

Maintenance of Administrative Controls

Automation of systems can lead to the consolidation of processes, data, and the controls in place to protect the data. When administrative controls are consolidated, they should be evaluated so that all necessary controls remain in place to the degree necessary to continue to control access to and use of the data.

Document record retention procedures and coordinate them with the MAJCOM Command Records Manager.

Section E—Privacy Questions*Data in the System*

1. Generally describe the information to be used in the system.

2. What are the sources of the information in the system?

a. What Air Force files and databases are used?

b. What Federal Agencies are providing data for use in the system?

c. What State and local agencies are providing data for use in the system?

d. What other third party sources will data be collected from?

e. What information will be collected from the employee?

3. Is data accurate and complete?

a. How will data collected from sources other than Air Force records and the subject be verified for accuracy?

b. How will data be checked for completeness?

c. Is the data current? How do you know?

4. Are the data elements described in detail and documented? If yes, what is the name of the document?

Access to the Data

1. Who will have access to the data in the system (Users, Managers, System Administrators, Developers, Other)?

2. How is access to the data by a user determined? Are criteria, procedures, controls, and responsibilities regarding access documented?

3. Will users have access to all data on the system or will the user's access be restricted? Explain.

4. What controls are in place to prevent the misuse (e.g., browsing) of data by those having access?

5. Does the system share data with another system?

a. Do other systems share data or have access to data in this system? If yes, explain.

b. Who will be responsible for protecting the privacy rights of the employees affected by the interface?

6. Will other agencies have access to the data in the system?

a. Will other agencies share data or have access to data in this system (International, Federal, State, Local, Other)?

b. How will the data be used by the agency?

c. Who is responsible for assuring proper use of the data?

d. How will the system ensure that agencies only get the information they are entitled to under applicable laws?

Attributes of the Data

1. Is the use of the data both relevant and necessary to the purpose for which the system is being designed?

2. Will the system create new data about an individual?

a. Will the system derive new data or create previously unavailable data about an individual through aggregation from the information collected?

b. Will the new data be placed in the individual's record?

c. Can the system make determinations about the record subject that would not be possible without the new data?

d. How will the new data be verified for relevance and accuracy?

3. Is data being consolidated?

a. If data is being consolidated, what controls are in place to protect the data from unauthorized access or use?

b. If processes are being consolidated, are the proper controls remaining in place to protect the data and prevent unauthorized access? Explain.

4. How will the data be retrieved? Is it retrieved by personal identifier? If yes, explain.

Maintenance of Administrative Controls

(1) a. Explain how the system and its use will ensure equitable treatment of record subjects.

b. If the system is operated at more than one location, how will consistent use of the system and data be maintained?

c. Explain any possibility of disparate treatment of individuals or groups.

(2) a. Coordinate proposed maintenance and disposition of the records with the MAJCOM Command Records Manager.

b. While the data is retained in the system, what are the requirements for determining if the data is still sufficiently accurate, relevant, timely, and complete to ensure fairness in making determinations?

(3) a. Is the system using technologies in ways that the Air Force has not previously employed?

b. How does the use of this technology affect personal privacy?

(4) a. Will this system provide the capability to identify, locate, and monitor individuals? If yes, explain.

b. Will this system provide the capability to identify, locate, and monitor groups of people? If yes, explain.

c. What controls will be used to prevent unauthorized monitoring?

(5) a. Under which Systems of Record notice does the system operate? Provide number and name.

b. If the system is being modified, will the system of record require amendment or revision? Explain.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

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BILLING CODE 5001-5-P

ADVISORY COUNCIL ON HISTORIC PRESERVATION**36 CFR Part 800**

RIN 3014-AA27

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) is submitting proposed amendments to the regulations setting forth how Federal agencies take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment, pursuant to section 106 of the National Historic Preservation Act. Most of the proposed amendments respond to recent court decisions which held that the ACHP could not force a Federal agency to change its determinations regarding whether its undertakings affected or adversely affected historic properties, and that section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. Another proposed amendment clarifies the time period for objections to "No Adverse Effect" findings. The last proposed amendments clarify that the ACHP can propose an exemption to the section 106 process on its own initiative, rather than needing a Federal agency to make such a proposal.

