

and the draft Amendment 2 to the Consolidated HMS FMP is reopened. Comments must be received by 5 p.m. on December 17, 2007.

**ADDRESSES:** You may submit comments, identified by 0648-AU89, by any one of the following methods:

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

- Email to [ShkA2@noaa.gov](mailto:ShkA2@noaa.gov).

- Fax: 301-713-1917, Attn: Michael Clark

- Mail: Attn: Michael Clark, HMS Management Division (SF1), 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comment on Amendment 2."

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 in Microsoft Word, Excel, WordPerfect, PowerPoint, or Adobe PDF file formats only.

Copies of the draft Amendment 2 to the Consolidated HMS FMP and other relevant documents are available on the HMS Management Division's website at [www.nmfs.noaa.gov/sfa/hms](http://www.nmfs.noaa.gov/sfa/hms) or by contacting the HMS Management Division at 301-713-2347.

**FOR FURTHER INFORMATION CONTACT:** For more information concerning the draft Amendment 2 to the Consolidated HMS FMP and its proposed rule, contact: Michael Clark at 301-713-2347 or fax 301-713-1917; or Jackie Wilson at 240-338-3936 or fax 404-806-9188.

**SUPPLEMENTARY INFORMATION:** The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Consolidated HMS FMP, finalized in 2006, and amendments to that FMP are implemented by regulations at 50 CFR part 635.

On July 27, 2007 (72 FR 41392), NMFS published a proposed rule that requested comments on the draft Amendment 2 to the Consolidated HMS FMP, and scheduled 10 public hearings throughout August and September 2007 to receive comments from fishery participants and other members of the

public regarding the proposed rule and draft Amendment 2 to the Consolidated HMS FMP. On October 3, 2007 (72 FR 56330), the comment period was extended from October 15, 2007, to November 2, 2007.

At the October 2007 HMS Advisory Panel (AP) meeting, AP members asked a number of questions regarding the proposed measures that would require fishermen to land sharks with all fins naturally attached. Specifically, AP members asked how this requirement would relate to the Shark Finning Prohibition Act and its implementing regulations. In order to provide evidence that sharks were actually landed with their fins attached, NMFS is considering modifying shark dealer weigh-out slips so that dealers can document when they receive sharks landed with fins naturally attached. NMFS recently released a document that discusses this issue entitled "Clarification of the Proposed Rule Regarding Landing Sharks with the Fins Attached and the Shark Finning Prohibition Act," which is available on the HMS website (see **ADDRESSES**) and was distributed to the HMS listserve.

Throughout the comment period, NMFS has received thousands of comments on the full range of analyzed alternatives, including the status of the stocks, proposed quotas, proposed shark landing requirements, and the proposed list of allowable shark species for recreational anglers. NMFS has also received suggestions on modifying the proposed measures to minimize impacts on fishermen. Specifically, one group of commenters, including the Gulf of Mexico Fishery Management Council and the Atlantic States Marine Fisheries Commission, suggest implementing two regions (i.e., a Gulf of Mexico region and an Atlantic region). In general, these comments were made in light of the blacktip shark status in the Gulf of Mexico and the large overharvests in the Gulf of Mexico during 2007. NMFS has not fully analyzed the implications of the two regions versus the proposed one region or the status quo alternative of three regions. Nonetheless, NMFS welcomes additional comments on this suggestion.

Finally, NMFS is clarifying that any overharvests in 2007 or 2008 would be accounted for in final measures implementing Amendment 2 to the Consolidated HMS FMP, consistent with both the current and proposed regulations. NMFS continues to accept comments on any of the proposed measures and on those measures that comments were specifically requested, including the proposed list of species that recreational anglers would be

allowed to land, the amount of time proposed to provide notice of closures, and the 80 percent trigger for closing commercial shark fisheries.

In order to provide additional opportunities for public comment, NMFS is reopening the public comment period on the proposed rule and draft Amendment 2 to the Consolidated HMS FMP until 5 p.m., December 17, 2007.

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2007.

