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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130822745-5611-02]

RIN 0648-BD64

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries

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

ACTION: Final rule.

SUMMARY: This final rule implements an information collection program for the Atlantic surfclam and ocean quahog fisheries. The information collection program is intended to obtain more detailed information about individuals and businesses that hold fishery quota allocation in these individual transferable quota fisheries. This action is necessary to ensure that the Mid-Atlantic Fishery Management Council has the information needed to develop a future management action intended to establish an excessive share cap in these fisheries.

DATES: Effective January 1, 2016.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Greater Atlantic Regional Fisheries Office and by e-mail to OIRA_Submission@omb.eop.gov,

or fax to (202) 395-7285.

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

SUPPLEMENTARY INFORMATION:

Background

Section 402(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement an information collection program if a fishery management council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan (FMP). The Mid-Atlantic Fishery Management Council formally requested that NMFS implement an information collection program in the Atlantic surfclam and ocean quahog individual transferable quota (ITQ) fisheries. The purpose of this information collection is to better identify individuals who hold or control ITQ allocation in these fisheries. The Council will use the information collected to inform the development of a future management action intended to establish an excessive share cap as part of the Council's Surfclam/Ocean Quahog FMP.

Currently, NMFS collects only basic information about the individuals or businesses that hold surfclam and ocean quahog ITQ allocations. This information is collected at the time that an entity first acquires ITQ allocation and is not routinely verified or updated. The information collection program implemented in this action is intended to identify the specific individuals who have an ownership interest in surfclam or ocean quahog ITQ allocation through a corporation, partnership, or other business entity, or control the use of ITQ allocation through the use of long-term contracts or other agreements. This action also ensures that the ownership information on

file remains up to date by modifying the procedures for receiving and maintaining an ITQ permit.

This action also makes minor corrections and clarifications to the surfclam and ocean quahog regulations.

Final Measures

Full details and background on the measures in this rule are explained in the proposed rule published on August 7, 2014 (79 FR 46233), and are not repeated here.

1. Surfclam/Ocean Quahog ITQ Permit Annual Renewal

This final rule revises the regulations at § 648.74 to change the validity period for ITQ Permits. ITQ permits will now expire at the end of the year and need to be renewed annually. This annual renewal requirement better ensures that ITQ-related information is kept current. Expired permits are eligible for renewal until the last day of the year for which they are needed. Permits not renewed by the deadline are considered voluntarily relinquished and will have their quota share and eligibility permanently revoked. This is commonly referred to as a “renew or lose” provision. To renew a permit, an annual ITQ permit application must be completed. The ITQ permit application form requires information such as the applicant’s name, address, telephone number, and date of birth (or taxpayer identification number for businesses). ITQ permit holders are also required to verify that they are eligible to own a U.S. Coast Guard documented vessel, as defined under 46 U.S.C. 12103(b), which serves as a check of U.S. citizenship or corporate control by U.S. citizens.

2. New Surfclam/Ocean Quahog ITQ Ownership Form

This final rule implements a new ITQ ownership form that must be submitted along with the ITQ permit application form for a permit to be issued. This form is being implemented to

capture detailed ownership information, such as information on bank-held shares and identification of corporate officers, major shareholders, and partners as well as any immediate family members who also hold ITQ permits. Corporations or other business entities that hold an ITQ permit will be required to identify their corporate officers and all shareholders who have a 10-percent or larger stake in the company.

3. ITQ Transfer Form Changes

This action modifies the existing ITQ transfer form to collect more detailed financial information about transactions in which ITQ is transferred. Information about the allocation holder is removed, as that is now collected through the ITQ permit application and the ITQ ownership form. The ITQ transfer form now clarifies whether or not a permanent transfer of ITQ quota share includes all of the cage tags for the current fishing year. This action also adds additional questions to better understand the nature of the transfer. This includes a requirement to submit total price paid for the transfer, including any fees; broker fees paid, if applicable; whether the transfer is part of a long-term (more than 1 year) contract; if so, the duration of the contract and whether the price is fixed or flexible; and any other conditions on the transfer.

