



**Summary of the
Atlantic Surfclam and Ocean Quahog (SCOQ)
Advisory Panel Meeting and
SCOQ Committee Meeting - September 17, 2019**

To review

SCOQ Excessive Shares Amendment - Public Comments

The Mid-Atlantic Fishery Management Council's (Council) SCOQ AP and SCOQ Committee held separate meetings on Tuesday, September 17, 2019 to review and provide input on the public comments from the Excessive Shares Amendment received during the August 1 – September 14, 2019 public comment period. The input provided below on this topic will be provided to the Council at its December 2019 Council meeting, when the Council discusses the final action/approval of the Excessive Shares Amendment. The following provides a summary of common themes provided during those meetings.

AP Meeting (morning session)

AP Members: Thomas Alspach, Tom Dameron, Michael Ferrigno (listen-only webinar), Howard King, Jeffrey Pike, David Wallace. Staff: Jessica Coakley, José Montañez.

Others: Doug Potts, Peter deFur, Peter Hughes, Daniel LaVecchia, Mike Ruccio (listen-only webinar).

José Montañez presented a summary of the comments received during the public comment period. The AP provided the following comments regarding the various topics/issues that were discussed.

- There was a short discussion regarding the meaning of the “Final adopted by MAFMC: MM-DD-YYYY” date on the first page of the Draft Environmental Assessment document. It was implied that the Council did not make a Final adoption of the public hearing document before it went out for public hearings. Staff responded: that the Council adopted the Draft Environmental Assessment document to be used for public hearings at the June Council meeting (Draft Adopted by MAFMC: 06-24-2019) and that the “Final adopted by MAFMC: MM-DD-YYYY” missing date would be posted when the Council takes final action/approval of the Excessive Shares Amendment. Final action/approval on the Excessive Shares Amendment is anticipated to take place at the December council meeting.
- It was stated that there were significant changes made to the document from the version of the document that was approved at the June 2019 Council meeting and the version

that was used to conduct public hearings. When you take a statement that says excessive shares and market issues, and use terms called market consolidation and social issues. This changes the whole realm of what the document is about. It is about excessive consolidation. From an industry standpoint, this is not the document that was voted on by the Council with the necessary edits.

- Alternatives 5 and 6 would reduce the activity in the leasing market and not increase it as indicted in the public hearing document. There has never been an analysis of the leasing market prior to this point. The net leasing of ITQ cage tags would be reduced by these alternatives. There are people holding ITQs that do not participate in the harvesting or processing of clams; however, they do participate in the fishery by leasing their allocations. So, while they are not active in the fishery, they are active in the leasing market. These are mostly people that did not receive large initial ITQ allocations when the program was first implemented. Alternatives 5 and 6 would affect these individuals as well, and this has not been fully investigated.
- In the summary of public comments there is a statement that I do not agree with which reads “newly developed analysis presented during the public hearings indicates that there is no information to conclude that harmful market power is being exercised in the SCOQ fisheries.” The compass Lexecon report indicated this, but this is not reflected in the public hearing document. Staff responded: the Compass Lexecon report indicated that there was no evidence that monopoly power was occurring in these fisheries. They did not specifically look at monopsony power. The CIE review indicated that this was not properly assessed in the Compass Lexecon report, but there are characteristics in the fishery that indicate that this may be a problem. The statement above can be modified to better state its intent and remove the reference to “newly.”
- One of the themes stated by industry in opposition to alternatives 5 and 6, and stated in the “Public Comment Summary,” was that “Alternatives 5 and 6 will give market power to the non-participant ITQ holders.” This was supported by the analysis conducted by economic experts submitted by industry. Nevertheless, that analysis is underestimating the market power that would be given to non-participants as the experts did not have the data to do detailed analysis. There are 3 individuals that own most of the outstanding ITQ (this information is from our companies knowledge of who we have leased from), and if you hand power over to them it would create a significant market for some holders of ITQ shares. One of these large ITQ holders leases cage tags under contract to other parties. But we know of 1.8 million bushels of tags that people do not want to lease out – there are folks who hold shares and never lease or use them. This person does not want to enter into a contract to lease.
- The Council and Committee need to be reminded that we tried to align the quota with market needs back in the late 1990s, when the idea/notion of balancing the quota with the average catch was raised. The Council reduced the quota to the current catch level at that time, but no one bothered to look at National Standard 5 which would have prohibited that. Nevertheless, this created havoc in the industry. The Council then passed two motions to restore the quota to the same levels as before, and to never do this again. The need to lease clams increases the price of the clam meat – when you have to go to someone that holds quota and they know that some people need to lease, then, they can ask whatever price they want to lease cage tags out. And when those individuals want more and raise the price they want in order to lease out their tags, you

cannot get the additional amount from the customers you sell the clam products to (soup manufacturers). When you tell the big clam buyers that you need to increase the price of the clam products you sell to them, they would say “we will just sell chicken noodle soup.” If alternatives 5 or 6 are implemented, this would force us to go into leasing. This will just shrink the industry and increase the price of clam meats. If we were farmers there would be 100 congressman behind you making sure this would not happen and that we were ok. This is a socialist idea and we operate in a capitalist system. Also, there were changes to the document between the June Council meeting and when they public hearings were held. This is not the way this should function, and leadership has determined that the changes made are within the legal boundaries. This is a problem.

