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NEW ENGLAND FISHERY MANAGEMENT COUNCIL INVOLVEMENT
WITH THE MID-ATLANTIC COUNCIL'S SURF CLAM &
OCEAN QUAHOG FISHERY MANAGEMENT PLAN

GOVERNMENT DOCUMENTS
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by

David E. Pierce

Massachusetts Division of Marine Fisheries

100 Cambridge St.

Boston, MA 02563

Funded by the New England Fishery Management Council

833/91

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The Surf Clam/Ocean Quahog Plan was implemented by emergency regulations on November 17, 1977. This Plan set annual (January through December) catch quotas of 1,800,000 bushels of surf clams and 3,000,000 bushels of ocean quahogs. The surf clam quota was allocated by calendar quarter with 350,000 bushels for the first and fourth quarters and 550,000 bushels for the second and third quarters. For surf clams the Plan restricted fishing effort through a reduction of allowable fishing time (days fished) and, importantly, established a moratorium on new entrants into the fishery. The Plan required a significant cutback in allowable harvest. It recognized that surf clam populations were declining and that a long-term stock rebuilding program was needed. It also recognized that fishing effort would be transferred to the ocean quahog resource, thus the need to manage surf clams and ocean quahogs together. Three objectives were set:

- 1) Rebuild the declining surf clam population to allow eventual harvest approaching the 50,000,000 pound level, which is the present best estimate of the maximum sustainable yield (MSY), based on the average yearly catch of 1960 through 1976.
- 2) Minimize the short-term economic dislocations to the extent possible consistent with objective 1 and promote economic efficiency.
- 3) Prevent the harvest of ocean quahog from exceeding biologically sound sustainable yield levels, and direct the fishery toward maintaining optimum yield.

This Plan aroused much concern by the New England Fishery Management Council (NEFMC). Ever since the Draft Plan was published in April 1977, the New England Council kept up with the Plan's development and attempted to have its recommendations accepted by the Mid-Atlantic Fishery Management Council (MAFMC), the lead Council for Plan development. In particular, Massachusetts and Rhode Island, as states and members of the Council, attempted to prevent the Surf Clam/Ocean Quahog Plan from unduly restricting existing and potential fisheries in New England for both species. For example, soon after the proposed Plan was published, the Massachusetts Division of Marine Fisheries (DMF) related its concern to the New England Council that the proposed moratorium and quotas appeared to pertain to the New England as well as the mid-Atlantic areas. The New England Council as a whole recognized this possibility too as evidenced by an open letter, providing a summary of the Draft Environmental Impact Statement/Fishery Management Plan (DEIS/FMP) and a

detailed analysis of regulating requirements and implications thereof, to the New England surf clam/ocean quahog industry. The New England Council took the following position on the Draft:

- 1) "The 35,000,000 pound quota on surf clams is not clearly and everywhere limited to the mid-Atlantic waters. In all references, both in the Plan and in the proposed emergency regulations, the surf clam quota should be rigorously defined as applying to the mid-Atlantic waters along and to the south and west of a line extending from Montauk, Long Island, southward to the 22 fathom line.
- 2) The controlled entry stipulation outlined as option 1 should read: the number of vessels in the surf clam fishery will be frozen in the mid-Atlantic area six months from the date of enactment of the Management Plan with consideration of limitations in the New England area at a later date.
- 3) While the text clearly anticipates workweek restrictions as applying only to the mid-Atlantic waters, this fact is not clearly stated everywhere. Again, a line separating the mid-Atlantic region from the New England region is needed. All restrictions contemplated should be clearly listed as applying to waters to the north and east or to the south and west of the line.
- 4) In general the Council supports the Plan as being urgently needed, contingent upon clarification of regional restrictions."

On July 25, 1977, the Executive Director of the New England Council sent to each member a copy of the Final EIS/FMP which had no geographic distinction between the New England and mid-Atlantic areas. The moratorium applied to both regions and was to:

"Prohibit the entry of additional vessels into the surf clam fishery effective immediately upon the adoption of the Plan by the Secretary of Commerce. This provision would not exclude those vessels demonstrated to have been under construction at the time of adoption of the FMP. The moratorium would not preclude replacement (with a vessel of similar capacity) of vessels involuntarily leaving the fishery during the time when the moratorium is in force; other hardship cases would be considered on a case by case basis according to criteria recommended by the Council and prescribed by the Secretary. The FMP recommends that the moratorium remain

in effect for one year from the date of adoption of the FMP unless the Secretary determines, after consultation with the Council and after a public hearing, that the moratorium should be terminated or extended."

The FEIS/FMP also established a four-day workweek, Monday through Thursday, to help spread yearly catch evenly throughout each quarter.

On September 21, 1977 representatives of the New England and Mid-Atlantic Councils, National Marine Fisheries Service, Massachusetts Division of Marine Fisheries, Rhode Island Division of Fish and Wildlife and Maine Department of Marine Resources met to review and resolve questions related to final objectives and proposed regulations of the Surf Clam/Ocean Quahog Management Plan. The two principal points of concern were:

- 1) the stated objective of stabilizing the surf clam stock, and;
- 2) the one-year moratorium on new entry into the surf clam fishery immediately upon implementation of the Management Plan.

According to a summary of the meeting,

"There was extended discussion on the issue of immediate restricted entry. The point was stressed that the restriction would preclude any New England vessels from exploring for or fishing on any surf clam stocks off the New England coast including those vessels that presently had an interest or intent in doing so. It was made clear that the New England Council did not propose that New England vessels would fish off the mid-Atlantic coast, nor that mid-Atlantic vessels would be precluded from fishing off New England.

After extended discussion on the feasibility of establishing zones in which the moratorium on entry would and would not apply, the Mid-Atlantic Council agreed it would recommend a line off the Long Island/Connecticut coasts, east of which the restricted entry proposal would not apply."

This line was included in the FEIS/FMP so as to prohibit the entry of additional vessels into the surf clam fishery south of 41° latitude. However, when emergency, proposed, and final regulations were published on November 17, 1977,

January 3, 1978, and February 17, 1978, no line of demarcation for entry moratorium was included.

The removal of the line from the FEIS/FMP prompted Allen Peterson, then Director of DMF, and Jay Cronin, Director of the Rhode Island Division of Fish and Wildlife, to send protests to then Assistant Administrator for Fisheries, Terry Leitzel (see letters).

A March 6, 1978 response (see letter) to Rhode Island's protest indicated that NOAA attorneys felt the two areas (north and south of 41° latitude) could not be established since it would have been possible for a vessel to be built north of the line and then legally moved south.

An April 12, 1978 response (see letter) to Massachusetts' protest was received from Terry Leitzel. Reasons for not exempting the New England area from the moratorium and the four-day workweek were given. These reasons were:

- 1) The Mid-Atlantic Plan contained no documented analyses or justification for such an exemption and no analyses or documentation of the impact of possible options.
- 2) No evidence of the substance or conclusions of discussions to exclude the New England area from the moratorium was presented for the record in the Plan or in supplemental material.
- 3) No provision for public comment on the proposed exclusion was made.
- 4) NMFS legal and enforcement people felt that the exclusion, as written, was unenforceable.

The issue was pursued further by Allen Peterson, and he received another reply (see letter) which indicated that "a number of significant legal issues" needed to be examined regarding the moratorium issue.