DATES: Submit comments on or before October 27, 2003.

ADDRESSES: Address all comments concerning this proposed rule to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606-8672. You may submit electronic comments to: achp@achp.gov. For electronic comments, please type "Regs Amendment 2003" in the subject line of the e-mail.

FOR FURTHER INFORMATION CONTACT: Javier Marqués, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004 (202) 606-8503.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, requires Federal agencies to take into account the effects of their undertakings on properties included, or eligible for inclusion, in the

National Register of Historic Places and to afford the Advisory Council on Historic Preservation ("ACHP") a reasonable opportunity to comment on such undertakings. The regulations implementing section 106 are codified at 36 CFR part 800 (2001) ("Section 106 regulations").

On September 18, 2001, the Federal district court for the District of Columbia ("district court") upheld the section 106 regulations against several challenges. *National Mining Ass'n v. Slater* (Civil Action No. 00-288) and *Cellular Telecommunications and Internet Ass'n v. Slater* (Civil Action No. 01-00404) (Judge Ellen S. Huvelle). Nevertheless, the district court invalidated portions of two subsections of the section 106 regulations insofar as they allowed the ACHP to reverse a Federal agency's findings of "No Historic Properties Affected" (§ 800.4(d)(2)) and "No Adverse Effects" (§ 800.5(c)(3)). See *National Mining Ass'n v. Slater*, 167 F. Supp. 2d 265 (D.D.C. 2001); and *Id.* (D.D.C. Oct. 18, 2001) (order clarifying extent of original order regarding Section 800.4(d)(2) of the section 106 regulations).

Prior to the district court decision, an objection by the ACHP or the State Historic Preservation Officer/Tribal Historic Preservation Officer ("SHPO/THPO") to a "No Historic Properties Affected" finding forced the Federal agency to proceed to the next step in the process, where it would assess whether the effects were adverse. An ACHP objection to a "No Adverse Effect" finding required the Federal agency to proceed to the next step in the process, where it would attempt to resolve the adverse effects.

On appeal by the National Mining Association, the D.C. Circuit Court of Appeals ("D.C. Circuit") ruled that section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency, and remanded to the district court. *National Mining Ass'n v. Fowler*, 324 F.3d 752 (D.C. Cir. 2003). On September 4, 2003, the district court issued an order declaring §§ 800.3(a) and 800.16(y) invalid to the extent that they applied section 106 to the mentioned undertakings, and remanding the matter to the ACHP.

The ACHP is now proposing amendments to the mentioned subsections so that they comport with the court rulings, while still being consistent with the purpose of helping Federal agencies avoid proceeding with a project under an erroneous determination that the project would not affect or adversely affect historic

properties, and still triggering section 106 compliance responsibilities for Federal agencies when they approve or fund State-delegated programs.

A related amendment would clarify that even if a SHPO/THPO concur in a "No Adverse Effect" finding, the ACHP and any consulting party still have until the end of the 30 day review period to file an objection. Such objections would require the Federal agency to either resolve the objection or submit the dispute to the ACHP for its non-binding opinion.

Finally, the ACHP is also taking the opportunity to amend its regulations to clarify that the ACHP can propose an exemption to the section 106 process on its own initiative, rather than needing a Federal agency to make such a proposal.

II. Amendments Regarding ACHP Review of "No Historic Properties Affected" and "No Adverse Effect" Determinations

As stated above, the district court held that the asserted power of the ACHP to reverse Federal agency determinations of "No Historic Properties Affected" and "No Adverse Effect" exceeded the ACHP's legal authority under the National Historic Preservation Act.

