

**Federal Register** for publication, notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period, or until such date as specified in the notification.

The 2003 BFT quota specifications issued pursuant to § 635.27 set a General category quota of 684.4 mt of large medium and giant BFT to be harvested from the regulatory area during the 2003 fishing year, and divided the General category quota into time-period subquotas. On November 18, 2003, NOAA Fisheries transferred 150 mt to the Reserve category, establishing an adjusted coastwide General category quota of 534.4 mt for the 2003 fishing year (68 FR 64990, November 18, 2003). Based on reported landings and effort, NMFS projects that the adjusted quota will be reached by December 10, 2003. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or HMS Charter/Headboat categories must cease at 11:30 p.m. local time December 10, 2003. The intent of this closure is to prevent overharvest of the adjusted quota established for the General category.

If it is determined that quota remains uncaught in the General category, or if additional quota can be made available to the General category through an inseason transfer, NMFS will announce the re-opening and/or transfer action in a separate **Federal Register** notice. General category and HMS Charter/Headboat permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

#### Classification

Pursuant to 5 U.S.C. 553 (b) (B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest. Based on recent landings reports, this closure is necessary to prevent the overharvest of the adjusted BFT quota established for the coastwide General category. The fishery is currently underway, and any further delay in this action would cause the fishery to exceed the quota and be inconsistent with domestic and international requirements and objectives. NMFS provides notification

of the closure by publishing the closure notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and to known fishery representatives, announcing the notice on the Atlantic Tunas Information Line, and announcing the closure notice over NOAA Weather and Coast Guard radio channels. For these same reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under 50 CFR 635.28(a) (1) and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 9, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 03-30914 Filed 12-10-03; 3:50 pm]  
**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 030908223-3289-02; I.D. 081403B]

RIN 0648-AP57

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan

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

**ACTION:** Final rule; implementation of Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP).

**SUMMARY:** NMFS implements measures contained in Amendment 13 to the FMP (Amendment 13). Amendment 13 establishes: A new surfclam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surfclams and ocean quahogs. This final rule includes technical corrections to the regulations

implementing the FMP in order to clarify the Mid-Atlantic Fishery Management Council's (Council) intent not to restrict allocation ownership to only those entities that also own a permitted vessel, and to eliminate the restriction on the transfer of allocation tags of amounts less than 160 bushels (bu) (85 hectoliters (hL)) (i.e., 5 cage tags). The primary purpose of Amendment 13 is to rectify the disapproved surfclam overfishing definition and the EFH analysis and rationale contained in Amendment 12 in order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to simplify the regulatory requirements of the FMP.

**DATES:** Effective January 15, 2004.

**ADDRESSES:** Copies of the Amendment 13 document, including the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Impact Statement (EIS), and other supporting documents for the amendment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-2298.

#### FOR FURTHER INFORMATION CONTACT:

Susan A. Murphy, Supervisory Fishery Policy Analyst, 978-281-9252, fax 978-281-9135, [Susan.A.Murphy@noaa.gov](mailto:Susan.A.Murphy@noaa.gov).

**SUPPLEMENTARY INFORMATION:** This final rule implements approved measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on November 21, 2003.

Details concerning the justification for and development of Amendment 13 and the implementing regulations were provided in the preamble to the proposed rule (68 FR 55358, September 25, 2003) and are only summarized here.

#### Background

Amendment 12 to the FMP was prepared by the Council to bring the FMP into compliance with the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996. On April 28, 1999, the Council was

notified that NMFS partially approved Amendment 12. Two Amendment 12 measures were disapproved, the surfclam overfishing definition and the analysis and rationale for the status quo alternative for addressing fishing gear impacts to EFH. To rectify these disapprovals, the Council prepared, and NMFS published, a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's scoping process for Amendment 13 (66 FR 13694, March 7, 2001). During this scoping process, other issues were identified for inclusion in the EIS, including: Multi-year quotas, a mandatory VMS requirement, and a permanent suspension of the surfclam minimum size limit.

The Amendment 13 measures implemented through this rule are multi-year fishing quotas and the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment. The analysis of fishing gear impacts on EFH for surfclams and ocean quahogs, a new surfclam overfishing definition, and a mandatory VMS requirement are not accompanied by regulatory text because either they are non-regulatory in nature (fishing gear impacts on EFH and the new overfishing definition) or implementation is deferred (a mandatory VMS requirement). However, information on these measures was presented in the preamble of the proposed rule and is only summarized below.

