MEMORANDUM

Date: May 22, 2019

To: Council

From: Jessica Coakley and José Montañez, Staff

Subject: Atlantic Surfclam and Ocean Quahog (SCOQ) Catch Share Program Review – Issues and Potential Actions for the Council to Consider

The following documents are available for Council consideration on the above subject.

- Summary of Public Comment on the Program Review (behind this tab)

Background

On April 9, 2019, the Council received a presentation from Northern Economics, Inc. on the “Review of the Atlantic Surfclam and Ocean Quahog Individual Transferable Quota Program,” This presentation started a 30-day public comment period that ended on May 8, 2019. The public comments were compiled and summarized. The Oversight Team met on May 13, 2019 to consider the findings of the review report and public comments received, and to develop a list of potential issues for the Council to consider for action to improve aspects of the SCOQ ITQ Program.

On June 4, 2019, the Council will review the public comment received and consider potential actions identified by the Oversight Team which are given below. The Council may also choose to take up none, some, or all the issues that were identified. In order to identify the best ways to address any of these for the Council, staff recommend they be tasked to work with GARFO and NEFSC staff to identify possible approaches (i.e., FMP action, regulatory action, workgroup, etc.) for possible inclusion in the 2020 Implementation Plan. That would allow the Council to consider whether and how to fold these potential actions into the current Council staff workloads.

Council Completion of Catch Share Review

The Council will formally submit the review package to NMFS and the Program Review will be complete.
Issues for possible consideration:

1. Imbalance between Annual Catch Limits and Harvest

This issue was raised in the program review report and public comments received. The report states: “Starting in the late 2000s, substantial portions of the surfclam and ocean quahog annual catch limits have been left unharvested due to weak or stagnant demand for clam products. While the resulting surplus of ITQ quota share has reduced the leasing burden, it has caused an economic hardship for some firms that opted to remain in the fisheries as quota lessors, as they have found it increasingly difficult to find lessees and/or have been forced to reduce quota lease prices (Section 7.3.2). In addition, the reduced harvest of surfclam and ocean quahog resources has placed active small independent vessel owners at a disadvantage-processors are more likely to be able to meet their supply requirements using their own vessels. This difficulty of finding buyers, together with the increasing costs of fuel, insurance, and other fishing inputs, has forced out more of the small independent firms and accelerated vertical integration (Section 7.3.2). On the other hand, some lessees of ITQ quota share welcome the devaluation of quota (Section 7.3.2). Moreover, a number of industry representatives have expressed concern that financial institutions would not renew loans if changes in the annual catch limits led to a significant reduction of ITQ quota share that could be used as collateral.”

Potential action: The Council could consider mechanisms suggested in the Excessive Share Amendment or through other means to align supply (quota) and demand (landings levels) to ensure that all allocation holders who own ITQ are afforded an opportunity to utilize their quota shares.

2. Decline in Independent Operators (may be interrelated to barriers below)

This issue was raised in the program review report: “The surfclam and ocean quahog harvest attributable to independent vessels (versus processor-owned vessels) has steadily declined (Section 6.3.6). Although the SCOQ ITQ program goals and objectives do not clearly define what the surfclam and ocean quahog “industry” is, the goals and objectives were oriented toward harvesting, with the initial ITQ quota share allocations going solely to vessel owners. However, the industry has become increasingly oriented toward the processing sector.”

Potential action: If independent participation in the harvesting sector is important, the Council could examine ways to promote the participation of independent harvesters in this fishery.

3. Barriers to New Entry

This issue was raised in the program review report: “The ITQ quota share transferability rules of the SCOQ IT program facilitate, in theory, the entry of new entities into the surfclam and ocean quahog fisheries. There are few restrictions on the transfer of ownership of either ITQ allocation permits or the annual allocations of ITQ quota share. The original owners of ITQ allocation permits and ITQ quota share were owners of permitted vessels in the surfclam and/or ocean quahog fisheries. Thereafter, any entity that meets requirements for owning a U.S. Coast Guard documented fishing vessel is eligible to own ITQ quota share. Initially, an allocation could not be transferred in amounts less than 160 bushels (i.e., 5 cages), but Amendment 13 to the FMP eliminated this restriction in 2004. There is no maximum amount that can be transferred, nor is there any limit on the percentage of the total ITQ quota share that can be held by one person.
However, according to interviewed industry representatives, the industrial scale of the fisheries has long posed an economic barrier to entry for new entrants to the surfclam and ocean quahog fisheries. Vessels and fishing gear are expensive, and it can be difficult to find buyers, especially when the product market is tight. The cost of acquiring ITQ quota share after implementation of the SCOQ ITQ program created an additional obstacle. In the ensuing years, there have been few programs to assist new entrants into the harvesting sector, and those programs have been limited in scope and duration. The number of new processors entering the surfclam and ocean quahog fisheries since the program began has also been limited. One long standing member of the industry has recently pursued a niche market for specialty clam products rather than attempting to compete with larger processors producing traditional products.

**Potential action:** The Council could consider what the specific impediments are to entry into these fisheries and consider how changes to the ITQ program itself or other programs could improve opportunity and assist new entrants into the harvesting sector and/or processing sector.

