



Atlantic Surfclam and Ocean Quahog Species Separation Requirements Amendment

Summary of All Comments Received from *October 6 – November 23, 2022*

The following provides a summary of common themes provided in both the written and public hearing comments regarding the Species Separation Requirements Amendment – Public Hearing Document. Please see the summary of public hearing comments and the complete written comments for additional detail.

Comment Period: October 6 to November 29, 2022 (5pm EST). This summary only includes comments through November 23; written comments received after this date will be provided as a supplemental material.

Number of Written Comments Received: 2 comments were received as of November 23.

Number of Public Hearings (2):

- #1 Philadelphia, PA – Thursday, November 10
- #2 Westport, MA – Monday, November 14 (Cancelled due to travel disruptions)
- #3 Webinar – Thursday, November 17

Attendance at Hearings: 16 persons in attendance cumulatively at the 2 hearings (excluding hearing officers and Council Staff); comprised of 14 individuals/people (i.e., some people attended more than 1 hearing). Eight sets of oral comments were made at the 2 hearings.

High-Level Themes

- The requirements that clam cage contain a single clam species (surfclam or quahog) should be suspended and there should be some tolerance for mixing of both clam species in the cages.
- This issue is not about sustainability, but enforcement. There is no risk to stock sustainability by suspending the requirements to allow for mixing in cages.
- Suspending enforcement in the short-term would allow more time for the development of other solutions (e.g., electronic monitoring (EM) to visually id clam species, mechanical sorting equipment, etc.).
- Commentors were generally not supportive of action alternatives 2 and 3, but some commentors spoke in support of alternative 4, while others did not support 4 because EM is not guaranteed to work.
- Some commentors suggested mixing in the cages should be allowed and estimates of clams caught/discarded could be provided (e.g., such as on Vessel Trip Reports (VTRs)).

**Public Hearing #1: Atlantic Surfclam and Ocean Quahog Species
Separation Requirements Amendment
Thursday, November 10, 2022**

Embassy Suites Philadelphia Airport, 9000 Bartram Avenue Philadelphia, PA, 19153

Council Hearing Officer: Michelle Duval

Staff: Jessica Coakley, José Montañez

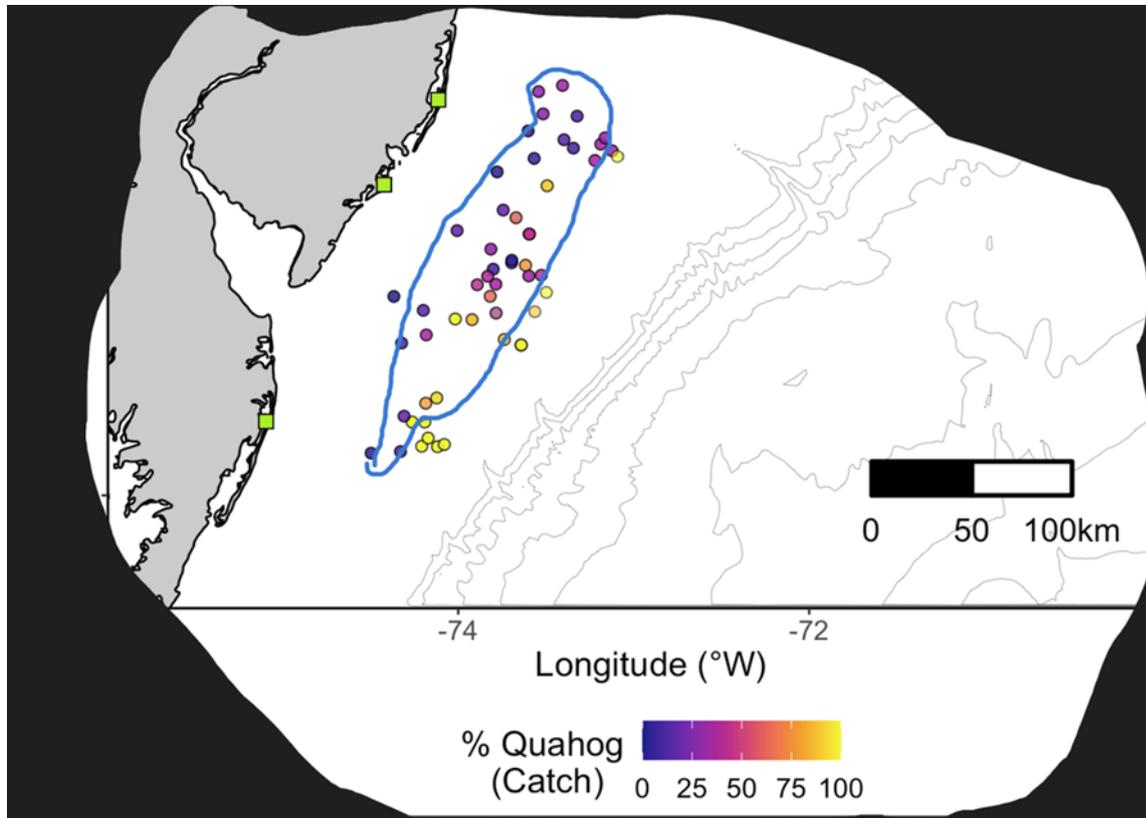
Attendees (SCOQ Advisors unless noted otherwise): Tom Alspach (Sea Watch International), Tom Dameron, Peter Himchak, Sam Martin, Daphne Munroe (Rutgers University), David O’Neil, and David Wallace.

