

SUMMARY: NMFS is correcting dates referenced in the preamble to the proposed rule for Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP), which published in the **Federal Register** on June 10, 2010. The dates being corrected refer to the decision date for the FMP amendments and the end date for the public comment period on the two amendments. Amendment 20 would establish a trawl rationalization program for the Pacific Coast groundfish fishery. Amendment 21 would establish fixed allocations for limited entry (LE) trawl participants.

DATES: Effective June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206–526–4656; (fax) 206–526–6736; Jamie.Goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Need for Correction

Some dates referenced in the preamble to the proposed rule for the trawl rationalization program (75 FR 32994, June 10, 2010) regarding the decision date for the FMP amendments and the end date for the public comment period need to be corrected. In two places in the preamble to the proposed rule, NMFS had instructed the **Federal Register** to “Insert date XX days after date of publication of the NOA in the FEDERAL REGISTER.” The **Federal Register** inserted dates that were calculated from the proposed rule rather than the notice of availability (NOA) (75 FR 26702, May 12, 2010). NMFS has since learned that the **Federal Register** cannot calculate dates between two publications; in this case, between the NOA and the proposed rule. The erroneous dates show up on page 32994 of the published proposed rule as September 8, 2010, and August 9, 2010. They should read August 10, 2010, and July 12, 2010, respectively.

Accordingly, the preamble to the proposed rule, published on June 10, 2010, at 75 FR 32994, on page 32994, third column, second paragraph after “Electronic Access,” is corrected to read as follows:

“Although this proposed rule would implement only certain portions of Amendments 20 and 21, NMFS is reviewing both Amendments 20 and 21 in their entirety. On May 12, 2010, NMFS published a notice of availability of Amendments 20 and 21, and—consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—must make a decision to approve, disapprove, or partially approve the amendments by August 10, 2010. Comments on the approvability of

the amendments must be submitted to NMFS by July 12, 2010. This preamble provides information about the full contents of each amendment for the purposes of promoting informed public comment. Detailed provisions regarding features of the proposed rule are provided where applicable. In addition, section IV of this preamble highlights what the main regulatory changes would be.”

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

Dated: June 24, 2010

Samuel D. Rauch III,

*Deputy Assistant Administrator For
Regulatory Programs, National Marine
Fisheries Service.*

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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; Surfclam
and Ocean Quahog Fishery**

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to open a portion of the Georges Bank (GB) Closed Area to the harvest of Atlantic surfclams and ocean quahogs, which has been closed since 1990 due to the presence of toxins known to cause paralytic shellfish poisoning (PSP). The U.S. Food and Drug Administration (FDA) has indicated that recent testing of clams collected from this portion of the GB Closed Area, known as Cultivator Shoal, has demonstrated that PSP toxin levels are well below the regulatory limit established for public health safety. As a result, the FDA has determined that harvesting of surfclams and ocean quahogs for human consumption, within this portion of the GB Closed Area, is safe.

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on July 30, 2010.

ADDRESSES: You may submit comments, identified by RIN number 0648–AY71, by any of the following methods:

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

- Fax: (978) 281–9135, Attn: Anna Macan.

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Proposed Opening of GB PSP Closed Area.”

Instructions: All comments received are 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 via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Anna Macan, Fishery Management Specialist, phone (978) 281–9165, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The GB Closed Area, located in the Exclusive Economic Zone east of 69°00' W. longitude and south of 42°20' N. latitude (see attachment), has been closed to the harvest of surfclams and ocean quahogs since 1990 due to red tide blooms that cause PSP. The closure was implemented based on advice from the FDA, after samples tested positive for toxins (saxotoxins) that cause PSP. PSP toxins are produced by the alga, *Alexandrium fundyense*, that 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 Surfclam and Ocean Quahogs Fishery Management Plan (FMP). In addition, NMFS also established temporary PSP closure areas, specified at § 648.14(a)(10)(iii) and (iv), that have been in effect since 2005. NMFS has relied on the FDA's advice to open/close

or shift these temporary PSP closure areas. 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) that is designed to test and verify that clams harvested from the 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. As of May 6, 2010, five commercial Surfclam trips for the 2010 fishing year have been conducted under the EFP, in which at-sea and dockside sampling conducted in accordance with the Protocol tested negative for PSP toxin levels, thus permitting the surfclams harvested from these trips to enter the food market.

