Sea Watch International, Ltd.
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August 1, 2019

Chris Moore, Ph.D.,
Executive Director
Mid-Atlantic Fishery Management Council
North State Street, Suite 201
Dover, DE 19901

Dear Dr. Moore,

Please accept these comments on behalf of myself and Sea Watch International, Ltd in regard to the Excessive Shares document currently out for public comment which were presented at the Cape May, NJ meeting August 1, 2019.

As a result of Amendment 8 being enacted in 1990, the Surfclam and Ocean Quahog fishery has experience considerable consolidation on both the harvest and processing side of the business. As I understand the reasoning behind Amendment 8, consolidation was one of the main objectives. The harvesting and processing of the Atlantic Surfclam and Ocean Quahog is a highly capitalized business both on land and sea. The economies of scale with fewer companies came not only at a high price for equipment, infrastructure and boats but also the purchase and/or leasing of ITQ's or allocation.

These substantial investments made by individuals and companies are the only reason SC/OQ fishery remains today. These investment produce products, jobs, tax revenues and buoy traditional coastal communities. These are substantial risk that have been taken.

Those individuals who chose to relieve themselves of physical assets and hold onto ITQ's and treat them as a property right put themselves at risk of devaluing the one asset that they have left, ITQ's. By not making investments in assets, science or marketing they put themselves at risk of not having a market to lease their ITQ's.

What if every individual or company that received an ITQ grant as a result of Amendment 8 decided to sell their boats and/or processing facilities and wait for the phone to ring to see who wanted to lease or rent their tags. The phone would not ring.

I use these examples of contrasting voluntary risks to substantiate my objection to the consideration of Alternatives 5 and 6 in the Excessive Shares Public Comment Document. Alternatives 5 and 6 are not a mechanism to control excessive shares rather a mechanism to re-allocate a clearly defined resource under the MSA. The ITQ is not a property right in and of itself as clearly defined in;
MSA Sec. 303A
Subsections (4) shall not create or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder and
(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

Understanding the task set before the council to decide on an excessive share cap and at the recommendation/direction of the Council staff to find an Alternative within the document to support we feel we can do this. In the context of a consolidated industry which must be allowed to innovate and grow which will create a robust leasing market for ITQ's, Sea Watch would support Sub Alternative 4.3 with a slight modification.

Surfclams

Two-part cap with an ownership cap of 35% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 65%.

Ocean Quahogs

Two-part cap with an ownership cap of 40% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 70%.

Sea Watch would support the following.

ES-2. Summary of excessive shares review alternatives.
Alternative 1: No Action
ES-3. Summary of framework adjustment process alternatives.
Alternative 1: No Action
ES-4. Summary of multi-year management measures alternatives.
Alternative 2: Specifications to be set for the maximum number of years consistent with the NRCC approved stock assessment schedule.

On behalf of myself and Sea Watch International, Ltd. we appreciate the opportunity to comment on this very important decision to be made that could have devastating ramification for our company and industry if Alternatives 5 or 6 are recommended.

Regards,
Sea Watch International, Ltd.

Guy B Simmons

Guy B Simmons
Sr. VP Marketing, Product Development
Government Relations and Fisheries Management

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August 8, 2019

Chris Moore, Ph.D.,
Executive Director
Mid-Atlantic Fishery Management Council
North State Street, Suite 201
Dover, DE 19901

Dear Dr. Moore,

Please accept these comments on behalf of myself and Sea Watch International, Ltd in regard to the Excessive Shares document currently out for public comment which were presented during the webinar meeting August 7, 2019.

In my comments August 1, 2019 in Cape May, NJ I made reference to several contributions that most active industry participants and Sea Watch International bring the SC/OQ fishery. These comments will focus around employment. In order to frame these comments, I would like to draw the distinction between Active Participants and Absentee Participants. It is my belief that an "Active Participant" is someone, a company or an entity that actually harvest clams, process clams, markets clam products and contributes to cooperative science that helps keep the fishery stable and, in some cases, making it stronger. It is my belief that an "Absentee Participant" is an individual, a company or an entity that received ITQ's as a grant resulting from the passage of Amendment 8 and chose to unburden themselves of any activity or infrastructure that might require ongoing investment and effort.

When we draw a comparison between the two "Participants" in regard to socio-economic contributions the differences are quite stark. Literally thousands of jobs are created by the "Active Participants" supporting thousands of family members, payroll, taxes, regulatory fees and permits are all required to maintain this infrastructure and employment of so many people.

The Sea Watch International and TMT clam companies employ hundreds of people from Maine to Virginia including a few salespeople scattered around the country.

Milford, DE	280
Easton, MD	167
New Bedford, MA	204
Mappsville, VA	9
Whiting, ME	32
TMT Clams	204
Total	896*

*numbers reflect peek season production and can fluctuate as much as 30%

We are supportive of an alternative within the current document, but it also bears discussing the alternatives that could have a catastrophic result for the SC/OQ fishery and Sea Watch International and TMT Clams. These alternatives are 5 & 6 which basically reduces everyone's quota including the "Absentee Participants" and forces harvesters and processors to lease quota before all of their owned quota is used. This will raise cost to the processers and consequently to the US consumer, we have seen this cycle before, and it has been discussed numerous times. When domestic prices get too high the cheaper imports who are not bound by nearly as much regulation as US fisheries have an opportunity to gain market share in the US. In 2018 $79,000,000.00 worth of clams were imported into the US from China, Canada, Thailand Vietnam, Chile and others. Depending on how you break that down it could be equal to 800,000 to 1,000,000 bushels of domestic surfclams or ocean quahogs. When foreign companies are able to take market share the demand for US domestic clams is reduced and jobs are put in jeopardy and ultimately lost.

Any way you look at alternatives 5 & 6 the "Absentee Participant" seems to be the one that is getting preferential treatment and is actually gaining market power by being able to charge whatever they please to a market held hostage by an unfair regulation. I would think that US regulators would be more interested in protecting American jobs and the American consumer than protecting individuals, companies or entities that are simply waiting for a check to be sent their way.

At the risk of being redundant I would like to restate our support of the following measures.

Sea Watch would support Sub Alternative 4.3 with a slight modification.

Surfclams

Two-part cap with an ownership cap of 35% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 65%.

Ocean Quahogs

Two-part cap with an ownership cap of 40% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 70%.

Sea Watch would support the following.

ES-2. Summary of excessive shares review alternatives.
Alternative 1: No Action
ES-3. Summary of framework adjustment process alternatives.
Alternative 1: No Action
ES-4. Summary of multi-year management measures alternatives.
Alternative 2: Specifications to be set for the maximum number of years consistent with the NRCC approved stock assessment schedule.

On behalf of myself and Sea Watch International, Ltd. we appreciate the opportunity to comment on this very important decision to be made that could have devastating ramification for our company and industry if Alternatives 5 or 6 are recommended.

Regards,
Sea Watch International, Ltd.

Guy B Simmons

Guy B Simmons
Sr. VP Marketing, Product Development
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August 21, 2019

Michael Luisi, Chair
Mid-Atlantic Fishery Management Council
800 N. State Street, Suite 201
Dover, DE 19901

Re: Unauthorized Changes to Excessive Shares Public Hearing Document

Dear Chairman Luisi:

This correspondence is submitted jointly and on behalf of Sea Watch International, Ltd.; Cape May Foods, LLC d/b/a LaMonica Fine Foods; Surfside Products, Inc.; Atlantic Capes Fisheries, Inc. and Truex Enterprises, all of whom have approved the following.

After considerable comment at the June meeting the Council voted to approve a "final" version of the public hearing document to be used in connection with the pending excessive shares amendment. Following the Council's final vote, you stated that "we now have a public hearing document," and presumably the full Council agreed.

But that was not so. After the Council's "final" approval of the document, certain parties – presumably Council and/or NMFS staff – took it upon themselves to make substantial substantive changes to the document, which were not resubmitted to the Council for approval and which we in industry discovered only after the document was published for the current comment period.

As briefly noted below, these unauthorized alterations of the public hearing document include multiple false claims and misrepresentations which the Council did not consider at its June meeting. Because of this, we first request answers to two questions:

1. Who made these changes and by whom were these changes approved?

2. Under what authority were these changes made, inasmuch as they substantively altered a Council document without Council approval?

The Council approved public hearing document included comparisons of the "impacts" of each of the pending alternatives, and at page 153 devoted just a half page to a straightforward summary of purported impacts of alternatives 5 and 6.

In contrast, the subsequently published public hearing document, at length at pages 152-158, now includes highly embellished, and false and misleading, representations about alleged conditions

in the clam industry that alternatives 5 and 6 supposedly would address. And those baseless conclusions now have been inserted into the public hearing record without the Council's knowledge, and after a different public hearing document was "finally" approved in June.

As an example, the "amended" public hearing document now claims that at market equilibrium (where we are now), processors can satisfy their customers' demands with their own ITQ shares, "and all other shares would go unused." This is utterly false; hundreds of thousands of ITQ shares held by non-processor independent ITQ owners are leased every year. According to the altered public hearing document, if the quota is reduced to harvest levels or less, "all ITQ shareholders would be able to utilize their shares and the monopsony power [of the processors] would disappear." This is false; in that scenario "monopsony power" would be held by the non-participating ITQ shareholders who could demand whatever price they chose for the shares necessary for processors to keep production in line with preexisting levels.

The unauthorized altered version of the hearing document compounds its misrepresentations by specifically incorporating the May 2019 SSC report – which includes multiple false claims such as the assertion that, because the processors need only utilize their own ITQ shares, independent ITQ owners have been denied their financial "piece of the action." That is flatly untrue; non-processor ITQ owners have been paid many, many millions of dollars for the lease of their ITQ shares, and those huge payments to these non-participants in the industry continue today.

But this is not the place to debate the veracity of the claims in the unauthorized revised public hearing document that now underpins the public hearing process. Nor should the burden now be upon industry to correct the record by responding piecemeal to all of the new substantive commentary that has been inappropriately inserted throughout the public hearing document, <u>after</u> the Council had approved the "final" version in June.

Given the unauthorized act of altering a Council document after its final approval, and considering the highly prejudicial nature of the false aspects of such alterations, there is only one fair and equitable solution to the current problem:

The current public hearing draft regarding the excessive shares amendment, published in July, should be withdrawn and stricken from the record. In its place, the public hearing document that actually was approved in final form by the Council in June should be inserted in the record, and that document should be deemed the controlling Council pronouncement on excessive share alternatives.[1]

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[1] The one exception would be to allow the correction to the HHI graph that was in fact approved as an amendment by the Council during the June meeting. This is necessary to accurately reflect consolidation within the industry over time.

We therefore formally request that the Council proceed to take this action so as to clear and correct what is now a prejudicially tainted public record, resulting from the introduction of claims and statements that never were approved or authorized by the Mid-Atlantic Fishery Management Council. In addition, we do request answers to Questions 1 and 2 above.

We thank you and the Council in advance for correcting this situation.

Very truly yours,

Thomas T. Alspach

On Behalf of:

Sea Watch International, Ltd.
Cape May Foods, LLC d/b/a Lamonica Fine Foods
Surfside Products, Inc.
Atlantic Capes Fisheries, Inc.
Truex Enterprises

TTA/tsd

cc: Mid-Atlantic Council
Mid-Atlantic Council Staff
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May 22, 2019

Mid-Atlantic Fishery Management Council
Atlantic Surfclam and Ocean Quahog Committee
800 North State Street, Suite 201
Dover, DE 19901

Re: Atlantic Surfclam and Ocean Quahog Excessive Share Amendment Public Hearing Document

Dear Committee Members:

Please consider the following proposed edits/revisions to the excessive shares public hearing document, in connection with the Committee meeting scheduled for June 3:

I. The Public Hearing Document Should Clarify the Existing Definition of "Excessive Share"

The draft of the public hearing document is confusing in its current form. At the outset, the draft fails to clarify that the definition of the term "excessive share" already exists and has been approved by NOAA/NMFS, as well as this Council's predecessors.

NOAA recently recited the accepted definition of "excessive share" in connection with Amendment 18 to the Northeast Multi-Species FMP, stating that an "excessive share" of fishing privileges is an amount "that would allow an entity to influence the market to its advantage (i.e., exert market power)." This was the same standard that the independent economic experts who analyzed the SCOQ fishery adopted, in concluding that no entity currently holds market power that would enable it to raise prices or exclude competition. This is also the standard adopted by this Council's predecessors as part of Amendment 8, when it was determined that, should an industry participant obtain and abuse market power, there would be a referral to the DOJ for enforcement procedures.

Instead of acknowledging this existing definition of an "excessive share," the draft plan states that: "For the surfclam and ocean quahog fisheries, the Council defines an excessive share as an ITQ share accumulation for an individual or business that is above the excessive share percentage cap selected by the Council for surfclams or ocean quahogs." In fact, "the Council" has never "defined" an excessive share in this fashion. The Council has not adopted any excessive share definition at all.

But more to the point, the supposed "definition" offered in the draft is nothing more than a tautology: An "excessive share" is a share that exceeds the cap on "excessive shares." This makes no sense.

What the draft should state is that an excessive share is an amount of ITQs in excess of a percentage cap because an ITQ share in excess of that cap would yield market power – that is, the power to influence prices or exclude competition. It is likely that the drafters of the document do not want to define "excessive share" in this way, because that definition leads to an obvious question that is not answered anywhere in the draft: Where is the evidence for the claim that an amount of ITQs in excess of any of the proposed caps would yield market power and its effects? The draft provides no support at all for how/why a share of ITQs in excess of any of the caps would suddenly create "market power." For example, one of the alternatives proposes a percentage cap of 49% – so that 50% ITQ ownership would exceed the cap and thereby become "an excessive share." But why? Where is the support for the claim that an additional percentage of ownership beyond 49% bestows market power on the holder of those ITQ shares?

There is no factual or legal basis for defining "excessive share" as the draft document does; instead, analysis and factual support is needed for demonstrating that ITQ holdings in excess of a specific percentage amount would yield market power on behalf of the owner of those shares, and therefore those shares would be "excessive." The hearing document should be amended accordingly before it goes out to the public.

II. Alternatives 5 and 6 Should be Deleted From the Public Hearing Draft

Alternatives 5 and 6 should be deleted because they are not "excessive share" control mechanisms, but instead are ITQ redistribution plans intended to create an artificial "market" for non-participants in the industry who still own ITQs. These alternatives would reduce current ITQ levels among industry participants by approximately 40%, compelling them to lease additional ITQ rights from industry non-participants, in order to maintain their previous levels of harvest. This would award market power to the ITQ owning non-participants, would reward those non-participants who do not contribute to the industry in any way and who have no investment at risk, would reduce the ITQ collateral now relied upon by banks for loans to industry participants, and would increase the cost of producing clam products (because of leasing fees) which would unnecessarily increase prices to consumers – all for the sole purpose of creating new revenue for non-participating ITQ holders who add nothing to the industry.

For these reasons alternatives 5 and 6 should be eliminated from the public hearing draft, as they are market restructuring plans and not excessive share controls.

Here is an illustrative example of how alternative 5 would operate as social engineering/share reallocation rather than as an excessive share cap:

Under alternative 5 the share "cap" would be 40% of total ITQs

Assume an individual owns just 10% of ITQs, well under the cap.

With the 3.4m quota, that shareholder would be entitled to 340,000 bushels of surf ITQs.

But under alternative 5 the shareholder's entitlement would be reduced to 10% of the annualized harvest, about 2.2m bushels, yielding that shareholder only 220,000 bushels of surf ITQs.

Before any class B shares would be made available, under alternative 5 all of the class A shares must be utilized. This would mean that, in order to make up the 120,000 bushels lost under the alternative 5 "quota," the shareholder would be compelled to lease those ITQs from another absentee ITQ holder, not using his or its shares. Note that the price the absentee ITQ holder could extract for those additional shares is completely unregulated.

So simply in order to maintain the same harvest he had previously accomplished (340,000 bu), that shareholder would be compelled to pay – likely hundreds of thousands of dollars – for the lease of 120,000 bu of ITQs from an absentee ITQ holder not engaged in fishing or contributing to the fishery in any way.

The plan document supposedly offers an analysis of both positive and negative impacts from each alternative. Where is the discussion of negative impacts resulting from the scenario just described? The same scenario will play out throughout the industry if alternative 5 or 6 is adopted, but no analysis of its negative impact is included in the draft.

Instead, the draft rationalizes these alternatives as a means of "aligning market supply and demand." By what authority does the Council have the right to do this? This is simply economic/social engineering – an effort by the Council to reallocate ITQs in a manner that ensures every ITQ holder is guaranteed a market for his/its shares – the "free market" in ITQs which was to be the bedrock of Amendment 8 is totally abandoned.

According to the draft, "aligning supply in the fisheries with market demand may result in more activity in the leasing market." (Draft, p. 18). Alignment of market supply and demand is not a goal or objective of the FMP, nor is stimulating "more activity in the leasing market." These are solely economic objectives, and fishery management may not be based solely upon economic manipulation of the market. In any event, "alignment of supply and demand" has nothing to do with containing excessive shares.