6:30 pm – The hearing officer read opening statement regarding public hearing meeting. Staff made a presentation covering background information and the public hearing document. Staff answered several questions about the document and the alternatives. The meeting was opened for public comment input. The hearing officer asked speakers to state their names and organization (if applicable) and to be specific in their input in terms of what alternatives do they support, or not support, and provide other specific details.

Sam Martin, Atlantic Capes Fisheries

- Company presently operates surfclam vessels and that are now bumping into ocean quahog ground. Noted there is a bigger problem than previously thought and believes handling this issue with a zero-tolerance level is not possible.
- This is not a biological problem; it is an enforcement problem.
- Processing plants cannot take mixes of clams - every plant has a different way of doing things, and surfclam and quahog meat cannot be mixed in the product. It must be separated.
- Alternative (Alt.) 2 will not work because of the microscope of enforcement. It will also create regulatory discards. Alt. 2 will not work unless the zero-tolerance level for mixing in cages is eliminated or a tolerance level is implemented. The mixing problem for the region is over 90% of the area – as shown in the image provided by SCEMFIS.
- Alt. 3 will not work whatsoever. There is not a dock that can accommodate the dumping of these cages. It would be expensive to implement and a logistically an issue. This would not work suspension of enforcement and suspension of the mixing prohibition is adopted.
- Alt. 4 cannot be selected right now. Under Alt. 4, you still have the problem of zero-tolerance. It’s not guaranteed to work.
- These alternatives were not fully vetted and did not come back to the AP; the AP and industry have several questions.
- This is a problem because of climate change. Industry does not want this problem and time is needed to fix it. Recommend no decision for 6 months or a year, to provide time to work with enforcement to fix this. Recognize that currently the mixed issue is not been getting enforced, but now the curtains are opened and have to deal with it.
- Atlantic Capes is a surfclam processor only – cannot presently take quahog cages only but need the opportunity to explore other options for those cages. Do not want to deal with mixed cages.

- Suspending enforcement in the short-term and allowing development of EM approaches would not hurt the quota whatsoever. There is no threat by requesting that the suspension of zero-tolerance for any type of mixing. This could stop regulatory discards that are happening right now. The measures need to be suspended because you can't just say it is not being enforced.



