proposed by the Council are more conservative than the 2016 management measures. The possession of cod is being prohibited, the haddock bag-limit has been reduced, and a new fall closure is being implemented. We expect that these measures will allow the recreational fishery to achieve, but not exceed their sub-ACLs.

We also considered the improved performance of the model. The model projects recreational catch using economic information from an angler choice experiment survey and biological information about the current stock structure for the GOM cod and haddock stocks with historical catchability data from recreational anglers. Recent modifications to the model, including the incorporation of new data, improved its ability to accurately estimate recreational catches, and thus increases our confidence in the management measures based on its output. Specifically, the model now includes data from 2015, when cod possession was prohibited for the first time, and as a result, the model is better able to estimate the impact of prohibiting cod on the number of angler trips and catch of cod and haddock. While we have relied on the model using similar buffers in the past, the model is now improved, providing greater confidence in the outputs.

When evaluating the merit of each fall closure option, we considered the impacts on both haddock and cod. GOM cod is overfished and overfishing is occurring, but GOM haddock is a healthy stock. The more conservative closed area we sought comments on is estimated to have an increased probability of constraining GOM haddock catch to the sub-ACL (70 percent), but is projected to result in slightly increased GOM

cod catch. Given the poor status of GOM cod, an option that is projected to increase GOM cod catch is a concern. We determined that the risk associated with increasing GOM cod catch outweighed the potential benefits of a slightly higher probability of limiting GOM haddock catch to the sub-ACL especially given the model improvements.

Last, newly available commercial catch data for 2016 show that overall catch is being effectively constrained. The newly available data shows that that the total commercial catch for GOM haddock was only 66 percent of the commercial ACL. The recreational sub-ACL is only a small portion of the overall ACL. Thus, despite a relatively minor overage in the recreational fishery, total 2016 GOM haddock catch, is expected to be below the overall ACL.

Fishing Year 2017 Recreational 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, we are adjusting management measures for the remainder of the fishing year, as recommended by the NEFMC. Effective July 27, 2017, recreational possession of GOM cod will be prohibited. The minimum size for GOM haddock is unchanged, but the bag limit is reduced from 15 fish to 12 fish, and a fall closed season has been added to the existing spring closure. These measures are summarized in Table 1, along with information on the current measures for comparison.

Table 1. GOM Cod and Haddock Recreational Management Measures for Fishing Year 2017 and Status Quo (Fishing Year 2016) Measures.

	Current Measures			New 2017 Measures		
Stock	Per Day Possession Limit (fish per angler)	Minimum Fish Size	Season When Possession is Permitted	Per Day Possession Limit (fish per angler)	Minimum Fish Size	Season When Possession is Permitted

GOM Cod	1	24 inches (61.0 cm)	August 1 – September 30	Possession Prohibited Year-Round		
GOM Haddock	15	17 inches (43.2 cm)	Year Round Except March 1 – April 14	12	17 inches (43.2 cm)	May 1 – September 16 November 1 – February 28 and April 15 – April 30

Analysis

Recreational catch and effort data are estimated by the Marine Recreational Information Program (MRIP). 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. Therefore, we are implementing more restrictive measures. Additional details are provided in the Supplemental EA (see **ADDRESSES**) and the proposed rule, and are not repeated here.

The final measures implemented by this action for the 2017 fishing year, as recommended by the NEFMC, are expected to result in a decrease in the number of trips taken by anglers, and decreased catch, in comparison to retaining the current measures, which is projected to allow the recreational fishery to reach, but not exceed, the 2017 recreational sub-ACLs (Table 2).

Table 2. Summary of the Model Estimates of Catch and the Likelihood of Catch Remaining Below the sub-ACLs for the Status Quo Measures and the 2017 Measures.

Measures	Predicted Haddock Catch (mt)	Probability Haddock Catch Below sub-ACL	Predicted Cod Catch (mt)	Probability Cod Catch Below sub-ACL
New 2017 Measures	1,160	50%	147	78%
Status Quo	1,299	0%	292	0%

2. Regulatory Corrections and Other Measures Under Regional Administrator Authority

We have made numerous administrative changes under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act that are necessary and consistent with the FMP’s goals and objectives. In § 648.89(b), we 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 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 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 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 NEFMC’s intent in Framework Adjustment 55.

