

requirements of S6(a) need not be met for vehicles manufactured before October 1, 2008. The standard's pull-to-close switch operability requirements of S6(c) need not be met for vehicles manufactured before October 1, 2010.

\* \* \* \* \*  
S6. \* \* \*  
\* \* \* \* \*

(c) Any actuation device for closing a power-operated window must operate by pulling away from the surface in the vehicle on which the device is mounted. An actuation device for closing a power-operated window must operate only when pulled vertically up (if mounted on the top of a horizontal surface), or out (if mounted on a vertical surface), or down (if mounted on the underside of an overhead surface), or in a direction perpendicular to the surrounding surface if mounted in a sloped orientation, in order to cause the window to move in the closing direction.

\* \* \* \* \*

Issued: July 1, 2008.

**Nicole R. Nason,**  
*Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No 080630803-8805-01]

RIN 0648-AW99

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Expansion 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; expansion of effective area; request for comments.

**SUMMARY:** This action expands an area currently closed to the harvest of bivalve shellfish, except for sea scallop adductor muscles harvested and shucked at sea, identified in a temporary final rule initially published on October 18, 2005. The regulations contained in the temporary rule, emergency action, published on October

18, 2005, and subsequently extended several times at the request of the U.S. Food and Drug Administration (FDA), were effective through December 31, 2008. This temporary rule supersedes the previous rule. This rule will expire on December 29, 2008. This temporary rule expands the closure area of Federal waters previously closed since the original emergency closure. The FDA has determined that current oceanographic conditions and alga sampling data warrant expanding the Northern Temporary Paralytic Shellfish Poison (PSP) Closure Area to encompass the current closure area and an adjacent area in the Federal waters southeast of Massachusetts around Nantucket Island and eastward to the George's Bank PSP Closure Area. This expanded area is closed to the harvest of bivalve molluscan shellfish, except for sea scallop adductor muscles harvested and shucked at sea. The remaining segment of the Southern Temporary PSP Closure Area continues to be closed to the harvest of whole or roe-on scallops only.

**DATES:** Effective from July 2, 2008 to December 29, 2008. Comments must be received by August 6, 2008.

**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 <http://www.nero.noaa.gov/nero/hotnews/redtide/index.html>.

You may submit comments, identified by RIN 0468-AW99, by any one of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark on the outside of the envelope, "Comments on PSP Closure."

- Fax: (978) 281-9135.

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business

Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Edward Stern, Fishery Management Specialist, phone: (978) 281-9177, fax: (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

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 by incorporating a provision that allowed for 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 a provision that divided the Temporary PSP Closure Area into northern and southern components. The Northern Temporary PSP Closure Area remained closed to the harvest of all bivalve molluscan shellfish, while the Southern Temporary PSP Closure Area was reopened to the harvest of Atlantic surfclams, ocean quahogs, and sea scallop adductor muscles harvested and shucked at sea. 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); January 4, 2007 (72 FR 291); June 27, 2007 (72 FR 35200); and December 31, 2007 (72 FR 74207). On May 18, 2007, the FDA indicated that it could not support the re-opening of the Northern Temporary PSP Closure Area due to insufficient analytical data from the area, and recommended the area remain closed indefinitely.

##### Provisions Implemented under this Emergency Rule

On June 25, 2008, NMFS received a request from the FDA to revise and expand the Northern Temporary PSP Closure Area after samples of shellfish

from the inshore and offshore waters off of the coast of 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.

Oceanographic conditions and alga sampling data warrant revising and expanding the Northern Temporary PSP Closure Area to encompass the current closure area and an adjacent area in the Federal waters southeast of Massachusetts around Nantucket Island, and eastward to the George's Bank PSP Closure Area. 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.

Based on the information provided by the FDA, the National Marine Fisheries Service implements this emergency rule to revise and expand the Northern Temporary PSP Closure Area to include Federal waters southeast of Massachusetts surrounding Nantucket Island, and eastward to the current Georges Bank PSP Closure Area, bound by the coordinates specified in Table 1, below. The boundaries of the original Northern Temporary PSP Closure area and the December 31, 2008 expiration date for this area, which was established in the emergency rule published on December 31, 2007 (72 FR 74207), is superseded by this emergency rule. The revised and expanded Northern Temporary PSP Closure Area is closed to the harvest of Atlantic surfclams, ocean quahogs, and whole or roe-on scallops until December 29, 2008.

TABLE 1: COORDINATES FOR THE EXPANDED NORTHERN TEMPORARY PSP CLOSURE AREA.

Point	Latitude	Longitude
1	43°00'N	71° 00' W
2	43°00'N	69° 00' W
3	41°00'N	69° 00' W
4	41°00'N	70° 30' W
5	41°39'N	70° 30' W
6	41°39'N	71° 00' W
7	43°00'N	71° 00' W

The remaining section of the Southern Temporary PSP Closure Area remains open to the harvest of bivalve molluscan shellfish, except for whole or roe-on scallops. The boundaries of the Southern Temporary PSP Closure Area comprise Federal waters bound by the coordinates specified in Table 2, below. Under this emergency rule, the remaining segment of the Southern

Temporary PSP Closure Area remains closed only to the harvest of whole or roe-on scallops.

TABLE 2: COORDINATES FOR THE SOUTHERN TEMPORARY PSP CLOSURE AREA

Point	Latitude	Longitude
1	41°39'N	71° 00' W
2	41°39'N	70° 30' W
3	41°00'N	70° 30' W
4	41°00'N	69° 00' W
5	40°00'N	69° 00' W
6	40°00'N	71° 00' W
7	41°39'N	71° 00' W

#### 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. Without the immediate implementation of this emergency rule, the public health would be in danger of illness or death from contaminated shellfish harvested in the revised and expanded Northern Temporary PSP Closure Area. 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. Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. In the past, people have become seriously ill and some have died from consuming contaminated shellfish. It is necessary to waive the 30-day delay in effectiveness to prevent the harvest of contaminated shellfish to ensure the protection of public health. This emergency rule will expire December 29, 2008, prompting a review of the closure by NMFS and FDA. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, this emergency action may remain effective through subsequent renewal and publication in the **Federal Register** 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 this case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action. 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 determined that the results of its tests warranted such action. This modification is also at the request of the FDA. 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.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

This rule is not significant for the purposes of Executive Order 12866.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 1, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries, 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 § 648.14, paragraphs (a)(170) and (a)(171) are suspended and paragraphs (a)(181) and (a)(182) are added to read as follows:

#### § 648.14 Prohibitions.

(a) \* \* \*

(181) 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 area 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°00'N. lat., 69°00'W. long.;

- (iv) 41°00'N. lat., 70°30'W. long.;
- (v) 41°39'N. lat., 70°30'W. long.;
- (vi) 41°39'N. lat., 71°00'W. long.; and then ending at the first point.

(182) 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., 70°30'W. long.;
- (iii) 41°00'N. lat., 70°30'W. long.;
- (iv) 41°00'N. lat., 69°00'W. long.;
- (v) 40°00'N. lat., 69°00'W. long.;
- (vi) 40°00'N. lat., 71°00'W. long.; and then ending at the first point.

\* \* \* \* \*

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