### Surfclam Overfishing Definition

The revised surfclam overfishing definition recommended by the Council and implemented through this final rule is based on the advice of the 30th Stock Assessment Workshop (SAW 30, April 2000), which incorporated the results of a research survey that took place during the summer of 1999. This surfclam overfishing definition is as follows: Biomass target ( $B_{\text{target}}$ ) =  $\frac{1}{2}$  of current (1999) biomass (as a proxy for the biomass level at maximum sustainable yield ( $B_{\text{msy}}$ )) = 1,268,500 mt; biomass threshold ( $B_{\text{threshold}}$ ) =  $\frac{1}{2}$  the biomass target; fishing mortality threshold ( $F_{\text{threshold}}$ ) = fishing mortality at maximum sustainable yield ( $F_{\text{msy}}$ ), where the current proxy for  $F_{\text{msy}}$  is the natural mortality rate for surfclams ( $M$ ); and the fishing mortality target ( $F_{\text{target}}$ ) would always be set less than the  $F_{\text{threshold}}$  and would be equivalent to the fishing mortality rate ( $F$ ) associated with the quota selected by the Council.

### Fishing Gear Impacts on EFH

The relatively recent "Workshop on the Effects of Fishing Gear on Marine Habitats off the Northeastern United States" (Workshop, October 2001) concluded that the effects of hydraulic clam dredges were limited to sandy substrates, since this type of gear is not used on muddy or gravel substrates and that overall impacts can be considered minimal. Based on information from this Workshop, NMFS is not taking any action to mitigate fishing gear impacts on EFH.

### Multi-year Quotas

Beginning in 2005, Amendment 13 replaces the current annual specification process with a process that allows the Council to establish specifications to be in effect for up to 3 fishing years, provided that an annual evaluation of the surfclam and ocean quahog status is undertaken. This multi-year specification process allows the Council and NMFS to be more efficient by streamlining the regulatory process, and provides the industry with greater regulatory consistency and predictability. The maximum 3-year specification process is not meant to constrain the Council from setting specifications during the interim years if information obtained during the annual review indicates that the surfclam or ocean quahog specifications warrant a change, e.g., to comply fully with the Magnuson-Stevens Act.

### Mandatory VMS

Amendment 13 lays the groundwork to implement a mandatory VMS requirement based on analysis provided by the Council and the agreement by NMFS that the system is economically viable. Upon such agreement, the Council would submit to NMFS the applicable paperwork to conform with the Paperwork Reduction Act, and submit a full economic analysis pertaining to this new requirement. Once these Council submissions are complete, NMFS will publish a proposed rule followed by a final rule that will evaluate the likely costs and benefits of any proposed VMS program. The public will have an opportunity to comment on all aspects of the proposed VMS program during the rulemaking stage.

### Frameworkable Measures

This rule adds to the list of frameworkable management measures the ability to suspend or adjust the surfclam minimum size limit. Due to concerns expressed by some industry members, as well as Council concern that it may be more difficult to

implement a change rather than to suspend a current provision, the Council voted, and NMFS agrees, to maintain the no action alternative and add to the list of frameworkable management measures the ability to suspend or adjust the surfclam minimum size limit.

### Comments and Responses

The comment periods on the FMP and proposed rule ended on October 23, 2003, and October 27, 2003, respectively. All comments received have been considered as responsive to both comment requests. Three comments were received prior to the close of the comment periods.

*Comment 1:* Two letters were received expressing "no comment" regarding Amendment 13. A response received from the U.S. Coast Guard First Coast Guard District indicated that, while the First District had no comment on the Amendment, it would defer input on enforcement and safety issues to the Fifth Coast Guard District. The Fifth Coast Guard District did not have any vessel safety or enforcement concerns with Amendment 13.

*Response:* NMFS acknowledges that the U.S. Coast Guard did not express any vessel safety or enforcement concerns with Amendment 13.

*Comment 2:* One comment raised several issues related to the measures implemented under this FMP. The comment stated that, for any multi-year fishing quotas, quotas should be drastically reduced. The commenter also suggested that any VMS required by NMFS should be supplied by the Agency, and suggested that marine protected areas (MPAs) should be established.

*Response:* The multi-year quotas proposed under Amendment 13 would be required to comply fully with the Magnuson-Stevens Act and would be established by the Council based upon the latest Northeast Fisheries Science Center clam survey and stock assessment, as well as any additional information that becomes available between stock assessments. NMFS believes that VMS units are a cost of conducting business and should be borne by the industry. Finally, the area most affected by the surfclam and ocean quahog industry operations is high-energy sandy areas that are only temporarily impacted by fishing operations under this FMP. As such, there is no immediate need for MPAs as a result of this fishery.

### Changes from the Proposed Rule

This final rule includes changes to the regulations implementing the FMP.

These changes are intended to reflect the Council's intent not to restrict allocation ownership to only those entities that also own a permitted vessel, and to eliminate the restriction on the trade of allocation tags of amounts less than 160 bu (85 hL) (5 cage tags).

