

## **Surfclam & Ocean Quahog Committee Meeting**

February 14, 2012  
1:00 pm - 3:00 pm

Hilton Virginia Beach Oceanfront,  
3001 Atlantic Avenue,  
Virginia Beach, VA 23451  
Telephone 757.213.3001

### **Draft Agenda**

Purpose and need for this meeting

*Where we are at currently - - Discussion and identification of next steps for Amendment 15*

Specific issues to address

- 1) *EFH / OQ overfishing definitions*
- 2) *Cost recovery / excessive shares / data collection*
- 3) *GB PSP closed areas*

# MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

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**Christopher M. Moore, Ph.D.**  
Executive Director

## MEMORANDUM

**DATE:** February 2, 2012

**TO:** Surfclam and Ocean Quahog Committee (Anderson, Himchak, Berg, Gilmore, King, and Nolan)

**FROM:** Tom Hoff and José Montañez

**SUBJECT:** February Council meeting

The Clam Committee will meet on Tuesday February 14 from 1:00 to 3:00 PM at the Virginia Beach, VA Council meeting. The only agenda item is to discuss and identify the next steps for Amendment 15. You will recall the December Council meeting where John Walden of the NEFSC Social Sciences Branch presented the *Summary of Findings by the Center for Independent Experts Regarding Setting Excessive Share Limits for ITQ Fisheries* (Summary Report). The Summary Report can be found at <http://nefsc.noaa.gov/publications/crd/crd1122/>. The excessive shares issue has been a very difficult one for both the FMAT and the Committee, but it is possible that some sort of resolution may be near.

Scoping for Amendment 15 (then Amendment 14) was conducted nearly 3 years ago. The Amendment had 5 issues: 1) essential fish habitat (EFH) update, 2) new ocean quahog overfishing definition, 3) cost recovery, 4) excessive shares, and 5) data collection. In February 2011 the Council added a sixth item -- providing the Assistant Administrator (AA) the authority to impose additional conditions on the reopening of any area closed due to the presence of the paralytic shellfish poisoning (PSP) toxin in order to protect public health.

In October of 2009 the Council reviewed work by staff and the FMAT and passed three motions that were recommended by the FMAT in selecting preferred EFH alternatives of:

- 1) Use of 95% relative abundance for survey years 1980 through 2008
- 2) For State waters EFH also use of 95% relative abundance for New Jersey and New York, and for the Gulf of Maine surfclams as sandy areas from the beach to 70 meters and ocean quahogs from 60 to 100 meters
- 3) Fishing gear impacts will adopt the Council's prior determination that hydraulic dredges may adversely impact EFH but that the impacts are temporary and minimal.

In October 2009 the Council also concurred with the FMAT and passed the following motion relative to the new ocean quahog overfishing definition for a preferred alternative of: " $F_{\text{threshold}}$  be 45% maximum spawning potential, and  $F_{\text{target}}$  set the same way as it is for surfclams, and a  $B_{\text{threshold}}$  increased from 25% to 40% virgin biomass."

Thus, with the Council's inclusion of the PSP testing protocol and providing the AA the authority to impose additional conditions on the reopening of any area closed due to the presence of PSP toxin, and the selection of preferred alternatives for EFH and ocean quahog overfishing, half of the six issues in this Amendment can be developed for public hearings.

The Council has not selected preferred alternatives for public hearings for the other three issues of: 1) cost recovery, 2) excessive shares, and 3) data collection.

Scoping for cost recovery had three alternatives:

- 1) No action/status quo
- 2) Incremental cost recovery -- post ITQ costs minus pre ITQ costs
- 3) Recoverable costs -- as defined by the Regional Office.

