

FINAL ENVIRONMENTAL ASSESSMENT/AMENDMENT NO. 1

FOR THE

SURF CLAM AND OCEAN QUAHOG INDUSTRIES

FISHERY MANAGEMENT PLAN

March, 1979

Mid-Atlantic Fishery Management Council

in cooperation with

New England Fishery Management Council

South Atlantic Fishery Management Council

National Marine Fisheries Service

II. SUMMARY

() Draft (X) Final Environmental Assessment/Amendment No. 1 for the Surf Clam and Ocean Quahog Industries Fishery Management Plan

II-1. Responsible Federal Agency

US Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

II-2. Name of Action

(X) Administrative () Legislative

II-3. Description of the Action

The Fishery Conservation and Management Act of 1976 (FCMA), enacted and signed into law on April 13, 1976, established a Fishery Conservation Zone (FCZ) and provided exclusive US regulation over all fishery resources except highly migratory species (i. e., tuna). Pursuant to the FCMA, the Mid-Atlantic Fishery Management Council in consultation with the New England and South Atlantic Fishery Management Councils prepared a Fishery Management Plan (FMP) for the Surf Clam and Ocean Quahog Industries (the Plan). The Councils, in the same manner, have prepared this amendment to the Plan. This amendment extends the present Plan, which terminates on September 30, 1979, until December 31, 1979. This extension is effected by establishing a quarterly quota of surf clam for the fourth quarter of 1979 (October 1, 1979 to December 31, 1979). This quota is exactly the same as the quota for the fourth quarter of 1978. The primary objective of amending the Plan in this fashion is to provide the Mid-Atlantic Council the time frame necessary to prepare a substantial amendment to the Plan in compliance with the review, comment, and implementation requirements of the FCMA.

The amendment also provides for the processor reporting requirements established by the amendments to the FCMA. The amendment would also remove the requirement that each quarter begin with a four day fishing week for surf clam and replace that provision with a requirement that the number of fishing days for the beginning of each quarter would be set by the Regional Director in consultation with the Surf Clam Committee of the Mid-Atlantic Council.

Implementation of these amendments by the Secretary of Commerce does not constitute a major Federal action significantly affecting the environment.

II-4. Summary of Impact

These amendments will assure the continuation of the current plan until the completion and adoption of a revised fishery management plan for the surf clam and ocean quahog fisheries. The amendment will maintain the status quo in the fishery, prevent economic dislocations, protect the stocks, and allow for more informed decision making in the major plan revision as the result of being able to include in the major plan revision data which would be impossible to include without this amendment.

II-5. Alternatives

The alternative to the proposed amendment is to not extend the current plan. Adoption of this alternative would require two alternative actions:

1. Revise the current plan so that the revision could be adopted prior

to September 30, 1979. This would mean that the results of the winter, 1979, survey cruise of surf clam resources would not be incorporated into the revised plan since those data will not be available until April, 1979. This would not allow adequate time to incorporate any necessary changes into the revised plan and permit the required review and approval processes. Because of the condition of the surf clam resource and the present capacity of the fleet to overharvest the surf clam resource, it is critical that the revised plan be based on the most comprehensive and up to date information possible.

2. Schedule the revision of the plan so that the winter survey cruise data may be included but permit the current plan to lapse until such time as the revision is completed and approved. This alternative would have dramatic negative effects on the surf clam fishery because both the quotas and the vessel moratorium would be removed without any alternatives replacing them. Given the condition of the resource and the present capacity of the fleet to overharvest surf clam and ocean quahog, this could have disasterous effects on the fishery.

Given the condition of the resource and of the fishery, both alternatives are unacceptable.

II-6. List of Agencies From Which Comments Have Been Requested

<u>Agency</u>	<u>Comment Received</u>
Senate Commerce Committee	
House Merchant Marine & Fisheries Committee	
Department of State	
Department of Commerce	
NOAA - National Marine Fisheries Service	
NOAA - Office of Coastal Zone Management	
NOAA - Office of Ocean Management	
Department of the Interior	
US Fish and Wildlife Service	X
Bureau of Land Management	
US Dept. of Transportation, US Coast Guard	
Environmental Protection Agency	
The States of Maine through North Carolina	X
New England Fishery Management Council	
South Atlantic Fishery Management Council	

II-7. Dates

Hearings:

Norfolk, VA	February 21, 1979
Tinton Falls, NJ	February 21, 1979
Newport, RI	February 22, 1979
Ocean City, MD	February 23, 1979

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IV. AMENDMENTS

IV-1. Introduction

The current Surf Clam and Ocean Quahog Industries Fishery Management Plan provided quarterly quotas for two years beginning October 1, 1978, and ending with September 30, 1979. Therefore, the Plan effectively expires on September 30, 1979.

The Mid-Atlantic Council had been aware of the expiration date on the Plan and had been working to produce a revised Plan on a schedule that would assure its review, approval, and implementation prior to September 30, 1979. However, the Northeast Fisheries Center of the National Marine Fisheries Service will not have data available from its winter, 1979, survey cruise of surf clam and ocean quahog resources before early April, 1979. If the revision of the Plan was delayed so that the survey data could be considered in the revision, there would not be adequate time available for the necessary review and comment periods for the Plan and its implementing regulations. The depressed condition of the surf clam resource, the impact of the condition of the resource on the Plan, and the current capacity of the fleet to overharvest the resource make it mandatory to consider the winter, 1979, cruise data in the revised Plan. The management measures in the present Plan must be thoroughly reviewed in light of the most recent available data to insure that the management measures in the revised Plan are as reasonable and comprehensive as possible. The Council reviewed the time necessary to revise the Plan and carry out the necessary reviews. It was decided to accomplish as much of the revision work as possible prior to receiving the cruise data, incorporate the findings of the cruise, and issue a draft plan. When this strategy was translated into a schedule, it became apparent that the present Plan would need to be extended to the end of calendar year 1979.

The amendment will also provide more time for consideration of social and economic information particularly with regard to the relationship between that information relative to stock condition. The effect of the amendment will be to have the plan year coincide with the calendar year, which may be beneficial to the fishery.

The Plan provides annual values for optimum yield, US capacity, and total allowable level of foreign fishing (see Table 29 of the Plan). Since the amendment only extends the Plan to the end of the calendar year by adopting the fourth quarter quota from 1978 as the fourth quarter quota for 1979, it is not necessary to revise these values. In other words, for surf clam, the 1979 OY would be 30 million pounds (meat weight), the US capacity 147.7 million pounds, and the TALFF 0 pounds. For ocean quahog, the 1979 OY would continue to be 30 million pounds (meat weight), the US capacity 119.0 million pounds, and the TALFF 0 pounds. Current information concerning US capacity for harvesting and processing and the condition of the surf clam and ocean quahog resources indicate that the present TALFF should be continued through the calendar year.

IV-2. Quota Amendment

Section XII, Measures, Requirements, Conditions or Restrictions Specified to Attain Management Objectives of the Surf Clam and Ocean Quahog Industries Fishery Management Plan is amended by deleting paragraph (a) under the heading "Catch Quotas" on page 96 and by replacing it with a new paragraph (a) as follows:

- (a) Catch quotas for the period from October 1, 1977 to December 31, 1979, for licensed vessels of the United States fishing for

surf clam are allocated by quarterly periods, as follows:

(1) Surf Clam	Bushels
October 1, 1977 to December 31, 1977	350,000
January 1, 1978 to March 31, 1978	350,000
April 1, 1978 to June 30, 1978	550,000
July 1, 1978 to September 30, 1978	550,000
October 1, 1978 to December 31, 1978	350,000
January 1, 1979 to March 31, 1979	350,000
April 1, 1979 to June 30, 1979	550,000
July 1, 1979 to September 30, 1979	550,000
October 1, 1979 to December 31, 1979	350,000
(2) Ocean Quahog	
Annual Quota	3,000,000

IV-3. Amendments Resulting from Amendments to the FCMA

The FCMA was amended during 1978 to require that plans consider the capacity of US processors to handle fish caught by US fishermen, and to require US processors to report processing capacity as well as actual processing volumes of species covered by management plans. Since the Surf Clam and Ocean Quahog Industries Fishery Management Plan is being amended to provide an additional quarter, it is appropriate that it be amended to bring it into conformity with the new requirements of the FCMA.

