

an initial amount of 100,000 Maine bu (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 hL to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas was provided in the preamble to the proposed rule published at 68 FR 60324, October 22, 2003, and is not repeated here. The comment period for that rule ended on November 21, 2003. One comment was received during the comment period.

The final quotas for the 2004 Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries, which are unchanged from those in the proposed rule, are shown in the table below. The status quo level of 2003 for the surf clam fishery will be increased by 4.6 percent (from 3.25 to 3.4 million bu) and the ocean quahog quota will be increased by 11.1 percent (from 4.5 to 5.0 million bu). Finally, this rule makes no changes to the Marine ocean quahog quota from the 2003 level of 100,000 Maine bushels.

FINAL 2004 SURFCLAM/OCEAN QUAHOG QUOTAS

| Fishery | 2004 final quotas (bu) | 2004 final quotas (hL) |
|--|------------------------|------------------------|
| ¹ Surfclam | 3,400,000 | 1,810,000 |
| ¹ Ocean quahog | 5,000,000 | 2,662,000 |
| ² Maine mahog- any ocean quahog | 100,000 | 35,240 |

¹ 1 bushel = 1.88 cubic ft. = 53.24 liters

² 1 bushel = 1.2445 cubic ft. = 35.24 liters

Comments and Responses

The deadline for receiving comments on the proposed rule was November 21, 2003. One comment was received on the proposed rule during the comment period.

Comment: The commenter expressed concern that the determination of OYs is biased by industry and politics and that they are set too high; asserted that NMFS fails to protect the stocks; and voiced general support for establishing marine protected areas and reducing any quotas by at least 50 percent. The commenter also objected to NMFS not accepting comments via e-mail on this action.

Response: This rule implements measures designed to provide for improved utilization of the Federal commercial surfclam and ocean quahog resource, and to improve efficiency of this fishery. The OYs used to determine

the quotas for each fishery are based on the best scientific information available, and have been vetted through the SARC, NOAA's Northeast Fisheries Science Center (Center), and peer reviewers, without dispute. None of the stocks are overfished, and overfishing is not occurring. The areas most affected by the surfclam and ocean quahog industry operations are 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. Finally, the recommended quotas will allow sustainable fishing to continue at these quota levels for at least 10 years for surfclams and 30 years for ocean quahogs.

Classification

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

A delay in the effective date of this rule would cause a disruption in the ordinary commerce of the surfclam and ocean quahog fisheries. Individual Transferable Quota (ITQ) shareholders each receive a portion of the overall quota for these two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surfclams and ocean quahogs begins on January 1, regardless of the publication of the annual quota. Historically, allocations have been transferred either permanently or temporarily to meet changing economic circumstances in the fishery right from the commencement of these fisheries. For example, vessel owners who enter into a supply contract with a processor may experience vessel breakdowns that thwart performance of their contractual obligations. In this situation, it is imperative that the vessel owner have the ability to request that NMFS transfer temporarily part of his/her allocation to another harvester who is willing to fulfill the terms of the supply contract in time for the start of the 2004 fishing year. Further, and of more immediate concern is that five banks currently hold twenty-nine allocations between the surfclam and ocean quahog fisheries. These allocations are held by the banks as security for loans made by the banks to fishermen in these two fisheries. This entails the permanent transfer of the individual allocation to the bank as collateral for the pendency of the loan. The banks request NMFS on an annual basis to transfer the cage tags associated with the allocation back to the borrower. This transaction is characterized as a temporary transfer of the allocation pursuant to the regulations. This

temporary transfer of allocation enables the borrower to begin fishing at the beginning of the fishing year in order to generate income with which to discharge the loan. NMFS has received several such requests from the banks holding allocations for the 2004 fishing year. More requests are expected in the near future. Without a quota in effect, NMFS cannot make a transfer of part or the entirety of an allocation either permanently or temporarily. This inability on the part of NMFS to make such transfers effective would preclude the intended recipients of such transfers from fishing, thereby engendering a negative economic impact on the surfclam and ocean quahog fisheries. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2004 surfclam, ocean quahog, and Maine mahogany quahog quotas.

A description of the reasons why this action is being taken by the Agency and the objectives of this final rule are explained in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and the economic 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 here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

One comment was received during the comment period on the proposed rule, although it did not pertain to the