

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 32

RIN 1018-AE18

## 1997-98 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** This rule adds additional national wildlife refuges to the list of areas open for hunting, along with pertinent refuge-specific regulations for such activities; and amends certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing. The Fish and Wildlife Service (Service) provides notice that they will manage the size of the bison herd by removing animals with firearms on the National Elk Refuge (Refuge) in Wyoming.

**DATES:** This rule is effective February 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Steve Vehrs; (703) 358-2397.

**SUPPLEMENTARY INFORMATION:** In the July 21, 1997, issue of the **Federal Register** (62 FR 38959) the Service published a proposed rulemaking and invited public comment that would allow the public to hunt bison on the National Elk Refuge. The Service working with the National Park Service, Wyoming Game and Fish Department, and the U.S. Forest Service developed a management plan for the Jackson Bison Herd (JBH) addressing the public's desire to maintain large populations of wildlife in limited and diminishing habitat while human habitation increases demands on the land. In the case of the JBH, public views vary widely about bison. The goal of the Service and cooperators is maintaining a free-roaming bison herd in Jackson Hole, as free from human intervention as practical. Given the existing behavior of the JBH, prevailing snowfall patterns, geography, and other constraints, the September 30, 1997 Final Management Plan meets public desires and provides for a viable free-roaming bison herd. The Service received two requests from The Fund for Animals to extend the comment period on the proposal to permit bison herd reduction within the Refuge. The original comment period was open for 30 days (62 FR 38959, July 21, 1997), and then extended to September 19, 1997, (62 FR 47372, September 9, 1997) to accommodate public review of a

pending update to the Jackson Bison Herd Long Term Management Plan. Due to the need by the Service for additional time to complete modifications to the final herd management plan and review information and comments from interested parties on this proposed action, the comment period was then reopened for an additional 30 days (62 FR 53773, October 16, 1997). Other documents, such as a refuge Compatibility Determination and the National Elk Refuge Hunt Plan Amendment were approved on October 1, 1997. Copies of the Hunt Plan Amendment and the Compatibility Determination are available from the Refuge Manager, National Elk Refuge, Box C, Jackson, Wyoming 83001.

National Wildlife Refuge System (System) hunting programs are reviewed annually to determine whether additional refuges should be added or whether individual refuge regulations governing existing programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications ensuring continued compatibility of hunting with the purposes of individual refuges, and the Mission of the System.

The Mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. The System was created to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of law: protection, research, census, law enforcement, habitat management, propagation, live trapping, transplantation, and regulated taking. The Mission is being facilitated by providing Americans opportunities to participate in compatible wildlife-dependent recreation, including hunting and fishing, on System lands and to better appreciate the value of and need for fish and wildlife conservation.

The Service generally closes national wildlife refuges to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary), acting through the Director of the Service may open refuge areas to hunting and/or fishing upon a

determination that such uses are compatible. A compatible use is a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the Mission of the System or the purposes of the refuge. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound fish and wildlife management and administration, and otherwise must be in the public interest.

50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to:

- Ensure compatibility with refuge purposes and the System's Mission;
- Properly manage the fish and wildlife resource;
- Protect other refuge values; and
- Ensure refuge user safety.

On many refuges, the Service policy of adopting State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Statutory Authority."

The Fund for Animals, a non-government organization provided the only public comments on the proposed rulemaking. Their comments and the Service's responses follow:

*Comment 1:* The JBH Management Plan and Environmental Assessment (EA) are in violation of the National Environmental Policy Act (NEPA), by the Service:

*Comment 1a:* failing to evaluate the impact of the Refuge supplemental feeding program on the JBH.

*Service Response:* Supplemental feeding of the Jackson elk herd is a longstanding practice dating back to 1911, when first initiated by the State of Wyoming and long before NEPA required analysis of the action. The objective of the program is to feed wintering elk and this management action stands alone.