The proposed amendments would still require a Federal agency that makes such findings and that receives a timely objection to submit the findings to the ACHP for the specified review period. Within that period, the ACHP would then be able to give its opinion on the matter to the agency official and, if it believed the issues warranted, to the head of the agency. The agency official, or the head of the agency, as appropriate, would take into account the opinion and provide the ACHP with a summary of the final decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion. However, the Federal agency would not be forced to abide by the ACHP's opinion on the matter.

The amendments also change the time period, from 15 days to 30 days, for the ACHP to issue its opinion regarding "No Adverse Effect" findings. This additional time is deemed necessary since the ACHP opinions may now be addressed to the head of the agency, and would therefore more likely be ultimately formulated by ACHP members, as opposed to such tasks being mostly delegated to the staff. Such formulation of opinions by ACHP members is expected to require more time considering that these ACHP members are Special Government Employees who reside in different areas

of the country and whose primary employment lies outside the ACHP.

III. Amendment Regarding the Applicability of Section 106 to Undertakings That Are Merely Subject to State or Local Regulation Administered Pursuant to a Delegation or Approval by a Federal Agency

As explained above, the D.C. Circuit held that section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. Accordingly, the proposed amendment removes those types of undertakings from the definition of the term "undertaking" on § 800.16(y).

Formerly, an individual project would trigger section 106 due to its regulation by a State or local agency (through such things as permitting) pursuant to Federally-delegated programs such as those under the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.* Under the proposed amendment, such State regulation would not, by itself, trigger section 106 for those projects.

Nevertheless, it is the opinion of the ACHP that the Federal agency approval and/or funding of such State-delegated programs does require section 106 compliance by the Federal agency, as such programs are "undertakings" receiving Federal approval and/or Federal funding. Accordingly, Federal agencies would need to comply with their section 106 responsibilities regarding such programs before an approval and/or funding decision on them. For existing programs, this could occur during renewal or periodic assessment of such programs.

Due to the inherent difficulties in prospectively foreseeing the effects of such programs on historic properties at the time of the program approval and/or funding, the ACHP believes that section 106 compliance in those situations will be pursuant to a program alternative per 36 CFR 800.14. For example, that section of the regulations provides that "Programmatic Agreements" may be used when " * * * effects on historic properties cannot be fully determined prior to approval of an undertaking; [or] * * * when nonfederal parties are delegated major decisionmaking responsibilities * * * " 36 CFR 800.14(b)(1). The ACHP stands ready to pursue such alternatives with the relevant Federal agencies.

IV. Amendment Clarifying the 30-Day Review Period for No Adverse Effect Determinations

Questions have arisen under the current section 106 regulations as to whether a Federal agency can proceed with its undertaking immediately after the SHPO/THPO concurs in a finding of "No Adverse Effect." The current section 106 regulations specify a 30-day review period, during which the SHPO/THPO, the ACHP and other consulting parties can lodge an objection. The result of such objection is that the Federal agency must submit the finding to ACHP review. If the SHPO/THPO concurs, for example, on the fifth day of the 30 day period, the current language may have given some the erroneous impression that this would cut off the right of other parties to object thereafter within the 30 day period (e.g., on the 15th or 28th day).

The proposed, technical amendment provides clearer language, consistent with the original intent expressed in the preamble to the section 106 regulations ("the SHPO/THPO and any consulting party wishing to disagree to the [no adverse effect] finding must do so within the 30 day review period," 65 FR 77720 (December 12, 2000) (emphasis added)) and in subsequent ACHP guidance on the regulations ("Each consulting party has the right to disagree with the [no adverse effect] finding within that 30-day review period;" <http://www.achp.gov/106q&a.html#800.5>). All consulting parties have the full 30 day review period to object to a no adverse effect finding regardless of SHPO/THPO concurrence earlier in that period.

