



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230808-0187]

RIN 0648-BM22

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Fishing Year 2023 Recreational Management Measures

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

ACTION: Final rule.

SUMMARY: This rule implements changes to fishing year 2023 recreational management measures for Georges Bank cod, Gulf of Maine cod, and Gulf of Maine haddock. The measures are necessary to ensure the recreational fishery achieves, but does not exceed, fishing year 2023 catch limits for Gulf of Maine cod and haddock, and the recreational catch target for Georges Bank cod.

DATES: The measures in this rule are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To review *Federal Register* documents referenced in this rule, you can visit: <https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan>.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Policy Analyst, (978) 281-9232.

SUPPLEMENTARY INFORMATION:

Background

Measures for the Gulf of Maine

The recreational fishery for Gulf of Maine (GOM) cod and GOM haddock is managed under the Northeast Multispecies Fishery Management Plan (FMP). The multispecies fishing year starts on May 1 and runs through April 30 of the following calendar year. The FMP sets sub-annual catch limits (sub-ACLs) for the recreational fishery each fishing year for both stocks. These sub-ACLs are a fixed proportion of the overall catch limit for each stock. The FMP also includes proactive recreational accountability measures (AMs) to prevent the recreational sub-ACLs from being exceeded and reactive AMs to correct the cause, or mitigate the effects, of an overage if one occurs.

The proactive AM provision in the FMP provides a process for the Regional Administrator, in consultation with the New England Fishery Management Council (Council), to develop recreational management measures for the upcoming fishing year to ensure that the recreational sub-ACL is achieved, but not exceeded. The provisions governing this action can be found in the FMP's implementing regulations at 50 CFR 648.89(f)(3).

The 2023 recreational sub-ACL for GOM cod established by Framework Adjustment 63 (87 FR 42375, July 15, 2022), is 192 metric tons (mt), the same as the 2022 recreational sub-ACL. Framework Adjustment 65 (88 FR 34810, May 31, 2023) proposed a 610-mt recreational sub-ACL for GOM haddock. The proposed 2023 sub-ACL for GOM haddock would be reduced from 3,634 mt in 2022, a reduction of approximately 83 percent. This rule does not set sub-ACLs for any stocks. The recreational sub-ACL for GOM cod is already in place and, because Framework Adjustment 65 has been delayed, default measures are in place for other stocks, including the proposed sub-ACL for GOM haddock, until the Framework Adjustment 65 final rule is published.

The results of bio-economic model simulations that were shared with the Council and its Recreational Advisory Panel (RAP) and Groundfish Committee to help inform Council recommendations on GOM cod and haddock measures, as well as the Council, Groundfish Committee, and RAP discussions, are described in the proposed rule for this action (88 FR 23611; April 18, 2023), and not described further here.

For GOM cod, the Council recommended, and the Regional Administrator proposed, an extended fall season (September 1-October 31) while eliminating the April open season (Table 1). No changes were proposed for either the minimum size or bag limit for GOM cod. These measures are expected to adequately constrain recreational catch of GOM cod based on bio-economic model estimates. As a result, the Regional Administrator is implementing these measures for GOM cod for fishing year 2023 (Table 1).

For GOM haddock, the Council ultimately recommended a status quo season (March closed), a 15-fish limit, and an 18 inch (45.7 centimeter (cm)) minimum size. The Council's recommendation sought in part to accommodate charter and party vessels seeking to benefit from advertising a 15-fish limit and expected increased bookings. While the Council-recommended measures for GOM haddock are expected to result in catch below the recreational sub-ACL, we remain concerned that the Council measures are expected to unnecessarily constrain catch and increase dead discards of GOM haddock for private anglers compared to a 17 inch (43.2 cm) minimum size and 10-fish bag limit.

The GOM haddock stock is dominated by relatively young year classes of haddock that are beginning to recruit to the fishery. These small haddock are subject to high discard mortality, especially during the summer and fall months, so any increase in discards would convert the majority of potential landings of haddock between 17 and 18 inches (43.2 and 45.7 cm, respectively) into dead discards. A 10-fish limit at 17 inches

(43.2 cm) is expected to result in higher landings, lower dead discards, more fishing trips, and higher angler satisfaction with a minimal increase in the risk of exceeding the recreational sub-ACL. Available data show that only a small proportion of anglers or trips harvest 10 or more haddock per angler and increasing the minimum size from 17 to 18 inches (43.2 and 45.7 cm, respectively) is expected to further reduce the number of haddock landed per angler. In fishing year 2022, the average number of haddock landed on trips targeting cod or haddock was just 2.3 haddock per angler, 3.6 haddock per angler on for-hire trips, and 2.2 haddock per angler on private trips. To reduce dead discards and increase landings, trips, and angler satisfaction, this rule implements the Council-recommended GOM haddock measures for only the for-hire angling mode (March closure, 15-fish limit, 18 inch (45.7 cm) minimum size; Table 2). This rule implements a status quo season (March closure), a 10-fish limit, and a 17 inch (43.2 cm) minimum size for GOM haddock for the private angling mode (Table 2).