4. Improved Data Collection and/or Research

This issue was raised in the program review report: “Both before and after the SCOQ ITQ program began, reporting and recordkeeping requirements for harvesters and processors in the surfclam and ocean quahog fisheries were used by the Council and NMFS to monitor fishery progress and gain additional information about the distribution of fishing pressure on the resource and about the economic character of the fisheries. However, these requirements left a number of data gaps. Information on the actual prices of surfclam and ocean quahog product as it moves from vessels to processors is difficult to obtain. Because of vertical integration, most processors are buying product from their own vessels; therefore, the prices reported in vessel logbooks and processor/dealer weekly reports may not represent a “true” market transaction. In addition, information on the operating and fixed costs of surfclam and ocean quahog vessels and processors is very limited, and there is no systematic collection of vessel crew and processor worker data, such as employment, remuneration, and job satisfaction.

Implementation of a mandatory, on-going economic data collection system would be one way of bridging the data gaps. Some LAPPs (Limited Access Privilege Programs) have comprehensive economic data collection requirement to help the Councils and NMFS assess the success of the programs and develop amendments to the programs. For example, both the Bering Sea and Aleutian Islands Crab Rationalization Program and that Pacific Groundfish Trawl Rationalization Program included requirements to provide employment, cost, and sales data necessary to understand the economic performance of harvesters and, in the case of the Bering Sea and Aleutian Islands Crab Rationalization Program, processors participating in the respective fisheries. Annual forms that collect quantitative financial information about industry operations were specifically developed for each fishery. Completion and submission of the forms are required as a condition of continued participation in the fisheries (National Marine Fisheries Service 2018e; National Marine Fisheries Service 2018d).

However, both of the above LAPPs had the advantage of including the economic data collection requirements when the programs were first implemented. Industry participants in the programs viewed the requirements as one of many other program requirements, and they became accustomed to providing detailed, proprietary financial data on a regular basis. Given the many years that have
elapsed since the SCOQ ITQ program began, an attempt to solicit similar economic information from surfclam and ocean quahog fishery participants is likely to encounter resistance from industry, as it would be outside of the long-held status quo. A potential indication of the level of resistance is the near zero percent response rate received in a voluntary survey that NMFS recently administered to commercial fishing vessel owners in the New England and Mid-Atlantic states to collect economic data—only one survey response was received from vessel owners who reported landings in the surfclam or ocean quahog fisheries in 2015 or 2016 (Walden 2018).

The outcomes of a recent series of reviews conducted by NMFS may offer guidance in ways to enhance the effectiveness of future economic and social data collection efforts, including boosting industry cooperation and participation, and thereby help fill data gaps and fulfill economic and sociocultural science research needs for managing the surfclam and ocean quahog fisheries.”

The Oversight Team noted there are some current actions that are targeted towards improving data collection. The NEFSC is conducting a crew survey, not specific to SCOQ, but it should include some crew participating in these fisheries. In addition, the eVTRs efforts and FDDV (Fisheries Dependent Data Visioning) initiatives should help improve data collection processes, hopefully reducing reporting burden over the long-term.

The steady decline in voluntary participation for the fishing vessel owner surveys is concerning and may highlight the need to find ways to encourage voluntary participation through outreach or to use mandatory mechanisms, as is used in other catch share programs to collect these data. The following information could be considered:

- Information on the operating and fixed costs of surfclam and ocean quahog vessels and processors are very limited, and there is no systematic collection of vessel crew and processor worker data, such as employment, remuneration, and job satisfaction. Better information on employment, cost, and sales data necessary to understand the economic performance of harvesters and processors participating in the respective fisheries, as is done in other LAPPs.
- Implementation of an improved mandatory, on-going economic data collection system would be one way of bridging the data gaps. Other options include research projects and other voluntary data collection tools.
- Review the existing data collection forms and consider potential modifications.
  - Review the ‘Additional Details’ data that has been collected on the current Clam ITQ Transfer form and assess this information for data quality. Determine if the data is useful and provide suggestions on how the data could be collected in a more standardized way for improved analysis.
  - For some of the allocations in the current ownership data the owner(s) can only be identified at the business level (no person names). This data collection gap needs to be addressed.
  - In the current ownership data, some owner(s) are not listed due to them having less than 10 percent ownership interest, so some the information/connection are being missed.
  - Additionally, depending on the tracking model selected by the Council for excessive shares, the data collected should be evaluated.
Potential action: The Council could consider improving information collection for these fisheries. The Council should work in conjunction with NMFS and GARFO staff to identify potential information needs to improve the social and economic data available for evaluating ITQ programs in the region. The recommendations from the Science Centers program review on the direction and quality of economics and human dimensions programs could be used as a starting point for discussion.¹ Specific recommendation for improving the collection of social and economic information for our region could be developed (including voluntary versus mandatory collection protocols).

5. Discards

The program review report indicates that according to observer data, there is minimal discards of other species in these two fisheries (Section 5.3.3). However, there are small quantities of ocean quahog caught in observed surfclam trips and vice versa. There is a strong incentive not to fish in areas where both species occur, as mixed loads of surfclams and ocean quahog are not allowed under current regulations (in addition to being undesired by processors), and it is not practical to sort catches at sea. In recent years survey catches including both surfclams and ocean quahogs have become more common, as surfclams have shifted towards deeper water. This increasing range overlap may change discard patterns in the future.

