



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 210208-0016]

RTID 0648-XX065

### Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Proposed 2021-2026 Fishing Quotas

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes status quo commercial quotas for the Atlantic surfclam and ocean quahog fisheries for 2021 and projected status quo quotas for 2022-2026. 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 would also continue to suspend the minimum shell size for Atlantic surfclams for the 2021 fishing year. The intended effect of this action is to provide benefit to the industry from stable quotas to maintain a consistent market.

**DATES:** Comments must be received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** An Environmental Assessment (EA) was prepared for the surfclam and ocean quahog specifications. Copies of the EA are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

You may submit comments on this document, identified by NOAA-NMFS-2020-

0152, by the following method:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0152*,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). If you are unable to submit your comment through *www.regulations.gov*, contact Laura Hansen, Fishery Management Specialist.

**FOR FURTHER INFORMATION CONTACT:** Laura Hansen, Fishery Management Specialist, 978-281-9225.

**SUPPLEMENTARY INFORMATION:**

The Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council, set quotas for surfclam and ocean quahog for up to a 3-year period. It is the policy of the Council that the catch limit allow for sustainable fishing to continue at that level for at least 10 years for surfclams, and 30 years for ocean quahogs. The Council policy also considers the economic impact 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. The Maine ocean quahog quota is allocated separately from the quota for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970; December 16, 2003) established the ability to propose 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, conducted in June 2020, and other relevant scientific information.

In August 2020, the Council voted to maintain status quo quota levels of 5.36 million bushels (bu); 285 million Liters (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 2021-2026. The Council recommended that specifications be set for 2021 and proposed for years 2022-2026 to create administrative efficiencies as a result of the new stock assessment process, which is expected to assess surfclam and ocean quahog on a 4 and 6 year cycle, respectively.

The regulations at 50 CFR 648.72(a) allow for setting of sections for up to 3 years. Through this action, we would only set 2021 specifications and include the projected specifications for 2022-2026 to inform the public. The Council approved a regulatory change in the Excessive Shares Amendment that would allow us to set specifications for the maximum number of years needed to be consistent with the Northeast Region Coordinating Council-approved stock assessment schedule, which currently anticipates assessments for both stocks every 6 years. Although the FMP currently authorizes specifications to be set for multiple years, we are still required to publish a final rule each year to formally set the specifications for the coming year. We expect the timing change in the Amendment will be implemented within the next year,

well before years 4 and 5 (fishing years 2025 and 2026) are finalized. However, if for some reason the Amendment is not approved, the Council would adopt new specifications for 2025 and 2026.

The proposed and projected quotas for the 2021-2026 Atlantic surfclam and ocean quahog fishery are shown in Tables 1 and 2.

**Table 1 -- Proposed Atlantic Surfclam Measures 2021-2026 (2022-2026 Projected)**

Atlantic Surfclam				
Year	Allowable Biological Catch (ABC)	Annual Catch Limit (ACL)	Annual Catch Target (ACT)	Commercial Quota
2021	47,919 mt	47,919 mt	29,363 mt	3.4 million bushels (181 million L)
2022	44,522 mt	44,522 mt	29,363 mt	3.4 million bushels (181 million L)
2023	42,237 mt	42,237 mt	29,363 mt	3.4 million bushels (181 million L)
2024	40,946 mt	40,946 mt	29,363 mt	3.4 million bushels (181 million L)
2025	40,345 mt	40,345 mt	29,363 mt	3.4 million bushels (181 million L)
2026	40,264 mt	40,264 mt	29,363 mt	3.4 million bushels (181 million L)

**Table 2 -- Proposed Ocean Quahog Measures 2021-2026 (2022-2026 Projected)**

Ocean Quahog				
Year	Allowable Biological Catch (ABC)	Annual Catch Limit (ACL)	Annual Catch Target (ACT)	Commercial Quota
2021	44,031 mt	44,031 mt	25,924 mt	Maine quota: 100,000 Maine bu (3.52 million L) Non-Maine quota: 5.36 million bu (285 million L)
2022	44,072 mt	44,072 mt	25,924 mt	Maine quota: 100,000 Maine bu (3.52 million L) Non-Maine quota: 5.36 million bu (285 million L)
2023	44,082 mt	44,082 mt	25,924 mt	Maine quota: 100,000 Maine bu (3.52 million L) Non-Maine quota: 5.36 million bu (285 million L)
2024	44,065 mt	44,065 mt	25,924 mt	Maine quota: 100,000 Maine bu (3.52 million L) Non-Maine quota: 5.36 million bu (285 million L)
2025	44,020 mt	44,020 mt	25,924 mt	Maine quota: 100,000 Maine bu (3.52 million L)

				Non-Maine quota: 5.36 million bu (285 million L)
2026	43,948 mt	43,948 mt	25,924 mt	Maine quota: 100,000 Maine bu (3.52 million L) Non-Maine quota: 5.36 million bu (285 million L)

The Atlantic surfclam and ocean quahog quotas are specified in “industry” bushels of 1.88 cube feet (ft<sup>3</sup>) (53.24L) per bushel, while the Maine ocean quahog quota is specified in Maine bushels of 1.24 ft<sup>3</sup> (35.24L) 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. The 2021-2026 quotas are the same as those implemented in the 2018-2020 specifications.