Comments and Responses

We received 67 comments on the proposed 2017 recreational measures. Two comments received were not germane to the proposed measures. We received pertinent comments from the NEFMC, the Massachusetts Division of Marine Fisheries, the New

Hampshire Fish and Game Department, the Stellwagen Bank Charter Boat Association, and 63 members of the public.

Timing

Comment 1: The New Hampshire Fish and Game Department, the Stellwagen Bank Charter Boat Association, and 31 individuals submitted comments regarding the publication of the proposed rule after the May 1 start of the 2017 fishing year. The New Hampshire Fish and Game Department expressed concern that the publication of the proposed rule after the start of the fishing year would exacerbate the existing timing problems of states attempting to match federal measures and inform anglers, and for-hire businesses attempting to attract business before knowing the regulations. The Stellwagen Bank Charter Boat Association and 30 individuals expressed disappointment because they feared that late implementation of the changes to the recreational measures would undermine the work of the NEFMC and its Recreational Advisory Panel (RAP) to develop and provide recommendations that would prevent catch from exceeding the quotas. The Stellwagen Bank Charter Boat Association and 30 individuals also urged that recreational anglers should not be subject to any further restrictions in the haddock bag limit or increases in the haddock minimum size in fishing year 2018 as a result of late implementation of changes in fishing year 2017. One individual commented that we should not change measures mid-season because business owners and recreational anglers have made financial decisions based on the current regulations.

Response: We agree that these timing issues make it difficult for the for-hire fleet to market and book trips, hamper the ability of states to implement complementary recreational measures, and create challenges for recreational anglers to be informed of the

latest regulations. The timing of changes to the recreational measures has been an issue for several years. MRIP collects information on recreational catch and effort. This information is processed in 2-month 'waves' and preliminary data is available six weeks after the end of each wave. Because of this, preliminary catch through October (which includes the majority of annual recreational groundfish activity) is first available after mid-December. As a result, January is the earliest we are able to present an analysis of the MRIP information and any potential changes that may be necessary for the next fishing year. This creates a compressed period for consideration of options, the public NEFMC consultation process, and proposed and final rulemaking. Because of this timeline, recreational measures for the new fishing year are generally not finalized until just prior to the start of the fishing year.

Although it is not ideal to change the recreational measures after the start of the fishing year this year, it is necessary that the revised measures be implemented before the recreational cod season opens. The recreational cod season is closed under status quo measures until August 1. While late implementation is not ideal, the timing of this action will still effectively prohibit the retention of cod in the recreational fleet.

Because of the challenging timeline of the current recreational process, we are working with the NEFMC to consider possible ways to modify the regulatory process so regulations for the recreational fishery can be finalized sooner. Changes to the recreational process would be incorporated into Framework 57, which is intended to be implemented for the 2018 fishing year. Additionally, any changes to the recreational measures for fishing year 2018 would be based on the 2018 catch limits and an analysis of expected catch in 2018.

NMFS Additional Option for a September Closure

Comment 2: The Stellwagen Bank Charter Boat Association and 30 individuals alleged that the reason the agency proposed an alternative September closure for haddock was because implementing the reduced haddock bag limit after May 1 would result in increased catch. One additional individual requested that we inform the recreational community of our reasons for the measures that were proposed.

Response: As discussed in the proposed rule, we sought comments on the effects of a more conservative fall closure on the fishery in comparison to the Council's proposed closure to address concerns about the recreational fishery's recent history of exceeding the GOM cod and haddock sub-ACLs. A U.S. District Court considered a history of overages and the effectiveness of accountability measures in the Gulf of Mexico red snapper fishery (*Guiondon v. Pritzker, 2014*) and struck down the accountability measure because they did not sufficiently ensure the limits would not be exceeded. We presented a more conservative closure season for comments to closely consider whether the Council's proposed accountability measures would sufficiently account for management uncertainty, prevent GOM cod and haddock catch overages, and provide an opportunity for the fishery to attain its allowable catch. As discussed in the preamble, we have determined that the Council's proposed measures sufficiently constrain catch and are more consistent with the FMP's goals and objectives.