Potential action: Evaluate the possibility of using electronic monitoring to assess discards (commingling) in these fisheries.

6. Goals and Objectives of Fishery Management Plan

This issue was raised in the public comments: Some commenters indicated that the objectives of FMP have been met; therefore, they should not be changed.

Potential action: The Oversight Team notes that this review highlights the opportunity for the Council to revisit and possibly “refresh” FMP goals and objectives to ensure that they are consistent with today’s fisheries and management issues. Many comments have indicated that the goals and objectives should not be changed; however, other comments received through public comment and the Council’s “goals and objectives workshop” have suggested that words like “sustainability” should appear in the goals and objectives.

The Council is already considering this issue in its SCOQ Excessive Shares Amendment.

Atlantic Surfclam and Ocean Quahog Catch Share Program Review
Public Comment Summary

May 2019

At the April 2019 Council meeting, the Council received a presentation by Northern Economic Inc. regarding the Atlantic Surfclam and Ocean Quahog Catch Share Program Review. This presentation (April 9) marked the beginning of a 30-day public comment period which ended on May 8. This document summarizes the public comments received during this period. All written comments received are included with this summary. Eight written comments were received during the public comment period. At the April 9 Council meeting, some public comments were made; those same verbal comments were reiterated in the written comments that were submitted.

List of Written Comments Submitted:

1. Roman Dudus
2. Anonymous
3. Anonymous
5. Tom Hoff
6. Daniel LaVecchia, LaMonica Fine Foods
7. Tom Alspach, Sea Watch International, LTD
8. Thomas Dameron, Surfside Foods, LLC

Summary of Overall Themes from Written Comments:

1. While the individual transferrable quota (ITQ) program significantly improved safety at sea, casualties were still occurring after program implementation. However, some commenters questioned the analysis by National Institute for Occupational Safety and Health (NIOSH) and their report findings.
2. The quota is set higher than landings (demand). This gives processors all the control in the industry. If the quota was set closer to what the industry needs, all shareholders would have an opportunity to participate in the fishery.
3. According to the ITQ review, the outcomes of the ITQ program are aligned with the initial program Goals and Objectives. The surfclam and ocean quahog ITQ system functions better than any other fishery. The existing goals and objectives should not be modified.
4. The Herfindahl-Hirschman Indexes discussed in the document should be removed because of the assumptions used in developing them.
5. There is no market power in these fisheries. National Standard 4 is being met. There is no reason for the Excessive Shares Amendment to be implemented.
6. The ITQ system does not prevent new entrants from entering the fishery if they raise the necessary capital to do so.
7. There is no evidence of market manipulation and the report should have stated this.
Coakley, Jessica

From: romanaround5246 <romanaround5246@gmail.com>
Sent: Saturday, April 13, 2019 5:31 PM
To: Coakley, Jessica
Subject: Quota Sharing

Hi Jessica,

My name is Roman Dudus and I would like to input my opinion on the surf clam and Quahog Quota Share. I feel that there should never be any sharing of any quotas for anything. If they can't catch their limit then the rest stays in the population. This way, they stay in the population. Thank you for allowing me to share my opinion.

Sincerely,

Roman Dudus

Sent via the Samsung Galaxy, an AT&T 4G LTE smartphone
This public comment is in reference to the request for input on Atlantic Surf Clam and Ocean Quahog Individual Transferable Quota Program Review.

As a former Clam Vessel Captain and later a vessel owner and current ITQ holder that participated in both the Surf Clam and Quahog fishing industry before and after the ITQ system was implemented, I have some experience in this opinion.

I realize some of the intent of the ITQ program was to reduce enforcement costs and hopefully improve vessel safety by not forcing boats to have to work in severe weather in a limited time constraint. I was in favor of not being forced into having to work unsafe conditions and the ITQ program meant that if weather conditions were unfavorable I wouldn’t lose my catch that day and could wait until conditions improved. Although this was an improvement over the old system, commercial fishing in general is an inherently dangerous profession and casualties were still occurring.

A couple of concerns I have with the current ITQ system is that even though all the models being used for clam stock assessment indicate that the stock is healthy and not being overfished, in reality, the harvest of clams have been steadily declining for some time now and to make up for that decline the clam industry has had to increase clam pump size, dredge size, and vessel size to accommodate the larger equipment to harvest clams in a timely matter. Not sure how much of this information is included in the Surf and Quahog Clam stock assessments. Vessels are also having to travel further to find productive beds to work on. Although there are some small areas that produce decent clam harvest, these are also in decline and have a lot of fishing pressure put on these limited areas.

The other concern I have is how the quota is set. Right now the quota is set much higher than what the actual landings have been. Although the landings are partially driven by market demands, they may also be affected by the difficulty of harvesters to catch their clams within a time, weather, and temperature restriction.

The higher quota also gives clam processors the ability to use the extra percentage of their own quota’s to handle their own market demand. This keeps all the independent shareholders from either catching or leasing their quotas. This high quota effectively gives the clam processors all the control in this industry. If the quota was reduced to closer to the actual clam landings, then all shareholders would have an opportunity to participate in this fishery if they choose and not give the clam processors all the control in determining all aspects of this industry.