Tom Alspach, Sea Watch International

- Represented company is a processor of both surfclam and ocean quahog. We see the opposite side of the vessels, as we only process the animals. We have never seen zero surfclam or ocean quahog – there is always some mixing.
- Need to cull out surfclams and quahogs out at the plant. Noted that it is very expensive to have to deal with this mixed clam problem. There is not an incentive for any boat or processor to want to harvest a mixed species. The issue was thrust upon us. We try to avoid having mixed catches but have not been perfect in doing so.
- Does not support Alt. 2 or 3.
- Under Alt. 2, what happens on a boat but would also affect what happens at the plant. The boat must make an economic living to stay in business to supply the shell stock. The amendment noted that onboard operations may need to slow down to sort – what does that mean? How much does it need to slow down. Do operations have to stop? This has not been vetted directly with the fishing captains. The margin is very thin for making money on these trips.
- Alt. 3 includes the idea of dumping some or all the cages. Someone will have to be at the dock going through the clam cages. There is no dock space. The expenses would be huge. There may be FDA issues. There is no evidentiary basis for the cost that is

given there. It's unreasonable to adopt an alternative without knowing the full cost. This suggests the need to count every single clam to account for the resource.

- Stock assessments don't count but instead provide an estimate of the clams that go back over the side. We use an estimate in the assessment. An estimate of additional clams of another species that are harvested could be identified and used for an interim time for a few years. The best estimate for nontarget catches for both species, on page 27 and 28 of the amendment document is just a few percent. One could choose reasonable estimate and apply that to the projections. Stop the belt every 4 hours or so and make an estimate of both species. That estimate won't really change anything. If all the quotas were caught it wouldn't affect the stocks.
- Alt. 2 and 3 are not practically feasible nor financially feasible.
- For a period, the requirements should be suspended to allow for some tolerance for mixing. There would still be no incentive to bring in mixed species.

Staff asked a question: You are suggesting the belt be stopped every few hours to get a count and proportion of clams. How do we account for that with the ITQ system? What would be your solution to reporting and tagging cages. There was brief discussion about this. **Sam Martin:** There is an estimate of how many cages are coming in. If you continue with the tagged program, you will still need to tag surfclam, and just need to estimate the quahogs. There would still be a need for some mixing in the cages. Many other fisheries use estimates for discards and what is brought back. **Tom Dameron:** If you haven't separated them, assume you have 100 cages and 7% are OQ, you would then tag 100 cages of SC then would need 7 tags of OQ. This will result in overreporting of surfclam. **Tom Alspach:** The problem with the mixing is paying for surfclam prices for quahog meat. **Sam Martin:** Another approach may be to move away from a tagging program to an accounting program. There is still a need to be able to separate the clams at the dock. It will eventually get to an accounting process. The mixing is not going to work for the plant. To address this issue, there may need to be a change in how things are caught and a change in how things are reported. The fisheries are not near the total allowable catches, so think there is a way to get to the point to solve these as an industry along with technology, along with grant funding. But in the meanwhile, we cannot be under this enforcement microscope. Staff asked another question: Was the vessel stopped or slowed down for sorting for the minimum size in the past? **Dave Wallace:** The captain would stop and take a sample, and then if there were undersized clams, they would move on to another area. If there were a lot, they would run the machinery to get the smaller clams out. **Sam Martin:** Noted that the mechanical rolling sorting is not useful for separating species - are running into issues with the same size surfclam and quahog.

David O'Neill, Advisor

- Noted still here learning about these issues but felt its clear there is a need to end zero-tolerance.
- Was going to say liked Alt. 2, if there was an effective sorting system that could go on the vessel. Alt. 2 is not going to working until an onboard sorting technology is proven to work.
- Processing plants are doing their best to separate the clams the plant. You could get data about mixing from the processing plants.

- There are not any biological concerns at this point. There were mixed beds historically that have been avoided by the processors. This may open new areas up to dredging that can be degrading and have some ecological impacts.
- Approaches that involve the dumping of cages should be avoid.