Comment 3: The NEFMC, the Massachusetts Division of Marine Fisheries, and the New Hampshire Fish and Game Department, and one individual commented that the issues in the *Guiondon v. Pritzker* case are distinct from the recreational fishery for GOM

cod and haddock, and that measures more conservative than the suite recommended by the NEFMC are not necessary or justified. The commenters also noted that the additional NMFS alternative in the proposed rule would not provide a clear conservation benefit in comparison to the NEFMC's recommended suite of measures.

Response: We agree that the recreational fishery for GOM cod and haddock and the suite of management measures for the fishery is distinct from the *Guindon v. Pritzker* case. Further, the GOM haddock stock is healthy and that the total ACL has not been fully harvested in the last 2 years. We considered stock status when evaluating the alternatives and, as discussed in the preamble, are implementing the NEFMC's recommended measures rather than the more conservative September closure for haddock. The model predicts that these measures have a 78-percent chance that catch of the rebuilding GOM cod stock will not exceed the recreational quota, and a 50-percent chance that the catch of the abundant and healthy GOM haddock stock will achieve, but not exceed the recreational quota. While the GOM haddock stock is healthy, the GOM cod stock is overfished and estimated to be only 4-6 percent of the target population size. Given the differences in the sizes and health of these two stocks, the final 2017 measures appropriately balance the risk of exceeding the quotas with the goal of achieving the quotas and providing the greatest overall benefit to the nation.

The Bioeconomic Model and Uncertainty

Comment 4: The Massachusetts Division of Marine Fisheries and the New Hampshire Fish and Game Department commented that the bioeconomic model fails to account for variance in the underlying MRIP data and uncertainty in the model inputs because it uses point estimates. The NEFMC commented that, in 2015, when recreational

possession of cod was prohibited for the first time, the bioeconomic model overestimated cod catch and angler effort, and that a cod prohibition in 2017 could again result in lower actual angler effort than the model has predicted.

Response: The bioeconomic model uses point estimates of catch from MRIP and currently does not incorporate measures of uncertainty in the MRIP data, although it might be possible to incorporate some measures of uncertainty in the future. As a result, the the model may underestimate or overestimate catch and angler trips in any given year. In recent years, the model has underestimated haddock and cod catch, with one exception in 2015. Although the bioeconomic model overestimated cod catch and the number of angler trips in 2015, it is unlikely to recur in 2017. The model had likely overestimated cod catch because at that time the model did not take into account factors that we expected would keep cod catch low, including a prohibition on retention of cod and the ability of vessels to avoid cod while targeting other species. However, we expect the bioeconomic model to better estimate the effect of prohibiting cod possession on total cod catch and the number of angler trips in 2017 because the model now incorporates data from 2015.

Although there are uncertainties in the bioeconomic model, the Northeast Multispecies FMP incorporates both scientific uncertainty and management uncertainty in setting annual catch limits. These uncertainty buffers increase the likelihood of achieving management targets and reduce the risk of overfishing. Among other factors discussed in the preamble, the incorporation of scientific and management uncertainty already built into setting recreational catch limits was a consideration in our determination to adopt the less conservative measures for haddock.

Comment 5: The New Hampshire Fish and Game Department and the Massachusetts Division of Marine Fisheries commented that we should address uncertainty in the GOM cod and haddock recreational fishery in a similar manner to the Atlantic States Marine Fisheries Commission's approach to using point estimates in the black sea bass fishery. Specifically, the New Hampshire Fish and Game Department recommended that we compare MRIP harvest estimates with a percent standard error to the recreational sub-ACLs and retain the status quo recreational measures for the next year if the recreational quota was within the percent standard error of the MRIP harvest estimate. The Massachusetts Division of Marine Fisheries also urged that we consider the Atlantic States Marine Fisheries Commission's approach to summer flounder. Specifically, using multiple years of MRIP data and incorporating standard errors around the MRIP catch estimates when developing recreational measures.

