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**Mid-Cycle Adjustment to the  
Ocean Quahog Specifications for  
2006 and 2007**

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**Mid-Atlantic Fishery Management Council**

**in cooperation with the**

**National Marine Fisheries Service**

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# Regulatory Impact Review / Initial Regulatory Flexibility Analysis

## 1.0 Introduction

The National Marine Fisheries Service (NMFS) requires the preparation of a Regulatory Impact Review (RIR) for all regulatory actions that either implement a new Fishery Management Plan (FMP) or significantly amend an existing plan or regulation. The RIR is part of the process of preparing and reviewing FMPs and provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way.

The RIR addresses many items in the regulatory philosophy and principles of Executive Order (E.O.) 12866. The RIR also serves as the basis for determining whether any proposed regulation is a "significant regulatory action" under certain criteria provided in E.O. 12866.

This document provides a supplement to the *Surfclam and Ocean Quahog Quota Specifications for 2005, 2006, and 2007, Including: Draft Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis, and Essential Fish Habitat Assessment* published by the Mid-Atlantic Fishery Management Council in October 2004 (Attachment 1). It describes the changes that have occurred in the surfclam and ocean quahog fisheries which have led the Council to recommend only a minor adjustment in the existing ocean quahog quota in 2006 and 2007 for economic reasons.

It should be stressed at the outset that the adjustment will have *no impact on habitat, the surfclam and ocean quahog resources, or the even the actual amounts harvested of either species*. An unexpected influx of clam imports from other countries has produced a serious glut in the marketplace, forcing US producers to scale back their harvests significantly. Large amounts of both surfclam and ocean quahog quota will remain unharvested in 2005. Due to its lesser value, it is likely that a surplus of ocean quahog quota will persist for some time to come. The Council's acceptance of an industry request to forgo scheduled increases in the ocean quahog quota for 2006 and 2007 will only serve to keep the surplus from growing larger. The benefit from this adjustment is simply to allow for a more equitable distribution of benefits among owners of ocean quahog ITQ allocation. Large surpluses have the effect of rendering allocation that cannot be sold as worthless, and allocation owners with lesser access to a market may be significantly impacted if the condition persists over an extended period.

### 1.1 Multi-Year Quotas Established with Amendment 13

The primary tool in the management of surfclams and ocean quahogs in Federal waters is the specification of annual quotas, which are allocated to the holders of allocation shares at the

beginning of each calendar year. With implementation of Amendment 13 in December 2003, the Council received the authority to recommend multi-year quotas to the Secretary of Commerce that will span the upcoming three years. The three-year interval was conceived to match the biological assessment cycle in which surfclams and ocean quahogs are typically surveyed and assessed every three years.

At the completion of each year in the three-year cycle, the Council staff is required to produce a report summarizing the most recent information available concerning the biological status of these natural resources and the commercial fisheries which utilize them. Based on this information, the Council may then make a recommendation to adjust the quotas in the upcoming years, or elect to keep the existing quotas in place.

The major benefits of this change in the management regime are two-fold:

- 1) It provides stakeholders in the surfclam and ocean quahog fisheries additional insight as to what the government believes is the appropriate direction for quotas to trend in the upcoming years, and
- 2) It reduces the administrative burden on the Federal government by eliminating the need to prepare and publish quota specifications in those years when no changes are deemed necessary, and streamlines the process if only an adjustment is required to the previously adopted quotas.

In June of 2004 the Council recommended and the Secretary ultimately accepted the following quota specifications for 2005, 2006, and 2007:

<b>Table 16. Current Quota Specifications for 2005, 2006, and 2007</b>			
Year	2005	2006	2007
Surfclams	3.400 mil. bu.	3.400 mil. bu.	3.400 mil. bu.
Ocean Quahogs	5.333 mil. bu.	5.666 mil. bu.	6.000 mil. bu.
Maine Ocean Quahogs	100,000 ME bu.	100,000 ME bu.	100,000 ME bu.

