

commercial quota to Virginia. The Regional Administrator has determined that the criteria set forth in § 648.100(e)(1) have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 1999 are: Virginia, 2,373,569 lb (1,076,633 kg); and North Carolina, 3,044,589 lb (1,381,002 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(1)(aa) of NOAA Administrative Order 216-6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

#### Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

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

**Dated:** January 11, 1999.

#### Bruce Morehead,

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 981231335-8335-01; I.D. 122498B]

RIN 0648-AM14

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 26

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework 26 of the Northeast Multispecies Fishery Management Plan (FMP). This final rule implements management measures that expand the April Gulf of Maine (GOM) closure area and adds an inshore GOM closure area and an offshore Georges Bank (GB) closure area for the month of February. The intent of this action is to provide additional protection for cod, particularly GOM cod, during the 1999 spring spawning season, while the New England Fishery Management Council (Council) develops the May 1, 1999, annual framework adjustment to address the fishing mortality reductions identified by the Multispecies Monitoring Committee (MSMC).

**DATES:** Effective January 19, 1999.

**ADDRESSES:** Copies of Amendment 7 to the FMP (Amendment 7), its regulatory impact review (RIR), and the final regulatory flexibility analysis contained with the RIR, its final supplemental environmental impact statement, and Framework Adjustment 26 documents are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

#### FOR FURTHER INFORMATION CONTACT:

Susan A. Murphy, Fishery Policy Analyst, 978-281-9252.

**SUPPLEMENTARY INFORMATION:** Results from the Northeast Regional Stock Assessment Workshop 27 (SAW 27), presented to the Council at its August 1998 meeting, concluded that the GOM cod stock is at a very low biomass level and remains overexploited. Although fishing mortality has declined from 1996 levels, the report estimates that there is a 90-percent probability that the 1997 fishing mortality is at least twice the maximum allowable level for achieving stock rebuilding. Spawning stock biomass (SSB) has declined from more than 26,000 metric tons (mt) in 1989 to a record low of 6,600 mt in 1998, and is expected to further decline in 1999 to a record low of 5,700 mt or less. Furthermore, recruitment from the three most recent year classes produced in 1994, 1995, and 1996 is extremely poor and far below any previously observed levels. The combined effects of low SSB, high fishing mortality, record low recruitment, and record low survival of pre-recruit fish indicate that the stock is collapsing. Management advice contained in the SAW 27 Advisory Report recommends immediate action to cease all directed fishing and minimize by catch on this stock.

Although SAW 27 information regarding GB cod is less dismal, the report concluded that this stock is also at a low biomass level and remains overexploited relative to the Amendment 7 rebuilding target of  $F_{0.1}$ . Fishing mortality has declined significantly from the record high levels in 1994 and 1995 but still remains about 45 percent higher than the Amendment 7 objective of  $F_{0.1} = 0.18$ . Management advice recommends a reduction in fishing mortality to substantially less than the  $F_{0.1}$  objective. The MSMC, which delivered its report at the December 1998 Council meeting, confirmed the findings of SAW 27 for both stocks of cod.

The GOM cod situation is very critical. Preliminary landing statistics for this stock indicate that more than 100 percent of the 1998 total allowable catch (TAC) level of 1,783 mt was landed within the first 6 months of the 1998 fishing year. Based on this information, the Council and NMFS are very concerned that current management measures are not sufficient to prevent further stock decline. Given this concern, and the upcoming opportunity to delay fishing mortality on mature cod during the spring spawning period, a time when stocks aggregate and are particularly vulnerable to fishing pressure, the Council initiated development of Framework 26 to afford some additional protection prior to the May 1, 1999, annual framework adjustment. The Council and NMFS believe that preservation of SSB is necessary to prevent a stock collapse caused by poor recruitment, while enhancing the probability of long-term rebuilding.

This action implements measures to modify the current April Inshore Closure Area within the GOM and would add an inshore closure area and offshore closure area to protect GOM and GB cod, respectively, for the month of February. The current March Inshore Closure Area and the year-round near shore Western GOM Closure Area would remain in effect. These closures, in combination, represent areas that have the highest catch per unit effort of cod.

#### 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. The Council must provide the public with advance

notice of both the proposals and the analysis, and an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Administrator, Northeast Region, NMFS, that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is necessary.

The public was provided the opportunity to express comments on the management of cod at numerous meetings beginning at the August 10–11, 1998, Council meeting. At this meeting, the Northeast Fisheries Science Center presented results of SAW 27, which updated the status of GOM and GB cod, among other stocks. For both stocks, a reduction in fishing mortality was recommended; however, for GOM cod, SAW 27 scientists recommended the Council take immediate action to reduce fishing mortality to levels approaching zero. The following list includes all of the 1998 meetings at which this action was on the agenda, was discussed, and public comment was heard:

Date	Meeting
Aug. 10–11 .....	Council.
Aug. 27 .....	Special Council.
Sept. 17 .....	Multispecies Oversight Committee.
Sept. 23–24 .....	Council.
Oct. 28–29 .....	Council.
Nov. 16 .....	Multispecies Oversight Committee.
Dec. 9–10 .....	Council.