Response: The bioeconomic model uses point estimates of recreational catch and effort from MRIP and produces point estimates that may underestimate or overestimate catch and angler trips. At the request of the New Hampshire Fish and Game Department, we provided an estimate of model uncertainty for the two options proposed. That estimate did not include uncertainty in the MRIP data, but did incorporate some sources of uncertainty in the model simulations. While the estimate is informative, additional work should be done before determining whether or not the bioeconomic model can incorporate uncertainty. Amendment 16 to the Northeast Multispecies FMP requires that recreational catch is calculated consistent with the catch used in the stock assessment. At this time, the stock assessments for GOM cod and haddock do not incorporate separate calculations of uncertainty for MRIP catch estimates. In evaluating possible changes to

the recreational management process in Framework 57, the NEFMC could consider changes to the method for determining when AMs are triggered.

Haddock Measures

Comment 6: The New Hampshire Fish and Game Department urged us to maintain the current haddock measures, in conjunction with prohibiting recreational possession of cod (analyzed and presented to the NEFMC as Option 1), because the GOM haddock stock is not overfished and the haddock quota is increasing. Additionally, New Hampshire contended that overfishing would not occur if the recreational fishery caught the amount of haddock predicted by the bioeconomic model for this scenario (1,288 mt) because total catch (including all other sectors catching their full quotas) would still be less than the acceptable biological catch due to the buffers between the acceptable biological catch and the catch limits. Further, New Hampshire argued that the recreational haddock quota, 1,160 mt, was within the 95-percent confidence interval of the model's predicted haddock catch for Option 1. The Massachusetts Division of Marine Fisheries (MA DMF) also commented that the recreational haddock quota for 2017 was within the 95-percent confidence interval for Option 1, but supported the NEFMC's recommended haddock measures, rather than the status quo haddock measures.

Response: We disagree that the status quo haddock measures should be maintained. While the GOM haddock stock is healthy and growing, we are still obligated to set measures we expect will achieve, but not exceed the catch limit. As explained in our response to Comment 7, we expect the model's estimate of catch and effort to be more accurate now because the bioeconomic model now incorporates data from 2015,

when cod possession was prohibited. The 12-fish bag limit, with a 17-inch (43.2-cm) minimum size, and closed seasons March 1–April 14 and September 17–October 31 have a 50-percent chance of achieving, but not exceeding, the catch limit. This is an appropriate balance of risk for a healthy stock with a growing population. Setting measures we expect will exceed the catch limit solely because we expect the overage will not cause overfishing is inconsistent with the requirements of the Magnuson-Steven Fishery Conservation and Management Act.

Comment 7: Six commenters generally supported maintaining status quo measures.

Response: We disagree that the status quo recreational measures should be retained for 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 Council’s more conservative measures are necessary to prevent exceeding the 2017 catch limits.

Comment 8: Thirty-three commenters supported the fall haddock closure as proposed by the NEFMC (September 17 through October 31). MA DMF specifically commented on the potential significant economic impact of a Labor Day closure, and cited this as one reason they supported the NEFMC proposed option. Thirty commenters discussed the benefits of keeping the fishery open in early September relative to allowing

recreational anglers a final opportunity to fish before many typically haul out their vessels, and end their season.

Response: We agree. After further consideration of the alternatives, the fall closure recommended by the NEFMC better aligns with the objectives of this action. We have approved the haddock measures recommended by the NEFMC. As further discussed in the proposed rule, the supplemental EA, and the preamble to this rule, the measures being implemented for the 2017 fishing year are expected to meet, but not exceed the catch limits, and provide a better balance between our conservation objectives and the anticipated negative short-term economic impacts of the proposed alternatives.

Comment 9: One commenter supported the 4-week September closure for haddock that we presented for comments as an alternative in the proposed rule. Another commenter supported a 4-week September closure starting the Monday after Labor Day, and one commenter opposed a fall closure for haddock in general.

Response: We disagree and are implementing the 6-week closure proposed by the NEFMC, as discussed in the preamble and response to Comment 11. Selection of the timing and length of the closure was based on the outputs of the model and the consideration of other factors in order to ensure the recreational fishery achieves, but does not exceed, the recreational fishery sub-ACLs. A fall closure was determined to be a necessary measure to ensure that not only the GOM haddock, but GOM cod sub-ACLs are not exceeded.

