

notified that NMFS partially approved Amendment 12. 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). During this scoping process, other issues were identified for inclusion in the EIS, including: Multi-year quotas, a mandatory VMS requirement, and a permanent suspension of the surfclam minimum size limit.

The Amendment 13 measures implemented through this rule are multi-year fishing quotas and the ability to suspend or adjust the surfclam 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 requirement 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 measures was presented in the preamble of the proposed rule and is only summarized below.

### Surfclam Overfishing Definition

The revised surfclam overfishing definition recommended by the Council and implemented through this final rule 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. This surfclam overfishing definition is as follows: Biomass target ( $B_{\text{target}}$ ) =  $\frac{1}{2}$  of current (1999) biomass (as a proxy for the biomass level at maximum sustainable yield ( $B_{\text{msy}}$ )) = 1,268,500 mt; biomass threshold ( $B_{\text{threshold}}$ ) =  $\frac{1}{2}$  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 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 and that overall impacts can be considered minimal. Based on information from this Workshop, NMFS is not taking any action to mitigate fishing gear impacts on EFH.

### Multi-year Quotas

Beginning in 2005, Amendment 13 replaces the current annual specification process with a process that allows the Council to establish specifications to be in effect for up to 3 fishing years, provided that an annual evaluation of the surfclam and ocean quahog status is undertaken. This multi-year specification process allows the Council and NMFS to be more efficient by streamlining the regulatory process, and provides the industry with greater regulatory consistency and predictability. The maximum 3-year specification process is not meant to constrain the Council from setting specifications during the interim years if information obtained during the annual review indicates that the surfclam or ocean quahog specifications warrant a change, e.g., to comply fully with the Magnuson-Stevens Act.

### Mandatory VMS

Amendment 13 lays the groundwork to implement a mandatory VMS requirement based on analysis provided by the Council and the agreement by NMFS that the system is economically viable. Upon such agreement, 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 followed by a final rule that will evaluate the likely costs and benefits of any proposed VMS program. The public will have an opportunity to comment on all aspects of the proposed VMS program during the rulemaking stage.

### Frameworkable Measures

This rule adds to the list of frameworkable management measures the ability to suspend or adjust the surfclam minimum size limit. 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, and NMFS agrees, to maintain the no action alternative and add to the list of frameworkable management measures the ability to suspend or adjust the surfclam minimum size limit.

### Comments and Responses

The comment periods on the FMP and proposed rule ended on October 23, 2003, and October 27, 2003, respectively. All comments received have been considered as responsive to both comment requests. Three comments were received prior to the close of the comment periods.

*Comment 1:* Two letters were received expressing "no comment" regarding Amendment 13. A response received from the U.S. Coast Guard First Coast Guard District indicated that, while the First District had no comment on the Amendment, it would defer input on enforcement and safety issues to the Fifth Coast Guard District. The Fifth Coast Guard District did not have any vessel safety or enforcement concerns with Amendment 13.

*Response:* NMFS acknowledges that the U.S. Coast Guard did not express any vessel safety or enforcement concerns with Amendment 13.

*Comment 2:* One comment raised several issues related to the measures implemented under this FMP. The comment stated that, for any multi-year fishing quotas, quotas should be drastically reduced. The commenter also suggested that any VMS required by NMFS should be supplied by the Agency, and suggested that marine protected areas (MPAs) should be established.

*Response:* The multi-year quotas proposed under Amendment 13 would be required to comply fully with the Magnuson-Stevens Act and would be established by the Council based upon the latest Northeast Fisheries Science Center clam survey and stock assessment, as well as any additional information that becomes available between stock assessments. NMFS believes that VMS units are a cost of conducting business and should be borne by the industry. Finally, the area most affected by the surfclam and ocean quahog industry operations is high-energy sandy areas that are only temporarily impacted by fishing operations under this FMP. As such, there is no immediate need for MPAs as a result of this fishery.

### Changes from the Proposed Rule

This final rule includes changes to the regulations implementing the FMP.