

Notice of Agency Rule-making Proposal

MAPA-3 revised 2-2016

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 34 Groundfish Regulations. Recreational Cod and Haddock Federal Compliance and Technical Changes Proposed Rule-Making

BRIEF SUMMARY:

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2016, the Department enacted emergency rulemaking on May 7, 2016 for charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. This proposed rule will permanently instate those changes made via emergency rulemaking on May 7, 2016, and would also make additional changes. For the recreational fishery, the cod fishery has been taken off the prohibited list and it is now lawful to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive. For cod fish, a minimum size limit of 24" (60.1 cm) will apply. Recreational possession limits for haddock increase from 3 to 15 fish. Finally, seasonal restrictions on haddock are being shifted, so that haddock may not be possessed on board a recreational fishing from March 1 through April 14, whereas recreational haddock possession had previously been restricted in both the fall and spring months. Additional proposed changes are largely structural in nature.

Date, time and location of PUBLIC HEARING (*if any*): Not Applicable

COMMENT DEADLINE: 6/17/2016

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CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): SAME

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): NONE

STATUTORY AUTHORITY FOR THIS RULE: 12 M.R.S. §6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): SAME

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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MORE DETAILED SUMMARY:

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2016, the Department enacted emergency rulemaking on May 7, 2016 for charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. This proposed rule will permanently instate those changes made via emergency rulemaking on May 7, 2016, and would also make additional changes. For the recreational fishery, the cod fishery has been taken off the prohibited list and it is now lawful to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive. For cod fish, a minimum size limit of 24" (60.1 cm) will apply. Recreational possession limits for haddock increase from 3 to 15 fish. Finally, seasonal restrictions on haddock are being shifted, so that haddock may not be possessed on board a recreational fishing from March 1 through April 14, whereas recreational haddock possession had previously been restricted in both the fall and spring months. Additional proposed changes are largely structural in nature. The proposed rulemaking would strike the rule and introduce a restructured version which clarifies the overall outline structure of the rule and will make it easier for the industry and public to locate applicable sections. In addition, certain minor changes are proposed that will clarify the contents of chapter 34. Bait gillnet is being added to the definitions section of the rule, which will include clear measurements for the mesh and length. Goosefish will be renamed monkfish under Groundfish definitions, and size limits for monkfish will be added to the section on recreational minimum fish sizes. Clarification of methods of mesh measurements for gillnets will be added. Common names will be added to lists of species in order to align the rule with current naming practices for fish. Pounds of fillets measuring less than minimum size, except for Atlantic Halibut, will be added to the section on minimum size limit exceptions. Language will be added to the section on commercial fishing possession limits to clarify the pounds of each species that can be taken from state waters by state commercial fishing license holders who do not hold federal groundfish permits. Windowpane flounder and Ocean Pout will be added to prohibited species under the Recreational Groundfish Restrictions to reflect the same prohibition for commercial fishing and to bring the state recreational restrictions into line with federal recreational prohibitions.

REPEAL AND REPLACE THE EXISTING CHAPTER 34 WITH THE FOLLOWING

CHAPTER 34 - GROUND FISH

TITLE INDEX

- 34.01 Definitions
- 34.02 Methods of Mesh Measurement
- 34.03 Groundfish Spawning Closures
- 34.04 Groundfish Gear Restrictions
- 34.05 Commercial Groundfish Restrictions
- 34.06 Recreational Groundfish Restrictions
- 34.07 Atlantic Halibut
- 34.08 Whiting/Silver Hake (*Merluccius bilinearis*) Commercial Effort Restrictions

