

Dated: April 23, 2002.

**Robert F. Shea,**

*Acting Administrator, Federal Insurance and Mitigation Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 020409080-2100-02; I.D. 032602A]

RIN 0648-AP78

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

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

**ACTION:** Interim final rule; change in effective date; correction; request for comments.

**SUMMARY:** NMFS issues this interim final rule to amend measures that were implemented through an interim final rule published by NMFS on April 29, 2002, in order to protect species managed under the Northeast Multispecies Fishery Management Plan (FMP) from overfishing. This interim final rule imposes additional restrictions ordered by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on April 26, 2002: Two new area closures in the eastern Gulf of Maine (GOM), an increase in the minimum size for commercially caught cod, and a new restriction on dehooking devices. This interim final rule also accelerates the date of implementation of the gear restrictions contained in the April 29, 2002, interim final rule. This action is necessary to bring the regulations governing the Northeast multispecies (groundfish) fishery into compliance with the Court's Remedial Order.

**DATES:** Effective from 0001 hours, local time, May 1, 2002 (i.e., immediately following implementation of the provisions contained in the interim final rule of April 29, 2002, at 67 FR 21140), through 2400 hours, local time, on July 31, 2002. The effectiveness of the provision in § 648.80(j)(3)(i) and (iii) is changed from May 15, 2002, through July 31, 2002, to May 1, 2002, through July 31, 2002. Comments on this interim

final rule must be received no later than 5 p.m., local time, on June 5, 2002.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Amended Interim Final Rule for Groundfish." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Thomas Warren, Fishery Policy Analyst, phone: 978-281-9347, fax: 978-281-9135; email: thomas.warren@noaa.gov

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 28, 2001, a decision was rendered by the Court on a lawsuit brought by the Conservation Law Foundation (CLF), Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al., v. Evans*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Act (18 U.S.C. 1801, *et seq.*), as amended by the Sustainable Fisheries Act (SFA), and the Court granted plaintiffs' Motion for Summary Judgment on all counts. The Court had not yet imposed a remedy, but it did ask the parties to the lawsuit to propose remedies consistent with the Court's findings. Additional background on the lawsuit is contained in the preamble to the April 29, 2002, interim rule and is not repeated here.

On March 1, 2002, NMFS, at the request of the Court, proposed a measure to bring the FMP into full compliance with the SFA, the Magnuson-Stevens Act, and all other applicable law as quickly as possible. That proposed measure would have resulted in three actions over the next year and a half. Plaintiffs and the intervenors in the case also proposed remedies to the Court. From April 5-9, 2002, plaintiffs, defendants and intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement Among Certain Parties (Settlement Agreement) on April 16, 2002. In addition to NMFS, the

parties signing the agreement include CLF, which is one of the plaintiff conservation groups, all four state intervenors, and two of three industry intervenors.

In order to ensure the implementation of protective management measures by May 1, 2002, NMFS, notwithstanding that the Court had not yet issued its Remedial Order, proceeded to file an interim final rule with the Office of the **Federal Register** on April 25, 2002, for publication on April 29, 2002. The interim final rule, published on April 29, 2002, implemented measures identical to the short-term measures contained in the Settlement Agreement filed with the Court. The measures contained in the April 29, 2002, interim final rule were to become effective on May 1, 2002, with the exception of §§ 648.80(j)(3)(i) and (iii), and 648.89(i)(1), which were to become effective May 15, 2002.

On April 26, 2002, the Court issued a Remedial Order that ordered the promulgation of two specific sets of management measures (to be effective from May 1, 2002, to July 31, 2002, and from August 1, 2002, until promulgation of Amendment 13, respectively). The Court-ordered measures for the first set of measures were, in the majority, identical with those contained in the Settlement Agreement and the measures contained in NMFS' April 29, 2002, interim final rule. However, the Court-ordered measures included additional provisions and an accelerated schedule of effectiveness for all measures, which were not contained in either the Settlement Agreement or the April 29, 2002, interim final rule. Further, the Court ordered that NMFS publish in the **Federal Register**, as quickly as possible, an "amended interim rule and an amended second interim rule" that would "include the departures from the Settlement Agreement incorporated in the Remedial Order." To comply with the Court Order in the meantime, NMFS publishes this interim final rule to modify the measures implemented through the April 29, 2002, interim final rule and to accelerate the effectiveness of the gear restrictions in § 648.80(j)(3)(i) and (iii) to May 1, 2002, consistent with the Remedial Order. The measures in § 648.89(i)(1) are administrative, only, and will still become effective on May 15, 2002.

