

The new effective date of this rule will be October 9, 2007.

5. *It is further ordered* that the effective date of the *Order* is the date upon which the *Order* is released by the Commission.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 070709299-7300-01]

RIN 0648-AV75

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Haddock Size Limit Change

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

**ACTION:** Temporary rule; emergency final rule.

**SUMMARY:** NMFS implements this final rule pursuant to its authority to issue emergency measures under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This emergency action implements measures intended to reduce immediately discards of Georges Bank (GB) and Gulf of Maine (GOM) haddock to prevent excessive waste and comply with the goals of reducing discards and maintaining the rebuilding programs of the Northeast (NE) Multispecies Fishery Management Plan (FMP), while helping to achieve optimum yield at the same time. Specifically, this emergency action reduces the commercial minimum haddock size to 18 inches (45 cm) from the current minimum size of 19 inches (48.3 cm). This action is intended to reduce discarding and maintain consistency with the FMP and the Magnuson-Stevens Act.

**DATES:** Effective August 10, 2007, through February 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule implements emergency measures, authorized by section 305(c)

of the Magnuson-Stevens Act, intended to immediately reduce excessive discarding of GB and GOM haddock by lowering the commercial minimum fish size to 18 inches (45 cm), from the current minimum size of 19 inches (48.3 cm). The New England Fishery Management Council (Council) voted on June 21, 2007, to recommend that the Secretary of Commerce take action to lower the minimum size of haddock to 17 inches (43.2 cm) for vessels fishing on GB. A written request from the Council to NMFS for such action was dated June 25, 2007. Recent information from the Council and data from observed trips to the Eastern U.S./Canada Area indicate that there have been large amounts of discarding of haddock occurring because only a small fraction of the haddock from an exceptionally large year class being caught on GB has reached the minimum size of 19 inches (48.3 cm). Observer data show a discard-to-kept ratio of over 1 lb (0.45 kg) of haddock discarded to every pound of haddock landed. Cumulative haddock discards from the Eastern U.S./Canada Area from May 1, 2007, through July 4, 2007, are estimated at approximately 700,000 lb (318 mt).

The reason for these large amounts of discards is that the very large 2003 year class of haddock, which is the largest since 1963, is growing more slowly than previously anticipated. Recent survey data indicate an average GB haddock size of 16.6 inches (42.2 cm) for fish in the 2003 year class. The average size of the fish in the 2003 year class is anticipated to be 19 inches (48.3 cm) by the summer of 2008, which would make them legal to retain under the existing regulations, so the current discard situation will resolve itself over the long term. However, in the short term, in order to reduce the large amount of discards and associated discard mortality that has been occurring in the haddock fishery, and enable such fish to be landed, a reduction in the haddock minimum size to 18 inches (45.7 cm) is warranted. A temporary 18-inch (45-cm) minimum size limit will enable a larger fraction of the haddock catch to be landed, until a greater portion of the haddock population grows and reaches 19 inches (48.3 cm). NMFS is taking emergency action to effect this change.

This emergency action differs from the Council's request in two aspects. The Council recommended a minimum size of 17 inches (43.2 cm), and limited the scope of the size reduction to GB. This emergency action reduces the minimum size to 18 inches (45.7 cm) in both the GB and GOM stock areas. Although the discarding situation is