These mode-based measures balance the different needs of the for-hire mode and the private mode and reduce discard mortality to the extent practicable. For-hire fishing operators and RAP advisors have repeatedly stated that high bag limits are beneficial for advertising and outreach to potential customers to increase for-hire trips and/or anglers per trip. Marketing trips and the resulting “booking” of trips are necessary to maintain the viability of for-hire businesses operations. The Council’s recommendation for the 15-fish bag limit and increased minimum size recognizes the value of increased bookings to for-hire businesses and that the potential increased income from a higher bag limit, coupled with a higher minimum size, may result in some additional dead discards and reduced landings.

While private anglers would normally benefit from a larger bag limit as well, in this case, there is greater benefit to private anglers in a smaller minimum size, which allows them to land more of the haddock they catch. Advertising and booking trips are

not relevant to private anglers because they do not operate as businesses. Private anglers, and the recreational fishery as a whole, are expected to benefit from keeping the 17 inch (43.2 cm) minimum size because anglers will land more of the haddock they encounter. Because private anglers account for the majority of recreational fishing activity, dead discards will be reduced more as a result. Thus, the mode-based measures provide a more refined balance, as dead discards are projected to be reduced by implementing the smaller minimum size in the private mode without any expected adverse economic impact.

Table 1-- Gulf of Maine Cod Status Quo and Implemented Measures

GOM Cod	Possession Limit	Minimum Size inches (cm)	Open Season
Status Quo Measures	1	22 (55.9)	September 1 - October 7, April 1 – 14
NMFS Final Measures			September 1 - October 31

Table 2-- Gulf of Maine Haddock Status Quo and Implemented Measures

GOM Haddock	For Hire Possession Limit	Private Angler Possession Limit	For Hire Minimum Size inches (cm)	Private Angler Minimum Size inches (cm)	Open Season
Status Quo Measures	20		17 (43.2)		May 1 - February 28, April 1 - 30
NMFS Final Measures	15	10	18 (45.7)	17 (43.2)	

Measures for the Georges Bank Cod

Unlike GOM cod and haddock, the FMP does not set a sub-ACL for the recreational fishery each fishing year for Georges Bank (GB) cod. Instead, the Council establishes a recreational annual catch target for GB cod. The catch target is not an allocation or sub-ACL but sets an expectation for recreational catch for the fishing year for management purposes that is not expected to result in an overage of the overall GB cod ACL. The catch target in Framework 65 is 113 mt.

The FMP includes a process for the Regional Administrator, in consultation with the Council, to develop recreational management measures for GB cod for fishing years 2023 and 2024 to prevent the recreational fishery from exceeding the annual recreational catch target for GB. The provisions governing this authority can be found in the FMP's implementing regulations at 50 CFR 648.89(g).

Unlike GOM cod and haddock, there is no peer-reviewed bio-economic model available to evaluate the potential impacts of various recreational measures for GB cod. Instead, measures were evaluated based on estimates of the percent reduction in catch from the fishing year 2022 projection. The 2022 catch projection is 218 mt, so a harvest reduction of approximately 48 percent would be required to remain below the catch target of 113 mt in fishing year 2023. Current measures for GB cod were implemented as part of Framework Adjustment 63 on July 15, 2022 (87 FR 42375; July 15, 2022), so they were not in place for the full fishing year in 2022. Status quo measures would result in a landings reduction of about 28 percent if all states implemented complementary measures in 2023, so additional measures are needed to achieve the necessary 48-percent reduction.

This rule eliminates the maximum size limit (slot), increases the minimum size from 22 to 23 inches (55.9 to 58.4 cm, respectively), and shifts the closed season back one month to close June, July, and August instead of May, June, and July (Table 3).

These measures are consistent with the Council recommendation, and we expect these measures to adequately constrain total catch to the proposed 2023 catch target.

