

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

The Council prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. Additionally, the Council in cooperation with NMFS prepared a supplement to the IRFA. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the reasons why this action is being considered, and the objectives and legal basis of this proposed rule are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this proposed rule and are not repeated here. There are no recordkeeping, reporting, or other compliance costs resulting from this action. It would not duplicate, overlap, or conflict with any other Federal rules.

All of the affected businesses (fishing vessels) are considered small entities under the standards described by the Small Business Administration because they have annual returns (revenues) that do not exceed \$3.5 million annually.

The economic impacts of actions were analyzed by employing quantitative approaches to the extent possible. When appropriate data was lacking, or the action was administrative in nature, a qualitative approach was employed. Effects on profitability associated with the proposed management measures should be evaluated by looking at the impact the proposed measures would have on individual vessel costs and revenues. However, in the absence of cost data for individual vessels engaged in these fisheries, changes in gross revenues are used as a proxy for profitability.

In 2003, there were 1590 vessels that held permits in the surf clam fishery and 1602 that held permits in the ocean quahog fishery. Of these vessels, 1590 held both the ocean quahog and surf clam permit simultaneously. The proposed action could affect any vessel holding an active Federal permit for either species. However, the commercial use of the permit is limited to vessels fishing under an individual fishing quota or fishing in the Maine mahogany quahog fishery. In 2001, there were 51 vessels that landed either surfclams (21 vessels), ocean quahogs (16 vessels), or both (14 vessels). There were 31 vessels in 2001 that fished under the Federal limited access Maine mahogany quahog permit for Maine ocean quahogs.

Management measures contained in this proposed rule would establish multi-year quotas and add the suspension of the surfclam minimum

size limit and adjustment of the minimum size to the list of frameworkable measures under the FMP.

None of the proposed management measures in this rule would result in a substantial change in revenues or profitability of vessels comprising these fisheries. Although additional alternatives were considered for these management measures, the preferred alternative would minimize economic impacts to the greatest extent possible.

The proposal to revise the overfishing definition for surfclams does not alter the optimum yield of the fishery, a basis for determining annual quotas, and does not directly impact gross revenues. Therefore, no change to gross revenues is expected from this revision. However, an initial regulatory flexibility analysis must be prepared at the times when quotas or other management measures that control landings are proposed. The Council considered three alternative overfishing definitions, none of which would meet the requirements of National Standard 1 of the Magnuson-Stevens Act. As in the case of the preferred alternative, none of these alternatives would directly affect the profitability of individual vessels.

The proposal to establish multi-year quotas and frameworkable minimum size limits and adjustments for surfclams are administrative and will not directly impact gross revenues. However, the Council will be required to prepare an initial regulatory flexibility analysis for each quota set by the Council and for each surfclam minimum size limit adjustment, if applicable.

The Council considered two alternatives to the multi-year quota measure including the status quo and an alternative that would set multi-year quotas without annual review. The Council also considered two alternatives to the minimum size limits and adjustments including the status quo and an alternative to adjust minimum sizes when the multi-year decisions occur. All alternatives are purely administrative in nature. However, as explained above, any changes to annual quotas or adjustments to surfclam minimum size that could result from any alternatives considered would require, subject to the preparation of a proposed rule, preparation of regulatory flexibility analyses at that time.

The Council is planning to establish a vessel monitoring program at a later point in time since the implementation of a system is dependent upon the determination by the Regional Administrator of an economically viable monitoring system. If and when the

Regional Administrator determines that an economically viable monitoring system is achievable, the Council must prepare an initial regulatory flexibility analysis that fully examines the compliance costs associated with that system. A mandatory VMS requirement would be implemented through proposed and final rulemaking by a regulatory amendment.

The Council proposes no change to existing management measures to address fishing gear impacts on EFH at this time. Therefore, there are no impacts on vessel gross revenues resulting from this aspect of Amendment 13. However, the Council analyzed potential closures of three areas as alternatives to the no action measure including a closing of the Georges Bank Area, the Southern New England East Area, and the Habitat Area of Particular Concern (HAPC) for Tilefish. For Georges Bank, there would be no economic impact to vessels since this area has been closed to fishing for surfclams and ocean quahogs for over ten years. Accordingly, no landings have been recorded from that area during the closure time. For Southern New England, the Council concluded that there would be minimally negative economic impacts to surf clam vessels. However, there could be substantially negative economic impacts to ocean quahog vessels. A closure in the Southern New England area would most likely affect surf clam and ocean quahog vessels fishing out of Massachusetts and Rhode Island since increased fuel costs needed to steam to another fishable area coupled with reduced gross revenue could reduce vessel profitability. The Council estimated that this closure would reduce gross revenues for quahog vessels by \$1,065 per trip and for surfclam vessels by \$2 per trip. The Council determined that the closure of the Tilefish HAPC could result in the largest negative impact to quahog vessels, with a loss in gross revenues of \$2,637 per trip and a loss in profitability to surfclam vessels of \$71 per trip. However, economic impacts from the closure of Tilefish HAPC are likely to be grossly overestimated relative to the actual area that would be specified in any regulations. The impacts are more a function of creating complete 10-minute squares for closures and attempting to minimize the jagged nature of the 250-ft (76.2-m) bathymetric contour. Based purely on sediment preference, it is unlikely ocean quahogs and tilefish would coexist in concentrated areas.

The analysis in the IRFA indicates that there are no significant alternatives considered that would minimize