DEPARTMENT OF MARINE RESOURCES

Chapter 34 - Groundfish Regulations

34.01 Definitions

- A. **Bait gillnet.** A "Bait Gillnet" is a gillnet with diamond or square stretch mesh, measuring less than 3.5 inches throughout the entire net, is suspended in the water column, and has a maximum length of 2,000 feet.
- B. **Charter or party boat.** A "charter or party boat" is any vessel that carries passengers for hire to engage in recreational fishing activities.
- C. **Coastal waters.** "Coastal waters" means all waters of the State within the rise and fall of the tide out to the limits of the exclusive economic zone as shown on the most recently published Federal Government nautical chart, but does not include areas above any fishway or dam when that fishway or dam is the dividing line between tidewater and fresh water.
- D. **Cod end.** The "cod end" is the terminal section of a trawl net in which captured fish may accumulate.
- E. **Commercial catch.** "Commercial catch" means all multispecies taken with any type of gear except multispecies taken for personal use by hand-held hook and line gear or any Atlantic Halibut taken in accordance with Chapter 34.07 D (5).
- F. **Groundfish.** "Groundfish" means all demersal species including but not limited to the following:

Common English Name	Scientific Name
Monkfish (Goosefish)	Lophius americanus
American Plaice (Dab)	Hippoglossoides platessoides
Atlantic Cod	Gadus morhua
Atlantic Halibut	Hippoglossus hippoglossus
Atlantic Searobins	Prionotus spp.
Atlantic Tomcod	Microgadus tomcod
Atlantic Wolfish	Anarhichas lupus
Cunner	Tautoglabrus adspersus
Cusk (Tusk)	Brosme brosme
Greenland Halibut	Reinhardtius hippoglossoides
Haddock	Melanogrammus aeglefinus
North Atlantic redfishes	Sabastes spp.
Ocean Pout	acrozoarces americanus
Pollock (Saithe)	Pollachius virens
Red Hake	Urophycis chuss
Redfish	Sabastes marinus
Sandeels (Sand lances)	Ammodytes spp.
Sculpins	Myoxocephalus spp.
Silver Hake(whiting)	Merluccius bilinearis
Summer Flounder (fluke)	Paralichthys dentatus
White Hake	Urophycis tenuis
Windowpane Flounder	Scophthalmus aquosus
Winter Flounder (Lemon sole/Blackback)	Pseudopleuronectes americanus
Witch Flounder (Gray sole)	Glyptocephalus cynoglossus
Wolffishes (catfishes)	Anarhichas spp.
Yellowtail Flounder	Limanda ferruginea

- G. **Marine species.** "Marine species" means all marine animals except lobster, shellfish, marine worms, and elvers.

- H. **Pectoral length.** "Pectoral length" is the measurement taken from the base of the pectoral fin where it joins the fish's body to the tip of the fish's tail.
- I. **Recreational fishing.** "Recreational fishing" means fishing that is not intended to, nor does it result in the barter, trade, or sale of fish.
- J. **Recreational fishing vessel.** A "Recreational fishing vessel" means any vessel from which no groundfish harvest other than recreational fishing, is conducted. Charter and party boats are not considered recreational fishing vessels.
- K. **Regulated species.** "Regulated species" means cod, witch flounder, American plaice, Atlantic halibut, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, ocean pout and white hake for the purposes of this management plan.
- L. **Sink gillnet.** A "Sink Gillnet" is a gillnet that is fished on or near the bottom in the lower third of the water column.
- M. **Territorial waters.** "Territorial waters" means all waters of the State within the rise and fall of the tide seaward to the 3-nautical mile line as shown on the most recently published Federal Government nautical chart, but does not include areas above any fishway or dam when that fishway or dam is the dividing line between tidewater and fresh water.
- N. **Total length.** "Total length" is the measurement taken from the tip of the snout to the tip of the tail.

34.02 Methods of Mesh Measurement.

- A. **Gillnets.**
Mesh size of gillnet gear shall be measured by lining up five consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring ten consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of ten consecutive measures.
- B. **All other nets.**
Mesh size for nets other than gillnets, shall be measured with a DMR issued net measure which has been certified for accuracy.
- C. **Square-mesh measurement.**
Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.
- D. **Diamond-mesh measurements.**
Diamond mesh in the regulated portion of the net shall be measured in a direction parallel to the long axis of the net. Mesh size is determined by averaging the measurements for a series of 20 consecutive meshes. Mesh measurements must be taken at least five meshes away from the lacings of the net.

