

service area. A cable operator that is not subject to effective competition within its cable service area may file a petition with the Commission, seeking a finding that particular circumstances exist that make it consistent with the public interest, convenience, and necessity to allow the operator to convert its cable system to an open video system. Nothing herein shall be construed to affect the terms of any franchising agreement or other contractual agreement.

3. Section 76.1502 is amended by revising paragraph (a) to read as follows:

**§ 76.1502 Certification.**

(a) An operator of an open video system must certify to the Commission that it will comply with the Commission's regulations in 47 CFR 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513. The Commission must approve such certification prior to the commencement of service at such a point in time that would allow the applicant sufficient time to comply with the Commission's notification requirements.

\* \* \* \* \*

4. Section 76.1503 is amended by revising paragraph (c)(2)(v) to read as follows:

**§ 76.1503 Carriage of video programming providers on open video systems.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) Notwithstanding the general prohibition on an open video system operator's discrimination among video programming providers contained in paragraph (a) of this section, a competing, in-region cable operator or its affiliate(s) that offer cable service to subscribers located in the service area of an open video system shall not be entitled to obtain capacity on such open video system, except where a showing is made that facilities-based competition will not be significantly impeded.

\* \* \* \* \*

[FR Doc. 00-110 Filed 1-4-00; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 991217342-9342-01; I.D. 120199D]

RIN 0648-AN15

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework 31 to the Northeast Multispecies Fishery Management Plan**

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

**ACTION:** Final rule and technical amendment.

**SUMMARY:** NMFS issues this final rule to implement management measures contained in Framework (FW) 31 of the Northeast Multispecies Fishery Management Plan (FMP). These measures include: An increase in the Gulf of Maine (GOM) cod trip limit to 400 lb (181.4 kg) per day with a maximum possession limit of 4,000 lb (1,814.4 kg); modification of the manner in which allowable trip limit overages are permitted and are calculated; and closure of an inshore area comprising Massachusetts Bay and Stellwagen Bank for February 2000. These measures constitute an inseason adjustment to the measures currently in place. The intent of this rule is to reduce discards in the GOM cod fishery while still achieving mortality objectives of the rebuilding plan in the FMP. In addition, this rule corrects errors contained in the final rule published October 15, 1999 (64 FR 55821), which implemented the approved measures contained in Amendment 9 to the FMP. The October 15, 1999, rule inadvertently omitted regulatory text to implement the approved Atlantic halibut measures.

**DATES:** Effective January 5, 2000, except for amendments to § 648.81 which are effective January 31, 2000, and the revision of § 648.88 (a)(1) which is effective November 15, 1999.

**ADDRESSES:** Copies of the FW 31 document, its Regulatory Impact Review (RIR), the Environmental Assessment (EA), and other supporting documents, and documents regarding Amendment 9 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906-1036.

**FOR FURTHER INFORMATION CONTACT:**

Thomas A. Warren, Fishery Management Specialist, 978-281-9347.

**SUPPLEMENTARY INFORMATION:**

**GOM Cod Measures**

FW 27, which became effective on May 1, 1999, implemented measures to address overfishing and achieve the rebuilding goals of the FMP for GOM cod for the 1999 fishing year (May 1, 1999, through April 30, 2000). Because the status of the GOM cod stock was characterized by the Multispecies Monitoring Committee as collapsing, the New England Fishery Management Council (Council) chose a target total allowable catch (TAC) of 782 mt, which corresponded to the precautionary fishing mortality rate (F) goal of  $F_{0.01}$ . This TAC was selected as a target to ensure that the  $F_{MAX}$  TAC of 1,340 mt was not exceeded. FW 27 increased the size and duration of closed areas, decreased the cod landing limit to 200 lb (90.7 kg) per day at sea (DAS), and required the Regional Administrator (RA) to reduce the landing limit to between 5 and 100 lb (2.3 kg and 45.4 kg) per DAS, when 402 mt of GOM cod was landed (30 percent of the  $F_{MAX}$  target and 50 percent of the  $F_{0.1}$  target). The 200-lb (90.7-kg) landing limit was reduced to 30 lb (13.6 kg) per DAS on May 28, 1999, based upon the RA's projection that 402 mt had been landed. Meanwhile, industry reports of high levels of discarding of cod precipitated the Council's May 28, 1999, request for emergency action to raise the GOM cod trip limit. NMFS determined that the situation did not meet the requirements for emergency action. Instead, on August 3, 1999, NMFS implemented interim measures to reduce levels of discarding and overall fishing mortality. These interim measures consisted of a landing limit of 100 lb (45.4 kg) per DAS, with a maximum possession limit of 500 lb (226.8 kg). The procedure for landing trip limit overages and the associated accounting of DAS (running clock) were revised to limit the amount of allowed overage to the equivalent of 1 day's landing limit. The interim measures are in effect through January 30, 2000.