Table 3 – Georges Bank Cod Status Quo and Proposed and NMFS Implemented Measures

GB Cod	Possession Limit	Minimum Size inches (cm)	Maximum Size inches (cm)	Open Season	Closed Season
Status Quo Measures	5	22 (55.9)	28 (71.1)	August 1 - April 30	May 1 - July 31
NMFS Final Measures		23 (58.4)	NA	May 1 - 31, September 1 - April 30	June 1 - August 31

Comments and Responses

We received comments on the proposed rule from the New England Fishery Management Council, Massachusetts Division of Marine Fisheries (MADMF), Rhode Island Party and Charter Boat Association (RIPCBA), Stellwagen Bank Charter Boat Association (SBCBA), and the Massachusetts Striped Bass Association (MSBA). We also received comments from 42 individuals, of which the majority were for-hire fishing vessel operators or private recreational anglers. The majority of comments focused on the GOM haddock measures, and a few comments discussed GB and/or GOM cod measures, one comment was opposed to the proposed rule but did not elaborate further.

Comment 1: Three commenters, including RIPCBA and MSBA, supported the proposed measures for GOM cod, and another individual supported the proposed change to the GOM cod season. The individual commenter also supported a larger minimum size for GOM cod, stating that a larger minimum size would have conservation benefits and that anglers value larger fish.

Response: This rule implements the proposed measures for GOM cod, including the season modifications recommended by the Council. This action is not implementing a

larger minimum size for cod because the proposed measures are expected to keep recreational catch below the GOM cod sub-ACL. Sub-ACLs are designed to prevent overfishing while allowing catch at levels that over the long-term help achieve optimum yield.

Comment 2: Two commenters, both for-hire vessel operators, opposed the elimination of the status quo April 1 through April 14 open season for GOM cod. One stated that the April season generated customers for for-hire vessels during the spring season, and the other argued an even longer spring season would benefit for-hire businesses and that an expanded fall season would not be as helpful because other species are available to anglers during the fall season.

Response: This rule eliminates the April 1-14 open season for GOM cod, consistent with the Council recommendation. While the April season may provide some benefit to for-hire businesses, many for-hire businesses do not begin operations until later in the season and do not benefit from the April opening. The April season also provides minimal benefit to private anglers as very few private anglers are fishing in the GOM that time of year. The GOM cod measures are expected to increase overall opportunity for recreational anglers to harvest GOM cod while keeping catch below the 2023 recreational sub-ACL for GOM cod.

Comment 3: SBCBA and one individual noted that their on-the-water observations include an abundance of all size classes of cod in Massachusetts state waters, Stellwagen Bank, east of Cape Cod, and Nantucket Shoals.

Response: This action sets measures based on the 2023 recreational sub-ACL for GOM cod, which is informed by stock assessment determinations of the status and abundance of GOM cod. There can be considerable uncertainties in stock assessments, however, recent assessments have shown that the GOM cod stock is overfished. The stock declined substantially in recent years and is now near historic lows in terms of

biomass. The current low ACL and recreational sub-ACL for GOM cod is intended to allow for future rebuilding of the stock. Evidence of strong recruitment of young cod is welcome news given the current status and history of the stock.

Comment 4: SBCBA and one individual commented in support of mode-based measures for GOM cod, in particular an open season for the for-hire mode from April 15 through the end of May, as historically this time period was important to for-hire operators before other species become available.

Response: This rule implements the proposed measures for GOM cod, which are expected to provide additional opportunities to harvest GOM cod while adequately restraining catch. NMFS has previously raised concerns about open seasons during the time period raised by the commenter, particularly because it overlaps with the Spring Massachusetts Bay Spawning Protection Area, which is closed to protect spawning activity from April 15 to April 30. Targeted fishing for cod should not occur during documented spawning time given the overfished status of GOM cod and the need to rebuild the resource to sustainable levels. Additionally, opening a season later than the April 1 through April 14 timeframe is likely to result in higher effort and catch. While NMFS did not evaluate an April 15 through May 31 opening using the bio-economic model, a season during that time would be expected to considerably increase catch of GOM cod.

Comment 5: Several commenters supported the proposed measures to reduce catch of GB cod. Two organizations (RIPCBA and MSBA), supported the proposed measures for GB cod, while additional commenters supported the proposed May opening for GB cod and the elimination of the slot limit for GB cod. Two of these commenters also supported winter spawning protections for GB cod. RIPCBA and MSBA both supported mid-Atlantic states adopting complementary measures to the proposed measures for GB cod in state waters.

Response: This rule implements the proposed measures for GB cod, which are expected to constrain recreational catch of GB cod to the 2023 recreational catch target. We are implementing proactive measures for GB cod, which are limited to measures aimed at achieving, but not exceeding, the recreational catch target. Spawning protections were not recommended by the Council and were not considered in this action as they are outside the scope of the proposed measures. We would support the Council considering additional spawning protections for GB cod in future actions that would impact both recreational and commercial fishing, particularly in the context of ongoing Council discussions about Atlantic cod stock structure. We coordinate with state fishery management agencies allowing them to have the opportunity to implement complementary measures for state waters within impacted stock areas.

