

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 or the objectives of the Atlantic Surfclam and Ocean Quahog FMP or 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 multi-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 MAFMC's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current multi-year period. Such modification shall be in effect for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a multi-year period.

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

[76 FR 60622, Sept. 29, 2011, as amended at 81 FR 38972, June 15, 2016; 87 FR 71529, Nov. 23, 2022]

**§ 648.73 Surfclam and ocean quahog Accountability Measures.**

(a) *Commercial ITQ fishery.* (1) If the ACL for surfclam or ocean quahog is exceeded, and the overage can be attributed to one or more ITQ allocation holders, the full amount of the overage will be deducted from the appropriate ITQ allocation in the following fishing year.

(2) Any amount of an ACL overage that cannot be otherwise attributed to an ITQ allocation holder will be de-

ducted from the appropriate ACL in the following fishing year.

(b) *Maine mahogany quahog fishery.* If the ocean quahog ACL is exceeded, and the Maine mahogany quahog fishery is responsible for the overage, then the Maine fishery ACT shall be reduced in the following year by an amount equal to the ACL overage.

[76 FR 60623, Sept. 29, 2011]

**§ 648.74 Individual Transferable Quota (ITQ) Program.**

(a) *Annual individual allocations.* Each fishing year, the Regional Administrator shall determine the initial annual allocation of surfclams and ocean quahogs for the next fishing year for each ITQ permit holder holding ITQ quota share pursuant to the requirements of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the quota share percentage held by each ITQ permit holder as of the last day of the previous fishing year in which quota shareholders are permitted to permanently transfer quota share percentage pursuant to paragraph (b) of this section (*i.e.*, October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.72. The total number of bushels of annual allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.77. Amounts of annual allocation of 0.5 cages or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of annual allocation greater than 0.5 cages created by this division shall be rounded upward to the nearest whole number, so that annual allocations are specified in whole cages.

(1) *Surfclam and ocean quahog ITQ permits.* Surfclam and ocean quahog ITQ allocations shall be issued in the form of annual ITQ permits. The ITQ permit shall specify the quota share percentage held by the ITQ permit holder and the annual allocation in cages and cage tags for each species.

(i) *Eligibility.* In order to be eligible to hold a surfclam or ocean quahog ITQ permit, an individual must be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

(ii) *Application*—(A) *General*. Applicants for a surfclam or ocean quahog ITQ permit under this section must submit a completed ITQ permit application and a completed ITQ ownership form on the appropriate forms obtained from NMFS. The ITQ permit application and ITQ ownership form must be filled out completely and signed by the applicant. The Regional Administrator will notify the applicant of any deficiency in the application.

(B) *Renewal applications*. Applications to renew a surfclam or ocean quahog ITQ permit must be received by November 1 to be processed in time for permits to be issued by December 15, as specified in paragraph (a)(1)(iii) of this section. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An ITQ permit holder must renew his/her ITQ permit(s) on an annual basis by submitting an application and an ownership form for such permit prior to the end of the fishing year for which the permit is required. Failure to renew a surfclam or ocean quahog ITQ permit in any fishing year will result in any surfclam or ocean quahog ITQ quota share held by that ITQ permit holder to be considered abandoned and relinquished as specified in paragraph (a)(1)(ix) of this section.

(C) *Lenders Holding ITQ Quota Share as Collateral*. A bank or other lender that holds ITQ quota share as collateral on a loan may be allowed to provide less detailed information on the ITQ ownership form under the following conditions.

(1) The lender certifies that the ITQ quota share is held solely as collateral on a loan and the lender does not exert any control over the use of the annual allocation of cage tags.

(2) The lender identifies the borrower, and the borrower maintains a valid ITQ permit including all required ownership information.

(3) The lender may only transfer quota share or cage tags to the identified borrower. The borrower could then transfer the quota share or cage tags to another party, if desired.

(iii) *Issuance*. Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is

submitted by November 1, as specified in paragraph (a)(1)(ii)(B) of this section, NMFS shall issue annual ITQ permits on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.77(b).

(iv) *Duration*. An ITQ permit is valid through December 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904, or revised due to a transfer of all or part of the ITQ quota share or cage tag allocation under paragraph (b) of this section.

(v) *Alteration*. An ITQ permit that is altered, erased, or mutilated is invalid.

