

comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.24(b)(4) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 9, 2016.

**Alan D. Risenhoover,**

*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. 150902808-6451-02]

RIN 0648-BF04

#### Fisheries of the Northeastern United States; Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan

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

**ACTION:** Final rule.

**SUMMARY:** This final rule approves and implements management measures contained in Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. Amendment 17 management measures were developed by the Mid-Atlantic Fishery Management Council to: Add cost recovery provisions for the Individual Transferable Quota component of the fishery; modify how biological reference points are incorporated into the fishery management plan; and remove the plan's optimum yield range. These changes are intended to make the management plan consistent with requirements of the Magnuson-Stevens Act, and to improve the management of these fisheries.

**DATES:** This rule is effective July 15, 2016.

**ADDRESSES:** Copies of Amendment 17 and the Environmental Assessment (EA), with its associated Finding of No Significant Impact (FONSI) and the Regulatory Impact Review (RIR), are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The Amendment 17 EA/FONSI/RIR is also

accessible online at: [www.greateratlantic.fisheries.noaa.gov](http://www.greateratlantic.fisheries.noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, 978-281-9341.

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule concurrently approves Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) on behalf of the Secretary of Commerce and finalizes implementing regulations. The Mid-Atlantic Fishery Management Council developed this amendment to establish a program to recover the costs of managing the surfclam and ocean quahog individual transferable quota (ITQ) fisheries, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make administrative changes to improve the efficiency of the FMP. We published a notice of availability on February 24, 2016 (81 FR 9159), announcing a 60-day period for the public to review and provide written comments on whether we, acting on behalf of the Secretary of Commerce, should approve Amendment 17. This comment period ended on April 25, 2016. On March 16, 2016, we published a proposed rule (81 FR 14072) to implement the amendment, and solicited written comments on the proposed rule for a 30-day period, which ended on April 15, 2016.

We reviewed all comments received during these comment periods, whether directed at our approval decision or the proposed regulations. See Comments and Responses section for more information. Now, on behalf of the Secretary of Commerce, we are approving and implementing Amendment 17, consistent with the review and approval process outlined in section 304 of the Magnuson-Stevens Act (16 U.S.C. 1854).

##### Cost Recovery Program

The Magnuson-Stevens Act requires each limited access privilege program (LAPP), such as the surfclam/ocean quahog ITQ program, to include measures to recover the costs of management, data collection and analysis, and enforcement activities involved with the program. This action implements a cost recovery program for the surfclam and ocean quahog ITQ fisheries modeled on the Council's existing cost recovery program for the Tilefish Individual Fishing Quota (IFQ) Program.

Under the program, any surfclam or ocean quahog ITQ permit holder who has quota share (*i.e.*, receives an initial

allocation of cage tags each year) will be responsible for paying a fee at the end of the year. The fee will be based on the number of the ITQ permit holder's cage tags that were used to land clams that year. In the first quarter of each year, the Greater Atlantic Regional Fisheries Office (GARFO) will announce the fee percentage and the associated per-tag fee for that year, and distribute this announcement widely, and distribution will include posting the announcement online and sending it to each ITQ permit holder. Annual fee information will not be published in the **Federal Register**. The fee percentage will be based on the total recoverable costs from the prior fiscal year, adjusted for any prior over- or under-collection, divided by the total ex-vessel value of the fishery. The resulting percentage cannot exceed the 3-percent statutory maximum. Then NMFS will calculate a per-tag fee based on the total number of cage tags used to land surfclams or ocean quahogs in the previous year. This tag fee will be separate from, and in addition to, the price ITQ permit holders currently pay to the tag vendor to obtain the physical cage tags each year. If an ITQ permit holder transfers some or all of his or her cage tags or quota share after the start of the fishing year, they will still be liable for any cost recovery fee based on landings of the initial allocation of cage tags.

This process includes an inherent assumption that a similar number of cage tags will be used each year. While the fishery has been largely stable over time, many factors (*e.g.*, weather events, market demand, etc.) may result in the use of more or fewer tags in any given year. As a result, we fully anticipate that, in some years, we will collect more or less money than is necessary to recover our costs. Refunding over-collections and issuing supplemental bills to make up for shortfalls would increase the cost of administering the fishery, which would increase the amount charged in bills the following year. To avoid these additional costs, we will apply any over- or under-collection to our calculation of recoverable costs and per-tag fees for the following year. Our communications with ITQ permit holders each year will make clear that any prior over- or under-collection adjustments will be incorporated into the following year's cost-recovery billing.