With this document, the Council is proposing an adjustment to **only** the ocean quahog quota for 2006 and 2007

<b>Table 17. MAFMC Recommended Quota Specifications for 2006 and 2007</b>		
Year	2006	2007
Ocean Quahogs	<b>5.333 mil. bu.</b>	<b>5.333 mil. bu.</b>

## 2.0 Evaluation of E.O. 12866 Significance

If a proposed action is determined to be significant under E.O. 12866, the analysis undergoes further scrutiny by the Office of Management and Budget (OMB) to ensure that it meets the requirements of E.O. 12866 (NMFS 2001). A "significant regulatory action" means any regulatory action that is likely to result in a rule that meets any of the criteria discussed below.

- **Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;**

The proposed adjustment in the ocean quahog quota will not have a discernable impact on the economy as it will not change actual harvest levels. The intent is to halt the increase of surplus quota that will be created if the federal government continues to raise the ocean quahog quota in spite of the fact that the market for domestic product has contracted.

- **Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;**

The proposed action will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect the Atlantic surfclam or ocean quahog fisheries in the EEZ.

- **Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;**

The proposed actions will not impact entitlements, grants, user fees, or loan programs or the rights and obligations of their participants.

- **Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.**

The proposed action supports and maintains the fisheries management program implemented by the Surfclam and Ocean quahog Fishery Management Plan and subsequent Amendments. The Individual Transferrable Quota system instituted in the fall of 1990 has been largely credited with successfully addressing the problems of overcapitalization and inefficiency inherent in many effort-based management systems. It has provided a high level of stability, efficiency, and improved profitability to the utilization of these resources. As such, the proposed actions do not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The benefits of a stable, ITQ management program are additionally evident from the absence of constant legal challenge, which many of the alternative management programs in the country have become subject to.

## **2.1 Significance Conclusion**

Due to the lack of meeting any of the four criteria described above, it is determined that the proposed adjustment of the 2006 and 2007 ocean quahog quotas does not constitute a "significant" regulatory action.

## **3.0 Description of Management Objectives**

A description of the management objectives of the Surfclam and Ocean Quahog FMP are presented in EA Section 4.2 'Management Objectives and Management Unit of the FMP' of the 2004 Specification document (Attachment 1).

## **4.0 Description of the Fishery**

The Mid-Atlantic Council is required to conduct annual reviews of the surfclam, ocean quahog, and Maine ocean quahog management programs, irregardless of whether the upcoming year already has quota specifications in place as part of the new, multi-year quota management approach. Updated information on all three programs has been incorporated into EA Section 6 of this document.

**Table 18. Federal Surfclam & Ocean Quahog Quotas and Landings: 1979 - 2005**

Surfclams (Thou Bushels)				Ocean Quahogs (Thou. Bushels)			
* Georges Bank first closed for PSP in 1990				* Maine ocean quahog fishery excluded 1991 - 2005			
Year	Landings	Quota	Percent Harvested	Year	Landings	Quota	Percent Harvested
1979	1,674	1,800	93%	1979	3,035	3,000	101%
1980	1,924	1,825	105%	1980	2,962	3,500	85%
1981	1,976	1,825	108%	1981	2,888	4,000	72%
1982	2,003	2,400	83%	1982	3,241	4,000	81%
1983	2,412	2,450	98%	1983	3,216	4,000	80%
1984	2,967	2,750	108%	1984	3,963	4,000	99%
1985	2,909	3,150	92%	1985	4,570	4,900	93%
1986	3,181	3,225	99%	1986	4,167	6,000	69%
1987	2,820	3,120	90%	1987	4,743	6,000	79%
1988	3,032	3,385	90%	1988	4,469	6,000	74%
1989	2,838	3,266	87%	1989	4,930	5,200	95%
1990*	3,114	2,850	109%	1990	4,622	5,300	87%
1991	2,673	2,850	94%	1991*	4,840	5,300	91%
1992	2,812	2,850	99%	1992*	4,939	5,300	93%
1993	2,835	2,850	99%	1993*	4,812	5,400	89%
1994	2,847	2,850	100%	1994*	4,611	5,400	85%
1995	2,545	2,565	99%	1995*	4,628	4,900	94%
1996	2,569	2,565	100%	1996*	4,391	4,450	99%
1997	2,414	2,565	94%	1997*	4,279	4,317	99%
1998	2,365	2,565	92%	1998*	3,897	4,000	97%
1999	2,538	2,565	99%	1999*	3,770	4,500	84%
2000	2,561	2,565	100%	2000*	3,161	4,500	70%
2001	2,855	2,850	100%	2001*	3,691	4,500	82%
2002	3,113	3,135	99%	2002*	3,871	4,500	86%
2003	3,244	3,250	100%	2003*	4,069	4,500	90%
2004	3,137	3,400	92%	2004*	3,823	5,000	77%
2005	N/A	3,400	N/A	2005*	N/A	5,333	N/A

