

taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the Act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The proponent of the exemption shall publish notice of any approved exemption in the **Federal Register**.

\* \* \* \* \*

5. Amend § 800.16 by revising paragraph (y) to read as follows:

**§ 800.16 Definitions.**

\* \* \* \* \*

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

\* \* \* \* \*

Dated: September 17, 2003.

**John M. Fowler,**

*Executive Director.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 030908223-3223-01; I.D. 081403B]

**RIN 0648-AP57**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan**

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

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

**SUMMARY:** NMFS proposes regulations to implement Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP). This proposed rule would establish: A new surfclam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surfclams and ocean quahogs. The primary purpose of this proposed action is to rectify the disapproved surfclam overfishing definition and the EFH analysis and rationale contained in Amendment 12 in order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to simplify the regulatory requirements of the FMP.

**DATES:** Comments must be received at the appropriate address or fax number, (See **ADDRESSES**), on or before 5 p.m., local time, on October 27, 2003.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 13 to Atlantic Surfclam and Ocean Quahog Fishery." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the FMP, its Regulatory Impact Review (RIR), the Initial

Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

**FOR FURTHER INFORMATION CONTACT:**

Susan A. Murphy, Supervisory Fishery Policy Analyst, 978-281-9252, fax 978-281-9135, [Susan.A.Murphy@noaa.gov](mailto:Susan.A.Murphy@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Amendment 12 to the FMP was prepared by the Mid-Atlantic Fishery Management Council (Council) to bring the FMP into compliance with the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996. On April 28, 1999, the Council was notified that NMFS partially approved Amendment 12. Specifically, two Amendment 12 measures were disapproved, the surfclam overfishing definition and the analysis and rationale for the status quo alternative for addressing fishing gear impacts to EFH. To rectify these disapprovals, the Council prepared, and NMFS published, a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's scoping process for Amendment 13 (66 FR 13694, March 7, 2001). The Council held a scoping hearing on March 21, 2001, and accepted scoping comments on the amendment during the period March 7 through April 6, 2001. In addition to the surfclam overfishing definition and EFH alternatives, other issues identified for inclusion in the EIS were multi-year quotas, a mandatory VMS requirement and a permanent suspension of the surfclam minimum size limit. The Council identified a range of alternatives for each of these five issues and approved the alternatives in a public hearing document at its May, 2002 meeting. A Notice of Availability (NOA) on the DSEIS was published in the **Federal Register** on August 30, 2002 (67 FR 55838), with a comment period ending October 15, 2002. There were a series of three public hearings held (one each in the states of Maine, New Jersey and Delaware). After consideration of all public comments, the Council chose the following alternatives at its January, 2003 meeting and voted to submit the Amendment 13 document, including the draft final supplemental environmental impact statement to NMFS. The Amendment 13 measures contained in this action propose multi-year fishing quotas and the ability to suspend or adjust the surfclam