



Mid-Atlantic Fishery Management Council

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Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman

Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: January 27, 2023
To: Council
From: Jessica Coakley and José Montañez, Staff
Subject: Atlantic Surfclam and Ocean Quahog (SCOQ) Species Separation Requirements Amendment

At this meeting, the Council will receive an update on the outcomes from the recent meeting of the SCOQ Advisory Panel (AP) and Fishery Management Action Team (FMAT).

The following is included for Council consideration on this subject:

- 1) SCOQ AP and FMAT Meeting Summary (January 26, 2023)
- 2) FMAT Action Plan
- 3) Comments received on Species Separation Requirements approaches.
- 4) Comment received on Nantucket Shoals/Great South Channel Habitat Mgmt. Area



**Atlantic Surfclam and Ocean Quahog (SCOQ) Species Separation Requirements
Fishery Management Action Team (FMAT) and Advisory Panel (AP)
Meeting Summary
January 26, 2023**

The Mid-Atlantic Fishery Management Council's (Council) Species Separation requirements FMAP and the SCOQ AP met via webinar on January 26, 2023, to allow the AP to provide input on the FMAT's draft action plan for work on the Species Separation Requirement Amendment in 2023. In addition, the FMAT gathered input from the Advisory Panel on additional types of solutions/approaches that could be considered for the amendment.

FMAT members present: Jessica Coakley and José Montañez (Council Staff), Douglas Potts and Sharon Benjamin (GARFO), and Dan Hennen (NEFSC).

AP members present: Tom Dameron, Peter Himchak, Samuel Martin, Joe Myers, David O'Neill, Jeffrey Pike, Dave Wallace, and Monte Rome.

Others: Peter Hughes (SCOQ Committee Chair), Michelle Duval, Moriah Baybrick, Tom Alspach.

Summary of Discussion

- The meeting was opened with introductory remarks and a review of the agenda. Staff provided an overview of the draft action plan, including the proposed timeline for 2023/2024 which is the main revision to the document.
- An AP member asked if the FMAT chose to do a Management Strategy Evaluation (MSE) to address this issue how would this work? Will the FMAT do the MSE? Staff responded that MSE is a process, that often takes multiple years, and you need to have a very specific question to answer. The question was clarified that they are asking who would initiate work on an MSE. It was noted that a request from the Council may be needed to get an MSE initiated, but it was also noted that it is unlikely the Council would initiate one without the FMAT requesting it or stating that it is needed to address information or research needs to complete addressing this issue/Amendment development task.
- Two draft comments were submitted prior to this meeting – one from 3 processors, and another comment from 1. The AP members that were involved in those comments were asked if they wanted to speak to those directly.

- LaMonica Fine Foods only hand shuck surfclam and mostly only land surfclam. They do all of the sorting at the plant, and any ocean quahog are removed and disposed of. They would need to have ocean quahog tags to be able to send them to another company for processing. The complexity of this issue is not as great for them as for other companies. The proposal suggests a process to recoup the loss of landings from ocean quahog on a surfclam trip. The surfclam tag is more valuable than for ocean quahog.
- Atlantic Capes have allocations of both species, and the processing plant decides what to target (even if heavy mixing exists). There is mixing of both species and the crew discards unwanted species to stay economically viable. They discard as much as possible at sea, and the crew reports to the best of their abilities. View this issue as simple, with just one part of the regulation that needs to change. Right now, a single species trip is declared, but there is bycatch. But if we were able to land both species, that would not need to change. The change that is needed is that a tag represents 32 bushels – this is what is creating the issue. Need to move towards a bushel-based accounting. It was noted that a tagging system for traceability is needed (from the boat to the processor). The licensed dealer gets both species that are landed in the cages and can report what they purchased in terms of surfclam and ocean quahog in bushels. This reporting at the dealer will allow them to have the same species landed in the same trip.
- Other advisors agreed with the prior comments. It was stated by an advisor from Intershell, that the way they report landings on vessels is by hail weight. If any vessel cannot separate at sea, then it must be done at the plant. They should be issued mixed tags. NOAA would have to rely on accurate dealer reporting – there is a lot of history for how this is done in other fisheries. Hail and verification by dealer are a simple task.
- An advisor noted they question this long schedule of effort by the FMAT and the NEPA analysis to go along with this when this task is simple.
- Another advisor from Sea Watch Intl. noted that in addition to accurate reporting, we need to add precision of the data to this as well. The precision of the catch data depends on the technology we can sort with. One of the big takeaways is that everything that has been proposed by the advisor will result in a reduction in uncertainty above what is being done now – feel this will do a better job reducing uncertainty in the catch. The separation of clam catch must happen, but they do not believe this should include mandates. If electronic monitoring (EM) becomes feasible means, there could be accounting, but there wouldn't need to be separation. They are not support of sorting on the vessels and are advocating for accounting and separation of the plant. All the vessels separate at sea to some degree. In addition, they support of something that allows us to true-up the allocation, and to use the bushels that were used and not incur any burden. Right now, there is an overreporting of surfclam on trips and underreporting of ocean quahogs. At the plant is where they'd like to see the full accounting.
- An advisor suggested that for someone who has mixed clams, it would make sense to develop a pilot project for one company that can work with NOAA and figure out how to

