

Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission. Systems on frequencies above 800 MHz are exempt from this requirement.

(ii) Initial access points within the public switched telephone network must be limited to transmission of a 3-second tone, after which time the transmitter shall close down. No additional signals may be transmitted until acknowledgement from a mobile station of the licensee is received. Licensees are exempt from this requirement if they have obtained the consent of all co-channel licensees located within a 120 kilometer (75 mile) radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission.

Systems on frequencies above 800 MHz are exempt from this requirement.

\* \* \* \* \*

■ 39. Amend § 90.613 by revising channel 139 of the Table of 896–901/935–940 MHz Channel Designations to read as follows:

**§ 90.613 Frequencies available.**

TABLE OF 896–901/935–940 MHz  
CHANNEL DESIGNATIONS

Channel No.	Base frequency (MHz)
* * * * *	
139 .....	.7375
* * * * *	

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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; Extension of 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; extension of effective period.

**SUMMARY:** This action extends a temporary final rule published on October 18, 2005. The regulations contained in the temporary rule, emergency action, published on October 18, 2005, at the request of the U.S. Food and Drug Administration (FDA), and that were subsequently extended on December 28, 2005, June 30, 2006, and again on January 1, 2007, expire on July 1, 2007. This temporary rule extends a closure of Federal waters through December 31, 2007. The FDA has determined that current oceanographic conditions and alga sampling data suggests that the northern section of the

Temporary Paralytic Shellfish Poison (PSP) Closure Area remain closed to the harvest of bivalve molluscan shellfish and that the southern area remain closed to the harvest of whole or roe-on scallops. NMFS is publishing the regulatory text associated with this closure in this temporary emergency rule in order to ensure that current regulations accurately reflect the codified text that has been modified and extended numerous times so that the public is aware of the regulations being extended through December 31, 2007.

**DATES:** The amendments to § 648.14 are effective from July 1, 2007, through December 31, 2007. The expiration date of the temporary emergency action published on January 4, 2007 (72 FR 291), is extended to December 31, 2007. Comments must be received by July 27, 2007.

**ADDRESSES:** Copies of the small entity compliance guide, the emergency rule, the environmental assessment, and the regulatory impact review prepared for the October 18, 2005, reinstatement of the September 9, 2005, emergency action and subsequent extensions of the emergency action, are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. These documents are also available via the internet at [www.nero.noaa.gov](http://www.nero.noaa.gov).

Comments may be submitted by any of the following methods:

- E-mail: [PSP2closure@NOAA.gov](mailto:PSP2closure@NOAA.gov). Include the subject line the following: “Comments on the July 2007 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 July 2007 PSP Closure.”
- Fax: (978) 281–9135.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Policy Analyst, phone: (978) 281–9220, fax: (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

This emergency closure is being implemented at the request of the FDA after samples of shellfish from the inshore and offshore waters off of the coasts of New Hampshire and Massachusetts tested positive for the toxins (saxotoxins) that cause PSP. These toxins are produced by the alga *Alexandrium fundyense* which can form

blooms commonly referred to as red tides. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP.

On June 10, 2005, the FDA requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption. On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA, i.e., the Temporary PSP Closure Area, through September 30, 2005. On July 7, 2005 (70 FR 39192), the emergency rule was modified to facilitate the testing of shellfish for the toxin that causes PSP by the FDA and/or FDA-approved laboratories through the issuance of a Letter of Authorization (LOA) from the NMFS Regional Administrator. On September 9, 2005 (70 FR 53580), the emergency regulation was once again modified by the division of the Temporary PSP Closure Area into northern and southern components. The northern area remained closed to the harvest of all bivalve molluscan shellfish while the southern component was reopened to the harvest of Atlantic surfclams and ocean quahogs but remained closed to the harvest of whole or roe-on scallops. The rule was extended as published on September 9, 2005, on October 3, 2005 (70 FR 57517), reinstated on October 18, 2005 (70 FR 60450) to correct a technical error, extended on December 28, 2005 (70 FR 76713), and subsequently on June 30, 2006 (71 FR 37505), and again on January 4, 2007 (72 FR 291) through June 30, 2007. On May 18, 2007, the FDA indicated that it could not support the re-opening of the Temporary PSP Closure Area due to insufficient analytical data from the area.

The boundaries of the northern component of the Temporary PSP Closure Area comprise Federal waters 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. Under this emergency rule, this area would remain closed to the harvest of Atlantic surfclams, ocean quahogs, and whole or roe-on scallops. The boundaries of the southern component of the Temporary PSP Closure Area comprise Federal waters 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. Under this emergency rule, this southern component of the area would remain closed only to the harvest of whole or roe-on scallops.

#### Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens 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, and public comment has been solicited concurrently with each of the extensions of this actions as detailed and responded to 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. 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, as modified on September 9, 2005, and re-instated on October 18, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided the public has had an opportunity to comment after the regulation was published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action. During the initial comment period, June 16, 2005, through August 1, 2005, no comments were received. One comment was received after the re-opening of the southern component of the Temporary PSP Closure Area on September 9, 2005. The commenter expressed reluctance to re-opening a portion of the closure area without seeing the results of the FDA tests. Data used to make determinations regarding closing and opening of areas to certain types of fishing activity are collected from Federal, state, and private laboratories. NOAA maintains a Red Tide Information Center ([http://www.cop.noaa.gov/news/fs/ne\\_hab\\_200605.html](http://www.cop.noaa.gov/news/fs/ne_hab_200605.html)), which can be accessed directly or through the website listed in the ADDRESSES section.

Information on test results, modeling of algal bloom movement, and general background on red tide can be accessed through this information center. While NMFS is the agency with the authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the request of the FDA, after the FDA has determined that the results of its tests warranted such action. If necessary, 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 to ensure the safety of human health.

This emergency/interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

The rule, as last published on October 18, 2005, was determined to be not significant for the purposes of Executive Order 12866.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 21, 2007.

**Samuel D. Rauch III,**

*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 revised 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 are of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(i) 43°00' N. lat., 71°00' W. long.;

(ii) 43° 00' N. lat., 69° 00' W. long.;  
(iii) 41° 39' N. lat., 69° 00' W. long.;  
(iv) 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:

(i) 41° 39' N. lat., 71° 00' W. long.;  
(ii) 41° 39' N. lat., 69° 00' W. long.;  
(iii) 40° 00' N. lat., 69° 00' W. long.;  
(iv) 40° 00' N. lat., 71° 00' W. long.,  
and then ending at the first point.  
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