The reason you have not heard any of these concerns at any council meetings is because if you speak against the clam processors which are attended by their lawyers and representatives, you would effectively never catch/lease/sell another clam again. The high quota gives them the ability to manipulate the rest of industry.

Thank you for your considerations on my comments.
Surf Clam and Quahog Review

Amendment 8 sought to curtail over capitalization by participants who were increasing both the size and catching capabilities of their vessels to gain an edge on time based fisheries.

It was thought that giving quasi ownership of the resource to the fisherman would solve this problem and at the same time create an atmosphere where the fisherman sought to protect the resource in the manner an independent land owner (farmer) would.

The council’s policy was to first set the annual quota based on biology (health of the resource).

The second part of the annual quota setting policy was to set the amount of resource harvested to be matched with industry needs.

If council reinstated the second part of the policy, the excessive share debate would be less contentious.

It had been said that lowering the annual quota to reflect industry needs would increase the price of clams to the public. Maybe we should end industry based retirement plans, health insurance, and independently owned farms. Ending these practices would probably lower the price of any commodity. However, I doubt many farmers would want to be sharecroppers on the processors land.

With 30% or more of the clam quota being left unharvested annually, it seems that the lease price per bushel should be pennies per bushel. If this is not the case, it’s possible that processors are artificially setting the lease price.

I realize that biology is not part of this study. I do have one statement or question. 35 years ago, scientists use to compare harvesting Ocean Quahogs to a mining operation because they were so slow growing and long living. The clams being caught at that time were reported to be between 60 and 80 years old.

Now quahogs are referred to as a sustainable resource. What happened?

Thanks
May 5, 2019

Via email

Ms. Jessica Coakley
Mid Atlantic Fishery Management Council
800 North State Street
Dover, DE 19901

Re: SCOQ ITQ FMP review

Dear Ms. Coakley:

Wallace and Associates represents a number of surfclam and ocean quahog Individual Transferrable Quota (ITQ) holders. These members all have been in the clam fishery for multiple generations. Their families all were in the clam business before there was Federal Fishery Management (pre 1977) and Amendment 8 (1990) was implemented. All of these members made investments to adjust their supply of raw clams to support their operations. These families purchased additional quota or arranged to lease what they needed and in most cases did both.

When Amendment 8 went into effect most if not all vessel owners were in very difficult financial conditions because there was no way that, an operator could make a profit by fishing one six-hour trip every other week. That did not take into consideration trips that were lost for bad weather or the fishery being closed at the end of the quarter because the quarterly quota had been exceeded. While the vessel owners were having a difficult time and many went broke, their crews were suffering also.

For the crews that worked for owners that had multiple boats, many crews operated and maintained many vessels at one time. While this was difficult to keep all of these boats operating, at least these crews could make a living out of the fishery. This time based management system was an unmitigated disaster.

It took years to develop the Goals and Objectives for Amendment 8 to deal with an industry that changed very quickly. The Mid Atlantic Fishery Management Council (MAFMC) and National Marine Fisheries Service (NMFS) in the 1980’s could not keep up with the rapid changes. The leadership of the council developed a management system that allowed the industry the ability to modify their operations as new situations arose. This flexibly along with the ITQ system and free transfer of quota lead the clam industry to become stable which was beneficial to the industry and the country. When looking at the clam fishery compared with Alaskan fishing quota fisheries, which are often considered the gold standard, the government publishes rule after rule in the Federal Register on the Alaskan Fishing Quota
fisheries almost daily whereas the government for the clam fishery publishes a couple FR notices annually. If you rated every well-managed fishery in the U.S. on the ten key issues from one to ten and then compared the score, the Surfclam and Ocean Quahog (SCOQ) fishery would be an estimated 25 points ahead of the next best fishery management plan. The clam industry is proud of how well they have done managing their day to day operations. The MAFMC should also be proud for having created the best-managed fishery in the U.S. and maybe the world.

In the NorthernEconomics review, the authors compared the results of the management plan to the Goals and Objectives. Their conclusion was that over the last 29 years the clam industry has attained the Goals and Objectives in Amendment 8. Today the FMP continues to do so and will into the foreseeable future.

Northern Economics provided comments on what they were aware of as possible down sides, they were;

#1. Fleet size decreased dramatically at onset of ITQ program (75% and 48%, SC and OQ);

Amendment 8 was about, among other issues, capacity reduction of the fleet. The surfclam fishery was grossly overcapitalized and the ocean quahog fleet was overcapitalized as well but not extent of the surfclam fleet.

#2. Large share of vessel owners opted to remain as quota lessors;

Many of the boat owners were old enough to retire and many of their boats should have been retired years earlier. However, many of the owners wanted to stay in the clam business and decided to keep their quota shares and rent them to those that wanted to keep operating. Those vessel owners who choose to remain as quota holders and potentially receive recurring leasing fees without putting their assets at risk. There are two different lease holders, the one that were willing to get involved in long-term leases and a reasonable lease fee per bushel and those who want to operate in the spot market. The spot market can be very lucrative when the demand is strong than the supply. However, over the years both have seen good times and bad.

The lesson learned by all leaseholders is that you cannot have a strong market for your quota all the time.

#3. Decrease in processing facilities post ITQ implementation;

The Clean Water Act put all of the shore side operations out of business unless they were able to connect to a city wastewater treatment plant. Very few shucking plant operators were able to solve their wastewater discharge problem.