Because the Plan was implemented, the only way to accommodate New England concerns was through a formal Plan Amendment. In keeping with this stipulation the New England Council contacted the Mid-Atlantic Council and requested an Amendment (see June 13 letter). The NEFMC,

- 1) Understood that the Mid-Atlantic Council intended to hold public hearings in July on an Amendment to the Plan.

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Northeast Region
 Fisheries Management Division
 State Fish Pier
 Gloucester, MA 01930

March 6, 1978

Mr. John M. Cronan, Chief
 Rhode Island Division of Fish and Wildlife
 Box 37
 West Kingston, RI 02892

Dear Jay:

This is in response to your letter of February 13 outlining problem areas in the surf clam regulations currently in effect. The regulations for those species protected under the Fishery Conservation and Management Act are based on the information and jurisdictions developed in the species management plans. As you point out, 50 CFR, Part 652.1, is worded, suggests that the information used in preparing the plan was interpreted as describing the entire range of the resource, rather than the limited area envisioned by the surf clam technical committee. Lawyers decided this could not be separated. Apparently it would be possible to build a vessel and fish it north of 41° for awhile and then legally move south. Under the system of plan preparation and review currently being followed for surf clam management plans, the Mid-Atlantic Council has the responsibility for amending the plan and incorporating comments and revisions based on changes in stock assessment or plans for industry expansion.

Since, in this case, the regulations cannot be changed without specific amendment to the management plan, your comments should be directed to John Bryson of the Mid-Atlantic Fishery Management Council.

Sincerely,

FRANK W. LEE
 Chief, Fisheries Management Division

Enclosure

Allen E. Peterson, Jr.
Director

The Commonwealth of Massachusetts
Division of Marine Fisheries
Leverett Saltonstall State Office Building
100 Cambridge Street, Boston 02202

February 3, 1978

Mr. Terry L. Leitzell F
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
3300 Whitehaven Parkway, NW
Washington, D.C. 20235

Dear Mr. Leitzell:

The Massachusetts Division of Marine Fisheries on behalf of the fishermen of our state wishes to comment on the proposed surf clam and ocean quahog regulations as published in the Federal Register (Volume 43, No. 1) dated January 3, 1978.

In particular, the moratorium on entry into the surf clam fishery within the entire Fishery Conservation Zone (section 652.91; paragraph a) is of great concern. On September 21, 1977, in Peabody, Massachusetts, representatives of the New England and Mid-Atlantic Fishery Management Council, the National Marine Fisheries Service, and the Massachusetts Division of Marine Fisheries met to specifically discuss the proposed moratorium. It was agreed that the Mid-Atlantic Council would recommend a line of demarcation off the Long Island-Connecticut coast east of which the moratorium would not apply. The reasons for the decision were: 1) in our region the abundance and distribution of surf clams is unknown and the stocks are virtually unexploited; 2) restrictions in our region would inhibit further exploration for and fishing on surf clam stocks; 3) interest in the fishery by fishermen is increasing and restrictions would prematurely strangle its development.

It is realized that rejection of this amendment to the plan by the National Marine Fisheries Service and Department of Commerce was brought about by legal time constraints. However, we feel it is an issue of significant importance that needs to be incorporated into the plan for the remainder of 1978.

We also object to the four day effort restriction (section 652.7; paragraph a). This limitation unnecessarily prevents New England vessels from operating in a segment of the surf clam fishery which is not overcapitalized or overfished.

In summary, we do not believe these restrictive measures are necessary in the New England area.

Sincerely,

Allen E. Peterson, Jr.
Director

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

F31/MKO

APR 12 1978

Mr. Allen E. Peterson, Jr.
Director, Division of Marine Fisheries
Leverett Saltonstall State Office Building
100 Cambridge Street
Boston, Massachusetts 02202

Dear Mr. Peterson:

This is in response to your letter of February 3, 1978, concerning the regulations for the surf clam and ocean quahog fisheries in the Atlantic. Please excuse our delay in responding, but we have been obtaining clarification from the concerned parties on the points which you raise.

There were four reasons besides "legal time constraints" behind the decision not to exempt the New England area from the proposal for a moratorium on new entries into the surf clam fishery. First, the plan contained no documented analysis or justification for such an exclusion, and no analysis or documentation of the impacts of possible options. Second, although we realize that some discussion of the subject had taken place, no evidence of the substance or conclusions of these discussions was presented for the record, either in the plan, or in supplementary material. Third, there had been no provision for public comments on the proposed exclusion, although the subject is important and somewhat controversial. Finally, our legal and enforcement people felt that the exclusion, as written, was unenforceable due to the lack of clarity in items such as the definition of "new" clam beds, the rights of clambers from one portion of the Fishery Conservation Zone (FCZ) to fish in other portions, as well as several other provisions of the exclusion. All four of these factors also apply to the exclusion of New England from the four-day workweek provisions contained in the plan.

We agree that it may be desirable to address differing situations with respect to the harvest of surf clams in the various areas of the FCZ in both the management plan and in the regulations. If you have access to data or information which might aid the Mid-Atlantic and New England Councils and our NMFS Northeast Regional Office in developing an approach to this problem, please provide it to the Council.

Thank you for advising us of our concerns. The management planning process is an iterative one. Many of these problems will be ironed out as more information becomes available, and as we gain more experience in applying this information to specific problems.

Sincerely,

Terry L. Leitzell
Acting Assistant Administrator
for Fisheries

MASSACHUSETTS DEPARTMENT OF FISHERIES
 DIVISION OF FISHERIES MANAGEMENT

F31/MZ

JUN 8 1978

Mr. Allen E. Peterson, Jr.
 Director, Division of Marine Fisheries
 Leverett Saltonstall State Office Building
 100 Cambridge Street
 Boston, Massachusetts 02202

Dear Mr. Peterson:

As was discussed in your conversation with Mark Zilberberg in our Office of Fisheries Management on Thursday, May 25, 1978, the issues of the surf clam-ocean quahog moratorium and fishing effort restriction, and their impact on New England fishermen, are currently being reviewed. I am aware of the effect of the present regulations on New England fishermen and related problems such as vessel financing and the accurate reporting of harvest locations (i.e., inside or outside of the three mile limit). I anticipate that these problems will be resolved to the satisfaction of all concerned.

The comments on the surf clam-ocean quahog regulations which were mailed from your office on February 6, 1978, arrived at this office on February 15, 1978. No exceptions were made to the February 11, 1978, deadline for receiving such comments for acknowledgment in the Federal Register.

General Counsel has indicated to us informally that the proposal to except New England fishermen from the moratorium presents a number of significant legal issues which certainly need to be examined. This remains to be done.

You also raised the issue of fishing periods. While your comments regarding the moratorium were the only comments received on that issue, a number of commentators raised the fishing period issue consonant with your views. Those comments are reflected in the final regulations.

I have asked General Counsel to examine the legal issues referred to above. I am also asking Bill Gordon to discuss this matter with the New England Council at the earliest opportunity so that all issues are considered.

In the meantime, I appreciate your patience.

Sincerely,

 Terry D. Leitzell
 Assistant Administrator
 for Fisheries

New England Regional Fishery Management Council

Peabody Office Building
One Newbury Street
Peabody, Massachusetts 01960

617-535-5450

FTS 8-223-3822

June 13, 1978

Mr. John C. Bryson, Executive Director
Mid-Atlantic Fishery Management Council
Federal Building, Room 2115
300 South New Street
Dover, Delaware 19901

Dear John:

It is our understanding that the Mid-Atlantic Council plans to hold public hearings on amendments to the Surf Clam Management Plan in July.