Amendment 8 to the FMP established the individual transferrable quota (ITQ) program for the Atlantic surfclam and ocean quahog fisheries in 1990. Amendment 8 states that there are "no restrictions on the permissible use of the quota." However, the regulations implementing Amendment 8 refer to the vessel owner as the individual to whom an allocation is issued. This language reflects the fact that the initial allocations were made to vessel owners. Subsequent to the initial allocation, and as contemplated by Amendment 8, some allocation holders sold their vessels or transferred allocation to individuals who did not own a vessel. This final rule changes this provision at 50 CFR 648.70(a) by specifying that the allocation for each fishing year will be allocated to the allocation owner as of the last day of the fishing year that allocation owners are allowed to permanently transfer their allocation (October 15).

The regulation prohibiting the transfer of allocation in amounts less than 160 bu (85 hL) (5 cage tags) was originally intended to reduce the administrative burden on NMFS. However, this regulation has inadvertently placed an undue burden on some vessels, particularly those in the Maine mahogany quahog fishery who chose to participate in the ITQ program, by preventing them from transferring less than 160 bu (85 hL) (5 cage tags) at any time. This regulation has also limited the activities of allocation owners within the Mid-Atlantic region, and may prevent some allocation owners from fully utilizing their allocations. Since the implementation of the ITQ program in 1990, computer programs have reduced the administrative burden such that this restriction is no longer necessary. This modification to the final rule eliminates the 160-bu (85-hL) restriction specified at 50 CFR 648.70(b) and allows participants to transfer allocation in any amount, including transfers of allocation in amounts less than 160 bu (85 hL), and would reduce the economic impact to and regulatory burden on participants in the ITQ program.

#### **Classification**

The Administrator, Northeast Region, NMFS, determined that the FMP amendment implemented by this rule is

necessary for the conservation and management of the Atlantic surfclam and ocean quahog fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Included in this final rule is the FRFA that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

#### **Final Regulatory Flexibility Analysis**

##### *Statement of Objective and Need*

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

##### *Summary of Significant Issues Raised in Public Comments*

Comments received prior to the close of the comment period for the proposed rule focused on the measures contained within Amendment 13 and did not reference the analysis contained in the IRFA. Although one commenter stated that NMFS should pay for the cost of VMS units, the requirement to utilize VMS is not being mandated through this rule. Once NMFS determines the economic feasibility of a VMS system, NMFS will inform the public of the likely costs. However, at this time, NMFS believes that use of a VMS is a cost of doing business and should be borne by the industry. For a summary of the comments received, refer to Comments and Responses.

##### *Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is only summarized here.

All of the affected businesses (fishing vessels) are considered small entities under the standards described by the Small Business Administration because they have annual returns (revenues) that do not exceed \$3.5 million annually. This rule could affect any vessel holding

an active Federal permit for either species. However, the commercial use of the permit is limited to vessels fishing under an individual fishing quota or fishing in the Maine mahogany fishery. In 2001, there were 51 vessels that landed either surfclams (21 vessels), ocean quahogs (16 vessels), or both (14 vessels). There were 31 vessels in 2001 that fished under the federal limited access Maine mahogany quahog permit for Maine ocean quahogs.

##### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

There are no recordkeeping, reporting, or other compliance costs forthcoming from this action.

##### *Steps Taken to Minimize Economic Impacts on Small Entities*

Management measures contained in this rule would establish multi-year quotas and add the suspension of the surfclam minimum size limit and adjustment of the minimum size to the list of frameworkable measures under the FMP. None of the management measures in this rule would result in a substantial change in revenues or profitability of vessels comprising these fisheries. Although additional alternatives were considered for these management measures, the preferred alternative would minimize economic impacts to the greatest extent possible.

##### *Overfishing Definition for Surfclams*

The proposal to revise the overfishing definition for surfclams does not alter the optimum yield of the fishery, a basis for determining annual quotas, and does not directly impact gross revenues. Therefore, no change to gross revenues is expected from this revision. However, an initial regulatory flexibility analysis must be prepared at the time when quotas or other management measures that control landings are proposed through a general notice of proposed rulemaking. The NMFS considered three alternative overfishing definitions, none of which would meet the requirements of National Standard 1 of the Magnuson-Stevens Act. These alternative definitions included the following: (1) The disapproved definition from Amendment 12; (2) The pre-Sustainable Fisheries Act Amendment 9 definition; and (3) The Amendment 8 estimate of MSY at 2.9 million bushels (approximately 50 million pounds of shucked meats) for the Mid-Atlantic portion of the resource. As in the case of the preferred alternative, none of these alternatives would directly affect the profitability of individual vessels.

### *Multi-year Quotas and Frameworkable Minimum Size Limits and Adjustments for Surfclams*

The establishment of multi-year quotas and frameworkable minimum size limits and adjustments for surfclams through this final rule are purely administrative and will not directly impact gross revenues. However, the Council and NMFS will be required to prepare an initial regulatory flexibility analysis for each quota set by the Council and for each surfclam minimum size limit adjustment, if applicable, when a notice of proposed rulemaking is developed.

