

**Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)**

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. Individual tribal members must meet the same regulatory requirements as other individuals who import or export wildlife.

**Executive Order 13211 (Energy Supply, Distribution, or Use)**

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, and use. This interim rule will create a user fee exemption program for certain low-risk importations and exportations as an interim measure while we work on a new economic analysis and determine any changes needed to the current user fee structure. This interim rule is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**List of Subjects in 50 CFR Part 14**

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Regulation Promulgation**

For the reasons described above, we amend part 14, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

**PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE**

■ 1. The authority citation for part 14 continues to read as follows:

**Authority:** 16 U.S.C. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

■ 2. Amend § 14.94 by adding paragraph (k)(4) to read as follows:

**§ 14.94 What fees apply to me?**

\* \* \* \* \*

(k) \* \* \*

(4) *Fee exemption program for low-risk importations and exportations—(i) Program criteria.* Businesses that require

an import/export license under § 14.93 may be exempt from the designated port base inspection fee as set forth in this paragraph (k)(4)(i). To participate in this program, you, the U.S. importer or exporter, must continue to pay the overtime fees, the nondesignated port base fees, or the import/export license and nondesignated port application fees, and your business must meet all of the following conditions:

(A) Each shipment does not contain live wildlife.

(B) Each shipment does not contain wildlife that requires a permit or certificate under parts 15, 17, 18, 20, 21, 22, or 23 of this chapter or is listed under part 16 of this chapter.

(C) Each shipment contains 25 or fewer wildlife parts and products containing wildlife.

(D) Each wildlife shipment is valued at \$5,000 or less.

(E) Your business has not been assessed a civil penalty, issued a violation notice, or convicted of any misdemeanor or felony violations involving the import or export of wildlife.

(F) Your business has had two or fewer wildlife shipments that were refused clearance in the 5 years prior to the receipt of your request by the Service.

(G) Your business has not previously participated in the program and been removed for failure to meet the criteria.

(ii) *Program participation.* To participate in the fee exemption program for low-risk importations and exportations, you must use the Service's electronic declaration filing system (eDecs) and take the following actions:

(A) You must certify that you will exclusively import and export wildlife shipments that meet all the criteria in paragraph (k)(4)(i) of this section and renew this certification annually. Upon completion of the certification and review of the criteria by the Service, eDecs will notify you if you have been approved to participate in the program.

(B) You must continue to meet the criteria in paragraph (k)(4)(i) of this section while participating in the program. If you fail to meet the criteria after approval, you will be removed from the program and must pay all applicable fees.

(C) If approved to participate in the program you must file FWS Form 3–177 and all required accompanying documents electronically using eDecs for each shipment and meet all other requirements of this part.

Dated: October 23, 2012.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 120316196–2195–01]

**RIN 0648–BB89**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Interim Action; Rule Extension**

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

**ACTION:** Temporary rule; interim measures extended, and request for comments.

**SUMMARY:** This rule extends interim Gulf of Maine Atlantic cod catch limits and fishery management measures through the end of the 2012 fishing year (April 30, 2013). The need for the interim measures is unchanged, which was to establish Gulf of Maine cod annual catch limits and implement recreational management measures that will constrain catch to the recreational sub-annual catch limit. The intended effect of the interim measures is to reduce overfishing occurring on Gulf of Maine cod in anticipation of further action to end overfishing in the 2013 fishing year.

**DATES:** The expiration date of the temporary rule published May 1, 2012 (77 FR 25623) is extended to April 30, 2013. Comments are accepted through November 26, 2012.

**ADDRESSES:** You may submit comments on this document, identified by "NOAA–NMFS–2012–0045," by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA–NMFS–2012–0045 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

• *Mail:* Submit written comments to John K. Bullard, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930.

• *Fax* (978) 281-9135.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the supplemental environmental assessment (EA) prepared for this action by NMFS are available from John Bullard, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. The supplemental EA is accessible via the Internet at <http://www.nero.noaa.gov>. A copy of the most recent stock assessment for Gulf of Maine cod is also accessible via the Internet at <http://www.nefsc.noaa.gov/groundfish>.