No unanimous advice has been provided by the FMAT on this issue. A 2005 General Accounting Office (GAO) report said that NMFS should develop guidance and should implement cost recovery for all ITQ programs. This GAO report stated that management costs decreased after implementation of the ITQ program for this fishery. Objective 2 of the FMP (since 1990) states: "Simplify to the maximum extent the regulatory requirement of surfclam and ocean quahog management to minimize the government and private cost of administering and complying with regulatory, reporting, enforcement, and research requirements of surfclam and ocean quahog management." Arguments have been made that the intent of Congress during the 2007 reauthorization was that the surfclam and ocean quahog fisheries were to be grandfathered from this requirement. Rough estimates for 2007 indicated that the RO may have less than \$60,000 worth of "recoverable" costs annually associated with this ITQ program. The battle in the past few years with the RO has been over whether the "recoverable" costs need to be collected or the "incremental" -- post ITQ costs minus pre ITQ costs (as defined by Headquarters) costs are recoverable. If the costs are fairly small, like less than \$60,000 per year, it may not be worth fighting over. However, no matter which alternative is selected, new costs associated with any additional data collection for the monitoring of share accumulation/concentration will need to be borne by industry.

Scoping for excessive shares had seven alternatives:

- 1) No action/status quo
- 2) 22% cap -- represents largest holding currently on record with NMFS
- 3) 33% cap -- would allow a minimum of three entities
- 4) 50% cap -- would allow a minimum of two entities
- 5) 70% cap -- corresponds to a market share level that is commonly cited in antitrust literature where market power concerns are an issue
- 6) 100% cap -- requested by industry
- 7) Adopt DOJ "Horizontal Merger Guidelines" (Herfindahl-Hirschman Index --HHI).

No advice has been provided by the FMAT yet on this issue. They had recommended a peer-reviewed CIE-type approach and advice for the Council.

As indicated above, NEFSC staff presented the *Summary of Findings by the Center for Independent Experts Regarding Setting Excessive Share Limits for ITQ Fisheries* (Summary Report) to the Council last December. Some points of interest to keep in mind for discussion purposes regarding excessive shares are:

- Initial Council position was to assess the value of S\* (excessive shares) between 22% and 100% as indicated in the range of alternatives described above. The upper value of the range (e.g., 70 to 100%) was based on the argument that with an elastic or near elastic

demand curve it would never be profitable to withhold production to raise prices due to the fact that loss in profits through loss in sales would be higher than the gain in profits through the increased price

- The CIE report did not provide an absolute or concrete value for  $S^*$ . However, they provided some insights that could be used to calculate  $S^*$
- The CIE report indicates that using the HHI as proposed by the Technical Group would provide evaluation of potential market power consistent with what is done in other industries. However, this measure would not provide an absolute measure of power and specific characteristics of the industry and market need to be considered as well (Summary Report, Part I. Preface: John Walden, p1)
- Specific industry characteristics could be qualitatively described using current research and knowledge of the elasticity of demand for fishery products. However, the extent of the market would require additional research as only anecdotal information is available. One reviewer indicated that "Determining the relevant markets is another challenge in the application of the proposed methods. The information on substitutability of products and the elasticity of demand is limited and therefore the recommendations are largely based on anecdotal data. The ability to exercise market power is significantly influenced by these factors, yet because of lack of data, this analysis was not performed." (Summary Report, Part III. Peer Review Report: Ani Katchova p9)
- One reviewer reported that "My conclusion is that the evidence provided in the Technical Group report is insufficient to set any particular share cap on the companies in this fishery" (Summary Report, Part II. Peer Review Report: Ragnar Arnason, p4)
- The Technical Group suggested that at least three firms holding quota may provide some constraint against predation or foreclosure of competitors. In the business literature, the "Rule of Three" is perceived as providing a sort of insurance that is neither destructive for competition or allows for collusion to prevail. Two CIE reviewers indicated that the "Rule of Three" could be considered when setting the maximum  $S^*$  (Summary Report, Part I. Preface: John Walden, p7; Part III. Peer Review Report: Ani Katchova, p2, 5, 11; Part IV. Peer Review: Rigoberto A. Lopez, p7)
- All three CIE reviewers indicated that the Technical Group did not consider the monopsony problem (Summary Report, Part I. Preface: John Walden, p 4-5). The Technical Group should have paid more attention to the monopsony problem, which is the ability of processors to exert market power on the harvesting sector. This may be of greater concern than the monopoly problem. The main issue is that if the TAC is not binding monopsony control (reduce input prices and thus potentially increase the firms' profits) can be exercised
- CIE reviewers commented that the Technical Group did not discuss the possible loss of scale efficiencies that might result from establishing an excessive share limit (Summary Report, Part I. Preface: John Walden, p7, 9)
- The CIE reviewers concurred with the Technical Group and suggested that in evaluating the exercise of market power both ownership and contractual control of quota need to be considered