Source: NMFS Clam Vessel Logbook Reports, Woods Hole, MA

## 5.0 Problem Statement

A description of the management issues and the approach which the Surfclam and Ocean Quahog Fishery Management Plan takes to address them are presented in RIR Section 5 of the 2004 Specification document (Attachment 1).

## 6.0 Description of Management Alternatives

The following tables specify alternative quotas the Council considered for 2006 and 2007 while performing its annual review in June of 2005.

<b>Table 19. Quota Alternatives Considered for 2006 and 2007 ITQ Fisheries</b>			
<b>Surfclams</b>			
	<u>Description</u>	<u>2006 Quota (bu)</u>	<u>2007 Quota (bu)</u>
Alt. S1	Min. Allowable	1.850 million	1.850 million
Alt. S2	Slight Decrease	3.250 million	3.250 million
Alt. S3	Status Quo	3.400 million	3.400 million
<b>Ocean Quahogs</b>			
	<u>Description</u>	<u>2006 Quota (bu)</u>	<u>2007 Quota (bu)</u>
Alt. Q1	Min. Allowable	4.000 million	4.000 million
Alt. Q2	Slight Decrease	5.000 million	5.000 million
Alt. Q3	Industry Recommendation	5.333 million	5.333 million
Alt. Q4	Current Specifications	5.666 million	6.000 million
Alt. Q5	Max. Allowable	6.000 million	6.000 million

<b>Table 20. Quota Alternatives Considered for 2006 and 2007 Maine Ocean Quahog Fishery</b>			
	<u>Description</u>	<u>2006 Quota</u>	<u>2007 Quota</u>
Alt. M1	50% of Max. Quota	50,000 Maine Bu.	50,000 Maine Bu.
Alt. M2	Slight Decrease	90,000 Maine Bu.	90,000 Maine Bu.
Alt. M3	Max Allowable - Status Quo	100,000 Maine Bu.	100,000 Maine Bu.

## **6.1 Surfclam ITQ Quota Alternatives for 2006 and 2007**

Council staff identified three potential quota alternatives for the Council to consider for the Federal the surfclam fishery. Alternatives S1 and S3 correspond to the current minimum and maximum allowable quota levels within the FMP of 1.850 and 3.400 million bushels. Alternative S3 also corresponds to the status quo quota that would remain in effect for 2006 and 2007 if the Council chose to take no action.

Alternative S2 represents a slight decrease of 4.4% to 3.25 million bushels that was presented to the Council as a potential response to the fact that catch rates have been declining in the surfclam fishery over the past four years, and that the 2004 quota was not fully harvested. The 3.250 quota level is still above the 3.137 million bushels taken in 2004, and would allow for some growth to occur.

After debate and consideration of public input, the Council decided to leave the existing surfclam quota specifications in place for 2006 and 2007.

## **6.2 Ocean Quahog ITQ Quota Alternatives 2006 and 2007**

The Council staff has identified five alternative ocean quahog quotas for the Council to consider for 2006 and 2007. As with surfclams, the first and last correspond to the minimum and maximum allowable under the current FMP.

Alternative Q4 corresponds to the existing quota specifications which would raise the ocean quahog quota by 333,000 bushels in each of the coming two years to 5.666 million bushels and then 6.000 million.