On January 21, 2010, NMFS received a letter from the FDA requesting NMFS open a portion of the GB Closed Area, as specified at 50 CFR 648.73(a), to the harvest of surfclams and ocean quahogs

for human consumption. The FDA has indicated that recent testing of clams from this portion of the GB Closed Area, known as Cultivator Shoal, has demonstrated that PSP toxin levels are well below the regulatory limit established for public health safety. This information contributed to the FDA's determination that harvesting of surfclams and ocean quahogs for human consumption from the area described below is safe.

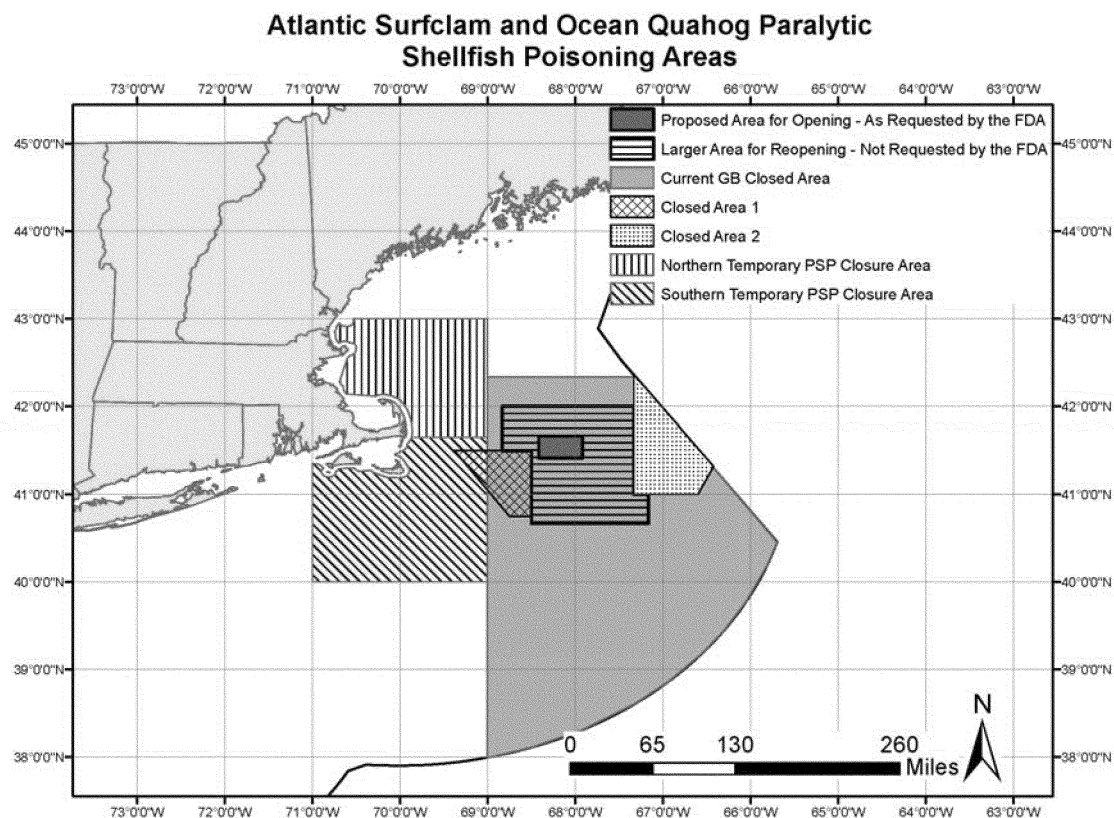
The FDA requests, and NMFS proposes, to open the Federal waters, bounded by the coordinates listed in the Table 1. The remaining portion of the GB Closure Area would remain closed.