The NMFS considered two alternatives to the multi-year quota measure including the status quo and an alternative that would set multi-year quotas without annual review. The Council also considered two alternatives to the minimum size limits and adjustments including the status quo and an alternative to adjust minimum sizes when the multi-year decisions occur. As explained above, any changes to annual quotas or adjustments to surfclam minimum size that could result from any alternatives considered would require, subject to the preparation of a proposed rule, preparation of regulatory flexibility analyses at that time.

### *Mandatory VMS*

This final rule does not implement a mandatory VMS program at this time. However, the Council is planning to establish a vessel monitoring program at a later time. When the Regional Administrator determines that an economically viable monitoring system is available to the industry, the Council and NMFS must prepare an IRFA that fully examines the compliance costs associated with that system. A mandatory VMS requirement would be implemented through proposed and final rulemaking by a regulatory amendment.

### *Fishing Gear Impacts on EFH*

This rule implements no changes to existing management measures to address fishing gear impacts on EFH. Therefore, there are no impacts on vessel gross revenues resulting from this aspect of Amendment 13.

### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such

publications as "small entity compliance guides." The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam and ocean quahog fishery permits. The guide will also be available on the Internet at <http://www.nero.noaa.gov>. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

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

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: December 9, 2003.

**John Oliver,**

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended 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 § 648.70, paragraphs (a)(1), (b)(1) and (b)(2) are revised to read as follows:

#### **§ 648.70 Annual individual allocations.**

(a) \* \* \*

(1) On or about November 1 of each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation 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 § 648.71. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number, so that

allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in bushels and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.75(b).

\* \* \* \* \*

(b) \* \* \*

(1) *Allocation percentage.* Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred in the year in which the transfer is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation 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 log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. 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 § 648.75 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. Section 648.71 is revised to read as follows:

#### **§ 648.71 Catch quotas.**

(a) *Establishing quotas.* Beginning in 2005, the amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for a 3-year period by the Regional Administrator on or about December 1, 2004. The initial 3-year specification will be based on the most recent available survey and stock assessments for Atlantic surfclams and ocean quahogs. Subsequent 3-year

specifications of the annual quotas will be accomplished on or about December 1 of the third year of the quota period, unless the quotas are modified in the interim pursuant to § 648.71(b). The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 million bu (98.5 to 181 million L) per year. The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 million bu (213 to 319.4 million L).

(1) *Quota reports.* On an annual basis, MAFMC staff will produce an Atlantic surfclam and ocean quahog annual quota recommendation paper to the MAFMC based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a 3-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

- (i) Exploitable and spawning biomass relative to the OY.
- (ii) Fishing mortality rates relative to the OY.
- (iii) Magnitude of incoming recruitment.
- (iv) Projected effort and corresponding catches.
- (v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review.* Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the **Federal Register**. Comments on the proposed annual quotas may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the **Federal Register** on or about December 1 of each year. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional

Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act and the objectives of the Atlantic Surfclam and Ocean Quahog FMP and other applicable law.

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the Council's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3-year period. Such modification shall be in effect for a period of 3 years from the year in which it is first implemented, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a 3-year period.

(c) *Annual quotas.* The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

■ 4. In § 648.75, paragraph (b) is revised to read as follows:

**§ 648.75 Cage identification.**

\* \* \* \* \*

(b) *Issuance.* The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year, or he/she may specify, in the **Federal Register**, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's initial allocation as specified in § 648.70(a). Each tag represents 32 bu (1,700 L) of allocation.

\* \* \* \* \*

■ 5. In § 648.77, paragraph (a)(1) is revised to read as follows:

**§ 648.77 Framework adjustments to management measures.**

(a) \* \* \*

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council

must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels), description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set-aside quota for scientific research, VMS, OY range, and suspension or adjustment of the surfclam minimum size limit.

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[FR Doc. 03-30923 Filed 12-15-03; 8:45 am]  
BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 031009255-3302-02; I.D. 092503A]

RIN 0648-AQ88

**Fisheries of the Exclusive Economic Zone Off Alaska; Revision to the Management of "Other Species" Community Development Quota**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to modify the management of the "other species" Community Development Quota (CDQ) reserve by eliminating specific allocations of "other species" CDQ to individual CDQ managing organizations (CDQ groups) and, instead, allowing NMFS to manage the "other species" CDQ reserve with the general limitations used to manage the catch of non-CDQ groundfish in the Bering Sea and Aleutian Islands management area (BSAI). This action also eliminates the CDQ non-specific reserve and makes other changes to improve the clarity and consistency of CDQ Program regulations. This action is necessary to improve NMFS' ability to effectively administer the CDQ Program. It is intended to further the goals and objectives of the North Pacific Fishery