This Council is very concerned about the application of management measures, which may be appropriate for the Mid-Atlantic area, to the surf clam fishery of New England. Quite different circumstances exist in the New England fishery.

This Council is concerned particularly that the resource off New England is not over-exploited, that in fact it is not adequately described or assessed, and that the fishery is hardly developed. The Council feels, therefore, that it is inappropriate that the vessel moratorium and the restrictive weekly trip limitations should apply in New England waters, and that in fact they may prevent the development of a viable New England surf clam fishery.

The public hearings that were held a year ago, particularly in Newport, RI, discussed these concerns at length. As a result of those hearings and the nature of the New England fishery, the Council urged that New England be exempted from those restrictive management measures.

It was the understanding of the Council that New England was exempted when the Surf Clam Management Plan was submitted last fall. The Council was of course disturbed to learn that all the restrictive provisions of the plan apply to the New England fishery. Therefore the Council requests that the plan be amended to include a demarcation line, east of which the vessel moratorium, catch quotas, and effort restrictions on surf clams shall not apply.

In short, the Council believes that such restrictions are unnecessary and inappropriate in New England waters where the resource is poorly known or assessed but very likely underutilized, and where the fishery is little developed and under-capitalized.

The Council therefore requests that this letter be entered as part of the record of your public hearing on amendments to the surf clam plan, and that the plan be amended accordingly.

Thank you.

Sincerely yours,

Spencer Apollonio
Executive Director

pp

cc: NERFMC Members

- 2) Restated the New England concern over the moratorium and fishing-day limitations.
- 3) Understood that New England was exempted in the Plan submitted in the fall of 1977 (but wasn't when final regulations were implemented) and requested a Plan Amendment to include a line of demarcation north of which the moratorium, catch quotas , and effort restrictions on surf clams would not apply.
- 4) Wanted these New England Council comments to be entered as part of the record for the upcoming July hearings.

Frustrated by the Mid-Atlantic Council's failure to hold anticipated public hearings on the moratorium issue, the New England Council wrote Terry Leitzel on August 15, 1978 to request a Secretarial hearing. A September 18 hearing was scheduled. However, just prior to this hearing the Mid-Atlantic Council informed the New England Council that it was considering changes to the Plan and that a draft of those changes would be discussed at an April 19, 1979 hearing. Also, NEFMC was informed that the Mid-Atlantic Council Scientific and Statistical Committee was to provide recommendations for a line of demarcation.

At the September 18 hearing, the Massachusetts Division of Marine Fisheries again protested inclusion of New England in the surf clam fishery moratorium on entry (September 18 correspondence). The Division stated that a continuation of the moratorium for another year would be a further injustice to Massachusetts fishermen.

On October 19, 1978 a letter from William Gordon, then Regional Director of the National Marine Fisheries Service, was received by the Council. William Gordon provided his staff's review of the various drafts of the Plan with respect to inclusion of the New England area under the moratorium. His conclusion was that the Fishery Management Plan, approved by the Secretary of Commerce, did not exempt the New England area from the surf clam vessel moratorium even though the language both in the Draft FMP/EIS (April 1977) and the Final FMP/EIS indicated that such an exemption was the Mid-Atlantic Council's intent at that time.

In reply, the New England Council sent an October 26 letter (see letter) to then Secretary of Commerce Juanita Krebs informing her that, "the Atlantic Surf Clam Plan in its present form is unsatisfactory and unacceptable to this Council and it cannot support the Plan. The Council, therefore requests that you direct the Mid-Atlantic Fishery Management Council, the lead Council for this Plan, to amend the Plan as appropriate for conditions in the New England area, and that you review and promulgate regulations that will implement satisfactory and reasonable Amendments to the Plan." The Council finally lost its patience and made the decision to withdraw its support for the existing Plan.

September 18, 1978

William G. Gordon, Regional Director
Northeast Region
National Marine Fisheries Service
Federal Building - 14 Elm Street
Gloucester, MA. 01930

Dear Bill:

The Massachusetts Division of Marine Fisheries on behalf of the fishermen of our state has previously gone on record in opposition to the inclusion of the New England region in the moratorium on entry into the surf clam fishery. Correspondence stating this opposition was sent to Terry Leitzell, then Acting Assistant Administrator for Fisheries on February 3, 1978. The Division again wishes to state its opposition to a moratorium in the New England region. Specifically, the need for a moratorium and restriction of fishing effort east of a line drawn off Long Island and Connecticut coasts, cannot be defended. To extend the restrictive regulations for an additional year would be a further injustice to Massachusetts fishermen.

Some reiteration with regard to the Division's efforts to remove the moratorium in our area is needed. On September 21, 1977 in Peabody, Massachusetts, representatives of the New England and Mid-Atlantic Fishery Management Councils, the National Marine Fisheries Service, and the Division met to specifically discuss the then proposed moratorium. It was agreed that the Mid-Atlantic Council would recommend a line of demarcation off the Long Island and Connecticut coasts east of which the moratorium and restrictions of fishing effort would not apply. The reasons for the decision were: 1) in our region the abundance and distribution of surf clams is unknown and the stocks are virtually unexploited; 2) restrictions in our region would inhibit further exploration for and fishing on surf clam stocks; interest in the fishery by fishermen is increasing and restrictions would prematurely strangle its development. The reasons and background were incorporated into the February 3 correspondence.

A response on behalf of Mr. Leitzell was received on April 12. No rebuttal against our reasoning was presented; however, four main arguments against removing the moratorium were given: 1) the Surf Clam/Ocean Quahog Plan contained no documented analysis or justification for such an exclusion and no analysis or documentation of the impacts of possible actions; 2) no evidence of the substance or conclusions of the joint meeting mentioned above was presented for the record, either in the Plan or in supplementary material; 3) there was no provision for public comments on the proposed exclusion; 4) legal counsel and enforcement people felt that the exclusion as written was unenforceable due to a lack of clarity in the definition of "new" clam beds and the rights of clambers from one portion of the Fishery Conservation Zone to fish in other portions, as well as several other provisions of the exclusion.

The Division submits that the aforementioned should not prevent the Secretary of Commerce from acting favorably on our request. First, with regard to the above, an opposite point of view is in order; that is, no documented analysis or justification for an inclusion of the New England area in the moratorium and no analysis or documentation of the impacts of this action on New England fishermen is presented in the Plan. Second, the documentation of the results of the joint meeting between Council representatives, the National Marine Fisheries Service, and the Division is available for the record. Third, public comment on the moratorium was in fact obtained during a 1977 hearing held in Newport, R. I. and now is further acquired on this date, September 18, 1978. Fourth, while the enforcement problem might become real, lines of demarcation have not prevented past or proposed plans of similar nature from being approved or considered; for example, the Gulf of Maine and Georges Bank/southern New England cod stocks and yellowtail flounder fisheries east and west of 69° W longitude. In fact with regard to boundary lines, closures have frequently been imposed for a fishery in one region and not for the fishery in the other.