Under the cost recovery program established by this final rule, at the start of the 2017 calendar year, we will use the total recoverable costs from the 2016 fiscal year (October 1, 2015, through September 30, 2016) and the total value of the fisheries in the 2016 calendar year

to calculate fee percentages for both surfclam and ocean quahogs. We will then use the total number of tags used during the 2016 calendar year to determine a per-tag fee for the 2017 calendar year.

In early 2018 (most likely February or March) we will issue the first cost recovery bills based on the previously announced per-tag fee and the number of cage tags that were used to land surfclams or ocean quahogs in 2017. At

the same time, we will announce the fee percentage and per-tag fees for the 2018 fishing year. This anticipated timeline is detailed in Table 1.

TABLE 1—SURFLAM AND OCEAN QUAHOG COST RECOVERY IMPLEMENTATION TIMELINE

Date	Anticipated action
October 2015 .....	We began tracking recoverable costs for surfclam and ocean quahog ITQ fisheries during fiscal year 2016.
March 2017 .....	We will announce the 2017 cost recovery per-tag fee, based on recoverable costs in fiscal year 2016 and the total number of cage tags used in calendar year 2016.
March 2018 .....	We will issue a 2017 bill to each ITQ permit holder based on the previously announced per-tag fee and how many of the ITQ permit holder's 2017 cage tags were used to land clams.
March 2018 .....	Concurrent with issuing bills for 2017, we will announce the 2018 cost recovery per-tag fee, based on costs in fiscal year 2017 (adjusted for any anticipated over- or under-collection) and the total number of cage tags used in calendar year 2017.
Subsequent years .....	Each year, we will issue bills for the previous fishing year and announce the cost recovery per-tag fee for the current fishing year.

Cost recovery bills will be due within 30 days of the date of the bill, and must be paid using the GARFO fishing industry Web site: Fish Online ([www.greateratlantic.fisheries.noaa.gov/apps/login/login](http://www.greateratlantic.fisheries.noaa.gov/apps/login/login)). Fish Online is a secure Web site and we provide a username and password for individuals to access their accounts. Members of the fishing industry may use the site to check details about their fishing permit and landings. The Web page has been used since 2010 to collect cost recovery payments for the Tilefish IFQ and Limited Access General Category Scallop IFQ fisheries. Cost recovery bills may be paid with a credit card or with an account number and routing number from a bank account, often referred to as an Automated Clearing House or ACH payment. Once bills are issued, ITQ permit holders will be able to log onto Fish Online and access the Cost Recovery section. Payments made through Fish Online are processed using the U.S. Treasury Department's Pay.gov tool, and no bank account or credit card information is retained by NMFS. We will not be able to accept partial payments or advance payments before bills are issued. We do not anticipate that other payment methods will be accepted, as the current payment system has been effective for other cost recovery programs. However, other payment methods may be authorized if the Regional Administrator determines that electronic payment is not practicable.

The cost recovery program implemented by this final rule includes procedures in case an ITQ permit holder should fail to pay their cost recovery bill. If a bill is not paid by the due date, NMFS would issue a demand letter, formally referred to as an initial

administrative determination. This letter would describe the past-due fee, describe any applicable interest or penalties that may apply, stipulate a 30-day deadline to either pay the amount due or submit a formal appeal to the Regional Administrator, and provide instructions for submitting such an appeal. If no appeal is submitted by the deadline, the Regional Administrator would issue a final determination based on the information already on file. An appeal must be submitted in writing, allege credible facts or circumstances, and include any relevant information or documentation to support the appeal. If an appeal is submitted, the Regional Administrator would appoint an appeals officer to determine if there is sufficient information to support the appeal and that all procedural requirements have been met. The appeals officer would then review the record and issue a recommendation to the Regional Administrator. The Regional Administrator, acting on behalf of the Secretary of Commerce, would then review the appeal and issue a written decision. If the Regional Administrator's final determination (whether or not there was an appeal) finds that ITQ permit holder is out of compliance, full payment would be required within 30 days. Following a final determination, we may also prohibit any transfer of cage tags or quota share, or renewal of the ITQ permit until full payment, including any interest or penalties, is received. If full payment is not received within this final 30-day period as required, we may then refer the matter to the Department of Treasury for collection.

