

the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. The Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure.

(f) *AM for the 2011 fishing year.* AMs shall be applied in the 2011 fishing year for any overage of the applicable yellowtail flounder stock's total ACL in the 2010 fishing year in accordance with the APA. If a 2010 yellowtail flounder subcomponent catch allocation was exceeded in the 2010 fishing year, and that overage caused the total yellowtail flounder ACL for that stock specified in accordance with § 648.90(a)(4) and § 648.90(a)(6) to be exceeded, the Regional Administrator shall implement the yellowtail flounder AM closure for the area, as defined in paragraph (b)(1) or (c)(1) of this section as soon as practicable after the effective date of this regulation. The closure shall be effective on the date specified by the Regional Administrator and the area shall remain closed for a period of time equal to the period of time specified in paragraphs (b)(2)(i)(A), (b)(2)(i)(B), or (c)(2) of this section, as applicable. For example, if the overage is 3 to 5 percent for the Southern New England/Mid-Atlantic yellowtail stock, and the closure is effective beginning July 15, 2011, the closure shall remain in effect through September 15, 2011, a 2-month period equivalent to the March–April, 2-month closure specified in paragraph (c)(2) of this section.

[76 FR 43770, July 21, 2011]

## Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

### § 648.70 Annual individual allocations.

(a) *General.* (1) Each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (i.e., October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.71. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number, so that allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in bushels and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.75(b).

(2) The Regional Administrator may, after publication of a fee notification in the FEDERAL REGISTER, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) *Transfers.*—(1) *Allocation percentage.* Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred in the year in which the transfer

is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) *Review.* If the Regional Administrator determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

[61 FR 34968, July 3, 1996, as amended at 68 FR 69973, Dec. 16, 2003; 70 FR 2026, Jan. 12, 2005]

EFFECTIVE DATE NOTE: At 76 FR 60622, Sept. 29, 2011, § 648.70 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

**§ 648.70 Surfclam and ocean quahog Annual Catch Limit (ACL).**

(a) The MAFMC staff shall recommend to the MAFMC ACLs for the surfclam and ocean quahog fisheries, which shall be equal to the ABCs recommended by the SSC.

(1) *Sectors.* The surfclam and ocean quahog ACLs will be established consistent with the guidelines contained in the Atlantic Surfclam and Ocean Quahog FMP. The ACL for ocean quahog will then be allocated to the Maine and non-Maine components of the fishery according to the allocation guide-

lines of the Atlantic Surfclam and Ocean Quahog FMP as specified in § 648.78(b).

(2) *Periodicity.* The surfclam and ocean quahog ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The MAFMC staff shall conduct a detailed review of the fishery performance relative to the ACLs at least every 5 years.

(1) If the surfclam or the ocean quahog ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the MAFMC staff will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

**§ 648.71 Catch quotas.**

(a) *Establishing quotas.* Beginning in 2005, the amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for a 3-year period by the Regional Administrator. The initial 3-year specification will be based on the most recent available survey and stock assessments for Atlantic surfclams and ocean quahogs. Subsequent 3-year specifications of the annual quotas will be accomplished in the third year of the quota period, unless the quotas are modified in the interim pursuant to § 648.71(b). The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 m bu (98.5 to 181 m L) per year. The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 m bu (213 to 319.4 m L).

(1) *Quota reports.* On an annual basis, MAFMC staff will produce an Atlantic surfclam and ocean quahog annual quota recommendation paper to the MAFMC based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as