

reducing risk. Covered railroads will be specifically required to evaluate components of the program that were not audited by FRA that year. These evaluations will likely be required to utilize valid mathematical tests or methods that conform to the standards of the American Evaluation Association.

a. How often should a railroad be required to evaluate the effectiveness of its RRP?

b. What other standards could a railroad use to evaluate the effectiveness of its RRP?

28. Should FRA allow a railroad to hire a contractor to evaluate its RRP? If so, what qualifications or certifications should this contractor have?

29. What documentation/certification must a railroad maintain so that FRA can verify that the railroad has properly evaluated the effectiveness of its RRP?

#### Cost/Benefits

30. What are the initial and recurrent costs of establishing and maintaining RRP processes (e.g., internal auditing and evaluation, data collection, employee training, computer software, personnel hiring and training)?

31. How could railroads maximize benefits associated with a risk reduction program without unjustified or unnecessary costs?

32. What new knowledge, skills, and abilities would your organization need, if any, to operate successfully within a risk reduction framework?

33. What are practical ways a small business could apply the elements of an RRP?

34. What business benefits are created by a risk reduction program?

35. Are there special costs or loss of benefits of scale for small businesses? If so, how can they be minimized?

#### General/Background

36. FRA may require a railroad to develop and submit an RRPP for approval six months after publication of the final rule. Is this timeline appropriate? If not, why? What additional problems does the six month deadline create?

37. FRA may require a railroad to establish a full initial implementation of an RRP six months after the RRPP has been approved by FRA.

a. Is this timeline appropriate? If not, explain why it is not appropriate.

b. Should FRA permit a railroad to implement its RRP in phases? What should those phases be? Explain.

38. Has your organization implemented an official safety risk reduction program (or other programs that could qualify as risk reduction)? Please describe your implementation experience.

a. How has this program impacted organizational safety and compliance with existing Federal statutes and regulations?

b. How have the resources required to implement and maintain the program affected your organization?

c. If you do not represent a railroad, how do you think your risk reduction activities would apply in a railroad context?

d. How has this program improved your organization's corporate safety culture?

39. Has your railroad undertaken a risk reduction pilot project? If so, please tell us how successful that pilot project has been and how any data or information obtained through the project could assist in the development of an RRP regulation.

40. What areas of FRA's current regulations do you believe already incorporate risk reduction principles? How would you suggest the FRA avoid any duplicative requirements in any risk reduction rulemaking effort?

#### Public Meetings

41. After the ANPRM comment period has closed, FRA may hold one or more public hearings on the announced risk reduction rulemaking. Decisions regarding public meetings will be made based upon the content of the comments. As such, all interested entities should, to the best of their ability, respond fully in writing to the questions presented in this ANPRM.

a. How many public meetings, if any, should FRA hold?

b. Where should any public meeting(s) be held? Are there certain meeting locations that would increase participation?

Issued in Washington, DC, on December 2, 2010.

**Karen J. Hedlund,**

*Chief Counsel, Federal Railroad Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100526227-0256-01]

RIN 0648-AY71

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam (Surfclam) and Ocean Quahog Fishery

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** NMFS withdraws the proposed rule published on June 30, 2010, which proposed to open a portion of the Georges Bank (GB) Closed Area to the harvest of surfclams and ocean quahogs. The previously published proposed rule will not be issued as a final rule and will not become effective or enforceable. The current GB Closed Area remains in effect.

**DATES:** The withdrawal of the proposed rule to open a portion of the GB Closed Area to the harvest of surfclams and ocean quahogs (75 FR 37745, June 30, 2010) is effective December 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Anna Macan, Fishery Management Specialist, phone (978) 281-9165, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS is withdrawing a proposed rule to open a portion of the GB Closed Area to the harvest of surfclams and ocean quahogs that was published on June 30, 2010 (75 FR 37745), with public comments accepted through July 30, 2010. The background and full details on the development of the June 30, 2011 proposed rule are contained in the preamble of the proposed rule and are only summarized here.

The GB Closed Area, located in the Exclusive Economic Zone east of 69°00' W. long. and south of 42°20' N. lat., has been closed to the harvest of surfclams and ocean quahogs since 1990 due to red tide blooms that cause paralytic shellfish poisoning (PSP). The closure was implemented based on advice from the U.S. Food and Drug Administration (FDA), after samples tested positive for toxins (saxotoxins) that cause PSP. PSP toxins are produced by the alga, *Alexandrium fundyense*, which can

form blooms commonly referred to as red tides, or harmful algal blooms (HABs), and can produce toxins that accumulate in water column filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death in humans.

