

minimum size limit through a framework adjustment. The analysis of fishing gear impacts on EFH for surfclams and ocean quahogs, a new surfclam overfishing definition, and a mandatory VMS are not accompanied by regulatory text because either they are non regulatory in nature (fishing gear impacts on EFH and the new overfishing definition) or implementation is deferred (a mandatory VMS requirement). However, information on these alternatives is presented in the preamble.

### Surfclam Overfishing Definition

The surfclam overfishing definition contained in Amendment 12 was disapproved because it was based on the sustainability of that portion of the surfclam stock located in the northern New Jersey area. Although 80 percent of the surfclam fishery has taken place off northern New Jersey over the past decade, the Amendment 12 surfclam overfishing definition did not represent the entire resource, as required by National Standard 3.

The surfclam overfishing definition recommended by the Council is based on the advice of the 30th Stock Assessment Workshop (SAW 30, April 2000), which incorporated the results of a research survey that took place during the summer of 1999. In addition, the proposed overfishing definition applies to the entire resource, versus focusing on the northern New Jersey area component of this stock. The proposed surfclam overfishing definition is as follows: Biomass target ( $B_{\text{target}}$ ) =  $1/2$  of current biomass (as a proxy for the biomass level at maximum sustainable yield ( $B_{\text{msy}}$ )); biomass threshold ( $B_{\text{threshold}}$ ) =  $1/2$  the biomass target; fishing mortality threshold ( $F_{\text{threshold}}$ ) = fishing mortality at maximum sustainable yield ( $F_{\text{msy}}$ ), where the current proxy for  $F_{\text{msy}}$  is the natural mortality rate for surfclams ( $M$ ); and the fishing mortality target ( $F_{\text{target}}$ ) would always be set less than the  $F_{\text{threshold}}$  and would be equivalent to the fishing mortality rate ( $F$ ) associated with the quota selected by the Council.

### Fishing Gear Impacts on EFH

The Amendment 12 no action alternative for addressing fishing gear impacts to EFH for surfclams and ocean quahogs was disapproved because the rationale and analysis for selecting this preferred alternative was insufficient. To address this insufficiency, the Council evaluated nine alternatives to minimize fishing gear impacts to EFH, most of which focus on closed areas. The relatively recent "Workshop on the Effects of Fishing Gear on Marine

Habitats off the Northeastern United States" (Workshop, October 2001) concluded that the effects of hydraulic clam dredges were limited to sandy substrates, since this type of gear is not used on muddy or gravel substrates. The Workshop panel also agreed that hydraulic clam dredges have important habitat effects, but that only a small area is affected by this type of gear. In summary, the Workshop panel concluded that because the surfclam fishery is primarily prosecuted in sandy habitats, its effect is limited to potentially large, but localized impacts to biological and physical structure. Furthermore, because the recovery time is relatively short for this high energy environment, the impacts can be considered temporary. In addition, because these impacts potentially affect a relatively small portion (approximately 100 square nautical miles) of the overall large uniform area of high energy sand along the continental shelf, they can be considered minimal. The Workshop panel also indicated that other measures, such as reductions in effort or gear modifications, are not practicable. Thus, based on information from the Workshop, NMFS proposes that no action be taken at this time to mitigate fishing gear impacts on EFH.

### Multi-year Quotas

This proposed rule would replace the current annual specification process with a process that would allow the Council to establish specifications to be in effect for up to three fishing years, provided that an annual evaluation of the surfclam and ocean quahog status is undertaken. This multi-year specification process would allow the Council and NMFS to be more efficient by streamlining the regulatory process, and would provide the industry with greater regulatory consistency and predictability. The intent of this provision is to make the 3-year maximum quota setting process coincide with the Northeast Fisheries Science Center's clam survey and subsequent stock assessment, which occur approximately every 3 years. This would provide the Council with the most recent scientific information available in setting the specifications for these two species. However, the maximum three-year specification process is not meant to curtail the Council from setting specifications during the interim years if information obtained during the annual review indicates that the surfclam and ocean quahog specifications warrant a change, e.g., to comply fully with the Magnuson-Stevens Act.

### Mandatory VMS

Amendment 13, if approved, would authorize NMFS to implement a mandatory VMS requirement based on analysis provided by the Council. At that time, the Council would submit to NMFS the applicable paperwork to conform with the Paperwork Reduction Act, and submit a full economic analysis pertaining to this new requirement. Once these Council submissions are complete, NMFS will publish a proposed rule. The Council intends that such a program would be implemented through three phases as follows: (1) VMS notification to replace the existing surfclam/ocean quahog call-in system; (2) electronic vessel reporting that would replace the existing vessel logbook; and (3) collection of scientific information on a tow-by-tow basis. In addition, the Council could decide to monitor closed areas to better aid enforcement. However, this would be done independently of the other three phases.

### Frameworkable Measures

Finally, this proposed rule would add to the list of frameworkable management measures the ability to suspend or adjust the surfclam minimum size limit. Currently, NMFS conducts an annual analysis to determine if discards or survey data indicate that 30 percent of the surfclams are smaller than 4.75 in (12.06 cm). If it is determined that 30 percent of the surfclams are not smaller than 4.75 in (12.06 cm), NMFS publishes a notice in the **Federal Register** to suspend the surfclam minimum size limit. This suspension has been done every year since the implementation of the individual transferable quota program in 1990. However, due to concerns expressed by some industry members, as well as Council concern that it may be more difficult to implement a change rather than to suspend a current provision, the Council voted to maintain the no action alternative and add to the list of frameworkable management measures the ability to suspend or to adjust the surfclam minimum size limit.

### Classification

At this time, NMFS has not determined that the Amendment, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.