V. Amendments Authorizing the ACHP To Initiate Section 106 Exemptions

Under the current section 106 regulations, in order for the ACHP to begin its process of considering an exemption, the ACHP needs to wait for a Federal agency to propose such an exemption. Under the proposed amendment, the ACHP would be able to initiate the process for an exemption on its own.

The ACHP believes it is in an unique position, as overseer of the section 106 process, to find situations that call for a section 106 exemption and to propose such exemptions on its own. There may also be certain types of activities or types of resources that are involved in the undertakings of several different Federal agencies that would be good candidates for exemptions when looking at the undertakings of all of these agencies, but that may not be a high enough priority for any single one of

those agencies to prompt it to ask for an exemption or to ask for it in a timely fashion. The ACHP could step into those situations and propose such exemptions on its own, and then follow the already established process and standards for such exemptions.

VI. Impact Analysis

The Regulatory Flexibility Act

The ACHP certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The amendments in their proposed version only impose mandatory responsibilities on Federal agencies. As set forth in section 106 of the NHPA, the duties to take into account the effect of an undertaking on historic resources and to afford the ACHP a reasonable opportunity to comment on that undertaking are Federal agency duties. Indirect effects on small entities, if any, created in the course of a Federal agency's compliance with section 106 of the NHPA, must be considered and evaluated by that Federal agency.

The Paperwork Reduction Act

The proposed rule does not impose reporting or record-keeping requirements or the collection of information as defined in the Paperwork Reduction Act.

The National Environmental Policy Act

It is the determination of the ACHP that this action is not a major Federal action significantly affecting the environment. Regarding the National Environmental Policy Act (NEPA) documents for the regulation to be amended, as a whole, please refer to our Notice of Availability of Environmental Assessment and Finding of No Significant Impact at 65 FR 76983 (December 8, 2000). A supplemental Environmental Assessment and Finding of No Significant Impact is not deemed necessary because (1) these amendments do not present substantial changes in the regulations that are relevant to environmental concerns; (2) most of the amendments are a direct result of a court order; and (3) there are no significant new circumstances or information relevant to environmental concerns and bearing on the regulations or their impacts.

Executive Orders 12866 and 12875

The ACHP is exempt from compliance with Executive Order 12866 pursuant to implementing guidance issued by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs in a memorandum dated October 12, 1993. The ACHP also

is exempt from the documentation requirements of Executive Order 12875 pursuant to implementing guidance issued by the same OMB office in a memorandum dated January 11, 1994.

The Unfunded Mandates Reform Act

The proposed rule does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant Federal intergovernmental mandate. The ACHP thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act.

Executive Order 12898

The proposed rule does not cause adverse human health or environmental effects, but, instead, seeks to avoid adverse effects on historic properties throughout the United States. The participation and consultation process established by the section 106 process seeks to ensure public participation—including by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed Federal undertakings. The section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties. The ACHP considers environmental justice issues in reviewing analysis of alternatives and mitigation options, particularly when section 106 compliance is coordinated with NEPA compliance.

VII. Text of Proposed Amendments

List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Inter-governmental relations, Surface mining.

For the reasons stated above, the Advisory Council on Historic Preservation proposes to amend 36 CFR part 800 as follows:

PART 800—PROTECTION OF HISTORIC PROPERTIES

1. The authority citation for part 800 continues to read as follows:

Authority: 16 U.S.C. 470s.

2. Amend § 800.4 by revising paragraph (d) to read as follows:

§ 800.4 Identification of historic properties.

* * * * *

(d) *Results of identification and evaluation.*

(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO, or the Council if it has entered the section 106 process, objects within 30 days of receipt of an adequately documented finding, the agency official shall forward the finding and supporting documentation to the Council and request that the Council review the finding. Upon receipt of the request, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. If the Council does not respond within 30 days of receipt of the request, the agency official may assume concurrence with the agency official's findings and proceed accordingly. The agency official, or, if the Council has commented to the head of the agency, the head of the agency, shall take into account the Council's opinion in reaching a final decision on the finding. The agency official or the head of the agency, as appropriate, shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the agency official's responsibilities under section 106 will be fulfilled.

