MEMORANDUM

Date: July 25, 2017
To: Council
From: José Montañez
Subject: August 2017 briefing materials on scoping comments regarding excessive shares

The Council conducted scoping hearings for the Excessive Shares Amendment in July. A summary of common themes provided in both written and public hearing comments regarding excessive shares is attached.

Full public comment summary, including individual written comments and transcripts of public hearings are available at http://www.mafmc.org/actions/scoq-excessive-shares-amendment
Atlantic Surfclam and Ocean Quahog  
Excessive Share Amendment  
“Excessive Shares” Comment Overview

The following provides a summary of common themes provided in both the written and public hearing comments regarding excessive shares. Please see the summary of public hearing comments and the complete written comments for additional detail.


Number of Written Comments Received: 24 during comment period + 1 prior to period. 14 individuals provide written comments (i.e., some individuals submitted more than 1 letter). Some comment letters were standardized and used by multiple individuals. In total, 14 unique comment letters were submitted.

Number of Public Hearings: 4 total (RI, NJ, MD, and a webinar).

Attendance at Hearings: 14 in attendance cumulatively at the 4 hearings (excluding hearing officers and Council Staff); comprised of 11 individuals/people (i.e., some people attended more than 1 hearing). Six individuals provided oral comments.

Frequent Comment Themes

General
• The Atlantic surfclam and ocean quahog fisheries are considered the best managed fisheries in the United States and perhaps the world.

• These fisheries are unique from other fisheries the Council manages.

• The Council is not addressing key issues in the fishery (e.g., closed areas in New England to clam dredge gear, cooccurrence of surfclam and ocean quahogs).

• The topics to be addressed in this amendment are already addressed under Amendment 8.

• The excessive shares amendment is a waste of taxpayers’ money.

• Need more industry participation in the FMAT process; as “working partners,” as they understand the industry well.

• Clam fishery united in stating that this Amendment, and other actions, are not needed.
Excessive Shares

- Amendment 8 already has management measures in place to address excessive shares.

- Amendment 8 relies on the Sherman Antitrust Act to deal with potential market power concepts. Antitrust laws are already in force which could cover the abuse of excessive shares.

- Amendment 8 was challenged in court. A group of processors in the fishery sued on multiple grounds, including that the amendment did not implement a cap defining an excessive share.

- A Federal Judge ruled in favor of the Council and Secretary and against the industry. The Court concluded that the antitrust laws were a perfectly reasonable way to control what could be construed as excessive shares because antitrust has a whole series of thresholds that you must have to identify excessive shares or restrictions on trade.

- National Standard 4 does not state that a “specific cap” or other “measurable definition” which limits the number of shares that could be owned an entity, individual, or corporation is required.

- Clam and clam products have a limited market due to domestic and foreign competition. There are many protein substitutes for clam products.

- Consumers, labor markets, and other industry participants have too many options for the exercise of market power to occur.

- The products of both surfclams and ocean quahogs compete with imports and many food products (i.e., protein products). Clam products are for the most part used as ingredient items that are easily substituted by the next layer of processing, soup companies, and major food networks.

- Clam industry is competing with international actors. For example, Clearwater (Canadian company) which harvests surfclams (a slightly different species) owns 100% of the resource and competes for market shares with domestic producers in the U.S.

- Omega Protein merger (Zapata fisheries and James Howard Smith Co.) was approved by the Department of Justice even though their combined control of the menhaden business was 90%. They sell protein units that are set worldwide at a specific price that competes against other proteins (e.g., corn); therefore, even though they have 90% of the business, the DOJ did not anticipate market power. Similarly, the clam industry produces protein ingredients that compete with shrimp, finfish, chicken, pork, etc.
• Landings for both species have been below their annual catch limits for years. There is allocation available in both fisheries, whereby an individual, entity, or corporation is able to participate in the fishery. [Many opportunities to enter the fishery].

• ITQ has been used as collateral for loans allowing the expansion and modernization of the industry.

• If numerical cap is implemented, it could result in divestiture, create inefficiencies, and take away industry flexibility in dealing with everchanging markets.

• The Excessive Shares Amendment as contemplated, would disregard the FMP’s successful management history by overriding established antitrust protection with unnecessary and duplicative measures.

• In order to set a cap level that is not arbitrary, additional information on competition needs to be available. [The Council must determine the relevant markets and have access to other information about competitive constraints.]

• If the Council decides to implement a percentage cap, it should be 100%. Even at that level, there cannot be market power.

• Industry will sue if a low cap level is implemented (e.g., below 70%).

• This issue has taken a lot of valuable Council and Council staff time.

• Recommendation for no action on excessive shares.
MEMORANDUM

Date: July 25, 2017

To: Dr. Christopher M. Moore

From: Jessica Coakley

Subject: Atlantic Surfclam Overfishing Limit (OFL) and Acceptable Biological Catch (ABC)

The following provides history and context for the above subject, as well as staff recommendations for next steps.

On May 18, 2017, the Scientific and Statistical Committee (SSC) met and developed recommendations for both the surfclam and ocean quahog (SCOQ) fisheries based on new Stock Assessment Review Committee (SARC) peer-reviewed stock assessments. In the case of surfclams, the SSC did not recommend an OFL, but did recommend an ABC for this fishery for 2018-2020 based on catch levels that maintain the current commercial quota levels. Following the meeting, Mr. Alspach followed up with an email to Dr. Boreman to determine if there was an alternative basis on which to calculate the OFL using swept area biomass within the stock assessment report that could have resulted in a higher calculated ABC (see Item #1 that follows). Dr. Boreman indicated that there was not because the underlying issue was the survey catchability (q), which is poorly understood.

At the June 2017 Council Meeting, the SCOQ fishing industry expressed concern that the lack of an overfishing limit (OFL) specified by the Scientific and Statistical Committee (SSC) for Atlantic surfclam, and the ABC as specified, could impact that fishery’s Marine Stewardship Council (MSC) Certification. The Council recommended this issue could be taken up by the SCOQ Committee and that Council leadership (i.e., Luisi, Elliott, Moore, and deFur) would discuss next steps following the Council meeting (Item #2).

Staff was directed by leadership to gather additional information on this issue. Staff contacted SCS Global, the conformity assessment body (i.e., CAB, third-party independent auditor) that determines/certifies whether MSC standards have been met to better understand the certification requirements. SCS Global conducted the original certification assessment for surfclam in 2016. They indicated that while their email does not constitute the formal audit which would occur later in 2017, the components contained in MSC Principle 1 (Stock Assessment and Management/Governance) would still be met given the current assessment and management regime, even if an OFL is not explicitly provided by the SSC (Item #3).

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1 The SSC indicated that, “A reported OFL estimate was considered to be highly uncertain, and deemed in the assessment report to be unreliable. No absolute estimates of fishing mortality rate or current stock size were endorsed by the review panel or the assessment report. Therefore, the OFL could not be estimated.”


2 The MSC is an international non-profit organization that provides fisheries with a certification and seafood labelling program. This program defines requirements for fisheries to be certified as sustainable, and for businesses to trade in certified seafood.
Given the discussions with SCS Global, the staff recommended a Committee meeting was not needed (Item #4).

Mr. Alspach emailed Mr. Luisi and Mr. deFur (Item #5) about the staff memo. Mr. Luisi and Mr. deFur indicated that leadership was pursuing this item further with the Council team.

Mr. Alspach sent comments to the SCOQ Committee (Item #6).

