

## 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

40°25'04" N. lat., 73°42'38" W. long., and with a radius of 6 nm 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 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 in Georges Bank, and is located east of 69° W. longitude, and south of 42°20' N. latitude.

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

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

(i) Sixty percent or more are smaller than the minimum size (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 Assistant 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-height class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surf clams 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 Assistant 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 may be submitted to the Regional Administrator within 30 days after publication. The Assistant 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 surf clam and ocean quahog processor 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).

## Fishery Conservation and Management

## § 648.75

(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]

### § 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.

(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.

### § 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 surf clams 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 for every 60 ft<sup>3</sup> (1,700 L), or portion thereof, of the cage. 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 collection or disposal as specified by the Regional Administrator.

(b) *Issuance.* The Regional Administrator will issue a supply of tags to each individual vessel 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 allocation. Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration.* Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return.* Tags that have been rendered null and void must be returned to the Regional Administrator, if possible.

(e) *Loss.* Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Administrator by telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter, the reported tags shall no longer be valid for use under this part.

(f) *Replacement.* Lost or stolen tags may be replaced by the Regional Administrator if proper notice of the loss