



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

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Chris Moore, PhD, Executive Director
Mid-Atlantic Fishery Management Council
Suite 201
800 N. State St.
Dover, DE 19901

Dear Chris:

As you know, the Mid-Atlantic Fishery Management Council has formed a fishery management action team (FMAT) to help develop and analyze potential excessive shares alternatives for the Surfclam and Ocean Quahog Fishery Management Plan (FMP). The FMAT is currently working on measures to ensure the FMP is consistent with the Magnuson-Stevens Fishery Conservation and Management Act's National Standard 4 that requires the allocation of fishing privileges are "carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." I'm writing today to provide you a summary of some recent work we conducted for the FMAT.

One of the issues that has come up in development of the Excessive Shares Amendment is the role that the Antitrust Division of the U.S. Department of Justice (DOJ) might play in the implementation of the Amendment going forward. At the request of Council staff, John Almeida, Northeast General Counsel, and Doug Potts, from my staff, contacted Mark Tobey, an attorney in DOJ Antitrust's Transportation, Energy, and Agriculture Section, to discuss the role that DOJ could play in addressing excessive shares of Individual Fishing Quota (IFQ) in the surfclam and ocean quahog fishery.

In our initial discussions on February 28, 2018, with Mr. Tobey and John Bender, an antitrust economist with DOJ, we explained the Council's FMP process, the Magnuson-Stevens Act National Standards, and the Council's efforts to address National Standard 4's excessive share requirements for the Surfclam and Ocean Quahog FMP. We explained how the current FMP leaves the question to the Federal antitrust legal framework. We explained the Council was looking at revisiting the issue and that various alternatives were under consideration. We noted an alternative that would rely on DOJ's Antitrust Division to review any additional consolidation of quota share ownership going forward. Mr. Tobey described the Antitrust Division's work, explaining its role as an enforcement agency with limited resources or programs for the type of ongoing review that the draft alternative envisions. He described a Business Review Process, which does provide a pre-enforcement review and advisory opinions for certain select transactions. The types of scenarios for which this process has been used in the past have been much larger, economically significant deals between companies than what is envisioned by the Amendment. He indicated that the Business Review Process is a time and resource intensive




effort, and that the DOJ Antitrust Division cannot perform more than a few in a given year. We concluded our discussion with Mr. Tobey indicating that he would talk with his supervisors and fellow attorneys to see if there was a way that the DOJ Antitrust Division could perform the potential duties being contemplated by the Council's draft alternative.

On April 17, 2018, we spoke again with Mr. Tobey and Mr. Bender. Mr. Tobey reported that his discussions with his colleagues confirmed his initial reactions that the DOJ Antitrust Division was not set up to programmatically provide the type of ongoing pre-enforcement review of quota acquisition in the surfclam and ocean quahog fishery as outlined by the draft alternative. He did indicate that the DOJ Antitrust Division would be willing to help the Council on the front end in its efforts to develop the Excessive Shares Amendment. He explained that while the development of such an amendment involved the unique Magnuson-Stevens Act framework and the various National Standards that were outside the purview and expertise of the Antitrust Division, he thought that they could assist and provide their technical expertise on market competition in our efforts.

At DOJ's suggestion, we set up a call on May 17, 2018, with you, your staff, our staff, and DOJ Antitrust Division staff. In this call, DOJ explained the limited role that they can play in pre-enforcement review, given their resources and their program's organization as an enforcement agency. They stated that they cannot commit to providing an ongoing review of quota acquisition in the fishery. They reiterated their offer to provide the Council with technical assistance in its development of the Excessive Share Amendment.

I trust this summary will prove useful in the Council's continued development of the Excessive Shares Amendment. If you have additional questions about our discussions with the DOJ Antitrust Division, please contact Doug Potts at 978-281-9341.

Sincerely,



Sarah Heil
for Acting Assistant Regional Administrator
for Sustainable Fisheries

cc: Michael Luisi, Council Chair
Peter deFur, Surfclam and Ocean Quahog Committee Chair
José Montañez PhD, FMAT Chair