

allocated a quota of 2,456,969 lb (1,114,462 kg), and Massachusetts was allocated a quota of 1,001,953 lb (454,478 kg). The 1995 quotas for several states were adjusted for overages occurring in 1994, as required under § 625.20(d)(2), on May 26, 1994 (60 FR 27906). The Commonwealth of Massachusetts' quota after the adjustment for overages was 984,246 lb (446,446 kg). Since New Jersey's quota was not exceeded in 1994, its 1995 quota was unaffected by this adjustment.

On August 30, 1995, the State of North Carolina transferred 7,229 lb (3,279 kg) of commercial quota to the State of New Jersey (60 FR 45107). As a result of that transfer, the revised quota for New Jersey was 2,464,198 lb (1,117,741 kg). On December 26, 1995, New Jersey transferred 20,000 lb (9,072 kg) of its commercial quota to the State of New York. As a result of that transfer, the revised quota for New Jersey was 2,444,198 lb (1,108,670 kg).

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director) to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1), in the evaluation of requests for quota transfers or combinations.

New Jersey has agreed to transfer 138,000 lb (62,596 kg) of its commercial quota to Massachusetts. The Regional Director has determined that the criteria set forth in § 625.20(f)(1) have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 1995 are: New Jersey, 2,306,198 lb (1,046,074 kg); and Massachusetts, 1,122,246 lb (509,042 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216-6, this action

is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

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

Dated: December 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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50 CFR Part 652

[Docket No. 951017252-5307-02; I.D. 101695C]

Atlantic Surf Clam and Ocean Quahog Fisheries; 1996 Fishing Quotas

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

ACTION: Final 1996 fishing quotas for surf clams and ocean quahogs.

SUMMARY: NMFS issues final quotas for the Atlantic surf clam and ocean quahog fisheries for 1996. These quotas are selected from a range defined as optimum yield (OY) for each fishery. The intent of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1996.

EFFECTIVE DATES: Effective January 1, 1996, through December 31, 1996.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's analysis and recommendations and environmental assessment are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin (Resource Policy Analyst) 508-281-9104.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs NMFS, acting on behalf of the Secretary of Commerce (Secretary) and in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an

annual basis from a range defined by the FMP as the OY for each fishery. Further, the Council follows the policy that the quotas selected should allow fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within these constraints, the quotas are also to be set at a level that would meet the estimated annual demand.

For surf clams, the quota must fall within the OY range of 1.85 million bushels (mil. bu.) (652 thousand hectoliters (hL)) to 3.40 mil. bu. (1.2 mil. hL). For ocean quahogs, the quota must fall within the OY range of 4.00 mil. bu. (1.4 mil. hL) to 6.00 mil. bu. (2.1 mil. hL). These ranges are specified in 50 CFR 652.21 (a) and (b).

During its discussions of the 1996 quota recommendations, the Council began developing new overfishing definitions for both species managed under the FMP. Overfishing is presently defined for both species in terms of actual yield levels in excess of the specified quota levels. These definitions do not incorporate biological considerations to protect against overfishing. Although preferred alternatives for overfishing definitions have not yet been chosen for each species, NMFS believes that none of the alternatives being considered by the Council for each species, if adopted, would necessitate any revision of the 1996 quotas contained in this action.

This action establishes a surf clam quota of 2.565 mil. bu. (1.36 mil. hL) and an ocean quahog quota of 4.45 mil. bu. (2.36 mil. hL) for the 1996 fisheries. The 1996 surf clam quota is identical to the 1995 quota, and the 1996 ocean quahog quota represents a 9 percent reduction from the 1995 quota. These quotas established by NMFS on behalf of the Secretary are unchanged from the proposed quotas published in the Federal Register on October 23, 1995 (60 FR 54330).

FINAL 1996 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	mil. bu.	mil. hL
Surf clam	2,565,000	1,362,000
Ocean quahog	4,450,000	2,363,000

Comments and Responses

Three comments were received during the public comment period. A consulting firm involved in the industry commented in support of the proposed quotas. The National Fisheries Institute and an attorney involved in the industry opposed the proposed quotas.

Comment: The consulting firm commented that the proposed 1996 surf

clam quota is very liberal and should be set 8 percent below the proposed quota of 2.565 mil. bu. (1.36 mil. hL) because of declining landings per unit of effort.

Response: This level of surf clam quota was recommended by the Scientific and Statistical Committee of the Council and meets the Council policy of leaving 10 years of supply available. NMFS believes a reduction of 8 percent would be overly conservative and is not justified based on the most recent stock assessment.

Comment: The opponents of the proposed quotas commented that NMFS should reevaluate the assumptions, conclusions, and recommendations of the 19th Stock Assessment Workshop (19th SAW), upon which these quotas are based, to incorporate what they believe is new information that was revealed during testimony in their lawsuit against the agency concerning the 1995 quota levels. Both accuse NMFS scientists of withholding critical information from the Council and industry.

Response: The Council and NMFS have accepted the advice of the 19th SAW and consider it to be the best scientific information available. No new information that would require NMFS to reevaluate the conclusions of the 19th SAW was presented at the hearing held

in the lawsuit referred to by the commenters. The only additional information was speculation that the dredge may have traveled farther than believed during the 1994 survey. However, the dredging distance could not account for the three-fold increase in the catch experienced during the 1994 survey.

The quota setting process, including the Stock Assessment Workshop that occurred in January 1995, is a very open and participatory process. The scientists provided the Council with all of the information relative to the surf clam and ocean quahog resource that was available at that time. The scientists still have not been able to determine the reason for the statistical anomalies contained in the 1994 survey and did not speculate as to their cause. However, even if the scientists had speculated on the reasons for the anomalies, the Council is still required to base its quota recommendation on the best scientific information available, especially any recommendations of the SAW. The scientists still have not been able to determine the reason for the statistical anomalies contained in the 1994 survey. When a reasonable explanation is determined, the Council will be informed.

Comment: At a minimum, NMFS should maintain the 1995 quota levels for both species until affected industry participants have an opportunity to evaluate the assumptions and conclusions of the 19th SAW with the assistance of scientific advisers from outside NMFS.

Response: NMFS sees no scientific basis for maintaining the 1995 quota levels for other than surf clams. The best scientific information available supports a reduction in the ocean quahog quota by 9 percent. NMFS further points out that independent scientific advisers were involved in the 19th SAW and that industry advisers were actively encouraged to participate in that process.

Classification

This action is authorized by 50 CFR part 652 and is exempt from review under E.O. 12866.

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

Dated: December 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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