Alternative Q3 is the alternative requested by the industry as represented by the National Fisheries Institute Clam Committee at the Council's Clam Committee meeting in May 2005. It requests that the existing 2005 quota of 5.333 million bushels be allowed to remain constant for 2006 and 2007, rather than increasing it each year. A letter dated May 30, 2005 explaining their position is appended to this document (Attachment 2).

After debate and consideration of public input, the Council decided to recommend Alternative Q3, which would keep the 2005 quota of 5.333 million bushels in place for 2006 and 2007. An analysis of the impacts are presented in the following RIR Section 7.

## **6.3 Maine Ocean Quahog Quota Alternatives for 2006 and 2007**

The Council staff has identified 3 potential quota levels for the Maine ocean quahog fishery. They correspond to the current maximum of 100,000 Maine bushels, a slight reduction to 90,000 bushels, and 50,000 bushels.

The Council decided to leave the current quota of 100,000 Maine bushels in place for 2006 and 2007, as requested by the Maine industry and state representatives. The current fishery is so



restricted from PSP closures that it is highly unlikely that any significant negative impact could result to the resource off of Maine shores from retaining it.

## **6.4 Surfclam Size Limit Suspension**

The Council is recommending that the current exemption from the minimum size limit on surfclams be maintained for 2006 and 2007, as it has been since implementation of Amendment 8 (MAFMC 1990). Current assessment information indicates that the stock is composed primarily of larger, adult clams in most areas. Reinstating a minimum size under these conditions would result in greater harm than benefit, as it would require the industry to use "sorting" machines which often damage or destroy undersized clams as they route them back overboard.

## **7.0 Analysis of Alternatives**

A detailed analysis of all alternatives considered for the surfclam, ocean quahog, and Maine ocean quahog fisheries for 2005, 2006, and 2007 is presented in RIR Section 7 of the 2004 Specification document (Attachment 1). The information presented in this 2005 document corresponds to the first mid-cycle review which the Council is required to perform to confirm whether the second and third year quotas are still appropriate, or should be adjusted because circumstances have changed.

At the June 2005 Council meeting, the Council concluded that only the ocean quahog quota specifications for 2006 and 2007 should be adjusted. The analysis presented in this section will correspondingly focus primarily on that issue, however the justification for maintaining the existing specifications for surfclams, Maine Ocean quahogs, and the surfclam minimum size limit will be included as well.

The objective of this analysis is to describe clearly and concisely the economic effects of the various alternatives. The types of effects that should be considered include the following:

- Changes in net benefits within a benefit-cost framework.
- Changes in the distribution of benefits and costs among groups.
- Changes in income and employment in fishing communities.
- Cumulative impacts of regulations.

A more detailed description of the economic concepts involved can be found in "Guidelines for Economic Analysis of Fishery Management Actions" (NMFS 2000), as only a brief summary of key concepts will be presented here.

Benefit-cost analysis is conducted to evaluate the net social benefit arising from changes in consumer and producer surpluses that are expected to occur upon implementation of a regulatory action. Total Consumer Surplus (CS) is the difference between the amounts consumers are willing to pay for products or services and the amounts they actually pay. Thus CS represents net benefits to consumers. When the information necessary to plot the supply and demand

curves for a particular commodity is available, consumer surplus is represented by the area that is below the demand curve and above the market clearing price where the two curves intersect.

An evaluation of consumer surplus for surfclams and ocean quahogs is further complicated by the fact that there are few retail markets for either species outside of Maine. All of the landings from the ITQ fisheries are sold to processors who then add value by processing them into a variety of product forms. Boxes of frozen, breaded surfclam strips, cans of "clamato" juice, or chopped "clam meats" are the more common items that may be found on retail grocer's shelves. The majority of production is sold at the wholesale level to restaurants or other processors in the food industry that use them as ingredients in chowders and sauces.

Net benefit to producers is producer surplus (PS). Total PS is the difference between the amounts producers actually receive for providing goods and services and the economic cost producers bear to do so. Graphically, it is the area above the supply curve and below the market clearing price where supply and demand intersect. Economic costs are measured by the opportunity cost of all resources including the raw materials, physical and human capital used in the process of supplying these goods and services to consumers.