34.03 Groundfish Spawning Closures

A. Boothbay and Sheepscot Bay Groundfish Closure.

It shall be unlawful to fish for or take groundfish with any type of gear, or to possess groundfish so taken, from the following described area from May 1 through June 30 of any year:

In Boothbay, Sheepscot Bay, Linnekin Bay and Sheepscot River, in Lincoln and Sagadahoc Counties, starting at the Sloop Ledge navigational buoy C "5", then running in a Southerly direction to the navigational buoy at the Sisters N "4S", then running Southeast to the navigational buoy N "2" at Tom Rock; then continuing on a line true South (180 degrees true) approximately 1.8 miles to a point at position 43 42.06'N / 069 43.06'W intersecting a line drawn from the Mile Ledge Bell Buoy R "20ML" to the Bantam Rock Bell R "2"; then continuing in an Northeasterly direction (067 degrees true) along the line from the Mile Ledge Bell Buoy to the Bantam Rock Bell Buoy approximately 4.5 miles to the Bantam Rock Bell; then Northerly to and along the Western shore of Damariscove Island; then to and along the western shore of Fisherman Island to its Northern tip; then Northerly to the Southern tip of Ocean Point on Linnekin Neck.

B. Maine Groundfish Spawning Closure.

Except for recreational harvest authorized by this chapter, it is illegal to fish for, take, or have in possession groundfish listed under this part during the months of April, May and June. Maine's territorial waters are closed to commercial harvest as follows: All territorial waters west of a line, running 180° magnetic from West Quoddy Head, in Lubec, to the Canadian international border. Commercial ground fishing vessels must have all fishing gear securely stowed and covered when transiting this area during the closed period. The stowage requirements will not apply to vessels secured to or moving between docks or moorings within a harbor.

GROUND FISH SPECIES

Common English Name	Scientific Name
American Plaice (Dab)	Hippoglossoides platessoides
Atlantic Cod	Gadus morhua
Haddock	Melanogrammus aeglefinus
Ocean Pout	Macrozoarces americanus
Pollock (Saithe)	Pollachius virens
Red Hake	Urophycis chuss
Redfish	Sebastes fasciatus
Silver Hake (whiting)	Merluccius bilinearis
White Hake	Urophycis tenuis
Windowpane Flounder	Scophthalmus aquosus
Winter Flounder (Lemon sole/Blackback)	Pleuronectes americanus
Witch Flounder (Gray sole)	Glyptocephalus cynoglossus
Yellowtail Flounder	Pleuronectes ferrugineus

**See Also Groundfish harvesting and gear restrictions found in Department of Marine Resources Regulations 55.35 and 55.40.

34.04 Groundfish Gear Restrictions.

Except as provided for Atlantic Halibut, It is unlawful to fish commercially in Maine's territorial waters for any species of groundfish, as defined in Chapter 34.01 (F), except in accordance with the following methods and restrictions:

- A. Otter and beam trawl.
The minimum mesh size for any otter or beam trawl net on a vessel, or used by any vessel fishing in Maine's territorial waters, shall be 6 inches diamond mesh or 6.5 inches square mesh in the body and wings, and 6.5 inches diamond mesh or square mesh in the cod end.
- B. Gill net.
Sink gillnets must have a mesh size of at least 6.5 inches and be labeled with the owner's commercial fishing license number. Gillnet fishermen may not fish more than fifty sink gillnets at one time. Sink gillnets with mesh measuring less than 6.5 inches are illegal and subject to seizure.
- C. Hooks.
The use of hooks on any commercial fishing vessel engaged in tub trawling or long lining shall be 12/0 or greater circle hooks and limited to 250 in number except as provided for Atlantic Halibut in this chapter.
- D. Crucifiers.
The use of de-hookers or "crucifiers" with less than 6-inch spacing between the fairlead rollers is prohibited.

34.05 Commercial Groundfish Restrictions

- A. Prohibited Species
Vessels are prohibited from retaining, killing or landing Ocean Pout, Windowpane Flounder, and Atlantic Wolffish.

- B. Commercial Fishing Size Restrictions

- 1. Unless otherwise specified under this chapter, the minimum fish size applies to the whole fish or any part of a fish while possessed on board a vessel and to whole fish only, after landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed.

