



**Mid-Atlantic Fishery Management Council**  
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## MEMORANDUM

**Date:** November 25, 2019  
**To:** Chris Moore, Executive Director  
**From:** Jessica Coakley and José Montañez, Staff  
**Subject:** Atlantic Surfclam and Ocean Quahog (SCOQ) Excessive Shares Amendment - Staff Recommendations

### Introduction

The following provides the staff recommendation for measures contained within the SCOQ Excessive Shares Amendment to the Fishery Management Plan (FMP). More detail on the complete suite of measures under consideration can be found in the Amendment document.

### Goals and Objectives

**Staff recommend the Council revise the objectives for the SCOQ FMP and adopt the revised goals and objectives as drafted by the Fishery Management Action Team (FMAT).**

Goals and objectives are a public statement from the Council describing what the FMP is trying to accomplish and the Council's longer-term intent and guidance for the fisheries. They should be written in a manner that is concise, clear to stakeholders and the public, and remain relevant over time.

The current SCOQ FMP objectives reflect the desired outcomes of Amendment 8 which implemented the individual transferable quota (ITQ) program. Many of those objectives were short-term and aspects of those objectives have already been achieved. Revising FMP goals and objectives would allow the Council to acknowledge the improvements that have been made to the management of the SCOQ fisheries, recognize what is working well, and focus on maintaining and sustaining these improvements in the long-term.

As noted in the goals and objectives synthesis document,<sup>1</sup> some of the specific terms used in the objectives are unclear to those who were not involved at the time Amendment 8 was developed or are unfamiliar with economic jargon. Terms are confusing because they are not defined or have

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<sup>1</sup> Synthesis Document for Review of Goals and Objectives for the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. Prepared by Fisheries Leadership & Sustainability Forum (October 2017). See Appendix B of Excessive Shares Amendment.

multiple definitions (e.g. economic efficiency, economic dislocations, etc.). In addition, the current objectives are complicated and combine topics (e.g. Objective 1 addresses both biology and economics).

The FMAT drafted goals and objectives drew from themes in the original objectives but simplified the terminology and focused on longer-term goals. They were crafted around goal areas focused on sustainability, a simple and efficient management regime, managing for stability, management that is flexible and adaptive to changes, and the promotion of science and research. The staff believe that these better reflect the Council's long-term intent for these fisheries.

The current objectives were adopted in 1988 through Amendment 8 to the SCOQ FMP:

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

The FMAT proposed revisions to the goals and objectives recommended by staff are as follows:

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

**Goal 2:** Maintain a simple and efficient management regime.

**Objective 2.1:** Promote compatible regulations between state and federal entities.

**Objective 2.2:** Promote coordination with the New England Fishery Management Council.

**Objective 2.3:** Promote a regulatory framework that minimizes government and industry costs associated with administering and complying with regulatory requirements.

**Goal 3:** Manage for stability in the fisheries.

**Objective 3.1:** Provide a regulatory framework that supports long-term stability for surfclam and ocean quahog fisheries and fishing communities.

**Goal 4:** Provide a management regime that is flexible and adaptive to changes in the fisheries and the ecosystem.

**Objective 4.1:** Advocate for the fisheries in ocean planning and ocean use discussions.

**Objective 4.2:** Maintain the ability to respond to short and long-term changes in the environment.

**Goal 5:** Support science, monitoring, and data collection that enhance effective management of the resources.

**Objective 5.1:** Continue to promote opportunities for government and industry collaboration on research.

## **Excessive Shares Alternatives**

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

If fully consolidated, this sub-alternative could potentially result in a minimum of three large entities participating in the surfclam fishery (i.e., 35%, 35%, 30%) and three large entities participating in the ocean quahog fishery (i.e., 40%, 40%, 20%). In addition, this alternative would limit the exercise of control, through possession of tags as limited by the second part of the cap.

This alternative represents a compromise on the part of the fishing industry, from their initial recommendation for no action (100%) or the 95% alternative which was added by the SCOQ Committee on the recommendation of the industry, neither of which would have addressed the market power or socioeconomic concerns raised by the Council in their excessive shares definition. With no restriction on ownership or consolidation for nearly 30 years, sub-alternative 4.4 will allow for some additional efficiencies in the fisheries (through further consolidation) and a reasonable number of entities to exist if fully consolidated.

In addition, staff recommend the family affiliate level. Most of the connections in these fisheries are already connected at the individual/business and family level; therefore, the corporate officer level added little additional information to the process in terms of ownership connections. Including just the family level captured the bulk of control through both individual/business and familial affiliations. This is the same affiliate level used in the Council's other individual fishing quota (IFQ) program, golden tilefish.

The staff also recommend the cumulative 100% model for tracking. This is the same tracking model that is used for the Atlantic sea scallop fishery. This fishery also has large numbers of transfers and transactions that occur within the fishing year and uses this tracking model to account for both ownership and control in the fishery. Based on discussions with the Analysis Program and Support Division (APSD), this would be the simplest tracking model, the least likely to create issues with tracking within year transactions, and it should result in the lowest cost recovery burden for ITQ holders. In addition, under the actual percentage model, individuals or businesses could circumvent the cap system by modifying their individual or business percent ownership in a company to ensure they remain below any excessive share quota ownership cap or cage tag possession cap requirements. Under the cumulative 100% model, if you touch it through ownership of quota shares or cage tag possession, it is tagged to you within the system. As such, staff recommend this as the most straightforward and efficient model for tracking, with the benefit that it follows an already proven model for tracking in the Northeast.

## **Excessive Shares Review Alternatives**

**Staff recommend Alternative 2 that would require the periodic review of the excessive share measures at least every 10 years or as needed.**

Conditions in the fisheries have changed over time and are likely change in the future; therefore, an excessive shares measure established at an appropriate level now could become inefficiently

high or low over time. The staff recommend the Council require periodic review of these measures because it should, as part of its responsibilities to manage these fisheries on behalf of the nation, routinely review its management regimes, particularly those that limit access to the fisheries. This review could be linked to the Catch Share Program Review which should be conducted every 7 years based on National Marine Fisheries Service (NMFS) Procedural Instruction 01-121-01 (Guidance for Conducting Review of Catch Share Programs).

### **Framework Adjustment Process Alternatives**

**Staff recommend Alternative 2, which would add excessive shares cap level to the list of measures to be adjusted via framework.**

This frameworkable item would allow modifications to the cap value only and not the underlying cap system, and only if the modification would not result in an entity having to divest. This modification would allow the Council to make changes to the caps in a timely manner, through a public process of Council meetings and a rulemaking process. This would not preclude the holding of advisory panel meetings or other steps to solicit input on the issue, that are frequently done with Frameworks. While frameworks typically take a minimum of 1 year to be completed, its more common for them to take up to 2 years with rulemaking. An Amendment process, if this was not frameworkable, could take several years to complete. Given limited staff resources, the staff recommend the Council support efficiencies in the process wherever possible.

### **Multi-year Management Measures Alternatives**

**Staff recommend Alternative 2, where specifications will be set for maximum number of years consistent with the Northeast Regional Coordinating Council (NRCC)-approved stock assessment schedule.**

This alternative would provide additional flexibility as specifications could be set until a new surfclam and/or ocean quahog stock assessment is produced. New specifications of annual quotas would be prepared in the final year of the quota period, unless there is a need for interim quota modifications. Given limited staff resources, the staff recommend the Council support efficiencies in the process wherever possible, which allows both the Council and the staff to dedicate resources to other ongoing or more pressing fishery management issues.