



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; Rule Extension

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

ACTION: Temporary rule; interim measures extended, and request for comments.

SUMMARY: This rule extends interim Gulf of Maine Atlantic cod catch limits and fishery management measures through the end of the 2012 fishing year (April 30, 2013). The need for the interim measures is unchanged, which was to establish Gulf of Maine cod annual catch limits and implement recreational management measures that will constrain catch to the recreational sub-annual catch limit. The intended effect of the interim measures is to reduce overfishing occurring on Gulf of Maine cod in anticipation of further action to end overfishing in the 2013 fishing year.

DATES: The expiration date of the temporary rule published May 1, 2012 (77 FR 25623) is extended to April 30, 2013. Comments are accepted through [insert date 30 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by “NOAA-NMFS-2012-0045,” by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0045 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Submit written comments to John K. Bullard, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930.
- Fax (978) 281-9135.

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

Copies of the supplemental environmental assessment (EA) prepared for this action by NMFS are available from John Bullard, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. The supplemental EA is accessible via the Internet at <http://www.nero.noaa.gov>. A copy of the most recent stock assessment for Gulf of Maine cod is also accessible via the Internet at <http://www.nefsc.noaa.gov/groundfish>.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fisheries Management Specialist, phone: 978-675-2153.

#### SUPPLEMENTARY INFORMATION:

##### Background

As fully described in the initial interim rule implemented on May 1, 2012, (77 FR 25623), the final Gulf of Maine (GOM) cod assessment results were finalized in late January 2012. At that time, NMFS notified the New England Fishery Management Council (Council), as required by section 304(e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), that the GOM cod rebuilding program was not making adequate progress toward rebuilding the stock, and that the Council must prepare an amendment within 2 years to rebuild the GOM cod stock. As authorized at section 304(e)(6) of the Magnuson-Stevens Act, the Council requested the Secretary of Commerce (Secretary) to implement interim measures to reduce, rather than end, overfishing of GOM cod while the Council developed a rebuilding plan. In response to the Council request and acting on behalf of the Secretary under authority granted by section 305(c) of the Magnuson-Stevens Act, NMFS implemented an initial interim rule May 1, 2012, to reduce rather than end overfishing on GOM cod during fishing year (FY) 2012, with the intent to extend the initial interim rule measures for the rest of FY 2012. However, the effectiveness for such rules is limited in duration. Rules may be issued for no more than 180 days with an extension of up to an additional 186 days to provide 12 months of interim measures. Therefore, this final interim rule extends the measures in the initial interim rule. The initial interim rule provided detailed information on how the interim measures are consistent with the authority provided by the Magnuson-Stevens Act and applicable NMFS

guidelines for issuing interim measures. The background and authority-related information is not repeated here.

This temporary final rule extends the interim GOM cod catch limits and recreational management measures that were implemented on May 1, 2012. The initial interim measures expire on October 29, 2012; therefore, it is necessary to extend the interim measures until April 30, 2013, so that catch limits and recreational management measures are in place for the entire 2012 FY.

Eight comments were received on the initial interim rule. Responses to those comments are found in the Comments and Responses section later in this preamble.

#### Annual Catch Limits and Allocation

The initial interim rule implemented a GOM cod total annual catch limit (ACL) of 6,700 mt that was divided among the various fishery components (Table 1). The distribution of ACL between sectors and the common pool was based on preliminary sector rosters in the initial interim rule. Subsequently, there have been two modifications to the original sector and common pool distribution based on final sector rosters (June 25, 2012, 77 FR 37816) and carryover from FY 2011 (September 26, 2012, 77 FR 59132). While the total ACL of 6,700 mt has remained unchanged, Table 1 highlights the revised allocations to sectors and the common pool. This interim rule extends the allocations in the most recent rule that published September 26, 2012.

Table 1. GOM Cod Allocations by Fishery (mt)

	Sector		Common Pool	Recreational	State Waters	Other
	Allocation	Carryover				
GOM Cod Interim Rule	3,618	471	81	2,215	253	62
Final Sector Rosters	3,619	471	80	2,215	253	62
FY 2011 Carryover	3,619	467.2	80	2,215	253	62

## Recreational Fishery Management Measures

The initial interim rule reduced the GOM cod recreational fishery minimum fish size from 24 in (61.0 cm) to 19 in (48.3 cm) and implemented a 9-fish bag limit (reduced from 10) to constrain catch to the recreational sub-ACL of 2,215 mt. These measures were based on analysis conducted by the Northeast Fisheries Science Center (NEFSC) using a new, but preliminary modeling approach and analytical model. Because of the uncertainty of the model and effectiveness of the measures, NMFS highlighted these concerns in the initial interim rule and outlined a plan to convene an external peer review of the model in question prior to this extension. A subset of the New England and Mid-Atlantic Fishery Management Councils' Science and Statistical Committees (SSC) convened on September 7, 2012, in Woods Hole, MA, to peer review the model and methods. The final SSC report found that the modeling approach was technically sound and represented an improvement over prior methods. Therefore, based on the findings of the peer review and the final report, this interim final rule extends the recreational measures through the end of FY 2012.