- For purposes of setting an S\* rate with respect to ownership and control of quota shares, it would be useful to know what the current structure is. However, defining a “current structure” requires the specification of a period over which to make such a measurement.

Finally, the third issue that has not yet been adequately addressed by the Council is the issue of data collection. The scoping document had three alternatives for data collection:

- 1) No action
- 2) Collect information designed to clarify ownership of allocations
- 3) Collect information designed to clarify ownership of allocations and control of allocations through contracts.

- As stated above, the CIE reviewers concurred with the Technical Group and suggested that in evaluating the exercise of market power both ownership and contractual control of quota need to be considered
- Consider the minimum necessary amount of information to enforce whatever S\* is chosen by the Council. (See staff recommendation regarding the creation of a subgroup of the FMAT to address data needs at the end of this memo)

During the past couple of years, while the Agency and Council have been trying to address the excessive shares issue, two additional issues have again been discussed and the Chair wishes to ascertain whether or not the Council may want to include these two issues at this time in this Amendment. The first issue deals with some mechanism to address localized depletion. We have heard this issue from some fishermen for the past several years during quota setting. It is often couched in the idea of the scallop rotational area. This issue had been brought up during the kick off meeting for this amendment (January 2008) and the Council at that time decided to not include it in the amendment. It has also been addressed during the last surfclam SARC presentation by Dr. Weinberg who emphasized that the scallop model works because of excellent recruitment for that resource and fishery and that is not the case when considering clams in the mid-Atlantic recently.

The second issue is also tied to the quota setting and has been discussed on numerous occasions where some individuals argue for more "economic" considerations rather than the strict setting of quotas based on the biological capacity of the stock. (See monopsony issue identified in the Summary Report stated above).

Finally, attached is a series of emails pertaining to the inability of anyone to clam on Georges Bank currently because of a lack of an Exempted Fishery Permit (EFP). As you can see from the attached email from George Darcy it is possible that the Council may want to consider that the most expeditious avenue to get vessels to be able to clam on Georges Bank may be to split this amendment and move quickly with simply the issue that provides the AA the authority to impose additional conditions on reopening any area closed due to PSP.

As background information on this PSP issue, the clam vessel Seawatcher fished for surfclams on Georges Bank in the PSP closed area under the ISSC/FDA Dockside Testing PSP Pilot Protocol and landed in New Bedford in 2010 and 2011 using a NMFS EFP. In October 2011 the ISSC approved the PSP Protocol and the Pilot research project was ended. When applying for an EFP for 2012 the application was rejected because there was no scientific justification for the research project put forth by industry to issue another EFP as a Dockside testing Protocol had been approved, according to NERO.

During the last several surfclam and ocean quahog assessments it was pointed out by NMFS assessment scientist that the surfclam beds were being heavily fished in the mid-Atlantic and that there was a large resource on Georges Bank that was not being utilized. NMFS scientist kept suggesting that for the long term good of the fishery that resource should be fished. Council staff has consistently pointed this issue out for the past several years during quota setting also. Thus, the industry has been keenly aware that the fishing pressure needs to be reduced off of the mid-Atlantic and agreed with the NMFS scientist and Council staff that moving some of the fishing effort to Georges Bank was desirable. An industry member set out to find a way to fish safely on Georges Bank knowing that on rare occasions there are PSP blooms in the area. The company along with the FDA, NMFS, EPA, ISSC and the northern states started the process of finding a safe way to harvest Georges Bank shellfish in 2004 and received final approval from the ISSC and FDA in October of 2011. Some in industry believe that the solution to the problem is to take the PSP protocol provision and make it Amendment 15, and place the remaining parts of Amendment 15 into Amendment 16. Industry, with the FDA, has a proposal currently into the Regional Office and should the RO issue an FEP to conduct this research this issue may be moot.