In fact, alternatives 5 and 6 would work directly contrary to FMP Objective 3 which is to allow the "industry to operate efficiently," that is, to allow "industry participants to achieve economic efficiency including efficient utilization of capital resources by the industry." Alternatives 5 and 6 would introduce expensive and inefficient externalities into the operation of the fishery:

actual industry participants, many of whom have invested millions of dollars in acquiring their allocation rights, would have those rights arbitrarily limited by the reduced "Class A" quota scheme, so as to require them to lease quota from non-participants in the industry, in order to maintain their overall level of harvest. The non-participants whose leasehold rights would become necessary for continued operation of the fishery would have participants over a barrel, and would be in a position to extract unreasonable ransoms for the lease of their ITQs by participating harvesters. Put another way, this would create market power – an excessive share – on the part of industry non-participants to whom harvesters would be required to turn to obtain fishing privileges necessary to sustain their prior levels of harvest.

This is not an "excessive share" control mechanism limiting those who participate in the industry, which is the purported intention of the pending amendment. Note that in the example above, **participants who are well below the excessive share "cap"** would nevertheless lose the ability to utilize ITQs in which they had invested, even though by definition they would not have an "excessive share."

III. The Hearing Document Description of Alternatives Should be Corrected and Amended Before it is Approved

Box ES-1. "Summary of Alternatives" (page 3):

Alternative 1: The draft inaccurately states that "no limit" on share ownership is included in the FMP. This summary should include a statement that, under the No Action/Status Quo alternative, "an excessive share is an amount of share ownership that enables the owner/holder to exercise market power, as defined above, in violation of the US Antitrust Laws." In the interest of accuracy and objectivity, the "summary" of alternative 1 additionally should state that: "The U.S. District Court for the District of Columbia has ruled that the status quo/no action alternative is compliant with NS4 of the MSA, and that ruling has not been overturned or appealed." It is misleading to imply, as the draft does (see below), that the status quo alternative is not compliant with the law, specifically NS4.

Alternative 2.2: Draft misleadingly suggests this alternative would lead to two entities dominating the fishery (each with 49%); should add at the end of the last sentence: "or three large entities holding 30%, 30% and 40%"

Alternative 2.3: Draft does not accurately state origin and purpose of this alternative. The summary should be edited with language to the effect: "this alternative is included based upon a vote by the MAFMC SCOQ Committee. It is intended to function the same as the status quo alternative, but to include a percentage cap – 95% – to satisfy GARFO's contention that an excessive shares limit must include a "quantifiable" or "measurable" amount of shares."

Alternative 3.3: Add at the end of the last sentence: "or three larger entities holding 30%, 30% and 40%."

Box ES-2. "Summary of Review Alternatives" (page 5)

Alternative 1: To make this statement accurate the following should be added: "But review by the DOJ is required if it is perceived that any shareholder has achieved market power and is acting in an anti-competitive fashion under the federal antitrust laws."

Section 1.2 "Summary of Impacts" (page 6-8):

Alternative 1 (page 6): This section misrepresents/mischaracterizes the status quo alternative. It is not true that there is "no specific limit" in the current FMP "as required under NS 4 of the MSA." To the extent a "specific limit" is intended to refer to a quantifiable or measurable standard, there is no such requirement under NS 4. And it is not true that there is no "limit" on excessive shares in the status quo FMP; instead, the limitation is that stated in the summary (revised) of Alternative 1 above.

This section misleadingly implies that under the status quo the DOJ would be required to assess every ITQ transaction, and all share ownership, and that the DOJ is not in a position to do this. But this is not the way the DOJ has functioned under the status quo alternative for the past 29 years. As noted above the status quo only requires that potential excessive shares be brought to the attention of the DOJ if it appears that a shareholder has acquired sufficient share ownership to exercise market power in an anti-competitive manner under the antitrust laws. The status quo imposes no significant burden on the DOJ at all.

Sub-alternative 2.3 (page 8): This section again misstates the origin and purpose of the 95% alternative, as noted above. This alternative was not included because of the argument "that industry participants cannot exert market power in the final product market (monopoly)." Instead, this alternative was added by the MAFMC SCOQ Committee because GARFO has insisted that there must be a "quantifiable" excessive shares standard, and 95% was selected to provide a "quantifiable" cap that actually functions in the same way as the current status quo.

It is never mentioned in the hearing draft, and should be, that whatever cap is under consideration, it does not trump the federal antitrust laws if implemented. So if the 95% cap is adopted, but in the future it could be demonstrated that an entity with only 60% or 70% of the ITQ shares was exercising market power in an anti-competitive manner, that would violate the antitrust laws and could require divestiture, even though the holder did not control 95% of the ITQs.

"Comparisons Across Sub-Alternatives 2.1 to 2.3" (page 9):

The bases offered for "comparisons" of these alternatives in the draft are entirely without substance or merit, and this language must be made credible, or should be deleted. The draft repeatedly purports to weigh "positive" and "negative" "socio-economic impacts" – but says nothing about what those "socio-economic impacts" supposedly are, or where the evidence for these bald statements in the draft may be found. The only "impact" alluded to is the concern of "protection against excessive consolidation." What is "excessive consolidation"? And why does it constitute a "negative impact"?

The whole purpose of Amendment 8 was to effectively compel consolidation, and this is what has happened in this industry, and until now this has been considered a good thing – both for the industry participants who now operate more efficiently and for those who exited the industry by selling – often for very substantial dollars – the allocation rights they were given by the federal government.

This supposed weighing of "impacts" amounts to no more than gibberish, as terms are not defined, and there is no basis or evidence at all offered for the conclusionary statements included.

"Comparison Across Sub-Alternatives 3.1 to 3.3" (page 11):

As with the claimed "comparisons" of sub-Alternatives 2.1 to 2.3, the discussion of sub-Alternatives 3.1 to 3.3 again is based upon unidentified and undocumented "socio-economic impacts" with no description or evidence of what these might be – except for the claim that, again, the different sub-alternatives may provide "a larger degree of protection against excessive consolidation." See the comments above regarding the total absence of a description of what "excessive consolidation" might be. Accordingly, these alleged "comparisons" are meaningless and this language should be deleted from the draft unless "socio-economic impacts" can be identified and described and quantified, and "excessive consolidation" can be identified and explained, including importantly a discussion of why such "consolidation" can be a "negative impact" inasmuch as Amendment 8 was precisely intended to bring about such consolidation.

"Comparisons Across all Excessive Share Alternatives" (pages 15-18):

This section begins by repeating the misleading and inaccurate characterization of Alternative 1, commented on above. It repeats the claim that the no action alternative creates "no limit" on the accumulation of shares, but this is false for the reasons already described above regarding the status quo procedure for invoking the antitrust laws in the event of market power and anti-competitive conduct resulting from share accumulation. But in this "comparison" section, this defective characterization of alternative 1 is amplified by adding the entirely unsupported claim that alternative

1 will lead to "negative impacts in the long term" because it provides "no protection against excessive consolidation."

As previously noted, nowhere is it explained what "excessive consolidation" might be, and what the basis and evidence is for the contention that "excessive consolidation" will result from the status quo alternative. Do we have "excessive consolidation" now? Presumably we should because the status quo already has been in effect for "the long term" – i.e., 29 years. So the draft should explain how there is excessive consolidation currently, since we have experienced the "long term," and should explain why, and provide evidence for, the claim that "excessive consolidation" has resulted from this long term existence of alternative 1.

"Purpose and Need of the Action" (pages 33-34):

The draft states that the action proposed is necessary because "Amendment 8 did not include ... measures that limited the maximum amount of shares that could be owned by an individual, corporation or entity." This is false. This language should be deleted or amended for the reasons already discussed. Amendment 8 most certainly did limit the "maximum amount of shares" to that amount that would not allow an individual/entity to exercise market power and engage in anti-competitive behavior. It was intended – with the Secretary's approval – should the Council perceive market power was being exercised, there would be a referral to DOJ. As previously noted, this excessive shares control procedure has been explicitly approved by a federal court. The draft should candidly acknowledge these points, and should not misleadingly suggest there was "no limitation" on excessive shares following Amendment 8.

Section 5.1 "Excessive Share Alternatives" (page39):

The draft precedes the discussion of excessive share alternatives with the statement that "the Council is required to define measurable criteria for what constitutes an excessive share ... ."

This statement is false, and should be deleted from the draft. There is nothing in the Magnuson Act that "requires" an excessive share limitation to be based upon "measurable" (i.e., quantifiable) criteria" in fact, the status quo/no action standard for an "excessive share" has been in effect for 29 years, and does not include a specific "measurable" standard for "defining" an excessive share – e.g., number of bushels, etc. And without such a measurable, quantified standard the Secretary of Commerce and NOAA have approved the current "unquantified" standard, and that standard has been upheld by a federal court as explained above.

This is not to say that the Council is forbidden to adopt "measurable criteria" for how an excessive share is controlled; that remains their prerogative. But it is entirely misleading for the draft to state that such measurable criteria are "required" and this reference, for that reason, should be deleted.

Section 5.1 next states that "at this point it is unclear whether any of the alternatives under consideration will result in the need for any individual, entity or corporation to divest." Why should this be unclear? At considerable expense to industry, the agency has been collecting data on share ownership for three years now, and that data should be sufficient to determine whether divestiture will be necessary under any alternative.

Further, even if the need for divestiture is "unclear" the failure of the draft plan to address how divestiture would be implemented is a critical deficiency in the document that should be corrected before public hearings. If there is even a possibility that individuals or firms – many of whom have invested millions of dollars in ITQs – may be required to "divest" as a result of Council action, that action should include a procedure for how divestiture – actual loss of those investments – will occur. It is no answer to suggest that the Council/staff can simply kick this can down the road and let NMFS decide on divestiture at a later date. An excessive shares amendment that could require divestiture absolutely should include procedures for how such divestiture would work, if only out of fairness to the industry affected.

Past Councils, during the long history of excessive share consideration, have opined that upon enactment of an excessive share control rule all then owned or controlled shares would be "grandfathered" into place. At a minimum, this should be the rule and the plan and amendment should so state. Not only is this fair and equitable – in view of investments and contracts already made – but it also is logically defensible because the expert economic consultants retained by NMFS have concluded that, at current levels of ITQ control by individuals/entities, no one in industry in a position to exert market power and engage in anti-competitive conduct.

The draft plan document should not go out to public hearing until it fairly addresses the issue of divestiture and proposes how divestiture would occur should it be necessary.

Section 5.1.1 "Alternative 1: No Action/Status Quo" (page 40):

This short section repeats the inaccurate canard that no specific "definition" of an excessive share is included in the FMP "as required under NS4 of the MSA." For the reasons stated at length above, this statement is inaccurate and should be deleted.

IV. Public Hearing Document includes no evidence or basis for how/why ITQ holdings in excess of the respective proposed percentage caps would be "excessive"

The theory behind alternatives 2 through 4 and their "sub-alternatives" is that ITQ holdings in excess of any of the proposed percentage caps would be deemed "excessive" and impermissible under the FMP. For example, Alternative 2.2 proposes a single cap of 49% for surfclams and quahogs. Therefore, ITQ ownership of 50%, or 55%, would be deemed "an excessive share." Why? Where is the basis and what is the evidence for proposing that ownership of 49% of ITQs is acceptable, but ownership of 50% would be "excessive"?

Similarly, alternatives 3.2 and 3.3 propose 40% and 49% caps, respectively, for combined ownership and leasing of ITQ shares. This means that, for example, if 3.2 were selected, combined ownership/leasing of 41% of ITQs would be "excessive" although ownership/leasing of 40% would not. Where is the evidence and what is the basis for this? How does the additional 1% – or any additional percentage – make that share "excessive"?

Nothing in the hearing draft, or in the discussion of any of the alternatives, explains how/why a 28% or 49% cap would be acceptable, but 29% or 50% would be "excessive." The same is true of the 40% and 49% caps in 3.2 and 3.3. Put another way, the percentage caps are not based upon any evidence or analysis of economic or anti-competitive behavior; instead, they are simply arbitrary.

As a proposed administrative rule the pending amendment cannot be arbitrary and capricious if it is to have a legal basis. To keep the proposed amendment from the "arbitrary and capricious" category, the Council must identify a rational, evidentiary basis for why each of the proposed percentages represents acceptable ownership, but even an additional one percent in each instance would become an "excessive" share, that is, would yield market power. Nowhere does the public hearing draft attempt to explain what the basis for these arbitrary caps might be, and this document should not go out to public hearing until those bases are identified so that the public and industry fairly may comment upon them during the hearing process.

V. The Public Hearing Document Does Not Define or Address Permissible "Leasing"

Multiple alternatives proposed by the draft include limitations on the "leasing" of allocation/ITQ rights – but nowhere is it explained what is intended by the term "leasing." This was a significant issue considered by the Compass Lexecon economists who concluded that there should be no constraints on leases of one year or less, because leases of such short duration could not really support the exercise of longer term market power.

At the very least, the same exclusion on leasing prohibitions should be included in the alternatives – that is, leases of one year or less should not be considered against any "percentage cap." This has a practical purpose beyond the point made by Compass Lexecon. There are many short term lease arrangements made throughout every fishing year that result from market ups and downs, short term, during the course of each such year. These short term leases are intended only to address short terms needs for additional harvest rights, and have nothing to do with an effort to accumulate market power. Indeed, some ITQ rights are leased and released several times during the course of a year for this same purpose. So such short term leases should not be included against any percentage cap.

And on a related note, the draft document does not explain, but should, whether an entity will have additional harvesting/processing rights even if he/it reaches the percentage cap that is finally selected. Assume for example that the percentage cap is 49% for both ownership and leasing. But assume further that an entity reaches that cap, but, as has been true for the past decade, there are large

amounts of the quota unharvested (generally, 40% for each species). Why shouldn't that individual or identity be able to lease further quota rights for the remainder of the year in order to continue to use that unharvested allocation? It should be clear that there are no constraints on continuing to harvest, or purchase/lease shellstock, even when a percentage cap is reached – provided that there is still ample quota available. This only makes sense as a means of achieving optimum yield, and the plan should address this.

For all of the reasons described above the draft public hearing document is not yet ready for public hearing, and the issues addressed herein should be given further consideration by the staff, the SCOQ Committee and the Industry Advisory Panel with a revised final draft to come before the Council when that work is finished.

Very truly yours,

Thomas T. Alspach, General Counsel
Sea Watch International, Ltd.

TTA/tsd

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September 3, 2019

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

Re: SCOQ Excessive Shares Amendment Comments

Dear Dr. Moore:

Please accept these written comments on behalf of Sea Watch International, Ltd. in response to the proposed alternatives for a pending "excessive shares" amendment to the SCOQ FMP.

Further below, we will recommend the alternative that we believe should be adopted by the Mid-Atlantic Council as its preferred alternative for the FMP amendment. But because of its significance, we begin with discussion of the alternatives that, under any circumstances, should be rejected by the Council: specifically, alternatives 5 and 6.

I. Alternatives 5 and 6 Should be Rejected

Alternatives 5 and 6 should be rejected because they are not "excessive share" control mechanisms, but instead are ITQ redistribution plans intended to create an artificial "market" for non-participants in the industry who still own ITQs. These alternatives would reduce current ITQ levels among industry participants by approximately 40%, compelling them to lease additional ITQ rights from industry non-participants, in order to maintain their previous levels of harvest. This would award market power to the ITQ owning non-participants, would reward those non-participants who do not contribute to the industry in any way and who have no investment at risk, would reduce the ITQ collateral now relied upon by banks for loans to industry participants, and would increase the cost of producing clam products (because of leasing fees) which would unnecessarily increase prices to consumers – all for the sole purpose of creating new revenue for non-participating ITQ holders who add nothing to the industry, who create no jobs, and who do no more then collect checks for the lease of ITQs that were given to them, for no payment, decades ago.

For these reasons alternatives 5 and 6 should be eliminated from the public hearing draft, as they are market restructuring plans and not excessive share controls.

Here is an illustrative example of how alternative 5 would operate as social engineering/share reallocation rather than as an excessive share cap:

Under alternative 5 the share "cap" would be 40% of total ITQs

Assume an individual owns just 10% of ITQs, well under the cap.

With the 3.4m quota, that shareholder would be entitled to 340,000 bushels of surf ITQs.

But under alternative 5 the shareholder's entitlement would be reduced to 10% of the annualized harvest, about 2.2m bushels, yielding that shareholder only 220,000 bushels of surf ITQs.

Before any class B shares would be made available, under alternative 5 all of the class A shares must be utilized. This would mean that, in order to make up the 120,000 bushels lost under the alternative 5 "quota," the shareholder would be compelled to lease those ITQs from another absentee ITQ holder, not using his or its shares. Note that the price the absentee ITQ holder could extract for those additional shares is completely unregulated.

So simply in order to maintain the same harvest he had previously accomplished (340,000 bu), that shareholder would be compelled to pay – likely hundreds of thousands of dollars – for the lease of 120,000 bu of ITQs from an absentee ITQ holder not engaged in fishing or contributing to the fishery in any way.

The plan document actually approved by the Council in June supposedly offers an analysis of both positive and negative impacts from each alternative. Where is the discussion of negative impacts resulting from the scenario just described? The same scenario will play out throughout the industry if alternative 5 or 6 is adopted, but no analysis of its negative impact is included in the draft.