With the surplus of ITQs in both species, there could be no better time to get into the clam shucking business. Quota rent could be low if the new processor would share in some of the profit with the quota holder. Some boat operators would be willing to catch the product and some shucking plants would be willing to shuck the product for the new operator. It would take determination and high energy but, the right person or group could get into the business relatively easily.

#4. Large share of ITQ quota share is transferred each year;
The same ITQ can be transferred many times from the holder to an operator and then to the vessel that is to catch the quota, it is not surprising and was anticipated.

#5. Financial institutions became some of largest holders of ITQ quota share;

There is a flaw in the MSA, which is supposed to allow a financial institution to place a lien on ITQs. The clam fishery worked hard to get Congress to fix the problem. Congress was not interested, so the banks agreed to hold the ITQs in their name. The banks now hold the quota in their name until the note is satisfied... By doing this the banking institution have security in the event of a default.

#6. Relatively high disaster and fatality rates persisted post ITQ implementation

Northern Economics own data does not support this suggestion. According to the National Institute for Occupational Safety and Health study, Assessment of Occupational Hazards in the Atlantic Surf Clam and Ocean Quahog Fisheries, found that rates of vessel disasters in the Atlantic Surfclam/Ocean Quahog fleet was 1.97 per 10,000 Days at Sea for the period 1990 – 19999, was 1.14 per 10,000 Days at Sea for the period 2000 – 2009 and was 0.46 per 10,000 Days at Sea for the period 2010 – 2017. During 2000–2009, the rate of vessel disasters decreased by 42% from the preceding ten-year period. The rate further declined by 60% during 2010–2017.

The rates of fatal injuries in the Atlantic Surfclam/Ocean Quahog fleet was 780 per 100,000 full-time equivalent worker in the period 1990 – 1999, was 79 per 100,000 full-time equivalent worker in the period 2000 – 2009 and was 143 per 100,000 full-time equivalent worker in the period 2010 – 2017. While the high incidence of crewmember deaths persisted in the 1990s, both the number and rate of fatalities has since remained much lower. During 2000–2009, the rate of fatalities was 90% lower than the previous decade. An increase in the rate was subsequently observed during 2010–2017, but it was still 82% lower than the 1990s.

#7. Issues Associated with Program Structure or Function Imbalance between annual catch limits and harvest;

The cost of catching and processing clam products is high and clam meat remains be an ingredient and relatively expensive. Therefore, it does not command high price such as scallops and finfish that are sold as the center of the plate products. Despite funding new product research and development to increase market demand and compete with these other proteins, clams still have limited places that they can be used in food service.

#8. Weak demand for products has created hardship for ITQ lessees;

The limited areas for marketing clam products has caused some ITQ leaseholders to not utilize their entire quota. This has caused some ITQ holders to vocalize their frustration.

#9. Barriers to new entry Industrial scale of the fisheries has traditionally posed economic barriers to entry; cost to acquire ITQ quota share created an additional obstacle;
There is no barrier to entry into processing and the marketplace if these ITQ holder wish to increase profitability of their shares. New entrants have no hindrance as they can rent ITQs for reduced rates and either participate in harvest and/or processing with very little capital input. Therefore, there are few obstacle other than one's own desire and ability to enter the clam industry.

The conclusion is simple. The SCOQ ITQ fishery management plan functions better than any other fishery. That is because of the Goals and Objectives of the SCOQ fishery management plan. The best course of action that council could take is to accept the NorthernEconomics report and not changing the original Amendment 8’s Goals and Objectives.

Thank you for considering my comments in this important issue.

Sincerely,

David H. Wallace

CC
M. Luisi Chairman
W. Elliot
P. deFur
M. Pentony
C. Moore
Dear Mrs. Coakley:

Please accept these comments on the report generated by Northern Economics on reviewing the SCOQ ITQ program. I thought the presentation at the 9 April, 2019 Council meeting by Drs. Mike Downs and Marcus Hartley was excellent and represented well the review teams stellar efforts. It was extremely heartening to hear Dr. Hartley’s eagerness to review and his respect for the SCOQ FMP which he reverenced as the grandfather of all ITQ programs in the country.

I wish to fully support all the points made by Dave Wallace in his letter of May 5 on this review. Dave has done a very thorough, but yet concise, job of addressing the FMP review. I will not reiterate all of Dave’s points except for his one about the relatively high disaster and fatality rates for the industry. I was completely unaware of the report by the National Institute for Occupational Safety and Health. For me, those compiled statistics during the ITQ are extremely telling and very rewarding. In the nearly three decades since implementation of the ITQs, there was often allusions to safety issues in the fishery. Unquestionably, fishing is a difficult profession, but to see the tremendous decrease in vessel disasters is wonderful and something the Council and NMFS should fully endorse and disseminate.

I have one specific comment on the review report and that deals with the HHI analyses. The original authors of the HHI made several questionable assumptions and, in fact, several of the CIE reviewers expressed difficulty with and thought it inappropriate for this industry. The fact that the Northern Economics review team did not update the decade old analyses fully indicates it should be dropped from the report all together.

