

Portsmouth, NH. This group was chaired by the Acting Assistant Administrator for Fisheries. At this meeting, NMFS indicated that fishing at a level higher than 6,700 mt would likely not reduce overfishing on the GOM cod stock. NMFS discussed potential sub-ACLs that would result from fishing at 6,700 mt for the year as well as providing potential changes to the recreational management measures for discussion, should this catch level eventually be implemented. Though no formal recommendations were sought or provided, a great deal of public input was received during this meeting and through correspondence after the meeting. This input was very helpful for NMFS as the interim measures were further developed.

The typical analytical process that is used to inform development of catch and recreational measures spans from late August through late December. Because of the introduction of new and substantially changed GOM cod stock information, these analyses had to be conducted by NMFS within a few weeks' time to ensure that rulemaking-related analyses and development could be conducted and concluded in sufficient time for the start of the fishing year (May 1). Though the work and discussion were conducted as quickly as possible, it was not possible to do so in a manner that provided sufficient time for notice-and-comment rulemaking. NMFS is relying on the collaborative development process for the measures within this interim rule to have provided a meaningful opportunity to engage with the affected public prior to issuing interim measures. Although this rule is becoming effective on May 1, based on the emergency precipitating it, NMFS is allowing the public an opportunity to comment on the measure for 60 days after the rule becomes published. NMFS will address public comments, including any necessary changes, before these interim measures are renewed in 6 months (October 2012).

Similarly, NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the full 30-day delay in effectiveness for this rule, and to have it become effective on May 1, 2012. That date is the beginning of the fishing year for GOM cod. If this rule does not become effective on May 1, 2012, then the previous ACL and AMs would remain in effect, with the result that overfishing would not be reduced. These measures would increase overfishing on the GOM cod stock and, as such, are inconsistent with the Magnuson-Stevens Act, the stated intent of the GOM cod rebuilding program, and the FMP. Moreover,

failing to have the rule effective on May 1, 2012, may lead to confusion in the fishing community as to what regulations govern the harvest of GOM cod. Thus, the 30-day delay is impracticable and contrary to the public interest, and NMFS waives the requirement and makes this rule effective on May 1, 2012.

NMFS has consulted with the Office of Information and Regulatory Affairs (OIRA) and due to the circumstances described above this action is exempt from review under Executive Order 12866.

Under section 608 of the Regulatory Flexibility Act, an agency may waive the requirement to perform a regulatory flexibility analysis for a rule where the agency finds that the "rule is being promulgated in response to an emergency that makes compliance or timely compliance with [the regulatory flexibility analysis requirements] impracticable." 5 U.S.C. 608. As discussed in the preamble to this interim rule, and as elaborated in this classification section, NMFS takes this action to address an emergency situation in the GOM cod fishery. Undertaking a regulatory flexibility analysis would delay this action and put the GOM cod and any small businesses that depend on it at further risk. Because the nature of this emergency requires immediate action, NMFS finds that compliance with the Regulatory Flexibility Act is impracticable. Thus, the requirements of the Regulatory Flexibility Act are hereby waived.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 26, 2012.

**Alan D. Risenhoover,**  
*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

- 2. In § 648.89,
  - a. Amend paragraph (b)(1) introductory text by removing the reference "paragraph (b)(3)" and adding "paragraph (b)(5)" in its place;
  - b. Suspend paragraphs (b)(3), (c)(1)(i), and (c)(2)(i); and
  - c. Add paragraphs (b)(5), (c)(1)(vi), and (c)(2)(vi) to read as follows:

#### § 648.89 Recreational and charter/party vessel restrictions.

(b) \* \* \*

(5) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(1) of this section may not possess cod smaller than 19 inches (48.26 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 9 cod per day in, or harvested from, the EEZ.