### **Surfclam**

The proposed 2021-2026 status quo surfclam quotas were developed after reviewing the results of the management track stock assessment for Atlantic surfclam, conducted in June 2020. The surfclam quota recommendation is consistent with the assessment finding that the Atlantic surfclam stock is not overfished, and overfishing is not occurring. Based on this information, the Council is recommending, and we are proposing, to maintain the status quo surfclam quota of 3.40 million bu (181 million L) for 2021-2026.

### **Ocean Quahog**

As with surfclams, the proposed 2021-2026 status quo ocean quahog quotas were developed after reviewing the results of the management track stock assessment for ocean quahogs, conducted in June 2020. The ocean quahog quota is consistent with the assessment finding that the ocean quahog stock is not overfished, and overfishing is not occurring. Consistent with the Council recommendation, we are proposing the following for ocean quahog. The proposed 2021-2026 non-Maine quota for ocean quahog is the

status quo quota of 5.36 million bu (285 million L). The 2021-2026 proposed quota for Maine ocean quahogs is the status quo level of 100,000 Maine bu (3.52 million L), which represents the maximum allowable quota under the FMP.

### **Surfclam Minimum Size**

In August 2020, the Council voted to recommend that the minimum size limit for surfclams continue to be suspended for 2021. The minimum size limit has been suspended annually since 2005. Minimum size suspension may not be taken unless discard, catch, and biological sampling data indicate that 30 percent or more of the Atlantic surfclam resource have a shell length less than 4.75 inches (120 millimeters (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 2020 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 11 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 Regional Administrator concurs with the Council's recommendation, and is proposing to suspend the minimum size limit for Atlantic surfclams in the upcoming fishing year (January 1 through December 31, 2021).

### **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.

This action is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

A complete description of the specifications, why they are being considered, and the legal basis for proposing and implementing specifications for the surfclam and ocean quahog fisheries are contained in the preamble to this proposed rule.

The measures proposed by this action apply to surfclam and ocean quahog allocation owners. These are the individuals or entities that received initial individual transferable quota (ITQ) allocations (*i.e.*, owners of record) at the beginning of each fishing year. There were 64 allocation owners of record for surfclam and 33 for ocean quahog in 2019.

Of the 64 initial surfclam allocation owners of record for 2019, 19 were categorized as “Commercial Fishing,” with 100 percent of them classified as small entities. Of the 9 allocation owners that were categorized as “Fish and Seafood Merchant Wholesalers,” 1 was classified as a small entity (11 percent) and 8 were classified as large entities (89 percent). Eight allocation owners were categorized as “Commercial Banking,” 1 was classified as a small entity (12 percent), and 7 classified as large entities (88 percent). Six allocations were categorized as “Credit Unions,” with 100 percent of them classified as large entities. There were also 5 allocations categorized as “Sector 92” (Public Administration sector); therefore, small business size standards are not applicable for these 5 allocation owners. Lastly, the (SBA)classification for 17 surfclam allocation owners was unknown.

Of the 33 initial ocean quahog allocation owners of record for 2019, 14 were categorized as “Commercial Fishing,” with 100 percent of them classified as small entities. Of the six allocation owners that were categorized as “Fish and Seafood

Merchant Wholesalers,” two were classified as small entities (33 percent) and 4 were classified as large entities (67 percent). One allocation owner was categorized as “Commercial Banking” and 1 categorized as “Credit Unions” with 100 percent of them classified as large entities. The SBA classification for the remaining allocations owners is unknown.

The proposed quotas are status quo. As a result, this action will have no impacts on the way the fishery operates. These measures are expected to provide similar fishing opportunities when compared to earlier years. Additionally, the surfclam and ocean quahog fisheries, including the Maine quahog fishery, have harvested well below their respective quota allocations for several years. As such, revenue changes are not expected in 2021-2026 when compared to landings and revenues in 2019. Therefore, adoption of the proposed specifications is not expected to have impacts on entities participating in the fishery if landings are similar to those that occurred in 2019.

Maintaining the suspension of the surfclam minimum shell length requirement would result in no change when compared to 2017-2020. The minimum shell length requirement has been suspended each year since 2005. The proposed action would have no impact on the way the fishery operates, and is not expected to disproportionately affect small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: February 8, 2021.

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