Peter Himchak, LaMonica Fine Foods

- Noted they will be submitting written comments.
- Stressed how robust the resources are.
- Alt. 2 is impracticable. Alt. 3 is not defined to the point that its clear what they are commenting on. Under Alt. 4, there is a question about what legal constraints the industry will work under while this is being developed. That's a question – please give a heads up to legal counsel.
- LaMonica only processes surfclams so having quahogs in a cage is a problem. But similar to Sam Martin, we need to explore new fishing grounds.

Dave Wallace, Advisor

- Support what everyone else has said.
- Need to suspend this notion of zero-tolerance. Even if you separated them, the wrong species is going to go into the other cages and then zero-tolerance is not met.
- Enforcement has been reasonable, but they have a job to do. Was around when there was a surfclam minimum size limit – if you hadn't irritated an enforcement office, they left you alone. You can go over 55 mph (driving), and it's the discretion of the officer to let you be. Those that pushed back on the regulation hurt everyone else.
- Need to get rid of the zero-tolerance and then conceivably, you can run those clams overboard or run them into a cage. We would be lucky if we get 80% of the target in a cage.
- For now, we need to cancel this zero-tolerance level and then explore EM solutions. We need a system that is workable and none of the alternatives do that.
- Also, there was the notion of counting 250 clams for an undersized violation – when they got 251, they seized the load.
- In this case the companies are all vertically integrated. All they are going to do is seize the boat and put the boat out of business.
- Industry is between a rock and a hard place. A doable system is needed.
- The enforcement office should choose to do this with just a reasonable tolerance, otherwise the boats and processors will go out of business.
- Different processing plants and hand shuck operations have different needs and problems. The hand shuck plants just throw the quahogs away. The industry brought this to the governments attention to get them to fix this problem – but they forced the MAFMC to deal with excessive shares action first. This issue is one big factor, with a bunch of subfactors to be addressed.

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Attendance Sign-In Sheet

Location: Philadelphia, PA

Date: 11/10/22

Name	Address	Affiliation	Phone	E-Mail (to be added to news list)
Michelle Duval	West Chester PA	MAFMC		
David O'Neill	Stearns town PA	SCOB	410 214 7042	oneilldavidj@yahoosig
David Wapellam	Conduffgalelg	QLAMTBS	410 576 3245	David.Wapellam@delaware.gov
Rita Hundert	Tuxedo NY	LA MAFMC	609-331-2255	rita.hundert@delaware.gov
Tom Alspach	Box 1358 WY 21601	Sea Watch	410-310-0829	tom.alspach@delaware.gov
Sam Waernd	985 Ocean Drive Camden NJ 08204	MAFMC	609-381-8892	You have it lol
Tom Dameron	1800 S Sartain St Philadelphia PA	Seaside	609 876 0189	capthond@gmail.com
Daphne Munroe	703 Wilson Ave Camden NJ	Rufers	856-305-5482	dmunroe@srj.rufers.edu
Jessica Oakley	MAFMC Staff			
Jose Montanez	MAFMC Staff			

**Public Hearing #3: Atlantic Surfclam and Ocean Quahog Species
Separation Requirements Amendment
Thursday, November 17, 2022**

Online

Council Hearing Officer: David Stormer

Staff: Jessica Coakley, José Montañez, Mary Sabo

Attendees: Deirdre Boelke, Maureen Davidson (Council Member), David Dow, Peter Himchak (Advisor), Ron Larsen, Chelsea Miller, Joe Myers (Advisor), Doug Potts (GARFO), and David Wallace (Advisor).

6:00 pm – The hearing officer read opening statement regarding public hearing meeting. Staff made a presentation covering background information and the public hearing document. Staff answered several questions about the document and the alternatives. The meeting was opened for public comment input. The hearing officer asked speakers to state their names and organization (if applicable) and to be specific in their input in terms of what alternatives do they support, or not support, and provide other specific details.