## Comments and Responses

NMFS received eight comments during the comment period on the initial interim rule, five from private citizens, one from the Massachusetts Division of Marine Fisheries (DMF), and two from non-governmental organizations (Earth Justice and Oceana). Three of the comments from private citizens did not address measures of the rule and, as such, no responses have been provided.

Comment 1: The individual commented on the cod catch of different components of the recreational fishery and asked for additional reporting requirements for large party/charter vessels.

Response: Vessel trip reports are submitted by all recreational party/charter vessels to NMFS and the Marine Recreational Information Program collects, analyzes, and reports recreational fishing data. This interim rule was very limited in scope and duration for the purposes of reducing overfishing for 1 year, and therefore, did not address the larger issues and concerns about the sources of data that are needed to make management decisions, or consider modifying reporting requirements for the recreational fishery. The Council is the more appropriate forum for examining these larger issues regarding fishery effort and catch information by different components of the recreational fishery and to determine appropriate management measures.

Comment 2: The individual requested a new stock assessment that involves more input from members of the fishing industry

Response: This comment does not directly pertain to the measures in the interim rule. The NEFSC will be completing stock assessments for Georges Bank (GB) and GOM cod in December 2012; these updates will provide catch advice to the Council for FY 2013. The NEFSC also recently hosted two workshops that included members of the fishing industry; one that reviewed the estimates of cod discard mortality rates and another that addressed the potential use of commercial catch per unit effort information in upcoming cod stock assessments. Lastly, the NEFSC has committed to side-by-side research with fishing industry vessels and the NEFSC's research vessels in the future.

Comment 3: Earth Justice requested that NMFS reject a Council request to allow partial access to the groundfish mortality closed areas. They also asked that NMFS develop a mid-year report on the interim catch levels and ongoing rebuilding efforts for GOM cod.

Response: NMFS denied the Council request to open closed areas in the initial interim rule and does not change that decision in this interim final rule. NMFS does not intend to complete a separate mid-year report at this time because commercial and recreational catch information is available (<http://www.nero.noaa.gov/ro/fso/MultiMonReports.htm>) and a comprehensive stock assessment is scheduled to occur in December of this year. At the end of FY 2012, NMFS intends to evaluate the commercial and recreational catch data and publish a final report on fishery performance. As mentioned above, the NEFSC will be completing a new GOM cod stock assessment which will provide insight on rebuilding efforts and help determine future catch levels and management measures for FY 2013.

Comment 4: The Massachusetts DMF and Oceana commented that there is inadequate and inaccurate catch monitoring given the current coverage rates of at-sea monitoring (25 percent), low catch limits for GOM cod, and the inability to enforce full retention of all legal-sized fish on unobserved trips.

Response: These comments align with a similar comment NMFS received for the FY 2012 Sector Operations Plan Rule, which suggested that the at-sea monitoring rate of 25 percent is inadequate. NMFS has determined, based on current information and analysis, that for FY 2012, the prescribed level of at-sea monitoring coverage is likely to provide reasonably accurate estimates of catch for sector vessels. However, The Plan Development Team (PDT) for the Council's Groundfish Oversight Committee and NMFS, are conducting an in depth examination into the adequacy of at-sea monitoring in the sector program; NMFS will reconsider the monitoring rate once this examination is complete. Moreover, because of the limited scope and duration of this interim rule, it is not appropriate or practicable to consider adjustments to the at-sea monitoring program and coverage levels in the middle of the fishing season. Resources for

hiring, training, and allocating at-sea monitors have been made for the full year. Adjusting at-sea monitoring levels and protocol part way through the year has implications on sector operations and catch monitoring which should be addressed more fully in the Council process. Therefore, NMFS is attempting to address these concerns for FY 2013 and beyond.

#### Classification

The Regional Administrator, Northeast Region, NMFS, determined that this interim final rule is necessary for the conservation and management of the GOM cod fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the full 30-day delay in effectiveness for this rule. This rule merely extends the rule currently in place for an additional 6 months. The need for this extension was fully anticipated and announced to the public in the initial interim rule published on May 1, 2012. Accordingly, the entities affected by this rule and the public have no need to be made aware of or adjust to this rule by delaying its effectiveness for 30 days. The primary reason for delaying the effectiveness of Federal regulations is not present, and, therefore, such a delay would serve no public purposes. On the other hand, it would be contrary to the public interest if this rule does not become effective on October 29, 2012, because the previously established ACL for FY 2012 of 8,551 mt would become effective, 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 October 29, 2012, may lead to confusion in the fishing community as to what regulations govern the harvest of GOM cod. For these reasons, there is good cause to waive the requirement for delayed effectiveness. 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 and classification section of initial interim rule, 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.

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

Dated: October 23, 2012.

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Alan D. Risenhoover, Director, Office of Sustainable Fisheries,  
performing the functions and duties of the Deputy Assistant Administrator for Regulatory  
Programs, National Marine Fisheries Service.

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