- You did a good job summarizing some of the major themes regarding opposition to alternatives 5 and 6. Question: was there any support provided support on 5 and 6? Staff responded: we did not receive any specific comments indicating that alternatives 5 or 6 were specifically supported. However, there were 3 sets of comments that indicated that the quota should be aligned with the landings/industry needs, but no one specifically supported 5 and 6. We can add that and note in the summary to clarify this.
- Aligning quota with demand/industry needs is not something we should be doing under alternatives 5 and 6. This would reduce the ability of processors to operate and there would be a lot of quota (Quota B shares) that would sit in NMFS cabinets/drawers instead of being in the processor’s hands. Also, remember that the increase in cost of leasing tags under alternatives 5 and 6 would eventually be passed to the end consumer, although not overnight.
- Another problem with alternatives 5 and 6 and the notion of aligning quota with harvest is that when Quota A shares are released you only get a portion of the quota that has been implemented in recent years, therefore, you cannot make arrangements with the larger buyers of the total quota (Quota A shares + Quota B shares), because quota B shares may never be released. We need flexibility to show the large buyers that we can supply their needs.
- Staff thanked the AP members for the input and clarifications provided. The specific comments/edits we agreed upon will be included in the final “Summary of All Comments Received.” In addition, these comments/edits will also be presented during the Committee meeting presentation this afternoon.
- Would like that the summary of comments to reflect that even though folks thought the IQA act request for correction was not warranted, the AP noted that substantial changes were made after the Council voted.
- Peter deFur stated that staff will be summarizing AP comments and they will be made available for the Council to review at the December Council meeting. This afternoon, the SCOQ Committee will discuss the industry proposed alternative that modifies sub-alternative 4.3. We have already asked staff about the potential for adding it to the document. Will make sure to highlight to the full Council in December, in terms of all the points that we discussed today and the public comments that were received on the Excessive Shares Amendment.

Committee Meeting (afternoon session)

Committee Members: Peter deFur, Peter Hughes, Maureen Davidson, Sonny Gwin, Stew Michels, Doug Potts (designee: Pentony), Mike Ruccio (listen-only webinar). Staff: Jessica Coakley, José Montañez.

Others: Mike Luisi, Thomas Alspach, Tom Dameron, Howard King, Jeffrey Pike, David Wallace, Daniel LaVecchia, Michael Ferrigno (listen-only webinar), Dave Frulla.

José Montañez presented a summary of the comments received during the public hearing period. In addition, the input provided by the AP during the morning meeting was presented to the Committee. The Committee provided the following comments regarding the various topics/issues that were discussed.

- Under alternatives 5 and 6 the net leasing market will decrease. We do not know who would benefit but it is likely a very small number of individuals, if any. However, many would be hurt if these alternatives are implemented. The reason this is not known is because we do not know how many ITQ allocations are not leased.
- Along the lines of the modification to sub-alternative 4.3 proposed by the industry, what was the justification for it? For the proposed modifications? Staff responded: industry indicated that the proposed slight modifications/increase in caps percentages to sub-alternative 4.3 would allow for extra room for growth and take advantage of potential economies of scale. The cap percentages for ocean quahogs are slightly higher than the cap percentages of surfclam; the justification for this is that currently there are two processing plants processing ocean quahogs. These percentages would give room to consolidate a bit further and meet future increase in demand.
- Regarding the alternative that would require a periodic review of excessive shares measures that the Council adopts; even if this was not an option, the current allocation review policy of the Council would occur as part of the catch share review. Staff responded: correct, but under this alternative there would be a specific timing requirement for the periodic review.
- For the alternative that addressed setting the multi-year management specifications, is that timing is based off the survey schedule. Staff response: Yes. Specifications could be set for a period up to the maximum number of years consistent with the NRCC-approved stock assessment schedule. This alternative would provide additional flexibility as specifications could be set until a new surfclam and/or ocean quahog assessment is produced. For example, under the current schedule, new survey information will be available every 4 years for surfclams and every 6 years for ocean quahogs, after which a stock assessment may be conducted.
- We have discussed monopsony since April. I am not sure where we are whether it is on the table or off the table. However, I think we have cut a layer too deep on who holds monopsony power. I think Sysco, Costco, and the Progresso's of the world, etc. are the companies exerting monopsony power. Not the SCOQ vessel, processors or ITQ holders. For example, in the sea scallop fishery – last year we sold every pound of it