One of the more visible costs to society of fisheries regulation is that of enforcement. From a budgetary perspective, the cost of enforcement is equivalent to the total public expenditure devoted to enforcement. However, the economic cost of enforcement is measured by the opportunity cost of devoting resources to enforcement vis à vis some other public or private use and/or by the opportunity cost of diverting enforcement resources from one fishery to another.

## **7.1 Justification for Leaving the Surfclam Quota Unchanged at 3.40 Million Bushels for 2006 and 2007**

Through the latter half of the 1990's the surfclam quota was set at 2.565 million bushels. This was significantly below the maximum allowable level of 3.40 million bushels because, at the time, assessment results suggested that this was a sustainable level for the resource. Markets were generally strong, and with the exception of a weak spot in 1998, the quotas were fully harvested by the industry.

Surveys and assessments performed in 1999 and later years suggested that the surfclam quota could be safely increased. Uncertainties in key parameters of the model used by biologists led the Council to move cautiously, however in concert with industry recommendations, the Council did agree to steadily increase the quota from 2.565 million bushels in 2000 to the maximum allowable level of 3.400 million bushels in 2004.

Due to the unexpected influx of clam imports which started in 2004, the industry only harvested 92% of the newly-increased 2004 quota: 3.137 million bushels. Even that amount was more than the markets could absorb at the time, and inventories started to accumulate in warehouses.

Average exvessel price as reported by processors was \$11.36 per bushel in 2004, essentially unchanged from 2003. Preliminary data for 2005 (reported through May 27, 2005) indicated that average price had dropped 2.5% to \$11.08 per bushel. Prices are likely to have fallen further in the following months.

Data are not available to indicate whether lower prices have been passed on to purchasers of wholesale surfclam products or ultimately retail consumers. However for the purposes of this analysis, it is assumed that foreign firms exporting product into the US market were successful in displacing US products in large part because they significantly undercut US prices. Hence it is assumed that purchasers of surfclam products are at least temporarily benefitting from lower prices at the expense of domestic producers.

As of 8/15/2005, a straight-line projection indicates that approximately 30% of the 2005 surfclam quota will be left unharvested. In contrast to the ocean quahog fishery, however, the industry has slowly been increasing its harvests of surfclams over the summer months. Industry representatives have forecast that they will be able to narrow the gap by year's end, in part because the quality of the imported product is apparently not on par with surfclam meats. It is a more successful substitute for ocean quahog products.

Hence the industry has not asked for a reduction in the surfclam quota for either 2006 or 2007.

The major concerns for the surfclam resource have been the loss of biomass in the warmer inshore and southern regions, and the fact that 29% of the estimated biomass is unavailable because it is located in the Georges Bank area closed for PSP.

The major concern for the surfclam fishery is that catch rates on the preferred fishing grounds off New Jersey have declined significantly over the past 5 years as the beds have been fished down. Lower catch rates translate directly into higher operating costs as vessels must fish longer to harvest a given quantity of surfclams. Fuel costs are a major component of operating expenses, and 2005 has seen significant increases in fuel prices.

The Council, however, does not feel that a reduction in the federal surfclam quota is warranted at this time. The results of the most recent assessment indicate that harvests on the order of 3.4 million bushels should be sustainable. A new resource survey was conducted in the summer of 2005, and many feel that any changes in course should wait until the results have been analyzed and peer reviewed.

## **7.2 Summary Evaluation of All Quahog Quota Alternatives (Q1, Q2, Q3, Q4 and Q5) - Assumes NONE of the Quota Alternatives Would be Binding on the Industry**

Historically, the ocean quahog fishery outside of Maine has played a supplementary role to the surfclam fishery. The ocean quahog fishery was first initiated in 1976 by surfclam vessels in response to a major decline in the availability of surfclams. With a smaller meat and sharper flavor than surfclams, it commanded less than half the price in the marketplace. Ocean quahog beds were also located further offshore than surfclams, such that the added fuel costs were an additional damper on the profitability of ocean quahog trips. Processors could still make a profit on ocean quahogs, and would often cajole captains and crews into making more quahog trips by assuring them they would purchase all their surfclam harvests at an acceptable price.