**John Oliver,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No.070717342-7504-01]

RIN 0648-AV42

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Proposed 2008-2010 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes quotas for the Atlantic surfclam and ocean quahog fisheries for 2008, 2009, and 2010. Regulations governing these fisheries require NMFS to publish the proposed quota specifications for the 2008-2010 fishing years and seek public comment on such proposed measures. The intent of this action is to propose allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on December 17, 2007.

**ADDRESSES:** Copies of supporting documents, including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic

Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. A copy of the RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov/nero/regs/com.html>.

You may submit comments, identified by RIN 0648-AV42, 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 SC/OQ Proposed Specifications."

- 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 (forexample, 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:**

Brian R. Hooker, Fishery Policy Analyst, 978-281-9220.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclams and ocean quahogs for a 3-year period, with an annual review, from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine ocean quahogs (locally known as mahogany quahogs) to the management unit, and provided for a small artisanal fishery for ocean quahogs in the waters north of 43° 50' N. lat. with an annual quota within a range of 17,000 to 100,000 Maine bu (5,991 to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. An evaluation, in the form of an annual quota recommendation, is conducted by the Council every year to determine if the

multi-year quota specifications remains appropriate. The fishing quotas must be in compliance with overfishing definitions for each species. In proposing these quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected fishing effort and catches, and areas closed to fishing.

In June 2007, the Council voted to recommend maintaining the 2007 quota levels of 5.333 million bu (284 million L) for the ocean quahog fishery, 3.400 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (35,240 hL) for the Maine ocean quahog fishery for 2008-2010. The proposed quotas for the 2008-2010 Atlantic surfclam and ocean quahog fishery are shown in the table below. The Atlantic surfclam and ocean quahog quotas are specified in standard bu of 53.24 L per bu, while the Maine ocean quahog quota is specified in "Maine" bu of 35.24 L per bu. Because Maine ocean quahogs are the same species as ocean quahogs, both fisheries are assessed under the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine ocean quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

### PROPOSED 2008-2010 ATLANTIC SURFLAM AND OCEAN QUAHOG<sup>1</sup> QUOTAS

	2008		2009		2010	
	bu	hL	bu	hL	bu	hL
Surfclams <sup>2</sup>	3.400	1.810	3.400	1.810	3.400	1.810
Ocean Quahogs <sup>2</sup>	5.333	2.840	5.333	2.840	5.333	2.840
Maine Ocean Quahogs <sup>3</sup>	100,000	35,240	100,000	35,240	100,000	35,240

<sup>1</sup> Numerical values are in millions except for Maine ocean quahogs

<sup>2</sup> 1 bu = 1.88 cubic ft. = 53.24 liters

<sup>3</sup> 1 bu = 1.2445 cubic ft. = 35.24 liters

#### Surfclams

In 1999, the Council expressed its intention to increase the surfclam quota to OY over a period of 5 years (OY = 3.4 million bu (181 million L)). The proposed 2008-2010 status quo surfclam quota was developed after reviewing the results of the 44th Northeast Regional Stock Assessment Workshop (SAW 44) for surfclams, issued in January 2007. The surfclam quota recommendation is consistent with the SAW 44 finding that the Atlantic surfclam stock is not overfished, nor is overfishing occurring.

Estimated fishable stock biomass in 2005 was above the management target, and fishing mortality was below the management threshold. Even though the total stock biomass is expected to gradually decline over the next 3 years due to poor recruitment, the total proposed quota of 3.4 million bu (181 million L), if fully harvested, would not exceed the fishing mortality threshold. Based on this information the Council is recommending, and NMFS is proposing, to maintain the status quo surfclam quota of 3.4 million bu (181 million L) for 2008-2010. This quota represents

the maximum allowable quota under the FMP.