Comment 6: Two commenters opposed measures to further constrain recreational catch of GB cod; one opposed the closed season and the other supported status quo recreational measures for GB cod.

Response: Status quo measures are not expected to adequately constrain recreational catch of GB cod. Additionally, because of the considerable recreational effort during the proposed closed season, more substantial changes to minimum or maximum sizes or the bag limit for GB cod would be needed to reduce recreational GB cod catch. We are implementing the proposed measures for GB cod, which are expected to constrain recreational catch to the 2023 recreational catch target for GB cod.

Comment 7: SBCBA suggested the use of mode-based measures for GB cod, stating that separate seasons and bag limits for for-hire vessels would help with operators' business viability and the for-hire fleet accounts for a small portion of the overall catch of GB cod.

Response: This rule is implementing the proposed measures for GB cod, which are expected to adequately constrain recreational catch, and is consistent with the Council

recommendation. We did not consider mode-based measures for GB cod as they were not deemed necessary to balance varying needs of the for-hire and private recreational modes.

Comment 8: One commenter supported status quo measures for GOM haddock for private anglers but urged consideration of using alternative methods to reduce discard mortality, including additional education for anglers, use of descending devices, and implementing circle hook requirements.

Response: The bio-economic model indicates that status quo measures for recreational anglers for GOM haddock would likely result in catch exceeding the 2023 recreational sub-ACL for GOM haddock. As a result, we are implementing mode-based measures that are expected to constrain GOM haddock recreational catch below the 2023 recreational sub-ACL.

While not considered in this rule, alternative management measures, including angler education programs, gear modifications, and recreational reporting have been discussed by the RAP. Future Council actions or recommendations could consider alternative measures to enhance the conservation of groundfish stocks. In recent years, MADMF led a study that resulted in resources, including maps that support anglers trying to target haddock and avoid cod in the GOM and reduce discard mortality of encountered fish; for more information on this effort visit <https://www.mass.gov/guides/haddock-recreational-fishing-guide>.

Comment 9: We received 29 comments that supported the proposed mode-based measures for GOM haddock, with commenters including RIPCBA and SBCBA and a number of for-hire operators. Many of these commenters noted that the higher for-hire bag limit would have benefits for for-hire businesses through increased bookings.

Response: This rule is implementing mode-based measures for GOM haddock, as proposed. Responses to surveys of recreational anglers generally show that recreational

anglers get greater satisfaction from, and prefer to catch, more legal-sized fish when given the opportunity. Marketing and booking trips is an integral part of the for-hire business model and their ability to produce income.

The RAP recommended to the Council the 15-fish limit and 18-inch minimum size, based on for-hire vessel representations and knowledge of the for-hire business model, because those measures are expected to enhance for-hire marketing and ability to gain bookings in order to increase income. However, data show that increases in the bag limits do not necessarily result in increases in landings by individual anglers. The combination of this limit with the 18-inch minimum size constrains catch sufficiently, with a smaller increase in dead discards than would occur in the private angler fishery with the same bag and size limits. Mode-based measures allow the 15-fish bag limit and 18-in (45.7-cm) minimum fish size for for-hire anglers consistent with the Council recommendation. Because private recreational anglers are not businesses that rely on bookings, the 15-fish limit is not necessary and a 10-fish limit with the smaller 17-inch (43.2-cm) minimum size results in higher landings, reduced discards, and better outcomes for private recreational anglers as a whole.

Comment 10: The Council reiterated its recommended measures for GOM haddock and provided additional context for the recommendation. MSBA and one individual also supported the Council-recommended measures for GOM haddock. The Council noted that the justifications for increasing the minimum size to 18 inches (45.7 cm) included that the large 2020 year, class of GOM haddock would likely be around 18 inches (45.7 cm) in 2023, and that advisors noted that larger fish were more valued by anglers. The Council noted that their recommended measures were intended for both the for-hire and private modes, and that they considered broad input.

Response: This rule is implementing the Council-recommended GOM haddock measures for the for-hire mode. We considered the clarifying justifications provided in

the Council comment, but data do not support the assertion that the 2020 year, class of GOM haddock would reach 18 inches (45.7 cm) in 2023. The bio-economic model predicting catch under different modes used recent survey catch data. The bio-economic model results using this information expects most of the GOM haddock encountered by anglers will be less than 18 inches (45.7 cm). The bio-economic model also uses estimated angler preferences based on angler surveys. The surveys show that, while anglers value larger fish over smaller fish, anglers value kept fish much more highly than fish that are released. These factors increase the potential negative impacts on private anglers if they are held to an unnecessarily restrictive 18-inch (45.7-cm) minimum size limit. The bio-economic model showed that the more restrictive minimum size would result in considerably lower landings and significantly higher dead discards under the Council's recommendation. By implementing Council-recommended measures for the for-hire fleet, and a 10-fish at 17 inches (43.2 cm) limit for private anglers, we are balancing the needs of the for-hire fleet with the goal of maximizing landings relative to the sub-ACL while reducing discards in the recreational fishery as a whole to the extent practicable, consistent with National Standard 9 considerations.

