

performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government as directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the Contractor's negligence, or the negligence of a subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor the repair of any damage resulting from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's right under the Inspection clause of this contract, with respect to latent defects, gross mistakes, or fraud.

(End of clause)

[FR Doc. 96-15222 Filed 6-19-96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[I.D. 061396A]

Atlantic Surf Clam and Ocean Quahog Fisheries; Notice of Availability for Amendment 9

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) for Secretarial review and is requesting comments from the public. The amendment would revise overfishing definitions for Atlantic surf clams and ocean quahogs.

DATES: Comments must be received on or before August 13, 1996.

ADDRESSES: Send comments to Dr. Andrew Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope

“Comments on Overfishing Definitions for Clams and Quahogs.”

Copies of Amendment 9 and the environmental assessment are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, on behalf of the Secretary, upon receiving the plan or amendment, immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review, and publish a document that the plan or amendment is available for public review and comment. NMFS will consider the public comments in determining whether to approve the amendment.

Amendment 9, if approved, would revise overfishing definitions for the stocks managed under the FMP in compliance with the NOAA Guidelines for Fishery Management Plans (50 CFR part 602).

During its discussions of the 1996 quota recommendations, the Council considered revising the overfishing definitions specified in the FMP. Overfishing is presently defined for both species in terms of actual yield levels—that is, overfishing is defined as harvests in excess of the specified quota levels. This definition does not incorporate biological considerations to protect against overfishing. NMFS has concluded that a harvesting strategy based on Council policy is no longer acceptable, since it depends on the Council taking appropriate action, rather than adhering to a rate-based biological standard. The overfishing definition proposed by the Council for surf clams as contained in Amendment 9 is a fishing mortality rate of $F_{20\%}$ (20 percent of maximum spawning potential (MSP)), which equates to an annual exploitation rate of 15.3 percent. The overfishing definition proposed by the Council for ocean quahogs as contained in Amendment 9 is a fishing mortality of $F_{25\%}$ (25 percent of MSP), which equates to an annual exploitation rate of 4.3 percent.

The receipt date for this amendment is June 12, 1996. No proposed or final regulations will be published for this amendment, because, if it is approved, no changes will be needed in the codified regulatory text that implements this FMP.

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

Dated: June 14, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96-15661 Filed 6-14-96; 4:52 pm]

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50 CFR Part 652

[Docket No. 960531155-6155-01; I.D. 050996B]

Atlantic Surf Clam and Ocean Quahog Fishery; Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) is considering limiting future access to anyone entering that portion of the ocean quahog (*Arctica islandica*) fishery, commonly referred to as the Maine mahogany quahog fishery, that is managed through the Maine Mahogany Quahog Experimental Fishery Program after June 20, 1996 (control date). Future access to the Maine mahogany quahog resource in the exclusive economic zone (EEZ) will not be assured beyond the control date if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This document is intended to promote awareness of potential eligibility criteria for future access to that portion of the ocean quahog fishery managed through the Maine Mahogany Quahog Experimental Fishery Program and to discourage new entries into this fishery based on economic speculation while the Council contemplates whether and how access should be controlled. The potential eligibility criteria may be based on historical participation, defined as any number of trips having any documented amount of ocean quahog landings. This document, therefore, gives the public notice that they should locate and preserve records

that substantiate and verify their participation in that portion of the Maine mahogany quahog fishery in Federal waters managed through the Maine Mahogany Quahog Experimental Fishery Program.

DATES: Comments must be submitted by July 19, 1996.

ADDRESSES: Comments should be directed to: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover DE 19904.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION:

Background

The surf clam and ocean quahog resources were the first resources placed under Federal management after the Magnuson Act was implemented. Surf clams and ocean quahogs are currently managed by the individual transferrable quota (ITQ) system that was implemented by Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP), that was effective September 30, 1990. Amendment 8 replaced an elaborate and costly effort control system with one which limited only the outputs, or landings of the two species, and gave harvesters the flexibility to utilize their landing allocation in whatever manner best suited their individual needs and situations.

NMFS assigned landing allocations to historic industry participants, which could be harvested, leased, or sold to other individuals at the allocation holder's discretion. The major factor employed in assigning those allocations was past participation in the fisheries. Documentation of past participation was provided by fishermen themselves, using logbook forms supplied by the government. Mandatory landings reports have been a requirement for any vessel harvesting surf clams or ocean quahogs in the EEZ since 1978.

Ocean quahogs are distributed in U.S. waters from the Canadian border to Cape Hatteras. South of Cape Cod, the species occurs primarily in EEZ waters, although some fishable concentrations occur in Rhode Island Sound, and in coastal waters off Massachusetts. In the Gulf of Maine, ocean quahogs occur both in state and EEZ waters. Two significant and separate fisheries currently exist for ocean quahogs, in the Middle Atlantic Bight, from Martha's Vineyard to the Delmarva Peninsula, and in waters off eastern Maine.

In general, over 99 percent of the ocean quahog landings in weight come from the mid-Atlantic fishery. Effort and catch per unit of effort in the Maine fishery are also substantially less than that in the mid-Atlantic. The Maine fishery occurs in a relatively restricted area centered off Mt. Desert Island. Ocean quahog catches from the coast of Maine are restricted to a narrow band inshore of the 50 fathom line.