- 2. Minimum Fish Sizes (Total Length)

Species	Size Inches (cm)
American Plaice (dab).....	12 (30.5 cm)
Cod.....	19 (48.3 cm)
Haddock.....	16 (40.7 cm)
Monkfish.....	17 (43.2 cm)
Pollock.....	19 (48.3 cm)
Redfish.....	7 (17.8 cm)
Summer Flounder.....	14 (35.6 cm)
Winter Flounder (lemon sole/blackback).....	12 (30.48 cm)
Witch Flounder (gray sole).....	13 (33.0 cm)
Yellowtail Flounder.....	12 (30.5 cm)

- 3. Minimum Size Limit Exceptions:

- (a) Except for Atlantic Halibut, each person aboard a vessel may possess up to 25 lb. of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.
- (b) Vessels fishing exclusively with pot gear may possess multispecies racks used, or to be used, as bait that measure less than the minimum fish size, if there is a receipt for the purchase of those racks on board the vessel.

- (c) Monkfish. Monkfish tails may be removed from the fish but must measure at least 11 inches (27.9 cm).

C. Commercial Fishing Possession Limits

1. Winter Flounder.
It shall be unlawful for persons who do not possess a federal groundfish permit to fish for, take, possess or land more than 500 lbs (226.8 kg) of winter flounder taken from Maine's territorial waters per vessel, per day.
2. Atlantic Cod
It shall be unlawful for persons who do not possess a federal groundfish permit to fish for, take, possess or land more than 200 pounds (90.7 kg) of cod taken from Maine's territorial waters per vessel per trip.
3. Monkfish
It shall be unlawful for persons who do not possess a federal groundfish permit to fish for, take, possess or land more than 150 lbs (68 kg) of monkfish tails or 498 lbs (225.9 kg) of whole monkfish taken from Maine's territorial waters per vessel per trip.
4. Summer Flounder
It shall be unlawful for persons who do not possess a federal groundfish permit to fish for, take, possess or land more than 1,000 pounds of summer flounder taken from Maine's territorial waters per vessel per trip.

When the annual Maine quota for summer flounder is reached it shall be unlawful to fish for, take, or possess summer flounder, (*Paralichthys dentatus*), aboard any vessel within Maine's territorial waters. Public notice will be made in a newspaper, with statewide circulation, when the annual quota for summer flounder has been reached. It is unlawful to land summer flounder in the State of Maine that is in excess of the annual quota established by the Atlantic States Marine Fisheries Commission and the Department of Marine Resources.

34.06 Recreational Groundfish Restrictions

- A. Prohibited species.
Charter, Party and Recreational vessels and/or recreational fishermen are prohibited from retaining, killing or landing Windowpane flounder and Ocean pout and/or Atlantic Wolffish,.
- B. Restrictions on Sale
It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, groundfish caught or landed by charter, party, or recreational fishing vessels.

C. Recreational Size Limits

1. Persons aboard charter, party and recreational fishing vessels are subject to the following minimum fish sizes:

Species	Minimum Fish Sizes (TL)	Size Inches (cm)
Cod.....		24 (60.1 cm)
American plaice (dab).....		14 (35.6 cm)
Haddock.....		17 (43.2 cm)
Monkfish.....		17 (43.2 cm)

Pollock.....	19 (48.3 cm)
Redfish.....	9 (22.9 cm)
Summer Flounder.....	20 (50.8)
Winter Flounder (blackback).....	12 (30.5 cm)
Witch Flounder (gray sole).....	14 (35.6 cm)
Yellowtail Flounder.....	13 (33.0 cm)

2. Exceptions:

- (a) Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter. This exception shall not apply to Atlantic Halibut.
- (b) Notwithstanding the minimum size for Pollock a person may take or possess up to, but not more than, twelve (12) Pollock per day which are less than 19 inches total length.

D. Recreational Limits and Restrictions

1. Winter Flounder

Each person on board a charter, party or recreational fishing vessel may not possess more than 8 Winter Flounder.