make this work. It's challenging to make a rule and then have everyone modify their activities without any experience or troubleshooting. FMAT members noted that the Exempted Fishing Program (EFP) through NOAA can allow for exemptions from the current regulation if something can be designed, in terms of research/approaches to explore these issues.

- An FMAT member asked an advisor that only processes ocean quahog about their vessel operations and thoughts on separating catch. They noted that they don't own the boats or do the harvesting, so they didn't feel that could answer that question on vessel operations.
- An advisor noted that most fishermen have spoken about surfclams but not about the reverse. The quahog beds are the ones that were fished down years ago and those boats have moved offshore now, and the inshore surfclams are moving offshore into these old quahog beds. If you look at the bycatch data, it seems to indicate that the incidence of quahog in the surfclam catch are greater than the surfclam catches in quahog trips.
- An FMAT member asked if the industry had talked about how area base information would be captured in their proposal – linking the catch back to the area caught? It is currently tracked via tags using the eVTRS on the vessel. That information does not carry to the dealer reports. An advisor noted that they could change the dealer reporting matrix, but their discussions were higher level (did not get into granular issues), so they did not talk about this specifically.
- Another FMAT member asked if the advisors were confident that the sorting and reporting can be attached to a specific trip from a specific boat. What about when you get multiple boats offloading at the same time? Some advisors noted they run different vessels one a time with a time stamp, while others noted they may have product from multiple vessels in the cooler at the same time before processing. It was noted that this may require sorting/running product from one vessel at a time.
- An FMAT member asked when clams are being sorted and counted at the processing plant – how amicable would the dealers/processors be to having some sort of monitoring of that sorting – for example having observers, port agents, etc. An advisor noted that every federal dealer is required to let a port agent in and to allow them to observe.
- An advisor asked, do you want this process in place because you don't trust us, or to check the process? The FMAT member noted it may be for monitoring and accountability – to ensure any sorting protocols are being followed. The FMAT member noted that, for example, VTRs and dealer reports are reconciled in other fisheries – so if the dealer is the point of reporting it would be having a check on the process to follow the standardized procedure. The advisor noted that maybe that check should be part of the procedure – you will be inspected a few times a year by a port agent, for example like the public health officials do.

- There was a discussion among the advisors as to whether having a common protocol for sorting would make sense. Some noted that a common protocol for counting may not be good. If the accountability is by the bushel (volumetric fashion) then it would work. Advisors noted they thought bushels should be the standard, and whether you put the product back in a cage or it goes into the hooper or a receptacle to get those measures should not matter – you just need the volume in bushels.
- An advisor asked the question that if you wanted to send product from one plant to another, do you need to have tags. Another advisor noted there are shellfish transfer forms, so you may not need tags for that if the tag accounting was already done at the dealer.
- An FMAT member noted that tracking allocation with bushels versus tags is probably more involved and complicated in terms of what might be involved. There will be some changes to the back of the house for tracking allocation usage.
- An advisor noted that the big change to address this issue is the ability to land both species and possess them both on the same fishing trip.
- Another advisor asked, why don't we just allow for mixed trips right now? An FMAT member noted that it requires changing the regulations through an Amendment action. Another advisor noted that they were told that we need to tie this to an action to change the rules. The rules can't just be changed. It was noted that no one wants to violate the rules, but the options are let's allow this or it could shut down the fishery. The advisor noted that the FMAT needs to step up and get this solved immediately. The advisor noted that a pilot project could help. Changing the regulation and putting those into place takes time. Maybe it's okay to parse out the parts that would be okay to immediately address now – the first phase is the allowance to have mixed clams and then must report what is taken out of the ocean.
- An advisor asked if there were any examples whether the regulations were changed because of an issue like this. An FMAT member noted the development of the blueline tilefish fishery because of shifting distributions into the Mid-Atlantic as one example of where new regulations were developed. Another FMAT member noted that the bycatch of haddock in the herring fishery maybe another similar example – the action developed and implemented did allow some number of haddock in that fishery with the monitoring of it.
- Another advisor noted that regarding the legal jeopardy, that a pilot project could be done through an EFP to suspend the zero tolerance. This could be developed for vessels that fish in the heavily mixed areas.
- There was a question as to whether you would need an EFP for every vessel. An FMAT member responded that there have been cases for EFPs where they were issued for one dealer/processor with multiple vessels linked to that.

