

An Expanded Analysis of Market Power in the Surfclam and Ocean Quahog (SCOQ) Fisheries

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This statement was written independently and the views expressed are those of the author and while he is a member of the Scientific and Statistical Committee (SSC), the statement cannot and should not be considered an SSC document. The purpose is to present a more detailed and complete analysis on the subject of the comments provided in Attachment 3 to the May 2019 SSC Meeting report, taking advantage of some of the written and oral comments on the report submitted to the Council to focus on areas of contention or confusion. The Council family needs to understand the whole story.

The main point of this document can be summarized as follows. There are conditions in the SCOQ fisheries that suggest that oligopsony power exists in the market for quota shares. The Magnuson Stevens Act mandates that Councils should address market power problems. It can be shown that Alternatives 5 and 6 in the excessive shares amendment were designed to address these problems and if implemented will solve them, albeit with some very significant redistribution effects.

The essence of the SSC comment can be found in following quote.

The SCOQ industry and ITQ program, however, is quite special and almost unique in at least three respects. First, catch must be processed before sale; more than simply heading and gutting. Second, there are few buyers of the processed product (few large companies e.g., Campbell's Soup Company). Third, for a number of years the annual TAC has not been harvested for either species.

The fact that the catch must be processed before it can be sold is critical to the operation of the SCOQ ITQ program. It is also true that there are only a few entities that have the capital equipment that enables them to do this processing. Further this processing equipment is expensive and somewhat specialized. As will be described below, the limited number of processors is a key element of where the oligopsony market power enters the analysis.

The report also noted that the SCOQ ITQ program is the only ITQ program in the world where the total TAC is not harvested. This fact is well known and is documented in the 2019 Atlantic Surf Clam Fishery Information Document (Table 1, page 5) and the 2019 Ocean Quahog Fishery Information Document (Table 1, page5) both of which can be found at

<http://www.mafmc.org/ssc-meetings/2019/may-7-8>

The same tables provide the OFLs and ABCs for surf clams and ocean quahogs. Table 1 is constructed using the information in these two tables and it shows the recent history of the quota surplus in both fisheries. In surf clams between 64% and 71% of the quota was taken, while in the quahog fishery landings were between 58% and 66% of the quota. While this shows the recent catch histories, in the five years immediately before and after the implementation of the ITQ program landings were always above 90% of the quota and in many years the quota was completely taken.¹ Why is this not so today and what are the ramifications for short- and long-term Council policy?

¹See page 20 of the council document “**Overview of the Surfclam and Ocean Quahog Fisheries and Quota Considerations for 2010**”

It is not widely known, but starting in 2010 for SC and 2011 for OQ the stock assessments included an OFL and an ABC value. The third column shows the ratio of the current quota to the annual ABC which is the normal basis for setting TACs in all other species managed by the council². If the 2010 ABC value was used to set the TAC, there would have been about a fourfold increase in the quota. In almost any fishery imagine how happy the participants with a 20% increase in TAC to say nothing of a 400% increase. The processing sector in the SCOQ fishery, however, did not greet this potential increase in quota with any joy at all. They did not want an increase in allowable harvest and they argued for no changes in the quota. That action was certainly consistent with an industry that is trying restrict output.

Table 1. Percent of quota harvested, quota as a percent of ABC, and percent of ABC harvested for Surfclams 2010-2017 and Ocean quahogs, 2010-2018 (2019 Surfclam and Ocean Quahog Fishery Information Documents MAFMC 2019

Surfclams	Annual quota = 3,400,000 bu		
year	% quota harvested	quota/ABC	% ABC harvested
2010	69%	27%	19%
2011	72%	27%	20%
2012	69%	28%	19%
2013	71%	27%	19%
2014	70%	43%	30%
2015	69%	51%	35%
2016	69%	54%	37%
2017	64%	59%	38%
Quahogs	Annual Quota = 5,333,000 bu		
Year	% quota harvested	quota/ABC	% ABC harvested
2011	59%	93%	55%
2012	66%	93%	61%
2013	61%	93%	56%
2014	60%	93%	56%
2015	57%	93%	53%
2016	58%	93%	54%
2017	59%	93%	55%
2018	60%	54%	32%

In fact, contrary to what is done in every other fishery under the Council’s jurisdiction, the quota did not increase to match the ABC, nor has it done so for the past 10 years. The final column shows the ratio of

² The ABCs in the referenced tables are shown in different units than the quota, but using the comparable landings in bushels and metric tons it is possible to derive a conversion factor.

annual landings to the ABC for the last decade. Of course, ABC is the biological maximum under the law and other factors are considered in setting a quota, but a TAC up to 81 percent below the ABC for surfclams and up to 68 percent below the ABC for quahogs indicates there is a lot of potential harvest that is not being provided to consumers.