Processors are reportedly working at less than full capacity to process surf clam and ocean quahog. A review of the surf clam and ocean quahog processed historically based on data in the original Surf Clam and Ocean Quahog Industries FMP indicates a historical capacity to process significantly more clam than the sum of the quotas for both species in this amended FMP. There has been no significant decrease in the number of processors. It therefore is reasonable to conclude that US processors have the capacity to process all surf clam and ocean quahog landed by US fishermen under the Plan, and probably amounts in excess of those values. Therefore, Section XI-5, Specification of Optimum Yield, is amended by adding a new paragraph after the first paragraph of that Section (at the bottom of page 86), as follows:

The capacity of US processors to process surf clam and ocean quahog caught by US fishermen is at least as great as the quotas for these species specified in this plan.

To incorporate the reporting requirements of the amended FCMA, paragraph (a)(1) under Reports and Records on pages 97 and 98 of the Plan (Section XII, Measures, Requirements, Conditions, or Restrictions Specified to Attain Management Objectives) is amended to read:

(a)Dealers.

(1) All persons who buy surf clam or ocean quahog from vessels engaged in the surf clam or ocean quahog fisheries shall provide the Regional Director of the National Marine Fisheries Service on a weekly basis the following information on forms supplied by the Regional Director:

- (a) dates of purchases,
- (b) number of bushels purchased, by species,
- (c) name and permit number of the vessel from which surf clam or ocean quahog are landed or received,
- (d) price per bushel, by species,

- (e) mailing address of dealer or processing plant,
 - (f) size distribution of surf clam and ocean quahog purchased, by species, on a percentage basis, and
 - (g) meat yield per bushel by species.
- (2) All persons required to submit reports under subparagraph (a)(1) are also required to submit at least the following information to the Regional Director on an annual basis on forms supplied by the Regional Director.
- (a) number of dealer or processing plant employees by month;
 - (b) number of employees processing surf clam and ocean quahog, by species, by month;
 - (c) total payroll of surf clam and ocean quahog processing by month;
 - (d) capacity to process surf clam and ocean quahog, by species; and
 - (e) projected capacity to process surf clam and ocean quahog, by species, for the following year.
- If capacity increases or decreases more than ten percent during the year, processors shall notify the Regional Director of the change in capacity.
- (3) All persons purchasing or receiving any surf clam or ocean quahog at sea for transport to any port of the United States must maintain and provide to the Regional Director records identical to those required under subparagraph (a)(1) and (2) of this paragraph.
- (4) Additional information may be required annually as part of the application documentation for a license.

The term "processor capacity" has not been defined as yet by the NMFS. As of the date of this amendment, the definition is set forth in the interim final regulations implementing P.L. 95-354 (see 44 FR 7708, February 7, 1979). However, the NMFS is currently holding hearings on these regulations and the definition may change as a result of these hearings. It is the Council's intent that the definition ultimately established for "processor capacity" be used in the regulations promulgated to implement this amendment. If the Council were to establish a different definition at this time, there is a possibility for confusion. In requiring that processor capacity be reported annually, the Council recognizes that the NMFS has been conducting a voluntary survey of processors. It is the Council's intent to minimize reporting requirements and to integrate the reporting required to monitor this FMP with other reporting programs to minimize expenses to both processors and to the NMFS.

IV-4. Other Amendments

The Plan and its implementing regulations currently provide that the Regional Director of the Northeast Region of the National Marine Fisheries Service may make various management decisions unilaterally. One of these decisions relates to the number of days per week during which fishing for surf clam is permitted. The Plan provides that each quarter begin with a four day fishing week for surf clam. This provision may be changed only by revising the regulations. Experience since the implementation of the Plan has shown that it is generally preferable to begin the quarter with fewer than four fishing days in order to insure there will be no closure of the fishery. The Council believes that the achievement of the objectives of the Plan would be enhanced by amending the Plan to provide the Regional Director with authority, after consultation with the Surf Clam Committee of the Council, to determine prior to the beginning of each quarter the number of fishing days with which to begin a quarter. Therefore, paragraph (a)(2) under Effort Restrictions (p. 96) in Section XII, Measures, Requirements, Conditions, or Restrictions

Specified to Attain Management Objectives is amended to read as follows:

(a) Surf clam

(1) Fishing for surf clam shall be conducted only during the period beginning 12:01 AM Monday and ending 11:59 PM Thursday. Such fishing is permitted during this period only at the times authorized by the Director.

(2)(i) Prior to the beginning of each quarter, the Director, in consultation with the Surf Clam Committee of the Mid-Atlantic Council, shall determine what number of hours per week to allow fishing for surf clam to be conducted throughout the entire quarter without exceeding the allocation for that quarter (as adjusted under section (a)(1) above).

(2)(ii) If the Director determines during the quarter that the quarterly allocation will be (will not be) exceeded, he may reduce (increase) the number of hours per week during which fishing for surf clam is permitted to avoid prolonged vessel tie-up times and fluctuations in the supply of surf clam which would result if the allocations were taken rapidly during the beginning of each quarter (facilitating the catch of the full quarterly allocation).

Since the amendment will extend the Plan to the end of 1979, in order that there be no break in the management regime for surf clam, it is necessary that the moratorium established pursuant to Section XII of the Plan for entry of new vessels into the surf clam fishery (page 97) be extended to the end of 1979 also. In the absence of any action the moratorium will lapse on November 17, 1979. Because of the substantial overcapacity of the current fleet to harvest surf clam, the revised Plan will address this problem in some as yet undetermined fashion. However, to permit the moratorium to lapse approximately six weeks before the implementation of a revised regime would create massive problems in the fishery. Therefore, the last paragraph in the "Vessel Moratorium" section on page 97 of the Plan is revised to read:

The moratorium shall remain in effect until December 31, 1979, unless the Secretary determines, after consultation with the Council and after a public hearing, that the moratorium should be terminated or extended.

Endangered Species Act of 1973

The provisions of this amended FMP should have no impact on endangered species, either through harvesting and processing operations for surf clam and ocean quahog or through the availability of surf clam and ocean quahog as possible food items for endangered species.

Costs Likely to be Incurred in Management

The cost of implementing this amended FMP should not be significantly different from the costs of implementing the original Surf Clam and Ocean Quahog Industries FMP. The only significant difference between the original FMP and this amended FMP relates to processor reporting. The processor reporting requirements have been structured so that they can be implemented by replacing the current voluntary processor survey with the required reporting established by this amendment. Processor reporting of capacity is required by the amended FCMA so the Council has no alternative except to require such reporting in this amended FMP.

V. APPENDIX

V-1. Environmental Assessment

Description of the Action

This action amends the Surf Clam and Ocean Quahog Fishery Management Plan. It extends the plan through the end of calendar year 1979, provides a quarterly quota of surf clam for the last quarter of 1979, revises the reporting requirements for processors to comply with the amendments to the FCMA, and extends the vessel moratorium in the surf clam fishery to the end of calendar 1979.

Environmental Impacts

Adoption of the proposed amendment should have no environmental impact since it is essentially an extension of the current fishery management plan for an additional three months. Based on the alternatives discussed below, failure to adopt the amendment could have a significant environmental impact in that it could possibly result in a lapse of the current plan with no replacement management regime, leading to unregulated harvesting of surf clam.