4. Regulatory Corrections and Clarifications

This final rule revises the regulations at § 648.74(a)(1)(i) to correct a cross reference to 46 U.S.C. 12103(b), which defines the persons or entities that are eligible to own a documented vessel. This rule also corrects several cross references in § 648.14(j) to other sections of the regulations in part 648 pertaining to surfclam and ocean quahogs. Finally, the regulations at § 648.74(b)(3) specifying when the Regional Administrator may deny a transfer of ITQ quota share or cage tags have been made more detailed and clear.

The new permit requirements in this rule are effective with the start of the next fishing year on January 1, 2016. However, the new forms will be distributed in early fall to give ITQ permit holders ample time to complete and submit the forms in order to receive their 2016 ITQ permits and 2016 cage tags before the start of the fishing year. Many ITQ shareholders choose to submit cage tags transfer requests in December, ahead of the new fishing year, so they can be processed and ready before January 1. We will continue to work to accommodate these requests for the industry.

Comments and Responses

We published a proposed rule in the **Federal Register** on August 7, 2014, and accepted public comments until September 8, 2014. After the comment period closed, the Council requested that we reopen the comment period to allow for additional public comment to be submitted after the proposed action was discussed at a Council meeting. In response, we published an announcement in the **Federal Register** on October 2, 2014 (79 FR 59472), announcing that the comment period was reopened until October 17, 2014. Altogether, we received comments from 23 individuals. Nearly all of the comments received were from the surfclam and ocean quahog industry including dealers, processors, harvesters, and surfclam and ocean quahog consumer product producers and manufacturers. All of these comments generally opposed the information collection program, and raised very similar issues. Related comments have been combined in our summary of comments and responses below. Two comments received generally supported the program, but provided no supporting information. The Mid-Atlantic Fishery Management Council submitted a comment informing us of a motion that was made at the Council meeting on October 7, 2014, regarding the information collected on the ITQ transfer form.

Comment 1: Numerous comments expressed concern that an excessive share cap is not necessary for these fisheries, and, therefore, there is no reason to collect additional information to help determine such caps.

Response: Two sections of the Magnuson-Stevens Act address the need to prevent an individual or corporation from acquiring an excessive share of fishing privileges: National Standard 4 and section 303A(c)(5)(D). Amendment 8 to the Atlantic Surfclam and Ocean Quahog FMP, which established the ITQ fishery in 1990, cited existing anti-trust laws as being sufficient to meet the requirements of National Standard 4, “that no particular individual, corporation, or other entity acquires an excessive share of such privileges.” Section 303A was added to the Act by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. This section contains provisions and requirements for Limited Access Privilege Programs (LAPPS), which include ITQ programs. These added provisions include section 303A(c)(5)(D)(i), which requires LAPPS to ensure limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program, by “establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use.” Because the FMP does not currently include an excessive share cap expressed as a percentage of the total allocated quota, it is out of compliance with this provision of the Magnuson-Stevens Act.

This information collection program is an important part of the Council’s efforts to establish a cap that meets this requirement. See the response to Comment 2 for additional rationale for why this information collection is necessary.

Comment 2: Several comments expressed concern that we are generally collecting too much information and that it is not necessary or applicable in helping determine excessive

shares. These comments expressed concern that we should not collect this information because it involves business transactions that should be confidential.

Response: We understand that this information collection includes more specific detail than is collected in other fisheries in the region. However, prior reports and analyses for these fisheries suggest this information is necessary and appropriate to determine current ownership and control of allocations in these fisheries. In the surfclam and ocean quahog fisheries, there is a series of complex corporate and business relationships involving control of quota shares. A 2002 GAO report on this ITQ program suggested that NMFS did not gather sufficient ownership information to appropriately characterize the amount of consolidation in the fishery. In 2011, NMFS and the MAFMC contracted an economic consulting firm to examine and report on potential excessive share caps in this fishery (Mitchell, Peterson and Willig. *Recommendations for Excessive Share Limits in the SCOQ Fisheries*. May 3, 2011), and subsequently convened a panel of independent reviewers to evaluate the report (*Summary of Findings by the Center for Independent Experts Regarding Setting Excessive Share Limits for ITQ Fisheries*; www.nefsc.noaa.gov/publications/crd/crd1122/). In a series of public meetings, a special Council workgroup met and considered the recommendations of these reports, reviewed how ownership information is collected in other fisheries around the country, reviewed the information currently collected in this fishery, and then devised a suite of data elements that would provide the information the Council would need when developing an excessive shares cap. These recommendations were detailed in a white paper that was considered and approved by the Council. Without the additional information this action will collect, the Council may not have the information necessary to make informed decisions on excessive share caps. When the Council ultimately establishes an excessive shares cap, it is possible that not all of these data