The Division wishes to support its reasons for wanting the moratorium and fishing effort restrictions removed for our region. Before and after implementation of the moratorium, at least eight surf clam fishermen expressed interest in the possibility of fishing offshore. Those informed before its existence decided to forego the needed investments due to the uncertainty of its implementation. Those informed during its presence were of course immediately deterred. Moreover, fishermen who were looking for other alternatives to pursue in response to restrictive regulations in other fisheries; e.g., groundfish, were stymied. Also, those fishermen who are currently involved in the fishery are experiencing extreme difficulty with the limitation of fishing days. These fishermen operate small vessels and their daily capacities are not sufficient to produce a return on one day of fishing per week. Therefore, they are being forced to restrict their fishing to "territorial waters".

With regard to the status of the surf clam resource in our region, it is apparent that the resource south of Nantucket Island and off Nantucket Shoals, in particular, has not been adequately assessed; Georges Bank is also unexplored. National Marine Fisheries Service surf clam/ocean quahog surveys only go as far east as 70° W longitude. In addition, continued exploration by fishing vessels for productive surf clam beds has been prevented. The potential of the New England surf clam resource, therefore, has yet to be defined. Consequently, there is no evidence that the resource off New England has either been overfished or overcapitalized. Furthermore, it is noteworthy that the few National Marine Fisheries Service tows further offshore on Nantucket Shoals suggest abundance, and it is of significance that vessels fishing on other grounds; e.g., Stellwagen Bank north of Cape Cod, for other species have reported good by-catches of surf clams.

In summary, the Division respectfully requests your consideration of this exemption from the moratorium and fishing effort restriction. The Division believes that reasons for exclusion outweigh any justification for incorporation of the New England region in the present surf clam management regime which unfairly restricts Massachusetts fishermen.

Sincerely,

Allen E. Peterson, Jr.
Director

New England Fishery Management Council

Peabody Office Building
One Newbury Street
Peabody, Massachusetts 01960

617-535-5450

FTS 8-223-3822

October 26, 1978

The Honorable Juanita Kreps
Secretary
Department of Commerce
Washington, DC 20230

THRU: Terry Leitzell, Asst. Administrator for Fisheries, NOAA/NMFS

Dear Madam Secretary:

This Council wishes to express, once again, its serious concern with the Atlantic Surf Clam Management Plan which extends a vessel moratorium and other severely restrictive regulations to the surf clam fishery in the Fishery Conservation Zone off New England.

There is an extensive and readily available record at this time, including more than one public hearing, letters from this Council, minutes of public meetings of this Council, minutes of joint committee meetings of the New England and Mid-Atlantic Fishery Councils, letters from concerned state fisheries agencies, and letters from industry representatives, on the total impropriety of those regulations to the actual conditions of the Surf Clam fishery off New England. I will not repeat the details or facts of that record in this letter, but only point out, once again, that it irrefutably documents that no good or valid purpose, within the context of the Fishery and Conservation and Management Act of 1976, is served by those regulations.

This Council has repeatedly and patiently requested that this situation be corrected. This has not been done.

The Council wishes to inform you that the Atlantic Surf Clam in its present form is unsatisfactory and unacceptable to this Council, and it cannot support the plan. The Council, therefore, requests that you direct the Mid-Atlantic Fishery Management Council, the lead Council for this plan, to amend the plan as appropriate for conditions in the New England area, and that you review and promulgate regulations that will implement satisfactory and reasonable amendments to the plan.

This Council will be pleased to cooperate fully with the Mid-Atlantic Council, NOAA, and the National Marine Fisheries Service in developing reasonable amendments to the plan and appropriate regulations. It looks forward to learning of your intended action on this issue. Thank you.

Sincerely yours,

Spencer Apollonio
Executive Director

SA:jr

cc: Mr. Terry Leitzell
Mid-Atlantic Council

To the New England Council's chagrin, on November 22, 1978, the moratorium was extended for an additional year. The Federal Register announcement describing the rationale for this extension is provided here. The announcement also summarizes the changes in fishing-day restrictions during the first year of the Plan's implementation.

At January 1979 Council meetings the status of the Surf Clam Plan was related. The question of the New England exemption from the entry moratorium was left unanswered. The Mid-Atlantic Council was exploring different means of controlling effort in the surf clam fishery for 1980 and NMFS felt that any amendment to exclude the New England area in the interim period would:

- 1) result in a loss of the moratorium in the mid-Atlantic as well as in New England;
- 2) need substantial analyses and an environmental impact statement, thus much work and delay;
- 3) result in three concurrent amendments involving considerable, perhaps overpowering, staff work and administrative procedures;
- 4) not be developed and formalized before the scheduled implementation of the new Plan (January 1, 1980).

Some interim relief was expected in the form of a relaxation of the number of allowable fishing days north of 41° latitude (line from off Montauk, Long Island to 14 1/2 miles south off Nantucket Island). However, there was still no assurance that the New England region would eventually be excluded from the entry moratorium. Consequently, the Council asked NOAA Counsel to determine if litigation was an appropriate course of action.

NOAA Counsel's summary of the administrative record of the Surf Clam/Ocean Quahog Fishery Management Plan and his opinion on litigation were provided (see February 6 memo). He did not recommend litigation since:

"There can be little doubt that the administrative record is so complex that the legal and factual issues to be argued on your behalf will require extensive and expensive preparation. Further, once the Council would be in a position to go to Court, judicial procedures themselves would be so slow as to eliminate the possibility of timely relief. Also, the Court is likely to take account of the pending revision of the Plan in fashioning a remedy; and may delay action to see what the Mid-Atlantic Council comes up with."

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20513

NOV 30 1978

TO: A - Richard A. Frank
FROM: F -
SUBJECT: Action Extending the Moratorium on Entry of Additional Vessels into the Surf Clam Fishery for One Year Beginning November 17, 1978—INFORMATION MEMORANDUM

Regulations implementing the Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries (FMP) contained a moratorium provision which prohibited additional vessels from entering this fishery for a one year period ending November 16, 1978. The Mid-Atlantic Fishery Management Council, which is the lead Council for this FMP, has requested a one year extension of this moratorium. I have taken action to amend the regulations implementing this plan to meet this request.

There has been significant controversy over the inclusion of the New England region in this moratorium. The New England Fishery Management Council has expressed strong opposition to both the National Marine Fisheries Service and the Mid-Atlantic Council to the moratorium being applied to the surf clam fishery in the New England area. The Council's basic position is that the New England resources are currently underdeveloped and no moratorium is necessary.

The Mid-Atlantic Council continues to support the moratorium throughout the entire surf clam fishery covering both the Mid-Atlantic and New England areas. The Council anticipates taking action in 1979 to develop an alternative strategy that would solve the problem of entry and exit in this fishery. "Until a final strategy is developed, the Council does not want additional vessels entering the New England fishery because it feels that such vessels could then gain legal rights to the overcapitalized Mid-Atlantic surf clam fishery under the present management regime."

I am extending the moratorium despite the controversy, since exempting the New England area from the moratorium would require a plan amendment with due public process. The Mid-Atlantic Council, after considering testimony at two public hearings, recommended continuation of the moratorium in both areas.

The Northeast Regional Director, who is a voting member on both the New England and Mid-Atlantic Councils, is currently discussing possible plan amendments with the Mid-Atlantic Council to resolve the difference between the two Councils on this question. However, the Mid-Atlantic Council may choose to defer action to amend the plan until an alternative management scheme is developed.