Joe Meyers, Sea Watch International

- Speaking as the Director of Innovation and Sustainability and recently appointed to the Advisory Panel. Been involved in SCOQ fisheries for a decade or so.
- There are a few places in Amendment 8 and in the 50 CFR where species separation requirements exist. More detailed will be provided in the written comments that will also be submitted.
- The proposed amendment as presented does not adequately address the issues faced from a cost implementation perspective and does not address impacts on sustainability. Provisions for separation and identification are not needed for the sustainability of the fishery.
- Alt. 1 is not a viable path forward. The mixing of clams will become more of an issue. Alt. 2, 3, and 4 do not have specific implementation costs.
- This level of precision and separation is not needed to maintain the sustainability of the fishery. Deal with uncertainty all the time. It doesn't seem like this level of separation is required. There are going to be some misses when this is implemented. The precision that is required needs to follow along with the technology. This fishery has low levels of bycatch. The highest level in the data, if the bycatch was expressed as a quota amount it would be about 1.6%. The level at which the fishery operates doesn't presently present any risks. Ocean quahog quota utilization is low, so poses no biological risk.
- Recommend a Management Strategy Evaluation (MSE) be conducted that looks at different levels of mixing on the boat, and different quota scenarios to be conducted by the NEFSC. Also requesting suspension of the enforcement action until we can determine the risk of this mixing, and that would allow the industry to address this mixing as it comes. One of the ways we propose to better quantify the risk.
- There is overreporting one species at the expense of underreporting the other. The suspension of enforcement and VTR forms would provide time to develop a risk assessment approach to fishing.

- SCEMFIS recently funded the ability to develop GIS layers to look at the extent of mixing.
- Industry is also looking at different sorting technologies that are applied in agricultural commodity settings. The costs need to be better understood.
- There could be some combination of Alt. 2 and 3, that would allow some sorting on the vessel and some to occur at the processing plant. Sorting is a challenge for both the boat and processing facilities.
- Also ask that the language used be more specific about sorting and species differentiation.
- The timeframes and costs for the approaches are somewhat unknown. We need to better understand the costs and have the flexibility to address this issue as an industry.
- In summary, the request is for:
 - Suspension of enforcement for zero-tolerance.
 - VTR reporting to address mix landings (and quantify the catch); mixed landings proposals won't achieve what we are trying to do.
 - Commission an MSE as well as fund projects mentioned for GIS.

Staff asked a question: To what extent in the mixed landings currently being reported in VTRs? **Joe Meyers:** Did not have those figures on hand to provide.

Peter Himchak, LaMonica Fine Foods

- LaMonica hand shucks surfclams.
- Already spoke at one hearing but will repeat that none of the 4 alternatives are acceptable.
- Alt. 2 is impracticable onboard the ships.
- Alt. 3 and 4 are not presently well enough defined to support and alternatives. Alt. 4 may be the long-term solution, but that's not something that is going to happen right away.
- In the meanwhile, the Council can deal with the enforcement suspension of zero-tolerance.
- It's something that can be dealt with outside the amendment.

David Dow, Public

Question in chat: Since the surfclam/ocean quahog fishery is moving into southern New England, how will the MAFMC enforced Alt. 2? Response: NOAA Fisheries/OLE will enforce the measures under any of the alternatives including what they do under no action. There may rely on cooperatively agreements to enforce regulations with some state agencies.

David Wallace, Advisor

- Noted that a clam of another species in a cage would be a violation. There is this requirement to have 100 percent separation but would be astounded if you could find a sorting machine that would be 80 or 90 percent effective.
- If the industry is not allowed to have another species on the vessel, they will be forced to go into areas to fish where the population is not mixing but the population may be very thin.

- Cannot support Alt. 1, 2, or 3 because they do not have any exceptions to clams being mixed in a cage and they must be completely separated.
- Do not want to get involved in nit picking with the enforcement agents.
- Enforcement was an issue decades ago when quahogs tags were cheap and surfclam were very expensive, so quahog tags were put on surfclam cages. We do not have this enforcement problem now and will not have this problem in the foreseeable future.
- No matter which group is working on Alt. 4, all the sorting would need to occur at the plant.
- Need a workable agreement and there is no problem with sustainability. These fisheries are not grossly overfished. The quotas could be higher on both surfclam and quahog.
- Noted that based on the number in the amendment, you only have 1.5 percent of mixing, it is hard to imagine that is done intentionally.
- Cannot afford to carry a large crew to sort because it is very expensive; cannot just add enormous costs on the current system.
- This is a very limited fishery in that there are about 30 boats that fish for SCOQ in the MAB, so there are only a few boats, but they cannot afford \$200,000 sorting machines.