In the past when Council members noted the large portion of the TACs that was not taken, some suggested that the TAC should be lowered to the market level of output. The industry responded with the argument that this would hurt market development because they could not realistically approach the big chowder manufacturers to make more sales if they were always up against the TAC. While there may be a grain of truth in that argument, those fears could be reduced or eliminated by a clear and actionable policy that allowed for automatic framework adjustment of the TAC if new contracts or markets are developed. More to the point, the processors are very much aware of the power they obtain from having the excess TAC, which is why they hide behind the market expansion argument.

Before going further, it will be useful to specify some definitions. Market structure analysis describes the organizational and other characteristics of a market that affect the nature of competition and price. It is generally the subject of one or two chapters in elementary and advanced microeconomics texts, which a interested reader may pursue for further details. However, for the present discussion, pure competition refers to a market where there are many buyers and many sellers none of which has power over the price of output. Monopoly and oligopoly refer to markets where there is one or few sellers, (respectively) of a particular good and the sellers have some power over the price. Monopsony and oligopsony refer to markets where there is one or few buyers, respectively, and the buyers have some power over price.

For purposes here oligopsony is a market situation where the presence of few buyers and many suppliers creates a buyer's market. The discussion here concerns markets where there are few buyers which may have the potential to set the price. Whether they will or not depends upon the definition of "few" and the nature of other organizational characteristics of the market. It should be understood that this is a definitional issue. (And to be fair, it should be noted that the May SSC comment should have explicitly referred to oligopsony.)

The market structure literature also addresses why a single buyer or seller can maintain their position over time given that the existence of profits produces an incentive for other buyers or producers to enter the markets. It is explained by what are called barriers to entry which includes, among other things, patents, high transportation costs and specialized and expensive capital equipment.

Although, or perhaps because, it contains several errors, the analysis contained in the comments submitted to the Council on the Excessive Shares Amendment by the industry consultant, Dr. Thomas Sproul, provides a useful spring board to demonstrate the nature of the market power in the SCOQ fishery.³

³ See letter to Dr. Christopher Moore dated September 13, 2019 which can be found at:

<http://www.mafmc.org/council-events/2019/scoq-committee-sept17>

Sproul's Figure 2, which is reproduced below, is meant to show the operation of the market for annual quotas shares. It is worth noting that since there is a one-to-one correspondence between quota shares and output, the horizontal axis represents both units of quota shares and units of output. But as will be shown below, the Sproul analysis is incomplete and theoretically flawed as a description of the operation of the SCOQ ITQ program because the three special elements mentioned in the SSC report are not adequately treated. But for now, consider the supply and demand curves as described in the document. Consider first the supply curve of tags which describes the behavior of holders of annual quota. In defining the curve Sproul states:

Competitive Quota Market with No Excess TAC

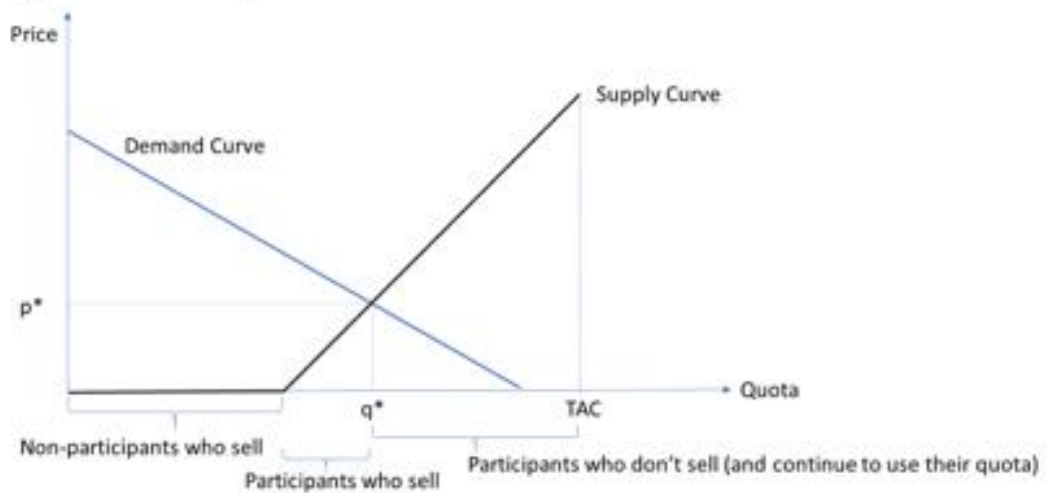


Figure 2

Specifically, economic reasoning dictates the supply of quota is defined by the opportunity costs of sellers – they will not accept a price less than their outside option. All quota holders who can use quota profitably will have that profit as an opportunity cost of selling quota, but non-participant quota holders cannot use quota profitably and thus should sell for whatever they can get.

As drawn, the Sproul supply curve for tags is initially coterminous with the horizontal axis but then begins to have a positive slope and it terminates at the vertical TAC line. The flat portion is attributed to non-participants which presumably means individuals who own quota but do not have boats that enables them to participate in the industry. Their “outside option” is zero.