Mr. deFur responded to Mr. Alspach indicating that the Council leadership had decided to include this issue for discussion at the August Council Meeting (Item #7).

Comments were received from Bumble Bee Seafoods indicating support for further clarity of these issues (Item #8).

Based on direction from leadership, staff continued to gather additional information and contacted MSC by phone. Marin Hawk, a US Fisheries manager with MSC, explained on the phone that MSC standards apply internationally so the CABs (like SCS Global) have flexibility when reviewing biological reference points and stock assessments against their standards because methods and governance systems differ globally. She also indicated that when review audits are conducted, persons or groups who were contacted when the fishery was certified are usually contacted again for any new information or questions auditors may have about information.³ In addition to communications with the industry, both the Northeast Fisheries Science Center (NEFSC; Dr. Hennen) and MAFMC (Ms. Coakley) were interviewed to provide information for the surfclam MSC certification in 2016 as the science and management organizations.

In addition, it was noted in the documents Ms. Hawk provided via email (Item #9) that there were no conditions (i.e., requirements for improvement or issues to be addressed by a deadline) placed on Principle Component 1 (Stock Assessment and Management/Governance) according to the surfclam public certification report.⁴ Based on the public certification report, Principle 1 scored 96.7, which is the average of Stock Status=100, Stock Rebuilding=NA, Harvest Strategy=95, Harvest Control Rule and Tools=85, Information and Monitoring=100, Assessment of Stock Status =100.

Only when the Principle 1 score (the average of all 6 categories) drops below 80 would a condition be placed on the fishery (see MSC Theory of Change below). The condition would require improvements to be made on a time certain timeline. Ms. Hawk gave an example in her email and described the steps to ensure conditions are being met, and that if a fishery is behind target meeting a condition they have 12 months to bring it back on target. Only would a certification be in jeopardy if it scores under 60 in any principle and if no improvements based on conditions are being made. This is all described as “highly unlikely” based on how fisheries are scored in her email.

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Mr. Wallace, and several companies, sent comments to the SCOQ Committee encouraging the Council to hold a Committee meeting prior to the August Council Meeting (Item #10).

Mr. deFur responded to Mr. Wallace that appropriate steps regarding this matter were being taken (Item #11).

**Discussion and Staff Recommendations**

When SARC-61 developed the stock assessment report summary (Table A4)\(^5\), it highlighted the higher level of uncertainty associated with expressing spawning stock biomass, recruitment, and fishing mortality as absolute estimates versus those estimates expressed in ratios to calculate the biological reference points. Both absolute estimates and the estimates expressed as ratios were provided in the stock assessment. It was noted that the conclusions based on the reference points that were recommended by SARC-61 were robust with respect to stock status (not overfished, not overfishing).

Based on this information, the SSC did not specify an OFL for surfclams for 2018-2020. This is not an uncommon outcome from SSC deliberations. The lack of an OFL meant that the SSC set the ABC using a different approach than had been used in the prior few years. While the ABC was lower by about 1/3 compared to the prior years, this resulted in no change in the commercial quotas, of which the fishery catches about 2/3 annually. This ABC was recommended for three years and the SSC requested that survey data, including survey indices and swept area estimates of biomass (when available), catch records, and spatial distribution of the fishery should be examined as interim metrics.

Many of the comments received from industry have suggested that there is existing information within the stock assessment report that might change the SSC recommendations; Dr. Boreman’s comments in Item #1 have suggested there is not. The criteria for remand to the SSC are very specific and this

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\(^5\)https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/58e3ab468419c208174b7c4a/1491315554366/1_SurfclamSummaryReport_crd1613.pdf
issue does not appear to meet the remand criteria based on our interpretation.\textsuperscript{6} In addition, if NEFSC created brand new analyses (not in the assessment report) they would need to be peer-reviewed prior to consideration by the SSC, as these analyses would not have been reviewed by SARC-61.

Other comments received have suggested that the drop in ABC would be interpreted as negative by the MSC. However, there is no increase or decrease in commercial quotas and these levels are consistent with the maximum optimum yields recommended by the industry. MSC certification standards do not have explicit requirements for OFLs and ABCs, as they are international and many of the fisheries they certify are not subject to the Magnuson-Stevens Act (MSA). In fact, the ocean quahog fishery was MSC certified in December 2016 with a score of 96.7 on Principle Component 1, both prior to the new stock assessment and SARC-63 being completed in 2017 and even though it did not have an OFL specified from 2014-2017.

In May 2016, the SSC noted that, “it lacked credible information on which to calculate an OFL,” and reiterated its concerns noted in its 2013 report that included, “The fishing mortality rate reference point was deemed non credible because species to which Ocean Quahog was compared were not appropriate.”\textsuperscript{7} The public certification report for surfclam and ocean quahog acknowledged the SSC process and its role in setting ABC and commenting on issues of uncertainty such as biological reference points.\textsuperscript{8}

The staff spent extensive time reviewing MSC certification and the role of SCS Global (as a CAB) which determines whether the fishery meets the MSC standards. Based on this review and comments from SCS Global and MSC (\textbf{Items #3 and 9}), it is highly unlikely that the surfclam certification would be lost based on the stock assessment, sustainable condition of this fishery, and governance/management process in place for this fishery under the MSA. The MSC standards are international and the CABs have a great deal of flexibility in interpreting information. The annual surveillance audits have requirements for stakeholder engagement and outreach which should ensure that there are opportunities for questions about the stock assessment and management process to be answered by Dr. Hennen and Ms. Coakley. The public certification report from 2016 noted on page 116 that, “The MAFMC and NEFSC were key in providing many of the scientific analyses.”

If concerns arise from the MSC or SCS Global, it is apparent that there is a process and timeline that should provide opportunity to address those issues. In addition, there is not new information in the stock assessment that would provide a basis for remand to the SSC to modify the OFL and ABC. The SSC has already requested which interim metrics should be provided by the NEFSC for its review in 2018 and 2019.

Therefore, at this point, the staff do not recommend any action be taken to modify the OFL and/or ABC.

\textsuperscript{6} Council SOPPs page 14: i) The Council may remand back to the Committee [SSC] its ABC recommendation based on the following criteria: (1) failure of the Committee to follow the terms of reference provided to it by the Council; (2) an error, in fact or omission, in the materials provided to the Committee; (3) an error in fact in the calculations, if any, undertaken by the Committee in developing its ABC recommendation; and (4) failure of the Committee to follow its standard operating procedures.

\textsuperscript{7} https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/577bb7bc579fb30e7f447de8/1467725770369/02_May+2016+SSC+Report.revised.pdf

\textsuperscript{8} Public certification report, page 108: “Scientific and Statistical Committee (“SSC”) of the MAFMC - a group of up to 20 scientists and academics required by the Magnuson Act to review annual reports from the MAFMC staff and NEFSC regarding the status of the stocks, and then to set the ABC (“Acceptable Biological Catch”) for each species. The ABC is the maximum level at which the MAFMC may set the harvest quota each year. The SSC additionally recommends improvements for the assessments and notes parameters – such as biological reference points – that they believe need further study.”
Tom

Thanks for your question, as it allows me to explain further the SSC’s reasoning for not accepting the OFL provided in the assessment. The swept area biomass estimate you mention in your email requires two elements: the survey catch, and the survey selectivity/catchability. The central question was around the reliability of the survey catchability – the assessment model, and the text that you refer to in your email, all suffer from the same issue. Scientists have a very poor understanding of what the q (catchability) for the survey is.

