

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 each year. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional 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-Stevens Act and the objectives of the Atlantic Surfclam and Ocean Quahog FMP and other applicable law.

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the Council's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3-year period. Such modification shall be in effect for a period of 3 years from the year in which it is first implemented, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a 3-year period.

(c) *Annual quotas.* The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. NMFS will issue notification in the FEDERAL REGISTER if the previous year's specifications will not be changed.

[68 FR 69973, Dec. 16, 2003, as amended at 70 FR 2026, Jan. 12, 2005]

#### § 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°25'36" N. lat., 70°35'00" W. long., with a radius of 1 nautical mile 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

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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).

(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]

§ 648.74 Shucking at sea.

(a) *Observers*. (1) The Regional Administrator may allow the shucking of