Comment 11: Four commenters supported a 10-fish limit at 17 inches (43.2 cm) for all modes that was described, but not proposed, in the proposed rule. Another stated they would support, and their charter business would not be impacted by, a haddock bag limit as small as three or four fish. These commenters stated various reasons for their support of a smaller bag limit for all modes, including statements that higher haddock bag limits were wasteful, anglers rarely catch enough haddock to reach a limit and are happy with fewer haddock, that large limits of haddock are difficult for anglers and for-hire crews to handle, that for-hire operators would be better off with a smaller bag limit, and that there are other species available for anglers to target if they catch their limit of haddock. While one commenter suggested a larger haddock minimum size, another

commented that the 17-inch (43.2-cm) minimum size would allow anglers to keep more of the haddock they catch and increase the likelihood of anglers catching a smaller (10 or fewer) bag limit.

Response: The results of the bio-economic model show that a 10-fish limit coupled with a status quo, 17-inch (43.2 cm) minimum size for GOM haddock would result in higher landings, lower dead discards, and more angler trips than the Council-recommended measures of a 15-fish bag limit at 18 inches (45.7 cm). As a result, we are implementing a 10-fish at 17-inches (43.2 cm) limit for GOM haddock for private anglers but implementing the Council-recommended measures for the for-hire mode, where the economic benefit to for-hire businesses of a larger bag limit is a consideration. Marine Recreational Information Program (MRIP) data supports the assertion that very few anglers harvest more than 10 haddock per trip, whether on private or for-hire trips.

Comment 12: Several commenters raised concerns about the use of mode-based measures for GOM haddock, including the Council, MSBA, and MADMF. Some of these commenters noted that the use of mode-based measures can be controversial or pit user groups against one another; that most anglers oppose mode-based measures; and that consideration of mode-based measures should only be considered in Council actions. Some of these commenters also noted that mode-based measures may lead to regulatory confusion, enforcement challenges, and impact the quality of MRIP data available to support future decision making. MSBA also stated that it was inappropriate for NMFS to consider marketing as a consideration in its decision making and disagreed with the summary of the Council and RAP discussions that led to the Council recommendation for a 15-fish haddock limit provided in the proposed rule.

Response: This rule is implementing mode-based measures for GOM haddock to increase catch relative to the sub-ACL, reduce dead discards, and attempt to balance the different needs of the for-hire and private modes under the unique circumstances at play

this fishing year. These mode-based measures for GOM haddock are effective only for fishing year 2023. Mode-based measures do not allocate catch to either mode and are not expected to result in more GOM haddock catch going to the for-hire mode. We estimate that the for-hire mode will trade landing fewer GOM haddock under these measures than under a 10-fish limit and 17-inch (43.2-cm) minimum size to achieve the higher 15-fish limit. However, for-hire interests revolve around their business model and operations. They have repeatedly asserted that they will benefit from the opportunity to have a higher bag limit. We are adopting the Council's recommendation for the for-hire fleet to accommodate the fleet's business needs and expected increased income and the slight increase in dead discards but are concerned these measures would unnecessarily limit landings and increase dead discards for the private mode.

There is no prohibition against using mode-based measures. GOM cod measures that varied between private and for-hire modes have been approved in the past in response to Covid-19 impacts on for-hire operations. Recreational fishing participants are accustomed to varying mode-based measures that are implemented in state fisheries. State agencies throughout the region, including MADMF, have implemented mode-based recreational measures for other species, including varying minimum sizes, seasons, bag limits, and aggregate vessel bag limits, to meet various management objectives.

We agree that mode-based measures have historically been subject to various levels of public support, and mode-based allocations for this fishery have not been pursued because of significant concerns raised by many in the recreational fleet. Comments revealed various opinions across the recreational community. Most for-hire operators supported the proposed mode-based measures. Many private anglers supported consistency between modes, often with a preference for a smaller overall bag limit. There were no programmatic objections raised that require changing the mode-based measures.

Another objection to mode-based measures is a concern about compliance and enforcement. We do not expect the mode-based measures to have a considerable impact on compliance, however. Many state fisheries and some federal fisheries, for example bluefish and tilefish, successfully use differing mode-based measures. Further, we intend to do outreach and provide resources to anglers trying to navigate the regulations. We do not anticipate that mode-based measures will limit the ability of enforcement agencies to determine when a violation has occurred.