Now consider the upward sloping portion which refers, I must assume, to participants who own both boats and tags. Each point on the curve represents the opportunity cost in terms of foregone earnings for boat owners that also own quota. The ones with the lowest opportunity cost (the least efficient) will

come into the market first, and the more efficient will only be enticed to sell quota at higher prices. Their “outside option” according to this analysis is positive.

A serious shortcoming of the analysis is that neither the role of processors nor the nature of the demand curve is described. But given the flow of the analysis, most likely the demand curve in the Sproul analysis is the sum of individual demand curves of all entities that have the ability to harvest and need annual quota shares to participate in the fishery.

Consider now the stated results from the interpretation of Sproul’s Figure 2 given the above assumptions. The equilibrium in the quota market is at p^* and q^* at the intersection of the (undefined) demand curve and the supply curve. In the graph, the distance between q^* and the TAC line is labeled as “participants who do not sell and continue to use their quota.” Since the horizontal axis is measured in units of quota (or output), it is hard to see how participants can be measured on the horizontal axis. But that aside, a friendly interpretation would be that the distance between q^* and the TAC line represents the amount of quota that is not sold on the market but is used by participating quota owners with boats. To those familiar with workings of the SCOQ fishery this sounds a bit silly. (How can participating quota owners use their quota without access to processing? Where do they sell unshucked clams?) It is true, however, that Figure 2 provides a pretty good description of how other ITQ programs would work where raw product can be readily sold.⁴ The notion of a flat segment on the supply curve for quota is interesting and correct but it is not carried to the logical conclusion with respect to the need for processing in the SCOQ fishery.

For this to be an accurate description of the workings of the SCOQ ITQ program, it must consider the three unique features mentioned in the SSC report. Harvested clams must be processed before sale to consumers. To create a correct depiction of the operation of SCOQ fishery, both the supply and demand curves must be constructed taking the need for processing into account. Consider first the supply curve. It takes more than the possession of tags and a boat to be able to participate in the fishery. Access to processing capacity is also necessary. If one does not have access to processing capacity, the opportunity cost of the annual quota is zero. The outside option for the quota shares is zero. The bottom line is that the supply curve of quota for all quota holders, whether they own a boat or not, will be coterminous with the horizontal axis out to the TAC line as depicted in by the bold lines in Figure A below. The fact that some of the quota is owned by processors will be addressed below.

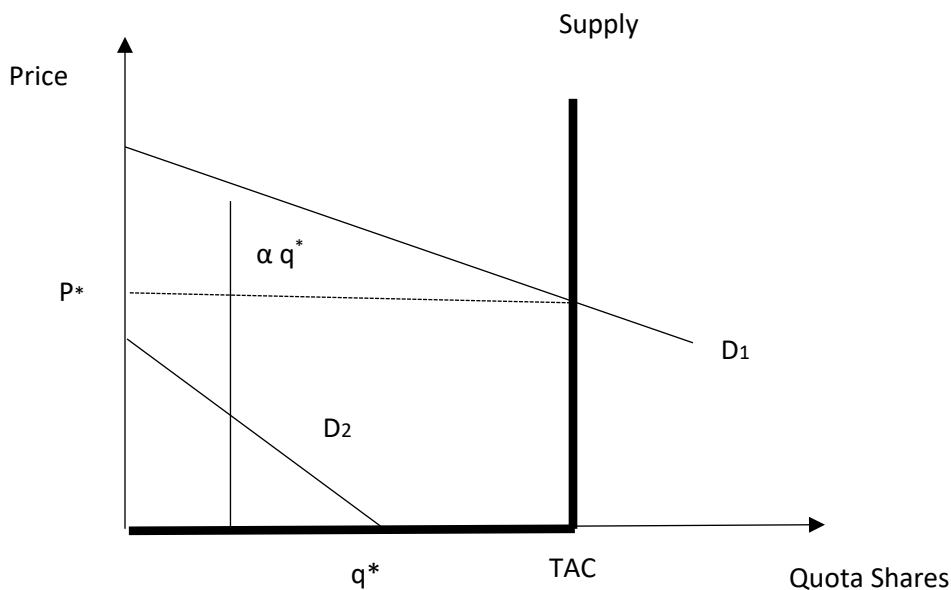
As a sidelight note that because the supply curve is vertical at the TAC line, there is no monopsonist marginal expenditure curve as shown in Sproul’s Figures 4 and 5. That analysis does not apply to the SCOQ fisheries. But as will be shown below there are other organizational characteristics that create market power for buyers.

⁴ It does show how a working quota market can allocate production between boats that are allocated quota and other boats that do not own quota but are more efficient and wish to participate. It follows from the graph that the marginal value of output from those that purchase quota is equal to the marginal value of output of quota owning participants. The harvest is efficiently spread between quota owners and other boats. That is supposed to be how ITQ programs create incentives for efficient harvest.