2. Haddock

Each person on board a charter, party, or recreational fishing vessel may not possess more than 15 Haddock per day and shall comply with the following restrictions:

- (a) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.
- (b) Haddock harvested by charter, party, or recreational fishing vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons aboard. If there is a violation of the possession limit on board a vessel carrying more than one person, the owner or operator shall be responsible for the violation.
- (c) Haddock must be stored so as to be readily available for inspection.
- (d) Haddock may not be possessed on board a charter, party or recreational fishing vessel from March 1 through April 14 inclusive.

3. Summer Flounder

Recreational Effort Restrictions: Summer Flounder creel limit and season.

It shall be unlawful to take, catch, kill, or possess more than two (2) Summer Flounder per day.

4. Cod

Each person on board a charter, party or recreational fishing vessel may not possess more than 1 cod per day. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive.

34.07 Atlantic Halibut (*Hippoglossus hippoglossus*)

A. Season for Maine's Territorial Waters.

The open season to fish for Atlantic Halibut in Maine's territorial waters shall begin at sunrise May 1st and end at sunset June 30th.

B. License Requirements.

1. Commercial Halibut fishermen must obtain an Atlantic Halibut endorsement on their Department of Marine Resources (DMR) Commercial Fishing License. Commercial Fishing license holders must declare the vessel at the time of license issuance or renewal, to which that license holder's tags will be allocated pursuant to the endorsement. The license holder may only fish for halibut from the vessel that was declared at the time of license issuance or renewal and to which that license holders' tags were allocated.
2. Recreational fishermen are not required to obtain a commercial license and endorsement to fish for Atlantic Halibut but must declare a vessel for which their recreational landings tags will be assigned.

C. Size Limit.

1. It shall be illegal to land, sell, or possess any Atlantic Halibut which measures less than 41 inches in total length or for a fish with the head removed, 32 inches in pectoral length. Except for removing the fish's head, Atlantic Halibut must remain intact until reaching the point of sale at a dealer facility or at the consumer's property.
2. Atlantic Halibut caught at sea which measure less than the minimum legal size, may be tagged with DMR issued research tags and then immediately released.
3. Atlantic Halibut raised by means of aquaculture shall be exempted from the size limit if accompanied by proper documentation identifying the origin of the fish and verification that the fish are an aquaculture product.

D. Prohibitions.

1. It shall be illegal to possess or land marine species other than Atlantic Halibut while fishing for Atlantic Halibut aboard commercial vessels in Maine's territorial waters. Other marine species caught while fishing for Atlantic Halibut shall be immediately liberated.
2. It shall be unlawful to transfer Atlantic Halibut between vessels.
3. It shall be illegal to fish for Atlantic Halibut in Maine's territorial waters by any method other than using size 14/0, 15/0 or 16/0 circle hooks.
4. No vessel may fish for Atlantic Halibut using more than 450 circle hooks.
5. Recreational fishermen or commercial fishing license holders without the halibut endorsement may Halibut fish, for personal use, using a tub-trawl and are limited to 100 hooks in total.
6. No individual may possess more than one type of landing tag per year. In addition, it shall be illegal for more than one type of landing tag to be assigned to any one vessel. The full allotment of landing tags will be issued to individuals one time per year.
7. It shall be illegal to possess a Halibut tag on a vessel that the tag is not registered to.

E. Halibut Gear Marking Requirements

1. All persons fishing for Atlantic Halibut with an endorsement issued in accordance with Chapter 34.07 B-1 must have marking buoys on each end of the trawl clearly labeled with their name and Maine Commercial Fishing license number.
2. All persons recreationally tub trawling for Atlantic Halibut must mark the trawl buoys with their name and the words "Halibut Trawl" or other DMR specified marking.

F. Total Allowable Catch

1. Commercial, party, or charter vessels may land no more than 25 Atlantic Halibut per year.
2. Recreational vessels may land no more than 5 Atlantic Halibut per year.