Thus, there are many issues to discuss and many decisions that need to be made in order to move forward with this amendment.

Staff recommends, that should the Council decide to move forward with excessive shares at this time, that an expanded subgroup of the FMAT be convened to ascertain what data would need to be collected from industry to sufficiently determine what the record keeping and data collection needs are to provide the ability to monitor and assess the current industry structure with respect to ownership and lease control of quota shares relative to whatever S\* is selected. If possible, it would also be helpful if the FMAT could provide an estimate of the current structure of ownership and control. Staff recommends this expanded subgroup be comprised of Council staff, RO plan coordinator, RO data collection individuals, GC, SC economist, SC data manager and at least one individual from HQ -- perhaps S&T.

On another note, Mary Clark will conduct a visioning meeting in Atlantic City on Wednesday Feb 22 from 6 to 8 PM.

**Montanez, Jose L.**

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**From:** Moore, Christopher  
**Sent:** Thursday, February 02, 2012 4:15 PM  
**To:** MacDonald, Joel  
**Cc:** Robins, Rick; Anderson, Lee; Hoff, Thomas B.; Montanez, Jose L.  
**Subject:** RE: control date notice question

Thanks Joel! C

**From:** Joel Macdonald [<mailto:joel.g.macdonald@noaa.gov>]  
**Sent:** Thursday, February 02, 2012 4:10 PM  
**To:** Moore, Christopher  
**Subject:** control date notice question

Chris, I s-poke with a colleague of mine about the issue of whether we need to publish a control date for the purpose of establishing a cap on surf clam/ocean quahog ITQ ownership, particularly with respect to selecting a date to use as the basis (e.g., the maximum amount of ITQ owned as of that date) for establishing the cap. Since control date notices are used as a means of notifying the industry of a possible Council action to limit entry in the future and to prevent speculative entry after that date, there is no need to publish a control date before in order to establish a cap. The industry is already on notice of this potential since I advised the Council of this issue a number of years ago. There have been numerous discussions on what level of cap to set from one, albeit theoretical, that causes a divestiture of some level of current ownership to 100 percent. Also, speculative entry or acquisition of ITQs is not an issue since this fishery is a limited access fishery and the incentive and availability of ITQ in which to speculate appears minimal. However, if the Council decides that it wants to have a control date notice published, then we can prepare one. Joel  
Joel G. MacDonald

Northeast Section Chief

phone: (978) 281-9241

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## Hoff, Thomas B.

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**From:** George Darcy <george.darcy@noaa.gov>  
**Sent:** Thursday, January 19, 2012 1:36 PM  
**To:** Hoff, Thomas B.  
**Cc:** Jacobson, Larry; Wallace, Dave; Jensen, Pete; clambuyer@yahoo.com; daniel hennen; Chute, Toni; Brown, Russ; Rago, Paul; Montanez, Jose L.; Anderson, Lee; Moore, Christopher; Pentony, Mike; Potts, Douglas; MacDonald, Joel  
**Subject:** Re: Fishing for surfclams on GBK -- Re: Fwd: Re: Seawatcher I EFP application

Perhaps a fine point, but what I actually said was, splitting the amendment was an option the Council could consider, and that we really need to get the Georges access issue addressed soon so that commercial fishing can occur there under the new protocol, rather than under EFPs, which are now more problematic, given that the protocol has been approved. It is the Council's decision whether it wants to take that approach, of course.

George

On Thu, Jan 19, 2012 at 11:34 AM, Hoff, Thomas B. <[thoff@mafmc.org](mailto:thoff@mafmc.org)> wrote:  
Thanks Larry,

The Surfclam and Ocean Quahog Committee of the Council will be discussing the direction for Amendment 15 at their February Council meeting now that they have been briefed on the CIE review of excessive shares (occurred in December). The issue of giving the Regional Administrator the authority to impose additional conditions on the reopening of GB was added to the amendment last February. I am sure that there will be discussions of where to go with this issue now that the ISSC has approved the protocol and the previous reason for the EFP on Georges has been met. I am not sure where the Council may go on this issue, but I am sure that George's advice will be considered strongly.