**Action Plan to Develop an Amendment to address
Species Separation Requirements in the Atlantic Surfclam and Ocean Quahog FMP
(Updated as of 27 January 2023)**

Council: Mid-Atlantic.

Type of Action: “Species Separation Requirement Amendment” to the Atlantic Surfclam and Ocean Quahog FMP.

Applicable Fisheries: Atlantic Surfclam and Ocean Quahog.

Purpose and Need: The purpose of this action is to modify the species separation requirements in the Atlantic surfclam and ocean quahog fisheries. Regulations will be modified to allow for mixed catches onboard vessels that presently are declared/targeting either surfclam or quahog. Regulations may be modified at various levels to address vessel trip declaration, onboard operations (e.g., sorting), cage tagging, and other regulations as needed. This action to update fishery regulations is needed because of the increased frequency of mixed catches in these fisheries, an issue raised to the Council by the clam fishing industry. In addition, these regulatory changes are needed to improve data collection and monitoring of the surfclam and ocean quahog catches given the current incorrect assumption at present that 100 percent of the catch on a targeted trip is the targeted clam species. This is also inconsistent with the ITQ system which requires tags and allocation for each species to be landed. No enforcement or monitoring of these mixed catches is occurring, but industry and survey data indicate that the overlap of these species distributions is increasing.

Additional Expertise Sought: The Fisheries Management Action Team (FMAT) for this action will be composed of staff from the Council, Greater Atlantic Regional Fisheries Office (GARFO), and the Northeast Fisheries Science Center (NEFSC). The FMAT will serve as the primary team for amendment development and analysis.

Fishery Management Action Team (FMAT)		
Agency	Role	Person
MAFMC	FMAT Chair	Jessica Coakley
MAFMC	Other Staff Technical Support	José Montañez
NMFS GARFO	Sustainable Fisheries - GARFO liaison	Douglas Potts
NMFS GARFO	GARFO - NEPA	Sharon Benjamin
NMFS GARFO	NEFSC - Population Dynamics Branch	Dan Hennen
NMFS NEFSC	NEFSC - Social Sciences Branch	John Walden

Types of Measures to be Considered:

The Council is considering measures to modify the species separation requirements in these fisheries.

Type of NEPA Analysis Expected: Document expected to be an EA.

Acronym	NEPA Analysis	Requirements
EA	Environmental Assessment	NEPA applies, no scoping required, public hearings required under MSA*
EIS	Environmental Impact Statement	NEPA applies, scoping required, public hearings required

* If significant impacts are identified the action will be elevated to an EIS.

Applicable Laws/Issues:

Magnuson-Stevens Act	Yes
Administrative Procedures Act	Yes
Regulatory Flexibility Act	Yes
Paperwork Reduction Act	Unlikely, depends upon the actions taken
Coastal Zone Management Act	Unlikely; depends upon effects of the action on the resources of coastal states in the management unit
Endangered Species Act	Unlikely; level of consultation, if necessary, depends upon the actions taken
Marine Mammal Protection Act	Unlikely; level of consultation, if necessary, depends upon the actions taken
E.O. 12866 (Regulatory Planning and Review)	Yes
E.O. 12630 (Takings)	Unlikely; legal review will confirm
E.O. 13132 (Federalism)	Unlikely; legal review will confirm
Essential Fish Habitat	Unlikely; level of consultation, if necessary, depends upon the actions taken
Information Quality Act	Yes

Other Issues: No additional Amendment development issues have been identified.