Instead, the draft rationalizes these alternatives as a means of "aligning market supply and demand." By what authority does the Council have the right to do this? This is simply economic/social engineering – an effort by the Council to reallocate ITQs in a manner that ensures every ITQ holder is guaranteed a market for his/its shares – the "free market" in ITQs which was to be the bedrock of Amendment 8 is totally abandoned.

According to the draft, "aligning supply in the fisheries with market demand may result in more activity in the leasing market." (Draft, p. 18). Alignment of market supply and demand is not a goal or objective of the FMP, nor is stimulating "more activity in the leasing market." These are solely economic objectives, and fishery management may not be based solely upon economic manipulation of the market under National Standard 5. In any event, "alignment of supply and demand" has nothing to do with containing excessive shares.

In fact, alternatives 5 and 6 would work directly contrary to FMP Objective 3 which is to allow the "industry to operate efficiently," that is, to allow "industry participants to achieve economic efficiency including efficient utilization of capital resources by the industry." Alternatives 5 and 6 would introduce expensive and inefficient externalities into the operation of the fishery: actual industry participants, many of whom have invested millions of dollars in acquiring their allocation rights, would have those rights arbitrarily limited by the reduced "Class A" quota scheme, so as to require them to lease quota from non-participants in the industry, in order to maintain their overall level of harvest. The non-participants whose leasehold rights would become necessary for continued operation of the fishery would have participants over a barrel, and would be in a position to extract unreasonable ransoms for the lease of their ITQs by participating harvesters. Put another way, this would create market power – an excessive share – on the part of industry non-participants to whom harvesters would be required to turn to obtain fishing privileges necessary to sustain their prior levels of harvest. Alternatives 5 and 6 propose no means of controlling this monopsony power that would be awarded to the non-participating ITQ owners.

This is not an "excessive share" control mechanism limiting those who participate in the industry, which is the purported intention of the pending amendment. Note that in the example above, **participants who are well below the excessive share "cap"** would nevertheless lose the ability to utilize ITQs in which they had invested, even though by definition they would not have an "excessive share."

Alternatives 5 and 6 work directly in opposition to the production of optimum yield in the clam fishery, and instead will serve to suppress customer demand for and production of the US clam resource. If active harvesters/processors are compelled to lease ITQs from current non-participants, simply to maintain their current levels of production, those leasing costs will substantially increase the cost of the final product – margins now are far too narrow for processors to simply "eat" the additional cost of leased ITQs.

No one on the Council or the staff/FMAT has undertaken any analysis of the economic impact on the current industry participants of imposing what would amount to a new tariff on finished product, by requiring current producers to lease unnecessarily the ITQs of industry non-participants. Accordingly, the economic consequences of this proposed economic restructuring scheme have not been evaluated and it would be highly irresponsible for the Council to push ahead with a program that could wreak such economic hardship, having undertaken no study to consider this outcome in advance.

The primary reason that the non-participating ITQ owners currently are unable to lease all of their shares is that demand for US clam products has declined over the past ten years, largely because more and more such product is being imported from abroad. China is the principal exporter of clam products to the US market, and those exports have seriously damaged domestic sales. Adding an additional cost factor to US clam products – the cost of compelled leasing of non-

participants' ITQ shares by alternatives 5 and 6 – would further increase the cost of the domestic product, opening our producers to even more foreign competition, undercutting our prices. Again, neither the Council nor the staff/FMAT have undertaken any analysis of the extent to which 5 and 6 would promote more clam product importation, reducing the ability of domestic producers to market at current levels and maintain current labor forces.

As a final note, there has been no analysis of the extent to which a reduction in participants' ITQ shares, when those shares are calculated on the basis of the past several years total harvest, would diminish the collateral held by banks whose loans are keeping many industry participants afloat. More to the point, we wonder whether the alternative 5/6 advocates at NMFS have advised and sought the reaction of the related NMFS agency that has substantial outstanding loans to harvesters/fishermen/processors with their ITQ shares as collateral. Will that NMFS department be pleased to have that collateral reduced by some 40% if 5/6 are adopted? The agency certainly should know the answer to this.

II. The Council Should Adopt a Modified Version of 4.3 as Its Preferred Alternative

In the best of all worlds the Council would adopt the status quo – alternative 1 – as its preferred alternative, as this excessive shares control rule has operated successfully for almost 30 years. But GARFO has threatened the Council not to approve any further FMP amendments until and unless the Council adopts a quantified percentage cap for its definition of an "excessive share."

GARFO's threat is and was baseless; the agency has no legal authority to refuse to process FMP amendments for the reason just stated. Nevertheless, the Council explicitly has deferred to GARFO on this point, and will insist that an alternative that imposes a percentage cap is adopted in the end.

So with this background, and recognizing this political reality, Sea Watch is prepared to support a compromise percentage cap defining an excessive share – specifically, a slightly modified version of stated alternative 4.3.

For surfclams, Sea Watch would support a two part cap with an ownership cap of 35%, and a combined cap (ownership plus leasing of annual allocation) of 65%.

For quahogs, Sea Watch support a two part cap with an ownership cap of 40% and a combined cap (ownership plus leasing of annual allocation) of 70%.

It should be noted that under both of the above proposed caps, there will be substantial latitude for the leasing of allocation rights. This should be of significant appeal to those who are pushing to find a means of compelling more leasing of ITQ shares from non-participating ITQ owners. A reduced cap on leasing would work directly against that objective, so what is proposed

here would be in the best interest of not only current active industry participants, but also those who are not participating but who continue to hold ITQ shares for lease.

With regard to the other alternatives under consideration that do not relate to share ownership, Sea Watch supports the following:

ES-2. Summary of excessive shares review alternatives
Alternative 1: No Action

ES-3. Summary of framework adjustment process alternatives.
Alternative 1: No Action

Es-4. Summary of multi-year management measures alternatives.
Alternative 2: Specification to be set for the maximum number of years consistent with the NRCC approved stock assessment schedule.

Thank you for considering the above comments.

Very truly yours,

Thomas T. Alspach, General Counsel
Sea Watch International, Ltd.

TTA/tsd

BUMBLE BEE SEAFOODS

Jan Tharp | interim CEO
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Chris Moore, Ph.D., Executive Director
Mid-Atlantic Fishery Management Council (MAFMC)
North State Street, Suite 201
Dover, DE 19901

September 3, 2019

RE: SCOQ Excessive Shares Amendment Comments

Dear Dr. Moore,

I am writing to provide Bumble Bee Seafoods (BBS) comments on the MAFMC excessive shares amendment for the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (SCOQ FMP). As our company commented during the scoping process, we believe this initiative is driven solely by the need to satisfy a regulatory requirement and is not indicative of any issues within the fishery. The current system, which relies on U.S. antitrust laws, is functioning properly with no evidence that a person or company is capable of market manipulation.

Fishery Management Plan Objectives

In Bumble Bee's July 12, 2017 letter to you, we stated that the company supports the Council's efforts to update the goals and objectives of the SCOQ FMP. We also provided a list of revised/rewritten goals and objectives in that same letter which we believe more accurately reflect today's fishery. We stand by those comments but will not repeat them here.

Excessive Shares

The public hearing document provides a number of alternatives currently under consideration by the Council. Obviously, the affiliate level selected by the Council will result in different outcomes. For purposes of these comments, BBS supports and assumes that the affiliate level will be 100% cumulative ownership.

In our scoping comments, we stated that if the Council moves forward with a numerical cap, it should be set at a level that does not penalize any current active quota holder and allows for additional growth. While we believe alternatives 2.2 (49% ownership cap/unrestricted leasing) and 3.3 (combined cap at 49%) would satisfy those goals, BBS prefers the approach of alternative 4 which provides a two-part cap on quota ownership and a combined quota share ownership plus leasing of annual allocation. We believe this approach better reflects the actual level of engagement in the fisheries by the various companies and would prevent any one entity from accumulating an excessive share of the quota. BBS supports 4.3 (ownership 30%/combined cap 60%) and the modified 4.3 alternative submitted to the Council by the clam industry (35%/70% surfs and 40%/70% for quahogs).

BBS strongly opposes alternatives 5 & 6 and asks the Council to reject them. The stated goal of these alternatives is to align supply in the fisheries with market demand by creating a two-tiered quota system. BBS submits that this goal is contrary to the Magnuson-Stevens national standard #1 for fishery management plans (Sec. 301(a)(1)) which requires conservation and management measures to achieve, on a continuing basis, optimum yield from each fishery. Moreover, by creating two classes of quota shares, alternatives 5 & 6 would force active quota holders to lease quota from non-participants in order to utilize the entire quota they hold. BBS opposes these social engineering alternatives that appear to be designed more to help non-participants in the fishery than to establish an excessive share cap.

I appreciate the Council taking into account Bumble Bee Seafoods' comments and would be happy to provide any additional information you may need.

Sincerely,

Jan Tharp
Chief Executive Officer

Seafish Inc.
10344 Waterview Drive
Ocean City Md. 21842

August 22, 2019

Mid Atlantic Fishery Management Council
800 North State Street
Dover, Delaware 19901

Re: Excessive Share Amendment

Council Members and Staff,

I am Dave Martin, owner of Seafish Inc. who owns surf clam and ocean quahog allocation. We are participants by leasing our quota in full every year. We do not participate in harvest. But we have relied on this yearly income for the past 20+ years.

We have considered the information regarding the Excessive Shares Amendment and the long list of Alternatives being considered for implementation to cap the amount of ownership. The levels of ownership being considered is not so low that it will affect our allocation holdings. But there is concern for the calculation of what would be considered "one" entity. There are few processors anymore because of the nature of the business and the difficulties in the marketplace. So, to keep the ownership plus leasing cap too low would put in jeopardy our ability to continue to lease our allocation year to year. We recommend giving the largest percentage possible to continue to give room for us to lease our quotas.

We are opposed to Alternative 5 and 6 as they will have severe negative impacts on our income and the industry. These Alternatives aim to split the quota into A and B shares. The A shares will be handed out based on the level of harvest on the last few years. This will be devastating to us. The A shares will be approximately 65% of what we have normally been receiving. The marketability of clam is limited for the foreseeable future due largely to it being an ingredient and not a center of the plate item. The other reason is the large amount of imports that are allowed into our country diminish the ability to sell more. This means that the B shares may not be handed out in the foreseeable future for us to lease and receive the remainder of our income.

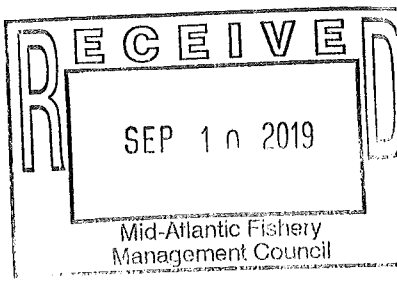
Its shows that the purpose is to increase activity in the leasing market, but the result will be nothing more than a loss of income for many quota holders that were given the opportunity reduce their harvest capacity years ago by the implementation of transferable quotas. There is no reason for this and 5 and 6 should not be chosen.

Thank you for the opportunity to express our public comments.

Dave Martin
Seafish Inc.

Woodrow Laurence Inc.

12310 Collins Rd.
Bishopville, Md. 21813



Mid Atlantic Fishery Management Council
800 North State Street
Dover, Delaware 19901

Re: Excessive Share Amendment

August 22, 2019

Council Members and Staff,

I am Steve Martin, owner of Woodrow Laurence Inc. a holder of surf clam and ocean quahog quota. We were originally harvesters with vessels but do not currently harvest. We are quota holders that lease our quota every year. We took the opportunity to be able to sell our vessel some years after the ITQ system started and we have been relying on the income from leasing our quota every year since. Now that we are in the public hearing process for the Excessive Shares Amendment, we appreciate the opportunity to speak out, mostly against the implementation of Alternatives 5 and 6.

First though, we disagree with the implementation of an excessive share cap at all. There have been no monopolies in the fishery, either from the marketing end or the harvest and tag leasing sector. There is no impediment to access the fishery from any perspective. The value of the product is low in the marketplace as it is an ingredient in meals, largely diminished by imports from other countries.

Our company will not be in jeopardy of being over any share caps described in the Alternatives. Although we do rely heavily every year on the few processors that there are for the industry that could be affected by them. If the affiliations as describe in the document are too constraining on the current processors, we may have no place to lease and/or sell our quota in the future. We propose Alternative 4.3 as having the most flexibility for the processors and those of us that are leasing our quotas. We would much rather 2.3 at 95% but that may not meet definitions that are needed to move forward.

If alternative 5 or 6 are chosen it will be devastating to those that are leasing all their quota now, as it proposes to split the allocation each year into A and B shares. The A shares given out at the levels of harvest in recent years and the B shares given out when the A shares are harvested. In the current marketplace this amounts to nothing more that reducing our income up to 40% as the market cannot handle anymore product. The B shares in the foreseeable future will not be let out of the NOAA office. All quota holders will be given this cut. The document says the reason is to increase activity in the leasing market, yet it has never been stated how many bushels go unleased a year to show if there is a problem. Without that information how can it be stated whether 5 and 6 will have benefit?

If Alternative 5 and 6 is designed for a minority number of bushels that go unleased every year to get leased in a free market system, then this is nothing more than social engineering that will not help he industry as a whole, it will only damage it and likely beyond repair for most of us.

Please do not choose Alternative 5 and 6.

Thank you for the opportunity to comment.

Steve Martin
Woodrow Laurence Inc.

Sea Watch International, Ltd.

8978 Glebe Park Drive ◆ Easton, MD 21601

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Fax: 410-822-1266

September 9, 2019

Chris Moore, Ph.D.,
Executive Director
Mid-Atlantic Fishery Management Council
North State Street, Suite 201
Dover, DE 19901

Dear Dr. Moore,

Please accept these comments on behalf of myself and Sea Watch International, Ltd in regard to the Excessive Shares document currently out for public comment which were presented during the Public Hearing in Salisbury, MD September 9, 2019.

I have lifted a page from the Magnuson Stevens Act reauthorization of 2007 to make the point that alternatives 5 & 6 are in direct violation of National Standard (5) and (8). I have highlighted National Standard (5) and parts of National Standard (8) below to substantiate this statement.

Alternatives 5 & 6 will reallocate the quota system in a purely economic manner because its goal is to "align supply in the fisheries with market demand". This can only be described as a measure resulting in economic allocation which is exactly what National Standard (5) disallows. There is no scientific reasoning behind this type of reallocation in a fishery that has been well managed for 29 under the current ITQ system.

16 U.S.C. 1851 MSA § 301 58 TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM SEC. 301. NATIONAL STANDARDS FOR FISHERY 16 U.S.C. 1851 CONSERVATION AND MANAGEMENT (a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management: 98-623 (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. (2) Conservation and management measures shall be based upon the best scientific information available. (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination. (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
104-297

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. 104-297, 109-479 (8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

I would also like to draw your attention to National Standard (8) (A) & (B). Alternatives 5 & 6 will have adverse impacts on fishing communities which have developed over years and provide thousands of jobs in the SC/OQ. Alternatives 5 & 6 will have direct negative impacts on jobs by raising processors cost structures, prices to the US consumer and the loss of US JOBS to cheap imports.

We live, work and provide jobs in a capitalist society and if that is a dirty word to you, I am sorry I cannot apologize for that. Let the process work, as strong processors develop more demands here at home and abroad the need for the excess ITQ's will be in high demand. Might I remind you that thousands of bushels are being leased every year by the very processors that alternative 5 & 6 will decimate. The SC/OQ Fishery will not thrive and grow and will be lucky to survive this type of overbearing regulation if Alternatives 5 & 6 are adopted.

Here is a tidbit for you, through August 31, 2019 Sea Watch International has exhausted all of the ITQ's owned by its owners. Every clam that crosses our docks from September 4 to December 31, 2019 will be leased tags from some Absentee ITQ holder.

Sea Watch would support Sub Alternative 4.3 with a slight modification.

Surfclams
Two-part cap with an ownership cap of 35% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 65%.

Ocean Quahogs
Two-part cap with an ownership cap of 40% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 70%.

On behalf of myself and Sea Watch International, Ltd. we appreciate the opportunity to comment on this very important decision to be made that could have devastating ramification for our company and industry if Alternatives 5 or 6 are recommended.

Regards,
Sea Watch International, Ltd.

Guy B Simmons

Guy B Simmons
Sr. VP Marketing, Product Development
Government Relations and Fisheries Management

Sea Watch International, Ltd.

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September 10, 2019

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

Dear Dr. Moore,

Please accept these comments on behalf of myself and Sea Watch International, Ltd. regarding the proposed Atlantic Surfclam and Ocean Quahog (SCOQ) Excessive Shares Amendment.

The range of alternatives under consideration 1 through 4.3 seem to provide a reasonable range of options consistent with the stated charge of a fisheries management council in implementing an excessive shares cap for an Individual Transferable Quota (ITQ) fishery.

The incremental actions proposed by Alternative 5 and Alternative 6 in creating classes of quota go above and beyond the stated charge of what is reasonably required by the Council to bring the SCOQ Fisheries Management Plan (FMP) in compliance with the Magnuson-Stevens Act (MSA) and ensure that the SCOQ fishery continues to be properly managed employing the best available science. The thrust of these comments will provide rationale behind why I believe Alternatives 5 & 6 are problematic to the process. Since identifying a problem would be incomplete without proposing a solution, I will also conclude these comments with the recommendation of a preferred alternative that I believe satisfies the stated objective of this amendment. It is imperative that management measures continue to foster growth and efficiency in the industry and interrelated sectors, support the optimal yield targets to encourage production of SCOQ products in an emerging globally competitive food business, and yet do not unnecessarily introduce uncertainly to the process.