In 1990, a problem was discovered relative to the fishery for ocean quahogs off of Maine. While previously this small-scale fishery had occurred primarily within Maine state waters, area closures were required due to the presence of paralytic shellfish poisoning toxin. These closures forced vessels to fish further offshore in the EEZ starting in 1987.

It was not until one of the participants in the Maine ocean quahog fishery was issued a violation notice by the U.S. Coast Guard that Maine participants came to understand the Federal management measures governing the quahog fishery. Some of the participants in this fishery had mistakenly believed that the animal that was locally called a "mahogany clam" was a different species than the ocean quahog under Federal management.

Although the mahogany quahog fishery that occurs off Maine uses the same species as the ocean quahog off the mid-Atlantic, the Maine mahogany quahog is a distinct biological group of animals. For instance, Maine mahogany quahogs have a much slower growth rate than ocean quahogs off the mid-Atlantic.

To address the issue of a distinct biological group of ocean quahogs off the coast of Maine, the Director, Northeast Region, NMFS, initiated an experimental fishery for mahogany quahogs off of downeast Maine. The participants in this fishery are required to obtain and carry on board their vessels a certificate issued by NMFS. Several conditions are placed on the experimental fishery, including an area restriction that prohibits vessels from fishing south of 43°50' N. latitude (changed from 43°00' N. latitude in 1992), vessel and dealer reporting requirements, an obligation to take observers aboard if required by NMFS, and a requirement for vessels to sell only to federally permitted dealers.

Significant differences exist between the Maine and mid-Atlantic fisheries. The markets into which each type of ocean quahog are sold also differ. The major ocean quahog fishery from the mid-Atlantic has typically been a larger scale industrial enterprise, conducted by large vessels operating in deep,

offshore waters. Ocean quahogs are dislodged from the seabed using large, hydraulic dredges that shoot jets of water from their leading edge. Once on board, ocean quahogs are stored in metal cages capable of holding 32 bu each. At the dock, cranes lift the cages into tractor trailers for shipment to processing plants where they are steamed open, thoroughly washed, and processed into a variety of product forms primarily for clam chowder. Reported prices have been relatively constant over time and have ranged from \$3.00 to \$4.70 per bu in 1995.

The small-scale Maine mahogany quahog fishery utilizes small, dry dredges on small boats typically ranging between 35 (11 m) and 45 ft (14 m) in length. The quahogs targeted by these vessels are smaller than in the industrial fishery, averaging between 1.5 (38 mm) and 2.5 inches (63 mm), and are destined for the fresh, half-shell market. The average exvessel price in 1995 was \$34 per bu but prices have been as high as \$45 per bu in 1991.

Significant landings (124,000 bu) of quahogs in Maine were first recorded in 1986. For the next eight years, reported landings were on a declining trend, falling to a low of 22,000 bu in 1994. The number of vessels reporting landings in the Federal experimental fishery declined from 45 boats in 1991 to 30 in 1994.

The 1995 data have not yet been finalized, however, the State of Maine has records of landings increasing sharply to approximately 40,000 bu, due to the discovery of an extensive new bed. Indications from officials in Maine are that this new resource site straddles the boundary between the EEZ and state waters.

NMFS collected nonrandom samples from the coast of Maine with the 1992 and 1994 research surveys in order to map the distribution of ocean quahogs and to examine the population size frequency distributions. Within the 50-fathom range, ocean quahogs appear to be restricted to a patch centered between 67° and 68° W. longitude. Tows were taken to the east and west of the patch to attempt to define the limits. The location of the patch, as defined by survey data, agrees well with the location of recent landings. Maine is the only area with any evidence of substantial recruitment of small quahogs or of growth by medium-sized ocean quahogs in any region.

The 1994 stock assessment states that given the problems with the 1994 survey, it would be inappropriate to use the two surveys from Maine to make inferences about changes in population size, because those samples were taken

from nonrandom locations. In the Maine area, the population consists of two length modes. The larger group is centered between 50–54 mm (25 mm = 1 inch) shell length. Most clams in the smaller group measured 20–29 mm in July 1992, and 30–39 mm in August 1994. Work is currently in progress to section these shells and estimate age and growth. The 50–54 mm long clams are estimated to be 35 to 43 years of age. The smaller group, 30–39 mm long, are estimated to be 15 to 20 years of age.

The Council intends to address whether and how to limit entry of commercial vessels into this fishery in Amendment 10 to the FMP. The

Council's intent in making this announcement is to discourage speculative entry into the Maine mahogany quahog fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. The control date will help to distinguish bona fide established fishermen from speculative entrants to the fishery. Fishermen are notified that entering the fishery after the control date will not assure them of future access to the ocean quahog resource on the grounds of previous participation. Furthermore, additional and/or other qualifying criteria also may be applied.

The Council may choose different and variably weighted methods to qualify fishermen, based on the type and length of participation in the fishery or on the quantity of landings. The Council may also decide not to limit entry into this fishery after a consideration of all reasonable alternatives for its management.

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

Dated: June 13, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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