In order to capture the need for processing, and to complete the analysis given the definition of the supply curve, the processors demand curve for annual quota shares needs to be derived. The relevant demand curve is the sum of the processors individual demand curves. Going back to the definitions, whether this is a competitive or an oligopsonist market depends on whether it is the sum of “many” or “few” firms. The fact that processors can own quota shares is consistent with this analysis. They can be viewed as buying quota shares from themselves. Now that we have correctly defined the demand and supply curves, it is possible to provide a complete and accurate analysis the market for quota shares in the SCOQ fisheries, something that is not possible in the incomplete Sproul analysis.

Consider first the demand curve labeled D_1 in Figure A. If there are many firms, they will be forced to compete against each other for the limited amount of annual quota, and theory tells us that it will be sold at a price of P^* . However, if there are few buyers of quota, which means that by definition it is an oligopsonistic market, the outcome will depend upon other characteristics of the market. For example, if the transaction costs of bargaining between processing firms are low, and there are ways to enforce agreements between them, there might be a tendency for processors to agree to limit bidding against each other and the price may be lower than P^* . The possibility for oligopsony market power exists even when all of the quota will be sold.

Figure A



Consider now the demand curve labeled D_2 in Figure A. (Ignore for the moment the line labeled αq^*) The three unique features of the SCOQ ITQ market can all be depicted in this situation. First, the fact that clams require processing and cannot be sold directly to consumers is the reason for horizontal supply curve out to the TAC line. In Sproul’s terminology, the quota shares do not have an “outside

option.” Second, the demand curve D_2 intersects the horizontal axis at q^* which is less than the TAC. All of the quota shares cannot be sold. And here is the easy part, given that there are only a few processors in the industry, D_2 is the summation of the demand curves of only a few processors, which by definition makes this a market with oligopsony power. But this is more than an issue of definitions. Combined these three elements provide the organizational characteristics that provide market power to the processors. The amount of quota shares on the market is equal to TAC, but the processors only want to buy q^* which is less than that amount. The processors can choose who they will buy from and they do not need to buy all the tags. Those that are not purchased have no alternative value to owner. It is clearly a buyers’ market. When the demand curve intersects the horizontal axis before it hits the supply curve, there is no graphical solution to the equilibrium price. The technical solution would be a zero price but common-sense rules that out. There will be positive price which will be determined by bargaining between processor and quota owners, with processors having the upper hand in the bidding.

There is a comment from one quota holder on the same Council webpage that gives some insight in to how the bargaining in this restricted market takes place. It is the very last one in the second batch and it is reproduced here in its entirety.⁵

This public comment is in reference to the Excessive Shares issue.

Excessive Shares have been an ongoing conflict with processors and independent ITQ shareholders for some time now. Excessive Shares is very much in relation to quota allocation. Quite simply, if the quota allocation is set at a high level over what the demand/market can handle then you give large shareholders an advantage over other independent shareholders. The high quota over demand gives them a “bump” in their own quotas to manipulate the industry by squeezing out independent shareholders so that they can control every aspect of the clam industry.

I have heard from other council meetings that the processors complain constantly about, and I quote, “Couch, Armchair, and Non-Participant” shareholders should have no stake or claim to the ITQ system because they “just want to collect free money and have no risk or investment” in the clam industry.

Here is my response to those comments.

First of all, I earned those ITQ shares under the rules and guidelines put forth by NOAA and The Fisheries Council. A lot of the clams I caught over the years went to other company/boat owners in which I got a paycheck but no stake in the resource. These processors were supplied a product they needed to make their money. Then when I was able to get my own boat and buying and leasing quota (investment) and put a lot of years on the ocean (risk, picking up fishing colleagues out of the ocean, some alive and some dead) I take a lot of offense to those comments by some people who only got their feet wet by visiting the beach.

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https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5d7e7d9505c9e06a3a65f9be/1568570805736/Vol+II-Written+Comments+22-29_2019-09-13.pdf on page 736.

Additionally, some of the independent shareholders had to sell their boats due to health, retirement, or maybe by not being able to make boat payments due to the processors always favoring their own vessels with large quotas. One thing they like to do is say we can't lease your clams but if you are willing to sell your allocation, at rock bottom prices, we'll take them off your hands. To some independent ITQ holders this becomes the only option and gives the processors more of their own allocation to control the industry.

I am sending this public comment anonymously due to the fact that I'm sure there would be retribution within the clam industry if I signed my name to it.

This is clearly an indication that the processors have the upper hand in bargaining. But the reticence is not surprising. As a Council member I recall that during the prologue to establishing the ITQ program most boat owners were unwilling to give public statements on which allocation formula they preferred because of fear of angering processors on whom they were dependent in the interim. When the SCOQ ITQ program was instituted one of the benefits of the program that was used as a selling point was that the future quota holders would be guaranteed a share of the returns from the fishery in perpetuity. That a quota share will have value as a proportion of the TAC over time is an argument that is made during the initial planning for all ITQ programs in the world, including the SCOQ program. I know this because I was around for the planning of many of the early ITQs and I was personally engaged in the development of the SCOQ ITQ program.