Alternatives to the Proposed Action

The alternative to the proposed amendment is to not extend the current plan. Adoption of this alternative would require two alternative actions:

1. Revise the current plan so that the revision could be adopted prior to September 30, 1979. This would mean that the results of the winter, 1979, survey cruise of surf clam resources would not be incorporated into the revised plan. Because of the condition of the surf clam resource, it is critical that the revised plan be based on the most comprehensive and up to date information possible.
2. Schedule the revision of the plan so that the winter survey cruise data may be included but permit the current plan to lapse until such time as the revision is completed and approved. This alternative would have dramatic negative effects on the surf clam fishery because both the quotas and the vessel moratorium would be removed without any alternatives replacing them.

Given the condition of the resource and of the fishery, both alternative actions are unacceptable.

Recommendation

Having reviewed the Environmental Impact Assessment, and considered the spirit and intent of the FCMA, and the available information relating to the proposed action, we have determined there will be no significant environmental impact resulting from the action.

X-2. List of Public Meetings and Summary of Proceedings

<u>Location</u>	<u>Date</u>	<u>Number of Public Attending</u>
Norfolk, VA	Feb. 21, 1979	9
Tinton Falls, NJ	Feb. 21, 1979	1
Newport, RI	Feb. 22, 1979	15
Ocean City, MD	Feb. 23, 1979	5

The comments at the hearings generally dealt with, not Amendment #1, but with issues that relate to the overall amendment to the Surf Clam and Ocean Quahog Industries FMP currently being prepared by the Mid-Atlantic Council. The most numerous of these were raised at the Newport hearing and addressed the relationship of the New England fishery for surf clam and ocean quahog to the mid-Atlantic fishery and the possible need to have differing management measures for each region to reflect these differences. Comments were made about the frequency of reporting processor capacity data.



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

PLEASE REPLY TO:
P. O. BOX 1809
TRENTON, NEW JERSEY 08625

DIVISION OF
FISH, GAME AND SHELLFISHERIES
RUSSELL A. COOKINGHAM
DIRECTOR

February 7, 1979

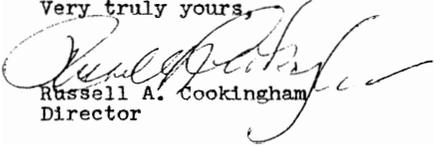
Mr. John C. Bryson
Executive Director
Mid-Atlantic Fishery Management
Council
Room 2115, Federal Building
North and New Streets
Dover, Delaware 19901

Dear Mr. Bryson:

Following are the comments of my Shell Fisheries Section
on the "Draft Environmental Assessment/Amendment No. 1
for the Surf Clam and Ocean Quahog Industries Fishery
Management Plan":

It is our opinion that extending the plan to
allow sufficient time for preparation of a sub-
stantial amendment is a good idea. Giving the
plan greater flexibility by not requiring that
each quarter open with four day weeks may also
be an advantage if the decision on whether and
when to open is made with an eye to the effect
on product price.

Very truly yours,


Russell A. Cookingham
Director

RAC jm
cc--G. Critchlow
R. Soldwedel



IN REPLY REFER TO:
ER79/40

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Secretary
Northeast Region
15 State Street
Boston, MA 02114

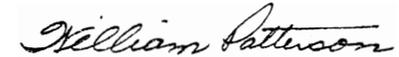
February 9, 1979

Mr. John C. Bryson
Executive Director
Mid-Atlantic Fishery Management Council
Room 2115, Federal Building
North and New Streets
Dover, DE 19901

Dear Mr. Bryson:

The Department of Interior has reviewed the Draft Environmental
Assessment/Amendment No. 1 for the Surf Clam and Ocean Quahog Industries
Fisheries Management Plan and offers no comments. Thank you for the
opportunity to review the document.

Sincerely yours,



William Patterson
Regional Environmental Officer

RECEIVED
FEB 12 1979
MID ATLANTIC COUNCIL



Doxsee Food Corp. / Executive Offices: 8323 Pulaski Highway / Baltimore, Maryland 21237 / Phone: (301) 686-2800
 Reply To: P.O. Box 288 / Lewes, Delaware 19958 / Phone (302) 645-6683

January 15, 1979

Mr. John C. Bryson,
 Executive Director.
 Mid-Atlantic Fishery Management Council
 Room 2115, Federal Building
 North & New Streets
 Dover, Delaware 19901

RECEIVED

JAN 17 1979

MID ATLANTIC COUNCIL

Dear Mr. Bryson:

In regard to the Amendment #1 to the Surf Clam and Ocean Quahog Fishery Management Plan section IV-3.

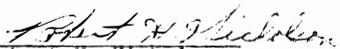
Our company feels that under the proposed reporting requirements that the following items are of a confidential nature and vary greatly from company to company as a result of innovative technology. It is this technology that produces a competitive spirit in the clam industry, and it is not reasonable to expect a company to divulge its manufacturing strength to other competitors.

1

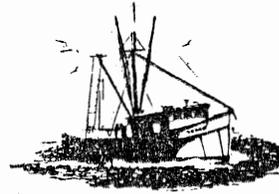
- d.) price per bushel
- f.) estimated processing capacity of the plant
- h.) meat yield per bushel
- i.) number of processing plant employees
- j.) number of employees processing clams
- k.) total payroll of surf clam & quahog processing
- l.) actual processing capacity utilized by plant

We would appreciate the council reviewing these points before proceeding with the proposed amendment.

Sincerely,


 Robert H. Nicholson,
 General Manager.
 DOXSEE FOOD CORP.
 P.O. Box 288
 Lewes, Delaware 19958

RHN:jp



EASTERN MARINE BUILDERS & SUPPLY COMPANY

(DIVISION OF THE AMERICAN ORIGINAL CORPORATION)

P. O. BOX 186
 BRIDGEVILLE, DELAWARE 19933
 AREA CODE 302-337-8283

February 24, 1979

RECORDED

FEB 29

BRANCH OFFICE:

SHARPS POINT
 SALISBURY, MARYLAND 21801
 AREA CODE 301-749-8819

New England Regional Council
 Peabody Office Building
 1 Newbury Port Turnpike
 Peabody, MA 01960

Gentlemen;

We wish to have this letter considered and made part of the public hearings which were held in New Port, Rhode Island on February 22, 1979. This hearing was to consider the extension of the Surf Clam and Ocean Quahog Fisheries Management Plan from September 30, 1979 to December 31, 1979.

Eastern Marine Builders and Supply Company, being the largest fleet operator in the fishery, feels that the extension of the F.M.P. for the fourth quarter of 1979 under these same provisions which it operated in 1978 is essential. The extension is logical and will have no negative impact on the resource or the industry. The advantages will be that when the new plan goes into effect, it will start on the first of the year and its anniversary will fall on the start of each subsequent year.

If the extension is not put in place before the September 30th deadline, than the Management Plan will expire and the area closure, size limits, quotas, and moratorium will not be in effect. This would have a tremendous negative impact on the resource and the industry. Since a new plan has not been completed at this time, the extension is necessary to get through all of the functions which are necessary to implement a new Fisheries Management Plan. Expiration of the Management Plan would undo that which has taken years of work to develop and get in place.

Until such time as a new plan can be written, it is your responsibility to keep a plan in effect. This is the only plan which can be used without additional impact on the resource and industry.

Thank you for your consideration in this matter.

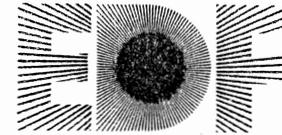
Sincerely,

David H. Wallace Jr.
David H. Wallace Jr.
Vice President
Vessel Operations

DWH/pf

cc:
Bruce Nichols (MMS)
John Bryson (Mid Atlantic Council)

- 14 -



November 20, 1979

REC-100

Mr. John C. Bryson
Executive Director
Mid-Atlantic Fishery Management Council
Room 2115, Federal Building
North and New Streets
Dover, Delaware 19901

RE: Amendments to the Fishery Management Plan (FMP) for the Surf Clam and Ocean Quahog Industry and Request for Public Comment, 43 Federal Register 6961 (February 5, 1979).

