

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 34 Recreational Measures for Cod, Haddock and Halibut Clean-up

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY:

On August 18, 2023, DMR adopted an emergency rule to align state recreational fishing regulations for Gulf of Maine cod and haddock with those adopted by NOAA Fisheries in federal waters. DMR is proposing to adopt the emergency rule as part of its regular rules. Consistent with the existing emergency rule, this proposal would maintain the existing size and bag limit for cod but modify the season so that cod can be possessed from September 1 through October 31. For haddock, the rulemaking maintains a closure in the month of March while 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. This proposed action would also replace reference to the previously used halibut endorsement on the commercial fishing license with language regarding the new commercial halibut license.

Date, time and location of PUBLIC HEARING (*if any*): None scheduled

COMMENT DEADLINE: October 13, 2023

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

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Hearing facilities: If you require accommodations due to disability, please contact 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS 6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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* *Check one of the following two boxes.*

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

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

APPROVED FOR PAYMENT _____ DATE: _____
(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
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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:

Species	Minimum Fish Sizes (TL)	Size Inches (cm)
Cod.....	22	(55.9 cm)
American plaice (dab).....	14	(35.6 cm)
Haddock.....	17	(43.2 cm)
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 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.

34.07 Atlantic Halibut (*Hippoglossus hippoglossus*)

A. Season for Maine's Territorial Waters

The open season to fish for Atlantic Halibut in Maine's territorial waters shall begin at sunrise May 18th and end at sunset June 13th.

B. License Requirements

1. Commercial Halibut fishermen must obtain an ~~Atlantic Halibut endorsement on their Department of Marine Resources (DMR) Commercial Fishing License~~ a Commercial Halibut License. Commercial ~~Fishing license~~ Halibut License holders must declare the vessel at the time of license issuance or renewal, to which that license holder's tags will be allocated ~~pursuant to the endorsement~~. The license holder may only fish for halibut from the vessel that was declared at the time of license issuance or renewal and to which that license holders' tags were allocated.
2. Recreational fishermen are not required to obtain a ~~commercial license and endorsement~~ Commercial Halibut License to fish for Atlantic Halibut but must declare a vessel for which their recreational landings tags will be assigned.

C. Size Limit

1. It shall be illegal to land, sell, or possess any Atlantic Halibut which measures less than 41 inches in total length or for a fish with the head removed, 32 inches in pectoral length. Except for removing the fish's head, Atlantic Halibut must remain intact until reaching the point of sale at a dealer facility or at the consumer's property.

Exception: Federally permitted Charter or Party Boats taking passengers for hire may fillet legal size halibut at sea under the following conditions:

- a. Fillets must come from a legal sized Atlantic Halibut;
 - b. Fillets must remain whole with skin left on;
 - c. Atlantic Halibut carcasses must be tagged and retained until the boat has been landed;
 - d. Fillets must match with the Atlantic Halibut carcass.
2. Atlantic Halibut caught at sea which measure less than the minimum legal size, may be tagged with DMR issued research tags and then immediately released.
 3. Atlantic Halibut raised by means of aquaculture shall be exempted from the size limit if accompanied by proper documentation identifying the origin of the fish and verification that the fish are an aquaculture product.

D. Prohibitions

1. It shall be illegal to possess or land marine species other than Atlantic Halibut while fishing for Atlantic Halibut aboard commercial vessels in Maine's territorial waters. Other marine species caught while fishing for Atlantic Halibut shall be immediately liberated.
2. It shall be unlawful to transfer Atlantic Halibut between vessels.
3. It shall be illegal to fish for Atlantic Halibut in Maine's territorial waters by any method other than using size 14/0, 15/0 or 16/0 circle hooks.
4. No vessel may fish for Atlantic Halibut using more than 250 circle hooks.
5. Recreational fishermen or ~~commercial fishing license holders without the halibut endorsement~~ commercial fishermen without a Commercial Halibut License holders may ~~Halibut~~ fish, for personal use, using a tub-trawl and are limited to 100 hooks in total.
6. No individual may possess more than one type of landing tag per year. In addition, it shall be illegal for more than one type of landing tag to be assigned to any one vessel. The full allotment of landing tags will be issued to individuals one time per year.
7. It shall be illegal to possess a Halibut tag on a vessel that the tag is not registered to.
8. For vessels which have been assigned State commercial landings tags for Atlantic Halibut, it shall be illegal to possess Atlantic Halibut when operating seaward of Maine's territorial waters.

