

# **Atlantic Surfclam and Ocean Quahog Information Collection Rule**

**Philadelphia, PA  
October 7, 2014**



# The Action

- Secretarial action under MSA 402(a) (i.e., NMFS lead)
- Applies to both SC and OQ
- Applies to SCOQ ITQ fisheries
- Collect data to address excessive shares accumulation issue
- In proposed rule stage: comment reopened until Oct. 17





# History/Timeline

- SCOQ under ITQ since 1990
- 2002 US GAO Report: “IFQs: Better Information Could Improve Program Management”
  - SCOQ consolidation is greater than NMFS data indicate
  - NMFS does not collect sufficient information to determine:
    - 1) who owns quota, and,
    - 2) whether holder is foreign individual or entity.



# History/Timeline

- 2003: NMFS responded to Congressmen that it would urge Council to address SCOQ excess shares
- 2004: NMFS “Christel” Report recommended further information be collected on ownership
- Highlighted that control of quota could apply to 3 markets:
  - raw material market (i.e., ex-vessel prices paid),
  - product market (i.e., the price paid for processed shellfish),
  - quota market (i.e., price paid for purchase or lease of quota).



# History/Timeline

- 2011: Compass Lexecon Report contracted and concluded that,
  - Evidence analyzed does not support conclusion that market power is currently being exercised through withholding of quota.
  - Did not analyze whether market power is exercised through withholding of harvesting or processing, or through exclusionary conduct other than conduct involving quota ownership.



# History/Timeline

- 2012: Compass Lexecon Report was CIE reviewed
  - Suggested that marketing power may exist in fishery, particularly in harvesting and processing sectors, but less so in quota holdings.
  - Require at least data on: quota ownership and control, processing volumes and capacity, size of the relevant market.
- Bottom line - CIE reviewers suggested that market power may or may not exist in this fishery. More information is needed to understand issues.



# History/Timeline

- Feb. 2012: SCOQ Committee Meeting met
- GC advised that info collection program could be developed by NMFS (without FMP Amendment) under 402(a) of MSA
- Committee split then Amendment 15 into pieces
  - Cost Recovery Amend
  - Data Collection Action to be done by NMFS
  - Excess Shares Amend after data collected



# History/Timeline

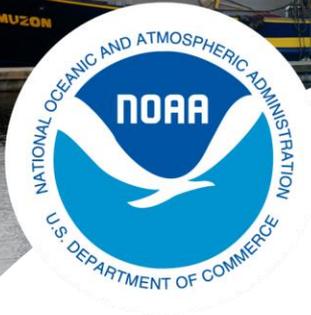
- 2013: FMAT met 3 times to develop information collection white paper; advisors & public attended
- During AP meeting in May, advisors asked for input
- June 2013, *“Move the Council approve the data collection protocol as prepared by the FMAT, with the understanding the NMFS will initiate a regulatory Amendment to implement a data collection protocol.”*

Anderson/McMurray (13/1/1), Motion carries



# History/Timeline

- October 2013 scheduled GARFO update cancelled
- December 2013 update by Doug Potts (GARFO)
  - Draft forms not ready at that time
- Proposed rule published August 7, 2013
- Request to reopen comment period to allow additional discussion today



**NOAA**  
**FISHERIES**

**Greater  
Atlantic  
Region**

# Surfclam & Ocean Quahog ITQ Information Collection Program

Review of Proposed Rule

October 7, 2014  
Doug Potts

# Information Collection Program

## Purpose

- Improve understanding of the ownership of ITQ allocations
- Data collected would be used in the development of a future excessive shares cap amendment

# What is changing

- ITQ permits would be annual and must be renewed
- Shareholder would not be issued a tag range until permit is renewed
- ITQ permit required to lease tags in or out

# What is changing

- Renew-or-lose provision, like Tilefish IFQ Permits and limited access vessel permits (by last day of fishing year)
- Grace periods:
  - 1 year for initial permits (end of 2017\*)
  - 6 months for 1<sup>st</sup> renewal (July 1, 2018\*)

\* proposed rule dates anticipated new permits for 2015.