NMFS intends to publish another interim final rule as soon as possible to implement management measures for the period August 1, 2002, through the implementation of Amendment 13 to the FMP, in accordance with the Remedial Order. Amendment 13 will implement rebuilding plans for several

groundfish stocks and continue to address capacity issues in the fishery. Amendment 13 is under development by NMFS and the Council and will be implemented by August 22, 2003.

**Management Measures**

The following management measures are implemented through this interim final rule: All measures that were in place prior to the April 29, 2002, interim final rule that were not amended by that rule and all measures implemented by the April 29, 2002, interim final rule that are not specifically amended through this interim final rule and that remain in effect. The measures added or modified through this interim final rule are as follows:

1. The minimum size for cod that may be lawfully sold is increased from 19 inches (48.3 cm) to 22 inches (55.9 cm)(total length).

2. Two new year-round closed areas, Cashes Ledge East and Cashes Ledge West, which correspond to statistical area blocks 128 and 130, respectively, are added. The existing Cashes Ledge Area Closure remains in effect and overlaps Cashes Ledge West.

3. A new restriction is placed on the hook-gear sector of the industry to discourage dehooking strategies that may reduce survival of discarded fish. Specifically, this interim final rule prohibits the use of de-hookers (crucifiers) with less than 6-inch (15.2-cm) spacing between the fairlead rollers.

4. The gear restrictions contained in § 648.80(j)(3)(i) and (iii), which were to become effective May 15, 2002, as a result of the April 29, 2002, interim final rule, are made effective May 1, 2002.

**Classification**

This rulemaking is required to be made effective on May 1, 2002, by the April 26, 2002 Remedial Order issued by the Court in *Conservation Law Foundation, et al., v. Evans*, Case No. 00CV01134 (D.D.C., Dec. 28, 2001). This Order leaves NMFS with no discretion as to whether or when to promulgate this interim final rule.

This rule has been determined to be significant for purposes of Executive Order 12866. NMFS has not prepared an assessment of the potential costs and benefits of this rule as required by the Executive Order.

Because the Court mandated on April 26, 2002, that this rule must be in effect no later than May 1, 2002, it is impracticable for NMFS to provide prior notice and an opportunity for public comment. Such procedures would prevent NMFS from timely

implementation of the Court's order. Accordingly, the Assistant Administrator for Fisheries (AA) finds that there exists good cause to waive the notice and comment requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(b)(B). For the same reason, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the measures required by this rule.

Since notice and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, this rule is not subject to the analytical requirements of the Regulatory Flexibility Act. As such, no regulatory flexibility analysis is required for this rulemaking, and none has been prepared. 5 U.S.C. 603.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 2, 2002.

**Rebecca Lent,**

*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 § 648.14, paragraphs (a)(149) through (151) are added to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(149) Use of de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers.

(150) Fish for, land, or possess NE multispecies harvested with the use of de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(151) Possess de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

\* \* \* \* \*

3. In § 648.80, paragraph (n)(6) is added to read as follows:

**§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(n) \* \* \*

(6) The use of de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited.

\* \* \* \* \*

**§ 648.81 [Corrected]**

4. Section § 648.81 is corrected by revising paragraph (u)(1) (effective May 1, 2002, through July 31, 2002) to read as follows:

**§ 648.81 Closed areas.**

\* \* \* \* \*

(u) *Cashes Ledge Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the three areas known as the Cashes Ledge Closure Areas, as defined in this paragraph (u)(1), except as specified in paragraphs (s) and (u)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter). The Cashes Ledge Closure Areas are three areas, two of which are overlapping, defined by straight lines connecting the following points in the order stated:

(i) *Cashes Ledge West.*

Point	N. Lat.	W. Long.
CL7	43°00'	69°30'
CL8	43°00'	69°00'
CL9	42°30'	69°00'
CL10	42°30'	69°30'
CL7	43°00'	69°30'

(ii) *Cashes Ledge.*

Point	N. Lat.	W. Long.
CL1	43°07'	69°02'
CL2	42°49.5'	68°46'
CL3	42°46.5'	68°50.5'
CL4	42°43.5'	68°58.5'
CL5	42°42.5'	69°17.5'
CL6	42°49.5'	69°26'
CL1	43°07'	69°02'

(iii) *Cashes Ledge East.*

Point	N. Lat.	W. Long.
CL11	43°00'	68°30'
CL12	43°00'	68°00'
CL13	42°30'	68°00'
CL14	42°30'	68°30'
CL11	43°00'	68°30'

\* \* \* \* \*

5. 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 § 648.89. Except as provided 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	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)

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

Species	Sizes (inches)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

\* \* \* \* \*

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