

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 34.06 Recreational Groundfish Regulations

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
On August 28, 2020, the Department of Marine Resources adopted an emergency rule in order to be consistent with a NOAA Fisheries federal rulemaking which was published on August 14th. The Department incorporates the emergency changes via this regular rulemaking. The regulation applies to charter, party and recreational fishing vessels operating in state waters regarding Gulf of Maine cod and haddock. Gulf of Maine cod can only be possessed on recreational fishing vessels, which per Section 34.01 are exclusive of charter or party vessels, from September 15-September 30 inclusive, and April 1-April 14, inclusive. Charter or party vessels may possess Gulf of Maine cod from September 8-October 7, inclusive, and from April 1-April 14, inclusive. The rule also adopts the season for Gulf of Maine haddock such that haddock may be possessed on board a party, charter, and recreational fishing vessel from April 1-February 28. In addition to complying with federal law and incorporating an existing emergency rule into the regular rule, this rule will increase recreational fishing opportunity in Maine State waters.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

AGENCY CONTACT PERSON:	Amanda Ellis
AGENCY NAME:	Department of Marine Resources
ADDRESS:	21 State House Station Augusta, Maine 04333
WEB SITE:	http://www.maine.gov/dmr/rulemaking/
E-MAIL:	dmr.rulemaking@maine.gov
TELEPHONE:	(207) 624-6573
FAX:	(207) 624-6024
TTY:	(207) 633-9500 (Deaf/Hard of Hearing)

Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____					DATE: _____
FUND	AGENCY	S-UNIT	APP	OBJT	AMOUNT
010	13A	1120	10	4946	regulations

Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta

DEPARTMENT OF MARINE RESOURCES

CHAPTER 34 GROUND FISH

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, 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:

Minimum Fish Sizes (TL)	
Species	Size Inches (cm)
Cod.....	21 (53.3 cm)
American plaice (dab).....	14 (35.6 cm)
Haddock.....	17 (43.2 cm)
Monkfish.....	17 (43.2 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.

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 March 31 ~~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 and must comply with the following restrictions: ~~Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 through September 14 inclusive~~

- (a) Cod may not be possessed on board a recreational fishing vessel, as defined in Section 34.01(J), from October 1 through March 31, inclusive, and from April 15 through September 14, inclusive.
- (b) Cod may not be possessed on board a charter or party boat, as defined in Section 34.01(B), from October 8 through March 31, inclusive, and from April 15 through September 7, inclusive.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; E-mail: amanda.ellis@maine.gov, web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: 34.06 Recreational Groundfish Regulations

STATUTORY AUTHORITY: 12 M.R.S. 6171

DATE AND PLACE OF PUBLIC HEARING: None scheduled

COMMENT DEADLINE: October 9, 2020

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

This action is intended to manage the Gulf of Maine cod and haddock recreational fishery in compliance with the federal management plan.

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)]

This proposed rule will increase the length of both the Gulf of Maine cod and haddock recreational fishing seasons, resulting in increased opportunities for participation in these recreational fisheries.

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]

This proposed rule considered the interim final rule issued by NOAA Fisheries on August 14th which set fishing year 2020 recreational management measures for Gulf of Maine cod and haddock. On August 28, DMR incorporated the applicable federal changes into the regulation via emergency rule-making. This proposal would incorporate all the changes made via the emergency regulation.

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

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

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Basis Statement:

On August 28, 2020, the Department of Marine Resources adopted an emergency rule in order to be consistent with a NOAA Fisheries federal rulemaking which was published on August 14th. The Department incorporates the emergency changes via this regular rulemaking. The regulation applies to charter, party and recreational fishing vessels operating in state waters regarding Gulf of Maine cod and haddock. Gulf of Maine cod can be possessed on recreational fishing vessels, which per Section 34.01 are exclusive of charter or party vessels, from September 15-September 30 inclusive, and April 1-April 14, inclusive. Charter or party vessels may possess Gulf of Maine cod from September 8-October 7, inclusive, and from April 1-April 14, inclusive. The rule also adopts the season for Gulf of Maine haddock such that haddock may be possessed on board a party, charter, and recreational fishing vessel from April 1-February 28. In addition to complying with federal law and incorporating an existing emergency rule into the regular rule, this rule will increase recreational fishing opportunity in Maine State waters.