\* \* \* \* \*

(2) \* \* \*

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified in paragraph (c)(2)(v) of this section, each person on a charter/party vessel may possess no more than 9 cod per day.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 120316196-2195-01]

RIN 0648-BB89

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

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

**ACTION:** Interim rule; withdrawal.

**SUMMARY:** NMFS issued interim measures for the 2012 Gulf of Maine (GOM) Atlantic cod fishery on April 3, 2012. These measures were intended to become effective May 1, 2012; however, the authority NMFS uses to issue interim measures requires that interim measures become effective on publication in the **Federal Register**. The interim rule published on April 3, 2012, is being withdrawn so NMFS may re-issue the same measures on May 1,

2012, to ensure that the effective date is consistent with both NMFS' authority and the start of the 2012 GOM cod fishing year.

**DATES:** The interim rule published on April 3, 2012, at 77 FR 19944 is withdrawn as of May 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

**SUPPLEMENTARY INFORMATION:** NMFS published a temporary rule containing interim measures to implement GOM cod catch limits and recreational fishing rules for the 2012 fishing year on April 3, 2012 (77 FR 19944). The interim measures were issued under authority of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and were designed to become effective on May 1, 2012, the first day of the 2012 GOM cod fishing year. However, the effective date specified in the published interim rule is inconsistent with NMFS' authority provided by the MSA. The MSA language that authorizes NMFS to issue interim measures under specific conditions is described in detail in the April 3, 2012, rule and not repeated here.

The MSA authority for interim rules explicitly specifies that measures are effective upon publication in the **Federal Register** and may remain in place for no more than 180 days. NMFS has authority to extend interim measures for an additional 186 days under the MSA-granted authority. This provides for up to a full year (365 days) of interim measures. NMFS indicated that the interim measures issued in the April 3 rule would be extended by a subsequent rule so that measures remain

effective for the duration of the 2012 fishing year which runs from May 1, 2012 to April 30, 2013. The initial 180 day effective period in the April 3 rule was calculated moving forward from the day the rule published, even though the rule states it is effective on May 1. Thus, the initial 180 day period specified in the April 3 interim rule ends on September 30, 2012. An extension of the interim measures for an additional 186 days from September 30, 2012 would be April 3, 2013. This would mean that 27 days of the 2012 fishing year would not have catch and management measures in place for GOM cod.

NMFS had published the measures in advance of the fishing season to provide advance notice to fishery participants and the interested public. Because the rule has published and the effective date outlined in the **DATES** section is inconsistent with NMFS' authority and creates a situation that would result in an unregulated portion of the 2012 fishing year, the measures and modifications to the Code of Federal Regulations (CFR) implemented by the rule are being withdrawn. NMFS will re-issue the exact measures and regulations previously published on April 3, 2012, for publication in the **Federal Register** on May 1, 2012. This ensures the effective date begins on the start of the fishing year and is consistent with the MSA section 305(c) authority that specifies interim rules are effective upon publication. This will result in the interim measures expiring on October 27, 2012. NMFS may then be able to extend the interim measures for an additional 186 days to ensure the measures are effective for the entire May 1, 2012–April 30, 2013 fishing year.

NMFS recognizes the withdrawal and re-publication of measures may cause some confusion for fishermen and those interested in the 2012 GOM cod fishery. Because the effective date in the April 3 rule is inconsistent with NMFS authority, it is not possible to simply correct the language. By withdrawing and re-issuing the interim measures for publication in the **Federal Register** on May 1, 2012, NMFS will ensure that the measures are effective at the start of the fishing year, consistent with both the intent of the previously published interim rule and the MSA authority for issuing interim rules. Furthermore, this withdrawal and re-issuance of the GOM cod 2012 fishing year interim measures will ensure that NMFS may use the MSA authority for a full fishing year, as intended and requested by the New England Fishery Management Council (Council). NMFS intends to explain the need for the withdrawal and re-issuance to the Council, fishery participants, and the interested public.

For the reasons outlined here, the publication on April 3, 2012 (77 FR 19944), implementing temporary rules to 50 CFR part 648 with an effective date of May 1–September 30, 2012, is withdrawn.

As previously stated, NMFS intends to re-issue the measures contained in the April 3, 2012 (77 FR 19944), on May 1, 2012.

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

Dated: April 25, 2012.

**Alan D. Risenhoover,**

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

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