The JBH has wintered on the Refuge for many years and has used a portion of the supplemental feed provided to elk since 1980. Winter range for large mammals in Jackson Hole is limited by winter snow accumulations, and particularly by human occupation, development and livestock use on most of the private lands in the valley, where the least snow accumulates. The need to limit the size of the bison herd as well as elk, mule deer, and other species of

large mammals is largely a function of the limited availability of suitable natural winter habitat. In the absence of winter feeding of elk, excess numbers of bison must still be controlled due to the geography of the Jackson Hole area. Bison follow the snow gradient down the valley and are brought into close association with the human population during the winter and spring months. In the absence of supplemental feeding, bison would still wander onto private ranchlands, roadways, and residential areas causing complaints from valley residents and state livestock officials, thus causing their numbers to be controlled by refuge management actions.

*Comment 1b:* failing to substantiate the justification for the JBH plan, reduction of risk of brucellosis transmission, or to quantify the risk of transmission.

*Service Response:* As noted earlier, the goal of the JBH Management Plan is to maintain a free-roaming herd of bison in Jackson Hole, as free from human intervention as practically possible. Disease management was one of the four management issues addressed in the planning and impact assessment to achieve this goal. Much of the justification for development of the management plan was to address the increasing size of the JBH and the lack of suitable winter range for the animals. To steward the habitat resource that must support not only bison but also a diversity of other wildlife species that inhabit Jackson Hole, controls on population growth of the JBH are required. Certainly, increasing bison numbers and intermingling of bison with livestock are of concern to various public groups and agencies. These issues were addressed in the Plan. However, in the absence of additional suitable winter habitat for bison, and given the current (annual) growth rate of the herd (16–18%), limiting population growth of the JBH was a fundamental basis for the Plan's development.

*Comment 1c:* failing to adequately evaluate the feasibility of using immunocontraception as a means for controlling size of the JBH.

*Service Response:* The JBH Plan did address the use of immunocontraceptives to control bison numbers, however, the use of immunocontraceptives in wild and free-ranging wildlife populations is in its formative stages. Such chemicals have been experimentally used in a number of species with varied success and mixed results as discussed below.

The International Association of Fish and Wildlife Agencies has expressed the following concerns to the Service:

- Immunocontraception is highly experimental;
- Secondary effects on populations have not been explored;
- Drugs are not approved by FDA and other agencies, thus no information on effect of ingesting treated animals by humans or predators;
- Behavioral complications have been noted in some species; and
- Before Service experimentation, State fish and wildlife agencies should be consulted.

Research is making some headway. First effective control of fertility in free-ranging animals was demonstrated in 1990 using PZP on Assateague Island National Seashore's feral horses. Study showed: (a) Vaccine could be dart delivered, (b) no adverse affect on pregnant mares noted, (c) no effect on social behavior, (d) reversibility of vaccine. Assateague Island NS has begun using PZP to manage Assateague's horses, having released an EA and FONSI in 1995.

Behavioral complications have been noted in some wildlife species.

Study in Virgin Islands National Park shows PZP is 90% effective in controlling fertility of feral burros.

White-tailed deer on Fire Island National Seashore are being treated with PZP. Those treated show 70% less fawning.

Major PZP disadvantage is that females must be inoculated twice three-weeks apart in first year of administering vaccine. Protection in subsequent years requires single booster.

Studies of PZP with wild horses (NV) and white-tailed deer at Smithsonian Conservation & Research Center (VA) focus on one single inoculation that will deliver one to three years of protection.

USDA-ADC's Denver Wildlife Research Center has been studying immunocontraception of white-tailed deer (including oral delivery), wild rats, starlings, coyotes, and wild horses. Cooperators include Baylor, Penn State, Vassar and Rutgers.

USDA does not regulate immunocontraception research but FDA suggests experiments, establishes restriction, and sets standards for data collection and record keeping.

The positive science needed to administer such chemicals, as explained in the Plan, to free-ranging public bison herds is inadequate to justify the use at this time.

*Comment 1d:* planning to maintain the size of the JBH between 350–400 animals. This size is not sufficient to insure a large enough breeding population to protect the herd's genetic diversity.

