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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130904778-3778-01]

RIN 0648-XC855

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Proposed 2014-2016 Fishing Quotas

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes commercial quotas for the Atlantic surfclam and ocean quahog fisheries for 2014, 2015, and 2016. The proposed quotas are unchanged from the quotas for the 2011, 2012, and 2013 fishing years. This action sets allowable harvest levels of Atlantic surfclams and ocean quahogs, prevent overfishing, and allow harvesting of optimum yield. This action would also continue to suspend the minimum shell size for Atlantic surfclams for the 2014 fishing year. It is expected that the industry and dealers will benefit from the proposed status quo quotas, as they will be able to maintain a consistent market.

DATES: Comments must be received by [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2013-0139, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0139, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- Fax: (978) 281-9177, Attn: Jason Berthiaume.

- Mail: John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on the 2014-2016 Surfclam/Ocean Quahog Specifications.”

Instructions: All comments received are part of the public record and will generally be posted to 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.

A copy of the Environmental Assessment prepared for this action is available upon request from the Mid-Atlantic Fishery Management (Council), 800 North State Street, Suite 201, Dover, DE 09901.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, 978-281-9177.

SUPPLEMENTARY INFORMATION: The Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) requires that NMFS, in consultation with the Mid-Atlantic Council (Council), specify quotas for surfclam and ocean quahog 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, 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 Maine 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 (0.6 to 3.524 million L). 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 annual quota review is conducted by the Council every year to determine if the multi-year quota specifications remain appropriate. The fishing quotas must be in compliance with overfishing definitions for each species. In recommending these quotas, the Council considered the most recent stock assessments and other relevant scientific information.

In June 2013, the Council voted to recommend maintaining the 2013 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 (3.524 million L) for the Maine ocean quahog fishery for 2014-2016. The proposed quotas for the 2014-2016 Atlantic surfclam and ocean quahog fishery are shown in the table below.

PROPOSED 2014-2016 ATLANTIC SURFCLAM AND OCEAN QUAHOG QUOTAS

Ocean Quahog				
Year	ABC	ACL	ACT	Commercial Quota

2014-2016	5.7 million bu (306 million L)	5.7 million bu (306 million L)	Maine ACT: 105,010 Maine bu (3.7 million L)	Maine Quota: 100,000 Maine bu (3.524 million L)
			Non-Maine ACT: 5.56 million bu (298 million L)	Non-Maine Quota: 5.3 million bu (284 million L)

Atlantic Surfclam				
Year	Allowable Biological Catch (ABC)	Annual Catch Limit (ACL)	Annual Catch Target (ACT)	Commercial Quota
2014	7.8 million bu (415 million L)	7.8 million bu (415 million L)	3.8 million bu (202 million L)	3.4 million bu (181 million L)
2015	6.7 million bu (202 million L)	6.7 million bu (202 million L)	3.8 million bu (202 million L)	3.4 million bu (181 million L)
2016	6.2 million bu (188 million L)	6.2 million bu (188 million L)	3.8 million bu (115 million L)	3.4 million bu (115 million L)

The Atlantic surfclam and ocean quahog quotas are specified in “industry” bushels of 53.24 L per bushel, while the Maine ocean quahog quota is specified in Maine bushels of 35.24 L per bushel. 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.

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 2014-2016 status quo surfclam quota was developed after reviewing the results of the Northeast Regional Stock Assessment Workshop (SAW) 56 for Atlantic surfclam, released to the public in 2013. The surfclam quota recommendation is consistent with the SAW 56 finding that the Atlantic surfclam

stock is not overfished, nor is overfishing occurring. 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 2014-2016. This quota represents the maximum allowable quota under the FMP.

Ocean Quahogs

The proposed 2014-2016 quota for ocean quahogs also reflects the status quo quota of 5.333 million bu (284 million L) in 2010. In April 2013, the ocean quahog stock assessment was updated and found that the ocean quahog stock is not overfished, nor is overfishing occurring. Ocean quahog is a low productivity stock that is being fished down from its pre-fishery level; however, after several decades of relatively low fishing mortality, the stock is still above the biomass target reference points. 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 2014-2016.

The proposed 2014-2016 quota for Maine ocean quahogs is the status quo level of 100,000 Maine bu (3.524 million L). In 2008, the State of Maine completed a stock assessment of the resource within the Maine Mahogany Quahog Zone. 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 Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the Atlantic Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Reporting and Recordkeeping Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

This proposed rule is exempt from the requirements of E.O. 12866.

The Council prepared a draft EA for this action that analyzes the impacts of this proposed rule. A copy of the draft EA is available from the Federal e-Rulemaking portal www.regulations.gov. Type “NOAA-NMFS-2013-0139” in the Enter Keyword or ID field and click search. A copy of the EA is also available upon request from the Council (see ADDRESSES).

The Council prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA), which is included in the EA for this action and supplemented by information contained in the preamble of this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY of the proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Council (see ADDRESSES).

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398).

The rule increased the size standard for finfish fishing from \$4.0 to \$19.0 million, shellfish fishing from \$4.0 to \$5.0 million, and other marine fishing from \$4.0 to \$7.0 million.

All of the entities (fishing vessels) affected by this action are considered small entities

under the SBA size standards for small shellfish fishing businesses (\$5.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities.

Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

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

The proposed measures would only affect vessels holding an active Federal open access surfclam and/or ocean quahog permit. The SBA defines a small commercial shellfish fishing entity as a firm with gross annual receipts not exceeding \$5 million. In 2012, a total of 42 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under the Individual Fishing Quota system. In addition, 12 vessels participated in the limited access Maine ocean quahog fishery, for a total of 54 participants in 2012. Average 2012 gross income was \$950,000 per vessel. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 54 commercial fishing entities fall below the SBA size threshold for small commercial shellfish fishing entities.

Economic Impacts of this Proposed Action Compared to Significant Non-Selected Alternatives

1. Specifications

The proposed quotas for 2014-2016 reflect the same quota levels set for 2011-2013. 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. The surfclam quota is proposed to be set to the maximum allowed under the FMP of 3.4 million bu (181 million L).

The Maine ocean quahog quota is proposed to be set at the maximum allowed under the FMP of 100,000 Maine bu (3.524 million L). 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.

The non-selected alternatives for both the surfclam and ocean quahog would both result in more restrictive quotas. Therefore, the more restrictive non-selected alternatives would have a negative economic impact on the fishery when compared to the proposed action of status quo quotas.

2. Minimum Size Suspension for Atlantic Surfclams

In regard to the suspension of the minimum size limit for Atlantic surfclams, the minimum size limit has been suspended since 2005. Therefore, because this action would not impose a minimum size limit, and because no net change in fishing effort, participation in the fishery, or fishery expenses are expected, it is anticipated that this action would not impose any additional costs on the industry. In fact, continuing to suspend the minimum size limit would likely have positive economic affects in contrast to not suspending the minimum size limit.

The non-selected alternative would result in the minimum size limit for surfclams not being suspended. As a result, the non-selected selected alternative would require fishery participants to adhere to the surfclam minimum size limit. Measuring surfclams would result in additional burden which would likely reduce operational efficiency. Therefore, the non-selected

alternative of not suspending the minimum size limit would have negative economic impacts and would reduce vessel efficiency when compared to the proposed alternative of suspending the minimum size limit.

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

Dated: November 1, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

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