



Surfclam/Ocean Quahog (SCOQ) Excessive Shares Amendment

Final Action

December 9, 2019

Annapolis, MD



Final Action Today

- Consider adopting revisions to FMP Goals and Objectives
- Select preferred alternatives for:
 1. Excessive Shares Cap
 2. Excessive Shares Review
 3. Framework Adjustment Process
 4. Multi-year Management Measures
- Approve document for submission to NMFS

Outline

- For each of these topics, we will review:
 1. Public Comment Summary
 2. Committee recommendations (2 Dec)
 3. Staff recommendations

Public Hearings & Comment Period

■ Comment Period

- August 1 to September 14, 2019
- All individual comments & summary are included in the briefing book

■ Written Comments

- 29 comments
- Some individuals and/or businesses provided multiple comment letters

Public Hearings & Comment Period

■ Public Hearings

- 4 hearings (NJ, DE, MD, RI)
- 40 in attendance cumulatively; comprised of 29 unique individuals (i.e., some people attended more than 1 hearing)
- Twenty-seven oral comments were made at 4 hearings. Some people provided comments at two or more public hearings

FMP GOALS AND OBJECTIVES



Current FMP Objectives

1. Conserve and rebuild Atlantic surfclam and ocean quahog resources by stabilizing annual harvest rates throughout the management unit in a way that minimizes short term economic dislocations
2. Simplify to the maximum extent the regulatory requirements of clam and quahog management to minimize the government and private cost of administering and complying with regulatory, reporting, enforcement, and research requirements of clam and quahog management
3. Provide the opportunity for industry to operate efficiently, consistent with the conservation of clam and quahog resources, which will bring harvesting capacity in balance with processing and biological capacity and allow industry participants to achieve economic efficiency including efficient utilization of capital resources by the industry
4. Provide a management regime and regulatory framework which is flexible and adaptive to unanticipated short term events or circumstances and consistent with overall plan objectives and long term industry planning and investment needs

Current FMP Objectives

- Developed for Amendment 8 that implemented the ITQ system
- Covered multiple topics
 - Conservation/rebuilding
 - Short-term economic dislocations
 - Simplify regulatory requirements
 - Simplify administrative requirements
 - Provide opportunity for the industry to operate efficiently
 - Flexible and adaptive management

G&O Revisions Development

- Council reviewing and possibly modifying G&O for all FMPs
- Fisheries Forum conducted planning conversations with SCOQ Cmte., SCOQ AP, & state representatives
- This information along with scoping comments were used to prepare the *"Synthesis Document"*
- Council reviewed FMAT's recommendations for G&O in October 2017 (G&O Workshop)
- FMAT drafted goals and objectives that drew from themes in original objectives but simplified the terminology and focused on longer-term goals

FMAT Goals and Objectives Revisions (See Appendix B)

- **Goal 1:** Ensure the biological sustainability of the surfclam and ocean quahog stocks to maintain sustainable fisheries

FMAT Goals and Objectives Revisions (cont.)

- **Goal 2:** Maintain a simple and efficient management regime
 - **Objective 2.1:** Promote compatible regulations between state and federal entities
 - **Objective 2.2:** Promote coordination with the New England Fishery Management Council
 - **Objective 2.3:** Promote a regulatory framework that minimizes government and industry costs associated with administering and complying with regulatory requirements

FMAT Goals and Objectives Revisions (cont.)

- **Goal 3:** Manage for stability in the fisheries
 - **Objective 3.1:** Provide a regulatory framework that supports long-term stability for surfclam and ocean quahog fisheries and fishing communities

FMAT Goals and Objectives Revisions (cont.)

- **Goal 4:** Provide a management regime that is flexible and adaptive to changes in the fisheries and the ecosystem
 - **Objective 4.1:** Advocate for the fisheries in ocean planning and ocean use discussions
 - **Objective 4.2:** Maintain the ability to respond to short and long-term changes in the environment

FMAT Goals and Objectives Revisions (cont.)

- **Goal 5:** Support science, monitoring, and data collection that enhance effective management of the resources
 - **Objective 5.1:** Continue to promote opportunities for government and industry collaboration on research

Public Comments: Goals and Objectives

- Most fishing industry comments noted that the current goals and objectives should not be change
- They have worked well for 30 years and have accomplished what they were designed to
- Changing the existing Goals stated in the FMP could create potential misinterpretations

Public Comments: Goals and Objectives (cont.)