*Service Response:* The Joint Agencies contracted two studies concerning the effect of population size on genetic sustainability of the JBH. The first study recommended a herd size of 250 bison (Shelley and Anderson 1989). As new information surfaced on population genetics of bison, particularly the work of Dr. Joel Berger, the agencies contracted a second study on population genetics of the JBH (Berger 1996). Berger's analysis suggested that 400 bison would be adequate to maintain the genetic diversity of the JBH, without any gene flow from other populations. Periodic introductions from other bison populations would permit the population to maintain heterozygosity at a lower herd size.

The JBH Plan calls for managing the herd at a 5-year running average of 350–400 bison during winter. The plan also notes that genetic contributions from another bison herd, animals that are part of the Yellowstone National Park (YNP) bison population, are likely. Several bison from YNP joined the JBH prior to the 1997-breeding season. The Service has not promoted the migration of bison from YNP to Jackson Hole. That is a phenomenon attributable to bison behavior and possibly enhanced by snowmobile trails in the Park. Bison are nomadic and commonly pioneer new areas, possibly in search of better foraging conditions or mates. Animals from the JBH have done the same on several occasions in the past.

It is inaccurate to state that no genetic work has been done on the JBH. Shelly and Anderson (1989) presented data on genetic status of the JBH. Those data indicated that JBH ranked third in genetic diversity compared to 13 other public bison herds in the United States.

*Comment 2:* Because the Service has failed to disclose information relevant to the proposed action in the JBH Plan and EA, a supplement to the EA is required:

*Comment 2a:* Information concerning changes in plant communities including a decline in abundance and health of woody plants was not contained in the bison plan and Environmental Assessment.

*Service Response:* The southern half of the Refuge is occupied by both elk and bison for approximately 6 months/year. Bison damage woody plants, particularly cottonwood trees, through their grooming activities. This was discussed in the final Plan and EA. Bison are primarily grazers but do consume some woody plants. The JBH Plan notes that woody vegetation on the refuge is suffering damage from overabundant ungulates. The JBH Plan is a bison management plan and therefore primarily discusses damage

due to bison, but elk certainly are responsible for plant damage as well.

*Comment 2b:* The Service failed to disclose how the proposed bison hunt would be conducted.

*Service Response:* The JBH Plan and Finding of No Significant Impact (FONSI) both discuss the bison hunt, including intent to harvest animals from all age classes and both sexes to maintain maximum genetic variability of the herd. The Plan states that approximately even sex ratios will be maintained to simulate a herd sex ratio expected under natural conditions. Additional information on how the hunt is to be conducted is provided in the response item 4(a), below.

*Comment 3:* The Service failed to comply with its own regulations in proposing to hunt bison on the Refuge:

*Comment 3a:* Since the herd objective is 350–400, the FWS has apparently concluded that any bison in excess of 350 are surplus and are available to be hunted.

*Service Response:* The FONSI calls for maintaining a winter herd size of 350–400 bison post harvest until the year 2000. Thereafter, the herd will be maintained at 350–400 animals on a running 5-year average. Reductions certainly may occur when the population is less than 400 bison.

*Comment 3b:* In addition to its arbitrary determination that surplus bison exist, the possibility that the animals may be hunted as early as December, is entirely inconsistent with the population census strategy described in the bison hunt plan amendment.

*Service Response:* Bison are censused each winter on the Refuge during February and March. New calves as well as total numbers of bison are repeatedly counted on summer range in Grand Teton National Park. Each fall's reduction will be based upon the number of bison alive at that time. The fall population size is derived from the previous winter's herd size, plus the number of new calves documented during summer, minus known losses due to natural causes and vehicle collisions.