One of the reasons why there are so few statements on the true nature of the market for quota shares in the SCOQ fishery is that it is so difficult to do a detailed study of the market especially at the level taken in the Compass Lexicon and Northern Economics reports, as oftentimes much of the necessary data are not collected or are withheld by the industry or government as business confidential. While working on this report I had several conversations with eminent faculty members about why it is that the SCOQ ITQ program is the only one in the world that does not take the entire TAC and how the market for quota shares actually works given the three special conditions discussed above. Notwithstanding the challenges mentioned, there may be a detailed and careful doctoral dissertation on this subject from a resource economics program in a major University in the near future.

Returning to Figure A, it should be clear from the above that the distance between TAC and q^* represents the amount of annual quota that is not sold and remains unused. Call the owners of this unused quota Group X. Given the confidentiality of the data it is hard to identify them and the size of the group may increase or decrease in size with changes in market output. And it should also be clear that processors have to buy some quota shares in order to produce q^* , the market level of output. However, the fact that industry tells us that millions of dollars have been paid over the year to rent tags does not prove that there is no oligopsony power. The point is they bought some but they did not have to buy them all and they got to choose who they bought from. They have and continue to work in a buyers market.

Sproul takes issue with the statement in SSC report that the very existence of non-participants who can't sell their quota is evidence of monopsony (oligopsony) power in the quota market. He says it is not supported by any of the expert review documents or by economic theory or the facts of the SCOQ fishery. In particular he says that

“The observation of unused quota is consistent with either a) excess TAC relative to what can be harvested profitably, or b) market power of processors reducing the total volume in the clam market below TAC (that would otherwise be fully harvested). The second one would oligopsony power over harvests. *By itself, unused quota offers no conclusive evidence for either case.* I will show that in what follows that the other available evidence suggests excess TAC explains the unused quota, rather than market power of processors. “

Consider the sentence in quotes. “By itself, unused quota offers no conclusive evidence for either case.” As it stands, the “by itself” term makes the sentence correct. However, the quote must be considered in the context of the SSC report which was talking in terms of the three unique elements of the SCOQ fishery. In addition to the unused quota there is the fact that clams must be processed before sale and there are a limited number of processors in the market. The analysis of Figure A, which shows the correct economic theory and facts of the SCOQ fishery show that the statement in question from the SSC report is accurate. Perhaps it would have been better to state something like “Given the other two unique elements of the SCOQ fishery, the existence of unused quota is evidence of oligopsony power.

For a closer look at how the industry strives to maintain its oligopsony power, consider the comments on the vote on the cost recovery amendment during the 2015 February Council meeting. According to the Magnuson Stevens Act all ITQ programs must be subject to a cost recovery fee where the costs directly attributable to the ITQ programs is paid by ITQ holders.

During the discussion of the cost recovery amendment the industry ignored the plain fact that cost recovery is mandated and argued in favor of no cost recovery (Alternative 1) but as a backup they supported an alternative that would have all ITQ owners, including the non-participating owners (Group X), be assessed a cost recovery fee (Alternative 4).

"Should the Council not decide on Alternative 1, then our clients would be forced to support Alternative 4. That is the only alternative that distributes the costs fairly to everyone and is the most economically efficient because it would require the least administrative effort to collect the fees. Additionally, Alternative 4 is the fairest proposal because it ensure that all who benefit for the ITQ program pay for a share of its administrative expense."

Letter from D. Wallace to Chris Moore dated January 16, 2015 and included in the documents from the February 2015 Council meeting.

“Further, Alternative 4 is the fairest proposal because it ensures that all who benefit from the ITQ program pay for a share of its administrative expense. Those who do not actually use their tags to harvest shellstock in a given year still benefit substantially from having the ITQ program in place. It gives value to the shares that they own, and predictability regarding how those shares may be treated through transfers and otherwise. “

Letter from T. Alspach to Chris Moore dated January 14, 2015 and included in the documents from the February 2015 Council meeting

To be clear, they are arguing that the fairest thing to do is to have Group X tag owners, those who are not able to sell their tags due to the oligopsony power of the processors, pay the cost recovery fees despite the fact that they do not benefit from the ITQ program.

It is useful to ask why the processors argued for sharing cost recovery over all tag holders when the actual dollar amounts are so very small relative to their operating costs. However, the net returns of Group X participants would have been significantly affected if they were forced to pay the cost recovery fee for tags that they were not able to use. Their quota shares, (an asset that was supposed to give them a share of the gains from the ITQ program, but instead has a zero value because of their inability to sell them,) would turn into an asset with a negative value. The outcome would have placed Group X in a position where they would have no choice but to sell their quota, a theme similar to that suggested by the anonymous commenter quoted above.