The advantage that ocean quahogs have had are the massive, dense beds that have developed across decades or even centuries of time. Vessels have been able to harvest the long-lived animals in large quantities, very quickly. The resource off the Atlantic coast has supported

intense harvests for almost three decades, and scientists believe that even when the closed portions of the resource are excluded, 72% of the virgin biomass remains untouched.

For this reason, the annual quotas for ocean quahogs have generally been set substantially higher than the levels industry has chosen to harvest. From 1998 through 2002, harvests did not even reach the minimum quota level of 4.0 million bushels. Only in 2003 did harvests inch back above the minimum with total landings of 4.077 million bushels. In 2005 the market glut has cut severely into ocean quahog harvests, such that total landings are not expected to reach far beyond 3 million bushels.

The optimum yield range currently specified in the surfclam and ocean quahog FMP is between 4.0 and 6.0 million bushels. Hence the quota alternatives which the Council may recommend to the Secretary of Commerce must all fall within that allowable range. **When industry harvests do not even reach the relevant quota range, none of the alternatives would be binding on the industry, and hence none of the alternatives would be expected to have any impact on the following areas:**

- Landings
- Exvessel prices
- Consumer prices
- Consumer surplus
- Harvest costs
- Producer surplus
- Enforcement costs
- Risk of biological overexploitation

#### *Distributive and Cumulative Impacts*

Given the real possibility that ocean quahog harvest levels will not reach any of the quota alternative levels in the near term, the only areas of potential impact are distributive and cumulative in nature. Specifically, the potential economic impacts of Federal quotas that are set far in excess of what the industry is able to utilize in an ITQ fishery. Annual quota allocations are distributed to allocation owners each year that rise and fall with the annual quota, with bushel amounts equal to their percentage share of the total quota.

When 100% of the total quota has a market, then all allocation holders are able to find a buyer for his/her shares. However in years when markets are tight and not all of the quota can be sold, companies which are vertically integrated and have better access to markets may find that the quota allocation they hold is sufficient to fill their orders, and have no need to purchase or lease quota from other holders.

In other words, those companies with greater market access benefit from a reduction in costs because they no longer need to buy the allocation held by others. Correspondingly, those entities left without a market for their allocation suffer a loss in income since their holdings cannot be sold. If losses persist over a period of time, the impacts can be severe and cause businesses to close their doors.

As of mid-2005 it is known that at least 5 vessels out of the fleet of 50 have not participated in the federal surfclam or ocean quahog fisheries since 2004. The family business that owns and

operates these vessels also owns allocation of both surfclams and ocean quahogs, but is not part of a vertically-integrated company.

Surplus quota has existed in the ocean quahog fishery for many years, so it is not an unaccustomed event for the participants. In the year 2000, 30% of the quota was left unharvested. However the projected surplus of 43% in 2005 will be unprecedented. As will be discussed further in RIR Section 8, there are currently 56 corporate entities or individuals listed as owners of ocean quahog allocation. The list is characterized by several entities owning substantial shares in the range of 4% to 22%, and a great many entities owning smaller shares of 3% or less. With the top six entities receiving allocations equal to approximately 3 million bushels when the federal quota is set at 5.333 million, they alone would be able to supply the entire market, given its current, constricted state.

It is for this reason that the Council has agreed with the industry's request to forgo the additional increases scheduled to take effect in the 2006 and 2007 ocean quahog quotas.

A summary of all impacts that can be expected from a continuation of the existing market and supply situation in 2006 and 2007, in which quotas are not binding on the industry, is represented in the following table.