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Table 1: Coordinates of Proposed Opening of GB Area

Point	Latitude	Longitude
1	41° 40' N	68° 25' W
2	41° 40' N	67° 55' W
3	41° 39' N	67° 55' W
4	41° 39' N	68° 25' W

Figure 1: Chart Depicting Proposed Opening of GB Area



About a month after NMFS received the letter from the FDA, NOS issued a forecast, on February 24, 2010, that the NOAA-funded Gulf of Maine Toxicity Project predicted a larger regional HAB for the spring and summer of 2010. NMFS, however, defers to the FDA in matters of the public health and has relied on their advice to initially implement the GB Closure, and has also been relying on the FDA's advice to open/close or shift the temporary PSP closure areas specified at § 648.14(a)(10)(iii) and (iv) that have been in effect since 2005. Since NMFS defers to the FDA in matters of the public health, NMFS proposes to open the portion of the GB Closed Area, known as Cultivator Shoal, to the harvest of surfclams and ocean quahogs, under its authority at § 648.73(c). NMFS will, however, continue to observe the NOS forecast and, in addition to seeking public comment, will consult with both the FDA and NOS prior to making a final decision on whether to re-open this area.

In addition, while NMFS proposes to re-open a portion of the GB Closed Area as requested by the FDA, NMFS also recognizes that red-tide events can vary inter-annually. For that reason, NMFS has prepared an environmental assessment (EA), which analyzes the proposed re-opening and an additional larger area within the GB Closed Area, to cover the possibility that the FDA's proposed opening could shift or vary, depending on a change in conditions. Given the temporal nature of PSP conditions, NMFS is seeking public comment on whether this proposed opening should be made effective.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NMFS prepared a draft Environmental Assessment (EA) for this action, which

analyzes the impacts of this proposed rule. A copy of the draft EA is available from the Federal e-Rulemaking portal <http://www.regulations.gov>. Type "NOAA-NMFS-2010-0104" in the Enter Keyword or ID field and click search. A copy of the EA is also available upon request from NMFS Northeast Regional Administrator, Patricia A. Kurkul (see ADDRESSES).

This proposed 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed measures could affect any vessel holding an active Federal open access surfclam and/or ocean quahog permit. In 2009, there were 47 Federal open-access surfclam and/or ocean quahog permitted vessels that landed surfclams and/or ocean quahogs. All of these vessels fall within the definition of a small business. This action proposes to open an area that has previously been closed. Since the area is well offshore, it is likely that the larger vessels (i.e., vessels greater than 90 ft (27.43 meters) in length) would more likely target the surfclams and ocean quahogs from the GB Closed Area. The surfclam and ocean quahog fishery is managed under an Individual Transferable Quota (ITQ) system, and since overall quotas are not being changed as a result of this action, there would be no net change in harvest. Participating vessels, regardless of size, would still be able to fish in any of the existing areas open to the harvest of surfclams and ocean quahogs. Those vessels that may fish in the area proposed to be opened may experience increased operational costs, if they choose to fish there, however, these costs, may be offset due to increased productivity in effort because of greater abundance of surfclams and ocean quahogs in the GB Closed Area. In addition, for the past 3 years, NMFS has issued an Exempted Fishing Permit (EFP) for one vessel to harvest surfclams using the FDA-approved Protocol for Onboard Screening and Dockside Testing in Molluscan Shellfish. Since NMFS has issued an EFP to harvest surfclams within the GB Closed Area, and given their higher value, it is likely that vessels would continue this trend in targeting surfclams from the GB Closed Area. Due to the seasonal variability of PSP toxin levels, it is likely that

any or all of the areas associated with this action may open or close based on PSP conditions. Given this uncertainty as to whether the area will remain open, it is not anticipated that there would be an increase in participation in the fishery due to the opening of this area.

Therefore, because this action only proposes to re-open an area that has previously been closed, and because no net change in fishing effort or participation in the fishery is expected, this action will not have a significant economic effect on a substantial number of small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 23, 2010

Eric C. Schwaab,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.73, paragraph (a)(4) is revised to read as follows:

§ 648.73 Closed areas.

(a) ***

(4) *Georges Bank*. The paralytic shellfish poisoning (PSP) contaminated area, which is located in Georges Bank, and is located east of 69° W. longitude, and south of 42°20' N. latitude is closed to the harvest of surfclams and ocean quahogs, except for the areas bounded by the following coordinates in the order stated:

- (i) 41° 40' N. lat., 68° 25' W. long.;
 - (ii) 41° 40' N. lat., 67° 55' W. long.;
 - (iii) 41° 39' N. lat., 67° 55' W. long.;
 - (iv) 41° 39' N. lat., 68° 25' W. long.;
- and then ending at the first point.

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