(vi) *Replacement*. The Regional Administrator may issue a replacement permit upon written application of the annual ITQ permit holder.

(vii) *Transfer*. The annual ITQ permit is valid only for the person to whom it is issued. All or part of the ITQ quota share or the cage tag allocation specified in the ITQ permit may be transferred in accordance with paragraph (b) of this section.

(viii) *Fee*. The Regional Administrator may, after publication of a fee notification in the FEDERAL REGISTER, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(ix) *Abandonment or voluntary relinquishment*. Any ITQ permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to renew in accordance with paragraph (a)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year, except as specified in paragraph (a)(1)(x) of this section.

(x) *Transitional grace period*. A surfclam or ocean quahog quota share holder who does not submit a complete application for an ITQ permit before the end of the 2016 fishing year, may be granted a grace period of up to one year to complete the initial application process, and be issued an ITQ permit, before the quota share is considered permanently relinquished. If an individual is issued a 2016 ITQ permit, but fails to renew that ITQ permit before the end of the 2017 fishing year,

the Regional Administrator may allow a grace period until no later than July 1, 2018, to complete the renewal process and retain the permit. A permit holder may not be issued cage tags or transfer quota share until a valid ITQ permit is issued. Failure to complete the ITQ permit application or renewal process, and be issued a valid ITQ permit before the end of such a grace period would result in the ITQ permit and any associated ITQ quota share being permanently forfeit.

(2) *ITQ ownership caps.* (i) *Quota share.* A business or individual is not eligible to be issued an ITQ permit and is not eligible to acquire additional quota share, if, as a result of the issuance of the permit or quota share transfer, the business or individual, or any other person who is a shareholder or partner, or their immediate family member, would individually or collectively have an ownership interest in more than 35 percent of the total surfclam quota or 40 percent of the total ocean quahog quota.

(ii) *Cage tags.* A business or individual is not eligible to be issued an ITQ permit and is not eligible to acquire additional cage tags, if, as a result of the issuance of the permit or cage tag transfer, the business or individual, or any other person who is a shareholder or partner, or their immediate family member, would individually or collectively have an ownership interest in more than 65 percent of the total surfclam cage tags issued that year or 70 percent of the total ocean quahog cage tags issued that year.

(iii) *Enforcement.* The following conditions apply for the purposes of monitoring and enforcing these caps.

(A) Any partial or shared ownership is counted as full ownership by each party for the purpose of monitoring these caps. For example, if two people share ownership of a business with quota share, the full amount of quota share held by the business counts toward the cap for both owners.

(B) Having an ownership interest includes, but is not limited to, persons who are shareholders in a corporation that holds an ITQ permit, who are partners (general or limited) to an ITQ permit holder, who are immediate family members of an ITQ permit holder,

or who, in any way, partly own an entity that holds an ITQ permit.

(C) Immediate family members include individuals connected by the following relationships:

- (1) Spouse, and parents thereof;
- (2) Children, and spouses thereof;
- (3) Parents, and spouses thereof;
- (4) Siblings, and spouses thereof; and
- (5) Grandparents and grandchildren, and spouses thereof.

(D) The quota share and cage tag caps do not apply to a bank or other lender that holds ITQ quota share as collateral on a loan as described in paragraph (a)(1)(i)(C) of this section. The quota share held as collateral and the associated cage tags will be treated as if it is held by the borrower.

(E) Compliance with these ownership caps is based on the total amount of quota share or cage tags controlled throughout a fishing year. In this instance, control means the cumulative total amount of quota share or cage tags, including the amount held by the ITQ permit at the start of the fishing year plus any quota share or cage tags acquired by the ITQ permit throughout the fishing year. This measure of control during the fishing year is increased by acquiring quota share or cage tags from other ITQ permits, but is not reduced by any quota share or cage tags that are transferred to another ITQ permit.

(iv) *Review.* The MAFMC shall review these ITQ ownership cap measures at least every 10 years, or sooner as needed. Such a review should include an evaluation of the effects and effectiveness of the caps in the fishery and whether the cap levels remain appropriate or should be adjusted.