Amendment Timeline (Development/Review/Implementation; as of 27 January 2023):

Note: *Italics/gray = complete.*

<i>December 2021</i>	<i>Council initiated work (FMAT, Advisory Panel (AP) and Committee meetings in 2021)</i>
<i>February 2022</i>	<i>FMAT reformed by Council</i>
<i>April 2022</i>	<i>FMAT meets, approves action plan, discusses potential range of alternatives, and begins document development</i>
<i>October/November 2022</i>	<i>Council meeting - Adopts public hearing draft and hold public hearings w/ advisors</i>
<i>December 2022</i>	<i>Committee meets to develop recommendations</i>
<i>December 2022</i>	<i>Council meeting – Remands work back to Committee and FMAT for further development</i>

January 2023	FMAT meets with AP. FMAT approves draft action plan, and receives additional input on solutions to explore from AP
February 2023	Council update on Action Plan and AP Input
March/April 2023	FMAT meeting to discuss possible solutions with additional experts on regulations, data, enforcement, etc. (e.g., APSD, OLE, SFD, etc.)
April 2023	AP meeting – discuss FMAT meeting outputs during AP Fishery Performance Report meeting
May – September 2023	FMAT develops possible alternatives; any additional FMAT, AP, or Committee meetings scheduled as needed
September 2023	Committee meets to develop recommendations on additional alternatives for inclusion in EA
October 2023	Council meeting – review and approve any additional alternatives
October 2023/January 2024	FMAT completes drafting public hearing document (may include an additional AP and Committee meeting to review document)
February 2024	Council approves public hearing draft
April/May 2024	Public hearings and comment period; Committee meeting to review public comment provided and develop recommendations to the Council
June 2024	Council Final Action

A Proposal to Develop an Accounting Program
from Atlantic Capes Fisheries, LaMonica Fine Foods, and Surfside Foods
to Address the Co-Mingling of Surfclams and Ocean Quahogs
During Either a Surfclam or Ocean Quahog Clamming Trip

The objective of the clam industry's proposal is to ensure accurate reporting of mixed catches of surfclams (SC) and ocean quahogs (OQ) in support of accurate compliance with quotas and in continuing support of stock assessments for both species.

This is a two-part process:

1. Preliminary estimates of mix catch composition will be made at sea using acceptable subsampling for the total catch. The vessel may separate at sea to the extent possible and to the degree that the plant can handle the second level of separation. Separation at sea is not mandatory and any separation at sea is at the discretion of the individual clam company. Clams separated at sea, when landed, will be tagged with species specific tags.
2. Final accounting will be made at the processing plant. The plant further separates what could not be separated on the vessel to have the most accurate landings of both SCs and OQs.

Since both clam species must be completely separated and processed individually, the accounting of both clam species at the processing plant reduces uncertainty in the number of SCs and OQs that are being landed.

In order to implement this industry two-step process of accountability, the existing regulations governing the catch and landings of SCs and OQs must be changed in the following manner:

1. There must be an allowance for the presence of both SCs and OQ, separately in cages or mixed in cages, aboard a clam vessel as long as the vessel is fully permitted to do so.
2. There must be an allowance for the transport and possession of both SCs and OQs separately, or in mixed clam cages, at the plant.
3. The enforcement mandate that not a single clam of one species be present in a cage of the other species must be eliminated.

This accounting proposal using plant records will be records for both enforcement and data reporting to NMFS.

If a SC tagged cage is documented at the plant to include X number of bushels of OQs, which will then become identified by an OQ tag at the plant, the holder of the SC tag on that original cage desires to be able to recoup the X number of bushels of SCs under a separate SC tag number on a future trip. The same would apply for SCs present in an OQ tagged cage.

From: [Joe Myers](#)
To: [Coakley, Jessica](#)
Cc: [Luisi, Michael](#); [Townsend, Wes](#); [Moore, Christopher](#); [Hughes, Peter B.](#); [Montanez, Jose](#)
Subject: advance comments from SWI - SCOQ Advisory Panel Meeting with FMAT
Date: Tuesday, January 24, 2023 4:27:46 PM

Dear Ms. Coakley,

On behalf of Sea Watch International, Ltd. and myself as an Advisory Panel member, we provide the following comments in advance of the Surfclam and Ocean Quahog Advisory Panel & FMAT Meeting on Thursday, January 26, 2023.

The objective that we share as a participant in the surf clam and ocean quahog fishery is to ensure accurate reporting of mixed catches of these two species of clams in support of accurate compliance with quotas and in continuing support of stock assessments for both species.

