

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 34 Groundfish: Maximized Retention Monitoring

CONCISE SUMMARY: This rule incorporates into state regulation the electronic monitoring maximized retention model, which is a monitoring tool approved by NOAA to achieve sector monitoring coverage in the federal groundfish fishery. This rule defines ‘electronic monitoring maximized retention model’ and ‘allocated groundfish species.’ It adds an exemption from the minimum sizes for allocated groundfish species to vessels participating in the maximized retention model, subject to constraints specified in the rule.

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

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

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

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Chapter 34: GROUND FISH REGULATIONS

34.01 Definitions

- A. **Allocated groundfish species.** “Allocated groundfish species” means cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, redfish, and white hake for the purposes of this management plan
- AB. **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.
- BC. **Charter or party boat.** A “charter or party boat” is any vessel that carries passengers for hire to engage in recreational fishing activities.
- CD. **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.
- DE. **Cod end.** The “cod end” is the terminal section of a trawl net in which captured fish may accumulate.
- EF. **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).
- G. **Electronic monitoring maximized retention model.** The “electronic monitoring maximized retention model” with respect to the groundfish sector monitoring program, means a program in which all eligible trips are electronically monitored; fish must be handled in view of cameras; allowed discarding must occur at controlled points in view of cameras; all allocated groundfish species stocks must be retained; electronic monitoring is used to verify compliance; and offloads are subject to observation by dockside monitors.
- FH. **Groundfish.** “Groundfish” means all demersal species including but not limited to the following:

Common English Name

Monkfish (Goosefish)
American Plaice (Dab)
Atlantic Cod
Atlantic Halibut
Atlantic Searobins
Atlantic Tomcod
Atlantic Wolfish
Cunner
Cusk (Tusk)
Greenland Halibut

Scientific Name

Lophius americanus
Hippoglossoides platessoides
Gadus morhua
Hippoglossus hippoglossus
Prionotus spp.
Microgadus tomcod
Anarhichas lupus
Tautoglabrus adspersus
Brosme brosme
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

- GI. **Marine species.** “Marine species” means all marine animals except lobster, shellfish, marine worms, and elvers.
- HJ. **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.
- IK. **Recreational fishing.** "Recreational fishing" means fishing that is not intended to, nor does it result in the barter, trade, or sale of fish.
- JL. **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.
- KM. **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.
- LN. **Sink gillnet.** A “Sink Gillnet” is a gillnet that is fished on or near the bottom in the lower third of the water column.
- MO. **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.
- NP. **Total length.** "Total length" is the measurement taken from the tip of the snout to the tip of the tail.

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).
- (a) Vessels participating in the electronic monitoring maximized retention model must retain all fish from each allocated groundfish species, regardless of length, and are therefore exempt from the minimum fish sizes for allocated groundfish species specified in Section 34.05 B(2). Federally permitted Northeast multispecies dealers may possess undersized fish which are landed by vessels participating in the electronic monitoring maximized retention model as long as they clearly identify, mark, or label all containers with fish below the minimum size as containing undersized fish, the fishing vessel from which they were offloaded, and the date of offloading. A receipt must accompany the

possession of undersized allocated groundfish originating from the maximized retention model to indicate they were legally obtained. Vessels, or their sector manager, which are participating in the electronic monitoring maximized retention model and plan to land groundfish in Maine must notify Maine DMR when their vessel monitoring plan includes, or removes, the maximized retention model as an electronic monitoring tool and provide a list of Maine dealers which they are authorized to land at as per their vessel monitoring plan.

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: 34 Groundfish: Maximized Retention Monitoring

STATUTORY AUTHORITY: 12 M.R.S.A. §6171

DATE AND PLACE OF PUBLIC HEARING(S): None scheduled

COMMENT DEADLINE: February 17, 2023

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

The purpose of this proposed rule is to allow for the operation of the federal electronic monitoring maximized retention model in state waters, primarily by exempting participating vessels from the minimum size restrictions for allocated groundfish species. This change will align state and federal regulations, and eliminate the need for the Department of Marine Resources to issue Special Licenses to vessels participating in the electronic monitoring maximized retention model.

