

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 (5) 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 preambles of the June 16, 2005, and the July 7, 2005, 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 permitted only 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 were insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish on October 1, 2005; therefore, it requested that NMFS continue the regulations through December 31, 2005. Based on this request, NMFS issued additional temporary rules (70 FR 57517 and 70 FR 60450) to extend the prohibitions through December 31, 2005.

In the absence of further notice from the FDA, the entire temporary closure would have expired on January 1, 2006. FDA has once again determined that there are insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish on January 1, 2006, and has requested that NMFS continue the regulations, which NMFS agrees to do through June 30, 2006.

**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) (Magnuson-Stevens Act).

The original emergency closure was in response to a public health emergency. 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 as reinstated on October 18, 2005, 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 Commerce Secretary's action. The public had opportunities to comment on the published regulations 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 on September 9, 2005, and as reinstated on October 18, 2005, should continue through June 30, 2006. If warranted, 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, if necessary, to ensure the safety of human health.

The October 18, 2005, rule was determined to be not significant under Executive Order 12866.

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

Dated: December 21, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 050112008-5102-02; I.D.121205D]

**Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1B**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Management Area 1B (Area 1B) for fishing year 2005 is projected to be harvested by December 23, 2005. Therefore, effective 0001 hours, December 23, 2005, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1B per trip or calendar day until January 1, 2006 when the 2006 TAC becomes available, except for transiting

purposes as described in this document. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that 95 percent of the Atlantic herring TAC allocated to Area 1B has been harvested, and no TAC is available for the directed fishery for Atlantic herring harvested from Area 1B.

**DATES:** Effective 0001 hrs local time, December 24, 2005, through 2400 hrs local time, December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fisheries Management Specialist, at (978) 281-9221.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2005 TAC allocated to Area 1B for the fishing year (70 FR 21971, April 28, 2005) is 10,000 mt (22,046,226 lb).

The regulations at 50 CFR 648.202 require the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan for the Atlantic Herring Fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** of this determination. Effective upon a specific date, NMFS must notify vessel and dealer permit holders that vessels are prohibited from fishing for, catching, possessing, transferring or landing more than 2,000 lb (907.2 kg) of herring per trip or calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 1B is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information that 95 percent of the total Atlantic herring TAC allocated to Area 1B for the 2005 fishing year is projected to be harvested by December 23, 2005. Therefore, effective 0001 hrs local time, December 23, 2005, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1B per trip or calendar day through December 31, 2005; except a vessel may transit, or land herring in Area 1B with more than

2,000 lb (907.2 kg) of herring on board, provided such herring were not caught in Area 1B, and provided all fishing gear is stowed and not available for immediate use as required by 648.23(b). Effective December 23, 2005, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 1B through December 31, 2005, 2400 hrs local time.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 21, 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. 051017270-5339-02; I.D. 093005B]

**RIN 0648-AT85**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; 2006 and 2007 Fishing Quotas for Ocean Quahogs**

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS is specifying the final quotas for the ocean quahog fishery for 2006 and 2007. Specifications for the Atlantic surfclam and Maine ocean quahog fishery, which remain unchanged from the 2005-2007 multi-year quota specifications, are reprinted here for clarity. Regulations governing these fisheries require NMFS to publish the revised allowable harvest levels of ocean quahogs from the Exclusive Economic Zone for the 2006 and 2007 fishing years.

**DATES:** Effective from January 27, 2006, to December 31, 2007.

**ADDRESSES:** Copies of supporting documents, including the

Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790.

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, and public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-2298. A copy of the EA/RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov/nero/regs/com.html>.

**FOR FURTHER INFORMATION CONTACT:** Brian R. Hooker, Fishery Policy Analyst, 978-281-9220.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclams and ocean quahogs on a 3-year basis, with an annual review, from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine ocean quahogs (locally known as mahogany quahogs) to the management unit, and provided that a small artisanal fishery for ocean quahogs in the waters north of 43°50' N. lat. has an annual quota within a range of 17,000 to 100,000 Maine bu (5,991 to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. An evaluation, in the form of an annual quota recommendation paper, is conducted by the Council every year to determine if the multi-year quota specifications remain appropriate. The fishing quotas must be in compliance with overfishing