Dear Mr. Bryson:

In early January the Mid-Atlantic Council distributed a proposed amendment to the Surf Clam/Ocean Quahog FMP, accompanied by a brief environmental impact statement. The amendment extends the current surf clam management plan to the end of 1979 so as to permit analysis of 1978 catch data prior to the preparation of a substantially revised plan. The Environmental Defense Fund ("EDF") does not oppose this request to refine and update management efforts with the best scientific information available. EDF wishes, however, to take this opportunity to express a number of concerns with the current FMP for consideration by the Council and the National Oceanic and Atmospheric Administration in 1979. 2

I. Status of the Resource

The recent history of the surf clam fishery has been one of depletion followed by movement to new beds. Prior to World War II, surf clam landings averaged less than 2 million pounds of meat per year. Technological improvements raised landings in the 1950's to 14 million pounds per year. The discovery of new beds off Maryland and Virginia led to a peak harvest of 96 million pounds in 1974 followed by a severe decline to 49 million in 1976 and 51 million in 1977.* Historically, both the inshore and offshore fishery has centered in New Jersey. Rising prices and the discovery of new beds has led to the development of a mobile, efficient offshore fleet fully

* Serchuk, Fredric M., Steven A. Murawski, Emma M. Henderson, and Bradford E. Brown, Dec. 1978. "The Population Dynamics Basis for Management of Offshore Surf Clam Populations in the Middle Atlantic." Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts, pp. 1-5.

Mr. John C. Bryson
Page Two
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capable of catching three to four times the number of surf clams caught five years ago. As New Jersey grounds were depleted, the fleet moved south and the offshore fishery is now concentrated off of Maryland and Virginia.

A smaller fishery in New England waters has started to expand in recent years. Surf clam beds are relatively small and isolated in New England, requiring a slightly different management approach. This new fishery has yet to seriously deplete local beds. However, fishing effort is expected to rise as technological improvements and new vessels increase overall efficiency.

There is every indication that the many factors contributing to the decline of surf clam stocks will continue in the foreseeable future. The ex-vessel price per pound increased over fivefold between 1966 and 1976, rising from 8.6¢/lb. to 47.4¢/lb.* This trend is expected to continue even without the catch limitations in the 1978 FMP. Without any management the ex-vessel price is expected to rise from 46.5¢/lb. in 1977 to 97.46¢/lb. in 1982; with the FMP the 1982 price is projected to be 88.09¢/lb.** The benefits of long-term stability undoubtedly outweigh the slight reduction in projected prices forecast by the current management plan. The combination of high prices and technological improvements undoubtedly will assure that fishing effort remains high and the fleet will still be capable of overfishing local areas. These overharvesting pressures are compounded by the continuing impact of the 1976 anoxic conditions in the New York Bight that killed 25% of the total New Jersey surf clam population.***

II. Needed Revisions in the 1978 FMP

Given the uncertain future of the surf clam fishery, we have reviewed the 1978 management plan seeking answers to four questions:

- A. Are steps being taken to stabilize and restore surf clam populations?
- B. Do management regulations adequately reflect the biological needs of this resource?
- C. What steps are being taken to protect habitat?
- D. Has the FMP adequately complied with the mandate of the Fishery Conservation and Management Act?

* 43 Fed. Reg. 60468 (Nov. 25, 1977). Fishery Management Plan for the Surf Clam and Ocean Quahog Industries, hereinafter "FMP."

** FMP, p. 60473.

*** FMP, p. 60455.

Mr. John C. Bryson
Page Three
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A. Stabilization and Restoration of Surf Clam Populations. The 1978 management plan sets a "first-approximation estimate" of the maximum sustainable yield ("MSY") for the surf clam fishery at 50 million pounds.* Because of a general lack of data on catch, effort, and growth rates, this figure was developed by simply averaging commercial catch from 1960 to 1976. Thus, built into this MSY calculation are the same events that led to the virtual collapse of the surf clam fishery off New Jersey.

The concept of maximum sustainable yield has its roots in the belief that in a virgin stock of fish, natural mortality is balanced by growth or recruitment. Once a constant fishing pressure is applied, the standing stock of the population reaches a new equilibrium where growth and recruitment are balanced by natural and fishing mortality. Generally, MSY calculations assume that changes in the environment are nil. The key words in this layman's definition of MSY are balance, equilibrium, constant fishing pressure, and the assumption that changes in the environment are nil. Unfortunately, none of these terms reflect the realities of the mid-Atlantic surf clam fishery.

The 50 million figure was derived from catch data taken during a period when the number of vessels in the fishery tripled (68 in 1965, 162 in 1977),** catch per unit of effort dropped,*** and the relative abundance of clams off New Jersey dropped from 34.1 clams per tow in the spring of 1965 to 7.6 clams per tow in the winter of 1977.**** The grounds off the Delmarva Peninsula, which have not experienced intensive fishing pressure for as long a period, are the only areas where the population has remained relatively stable. The MSY figure in the 1978 management plan is even more dubious if the long-term impact of anoxic conditions in 1976 are taken into account. Assuming immediate spawning success, up to five years will be required for a bed of clam larvae to reach harvestable size.***** Except for a relatively small area off Atlantic City, successful sets have not been observed on a large scale in the area devastated in the summer of 1976.

Given an over-estimation of MSY, the optimum yield ("OY") figure for surf clams is also in doubt. The relative abundance of clams has declined in both the northern and southern New Jersey fishing grounds.***** The rate of decline differs slightly between the two regions because of high mortality on northern beds in the summer of 1976. If survey results are approximately weighted by area, total

* FMP, p. 60451.

** FMP, p. 60461.

*** FMP, p. 60462.

**** FMP, p. 60445.

***** Professor Harold Haskin, personal communication.

***** FMP, p. 60445.

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New Jersey catch must be limited to 2.3-3.0 million pounds per year for the population to remain static. If stock build-up is desired, even lower catches would be required.* "Any harvest of surf clams in offshore New Jersey beyond the recommended 1-2 million pounds during 1977 will further aggravate the precarious status of these populations"** Thus, for lack of better information, we have assumed that the OY for New Jersey stocks is 1-2 million pounds.

The current FMP recommends a harvest of 20 million pounds off the Delmarva Peninsula, if that population is to remain stable. Thus, the total OY for the fishery would be 21-22 million pounds if further depletion is to be avoided. Citing economic hardship, however, the 1978 FMP sets optimum yield at 30 million pounds, 8 or 9 million above the stabilization level. Thus, the 1978 FMP limits, but does not end, the precipitous decline of this resource.

Intentional overfishing in 1978 would, perhaps, be acceptable if a long-term restoration program was clearly spelled out. The industry cited immediate economic hardship if a lower OY figure was approved by the Council and NOAA. There is nothing to prevent the same problem occurring in 1979 since the current plan did not specify future declining quotas needed to implement a restoration program. The one forecast of future catches in the current FMP predicts a yearly harvest of 28 million pounds*** after 1980 -- still 6 or 7 million pounds over the level required to stabilize (but not restore) the stock.

The lack of a restoration program is particularly disturbing given the perilous state of the New Jersey fishery. There is nothing to prevent continued overfishing -- and therefore actual extinction of local beds -- in the 1978 FMP. The current plan sets overall quotas for the entire fishery and makes no effort to govern fishing on a regional basis. The current plan also rejects area closures as a management option.**** Thus, there is little direct protection of the New Jersey grounds. Although boats generally fish where there are high concentrations of clams, high prices continue to make the extra effort required to fish a depleted bed attractive. Small beds of harvestable clams ("hot spots") could also conceivably be wiped out before the area can be closed, making it difficult for the population, as a whole, to recover.

B. The Biological Needs of the Resource. Given the technological advances in harvesting and the overall quotas in the 1978 FMP it is possible to eliminate completely a particular bed of surf clams. The

* FMP, p. 60451.

** FMP, p. 60454.

*** FMP, p. 60472.

**** A bed off Atlantic City was closed in 1978 to allow growth of a new set of larvae, however the rest of the New Jersey grounds apparently remain open.