As was discussed by the SSC, the uncertainty in q is sufficiently great that we know the pattern but not the scale of the dynamics of this species. The assessment model estimates a value of q that is multiplied by the survey data to get an estimate of scale. The text referred to on p 438 uses q=0.67, which is equivalent to that estimated in the assessment to do the same thing. The uncertainty in q that led the assessment review team and the SSC to abandon the OFL estimate is exactly the same uncertainty that would lead us to reject the swept area biomass estimate provided on p 438 (Appendix 13) of the assessment. The solution the SSC discussed briefly (and eventually rejected) was to assume that q=1 (i.e., it catches everything in its path) and use that as a conservative bound on the swept area biomass, leaving us simply with the strong yet uncertain assumption of the dome-shaped selectivity.

I also want to note that the ABC recommendation for 2018 of 29,363 mt is 2/3 of the ABC recommended for 2017 (44,469 mt). Also, as noted in the Fishery Performance Report, the OY preferred by industry is equivalent to the ABC recommendation (minus allowance for 12% incidental mortality) for 2018, 2019, and 2020.

Hope this helps. See you in Norfolk.

-jb

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On 5/24/17 11:40 AM, Thomas T. Alspach wrote:

Good Morning John –

I am still reeling a bit from results of the SSC meeting last week regarding surfclams. I understand the SSC’s difficulty because of the insistence of the NEFSC assessment scientists on
providing you with trends and ratios instead of point estimates, as the SSC always has been provided in the past. To no avail, I insisted rather emphatically during the assessment meetings that the SSC would not be able to fulfill its obligations if only trends/ratios were provided.

In any event, toward the end of the meeting the SSC was casting about for some alternative basis to support a biomass point estimate, as a starting point for an OFL expressed in metric tons rather than as a ratio. It was suggested by several members that perhaps the committee could rely upon a swept area biomass calculation, and that maybe this could be provided by the time of the next SSC meeting in 2018. It also was determined that this would be a “metric” so that a proposed number could be utilized at that time.

Actually, it was apparently overlooked that there already is a swept area biomass calculation in the current assessment. I could not point this out as this part of the discussion occurred after public comment was “closed” and only SSC membership were engaged in the debate.

But you can find the swept area biomass calculations at page 438 of the full assessment document, and in particular there are graphs at Figures 275-277 that provide hard numbers based upon those swept area biomass calculations.

As the report states, the swept area calculations were provided “for comparison to stock assessment model (SS3) estimates.” The report concludes that “empirical results appear to support assessment model estimates.”

So the question is, could this information not be used by the SSC to revise the ABC decision it reached last Thursday? This appears to be precisely what some on the SSC were suggesting as a means for calculating an OFL and ABC not dependent upon the trends/ratios offered by Dan and Larry.

As you might understand, those of us in the non-scientific outside world are struggling a bit with how to explain what happened last week. The assessment and the scientists are quite confident that the surfclam biomass remains at close to its virgin state, even after 40 plus years of fishing extractions. But nevertheless we now have reduced the ABC to little more than a third of what it was last year. This doesn’t seem to make a lot of sense.

Thank you for your consideration of this.

Tom

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Item #2: June 2017 Council Meeting discussion of subject.

(19:49) Tom Alspach: Good morning, Tom Alspach, representing Sea Watch International, processor of surfclams and ocean quahogs. I also attended all of the assessment meetings that preceded the surfclam peer review. I want to address the surfclam situation. There is a significant problem for the industry that has come out of this. We would like to ask for the Council’s help in addressing. It does not have to do with the amount of the quota or the fishing that we are doing or any of the related management issues that this Council has before it, but the genesis of the issue is that this year for the first time, and I have been attending these stock assessment meetings for 25 years and through 8 stock assessments at least, this year for the first time the assessment did not provide to the Council specific value for the biologic reference points, biomass, etc. The definition of the overfishing limit for example in the code of federal regulations, which apply here is that, OFL is to be expressed in terms of numbers or weights of fish. We don’t have that, we have ratios and for other reference points we have trends, even though the definition of BRPs as you’ll find in the documents you have with you is that the biological reference points are supposed to be specific values, not trends and ratios. They always have been specific values in the past. I understand that from the scientist’s point of view that they were concerned about the trustworthiness, shall we say, of the absolute numbers that they were getting from the model. My understanding is this is the reason why they went with trends and ratios instead of absolute numbers. The trends were very good. The trend for biomass shows that 40 years of fishing for surfclams had effectively no impact on the status of the stock. It is still essentially in its virgin state. Overfishing is not even a question here. But there is a problem because when the assessment with its ratios and trends got to the SSC, which is obliged to establish an ABC for your management purposes, they did not have an OFL expressed in a weight or numbers of fish as the regulations stipulate. So, they cast about for a way to address this problem and what they came up with is explained in the documents that were provided by Jessica and John. They pretty much had to default to the amount of the actual quota that we have, 3.4 million bushels. If you looked at quota paper that was presented by the staff the effect of this was that, this is on page 3, if we had been able to go with the traditional way the SSC sets the ABC we would for 2018 had been looking at an ABC of 60,000 metric tons. Instead the ABC that was decided upon was less than ½ that amount. Say you have this anomalous situation
in which in the one hand we are saying that we are nowhere near overfishing, the stock is essentially untouched by fishing, and yet we are cutting the ABC in half. I understand there are reasons for that but the two don’t really mesh from a logical perspective. This is a real concern for the industry. I would like to explain why. It again does not have to do with constraints on our abilities to fish. We support the quotas that are recommended and we'll be out there fishing as we have in the past. However, in the past 2+ years our industry has invested well over a quarter of a million dollars in going through Marine Stewardship Council certification and we are now a MSC certified fishery. A very large component of that review looks at the status of scientific underpinnings for our fisheries management. We will be surveilled, as they call it, again at the end of the year. We have great concern that when they see these reports saying that the BRPs are not considered reliable, which is in the staff paper, that the ABC has been cut in half, that there is no numerical value for an OFL, we have grave, grave concern that the MSC will qualify or perhaps even withdraw their certification of our fishery as a sustainable fishery. This is a great problem for my client and others in the industry. We were told two years ago, for example by Cisco, a company to which we sell $25,000,000 worth of product to each year, that if we are not MSC certified that they will not accept our product any longer. So, if MSC certification is lost, our major client/customer is in danger of being lost. The same is true for other companies who sell to places such as Walmart who have put the same standards in place. What we would like to ask the Council’s help with is how to get the ABC back to where it should be and how to get information before the SSC such that they can come up with an ABC that is similar to what they have done in the past. We’ve talked informally to some folks about this, we’ve talked with the scientists at Woods Hole who did the assessment, they are quite convinced that if they were given the opportunity to present some information in the assessment that was not made abundantly clear to the SSC, that they could provide a basis for a numerical ABC such as we have had in the past based upon an OFL, so what we’re asking the Council is give us the leeway to take our concerns to the surf clam committee to hear us out. I don’t want to get into the weeds with all of this here, and neither do you, but we would like to present some information to the surf clam committee having in mind the goal of them coming back to you with a recommendation to exercise your discretion to ask the SSC to take another look at the ABC question and how it was set and the OFL based upon some additional information that we believe could be presented to the SSC given the opportunity to receive it. That’s where I’ll leave it. We
hope we can convene a meeting with the surfclam committee sometime in the next weeks or month or so to address this problem further because it does pose some great risk for both my company and other companies economically if we have an issue with MSC going forward because of the problems I’ve just outlined. I thank you for your time in considering this and I hope you will respond favorably to this request. Thank you.