Tom

-----Original Message-----

**From:** Larry Jacobson [<mailto:larry.jacobson@noaa.gov>]  
**Sent:** Thursday, January 19, 2012 9:14 AM  
**To:** Hoff, Thomas B.  
**Cc:** Wallace, Dave; Jensen, Pete; [clambuyer@yahoo.com](mailto:clambuyer@yahoo.com); daniel hennen; Chute, Toni; Brown, Russ; Rago, Paul; Darcy, George  
**Subject:** Fishing for surfclams on GBK -- Re: Fwd: Re: Seawatcher I EFP application

Tom-

- 1) Some good news.
- 2) Paul Rago spoke to John Darcy at headquarters regarding the various options for catching surfclams on GBK now that the PSP issues have been resolved. Paul explained all of the underlying issues related to poor stock status in the south, PCP, etc.
- 3) Darcy's advice was to split the amendment currently under development. That is, submit the part about fishing on GBK as a separate amendment.



4) The prospects for an EFP are low because the amount of new science would probably be modest.

5) I am not an official provider of this sort of news so Tom should follow up with Darcy himself.

Cheers!

On 12/27/2011 3:12 PM, [dhwallace@aol.com](mailto:dhwallace@aol.com) wrote:

> Hi Larry,

> I hope you and your family had a Merry Christmas.

> As you may know, the ISSC adopted the PSP Protocol in October.

> Therefore, the Pilot program on Georges is over when the EFP ends at

> the end of this year. At first we thought that the NERO would renew

> our EFP and grant two more. As things went along the requirements got

> much more complicated as you will see below. Today Georges Bank can

> be fished for bivalves including Surfclams and Ocean Quahogs under the

> Protocol but NMFS will not issue us permits to fish there because the

> only way that they will consider issuing an EFP is for do research.

> Is there any way that we can create a research program for GB so that

> you get needed information without the vessels just doing survey work?

> If not then there is not money to operate the vessels. These are

> large expensive vessels fishing way off shore burning very costly

> fuel.

> Any suggestions or ideas would be helpful.

> Cheers,

> Dave.

>

> David H. Wallace

> Wallace & Associates

> 1142 Hudson Road

> Cambridge, MD 21623 3234

> P 410 376 3200

>

> -----Original Message-----

> From: Douglas Potts <[douglas.potts@noaa.gov](mailto:douglas.potts@noaa.gov)>

> To: [dhwallace@aol.com](mailto:dhwallace@aol.com)

> Cc: Michael.Pentony <[Michael.Pentony@Noaa.Gov](mailto:Michael.Pentony@Noaa.Gov)>; George.Darcy

> <[George.Darcy@noaa.gov](mailto:George.Darcy@noaa.gov)>; Joel.G.Macdonald <[Joel.G.Macdonald@noaa.gov](mailto:Joel.G.Macdonald@noaa.gov)>;

> Jason.Berthiaume <[Jason.Berthiaume@noaa.gov](mailto:Jason.Berthiaume@noaa.gov)>; WPJensen

> <[WPJensen@aol.com](mailto:WPJensen@aol.com)>

> Sent: Thu, Dec 22, 2011 3:00 pm

> Subject: Re: Seawatcher I EFP application

>

> Dave,

>

> I couldn't open the attachment with your most recent EFP application,

> but Jason was able to send me the text version you provided to him.

> This draft EFP request still does not seem to address several of the

> questions I raised in my last email.

>

> In my last email I tried to stress the need for a valid scientific

- > objective in an application for an EFP. Essentially, a scientific
- > question that the activities taken under the EFP are specifically
- > designed to answer. Further, the application would need to include a
- > fully developed research plan that explains and justifies the proposed
- > sampling regime in regard to answering that scientific question. The
- > details of the sampling plan would include, but not limited to,
  - > • Data to be collected,
  - > • Proposed sample size,
  - > • Locations to be sampled,
  - > • Number of vessels necessary to complete the work,
  - > • Expected clam harvest necessary to complete the work,
  - > • Information on who would conduct the data analysis, and
  - > • Who would be provided with the report of the results and conclusions.