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traditional pattern of over-exploitation and movement to new grounds continues unchecked despite the precarious condition of the resource. Successful surf clam reproduction is dependent upon a large number of variables including temperature, wind direction, salinity, and predation. It is often impossible to predict with certainty where a "set" of larvae will succeed. The current pattern of localized over-exploitation (and possible extinction) further complicates predictions of reproductive success by eliminating the mature surf clams from the area.

Given current, or slightly reduced quotas, and the maintenance of average recruitment, population levels in all offshore clam areas should stabilize in the future if harvest is regulated by area in proportion to current stock densities.* Such an approach would recognize the reproductive needs of the fishery by protecting a minimum "breeding stock" and prohibiting localized extinction. Regional quotas based upon density reflect the biological needs of the resource, and would force a change in today's destructive fishing patterns.

The need for a regional approach to surf clam management is reinforced by the controversy surrounding the current vessel moratorium in New England. The New England Fishery Management Council has asked that the surf clam fishery northeast of Block Island be exempted from the current management plan. EDF is strongly opposed to this proposal as it would permit unregulated fishing at one end of the normal range of this species, setting a precedent for management plans elsewhere.

It is possible to set quotas and vessel restrictions for different geographical areas. The revised FMP can reflect differences between the New England and Mid-Atlantic fishery while still preventing overfishing. Left without unified management, however, the New England fishery may simply follow the pattern established further south.

C. Habitat Protection. Surf clams are immobile once past their larval stage and a bed is easy to identify and define. Since it is possible to predict with certainty the length of time required for clams to reach harvestable size, area closures are a valuable management tool.

The current plan calls for area closures once a majority of clams fall below a specified size.** The data required to support closure are derived from the fishermen's logbooks (compiled by those with a vested interest in keeping a bed open) and infrequent surveys by research vessels. It is no surprise, therefore, that only one area off Atlantic City, New Jersey was closed in 1978 despite the poor condition of the resource as a whole.

* Serchuk, et al., December 1978, p. 12.

** FMP, p. 60486.

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Rather than closing an area when the majority of clams falls below a specified level, EDF suggests that beds only be opened if the number of clams is high enough to support sustained fishing. This would clearly shift the burden of proof and assure a minimum population level for restoration purposes.

D. Adequacy of the FMP Under the Fishery Conservation and Management Act. The foregoing discussion suggests strongly that the existing FMP will have to be substantially revised in order to satisfy at least two of the statutory national standards for all such plans. Standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. The highly dubious MSY figure determined for this fishery and the admitted failure of the plan to reduce take to a level at which the stock will stabilize, constitute in effect a failure to conform to this standard.

The FMP also apparently fails to meet Standard 6, which provides that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources and catches. The Secretary's guidelines implementing this standard provide that "Sufficient flexibility must be built into the fishery management process to allow for timely response to unforeseen changes, either mancaused (e.g., change in catch size) or natural, (e.g., spawning failure). To the extent that information is available, every effort should be made to develop fishery management plans that take into account these variations and provide a suitable buffer in favor of conservation." 50 C.F.R. § 602.3(g)(2). The FMP's establishment of but a single areawide quota, despite a demonstrated history of depletion of specific beds, and its failure to respond adequately to both mancaused and natural adverse factors affecting this fishery demonstrate that it lacks the required flexibility and fails to establish a suitable buffer in favor of conservation.

III. Recommendations

The serious flaws in the 1978 Fishery Management Plan suggest that a review of MSY and OY figures, a re-evaluation of area closures, and consideration of a regional quota system is in order. EDF therefore would like to make the following recommendations for revising the 1978 Fishery Management Plan:

A. Maximum Sustainable Yield be revised to allow for population fluctuations due to a recurrence of 1976 anoxic conditions and a consistent pattern of unsuccessful spawning.

B. Optimum Yield should be set below MSY to allow restoration of stocks. Regional quotas should be established to assure restoration throughout the range of the species. If economic factors force a higher optimum yield, as occurred in 1978, then a specific timetable should be prepared with declining quarterly quotas until optimum yield is reached.

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C. A long-term restoration program should be immediately established showing yearly quotas by region and delineating closed areas for the next five years.

D. The burden of proof for area closures should be shifted. Known depleted areas should be closed immediately until new data indicate that the region can support sustained fishing.

E. The New England fishery should not be exempted from the 1979 FMP. However, a regional quota system should reflect differences between areas.

By revising the Fishery Management Plan along the lines suggested, surf clam management will be firmly based upon the biological needs of the resource and the mandate of the Fishery Conservation and Management Act can be met.

Respectfully submitted,



Langdon Warner
Science Associate



Michael J. Bean
Chairman, Wildlife Program

cc: Terry Leitzell
Eldon Greenburg

LW/MJB/SC



Rhode Island Seafood Council

P. O. Box 219
Narragansett, R. I. 02882

(401) 783-4200

February 24, 1979

Mr. John C. Bryson
Executive Director
Mid Atlantic Fishery Management Council
Dover, Delaware 19901

Dear Mr. Bryson:

I have been asked by a number of members of the Rhode Island clam industry to object to the proposed extension of the Surf Clam/ Ocean Quahog plan through December 1979.

We object to the continued imposition of a vessel moratorium and fishing day restrictions on Surf Clams in New England waters. The fishery in New England is undeveloped, largely unassessed, and is being unfairly prevented from growing by the arbitrary and capricious imposition of inappropriate management measures by the Mid Atlantic Fishery Management Council. 3

The New England Surf Clam and Ocean Quahog industry has patiently tried to work through the proper administrative channels to seek relief. Now, we are expected to accept another 10 months of unfair restriction. This, if the rumors are correct, will be followed by adoption of a "stock certificate" type of management scheme which will continue to concentrate the available resource in the hands of the small group of clam processors who dominate the Mid Atlantic clam fishery. There is ample precedent in the implementation of other management plans for recognition of special circumstances that justify establishment of certain areas to be exempt from certain provisions of a management plan when that plan is clearly inappropriate for use throughout the range of the regulated species.

To refresh your memory, I have attached the comments I filed on September 15, 1978 at the Westport Massachusetts hearing held by the Secretary of Commerce. These comments were essentially the same as those filed by the State of Massachusetts and parallel the verbal comments of Mr. Borden of the State of Rhode Island and Mr. Blount of Blount Seafood Corp., Warren, R.I.

I also attach copies of correspondence from Spencer Apollonio, N.E.R.F.M.C. Executive Director to you, to Mr. Hart of your council, and to Terry Leitzell, N.O.A.A. I also include marked portions of the

Office: Room 1, Tower Hill Office Building, Wakefield, R. I.

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public hearing transcripts of September 14, 1978 in Cape May, N.J. and September 18, 1978 in Westport, MA.

This unbelievable trail of obfuscation goes back to the June 15, 1977 meeting in Newport, R.I. At this hearing the audience of about 80 persons left with the clear impression that there would be a demarcation line between the New England and the Mid Atlantic Surf Clam and Ocean Quahog fishing areas with the New England area to be exempt from those measures which were being imposed on the heavily overfished and over capitalized Mid Atlantic fishery. For awhile most of us have believed that the dropping of the line was truly an error. I think any reasonable person looking at the time that has passed (20 months) and the repeated correspondence and efforts of the New England Fishery Management Council to seek relief, would conclude that bad faith is at work.

It appears to us that the real intent of the moratorium is economic because you have made no effort to restrict gear efficiency. The use of double dredges and blades up to 100 inches has had the same effect as continued new entry to the fishery.

The unanimous sentiment in New England seems to be in favor of seeking relief through litigation since we have exhausted all other avenues.

I personally hate to see this happen as it tends to undermine the management council process but we feel we have no choice.