Mike Luisi: Thank you very much Tom and your comments are certainly well understood and it provides for a nice Segway to the next portion of the meeting. So before we take up the request, I think what I would like to do is have Jessica Coakley from Council staff and Dr. Boreman go through their portions of the presentations so that we are all up to speed on all the information and allow the SSC to speak to its decision-making along the way and then after the specifications settings are complete, Peter I’ll look to you as committee chair maybe we can have the conversation about the request and how we can proceed further between now and our August meeting. The one thing I want to think about and make sure we are clear on the record about the request as to whether or not this request is for a remand to the SSC or are we just trying to work with new information to allow the SSC to redeliberate over something based on new information that’s out there. So, will put that on the back burner for now. But I would like to move into the next portion of our meeting this morning. We are going to be discussing the setting of Surfclam and Ocean Quahog specifications and developing recommendations for 2018-2020. Jessica Coakley will be leading that discussion. Jessica whenever you are ready. (28:50)

(56:50) John Bullard: Dr. Boreman, this is a question, maybe for Dr. Hare, I’m not sure. In terms of species that get smaller as they get older, I’ve been getting shorter in the last 15 years or so. Tom Alspach mentioned the issue about MSC certification and while it troubles me the issue of considering setting ABCs around MSE certification. I certainly understand the importance of this and this industry just reeks of consistency with me, and always has. This is the sense I get from all the presentations so far. It’s a long-lived species, harvested at a very sustainable rate. While there is, as Peter deFur mentioned, northward movement there’s a lot of stability in it and my question is, what changed? I guess in the dredge that made it unable this time to get an OFL. Because this does seem to be something just year after year there are no big ups or downs, and we do things, I was going to say minor changes, but almost no changes. But this year there is a
change that could have a significant impact. I just wanted to know what was different this year? I guess it was in the dredge that caused us not to be able to set an OFL.

Mike Luisi: Dr. Boreman.

Dr. Boreman: Well, I’ll start, but I definitely will hand this off to Jon who might want to hand it off to Dan Headan or somebody. First of all, this is a benchmark and it hasn’t had a benchmark assessment done on surfclams in a while. This benchmark looked at the recent survey data. As you know the recent survey design has changed in the past few years, switched over to commercial vessels doing the survey, so there is that aspect, we mentioned that in our sources of uncertainty here as change in design. Overall maybe not in terms of stratification but obviously the sampling vessel has changed. That effects catchability too. So that was looked at. In terms of why the catchability has all of a sudden apparently become more uncertain the estimate of the indices based on the survey, that I need to defer to the center because they’re the experts, they’re the ones looking at the data.

Jon Hare: Yeah, I can’t answer those specific questions but I certainly can ask Dan Headen who is the lead assessment scientist. We’ve been communicating via email this morning so I can get an answer quickly. I think the from the benchmark assessment, you ask a group of people to sit down, open up a model, look at different model structures, different model types, different data types, and redo an assessment and in that redoing process the group made the decision that a ratio-based estimate for a reference point was better than the previous solid OFL. So, I can find out what the rationale was. It’s inherent in how we currently do assessments. When we do benchmark assessments we are really opening up the whole and you can potentially get something that you weren’t necessarily anticipating. Going back to your earlier, it wasn’t really a question but the lead up to your question, to my knowledge, we do not design assessment terms of reference with an endpoint of MSC certification, when we’re thinking about the terms of reference. We’re thinking about the endpoint being provide the SSC and the Council with a document by which they can make management decisions. There are other fisheries where MSC is an important part of the marketing of the product. We should have a conversation with the
NRCC, maybe not the next one because we already have an agenda, maybe the following one, what do we want our assessment terms of reference to be?

Mike Luisi: Dr. Boreman.

Dr. Boreman: Yeah, I just want to add while I have a chance Mr. Chair that the SSC thought that both of the assessments that came through, both on surfclams and quahogs, were tremendous, excellent, solid assessments. They’re not a step backwards, they’re in a different direction, which I think Tom Alspach outlined, that’s what we’re dealing with here. It’s a step in a different direction, however the SSC needs that estimate of OFL. In the quahogs, we were a little more successful arriving at a conclusion on the OFL. But here because both the assessment scientists and the SARC panel both thought that the OFL was unreliable and gave us very little wiggle room as far as how we can operate within the rules.

Jon Hare: I think it’s important that you emphasize although the absolute OFL has a large degree of uncertainty, the conclusion that overfishing is not occurring is a very certain conclusion and so it gets into some of the nuances of how we have these decision rules structured. But overfishing is not occurring and the resource is not overfished.

Mike Luisi: John.

John Bullard: I think that the word unreliable, I’m not sure, sounds like a negative word, but in the context of whether a fishery is being prosecuted in a sustainable fashion, it doesn’t seem to me that it is a negative word. As you said Dr. Boreman, it’s a different direction, and I don’t think unreliable should be taken in a negative way even though it seems like a negative word.

Mike Luisi: Mike Pentony.

Mike Pentony: Thanks Mr. Chairman. Dr. Boreman, question for you. So, I understand that Larry Jacobson at the center did some work looking at swept-area biomass that may have
informed the discussions of the SSC relative to OFL. I just wondering if you could speak to that?

Mike Luisi: Dr. Boreman.

John Boreman: Yeah, we did discuss it, the swept-area biomass, but that’s the issue. In order to come up a swept-area biomass you have to have a catch efficiency of the dredge factor and that’s where the high uncertainty is. If your efficiency estimate is highly uncertain then your swept area biomass is going to be uncertain. We thought maybe we could use it but at the end we rejected that idea and decided to go with the status quo recommendation.

Mike Luisi: Any other questions of Jessica or Dr. Boreman on the presentation? Peter go ahead. (1:06:26)

(1:11:10) Mike Luisi: So with the discussion we just had regarding MSC certification and the potential problems that may exist with the lack of an OFL, I know that I certainly understand the industries concern and I know all of you do as well, but what I would like to do at this time and there may be an opportunity to explore that more deeply. I’ve had a few discussions with some of you about the possibility of getting the committee to convene, with a few members of the SSC or maybe the assessment team, there may be something we can explore to ask questions and have the time to get answers rather than have that full debate today. So, if there’s time at the end of today’s agenda, and after we set specifications for surfelams and we still have to do quahogs, we can take that up or maybe under new business on Thursday if we need to do something like that. With that said, I would like to look at the Council now on how you’d like to handle the surfelam specifications. Peter deFur. (1:12:16)

Peter deFur: Mr. Chairman, when you’re ready I have a motion....

(1:13:40) Adam Nowalsky: I understand the desire to have this discussion about how we address the MSC issue that has been raised before us. I’m somewhat concerned about taking action on this though without having some of that at least some area of comfort, knowing that knowing
that we have a path forward. I’ve heard our Chairman of our SurfClam and Ocean Quahog Committee mention that they have some ideas on the way forward, I would just like to know that we could hear those now, at least some ideas for potential ways forward before we actually vote on this motion.

Mike Luisi: Adam, it’s my understanding, as far as getting specifications on the books for 2018 is what’s important and that’s something we need to take care of today. The idea is that I would have to look to Peter to determine or provide the Council information on what some of those potential ideas may have been discussed over the past few weeks as we’ve prepared for this meeting might be. I don’t know though that we can delay action on this today and wait for new information. I would prefer taking action and getting the ball started and then if new information is presented to the Council and we want to change specifications then we can do so. Getting something started today is what I think is the most important thing to do. Adam.