For the record the Council did not accept the industry's notion of fairness and voted 20 to 0 for an alternative that only assessed a cost recovery fee to those ITQ shares that were used during the fishing year.

Sproul also suggests market power is not an issue because if it were quota holders could enter the processing sector and compete with existing sector participants. In his comments on page 7 he states:

As I understand it, these non-participants collectively, and the largest one individually, have enough quota to start their own processing facility. If processors were artificially restricting either harvests or the production of shucked clams, these quota holders could immediately step in and compete with sufficient scale.

I would be more comfortable with the view that the risk of setting up a high cost and specialized processing plant, given the technology, capital, siting and permitting required, and especially given the uncertainty of what the existing processors would do, is a significant barrier to entry that would prevent "immediate" or even eventual entry of new processing facilities.

Let us now consider the likely effects of Alternatives 5 and 6, which is something that Sproul did not do.

The excessive shares amendment is being offered to address excessive shares without regard to how they came about. But it is clear from the above analysis that there is and there has been oligopsony in the market for quota shares. And over time, this power has negatively affected the individuals in Group X, those that were not able to sell or otherwise use their annually allocated tags.

Why are they in that group? It is hard to say. Perhaps they did not own or have direct access to processing. Or they did not do well in the initial bidding wars for the sale of tags.

What about alternatives 5 and 6? The basics are that there would be two types of tags: Type A and Type B. In terms of the Sproul analysis above, the amount of Type A shares will be equal to x^* in Figure A, which is the current level of output, and the amount of Type B shares will equal $TAC - x^*$, and no type B shares can be used until all Type A share are used.

By way of definition, let $\alpha = q^*/TAC$, the ratio of current harvest to TAC. See column 2 in the above tables. If the total amount of Type A quota is equal to q^* (the total amount produced as shown in Figure A,) then the amount of Type A quota current producers will get is shown by the line labeled αq^* . From the table above, this means using the 2017 data, the current producers would get Type A quota that would allow them to have 64% of what they harvested before.

Consider Figure A again. The line labeled αq^* represents the amount of Type A quota that will available to the current producers. The value of the marginal tag under these circumstances will be determined

by the intersection of the demand curve and the line demarking the αq^* level of output. In order to produce the same level of output as before, the current producers will need to purchase the rest of the Type A quota from Group X. The final price for the extra tags needed will again be determined by bargaining between processors and tag holders, but things will have changed because the processor will have to buy all (or nearly all) of the Type A tags in order to meet the market output. The oligopsony power will have been reduced. The regulation will bring Group X back to the table in terms of capturing the rents from the fisheries. It is also possible that others who were able to sell tags before will be able to get higher prices for their tags if they are not under long-term contracts.

This could involve considerable extra payments by the processing companies, which is why they are so opposed to these alternatives.

However, the choice is a pure policy call that depends on how one evaluates the distribution effects. The law demands that market power in ITQ fisheries be addressed, but nothing has been done for over two decades. The processing sector has been able to set up a situation where they are doing rather well but at the expense of individuals in Group X. Alternatives 5 and 6 will turn things around to provide a more level playing field at the expense of the processing sector but to the advantage of the folks that have suffered losses for a very long time. Some say that the processing industry has just played the cards they were dealt very carefully and it is too late to do anything now. Others say processors have been dealing off the bottom of the deck using their oligopsony powers for many years (which is clearly forbidden by the Magnusson Stevens Act) and it is time to put a stop to it.

The processing industry has muddied the waters by calling alternatives 5 and 6 “social engineering”, (to say nothing about despairingly insulting the hard-working members of the FMAT) but it is clear that the alternatives were specifically designed to directly address the oligopsonistic powers. And the Type B quota will allow for instantaneous production expansion should new markets develop. No regulatory action would be necessary

One final point bears consideration. The argument that that the “excess TAC relative to what can be harvested profitably” explains why there is unused quota shares (but is only part of the story with respect to oligopsonistic market power) is interesting. This is a point that is stressed repeatedly in comments by the processors and their consultants. However, it is surprising that no one takes the next step and considers its effect on the need for basic fisheries management. One of the basic tenets of fisheries management is that left to their own devices, profit motivated fishermen will tend to harvest *more* than the safe annual harvest if the market will accept that much output. *This is the fundamental justification for controls on harvest in modern fisheries management.* But given that the TACs in the SCOQ fisheries are less than the ABC values, they most certainly represent safe annual harvests. Therefore, the fact that there is “excess TAC relative to what can be harvested profitably” indicates that there is no need to set harvest limits on these fisheries, much less implement a complicated ITQ system. Apparently try as they might, for the last 10 years the SCOQ fisheries have not been able to sell enough product to even match the TACs which are well below safe levels of catch. Thus, the need to continue to manage the SCOQ ITQ fishery in its present form with all its coincident scientific and regulatory costs and implications is a public policy issue that warrants serious Council and NOAA evaluation.