CLEARANCES

DATE

F3:RSmith R. Smith (S. K. K. K.) 11/22/78

GC:EGreenberg _____

PP:MGlazer _____

A:JWalsh _____

Prepared by: D. Leedy, NMFS, 634-7436, 11/21/78

cc: F, F3(2), F36(3), F37, FNE, FAFMC, NEFTC

F34:NMFS:DLeedy:634-7436:11/21/78:nd1 (ca :orSCLan)
F35:NMFS:DLeedy:634-7436:11/22/78:en (ca :orSCLan)

**Extension of Surf Clam Vessel
Moratorium**

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Continuation of surf clam vessel moratorium for 1 year.

SUMMARY: The fishery management plan for the surf clam and ocean quahog fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council), and approved by the Secretary on November 17, 1977, contains a moratorium provision which prohibits additional vessels from entering the surf clam fishery for the 1-year period ending November 16, 1978. These regulations continue the moratorium for an additional 1-year period beginning 0001 hours e.s.t., November 17, 1978, and ending at midnight, November 16, 1979.

EFFECTIVE DATE: 0001 hours e.s.t., November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Denton Moore; 202-634-7454.

SUPPLEMENTARY INFORMATION: Pursuant to section 305 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), final regulations were published on February 17, 1978 (43 FR 6952), to implement the FMP prepared by the Mid-Atlantic Council and approved by the Secretary of Commerce for the surf clam and ocean quahog fisheries. Section 652.9 of those regulations prohibits the entry of additional vessels into the surf clam fishery until November 16, 1978.

The FMP specifies annual quotas for the harvesting of surf clams for the 2 years in which the FMP is to be in effect with these quotas allocated on a quarterly basis. The surf clam annual and respective quarterly quotas are the same for each of the 2 years for which the Council specified an optimum yield for the surf clam resource.

In the first year of this FMP, the following actions were taken to insure that the quarterly quotas were not exceeded:

In the first quarter of 1978 the fishing period was limited to 4 days per week, Monday-Thursday. The quarterly quota was obtained by March 10 and the fishery closed until April 1.

Effort in the second quarter was initially restricted to 48 hours per week and then 24 hours per week to prevent the quota from being exceeded.

In the third quarter, the 24-hour-per-week fishing period was continued.

For the fourth quarter of 1978, a fishing period of 36 hours per week was originally specified. This extension was based on a "carry-over" of the uncaught part of the quota for the third quarter, and expected adverse weather conditions. The third quarter quota was not reached and the surplus of 37,834 bushels has been added to the fourth quarter quota for a total quota of 387,834 bushels for this quarter. The fishing period was reduced to 24 hours on October 30 due to the rapid rate of exploitation.

Judging by the actions taken during the first year in which the FMP has been in effect, there is no indication that the number of vessels permitted to harvest surf clams is insufficient to achieve allowable quotas. The need to significantly limit fishing effort during 1978 strongly suggests that the harvesting capacity of the fishing fleet easily exceeds the specified quotas. The economic impacts that would result from additional vessels entering this fishery are unchanged from those presented in the FMP.

The New England Fishery Management Council (New England Council) objects strongly to including the New England area in a surf clam vessel moratorium. Hearings were held on September 14 and 18, 1978 to obtain public comment on the proposal to continue the moratorium. The New England Council commented that the FMP should be amended to remove the very small New England fishery from the moratorium restrictions as soon as possible. The New England Council recognizes the need for a moratorium in the overcapitalized Mid-Atlantic

fishery, but feels strongly that the moratorium applied in the New England area has served as a deterrent to the development of the fishery and has caused particular hardship to the area's fishermen. Most of these surf clams are taken from territorial waters and not the FCZ. The chief use of surf clams taken in the New England area is bait for recreational fishing.

The FMP provides that the Secretary of Commerce may continue the moratorium for 1 additional year beginning November 17, 1978. The Assistant Administrator for Fisheries has determined that the moratorium shall be continued and this document continues the moratorium by amending the regulations which implemented the FMP. All procedural requirements for this action have been fulfilled. Continuation of the moratorium in only the area south of the 41st parallel, as recommended by the New England Council, can be accomplished only by an amendment to the FMP. The FMP has not been amended to accomplish this. Therefore, the moratorium must be continued in the entire area or it must lapse. The Assistant Administrator determines that the surf clam vessel moratorium is continued for a period of 1 year beginning at 0001 hours e.s.t., November 17, 1978, and ending on midnight, November 16, 1979.

The Assistant Administrator further finds and determines that this is not a significant Federal action within the meaning of the National Environmental Policy Act and does not require compliance with Executive Orders 12044, 11821, and 11949.

116 U.S.C. 1801 et seq.)

Signed at Washington, D.C., this the 16th day of November 1978.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

Amend 50 CFR Part 652 to revise § 652.9 to read as follows:

§ 652.9 Vessel moratorium.

(a) A moratorium which became effective on November 17, 1977, prohibits the entry of additional vessels into the surf clam fishery.

(b) The moratorium shall remain in effect until November 16, 1979, unless the Secretary determines, after public hearings and consultation with the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, to terminate the moratorium at an earlier date.

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
Federal Building, 14 Elm Street
Gloucester, Massachusetts 01930

6 February 79

MEMORANDUM FOR THE NEW ENGLAND FISHERY MANAGEMENT COUNCIL

FROM: John H. Dunnigan
SUBJECT: Surf Clam Moratorium

Pursuant to your request, I have investigated the administrative record of the Fishery Management Plan for the Surf Clam and Ocean Quahog Industries (the Plan). My findings are as follows:

- (1) It appears that the exemption of New England waters from the moratorium was not included in the Plan by the Mid-Atlantic Council due to an oversight. The Mid-Atlantic Council, at its next meeting (September 1977) did formally vote to amend the Plan by inserting a provision restricting the moratorium to waters south of the 41st parallel.
- (2) Contrary to common opinion, the reason that the moratorium exemption was not included in the Plan as approved by the Secretary was not solely the fact that it had not been subjected to public hearings. The matter was obviously subjected to extensive public review, since it appeared in the Draft Plan which went to public hearings, and was always a matter of record as to the understanding of the New England Council.
- (3) Four reasons for applying the moratorium in New England waters were set forth in a letter from the Assistant Administrator for Fisheries to the Director of Marine Fisheries, State of Massachusetts, on April 12, 1978 (See attachment). It cannot be said that these four reasons were totally unfounded. The Plan, even as originally drafted or as later modified by the Mid-Atlantic Council, does not include an analysis of reasons why the New England surf clam fishery ought

to be treated differently from the surf clam fishery in Mid-Atlantic waters with respect to the moratorium, except to state that the surf clam beds in New England are "new". The Plan and the Draft Environmental Impact Statement contain little response to public comment concerning the applicability of the moratorium in New England. Further, there may actually be conceptual enforcement problems involved, which no draft of the Plan addresses in proposing a restriction of the moratorium to those waters south of the 41st parallel.

On the other hand, each of these could be looked at differently. Documentation might not be useful since there is very little information concerning the fishery; and all of the information that is presented relates only to those areas south of the 41st parallel. Most, if not all of the public comments concerning the application of the moratorium for New England do not demand response since it was assumed at the time, based upon the language under review, that the moratorium would not apply to New England. The enforcement problems should perhaps not be dealt with specifically in the Plan itself, but rather should be reserved as policy consideration to be addressed during the regulation promulgation and implementation process.