FW 31 contains three measures with respect to GOM cod: (1) A GOM cod landing limit of 400 lb (181.4 kg) per DAS with a maximum possession limit of 4,000 lb (1,814.4 kg); (2) the closure, in February 2000, of an area of the GOM comprising Massachusetts Bay and Stellwagen Bank to vessels using gear capable of catching groundfish, with the exception of vessels using scallop dredge gear; and (3) an extension of the

effective date of the running clock measure as implemented in the interim measures. Although a landing limit increase to 400 lb/DAS (181.4 kg/DAS) could contribute to increased fishing mortality, the other management measures (additional closed area and interim running clock) serve to limit fishing mortality. Although the projected landings of GOM cod under the 400-lb (181.4-kg) landing limit exceed the  $F_{MAX}$  TAC by 5 percent, the projection does not include potential reductions in catch due to the proposed closure or running clock. In contrast, the current interim measures do not include the proposed February closed area, and FW 27 included neither the proposed closed area nor a limitation on the use of the running clock.

This trip limit change means vessels may land 400 lb (181.4 kg) of GOM cod for the first 24-hr period of a trip, or portion thereof, after a vessel has called into the DAS program to start a trip on which cod are landed. For example, a vessel that starts a trip at 6:00 a.m. may call out of the DAS program at 11:00 a.m. and land up to 400 lb (181.4 kg) of cod; but the vessel cannot land any more GOM cod on a subsequent trip until at least 6:00 a.m. on the following day.

For trips longer than 24 hr, a vessel may land up to an additional 400 lb (181.4 kg) of cod for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,814.4 kg) per trip. For example, a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than, 800 lb (362.8 kg) of GOM cod. That vessel operator must not call out of the DAS program or depart from port until the remainder of the additional 24-hr block of the DAS has elapsed. For example, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 800 lb (362.8 kg) of cod, provided that the vessel operator does not call out of the DAS program, or leave port, until 48 hr have elapsed from the beginning of the trip. In effect, the use of the "running clock" is restricted to 24-hour blocks.

#### Georges Bank Cod Disapproved Measure

FW 30, which was effective July 29, 1999, was the portion of the multispecies annual adjustment for fishing year 1999 that contained measures for Georges Bank cod. FW 30 established a cod daily landing limit of 2,000 lb (907.2 kg) per DAS starting August 15, 1999, with a maximum possession limit of 20,000 lb (9,072 kg)

for vessels enrolled in the GOM Cod Trip Limit Exemption Program. FW 30 also established a so-called "backstop measure" that authorized the RA to decrease the trip limit when 75 percent of the target TAC for Georges Bank cod is projected to be reached. Conversely, the RA was authorized to increase the trip limit if it was anticipated that 75 percent of the target TAC for Georges Bank cod would not be reached by the end of the fishing year.

FW 31 contains one measure with respect to Georges Bank cod—the elimination of the RA's inseason authority to adjust the Georges Bank cod trip limit. The Council proposed this measure because of its concern that a decrease in the landing limit could increase cod discards. The analysis supporting FW 30 assumed that the 2,000-lb landing limit would be in effect at the start of the fishing year (May 1, 1999). Projected landings for Georges Bank cod in that instance were calculated to be 5,947 mt. Because the 2,000-lb (907-kg) trip came into effect August 15, 1999, and not at the beginning of the fishing year, it is likely that the projected landings of 5,947 mt is an underestimation. Therefore, NMFS disapproved the measure because it would increase the risk of exceeding the TAC and violate national standard 1, which requires that management measures prevent overfishing.

The RA may set a trip limit at the appropriate level in order to achieve a balance between the conflicting goals of limiting fishing mortality and minimizing discards. The effect on discards of a reduction of the trip limit by the RA depends on the specific trip limit implemented and the circumstances under which it is used.

#### Technical Amendment

Information concerning Amendment 9 to the FMP was provided in the preamble of the proposed rule (64 FR 13952, March 23, 1999), in the supplement to the proposed rule (64 FR 19111, April 19, 1999), and in the final rule (64 FR 55821, October 15, 1999), and is not repeated here. Among other management measures implemented under Amendment 9, the final rule added Atlantic halibut to the management unit of the FMP and implemented management measures for that species. Consistent with the intent of Amendment 9, the October 15, 1999, final rule revised § 648.88(a)(1) to specify the possession limit for Atlantic halibut for open access multispecies handgear permit vessels. However, § 648.88(a)(1) had been suspended by the GOM interim cod rule (64 FR 42042, August 3, 1999). Therefore, this final

rule corrects the error by revising § 648.88(a)(1) to specify the halibut measure.

#### Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings, where comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analysis and provide an opportunity to comment on them specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to the RA that the measures be published either as a final rule, or as a proposed rule if additional public comment is necessary.

