

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
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**Person County (Unincorporated Areas)**

Maps are available for inspection at the Person County Planning and Zoning Department, 20A Court Street, Roxboro, North Carolina.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 22, 2006.

**David I. Maurstad,**

*Director Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 050613158-5262-03; I.D. 090105A]

**RIN 0648-AT48**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Extension of Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning**

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

**ACTION:** Temporary rule; emergency action; extension of effective period.

**SUMMARY:** This action reinstates a temporary final rule published on October 18, 2005. The regulations contained in the temporary rule, emergency action, published on October 18, 2005, at the request of the U.S. Food and Drug Administration (FDA) and that were subsequently extended on December 28, 2005, and again on June 30, 2006, expire on December 31, 2006. This temporary rule extends the closure through June 30, 2007. The FDA has determined that current oceanographic conditions and alga sampling data suggests that the northern section of the Temporary Paralytic Shellfish Poison (PSP) Closure Area remain closed to the harvest of bivalve molluscan shellfish and that the southern area remain

closed to the harvest of whole or roe-on scallops. NMFS is publishing the regulatory text associated with this closure in this temporary emergency rule in order to ensure that current regulations accurately reflect the codified text that has been modified and extended numerous times so that the public is aware of the regulations being extended through June 30, 2007.

**DATES:** The amendment to § 648.14 is effective from January 1, 2007, to June 30, 2007. The expiration date of the temporary emergency action published on June 30, 2006 (71 FR 37505), is extended to June 30, 2007. Comments must be received by February 5, 2007.

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

Comments may be submitted by any of the following methods:

- *E-mail:* [PSPclosure2@NOAA.gov](mailto:PSPclosure2@NOAA.gov). Include the subject line the following: "Comments on the October Emergency Rule for Area closures Due to PSP."
- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on October PSP closure."
- *Fax:* (978) 281-9135.

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

**SUPPLEMENTARY INFORMATION:****Background**

This emergency closure was implemented at the request of the FDA after samples of shellfish from the inshore and offshore waters off of the coasts of New Hampshire and Massachusetts tested positive for the toxins (saxotoxins) that cause Paralytic Shellfish Poisoning (PSP). These toxins are produced by the algae *Alexandrium fundyense* that can form blooms commonly referred to as red tides. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP.

On June 10, 2005, the FDA requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption. On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA, *i.e.*, the Temporary PSP Closure Area, through September 30, 2005. On July 7, 2005 (70 FR 39192), the emergency rule was modified to facilitate the testing of shellfish for the toxin that causes PSP by the FDA and/or FDA-approved laboratories through the issuance of a Letter of Authorization (LOA) from the Regional Administrator. On September 9, 2005 (70 FR 53580), the emergency regulation was once again modified by the division of the Temporary PSP Closure Area into northern and southern components. The northern area remained closed to the harvest of all bivalve molluscan shellfish while the southern component was reopened to the harvest of Atlantic surfclams and ocean quahogs but remained closed to the harvest of whole or roe-on scallops. The rule was extended as published on September 9, 2005, on October 3, 2005 (70 FR 57517), reinstated on October 18, 2005 (70 FR 60450) to correct a technical error, extended on December 28, 2005 (70 FR 76713), and subsequently on June 30, 2006 (71 FR 37505), through December

31, 2006. On December 27, 2006, the FDA indicated that they could not support the re-opening of the Temporary PSP Closure Area due to insufficient analytical data from the area.

The boundaries of the northern component of the temporary closure area comprise Federal waters bound by the following coordinates in the order stated: (1) 43°00' N. lat., 71°00' W. long.; (2) 43°00' N. lat., 69°00' W. long.; (3) 41°39' N. lat., 69°00' W. long.; (4) 41°39' N. lat., 71°00' W. long., and then ending at the first point. Under this emergency rule this area would remain closed to the harvest of Atlantic surfclams, ocean quahogs, and whole or roe-on scallops. The boundaries of the southern component of the temporary closure area comprise Federal waters bound by the following coordinates in the order stated: (1) 41°39' N. lat., 71°00' W. long.; (2) 41°39' N. lat., 69°00' W. long.; (3) 40°00' N. lat., 69°00' W. long.; (4) 40°00' N. lat., 71°00' W. long., and then ending at the first point. Under this temporary emergency rule, this southern component of the area would remain closed only to the harvest of whole or roe-on scallops.

#### Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c) (Magnuson-Stevens Act). The original emergency closure was in response to a public health emergency. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, the closure to the harvest of shellfish, as modified on September 9, 2005, and re-instated on October 18, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided the public has had an opportunity to comment after the regulation was published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action.

During the initial comment period, June 16, 2005, through August 1, 2005, no comments were received. One comment was received after the re-opening of the southern component of the Temporary PSP Closure Area on September 9, 2005. The commenter expressed reluctance to re-opening a portion of the closure area without seeing the results of the FDA tests. Data used to make determinations regarding closing and opening of areas to certain types of fishing activity are collected from Federal, state, and private laboratories. NOAA maintains a Red Tide Information Center ([http://www.cop.noaa.gov/news/fs/ne\\_hab\\_200605.html](http://www.cop.noaa.gov/news/fs/ne_hab_200605.html)) which can be accessed directly or through the Web site listed in the **ADDRESSES** section. Information on test results, modeling of algal bloom movement, and general background on red tide can be accessed through this information center. While NMFS is the agency with the authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the request of the FDA, after the FDA has determined that the results of its tests warranted such action. If necessary, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D) of the Magnuson-Stevens Act, by publication in the **Federal Register** of a notice of termination, or extended further to ensure the safety of human health.

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

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 28, 2006.

**John Oliver,**

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

For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, paragraphs (a)(170) and (a)(171) are added to read as follows:

#### § 648.14 Prohibitions.

(a) \* \* \*

(170) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels with the exception of sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated: (1) 43° 00' N. lat., 71° 00' W. long.; (2) 43° 00' N. lat., 69° 00' W. long.; (3) 41° 39' N. lat., 69° 00' W. long.; (4) 41° 39' N. lat., 71° 00' W. long., and then ending at the first point.

(171) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops except for sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated: (1) 41° 39' N. lat., 71° 00' W. long.; (2) 41° 39' N. lat., 69° 00' W. long.; (3) 40° 00' N. lat., 69° 00' W. long.; (4) 40° 00' N. lat., 71° 00' W. long., and then ending at the first point.

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[FR Doc. 06-9975 Filed 1-3-07; 8:45 am]

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