<b>Table 21. Summary of Impacts for Alternative Ocean Quahog Quota Levels Relative to Status Quo of 5.333 million bushels - <u>Assumes NONE of the Quota Alternatives are Binding on the Industry (Landings Below 4.00 million bushels)</u></b>				
Feature	<b>4.000 million bushels</b> Used by: Alt. Q1 For Years: 2006, 2007 Min. Allowable	<b>5.000 million bushels</b> Used by: Alt. Q2 For Years: 2006, 2007 Slight Decrease	<b>5.666 million bushels</b> Used by: Alt. Q4 For Year: 2006 Slight Increase	<b>6.000 million bushels</b> Used by: Alt. Q4 & Q5 For Year: 2006, 2007 Max. Allowable
Landings	- 25.0% allowed (assumes less than 4 mill. harvested)	-6.2% allowed (assumes less than 4 mill. harvested)	+ 6.2% allowed (assumes less than 4 mill. harvested)	+ 12.5% allowed (assumes less than 4 mill. harvested)
Exvessel Prices	0	0	0	0
Consumer Prices	0	0	0	0
Consumer Surplus	0	0	0	0
Harvest Costs	0	0	0	0
Producer Surplus	0	0	0	0
Enforcement Costs	0	0	0	0
Distributive Impacts	-	Small -	Small +	+
Cumulative Impacts	-	Small -	Small +	+
Risk of Biological Overexploitation	0	0	0	0
+ indicates an increase relative to the status quo; - indicates a decrease relative to the status quo; 0 indicates no change; ? indicates unknown				

### **7.3 Justification for Leaving the Maine Ocean Quahog Quota Unchanged at 100,000 Maine Bushels for 2006 and 2007**

RIR Section 7 of the 2004 Specification document (Attachment 1) provides an evaluation of all alternatives considered for the current 2005, 2006, and 2007 specifications. Updated information on the Maine fishery is included in EA Section 6 and Appendix Table 2 of this document.

In summary, reports from industry members in Maine indicate that the landings decline in 2004 was due to the combined impact of tightening markets and severe area closures for PSP. Harvesters were obliged to concentrate their efforts into a very small area, resulting in the 19% decline in LPUE experienced by the 2004 fishery.

The Council is recommending that the current quota of 100,000 Maine bushels remain in place for 2006 and 2007, as requested by the Maine industry and state representatives. The current fishery is so restricted from PSP closures that it is highly unlikely that any significant negative impact could result to the resource off of Maine shores. Funding for continued survey work was obtained, and the completion of a peer-reviewed assessment is hoped for in the near future.

### **7.4 Justification for Continuing the Suspension of the Minimum Size Restriction on Surfclams for 2006 and 2007**

The Surfclam and Ocean Quahog FMP includes a provision for a minimum size limit of 4.75 inches on surfclams, which may be used to protect new year classes from harvest before they have reached an optimal size. The provision is written such that a minimum size will automatically be in effect unless the Council takes the active step of suspending it each year.

The current stock is comprised primarily of large, adult individuals, with few small individuals apparent from landings in most areas. Reinstating a minimum size under these conditions would result in greater harm than benefit, as it would require the industry to use "sorting" machines which will often damage undersized clams as it routes them back overboard.

It is, therefore, the Council's recommendation that the surfclam minimum size limit be suspended for 2006 and 2007, as has been done since 1990. Continuing the suspension will have no impact on the current fishery.

## **8.0. Initial Regulatory Flexibility Analysis - Impacts on Small Entities**

### **8.1 Introduction**

The purpose of the Regulatory Flexibility Act (RFA) is to minimize the adverse impacts from burdensome regulations and record keeping requirements on small businesses, small organizations, and small government entities. The category of small entities likely to be affected by the proposed plan is that of Individual Transferrable Quota (ITQ) holders and fishermen in

the commercial Atlantic surfclam and ocean quahog fishery. The impacts of the proposed action on the fishing industry and the economy as a whole were discussed above. The following discussion of impacts centers specifically on the effects of the proposed actions on the mentioned small business entities.

The Small Business Administration (SBA) defines a small business in the commercial fishing sector as a firm with receipts (gross revenues) of up to \$3.0 million. The Northeast Regional Office of the National Marine Fisheries Service maintains current ownership records of surfclam and ocean quahog allocation holders. Tables 22 and 23 below contain summaries of surfclam and ocean quahog allocation ownership by state as of August 22, 2005. These are the entities that will be most directly impacted by the setting of annual quotas.

