

TABLE 1. SUMMER FLOUNDER COMMERCIAL QUOTA TRANSFERS

State	Amount Transferred		2005 Quota ¹		2005 Revised Quota	
	lb	kg	lb	kg	lb	kg
New Jersey	-36,333	-16,481	3,005,481	1,363,286	2,969,148	1,346,806
Maine	+999	+453	12,396	5,623	13,395	6,076
Massachusetts	+10,957	+4,970	1,219,773	553,289	1,230,730	558,259
Connecticut	+13,965	+6,335	459,408	208,387	473,373	214,722
New York	+10,412	+4,723	1,414,282	641,518	1,424,694	646,241

¹Reflects quotas as published on June 21, 2005 (70 FR 35557), inclusive of previous Addendum XV and “safe harbor” transfers.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 12, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050613158-5262-03; I.D. 090105A]

RIN 0648-AT48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action.

SUMMARY: This action reinstates the temporary regulations published in the **Federal Register** on September 9, 2005, and establishes the prohibition that was inadvertently omitted in the September 9, 2005 rule. In the September 9, 2005, temporary rule, NMFS continued the closure through September 30, 2005, of one portion of an area it had previously closed on June 16, 2005, to the harvest for human consumption of certain bivalve molluscan shellfish due to the presence in those waters of the toxin

that causes Paralytic Shellfish Poisoning (PSP). The prohibition of harvesting whole or roe-on sea scallops, only, in the other portion of the area previously closed on June 16, 2005, was inadvertently omitted from the regulatory text of the September 9, 2005, publication. NMFS establishes this prohibition in this action. The intent of this action is to respond to the request of the U.S. Food and Drug Administration (FDA), having determined on September 23, 2005, that there is insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish fishing on October 1, 2005.

DATES: Effective October 18, 2005, through December 31, 2005. Comments must be received by November 17, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

- E-mail: PSPclosure2@NOAA.gov. Include the subject line the following: “Comments on the October Emergency Rule for Area closures Due to PSP.”
- Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on October PSP closure.”
- Fax: (978) 281-9135.

Copies of the small entity compliance guide prepared for the September 9, 2005, emergency action are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. The small entity compliance guide/permit holder letter is also accessible via the Internet at <http://www.nero.noaa.gov>. Copies of the emergency rule are available from Patricia A. Kurkul, at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, (978) 281-9272.

SUPPLEMENTARY INFORMATION:

Background

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.

On June 10, 2005, the FDA requested that NMFS issue an emergency rule to close an area of Federal waters to the harvesting of bivalve molluscan shellfish intended for human consumption because of toxic algal blooms off the coasts of New Hampshire and Massachusetts. This closure prohibited harvests of shellfish such as Atlantic surfclams and ocean quahogs, as well as scallop viscera. The emergency rule for the action, published in the **Federal Register** on June 16, 2005 (70 FR 35047), stated it would be in effect from June 14 through September 30, 2005, unless extended. The emergency rule was modified on July 7, 2005 (70 FR 39192) to allow for the collection of biological samples by commercial fishing vessels issued a Letter of Authorization signed by the Regional Administrator.

The action temporarily closed all Federal waters of the Exclusive Economic Zone of the northeastern United States to any bivalve molluscan shellfish harvesting, except for Atlantic sea scallops shucked at sea for their adductor muscles, in the area bound by the following coordinates in the order stated: (1) 43° 00' N. lat., 71° 00' W. long.; (2) 43° 00' N. lat., 69° 00' W. long.; (3) 40° 00' N. lat., 69° 00' W. long.; (4) 40° 00' N. lat., 71° 00' W. long., and then ending at the first point. The scallop adductor muscle, or “meat,” is unaffected by the toxin. Further details of the original closure may be found in the June 16, 2005, and the July 7, 2005,

Federal Register rules, and are not repeated here.

As a result of tests conducted by the FDA in cooperation with NMFS and the fishing industry, it was determined that toxin levels in a portion of the closure area (described below) were well below those known to cause human illness. With the exception of whole and roe-on scallops, the FDA determined that harvesting of bivalve molluscan shellfish for human consumption from the area described was once again safe.

At the FDA's request, on September 9, 2005, NMFS reopened those waters south of 41°39' N. lat., west of 69°00' W. long., north of 40°00' N. lat., and east of 71°00' W. long. (70 FR 53580). Because scallop viscera and roe are capable of retaining PSP toxins longer than other species of molluscan shellfish, scallop harvesting was only permitted in the reopened area for the purpose of shucking of the adductor muscle; however, although this limitation was discussed in the preamble of the September 9, 2005 temporary rule, it was inadvertently omitted from the regulatory text.

In the absence of further notice from the FDA, the entire temporary closure would have expired on October 1, 2005. FDA determined on September 23, 2005, that there is insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish on October 1, 2005; therefore FDA requested that NMFS continue the regulations through December 31, 2005.

On October 3, 2005, a document was published in the **Federal Register** (70 FR 57517) intending to extend the expiration date of the September 9, 2005, temporary rule from September 30, 2005, to December 31, 2005. Although the date of filing for public inspection by the Office of the **Federal Register** occurred on September 27, 2005, the document was not published in the **Federal Register** until October 3, 2005, leaving no regulations in place after September 30, 2005 (the original expiration date). Therefore, NMFS issues this temporary rule to (1) reinstate the prohibition to fish for, harvest, catch, or possess any bivalve shellfish except sea scallops harvested only for adductor muscles and shucked at sea in the area described in § 648.14(a)(170) and (2) allow the harvest of bivalve molluscan shellfish other than whole or roe-on Atlantic sea scallops, as described in § 648.14(a)(171).

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens

Fishery Conservation and Management 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 as described 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 as described below. 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 by this action reinstates the September 9, 2005 temporary rule through December 31, 2005. This action also prohibits the retention of whole or roe-on sea scallops in an area as described in § 648.14(a)(171) because of the possible retention of PSP. This rule may remain in effect until the circumstances that created the emergency no longer exist, provided that the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary of Commerce's action. The public had opportunities to comment on the earlier regulations establishing the closures and one comment was received. The commenter expressed her reluctance to agree with reopening a portion of the closure without seeing the results of the FDA's tests. While NMFS is the agency with authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the behest of the FDA after the FDA had determined that the results of its tests warranted such action. Accordingly, the Secretary of Health and Human Services and the Secretary of Commerce concur that the emergency regulations, as modified, should be reinstated through December 31, 2005. Subsequently, if warranted, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D), by publication in the **Federal Register** of a notice of termination.

Because prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other

law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This rule is determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 13, 2005.

James W. Balsiger,

Acting 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

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.14, paragraphs (a)(170) and (a)(171) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(170) 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, or a vessel 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: (1) 43° 00' N. lat., 71° 00' W. long.; (2) 43° 00' N. lat., 69° 00' W. long.; (3) 41° 39' N. lat., 69° 00' W. long.; (4) 41° 39' N. lat., 71° 00' W. long., and then ending at the first point.

(171) 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, or a vessel 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: (1) 41° 39' N. lat., 71° 00' W. long.; (2) 41° 39' N. lat., 69° 00' W. long.; (3) 40° 00' N. lat., 69° 00' W.

long.; (4) 40° 00' N. lat., 71° 00' W. long.,
and then ending at the first point.

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