*Comment 4:* The proposed bison hunt is in violation of Service hunting policies:

*Comment 4a:* Because of the protection afforded to these bison over the past decades, these animals have virtually no fear of humans. They have become acclimated to the presence of people on both their summer and winter range. The agencies, including the FWS, have contributed to this behavior by providing supplemental feed for these animals in the winter while promoting

bison observation in the summer. Consequently, the proposed hunt, if implemented, will not be challenging, sporting, ethical, or consistent with the concepts of fair chase.

*Service Response:* The bison hunt is not a recreational hunt, but rather is a tool to reduce the size of the bison herd. It has been structured to be consistent with Service policy and the principles of sound wildlife management and in the public interest. The herd reduction plan is based on public comments received during the planning phase as well as professional biological input provided by the Joint Agencies. An array of methods for controlling the size of the JBH were considered. A combination of herd reduction by trained and certified Native Americans, public sportsmen and Agency personnel as needed was selected as the most feasible alternative. Herd reduction will follow a one-day orientation, safety training, and firearms efficiency qualification, by the permitted participants. Those individuals qualifying to participate in the herd reduction program will be permitted to take bison in a swift and humane manner following State and refuge regulations and permit conditions.

The Service reviewed, considered and responded to the above comments regarding bison herd management at the National Elk Refuge and determines that the Bison Plan is compatible and will be permitted and carried out as planned.

#### Statutory Authority

The Refuge Recreation Act of 1962 (16 U.S.C. 460k); and the National Wildlife Refuge System Administration Act (NWRSA) of 1966, as amended (16 U.S.C. 668dd), govern the administration and public use of national wildlife refuges. The Refuge Recreation Act (RRA) authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and not inconsistent with public safety. Except for timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges, no other determinations or findings are required to be made by the refuge official under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur. Section 4(d)(1)(A) of the NWRSA authorizes the Secretary

of the Interior to permit the use of any area within the System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that uses are compatible with the major purpose(s) for which the area was established.

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) amends and builds upon the NWRSA in a manner that provides an “Organic Act” for the Refuge System similar to those which exist for other public lands. It serves to ensure that the Refuge System is effectively managed as a national system of lands, waters and interests for the protection and conservation of our nation's wildlife resources. The RRA, NWRSA and National Wildlife Refuge System Improvement Act of 1997 (NWRSIA) authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses. The NWRSIA states first and foremost that the mission of the National Wildlife Refuge System be focused singularly on wildlife conservation—“Wildlife First.”

The NWRSIA gives guidance to the Secretary in the overall management of the Refuge System. The Act's main components include:

- A Strong and singular wildlife conservation mission for the Refuge System;
- A requirement that the Secretary of the Interior maintain the biological integrity, diversity and environmental health of the Refuge System;
- A requirement that no refuge use may be allowed unless it is first determined to be compatible;
- A requirement that wildlife-dependent recreational uses (including hunting, fishing, wildlife observation and photography, and environmental education and interpretation), when determined to be compatible, shall receive priority consideration over other public uses in refuge planning and management;
- A new definition and process for making compatibility determinations;
- A requirement for preparing comprehensive conservation plans.

The Service develops hunting and sport fishing plans for each existing refuge before opening it to hunting or fishing. The Service develops refuge-specific regulations to ensure the programs do not detract from the fulfillment of the Mission of the System or the purposes of the refuge. Initial compliance with the RRA, NWRSA and NWRSIA has been ensured for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at

the time of acquisition. This ensures that the determinations required by these acts have been made before the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by the development of long-term hunting and sport fishing plans and by annual review of hunting and sport fishing programs and regulations.

In accordance with the RRA, NWRSA and NWRSA, the Service determines that this opening is compatible and will not detract from the fulfillment of the Mission of the System or the purposes of the refuge.

#### **Paperwork Reduction Act**

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

#### **Executive Order 12866**

This rule is being implemented with approval and cooperation of the National Park Service, Wyoming Game and Fish Department, and the U.S. Forest Service who, along with the Service developed a management plan for the Jackson Bison Herd, that calls for a bison hunting program. This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866.