Comment 10: Thirty-seven commenters supported the 12-fish haddock bag limit.

Response: We agree and have approved the 12-fish haddock bag limit recommended by the NEFMC. As further discussed in the proposed rule, preamble, and

the supplemental EA, and the preamble to this rule, the measures being implemented for the 2017 fishing year are expected to meet, but not exceed the catch limits.

Comment 11: Three commenters support a lower bag limit for haddock than was proposed.

Response: We disagree that a lower bag limit is needed. The 12-fish bag limit for haddock, in conjunction with the other measures, is intended to balance the need to constrain catch within the ACL, with social and economic considerations. Further reduction of the haddock bag limit is not biologically necessary and would likely unnecessarily increase negative economic effects to the recreational fishery.

Comment 12: One commenter suggested that we reduce the haddock minimum size to 16 inches (40.64 cm) to reduce discards.

Response: We disagree. Potential changes to minimum sizes and the impact on the catch and fishery are incorporated into the bioeconomic model. We are maintaining the current minimum size (17 inches; 43.2 cm) for GOM haddock in this action.

Cod Measures

Comment 13: Seven commenters wanted the recreational cod fishery to be reopened. Two commenters wanted to maintain the status quo cod season. Several commenters referenced their personal fishing experience and stated that they encountered more cod in 2016 than they had in the past.

Response: We disagree that the recreational fishery for cod should be open in 2017. This action prohibits the retention of GOM cod by recreational anglers year-round. GOM cod is overfished, and overfishing is occurring. In fishing year 2016, the recreational cod ACL was exceeded by 92 percent, and the recreational cod quota

remains the same in 2017 as it was in 2016. More restrictive measures on recreational cod, and haddock, fishing are required to ensure that the recreational cod quota is not exceeded again. We understand that there are short-term negative economic effects associated with the prohibition on recreational cod fishing. We are hopeful that the continued efforts to rebuild the GOM cod stock will result in increased opportunities for recreational fishermen in the future.

Comment 14: Two comments discussed alternative management measures for cod that were not in the proposed rule: A 2- to 4-week cod season for one 26-inch (66.0-cm) or greater cod, or the use of a slot limit for cod (24-29 inches; 61.0-73.7 cm).

Response: We disagree that these options would have been viable alternatives for the 2017 fishing year. Even when zero possession of cod was analyzed, the recreational cod catch limit was projected to be exceeded without additional measures limiting the catch of haddock to further reduce the projected cod catch. Limited seasons and slot limits could be appropriate for consideration in future actions.

Comment 15: Thirty-six commenters supported the prohibition of cod.

Response: We agree. We have implemented the prohibition on recreational GOM cod catch as one measure to constrain 2017 recreational cod catch to the sub-ACL. GOM cod are overfished and overfishing is occurring so the recreational sub-ACL has been set at an extremely low level of 157 mt. This decision has been explained further in the preamble.

Comment 16: Two commenters cited concerns about the impact of the recreational fishery on spawning cod.

Response: This action did not consider measures to protect spawning cod, and as a result, these comments are irrelevant to, and outside the scope of, the measures approved in this final rule. However, to provide some background, the Northeast Multispecies FMP includes measures to protect spawning cod during times when aggregations are known to occur consistently. Some of these closures apply to the recreational fishery, while others only apply to commercial groundfish vessels. In the future, the NEFMC could consider changes to these closures, including the fisheries that are exempt from the closures, as well as additional spawning protections.

General Comments

Comment 17: Thirty-four commenters supported adoption of the measures proposed by the NEFMC.

Response: We agree, and are implementing the measures proposed by the NEFMC because these measures balance regional differences and impacts on anglers and the for-hire fleet. Additionally, the NEFMC measures provide a sufficient probability of achieving, but not exceeding, the GOM cod and haddock 2017 catch limits.

Comment 18: The NEFMC commented that although the NMFS option is estimated to have only \$100,000 less economic benefit than the NEFMC option, it is not clear if the model can accurately estimate the economic impact of a Labor Day weekend closure because it is less than a whole MRIP wave.

Response: We agree that the bioeconomic model estimates for a timeframe of less than 1 month may be less precise than estimates produced for a complete wave. We are not implementing the additional NMFS option for a 4-week closure in September.