elements will be necessary to effectively monitor the cap. At that time, this collection will be reevaluated, and data elements may be added, removed, or modified to address the specific information needed to monitor the cap.

We agree that some business transactions are confidential. Pursuant to section 402(b) of the Magnuson-Stevens Act, information submitted in compliance with the Act is confidential, and would not be distributed or made publicly available. These confidentiality requirements of the Magnuson-Stevens Act apply to information collected as a result of this action. Therefore, the collected information may be used to conduct analysis by NMFS, or Council staff who are subject to confidentiality agreements. Results of this analysis could only be presented in an aggregate form, which protects any confidential information.

Comment 3: Nearly all of the comments received against this action were opposed to the provision that ITQ quota share could be considered permanently relinquished if the shareholder's ITQ permit is not renewed before the end of the fishing year. These comments explain that banks and other lending institutions hold much of the ITQ quota share in the surfclam and ocean quahog fisheries. Commenters expressed concern that lenders could view the potential loss of quota share as an unacceptable investment risk. Commenters stated this could result in the banks leaving the industry and discontinuing investment in the Atlantic surfclam and ocean quahog fisheries. These commenters further asserted that it is too easy to make an administrative error of not renewing a permit which would result in unfair loss of valuable ITQ quota share.

Response: NMFS understands that there are concerns with losing the fishing rights associated with ITQ quota share if a permit is not renewed. However, based on the comments received, there appears to be a misunderstanding of how this provision would function. While a number of these comments seemed to be under the impression the rights to a permit would be

lost immediately following the permit's expiration date, this is not the case. To clarify, an ITQ permit and quota share are not lost the day the permit expires. Although the permit cannot be used to harvest fish after it has expired, the applicant is eligible to renew the permit for the entire following year before the permit would be considered surrendered. For example, if an ITQ permit expires on December 31, 2015, the applicant has until December 31, 2016, to renew the permit before it is considered surrendered. It would not be surrendered when it expires on December 31, 2015.

All limited access vessel permits in the Greater Atlantic Region have been subject to these renew-or-lose provisions since they were implemented in the mid-1990s. The Golden Tilefish Individual Fishing Quota program has operated under renew-or-lose provisions for tilefish quota share since the program's inception in 2010. If a permit is not renewed, NMFS makes multiple attempts to notify the permit holder of the need to renew the permit well before the deadline. Permanent loss of fishing rights has occurred for these other fisheries. However, loss of the right to a permit is rarely due to a clerical error such as simply forgetting to renew a permit. We believe such instances are infrequent given the system that provides a year to renew after permit expiration and multiple reminders prior to loss of fishing rights.

Further, the ITQ permit must be current and valid in order for ITQ to be traded or for fishing activity to occur using ITQ. In 2014, there were 41 ocean quahog ITQ permits with quota share and 70 surfclam ITQ permits with quota share. Of these 111 ITQ permits, all but 15 transferred allocation, used cage tags to land clams, or otherwise participated in the fishery in a manner that will now require a current valid permit. The majority of those permits not used in 2014, were used in the preceding two years. Therefore, it is likely that most if not all permits will be renewed each year in order for ITQ shareholders to continue participating in the fishery

as they have in previous years. As a result, there would be little to no threat of an ITQ shareholder permanently losing his/her quota share.

Certainly, lenders will continue to evaluate investment risk as it relates to these fisheries. We believe it unlikely that investors will find the “renew or lose” provision to be an additional risk that would preclude investment.