We share MADMF's concern that MRIP data available to support decision making in the region is limited and that estimates come with significant uncertainty. Mode-based measures may result in changes in the sampled landings and have other effects. But we are not concerned that mode-based measures alone will undermine the validity of MRIP data in the region. As discussed earlier, GOM haddock will be only one stock subject to mode-based measures this fishing year in the region. We expect any effect to be small and, therefore, have determined that the expected benefits of mode-based measures this fishing year outweigh the small risk of an impact to MRIP data quality. We agree that additional funding and innovations to support more effective recreational data collection in the region could improve datasets and create opportunities for more focused recreational management measures in the future.

The Council recommended the 15-fish limit combined with the 18-inch minimum size in part on the basis of marketing benefits. We are accepting this part of the Council's rationale as it recognizes that booking trips is a primary business factor for the success of the for-hire fleet. It further considers the relatively small increase in dead discards that may result. We are rejecting this combination for private anglers that do not rely on marketing and booking for successful fishing. Implementing the Council's recommended measures for the private recreational mode would result in reduced landings, increased dead discards, and make it less likely that the recreational fleet as a whole would achieve

its sub-ACL for GOM haddock. Recreational management measures for cod and haddock must achieve, but not exceed, the sub-ACL's for the recreational fishery. Mode-based measures are expected to achieve this goal better than the Council-recommended measures for all modes.

Comment 13: MADMF and MSBA presented analysis based on MRIP intercept data that indicated there is no statistically significant difference in the size of haddock landed by different recreational modes. They noted this is likely because private and for-hire anglers target GOM haddock in the same general areas using the same gear. MSBA argued that, based on this finding, NMFS must implement the Council-recommended measures for GOM haddock. MADMF did not argue for any particular set of measures but did urge consideration of the MRIP-intercept data and supported consistency between modes as described in our response to comment 12 above. MADMF also noted that, based on surveys, it is probable that for-hire operators overestimate the importance of high bag limits to for-hire anglers, their potential customers.

Response: We agree with the commenters' interpretation of the MRIP-intercept data. The available data do not show a distinct difference in the size of haddock landed by different recreational angling modes. We noted in the proposed rule that Council members and advisors have suggested that for-hire anglers fish further offshore and/or catch larger haddock than their private angler counterparts, but our decision was not contingent on any relationship between recreational mode and area fished or haddock size. The bio-economic model assumes that all modes encounter the same size distribution and provides an understanding of the trends and directional impacts of different measures. But it does not allow for direct comparison of mode-based measures such as different size encounters by mode. The model informed our understanding of the impacts of different sets of measures on the recreational fishery as a whole, which informed our decision to implement mode-based measures.

The MRIP-intercept data for GOM haddock size by, and across, recreational modes suggest that an increase in the minimum size of GOM haddock above 17 inches (43.2 cm) is likely to significantly reduce landings and increase dead discards, regardless of mode. MADMF noted that the highest median length of landed GOM haddock across four recent fishing years for any mode was only 17.8 inches (45.2 cm). This suggests that an increase of the minimum size consistent with the Council recommendation of 18 inches (45.7 cm) will result in more than half of all the GOM haddock that would be able to be harvested with a 17-inch (43.2-cm) minimum size being discarded, leading to much higher discard mortality for GOM haddock, and making it even more difficult for anglers to catch and keep their GOM haddock limit.

The above conclusion supports our decision to implement a 10-fish at 17 inches (43.2 cm) limit for the private mode, as that regulation will lead to higher landings and lower dead discards than the Council-recommended measures. Arguably, the finding that for-hire anglers are not harvesting larger haddock than their private angler counterparts would support implementing a 10-fish at 17-inches (43.2 cm) limit for the for-hire fleet as well. We ultimately found the Council recommendation appropriately considered the potential benefit of additional bookings for the for-hire fleet under a higher bag limit and chose to implement the Council-recommended measures for the for-hire mode.

Comment 14: Three commenters stated that recreational fishing is not contributing as much to impacts on the fishery as commercial fishing, especially trawling, which commenters stated had a bigger impact. One of the commenters noted that they were concerned about the depletion of baitfish in near shore waters.

Response: The measures in this rule constrain recreational fishery catch to catch limits and targets for GOM cod and haddock and GB cod; this rule did not consider changes to commercial measures or allocations between commercial and recreational fisheries.

Comment 15: Two commenters stated that recreational fishing and booking a charter is becoming too expensive for anglers to continue to be interested in recreational fishing for groundfish.

Response: The measures in this rule are intended to allow the recreational fishery to achieve, but not exceed, their sub-ACL's. NMFS cannot set management measures on the basis of the cost of fishing or booking trips.