G. Tagging Requirements.

1. All legal size Atlantic Halibut caught in Maine's coastal waters and intended to be retained by a Commercial Fishing license holder or recreational fisherman shall be immediately tagged with a landing tag approved by the Department of Marine Resources (DMR). Landing tags shall be attached in a manner for which the tag was designed tightly around or through the tail just before the tail fin.
2. Landings tags must remain on the fish until the fish has reached its final destination as a legal-sized fish that is not offered or intended for sale, trade, or barter by a recreational fisherman or prior to retail sale by a Commercial Fishing license holder or Wholesale Seafood Dealer. It is illegal to possess Atlantic Halibut which are not properly tagged. Any person in possession of Atlantic Halibut without a DMR landings tag shall not be in violation of this Chapter if that person is in possession of a bill of lading showing the Atlantic Halibut were lawfully obtained from an origin outside the State of Maine or identified in accordance with the exception for Atlantic Halibut raised by means of aquaculture in Chapter 34.07 C-3. The absence of a bill of lading shall be prima facie evidence that the Atlantic Halibut were landed in Maine i.e., not shipped into Maine.
3. No individual or vessel will be issued more than 25 landing tags per (calendar) year except that commercial fishing license holders who also hold a Federal Multispecies Permit shall be exempted from the individual tag limit provided that no one federally permitted vessel is assigned more than 25 landing tags per year.
4. Three types of landing tags may be issued:
 - (a) State Commercial tags will be issued to endorsement holders without a Federal permit fishing in Maine's territorial waters.
 - (b) Federal Commercial tags will be issued to endorsement holders who possess a Federal multispecies permit authorizing access to Federal waters.
 - (c) Recreational tags will be issued to party/charter or recreational vessels which fish in either Federal or territorial waters.

H. Observers.

When fishing for Atlantic Halibut, all commercial, recreational, party and charter boat vessels must accept observers aboard their vessels upon request from the DMR or National Marine Fisheries Service (NMFS).

I. Sampling.

Atlantic Halibut fishers may be requested to preserve stomach, gonad, otolith, scale or other biological samples for analyses by DMR and NMFS scientists. Any training necessary for compliance with such a request would be provided by DMR and/or NMFS personal.

J. Reporting: See Chapter 8.20(F) Landings Program.

34.08 Whiting/Silver Hake (*Merluccius-Bilinearis*) Commercial Effort Restrictions

A. Maine Territorial Waters Gear Prohibition and Season

1. It shall be unlawful for any person to take, harvest, or fish for Whiting in Maine's territorial waters by any method from December 1st through June 30th.

(a) Exemption: A person participating in the northern shrimp fishery may retain Whiting taken as by-catch less than or equal to the amount of shrimp on board, but not to exceed 3,500 pounds. These persons must possess a Commercial Northern Shrimp license issued in accordance with 12 M.R.S. §6804; as well as, a Commercial Pelagic and Anadromous Fishing License in accordance with 12 M.R.S. §6502-A with a Whiting endorsement pursuant to Chapter 34.08 C.

2. No person may take, harvest or fish for Whiting using any grate raised footrope trawl (GRFT) net in Maine's territorial waters.

B. Coastal Waters Gear Restrictions.

It shall be unlawful to possess aboard a vessel any grate raised footrope trawl (GRFT) net, which has net mesh less than 6.5 inches or cod end mesh which measures less than 2.5-inches. GRFT nets used to fish for or take whiting must comply with the federal regulations specified under 50 CFR §648.80(a)(16). For cod ends comprised of square mesh, measurements shall be taken from within the first 100 bars, counting from the terminus of the net, for vessels greater than 45 feet in length overall, and taken from within the first 50 bars, counting from the terminus of the net, for vessels 45 feet or less in length overall. For cod ends comprised of diamond mesh, measurements shall be taken from within the first 50 meshes, counting from the terminus of the net, for vessels greater than 45 feet in length overall and taken from within the first 25 meshes for vessels 45 feet or less in length overall.

C. Whiting Endorsement Required

In order to obtain a Whiting endorsement, GRFT federal exempted Whiting fishery participants must contact the Department of Marine Resources for a gear inspection. Upon satisfactory completion of the gear inspection, the Whiting endorsement will be affixed or applied to the license holder's Maine Commercial Pelagic and Anadromous Fishing License by DMR personnel. The endorsement shall be subject to continued compliance with the gear apparatus and DMR reporting requirements.

