

§ 648.76

50 CFR Ch. VI (10–1–11 Edition)

not attributable to beds where the growth of individual surfclams has been reduced because of density dependent factors.

(4) *Measurement.* Length is measured at the longest dimension of the surfclam shell.

§ 648.76 Maine mahogany quahog zone.

(a) *Landing requirements.* (1) A vessel issued a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), and fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law in any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.70 and 648.75. Documentation required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally-permitted dealers for inspection by NMFS.

(b) *Quota monitoring and closures*—(1) *Catch quota.* (i) The annual quota for harvest of mahogany quahogs from within the Maine mahogany quahog zone is 100,000 Maine bushels (35,150 hL). The quota may be revised annually within the range of 17,000 and 100,000 Maine bushels (5,975 and 35,150 hL) following the procedures set forth in § 648.71.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.70 shall be applied against the Maine mahogany quahog quota, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.70 will be counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the quota based on dealer re-

ports and other available information and shall determine the date when the quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel.* The Council shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surf Clam and Ocean Quahog Committee of the Council, regarding revisions to the annual quota and other management measures.

[63 FR 27485, May 19, 1998]

EFFECTIVE DATE NOTE: At 76 FR 60624, Sept. 29, 2011, § 648.76 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.76 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surfclam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Regional Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Regional Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Regional Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground.* The waste disposal site known as the “Boston Foul Ground” and located at 42°25′36″ N. lat., 70°35′00″ W. long., with a radius of 1 nm (1.61 km) in every direction from that point.

(2) *New York Bight.* The polluted area and waste disposal site known as the “New York Bight” and located at 40°25′04″ N. lat., 73°42′38″ W. long., and with a radius of 6 nm (9.66 km) in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31′00″ N. lat., 73°43′38″ W. long., directly northward toward Atlantic Beach Light in New York to the limit of the state territorial waters of New York; and a line from the point on the arc at 40°19′48″ N. lat., 73°45′42″ W. long., to a point at the limit

Fishery Conservation and Management

§ 648.77

of the state territorial waters of New Jersey at 40°14'00" N. lat., 73°55'42" W. long.

(3) *106 Dumpsite*. The toxic industrial site known as the "106 Dumpsite" and located between 38°40'00" and 39°00'00" N. lat., and between 72°00'00" and 72°30'00" W. long.

(4) *Georges Bank*. The paralytic shellfish poisoning (PSP) contaminated area, which is located on Georges Bank, and located east of 69° W. long., and south of 42°20' N. lat.

(b) *Areas closed because of small surfclams*. Areas may be closed because they contain small surfclams.

(1) *Closure*. The Regional Administrator may close an area to surfclams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surfclams of which:

(i) Sixty percent or more are smaller than 4.5 inches (11.43 cm); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening*. The Regional Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-length class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surfclams in the area.

(c) *Procedure*. (1) The Regional Administrator may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Regional Administrator shall publish notification in the FEDERAL REGISTER of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening must be submitted to the Regional Administrator within 30 days after publication. The Regional Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in the FEDERAL REGISTER. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the FEDERAL REGISTER. The Regional Administrator shall send notice of any action under this paragraph (c)(1) to each surfclam and ocean quahog processor and to each surfclam 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 PSP. 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.

(2) [Reserved]

§ 648.77 Framework adjustments to management measures.

(a) *Within season management action*. The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Surf Clam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process*. The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels), description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set-aside quota for scientific research, VMS, OY range, suspension or adjustment of the surfclam minimum size limit, and changes to the Northeast Region SBRM (including the CV-based performance standard, the means