Adam Nowalsky: So to follow up, I’ll look forward to hearing specific public comment on this and their level of comfort about it before voting on it. My concern is that this goes out in a press release and $25,000,000 immediately becomes at risk. I would just like to hear from them that they have some level of comfort that that’s not what they are faced with when this release goes out.

Mike Luisi: I appreciate that and I certainly have questions about the MSC certification process when one of the questions on my mind is... when does that become a critical... I realize it is critical to the industry but at what point in time is that MSC certification going to be in jeopardy if information like this goes out. So those are my... I mean I think we all have a lot of questions and that’s why I was suggesting that perhaps this item be taken up at another time between now and the August meeting when we fully can spend the time and gather the information and answer the questions to inform the Council. But, yes, we will certainly give the public an opportunity to address the motion before we vote on it. Peter Hughes.

Peter Hughes: Thank you Mr. Chair. I share Adam’s concern. I’m concerned that if we lock ourselves into this 2-year, or 3-year period specification setting process, can it come back before
the Council prior to that 3-years? If new information is mined out of the current data that is there, can we revisit this next year? If that being the case then... I understand the importance of the specifications setting, I don't necessarily care for where the specifications are but that's what we have in front of us today. As long as this is going to be revisited to would like to hear from members of the audience then I may be able to support it. I'm not sure if I where I stand on this.

Mike Luisi: Peter, not only may it be reviewed but it will be reviewed next year. It will be part of our plan to review all new information leading up to this time next year. Then we have an opportunity to make adjustments to the specifications if they're put in place as in this motion, we would have every opportunity each year to make modifications to this. Any discussion on the motion? Ok, seeing none, I'll turn to the audience, any discussion on the motion before us specific for surfclams. Yes, Dave Wallace.

Dave Wallace: Good Morning and thank you Mr. Chairman. The surfclam advisors, of which I am one, the surfclam advisors unanimously supported the status quo at 3.4 million bushels for 2018. We would very much like the Council to agree with that number because that is what we have had for the last 10 or 12 years. This gives us an opportunity to expand our market base because our catch is roughly 65% of that number so we are hopeful that you will continue to allow us to run the business and potentially grow it as the economy gets better and restaurants start being more aggressive in their drawing customers into their establishments.

Mike Luisi: Thanks David. Tom.

Tom Alspach: Yes, thank you Mr. Chairman. Tom Alspach again. I would affirm Dave's comments and appreciate the concerns raised by the two Council members about the potential for putting this in further jeopardy. I agree with the Chairman's comments afford today that it is critical to go ahead and get the quotas in place. We would open yet another can of worms if it were perceived by our customers in particular that there were problems with the quota. They do monitor that and they like to see stability and even though we are not harvesting all the quota as yet, we're talking about a three year spec, we doing a lot of work to expand markets, and the last thing we would want to do is jeopardize the consistency, the quotas that we have had, because
our customers and our financiers, the banks who lend money to harvesters and the companies, they pay a lot of attention to our quotas and the consistency that we have so I would urge the Council to go ahead and get the quotas in place and we can address this ABC issue as a separate item. Thank you, Mr. Chairman.

Mike Luisi: Thanks Tom. Pete Himchak.

Pete Himchak: Thank you Mr. Chairman. Pete Himchak, La Monica Fine Foods. It’s very difficult to explain to an auditor how you went from over 60,000 metric tons to 29,363. Assuming the motion passes as written, if there is a following action in the proceedings that documents that 29,363 is under review then I think that would be comforting to the industry because from an industry point of view this is a red flag, this change in ABC. Thank you.

Mike Luisi: Any other comments from the audience? Seeing none, we’ll come back to the table. Council? Any other discussion on the motion? I’m going to read the motion into the record and then we’re going to call to question. (1:21:54)

(1:26:31) Howard King: Thank you Mr. Chairman, just real quick. This whole conversation has been rather iffy, unreliable, uncertain. I hope whatever press goes out on these quotas gives the message that surfclams are not overfished, overfishing is not occurring, and the quota has been set to a level that has afforded the sustainability of the fishery since 2003. So I hope there’s a message that goes with this.

Mike Luisi: I’ sure Mary will do a very nice job with that message. (1:27:06)

(1:48:50) Peter deFur: Thank you Mr. Chairman. As Chairman of the Committee I have been in discussion with the industry about this matter and I’ve talked with a couple of members of the committee including my esteemed colleague from Virginia. We’ve had a strategy about what we might do and with the Council’s approval I’d like to suggest that the committee take this up, that we have a technical discussion, that we engage the appropriate people from Woods Hole who were involved with the assessment. If it’s necessary or appropriate John Boreman or one of his
representatives and somebody from the science center. We’ll take this up and report back to the Council in August with any thoughts about what actions we might do, if any, so that we would clarify this. I’ve had this discussion with the industry and they say this makes the most sensible approach because this is not as though it affects the specification setting as we’ve just done, what it affects is the outside worlds entity, perception, of the science behind our specification setting. So with your approval and the Council’s approval that’s what I suggest we do. Take it up at the committee level.

Mike Luisi: I think that’s a very good idea Peter. We will turn to the Council and see if there are any comments. Is there any opposition to the suggestion that the committee take up the issue working with members of the science center, perhaps members of the SSC and industry over the summer and report back to us at our next meeting? Ok seeing…Jon

Jon Hare: My one question is in what form would this request come? Would it be a letter from the Council requesting our participation? Would it be the committee reaching out to specific individuals at the science center? Are individuals from the science center formally on the committees? I’m just trying to understand the dynamics of how this will move forward.

Mike Luisi: Peter, Chris, Warren and I, we can talk and figure out what that plan might be. If there is a request for a particular individual to participate, not on the committee but to help inform the committee, we could send a letter to that regard, if that works for you guys.

John Hare: Thank you.

Mike Luisi: You’re welcome. Consider we’ll take up that action. Peter, Chris, you and I and Warren can have that conversation maybe before the end of the week as to how we want to plan for that. Jessica is there anything else to come before us regarding specifications. (1:51:44)
Item #3: Email from SCS Global to Council staff.

Coakley, Jessica

Subject: FW: SC/OQ MSC review
Attachments: PCR_SS-F_TMP_RPT-fullassMSC_SurfclamQuahog_120816.pdf

From: Jennifer Humberstone [mailto:JHumberstone@scsglobalservices.com]
Sent: Tuesday, June 20, 2017 12:14 PM
To: Moore, Christopher <cmoore@mafmc.org>
Cc: Coakley, Jessica <jcoakley@mafmc.org>; DeAlteris, Joe <jdealteris@uri.edu>; rballen63@gmail.com
Subject: RE: SC/OQ MSC review

Hello Chris and Jessica,

I’ve checked in on this matter with Dr. Joe DeAlteris, who served as our Principle 1 expert evaluating stock status and harvest strategy in the full assessment, who shared largely the same preliminary view on this question.

As I said on my initial call with Chris, there is no explicit MSC requirement that demands an OFL specifically. In previous versions of the standard, we were required to evaluate the fishery for Target and Limit Reference points, but in the new Version 2.0, the requirements now focus on the stock status relative to the point of recruitment impairment (PRI) and relative to MSY (or some proxy consistent with MSY).

Specifically, we must consider the available stock status and harvest strategy measures as follows for scoring:

a) the stock status can be determined relative to PRI and consistency with MSY (Performance Indicator (PI) 1.1.1),
b) the harvest control rule can be expected to act to reduce exploitation as the PRI is approached (PI 1.2.2), and
c) the stock assessment can be said to estimate status relative to reference points appropriate to the stock that can be estimated (PI 1.2.4).