(40 million pounds) and this year we are planning to sell it all as well (65 million pounds). This year, we will again sell every pound because the markets are hungry for that product. The SCOQ leaves about 30 percent of the resources in the water – the bottom line is because the Sysco's, Costco, and other US food companies will not buy all the clams that could be produced. Therefore, we cannot sell all the clams. In the scallop fishery, we sell every pound of it. The SCOQ industry cannot sell all of their quota but it is the processors or the buyers that hold the power. This should put this issue to rest.

- The Committee should vote to incorporate the industry modified sub-alternative 4.3 into the document for the Council to consider.
- Motion to include a modified sub-alternative 4.3, based on industry input. For Surfclams: 35% ownership / 65% combined. For Ocean Quahog: 40% ownership / 70% combined.

Gwin/Davidson

- AP members offered the following comments in support of the motion considered by the Committee:
- Urged the committee to pass this motion and include information on the reason in the document. The industry position has always been that we should stay with alternative 1, but have come up with a compromise alternative that we could live with. This alternative would allow for some expansion given current ownership levels in the fishery (i.e., 28% ownership for surfclams; 22% ownership for ocean quahogs). This would allow a little bit of growth and would also allow for additional leasing. There is a perception by Staff / Council that they would like to see more leasing of non-participant ITQ holders. As to the difference between the SC and OQ cap level values, you have captured the justification. This is an industrial fishery.
- Concern about using the term monopsony power – that comes with a connotation that there is market power being exercised. Just because there is limited appetite for a product, or product at a certain price does not meet there is a monopsony issue.
- We cannot have fair market pricing with large buyers (e.g., Sysco, Heins, Progresso, etc.). If they see that the quota is cut whether natural or manmade, they become concerned. These large buyers are projecting purchases years out (two to three years down the road) and tracking how the fishery/management operates. It is already past lent, they are already looking months out to see what they can roll out. Then again, they want to know what they may have in the next season. Our clam products are not an appetizer or center of the plate product. It is an ingredient/condiment – or it is a fried clam. In comparison, scallops are in two or three places on menus. The industry is in a good place because there is stability, the harvest is good, and the biomass is good. Maybe there is thinking we do not want to sell all or clams and that is why the quota is not taken. Any reduction in the quota will concern the buyers, and in fact, would panic them. Every time we go to a show (e.g., Boston Seafood Show), you should see what we are doing to expand our markets. We are actively trying to sell clam meat. If you diminish the supply, especially if man-made, the large buyers will see it and want to know what is going on. Not sure what to say about the banks; but this would also affect our banking relationships as our allocations are collateralized. It is not that we do not

want to do business with the non-participants, I would like to lease from them, but we have to sell clams first.

- How is making the quota available under alternatives 5 and 6 effect the processors, related to large buyers (e.g., Sysco, Progresso's)? How are people selling clams (shell stock) to processors be affected by the quota being adjusted (e.g., allocated under Quota A shares and Quota B shares)? You have to make decision on how much to fish. How do you relate to the ones that have their own individual quotas? How are they affected? Are independent fishermen left out? Industry members responded:
- We have 4 boats and also buy from an independent vessel. As an example, we did not land all the quota last year, so due to timing scheduling we also try to keep those relationships going; we implement multi-year contacts to keep those relationships going. So, when in the future, as you need more clams, then you have people that can help you land all you need.
- Our relationships are based on taking into consideration the captain and vessel that brought the highest yield, the captain and vessel that brought up the cleanest product, and how good you were when delivering what was needed; those people are rewarded.
- We process clams and need to have relationships to fill the holes. We had a hard time sending clams to other locations and prices were so high because of transportation costs; went from say \$10/bu to \$20/bu. Hauling restrictions bolted the price of clams up. We could not use any other freight to get the prices down.
- It is important to recognize that alternatives 5 and 6 have not been driven by the needs of non-independent boat owners. It is driven by non-participants that are not involved in the industry. They do not care how we fish because they do not own boats. It is up to us to lease and have contracts to satisfy needs. The non-participant ITQ holders are highly concentrated. Alternatives 5 and 6 are not creating additional fishing opportunities for vessels, but create a market for ITQ owners that do not use/rent their allocation; to create a market for their ITQs.