Since the Alternatives 5 and 6 propose to go above and beyond what is required to bring the SCOQ FMP in compliance with MSA, the incremental activities of creating classes of quota to sort participation from non-participation appears to be solely economic in nature. Measure that have economic allocation as its sole purpose violate National Standard #5.

The Scientific and Statistical Committee (SSC) Comments on the SCOQ Excessive Shares Amendment, which is Attachment 3 to the Report of the May 2019 SSC Meeting, proposes to offer economic rationale for inclusion of Alternatives 5 & 6. I find that both the structure and specific arguments are problematic. The mere arrangement of the document is problematic

because the need for quantitative economic research upon which to identify potential effects is identified AFTER drawing the conclusions about market power that underpin the argument for inclusion of Alternatives 5 & 6. This structure of putting results ahead of proper research either 1) falls short of supporting the basic scientific method or 2) renders statements regarding monopoly, monopsony, and market power as mere hypotheses. As the SSC is considering to undertake a greater role in the economic and social sciences to support the Council's role in fisheries management, I hope that the scientific rigor employed by the SSC in the economic and social sciences is conducted to the same high standards employed in the execution of science that supports the setting of Acceptable Biological Catch.

Secondly, the arguments put forth do not appear to be supported by previous work conducted to better understand the history and current status of the SCOQ ITQ. The statement that the "very existence of non-participating ITQ owners is proof of monopsony power" is a reckless statement. Nothing presented in the body of academic and informal study of this excessive shares issue rises to the level of "proof." Inclusion of Alternatives 5 & 6 appear to be an attempt to resolve an unsubstantiated problem because the CIE reviewers do no concur that monopsony power actually exists. Rather than drawing a conclusion of "proof" of the monopsony power, a plausible explanation is that demand market signals from consumers and buyers of SCOQ products are passing through processors upstream to harvesters and ultimately to ITQ holders.

The Public Comment document also contains certain misrepresentations to support the incremental aspects of Alternatives 5 & 6 over and above establishment of an excessive shares cap. The document seems to suggest that an objective to "align supply in the fisheries with market demand" is a recurring theme among Mitchell et.al (2011) and subsequent CIE reviews and summaries. None of these references include language that is remotely close to this statement, nor is any recommendation made in this regard. There are ample references to supply and demand, but these are principally used to develop hypothetical scenarios to help the reader gain a better understanding of market power or price elasticities in an absence of empirical data to support any specific conclusion. Furthermore, with the influence of foreign imports that compete directly with domestic products derived from SCOQ (which are described below), it is well outside of the purview and ability of the Council to hope to align supply and demand and should therefore be abandoned by the Council as a goal for this fishery.

Northern Economics, Inc. (2019) describes SCOQ products as "highly inelastic" (p. 26), but does not offer any evidence to support this statement. The description of SCOQ products as "highly inelastic" appears to be incorrect. Mitchell and Peterson (2013) provide a hypothetical example of quota withholding (p. 16) that would require high price inelasticity which was deemed to be outside an expected range of the Northeast Multispecies Fishery. Furthermore, Mitchell et.al. (2011) report (p. 25) that "domestic clam processors face elastic demand for at least some significant portion of their products." CIE reviewers also cite evidence that suggest that clam products are likely more elastic than inelastic (Arnason p. 24, Lopez p. 9)

What is clear from these analyses is that actual price elasticities of supply or demand have not been determined for SCOQ products (Kachova p. 9). However, one dynamic that can be assumed is that price elasticities become more elastic over time (Goodwin, et al., 2009), a notion which is also identified by CIE reviewer Kachova (p.7). Any alternative that is ultimately

selected will have long-term impacts on the SCOQ fishery. An unintended consequence is that these impacts can exceed natural market cycles. Table 4 of the Public Comment document (p. 69) provides the most recent times where an excess of 90% of the quota was harvested. For surfclams and ocean quahogs, 2007 and 2004, respectively, were the last occurrences of observed near full quota utilization. SCOQ products compete in a changing marketplace that will continue to evolve. SCOQ products can reasonably be expected to continue to trend toward greater elasticity, with increasing supply pressure form imports placing downward price pressure on SCOQ products.

The influence of imports is identified in Mitchell et.al. (2011) and by subsequent CIE reviews (Katchova p. 9, Lopez p. 11) as an important consideration in understanding the broader marketplace in which domestic clam products complete. Because these data from several years ago may be somewhat dated, it is important to provide recent import data to further elucidate this effect on clam products that are likely more elastic than inelastic and have a greater tendency toward increasing elasticity over time. Imports of competing clam products have a high degree of direct substitutability of many domestic clam products and grew 17% from 2014-2018 with an average annual growth of 4.3% (FAS, USDA, 2019). The growing degree to which we see imported clam products in the marketplace indicates growing supply to the overall marketplace in which domestic clam compete. The result of policy decisions that do not properly account for the impact of imports have overall negative implications for the domestic SCOQ processing and harvesting sector. The negative repercussions for the upstream and downstream businesses sectors would be especially magnified due to the notable high economic outputs and impacts reported by Murray (2016) for SCOQ landings. Combined landings in 2014 of $54.873 million resulted in an economic multiple of 11.4x and a total economic output of $1,308 million.

One recurring recommendation of the reviewers (Arnason p. 4, Lopez p. 15) of Mitchell et.al. (2011) was that gains in market efficiency through consolidation need to be weighed against efficiency losses that could result from an inappropriate cap. It is through market participation that efficiency gains are realized. Alternatives 5 & 6 seem to clearly disregard any consideration of market efficiency because the incremental activity of these alternatives rewards willful non-participants at the expense of active participants. In fact, woeful bias for social experimentation and related disregard for market efficiency is seen in the Public Comment document where Alternatives 5 & 6 are identified as having the largest positive impact. Furthermore, and of notable importance regarding active participation, is the citation of 55 Federal Register 24184 (p. 78) of the Mitchell et.al. (2011), where the authors describe the Council's desire not to unjustly enrich non-active participants in the fishery at the onset of the ITQ program.

Now that the cost-recovery amendment is in place, it has not been adequately addressed what effect any excessive share decision will have on the cost-recovery requirements for the SCOQ fishery. The most complex alternatives such as Alternatives 5 & 6, will presumably result in highest monitoring and enforcement costs, which will presumably be subject to cost recovery. Because recoverable costs are based on fished quota and those costs are paid by holders of active quota only (Potts, 2019), this will be disproportionately harmful to active quota holders.

Excessive share caps for other US fisheries managed under an ITQ system are described on p. 201-202 of the public comment document. None of these fisheries appear to feature a tiered

quota system as prescribed in Alternatives 5 & 6. As I have mentioned before, this tiered quota scheme amounts to an experimental measure that is not rooted in empirical study and will introduce an unacceptable risk to a well-managed fishery.

Reinforcement of the inclusion of Alternatives 5 & 6 in the Excessive Shares Amendment is, at best, supported by hypothetical conclusions about the SCOQ business environment. In some cases, the underpinnings for maintaining Alternatives 5 & 6 are simply not supported by Mitchell et.al. (2011), the subsequent CIE reviewers, and Northern Economics, Inc. (2019). A summary of points in these comments are as follows:

- Alternatives 5 & 6 go beyond what is stated to be required by the Council to establish an excessive share limit on the SCOQ fishery.
- In going above and beyond the core stated purpose and being solely for economic purpose, the incremental measures violate National Standard 5.
- Alternatives 5 & 6 propose to benefit those who made willing business decisions to divest from active fishery status and remain inactive. These measures would be implemented at the expense of many other active participants in the SCOQ fishery who have invested in in improving operational efficiency, market development, the scientific advancements in understanding the biology of surf clams and ocean quahogs and their surrounding ecology, and collaborative management of these fisheries over many years.
- Alternatives 5 & 6 are not only novel to US Fisheries management, but also not based on best available science. They introduce the greatest amount of uncertainty to the FMP and cost to the active SCOQ industry participants.
- The incremental effect of Alternatives 5 & 6 amount to a natural experiment involving ITQ holders as test subjects participating in a fishery that is already deemed to be well-managed based on the core biological and management fundamentals of fishery management.
- The economic conditions that Alternatives 5 & 6 aim to remedy are at best hypothetical and the interpretation of economic principles that underpin augments for Alternatives 5 & 6 are in some cases blatantly incorrect.
- Given the tendency of products to move toward greater elasticity over time, and the understanding that any decision on a limit of excessive shares likewise has long-term implications on the management of the SCOQ fishery, Alternatives 5 & 6 have the real potential of placing at a disadvantage domestically harvested and processed products from surfclams and ocean quahogs to the advantage of the growing availability of imported clam products in the US marketplace.

Sea Watch strongly opposes Alternative 5 and Alternative 6.

Sea Watch would support Sub Alternative 4.3 with a slight modification.

- Surfclams
    - Two-part cap with an ownership cap of 35% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 65%.
- Ocean Quahogs
    - Two-part cap with an ownership cap of 40% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 70%.

Alternative 4.3 with modification serves the core stated purpose of bringing the SCOQ FMP into compliance with National Standard #4 without creating a subsequent non-compliance issue with National Standard #5, and allow management measures to proceed with the best available science.

Sea Watch would support the following.

- ES-2. Summary of excessive shares review alternatives.
  - Alternative 1: No Action
- ES-3. Summary of framework adjustment process alternatives.
  - Alternative 1: No Action
- ES-4. Summary of multi-year management measures alternatives.
  - Alternative 2: Specifications to be set for the maximum number of years consistent with the NRCC approved stock assessment schedule.

Thank you for the opportunity to comment on the proposed Atlantic Surfclam and Ocean Quahog Excessive Shares Amendment.

Sincerely:

Joseph J. Myers
Director, Marine Innovation and Technology

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MARTIN FISH COMPANY LLC
12929 Harbor Road
Ocean City Md. 21842

August 22, 2019

Mid Atlantic Fishery Management Council
800 North State Street
Dover, Delaware 19901

Re: Excessive Share Amendment

Council Members and Staff,

I am John R. Martin, General Manager of Martin Fish Company LLC an off loader in Ocean City MD. We do not participate in the harvest however we have been offloading seafood products at our dock facility for over 40+ years including surf clams and quahogs.

We have considered the information regarding the Excessive Shares Amendment and the long list of Alternatives being considered for implementation to cap the amount of ownership. There are few processors anymore because of the nature of the business and the difficulties in the marketplace. We recommend giving the largest percentage possible to continue to give room for leasing and flexibility in the business.

We are opposed to Alternative 5 and 6 as they will have severe negative impacts on in the industry. These Alternatives aim to split the quota into A and B shares. The A shares will be handed out based on the level of harvest on the last few years. This will be devastating to the industry. The A shares will be around 65% of what normally has been received.

The clam market is limited for the due to it largely being an ingredient. The importing of cheaper products allowed into our country also diminish its marketability. This means that the B shares may not be handed out in the future for lease and thereby decreasing potential unloading income.

Alt 5 & 6 show that their purpose is to increase activity in the leasing market, but the result will be loss of income. There is no scientific or economic reason for these two alternatives therefore 5 and 6 should not be chosen.

We support alternative 4.3 and after review we also support 4.3 with the adjustments suggested by industry and stakeholders.

Thank you for the opportunity to express our public comments.

John R. Martin
Martin Fish Company LLC

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

Chris Moore, Ph.D., Executive Director
Mid-Atlantic Fishery Management Council
North State Street, Suite 201
Dover, DE 19901

August 02, 2019

Dear Chris Moore,

Thanks to you and your staff for the opportunity to comment on Atlantic Surfclam and Ocean Quahog Excessive Shares Amendment Public Hearing Document at the Thursday August 1st 2019 meeting in Cape May.

My name is Chris Shriver General Manger Galilean Seafoods Bristol, Rhode Island. Galilean employs over 100 people throughout its supply chain; from harvesting effort, vessel management and maintenance, processing, sales & marketing and distribution. We have great concerns regarding some alternatives being presented in this public hearing document.

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. We would catch all the quota if the markets demanded it. There are several reasons causing this but allowing imports to compete with our domestic production drives market demand down is a major factor.

Alternative 5 and 6 would split the quota in such a way that it would force the leasing of 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 admittedly, giving negative financial impact to the active participants. Reducing leasing activity overall rather than increasing it.

Excluding alternative 2.3, alternatives 2.0-4.2 could create negative impacts by diminishing the ability for growth in ownership by the stated ownership caps or the inability to consolidate companies for financial strength.

Alternative 4.3 could have the least impact to our company and the industry in general. It gives room for expansion in ownership and can increase leasing activity.

We would like to propose an adjustment to Alternative 4.3:

- Surf Clams the ownership cap of 35% and overall cap with leasing included 65%
- Ocean Quahogs the ownership cap of 40% and overall cap with leasing included 70%

Thank you again for your consideration in this matter.

Best,

Chris Shriver
General Manager
Galilean Seafoods
16 Broadcommon Road
Bristol, RI, 02809

Sea Watch International, Ltd.
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Fax: 410-822-1266

September 10, 2019

Chris Moore, Ph.D.,
Executive Director
Mid-Atlantic Fishery Management Council
North State Street, Suite 201
Dover, DE 19901

Dear Dr. Moore,

Please accept these comments on behalf of myself and Sea Watch International, Ltd in regard to the Excessive Shares document currently out for public comment which were presented during the Public Hearing in Warwick, RI September 10, 2019.

My comments during this session will detail the contributions by Sea Watch International as an Active ITQ Participants in stark contrast to the contribution made by Absentee ITQ Participants. I am currently the Chairman of the National Fisheries Institute Clam Committee and serve on the Industry Advisory Board for the National Science Foundations Science Center for Marine Fisheries as well as former Chairman of the IAB for SCeMFiS. Since these two organizations are the primary means for cooperative science dollars for the SC/OQ fishery I feel I am qualified to comment on who is participating and who is not.

The current ownership of Sea Watch International has been in place since 1999 and has invested millions upon millions of dollars towards Cooperative Science, Marketing, Education, Sustainability and the Global expansion of the SC/OQ Fishery. The detailed investment below is related to Sea Watch International only, however the vast majority of harvesters and processors in the SC/OQ Fishery contribute in similar ways.

At the public hearing in Salisbury, MD September 9, 2019, Mr Bob Brennan of Sea Watch International mentioned numerous capital expenditures made by Sea Watch over the past decades. The information below details some but not all of Sea Watch's expenses over the past decades to promote the SCOQ fishery.

Sea Watch Non Capital Investments 1999 – 2019

National Fisheries Institute – Membership Fees **$639,019**
(The National Fisheries Institute is a non-profit organization dedicated to education about seafood safety, sustainability, and nutrition).

NFI Clam Committee – Cooperative Science **$1,259,433**

National Science Foundation, SCeMFiS – Cooperative Science **$275,000**

Georges Banks PSP Protocol FDA and ISSC **$2,000,000**

Marketing **>$50,000,000**
Advertising, Trade Shows, Distribution programs, Slotting Fees, Training, Education, Sustainability, Global Expansion (Exports)

Fisheries Participation – This is hard to put a price tag on because from the very first Council meeting held back in 1978, Sea Watch International was represented and has been actively involved in the development and growth of the SC/OQ fishery. Sea Watch and other active participants have brought worldwide recognition to the SC/OQ Fishery by seeking MSC Certification in 2016. This was done at zero cost to the taxpayer and might I add, zero cost to the Absentee ITQ holders.

Absentee Contribution 1999 – 2019 **ZERO DOLLARS**

Sea Watch would support Sub Alternative 4.3 with a slight modification.

Surfclams
Two-part cap with an ownership cap of 35% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 65%.

Ocean Quahogs
Two-part cap with an ownership cap of 40% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 70%.

On behalf of myself and Sea Watch International, Ltd. we appreciate the opportunity to comment on this very important decision to be made that could have devastating ramification for our company and industry if Alternatives 5 or 6 are recommended.

Regards,
Sea Watch International, Ltd.

Guy B Simmons

Guy B Simmons
Sr. VP Marketing, Product Development
Government Relations and Fisheries Management

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September 13, 2019

Chris Moore, Ph.D.,
Executive Director
Mid-Atlantic Fishery Management Council
North State Street, Suite 201
Dover, DE 19901

Dear Dr. Moore,

As the public comment period closes on the Excessive Shares Amendment I feel compelled to weigh in on something that I personally find offensive to say the least. As I am sure you are aware Mr. Tom Alspach representing Sea Watch and a number SCOQ industry members on this point specifically sent a letter to Chairman Luisi. In this letter Mr. Alspach requested that Chairman Luisi call back the Public Hearing on Excessive Shares in the SCOQ Fishery document that was put forth August 1, 2019. The reasoning behind this request was the substantial changes made to the original document that was approved by the full Council at the June meeting.