The initial and final meetings for Framework 31 at which public comment was received were on August 10–11, 1999, and September 21–23, 1999, respectively. The Council's Groundfish Committee and Industry Advisory Panel also held meetings and took public comment on the proposals on August 25 and September 9, 1999. Documents summarizing the Council's proposed action and the analysis of biological, economic, and social impacts of this and alternative actions were available for public review 1 week prior to the final meeting, as is required under the framework adjustment process. Written comments were accepted up to and during that meeting.

#### Comments and Responses

*Comment 1:* Several members of the fishing industry stated that, because the February closure area is based on 30' squares, it is overly burdensome on inshore vessels. The commenters said the February closure area closes some areas within the squares where cod catch rates are low and other fishery opportunities exist. Instead, they supported Option 2, which proposed smaller year-round closures and other measures. One individual who supported Option 2 area closures also advocated prohibiting night fishing by mobile gear in the western GOM.

*Response:* The Council considered the Option 2 area closures and other measures, but rejected the proposal in part because the analysis showed that the proposed closures were not sufficient to achieve the FMP objectives, and because the U.S. Coast Guard commented that the closures would

present enforcement difficulties due to their small size, irregular configuration, and location. The prohibition on night fishing was not available for consideration in any of the options that were drafted and analyzed for the final framework meeting.

**Comment 2:** Three members of the processing and wholesaling sector, and several other individuals, opposed limiting DAS during the months of February through April, as proposed in Option 2. They indicated the importance of these months to fishermen and fish processors because there is excess market demand and high prices during those months. They were concerned that further disruption to the supply of fresh fish during this period would cause their customers to seek alternative sources of product, thus resulting in permanent loss of fresh fish markets in the region.

**Response:** The Council did not adopt the Option 2 provision to limit DAS during the months of February through April, primarily because analyses indicated that the proposed limitations would not reduce effort substantially then, so that such a measure would have little or no contribution to conserving GOM cod. The Council also took into account concerns of the industry regarding DAS limitations during these months in some areas in its rejection of Option 2.

**Comment 3:** Several members of the fishing industry commented that a trip limit of 200 lb (90.7 kg) would still result in significant discards at certain times and in certain areas, especially upon the re-opening of a seasonally closed area. All commenters supported the goal of reducing discards.

**Response:** A landing limit of 400 lb (181.4 kg) per day would result in less discarding than would a 200-lb (90.7-kg) limit. Although a 400-lb (181.4-kg) limit would not entirely eliminate discards, a landing limit at this level is appropriate for achieving the goal of minimizing discards while still achieving the fishing mortality rate objective for GOM cod.

**Comment 4:** One individual opposed eliminating the RA's authority to reduce the Georges Bank cod trip limit without other measures to prevent exceeding the target TAC. Several members of the fishing industry and one U.S. Congressman supported elimination of that authority.

**Response:** NMFS disapproved this measure, as explained elsewhere in the preamble of this rule.

#### Classification

The RA determined that this framework adjustment to the FMP is necessary for the conservation and

management of the Northeast multispecies fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Notice and opportunity for public comment were provided for the management measures implemented by this rule. The technical changes include corrections to an existing set of regulations for which full prior notice and opportunity for comment were provided. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), finds that providing additional opportunity for public comment is unnecessary. Because the provisions of this rule related to the GOM cod trip limit relieve a restriction, under 5 U.S.C. 553(d)(1) they are not subject to the 30-day delay in effectiveness. Therefore, the trip limit change will become effective upon publication. Fishermen will be notified of the new daily landing limit and possession limit via NOAA weather radio, U.S. Coast Guard announcements, and letters to permit holders. The technical change imposes no new requirements and is not subject to the 30-day delay in effective date provisions of 5 U.S.C. 553(d).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Consequently, a regulatory flexibility analysis has not been prepared. Nevertheless, the socioeconomic impacts on affected small entities were considered in the RIR contained in the supporting analyses for Framework 31. The short-term impact of the measures on ex-vessel revenue is estimated to result in an increase of approximately \$500,000.

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

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

Commercial Fisheries, Fish, Fisheries.

Dated: December 27, 1999.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
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.*

#### § 648.10 [Amended]

2. In § 648.10, lift the suspension placed on paragraphs (f)(3)(i) and (f)(3)(ii) at 64 FR 42044 (August 3, 1999), and remove paragraph (f)(3)(iii).

#### § 648.14 [Amended]

3. In § 648.14, lift the suspension placed on paragraphs (c)(23), (c)(24), (c)(25) at 64 FR 42045 (August 3, 1999), and remove paragraphs (c)(27), (c)(28), (c)(29), and (c)(30).