Congress of the United States
Washington, DC 20515

November 22, 2019

Dr. Christopher Moore
Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, DE 19901

RE: SCOQ Excessive Shares Amendment Comments

Dear Executive Director Moore:

We are writing in regard to the Mid-Atlantic Fishery Management Council's (Council) efforts to regulate the acquisition of "excessive shares" of Individual Transferable Quota ("ITQ") fishing privileges in the federal Atlantic Surfclam and Ocean Quahog (SCOQ) fishery. This effort is intended to bring the SCOQ Fishery Management Plan into compliance with the Magnuson-Stevens Fishery Conservation and Management Act, and we understand that the Council has been working to scope and develop potential methods to limit excessive share accumulation since 2017. As part of this process, we recognize that Council members and staff have engaged regularly with SCOQ harvesters, processors, and the public to guide the development of the Public Hearing Document released for public comment from August 1 – September 14, 2019. It is our expectation that the Council will use this feedback to inform its selection of an approach to limit excessive share accumulation at its December 2019 Council meeting. As the Council reviews comments on the Public Hearing Document, we wanted to elevate the concerns of Sea Watch International – an important business in our state – regarding two of the proposed approaches. We ask that our letter be included as part of the written comments made on the Public Hearing Document.

As you may know, Sea Watch International was founded in Milford, Delaware in 1978 and remains an important part of Delaware's coastal economy. The company's Milford processing plant employs nearly 300 people and produces many of the clam products that Delaware residents and visitors enjoy. We hope the company can continue to help cultivate and grow the domestic Atlantic clam market in Delaware and throughout the East Coast for many years to come. We would like to bring both substantive and procedural concerns raised by Sea Watch International about the Public Hearing Document to your attention.

Substantively, of the six excessive shares cap schemes outlined in the Public Hearing Document, Sea Watch International has expressed serious concern that Alternatives 5 and 6 would have severe economic ramifications for the domestic Atlantic clam market. Both of these approaches would create new, two-tiered systems with shares divided between "Class A" and "Class B" shares industry-wide. Although an entity's entitlement to its ITQ shares has, for the past 30 years, been calculated as its percentage of the total surfclam or ocean quahog quota, both proposed approaches would require "Class A" shares to be calculated as a percentage of the annual harvest. Each would

also require "Class B" shares to comprise the remainder of what an ITQ owner's additional shares would be if calculated, as in the past, as a percentage of the full quota. Under these proposals, none of an ITQ owner's "Class B" shares could be accessed or utilized, however, until and unless all "Class A" shares of all ITQ owners were fully leased or utilized.

As the country's largest harvester and processor of clams, Sea Watch International is deeply concerned about the economic ramifications of these proposals. According to the company's calculations, implementation of Alternatives 5 or 6 would effectively confiscate as much as 40% of the current shares from active industry participants and force them to pay for the lease of ITQ privileges from inactive ITQ speculators at whatever price those speculators can extract. This could raise the cost of producing domestic clams and, in turn, affect hundreds of jobs in the industry.

As a procedural matter, Sea Watch International has also shared their concerns with us regarding the Council's handling of the Public Hearing Document. It is our understanding that the Public Hearing Document for the SCOQ Excessive Shares Document was approved by the full Council at the June 2019 Council Meeting. However, by the time the document was released for public comment on August 1, 2019, Sea Watch International and other industry members noted that substantial staff-level edits and additions had been made to the document. According to Sea Watch International, these changes apparently did not go back before the full Council for approval. Sea Watch International has informed us that other industry members submitted a "Request for correction of information submitted under section 515 under Public Law 106-554" detailing these edits. The company has expressed concern to us that these changes exceed the technical or clarifying edits typically made by Council staff in the interim between Council approval of a Public Hearing Document and the start of the public comment period. Therefore, we ask that you provide us with any additional information that may help us better understand the changes made to the Public Hearing Document between the Council's June 2019 approval of the finalized document and the August 1, 2019 issuance of the Public Hearing Document for public comment.

Given its importance to our state, we ask that the Council give full and fair consideration to Sea Watch International's concerns in selecting a measure to limit excessive shares accumulation in the SCOQ fishery. Further, we understand that Sea Watch International and other industry members have expressed their willingness to collaborate with the Council on this matter by developing a proposal (a modified version of Sub-Alternative 4.3) that satisfies the Council's goals and balances industry's concerns. We ask that you consider this good-faith effort when weighing your options and ultimately selecting your preferred proposal.

We appreciate your consideration and respectfully request that you keep us apprised of your decision following the December Council Meeting. If you have any questions, please feel free to contact Kaitlyn Pritchard (Kaitlyn_Pritchard@epw.senate.gov), Chris Young

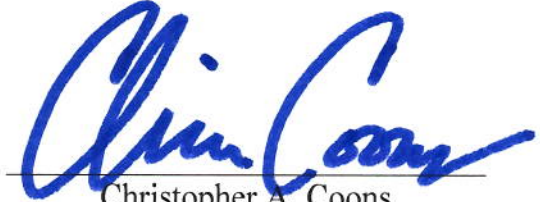
November 22, 2019
Carper, Coons and Blunt-Rochester, pg. 3

(Chris_Young@coons.senate.gov), and Sara Jordan (Sara.Jordan@mail.house.gov).