#### **Regulatory Flexibility Act Determination (5 U.S.C. 601)**

Service review has revealed that this rulemaking will increase hunter visitation to the surrounding area of the refuge before, during and after bison hunting, compared to the refuge being closed to this recreational use.

This refuge is located away from large metropolitan areas. Businesses in the area of the refuges consist primarily of small family-owned stores, restaurants, gas stations and other small commercial enterprises. In addition, there are several small, commercial recreational fishing and hunting camps, dude ranches and marinas in the general area. This final rule will have a positive effect on such entities; however, the amount of revenue generated to businesses is very small.

Many area residents enjoy a rural lifestyle that includes frequent recreational use of the abundant natural resources of the area. A high percentage of the households enjoy hunting, fishing, and boating in areas mountains, valleys, wetlands, rivers and lakes. Refuge lands were not available for general public use before government acquisition; however, they were fished

and hunted upon by friends and relatives of the ranchland owners. Many nearby residents also participate in other forms of non-consumptive outdoor recreation, such as biking, hiking, camping, birdwatching, canoeing, and other outdoor sports.

Economic impacts of refuge hunting programs on local communities are calculated from average expenditures in the "1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation". In 1996, 39 million U.S. residents 16 years old and older hunted and/or fished. More specifically, 35.2 million fished and 14 million hunted. Those who both fished and hunted account for the \$10.2 million overage. Nationwide expenditures by sportsmen totaled \$72 billion. Trip-related expenditures for food, lodging, and transportation were \$14 billion or 19.4 percent of all fishing and hunting expenditures; equipment expenditures amounted to \$44.2 billion, or 61.4 percent of the total; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for \$13.8 billion, or 19.2 percent of all expenditures. Overall, anglers spent an average of \$41 per day. For each day of hunting, migratory bird hunters spent an average of \$33, upland game hunters an average of \$20, and big game hunters averaged spending \$40.

At the National Elk Refuge included in this final regulation, less than 500 hunters will spend \$20,000 annually hunting on the refuges' purchasing supplies, food and lodging in the area of the refuge, since most hunters live within commuting distance of the refuge hunt. While many of these hunters already make such expenditures before the refuge opening, some of these additional expenditures directly are due to the land now being open to the general public.

This rulemaking will have a small but positive impact on local economies by increasing visitation and expenditures in the surrounding area of the refuge. Therefore, based on the above analysis, the Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### **Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*, Pub. L. 104-4, E.O. 12875)**

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given

year on local or State governments or private entities.

#### **Civil Justice Reform (E.O. 12988)**

The Department has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **National Environmental Policy Act (42 U.S.C. 4321 *et seq.*, 40 CFR 1500, 516 DM)**

The Service ensures compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(c)) when developing hunting and sport fishing plans, and the determinations required by NEPA are made before the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32.

#### **Section 7 Consultation (16 U.S.C. 1531 *et seq.*, 50 CFR 402)**

The Service reviewed the opening package documents for bison hunting on the National Elk Refuge with regards to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543). The Service is concerned with grizzly bear-human conflicts and habitation of bears due to hunters not taking necessary precautions. In accordance with the Biological Opinion, hunter education will include precautions for bear country, that bison will not be concentrated in bald eagle roosting areas, and that helicopter hazing will not be used. Based on this understanding, the Service finds the action as presented is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. In particular, this action is not likely to adversely affect the bald eagle (*Haliaeetus leucocephalus*), peregrine falcon (*Falco peregrinus*), whooping crane (*Grus americana*), gray wolf (*Canis lupis*), or grizzly bear (*Ursus arctos horribilis*). The Environmental Assessment and Section 7 Consultation documents are on file in Service offices and may be viewed by contacting the primary author.

#### **Intergovernmental Review of Federal Programs (E.O. 12372, 43 CFR 9, and the Intergovernmental Cooperation Act of 1968)**

The Service reviewed this rule under E.O. 12372 and accommodated the recommendations of state and local governments concerning Federal programs affecting their jurisdictions.