- Bumble Bee Seafoods indicated that they support the Council's efforts to update the goals and objectives of the FMP
 - They stand by the list of revised/rewritten goals and objectives that they submitted in writing to the Council in July 2017
 - Refreshing these goals and objectives to include things like sustainability and science/research would be good

Goals and Objectives (cont.)

■ Staff

- Recommend that the Council adopt the revised goals and objectives drafted by FMAT

■ Committee

- Motion: Move that the Committee recommend that the Council support the staff recommendations on goals and objectives

EXCESSIVE SHARES ALTERNATIVES



Alternative 1

Alternative	Summary of Alternative
Alternative 1: (No Action / Status Quo)	<ul style="list-style-type: none">• No limit or definition of an excessive share is included in the FMP• If fully consolidated, could potentially result in 100% for each SC and OQ

Public Comments: Alternative 1

- The status quo alternative is not fairly represented in the document
- There is already an excessive shares definition in place
- The current system has been in place for 30 years and it works
- GARFO is requiring a quantifiable excessive shares cap. This is not required by MSA

Public Comments: Alternative 1 (Cont.)

- Some people indicated that they would prefer the no action/status quo alternative (alternative 1)
 - Because of less potential for harmful economic impacts
- However, many people also indicated that they were willing to compromise (support sub-alternative 4.4)

Alternative 2 Suite

Alternative	Summary of Alternative
Alternative 2: Single Cap – Quota share ownership cap- only, with unlimited possession of cage tags allowed during the fishing year	<ul style="list-style-type: none">• Single cap on how much quota share one individual or entity could hold would be established separately for SC and OQ• Cap would be based on quota share ownership with unlimited possession of cage tags allowed during the fishing year• Does not account for leasing or other transactions and complex contracting and business practices (ownership and control of cage tags)

**Sub-Alternative
2.1:
Quota share
ownership cap
based on highest
level in the
ownership data,
2016-2017**

- The single quota share caps would be based on the highest level of quota share held by an individual or entity reported in ownership data for each fishery for the 2016-2017 period
- 28% for SC and 22% for OQ
- If fully consolidated: 28%, 28%, 28%, and 16% SC; 22%, 22%, 22%, 22%, and 12% OQ

**Sub-Alternative
2.2:
Quota share
ownership cap at
49%**

- Cap is similar to golden tilefish IFQ cap which allows for a 49% maximum share cap value; but, tilefish, applied to both ownership of quota share and transfer/leasing of quota share allocation within the fishing year
- If fully consolidated: 49%, 49%, 2% for each

**Sub-Alternative
2.3:
Quota share
ownership cap at
95%**

- The single cap would be 95% for SC and 95% for OQ
- This sub-alternative was recommended for inclusion by the SCOQ Committee
- If fully consolidated: 95%, 5% for each

Public Comments: Alternative 2

- Some people indicated that sub-alternative 2.3 (95% cap) was their second choice (right after the no action alternative)
 - Because of less potential for harmful economic impacts
- However, many also indicated that they were willing to compromise (support sub-alternative 4.4)

Alternative 3 Suite

Alternative	Summary of Alternative
<p>Alternative 3: Cap – applies to possession of both owned quota share and cage tags</p>	<ul style="list-style-type: none">• A percent cap based on possession of both owned quota share and cage tags by an individual or entity would be established separately for SC and OQ• Since the cap is based on possession of allocation that are both owned and transferred, it accounts for leasing or other transactions and complex contracting and business practices (ownership and control of cage tags)

**Sub-Alternative
3.1:
Cap based on
highest level of tag
possession in the
ownership and
transfer data,
2016-2017**

- Caps would be based on the highest level of both owned quota share and cage tags by an individual or entity reported in ownership and transfer data for each fishery for the 2016-2017 period
- If fully consolidated: 2 to 4 large entities in the SC fishery and 3 to 4 large entities in the OQ

**Sub-Alternative
3.2:
Cap at 40%**

- Cap on possession of both owned quota share and cage tags by an individual or entity would be 40% for SC and 40% for OQ
- If fully consolidated: 40%, 40%, 20% for each