#### Ocean Quahogs

The proposed 2008-2010 quota for ocean quahogs also reflects the status quo quota of 5.333 million bu (284 million L) in 2007. SAW 44 found that the ocean quahog stock is not overfished, nor is overfishing occurring. Estimated fishable biomass in 2005 was above the management target, and estimated fishing mortality was well below the target level. Fishing mortality is not expected to reach the target threshold if the proposed quota is

harvested each of the 3 years. Similar to surfclams, the ocean quahog biomass is expected to decline over the next 3 years. There is some evidence of recruitment, and small ocean quahogs found in most regions; however, growth is so slow that initial recruitment of year classes to the fishery is delayed for about 20 years. Based on this information the Council is recommending, and NMFS is proposing, to maintain the status quo quota of 5.333 million bu (284 million L) for 2008–2010. This quota level is above current market demand, but allows for growth of the market if conditions change.

The proposed 2008–2010 quota for Maine ocean quahogs is the status quo level of 100,000 Maine bu (35,240 hL). In 2006, the State of Maine completed a stock assessment of the resource within the Maine Mahogany Quahog Zone. This assessment was peer-reviewed as part of SAW 44. Although landings per unit of effort have declined since 2002, they remain relatively high overall. The findings of the Maine quahog survey did not change the status of the entire ocean quahog resource. The proposed quota represents the maximum allowable quota under the FMP.

#### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 603, an initial regulatory flexibility analysis (IRFA) has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A summary of the IRFA is included in this section. The complete IRFA and regulatory impact review is available from the Council (see **ADDRESSES**). A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule is found in the preamble of this proposed rule. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

This action proposes fishing quotas for Atlantic surfclams and ocean quahogs for 2008–2010. The Council

analyzed four quota alternatives for the Atlantic surfclam fishery, five alternatives for the ocean quahog fishery, and four alternatives for the Maine ocean quahog fishery. Each of the alternative sets included the proposed alternative and a “no action” alternative. The three proposed quotas for 2008–2010 are 5.333 million bu (284 million L) for the ocean quahog fishery, 3.400 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (35,240 hL) for the Maine ocean quahog fishery.

#### *Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply*

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross annual receipts not exceeding \$4 million. In 2006, a total of 38 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. In addition, 25 vessels participated in the limited access Maine ocean quahog fishery, for a total of 63 participants in the 2006 fisheries. Average 2006 gross income from surfclam ITQ trips was \$1,182,713 per vessel, and from ocean quahog ITQ trips was \$1,020,409 per vessel. The Maine ocean quahog fishery reported an average value of \$160,698 per boat. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 63 commercial fishing entities fall under the SBA size standard for small commercial fishing entities.

In addition to the actual vessels that participate in the fishery there are 55 ocean quahog quota allocation owners, 67 surfclam allocation owners, and 51 Federal limited access Maine mahogany quahog permit holders. An allocation owner may choose to fish or lease his or her quota allocation.

#### *Economic Impacts of this Proposed Action*

The proposed quotas for 2008–2010 reflect the same quota level set for 2005–2007. Therefore, it is not expected that there will be any different economic impacts beyond status quo resulting from the proposed quota level. Leaving the ocean quahog quota at the harvest level of 5.333 million bu (284 million L) is not expected to constrain the fishery. In fact, actual ocean quahog landings for 2005 and 2006 did not exceed 60 percent of the available quota. The total 2007 harvest is expected to be similar to recent years (as of September 15, 2007, only 45.4 percent of the quota had been harvested). In comparison, 41

percent of the quota had been harvested as of September 15, 2006.

The surfclam quota is proposed to be set to the maximum allowed under the FMP. In contrast to the ocean quahog harvest, the surfclam fishery has harvested over 80 percent of the available quota each year since 2005. The Maine ocean quahog quota is proposed to be also set at the maximum allowed under the FMP. The Maine ocean quahog quota is often fully harvested on an annual basis. It is anticipated that by maintaining the status quo quota level for the next 3 years the fishing industry will benefit from the stability of product demand from the seafood processors and being able to predict future fishery performance based on past performance from the last 3 years.

