

These changes are intended to reflect the Council's intent not to restrict allocation ownership to only those entities that also own a permitted vessel, and to eliminate the restriction on the trade of allocation tags of amounts less than 160 bu (85 hL) (5 cage tags).

Amendment 8 to the FMP established the individual transferrable quota (ITQ) program for the Atlantic surfclam and ocean quahog fisheries in 1990. Amendment 8 states that there are "no restrictions on the permissible use of the quota." However, the regulations implementing Amendment 8 refer to the vessel owner as the individual to whom an allocation is issued. This language reflects the fact that the initial allocations were made to vessel owners. Subsequent to the initial allocation, and as contemplated by Amendment 8, some allocation holders sold their vessels or transferred allocation to individuals who did not own a vessel. This final rule changes this provision at 50 CFR 648.70(a) by specifying that the allocation for each fishing year will be allocated to the allocation owner as of the last day of the fishing year that allocation owners are allowed to permanently transfer their allocation (October 15).

The regulation prohibiting the transfer of allocation in amounts less than 160 bu (85 hL) (5 cage tags) was originally intended to reduce the administrative burden on NMFS. However, this regulation has inadvertently placed an undue burden on some vessels, particularly those in the Maine mahogany quahog fishery who chose to participate in the ITQ program, by preventing them from transferring less than 160 bu (85 hL) (5 cage tags) at any time. This regulation has also limited the activities of allocation owners within the Mid-Atlantic region, and may prevent some allocation owners from fully utilizing their allocations. Since the implementation of the ITQ program in 1990, computer programs have reduced the administrative burden such that this restriction is no longer necessary. This modification to the final rule eliminates the 160-bu (85-hL) restriction specified at 50 CFR 648.70(b) and allows participants to transfer allocation in any amount, including transfers of allocation in amounts less than 160 bu (85 hL), and would reduce the economic impact to and regulatory burden on participants in the ITQ program.

#### Classification

The Administrator, Northeast Region, NMFS, determined that the FMP amendment implemented by this rule is

necessary for the conservation and management of the Atlantic surfclam and ocean quahog fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Included in this final rule is the FRFA that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

#### Final Regulatory Flexibility Analysis

##### *Statement of Objective and Need*

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

##### *Summary of Significant Issues Raised in Public Comments*

Comments received prior to the close of the comment period for the proposed rule focused on the measures contained within Amendment 13 and did not reference the analysis contained in the IRFA. Although one commenter stated that NMFS should pay for the cost of VMS units, the requirement to utilize VMS is not being mandated through this rule. Once NMFS determines the economic feasibility of a VMS system, NMFS will inform the public of the likely costs. However, at this time, NMFS believes that use of a VMS is a cost of doing business and should be borne by the industry. For a summary of the comments received, refer to Comments and Responses.

##### *Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is only summarized here.

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. This rule 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 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.

##### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

There are no recordkeeping, reporting, or other compliance costs forthcoming from this action.

##### *Steps Taken to Minimize Economic Impacts on Small Entities*

Management measures contained in this 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 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.

##### *Overfishing Definition for Surfclams*

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 time when quotas or other management measures that control landings are proposed through a general notice of proposed rulemaking. The NMFS considered three alternative overfishing definitions, none of which would meet the requirements of National Standard 1 of the Magnuson-Stevens Act. These alternative definitions included the following: (1) The disapproved definition from Amendment 12; (2) The pre-Sustainable Fisheries Act Amendment 9 definition; and (3) The Amendment 8 estimate of MSY at 2.9 million bushels (approximately 50 million pounds of shucked meats) for the Mid-Atlantic portion of the resource. As in the case of the preferred alternative, none of these alternatives would directly affect the profitability of individual vessels.