Therefore, a good, although not necessarily conclusive argument could be made that the Secretary should not have applied the moratorium to New England when implementing final regulations.

I recommend, however, that the New England Fishery Management Council concentrate its effort on ensuring that the new Plan adequately addresses the concerns of the New England Surf Clam fishery. Any modification to the current management system will be lengthy and not completed in time to make any meaningful difference to New England fishermen. Resolving the moratorium issue alone only solves a portion of New England's problems, since the effort and quota restrictions would continue to apply. The problems encountered by New England fishermen being subject to the moratorium might not be as significant as originally anticipated. Further, it has since been realized that the 41st line is not the best place to draw a distinction. Therefore, it would appear to be wiser for the New England Council to concentrate its efforts on a long-term solution to its total problems with the Plan, rather than a short-term approach to a portion of its problems.

I do not recommend that the Council attempt to initiate any litigation. There can be little doubt that the administrative record is so complex that the legal and factual issues to be argued on your behalf will require extensive and expensive preparation. Further, once the Council would be in the position to go into Court, judicial procedures themselves would be so slow as to eliminate the possibility of timely relief. Also, the Court is likely to take account of the pending revision of the Plan in fashioning a remedy; and may delay action to see what the Mid-Atlantic Council comes up with.

cc: GC, GCF, F, FNE, FNE71

The Council decided against litigation.

The Mid-Atlantic Council produced a draft Amendment #2 to the Surf Clam/Ocean Quahog Plan in June 1979. The Mid-Atlantic position on the New England recommendation was:

"the Council has been considering the recommendation of the New England Fishery Management Council that a special regime be established for the surf clam fishery in New England. There has been much discussion since the original FMP was developed relative to the New England surf clam fishery, whether it differed enough from the Mid-Atlantic fishery to warrant a separate regime, and if so, what form that separate regime should take. After much consideration, the Mid-Atlantic Council has developed an alternative for the management of the surf clam fishery in New England. The alternative provides for the establishment of a separate management regime in New England, that is, the area north of the dividing line between the Mid-Atlantic and New England Fishery Management Councils (see figure). In the northern area the moratorium on entry of vessels into the surf clam fishery and the effort and gear restrictions would not be in effect. A quota of 200,000 pounds of surf clams would be set for that area. The New England quota would be in addition to the quota for approximately 30 million pounds of surf clams set in the amended FMP in the Mid-Atlantic. When half of that quota would be caught, the effort restrictions operating in the Mid-Atlantic area would be imposed. Any harvest of surf clams from the northern area would not be charged against the Mid-Atlantic surf clam quota. Vessels entering the New England fishery under this special provision would not be entitled to fish in the Mid-Atlantic area and would not accrue any rights to a future direct allocation system that might be established. Vessels with permits issued pursuant to the moratorium established by the original Surf Clam and Ocean Quahog Industries FMP would be permitted to fish in the northern area, but their landings would be reported separate from their Mid-Atlantic landings and would not count toward any possible future direct allocation system base calculation."

In response to the draft, specifically the 200,000 pound proposed quota and effort restriction when one half of the quota was taken, both Massachusetts and Rhode Island submitted comments on the draft to the Mid-Atlantic Council (see July 9 and 23 correspondence). Both states noted the disincentive

The Commonwealth of Massachusetts
Division of Marine Fisheries
Lewinell Tallonstall State Office Building
100 Cambridge Street, Boston 02202

Philip G. Coates
Director

Philip G. Coates

July 9, 1979

Mr. John Bryson
Executive Director
Mid-Atlantic Fishery
Management Council
Room 2115 Federal Bldg.
North and New Streets
Dover, DE 19901

Dear John:

The Massachusetts Division of Marine Fisheries on behalf of the fishermen of our state wishes to comment on the Draft Amendment No. 2 to the Surf Clam and Ocean Quahog Industries Fishery Management Plan.

From the outset, we wish to compliment the Mid-Atlantic Council and Staff for your steadfast pursuit of successful ways to manage the surf clam/ocean quahog fishery of the mid-Atlantic and New England regions in an equitable manner. We fully appreciate the difficult problems which you face and strive to overcome. Whether it be difficulties with enforcement and accurate reporting or legal and procedural hindrances, we are sympathetic since our association with the New England Council has exposed us to similar frustrations. It is not easy to develop a plan for an overcapitalized fishery without imposing unpalatable restrictions. In fact, your willingness to invoke a moratorium on fishing effort illustrates the severity of your management problems.

We support the alternative which provides for the establishment of a separate management regime in New England specifically the abolition of the moratorium on entry of vessels into the surf clam fishery and the effort and gear restrictions. We et al have sought this sort of regime since 1977 and are gratified to finally acquire your concurrence. The rationale for two proposals of the regime needs further elaboration, however.

First, what is the basis for the 200,000 lbs. quota (11,765 bushels) of surf clam meats for the New England area? It is cited in the Plan Amendment No. 2 that there is no traditional offshore fishery for surf clams in New England and that Fishery Conservation Zone surf clam catch landed in Massachusetts was 286,358 lbs. of meat in 1977; therefore, why restrict the fishery to 200,000 lbs. of meat? If it can be assumed that the same vessels expend similar effort in 1980 and are as successful, the quota provides no incentive for fishermen to further develop the surf clam fishery in New England. This quota, as does the present moratorium, serves to discourage

interest in the fishery. The imposition of the fishing effort restrictions when one half of that quota is caught compounds the disincentive. At this time we do not see the need for a quota.

Secondly, why will New England vessels, which will enter the fishery under this scheme, be prohibited from fishing in mid-Atlantic waters, yet mid-Atlantic vessels can fish in New England waters? The latter case sets up a situation in which the proposed 200,000 lbs. of meat quota can be exhausted through false reporting. Note the situation with the 69° W. longitude division for yellowtail flounder. It is common for vessels fishing west of the line to claim their catches from the east thereby prolonging the west of 69° quota. It is reasonable to assume that without a mutual exclusion provision similar behavior will be demonstrated by mid-Atlantic fishermen. Human nature will likely be true to form. Moreover, if good beds of surf clams are found in the New England area, mid-Atlantic vessels may actually shift their efforts to New England and exhaust the quota.

The intent to establish in 1981 a system of individual vessel allocations in the form of stock certificates is evident in the amendment. It is stated that vessels licensed in the New England surf clam fishery pursuant to the proposed separate management scheme would accrue no rights to 1981 vessel allocations in the mid-Atlantic. How will the New England vessels currently licensed to fish in the surf clam fishery be treated? Will they also fail to accrue rights? The Council's intent is not clear. Also, will this public hearing be the last opportunity for New England comment on the stock certificate program? We ask this in response to the statement on page 100 of the Plan Amendment No. 2, "It is recommended that this alternative", (i.e., New England lack of rights to the 1981 vessel allocations in the mid-Atlantic), "be included in the amended FMP for public hearing purposes. In that way, the Council can develop a solution for the New England fishery without additional public hearings".

The Plan Amendment sets to limit dredge size and number to that on board and in use as of January 1, 1980. Is it the Council's judgement that present dredge sizes and number used in the fishery do not present management problems? Is the Council willing to accept the status quo? We were under the impression that the size and number of dredges have escalated over the past year and a half thus increasing effort and negating benefits of the moratorium.