**Sub-Alternative
3.3:
Cap at 49%**

- Cap on possession of both owned quota share and cage tags by an individual or entity would be 49% for SC and 49% for OQ
- Cap is similar to golden tilefish IFQ cap which allows for a 49% maximum share of the total allowable landings
- If fully consolidated: 49%, 49%, 2% for each

Public Comments: Alternative 3

- Some people indicated that sub-alternative 3.3 (49% cap) was their third choice (right after the no action alternative and sub-alternative 2.3 [95% cap])
 - Because of less potential for harmful economic impacts
- However, many also indicated that they were willing to compromise (support sub-alternative 4.4)

Alternative 4 Suite

Alternatives	Summary of Alternative
<p>Alternative 4: Two-Part Cap Approach – A cap on quota share ownership and a cap based on possession of cage tags</p>	<ul style="list-style-type: none">• A two-part cap approach would be implemented for each fishery – first part being a cap on quota share ownership – second, annual allocation cap on the possession of cage tags by an individual or entity• Based on recommendations for a two-part cap provided in the Compass Lexecon Report• Since the caps are based on quota share ownership and possession of cage tags, it accounts for leasing or other transactions and complex contracting and business practices (ownership and control of cage tags)

**Sub-Alternative
4.1:
Two-part cap
based on highest
level in the
ownership and
transfer data,
2016-2017**

- Two-part cap approach includes one cap on quota share ownership and a second cap on possession of cage tags by an individual or entity based on the highest levels reported in the ownership and transfer data for each fishery for the 2016-2017 period
- If fully consolidated: 28%, 28%, 28%, and 16% SC; 22%, 22%, 22%, 22%, and 12% OQ

**Sub-Alternative
4.2:
Two-part cap
based on highest
level in the
ownership and
transfer data,
2016-2017, plus
15% added to the
maximum levels to
allow for additional
consolidation**

- Same as above. However, under this sub-alternative, + 15% for additional consolidation
- 15% value was recommended by some industry representatives and is expected to provide flexibility for efficient firms in the SC and OQ fisheries to consolidate/grow if market conditions allow
- If fully consolidated: 43%, 43%, 14% for SC; 37%, 37%, 26% for OQ

**Sub-Alternative 4.3:
Two-part cap; quota
share ownership cap
at 30% and cap
based on possession
of cage tags at 60%**

- Two-part cap with a quota share ownership cap at 30% and the annual allocation cap (based on possession of cage tags by an individual or entity) at 60%
- Values are based on recommendations for a two-part cap provided in the Compass Lexecon Report
- If fully consolidated: 30%, 30%, 30%, 10% for each

**Sub-Alternative 4.4:
Two-part-cap; Quota
share ownership cap
and annual
allocation cap based
on possession of
cage tags (SC:
35/65%; OQ:
40/70%)**

- For SC: Two-part cap with a quota share ownership cap at 35% and an annual allocation cap (based on possession of cage tags) at 65%. For OQ: Two-part cap with a quota share ownership cap at 40% and an annual allocation cap (based on possession of cage tags by an individual or entity) at 70%
- Sub-alternative was recommended by the SCOQ Committee based on their review of public comments
- If fully consolidated: 35%, 35%, 30% SC; 40%, 40%, 20% OQ

Public Comments: Alternative 4

- Support the two-cap approach
- Sub-alternative 4.4 is a compromise expressed by most of the industry members that provided comments
- Achieve results that everyone can live with & accomplish what the MAFMC/NMFS maintains is necessary under NS4

Public Comments: Alternative 4 (Cont.)

- Allow for further consolidation given current maximum ownership levels
- One commenter supported sub-alternative 4.3, without modifications

Alternative 5

Alternative	Summary of Alternative
<p>Alternative 5: Quota share ownership cap- only at 40% with unlimited possession of cage tags allowed during the fishing year, plus a two-tier quota</p>	<ul style="list-style-type: none">• Cap would be 40% for SC and 40% for OQ with unlimited possession of cage tags allowed during the fishing year plus, Quota A and B shares (for each individual species), where A shares is the current 3-year landings level and B shares is the difference between the ACT or overall quota level and A shares• B shares are not released until all A shares are used/exhausted• Aligns supply (quota) with market demand• If fully consolidated: 40%, 40%, and 20% for each

Alternative 5 (Cont.)

Hypothetical derivation of Quota A shares and Quota B shares (and cage tags) for surfclams and ocean quahogs under alternatives 5 and 6.