Comment 19: Seven individuals commented that the commercial fishery should be shut down, or kept 50 miles from shore, to allow increased harvesting opportunities for recreational fishermen. One commenter asserted that the recreational fishery cannot catch as much as one commercial haul.

Response: The Northeast Multispecies FMP allocates separate sub-ACLs for GOM cod and haddock to both the commercial and recreational components of the fishery. Each component allocated a sub-ACL is also subject to specific AMs if it exceeds that sub-ACL. These measures are intended to ensure that each fishery is able to access the resource and be accountable for any overages, and is intended to prevent one component of the fishery from negatively affecting another component. The recreational fishery is allocated 33 percent of the total GOM cod ACL and 27 percent of the GOM haddock ACL, and in 2016 caught more than its allocation for both stocks. In recent years, recreational catch has, at times, exceeded commercial catch, and can be a substantial portion of overall GOM cod and haddock catch. Additionally, the status quo measures are not expected to constrain recreational catch to its sub-ACLs in 2017, and as a result, the final measures implemented in this action are necessary to ensure that the recreational sub-ACLs are not exceeded.

Comment 20: Two commenters supported separate measures for private vessels and for-hire vessels.

Response: During development of 2017 measures, the Council's RAP and Groundfish Oversight Committee considered separate measures for private vessels and the for-hire fleet. As discussed in the proposed rule, the NEFMC declined the Groundfish Committee's recommendation to implement separate measures for these

fleets at this time in deference to having a larger public process to consider the concept. Separate measures for these fleets may be considered in a future action.

Comment 21: One individual commented that haddock 17 inches (43.2 cm) and larger were rare and questioned why anglers do not see these small haddock turn into high numbers of larger fish the next year.

Response: In recent years, there have been multiple large year classes of haddock. These large year classes can make larger haddock appear less common by comparison; the proportion of young fish to old fish is high in the current population. The growth rate of haddock has varied over time and may be related to population size. Prior to declines of the haddock population in the mid-twentieth century, haddock grew slower than was observed when the population was smaller in the later twentieth century. In recent years, with the large populations of haddock and as a result, slower growth rates in haddock.

The average weight of haddock caught by recreational anglers in 2016 (1.7 lb; 0.8 kg) was the same as the average weight in 2015, while the average number of haddock caught per angler trip nearly doubled (from 5.5 to 14) between 2015 and 2016. This information does not demonstrate a strong benefit to further reduce the minimum size for haddock at this time.

Comment 22: The Stellwagen Bank Charter Boat Association and 31 individuals commented that the MRIP data are incorrect and suggested we should not use catch and effort estimates to manage the recreational fishery. In particular, estimates of the number of angler trips was a concern raised in these comments.

Response: Estimates of catch and effort must be used because it is not possible to have a complete census of all recreational anglers to capture all catch and every angler trip. MRIP is the method used to count and report marine recreational catch and effort. In January 2017, the National Academies of Science released their latest review of MRIP and recognized NMFS for making “impressive progress” and “major improvements” to MRIP survey designs since the 2006 review of MRIP. While there are some remaining challenges to MRIP surveys, we continue to make improvements including transitioning from the Coastal Household Telephone survey to the Fishing Effort Survey, which will further improve our estimates of recreational fishing effort.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that these measures are necessary for the conservation and management of the Northeast multispecies fishery and that the measures are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries finds good cause to make this rule effective immediately upon filing with the Office of the Federal Register. This final rule implements reductions from the recreational management measures implemented for fishing year 2016, and that currently remain in place. In fishing year 2016, the GOM cod recreational sub-ACL was exceeded by 92 percent and recreational sub-ACL is unchanged for 2017. GOM cod are overfished and overfishing is occurring, and it is critical that the 2017 recreational management measures, which prohibit the retention of cod, go into effect before the season opens to

ensure that the catch limit is not exceeded again. Fishing effort and catch are both strong in summer months. Further delay of the implementation of these measures increases the likelihood of quota overages that could require implementation of even more restrictive measures in a future action. If this rule is not effective on, or before, August 1, then the GOM recreational cod season will open and anglers will be able to retain these fish. A targeted fishery would result in an increase in cod catch not only due to retention of cod, but due to discards of cod which are higher during an open season than when anglers are intentionally avoiding cod altogether to focus on other species. Thus, delaying implementation of these measures would be contrary to the public interest of ensuring that GOM cod catch limits are not exceeded.