Due to inadequate testing or monitoring of the GB Closed Area for the presence of PSP-causing toxins, the closure was made permanent in 1999, under Amendment 12 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). Since the implementation of the permanent closure, NOAA's National Ocean Service (NOS) has provided grants to the FDA; the States of Maine, New Hampshire, and Massachusetts; and a clam industry representative to collect water and shellfish samples from Federal waters off of southern New England. The FDA, in consultation with NMFS and several States, also developed the Protocol for Onboard Screening and Dockside Testing in Molluscan Shellfish (Protocol), which is designed to test and verify that clams harvested from GB are safe. NMFS first issued an Exempted Fishing Permit (EFP) on January 9, 2008, to Truex Enterprises of New Bedford, MA, to allow for testing the efficacy of harvesting surfclams and ocean quahogs from a portion of the GB Closed Area using the Protocol. The EFP was subsequently renewed on January 22, 2009, and December 10, 2009.

On January 21, 2010, NMFS received a letter from the FDA requesting that NMFS open a portion of the GB Closed Area, as specified at 648.73(a), to the harvest of surfclams and ocean quahogs for human consumption. The FDA indicated that testing of clams from the portion of the GB Closed Area known as Cultivator Shoal had demonstrated that PSP toxin levels were well below the regulatory limit established for public health and safety. This information contributed to the FDA's determination that harvesting of surfclams and ocean quahogs from this area is once again safe. In response to the FDA's request, NMFS published the aforementioned proposed rule to solicit public comments on the FDA's request to open a portion of the GB Closed Area.

#### Basis for Withdrawal

During the public comment period, NMFS received substantive comments from leading experts in PSP, who questioned the validity of the data on which the proposed re-opening is based, and strongly cautioned against re-opening the area without a rigorous testing protocol designed to protect the

public health. Several other comments were also received in support of a re-opening, but with the use of the FDA-approved Protocol.

Upon review of public comments, NMFS agrees that testing is necessary to ensure clams harvested from the area are safe for human consumption. The proposed rule did not propose any additional requirements such as a testing protocol. The Regional Administrator does not have the authority to implement a testing protocol under the existing regulations for the FMP. Therefore, NMFS is withdrawing the proposed rule.

#### Comments and Responses

During the public comment period on the proposed rule, 11 comments were received. Two comments were in support of the re-opening; six comments supported the re-opening, but with the use of the FDA-approved Protocol; two comments were opposed to the action, due to lack of a monitoring requirement; and one comment was opposed to the re-opening but did not supply any significant rationale for the opposition.

*Comment 1:* Two experts questioned the validity of the data on which the proposed opening of the GB Closed Area is based, and strongly cautioned NMFS against re-opening the area without a rigorous testing protocol to ensure the clams harvested from the area are safe. Six comments were in support of the re-opening, but with the use of the FDA approved Protocol.

*Response:* NMFS agrees that testing is necessary; however, the proposed rule only proposed to re-open an area, and did not propose any additional requirements such as a testing protocol. The Regional Administrator does not have the authority to implement a monitoring requirement under the existing regulations implementing the FMP.

*Comment 2:* One commenter supported the re-opening, since the FDA determined that clams from the area were safe. This commenter stated that the industry should be permitted to harvest clams from the area. The commenter further supported the re-opening because a large portion, roughly 50 percent of the surfclam and ocean quahog biomass, is located in GB and opening a portion of the GB Closed Area would alleviate fishing pressure on areas that are experiencing declines in landings per unit of effort.

*Response:* NMFS recognizes that re-opening a portion of the GB Closed Area may help address problems associated with localized depletion. However, given the significant health risk associated with opening the area

without a sufficient monitoring program to ensure that clams harvested from the area are safe for human consumption, NMFS will not take action to re-open the area. NMFS does not have the authority to implement a monitoring requirement under the existing regulations implementing the FMP. NMFS would consider supporting a Mid-Atlantic Fishery Management Council action to open the area, provided a sufficient monitoring program was included as part of the action.

*Comment 3:* One commenter supported the proposed opening, but expressed concern as to whether there were enough data to support the finding that ocean quahogs harvested from GB are safe.

*Response:* NMFS agrees this is a valid concern. Based on the significant comments received on this action, and given the significant risk associated with opening the area without a testing protocol, NMFS is withdrawing the proposed rule.

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

Dated: December 2, 2010.

**Eric C. Schwaab,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 101126522-0522-02 ]

RIN 0648-XZ89

#### Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2011 and 2012 Harvest Specifications for Groundfish

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

**ACTION:** Proposed rule; request for comments.

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**SUMMARY:** NMFS proposes 2011 and 2012 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2011 and 2012 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of