**FOR FURTHER INFORMATION CONTACT:** Brett Alger, Fisheries Management Specialist, phone: 978-675-2153.

#### SUPPLEMENTARY INFORMATION:

##### Background

As fully described in the initial interim rule implemented on May 1, 2012, (77 FR 25623), the final Gulf of Maine (GOM) cod assessment results were finalized in late January 2012. At that time, NMFS notified the New England Fishery Management Council (Council), as required by section 304(e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), that the GOM cod rebuilding program was not making adequate progress toward rebuilding the stock, and that the Council must prepare an amendment within 2 years to rebuild the GOM cod stock. As authorized at section 304(e)(6) of the Magnuson-Stevens Act, the Council requested the Secretary of Commerce (Secretary) to implement interim measures to reduce, rather than end, overfishing of GOM cod while the Council developed a rebuilding plan. In response to the Council request and acting on behalf of the Secretary under authority granted by section 305(c) of the Magnuson-Stevens Act, NMFS implemented an initial interim rule May 1, 2012, to reduce rather than end overfishing on GOM cod during fishing year (FY) 2012, with the intent to extend the initial interim rule measures for the rest of FY 2012. However, the effectiveness for such rules is limited in duration. Rules may be issued for no more than 180 days with an extension of up to an additional 186 days to provide 12 months of interim measures. Therefore, this final interim rule extends the measures in the initial interim rule. The initial interim rule provided detailed information on how

the interim measures are consistent with the authority provided by the Magnuson-Stevens Act and applicable NMFS guidelines for issuing interim measures. The background and authority-related information is not repeated here.

This temporary final rule extends the interim GOM cod catch limits and recreational management measures that were implemented on May 1, 2012. The initial interim measures expire on October 29, 2012; therefore, it is necessary to extend the interim measures until April 30, 2013, so that catch limits and recreational management measures are in place for the entire 2012 FY.

Eight comments were received on the initial interim rule. Responses to those comments are found in the Comments and Responses section later in this preamble.

##### Annual Catch Limits and Allocation

The initial interim rule implemented a GOM cod total annual catch limit (ACL) of 6,700 mt that was divided among the various fishery components (Table 1). The distribution of ACL between sectors and the common pool was based on preliminary sector rosters in the initial interim rule. Subsequently, there have been two modifications to the original sector and common pool distribution based on final sector rosters (June 25, 2012, 77 FR 37816) and carryover from FY 2011 (September 26, 2012, 77 FR 59132). While the total ACL of 6,700 mt has remained unchanged, Table 1 highlights the revised allocations to sectors and the common pool. This interim rule extends the allocations in the most recent rule that published September 26, 2012.

TABLE 1—GOM COD ALLOCATIONS BY FISHERY (MT)

	Sector		Common pool	Recreational	State waters	Other
	Allocation	Carryover				
GOM Cod Interim Rule .....	3,618	471	81	2,215	253	62
Final Sector Rosters .....	3,619	471	80	2,215	253	62
FY 2011 Carryover .....	3,619	467.2	80	2,215	253	62

#### Recreational Fishery Management Measures

The initial interim rule reduced the GOM cod recreational fishery minimum fish size from 24 in (61.0 cm) to 19 in (48.3 cm) and implemented a 9-fish bag limit (reduced from 10) to constrain catch to the recreational sub-ACL of 2,215 mt. These measures were based on analysis conducted by the Northeast Fisheries Science Center (NEFSC) using

a new, but preliminary modeling approach and analytical model. Because of the uncertainty of the model and effectiveness of the measures, NMFS highlighted these concerns in the initial interim rule and outlined a plan to convene an external peer review of the model in question prior to this extension. A subset of the New England and Mid-Atlantic Fishery Management Councils' Science and Statistical Committees (SSC) convened on

September 7, 2012, in Woods Hole, MA, to peer review the model and methods. The final SSC report found that the modeling approach was technically sound and represented an improvement over prior methods. Therefore, based on the findings of the peer review and the final report, this interim final rule extends the recreational measures through the end of FY 2012.

## Comments and Responses

NMFS received eight comments during the comment period on the initial interim rule, five from private citizens, one from the Massachusetts Division of Marine Fisheries (DMF), and two from non-governmental organizations (Earth Justice and Oceana). Three of the comments from private citizens did not address measures of the rule and, as such, no responses have been provided.

