

## NOTICE OF AGENCY EMERGENCY RULE-MAKING

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 34.06 Emergency Rulemaking to Adjust Recreational Measures for Cod and Haddock

**CONCISE SUMMARY:**

For consistency with NOAA Fisheries federal rulemaking, the Department is implementing regulatory changes to the recreational fishing measures for Gulf of Maine cod and haddock. For cod, the emergency rulemaking modifies the season so that cod can be possessed from September 1 through October 31. For haddock, the emergency rulemaking establishes separate bag and size limits for the party/charter and private recreational fishing sectors. For party and charter boats, the rule reduces the bag limit from 20 fish to 15 fish per day and increases the minimum size limit from 17-inches to 18-inches. For private anglers, the rule reduces the bag limit from 20 fish to 10 fish per day but maintains the existing minimum size limit of 17-inches. This action ensures compliance with the federal fishery management plan. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the recreational groundfish measures for Gulf of Maine cod and haddock in accordance with 12 MRS §6171(3)(C).

**EFFECTIVE DATE:** August 18, 2023

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**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:

<b>Species</b>	<b>Minimum Fish Sizes (TL)</b>	<b>Size Inches (cm)</b>
Cod.....		22 (55.9 cm)
American plaice (dab).....		14 (35.6 cm)
<del>Haddock.....</del>		<del>17 (43.2 cm)</del>
Monkfish.....		17 (43.2 cm)
Redfish.....		9 (22.9 cm)
Summer Flounder.....		20 (50.8 cm)
Winter Flounder (blackback).....		12 (30.5 cm)
Witch Flounder (gray sole).....		14 (35.6 cm)
Yellowtail Flounder.....		13 (33.0 cm)

**2. Haddock recreational size limits**

- (a) The recreational minimum size limit (TL) for charter and party vessels, as defined in Section 34.01(C), is 18 inches (45.7 cm).
- (b) The recreational minimum size limit (TL) for recreational fishing vessels, as defined in Section 34.01(L), is 17 inches (43.2 cm).

**3. 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, or party vessel, as defined in Section 34.01(C), may not possess more than 15 haddock per day. Each person on board a, or recreational fishing vessel, as defined in Section 34.01(L), may not possess more than 20 10 haddock per day, and

Each person on board a charter, party, or recreational fishing vessel 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 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 8 through March 31, inclusive, and from April 15 through August 31, inclusive~~ November 1 through August 31, inclusive.

## **Basis Statement**

The Commissioner adopts this emergency rulemaking to modify the recreational fishing measures for Gulf of Maine cod and haddock in accordance with recent changes enacted by NOAA Fisheries. Cod and haddock are regulated under the Northeast Multispecies Fishery Management Plan at the New England Fishery Management Council (Council). The Council recommends recreational sub-annual catch limits (sub-ACLs) for both species as well as a suite of management measures so that catch stays below the respective sub-ACLs. NOAA Fisheries considers these Council recommendations but is ultimately charged with issuing a final rule to implement recreational measures. As a part of the Council's work to set recreational sub-ACLs, the Council voted to maintain the Gulf of Maine cod sub-ACL from 2022 to 2023. Stock assessment results for Gulf of Maine haddock were not favorable and indicated a significant reduction in catch was needed to prevent overfishing. As a result, the Council recommended an 83% reduction in the recreational sub-ACL for haddock from 2022 to 2023.

On August 14, NOAA Fisheries issued a final rule to set recreational measures for Gulf of Maine cod and haddock for the 2023 fishing year. For cod, the rule maintains the bag and size limit but modifies the fishing season so that cod can be possessed from September 1 through October 31. For haddock, the NOAA Fisheries final rule maintains a closure in the month of March but deviates from the Council recommendation by establishing separate bag and size limits for the party/charter and private recreational fishing sectors. For party and charter boats, the rule reduces the bag limit from 20 fish to 15 fish per day and increases the minimum size limit from 17-inches to 18-inches. For private anglers, the rule reduces the bag limit from 20 fish to 10 fish per day but maintains the existing minimum size limit of 17-inches. NOAA's rationale for the mode-split is that it restrains recreational catch of haddock to the significantly lower sub-ACL while acknowledging the differing needs of the sectors. Specifically, during Council discussions members of the party/charter industry expressed that a higher bag limit is integral to attracting clients and booking trips; a higher minimum size limit is needed to offset a higher bag limit. NOAA Fisheries expressed concern that increasing the minimum size limit may increase dead discards. As a result, NOAA Fisheries maintained the 17-inch minimum size limit for private anglers and implemented a greater reduction in the bag limit. In response to this federal rulemaking, ME DMR is implementing separate haddock bag and size limits for the recreational sectors to ensure consistency between recreational measures in state and federal waters.

Importantly, this action ensures compliance with the federal fishery management plan. It expands recreational fishing opportunities for Gulf of Maine cod in the fall, which should provide benefit to Maine anglers. It also places greater constraints on recreational fishing for haddock to maintain catch under the lower sub-ACL. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the recreational groundfish measures for Gulf of Maine cod and haddock in accordance with 12 MRS §6171(3)(C).

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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**CHAPTER NUMBER AND RULE:** Chapter 34.06 Emergency Rulemaking to Adjust Recreational Measures for Cod and Haddock

**STATUTORY AUTHORITY:** 12 M.R.S. 6171(3)(C)

**DATE AND PLACE OF PUBLIC HEARING:** NA; Emergency Rulemaking

**COMMENT DEADLINE:** NA; Emergency Rulemaking

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

This rulemaking is intended to ensure consistent recreational fishing measures between state and federal waters for Gulf of Maine cod and haddock. This rule also maintains compliance with the federal fishery management plan for northeast groundfish.

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

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

The rulemaking eliminates an open season for cod in April in order to expand recreational fishing opportunities in the fall which should benefit Maine anglers. It also places greater restrictions on haddock in order to maintain catch within the lower sub-Annual Catch Limit. For haddock, this rulemaking establishes separate measures for the party/charter and private angling sectors in response to the final rule issued by NOAA 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 rule considered a final rule published by NOAA Fisheries on August 14, 2023 regarding recreational measures for Gulf of Maine cod and haddock. Discussion by the New England Fishery Management Council regarding groundfish recreational measures for the 2023 fishing year was also considered.

**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.

*Note: If necessary, additional pages may be used.*