

### National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact, as part of its request for a small take authorization in 1997. This EA contains information incorporated by reference in the application that is necessary for determining whether the activities proposed for receiving small take authorizations are having a negligible impact on affected marine mammal stocks. NMFS adopted the U.S. Air Force EA as its own as provided by 40 CFR 1506.3. In the final rule for this activity (64 FR 9925, March 1, 1999), NMFS found that the issuance of regulations and LOAs to the Air Force would not result in a significant environmental impact on the human environment and that it would be unnecessary to either prepare its own NEPA documentation, or to recirculate the Air Force EA for additional comments. This action is within the scope of the EA and does not alter its conclusions.

### Endangered Species Act (ESA) Consultation History

The Department of the Air Force consulted with NMFS, as required by section 7 of the ESA, on whether launches of Titan II and IV at SLC-4 would jeopardize the continued existence of species listed as threatened or endangered. NMFS issued a section 7 biological opinion on this activity to the Air Force on October 31, 1988, concluding that launchings of the Titan IV were not likely to jeopardize the continued existence of the Guadalupe fur seal. The Air Force reinitiated consultation with NMFS after the Steller sea lion was added to the list of threatened and endangered species (55 FR 49204, November 26, 1990). However, since Steller sea lions had not been sighted on the Channel Islands between 1984 and the time of the consultation, it was determined that these launchings were not likely to affect Steller sea lions. Additionally, on September 18, 1991, NMFS concluded that the issuance of a small take authorization to the Air Force to incidentally take marine mammals during Titan IV launches was not likely to jeopardize the continued existence of Steller sea lions or Guadalupe fur seals. Because launches of rockets and missiles other than Titan IV are unlikely to produce sonic booms that will impact the NCI and because listed marine mammals are not expected to haul out either on the Vandenberg coast or on the NCI during the 5-year period for this

proposed authorization, the issuance of regulations is unlikely to adversely affect listed marine mammals (64 FR 9925, March 1, 1999). Additionally, incidental take authorizations for either of these two species under either the MMPA or the ESA are not warranted.

### List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and record keeping requirements, Seafood, Transportation.

Dated: January 14, 2002.

**William T. Hogarth,**

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

For the reasons discussed in the preamble, 50 CFR part 216 is amended as follows:

### PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.125, paragraph (b) (1) is revised to read as follows:

#### § 216.125 Requirements for monitoring and reporting.

\* \* \* \* \*

(b) \* \* \*

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching.

\* \* \* \* \*

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### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 011004242-2005-02; I.D. 092401F]

RIN 0648-APO9

#### Fisheries of the Northeastern United States; 2002 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

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

**ACTION:** Final rule; 2002 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany ocean quahogs.

**SUMMARY:** NMFS issues final quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2002. These quotas specify allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from the waters north of 43° 50'N. lat. in 2002.

**DATES:** Effective from January 16, 2002, through December 31, 2002.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and the Essential Fish Habitat Assessment, are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. A copy of the EA/RIR/FRFA is accessible via the Internet at <http://www.nero.gov/ro/doc/nr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Walter Gardiner, Fishery Management Specialist, 978-281-9326.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) requires NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected should allow sustainable fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the Council must

also consider the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP, published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs to the management unit and provide that a small artisanal fishery for ocean quahogs in the waters north of 43° 50' N. lat. will have an annual quota within a range of 17,000 to 100,000 Maine bushels (bu) (5,991 to 35,240 hectoliters (hL)), with an initial amount of 100,000

Maine bu (35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas was provided in the preamble to the proposed rule published at 66 FR 53770, October 24, 2001, and is not repeated here. The comment period for that rule ended on November 23, 2001.

No comments were received during the comment period, and the final quotas for 2002, which are unchanged from those in the proposed rule, are shown in the table below. The 2002 quotas for both ocean quahogs and Maine mahogany quahogs are the same as the 2001 quotas. However, the 2002 surf clam quota is 10 percent higher than the 2001 quota.

#### 2002 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	2002 final quotas (bu)	2002 final quotas (hL)
<sup>1</sup> Surf clam	3,135,000	1,669,000
<sup>1</sup> Ocean quahog	4,500,000	2,396,000
<sup>2</sup> Maine mahogany quahog	100,000	35,240

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

<sup>2</sup> 1 bushel = 1.2445 cubic ft = 35.24 liters.

#### Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A delay in the effective date of this final rule would cause a disruption in the ordinary commerce of the surf clam and ocean quahog fisheries. Individual Transferable Quota shareholders each receive a portion of the overall quota for these two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surf clams and ocean quahogs begins on January 1, regardless of the publication of the annual quota. Historically, allocations have been transferred either permanently or temporarily to meet changing economic circumstances in the fishery from the commencement of these fisheries. For example, vessel owners who enter into a supply contract with a processor may experience vessel breakdowns that thwart performance of their contractual obligations. In this situation it is imperative that the vessel owner have the ability to request that NMFS temporarily transfer part of his/her allocation to another harvester who is willing to fulfill the terms of the supply contract. Further, allocation holders at times pledge their allocation as security for a loan. This entails the transfer of the individual allocation to the lending institution for the pendency of the loan. Without an effective quota, NMFS cannot make either a partial transfer or an entire allocation effective, permanently or temporarily. This inability on the part of NMFS to make such transfers effective would have a negative economic impact on the surf clam and ocean quahog fisheries.

Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2002 surf clam, ocean quahog, and Maine mahogany quahog quotas.

NMFS and the Council prepared a FRFA for this action. A copy of the FRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed rule and specifications included a detailed summary of the analysis contained in the Initial Regulatory Flexibility Analysis (IRFA), which is not repeated here. A summary of the FRFA, focusing upon the impacts of the final measures, follows:

A description of the reasons why this action is being taken by the agency and the objectives of this final rule are explained in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

#### Public Comments

There were no public comments received in response to the IRFA's analysis of the expected impacts of the proposed regulations on small entities.

