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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170818784-8080-02]

RIN 0648-XF641

**Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery;
2018-2020 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 2018 and projected status quo quotas for 2019 and 2020. 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. This action also continues to suspend the minimum shell size for Atlantic surfclams for the 2018 fishing year. The intended effect of this action is to provide benefit to the industry from stable quotas to maintain a consistent market.

DATES: This rule is effective [*insert date 30 days after date of publication in the Federal Register*], through December 31, 2018.

ADDRESSES: Copies of the Environmental Assessment (EA), Supplemental Information Request (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.

FOR FURTHER INFORMATION CONTACT: Erin Wilkinson, Fishery Management Specialist, 301-427-8561.

SUPPLEMENTARY INFORMATION:

In June 2017, the Council voted to recommend maintaining for 2018-2020 the status quo quota levels of 5.33 million bu (288 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. As further discussed below, NMFS received six comments on the proposed rule (82 FR 58164) published on December 11, 2017. Additional detail on the Council’s recommendations and background on the surfclam and ocean quahog specifications is provided in the proposed rule and not repeated here.

2018 and Projected 2019-2020 Specifications

Tables 1 and 2 show quotas for 2018 and projected quotas for the 2019-2020 Atlantic surfclam and ocean quahog fishery. NMFS will publish a notice in the *Federal Register* before the 2019 and 2020 fishing years notifying the public of the final quota for each year.

Table 1: 2018 and Projected 2019-2020 Atlantic Surfclam Measures

Atlantic Surfclam				
Year	Allowable Biological Catch (ABC)	Annual Catch Limit (ACL)	Annual Catch Target (ACT)	Commercial Quota
2017 (current)	44,469 mt	44,469 mt	29,364 mt	3.4 million bushels (181 million L)
2018	29,363 mt	29,363 mt	29,363 mt	3.4 million bushels

				(181 million L)
2019-2020 (Projected)	29,363 mt	29,363 mt	29,363 mt	3.4 million bushels (181 million L)

Table 2: 2018 and Projected 2019-2020 Ocean Quahog Measures

Ocean Quahog				
Year	ABC	ACL	ACT	Commercial Quota
2017 (current)	26,100 mt	26,100 mt	26,035 mt	Maine quota: 100,000 Maine bu (3.52 million L) Non-Maine quota: 5.33 million bu (288 million L)
2018	44,695 mt	44,695mt	25,924 mt	Maine quota: 100,000 Maine bu (3.52 million L) Non-Maine quota: 5.33 million bu (288 million L)
2019 (Projected)	46,146 mt	46,146 mt	25,924 mt	Maine quota: 100,000 Maine bu (3.52 million L) Non-Maine quota: 5.33 million bu (288 million L)
2020 (Projected)	45,783 mt	45,783 mt	25,924 mt	Maine quota: 100,000 Maine bu (3.52 million L) Non-Maine quota: 5.33 million bu (288 million L)

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. Because Maine ocean quahogs are the same species as ocean

quahogs, both fisheries are assessed under the same overfishing definition. When the two quota amounts (ocean quahog and Maine ocean quahog) are added, the total allowable harvest is below the level that would result in overfishing for the entire stock.

Surfclam

The Atlantic surfclam stock is not overfished, and overfishing is not occurring. This rule maintains the status quo surfclam quota of 3.40 million bu (181 million L) for 2018 and projects that same quota for 2019 and 2020 (see table 1).

Ocean Quahog

The 2018 non-Maine quota for ocean quahog is the status quo quota of 5.33 million bu (288 million L).

The 2018 quota for Maine ocean quahogs is the status quo level of 100,000 Maine bu (3.52 million L). The quota represents the maximum allowable quota under the FMP. NMFS projects that these quota levels will be maintained for the 2019 and 2020 ocean quahog fisheries.

Surfclam Minimum Size

The minimum size limit has been suspended annually since 2005. Minimum size limit may not be suspended unless discard, catch, and biological sampling data indicate that 30 percent or less of the Atlantic surfclam resource have a shell length less than 4.75 inches (120 mm), and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

Commercial surfclam data for 2017 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 10.4 percent of the overall commercial landings, to date, were composed of surfclams that were less than the 4.75-inch (120-mm) default minimum size. Based on the information available, the

minimum size limit for Atlantic surfclams is suspended in the upcoming fishing year (January 1 through December 31, 2018). The Council will re-evaluate if the minimum size should be suspended for 2019 and 2020 prior to each of those fishing years. NMFS will notify the public if the minimum size is suspended for those fishing years.

Comments

We received six comments on the proposed rule; one from the general public and five from industry representatives. One comment from the public was not relevant to the rulemaking. All other comments are in support of the quotas and size suspension in the proposed rule.

Some comments received from industry expressed concern that an overfishing limit (OFL) for surfclams has not been specified. A reported OFL estimate for surfclams was considered highly uncertain, and deemed in the assessment report to be unreliable. Absolute estimates of fishing mortality rate or current stock size were not endorsed by collective scientists conducting the assessment or the assessment peer review panel, so no OFL was estimated.

Some comments from industry were also concerned that the lack of an OFL means that the Council was not able to develop an Allowable Biological Catch (ABC) for surfclam using its standard approach. The Council's Scientific and Statistical Committee recommended an ABC of 29,363 mt, which was adopted by the Council. This ABC is based on a commercial quota of 26,218 mt and 12 percent incidental mortality. This catch level has been sustained by the stock historically, and has prevented overfishing and kept the stock from becoming overfished.

This final rule maintains status quo quotas and the minimum surfclam size is suspended for 2018.

Changes from Proposed 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 rule is consistent with the Atlantic Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

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

This rule is not expected to be an E.O. 13771 regulatory action because this rule is not significant under 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 this 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: February 1, 2018.

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

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