The Northeast Multispecies fishing year begins on May 1 of each year and continues through April 30 of the following calendar year. The collection and processing of recreational data creates a very compressed period for consideration of options, the public NEFMC process, and the rulemaking process prescribed by the Administrative Procedure Act. We consulted with the NEFMC in January 2017. On January 25, 2017, the NEFMC voted to recommend to us the suite of recreational measures we are implementing. In addition to this collaborative consultation process prescribed for the proactive AM, we must fully evaluate and analyze the measures under consideration. This involves not only the bioeconomic model output presented in January, but also includes an environmental analysis consistent with the NEPA requirements, and a systematic review of compliance with other applicable laws. In order to evaluate the impact of the 2016 recreational catch overages, and the proposed management alternatives, we needed to consider them in the context of total catch and catch limits.

Final data on commercial catch of GOM cod and haddock, and the portion of the catch limit that was utilized, was not available until July 5, 2017.

For the reasons outlined, NMFS finds that there is good cause to waive the otherwise applicable requirement to provide a 30-day delay in implementation.

Executive Order (E.O.) 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act (RFA)

A final regulatory flexibility analysis (FRFA) was prepared for this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA and NMFS responses to those comments, and a summary of the analyses completed to support the action. The FRFA 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 description of the action, why it is being considered, and the legal basis for this action are contained in the supplemental information report and preamble to the proposed rule, and are not repeated here (see **ADDRESSES**). A summary of the analyses follows.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

Our responses to all of the comments received on the proposed rule, including those that raised significant issues with the proposed action, or commented on the

economic analyses summarized in the IRFA, can be found in the Comments and Responses section of this rule. In the proposed rule we solicited comments on two options. The majority of comments supported implementing the measures that the NEFMC recommended, including the fall haddock closure from September 17 through October 31. Most of these comments expressed disappointment that the recommended measures were not implemented in time for the May 1 start to the fishing year and raised concerns that the delay would cause further overages and result in additional restrictions on the recreational fishery in 2018. There was one comment on the IRFA. The NEFMC pointed out that the bioeconomic model cannot estimate recreational effort at a time scale of less than a month. Given this restriction it is not clear that the model can accurately capture the impacts of a closure that discourages recreational fishing during the Labor Day weekend, the last 3-day weekend of the summer and an important component of the for-hire fleet's business. This comment, among other information as discussed in the preamble, supports our decision to implement the NEFMC's proposed option.

Description and Estimate of the Number of Small Entities to Which this 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 3-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.

This rule includes 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; and/or
- 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 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 Rule

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

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

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

Description of Significant Alternatives to the Rule 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 NEFMC. This included the status quo and an option (presented 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 NEFMC recommended option (presented as Option 2) and the additional NMFS option (presented as Option 3), which are discussed in detail in the preamble of the proposed rule. The remaining three options (Options 4, 5, and 6 in Table 3) 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 3. Projected Fishing Year 2017 Recreational Cod and Haddock Catch under Alternative Measures Not Proposed

Possible 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 1 week 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				

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (see ADDRESSES), and the guide, i.e., bulletin, will be sent to all holders of permits for the Northeast multispecies fishery. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 25, 2017.

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 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 (8) as paragraphs (c)(2) through (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 the GOM Regulated Mesh 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 the GOM Regulated Mesh 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) *Fillet conversion.* 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) *Application of possession limit.* 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) *Storage.* 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 the GOM Regulated Mesh Area with more than the GOM haddock possession limit specified at paragraph (c)(7)(ii) of this section up to the possession limit specified at paragraph (c)(7)(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 the GOM Regulated Mesh Area with more than the GOM haddock possession limit specified at paragraph (c)(7)(ii) of this section up to the possession limit specified at paragraph (c)(7)(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) *Fillet conversion.* 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) *Application of possession limit.* 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) *Storage.* 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 NEFMC, 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 NEFMC: 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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