Summary of Comments:

Notice of this proposed rulemaking appeared on September 9, 2020 in the five major daily newspapers as published by the Secretary of State. On September 9, 2020, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Due to the pandemic, no public hearings were scheduled. The comment period closed October 9, 2020.

Written Comments**Marc Lamothe, received via email, September 9, 2020**

Please do not make a change to two different cod seasons.....one for party and charter boats and a shorter period for recreational fishermen. The Bunny Clark is the only Maine party boat operating during the current Sept. 15-30 cod season. Very few charter operations are still operating during this period. Tourists and locals alike are turning their attention to stacking wood, setting up deer stands, etc.....

I am a charter operator and a school teacher. September fishing does not fit my schedule, nor does it fit the schedule of my summer customers.

To add more time to the Bunny Clark's fishing days would be unfair. A week or two in June or July, or maybe August would have more widespread appeal. Maybe a week in June and a week in August?

If charter boats and party boats can fish on certain days, so should the general public.....recreational fishermen. Having a special charter/party boat season is unfair to those who fish Maine waters.

I don't like the selfish slant that Tim Tower brings to these decisions. He is on the council for selfish reasons. I would like to be able to retain a few cod each summer. Fall fishing is so uncertain.....with east winds and offshore hurricanes. Summer is when this fishery should open. Let the scientists determine how long....maybe brief three day openings would work.....perhaps monthly??

Bob Humphrey, received via email, September 9, 2020

My purpose in writing is to express my support for the Department's proposed rule to expand recreational fishing seasons for Gulf of Maine cod and haddock to align state and federal recreational fishing seasons. I participated in recreational groundfish workshops last fall conducted by NOAA's Greater Atlantic Regional Fisheries Office where the status of groundfish species, particularly cod and haddock, were discussed at length. At that time, facilitators advised that based on current information there would likely be no changes. However, they were receptive to public comment and subsequently made an effort to look more closely at the most recent information on current stocks. As a result, they modified their management approach and stock assessment procedures, which eventually led to their most recent liberalization of federal recreational groundfishing regulations. I applaud the Maine Department of Marine Resources for taking steps to make state and federal regulations, which can be quite confusing, more consistent. Both NOAA/NMFS and DMR have always taken a cautious approach in expanding fishing opportunity while keeping the best interest of the resource in mind and I am confident this measure meets both those objectives.

Department's Response:

Measures by Recreational Sector

One commenter did not support different Gulf of Maine cod management measures for the for-hire and private angler sectors. The slightly longer season for the for-hire sector resulted from the New England Fishery Management Council's (Council) attempt to address the economic impacts of Covid-19 on the party/charter fleet. In June 2020, the Council was presented with information which showed that the number of party/charter trips in the Gulf of Maine had drastically decreased in April and May of 2020, as compared to the previous five-year average. In recognition that many states' regulations did not permit party/charter vessels to operate in the spring of 2020, the Council recommended extending the fall fishing season for Gulf of Maine cod to provide additional fishing opportunities for the for-hire fleet. This recommendation was approved and implemented by NOAA Fisheries. Recreational measures for Gulf of Maine cod and haddock are set annually and the Council will evaluate measures for the 2021 fishing year this winter.

Timing of the GOM Cod Recreational Season

One commenter did not support the timing of a recreational Gulf of Maine cod season in September and recommended the season be in the summer. Through the New England Fishery Management Council, a variety of fishing seasons were considered for Gulf of Maine cod, including some seasons with dates in May and August. Ultimately, these options were not chosen because they resulted in scenarios which had a greater than 50% chance of exceeding the recreational sub-ACL. In particular, the analysis showed the risk of exceeding the Gulf of Maine cod sub-ACL decreased when the season opened after Labor Day weekend. As a result, the Council recommended, and NOAA Fisheries approved, a recreational Gulf of Maine cod season in September.

Consistency with Federal Regulations

One commenter supported DMR's adoption of recreational groundfish measure which mirror federal regulations. DMR agrees that consistency between state and federal regulations is important.