Documents summarizing the Council's proposed action, and the analysis of biological and economic 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:* Many members of the fishing industry commented that this rule treats inshore vessels unfairly and does not protect cod in offshore areas.

*Response:* The Council and NMFS have fully considered the impacts on inshore vessels in light of the need to implement this rule. For the time period February through April, the Council evaluated the alternatives in terms of conservation benefits compared to costs imposed on the harvesting industry. Out of the four alternative area closures analyzed in Framework 26, including an industry proposal and a variation of the industry proposal, the selected

alternative has the second to least negative impacts on revenue when considering all species combined, while affecting those areas that have the highest catch per unit effort of cod. Because this rule was developed to afford additional protection for cod during the spring spawning period (a time when the cod are concentrated inshore), offshore areas did not show the same level of cod landings as the inshore areas. The expanded protection of cod year-round will be addressed in Framework Adjustment 27, currently under development.

*Comment 2:* Measures in Framework 26 cause severe social impacts on inshore vessels because they have little or no alternatives available to them during the months of February through April.

*Response:* The analysis notes that this action will have severe negative social impacts, especially on small vessels from fishing communities directly bordering the closure areas and, to a lesser degree, on vessels from other fishing communities that traditionally have fished within the closure areas. However, because of extremely poor recruitment of GOM cod and the possibility of a stock collapse, the Council and NMFS believe there is no other acceptable alternative available to protect the spawning biomass of this stock during the upcoming season.

*Comment 3:* Several industry members have commented that closing additional areas during the course of the fishing year may disrupt fishing strategies and possibly cause some vessels to lose income from their remaining multispecies days-at-sea (DAS).

*Response:* The Council and NMFS took this concern into account in developing this final rule. This action does not prevent vessel owners from using their DAS. Additionally, because this action was initiated by the Council in September, industry members have known for several months that the Council would be recommending inshore closures for the February through April time period.

*Comment 4:* Some fishers stated that GOM cod could be better protected through adjustments to the trip limit because fishing vessels can target flounder without catching substantial amounts of cod.

*Response:* A trip limit restriction through an adjustment to the "running clock" mechanism was analyzed in Framework 26. (The current GOM cod trip limit system allows vessels to land cod exceeding the daily limit (currently 400 lb per day) as long as the vessel remains in port and does not call out to

end the trip until sufficient time has elapsed to account for the overage.) The analysis for this action shows that for the February through April period, greater conservation can be achieved by this area closure action than through an adjustment to the trip limit restriction.

**Classification**

Notice and opportunity for public comment were provided to discuss the management measures implemented by this rule. Comments were received from members of the fishing industry and are responded to in the preamble of this rule. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), finds for good cause that additional prior notice and additional opportunity for public comment is unnecessary. Because of the need to implement an inshore and offshore closure for the month of February in order to provide additional protection for cod, particularly GOM cod, the AA also finds under 5 U.S.C. 553(b)(B) that it would be contrary to the public interest to delay this rule in order to provide further notice and further opportunity for public comment.

Because of the need to implement an inshore and an offshore closure for the month of February in order to provide additional protection for cod, particularly GOM cod, the AA finds that under 5 U.S.C. 553(d)(3), there is good cause to waive part of the 30-day delay in effectiveness of this regulation. Recent information contained in the SAW 27 Advisory Report indicates that GOM cod is in very poor condition and is approaching a collapsed state. Scientific advice for this stock is to immediately reduce fishing mortality to levels approaching zero. Upon hearing this at its August 1998 meeting, the Council considered emergency action but determined that this issue would best be addressed through the public framework process, i.e., the annual framework action (Framework 27), and through an additional framework action (Framework 26), as a way to provide protection before the start of the new May 1, 1999, fishing year. Given the record low recruitment exhibited by this stock, protection of the GOM cod spawning stock biomass at a time when they aggregate to spawn is necessary to help prevent a stock collapse.

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, no regulatory flexibility analysis has been prepared.

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**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 11, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out 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.*

2. In § 648.14, paragraphs (a)(52), (a)(101), and (a)(104) are revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81(f)(1) through (i)(1), and § 648.81(n)(1) and (o)(1) during the time period specified, except as provided in § 648.81(d), (f)(2), (g)(2), (h)(2), (i)(2), (n)(2), and (o)(2).

\* \* \* \* \*

(101) Enter, fail to remove gear from, or be in the areas described in § 648.81(f)(1) through (i)(1), and in § 648.81(n)(1) and (o)(1) during the time period specified, except as provided in § 648.81(d), (f)(2), (g)(2), (h)(2), (i)(2), (n)(2), and (o)(2).