Each year NMFS will issue a report on the status of the ITQ cost recovery program. This report will provide

details of the recoverable costs to be collected, the success of previous collection efforts, and other relevant information.

*Biological Reference Points*

Under National Standard 1, the Magnuson-Stevens Act requires that each Council FMP define overfishing as a rate or level of fishing mortality (F) that jeopardizes a fishery's capacity to produce maximum sustainable yield (MSY) on a continuing basis, and defines an overfished stock as a stock size that is less than a minimum biomass threshold (see 50 CFR 600.310(e)(2)). The Magnuson-Stevens Act also requires that each FMP specify objective and measurable status determination criteria (*i.e.*, biological reference points (BRPs)) for identifying when stocks covered by the FMP are overfished or subject to overfishing (see section 303(a)(10), 16 U.S.C. 1853). To fulfill these requirements, status determination criteria are comprised of two components: (1) A maximum fishing mortality threshold; and (2) a minimum stock size threshold.

This action modifies how these BRPs are incorporated in the FMP. Rather than using specific definitions, the FMP will now include broad criteria to allow for greater flexibility in incorporating changes to the definitions of the maximum fishing mortality threshold and/or minimum stock size threshold as the best scientific information becomes available, consistent with National Standards 1 and 2. The Council has already adopted this approach in several of its other FMPs, and this change will make the Surfclam and Ocean Quahog FMP consistent with these other FMPs. Further details of this change were provided in the preamble to the proposed rule and are not repeated here.

### *Optimum Yield*

This action removes the optimum yield ranges (1.85–3.40 million bushels (98.5 to 181.0 million L) for surfclam, and 4.00–6.00 million bushels (213.0 to 319.4 million L) for ocean quahog) from the FMP, as explained in detail in the preamble to the proposed rule. As part of the normal specifications process, the Council's Scientific and Statistical Committee will recommend Acceptable Biological Catch limits, and the Surfclam and Ocean Quahog Advisory Panel will develop recommendations for commercial quotas, including optimum yield recommendations. This information will be provided to the Council to inform its decisions regarding annual catch limits, catch targets, and commercial harvest quotas.

### *Corrections and Clarifications*

Apart from the management measures in Amendment 17, this action modifies the Atlantic surfclam and ocean quahog regulations pursuant to the Secretary's authority under section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)) to ensure that FMPs are implemented as intended and consistent with the requirements of the Magnuson-Stevens Act. This action modifies the regulations at 50 CFR 648.11(a) so that vessels holding a Federal permit for Atlantic surfclam or ocean quahog are included on the list of vessels required to carry a NMFS-certified fisheries observer if requested by the Regional Administrator. A detailed explanation for this change was provided in the preamble of the proposed rule and is not repeated here.

In addition, this final rule includes corrections for two minor errors in the existing regulations that were not addressed in the proposed rule. These corrections (for an error in a cross-reference and a conversion error) are described below in more detail.

### *Changes From the Proposed Rule*

As mentioned above, this final rule corrects two minor errors in the regulations that were not mentioned in the proposed rule. After publication of the proposed rule, two minor errors were discovered in the current surfclam and ocean quahog regulations. A cross reference in § 648.75(a)(2)(iii) refers to the wrong sub-paragraph, and § 648.76(a) contains an erroneous conversion from nautical miles to kilometers. Both errors, which were inadvertently introduced by a September 29, 2011, final rule (76 FR 60606), are corrected in this final rule.