principally occurring on GB, and GOM haddock appear to have a higher rate of growth than GB haddock (Northeast Fisheries Science Center, (NEFSC)), this action decreases the minimum size limit for haddock throughout the range of the species to ensure meaningful and effective enforcement of the minimum size. Having differential size limits in the commercial fishery for two stocks of haddock that are landed by the same fishery in the same ports would make it virtually impossible to distinguish between the different size limits for enforcement purposes. Reducing the haddock minimum size from 19 inches (48.3 cm) to 18 inches (45 cm) will more than double the percentage of the GB haddock population available for harvest (from 22 percent to 47 percent in fall 2007; NEFSC). Such a size reduction will also modestly increase the percentage of GOM haddock available (from 57 percent to 61 percent in fall 2007), commensurate with the higher growth rate of haddock in the GOM. The decrease in the size limit for GOM haddock, therefore, should not increase the incentive to target smaller haddock. The recreational minimum size will remain at 19 inches (48.3 cm) because the magnitude of the recreational fishery for GB haddock, and the associated discard issue, is much less than the commercial fishery. Also, it is possible for a recreationally caught haddock that is undersized to be released alive, while it is more difficult to do so with commercially caught fish. Because the recreational fishery is distinct from the commercial fishery, the fact that the associated minimum sizes are different does not undermine enforcement of such restrictions.

NMFS policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss or to preserve a

significant economic opportunity that otherwise might be foregone.

Although the relative size of the 2003 year class has been evident since 2004, neither the observed slow growth rate of the year class, nor the large magnitude of the discarding problem were anticipated. These issues have become apparent only recently. Because of the limited selectivity of trawl mesh, it is not possible to effectively target 19-inch (48.3-cm) haddock without catching 18-inch (45-cm) haddock. This limited selectivity, combined with the abnormally slow growth rate of the large 2003 year class, results in the trawl fishery temporarily experiencing an exceptionally high catch of undersized haddock. The inability of fishers to retain the extremely large numbers of haddock less than 19 inches (48.3 cm) being caught presents an immediate management problem. High levels of discards undermine the benefits of rebuilding this stock, and reduce the likelihood of attaining optimum yield because most discarded fish die and therefore never recruit into the fishery. As previously stated, recent observer data show a discard-to-kept ratio of over 1 lb (0.45 kg) of haddock discarded to every pound of haddock landed. That means the fishery is discarding more haddock than it is keeping. Cumulative haddock discards from the Eastern U.S./Canada Area from May 1, 2007, through July 4, 2007, are estimated at approximately 700,000 lb (318 mt). In the context of historic discards, the amount of haddock discarded in the first 2 months of fishing year (FY) 2007 is greater than the amount of haddock discarded during the entirety of FY 2006, FY 2005, or FY 2004. Reducing the haddock minimum size to 18 inches (45 cm) will reduce waste (discard mortality) in the fishery and may increase opportunities for the fishery to achieve optimum yield (OY). A collateral benefit of this action will be prevention of a significant direct economic loss by allowing the landing and sale of fish that would be discarded at sea if the minimum size limit were kept at 19 inches (48.3 cm). To delay this action for the time necessary to implement an amendment or framework action, with the opportunity for prior public comment, would result in continued discarding of large amounts of bycatch, the associated mortality of such discarding, the irretrievable loss of significant economic revenues from the discarded fish, and the further diminishing of the industry's ability to achieve OY. These consequences are inconsistent with National Standards 1, 7, and 9.

The immediate benefits to be gained through the reduction of the haddock minimum size limit (e.g., reduced discarding and enhanced opportunities to achieve OY) justify this emergency action in accord with the guidelines outlined.

This action is not expected to interfere with any conservation objective of the FMP. Although GB haddock is still considered overfished, overfishing is not occurring. In recent years, less than 50 percent of the annual target Total Allowable Catch for GB haddock has been harvested. Allowing fish to be landed that would otherwise be discarded dead is not expected to increase fishing mortality or delay the rebuilding of the GB haddock stock. An increase in fishing effort is not expected due to the fact that, at current levels of fishing effort, trips under an 18-inch (45-cm) minimum haddock size may be more profitable, because the same amount of fishing effort will yield more legal catch that can be landed and sold. A shift to target smaller fish is not likely because haddock in the 18 to 19-inch (45 to 48.3-cm) range are caught together, and there is limited selectivity of the fishing gear. Therefore, there appears to be, in the short term, no incentive or effective way to target 18-inch (45-cm) haddock. NMFS intends to monitor this fishery closely in order to determine whether this action results in significant changes in fishing behavior or substantive increases in fishing effort. If necessary, inseason implementation of management measures through existing Regional Administrator authority could be taken to control catch. Prior to the expiration of this temporary rule, NMFS will evaluate whether an emergency situation still exists, and whether extension or modification of this action is necessary. The NEFSC estimates that the average total length of GB haddock will not be above 19 inches (48.3 cm) until the summer of 2008.