Sincerely,

Kenelm W. Coons
Executive Director

CC: Ad Hoc Committee New England Surf Clam/ Ocean Quahog Industry
Shellfish Institute of North America
New England Regional Fishery Management Council
Rhode Island D.E.M., Fish and Wildlife Division
Rhode Island Seafood Council / Clam Committee

Public Hearing on Surf Clam Moratorium Extension
 September 18, 1978 -- Westport, Massachusetts

Chairman: Kenneth L. Beal, Chief, Fisheries Management Operations Branch
 Officials present: Kenneth L. Beal
 Council members present: None

Ken Beal: Opening remarks: Review of results of Mid-Atlantic hearing (Cape May, NJ). Stressed that changes in moratorium would take some time, would have to be done after the extension.

Al Guimond: What are stock conditions -- has the moratorium helped?

Ken Beal: Stocks are still declining, according to preliminary surveys.

Al Guimond: License holders should not reap financial gain.

Comment: The need to use or lose license forces effort upward -- as in Massachusetts lobster fishery.

Question: What is minimum landing needed to keep license?

Francis Manchester: Have no FCZ landings, but my vessel works inshore. Do I keep my license?

Phil Coates: Read prepared statement of Massachusetts Division of Marine Fisheries (copy attached). Opposed to the moratorium in New England.

Ken Beal: Changes in the range covered by the plan, including separate management areas, can be covered in a plan re-write.

Comment: Moratorium has discouraged people who are in the inshore fishery or would want to fish the FCZ from applying.

Question: Could a Mid-Atlantic vessel come up here, fish off Nantucket within its fishing periods?

Ted Blount: Surveys didn't deal with this area. Why does moratorium? Agrees with comments from State of Maine. New England fishery came first 30 years ago, now they are getting jumped on for Mid-Atlantic benefit. Suggested Loran C line 50,000 as a good dividing line -- 41st parallel is not realistic. Serious survey should be conducted on Georges Bank, Nantucket Shoals. Can't make a living in New England with the time limits imposed on Mid-Atlantic.

Question: What happens to fishing effort with double rigging?

Ken Beal: The Council's intent was not to restrict fishing efficiency.

Question: May Council now consider gear restrictions?

Ken Beal: They have not indicated a change in position.

Comment: A moratorium must, according to law and constitutional principle meet lawful objectives for conservation or economics. If you don't restrict gear the moratorium doesn't work -- it is unlawful.

Question: Has there been a challenge on the grounds of "taking without compensation?"

Page 2 Comment: Reason for and intent of moratorium have not been met.

Comments: Random discussion about transferability -- setting up a value for permits, single purpose vessels losing value without free transfer.

Kenelm Coons, Rhode Island Seafood Council: Prepared statement -- not read because points already made (copy attached) should specify boundary for moratorium tonight. Comment on timely notification for the meeting.

Comment: Surveys should be done by commercial, not research vessels.

Dave Borden, State of Rhode Island: Opposed to moratorium for reasons already stated. Line should divide two management areas. Read letter from Spencer Apollonio to Terry Leitzell (8-15-78) (copy attached).

Question: Who is against a line separating regions?

Ken Beal: Gordon & New England Council favor it, Mid-Atlantic wants one management unit.

Al Guimond: NMFS should recommend the moratorium not be continued to the Secretary of Commerce. Disband entire moratorium unless Mid-Atlantic recognizes New England concerns.

Question: What would OY for New England separate management area be -- no surveys done yet?

Dave Wallace: Surf clam business is in trouble -- discontinuation of moratorium would ruin industry.

Question: Why should New England have to support Mid-Atlantic just because they messed themselves up?

Page 3 Comment: The moratorium is being used to save the industry, not the resource. sets up a way for inefficient people to survive. Needn't be that way.

Dave Wallace: Opposed to splitting up the fishery -- in favor of extending present moratorium 12 months. With probable 10 million pound MSY in future, we would have real trouble.

Dave Borden: Letter from NMFS in February said moratorium had to be universal, or boats would be able to move from north to south after construction.

Ken Beal: Should be possible to restrict movement with two management areas.

Dave Wallace: No moratorium in New England -- if large beds are found they would be quickly and heavily exploited.

Question: If it's so bad in the Mid-Atlantic, why do people want to get in the business?

Dave Wallace: In a few months, a lot of vessels will have problems financially.

Comment: Sounds like moratorium is used just for economic purposes -- OY should be reduced for conservation.

Comment: Opposed to moratorium.

Ken Beal: Let's bring the issue to a vote.

Comment: People here representing organizations -- weigh that in the vote.

*VOTE: Majority voted against a moratorium on the New England fishery.

*VOTE: Inconclusive on need for any moratorium.

O'Malley: Can the New England Council manage the New England fishery?

Comments: New England was told that they were involved in moratorium by an oversight. This happened with yellowtail on the groundfish plan as well. Severe credibility problem with NMFS and possibly now Mid-Atlantic Council.

Braden: New England people didn't come to this meeting because they think they will be ignored.

Dave Borden: NMFS should decide how much landings required to keep license -- let everyone know a month in advance.

Comment: If Secretary of Commerce looks at moratorium in light of National Standards -- she would have to overturn it. It is only economic in nature.

Comments: Nobody can do exploratory fishing with present time limits.

Comment: With a lower OY and our bad weather, Mid-Atlantic people could fish out quota before we get out to sea.

*VOTE: How much fishing time do you want -- 24, 36, or 48 hours per week. No action -- They want no restrictions.

Dave Wallace: Supports 24 hours per week fishing.

Question: What line should divide the management areas?

Suggestions: Use any Loran line between Montauk and Block Island, ending just east of Hudson Canyon -- use a line of latitude for legal purposes

* * * * *

Official hearing closed

Attachments:

- 1) Prepared statement -- Massachusetts Division of Marine Fisheries
- 2) Prepared statement -- Blount Seafood Corporation
- 3) Comments -- Rhode Island Seafood Council
- 4) Letter from Spencer Apollonio to Terry Leitzell

SUMMARY TRANSCRIPT

Public Hearing on Surf Clam Moratorium Extension
September 14, 1978 -- Cape May, New Jersey

Chairman: Kenneth L. Beal, Chief, Fisheries Management Operations Branch
Officials present: Kenneth L. Beal, Jack Dunnigan, GCNE; Nancy Weiss, MAFMC;
John Bryson, Executive Director, MAFMC
Council members present: J. Laurie McHugh, Barbara Porter, Ricks Savage,
MAFMC; and Jake Dykstra, NEFMC

1: Ken Beal: Opening remarks

Comment: Keep the moratorium but have free transfer of licenses. Limit total number of permits -- have them "belong" to the vessel owner.

Comment: Have a permanent permit -- not tied to any size of vessel -- the owner can keep it.

Question: Do we have to report gear changes?

Ken Beal: Yes

Questions: Random questions concerning vessels replacement with "similar" capacity, etc.

Comment: What good is moratorium if vessels can re-rig?

Ken Beal: Council does not want to stifle, regulate efficiency.

Comments: Random discussion about discretionary decisions in replacement of vessels with others of "similar" capacity.

Question: What if somebody buys up clam permits for speculation?

Ken Beal: Can't happen now; could if permits were owned by individuals.

Comment: We can take care of ourselves; let us own the permits and look after ourselves.

Comment: In New Jersey, the permit goes with the boat if sold in-state; if sold out of state, owner keeps permit.

Comment: Present system compels an owner to sink his boat to get out of fishery.

John Bryson: Reminded hearing of hardship clause which allows for transfers without extreme measure.

Comment: That shouldn't be up to the government to decide.

ape 2: Comment: There should be no restrictions on changing vessel size if there is none on changing gear. No free enterprise -- we can't grow.

Comment: Little guy never gets fishing time -- big rics catch clams all up too fast.

John Bryson: May consider dredge limits in a re-write of plan -- what other characteristics should be addressed?

Question: Wouldn't per-boat quotas solve this?

John Bryson: How do you equitably allocate per-boat quotas with differences in vessels, crews, skippers?