From: [Paul Olinski](#)
To: [Coakley, Jessica](#)
Subject: SCOQ species separation
Date: Friday, November 18, 2022 4:41:06 PM

I am not involved in the fishery, but I believe Alternative 2 (two) sounds the most reasonable and applicable for all involved. Paul O.

Sent from [Outlook](#)

From: [Coakley, Jessica](#)
To: [Coakley, Jessica](#)
Subject: Comment from Rome 10/25/22
Date: Wednesday, November 2, 2022 11:16:08 AM

From: MONTE ROME
Sent: Tuesday, October 25, 2022 9:13 AM
Subject: Re: Message to Jessica concerning Nantucket Shoals

Good Morning Jessica,

I will be joining on Nov 14 meeting in Westport. Please note.

In review of your enclosed document, I noticed that it referred to the 'Panel of Experts' who assembled as the Northeast Region Essential Fish Habitat Steering Committee of 2001 in order to examine the impacts of mobile fishing gears used in the Northeast region. This study, published in 2001 concluded that surf clam dredging is the least harmful to the suitable habitats for prosecution of the fishery by comparison to scallop dredging and otter trawl dragging which are conducted in the Northeast.

Most importantly, the conclusion from the 'Panel of Experts' that surf clam dredging had the most minimal disturbed bottom and SASI record of the 3 fisheries examined is crucial for the NEFMC to embrace. The egregious rule making affecting the New England Surf Clam Industry working on Nantucket Shoals, enacted by NEFMC (with MAFMC's ostensible abstention from the argument), has affected all aspects of the New England portion of the Surfclam Industry and must be immediately reviewed in light of this 'expert' study.

Bearing out the conclusion of the 'Panel of Experts' was the recent EFP 19066/habitat study conducted in 2021/22 by the Coonamessett Farm Foundation. This study established that the use of the GSCHMA for 104 surf clam trips utilized less than 1 square mile of habitat bottom and generated approximately \$800,000.00 in x-vessel revenue over the study. This type of revenue generated from the minimal use of the HMA constitutes the most productive mobile gear fishery per square area of seabed impact at work in today's fisheries. This area amounted to .0014 of the GSCHMA - or a negligible use of the bottom of this protected area. It remains of great significance that the Nantucket Shoals area is the only place in the Northeast to harvest commercial quantities of surfclams in New England. The maintenance and productivity of the Nantucket Shoals is an essential management council requirement of the Magnuson Act in Magnuson's dictate for lead councils (MAFMC) to maintain the OY in the fisheries they manage.

As I look at the stats in Table 1, 1999-2021, it is essential that all of us on the surf clam advisory panel realize that the trend of landings indicate that the surf clam fishery is near economic collapse and operating at less than half volume of raw materials needed. The clear trend in landings indicate that it will be only a matter of time before severe economic problems will occur as the lack of raw materials

continue to erode the ability of all processors to maintain their surf clam businesses. The Nantucket Shoals area could produce a 25% portion of the needed OY when we regain our right to harvest there. Additionally, opening Georges and Closed Area 2 to routine fishing could provide the best approach to stability in the surf clam fishery if the overly restrictive requirements are lifted.

I hope this bit of data inspires you and the MAFMC to initiate a sincere and full effort to regain management control over the Nantucket Shoals as an essential harvest area for the Fishery. Without question, renewed control by the council that understands the Fishery will contribute to the stabilization of the U.S. Surf Clam Fishery as Magnuson dictates. We need the immediate and unwavering support from the full council in support of our Industry needs.

Best regards,

Monte