Table 22. Surfclam Allocation Owners by State as of August 22, 2005			
No. of Allocation Holders	State	Total Bushels Held	Bu/Holder
45	NJ	1,538,848	34,197
15	VA	1,010,176	67,345
12	MD	364,576	30,381
9	VAR*	487,424	54,158
<b>Total = 81</b>		<b>3,401,024</b>	<b>41,988</b>

\* Var = CT, MA, NY, RI

Table 23. Ocean Quahog Allocation Owners as of August 22, 2005			
No. of Allocation Holders	State	Total Bushels Held	Bu/Holder
36	NJ	2,517,408	69,928
8	MD	327,648	40,956
6	VA	1,081,216	180,203
6	VAR*	1,399,392	233,232
<b>Total = 56</b>		<b>5,325,664</b>	<b>95,101</b>

\*Var = GA, ME, NY, RI

Table 24 lists the number of vessels active in harvesting surfclams and ocean quahogs in the non-Maine fisheries. Some of these vessels may not hold allocations. Depending on the regulations promulgated, the population affected by the regulation may change, i.e. if, for example, an area is closed, both holders and service providing vessels may be affected, while with a quota change, only holders may appropriately be affected and service providers impacted.

Species Harvested	Number of Vessels
Surfclams only	21
Ocean Quahogs only	15
BOTH Surfclams and Ocean Quahogs	14
<b>TOTAL</b>	<b>50</b>

Average 2004 gross income from surfclam trips was \$1,018,126 per vessel, and from ocean quahog ITQ trips was \$789,748 per vessel. In the small artisanal fishery for ocean quahogs in Maine, 33 vessels reported harvests in the clam logbooks, with an average value of \$120,932 per boat. All of these vessels readily fall within the definition of small businesses.

## 8.2 Analysis of the Impacts of Alternatives

RIR Section 8.2 of the 2004 Specification document (Attachment 1) provides an evaluation of all alternatives considered for the current 2005, 2006, and 2007 specifications.

At its June 2005 meeting the Council reviewed these specifications and concluded that only the 2006 and 2007 quotas for ocean quahogs should be adjusted.

### 8.2.1 Impacts of the Ocean Quahog ITQ Quota Alternatives

	Description	2006 Quota (bu)	2007 Quota (bu)
Alt. Q1	Min. Allowable	4.000 million	4.000 million
Alt. Q2	Slight Decrease	5.000 million	5.000 million
Alt. Q3	Industry Recommendation	5.333 million	5.333 million
Alt. Q4	Current Specifications	5.666 million	6.000 million
Alt. Q5	Max. Allowable	6.000 million	6.000 million

Impacts of quota adjustments will be felt most directly by the 56 entities currently holding ocean quahog ITQ allocations.

As described in previous sections, the East Coast clam industry has been severely impacted by a flood of imported product that started entering US markets in the latter portion of 2004. It displaced the sales of many domestic producers, and most strongly affected sales of US ocean quahog product.



Landings of ocean quahogs in 2005 are projected to reach only the 3 million bushel mark, lower than all of the potential quota alternatives available in the current management plan. The process of specifying quotas in the near term has therefore changed from one of limiting removals from a biological resource to a sustainable level to one of deciding how large a surplus of ocean quahog allocation is socially and economically acceptable.

The process is complicated by industry concerns relative to the perceptions of their customers on ocean quahog resource availability and the need to motivate national marketers to advertize clam products (see Attachment 2). As described in the previous Section, at the current quota level of 5.333 million bushels, the percentage share of the six largest owners of ocean quahog allocation would be sufficient to supply the entire market.

Which of the 56 allocations will ultimately find a market will be influenced by existing contracts and how much the sellers are willing to lower their prices. A price war is quite possible under the current circumstances. The National Marine Fisheries Service does not collect data on the rental value of allocation, so a definitive analysis is not feasible at this time. However past industry practice seems to be more along the lines of allowing the surplus allocation tags to expire at the end of the year, and hoping for better times in the future.

The Council weighed each of these factors and ultimately accepted the request of industry representatives to recommend that the current quota of 5.333 million bushels be continued in 2006 and 2007, rather than implementing the increases that were adopted at the start of this multi-year cycle.

## 9.0 References

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