# Form changes

- Currently - 1 form
  - ITQ Transfer form also serves as application for new entrants
  - Permits renewed and issued automatically each year
- Proposed - 3 forms
  - Application: Ensures eligibility
  - Ownership: Records ownership
  - Transfer: Records transaction details

# Draft Form - Application

OMB Control No. 0648-06XX Expires: XX/XX/20XX



U.S. Department of Commerce  
NOAA/National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930-2298  
Tel: (978) 282-8483

Application for  
Surfclam / Ocean Quahog  
Individual Transferable Quota (ITQ)  
Permit  
Fishing Year YYYY  
January 1, YYYY – December 31, YYYY

## Section A – Permit Holder Information

Name of Applicant:			ITQ Permit Number: [C-XXX or Q-XXX] Leave blank for initial application
			DOB (if person) or TIN (if business):
Business Mailing Address: Street or PO Box			Telephone Number:
			Email address (optional):
City	State	Zip Code	

For an initial application, please select desired ITQ permit type(s):  Atlantic Surfclam  Ocean Quahog

## Section B – Permit Eligibility

The applicant must be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b). Specifically, the applicant must be one of the following:

- An individual who is a citizen of the United States.
- An association, trust, joint venture, or other entity if—
  - each of its members is a citizen of the United States; and
  - it is capable of holding title to a vessel under the laws of the United States or a State.
- A partnership if—
  - each general partner is a citizen of the United States; and
  - the controlling interest in the partnership is owned by citizens of the United States.
- A corporation if—
  - it is incorporated under the laws of the United States or a State;
  - its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and
  - no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.
- The United States Government.
- The government of a State.

Is the applicant eligible to hold a surfclam or ocean quahog ITQ permit, consistent with this requirement?

Yes  No

## Section C – ITQ Quota Share Holdings

Your ITQ Quota Share is: [Insert Ratio]

Your annual cage tag allocation is determined by multiplying the total surfclam quota by this ratio. The result is divided by 32 to determine the appropriate number of cage tags to be allocated. Amounts of allocation of 0.5 cages or smaller are rounded down to the nearest whole number, and amounts greater than 0.5 cages are rounded up to the next whole number, so that allocations are in whole cages.

Please refer to your ITQ permit, when issued, for your actual YYYY cage tag allocation.

An ITQ permit does not need to have associated quota share to be used for leasing cage tags.

Annual SC/OQ ITQ Permit Application  
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## Section D – Certification of Applicant

Under penalty of perjury, I hereby declare that I, the undersigned, am authorized to certify this application on behalf of the applicant and completed this form, and the information contained is true, correct, and complete to the best of my knowledge and belief. (18 U.S.C. § 1001)

Applicant Signature:

Date:

Print Name:

To avoid delay in processing, please include all information requested.

PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 5 minutes per individual fishing quota application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to the Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

Permit holder name, address, phone, and permit information will be released via a NOAA Fisheries website. All other data submitted will be handled as confidential in accordance with section 402(b) of the Magnuson-Stevens Act and NOAA Administrative Order 215-100, Protection of Confidential Fisheries Statistics. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

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# Draft Form - Ownership

OMB Control No. 0648-06XX Expires: XX/XX/20XX



U.S. Department of Commerce  
NOAA/National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930-2298  
Tel: (978) 282-8483

## Surfclam / Ocean Quahog Individual Transferable Quota (ITQ) Ownership Form Fishing Year YYYY

### Section A – Permit Holder Information

1. ITQ Permit Number:		
2. Name of ITQ Permit Holder:		3. Date of Birth (if person) or TIN (if business):
4. State Registered In (if business):		
5. Business Mailing Address: Street or PO Box		6. Telephone Number:
City	State	Zip Code
7. Email address (optional):		
8. <input type="checkbox"/> Individual/Sole Proprietorship <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Other (specify)		

### Section B – Certification of Bank Held Quota Share

Is the ITQ permit holder identified above a State or Federal chartered bank, which is holding the ITQ quota share solely as collateral on a loan, and does not exert control over how the associated annual cage tags are used?		If "No", please skip to Section C, and complete the rest of this form.
<input type="checkbox"/> Yes <input type="checkbox"/> No		If "Yes", complete all fields in Section B, and sign below. You do not need to complete Sections C-F.
Name of Borrower:		Borrower's ITQ Permit Number:
The borrower must maintain a valid ITQ permit and transfer of quota share or cage tags must be to the borrower's ITQ permit listed here.		
Under penalty of perjury, I hereby declare that I, the undersigned, am authorized to certify this application on behalf of the permit holder and the information contained in Section A and Section B is true, correct, and complete to the best of my knowledge and belief. (18 U.S.C. § 1001)		
Signature:		Date:
Printed Name:		

### Section C – Identification of Corporate Officers

If the permit holder is not an individual, provide the names of all corporate officers.  
If necessary, attach additional sheets of paper.