(b) *Transfers*—(1) *Quota share percentage.* Subject to the approval of the Regional Administrator, part or all of a quota share percentage may be transferred in the year in which the transfer is made, to any person or entity with a valid ITQ permit under paragraph (a) of this section. Approval of a transfer by the Regional Administrator and for a new ITQ permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new ITQ permit to the Regional Administrator at least 10 days before the date on

which the applicant desires the transfer to be effective, in the form of a completed transfer form supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised ITQ permit from the Regional Administrator reflecting the new quota share percentage. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to §648.77 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) *Denial of ITQ transfer application.* The Regional Administrator may reject an application to transfer surfclam or ocean quahog ITQ quota share or cage tags for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid surfclam or ocean quahog ITQ permit for the appropriate species; the transfer is not allowed under paragraph (a)(1)(ii)(C)(3) of this section; the transferor's or transferee's surfclam or ocean quahog ITQ permit has been sanctioned pursuant to an enforcement proceeding under 15 CFR part 904; the transfer would result in exceeding an ownership cap under paragraph (a)(2) of this section; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer ITQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(c) *ITQ cost recovery*—(1) *General.* The cost recovery program collects fees of up to three percent of the ex-vessel value of surfclams or ocean quahogs harvested under the ITQ program in accordance with the Magnuson-Stevens Act. NMFS collects these fees to recover the actual costs directly related to the management, data collection,

and enforcement of the surfclam and ocean quahog ITQ program.

(2) *Fee responsibility.* If you are an ITQ permit holder who holds ITQ quota share and receives an annual allocation pursuant to paragraph (a) of this section, you shall incur a cost recovery fee, based on all landings of surfclams or ocean quahogs authorized under your initial annual allocation of cage tags. You are responsible for paying the fee assessed by NMFS, even if the landings are made by another ITQ permit holder (*i.e.*, if you transfer cage tags to another individual who subsequently uses those tags to land clams). If you permanently transfer your quota share, you are still responsible for any fee that results from your initial annual allocation of cage tags even if the landings are made after the quota share is permanently transferred.

(3) *Fee basis.* NMFS will establish the fee percentages and corresponding per-tag fees for both the surfclam and ocean quahog ITQ fisheries each year. The fee percentages cannot exceed three percent of the ex-vessel value of surfclams and ocean quahogs harvested under the ITQ fisheries pursuant to section 304(d)(2)(B) of the Magnuson-Stevens Act.

(i) *Calculating fee percentage.* In the first quarter of each calendar year, NMFS will calculate the fee percentages for both the surfclam and ocean quahog ITQ fisheries based on information from the previous year. NMFS will use the following equation to annually determine the fee percentages: Fee percentage = the lower of 3 percent or  $(DPC/V) \times 100$ , where:

(A) "DPC," or direct program costs, are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of the ITQ program. "Actual incremental costs" mean those costs that would not have been incurred but for the existence of the ITQ program. If the amount of fees collected by NMFS is greater or lesser than the actual incremental costs incurred, the DPC will be adjusted accordingly for calculation of the fee percentage in the following year.

(B) "V" is the total ex-vessel value from the previous calendar year attributable to the ITQ fishery.

(ii) *Calculating per-tag fee.* To facilitate fee collection, NMFS will convert the annual fee percentages into per-tag fees for both the surfclam and ocean quahog ITQ fisheries. NMFS will use the following equation to determine each per-tag fee:  $\text{Per-Tag Fee} = (\text{Fee Percentage} \times V)/T$ , where:

(A) “T” is the number of cage tags used, pursuant to § 648.77, to land shellfish in the ITQ fishery in the previous calendar year.

(B) “Fee percentage” and “V” are defined in paragraph (c)(3)(i) of this section.

(C) The per-tag fee is rounded down so that it is expressed in whole cents.

(iii) *Publication.* During the first quarter of each calendar year, NMFS will announce the fee percentage and per-tag fee for the surfclam and ocean quahog ITQ fisheries, and publish this information on the Regional Office Web site ([www.greateratlantic.fisheries.noaa.gov](http://www.greateratlantic.fisheries.noaa.gov)).

(4) *Calculating individual fees.* If you are responsible for a cost recovery fee under paragraph (c)(2) of this section, the fee amount is the number of ITQ cage tags you were initially allocated at the start of the fishing year that were subsequently used to land shellfish multiplied by the relevant per-tag fee, as described in paragraph (c)(3)(ii) of this section. If no tags from your initial allocation are used to land clams you will not incur a fee.