*Comment 1:* The individual commented on the cod catch of different components of the recreational fishery and asked for additional reporting requirements for large party/charter vessels.

*Response:* Vessel trip reports are submitted by all recreational party/charter vessels to NMFS and the Marine Recreational Information Program collects, analyzes, and reports recreational fishing data. This interim rule was very limited in scope and duration for the purposes of reducing overfishing for 1 year, and therefore, did not address the larger issues and concerns about the sources of data that are needed to make management decisions, or consider modifying reporting requirements for the recreational fishery. The Council is the more appropriate forum for examining these larger issues regarding fishery effort and catch information by different components of the recreational fishery and to determine appropriate management measures.

*Comment 2:* The individual requested a new stock assessment that involves more input from members of the fishing industry.

*Response:* This comment does not directly pertain to the measures in the interim rule. The NEFSC will be completing stock assessments for Georges Bank (GB) and GOM cod in December 2012; these updates will provide catch advice to the Council for FY 2013. The NEFSC also recently hosted two workshops that included members of the fishing industry; one that reviewed the estimates of cod discard mortality rates and another that addressed the potential use of commercial catch per unit effort information in upcoming cod stock assessments. Lastly, the NEFSC has committed to side-by-side research with fishing industry vessels and the NEFSC's research vessels in the future.

*Comment 3:* Earth Justice requested that NMFS reject a Council request to allow partial access to the groundfish mortality closed areas. They also asked that NMFS develop a mid-year report on

the interim catch levels and ongoing rebuilding efforts for GOM cod.

*Response:* NMFS denied the Council request to open closed areas in the initial interim rule and does not change that decision in this interim final rule. NMFS does not intend to complete a separate mid-year report at this time because commercial and recreational catch information is available (<http://www.nero.noaa.gov/ro/fso/MultiMonReports.htm>) and a comprehensive stock assessment is scheduled to occur in December of this year. At the end of FY 2012, NMFS intends to evaluate the commercial and recreational catch data and publish a final report on fishery performance. As mentioned above, the NEFSC will be completing a new GOM cod stock assessment which will provide insight on rebuilding efforts and help determine future catch levels and management measures for FY 2013.

*Comment 4:* The Massachusetts DMF and Oceana commented that there is inadequate and inaccurate catch monitoring given the current coverage rates of at-sea monitoring (25 percent), low catch limits for GOM cod, and the inability to enforce full retention of all legal-sized fish on unobserved trips.

*Response:* These comments align with a similar comment NMFS received for the FY 2012 Sector Operations Plan Rule, which suggested that the at-sea monitoring rate of 25 percent is inadequate. NMFS has determined, based on current information and analysis, that for FY 2012, the prescribed level of at-sea monitoring coverage is likely to provide reasonably accurate estimates of catch for sector vessels. However, The Plan Development Team (PDT) for the Council's Groundfish Oversight Committee and NMFS, are conducting an in depth examination into the adequacy of at-sea monitoring in the sector program; NMFS will reconsider the monitoring rate once this examination is complete. Moreover, because of the limited scope and duration of this interim rule, it is not appropriate or practicable to consider adjustments to the at-sea monitoring program and coverage levels in the middle of the fishing season. Resources for hiring, training, and allocating at-sea monitors have been made for the full year. Adjusting at-sea monitoring levels and protocol part way through the year has implications on sector operations and catch monitoring which should be addressed more fully in the Council process. Therefore, NMFS is attempting to address these concerns for FY 2013 and beyond.

## Classification

The Regional Administrator, Northeast Region, NMFS, determined that this interim final rule is necessary for the conservation and management of the GOM cod fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the full 30-day delay in effectiveness for this rule. This rule merely extends the rule currently in place for an additional 6 months. The need for this extension was fully anticipated and announced to the public in the initial interim rule published on May 1, 2012. Accordingly, the entities affected by this rule and the public have no need to be made aware of or adjust to this rule by delaying its effectiveness for 30 days. The primary reason for delaying the effectiveness of Federal regulations is not present, and, therefore, such a delay would serve no public purposes. On the other hand, it would be contrary to the public interest if this rule does not become effective on October 29, 2012, because the previously established ACL for FY 2012 of 8,551 mt would become effective, with the result that overfishing would not be reduced. These measures would increase overfishing on the GOM cod stock and, as such, are inconsistent with the Magnuson-Stevens Act, the stated intent of the GOM cod rebuilding program, and the FMP. Moreover, failing to have the rule effective on October 29, 2012, may lead to confusion in the fishing community as to what regulations govern the harvest of GOM cod. For these reasons, there is good cause to waive the requirement for delayed effectiveness. NMFS has consulted with the Office of Information and Regulatory Affairs (OIRA) and due to the circumstances described above this action is exempt from review under Executive Order 12866.