In summary, we appreciate the Mid-Atlantic Council's efforts to accommodate New England interests; however, the 200,000 lbs. of meat quota and possible usurpation of that quota by mid-Atlantic vessels are particularly disturbing. We recommend that you do not establish a surf clam quota for New England waters since it is not necessary and that if you must set a quota, mid-Atlantic vessels should be prevented from decreasing it through real or deceptive catches.

Sincerely,

Philip G. Coates
Philip G. Coates
Director

Department of Environmental Management
DIVISION OF FISH AND WILDLIFE
Washington County Government Center
Tower Hill Road
Wakefield, R. I. 02879

July 23, 1979

"Mr. John Bryson
Executive Director
Mid-Atlantic Fishery Mgt. Council
Federal Bldg., Rm. 2115
North and New Sts.
Dover, Delaware 19901

Dear John:

On behalf of the R. I. Division of Fish and Wildlife, I would like to thank you, your staff, and the members of the Mid-Atlantic Council for conducting two recent surf clam hearings in the New England area. I believe that the attending Mid-Atlantic Council representatives gained valuable first hand experience into the objections being voiced in the New England area, over the current and proposed regulations. Although a member of my staff attended the Mt. Judith meeting and gave testimony on the major concerns of the R. I. segment of the industry, I would also like to comment on the proposal. The major concerns of the R. I. surf clam-ocean quahog industry relate to the moratorium, the separation line, the proposed quota of 200,000 lbs. of surf clam meats, and the proposed effort restrictions.

1. Moratorium: The R. I. Division of Fish and Wildlife and members of the R. I. clam industry continue to oppose any form of surf clam-ocean quahog license limit in the N. E. area. The existing license moratorium was implemented in order to freeze effort in the clam fishery. The conclusion one can draw about the existing moratorium is that it has been a dismal failure in halting the increase in effort in the fishery. The existing moratorium froze licenses while harvesting capacity in the fishery was allowed to expand, i.e. increases in dredge size and number, etc.

The proposed amendment attempts to eliminate the moratorium in the N. E. area; in fact, it does not. The quota on surf clams of 200,000 lbs., and the gear and effort restriction which become effective when the N. E. industry reaches the 100,000 lbs. level, effectively constitute a de facto closure. Industry expansion under this type of regulatory format would be quite impossible.

2. Separation Line: The R. I. Division of Fish and Wildlife endorses the concept of a line of demarcation, north and east of which the industry would be allowed to operate under a non-restrictive vessel entry and catch quota basis. The proposed lines of 41° latitude, 71° longitude, and the demarcation line between the Councils are totally unacceptable. The line proposed by the National Marine Fisheries Service is also unacceptable, but preferable compared to the other three alternatives. As a preferred option, I would propose the line of 71°50' or 72° longitude. Although R. I. ocean quahog vessels presently utilize the area which is south and west of 71°50', the line would more closely parallel existing industry harvesting practices, and therefore be preferable to all of the proposed options.

3. N. E. Alternative - Proposed Quota of 200,000 lbs. of Surf Clam Meats

The proposed quota of 200,000 lbs. constitutes a substantial disincentive for potential expansion of the N. E. surf clam fleet. During 1977, the State of Massachusetts alone landed 286,000 lbs. of surf clams from the FCZ. The present allocation would constitute a reduced quota based upon the historical performance of the industry. In addition, the lack of an adequate survey in the N. E. area focuses attention on the subject of a fair and equitable distribution of the surf clam resource. The quota of 200,000 lbs. is clearly inconsistent with Section 391 (a) (4) of the FCMA, which states that:

"Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U. S. fishermen, such allocation shall be:

- A. fair and equitable to all U. S. fishermen. . . and
- B. reasonable calculated to promote conservation
- C. carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges."

The allocation of 200,000 lbs. equals two-thirds of one percent of the allocation to the Mid-Atlantic area. Since the allocation was not derived from survey data, it is in no way fair or equitable, and it clearly allocates an excessive share to the Mid-Atlantic area.

Effort Restriction:

The question of imposing effort restrictions, i.e. a freeze on dredge size, adoption of a minimum size, limits on the days fished, etc., establishes a substantial disincentive for expansion of the surf clam fleet in the N. E. area. Although the plan amendment gives the impression of removing the restrictions in the N. E. area, in actuality, it does not. When the N. E. industry reaches the 100,000 landing level, all of the effort restrictions become effective. Implementation of the amendment will unnecessarily regulate and restrict the N. E. industry for a period in excess of one half of each year.

In summary, the R. I. Division of Fish and Wildlife proposes that the area north 72° longitude be managed on a free entry-no quota management basis. If the surf clam-ocean quahog fishery develops to a substantial degree, then it obviously will be necessary to impose catch and/or effort restrictions, but not until there is substantial development above present levels.

Sincerely,

John H. Cronan
Chief

JHC:ps

SUMMARY - AMENDMENT #2 TO THE SURF CLAM AND OCEAN QUAHOG INDUSTRIES FMP

The original management plan for the surf clam and ocean quahog industries of the northwestern Atlantic Ocean was approved by the Secretary of Commerce in November, 1977, for the period through September, 1979. Amendments #1 to the FMP extended it through December 31, 1979 and revised reporting requirements to bring them in compliance with the amended FCMA. This Amendment #2 would extend the FMP through the end of calendar year 1980.

The objectives of the FMP remain unchanged as a result of Amendment #2 and are to:

1. Rebuild the declining surf clam populations to allow eventual harvesting approaching the 50 million pound level, which is the present best estimate of the maximum sustainable yield (MSY), based on the average yearly catch from 1960 to 1976.
2. Minimize short-term economic dislocations to the extent possible consistent with objective 1.
3. Prevent the harvest of ocean quahog from exceeding maximum sustainable yield and direct the fishery toward maintaining optimum yield.

The management unit for this FMP remains unchanged and is all surf clams (Spisula solidissima) and all ocean quahogs (Arctica islandica) in the Atlantic FCZ.

The Mid-Atlantic Council recommends that the following measures be adopted to achieve the objectives:

1. The annual surf clam quota of 1.8 million bushels (approximately 30 million pounds of meats) would be continued unchanged as would be the provisions to allocate the quota by quarters and regulate fishing effort by restricting days fished. However, Amendment #2 would revise the quarterly quotas for surf clams to be 400,000 bushels for October through December and January through March, and 500,000 bushels for April through June and July through September. A fishing week of no more than four days, Monday through Thursday, will be continued. To help spread the quarterly catch evenly throughout the entire quarter, each vessel will be restricted to 24 hours of fishing per week at the beginning of each quarter. If the Regional Director of the NMFS determines that the quarterly quota will not be harvested, the weekly hours of fishing may be increased. The Regional Director may prohibit fishing if it is likely that the quarterly quota will be exceeded. Vessels would be required to start and stop fishing at uniform hours. A make-up day for bad weather would be permitted on the fishing day following the fishing day during which the bad weather condition existed. The make-up day provision would be in effect only during the months of December, January, February, and March.

2. Amendment #2 would continue the provisions of the original FMP regarding ocean quahogs except that the annual quota for ocean quahogs would be increased to 4.0 million bushels (approximately 40 million pounds of meats).

3. The prohibition on the entry of additional vessels into the surf clam fishery would be continued by Amendment #2. The moratorium would not preclude replacement of vessels involuntarily leaving the fishery during the time when the moratorium is in effect.