I am sure that I do not have to inform you of Mr. Luisi's response, and I am aware that the staff may have the authority to make changes to an approved document that might reflect discussions had by the Council during the approval process. I was at the Council meeting in June and the only point that I recall the staff being asked to change was the HHI chart which was based on data from 2011 and staff was told to recalculate the chart using new data up to 2016. I do not recall instructions from the head table to add a substantial amount of additional comments made by Lee Anderson that were not included in the original SSC document from the May meeting, which is precisely what happened. Not only were these additional pages added but they made severely inaccurate assumptions presumably based on the Northern Economics report and the Lexicon report. These assumptions are not conclusions from studying the research in these documents but the opinions of one man who appears to have an agenda against the SCOQ Fishery which astonishes me when this same man, Lee Anderson was the architect of Amendment 8 in the first place. I hope you will pay close attention to the report submitted by Dr Tom Sprouls from the University of Rhode Island which points out severity of these non-conclusive assumptions made by Lee Anderson.

These are self-proclaimed opinions of mine and I am no lawyer, but Sea Watch has been represented by a fine one for over 40 years. Because of the gross mis representation of facts aloud to remain in this PHD, Sea Watch along with many other members of the SCOQ Fishery have retained the services of Kelley Drye as I am sure you are also aware. I do not know the outcome of this process, but I certainly hope that it does not require litigation because that is not money that anyone of us in the SCOQ Fishery can afford to spend but then again cannot afford not to spend.

Sea Watch would support Sub Alternative 4.3 with a slight modification.

Surfclams
Two-part cap with an ownership cap of 35% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 65%.

Ocean Quahogs
Two-part cap with an ownership cap of 40% and the combined cap (quota share ownership plus leasing of annual allocation or cage tags) at 70%.

On behalf of myself and Sea Watch International, Ltd. we appreciate the opportunity to comment on this very important decision to be made that could have devastating ramification for our company and industry if Alternatives 5 or 6 are recommended.

Regards,
Sea Watch International, Ltd.

Guy B Simmons

Guy B Simmons
Sr. VP Marketing, Product Development
Government Relations and Fisheries Management

Dr. Christopher Moore

Dr. Jose Montanez

Mid-Atlantic Fishery Management Council

800 North State Street, Suite 201

Dover, DE 19901

September 12, 2019

"SC/OQ Excessive Shares Amendment Comments"

Dear Drs. Moore and Montanez:

I wish to provide these comments on the Scoping Document entitled, "Surfclam and Ocean Quahog Excessive Shares Amendment" which was presented during 4 public hearings between August 1 and September 10, 2019. Representatives of our companies made oral comments during the hearings and now I simply wish to reiterate some of those comments in writing.

I am advising a number of surfclam and ocean quahog companies through Wallace & Associates. Our company represents most of the surfclam and ocean quahog fisheries and they all strongly agree that while this Amendment is totally not needed, they have come to a compromise in support of Alternative 4.3 with minor modifications to the proposed percentages. This issue of "excessive shares" has been a conundrum and a morass sucking time and resources since its initiation. I can tell you that I have never seen the clam industry so united and opposed to one idea as they have since the beginning of the issue of excessive shares.

The genesis of this excessive share issue dates back to a 2002 Government Accountability Office (GAO) report that assessed existing ITQ programs and ways they could be improved. The GAO issued a favorable report regarding how existing ITQ programs were working and included several recommendations for the future, one of which related to the definition of an "excessive share". "To help prevent an individual or entity from acquiring an excessive share of the quota in future IFQ programs, (emphasis added) NMFS recommend that the Secretary of Commerce require regional fishery management councils to define what constitutes an excessive share for the fishery." The GAO plainly was not directing this recommendation to preexisting ITQ programs, such as the surfclam and ocean quahog FMP, but instead only to new ITQ programs adopted in the future.

These two fisheries were the first ones in this country managed under the Magnuson Act with the development of an FMP in 1977. The industry needed federal involvement because they had overfished the surfclam resource. In the past 40 years, the surfclam resource was quickly rebuilt and the resources have never been overfished nor has overfishing occurred since the initiation of management. The first 13 years of management was hellacious with draconian government

micromanagement. Fishing effort was limited to as little as 24 -- six hour days a year. Then in 1990, ITQs were implemented and the fishery went from one of the most intensely micromanaged to one where industry meets with the Council and the Agency only once or twice a year. This fishery is successful without government intrusion.

As I stated above, the majority of industry participants now believe, that if there must be an excessive shares definition, they could live with Alternative 4.3 with some minor modifications to the proposed percentages. The majority of industry believes that for surfclams the ownership cap should be 35% and the total should be 65%. For ocean quahogs, the ownership cap should be set at 40% and the total should be 70%. Industry believes the individual/business should be used in the regulations and that the calculations should be based on the New Actual Percentage model. This is a major compromise on industry's part!

In the spring of 2009 the Council held Scoping meetings on an Amendment that included this issue of "excessive shares". That Scoping document had three Alternatives: A) No Action, B) Implement a % Share Cap – with sub-alternatives of 1) 22%, 2) 33%, 3) 50% and 4) 70%, and then C) Adopt DOJ Horizontal Merger Guidelines. From those entire Scoping meetings in 2009, there was only ONE written comment that supported a 50% share cap. EVERYONE else that orally provided comments or provided them in writing supported the No Action alternative. Everyone argued that the dependence on Amendment 8 antitrust regulations were sufficient. As I said in the above paragraph, industry's support for Alternative 4.3 with the minor modifications to the proposed percentages is an absolute amazing compromise for the majority of the industry.

I would just like to say a few words on the Objectives. Please do not change ONE word! Those Objectives were developed over nearly a year by some of the "Forefathers" of fisheries management (Drs. Lee Anderson, Bill Hargas and State Directors Peter Jenson and Russell Cookingham) for Amendment 8. Nearly every word was fought over by the Council. Those 4 Objectives have been the guiding force for the regulation of these resources and fisheries for nearly 30 years. They are the basis for the Council's flagship FMP and one that the rest of the country often attempts to emulate. Amendment 8's Objectives have allowed consolidation decisions and all other business decisions to be made efficiently by businessmen. They have been flexible and adaptable. The have minimized government regulations as well as private costs of this management system. The Objectives and thus, the rules that businesses have been operating under should not be changed at all now.

Finally, I wish to address the items that are up for frameworking. There is absolutely NO way that the excessive share percentages should be frameworked! The issue of excessive shares has been fought about for 17 years now and only with an extremely generous offer from the majority of industry does it appear that headway can be made and this issue may be put to rest. Two Council meetings, in order to change the percentages now, is ludicrous. Seventeen years to get to this point and now changes can be made through two meetings?? That is certainly not the way to build trust and partnership. In fact, there is nearly total distrust between the industry and staff.

The Magnuson Act calls for transparency and partnerships in working towards conservation goals. While there are no conservation improvements with this Amendment, that does not preclude working together for the benefits of the resources and the fishermen. I have not seen as much animosity between an industry and staff since the heydays of summer flounder management 30 years ago. The industry believes the staff has their own agenda (witness the 15 pages of rationale for social engineering that was provided by staff between the Council-approved May hearing version and the July version) and is way overstepping their authority in making policy for the Council. There should be no additional frameworked management measures at this time.

In summary, I fully support the industry participant's position on Alternative 4.3 with the minor modifications to the proposed percentages. Industry supports an ownership cap of 35% and the total should be 65% for surfclams. Industry believes that for ocean quahogs the ownership cap should be 40% and the total should be 70%. There is no reason for a change in any of the Objectives. No additional management measures should be suggested for frameworking at this time. The industry, NMFS, and the Mid-Atlantic Fishery Management Council (MAFMC) have successfully operated these fisheries efficiently and cooperatively since implementation of the ITQ allocations in 1990. This fishery management system is NOT broke. Please don't go backwards to the days of government micromanagement with it.

Thank you for your consideration of these comments. Please do not hesitate to contact me should you have any questions.

Sincerely yours,

Thomas B. Hoff Ph.D.

2227 Trumbauersville Road

Quakertown, PA 18951

215-536-3543

Quality Is a Family Tradition
LaMonica
SINCE 1923
"Home of the Hand Shucked Clam"

September 13, 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

Dr. Moore:

LaMonica Fine Foods (LFF) appreciates the opportunity to comment on the Atlantic Surfclam and Ocean Quahog Excessive Shares Amendment, adding to the administrative records, written comments that were orally made at the Cape May Public Hearing on August 1, 2019.

The Mid-Atlantic Fishery Management Council (MAFMC) insists that a percentage cap has to be defined for the Surfclam and Ocean Quahog Individual Transferable Quota (SCOQ ITQ) fishery in accordance with National Standard 4 of the Magnuson –Stevens Fishery Conservation and Management Act (MSA) and has offered six excessive shares alternatives to meet that end. Additionally, the MAFMC has proposed three excessive shares review alternatives within the same public hearing document that deserve commenting and consideration from an industry point of view for future years.

From the outset, starting with the April 2019 MAFMC Meeting, it became apparent through comments from MAFMC leadership and staff, NMFS staff, and members of the Surfclam and Ocean Quahog Committee that two of the six excessive shares alternatives would not be acceptable to the National Marine Fisheries Service (NMFS), namely Alternative 1, No Action/Status Quo and Sub-Alternative 2.3, Quota Share Cap at 95%. The surfclam and ocean quahog ITQ holders (hereafter referred to as the "clam industry") were encouraged to examine the remaining alternatives and come to a consensus agreement of an alternative to define excessive shares. The clam industry, recognizing the coercive actions of both the MAFMC and the NMFS did come to an agreement on a modified version of Alternative 4.3, a two-part cap approach, ownership, leased shares, and total shares on an annual basis, according to the following table:

Modified Alternative 4.3, Two-Part Cap, Ownership, Leased, and Total

	Ownership Cap	Leased Cap	Total Annual Cap
Surfclams	**35%**	**30%**	**65%**
Ocean Quahog	**40%**	**30%**	**70%**

LaMonica Fine Foods
PO Box 309
48 Gorton Road
Millville, NJ 08332

The clam industry has operated in good faith in agreeing to a definition of excessive shares that accomplishes what the MAFMC and the NMFS maintain is necessary under National Standard 4 without causing any significant harm to current, participating shareholders that have actively invested in the clam industry over the past decades from when Amendment 8 was implemented. The clam industry has acted in good faith with the MAFMC and the NMFS to satisfy requirements under National Standard 4.

However, the MAFMC further maintains that, while there must be a definition of an excessive share, it is also considering social concerns for fishing communities, as expressed in MSA National Standard 8 – which includes community participation, and a sense of equity and fairness that may, in part, be grounded in the history of fishery management in this country. This aspect of the excessive shares amendment expands into economic and social aspects of the clam industry that neither the MAFMC, nor the NMFS, fully understand, and the result of their considered actions would encumber the clam industry with a form of social engineering that has no part in the development of a definition for an excessive share.

The clam industry specifically objects to Alternatives 5 and 6 which would be disasterous for the currently well managed clam industry. These two alternatives in the Draft Public Hearing Document, Alternatives 5 and 6, in our estimation, appear to violate National Standard 5, wherein the alternatives are in essence a social engineering mechanism to facilitate entry into the fishery, of currently unused/unfished allocations, that would replace existing industry affiliated allocations (owned and/or leased), and in fact could very well allow these new shareholders the economic upper hand in controlling a price for their use! This anticipated practice, should either Alternative 5 or 6 be adopted, would not only re-arrange the existing use of owned or leased shares, rendering the fishery less efficient, but also put market power in the hands of shareholders that are currently unengaged in the SCOQ ITQ fishery.

Whereas the MAFMC is quick to reference National Standards in the public hearing document to justify their social and economic objectives, the clam industry would like the MAFMC to consider another part of the MSA, National Standard 5 – Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; **except that no such measure shall have economic allocation as its sole purpose.**

Alternatives 5 and 6, in our estimation, appear to violate National Standard 5, and should be completely rejected.

LFF sees these unintended consequences in both Alternatives 5 and 6 whereby those shareholders (owned or leased) that have invested in the SCOQ ITQ fishery since Amendment 8 was implemented could very well be replaced by unengaged shareholders who have not invested

in the fishery. National Standard 5 does not allow for a conservation and management action to have as its sole purpose, the economic allocation that Alternatives 5 and 6 appear to create. Defining an excessive share in the SCOQ ITQ fishery and demonstrating that a certain cap percentage is exerting market power, are difficult objectives in and of themselves. Considering Alternatives in the public hearing document that have nothing to do with defining excessive shares but rather serve as a redistributing/reallocation ITQ rights mechanism should not be selected for implementation.

The public hearing document for excessive shares also includes less obvious but equally important issues on future management practices following the implementation of the excessive shares amendment.

At **Box ES-2. Summary of the excessive shares review alternatives**, the clam industry supports **Alternative 1: (no Action/Status Quo)**-There would not be a requirement for periodic review of any implemented excessive shares measures, as could be done through a Framework. This excessive shares amendment has been over 10 years in the making and to allow for periodic review through a Framework Adjustment cannot be justified, based on the need for long term stability in the clam industry.

At **Box ES-3. Summary of the framework adjustment process alternatives**, the clam industry supports **Alternative 1: (No Action/Status Quo)**, No changes to the list of management measures that can be addressed via the framework adjustment process.
At **Box ES-4. Summary of the multi-year management measures alternatives**, the clam industry supports **Alternative 2: (Allow for specifications to be set for a maximum number of years consistent with the NRCC-approved stock assessment schedule).**
Lastly, this excessive shares amendment would allow the MAFMC to revise the management goals and objectives of the Atlantic Surfclam and Ocean Quahog Fishery Management Plan that have served the industry and management of these two important resources well since the Implementation of Amendment 8 when the SCOQ ITQ System was developed. **The clam industry sees no need to revise any of the goals and objectives implemented through Amendment 8 and questions why the MAFMC would want to revise a system that is well managed.**

Throughout the difficult process in 2019 in developing the excessive shares amendment, the clam industry has acted in good faith to help the MAFMC and the NMFS develop a definition of excessive shares as a percentage of the cap on allocations, as they say are necessary under National Standard 4 and have encouraged the clam industry to develop a consensus preferred option which the clam industry has presented at the four public hearings and in written form. However, during this process the clam industry has witnessed questionable actions taken by the MAFMC's Scientific and Statistical Committee (SSC) in commenting on economic issues related to the excessive shares amendment, and questionable actions taken by MAFMC staff in

supplementing a Draft Public Hearing Document after it had been approved by the full Council for public hearings. The clam industry believes that the two questionable actions referenced above are detrimental to the clam industry and, in fact, prejudicial in advocating for Alternatives 5 and 6 for excessive shares. LFF is aware that other commenters will be elaborating on the inappropriateness in how MAFMC and/or NMFS staff revised the Council-approved public hearing document to provide additional support for Alternatives 5 and 6 before releasing the document to the public in July 2019, the inclusion of a term, "excessive consolidation", and the inclusion of information that may not measure up to a 515 Request challenging the Information Quality Guideline set by the NMFS. LFF will be closely watching further actions on this excessive shares amendment to see how the questionable facets of the public hearing process are explained.

LFF appreciates the opportunity to comment on all the sections of this Draft public hearing document on excessive shares.

Sincerely,

Michael A. LaVecchia, Vice President
LaMonica Fine Foods

cc: Daniel P. LaVecchia
Peter Himchak

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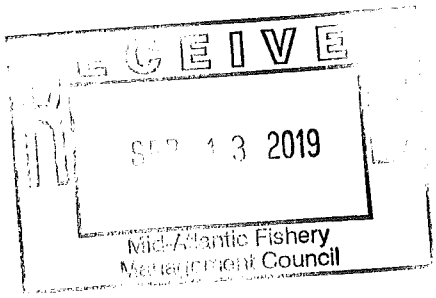

August 22, 2019

Mid Atlantic Fishery Management Council
800 North State Street
Dover, Delaware 19901

Re: Excessive Share Amendment

Council Members and Staff,

I am Tony Martin, owner of surf clam allocation. We lease our quota in full every year since we sold our vessel.

We disagree with the need for an excessive share definition but if there must be one then it needs to be a cap high enough to allow for the industry to consolidate or make changes with so few players. It was originally designed to reduce harvest capacity and many of us took advantage of this and have relied on this income year to year.

The proposed Alternatives 5 and 6 will have detrimental impacts on our income. These Alternatives are splitting the quota into A and B shares. The A shares will be handed out based on the level of harvest on the last few years. This will be devastating to us. The A shares will be approximately 65% of what we have normally been receiving. The marketability of clams is limited for the foreseeable future due largely to clams being an ingredient and not a center of the plate item. The other reason is the large amount of imports that are allowed into our country diminish the ability to sell more.

Its shows that the purpose is to increase activity in the leasing market, but the result will be nothing more that a loss of income for many quota holders that were given the opportunity reduce their harvest capacity years ago by the implementation of transferable quotas. There is no reason for this and 5 and 6 should not be chosen.

Thank you for the opportunity to express our public comments.

Anthony E. Martin

To the Council,

I'm in favor of matching the quota with industry's needs. People have told me that clam ITQ's are strictly a processors quota. I don't believe that was the intent of the council when it was developed. I hope it's not now.