Overall, I was ecstatic to see the Northern Economics review team (which included Council staff) in so much support of the SCOQ ITQ program. As has been stated numerous times over the past few decades by NMFS personnel and outside reviewers at varies scientific and professional meetings, these fisheries are likely the best managed fisheries in the U.S. if not the world. There is absolutely no reason to change the Goals and Objectives at all. The FMPs four Management Objectives were generated over several years by some of the foremost fisheries managers in the country during the late 1980s and have allowed industry and management to operate uncontentiously and efficiently for nearly 3 decades. No one in industry wants changes which could allow government micromanagement again.

In summary, the two resources are not overfished, overfishing is not occurring, and there is no likelihood of the resources jeopardized at any time in the foreseeable future. Industry does not, and government should not, want any chance of returning to the draconian micromanagement that existed prior to the ITQ implementation. Please stop trying to over-manage these two fisheries and allow them to be kept simple.

Thank you for your consideration of these comments.

Sincerely,

Thomas B. Hoff Ph.D.
May 8, 2019

Ms. Jessica Coakley
Mid-Atlantic Fishery Management Council
800 North Street
Dover, DE 19901

RE: SCOQ ITQ Review

Dear Ms. Coakley:

LaMonica Fine Foods appreciates the opportunity to comment on the document, Review of the Atlantic Surfclam and Ocean Quahog Individual Transferable Quota Program prepared by Northern Economics for the Mid-Atlantic Fishery Management Council, March 2019, 219 pp.

The surfclam and ocean quahog industry (hereafter referred to as the clam industry) understands that the National Oceanic and Atmospheric Administration (NOAA) Catch Share Policy prepared in 2010 indicates that periodic reviews are expected of all Limited Access Privilege Programs (LAPPs), regardless of when they were put in place. The surfclam and ocean quahog individual transferrable quota (SCOQ ITQ), program developed in Amendment 8, which went into effect on October 1, 1990, and included revised goals and objectives of the SCOQ ITQ program, has been a remarkably sustainable and stable fishery with nearly zero management uncertainty since its inception. Quotas for both species have been unchanged for more than the last 10 years and market conditions for product has kept landings below annual catch limits. Recent benchmark assessments through the Northeast Fisheries Science Center’s SAW/SARC Process have determined that neither resource is overfished, nor is overfishing occurring. LaMonica Fine Foods has reviewed the components identified in the SCOQ ITQ program to properly describe and analyze the performance of a LAPP in terms of its meeting its goals and objectives and offers the following comments on the findings of Northern Economics under the topics identified in the review of a LAPP:

A) Goals and Objectives – both resources are well managed, sustainable, and have a highly efficient management system with near zero management uncertainty. The SCOQ ITQ review document recognizes: stable landings and stock conditions; reduced costs to ongoing NMFS administration and enforcement; the elimination of excessive capacity; efficient use of capital and labor; and, the industry’s willingness to contribute action and financing to address any problems and opportunities, all attributes resulting from the inception of the SCOQ ITQ program in 1990. Recognizing all these positive attributes that have been realized following the inception of the SCOQ ITQ program, the clam industry does not support any revisions to the current goals and objectives that have successfully guided the management of both resources for nearly 30 years.
B) Allocations – Northern Economics maintains that, “Following implementation of the SCOQ ITQ program, courts ruled that the SCOQ ITQ program was consistent with the fair and equitable provisions of National Standard 4. The clam industry is now having to deal with an excessive share cap that is becoming contentious for no apparent reason since the clam industry maintains that within the current allocation of shares in both fisheries, there is no entity that can exert market power in either fishery.

C) Eligibility – Vessels operating in either fishery are required to have a vessel permit to fish for and land either surfclams or ocean quahogs and an ITQ permit that specifies the tag cage numbers the permit holder is required to use during the harvest of their allocation. The sequential numbering of all cage tags allows the monitoring of the catch aboard a vessel, through offloading and transportation to a processing facility, and through the processing of all the meats to end products. The landings are well monitored. As to initial eligibility, some vessel owners that were originally granted ITQ rights prior to them making multi-year lease deals put up for bid their old and in many cases valueless vessels. This tactic was used as a means to allow the potential lessee the right to lease the lessor’s allocation. In order to lease their granted ITQ allocation you had to agree to purchase their old vessel. In exchange for the long term lease, they divested themselves of as low valued, risky asset and the arduous work that goes with operating fishing vessels. So, many of the lone ITQ holders of today were rewarded handsomely with windfalls for the sale of their vessels using the ITQ as bait, while choosing to keep and lease their government gifted ITQ.

D) Transferability – There are few restrictions and no maximum amount that can be transferred, nor is there any limit on the percentage of the total ITQ quota share that can be held by any entity. The clam industry favors the status quo on transferability.

E) Catch and sustainability – Since the implementation of the SCOQ ITQ program, there have been no significant overages of the annual catch limit since the landings are so well monitored through cage tags requirements. Additionally, discard rates are near zero and bycatch in both fisheries is minimal. The clam industry is to be commended for conducting such a “clean” fishery.

F) Accumulation limits/caps – Northern Economics maintains that there is insufficient evidence that any entity exerts market power in either fishery. However, the NMFS is, nonetheless, developing an excessive shares amendment to define an excessive share cap which the industry maintains is ill-advised.