4. In § 648.81, revise paragraph (g)(1) introductory text, and add paragraph (g)(1)(vi) to read as follows:

#### § 648.81 Multispecies closed areas.

\* \* \* \* \*

(g) \* \* \*  
(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, GOM Rolling Closure Areas I through VI, as described in paragraphs (g)(1)(i) through (vi) of this section, for the times specified in paragraphs (g)(1)(i) through (vi) of this section, except as specified in paragraphs (d), and (g)(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).

\* \* \* \* \*

(vi) *Rolling Closure Area VI.* From February 1 through February 29, 2000, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area VI, which is the area bounded by straight lines connecting the following points in the order stated:

#### ROLLING CLOSURE AREA VI

[February 1–February 28]

Point	N. Lat.	W. Long. (*)
GM1 .....	42°00' .....	(1)
GM2 .....	42°00' .....	(2)
GM3 .....	42°00' .....	(3)
GM4 .....	42°00' .....	70°00'
GM8 .....	42°30' .....	70°00'
GM9 .....	42°30' .....	(1)

(\*) or other intersecting line:

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

\* \* \* \* \*

5. In § 648.82, lift the suspension placed on paragraph (b)(3)(i) at 64 FR 42045 (August 3, 1999) and revise it, and remove paragraph (b)(3)(iii) to read as follows:

#### § 648.82 Effort-control program for multispecies limited access vessels.

\* \* \* \* \*

(b) \* \* \*  
(3) \* \* \*

(i) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions. Such a vessel is not subject to a possession limit for other NE multispecies.

\* \* \* \* \*

6. In § 648.86, lift the suspension placed at 64 FR 42045 (August 3, 1999) on paragraphs (b)(1)(i), (b)(1)(ii)(A), and (b)(3), revise paragraphs (b)(1)(i) and (b)(1)(ii)(A) to read as set forth below, and remove paragraphs (b)(1)(iv) and (b)(5).

**§ 648.86 Multispecies possession restrictions.**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(i) Except as provided in paragraph (b)(1)(ii) and (b)(4) of this section, and subject to the call-in provision specified in Sec. 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land only up to 400 lb (181.8 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 400 lb (181.8 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 400 lb (181.8 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 800 lb (363.6 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr but less than 48 hr) may land up to an additional 400 lb (181.8 kg) of cod for that trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) \* \* \*

(A) The vessel operator does not call out of the DAS program as described under Sec. 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the

DAS program for 25 hr, at the time of landing, may land only up to 800 lb (363.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

\* \* \* \* \*

7. In § 648.88: Paragraph (a)(1) is revised effective November 15, 1999 to read as set forth below; paragraph (a)(3) is removed.

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

(a) \* \* \*

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, one Atlantic halibut, per trip, and unlimited amounts of the other NE multispecies, provided that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

\* \* \* \* \*

[FR Doc. 99-34026 Filed 12-29-99; 3:45 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 991228352-9352-01; I.D. 121099C]

RIN 0648-AM83

**Fisheries of the Exclusive Economic Zone Off Alaska; Permit Requirements for Vessels, Processors, and Cooperatives Wishing to Participate in the Bering Sea and Aleutian Islands Pollock Fishery Under the American Fisheries Act**

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

**ACTION:** Emergency interim rule; request for comments.

**SUMMARY:** NMFS issues an emergency interim rule to implement permit requirements for vessels, processors, and cooperatives wishing to participate in the Bering Sea and Aleutian Islands management area (BSAI) pollock fishery under the American Fisheries Act (AFA). This emergency interim rule is necessary to provide participants in the BSAI pollock fishery with the opportunity to apply for permits to participate in the BSAI pollock fishery prior to the scheduled start of the fishery on January 20, and to implement

sideboard restrictions to protect other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA.

**DATES:** Effective December 30, 1999 through June 27, 2000. Comments on the emergency rule must be received by January 20, 2000.

**ADDRESSES:** Comments must be sent to Sue Salvesson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907-586-7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, 709 West 9<sup>th</sup> Street, Juneau, AK 99801, and marked Attn: Lori Gravel.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendments 61/61/13/8 and for this action may be obtained from North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, 907-271-2809. Send comments on collection-of-information requirements to the NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7228 or kent.lind@noaa.gov

**SUPPLEMENTARY INFORMATION:**

NMFS manages the U.S. groundfish fisheries in the exclusive economic zone of the BSAI and Gulf of Alaska (GOA) under the fishery management plans for the groundfish fisheries of the BSAI and GOA (FMPs). With Federal oversight, the State of Alaska manages the FMPs for Commercial King Crab and Tanner Crab fisheries in the BSAI and the Scallop Fishery off Alaska. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR 600.

**American Fisheries Act—Background Information**

The AFA made profound changes in the management of the groundfish fisheries of the BSAI and, to a lesser extent, the groundfish fisheries of the