Name (Last, First, Middle Initial)	DOB	Mailing Address (Street or PO Box, City, State, Zip code)	Title
<input type="checkbox"/> President/CEO <input type="checkbox"/> Vice President <input type="checkbox"/> Secretary <input type="checkbox"/> Treasurer <input type="checkbox"/> Director/Manager <input type="checkbox"/> Partner <input type="checkbox"/> Other _____			
<input type="checkbox"/> President/CEO <input type="checkbox"/> Vice President <input type="checkbox"/> Secretary <input type="checkbox"/> Treasurer <input type="checkbox"/> Director/Manager <input type="checkbox"/> Partner <input type="checkbox"/> Other _____			
<input type="checkbox"/> President/CEO <input type="checkbox"/> Vice President <input type="checkbox"/> Secretary <input type="checkbox"/> Treasurer <input type="checkbox"/> Director/Manager <input type="checkbox"/> Partner <input type="checkbox"/> Other _____			
<input type="checkbox"/> President/CEO <input type="checkbox"/> Vice President <input type="checkbox"/> Secretary <input type="checkbox"/> Treasurer <input type="checkbox"/> Director/Manager <input type="checkbox"/> Partner <input type="checkbox"/> Other _____			
<input type="checkbox"/> President/CEO <input type="checkbox"/> Vice President <input type="checkbox"/> Secretary <input type="checkbox"/> Treasurer <input type="checkbox"/> Director/Manager <input type="checkbox"/> Partner <input type="checkbox"/> Other _____			

### Section D – Identification of Major Shareholders and Partners Part 1 – First Level

List all shareholders with a 10% or greater ownership interest in the permit holder. If you list a business entity as a shareholder, use Part 2 to identify the specific ownership of that business. If necessary, attach additional sheets of paper.

Name (Last, First, Middle Initial)	TIN or DOB	Mailing Address (Street or PO Box, City, State, Zip code)	% Interest Held
<b>Total Ownership</b>			<b>%</b>
<b>Number of shareholders with less than 10% ownership interest</b>			



# Draft Form – Ownership (cont.)

Section D – Identification of Major Shareholders and Partners Part 2 – Second Level			
List owners of any business from Section D - Part 1 above, down to the level of individual persons who make up that business. If more than one business is listed, be clear which individuals belong to which business. If necessary, attach additional sheets of paper.			
Name (Last, First, Middle Initial)	TIN or DOB	Mailing Address (Street or PO Box, City, State, Zip code)	% Interest Held
Business Name 1 from Part 1			
Owners of Business 1			
Total Ownership of Business 1			%
Business Name 2 from Part 1			
Owners of Business 2			
Total Ownership of Business 2			%
Business Name 3 from Part 1			
Owners of Business 3			
Total Ownership of Business 3			%

Section E – Identification of Family				
If any of the individuals listed in Section D (Parts 1&2) has an immediate family member who has an ownership interest in any other surfclam or ocean quahog ITQ permit list those family members here. Immediate family is defined as: Father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, or mother-in-law. If necessary, attach additional sheets of paper.				
Name (Last, First, Middle Initial)	DOB	Mailing Address (Street or PO Box, City, State, Zip code)	Relationship to Person in Section D (ex. son of John Smith)	ITQ Permit Number(s)

Section F – Certification	
Under penalty of perjury, I hereby declare that I, the undersigned, am authorized to certify this application on behalf of the applicant and completed this form, and the information contained is true, correct, and complete to the best of my knowledge and belief. (18 U.S.C. § 1001)	
Signature:	Date:
Print Name:	

To avoid delay in processing, please include all information requested.

**PAPERWORK REDUCTION ACT STATEMENT:** Public reporting burden for this collection of information is estimated to average 1 hour per response for new entrants, and is estimated to average 5 minutes when pre-filled for renewing entities, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to the Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

Permit holder name, address, phone, and permit information will be released via a NOAA Fisheries website. All other data submitted will be handled as confidential in accordance with section 402(b) of the Magnuson-Stevens Act and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

# Draft Form - Transfers

OMB Control No. 0648-06XX Expires: XX/XX/20XX



U.S. Department of Commerce  
NOAA/National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930-2298  
Tel: (978) 282-8483

Application to Transfer  
Surfclam / Ocean Quahog  
Individual Transferable Quota (ITQ)  
Fishing Year YYYY  
January 1, YYYY – December 31, YYYY

## Section A – Type of Transfer Requested

Temporary Transfer of Cage Tags

Permanent Transfer of ITQ Quota Share

Transfer quota share including all cage tags for the current fishing year  
 Transfer quota share only, not cage tags for the current fishing year  
(transfer is effective for the following fishing year)

## Section B – Transfer Details

	Beginning Tag Number	Ending Tag Number	Total Tags
Tag Series 1:			
Tag Series 2:			
Tag Series 3:			

## Additional transaction details

Total price paid, including all fees:

Broker fees, if applicable:

Is this transfer part of a long-term (more than 1 year) contract?  No  Yes Contract duration: \_\_\_\_\_  
Note: Temporary tag transfers only apply to the current fishing year. Any future transfer would require a separate transfer application.