G) Cost Recovery – Amendment 17 established a cost recovery system for these fisheries. When the cost recovery program was developed, the clam industry commented that all holders of allocation should contribute to the coast of administering the program on a per share basis but the NMFS did not accept that recommendation and only active allocations (owned or leased) are the basis of covering the program’s costs.
H) Data collection/reporting, monitoring, and enforcement – as mentioned above, the management system for the SCOQ ITQ program is extremely efficient and monitored to the point that management uncertainty is near zero. The fishery as it existed before the implementation of the SCOQ ITQ program was extremely inefficient and was difficult for the NMFS to administer with all the restrictions on catch at that time. With the implementation of the SCOQ ITQ program, enforcement issues have been non-existent. Additionally, the two fisheries are to be commended as becoming the first federally-managed fisheries engaged in electronic reporting on a per vessel and trip basis (“e-Clams”) with this voluntary program currently being used by nearly all vessels.

I) Duration – The clam industry understands that the LAPP created by the SCOQ ITQ program does not grant exclusive control of the resources to the industry participants that are using it. As of January 1, 2016, the clam industry has had to comply with an annual renewal requirement of ITQ allocation permits that the clam industry commented at the time was an unnecessary process for an already efficient management system.

J) New Entrants – The SCOQ ITQ program does not prevent new entrants from entering the fishery if they can raise the necessary capital to do so.

K) Auctions and Royalties – This key area for the review is not applicable, since the SCOQ ITQ program was implemented before January 12, 2007 when NMFS first required councils to consider auctions and royalties.

LaMonica Fine Foods appreciates the opportunity to comment on the Norther Economics review of the SCOQ ITQ program and hopes that there can be a co-operative management program moving forward with both the MAFMC and the NMFS.

Sincerely,

[Signature]
Daniel P. LaVecchia, President
LaMonica Fine Foods
May 8, 2019

VIA ELECTRONIC MAIL

Ms. Jessica Coakley  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Suite 201  
Dover, DE 19901

Re: SCOQ ITQ Review

Dear Ms. Coakley:

This correspondence will offer some comments on the published Northern Economics report that provides a review of the SCOQ ITQ program from its inception to date (actually, not really to date since much of the economic data in the report is out of date by 10 years or more).

In general the Report accurately finds that the ITQ program has served the SCOQ fishery well, and more importantly that implementation of the program has been consistent with the Goals and Objectives of the current SCOQ FMP. This demonstrates that the fishery has been well managed and that the FMP Goals and Objectives should not be altered, as compliance with those standards has led to a productive fishery that is serving the needs of harvesters, processors and consumers even some 29 years after commencement of the ITQ program.

All of this said, the Northern Economics report, its length notwithstanding, at points oversimplifies industry issues and either fails to grasp or otherwise omits analysis of certain industry concerns. A comprehensive discussion of all of those shortcomings is well beyond the scope of this correspondence, but here are some examples:

Certain points in the Report inaccurately posit the “plight” of vessel owners who have purportedly sustained economic hardship as a result of the ITQ program. At pages 67-68, for example, the Report asserts that “control” of larger amounts of ITQ shares by some entities has led to “lower prices paid to independent vessels,” and that the “mean real price for surfclams,” declined approximately 10% over the 2002 - 2008 period. From this, the Report concludes that those vessels “were likely not improving their economic position ... .”

There is no basis for this conclusion, and indeed the Report offers no data in support of this. The authors’ economic analysis on this point is flawed, because they have not taken into account the huge efficiencies that vessel owners realized through the implementation of Amendment 8, which led to substantially lower costs of operation – with the result that, even with “lower prices,” those
vessel owners could actually significantly improve their economic positions, contrary to the conclusion of the Report.

This was and is so because, under Amendment 8, vessel owners could transfer and concentrate their ITQ shares on one vessel, and retire other older and inefficient vessels from the fleet. This was a major departure from the previous time system, whereby each vessel was provided a trip limit, and those trips could not be transferred – so that, for example, an owner of three vessels was compelled to keep all in operation in order to maintain its harvest. Once Amendment 8 took effect, that vessel owner could retire two of those vessels and concentrate all of its harvesting power on one, eliminating the costly overcapitalization that previously existed. This substantially improved the vessel owner’s economic position – even if prices for the end product remained the same or even slightly declined.

Further, the alleged “control” of larger amounts of ITQ shares – which the Report implicitly criticizes – was in fact the very point and purpose of Amendment 8. The Report acknowledges but does not provide enough for the driving rationale for Amendment 8: that the fishing fleet was grossly overcapitalized, and a means had to be found to “concentrate” fishing power in fewer vessels so that older expensive and dangerous boats could be retired from the fleet. This is the reason that ITQ shares began to become “concentrated” – it was the logical and fully intended result of Amendment 8, and that intent was acknowledged by the regulators when the new plan was adopted.

The Report raises – but does not forcefully rebut as it should – the long standing canard that processors or other large holders of ITQs may intentionally “withhold quota” from the market as an exercise in market manipulation. There is utterly no evidence that this ever has happened in the history of the ITQ program, and the Report should have exploded this myth. Despite the complete lack of evidence for this claim, we continue to hear it even now in connection with the excessive shares discussion.