- >
- > Your application states that the purpose of activities under the EFP
- > would be to allow access to surf clams and ocean quahogs in the
- > federally closed waters on Georges Bank and to determine presence or
- > absence of PSP in the closed area. The application then states that
- > the purpose for determining presence or absence of PSP would be to
- > determine the safety of the harvested clams for the food market. This
- > is the same circular argument from the previous application. I cannot
- > identify a scientific objective in this application that is not
- > focused exclusively on the commercial harvest of clams from this area.
- > That is, if you don't harvest the clams from the closed area in the
- > first place, then you don't need to test them to ensure they are safe
- > for human consumption.

- >
- > Your application states that information collected would be available
- > to the Mid-Atlantic Council, but it might be more useful to specify
- > what scientific analysis would be conducted and how the results and
- > conclusions of the study would be presented to, and used by, the Council.

- >
- > Apart from the commercial harvest of clams, I can only infer that the
- > intended objective is some sort of PSP survey on Georges Bank. The
- > application also specifies the amount of clams to be harvested (a
- > significant increase from the amount harvested under the previous EFP)
- > but does not discuss how the number of clams to be harvested is
- > connected to the scientific question being asked. If the objective of
- > the study is a survey for the presence of PSP in the closed area, this
- > raises some questions of the sample design:
  - > • Are samples to be taken at locations spread over the entire PSP
  - > closed area?
  - > • How were sample sites chosen?
  - > • Is it a random stratified sampling design or are specific
  - > stations chosen for some other reason?
  - > • Is there a statistical analysis that was used to determine that
  - > this amount of harvest is necessary to get a statistically significant
  - > result?
  - > • How will these results be analyzed when the study is concluded?
  - > • Will there be a final report that presents the findings of this
  - > study?

> • And who will receive such a report?

>  
> The pilot protocol EFP included many aspects of the sample design  
> within the protocol itself, but that was because the nature of the  
> particular research objective in that case. For example, the details  
> of how specific sampling locations were chosen would be less important  
> in a study that focuses just on the efficacy of a PSP testing protocol  
> than it would in a study that intends to survey PSP prevalence over a  
> large area. Under a new research project, you would need to determine  
> the scientific objective and the sampling details would be designed  
> around addressing that objective. You might find some of the  
> documents we have on the web to be useful  
> ([www.nero.noaa.gov/sfd/sfdrsa.html](http://www.nero.noaa.gov/sfd/sfdrsa.html)). Perhaps collaboration with an  
> experienced researcher would help you develop a research question and  
> design a sampling plan to match it.

> Sincerely,

> Doug

> On 12/16/2011 2:49 PM, [dhwallace@aol.com](mailto:dhwallace@aol.com) wrote:

>> Hi All:

>> Attached is a draft application for vessels to fish on Georges Bank  
>> under the Dockside Monitoring PSP Protocol that was approved by the  
>> ISSC in early October of this year. This is an informal document for  
>> you review and suggestions. For the past three years the Seawatcher  
>> I was allowed to fish on Georges Bank under the Pilot Dockside PSP  
>> Protocol as a research vessel. It has become clear that obtaining  
>> research EFPs is now much more difficult.  
>> The attached draft document request that EFPs be issued under health  
>> and safety, exploratory fishing and data collection.  
>> Will this approach expedite EFPs for operating on Georges Bank under  
>> the Protocol? If not, what will? In the past, we have received the  
>> Seawatcher's EFP before the start of the new year. We had hoped that,  
>> at least, the Seawatcher's EFP would be issued by early January.  
>> Today that does not appear to be a realistic date.  
>> Any suggestions or ideas would be approached.