D. Possession Restrictions

The owner or operator of a vessel participating in the GRFT federal exempted Whiting fishery with a Whiting endorsement from DMR may not possess on board, or land any species of fish, other than a maximum of 7,500 lb (3,402 kg) of Whiting; except for the following incidental species in accordance with 50 CFR §648.80(a)(16)(i)(A): Offshore Hake, Red Hake; Butterfish; Herring; Mackerel; Squid; and Alewife.

E. Observers.

When fishing for Whiting, all commercial vessels must accept observers aboard their vessels upon request from the DMR or NOAA Fisheries, National Marine Fisheries Service (NMFS).

F. Reporting requirements: See Chapter 8.20(Q) Landings Program.

G. Revocation of Whiting endorsement

The failure of the license holder to comply with the reporting or observer requirements of this rule shall be grounds for the immediate revocation of the whiting endorsement or, in the discretion of the Commissioner, for a refusal to renew the Whiting endorsement. The Commissioner may revoke or deny renewal of the endorsement in accordance with the following procedures:

1. The Commissioner shall advise the license holder of the decision to revoke or to deny renewal of the Whiting endorsement by certified mail and shall include in the notice a statement of the grounds for the decision.
2. The Commissioner shall advise the license holder of his/her right to request that an adjudicatory hearing be held before the Department in conformity with 5 M.R.S.A., Chapter 375 subchapter IV. The Commissioner shall advise the license holder that the hearing must be requested in writing and that the written request must be received by the Department no

later than ten days of receipt by the applicant of the notice, by certified mail, of immediate revocation or non-renewal of the Whiting endorsement.

3. If an adjudicatory hearing is requested, the Commissioner shall schedule a hearing within ten days of the Department's receipt of the written request for hearing, unless a longer period is mutually agreed to in writing.
4. Notice of the hearing date, time, and location shall be given immediately to the license holder.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 34

STATUTORY AUTHORITY: 12 M.R.S. §6171

DATE AND PLACE OF PUBLIC HEARING: Not Applicable

COMMENT DEADLINE: **6/17/2016**

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2016, the Department enacted emergency rulemaking on May 7, 2016 for charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. This proposed rule will permanently instate those changes made via emergency rulemaking on May 7, 2016, and would also make additional changes. For the recreational fishery, the cod fishery has been taken off the prohibited list and it is now lawful to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive. For cod fish, a minimum size limit of 24" (60.1 cm) will apply. Recreational possession limits for haddock increase from 3 to 15 fish. Finally, seasonal restrictions on haddock are being shifted, so that haddock may not be possessed on board a recreational fishing from March 1 through April 14, whereas recreational haddock possession had previously been restricted in both the fall and spring months. Additional proposed changes are largely structural in nature. The proposed rulemaking would strike the rule and introduce a restructured version which clarifies the overall outline structure of the rule and will make it easier for the industry and public to locate applicable sections. In addition, certain minor changes are proposed that will clarify the contents of chapter 34. Bait gillnet is being added to the definitions section of the rule, which will include clear measurements for the mesh and length. Goosefish will be renamed monkfish under Groundfish definitions, and size limits for monkfish will be added to the section on recreational minimum fish sizes. Clarification of methods of mesh measurements for gillnets will be added. Common names will be added to lists of species in order to align the rule with current naming practices for fish. Pounds of fillets measuring less than minimum size, except for Atlantic Halibut, will be added to the section on minimum size limit exceptions. Language will be added to the section on commercial fishing possession limits to clarify the pounds of each species that can be taken from state waters by state commercial fishing license holders who do not hold federal groundfish permits. Windowpane flounder and Ocean Pout will be added to prohibited species under the Recreational Groundfish Restrictions to reflect the same prohibition for commercial fishing and to bring the state recreational restrictions into line with federal recreational prohibitions.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? YES NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

The rule permanently implements changes in groundfish regulations implemented by emergency rule that will bring Maine into line with federal law. In addition, the proposed rule makes certain structural changes that will clarify the contents and enforcement of the chapter. The proposed rule would also add certain common names for species, as well as greater detail on gear measurements and sizes.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]

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Primary Sources: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, 50 CFR Part 648, Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Fishing Year 2016; Recreational Management Measures

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.