

■ g. Amending paragraph (e)(6)(ii) by removing the reference “(e)(3)(iii)(C)” and adding in its place “(e)(3)(ii)(E).”

§ 21.29 Falconry standards and falconry permitting.

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- (c) * * *
- (3) * * *
- (i) * * *

(E) You may take raptors less than 1 year old, except nestlings, from the wild during any period or periods specified by the State, tribe, or territory. You may take any raptor species from the wild except a federally listed threatened or endangered species or the following species: Bald eagle (*Haliaeetus leucocephalus*), white-tailed eagle (*Haliaeetus albicilla*), Steller’s sea-eagle (*Haliaeetus pelagicus*), golden eagle (*Aquila chrysaetos*), American swallow-tailed kite (*Elanoides forficatus*), Swainson’s hawk (*Buteo swainsoni*), peregrine falcon (*Falco peregrinus*), flammulated owl (*Otus flammeolus*), elf owl (*Micrathene whitneyi*), and short-eared owl (*Asio flammeus*).

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- (d) * * *
- (9) *Inspections.* * * *

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Dated: December 14, 2010.

Thomas L. Strickland,
Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101013504–0610–02]

RIN 0648–XY27

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Final 2011–2013 Fishing Quotas for Atlantic Surfclam and Ocean Quahog

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements final quotas for the Atlantic surfclam and ocean quahog fisheries for 2011, 2012, and 2013. Regulations governing these fisheries require NMFS to publish the final quota specifications for the 2011–2013 fishing years. The intent of this action is to establish allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone to prevent overfishing and to allow harvesting of optimum yield (OY). **DATES:** Effective January 1, 2011, to December 31, 2013.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) are available from Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State St., Dover, DE 19901. A copy of the EA/RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov/nero/regs/com.html>.

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA and the summary of impacts and alternatives contained in the Classification section of the preamble to this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, 978–281–9165.

SUPPLEMENTARY INFORMATION: The fishery management plan (FMP) for Atlantic surfclams and ocean quahogs requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclam and ocean quahog for a 3-year period, with an annual review, from a range that represents the OY for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams, and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine ocean quahogs (locally known as Maine mahogany quahogs) to the management unit, and

provided for a small artisanal fishery for ocean quahogs in the waters north of 43°50’ N. lat., with an annual quota within a range of 17,000 to 100,000 Maine bu (5,991 to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. An evaluation, in the form of an annual quota recommendation, is conducted by the Council every year to determine if the multi-year quota specifications remain appropriate. The fishing quotas must be in compliance with overfishing definitions for each species. In recommending these quotas, the Council considered the most recent stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected fishing effort and catches, and areas closed to fishing.

In June 2010, the Council voted to recommend maintaining the 2010 quota levels of 5.333 million bu (284 million L) for the ocean quahog fishery, 3.400 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (35,240 hL) for the Maine ocean quahog fishery for 2011–2013. The basis for the Council’s quota recommendations was provided in the proposed rule published on October 25, 2010 (75 FR 65442), and is not repeated here.

With this rule, NMFS approves and implements the quotas proposed by the Council. The final quotas for the 2011–2013 Atlantic surfclam and ocean quahog fishery are shown in the table below. The Atlantic surfclam and ocean quahog quotas are specified in “industry” bu of 53.24 L per bu, while the Maine ocean quahog quota is specified in “Maine” bu of 35.24 L per bu. Because Maine ocean quahogs are the same species as ocean quahogs, both fisheries are assessed under the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine ocean quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

FINAL 2011–2013 ATLANTIC SURFLCLAM AND OCEAN QUAHOG¹ QUOTAS

	2011		2012		2013	
	bu	hL	bu	hL	bu	hL
Surflclams ²	3.400	1.810	3.400	1.810	3.400	1.810
Ocean Quahogs ²	5.333	2.840	5.333	2.840	5.333	2.840
Maine Ocean Quahogs ³	100,000	35,240	100,000	35,240	100,000	35,240

¹ Numerical values are in millions except for Maine ocean quahogs.

² 1 bu = 1.88 cubic ft. = 53.24 liters.

³ 1 bu = 1.2445 cubic ft. = 35.24 liters.

Comments and Responses

NMFS published proposed specifications on October 25, 2010, with a comment period that ended November 24, 2010. During the comment period on the proposed rule, NMFS received four comments. Three comments were received from commercial Atlantic surfclam and ocean quahog industry participants, and one comment was received from a private citizen.

Comment #1: One commenter proposed significant reductions to all quotas in order to end overfishing, but offered no scientific basis for this suggestion, and the comment does not speak to Atlantic surfclams or ocean quahogs specifically.

Response: Neither ocean quahogs nor Atlantic surfclam are overfished nor are subject to overfishing; therefore, there is no scientific basis for reducing the quotas as suggested by this commenter.

Comment #2: Three commenters suggested that the ocean quahog allocation should be reduced 25 percent to 4.0 million bushels.

Response: This request is based, in part, on concern over the health of the resource; two commenters raised a concern that the stock biomass may be less than half of the virgin biomass in the Virginia, Delmarva, and New Jersey regions, and that making determinations about the health of the stock based on the whole stock, rather than just the exploitable component of the stock, is a violation of the National Standards. However, as noted above, the most recent stock assessment (completed in 2009) concluded that ocean quahogs were not overfished and were not subject to overfishing. The stock assessment reviewed all available information on the ocean quahog stock. The decision to base the status determination and the quota on the entire stock rather than just the exploitable biomass is consistent with the best available scientific advice.