Under section 608 of the Regulatory Flexibility Act, an agency may waive the requirement to perform a regulatory flexibility analysis for a rule where the agency finds that the "rule is being promulgated in response to an emergency that makes compliance or timely compliance with [the regulatory flexibility analysis requirements] impracticable." 5 U.S.C. 608. As discussed in the preamble and classification section of initial interim rule, NMFS takes this action to address an emergency situation in the GOM cod fishery. Undertaking a regulatory flexibility analysis would delay this action and put the GOM cod and any small businesses that depend on it at

further risk. Because the nature of this emergency requires immediate action, NMFS finds that compliance with the Regulatory Flexibility Act is impracticable. Thus, the requirements of the Regulatory Flexibility Act are hereby waived.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2012.

**Alan D. Risenhoover,**  
 Director, Office of Sustainable Fisheries,  
 performing the functions and duties of the  
 Deputy Assistant Administrator for  
 Regulatory Programs, National Marine  
 Fisheries Service.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 120424023-1023-01]

**RIN 0648-XC282**

**Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #22 through #26**

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

**ACTION:** Modification of fishing seasons and landing and possession limits; request for comments.

**SUMMARY:** NMFS announces 5 inseason actions in the ocean salmon fisheries. These inseason actions modified the

commercial and recreational fisheries in the area from the U.S./Canada Border to Humboldt South Jetty, California.

**DATES:** The effective dates for the inseason action are set out in this document under the heading Inseason Actions. Comments will be accepted through November 13, 2012.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2012-0079, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, enter NOAA-NMFS-2012-0079 in the search box. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Mail:** William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-6349.

- **Fax:** 206-526-6736, Attn: Peggy Mundy.

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected

information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Peggy Mundy at 206-526-4323.

**SUPPLEMENTARY INFORMATION:**

**Background**

In the 2012 annual management measures for ocean salmon fisheries (77 FR 25915, May 2, 2012), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2012, and 2013 salmon seasons opening earlier than May 1, 2013.

NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Prior to taking inseason action, the Regional Administrator (RA) consults with the Chairman of the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)(1)). Management of the salmon fisheries is generally divided into two geographic areas: north of Cape Falcon (U.S./Canada Border to Cape Falcon, Oregon) and south of Cape Falcon (Cape Falcon, Oregon to the U.S./Mexico Border).

**Inseason Actions**

The table below lists the inseason actions announced in this document.

Inseason action number	Effective date	Salmon fishery affected
22	September 7, 2012	Commercial fishery from Humbug Mountain, Oregon to the Oregon/California Border (Oregon Klamath Management Zone or Oregon KMZ).
23	September 13, 2012	Recreational fishery from Queets River to Leadbetter Point (Westport subarea).
24	September 20, 2012	Recreational fishery from Cape Falcon, Oregon to Humbug Mountain, Oregon.
25	September 19, 2012	Commercial fishery from Oregon/California Border to Humboldt South Jetty, California (California KMZ).
26	September 27, 2012	Recreational fisheries from U.S./Canada Border to Queets River, Washington (Neah Bay and La Push subareas).

**Inseason Action #22**

The RA consulted with representatives of the Council, Oregon Department of Fish and Wildlife (ODFW), and California Department of Fish and Game (CDFG) on September 7, 2012.

The information considered during this consultation related to catch and effort to date in the commercial salmon fisheries south of Cape Falcon in the Oregon KMZ. Inseason action #22 closed the commercial salmon fishery in the Oregon KMZ on September 7, 2012, due to projected attainment of Chinook

salmon quota. On September 7, 2012, the states recommended this action and the RA concurred; inseason action #22 took effect on September 7, 2012, and remained in effect until the end of the fishing season. Inseason action to effect season closure due to attainment of