E. Halibut Gear Marking Requirements

1. All persons fishing for Atlantic Halibut with an ~~endorsement issued~~ Commercial Halibut License in accordance with Chapter 34.07 B-1 must have marking buoys on each end of the trawl clearly labeled with their name and ~~Maine Commercial Fishing Commercial Halibut License~~ license number.
2. All persons recreationally tub trawling for Atlantic Halibut must mark the trawl buoys with their name and the words "Halibut Trawl" or other DMR specified marking.

F. Total Allowable Catch

1. Commercial, party, or charter vessels may land no more than 25 Atlantic Halibut per year.
2. Recreational vessels may land no more than 5 Atlantic Halibut per year.

G. Tagging Requirements

1. All legal size Atlantic Halibut caught in Maine's coastal waters and intended to be retained by a ~~Commercial Fishing license~~ Commercial Halibut License holder or recreational fisherman shall be immediately tagged with a landing tag approved by the Department of Marine Resources (DMR). Landing tags shall be attached in a manner for which the tag was designed tightly around or through the tail just before the tail fin.
2. Landings tags must remain on the fish until the fish has reached its final destination as a legal-sized fish that is not offered or intended for sale, trade, or barter by a recreational fisherman or prior to retail sale by a ~~Commercial Fishing license~~ Commercial Halibut License holder or Wholesale Seafood Dealer. It is illegal to possess Atlantic Halibut which are not properly tagged. Any person in possession of Atlantic Halibut without a DMR landings tag shall not be in violation of this Chapter if that person is in possession of a bill of lading showing the Atlantic Halibut were lawfully obtained from an origin outside the State of Maine or identified in accordance with the exception for Atlantic Halibut raised by means of aquaculture in Chapter 34.07 C-3. The absence of a bill of lading shall be prima facie evidence that the Atlantic Halibut were landed in Maine i.e., not shipped into Maine.
3. No individual or vessel will be issued more than 25 landing tags per (calendar) year except that ~~commercial fishing license~~ Commercial Halibut License holders who also hold a Federal Multispecies Permit shall be exempted from the individual tag limit provided that no one federally permitted vessel is assigned more than 25 landing tags per year.
4. Three types of landing tags may be issued:
 - (a) State Commercial tags will be issued to ~~endorsement~~ Commercial Halibut License holders without a Federal permit fishing in Maine's territorial waters.
 - (b) Federal Commercial tags will be issued to ~~endorsement~~ Commercial Halibut License holders who possess a Federal multispecies permit authorizing access to Federal waters.
 - (c) Recreational tags will be issued to party/charter or recreational vessels which fish in either Federal or territorial waters.

H. Observers

When fishing for Atlantic Halibut, all commercial, recreational, party and charter boat vessels must accept observers aboard their vessels upon request from the DMR or National Marine Fisheries Service (NMFS).

I. **Sampling**

Atlantic Halibut fishers may be requested to preserve stomach, gonad, otolith, scale or other biological samples for analyses by DMR and NMFS scientists. Any training necessary for compliance with such a request would be provided by DMR and/or NMFS personnel.

J. **Reporting:** See Chapter 8.20(F) Landings Program.

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: Chapter 34 Recreational Measures for Cod, Haddock and Halibut Clean-Up

STATUTORY AUTHORITY: 12 MRS 6171

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

COMMENT DEADLINE: October 13, 2023

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

This rulemaking is intended to maintain consistent recreational fishing measures between state and federal waters for Gulf of Maine cod and haddock. This rule also proposes to replace outdated language regarding the halibut endorsement on the commercial fishing license with reference to the new commercial halibut license.

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. The rulemaking also cleans-up language to reference the new commercial halibut license, and this change should have no impact on the operation of the state halibut fishery.

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. Finally, the new Commercial Halibut License which was implemented in 2023 was considered.

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.