#### *Economic Impacts of Alternatives to the Proposed Action*

The Council analyzed four alternatives for the Atlantic surfclam fishery, five alternatives for the ocean quahog fishery, and four alternatives for the Maine ocean quahog fishery. Each of the alternative sets included the proposed alternative and a “no action” alternative. The selection of “no action” alternative would result in no quotas being established, a closure of the fishery, and is contrary to the FMP. Based on 2006 ex-vessel prices, the result of no Federal surfclam or ocean quahog harvests in 2008 would be a loss of \$34.3 million to the Federal surfclam fishery, \$18.4 million to the ocean quahog fishery, and \$4 million to the Maine ocean quahog fishery, for a total loss of \$56.7 million. The viable alternatives to the proposed quotas for ocean quahog include a 20-percent decrease from the status quo, a 6.2-percent decrease from the status quo, and a 20-percent increase from the status quo. The ocean quahog quota alternatives that were chosen for analysis represent options within the 4 - 6 million bu (213 - 319.4 million L) range that is specified in the FMP. Since the alternative quota levels would not likely constrain the harvest level, the primary economic impact would come from the change in the lease and sale value of surplus quota shares. It is estimated that the status quo lease price per bushel of ocean quahogs is \$0.53. A 20-percent decrease in quota would likely increase the lease value to \$1.00 per bu. In 2006 there were over 748,000 cage tags traded (each cage tag equals 32 bu or 1,704 liters). Most tags are traded more than one time. Since NMFS does not keep records on the transaction costs, the actual value of these transactions can not be accurately

determined. However, it is clear that allocation owners who depend primarily on the lease market would benefit from a decrease in quota at the expense of harvesters. The other two alternatives each would increase the quota above status quo. Thus, each would likely have the effect of devaluing the lease price of a quota share, perhaps encouraging some allocation owners to sell their quota shares. These sales could cause further consolidation of quota shares in the ocean quahog fishery.

The alternatives to the proposed surfclam quotas include a 45.6-percent decrease from the status quo and a 4.4-percent decrease from the status quo. The Atlantic surfclam quota alternatives that were chosen for analysis represent options within the 1.85 - 3.4 million bu (98.5 - 181 million L) range that is specified in the FMP. A 45.6-percent decrease in the Federal surfclam quota would subtract 23,147 bu (1.2 million L) from the current average allocation. At an average ex-vessel value of \$11.22 per bu, the gross value of the quota decrease would equal \$259,715 per allocation. For those entities that are simply renting their allocation, it is assumed that the

current rental value for a bu of surfclams is \$4.00. The foregone value of 23,147 bu (1.2 million L) would equate to \$92,590. A 4.4-percent decrease in the Federal surfclam quota would subtract 2,234 bu (118,930 L) from the current average allocation. At an average ex-vessel value of \$11.22 per bu, the gross value of the quota decrease would equal \$25,060 per allocation. For those allocation owners renting their allocation, 2,334 bu (118,930 L) at \$4.00 per bushel would equate to a loss of \$8,934.

The alternatives to the proposed Maine ocean quahog quota include a 50-percent decrease from the status quo and a 10-percent decrease from the status quo. Since 100,000 Maine bu (35,240 hL) is the maximum quota currently allowed for the Maine ocean quahog fishery under the FMP, only quota alternatives equal to, and less than that amount were analyzed. In 2006, a total of 25 vessels participated in the Maine ocean quahog fishery. If the Maine quota were reduced by 50 percent to 50,000 Maine bu (1.8 million L), 90 percent of the reduction would likely be replaced by renting ocean quahog allocation from the ITQ fishery.

This would equal a total of 45,000 bu (1.6 million L) rented, at an estimated \$1.00 per bushel. Divided among the 25 vessels in the fleet, the average cost per vessel would be \$1,800. A 10-percent decrease in the Maine ocean quahog quota would likely result in 10,000 bu (352,400 L) being leased from the ocean quahog ITQ fishery, resulting in a lease cost of \$400 per vessel. Under both alternatives, those unable to lease quota shares would just lose the amount they would have harvested under the 100,000-bu (35,240,000-L) quota.

#### **Reporting and Recordkeeping Requirements**

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

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

Dated: November 9, 2007.

**Samuel D. Rauch III,**

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

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