When clam ITQ's were first distributed, individual allocation holders had the option of buying, selling, or leasing theirs or someone else's allocation. If independent fisherman were not being encouraged to retain their quota their option to lease would not have been available. Most people did not receive an allocation that would be adequate to maintain a boat. Not having a working relationship with lending institutions made it very difficult for independent fishers to purchase ITQ's! In most cases, sell or lease was the only options.

When Amendment 7 was in force, (this was a time-based quota) there was a period of time when all clam boats were allowed 2 days a week to fish. The annual quota was monitored quarterly and if the catch was falling behind, the council would increase time at sea and reverse it if the catch was excessive.

The American Original Co. was the largest clam company with the largest fleet of clam boats. They did however buy shell stock from independents for a portion of their needs. American Original decided to lay off all their independent boats when the next quota estimate was posted; the quota was not being harvested. American Original told the council they needed to increase the time allocated at sea from 2 days to 3 days, and to the council's credit, they said that would not happen until all the independent boats had a market. Sound familiar?

I'd like to see more representation of unaffiliated clammers (ITQ holders) on the council and industry panel.

Thanks

From: Squarespace
To: Montanez, Jose
Subject: Form Submission - SCOQ Excessive Shares Amendment Comments
Date: Friday, 13 September 2019 11:12:29 AM

Name: Joe Garvilla

Email:

Comments: August 29, 2019

To whom it may concern,

I am told that as an armchair ITQ owner, my son and I are second rate stakeholders in the eyes of the current Surf Clam and Quahog industry.

Here is a brief listing of my resume: I have had four and a half years of active duty in the US Coast Guard, four years on a tug boat, and twenty years on commercial fishing vessels, most of which was spent clamming off the Atlantic Coast. I am seventy-one years old now and my clamming days are over. My son's resume is as follows: Mike started fishing at the age of fourteen (Bay clamming). After graduating high school, he went to work on a sea clam boat out of Ocean City, MD. He worked his way up from a deck hand to captain in two years (youngest captain in the fleet at age 19). He remained in that industry for twenty-three years, fishing from Cape Cod, MA to False Light, NC. He currently is a captain of a research vessel. If this amounts to armchair stakeholders, I would like to see the resume of current ITQ holders.

I have three grandchildren, two of which have expressed interest in the clam business. I have not encouraged them because I don't know if there is a place for independent stakeholders in this industry now or in the future.

We have not had a contract to lease our ITQ's in eight years. I would welcome the opportunity to bid competitively against other ITQ holders but that is not what happens. Nine years ago, I was told the reason no one needed my clams was because everybody already had contracts. Fast forward from 2010 to 2019, does anyone believe all the same contracts are still in place?

For four years out of eight years, I leased less than twenty percent of my quota. The other four years, I didn't lease any of my quota. I was told repeatedly "I don't need any of your quota unless you are willing to sell me the quota."

Originally the annual clam quotas were established using two criteria. The first was industry need for the resource and the second was whether the resource could sustain itself. When the initial clam quota was distributed, I received about twenty-two percent of the allocation we now possess. The balance of seventy-eight percent was purchased. When the council distributed the original quota, they said they wanted to encourage independent ownership as a means of protecting the resource in the same way farmers watch over their farms.

Hopefully the government has not had a change of strategy for managing the resource.

Sincerely,

Joe Garvilla

(Sent via *Mid-Atlantic Fishery Management Council*)

THOMAS SPROUL, PH.D.

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SCOQ EXCESSIVE SHARES AMENDMENT COMMENTS

September 13, 2019

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

Dear Dr. Moore:

I have been retained by members of the clam industry to provide an expert peer review with respect to economic analysis and statements in the Atlantic Surfclam and Ocean Quahog (SCOQ) Excessive Shares Amendment Public Hearing Document. I hold a Ph.D. in Agricultural & Resource Economics from the University of California, Berkeley, and I am currently employed as Associate Professor (with tenure) of Environmental & Natural Resource Economics at the University of Rhode Island (URI). I also serve as a member of the Committee for Economics and Social Sciences of the Atlantic States Marine Fisheries Commission (ASMFC). To be clear, these comments are my own and do not reflect any official position of either URI or the ASMFC.

The content of my review is below – it is hereby submitted as public comment regarding the Public Hearing Document.

In constructing my review, I considered these expert review documents referenced in the Public Hearing Document:

- the 2019 Northern Economics report (NEI, 2019);
- the 2011 Compass Lexecon report (Mitchell et al., 2011); and
- the 2011 Center for Independent Experts (CIE) report, including the summary (Walden, 2011) and the individual expert reviews by Arnason, Katchova and Lopez.

I also considered the Report of the May 2019 SSC Meeting (SSC, 2019), which was incorporated by reference. This document was also the apparent source of text justifying Alternatives 5 and 6.

My findings are as follows.

The expert review documents conclude there is insufficient information to support implementing a specific excessive shares cap, or even if one is needed at all. They do not conclude that harmful market power is being exercised in the SCOQ fisheries, and they note that implementing an unneeded cap can lead to economic harms.

Thus, I find that Alternative 1 (Status Quo/No Action) is the most prudent alternative to adopt, followed by Alternative 2.3 (Quota share cap at 95%), which has the least potential for economic harm among the options where a share cap is established.

Alternatives 5 and 6 (two-tier quota) are likely to be the most economically harmful based on my analysis, so I strongly recommend they not be adopted. Specifically, industry data suggest that non-seller, non-participant quota holders are themselves highly concentrated. The two-tiered quota structure contemplated will turn these non-participants into oligopoly sellers of their "A shares." Economic theory predicts they will restrict sales to increase their price received and that landings in the SCOQ fisheries will fall below their current level.

With respect to all other Alternatives and Sub-Alternatives, I did not have resources to differentiate between combinations of leasing versus ownership caps. However, all of these can be prioritized according to how little impact they have, or might have, on industry.

In contrast, the Public Hearing Document appears to come to the exact opposite conclusion, making a case that the most aggressive interventions are best. I believe this conclusion is based on the following inaccurate and/or unsubstantiated economic statements:

1. The Public Hearing Document reads as if the harmful exercise of market power in the SCOQ fisheries is an established fact. This is untrue. None of the expert review documents come to this conclusion, nor is it supported by industry data. The only support for this claim is text apparently copied from the SSC meeting report, which is itself not supported by expert evaluation.

2. The Public Hearing Document also reads as if it is an established fact that industry consolidation leads to negative socioeconomic impacts. This is untrue. This claim is not supported by the expert review documents, nor is it supported by analysis in the Public Hearing Document itself.

3. The Public Hearing Document misrepresents the findings of the Compass Lexecon report and the CIE report by claiming they recommend a 40% excessive share cap. This is untrue. Both reports clearly indicate there was not enough information in 2011 to identify the correct level of an excessive share cap, or if one should exist at all. There is no new information provided to address the experts' concerns.

4. The Public Hearing Document includes text claiming there is monopsony power in the quota market. This text was apparently copied from the SSC meeting report. The SSC meeting report supports this claim by asserting the very existence of non-participants who can't sell quota is evidence of monopsony power in the quota market. This claim is not supported by any of the expert review documents, nor is it supported by economic theory or the facts of the SCOQ fisheries.

In sum, I hope you will consider my recommendations. I believe the Public Hearing Document (PHD) comes to the exact wrong conclusions regarding market power and the appropriate level of intervention into the SCOQ fisheries. The details of my analysis are presented below.

There is insufficient information to implement an excessive shares cap.

From Compass Lexecon (Mitchell et al., p. 30):

> "The relevant information the regulator must collect includes the scope, quantity, and flexibility of supply of substitute products, the level of excess capacity in harvesting and processing, the degree of product heterogeneity, the relative bargaining power of buyers and sellers, the ability to price discriminate, ease of entry, and efficiencies (or economies of scale). This information would be required for ITQ transactions as well as related industry activities including fishing (harvesting) and processing. Information on product substitution should have sufficient detail for the determination of relevant markets, as described in the Horizontal Merger Guidelines. The product of this inquiry

> will be an informed, fact-based judgment regarding the highest degree of concentration that would be consistent with a well-functioning, competitive market."

Each of the expert reviewers in the CIE Report agreed with these statements and indicated that establishing an excessive shares cap without the appropriate data available could result in economic harms to the SCOQ fisheries. As an example of how little was known at the time, Compass Lexecon developed a 40% cap using the "Rule of Three" but indicated that this was not supported by their findings regarding market power. Their use of the "Rule of Three" was considered to be ad hoc by CIE reviewer Katchova (p. 7 of her review), who indicated it was not clear how this rule should interact with the rest of their framework. At the same time, CIE reviewers Arnason (p. 8 of his review) and Lopez (p. 12 of his report) suggested that caps of 83% and 100%, respectively, might be equally reasonable given available data. Compass Lexecon acknowledges the 100% figure is possible, but deems it unlikely (pp. iv, vi, 1). Further, Arnason, the 1st CIE reviewer, states on page 14 of his expert review:

> "…I don't see any reasonable basis in the [Compass Lexecon] report or in the other data about this fishery… to set this cap. If anything my own investigations… suggest that to the extent that a cap should be set, it should be set substantially higher. My basic conclusion is that there are insufficient data to set any cap at this stage and, therefore, especially given the possible costs involved, the prudent course of action is to refrain from doing so."

There is no evidence in the PHD of new data to satisfy these expert recommendations for data collection and analysis since the recommendations were made in 2011. NMFS began collecting quota price data in 2016, but that was not available for analysis in the Northern Economics report (p. 95). Thus, it appears that the current consideration of implementing excessive share caps is continuing with complete disregard for the recommendations in the expert review documents.

There is no expert finding of harmful market power in the SCOQ fisheries.

As addressed in the various expert review documents, and at times faithfully transcribed in the Public Hearing Document (PHD), the potential exercise of market power in these fisheries requires either restriction of quota transactions or restriction of harvested clams. These

restrictions can be caused either by buyers or sellers, depending on who has market power over which market. Sellers exercising market power are called monopolists or oligopolists (depending on whether there is one or more) and they exercise market power by restricting their sales to increase the price received. Buyers exercising market power are called monopsonists or oligopsonists and they exercise market power by restricting their purchases to decrease the price paid.

Figure 1 shows each potential scenario where processors could potentially exercise market power in the SCOQ fisheries. I evaluate them in turn, below. None of the potential market power scenarios are supported by the available evidence.

Potential Processor Market Power Scenarios

Quota Market. Market power used to restrict quota transactions.

1. Quota *oligopoly*
   - Sales of quota are restricted by large holders to increase price received.
2. Quota *oligopsony*
   - Purchases of quota are restricted by large buyers to lower price paid.

Clams Market. Market power used to restrict clams transactions.

3. Shucked clams *oligopoly*
   - Sales of shucked clams to food companies are restricted to increase price received.
4. Harvested clams *oligopsony*
   - Purchases of clams from independent harvesters are restricted to lower price paid.

Figure 1

Quota Market Power Scenarios.

Scenario 1: Quota Oligopoly. Neither the SSC nor any of the expert review documents have found evidence of monopoly/oligopoly restriction of quota sales. For example, Compass Lexecon concluded that "…the evidence we analyzed does not support a conclusion that market power is currently being exercised through the withholding of quota (or, apparently, through other means as well)" (p. 26).

Scenario 2: Quota Oligopsony. Only the SSC has asserted there is monopsony/oligopsony restriction of quota purchasing, but without any outside support for the claim. I believe this claim is based on incorrect economic reasoning. The below text appears without any supporting reference on pages 153 and 156 of the PHD, and on page 9 of SSC (2019):

> "Once the processing sector accumulated enough catch shares to match the market equilibrium output [MEO] the game was over. The processors would produce the MEO level of production with their own annual shares, and all other annual shares would go unused. The processors have monopsony power with respect to the purchase of quota shares. If TAC < MEO, as it is in every other ITQ program, in order to fulfill the market demand, all of the catch shares will have to be utilized and all ITQ shareholders would be able to utilize their shares and the monopsony power would disappear. Since the condition in these fisheries is that the TAC > MEO, some catch share owners cannot rent or sell their shares due to the monopsony power of the processors."

As I will show below, the SSC logic is flawed because quota oligopsony does not cause unsold quota to go unused. 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 volumes in the clams market below TAC (that would otherwise be fully harvested). The second one would be oligopsony power over harvests. By itself, unused quota offers no conclusive evidence for either case. I will show in what follows that the other available evidence suggests excess TAC explains the unused quota, rather than market power of processors.

Clams Market Power Scenarios.

Other than restricting quota, the only potential for market power is restricting the clams trade itself. Any restriction of clams would be expected to originate with processors, based on incentives to either restrict sales of shucked clams (oligopoly power as sellers to food manufacturers) or restrict purchases of harvested clams (oligopsony power as buyers from independent harvesters). In both cases, processors would be observed restricting the total volume of clams since they would not benefit from building up unsold inventory.

None of the expert documents conclude that processors are exercising market power over the clams trade. Compass Lexecon states "…the evidence does not support the conclusion

that the processing sector has exercised market power in the Surfclam or Ocean Quahog fisheries" (p. 26, note 73). Along similar lines, Northern Economics concludes: "While the barriers for new entrants into the harvesting and processing sectors of the surfclam and ocean quahog fisheries are substantial, there is insufficient information to definitively conclude that these barriers have led to market power being exercised and economic inefficiencies being created" (p. 72).

Beyond the experts' conclusions, industry data I have reviewed suggest that the non-seller non-participants are highly concentrated, with a single quota holder accounting for over 600,000 bushels of ocean quahog (almost 12% of TAC), and the top three accounting for more than 1,100,000 bushels (over 20% of TAC). As I understand it, these non-participants collectively, and the largest one individually, have enough quota to start their own competing 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. The fact that they have not done so is further evidence that market power is not being exercised by processors over the clams trade.

Scenario 3. Shucked Clams Oligopoly. Compass Lexecon concludes that processors are unlikely to be oligopoly sellers of shucked clams because they are unlikely to be able to restrict sales (in order to exercise market power). This is due to the presence of competing products and due to the market power of the food manufacturers that are their main customers (p. 25). Similarly, Northern Economics concludes that "competition for buyers and availability of imported substitutes suggest that processors are unable to control their selling price" (p. 72). These findings are not disputed by the SSC nor by the CIE expert reviewers.

Scenario 4. Harvested Clams Oligopsony. With regard to concentrated processors possessing monopsony power over independent harvesters, Northern Economics cites a 2009 study by the National Marine Fisheries Service (NMFS): "NMFS determined that there was insufficient information to definitively conclude that this concentration has reduced the bargaining power of vessels over ex-vessel prices or ITQ quota share price" (p. 72). Compass Lexecon also concludes that processors are unlikely to be restricting purchases of harvested clams because i) a vertically integrated processor "would not benefit by underutilizing its owned harvesting assets in order to depress the price of harvesting services" (p. 26), and ii) quota

prices near zero are consistent with excess TAC rather than with harvest being restricted below TAC (p. 10).

Despite these conclusions, the PHD states (this text appears on pp. 106, 133 and 138-139):

> "The condition of TAC not binding and quota prices of zero are also consistent with a monopsony scenario. Given that this is a vertically integrated industry and there with a small number of vessels and processors predominately controlled by processors, the exercise of monopsony is of primary interest and it is a larger concern than monopolization in the output market (Walden, 2011)."

This is the only citation of an expert review in the PHD given to support the claim that market power is being exercised by processors. The CIE report (Walden, 2011) in general mentions that Compass Lexecon should have been tasked with evaluation of harvest monopsony rather than quota monopoly, because it is more likely to be a problem in the SCOQ fisheries. The report does not, however, reach any conclusion that monopsony power is being exercised.

The key statement in the above text is "The condition of TAC not binding…" which comes from the expert review of Lopez (p. 13). He correctly points out that TAC not binding and quota prices near zero might be consistent with a) a competitive market with excess TAC, or b) a market in which vertically integrated processors will have an incentive to restrict harvests once their own harvesting capacity is used up, since this also could result in near zero quota prices. Additional information is needed to distinguish between the two cases.

Critically, both Lopez and Compass Lexecon (p. 26) agree that vertically integrated processors will not restrict their own harvests if they are exercising market power. Thus, if they are not harvesting at close to 100% capacity, it is evidence that processors are not exercising monopsony or oligopsony power and rather we are in a world of excess TAC. To assess this concern, I interviewed four major processors in the SCOQ fisheries, and was informed that they each have 10-30% unused harvest and processing capacity, and unused, accessible quota (either owned or by leasing arrangement). Combined with the other available evidence, this suggests processors are not restricting harvests artificially but are instead being truthful in reporting the inability to sell more shucked clams. In other words, while oligopsony

power of processors over harvesters is worthwhile to consider and evaluate (as per all CIE reviewers), it does not appear to be exercised in the SCOQ fisheries.

The SSC claim of quota monopsony does not make sense.

The only potential form of market power not fully addressed above is oligopsony restriction of quota purchasing. This is asserted by the SSC to be taking place but not supported elsewhere in the expert review documents: "The very existence of non-participating ITQ owners is proof of monopsony power" (SCC, 2019, p. 10; referenced but not repeated on pp. 153 and 156 of the PHD). I believe this claim by the SSC to be incorrect, perhaps due to inaccurate or incomplete evaluation of the supply-and-demand model.