Year	Quota Million bushels	Landings Million bushels	Quota A shares Million bushels	Quota B shares Million bushels
Atlantic surfclams				
1	3.400 (106,250 cage tags)	2.364 (73,875 cage tags)	NA	NA
2	3.400 (106,250 cage tags)	2.354 (73,563 cage tags)	NA	NA
3	3.400 (106,250 cage tags)	2.339 (73,094 cage tags)	NA	NA
4	3.400 (106,250 cage tags)	NA	2.352 (73,500 cage tags)	1.048 (32,750 cage tags)
Ocean quahogs				
1	5.333 (166,656 cage tags)	3.196 (99,875 cage tags)	NA	NA
2	5.333 (166,656 cage tags)	3.007 (93,968 cage tags)	NA	NA
3	5.333 (166,656 cage tags)	3.075 (96,094 cage tags)	NA	NA
4	5.333 (166,656 cage tags)	NA	3.093 (96,656 cage tags)	2.240 (70,000 cage tags)

Alternative 6

Alternative	Summary of Alternative
<p>Alternative 6: Quota share ownership cap- only at 49% with unlimited possession of cage tags allowed during the fishing year, plus a two-tier quota</p>	<ul style="list-style-type: none">• Identical to Alternative 5• Except that cap is 49%• If fully consolidated: 49%, 49%, and 2% for each

Public Comments: Alternatives 5/6

- Alternative 5 and 6 will have devastating adverse economic impacts to the industry
- Adverse impacts associated with alternatives 5 and 6 not adequately described in the document
- No direct support for alternatives 5 or 6 received. However, three commenters indicated that they would like to see the quota levels match the current landings levels

Public Comments: Alternatives 5/6 (Cont.)

- Will give monopsony power to the non-participant ITQ holders
- Industry would need to lease more shares from non-participants
- The non-participant ITQ holders do not contribute to the marketing, infrastructure, science and technology development, etc. needed to keep this industry successful
- These are market restructuring plans (social engineering) and not excessive share controls

Public Comments: Alternatives 5/6 (Cont.)

- There are a couple of allocation holders that currently will not lease out their allocations due to negative feelings towards everyone in the business. This would create a downward spiral effect and make the catch go down

Public Comments: Alternatives 5/6 (Cont.)

- These micromanage the fishery. Have been there and it was not good for the industry or management process
- Designed around the quota holders that do not have lessors to rent to. This is social engineering so a few leaseholders, that are large leaseholders, can use their quota

Public Comments: Alternatives 5/6 (Cont.)

- Reducing everyone's quota (share) forces harvesters and processors to lease quota before all their owned quota is used
- Industry data suggests that the non-sellers/non-participants are highly concentrated – will turn them into “oligopoly sellers of their “A shares”

Public Comments: Alternatives 5/6 (Cont.)

- Alternatives 5 and 6 are in violation of NS5
- Newly developed analysis presented during the public hearings indicates that there is no monopsony power issues
- Net leasing activity will decrease

Public Comments: Alternatives 5/6 (Cont.)

- Reduce the ITQ available for collateral and increase the cost of producing clam products
- Have negative impacts on jobs by raising processors cost and passing those costs to consumers
- Result in increased imports of cheap foreign clam products and diminish US product marketability

Public Comments: Model/Affiliation Levels

- Regarding the model/affiliation levels for selecting/monitoring any excessive shares alternative the Council selects, a few comments indicated support for the following:
 - Net actual percentage model
 - Cumulative 100% model
 - Individual/business affiliation level
 - Family level affiliation level

Additional Comments: Alternatives 5/6

- Lee Anderson, "An Expanded Analysis of Market Power in the SCOQ Fisheries"
- Carper, Coons, and Blunt-Rochester (DE)
- Reed (RI)

Excessive Shares Cap Alternatives (Cont.)