\* \* \* \* \*

(104) Fish for, harvest, possess, or land regulated multispecies when fishing in the closed areas specified in § 648.81(a), (b), (c), (f), (g), (h), (i), (n), and (o), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i) and (f)(2)(iii).

\* \* \* \* \*

3. In § 648.80, paragraphs (a)(8)(iii), and (a)(10)(i)(C) are revised to read as follows:

**§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(a) \* \* \*

(8) \* \* \*

(iii) The portion of Small Mesh Area 2 that is south of 43°00.0' N. lat. shall be closed to all fishing during the period April 1 through April 30 to coincide with the April 1999 Closure Area specified in § 648.81(o)(1)(iii) and, for years beyond 1999, the Inshore Closure Area II specified in § 648.81(g)(1)(ii).

Therefore, during the April 1 through April 30 time period, Small Mesh Area 2 is defined by straight lines connecting the following points in the order stated:

**SMALL MESH AREA 2**  
[April 1–April 30]

Point	N. lat.	W. long.
SM18 .....	43°00.0'	69°41.6'
SM14 .....	43°10.1'	69°43.3'
SM13 .....	43°05.6'	69°55'
SM19 .....	43°00.0'	69°55'
SM18 .....	43°00.0'	69°41.6'

\* \* \* \* \*

(10) \* \* \*

(i) \* \* \*

(C) The exemption does not apply to areas closed to meet the GOM closure fishery mortality reduction targets as specified in § 648.81(f), (g), (h), (i), and (o).

\* \* \* \* \*

4. In § 648.81, paragraphs (d) and (g)(1) are revised and paragraph (o) is added to read as follows:

**§ 648.81 Closed areas.**

\* \* \* \* \*

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the NE Closure Area, the GOM Inshore Closure Areas, the Cashes Ledge Closure Area, the Western GOM Closure Area, and the Spring 1999 Closure Areas, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), (i)(1), and (o)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

\* \* \* \* \*

(g) \* \* \* (1) Unless otherwise specified under paragraph (o) of this section, from May 1, 1998, through April 30, 2001, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the GOM Inshore Closure Areas I through IV, as described in paragraphs (g)(1)(i) through (iv) of this section, for the times specified in those paragraphs, 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)).

\* \* \* \* \*

(o) *Spring 1999 Closure Areas.* (1) For the calendar year 1999, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be

in, or on board a vessel in, the Spring 1999 Closure Areas, as described in paragraphs (o)(1)(i), (ii), and (iii) of this section, for the times specified in those paragraphs, except as specified in paragraphs (d) and (o)(2) of this section. A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502).

(i) *February-Inshore 1999 Closure Area.* From February 1, 1999, through February 28, 1999, the restrictions specified in paragraph (o)(1) of this section apply to the February-Inshore 1999 Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

**FEBRUARY-INSHORE 1999 CLOSURE AREA**  
[February 1–February 28, 1999]

Point	N. Lat.	W. Long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)
GM3 .....	42°00'	(3)
GM4 .....	42°00'	70°00'
GM5 .....	42°30'	70°00'
GM6 .....	42°30'	(1)

<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.

(ii) *February-Offshore 1999 Closure Area.* From February 1, 1999, through February 28, 1999, the restrictions specified in paragraph (o)(1) of this section apply to the February-Offshore 1999 Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

**FEBRUARY 1999 CLOSURE AREA—OFFSHORE**  
[February 1–February 28, 1999]

Point	N. Lat.	W. Long.
GM18 .....	42°00'	67°30'
GM19 .....	42°00'	68°00'
GM20 .....	42°30'	68°00'
GM21 .....	42°30'	67°30'
GM18 .....	42°00'	67°30'

(iii) *April 1999 Closure Area.* From April 1, 1999, through April 30, 1999, the restrictions specified in paragraph (o)(1) of this section apply to the April 1999 Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

**APRIL 1999 CLOSURE AREA**  
[April 1–April 30, 1999]

Point	N. Lat.	W. Long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)

APRIL 1999 CLOSURE AREA—  
Continued  
[April 1–April 30, 1999]

Point	N. Lat.	W. Long.
GM3 .....	42°00'	( <sup>3</sup> )
GM22 .....	42°00'	69°30'
GM7 .....	42°30'	69°30'
GM14 .....	42°30'	69°00'

APRIL 1999 CLOSURE AREA—  
Continued  
[April 1–April 30, 1999]

Point	N. Lat.	W. Long.
GM17 .....	43°00'	69°00'
GM9 .....	43°00'	( <sup>4</sup> )

<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.  
<sup>4</sup> New Hampshire shoreline.

(2) Paragraph (o)(1) of this section does not apply to persons on fishing vessels or to fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

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