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. Supply and demand curves in a competitive quota market (there has been no finding to the contrary) are shown in Figure 2 (no excess TAC) and Figure 3 (excess TAC).

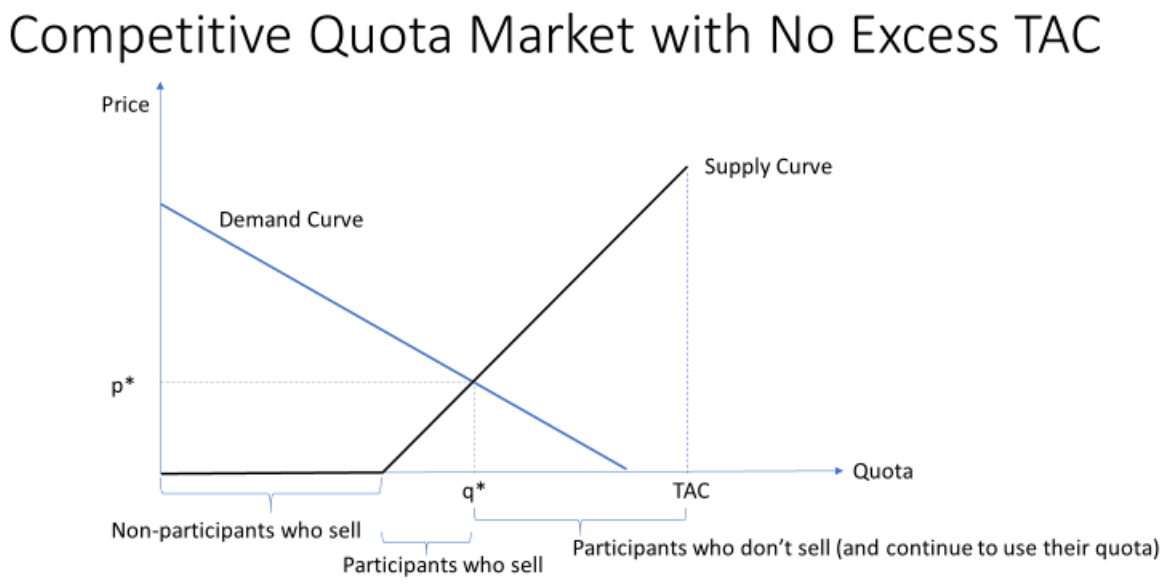

Figure 2

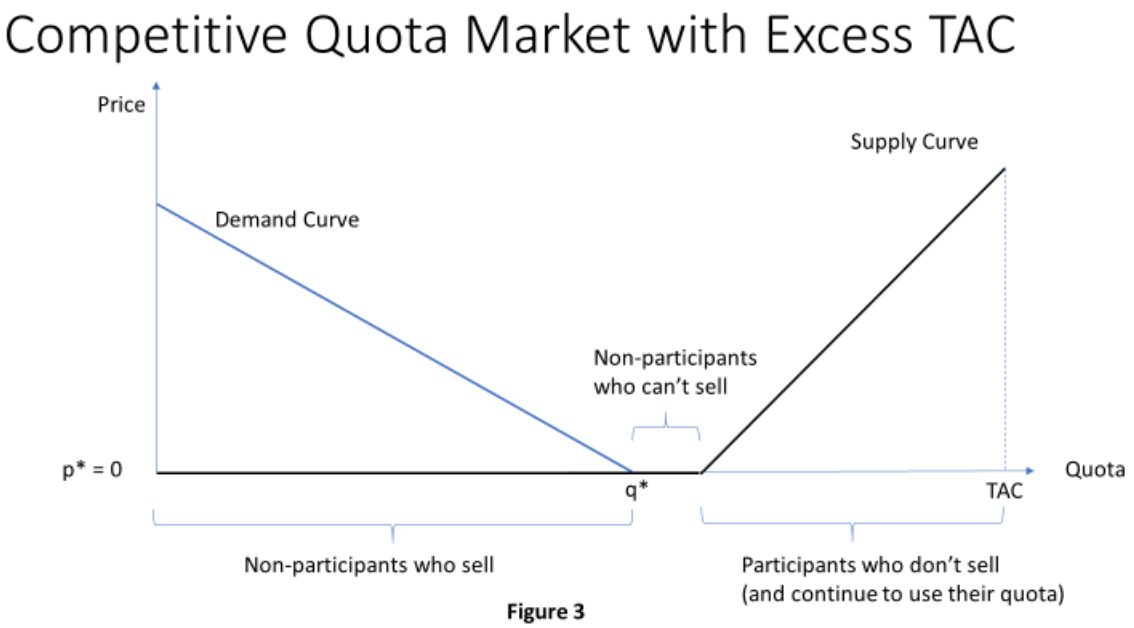

Figure 3

In both Figures 2 and 3, q* and p* are the equilibrium quantity and equilibrium price, respectively. The key difference between the figures is that Figure 2 shows the quota market when there is no excess TAC – the TAC is binding on the fishery. In this scenario, not all quota is sold, but all quota is harvested because those who don't sell can (and will) still use their quota to make a profit. In contrast, in Figure 3, there is excess TAC – the TAC is not binding on the fishery because it is not economically profitable to harvest the full quota. In this scenario, the full demand for quota can be supplied, but prices will be near zero and there will be non-seller non-participants, features that are currently observed in the SCOQ fisheries.

Consider how the picture changes under quota monopsony. A large buyer exercises monopsony power by reducing the amount of quota purchased in order to reduce the price they pay. The large buyer has an incentive to drive price down by restricting their purchasing to only the least profitable harvesters, who must accept a lower price. There is no incentive to restrict quantity from non-participants because there are no other lower cost sellers.

In comparison to Figure 2, Figure 4 below demonstrates these ideas for quota monopsony with no excess TAC. In the Figure, q* is the competitive market equilibrium quantity corresponding to the price p*. To maximize profits (this is the point where marginal expenditure crosses the monopsonist's demand curve), the monopsonist chooses the quantity q^M and pays only the price p^M for what they purchase. Since a monopsonist only

operates against the upward-sloping part of the supply curve, there is no incentive to reduce quantity to the point where non-participants are excluded.

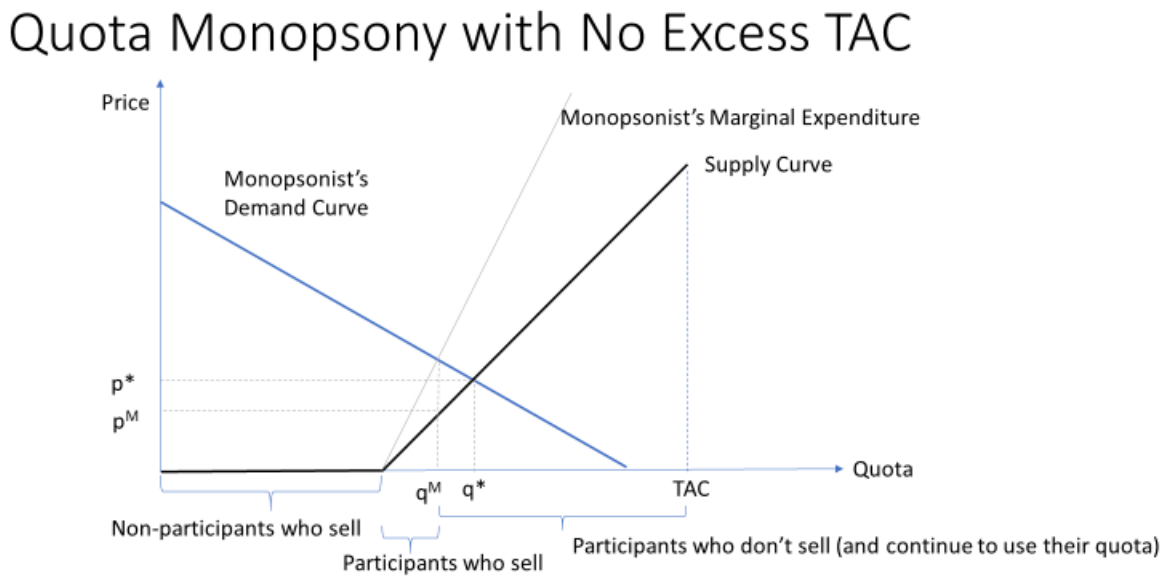

Figure 4

Further, the exercise of market power in this case leads only to a limit of exchanges between profitable participants and the monopsonist – the difference between q^M and q* is the number of participants who are now unable to sell due to the exercise of market power. As in Figure 2, the quantity of landings is not reduced (it remains at the TAC) because those who don't sell can profitably use quota on their own. Thus, the SSC claim, that non-participants being unable to sell is evidence of quota monopsony, is incorrect.

Otherwise, if the SSC is mistaken and there is in fact excess TAC in these fisheries, then economic theory predicts we will observe market behavior consistent with the observed facts. Namely, those who can use quota profitably will do so, some who cannot use it profitably will sell or lease quota, and the rest of those who cannot will end up as non-participants who can't sell. Thus, so long as quota held by non-participants exceeds the demand of large buyers (as occurs with excess TAC), there is no incentive for large buyers to exercise market power. This is shown in Figure 5 below, which is materially identical to Figure 3, because the monopsonist will choose the competitive outcome in this case.

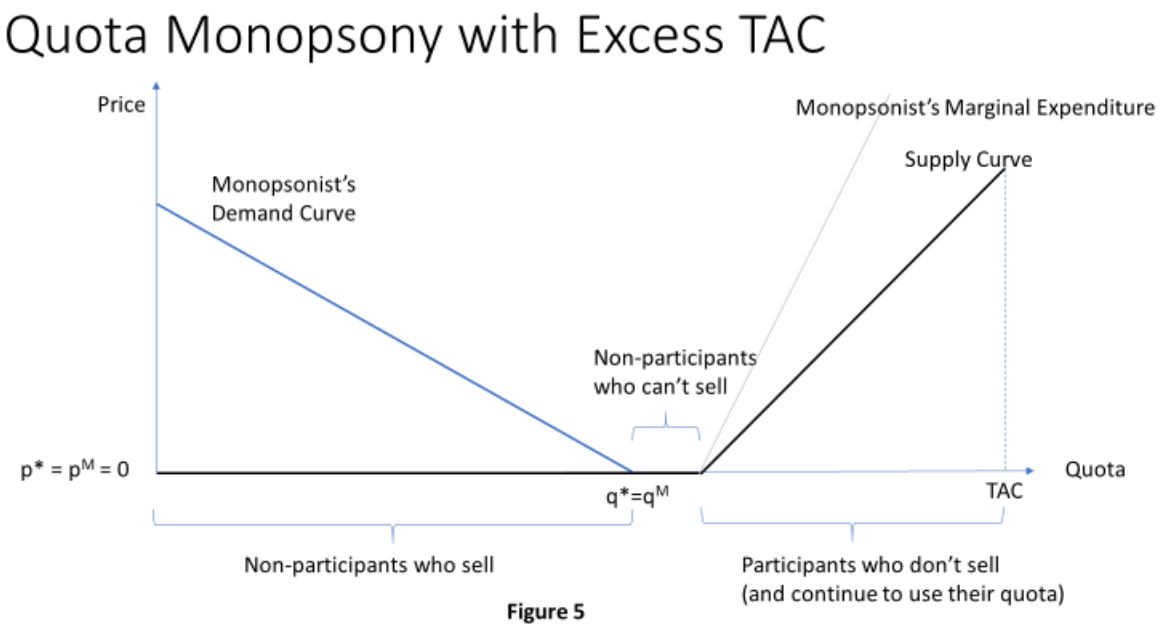

Figure 5

To summarize, the SSC asserts that non-participant, non-selling quota holders are evidence of monopsony power in the quota market. This claim is inconsistent with the economic reasoning outlined above regarding monopsony power in the quota market. In fact, the observation of non-selling, non-participant quota holders is more consistent with excess TAC than with quota monopsony under a binding TAC.

Finally, it is also possible that the SSC has mistakenly conflated quota oligopsony power with harvest oligopsony power. I say this because harvest oligopsony is the only market power scenario in which there would be no excess TAC under perfect competition and yet non-participants are still unable to sell, due to oligopsony restriction of total volumes in the clams market below TAC. However, as detailed above, harvest oligopsony power being exercised by processors is not supported by the expert review documents or the available evidence.

Setting an unneeded excessive share cap is potentially harmful.

The Compass Lexecon report and the expert reviewers of the CIE concluded that implementing a share cap without sufficient information should be avoided because it could be harmful. It has been demonstrated above that there is no credible finding of market

power being exercised in the SCOQ fisheries, so there is no apparent economically-motivated need for an excessive share cap to be set at this time.

The expert review documents indicate a number of potential downsides of prematurely setting an excessive share cap without sufficient information. Chief among them are the loss of economies of scale, which may be necessary to the survival of a processing firm (Lopez, page 12) and the loss of economic efficiency gains from redistribution of output towards more efficient firms, "that may be crucial for the survival of the industry, particularly when demand is depressed" (Lopez, page 15). Both of these types of efficiency gains are ostensibly the chief goals of the SCOQ ITQ program (Amendment 8) in the first place (NEI, 2019, page ES-3, Table ES-1, Goal 3, and p. 52), so to limit them without accurate assessment of tradeoffs seems arbitrary.

The Northern Economics report (p. 81) indicates that the Council is developing an excessive share amendment because NMFS has determined the SCOQ Fisheries Management Plan (FMP) to be out of compliance with National Standard 4 due to the lack of an excessive share cap. Assuming that the amendment must happen regardless of available data, it is worth evaluating what type of excessive share regulation has the least potential for harm. Since the available evidence does not suggest that harmful market power is currently being exercised, any adopted regulation should leave current ownership and leasing practices undisturbed. Establishment of excessive share caps above these current levels depends on evaluating whether further competitive pressures on the clam industry or further technological, harvest, or other production efficiencies will necessitate further consolidation in order for industry participants to survive. In the event an excessive share cap is set, there should be a mechanism in place for timely, responsive evaluation of the need for changes to the cap so as not to harm the industry. This observation is confirmed in the PHD: "an excessive shares measure established at an appropriate level now could over time become inefficiently high (offering too little constraint on the exercise of market power) or low (offering too much constraint on efficient competitive activity in the industry)" (p. 21).

Alternatives 5 and 6 are likely to be harmful.

Consideration of the A and B shares structures contemplated in Alternatives 5 and 6 appears also to be justified only by the text in the PHD that was taken from the SSC. I believe that Alternatives 5 and 6 will form the non-participant quota holders into oligopoly sellers of their "A shares" because industry data suggests that the non-participant, non-selling quota holders are themselves highly concentrated. Turning them into oligopoly sellers will lead to reduction of landings and resulting economic harms. This obvious potential downside is only briefly mentioned as unlikely (pp. 155 and 158) but never evaluated within the PHD, which states that expected impacts on landings and/or socioeconomic outcomes from these Alternatives are either none or positive (pp. 154 and 157).

The PHD describes the unique feature of Alternatives 5 and 6 on pages 152 and 156:

> "…this alternative would also establish Quota A and B shares (for each individual species), where A shares is the current 3-year landings… 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."

For example, if 40% of TAC has gone unharvested in recent years, then every quota holder will receive 60% of their quota as A shares and 40% of their quota as B shares. The clear intent of this policy is to require leasing of quota from non-seller non-participants, if current levels of production are to be maintained. In particular, this means the productive 60% of the fishery will now need to lease 40% of their current production from non-seller non-participants before any further quota can be released. The PHD states on pages 155 and 158:

> "while not likely, there could be quota allocation holders that may not want to lease their quota allocations out thus impeding the release of Quota B shares. If this were to occur, landings could be affected and additional flexibility for increasing harvests if there is a surge in demand for surfclams or quahogs midway through the fishing year could not be met."

The assessment "while not likely" is not supported by economic reasoning, yet the potential downside of the policy is not further addressed beyond a statement that impeding the release of B shares might be met with changing the policy to something less than 100% use of the A shares as a trigger. As mentioned above, industry data suggest that the non-seller non-

participants are highly concentrated, with a single quota holder accounting for over 600,000 bushels of ocean quahog, and the top three accounting for more than 1,100,000 bushels. Thus, the ability of A shares to hold B shares captive will essentially turn the non-participants into oligopoly sellers of quota. Economic theory predicts they will restrict quantities sold to maximize the price received, and since all unsold quota will be held by non-participants, total landings in the SCOQ fisheries will decrease below their current level.

To be clear, I am asserting that the contrived market for A shares will have a fundamentally different structure than the quota market and clams markets as already evaluated. It is this different structure which will incentivize non-participants to exercise market power in a manner not observed in the other domains. Recall that oligopoly power is exercised by reducing the quantity sold in order to charge a higher price to buyers with the highest willingness-to-pay. Since the buyers faced by the non-participant sellers are all of the active industry participants who can use quota profitably, and since industry participants vary in their ability to profit (and hence their willingness-to-pay), the opportunity will be available for the oligopoly sellers of A shares to restrict quantities and raise prices on quota.