#### Minimizing Significant Economic Impact of Small Entities

These specifications establish a 10-percent increase in the surf clam quota and continue the ocean quahog and

Maine mahogany ocean quahog quota without change from the 2001 quotas. Since 2000 harvest levels of 2.561 and 3.161 million bu (1.364 million hL to 1.683 million hL) for surf clams and ocean quahogs, respectively, were below the 2002 quotas implemented by this action, and NMFS and the Council assume no changes in fishing effort or yield-to-effort will take place in 2001, these 2002 quotas are not expected to constrain the overall harvest in the fishery. As a result, harvesters could increase their landings over the 2000 levels, and additional revenues could accrue in 2002.

#### Vessels

In 2000, a total of 48 vessels reported harvesting surf clams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2000 gross income from surf clam harvests was \$702,317 per vessel, and \$470,854 per vessel from ocean quahog harvests. In the small artisanal fishery for ocean quahogs in Maine, 34 vessels reported harvests in the clam logbooks, with an average value of \$97,223 per vessel. All of these vessels fall within the definition of a small entity.

For ocean quahogs, the proposed 2002 quota is 4.500-million bu (2.396-million hL). The other alternatives considered were 4.000, 4.250, 4.750, and 6.000 million bu (2.129, 2.263, 2.529, and 3.195 million hL). The minimum allowable quota specified in the current OY range is 4.000 million bu (2.129 million hL) of ocean quahogs. Adoption of a 4.000-million bu (2.129-million hL) quota would represent a 12-percent decrease from the current 4.500-million

bu (2.396-million hL) quota and, assuming the entire quota is harvested, a 27-percent increase in harvest from the 2000 harvest level of 3.161 million bu (1.683 million hL). This alternative would take the most conservative approach to managing the fishery that is currently available to NMFS and the Council. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33-percent increase in allowable harvest and a 90-percent increase in landings from 2000, assuming that all of the quota is harvested. However, the industry does not have a market available to absorb such a massive increase in landings and may not have the vessel capacity necessary to harvest a quota this large (two of the most productive ocean quahog vessels sank in January 1999 and have not been replaced). Since all alternatives, including the preferred, would yield increases relative to the actual 2000 landings, increased revenues would be likely to occur.

For surf clams, the proposed 2002 quota is 3.135 million bu (1.669 million hL). The other alternatives considered were 1.850, 2.850, 3.000, and 3.400 million bu (0.985, 1.517, 1.597, and 1.810 million hL). The minimum allowable quota specified in the current OY range is 1.850 million bu (0.985 million hL) of surf clams. Adoption of a 1.850-million bu (0.985-million hL) quota would represent a 35-percent decrease from the current 2.850-million bu (1.517-million hL) quota, and a 28-percent decrease from the 2000 harvest level of 2.561 million bu (1.364 million hL). A reduction in quota of this magnitude would have a substantially negative impact on overall ex-vessel revenues. Adoption of the 2.850-million bu (1.517-million hL) quota would most likely have a limited impact on small entities, since it is identical to the 2001 quota. Adopting the maximum allowable quota of 3.400 million bu

(1.810 million hL) for surf clams would allow for a 19-percent increase in harvest. The Council considered a 5-percent increase in quota from the 2001 level to 3.000 million bu (1.597 million hL), but industry representatives stated that they preferred a 10-percent increase. The preferred alternative allows for the 10-percent increase of 2.850 million bu (1.517 million hL) to 3.135 million bu (1.669 million hL). The only alternative that would reduce revenues to vessels is the 1.850-million bu (0.985-million hL) alternative. Both the status quo quota and the 5-percent increase alternative could be constraining on industry. At best, the 5-percent increase would probably increase revenues by a small amount. The resource can support the 10-percent increase in landings and the industry believes it can harvest and process this additional product.

The proposed 2002 quota for Maine mahogany ocean quahogs is 100,000 Maine bu (35,240 hL), which is the maximum allowed under the FMP. The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. Two other alternatives were considered: 50,000 Maine bu (17,620 hL) and 72,466 Maine bu (25,537 hL). Any quota below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely have resulted in a decrease in revenues to individual vessels. The proposed quota is the least constraining allowed under the FMP.

#### *Processors*

Nine to 12 processors currently participate in the surf clam and ocean quahog fisheries. However, five firms are responsible for the vast majority of purchases in the vessels and sale of processed clam products in wholesale markets. Impacts to surf clams and

ocean quahog processors would most likely mirror the impacts of the various quota alternatives to vessels, as discussed above. Revenues earned by processors would be derived from the wholesale market for clam products and, since a large number of substitute products (i.e., other food products) are available, the demand for processed clam products is likely to depend on the price of processed clams, relative to the price of available clam substitutes.

#### *Allocation Holders*

In 2001, there were 99 surf clam allocation holders, while 63 firms or individuals held an ocean quahog allocation. Under the 2002 quotas, the increase in the surf clam quota could benefit those who purchase quota (through lower prices (values)) and negatively impact sellers of quota, because of reduction in value due to the increased allocation of surf clams to each allocation holder. Some allocation holders who might otherwise have found it necessary or desirable to purchase quota share from others will have sufficient quota available to them in 2002 to make additional quota purchases unnecessary. Because the ocean quahog quota is unchanged from 2001, no impacts on allocation holders are expected.

The RIR/IRFA is available from the Council (see **ADDRESSES**). This final rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132; therefore, preparation of a Federalism assessment is not necessary.

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

Dated: January 15, 2002.

**Rebecca Lent,**

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

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