As we understand on a quick review, there are still biologically based stock status reference points, there is still a model estimate of stock status relative to those reference points, and there is still an HCR that requires management to act to reduce exploitation as the PRI is approached. If you would like to review how the assessment team evaluated these considerations in the context of the surfclam fishery, you can refer to the attached report (pages 139-140, 145-146, 149-150).

I hope this further explanation on the MSC framework and our preliminary response is helpful; however, I do need to emphasize that this email is not to be considered SCS’s formal position on this matter. We will be formally reviewing the fishery for changes relevant to scoring annually in the course of the annual surveillance audit— which will include a review of the updated stock assessment and fishery specifications. The timing of the surveillances are tied to the certification date of the fishery- for surfclam this was December 2016—so, we will likely seek to conduct the surveillance in November or early December this year.

If this further insight into how the MSC standard evaluates stock assessments, reference points, and harvest control rules raises concerns about how these changes could affect the surfclam certification, the client group members may request that we conduct our surveillance audit at least in part early. Our ability to do this would be contingent on our assessment team’s availability to conduct the review. If this is something that industry would like to pursue they may contact me directly to explore this option.

Please do not hesitate to reach out in the future regarding this or other matters. I will do my best to be as helpful as possible, and it is always helpful for us to remain apprised of key updates.
Best,
Jenn

Jennifer Humberstone | Technical Associate, Sustainable Seafood
+1.510.452.6996 direct | +1.510.452.6884 fax

SCSglobal
Setting the Standard for Sustainability™
MEMORANDUM

Date: June 21, 2017

To: Surfclam and Ocean Quahog (SCOQ) Committee

From: Christopher M. Moore

Subject: Atlantic Surfclam Overfishing Limit

At the June 2017 Council Meeting, the SCOQ fishing industry expressed concern that the lack of an overfishing limit (OFL) specified by the Scientific and Statistical Committee (SSC) for Atlantic surfclam in 2018-2020 could impact that fishery’s Marine Stewardship Council (MSC) Certification. The Council recommended this issue be referred to the SCOQ Committee.

To better understand how OFL is involved in MSC certification, Council staff contacted technical associates that conduct MSC review and certification. They indicated that there, “is no explicit MSC requirement that demands an OFL specifically.”

MSC requirements focus on stock status relative to the point of recruitment impairment (PRI) and relative to maximum sustainable yield (MSY) or an MSY proxy. Specifically, MSC considers the available stock status and harvest strategy measures as follows for scoring:

- The stock status can be determined relative to PRI and consistency with MSY,
- The harvest control rule can be expected to act to reduce exploitation as the PRI is approached, and,
- The stock assessment can be said to estimate status relative to reference points appropriate to the stock that can be estimated.

Nothing has changed with respect to meeting the 3 criteria above based on either the new stock assessment or SSC recommendations. In addition, stock status for surfclam is unchanged (not overfished, not overfishing), and relative spawning stock biomass (SSB) indicates it is above the SSB (MSY) target levels. It should also be noted that the ocean quahog fishery was MSC certified while it did not have an OFL specified by the SSC.

Based on these findings, a Committee Meeting is not needed to address this issue because the OFL is not required for MSC certification, nor will it be of concern when MSC conducts its annual surveillance audit in late 2017. We recommend the auditors be referred to Council staff if additional information is needed to help understand how this fishery continues to meet those criteria described above.

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1 The MSC is an international non-profit organization that provides fisheries with a certification and seafood labelling program. This program defines requirements for fisheries to be certified as sustainable, and for businesses to trade in certified seafood.
Subject: FW: Moore Memorandum

From: Michael Luisi -DNR: [mailto:michael.luisi@maryland.gov]
Sent: Monday, June 26, 2017 2:12 PM
To: Alspach, Tom <talspach@goeaston.net>
Cc: deFur, Peter <pldefur@gmail.com>
Subject: Re: Moore Memorandum

Tom - That you very much for your email regarding your concerns. Perter and I both received your email regarding the Surf Clam OFL question from the June Council meeting - and we did have some time at the end of last week to discuss the issue. Be assured we take seriously the matter raised at the Council meeting and continue to pursue this item in cooperation with the Council team.

We are concerned about the implication in your email that Dr. Moore or anyone at the Council may have acted inappropriately. We have every confidence in Chris and all the Council employees, all of who have our full support.

If you would like to discuss this issue with me or Peter please let us know. Thank you.

Sincerely,

Mike and Peter

Michael Luisi
Division Director, Monitoring and Assessment
Fishing and Boating Services
Department of Natural Resources
580 Taylor Ave., B-2
Annapolis, Maryland 21401
410-260-8341 (office)
443-758-6547 (cell)
michael.luisi@maryland.gov

Click here to complete a three question customer experience survey.
On Wed, Jun 21, 2017 at 4:09 PM, Thomas T. Alspach <talspach@goeaston.net> wrote:

Mike/Peter --

I have received Chris Moore’s memorandum regarding his interference in the Council’s decision to request further review of the SSC’s ABC determination.

I will be responding separately and at length to Moore about what he has done.

But my question to you fellows is, by what authority did he do this? Were his actions requested or approved by either Council leadership or Surf Clam Committee leadership? Who is driving the bus here?

Needless to say, this is an issue that is not going to go away quietly, and for starters I, and I am sure others, would like to know what Moore’s range of authority was, or was not, in doing what he has done.

Thank you for any information that you can provide.

TTA

Thomas T. Alspach
295 Bay Street, Suite 1
P.O. Box 1358
Easton, MD 21601
410-822-9100
Dear Surfclam Ocean Quahog Committee Members —

Please review and consider the attached memorandum. Thank you for your attention to this.

TTA

Thomas T. Alspach
295 Bay Street, Suite 1
P.O. Box 1358
Easton, MD 21601
410-822-9100

Confidentiality Notice
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MEMORANDUM

TO: Surfclam Ocean Quahog Committee (Peter deFur, Mike Luisi, Peter Hughes, John Bullard, Steve Heins, Howard King, Roger Mann, Stew Michels, Laurie Nolan, Wes Townsend)

cc: Christopher Moore, Jessica Coakley
cc: Industry Advisory Panel (Warren Alexander, Thomas Dameron, Peter Himchak, Sam Martin, Joseph Myers, David Wallace)

FROM: Thomas T. Alspach, Sea Watch International, Ltd.

DATE: June 28, 2017

RE: Response to Staff Memorandum Regarding Further Review of Surfclam Stock Assessment

At its meeting in June the Council voted unanimously to ask NEFSC to reconsider parts of the surfclam stock assessment in order to address certain deficiencies that could impede further unqualified Marine Stewardship Council (MSC) certification of the surfclam fishery. The staff now has circulated a memorandum proposing that the Council action not take effect, claiming that the absence of an overfishing limit (OFL) in the assessment will not be problematic for the MSC when it reviews our fishery for continued certification.

The staff memorandum incorrectly presumes that the only deficiency in the assessment is the absence of an OFL. But in fact the problems are much broader than that, and most certainly will be troublesome for MSC when it undertakes its review. The primary underlying problem is the absence of multiple biological reference points (BRPs) expressed as specific values. This absence of BRPs expressed as specific values is not compliant with the Magnuson Act, precludes the Council from exercising its legally required management oversight, and has frustrated the ability of the SSC to carry out its responsibility for setting an ABC under prescribed Council rules.