#### Classification

NMFS has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson-Stevens Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide additional notice and opportunity for the public to comment, or to delay for 30 days the effective date of this emergency regulation, under the provisions of sections 553(b) and (d) of the

Administrative Procedure Act. As more fully explained above, solicitation of public comment or a delay in effectiveness would result in significant negative consequences inconsistent with Magnuson-Stevens Act and FMP mandates. In particular, the immediate implementation of this action will avoid wasteful discards of haddock, enhance opportunities to achieve OY, reduce costs, and increase revenues of the fishing industry, without jeopardizing any conservation and management objectives of the FMP. Further, waiver of prior public comment is necessary because a substantial portion of the fishing effort in the groundfish fishery occurs in summer and early fall, and to delay implementation of this action would mean that the change in minimum size would occur after the part of the fishing season when it is needed most.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

This emergency action meets the Categorical Exclusion requirements of NOAA Administrative Order 216-6, and therefore no analysis was prepared pursuant to the National Environmental Policy Act.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 6, 2007.

**Samuel D. Rauch III,**

*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 § 648.60, the introductory text to paragraph (a)(5)(ii) is suspended, and paragraph (a)(5)(iii) is added to read as follows:

#### § 648.60 Sea scallop area access program requirements.

(a) \* \* \*

(5) \* \* \*

(iii) *NE multispecies possession limits and yellowtail flounder TAC.* Subject to the seasonal restriction established under the Sea Scallop Area Access

Program and specified in § 648.59(b)(4), (c)(4), and (d)(4), and provided the vessel has been issued a scallop multispecies possession limit permit as specified in § 648.4(a)(1)(ii), after declaring a trip into a Sea Scallop Access Area and fishing within the Access Areas described in § 648.59(b) through (d), a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(3), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(iii)(A) through (C) of this section.

\* \* \* \* \*

■ 3. In § 648.83, paragraph (a)(1) is suspended and paragraph (a)(3) is added to read as follows:

**§ 648.83 Multispecies minimum fish sizes.**

(a) \* \* \*

(3) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

**MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS**

| Species                     | Sizes (Inches) |
|-----------------------------|----------------|
| Cod                         | 22 (55.9 cm)   |
| Haddock                     | 18 (45.7 cm)   |
| Pollock                     | 19 (48.3 cm)   |
| Witch flounder (gray sole)  | 14 (35.6 cm)   |
| Yellowtail flounder         | 13 (33.0 cm)   |
| American plaice             | 14 (35.6 cm)   |
| Atlantic halibut            | 36 (91.4 cm)   |
| Winter flounder (blackback) | 12 (30.5 cm)   |
| Redfish                     | 9 (22.9 cm)    |

\* \* \* \* \*

■ 4. In § 648.85, the introductory text to paragraph (c) is suspended, and paragraph (c)(4) is added to read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(c) \* \* \*

(4) *Scallop fishery closed area access program.* Limited access scallop vessels operating under the Sea Scallop Area Access Program, as defined in § 648.59, and fishing in accordance with the regulations at § 648.60 may possess and land up to 1,000 lb (453.6 kg) of all NE multispecies combined, as provided in § 648.60(a)(5)(iii).

\* \* \* \* \*

■ 5. In § 648.88, paragraph (c) is suspended and paragraph (e) is added to read as follows:

**§ 648.88 Multispecies open access permit restrictions.**

\* \* \* \* \*

(e) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under (a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(iii).

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