Sincerely,



Thomas R. Carper
Ranking Member
U.S. Senate Committee on
Environment and Public Works



Christopher A. Coons
United States Senator



Lisa Blunt-Rochester
United States Representative

cc: Michael Luisi, Chairman, MAFMC
Dr. Peter DeFur, Chair, MAFMC SCOQ Committee
Michael Pentony, Regional Administrator, GARFO

JACK REED
RHODE ISLAND

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<http://reed.senate.gov>

November 27, 2019

Dr. Christopher Moore
Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201, Dover, DE 19901

Dear Dr. Moore:

I write to share the enclosed letter from Mr. Chris Shriver, General Manager of Galilean Seafood, regarding alternatives 5 and 6, which are under consideration as part of the Atlantic Surfclam and Ocean Quahog Excessive Shares Amendment process.

Galilean Seafood employs over 150 people throughout its supply chain, including at its Bristol, Rhode Island facility, and it is an important part of Rhode Island's seafood industry. In the letter, Mr. Shriver indicates that alternatives 5 and 6 would impose additional and potentially unsustainable costs on Galilean Seafoods by forcing it to purchase quota from inactive participants in the fishery before it can access its own quota.

Given the potential impacts on Rhode Island jobs, I ask that you take these concerns into consideration as you evaluate alternatives for this amendment.

Thank you for your attention in this matter.

Sincerely,



Jack Reed
United States Senator

Enclosure

cc: Mr. Chris Oliver, Assistant Administrator for NOAA Fisheries



16 Broadcommon Road-Bristol, RI 02809
TEL. (401) 253-3030

United States Senator
Jack Reed, Rhode Island
1000 Chapel View Boulevard
Cranston RI, 02920-5602

November 25, 2019

Dear Senator Jack Reed,

My name is Chris Shriver, General Manager Galilean Seafood's Bristol, Rhode Island. Galilean Seafood's' is the largest "Hand Shucked" surf clam operation in New England and has been processing niche market "Hand Shucked" North Atlantic Surf clam for several decades employing over 150 people throughout its supply chain; from harvesting effort, vessel management and maintenance, processing, sales & marketing and distribution. Many of the personnel live locally in Bristol and its surrounding Rhode Island neighboring communities. In addition, Galilean Seafood's distributes its products regionally to processors such as Blount and independent mom & pop restaurants and Clam Shacks such as Flo's.

The nature of this letter to you, Senator Reed, is to bring to your attention a pending action by the Mid Atlantic Fisheries Management Council (MAFMC) on a Surf Clam Ocean Quahog Excessive Shares Amendment that is threatening the healthy sustainable future of the Surf Clam Ocean Quahog Industry and Rhode Island's Galilean Seafood's by considering regulations that negatively impact Individual Transferable Quota (ITQ) fishing privileges in the federal Surf Clam and Ocean Quahog Industry.

Industry has circulated to Senators and Representatives of Surf Clam Ocean Quahog landing and processing states an Industry prepared letter (Attachment) addressed to National Oceanic Atmospheric Administration, Assistant Administrator Chris Oliver stating industry fears with the Excessive Shares Amendment and its inevitable damaging impact on (ITQS) Individual Transferable Quota System. Industry has great concerns regarding some alternatives being considered. For this, we ask for your support of industry against alternatives 5 and 6.

Alternative 5 and 6, specifically would have tremendous negative impacts on our ability to be profitable and stay in business. They are in part designed to increase the leasing activity of quota holders that do not have anyone to lease to. It is implied that the current active participants in the fishery purposefully do not catch all the quota thereby do not need to rent the non-active quota holders tags. This could not be further from the truth.

Alternative 5 and 6 would split the quota in such a way that it would force Galilean Seafood's to lease quota at uncontrolled prices before we could even utilize our own owned quota. Our company has little need to lease quota but these alternatives would cause us to not have utilization of up to 40% of our owned tags and lease quota that of which may not be available because all quota holders will have had the same reduction in available quota. We would then have to shut the doors and put everyone on the unemployment line waiting the market demand to increase to get the B share of our allocation. It is nothing more than social engineering that favors a very small subset of the quota holders while undoubtedly, passing on a negative financial impact to the active participants.

Thank you again for your consideration in support of industry and Galilean Seafood's against against alternatives 5 and 6 in the Surf Clam Ocean Quahog Excessive Shares Amendment.

Best,

Chris Shriver
General Manager

Galilean Seafoods
16 Broadcommon Road
Bristol, RI, 02809
609-602-4889