

by the allocation percentage, specified for that owner on the allocation permit for the preceding fishing year, adjusted to account for any transfer pursuant to paragraph (b) of this section. These allocations shall be made in the form of an allocation permit specifying for each species the allocation percentage and the allocation in bushels. Such permits shall be issued on or before December 15, to the registered holders who were assigned an allocation by November 1. 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. An allocation permit is only valid for the entity for which it is issued.

(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 amounts equivalent to not less than 160 bu (8,500 L) (i.e., 5 cages) in the year in which the transfer is made, to any person 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 in quantities of not less than 5 tags at any one time, 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 and 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.

#### § 648.71 Catch quotas.

(a) *Surf clams*. The amount of surf clams that may be caught annually by fishing vessels subject to these regulations will be specified by the Assistant Administrator, on or about December 1 of each year, within the range of 1.85 to 3.4 million bu (98.5 to 181 million L).

(1) *Establishing quotas*. (i) Prior to the beginning of each year, the MAFMC, following an opportunity for public comment, will recommend to the Assistant Administrator quotas and estimates of DAH and DAP within the ranges specified. In selecting the quota, the MAFMC shall consider current stock assessments, catch reports, and other relevant information concerning:

(A) Exploitable and spawning biomass relative to the OY.

(B) Fishing mortality rates relative to the OY.

(C) Magnitude of incoming recruitment.

(D) Projected effort and corresponding catches.

(E) Geographical distribution of the catch relative to the geographical distribution of the resource.

(F) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(ii) The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surf

## Fishery Conservation and Management

## § 648.73

Clam and Ocean Quahog FMP. The Assistant Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson Act and the objectives of the Atlantic Surf Clam and Ocean Quahog FMP.

(2) *Report.* Prior to the beginning of each year, the Regional Administrator shall prepare a written report, based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

(i) Exploitable biomass and spawning biomass relative to OY.

(ii) Fishing mortality rates relative to OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Status of areas previously closed to surf clams fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(vi) Geographical distribution of the catch relative to the geographical distribution of the resource.

(3) *Public review.* Based on the information presented in the report, and in consultation with the MAFMC, the Assistant Administrator shall propose an annual surf clam quota and an annual ocean quahog quota and shall publish them in the FEDERAL REGISTER. Comments on the proposed annual quotas may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the FEDERAL REGISTER on or about December 1 of each year.

(b) *Ocean quahogs.* The amount of ocean quahogs that may be caught by fishing vessels subject to these regulations shall be specified annually by the Assistant Administrator, on or about December 1, within the range of 4 to 6 million bu (213 to 319.4 million L), following the same procedures set forth in

paragraph (a) of this section for surf clams.

### § 648.72 Minimum surf clam size.

(a) *Minimum length.* The minimum length for surf clams is 4.75 inches (12.065 cm).

(b) *Determination of compliance.* No more than 50 surf clams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surf clams in any inspected cage of surf clams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(c) *Suspension.* Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the FEDERAL REGISTER, the minimum shell-height standard, unless discard, catch, and survey data indicate that 30 percent of the surf clams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell height is not attributable to beds where the growth of individual surf clams has been reduced because of density dependent factors.

(d) *Measurement.* Length is measured at the longest dimension of the surf clam shell.

### § 648.73 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Assistant Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Assistant Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Assistant 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°2'36" N. lat., 70°35'00" W. long., with a radius of 1 nm 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