Comments: Discussion about allowing more hours of fishing per week over fewer weeks -- other fishing time alternatives.

Comment: Let us vote on 200-mile limit again!

Comment: Adding dredges is just like adding boats -- limit gear changes.

Comment: Increasing gear size is ok; increasing number of dredges is adding boats.

Comment: Discussion of time required to change the plan and provisions.

Jack Dunnigan: The only option to the Secretary of Commerce is to extend moratorium or end it.

*VOTE: Majority vote approved moratorium continuation.

*VOTE: Majority vote approved free transfer of permits.

Comment: If there are separate moratoriums, there should be separate quotas for both areas.

Ken Beal: Possibility of creating two management areas -- separate.

Comment: Don't allow New England people to build vessels, bring them down here.

John Bryson: Are there any clams in FCZ of New England? Don't make an issue where none may exist.

You really don't know, do you!

Ken Beal: Detailed history of deliberations over moratorium, management plan in New England by New England Council and Mid-Atlantic Council.

3: Comment: Divide the fishery into two separate segments.

Question: Does moratorium apply to ocean quahogs too?

Comment: Should apply to quahogs -- not too far off when everyone will be catching them. Their quota will look a whole lot smaller.

x x x x x

Official hearing closed

Opened to general discussion of fishing times, quotas, etc.

October 17, 1977

Mr. David H. Hart, Chairman
Mid-Atlantic Fishery Management
Council
Room 2115, Federal Building
North & New Streets
Dover, Delaware 19901

Dear Mr. Hart:

The New England Council was pleased to receive Mr. Birkholz's verbal report that the current draft FMP for surf clams/ocean quahog had been amended to include as an objective the "...rebuilding of the surf clam stock", and to limit the moratorium on new entry to the waters to the west and to the south of the 41st parallel. On the basis of this report, the Council unqualifiedly endorses the draft FMP as amended.

By copies of this letter, the Council lends its support to the early approval and implementation of the Plan through the emergency regulations route. The Council endorses such action on the basis of its knowledge as to the precarious condition of the surf clam resource and as to the present high rates of exploitation of this same resource. The Council, within its legislative authority, stands ready to assist in monitoring compliance with the regulations when implemented, and in determining need for future amendments.

Sincerely yours,

Spencer Apollonio
Executive Director

pmp

cc: Secretary Juanita Kreps
Director Robert Schoning
Regional Director William Gordon

New England Regional Fishery Management Council

Peabody Office Building
One Newbury Street
Peabody, Massachusetts 01960

FILE COPY

617-535-5450

FTS 8-223-3822

June 13, 1978

Mr. John C. Bryson, Executive Director
Mid-Atlantic Fishery Management Council
Federal Building, Room 2115
300 South New Street
Dover, Delaware 19901

Dear John:

It is our understanding that the Mid-Atlantic Council plans to hold public hearings on amendments to the Surf Clam Management Plan in July.

This Council is very concerned about the application of management measures, which may be appropriate for the Mid-Atlantic area, to the surf clam fishery of New England. Quite different circumstances exist in the New England fishery.

This Council is concerned particularly that the resource off New England is not over-exploited, that in fact it is not adequately described or assessed, and that the fishery is hardly developed. The Council feels, therefore, that it is inappropriate that the vessel moratorium and the restrictive weekly trip limitations should apply in New England waters, and that in fact they may prevent the development of a viable New England surf clam fishery.

The public hearings that were held a year ago, particularly in Newport, RI, discussed these concerns at length. As a result of those hearings and the nature of the New England fishery, the Council urged that New England be exempted from those restrictive management measures.

It was the understanding of the Council that New England was exempted when the Surf Clam Management Plan was submitted last fall. The Council was of course disturbed to learn that all the restrictive provisions of the plan apply to the New England fishery. Therefore the Council requests that the plan be amended to include a demarcation line, east of which the vessel moratorium, catch quotas, and effort restrictions on surf clams shall not apply.

Mr. John C. Bryson

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June 13, 1978

In short, the Council believes that such restrictions are unnecessary and inappropriate in New England waters where the resource is poorly known or assessed but very likely underutilized, and where the fishery is little developed and under-capitalized.

The Council therefore requests that this letter be entered as part of the record of your public hearing on amendments to the surf clam plan, and that the plan be amended accordingly.

Thank you.

Sincerely yours,

Spencer Apollonio
Executive Director

PP

cc: NERFMC Members

August 15, 1978

Mr. Terry L. Leitzell
Assistant Administrator for
Fisheries, NOAA/NMFS
Page Building Two
Washington, DC 20235

THRU: William G. Gordon, Regional Director, Northeast Region

Dear Terry:

I am writing concerning the application of the vessel moratorium and the limitation on fishing days in the Surf Clam fishery to the waters off New England.

Because this issue seems to have become unbelievably confused, I wish to state the understanding of this Council and to request relief for the fisheries of New England.

At the scheduled Public Hearing on the Surf Clam Plan in Newport, RI, more than a year ago, these issues were discussed thoroughly. The audience of approximately 80 people supported the exemption of the very limited New England fishery from the moratorium, and all understood that a moratorium should not apply in these waters.

The Council subsequently voted to support the Surf Clam plan provided that the moratorium on vessels did not apply in these waters.

At a later meeting in this office with representatives of the Mid-Atlantic Council, it was agreed that the moratorium would not apply in New England waters, and that the plan would be forwarded to Washington with that exemption. The most recent version of the Surf Clam in our possession (October 1977) excludes waters north of 41°N latitude from that moratorium.

When this Council subsequently learned that the moratorium does apply to New England waters, it and several individuals clearly expressed their concern and requested relief as soon as possible.

Mr. Terry L. Leitzell

- 2 -

August 15, 1978

We were given to understand that relief for vessels in New England waters could be obtained by amendment to the plan following public hearings which we understood were scheduled for August of this year.

I now learn that no hearings are presently scheduled -- certainly none in August -- and that it is unclear whether hearings will be held or who will hold them on this issue. There is a possibility of Secretarial hearings. I therefore urge that appropriate hearings be scheduled as rapidly as possible so that these issues may be resolved.

I would point out only briefly that the circumstances of the surf clam fishery off New England is totally different from that in the Mid-Atlantic region. Our fishery is neither over-capitalized nor over-exploited. In fact it is hardly developed, and the moratorium and limit of fishing days are completely inappropriate for the present state of the resource.

Thank you for your attention to this issue.

Sincerely yours,

Spencer Apollonio
Executive Director

pp

cc: NEFMC Members
Mid-Atlantic Council

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Rhode Island Seafood Council

P.O. Box 219
Narragansett, R.I. 02882
(401)783-4200

September 15, 1978

COMMENTS ON THE SURF CLAM - OCEAN QUAHOG MANAGEMENT PLAN
(September 18, 1978 Hearing)

1. No notification of this September 18 hearing was received by the Rhode Island Seafood Council. Our members include Blount Seafood, Harbor Shellfish, Quito Shellfish, Amoriggi Sea Foods, Manchester Seafood, and clam dredge operators all of whom have a direct interest in these proceedings. (I also understand no notice of this meeting was received by the Rhode Island Division of Fish and Wildlife who are vitally interested.) I found out about the meeting by chance from Mr. Blount.

2. The line dividing the Mid-Atlantic and New England regions in the FMZ was extensively discussed at public hearings prior to promulgation of the present plan by members of the Rhode Island clamming industry. A proposal was presented which would retain the traditional areas South of Long Island for New England based fishermen.

Not only was the line established at 41 degrees which excludes areas fished by Rhode Island vessels for as long as thirty years, but also, the line was entirely eliminated when the vessel moratorium was announced as part of the surf clam plan.

There is a single quota throughout the species range for ocean quahogs.

The Southern New England industry is unanimously opposed to this approach and seeks to establish a separate management area. Otherwise, the New England clamming industry will be subject to the economic hardships which result from Mid-Atlantic clamming operations.