Is the contract based on a fixed price, or a market-based flexible price?  Fixed price  Flexible price  NA

Specify any other conditions on this transfer (e.g. harvester must sell clams to a specific processor, right of first refusal on future transfers, etc.).

## Section C – Transferor (Seller) Certification

Name of Permit Holder:

ITQ Permit Number:

Under penalty of perjury, I hereby declare that I, the undersigned, am authorized to certify this application on behalf of the transferor and completed this form, and the information contained is true, correct, and complete to the best of my knowledge and belief. (18 U.S.C. § 1001)

Signature:

Date:

Print Name:

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## Section D – Transferee (Buyer) Certification

Name of Permit Holder:

ITQ Permit Number:

Under penalty of perjury, I hereby declare that I, the undersigned, am authorized to certify this application on behalf of the transferee and completed this form, and the information contained is true, correct, and complete to the best of my knowledge and belief. (18 U.S.C. § 1001)

Signature:

Date:

Print Name:

To avoid delay in processing, please include all information requested.

PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to the Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

Permit holder name, address, phone, and permit information will be released via a NOAA Fisheries website. All other data submitted will be handled as confidential in accordance with section 402(b) of the Magnuson-Stevens Act and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

SC/OQ ITQ Transfer Application  
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# Where we are in rulemaking process

- Proposed rule published in the *Federal Register* August 7, 2014
- Initial comment period closed September 8, 2014
- Reopened comment period until October 17, 2014
- 21 individuals submitted comments so far
- Previous comments do not need to be resubmitted
- Final rule likely in December

# Steps from here

- Permits and tags for 2015 issued under the current system: November 2014
- Application package sent to all ITQ shareholders and permit holders who leased tags in 2014 or 2015: Mid-2015
- New 2016 permits issued: November 2015
- Pre-filled renewal forms sent: October 2016
- Earliest possible loss of quota: January 1, 2018

# Questions, Comments, or Suggestions?

# Current Form

## Request for Atlantic Surfclam or Ocean Quahog ITQ Allocation or Cage Tag Transfer



United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Greater Atlantic Regional Fisheries Office  
55 Great Republic Drive  
Gloucester, MA 01930

### Section 1. Check which type of transfer you are requesting:

<input type="checkbox"/>	Permanent ITQ Allocation Transfer
<input type="checkbox"/>	Temporary Cage Tag Transfer

### Section 2.

Transferer (Seller)			
Name:		Allocation Number:	
Cage Tags to be Transferred			
	Beginning Tag Number	Ending Tag Number	Total Tags
Tag Series 1:			
Tag Series 2:			
Tag Series 3:			

### Section 3.

Transferee (Buyer)	
Name:	*Allocation Number:
List of allocation numbers in which an interest is owned:	* If an allocation number has not been issued Section 4 of this form must be completed. NMFS will issue an allocation number upon receipt of the completed application.

### Section 4.

Name:	
Vessel (if applicable):	
Street:	
City/ State/ Zip:	
Telephone:	
<input type="checkbox"/>	U.S. citizen requirement. By checking this box you are indicating that you are eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) and are able to provide documentation attesting to such eligibility if requested by NMFS.

### Section 5.

Printed Name of Transferer or Authorized Agent:	Printed Name of Transferee or Authorized Agent:
Signature of Transferer or Authorized Agent:	Signature of Transferee or Authorized Agent:
Date:	Date:

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information. Send comments regarding this burden estimate to: NMFS, 25 Great Republic Drive, Gloucester, MA 01930. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

OMB Approval No. 0648-0240 Expires 12/31/2015



# Current annual ITQ process

- August – Contact tag vender to get quote for coming year
- September – Publish *Federal Register* notice of the tag vender
- October 15 – Deadline for permanent transfers
- Late October – Send tag vender tables of allocation holders and tag ranges
- Early November – Issue new allocation letters and tag transfer forms by mail
- December 10 – Tag transfer deadline for current fishing year
- Update our ITQ system for new quotas and begin processing transfers for next fishing year
- January 1 – New fishing year starts