from January 1, 2013, through December 31, 2013. The expiration date of the temporary emergency action published on December 8, 2010 (75 FR 76315), and extended on November 22, 2011 (76 FR 72125), is further extended through December 31, 2013. Comments must be received by January 7, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2011–0260 by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA–NMFS–2011–0260 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- **Mail:** Submit written comments to John K. Bullard, Regional Administrator, Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope, “Comments on PSP Closure.”
- **Fax:** (978) 281–9135; Attn: Jason Berthiaume.

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information will be kept in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and will not be disclosed to the public except to the extent required by law. NMFS will accept comments voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

**SUPPLEMENTARY INFORMATION:**

**Background**
On June 10, 2005, the U.S. Food and Drug Administration (FDA) requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption due to the presence in those waters of toxins (saxotoxins) that cause PSP. These toxins are produced by the alga *Alexandrium fundyense*, which can form blooms commonly referred to as red tides. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP.

On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA (i.e., the Temporary PSP Closure Area). Since 2005, the closure has been extended several times and the area has been expanded and divided into northern and southern components. The Northern Temporary PSP Closure Area remained closed to the harvest of all bivalve molluscan shellfish, while the Southern Temporary PSP Closure Area was reopened to the harvest of Atlantic surfclams, ocean quahogs, and sea scallop adductor muscles harvested and shucked at sea. The current closure will expire on December 31, 2012, and this action extends this closure for an additional year, through December 31, 2013.

The boundaries of the northern component of the Temporary PSP Closure Area comprise Federal waters bounded by the following coordinates specified in Table 1 below. Under this emergency rule, this area remains closed to the harvest of Atlantic surfclams, ocean quahogs, and whole or roe-on scallops.

**TABLE 1—COORDINATES FOR THE NORTHERN TEMPORARY PSP CLOSURE AREA**

<table>
<thead>
<tr>
<th>Point</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>43°00' N</td>
<td>71°00' W</td>
</tr>
<tr>
<td>2</td>
<td>43°00' N</td>
<td>69°00' W</td>
</tr>
<tr>
<td>3</td>
<td>41°39' N</td>
<td>69°00' W</td>
</tr>
<tr>
<td>4</td>
<td>41°39' N</td>
<td>71°00' W</td>
</tr>
<tr>
<td>5</td>
<td>43°00' N</td>
<td>71°00' W</td>
</tr>
</tbody>
</table>

The boundaries of the southern component of the Temporary PSP Closure Area comprise Federal waters bound by the following coordinates specified in Table 2 below. Under this emergency rule, the Southern Temporary PSP Closure Area remains closed only to the harvest of whole or roe-on scallops.
Table 2—Coordinates for the Southern Temporary PSP Closure Area

<table>
<thead>
<tr>
<th>Point</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>41°39’ N</td>
<td>71°00’ W</td>
</tr>
<tr>
<td>2</td>
<td>41°39’ N</td>
<td>69°00’ W</td>
</tr>
<tr>
<td>3</td>
<td>40°00’ N</td>
<td>69°00’ W</td>
</tr>
<tr>
<td>4</td>
<td>40°00’ N</td>
<td>71°00’ W</td>
</tr>
<tr>
<td>5</td>
<td>41°39’ N</td>
<td>71°00’ W</td>
</tr>
</tbody>
</table>

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(c). Pursuant to section 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator for Fisheries finds there is good cause to waive prior notice and an opportunity for public comment on this action as notice and comment would be impracticable and contrary to the public interest due to a public health emergency, and public comment has been solicited concurrently with each of the extensions of this action, as detailed and responded to below. In addition, under section 553(d)(3) there is good cause to waive the 30-day delay in effectiveness due to a public health emergency. The original emergency closure was in response to a public health emergency. Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. People have become seriously ill and some have died from consuming affected shellfish under similar circumstances. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, the closure to the harvest of shellfish, as modified on September 9, 2005, and re-instated on October 18, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided the public has had an opportunity to comment after the regulation was published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary’s action. During the initial comment period, June 16, 2005, through August 1, 2005, no comments were received. Two comments have been received after the re-opening of the southern component of the Temporary PSP Closure Area on September 9, 2005. One commenter described the overall poor quality of water in Boston Harbor, but provided no evidence to back these claims. The other commenter expressed reluctance to re-opening a portion of the closure area without seeing the results of the FDA tests. Data used to make determinations regarding closing and opening of areas to certain types of fishing activity are collected from Federal, state, and private laboratories. NOAA maintains a Red Tide Information Center (http://oceanervice.noaa.gov/redtide/), which can be accessed directly or through the Web site listed in the addresses section. Information on test results, modeling of algal bloom movement, and general background on red tide can be accessed through this information center. While NMFS is the agency with the authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the request of the FDA, after the FDA determined that the results of its tests warranted such action. If necessary, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D) of the Magnuson-Stevens Act, by publication in the Federal Register of a notice of termination, or extended further to ensure the safety of human health.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment. This rule is not significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 30, 2012.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

§ 648.1—Prohibitions.

(a) * * * * *(10) * * * *(iii) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels, with the exception of sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 43°00’ N. lat., 71°00’ W. long.;
(B) 43°00’ N. lat., 69°00’ W. long.;
(C) 41°39’ N. lat., 69°00’ W. long.;
(D) 41°39’ N. lat., 71°00’ W. long.; and then ending at the first point.

(iv) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops, except for sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 41°39’ N. lat., 71°00’ W. long.;
(B) 41°39’ N. lat., 69°00’ W. long.;
(C) 40°00’ N. lat., 69°00’ W. long.;
(D) 40°00’ N. lat., 71°00’ W. long.; and then ending at the first point.

* * * * *