Comment #3: Two commenters also raised concerns with the economic implications of setting a quota higher than recent landings. The concern appears to be that, because surplus

quota is allocated to the fishery, this could reduce the value of the fishing quota allocated to individuals, who are left with less demand for quota to lease.

Response: The Council has the discretion to act on this issue pursuant to the Magnuson-Stevens Act and has discussed this issue during the development of proposed specifications for the clam fishery. The Council's proposed quota of 5.33 million bushels is consistent with the best available scientific information on the stock, and the management approach selected by the Council remains consistent with the National Standards of the Magnuson-Stevens Act.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the MSA, and other applicable law.

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause, under 5 U.S.C. 533(d)(3), to waive the 30-day delay in effectiveness period for the implementation of the 2011–2013 surfclam, ocean quahog, and Maine ocean quahog quotas. A delay in the effective date of this final rule would cause a disruption in the ordinary commerce of the surfclam and ocean quahog fisheries. ITQ shareholders each receive a portion of the overall annual quotas for the 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, 2011, regardless of the publication of the annual quota, as tags for the 2011 fishing year have already been issued by the vendor pursuant to § 648.75(b). ITQ allocations are often transferred either permanently or temporarily to meet changing economic circumstances in the fishery beginning immediately upon the

commencement of these fisheries. Without a quota in effect, the industry does not have the ability to make a transfer of part or all of an allocation either permanently or temporarily. The inability of the industry to make such transfers effective would preclude the intended recipients of such transfers from fishing. Accordingly, a delay in the effectiveness of this rule would be contrary to the rule's intent to maintain current quota levels that have the full support of the fishing industry and facilitate the transfer of quotas requested by the industry.

This rule could not be published sooner because the Council did not provide its quota specification until September of 2010. As a result of that timing, in order for NMFS to provide a proposed rulemaking stage with adequate opportunity for comment, it is necessary to waive the 30-day delay in effectiveness, as it would compromise the start of the fishing year and thereby undermine the intent of the rule. The inability to transfer quota would be contrary to the public interest because it would preclude the intended recipients of such transfers from fishing, thereby resulting in a negative economic impact on the industry. Additionally, a delay in quota transfers would result in fewer days available to fish, and a vessel operator may feel obligated to fish during periods when they may otherwise choose not to do so. Given the increase in foul weather and hazardous seas during certain months, a vessel's ability to operate safely at sea could be compromised.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a FRFA in support of these specifications. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the IRFA, RIR, and EA are available upon request (*see ADDRESSES*). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A

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

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Four public comments were submitted on the proposed rule. Although none of the comments were made in direct response to the IRFA, two commenters did raise concerns about the economic impacts associated with the quota levels implemented in this final rule. NMFS has responded to these comments in the Comments and Responses section of this preamble. No changes have been made in this final rule as a result of the comments provided on the proposed rule.

Description and Estimate of the Number of Small Entities to Which This Rule Would Apply

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross annual receipts not exceeding \$4.0 million. In 2009, a total of 43 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under the IFQ system. In addition, 19 vessels participated in the limited access Maine ocean quahog fishery, for a total of 62 participants in the 2009 fisheries. Average 2009 gross income from surfclam IFQ trips was \$833,333 per vessel, and from ocean quahog IFQ trips was \$1,533,333 per vessel. The Maine ocean quahog fishery reported an average value of \$105,263 per vessel. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 62 commercial fishing entities fall

below the SBA size threshold for small commercial fishing entities.

In addition to the active vessels that participate in the fishery there are 45 ocean quahog quota IFQ allocation holders, 57 surfclam allocation holders, and 40 Federal limited access Maine mahogany quahog permit holders. An allocation holder may choose to fish or lease his or her quota allocation.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This final rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

The final quotas for 2011–2013 reflect the same quota levels set for 2008–2010. Therefore, it is not expected that there will be any different economic impacts beyond status quo resulting from the final quota level. Leaving the ocean quahog quota at the harvest level of 5.333 million bu (284 million L) is not expected to constrain the fishery. In fact, actual ocean quahog landings for 2008 and 2009 did not exceed 65 percent of the available quota. The total 2010 harvest is expected to be similar to that of recent years (as of October 31, 2010, only 53.6 percent of the quota had been harvested). In comparison, 56.5 percent of the quota had been harvested as of October 31, 2009.

The surfclam quota is to be set to the maximum allowed under the FMP. In contrast to the ocean quahog harvest, the surfclam fishery has harvested over 80 percent of the available quota each year since 2005. The Maine ocean quahog quota is to be also set at the maximum allowed under the FMP. The Maine ocean quahog quota is often fully harvested on an annual basis. It is

anticipated that, by maintaining the status quo quota level for the next 3 years, the fishing industry will benefit from the stability of product demand from the seafood processors and being able to predict future fishery performance based on past performance from the last 3 years.

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 actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. All ITQ allocation holders and fishermen in the Atlantic surfclam and ocean quahog fishery that would be impacted by this final rulemaking are considered to be small entities. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of commercial Federal Atlantic surfclam, ocean quahog, and the limited access Maine ocean quahog fishery permits. The guide will also be available on the internet at <http://www.nero.noaa.gov>. The guide and this final rule will be available upon request from the Regional Administrator (*see ADDRESSES*).

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

Dated: December 21, 2010.

Samuel D. Rauch III,
*Deputy Assistant Administrator For
Regulatory Programs, National Marine
Fisheries Service.*

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