We also have modified a portion of the proposed rule language that would

add a new paragraph (c) to the existing regulations at § 648.74, pertaining to the consequences for failing to pay a cost recovery fee. The proposed rule language at § 648.74(c)(6)(iii)(C)(1) would have authorized NMFS to suspend an ITQ permit for non-payment until the outstanding fee is paid in full. As a result of suspension of an ITQ permit for non-payment, the ITQ permit holder would have been prohibited from transferring quota share or cage tags and from using any previously issued cage tags. In addition, renewal of the permit could be prohibited in subsequent years until payment is received. The resulting prohibition on using previously issued cage tags for the current fishing year was potentially more punitive than necessary, and was inconsistent with other catch share programs that we administer around the country. Therefore, the language of this final rule at § 648.74(c)(6)(iii)(C)(1) does not authorize suspension of the current ITQ permit, but instead authorizes the Regional Administrator to disapprove any application to transfer quota share or cage tags to or from the ITQ permit holder and to deny issuance of an ITQ permit in subsequent years, until full payment is received. Thus, the current ITQ permit would remain valid and any previously issued cage tags could continue to be used to land clams for the remainder of that fishing year.

### *Comments and Responses*

A total of five comments were received on the proposed rule and notice of availability. One commenter did not address the proposed action, but was generally opposed to commercial fishing and our management of the resource. The four other comments were submitted by members and representatives of the commercial surfclam and ocean quahog industry. All four letters made similar points, which are discussed by topic.

*Comment 1:* Commenters from the clam industry assert that the Magnuson-Stevens Act only requires collection of the incremental costs of a LAPP, and that if those costs are negative then no cost recovery program is necessary. To support this position, they cite the 2010 NOAA Catch Share Policy document. The commenters state that the costs of managing the clam fishery are significantly lower now, under the ITQ, than they were in the 1980s. As a result, they assert that cost recovery is not necessary and should not be imposed on the surfclam and ocean quahog ITQ program.

*Response:* The 2010 NOAA Catch Share Policy document represents a series of guiding principles for

consideration when developing a catch share program. It does not, however, have the force of law or represent binding requirements for all catch share programs. In discussions of cost recovery, the document does state that the relevant costs for cost recovery would be the incremental costs of the catch share program, and describes how those costs may be determined using a before and after comparison, effectively describing the net costs of the program. This language was taken from the 2007 report "The Design and Use of Limited Access Privilege Programs," by editors Lee Anderson and Mark Holliday (NOAA Technical Memorandum NMFS-F/SPO-86). Since the publication of the 2007 report, it has become common to use the terms "recoverable costs" and "incremental costs" interchangeably. However, there are several problems with using this approach to determining recoverable costs in a LAPP.

The Magnuson-Stevens Act does not use the term "incremental costs" when addressing cost recovery in LAPPs. Section 304(d)(2)(A) of the Act requires the Secretary to "collect a fee to recover the *actual costs* directly related to the management, data collection, and enforcement" (emphasis added) of any LAPP. The GARFO has consistently advised the Council that this requirement is best interpreted to refer to costs that are specific to the LAPP, and that would not have been incurred if the fishery was not managed as a LAPP. This approach is consistently applied across other LAPPs in the Greater Atlantic Region. For the surfclam and ocean quahog ITQ program, these costs would include the costs of issuing and renewing ITQ permits, processing cage tag transfers, and tracking cage tag usage. There are always some new tasks associated with a new LAPP, so while these costs could be low they could not be negative.

*Comment 2:* One commenter claims that the cost recovery program will require the industry to pay for at-sea observers.

*Response:* As described in the previous response, we have determined that the recoverable costs are for tasks that would not be conducted if not for the ITQ program. Current observer coverage in the surfclam and ocean quahog fisheries is based on the standardized bycatch reporting methodology (SBRM). Coverage specified under the SBRM is paid for by the Federal Government through NMFS. The SBRM is a requirement for all fisheries managed by the Council and is not specific to the ITQ. Therefore, the cost of SBRM observer coverage would

not be considered recoverable under this program.

*Comment 3:* The four members of the clam industry that provided comments express opposition to the proposed change to how BRPs are incorporated into the FMP. The commenters maintain that this change is discretionary on the part of the Council, that the proposed criteria for acceptable peer review is not rigorous enough, and that any change could lead to instability in the management of these fisheries.