The new assessment, instead of providing specific values (expressed in weight or numbers of fish), provides only “ratios” and “trends” for such factors as B, F, R or MSY. This is contrary to Magnuson requirements which define “Biological Reference Points” as “specific values” for the variables that describe the state of a fishery system which are used to evaluate its status.” 61st Northeast Regional Stock Assessment Workshop, published by NEFSC, at 3. Accordingly, for example, MSY is defined as “the largest average catch that can be taken from a stock under
existing environmental conditions.” Recruitment is defined as “the number of young fish that survive from birth to a specific age or grow to a specific size.” And spawning stock biomass (SSB) is the “total weight of all sexually mature fish in a stock.”

Because of the absence of BRPs as values, the Council cannot exercise its oversight obligations, such as the requirement that, in setting quotas, it “shall consider exploitable and spawning stock biomass relative to OY.” 50 CFR 648.71(a)(1). The Council cannot do this because the assessment does not provide any value for spawning stock biomass (SSB). It is indisputable that the assessment does not provide adequate BRPs. When the staff quota memorandum was released in late May, it recommended reducing the surf ABC to only 50% of what it would have been using the SSC’s prior methodology, stating that B, F and R—not just the OFL—are “unreliable,” and that an SSB/SSB threshold “cannot be provided.”

These deficiencies prevented the SSC from establishing an ABC under the Council’s adopted harvest control rule/risk policy. That policy requires values for B and Bmsy because it uses the B/Bmsy ratio. This year the SSC could not apply the policy not only because there was/is no OFL, but also because it had no reliable estimate of fishing mortality (F) or stock biomass (B or SSB).

The staff memo provides as bullet points certain criteria for MSC certification, and claims that these are satisfied by the assessment. That is not so. It is not correct that “the harvest control rule can be expected to reduce exploitation” because the HCR cannot operate, on the basis of the current assessment, for reasons just explained. And it cannot be said that the assessment “estimates stock status relative to reference points appropriate to the stock” because we have no reference points—only ratios with no specific values. Again, “reference points” under Magnuson are “values of parameters (e.g., Bmsy, Fmsy) that are useful benchmarks for guiding management decisions.”

So even if the staff correctly surmises that an explicit OFL “is not required for MSC certification,” there is great risk that the reasons for that absence, coupled with the deficiencies just described, will make continued unqualified MSC certification problematic. As an example, an auditor surely will ask, if the stock is still near carrying capacity, and if overfishing is not occurring, why was it necessary to reduce the ABC to 50% (29K mt) of what it would have been using the established risk policy (60K mt, per the staff quota memorandum)? The answer will have to be that, under the circumstances of the current assessment, the established risk policy cannot be applied.

It is important to understand that the guidance about MSC certification provided to the staff, and summarized in its memorandum, did not come from MSC, but from SCS Global, an auditing subcontractor. Further, in her email to the staff addressing MSC criteria, Ms. Humberstone stated that “this email is not to be considered SCS’s formal position on this matter. We will be formally reviewing the fishery ... in the course of the annual surveillance audit, which will include a review of the updated stock assessment and fishery specifications.” (Emphasis in original).
June 28, 2017
Page 3

Finally, we believe the Council should recognize that the issue here is not simply whether the assessment will pass muster with MSC. Rather, the broader concern is that, wholly apart from MSC interests, the Council simply should not be satisfied with an assessment including BRPs that are deemed “unreliable,” and which impedes compliance with Magnuson and implementation of Council policy.

For these reasons we submit that the Council should proceed with asking the scientists at NEFSC to address the problems described above and that were discussed at length at the last Council meeting. This should happen now and not be deferred until a future date. The good news is that the assessment scientists have stated explicitly that there is data within the current assessment that could be utilized to derive BRP values necessary for correcting the problems that frustrated the SSC’s establishment of an ABC. We hope that the Council will urge the NEFSC to proceed with this effort as soon as possible.

Thank you for considering the above.

TTA/tsd
Item #7: Email from Mr. deFur to Mr. Alspach and the SCOQ Committee.

From: Coakley, Jessica
Sent: Monday, July 3, 2017 9:52 AM
To: COM - Clam
Subject: SCOQ Memo

Hello SCOQ Committee,

Please see the email below.

Jessica

Jessica Coakley, Fishery Management Specialist
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, DE 19901
Direct: 302-526-5252
Main: (302) 674-2331 | Toll-Free: (877) 446-2362 | Fax: (302) 674-5399
jcoakley@mafmc.org or jessica.coakley@noaa.gov

From: Peter de Fur [mailto:pldefur@gmail.com]
Sent: Friday, June 30, 2017 5:51 PM
To: Alspach, Tom <talspach@goeaston.net>
Cc: Coakley, Jessica <jcoakley@mafmc.org>; Moore, Christopher <cmoore@mafmc.org>
Subject: Fwd: Your memo

Sent from my iPhone

Begin forwarded message:

From: Peter de Fur <pldefur@gmail.com>
Date: June 30, 2017 at 2:11:33 PM EDT
To: Home <pldefur@gmail.com>
Subject: Your memo

June 30, 2017

Tom,

Thank you for your memo titled, “Response to Staff Memorandum Regarding Further Review of Surfclam Stock Assessment.”

I have reviewed it in detail, and discussed this issue at length with our Council leadership. We are scheduling a discussion of this subject at the August Council Meeting - the agenda should be finalized and available around Mid-July.

Sincerely,

Peter
Thank you Peter. Your concern for our industry is very much appreciated.

Tom

----- Original Message ----- 
From: "Peter deFur" <pledefur@gmail.com>
To: "Thomas T. Alspach" <talspach@goeaston.net>
Cc: "Jessica Coakley" <jcoakley@mafmc.org>, "chris moore fmc" <cmoore@mafmc.org>
Sent: Fri, 30 Jun 2017 17:51:06 -0400
Subject: Fwd: Your memo

Sent from my iPhone

Begin forwarded message:

From: Peter deFur <pledefur@gmail.com>
Date: June 30, 2017 at 2:11:33 PM EDT
To: Home <pledefur@gmail.com>
Subject: Your memo

June 30, 2017

Tom,

Thank you for your memo titled, “Response to Staff Memorandum Regarding Further Review of Surfclam Stock Assessment.”

I have reviewed it in detail, and discussed this issue at length with our Council leadership. We are scheduling a discussion of this subject at the August Council Meeting - the agenda should be finalized and available around Mid-July.

Sincerely,

Peter

Sent from my iPhone
Item #8: Comment received from Mr. Pike.

From: Moore, Christopher
Sent: Wednesday, July 5, 2017 1:40 PM
To: Pike, Jeffrey; Coakley, Jessica; Montanez, Jose
Cc: Kraft, Mike
Subject: RE: Clams

Jeff – thanks for the note! We plan to add the issue to the agenda for our August Council meeting - C

From: Jeffrey Pike [mailto:jpike@pikeassoc.com]
Sent: Wednesday, July 05, 2017 1:30 PM
To: Moore, Christopher <cmoore@mafmc.org>; Coakley, Jessica <jcoakley@mafmc.org>; Montanez, Jose <jmontanez@mafmc.org>
Cc: Kraft, Mike <Mike.Kraft@bumblebee.com>
Subject: Clams

Chris-

Hope you and the staff had an enjoyable holiday!

Mike Kraft, senior executive with Bumble Bee Seafoods and with whom I work with on clam management, and I have been discussing the staff memorandum and Tom A. response on behalf of Sea Watch.
I attended the Council meeting in Norfolk and observed the discussion and expression of concern.

