

### *Multi-year Quotas and Frameworkable Minimum Size Limits and Adjustments for Surfclams*

The establishment of multi-year quotas and frameworkable minimum size limits and adjustments for surfclams through this final rule are purely administrative and will not directly impact gross revenues. However, the Council and NMFS 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, when a notice of proposed rulemaking is developed.

The NMFS 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. 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.

### *Mandatory VMS*

This final rule does not implement a mandatory VMS program at this time. However, the Council is planning to establish a vessel monitoring program at a later time. When the Regional Administrator determines that an economically viable monitoring system is available to the industry, the Council and NMFS must prepare an IRFA 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.

### *Fishing Gear Impacts on EFH*

This rule implements no changes to existing management measures to address fishing gear impacts on EFH. Therefore, there are no impacts on vessel gross revenues resulting from this aspect of Amendment 13.

### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such

publications as "small entity compliance guides." The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam and ocean quahog fishery permits. The guide will also be available on the Internet at <http://www.nero.noaa.gov>. Copies of the guide can also be obtained from the Regional Administrator (see ADDRESSES).

### **List of Subjects in 50 CFR Part 648**

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: December 9, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

### **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.70, paragraphs (a)(1), (b)(1) and (b)(2) are revised to read as follows:

#### **§ 648.70 Annual individual allocations.**

(a) \* \* \*

(1) On or about November 1 of each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (i.e., October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.71. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number, so that

allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in bushels and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.75(b).

\* \* \* \* \*

(b) \* \* \*

(1) *Allocation percentage.* Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred in the year in which the transfer is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

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■ 3. Section 648.71 is revised to read as follows:

#### **§ 648.71 Catch quotas.**

(a) *Establishing quotas.* Beginning in 2005, the amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for a 3-year period by the Regional Administrator on or about December 1, 2004. The initial 3-year specification will be based on the most recent available survey and stock assessments for Atlantic surfclams and ocean quahogs. Subsequent 3-year