(5) *Fee payment and collection.* NMFS will send you a bill each year for any applicable ITQ cost recovery fee.

(i) *Payment due date.* You must submit payment within 30 days of the date of the bill.

(ii) *Payment method.* You may pay your bill electronically using a credit card or direct Automated Clearing House withdrawal from a designated checking account through the Federal web portal, [www.pay.gov](http://www.pay.gov), or another internet site designated by the Regional Administrator. Instructions for electronic payment will be included with your bill and are available on the payment Web site. Alternatively, payment by check may be authorized by the Regional Administrator if he/she determines that electronic payment is not practicable.

(6) *Payment compliance.* If you do not submit full payment by the due date, NMFS will notify you in writing via an initial administrative determination (IAD) letter.

(i) *IAD.* In the IAD, NMFS will:

(A) Describe the past-due fee;

(B) Describe any applicable interest charges that may apply;

(C) Provide you 30 days to either pay the specified amount or submit an appeal; and

(D) Include instructions for submitting an appeal.

(ii) *Appeals.* If you wish to appeal the IAD, your appeal must:

(A) Be in writing;

(B) Allege credible facts or circumstances;

(C) Include any relevant information or documentation to support your appeal; and

(D) Be received by NMFS no later than 30 calendar days after the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of the business on the next business day. Your appeal must be mailed or hand delivered to the address specified in the IAD.

(iii) *Final decision—(A) Final decision on your appeal.* If you appeal an IAD, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on your appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator, acting on behalf of the Secretary of Commerce, will issue a written decision on your appeal which is the final decision of the Department of Commerce.

(B) *Final decision if you do not appeal.* If you do not appeal the IAD within 30 calendar days, NMFS will notify you via a final decision letter. The final decision will be from the Regional Administrator and is the final decision of the Department of Commerce.

(C) *If the final decision determines that you are out of compliance.* (1) The Regional Administrator may, at any time thereafter, disapprove any application to transfer quota share or cage tags under § 648.74(b), and prohibit issuance of the surfclam or ocean quahog ITQ permit for subsequent years, until the outstanding balance is paid in full.

(2) The final decision will require full payment within 30 calendar days.

(3) If full payment is not received within 30 calendar days of issuance of the final decision, NMFS may refer the matter to the appropriate authorities for the purposes of collection or enforcement.

(7) *Annual report.* NMFS will publish annually a report on the status of the ITQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, data collection, and enforcement of the surfclam and ocean quahog ITQ program, and other relevant information at the discretion of the Regional Administrator.

[80 FR 42751, July 20, 2015, as amended at 81 FR 38973, June 15, 2016; 87 FR 71529, Nov. 22, 2022]

**§ 648.75 Shucking at sea and minimum surfclam size.**

(a) *Shucking at sea—(1) Observers.* (i) The Regional Administrator may allow the shucking of surfclams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surfclams and ocean quahogs harvested in the shell prior to shucking.

(ii) Any vessel owner may apply in writing to the Regional Administrator to shuck surfclams or ocean quahogs at sea. The application shall specify: Name and address of the applicant; permit number of the vessel; method of calculating the amount of surfclams or ocean quahogs harvested in the shell; vessel dimensions and accommodations; and length of fishing trip.

(iii) The Regional Administrator shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(iv) Any observer shall certify at the end of each trip the amount of surfclams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(2) *Conversion factor.* (i) Based on the recommendation of the MAFMC, the Regional Administrator may allow shucking at sea of surfclams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surfclams or ocean quahogs harvested in the shell.

(ii) The Regional Administrator shall publish notification in the FEDERAL REGISTER specifying a conversion factor, together with the data used in its calculation, for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Administrator may publish final notification in the FEDERAL REGISTER specifying the conversion factor.

(iii) If the Regional Administrator makes the determination specified in paragraph (a)(2)(i) of this section, he/she may authorize the vessel owner to shuck surfclams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

(b) *Minimum surfclam size—(1) Minimum length.* The minimum length for surfclams is 4.75 inches (12.065 cm).

(2) *Determination of compliance.* No more than 50 surfclams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surfclams in any inspected cage of surfclams 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.

(3) *Suspension.* Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the FEDERAL REGISTER, the minimum shell-length standard, unless discard, catch, and survey data indicate that 30 percent of the surfclams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell length is not attributable to beds where the growth of individual