I am neither a scientist nor expert on MSC requirements, but we think that the issues Tom raised are worthy of further consideration/discussion. Whether that’s having the NEFSC scientists or the SSC shed some light on this discussion, not sure.
We do think that anytime there is a chance to shine more daylight on the issues of concern it’s well worth doing, even if the conclusions don’t change.

In summary, we wanted you to know that Bumble Bee Seafoods supports Sea Watch’s request for more attention to the issues raised in his memo.

Regards,

Jeff

Jeffrey R. Pike | Pike Associates LLC
203 Maryland Ave. NE | Washington, DC 20002-5703
Phone: 202.737.1079 | Fax: 202.737.1245 | Email: jpike@pikeassoc.com
www.pikeassoc.com
Hey Jessica,

Thanks for the chat just now. Before I dive into this, I wanted to point out that the fishery does not currently have a condition for harvest control rules or reference points. Attached is the final assessment ('PCR_clamsquahogs') for clams, which includes all conditions on the fishery in Table 27. A condition is placed on the fishery if they score between a 60 and 80 during the assessment. So, if for some reason the CAB is not satisfied with the new stock assessment and results, the performance indicator would simply be re-scored. This score would likely require a new condition for the fishery, and the fishery would create a client action plan to address the issue. This would not result in an immediate withdrawal unless the fishery no longer met the minimum level of 60. This is highly unlikely (see “scoring graphic’ attached for info on how fisheries are scored).

The surveillance audit process is outlined in section 7.23 of the FCR (page 47, attached). The surveillance audit occurs one year from the certification date of the fishery. For clams and quahogs, the audit will occur sometime later this fall. The CAB (certification assessment body, aka certifier) has a little leeway around this date. Specific activities that occur during the audit are outlined in section 7.23.12.

If a condition is deemed to be ‘behind target’, the CAB would indicate this to the fishery and the fishery would have 12 months to bring it back onto target. For example, if a fishery had a condition to show evidence of pinger use on gill nets, and they had not begun to collect information, the fishery may be found ‘behind target’. They would then have 12 months to collect information and show evidence of compliance with pinger regulations. If they were still not ‘on target’ after 12 months, the CAB may issue a suspension for the fishery.

The suspension process is outlined in section 7.4 of the GCR (page 29, attached). Specifically, section 7.4.3: A CAB shall suspend a fishery certificate if a certificate holder has not made adequate progress towards addressing conditions. The certificate would be suspended for 90 days while the client worked to fix the issue.

I have also included a graphic that represents how MSC, the certifier (CAB) and the client fishery all work together (‘MSC relationship with entities’). As mentioned, MSC is the standard holder. The CAB conducts the fishery assessment, and is accredited by ASI. ASI basically audits the CABs to ensure they are conducting the audits appropriately.

Overall, the clam fishery has little to worry about because there is not even a condition on the fishery for stock assessment information/reference points. I know this is a bunch of information, and the MSC process is certainly not simple. I am happy to answer any questions that pop up. I have also attached a general guide to certification for your reference (‘get certified’).

Cheers,

Marin

--

Marin Hawk
Fisheries Manager, US Atlantic and Gulf of Mexico
Marine Stewardship Council, Washington, DC
This e-mail and any accompanying documents contain confidential information intended for a specific individual or company. This information is private and protected by law. If you are not the intended recipient, you are hereby notified that any disclosure, copying or distribution, or the taking of any action based on the contents of this information, is strictly prohibited. You are also requested to advise us immediately if you receive information not addressed to you.
Item #10: Comment received from Mr. Wallace and several companies on this subject.

From: dhwallace@aol.com
Sent: Monday, July 10, 2017 10:54 AM
To: deFur, Peter; Luisi, Michael; Hughes, Peter B.; Bullard, John; steveheinsifish@gmail.com; King, Howard; Mann, Roger; Michels, Stewart; Nolan, Laurie; Townsend, Wes; Moore, Christopher; Coakley, Jessica; Alexander, Warren; Dameron, Tom; Pphimchak@comcast.net; Martin, Samuel; Wallace, Dave
Cc: 
Subject: Email regarding the surfclam assessment and MSC

The undersigned companies, being participants in the surf clam and ocean quahog fisheries, herein wish to address the 2016 surf clam assessment. With this letter we are urgently encouraging the MAFMC and its staff to quickly follow through on the unanimous vote of the MAFMC June 6, during the last MAFMC meeting.

The Council at their last meeting voted unanimously to have the MAFMC Surf Clam Ocean Quahog Committee meet with the sole purpose of requesting the NMFS North-East Fishery Science Center (NEFSC) to provide the necessary information so that the MAFMC Science and Statistical Committee (SSC) could develop an ABC from the latest surf clam assessment.

It is necessary for the public’s perception of the health of the fishery and the clam industry dependent on the surf clam fishery that the assessment include an ABC, based on the available information. This information is available from the NEFSC and could be transmitted by the NEFSC to the SSC, if so requested. If necessary the MAFMC Surf Clam Ocean Quahog Committee could initiate the process through a simple conference call meeting, not requiring a meeting in person.

The industry is motivated to have an ABC included in the assessment, due to the third party evaluation of fisheries, by NGO’s, including but not limited to the Marine Stewardship Council (“MSC”). Most US and European retail chains will only sell seafood from fisheries which are certified as sustainable by third party evaluators, such as MSC.

If the Surf Clam assessment does not include an ABC, even though the fishery is not overfished and overfishing is not occurring, MSC auditor’s conceivably could question their certification of the surf clam fishery during its annual review. It is important that this administrative oversight be fixed, since the NEFSC has the information.

We are writing due to our concern that Dr. Peter deFur’s email of June 30 to Tom Alspach which says that the MAFMC will schedule time to discuss the surf clam assessment issue again at the MAFMC’s August meeting. There seems to be no reason for the MAFMC to revisit this again since the MAFMC voted to proceed as outlined above at its last meeting. A phone or in person Surf Clam or Ocean Quahog Committee meeting could be scheduled for July or August and the NEFSC could have the fixed the ABC assessment by August to be reviewed by the SSC at their next meeting.

Rather than MAFMC staff scheduling a discussion at the August Council meeting the MAFMC staff should schedule a Surfclam Committee meeting / conference call, including members of the SSC. The Surf Clam Committee could identify the information needed and the solution could be underway in a timely manner.

The short and long term wellbeing of the surf clam industry, as perceived by the NGO’s and the marketplace, will be impacted if the MAFMC and NMFS do not fully fix the Surf Clam Assessment.

The Surf Clam industry of which the undersigned are all participants greatly appreciate the success of the Surf Clam management plan under the auspices of the MAFMC and it would be unfortunate that for the lack of timely diligence in requesting information from the NEFSC to complete the Assessment with an ABC, the fishery and its management plan could be viewed negatively by third parties, negatively impacting all of the undersigned, as well as the reputation of the MAFMC.

As evidenced by the unanimous vote of the MAFMC at its last meeting, this is an easily fixable problem and we seek to work with the leadership and staff as collegially as possible to schedule a phone Committee meeting, which should not be a burden on the MAFMC staff to move ahead expeditiously.
We are available to help in any manner necessary.

Sincerely,

Galilee Seafood, LLC.                     La Monica Fine Foods, LLC

Surfside Products, LLC                   Truex Enterprises-

Wallace and Associates

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Dave,
Be assured that we are taking all appropriate steps regarding the surf clam OFL matter.
Thank you
Peter

Sent from my iPad