Comment 4: The Council submitted a comment informing us of a motion approved at the October 2014 Council meeting to request we remove much of the information to be collected on the ITQ transfer form.

Response: While the motion was supported by a majority of the Council members present, the vote was not unanimous and there were members who expressed a strong interest in having this information available when they consider an excessive shares cap. Removing these fields from the ITQ transfer form would be contrary to the recommendations in the white paper prepared by the Council’s special workgroup and the 2011 report *Economic Guidelines for Excessive Share Limits in the Surfclam and Ocean Quahog Fisheries*. Currently, no information is collected on the financial aspects of allocation transfers in the surfclam and ocean quahog ITQ fishery. Similar programs around the country routinely collect information about the price paid for allocation. This information can provide valuable insight into the market for quota or long-term contracts and agreements that would not otherwise be apparent. These additional details about transfers can illuminate situations where individuals or companies exert effective control over ITQ allocation, even if they do not directly hold the quota share.

As mentioned above in the response to Comment 2, we anticipate that the specific data elements will be reevaluated and revised when an excessive share cap is implemented. For these reasons, we continue to support the inclusion of all of the proposed elements of this information

collection program, at least for the short term. Therefore, this action implements the ITQ transfer form as described in the proposed rule.

Changes from Proposed Rule

There are no substantive changes from the measures described in the proposed rule. The preamble to the proposed rule explained that banks holding quota share as collateral on a loan would not need to provide as much detail about ownership if the borrower maintains a valid ITQ permit and the bank could only transfer quota share or cage tags to the borrower. However, the regulatory text in the proposed rule did not fully reflect these requirements. These requirements have been added at § 648.74(a)(1)(ii)(C) and (b)(3) in this final rule to reflect these provisions as they were described in the preamble of the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this action is necessary for the conservation and management of the Atlantic surfclam and ocean quahog fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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 would not have a significant economic impact on a substantial number of small entities. The factual basis for this 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.

This final rule contains a change to a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648-0240: Northeast Region Surfclam and Ocean Quahog Individual Transferable Quota (ITQ) Administration. The public reporting burden is estimated to average 5 minutes per response for the application for surfclam/ocean quahog ITQ permit; 60 minutes per response for new entrants completing the surfclam/ocean quahog ITQ ownership form and to average 5 minutes per response when the form is pre-filled for renewing entities; and the application to transfer surfclam/ocean quahog ITQ are estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The costs burden associated for all of the requirements is \$.49 per submission for postage. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 14, 2015

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 § 648.14, revise paragraphs (j)(1)(ii), (j)(2)(i), (j)(3)(v), (j)(3)(vi), (j)(5)(ii), (j)(5)(iv), (j)(5)(v), (j)(6)(ii), and (j)(6)(iii) to read as follows:

§ 648.14 Prohibitions.

(j)***

(1)***

(ii) Shuck surfclams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Administrator under the terms of § 648.75.

(2) *Transfer and purchase.* (i) Receive for a commercial purpose other than solely for transport on land, surfclams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.74, unless issued a dealer/processor permit under this part.

(3)***

(v) Possess an empty cage to which a cage tag required by § 648.77 is affixed, or possess any cage that does not contain surfclams or ocean quahogs and to which a cage tag required by § 648.77 is affixed.

(vi) Land or possess, after offloading, any cage holding surfclams or ocean quahogs without a cage tag or tags required by § 648.77, unless the person can demonstrate the inapplicability of the presumptions set forth in § 648.77(h).

(5)***

(ii) Land unshucked surfclams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.74.

(iv) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into

cages, unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.74.

(v) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after the effective date published in the *Federal Register* notifying participants that Maine mahogany quahog quota is no longer available for the respective fishing year, unless the vessel is fishing for an individual allocation of ocean quahogs under § 648.74.

(6)***

(ii) Surfclams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.74(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.74.

(iii) Surfclams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and are deemed to be part of an individual's allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.74; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surfclam and ocean quahog permit issued under § 648.4 and he/she conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this part, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.74 or § 648.77(b).

3. Revise § 648.74 to read as follows:

§ 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) [Reserved]

(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; 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.

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