■ Staff

- Recommend that the Council select sub-alternative 4.4 as the preferred excessive shares cap, with the selection of family affiliate level and the cumulative 100% model for tracking of ownership

■ Committee

- Motion: Move to recommend as a preferred alternative, Sub-Alternative 4.4: Two-part cap - Quota share ownership cap and a second, annual allocation cap based on the possession of cage tags (Surfclams: 35/65%, Ocean quahogs: 40/70%), with the selection of the family affiliate level and the cumulative 100% model for tracking of ownership

OTHER ALTERNATIVES



Excessive Shares Review Alternatives

- Alternative 1: No Action/Status Quo
 - There would not be a requirement for periodic review of implemented excessive share cap measures
- Alternative 2: Require periodic review of the excessive shares measures at specific intervals. At least every 10 years or as needed
 - This alternative would require for periodic review of excessive shares measures that the Council adopts

Public Comments: Excessive Shares Review Alternatives

- Support - Alternative 1, No Action/Status Quo
- FMAT process not transparent

Excessive Shares Review Alternatives (Cont.)

■ Staff

- Council select alternative 2 as the preferred excessive shares review alternative
- Conditions in the fisheries do change
- Council should review its management regimes regularly

■ Committee

- Motion: Move to recommend the staff recommendation as the preferred alternative, and include the periodic review of the excessive shares measures at least every 10 years or as needed

Framework Adjustment Process Alternatives

- Alternative 1: No Action/Status Quo
 - No changes to the list of management measures that can be addressed via the framework adjustment process
- Alternative 2: Add excessive shares cap level to the list of measures to be adjusted via framework
 - This frameworkable item would allow modifications to the cap value only and not the underlying cap system

Public Comments: Framework Adjustment Process Alternatives

- Support - Alternative 1, No Action/Status Quo
- A framework adjustment process does not allow for a full transparency to address changes
- FMAT process not transparent

Framework Adjustment Process Alternatives (Cont.)

■ Staff

- Council select alternative 2 as the preferred framework adjustment process alternative
- Modifications to the cap value only, not the underlying cap system
- Only if no divestment is anticipated
- Does not preclude AP meetings, etc.
- Public Council meetings and rulemaking process
- Improve efficiency (amendments take many years)

■ Committee

- No recommendation was made

Multi-year Management Measures Alternatives

- Alternative 1: (No Action/Status Quo)
 - No changes to the process to set surfclam and ocean quahog management specifications for up to 3 years
- Alternative 2: Specifications to be set for maximum number of years consistent with the Northeast Regional Coordinating Council (NRCC)-approved stock assessment schedule
 - Specifications could be set for a period up to the maximum number of years consistent with the NRCC-approved stock assessment schedule

Public Comments: Multi-year Management Measures Alternatives

- Support - Alternative 2 (Specifications setting is consistent with the NRCC-approved stock assessment schedule)
- Provides efficiency

Multi-year Management Measures Alternatives (Cont.)

■ Staff

- Council select alternative 2 as the preferred multi-year management measures alternative
- Improve efficiency for specifications setting process

■ Committee

- Motion: Recommend as the preferred Alternative 2, where specifications will be set for maximum number of years consistent with the Northeast Regional Coordinating Council (NRCC)-approved stock assessment schedule

Other General Comments

- A request for correction of information under Section 515 of Public Law 106-554 was submitted
 - Submitted because there were substantial changes to the document between the version that came out of the June Council meeting and the version that was used for the public hearing

Other General Comments (Cont.)

- The excessive shares definition should not include social engineering concepts
- Concerns were raised thru a few comments about the lack of participation of independent stakeholders in the industry and management process
- Industry is not catching the quota due to low demand levels, increasing foreign competition, and habitat area closures

Other General Comments (Cont.)

- There is insufficient information to support implementing a specific excessive shares cap, or even if one is needed at all
- The impact analysis of all excessive shares cap alternatives is deficient
- The purpose and need for action (excessive shares cap) as described in the document is not consistent with MSA and what was implemented under Amendment 8

Decision Points

- Consider adoption of revised FMP Goals and Objectives
- Select preferred alternatives for:
 1. Excessive Shares Cap
 2. Excessive Shares Review
 3. Framework Adjustment Process
 4. Multi-year Management Measures
- Approve document for submission to NMFS

Questions/Comments?

Amendment Development

Council initiated work on action	2004
Data Collection Protocol	2016
Public Scoping Process	July 2017
Refinement of issues and development of alternatives	Fall 2017 – Spring 2019
Council approved public hearing document	June 2019
Public Comment Period	August 1 – September 14, 2019
AP and/or Committee meetings	September 2019 & December 2019
Council selects preferred alternatives (final action)	December 2019
Expected effective date of any changes	January 2021