Comment 16: Two commenters stated that it is not clear when the proposed measures would be implemented (with no further explanation of concern). One noted just overall uncertainty while the other noted that it could impact a charter trip he had already booked for August 2023. One commenter asked that, in the future, regulations be in place by the start of the fishing year to avoid conflicts with trips that were already booked. Another commenter noted that major changes in recreational measures from year to year are a challenge for for-hire operators and anglers.

Response: This rule implements the proposed measures for GOM cod and haddock and GB cod. Measures are effective immediately for federal waters, however, anglers should be aware that state-waters measures may differ. We share the commenters concerns about the timing of the implementation of future measures and agree that major changes between years can be challenging for anglers and for-hire businesses to adapt to. We will continue to work with the Council to consult on future recreational actions and to implement necessary changes to regulations as quickly as possible and closer to the start of the fishing year on May 1.

Comment 17: One commenter stated that measures should be considered for other stocks including pollock, redfish, and cusk. Another commenter asked whether the status of Atlantic wolffish would be reevaluated and stated that he hoped anglers could be allowed to keep wolffish in the future.

Response: The regulations allow NMFS to set Northeast multispecies recreational management measures for GB cod, and GOM cod and haddock. The Council could consider changes to recreational measures for Northeast multispecies stocks in a future action. Cusk is not currently managed under the Northeast Multispecies FMP.

Management measures for cusk would require adding it to an FMP through the Council process. Atlantic wolffish was last assessed in 2022. The assessment concluded that the stock is currently overfished. Due to its status, both commercial and recreational vessels are prohibited from possessing Atlantic wolffish.

Changes from the Proposed Rule

This rule implements regulations outlined in the proposed rule, and there are no changes from the proposed measures in this final rule.

Classification

NMFS is issuing this final rule pursuant to section 305(d) of the Magnuson-Stevens Act. In a previous action taken pursuant to section 304(b), the Council designed the FMP to specify the process for NMFS to take this action pursuant to MSA section 305(d). See 50 CFR 648.89(f)(3) and (g). The NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP and other applicable law.

The Assistant Administrator for Fisheries finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the date of effectiveness for this action. This final rule must be implemented as soon as possible reduce the potential for overfishing and avoid regulatory confusion. The regulations governing development and implementation of these measures are designed to facilitate implementation in a timely way that accounts for measures that are annual and seasonal. The fishing year begins May 31 each year, though delays in receiving, as happened here, information required to develop measures and the public process for developing such measures at times can result in implementing measures after that date. Recreational measures also often include

seasonal restrictions or modifications designed with timing requirements essential to meeting their conservation and management goals and objectives.

A delay in the implementation of measures may result in overages or overfishing. For GOM haddock, less restrictive status quo measures have been in effect since May 1, 2023, potentially increasing catch above the levels predicted in the bio-economic model and raising the likelihood of an overage. GOM haddock is subject to overfishing and these new measures in the recreational fishery to help prevent overfishing are important components of the overall set of measures (for commercial and recreational fishing) to prevent overfishing. For GB cod, the August 1 start of the proposed August closure which was recommended to limit cod catch and help prevent overfishing has already passed. Further delay would increase the potential that recreational harvest could contribute to excess catch relative to estimates and may contribute to possible overfishing of the GB cod stock. Exceeding catch targets may require more restrictive measures in the following fishing year that could result in lost fishing opportunities and adverse economic impacts.

The current delay, and further delay, of implementing this rule will result in regulatory confusion for the industry. Recreational stakeholders are well aware of the proposed measures but are currently fishing under last year's different measures. NMFS has received numerous requests for clarification on what measures anglers should be following and when measures will be implemented. This includes questions about the haddock limits and the August closure for GB cod. A delay also has the potential to negatively impact for-hire fishing business operations and angler's fishing trip bookings as fishing charter companies and anglers wait for the final measures to be implemented.

For GOM cod, a delay in implementation of regulations expanding the fall season may result in reduced or delayed bookings for for-hire vessels during that season. If the measures in this rule are delayed, anglers may cancel reservations or try to reschedule

trips for other dates; some operators may have to reimburse clients for trips already booked, reserved, or paid for. This could also hurt the business relationships between for-hire operators and their clients, leading to longer-term economic impacts for operators. For GB cod, trips that are already booked in August would need to be canceled with immediate implementation of this action. However, in this instance, the need for the August closure to help prevent overfishing supersedes the concern about booking trips. In addition, if we announce a delay in effectiveness past August, anglers will book trips in August, thereby ensuring that the benefits of the August closure would be undermined.

