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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160816746-6999-02]

RIN 0648-XE819

**Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery;
2017-2018 Fishing Quotas**

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

ACTION: Final rule.

SUMMARY: This final rule implements status quo commercial quotas for the Atlantic surfclam and ocean quahog fisheries for 2017, suspends the minimum shell size for Atlantic surfclams for 2017, and provides projected status quo quotas for 2018. This action is necessary to establish allowable harvest levels of Atlantic surfclams and ocean quahogs that will prevent overfishing and allow harvesting of optimum yield.

DATES: This rule is effective January 1, 2017, through December 31, 2017.

ADDRESSES: Copies of the Environmental Assessment (EA), Supplemental Information Report (SIR), and other supporting documents for these specifications are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The EA and SIR are also accessible via the internet at: www.greateratlantic.fisheries.noaa.gov/.

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

SUPPLEMENTARY INFORMATION:

The Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) requires that NMFS, in consultation with the Mid-Atlantic Council, specify quotas for surfclam and ocean quahog for up to a 3-year period, with annual reviews if multiple year quotas are established. It is the policy of the Council that the catch limits 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 ocean quahog quota is allocated separately from the ocean quahog individual transferable quota (ITQ) fishery quota. Regulations implementing Amendment 13 to the FMP (68 FR 69970; December 16, 2003) established the ability to set multi-year quotas with an annual quota review to be conducted by the Council to determine if the multi-year quota specifications remain appropriate for each year. NMFS then publishes the annual final quotas in the **Federal Register**. The fishing quotas must ensure overfishing will not occur. In recommending these quotas, the Council considered the most recent stock assessments and other relevant scientific information.

In June 2016, the Council voted to recommend maintaining the status quo quota levels of

5.33 million bu (284 million L) for the ocean quahog fishery, 3.40 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (3.52 million L) for the Maine ocean quahog fishery for 2017 and projected status quo quotas would be maintained in 2018. On November 23, 2016, we published a proposed rule (81 FR 84544), with a public comment period through December 8, 2016. Eight comments were received and are discussed below.

2017 and Projected 2018 Specifications

Tables 1 and 2 show quotas for the 2017 Atlantic surfclam and ocean quahog fishery along with projected quotas for 2018. By providing projected quotas for 2018, NMFS hopes to assist fishery participants in planning ahead. NMFS and the Council will reassess the status of the Atlantic surfclam and ocean quahog fishery in 2017, including the results of new stock assessments for both species. Final 2018 quotas will be published in the **Federal Register** before the start of the 2018 fishing year (January 1, 2018) based on the 2017 review.

Table 1 2017 and Projected 2018 Atlantic Surfclam Measures

Year	Acceptable Biological Catch (ABC)	Annual Catch Limit (ACL)	Annual Catch Target (ACT)	Commercial Quota
2017	44,469 mt	44,469 mt	29,364 mt	3.40 million bu (181 million L)
2018	45,524 mt	45,524 mt	29,364 mt	3.4 million bu (181 million L)

Table 2 2017 and Projected 2018 Ocean Quahog Measures

Year	ABC	ACL	ACT	Commercial Quota
2017	26,100 mt	26,100 mt	26,035 mt	Non-Maine Quota: 5.33 million bu (284 million L)
				Maine ACT: 100,000 Maine bu (3.52 million L)
Projected 2018	26,100 mt	26,100 mt	26,035 mt	Non-Maine Quota: 5.33 million bu (284 million L)

				Maine ACT: 100,000 Maine bu (3.52 million L)
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The Atlantic surfclam and ocean quahog quotas are specified in “industry” bushels of 1.88 ft³ (53.24 L) per bushel, while the Maine ocean quahog quota is specified in Maine bushels of 1.24 ft³ (35.24 L) per bushel.

Results of a new stock assessment for the Atlantic surfclam stock were released in November 2016, and a new assessment of the ocean quahog stock will be completed in early 2017. It is expected that the Council will use these assessment results to update the 2018 specifications as needed and recommend specifications for both fisheries through 2020. We anticipate rulemaking for 2018 specifications, with projections for 2019-2020, in the fall of 2017.

Surfclam Minimum Size Suspension

Commercial surfclam data for 2016 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 14.4 percent of the overall commercial landings were composed of surfclams that were less than the 4.75-in (120-mm) default minimum size. This percentage of small clams is higher than in most previous years; however, it is still below the 30-percent trigger specified in regulation. Based on the information available, the Regional Administrator suspends the minimum size limit for Atlantic surfclams for the 2017 fishing year (January 1 through December 31, 2017). A determination on the 2018 minimum size suspension will be made in the fall of 2017 and announced in the **Federal Register**.

Comments

We received eight comments on the proposed rule; six from representatives of Atlantic

surfclam and ocean quahog commercial fishing and processing companies and two from the general public. One comment from the general public was critical of NMFS management of the fishery, suggesting quotas be reduced to zero, but offered no supporting information. All other comments strongly supported the status quo quotas and continuing to suspend the surfclam minimum size limit. This final rule maintains status quo quotas and the minimum surfclam size is suspended for 2017, as outlined in the preamble.

Changes from Proposed Rule to Final Rule

There are no changes from the proposed to final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the Atlantic Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds good cause to waive the 30-day delay in effectiveness period for this action under the Administrative Procedure Act (5 U.S.C. 553(d)(3)).

First, if this action is not effective on January 1, 2017, the current suspension of the surfclam minimum size limit would expire. Timely publication of the 2017 minimum size suspension for the January 1 start of the fishing year relieves this restriction, thus exempting the minimum size suspension under this rule from the requirement for a 30-day delay in effectiveness (5 U.S.C. 553(d)(1)). There is also good cause to waive the 30-day delay because, until the new suspension is effective, fishing vessels would be subject to the size limit and would incur additional expense and lost fishing time to have crew members sort the catch to comply

with the default minimum surfclam length of 4.75 inches (12.065 cm). The minimum surfclam size has routinely been suspended each year for over a decade. If the minimum size were again in effect without prior warning, it would cause significant confusion for industry members and disruption to normal fishing operations. Vessels operating unaware of the reinstatement of the minimum size may also violate the applicable regulation.

Second, a delay in the effective date of this final rule may also cause substantial confusion. The regulations at 50 CFR 648.72(c) state that “annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section,” and requires NMFS to publish “notification in the **Federal Register** if the previous year's specifications will not be changed.” Members of the fishing industry may not be aware that quotas remain effective without the timely publication of a notice to inform them that specifications are not being changed. As a result, fishermen could be hesitant to fish or transfer cage tags if they think there are no quotas or that the associated cage tags may not be valid.

Delaying the effectiveness of this rule past January 1, 2017, would provide no benefit to the public or the fishing industry. On the contrary, there could potentially be significant disruption and cost to the fishery if the minimum size suspension is not in place on January 1. Therefore, there is good cause to waive the 30-day delay in effectiveness, as not doing so would be contrary to the public's interest.

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

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: December 19, 2016

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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