>> Best regards,

>> Dave,

>> David H. Wallace

>> Wallace & Associates

>> 1142 Hudson Road

>> Cambridge, MD 21623 3234

>> P [410 376 3200](tel:4103763200)

>>

>>

>> -----Original Message-----

>> From: Douglas Potts <[douglas.potts@noaa.gov](mailto:douglas.potts@noaa.gov)>

>> To: [dhwallace@aol.com](mailto:dhwallace@aol.com)

>> Cc: Michael Pentony <[Michael.Pentony@Noaa.Gov](mailto:Michael.Pentony@Noaa.Gov)>; George Darcy

>> <[George.Darcy@noaa.gov](mailto:George.Darcy@noaa.gov)>; Joel G Macdonald

>> <Joel.G.Macdonald@noaa.gov>; Jason Berthiaume

>> <Jason.Berthiaume@noaa.gov>

>> Sent: Tue, Dec 13, 2011 5:21 pm

>> Subject: Seawatcher I EFP application

>>

>> Dave,

>> I understand you have some additional questions following my last  
>> email regarding the Seawatcher I EFP, and what specifically I was  
>> asking for. I don't disagree with your point that the protocol  
>> adopted by the ISSC is a scientifically valid means of determining  
>> the safety of clams harvested from the Georges Bank PSP Closed Area.  
>> However, in order for NMFS to issue an EFP to allow access to this  
>> area, the authorized activity must be in support of a valid  
>> scientific objective. More general commercial harvesting in this  
>> closed area under the protocol may be authorized in the future, if  
>> the MAFMC chooses to include such an option in the next FMP amendment  
>> (currently under consideration for Amendment 15). However, until  
>> such a change to the FMP is adopted and implemented, the current PSP  
>> closure is still in effect.

>> There are a wide range of potential scientific inquiries that could  
>> justify issuing an EFP to access this area. Examples could include a  
>> broad sampling pattern that is designed to test the extent of any PSP  
>> toxin present in the closed area, or a sampling program that is  
>> designed to provide specific information the Council needs to  
>> developing future management actions. The specific scientific  
>> question to be addressed is up to you and your research partners,  
>> just so long as it is scientifically valid and the activity to be  
>> authorized is intended to collect data to achieve that objective.  
>> Our issue with the current proposal is that it does not include a  
>> reason for harvesting the clams other than the commercial market.  
>> The testing protocol is used to simply verify that the commercial  
>> product is safe. There does not seem to be an objective other than  
>> commercial sale of the resource. If you wish to pursue an EFP, we  
>> will need a revised application that clearly states the scientific  
>> objective to be studied, a copy of a research plan that explains and  
>> justifies the proposed sampling regime (including, but not limited  
>> to, data to be collected, proposed sample size, locations to be  
>> sampled, number of vessels necessary to complete the work, expected  
>> clam harvest necessary to complete the work, etc.), and information  
>> on who will conduct the data analysis, and to whom the results will  
>> be provided.

>> There were a couple of other questions that were raised, but these  
>> could be worked out once the Federal Register notice is published.  
>> The protocol calls for written agreements or memoranda of  
>> understanding with each of the states where product would be landed,  
>> that include several necessary provisions. I understand a letter  
>> from Massachusetts was pending, but we would need one from each state  
>> of landing. The protocol calls for MBA testing at a NSSP certified  
>> lab. Last year this testing was done by MA-DMF, but the current  
>> application does not address this testing. In a subsequent email you  
>> mentioned that testing would be done at a new industry funded lab.

>> Before issuing an EFP, we would need to get certification information  
>> for the lab to be used, including that it could handle the  
>> anticipated number of samples. But these issues can be addressed  
>> after the notice is published, provided we receive a new EFP  
>> application that addresses the issues raised in the preceding paragraph.

>> Doug

>>

>> --

>> Douglas Potts

>> Fishery Policy Analyst

>> Sustainable Fisheries Division

>> Northeast Region

>> National Marine Fisheries Service

>> 55 Great Republic Drive

>> Gloucester, MA 01930

>> TEL: (978) 281-9341

>> FAX: (978)281-9135

>>

>

> -- Douglas Potts Fishery Policy Analyst Sustainable Fisheries

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> 281-9135