Furthermore, anglers and for-hire operators who are subject to this action expect timely implementation to provide regulatory certainty, prevent overages and overfishing, and prevent adverse economic impacts. This final rule follows a process for setting yearly measures that are familiar to, and anticipated by, fishery participants. During the development of this rule, and in particular after the proposed rule comment period ended, private anglers and for-hire vessel owners and operators sought information from NMFS about the status and timing of the implementation of these measures. They regularly urged NMFS to finalize the measures so that the measures for the year would take effect as intended.

For these reasons, a 30-day delay in the date of effectiveness for this final rule is unnecessary, impracticable and contrary to the public interest.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification, which was published in the proposed rule, has not changed and is not repeated here. No comments were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 8, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS is amending 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, revise Table 1 to Paragraph (b)(1), Table 2 to Paragraph (c)(1)(i), and Table 3 to Paragraph (c)(2), to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(1) * * *

Table 1 to Paragraph (b)(1)

Species	Charter/Party Minimum size		Private Minimum size		Maximum size	
	Inches	cm	Inches	cm	Inches	cm
Cod:						
Inside GOM Regulated Mesh Area ¹	22	55.9	22	55.9	N/A	N/A
Outside GOM Regulated Mesh Area ¹	23	58.4	23	58.4	N/A	N/A
Haddock:						
Inside GOM Regulated Mesh Area ¹	18	45.7	17	43.2	N/A	N/A
Outside GOM Regulated Mesh Area ¹	18	45.7	18	45.7	N/A	N/A
Pollock	19	48.3	19	48.3	N/A	N/A
Witch Flounder (gray sole)	14	35.6	14	35.6	N/A	N/A
Yellowtail Flounder	13	33.0	13	33.0	N/A	N/A
American Plaice (dab)	14	35.6	14	35.6	N/A	N/A
Atlantic Halibut	41	104.1	41	104.1	N/A	N/A
Winter Flounder (black back)	12	30.5	12	30.5	N/A	N/A
Redfish	9	22.9	9	22.9	N/A	N/A

¹ GOM Regulated Mesh Area specified in § 648.80(a).

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(c) * * *

(1) * * *

(i) * * *

Table 2 to Paragraph (c)(1)(i)

Stock	Open Season	Possession Limit	Closed Season
GB Cod	September 1-April 30 May 1 - 31	5	June 1-August 31
GOM Cod	September 1 – October 31	1	May 1 – August 31 November 1 – April 30
GB Haddock	All Year	Unlimited	N/A
GOM Haddock	May 1 - February 28 (or 29) April 1 - 30	10	March 1 – March 31
GB Yellowtail Flounder	All Year	Unlimited	N/A
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A

CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A
American Plaice	All Year	Unlimited	N/A
Witch Flounder	All Year	Unlimited	N/A
GB Winter Flounder	All Year	Unlimited	N/A
GOM Winter Flounder	All Year	Unlimited	N/A
SNE/MA Winter Flounder	All Year	Unlimited	N/A
Redfish	All Year	Unlimited	N/A
White Hake	All Year	Unlimited	N/A
Pollock	All Year	Unlimited	N/A
N. Windowpane Flounder	CLOSED	No retention	All Year
S. Windowpane Flounder	CLOSED	No retention	All Year
Ocean Pout	CLOSED	No retention	All Year
Atlantic Halibut	See paragraph (c)(3)		
Atlantic Wolffish	CLOSED	No retention	All Year

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(2) * * *

Table 3 to Paragraph (c)(2)

Stock	Open Season	Possession Limit	Closed Season
GB Cod	September 1 – April 30 May 1 – 31	5	June 1 – August 31
GOM Cod	September 1 – October 31	1	May 1 – August 31 November 1 – April 30
GB Haddock	All Year	Unlimited	N/A

GOM Haddock	May 1 - February 28 (or 29) April 1 - 30	15	March 1 – March 31
GB Yellowtail Flounder	All Year	Unlimited	N/A
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A
American Plaice	All Year	Unlimited	N/A
Witch Flounder	All Year	Unlimited	N/A
GB Winter Flounder	All Year	Unlimited	N/A
GOM Winter Flounder	All Year	Unlimited	N/A
SNE/MA Winter Flounder	All Year	Unlimited	N/A
Redfish	All Year	Unlimited	N/A
White Hake	All Year	Unlimited	N/A
Pollock	All Year	Unlimited	N/A
N. Windowpane Flounder	CLOSED	No retention	All Year
S. Windowpane Flounder	CLOSED	No retention	All Year
Ocean Pout	CLOSED	No retention	All Year
Atlantic Halibut	See Paragraph (c)(3)		
Atlantic Wolffish	CLOSED	No retention	All Year

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