As discussed above, the exercise of market power is only harmful if the lost economic efficiency is not offset by efficiency gains elsewhere. In this case, there are no efficiency gains because the non-participants have no cost (opportunity cost or otherwise), so there are no potential economies of scale. The only other potential efficiency gain would be if the oligopoly power over A shares by non-participant quota holders was balancing out oligopsony power by quota buyers and therefore reducing efficiency losses. This is really the only way that the proposed reallocation of shares makes economic sense. However, as discussed above, the harmful exercise of oligopsony power in the quota market is asserted by the SSC without evidence and is not supported by the available evidence, by economic theory, or by any of the expert review documents. Thus, the share reallocation mechanisms in Alternatives 5 and 6 are likely to be harmful.

Alternatives should be ranked to minimize the potential for economic harm.

As suggested above, there is no expert conclusion of market power, there is potential for economic harm when setting an excessive share cap that is not needed, and Alternatives 5

and 6 are expected to be particularly harmful among the Alternatives considered. This analysis suggests a ranking of the Alternatives under consideration from least potentially harmful to most potentially harmful.

Alternative 1 (No Action/Status Quo) would be the least potentially harmful, followed by Sub-Alternative 2.3 (Quota share cap at 95%) which is the least restrictive of the options in which a share cap is set. Alternatives 5 and 6 (two-tier quota) can be considered the most potentially harmful. All other Alternatives and Sub-Alternatives appear to be more potentially harmful than Sub-Alternative 2.3, but less potentially harmful than Alternatives 5 and 6. Among these remaining options, less restrictive is better because a higher share cap has less potential for economic harm, but I have insufficient data to specifically identify optimal tradeoffs between quota versus leasing versus combined caps.

The PHD contains many incorrect or unsupported economic statements.

The PHD repeatedly uses incorrect or imprecise language with respect to economic concepts, and this language is used to draw incorrect conclusions throughout the document. The PHD uses an incorrect economic definition for excessive consolidation, and incorrectly conflates industry consolidation with both harmful market power and negative socioeconomic impacts. Furthermore, the lax approach to economic language throughout the document appears to spill over into two erroneous conclusions. First, the PHD misrepresents the findings of the Compass Lexecon and CIE reports as containing recommendations for a 40% excessive share cap, when they do not. Second, the PHD relies on the quota monopsony claim of the SSC. This claim is inconsistent with economic theory and with available evidence, as has been shown above. It is also possible that this claim by the SSC has been incorrectly conflated with the possibility of oligopsony power of processors over independent harvesters, a scenario with predictions that more closely match those of the SSC's claim but that are still not consistent with the available facts.

Incorrect Economic Definition of Excessive Consolidation

The PHD uses an incorrect economic definition of excessive consolidation, claiming it is "…a situation where one or more firms can exert market power…" (p. 6, 29, 39, 122). From an economic perspective, industry consolidation is only excessive when it results in the actual

exercise of market power and when efficiency losses from that exercise are not offset by efficiency gains elsewhere, e.g. from returns to scale. Critically, this means that even 100% market share may not be excessive depending on market factors, and that the PHD definition is incorrect.

This incorrect definition is repeated throughout the PHD, undermining the credibility of the document and the claims relying on this definition. For example, the statement "an excessive share could result in market power" appears nine times throughout the PHD (pp. 7, 136, 138, 146, 147 twice,150, and 152). The statement relies on circular reasoning because it is market power that results in shares being excessive, not the other way around.

Incorrect Characterization of Harmful Market Power as an Established Fact

The PHD reads as if the harmful exercise of market power in the SCOQ fisheries is an established fact. This is untrue. None of the expert review documents come to this conclusion, nor is it supported by industry data. The only support for this claim is text apparently copied from the SSC meeting report.

Based on the evidence reviewed above regarding potential market power and regarding the SSC claims, it is reasonable to conclude that the harmful exercise of market power is an opinion expressed in the PHD, but not an established fact. Furthermore, the evidence reviewed above indicates that this opinion is likely to be incorrect.

Unsupported Characterization of Potential Socioeconomic Impacts

The PHD reads as if industry consolidation leading to negative socioeconomic impacts is an established fact. Just like the unjustified claims about harmful exercise of market power, this claim is not supported by any of the expert review documents nor by new analysis in the PHD itself. In fact, across the expert review documents, the word "socioeconomic" appears only in the Northern Economics report, and primarily in reference to the difficulty in quantifying specific effects on fishing communities.[1] In contrast, the word appears 117 times in the PHD, where it is repeatedly and incorrectly stated that reducing industry consolidation leads to

[1] For example: "The level of engagement in the surfclam and ocean quahog fisheries of many communities changed after the SCOQ ITQ program was implemented. While the available literature suggests that the socioeconomic effects of the program account for at least some of these community-level changes, it is difficult to disentangle the effects of the program from the effects of co-occurring factors." (Northern Economics, page ES-9, item NS-8).

positive socioeconomic impacts and increasing industry consolidation leads to negative ones.[2] They use this false claim to rank the alternatives in exactly the opposite ranking according to the available evidence. For example, in Section 1.2 (PHD, page 6), it is stated:

> "In general terms, measures that would curtail entities from exerting market power and therefore not decreasing competition would have positive socioeconomic impacts. Lastly, measures that would result in community disruptions as result of additional consolidation (e.g., decrease in the number of independent harvesters, decrease in employment) would have negative socioeconomic impacts."

This statement is not true. I have discussed above how industry consolidation does not necessarily result in harmful market power, and how it may instead result in economic efficiency gains. The available evidence suggests that is what has happened in the SCOQ fisheries. Outside of economic efficiency, the other part of "socioeconomic" is social impacts, such as disruption of fishing communities. Here, it is critical to distinguish between the intended effects of adopting an ITQ program versus any further effects caused by later consolidation.

The PHD focuses on two community disruptions as examples of negative socioeconomic impacts: decrease in the number of independent harvesters and decrease in employment. With respect to the number of harvesters, ITQ programs are generally designed as a mechanism to remove excess capital and inefficient firms (generally, smaller harvesters) from the industry. This is also an explicit goal of the SCOQ ITQ program: "Provide opportunity for industry to operate efficiently, consistent with the conservation of clam and quahog resources, balancing harvesting capacity with processing and biological capacity and allow efficient utilization of capital resources" (NEI, 2019, page ES-3, Table ES-1, Goal 3). Thus, the very adoption of the program implies a policy judgment that economic efficiency gains outweigh the loss of harvester diversity. Neither the expert review documents nor the PHD make the case that this has changed. With respect to employment, it is not clear that there is any social downside: "One major social effect of the program was loss of crew employment due to fleet consolidation, although the crewmembers who retained their jobs were more fully employed" (NEI, 2019, page ES-9, item NS-8). In other words, the total number of jobs

[2] This claim is found on pp. 6-27, 122, 134, 136, 138-140, 145-148, 150-152, 154-155, 157-163 of the PHD.

decreased but the remaining jobs were better jobs, so it is not clear that there is any net negative social impact on employment.

In sum, it has not been demonstrated either in the PHD or in the expert review documents that consolidation has led to net negative socioeconomic impacts. It is irresponsible for the PHD to repeatedly make statements to the contrary, and to use these statements to justify maximal intervention into the SCOQ fishing industry.

Misrepresentation of Findings of Expert Review Documents

The PHD mis-cites the expert review documents from 2011. Discussion of Sub-Alternative 3.2 (page 3): "The combined cap would be 40% for surfclams and 40% for ocean quahogs. This is based on recommendations provided in the Compass Lexecon Report and corresponding CIE (Center for Independent Experts) review." This statement is misleading because the Compass Lexecon report clearly states that their findings do not support a specific cap, but that they were tasked anyway with developing a framework. They then give rules of thumb to support 40%, but this is hardly a recommendation. Similarly, each expert review in the CIE report concludes there is not enough information to choose a specific cap, and doing so without that information may be harmful. As discussed above, Arnason suggests that 83% might be a plausible number (p. 25 of his review) and Lopez suggests that even a natural monopoly (100% cap) might be appropriate due to production efficiencies (p. 12 of his review). Thus, it is misleading to state that 40% caps are based on recommendations from these reports.

Summary of my findings.

I would like to conclude my letter with a brief overview of my findings. In a nutshell, there is no conclusion of harmful market power being exercised in the SCOQ fisheries, and there is therefore no economic basis for implementing an excessive shares cap. To the extent that one must be implemented administratively, prudence suggests that minimal regulation is best since the data needed to set an appropriate cap have still not been collected.

Unfortunately, the Public Hearing Document contains repeated misleading statements suggesting that essentially the opposite is true. These statements appear to rely on incorrect

economic reasoning and on inaccurate claims about how industry consolidation must coincide with harmful market power and with negative socioeconomic outcomes.

After reading my review, I believe you will agree that these statements cannot and should not be relied upon in the adoption of an excessive shares amendment for the SCOQ fisheries.

Sincerely,

Thomas Sproul, Ph.D.

WALLACE & ASSOCIATES

September 11, 2019

Via Email and U.S. Mail
Mr. Chris Moore, Executive Director
Mid Atlantic Fishery Management Council
800 North State Street
Dover, DE 19901

Dear Dr. Moore

Wallace & Associates would like to comment on the Excessive Share Amendment (ESA). However, since there are two versions, the first was published in May and the second in July, which one I should address? Both documents say they are the ESA but the May document, which was approved by the Mid Atlantic Council, attempts to addresses the issue of Excessive Shares in the clam industry, and the July document should not be called the ESA because it is a policy advocate document for a socioeconomic amendment and should be called such.

The council needs to decide whether they want to address excessive shares or social engineering. The problem is that there is no clear definition of excessive share for the clam fishery and no peer review scientific documentation to support the assertion from a policy driven bias from a misunderstanding of the facts.

These comments are based on the approved May document.

- ***Keep the current Goals and Objectives from Amendment 8.***
- ***No need for any new framework adjustments in this amendment.***
  - ***ES-2. Summary of the excessive shares review alternative. I support Alternative 1, take no action;***
  - ***ES-3. Summary if the framework adjustment process alternative. I support Alternative 1, take no action; and***
  - ***ES-4. Summary of the muliti-year management measures alternative. I support Alternative 1, take no action.***
- ***In the public hearings the clam industry supported Alternative 4.3 with minor changes***
  - ***For surfclams the ownership cap would be 35 percent and the total would be 65 percent; and***
  - ***For ocean quahogs the ownership cap would be 40 percent and the total would be 70 percent.***

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- ***The unit to be use for determining excessive share, the group used should be individual/business.***
- ***The calculations to be used for the total should be, Net Actual Percentages Model.***

Keep the current Goals and Objective (G&O).

In the last 30 years that the SCOQ FMP has been in operation, the world has changed greatly. From climate change to key clam meat buyers being consolidated or public companies going out of business such as Mrs. Pauls' and Howard Johnson and the recessions that starting in 2008. In the pre ITQ, management system the council and NMFS spent hundreds of hours per year in attempt to change the regulations as the industry and market changes. With the advent of Amendment 8 with the flexibility that the G&O provided the fishery adjusted to the ever-changing ocean, fishery, and market demand.

Northern Economics' review stated that the current G&O provided the clam industry with the needed flexibility to deal with the changes without involving the NMFS or council in the micromanaging of the fishery.

Therefore, I strongly recommend that the current G&O remain in place. **There is no good reason to change the current G&O**.

There is no need for any new framework adjustments in this amendment.

There has not been a need for framework adjustment amendments for 30 years. All of the amendments were implemented from number 9 to 19 at the direction of the NMGS or congress. None of them were wanted or requested by the industry and were unnecessary for the operations of the clam fishery.

In the public hearings the clam industry supported Alternative 4.3 with minor changes in the percentages;

In the Compass Lexecon review, they advocated what they called the **"Rule of Three"** which is what the industry has proposed. They also suggested that having a ownership cap and a lease cap would be helpful, which is precisely what the clam industry's proposal accomplishes. They also suggested that one firm could hold 100 percent of the quota and not violate any anti-trust laws.

In the first public hearing principles from the major shucking and vessel companies made presentations with what they thought was a fair and reasonable proposal for preventing an

entity from acquiring an excessive share. On a number of occasions, council members have asked what does industry need and they will support them.

From the industry perspective, Alternative 1, the status quo would be our first choice followed by 2.3 and then 2.2. The industry recognized that those would not be acceptable to some council members, so, they found common ground and proposed the following as reasonable compromise.

Compass Lexicon had a suggestion that there should be an ownership cap and a lease cap. They also suggested that having space for three major companies would be preferable. Therefore, this proposal complies with their suggestions.

For surfclams the ownership cap would be 35 percent and the total would be 65 percent

Under 4.3 the suggestion was 30% ownership and 30% lease for a total of 60%. Recognizing that the largest ownership in the surfclam fishery today was 28% they proposed that 35 percent ownership was a reasonable number giving 35% +35% + 30% in the ownership and at 65% total ownership and leases should be acceptable under Compass Lexecon (CL) recommendations.

For ocean quahogs the ownership cap would be 40 percent and the total would be 70 percent

Like 4.3 for the surfclam operators the ocean quahog operators suggested that 40% ownership and 30% lease for a total of 70% would work for the quahog fishery. This also could have three major owners of 40% + 40% + 20% again in accordance with the Compass Lexecon recommendation.

The unit to use for determining excessive shares, the group that should be used is individual/business.

Looking at ITQ ownership, using individual, family and business is the simplest and easiest grouping that can be made since there are problems in understanding who is the owner in such situations as the large amount of quota held by the banks. Keep it simple and clear.

The calculations to be used for the total should be, Net Actual Percentages.

Like the grouping of ownership, the best way is to keep the model simple. The clam ITQ is complex because of the quota and it is not required to be tied to another asset. With the understanding that there is a lot that is not known in the 100% model, the Net Actual Percentage is the only possible way to understand the percentages. No one has been able to tell us how the 100% is calculated except every unit is calculated at 100% which tells us nothing and it is used by the scallop industry, but the clam industry is completely different than the scallop fishery.

Conclusion

This is not an excessive share amendment, it is a social welfare amendment vailed as excessive shares as described in alternatives 5 and 6. There is no such thing as an excessive share at the level that the clam industry has operated under for 50 years. The surfclam and ocean quahog SCOQ fishery is by every standard, heads and shoulders above all other U.S. fishery management plan (FMP). The SCOQ is an industrial fishery and not a mom and pop operation because there is no fresh market and the unit of raw product sale is about 3,000 pounds in a 32 bushel cage. If the shucking plant does not have an order for the clam meat, the vessels are not allowed to land clams. Since clam, vessels are very specialized they cannot work in other fisheries without major refits of the rigging and different fishing gear and are no longer able to fish for clams.

In SCOQ fishery, there are very few quota holders that are not able to use some of their quota. Those who receives the original allocation, then decided to sell their boat and quota or do away with their boat and rent their quota. Those who wanted to be active participants then started buying the quota from those who wanted to leave the fishery. The one that wanted to leave found the buyers willing to pay very high prices for their quota. The buyers spent hundreds of millions of dollars but as a whole never acquired enough to only supply themselves. This worked in the favor of the non-participants renter/leasers while demand was strong. The renters that did not want long term leases (spot market) would rent for a year to the highest bidder and made out very well for contributing nothing but rent quota shares. Then the industry priced themselves out of the market and the demand collapsed, and all of the quota holders were somewhat responsible for the situation. The clam industry learned a very hard lesson, the customers were not going to pay more, and they will buy less. For the surfcalms industry the result was and still is painful. With the volume down and the overhead staying high, the margin was gone and something had to give. The clam industry has three cost centers, boat cost to catch the clams, the plants cost to shuck the clams and the quota rental price. The only variable with no cost attached was the rental of the quota from those who got the allocation to start with. The non-participant quota owners were asked to share in the pain

by lowering their rental fees, some did and some did not agree. It was their business decision. The non participants cannot have it both ways.

The FMAT has not told us who is being harmed by the current clam management plan in the U.S. The clam industry is a business and each member business at one time or another has had good times and bad, that is how a capitalist system works. Capitalist governments cannot make business better by micromanaging an industry, socialist country's try that, **they can only make it worst**. Freedom and flexibility is the only way that industry can be quickly adapt in an ever changing world.

No matter how this is seen by supporter or opponent, the current SCOQ FMP decisions made 30 years ago by the MAFMC were correct and should be kept. It showed that the industry could and would spend hundreds of millions of dollars to buy out the surplus capital; most of them had jumped into the clam industry just before the fishery management plan was to go into effect with limited entry. A group of mostly boat owners that had been in the business for generations had a choice; buy back what they lost in the original allocation. Their reduces part of their rightful allocation was given to those who did not catch much, and for their support of amendment 8. The long time participants had to buy back what they lost so they could stay in the business. These members of the industry had to purchase ITQs at very high prices. Now the ugliest idea has been put fourth, reallocate the fishery again in alternative 5 or 6. Create a socioeconomic reward to those non participants of the industry that provide nothing to the industry or the country while penalizing the industry members who made this all happen by buying up the surplus capital in the fishery 30 years ago which was the objective of the amendment in the first place (a industry funded buyback). The active participants had to borrow millions of dollars to buy back what they lost in the original allocation, to the have nots. If there is a reallocation, the operators that spent all this money will have large part of the assets taken away but not their bank loans, they may not survive. **Where is the fairness in this?**

Thank you for considering my comments.

Sincerely,

David H. Wallace

David H. Wallace