Sea Watch proposes accounting of mixed landings be made at the processing plant in the dealer report. The dealer report will be the record for both enforcement and data reporting to NMFS. Current market outlets for surf clams and ocean quahogs require that these species must be separated and processed as such. Accounting of both clam species at the processing plant aligns reporting to where adequate separation is most practically accommodated. Through implementation of this new accountability process, the existing regulations governing the catch and landings of surf clam and ocean quahog could then enable removal the prohibition and on mixed landings.

Sea Watch is also supportive of a process by which bushels recorded as landed commensurate with the declared trip that are subsequently reconciled at the plant to the commingled species, can be returned to the tagholder for use against future landings.

We believe that these proposed measures, as well as others that other industry participants will bring forth, provide greater catch certainty compared to the status quo, and are therefore a marked improvement in the management of the surf clam and ocean quahog fishery.

Sincerely:

Joseph J. Myers

Sr. Director, Innovation & Sustainability
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Surf Clam / Ocean Quahog Accounting Flow Chart

Owner or Lessee of Clam has received allocation approval to harvest SC/OQ
Allocation Holder has 10,000 bushels of SC and 5,000 bushels of OQ. (Example)
(Current Regulation- No Changes Needed)

Federally permitted vessel declares for a SC or OQ trip for target species.
Each vessel will have a target dependent on what the processors wants them to catch.
In the current way of operating vessels are told what to target by processor need.
(Current Regulation- No Changes Needed)

Due to resource shift with mixing occurring, there is bycatch while the target species operations.
Crews are discarding bycatch to the degree possible while maintaining economic viability.
The mixing of catch is increasing at a greater rate than the crews can handle. (Problem)
Non-target species are being landed in cages. (Legal Jeopardy)
(Current Operations)

Vessel fills out and estimate landing by catch composition on VTR.
Due to the legal jeopardy the VTR have omitted the bycatch "problem".
If both species were legal to possess at the same time: (ZERO Legal Jeopardy)
(Current Regulation- No Changes Needed by NMFS)
Vessel will just need to start recording bycatch estimates.

Vessel offloads and tags the cage.
(Change Needed)
If there is going to be limited mixing in cages, then the "Tag" can no longer can represent
32 bushels as it will not be a true representation. The true accounting will be done from
the dealer.
The tag will now represent the offload container for shellfish traceability only.

The Licensed Dealer (First Buyer reporting entity) dumps cages onto their processing line. (No Change)
The workers on the lines separate the non-targeted (bycatch) clams. (No Change)
The bycatch is counted by the bushel and processed separately, sold, or discarded (No Change)

Example:

Vessel targeted Surf Clams, landed, and sold to the dealer. The dealer separated all clams. The true accounting of processed clams from that trip was 1000 bushels of SC and 150 bushels of OQ.

Dealer reports to NMFS purchased bushels from allocation holder is. The allocation holder is debited the number of bushels for each species against their allocation number. (No Change for Dealer or NMFS) The only difference is that each species would be reported on the same trip identifier.

In the example above the allocation holder will have the balance of bushels 9000 of SC and 4850 of OQ

NMFS will have the true landed volume for each species.

There is only one change needed in the management plan which is to allow the landing of SC and OQ on the same trip. It will be up top industry to how much, if any, get separated on the vessels.

Thanks
Sam Martin, Atlantic Capes Fisheries Inc.

From: [MONTE ROME](#)
To: [Coakley, Jessica](#); [Martin, Samuel](#); [Hughes, Peter B.](#); [RON SMOLOWITZ](#); [Shaun Gehan](#)
Subject: Re: SCOQ Species Separation Requirements Amendment FMAT and Advisory Panel Meeting
Date: Tuesday, January 24, 2023 10:39:40 AM
Attachments: [Untitled](#)

Good Morning Jessica,

I do plan to attend the meeting by zoom this Thursday. In the meantime, I would like to know the progress you have made on the framework for Nantucket Shoals. You might know that NEFMC has slated 'no project' for dealing with this area for this year as their project outline has been published without mention about the needs of this area and surf clam fishery.

It is ever clear that they do not intend to manage this area so one would conclude that this part of the surfclam range is truly without management from either council. This is of course in stark contrast to Magnuson and is a sad epithet to the only well managed fishery in our country. How can MAFMC let this happen while watching the OY drops below 50%? Could the MAFMC's negligence on this area's management requirements be realized in more rock protection on other surfclam EFH and close the entire fishery down?

Please provide your thoughts on how this area can be properly managed, and the timing of when a draft of a proposed framework be initiated and presented for us and both councils to be considered.

Best regards, Monte