(2) *Historic properties affected.* If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or

Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

3. Amend § 800.5 by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 800.5 Assessment of adverse effects.

* * * * *

(c) * * *

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to § 800.5(c)(3), the agency official may proceed after the close of the 30 day review period if the SHPO/THPO agrees with the finding and no consulting party objects within that period. The agency official shall carry out the undertaking in accordance with § 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

* * * * *

(3) *Council review of findings.* When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in § 800.11(e). The Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have been correctly applied within 30 days of receiving the documented finding from the agency official. If the Council does not respond within 30 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly. The agency official, or, if the Council has commented to the head of the agency, the head of the agency, shall take into account the Council's opinion in reaching a final decision on the finding. The agency official or the head of the agency, as appropriate, shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the agency official's responsibilities under section 106 will be fulfilled.

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4. Amend § 800.14 by revising paragraph (c) to read as follows:

§ 800.14 Federal agency program alternatives.

* * * * *

(c) *Exempted categories.*

(1) *Criteria for establishing.* The Council or an agency official may propose a program or category of undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation.* The proponent of the exemption shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act,

taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the Act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The proponent of the exemption shall publish notice of any approved exemption in the **Federal Register**.

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5. Amend § 800.16 by revising paragraph (y) to read as follows:

§ 800.16 Definitions.

* * * * *

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

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Dated: September 17, 2003.

John M. Fowler,

Executive Director.

[FR Doc. 03-24202 Filed 9-24-03; 8:45 am]

BILLING CODE 4310-10-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030908223-3223-01; I.D. 081403B]

RIN 0648-AP57

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP). This proposed rule would establish: A new surfclam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surfclams and ocean quahogs. The primary purpose of this proposed action is to rectify the disapproved surfclam overfishing definition and the EFH analysis and rationale contained in Amendment 12 in order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to simplify the regulatory requirements of the FMP.

DATES: Comments must be received at the appropriate address or fax number, (See **ADDRESSES**), on or before 5 p.m., local time, on October 27, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 13 to Atlantic Surfclam and Ocean Quahog Fishery." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the FMP, its Regulatory Impact Review (RIR), the Initial

Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT:

Susan A. Murphy, Supervisory Fishery Policy Analyst, 978-281-9252, fax 978-281-9135, Susan.A.Murphy@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Amendment 12 to the FMP was prepared by the Mid-Atlantic Fishery Management Council (Council) to bring the FMP into compliance with the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996. On April 28, 1999, the Council was notified that NMFS partially approved Amendment 12. Specifically, two Amendment 12 measures were disapproved, the surfclam overfishing definition and the analysis and rationale for the status quo alternative for addressing fishing gear impacts to EFH. To rectify these disapprovals, the Council prepared, and NMFS published, a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's scoping process for Amendment 13 (66 FR 13694, March 7, 2001). The Council held a scoping hearing on March 21, 2001, and accepted scoping comments on the amendment during the period March 7 through April 6, 2001. In addition to the surfclam overfishing definition and EFH alternatives, other issues identified for inclusion in the EIS were multi-year quotas, a mandatory VMS requirement and a permanent suspension of the surfclam minimum size limit. The Council identified a range of alternatives for each of these five issues and approved the alternatives in a public hearing document at its May, 2002 meeting. A Notice of Availability (NOA) on the DSEIS was published in the **Federal Register** on August 30, 2002 (67 FR 55838), with a comment period ending October 15, 2002. There were a series of three public hearings held (one each in the states of Maine, New Jersey and Delaware). After consideration of all public comments, the Council chose the following alternatives at its January, 2003 meeting and voted to submit the Amendment 13 document, including the draft final supplemental environmental impact statement to NMFS. The Amendment 13 measures contained in this action propose multi-year fishing quotas and the ability to suspend or adjust the surfclam