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)]

This rule is expected to incorporate the electronic monitoring maximized retention model into state regulation by exempting groundfish sector vessels participating in the maximized retention model from minimum fish sizes for allocated groundfish species in accordance with the operation of the program. The maximized retention model is an electronic monitoring tool in the federal groundfish fishery through which participating vessels are required to land all allocated groundfish species, regardless of length, and electronic monitoring is used to verify compliance with catch retention requirements. Subsequent dockside monitoring is used to collect information on groundfish that otherwise would have been collected at-sea.

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]: Relevant information considered during the development of this rule included NOAA's Final Rule published on December 9, 2022 to incorporate Amendment 23 into the Northeast Multispecies Fishery Management Plan (87 FR 75852). In addition, discussions between state fishery managers and federal counterparts regarding the operation of the maximized retention model informed this rulemaking.

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

Enforcement of these proposed amendments will 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

This rule incorporates into state regulation the electronic monitoring maximized retention model, which is a monitoring tool approved by NOAA to achieve sector monitoring coverage in the federal groundfish fishery. This rule defines ‘electronic monitoring maximized retention model’ and ‘allocated groundfish species.’ It adds an exemption from the minimum sizes for allocated groundfish species to vessels participating in the maximized retention model, subject to constraints specified in the rule.

Summary of Comments

On January 17, 2023, the rule was posted on the DMR website. Notice of the proposed rulemaking appeared on January 18, 2023, in the five major daily newspapers as published by the Secretary of State; and electronic messages were sent to individuals who subscribe to DMR's rulemaking notices and sent to industry members who provided their email address to DMR. No public hear was held. The comment period closed February 17, 2023. DMR received two comments in support of the change. No changes were made to the proposed rule.

Ben Martens, Executive Director, Maine Coast Fishermen's Association, received via email, February 17, 2023

The Maine Coast Fishermen's Association (MCFA) is an industry-based non-profit which identifies and fosters ways to restore the fisheries of the Gulf of Maine and sustain Maine's historic fishing communities for future generations. Established and run by Maine fishermen, the objectives of the Association are to: provide a voice for our fishing communities; rebuild the Gulf of Maine ecosystem; and help build viable fishing businesses on our coast.

MCFA supports the proposed rulemaking to incorporate the Maximized Retention Electronic Monitoring (MREM) model into state regulation. MCFA has long been a leader in the region championing electronic monitoring and the use of its data in management and science. One of the challenges we have experienced through different EM programs is delays onboarding vessels due to licensing and permitting issues. The MREM program requires that participating vessels retain, and land all catch of allocated groundfish, including fish below the minimum size, and hence requires special licensing. During the MREM pilot program, the state issued this special license to allow participating vessels to land allocated groundfish species below the minimum size in Maine. By exempting vessels participating in the program from the minimum fish sizes for allocated groundfish specie, this proposed regulation change streamlines the process of onboarding new vessels into an operational MREM program. MCFA supports this proposed rulemaking as it supports the intention of the MREM program to improve the accuracy of catch accounting and increase efficiency and accountability in the groundfish fishery.

Jonathan Labaree, Chief Community Officer, Gulf of Maine Research Institute, received via email, January 23, 2023

The Gulf of Maine Research Institute (GMRI) supports the proposed rulemaking to incorporate the Maximized Retention Electronic Monitoring (MREM) model into state regulation. From August 2018 through January 2023, GMRI piloted the MREM program through an exempted fishing permit issued by NOAA's Greater Atlantic Regional Fisheries Office (GARFO). The MREM program improves the accuracy of catch accounting and increases efficiency and accountability in the groundfish fishery. The MREM program requires that participating vessels retain and land all catch of allocated groundfish, including fish below the minimum size. An electronic monitoring component confirms the retention of all allocated groundfish at sea and compliance with program requirements. A dockside monitoring component characterizes the landed catch and verified dealer-recorded weights. During the pilot MREM program, GMRI worked with the State of Maine to secure a special license to allow each participating vessel to

land allocated groundfish species below the minimum size in Maine. This proposed regulation change streamlines the process of onboarding new vessels into an operational MREM program and aligns Maine's regulations regarding landing fish below the minimum size with federal regulations.