*Response:* As mentioned above, National Standard 1 guidelines direct all FMPs to specify BRPs, and National Standard 2 requires all conservation and management measures to be based on the best scientific information available. Under the current specifications process, when new BRPs are identified through an approved scientific review, they are used in setting management measures consistent with National Standard 2, even though they may differ from the BRPs in the FMP. This can lead to inconsistencies between the information in the FMP and what is used for management, and such inconsistencies can linger and cause confusion for years before an appropriate FMP amendment is developed and implemented. The Council has elected to use a broad and standardized list of potential peer review processes for establishing new BRPs. This allows the Council to maintain some consistency between FMPs, while ensuring that the best available scientific information is readily available for use in decision making, but does not mean that all potential peer review processes are equally applicable to every stock the Council manages. Consistent with the process now used by the Council and its SSC, each stock assessment is evaluated based on the information available and how well it performs relative to previous assessments. This change to the FMP does not reduce the scientific rigor needed to establish BRPs for the surfclam and ocean quahog stocks. We acknowledge that this change to the Council's FMP is discretionary, as it is not specifically mandated by any statute. However, the Council is free to determine how best to manage its fisheries and to make such modifications to its FMPs, if those changes are consistent with applicable law. Because updated BRPs are already used in setting management measures for surfclam and ocean quahog, regardless of the BRPs that are formally stated in the FMP, the modification will have no practical impact on the specification-setting process. The change implemented by this final rule

will make the plan consistent with other Council FMPs and established practice.

*Comment 4:* The four members of the clam industry that provided comment express opposition to the proposed removal of the optimum yield ranges for surfclams and ocean quahogs and support for the no-action alternative. The commenters state that the change is unnecessary and that they are concerned that removing the optimum yield ranges from the FMP could result in significant and rapid changes in harvest quotas.

*Response:* As stated in the previous response, the Council has the flexibility to determine how best to manage its fisheries and to make such modifications to its FMPs, if those changes are consistent with applicable law. As discussed in the preamble of this rule, the current optimum yield ranges specified in the FMP have been in place for many years and no longer reflect our understanding of the biology of the stocks. Because the optimum yield ranges in the FMP are not connected to the maximum sustainable yield, the use of the term is inconsistent with how the term "optimum yield" is used in the current National Standard 1 guidance. For these reasons, the Council has opted to remove the ranges from the FMP. The industry's preference for a constant harvest strategy is well known, and the Council is free to factor that preference into its specifications-setting process and support consistent harvest quotas for surfclams and ocean quahogs. The surfclam and ocean quahog industry has consistently been an invaluable partner in the successful management of these species. We are confident that this partnership will continue in the future, and that the Council will give full consideration to the preferences of the industry when considering harvest quotas.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Administrator, Greater Atlantic Region, NMFS, has determined that this final rule is consistent with Amendment 17, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the

proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 9, 2016.

**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 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 § 648.11, revise paragraph (a) to read as follows:

##### § 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section.

\* \* \* \* \*

■ 3. In § 648.72, revise paragraph (a) introductory text and paragraph (a)(1) to read as follows:

##### § 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas.* The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are

modified in the interim pursuant to paragraph (b) of this section.

(1) *Quota reports.* On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP for up to a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the quotas.

(ii) Fishing mortality rates relative to the quotas.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

\* \* \* \* \*

■ 4. In § 648.74, add paragraph (c) to read as follows:

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

\* \* \* \* \*

(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: 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.

■ 5. In § 648.75, revise paragraph (a)(2)(iii) to read as follows:

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

- (a) \* \* \*
- (2) \* \* \*

(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.

\* \* \* \* \*

■ 6. In § 648.76, revise paragraph (a)(1) to read as follows:

**§ 648.76 Closed areas.**

- (a) \* \* \*

(1) *Boston Foul Ground*. The waste disposal site known as the “Boston Foul Ground” and located at 42°25’36” N. lat., 70°35’00” W. long., with a radius of 1 nm (1.852 km) in every direction from that point.

\* \* \* \* \*

■ 7. In § 648.79, revise paragraph (a)(1) to read as follows:

**§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.**

- (a) \* \* \*

(1) *Adjustment process*. The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC’s recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; and suspension or adjustment of the surfclam minimum size limit. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

\* \* \* \* \*

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