Perhaps the major shortcoming of the Report is its failure to confront and address what has, over time, become a primary flaw in the ITQ system: namely, the proliferation of “absentee landlords” who have long ago left the fishery, but who have held onto large quantities of quota shares which actual industry participants then are compelled to lease back from the absentees in order to fish. In current circumstances when the entire quota is not being harvested these absentees pose less of a threat to the fishery economy. But when quota gets tight their holdings of quota shares, for which industry participants must pay a ransom to utilize, adds totally unnecessary additional costs to the actual fishery, and price increases to consumers when those costs are passed along.

At the present time probably 25% to 30% of the total ITQ shares are held by such absentees who have not participated in the fishery for many years, even decades. Those absentees have no
investment or other assets at risk as do the actual industry participants; instead, they just extract an artificial price for the right to fish when quota becomes tight. Sea Watch International, Ltd. has paid over the years many millions of dollars to such absentee quota holders to obtain access to the resource, a sum that could have gone into plant expansion, better prices for shellstock and/or better prices for consumers – but instead has simply lined the pockets of those sitting on the sidelines, who were gifted their allocation rights for nothing. Those absentee now exploit those rights through the extraction of large sums from the industry while doing nothing to support productive industry endeavors such as projects for improved science.

NOAA/GARFO/NMFS have been pressuring the Council to move quickly with an entirely unnecessary “excessive shares” cap, while completely ignoring, as has the Council, the companion Magnuson Act requirement that “a Council or the Secretary shall authorize limited access privileges to harvest fish ... to persons who substantially participate in the fishery.” 16 USC 1853a(c). NOAA/GARFO and the Council have been derelict in their duty to enforce this federal law, and the report is flawed for failing to make an issue of this shortcoming. In fact, it appears that the authors of the Report may have been aware of the above legal requirement. At page 87 of the Report the authors suggest that those who long ago exited the fishery, but still hold their ITQs, actually remain “participants” in the fishery. The Report refers to owners of ITQ’s “that have ceased harvesting but participate in the surfclam and ocean quahog fisheries by leasing their quota,” and further refers to “those who ceased fishing but remained in the fisheries as lessors” as they have adopted a purported “new business model” whereby they no longer harvested “but instead generated revenue by leasing ITQ quota share ... .”

This is nonsense; while it may serve as a colorable basis for the agency and the Council to avoid the above legal criterion, it plainly is not defensible. If the Magnuson Act intended that those who no longer participated in the fishery should nevertheless be able to hold onto their ITQs indefinitely, and ransom them back to real industry participants, there would have been no need for the legal limitation in section 1853a(c).

Finally, we concur with another commentator who observed that Northern Economics did not attempt to update the decade old HHI analysis, and this should have been dropped from the Report as irrelevant. Apart from the lack of current data for an HHI analysis, that approach is entirely misleading with regard to the unique nature of the ITQ/SCOQ fishery. In the first place, it has been fully anticipated since the adoption of Amendment 8 that the industry would substantially consolidate at both the processor and fishing vessel levels and thus higher concentration was always expected. Second, we are talking about an industrial fishery – there is no recreational component – which depends upon very high volumes of processing in order to produce low margin returns. It is impossible to be economically viable in this industrial fishery without the high volume of product that can only be achieved through consolidation/concentration. Finally, the equally important driver of concentration has been the smothering expense of wastewater and other environmental compliance that can only be satisfied through facilities with revenues sufficient to meet those ends.
In conclusion, while we have qualms about the Report because of the points just mentioned, and others beyond the scope of this discussion, we nevertheless fully support the Report’s excellent effort to demonstrate how implementation of the ITQ program has been consistent with the Goals and Objectives of the SCOQ FMP. Those same Goals and Objectives should remain in place to guide the industry going forward, to ensure that management measures continue to facilitate a productive fishery that offers many economic advantages, while not depending upon overfishing.

We thank you for considering these comments.

Very truly yours,

Thomas T. Alspach,
General Counsel

TTA/tsd
cc: Michael Luisi, Chairman
    Warren Elliot
    Peter deFur
    Mike Penton
    Christopher Moore
From: Thomas Dameron <tdameron@surfsidefoods.com>
Sent: Wednesday, May 8, 2019 4:29 PM
To: Coakley, Jessica
Cc: Moore, Christopher; Montanez, Jose
Subject: Northern Economics Clam Report

Dear Ms. Coakley:

Please accept Surfside Foods’ comments on the Northern Economics report, Review of the Atlantic Surfclam and Ocean Quahog ITQ Program (SCOQ ITQ Program Review or Review). I applaud the Review for its thoroughness and ability to identify potential impacts of influence of concurrent factors that were unrelated to the program. The sum of the SCOQ ITQ Program Review equates to the finding of a Limited Access Privilege Program (Program) that was well conceived, planned and executed. The analysis of the effects of the Program found the Program to be beneficial to participants, management, enforcement, and society as a whole as well as promote fishing safety, fishery conservation and management, and social and economic benefits.

The Program Goals and Objectives findings prove that these were well thought out and have guided the achievements of the Program well. The long period of success of the Program reinforces the appropriateness and flexibility of the current Goals and Objectives. The SCOQ ITQ Program Review should be accepted. No recommendation should be given to the Council that changes the current Goals and Objectives of the SCOQ FMP.

Thank you for your consideration of these comments.

Sincerely,
Thomas Dameron
Surfside Foods LLC