3. It is patently absurd for New England dredges to be limited to one fishing day per week on surf clams in the FMZ when the resource is relatively unexploited in New England waters.

The ocean quahog industry was first developed in New England. There is no indication of dangerous stock depletion off New England and until there is some indication of serious stock depletion, there should be unrestricted clamming in the FMZ off New England.

4. The Southern New England clamming industry favors a survey of shellfish resources on Georges Bank and the Nantucket Shoals.

Because of the demonstrated differences in performance between commercial dredges and the research vessel dredging done by NMFS research vessels like the Delaware, the industry favors a research approach in which NMFS stock assessment scientists would conduct the survey on chartered commercial dredges now in the fishery.

- 2 -

We feel these comments are constructive and reasonable. We see a real danger that the orderly development of the surf clam and ocean quahog industry in Southern New England will be unfairly inhibited and unnecessarily regulated because research, regulatory effort, and management is focused almost entirely on the problems and characteristics of the Mid-Atlantic fishery.

Virtually all the conditions are different in the New England surf clam and ocean quahog fisheries; therefore, we require consideration as a separate management area.

Respectfully submitted,


Kenelm W. Coons
Executive Director



NATIONAL FISHERIES INSTITUTE, INC.

1101 CONNECTICUT AVENUE, N.W. ■ WASHINGTON, D.C. 20036 ■ (202) 857-1110

February 26, 1979

Mr. John C. Bryson
Executive Director
Mid-Atlantic Fishery Management Council
Room 2115, Federal Building
North and New Streets
Dover, Delaware 19901

Dear Mr. Bryson:

The National Fisheries Institute, a national trade association representing more than 800 member companies, has reviewed the draft amendment to the Fishery Management Plan for Surf Clams and Ocean Quahogs. The Institute has specific reservations with Section IV-3 of the draft entitled "Amendments Resulting From Amendments to the FCMA."

First, NFI does not believe it is in accord with Congressional intent for the Council in the preparation of FMP's to implement reporting requirements for species for which there is sufficient knowledge regarding processing capacity. The Act clearly states that foreign vessels will only receive a permit to obtain U.S. harvested fish if there is not sufficient U.S. capacity for such fish. The interim regulations published in the Federal Register, February 7, 1979, set forth processing reporting to enable the Council to make such determinations.

However, the House and Senate reports which accompanied the "Joint Venture Amendment" contain a determination that sufficient processing capacity exists for many species including surf clams. In view of this determination, there is no necessity for the imposition of reporting requirements by the Council. This conclusion is supported by the Council's determination that "it is reasonable to conclude that U.S. processors have the capacity to process all surf clams and ocean quahogs landed by U.S. fisheries under the plan and probably an amount in excess of such values."*

The submission of reporting requirements thus would be burdensome, inflationary and unnecessary. The Institute recommends that the proposed amendments set forth in Section IV-3 be deleted insofar as reporting requirements are concerned. The determination of domestic processing capacity in this instance can be based on available data and the Council's knowledge of the current status of the Industry.

4

*Draft Environmental Assessment/Amendment #1, pg. 7

Mr. John C. Bryson
February 26, 1979
Page 2

Secondly, information regarding prices paid for species received by individual U.S. processors is of no benefit in determining actual processing capacity. In the House Committee report, the Committee stated "with respect to the determination of U.S. processing capacity and intent, the Committee does not intend that U.S. processors demonstrate an ability to outbid the price or other contract provisions offered by foreign processors in order to establish capacity and intent." If the House Committee did not believe such information was necessary, the Institute fails to see any basis for the imposition of this requirement by the Council. The Institute is aware that price data is currently being submitted under the existing FMP. While NFI takes no position on the need for such data, it is our recommendation that language be included to clearly state that such data is not required for the purpose of determining processing capacity.

The Institute appreciates the opportunity to comment on the draft amendment.

Sincerely,

Gustave Fritschie
Gustave Fritschie
Director
Government Relations

GF:cp

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February 26, 1979

Mr. John C. Bryson
Executive Director
Mid-Atlantic Fishery Management Council
Room 2114, Federal Building
North and New Streets
Dover, Delaware 19901

Dear Mr. Bryson:

I am writing to comment on the draft environmental assessment amendment No. 1 for the surf clam and ocean quahog fishery management plan prepared by the National Marine Fisheries Service and the Mid-Atlantic Fisheries Council.

I have no objection to the basic intent of the proposed amendment. It would extend the current management plan for one additional quarter -- from September 30, 1979, to December 31, 1979. The primary purpose of the extension is to permit the Council to assess and review fishery data being obtained in the winter of 1979. The data will then be used to prepare a new surf-clam management plan for implementation in January, 1980.

I also agree with the proposal's provision that would remove the existing requirement that each quarter begin with a four-day fishing week for surf clams. Under this proposal, the number of fishing days per week would be set at the beginning of the quarter by the N.M.F.S. in consultation with the Surf Clam Committee of the Council. I believe this proposal is a step in the right direction, particularly in its insistence on involving the Surf Clam Committee in making decisions that have important consequences for the surf clammers. As you know, the surf clammers have insisted since initiation of the plan that their views have been ignored. By granting the clammers more direct involvement in making the decisions that affect their livelihood, the plan will be more credible and more equitable.

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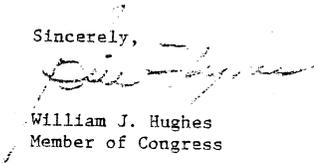
In addition to setting up a new method of determining fishing days, I believe that the proposed amendment should also deal with another major problem. Namely, it should adopt a resolution to the current requirement that causes a clammer to lose an entire day clamming whenever bad weather occurs on his designated fishing day. I feel the proposed amendment should clearly permit a clammer to have a make-up day whenever bad weather prevents him from going to sea. Such a change would remedy the current situation that causes serious loss of income for clammers already struggling under the burden of a very limited number of fishing days.

Finally, I would like to propose that the amendment to the plan incorporate some form of a per-boat quota. As you are aware, there have been serious disagreements within the surf-clam community over the equity of the current plan. Many clammers, particularly the small, independent clammers, claim the current plan discriminates against them by allowing the biggest boats to catch a disproportionately large amount of the quota. A per-boat quota, I feel, would be a fair response to these concerns. It would ensure that the limited resource would be allocated equitably among those entitled to have access to it. I am hopeful that you will give the per-boat quota your most serious consideration.

I appreciate this opportunity to comment on the proposed amendment to the management plan.

With kind personal regards.

Sincerely,


William J. Hughes
Member of Congress

WJH:emr

RESPONSES TO WRITTEN COMMENTS

1. Data would be handled as confidential and be published only in aggregate statistical form so that individual processors would not be identified.
2. The detailed comments relate to the major review and amendment to the Surf Clam and Ocean Quahog Industries FMP currently being prepared by the Mid-Atlantic Council, not to Amendment #1 to that FMP. These comments will be considered by the Council as part of the overall review process but will not be addressed as part of the considerations relative to Amendment #1.
3. The Council is aware of the concern of the New England surf clam industry relative to the vessel moratorium and is working to address that concern in the overall review and amendment of the Surf Clam and Ocean Quahog Industries FMP. However, the Council believes that the entire FMP must be extended through December 31, 1979 for the reasons stated in Amendment #1.
4. The Council believes that processing capacity reporting is necessary to comply with the amended FCMA. However, Amendment #1 has been revised to minimize the possible burden of such reporting.
5. Price data are necessary to monitor and update the FMP and are not included in the reporting requirements to meet the requirements of the amended FCMA.
6. NOAA General Council's Office has ruled that to provide for an alternate fishing day would require a major plan amendment with an Environmental Impact Statement. This matter will be considered by the Council in the major revision of the FMP that is currently being prepared.
7. To institute such an allocation system would require a major amendment to the FMP and an Environmental Impact Statement. This matter will be considered by the Council in the major revision of the FMP that is currently being prepared.