

## Fishery Conservation and Management

## § 648.74

and to each surf clam and ocean quahog permit holder.

(2) If the Regional Administrator determines, as the result of testing by state, Federal, or private entities, that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse effects fishing may have on the public health, he/she may close the area for 60 days by publication of notification in the FEDERAL REGISTER, without prior comment or public hearing. If an extension of the 60-day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) of this section shall be followed.

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin*—(1) *Maine mahogany quahog zone.* The Maine mahogany quahog zone is closed to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within the requirements of the National Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference as acceptable limits for the toxin responsible for paralytic shellfish poisoning. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding these areas contact the State of Maine Division of Marine Resources at (207-624-6550).

(2) [Reserved]

[61 FR 34968, July 3, 1996, as amended at 62 FR 14649, Mar. 27, 1997; 62 FR 37156, July 11, 1997; 63 FR 27485, May 19, 1998; 64 FR 57594, Oct. 26, 1999; 70 FR 2026, Jan. 12, 2005]

EFFECTIVE DATE NOTE: At 76 FR 60623, Sept. 29, 2011, § 648.73 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

### § 648.73 Surfclam and ocean quahog Accountability Measures.

(a) *Commercial ITQ fishery.* (1) If the ACL for surfclam or ocean quahog is exceeded, and the overage can be attributed to one or more ITQ allocation holders, the full amount of the overage will be deducted from the appropriate ITQ allocation in the following fishing year.

(2) Any amount of an ACL overage that cannot be otherwise attributed to an ITQ allocation holder will be deducted from the appropriate ACL in the following fishing year.

(b) *Maine mahogany quahog fishery.* If the ocean quahog ACL is exceeded, and the Maine mahogany quahog fishery is responsible for the overage, then the Maine fishery ACT shall be reduced in the following year by an amount equal to the ACL overage.

### § 648.74 Shucking at sea.

(a) *Observers.* (1) The Regional Administrator may allow the shucking of surf clams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surf clams and ocean quahogs harvested in the shell prior to shucking.

(2) Any vessel owner may apply in writing to the Regional Administrator to shuck surf clams or ocean quahogs at sea. The application shall specify: Name and address of the applicant, permit number of the vessel, method of calculating the amount of surf clams or ocean quahogs harvested in the shell, vessel dimensions and accommodations, and length of fishing trip.

(3) The Regional Administrator shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(4) Any observer shall certify at the end of each trip the amount of surf clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(b) *Conversion factor.* (1) Based on the recommendation of the MAFMC, the Regional Administrator may allow shucking at sea of surf clams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surf clams or ocean quahogs harvested in the shell.

(2) The Regional Administrator shall publish notification in the FEDERAL REGISTER specifying a conversion factor together with the data used in its calculation for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Administrator may publish final notification in the FEDERAL REGISTER specifying the conversion factor.

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(3) If the Regional Administrator makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surf clams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

EFFECTIVE DATE NOTE: At 76 FR 60623, Sept. 29, 2011, § 648.74 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

### § 648.74 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 § 648.72. 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 § 648.77. Amounts of allocation of 0.5 cages or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 cages 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 cages 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 § 648.77(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

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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 § 648.77 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-Stevens Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

### § 648.75 Cage identification.

Except as provided in § 648.76, the following cage identification requirements apply to all vessels issued a Federal fishing permit for surf clams and ocean quahogs:

(a) *Tagging.* Before offloading, all cages that contain surfclams or ocean quahogs must be tagged with tags acquired annually under paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage. A tag is required for every 60 ft<sup>3</sup> (1,700 L) of cage volume, or portion thereof. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for 60 days beyond the end of the calendar year, unless otherwise directed by authorized law enforcement agents.

(b) *Issuance.* The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year, or he/she may specify, in the FEDERAL REGISTER, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's