These documents are on file in Service offices and may be viewed by

contacting the primary author noted below. Individual refuge headquarters also retain information regarding hunting permits and the conditions that apply to refuge hunts, and maps of their respective area. You may also obtain information from the regional office at the address listed below:

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236-8145.

Primary author: Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this final rulemaking document.

**List of Subjects in 50 CFR Part 32**

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, the Service amends Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

**PART 32—[AMENDED]**

1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Amend § 32.70 *Wyoming* by revising the introductory text of paragraph C. of National Elk Refuge to read as follows:

**§ 32.70 Wyoming.**

\* \* \* \* \*

**National Elk Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* Hunters may hunt elk and bison on designated areas of the refuge subject to the following conditions:

\* \* \* \* \*

Dated: January 7, 1998.

**Donald J. Barry,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 98-947 Filed 1-13-98; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 980107005-8055-01; I.D. 102997E]

**Fisheries of the Northeastern United States; Final 1998 Fishing Quotas for Atlantic Surf Clams and Ocean Quahogs**

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

**ACTION:** Final 1998 fishing quotas for surf clams and ocean quahogs.

**SUMMARY:** NMFS issues quotas for the Atlantic surf clam and ocean quahog fisheries for 1998. These quotas were selected from a range defined as optimum yield (OY) for each fishery and in compliance with overfishing definitions for each species. The intent of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone for 1998.

**DATES:** January 1, 1998, through December 31, 1998.

**ADDRESSES:** Copies of the Mid-Atlantic Fishery Management Council's analysis and recommendations, including the Environmental Assessment, Regulatory Impact Review/Initial Regulatory Flexibility Analysis, and Final Regulatory Flexibility Analysis 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, Fishery Policy Analyst, 508-281-9104.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Assistant Administrator for Fisheries, 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 that represents the OY for each fishery. It is the policy of the Council that the level selected allow fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the quota is to be set at a level that would meet the estimated market demand.

The fishing quotas must be less than the level that would constitute

overfishing as defined for each species. The overfishing definitions are fishing mortality rates of  $F_{20\%}$  (20 percent of maximum spawning potential (MSP)) for surf clams and  $F_{25\%}$  (25 percent of MSP) for ocean quahogs.

This action establishes a surf clam quota of 2.565 million bushels (1.362 mil. hectoliters (hL)) and an ocean quahog quota of 4 million bushels (2.122 mil. hL). The 1998 surf clam quota is identical to the 1997 quota, and the 1998 ocean quahog quota is a reduction of 0.317 million bushels (0.168 mil. hL) from the 1997 quota. These levels are unchanged from the levels set forth in the preamble to the proposed rule, published in the **Federal Register** on November 24, 1997 (62 FR 62543). That preamble presents background on the specification of these levels.

**FINAL 1998 SURF CLAM/OCEAN QUAHOG QUOTAS**

Fishery	1998 final quotas (bu)	1998 final quotas (hL)
Surf clam .....	2,565,000	1,362,000
Ocean quahog ..	4,000,000	2,122,000

**Comments and Responses**

Two sets of comments were received on the proposed quotas. One commenter, a consulting firm, favors a reduction of the surf clam quota below the proposed level. The other commenter, an industry participant, opposed the proposed reduction of the 1998 ocean quahog quota. These commenters also offered several other comments on various aspects of the quota setting process.

*Comment 1:* One commenter believes the action of the Council, in making a recommendation to keep the surf clam quota at the 1997 level, violated national standard 1 of the Magnuson-Stevens Act which requires that fisheries be managed to provide OY based on the maximum sustainable yield as reduced by any relevant economic, social, or ecological factor. The commenter, in requesting a reduction of the quota, asserted that certain prevailing economic conditions were not properly considered by the Council as it contemplated a possible reduction to the surf clam fishing quota. The commenter suggested that an oversupply of surf clams exists which, when coupled with a decrease in demand, is having a detrimental effect on the industry in terms of depressed prices. Based upon recent landings and ex-vessel and wholesale prices, the commenter concluded that if the quota