4. The provision to close surf clam beds to fishing wherein over 60% of the clam are under 4 1/2 inches in length and less than 15% are over 5 1/2 inches in length is continued in Amendment #2. It is recommended that special measures be instituted to manage such closed areas when they are reopened to insure that such openings do not lead to premature closures in the fishery and to prevent overfishing of the newly opened beds.

5. Dredge size and number are to be limited by Amendment #2 to such equipment on board and in use on the effective date of Amendment #2. A minimum size limit of 4 1/2 inches would be imposed, at least during 1980. The primary reason for these measures is to take into account the possible impacts of using 190 as a base year for measuring harvesting sector performance upon which to base, at least in part, a possible future direct allocation system for the surf clam fishery. The dredge freeze was recommended by the Council's Surf Clam and Ocean Quahog Advisory Subpanel primarily to minimize changes from historical relative harvesting capacity during the base period. The surf clam size limit was recommended by the Subpanel in order to minimize the harvest of pre-recruit surf clams during the base period when there would be a great incentive to harvest the maximum volume of clams in order to improve harvesting performance. Council may amend the FMP by removing the moratorium on the entry of new vessels into the surf clam fishery and replacing it with some type of vessel allocation system beginning with calendar year 1981. In the event that such a system is instituted, and, to the extent that an allocation formula could be based on performance, 1980 would be the base period for at least a portion of such calculations.

6. The licensing provisions of the original FMP are continued in Amendment #2. The reporting requirements are continued with minor revisions.

In addition to the management measures summarized above that are related to extending the FMP through 1980, the Council has been considering the recommendation of the New England Fishery Management Council that a special regime be established for the surf clam fishery in New England. There has been much discussion since the original FMP was developed relative to the New England surf clam fishery, whether it differed enough from the Mid-Atlantic fishery to warrant a separate regime, and if so, what form that separate regime should take. After much consideration, the Mid-Atlantic Council has developed an alternative for the management of the surf clam fishery in New England. The alternative provides for the establishment of a separate management regime in New England, that is, the area north of the dividing line between the Mid-Atlantic and New England Fishery Management Councils. In the northern area the moratorium on entry of vessels into the surf clam fishery and the effort and gear restrictions would not be in effect. A quota of 200,000 pounds of surf clams would be set for that area. The New England quota would be in addition to the quota for approximately 30 million pounds of surf clams set in the amended FMP in the Mid-Atlantic. When half of that quota would be caught, the effort restrictions operating in the Mid-Atlantic area would be imposed. Any harvest of surf clams from the northern area would not be charged against the Mid-Atlantic surf clam quota. Vessels entering the New England fishery under this special provision would not be entitled to fish in the Mid-Atlantic area and would not accrue any rights to a future direct allocation system that might be established. Vessels with permits issued pursuant to the moratorium established by the original Surf Clam and Ocean Quahog Industries FMP would be permitted to fish in the northern area, but their landings would be reported separate from their Mid-Atlantic landings and would not count toward any possible future direct allocation system base calculation. The Mid-Atlantic Council is interested in receiving comments on this alternative during the review process on Amendment #2 so that this issue may be resolved when Amendment #2 has been finalized.

Another combination of management measures has been proposed for consideration during the public review process for this amendment by the Council's Surf Clam and Ocean Quahog Advisory Subpanel. That alternative would extend the FMP to the end of 1981 with annual and quarterly quotas for surf clams and an annual quota for ocean quahogs identical to those in the Council's recommended alternative. Dredge size and number would be limited to that on board and in use as of January 1, 1980. The bad weather make-up day provisions are the same in the Subpanel's alternative as those in the Council's recommended alternative, except that the make-up day would be limited to one twelve hour period per week. The moratorium on entry of vessels into the surf clam fishery would also be extended.

II. SUMMARY

The original management plan for the surf clam and ocean quahog fisheries of the northwestern Atlantic Ocean was approved by the Secretary of Commerce in November, 1977, for the period through September, 1979. Amendment #1 to the FMP extended it through December 31, 1979, and revised reporting requirements to bring them in compliance with the amended FMA. This Amendment #2 would extend the FMP through the end of calendar year 1981.

The objectives of the FMP remain unchanged as a result of Amendment #2 and are to:

1. Rebuild the declining surf clam populations to allow eventual harvesting approaching the 50 million pound level, which is the present best estimate of the maximum sustainable yield (MSY), based on the average yearly catch from 1960 to 1970.
2. Minimize short-term economic dislocations to the extent possible consistent with objective 1.
3. Prevent the harvest of ocean quahog from exceeding maximum sustainable yield and direct the fishery toward maintaining optimum yield.

The management unit for this FMP remains unchanged and is all surf clams (Spisula solidissima) and all ocean quahogs (Arctica islandica) in the Atlantic FCZ.

Based on a review of comments made at the public hearings and letters received during the review period, and on the recommendations of the Council's Surf Clam and Ocean Quahog Advisory Subpanel and Scientific and Statistical Committee, the Council has adopted the following measures for Amendment #2 to the Surf Clam and Ocean Quahog FMP:

1. Extend the FMP through calendar year 1981;
2. Establish two management areas for the surf clam fishery: the New England Area and the Mid-Atlantic Area. The dividing line between the areas would be the established dividing line between the New England and Mid-Atlantic Fishery Management Councils. The dividing line begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18'10.249" latitude and 71°05'28.477" longitude and proceeds S 37°22'32.75" E to the point of intersection with the outward boundary of the FCZ (50 CFR 601.12(a), Federal Register, Vol. 42, No. 137; July 18, 1977, page 36980).
3. The following quantities (in millions of bushels) would apply annually:

	Optimum Yield (OY)	Domestic Annual Harvest (DAH)		Domestic Annual Processing (DAP)		Quota	TAUFF
Surf Clams							
New England	0.025	0.025	0.025	0.025	0.025	0	0
Mid-Atlantic	1.800	1.800	1.800	1.800	1.800	0	0
Ocean Quahogs							
1980	3.500	3.500	3.500	3.500	3.500	0	0
1981	4.000	4.000	4.000	4.000	4.000	0	0

for the Mid-Atlantic Area the surf clam OY, DAH, DAP and quota of 1.8 million bushels (approximately 30 million pounds of meats) are continued unchanged as are the provisions to allocate the quota by quarters and regulate fishing effort by restricting days fished. However, the quarterly quotas for surf clams are revised to be 400,000 bushels for October through December and January through March, and 500,000 bushels for April through June and July through September.

While the DAP is shown separately in the above table for the New England and Mid-Atlantic Areas, the separate management areas do not apply to the processing sector.

4. A fishing week of no more than four days, Monday through Thursday, is continued. To help spread the quarterly catch evenly throughout the entire quarter, each vessel will be restricted to 24 hours of fishing per week at the beginning of each quarter. If the Regional Director of the NMFS determines that the quarterly quota will not be harvested, the weekly hours of fishing may be increased. The Regional Director may prohibit fishing if it is likely that the quarterly quota will be exceeded. Vessels would be required to stop fishing at 5:00 pm with the fishing week changed from 12:01 am Monday - 11:59 pm Thursday to 5:00 pm Sunday - 5:00 pm Thursday. During the months of December, January, February, and March, a take-up day for bad weather would be permitted on the fishing day following the fishing day during which the bad weather condition existed.

In the New England Area, there would be no effort restrictions until half of the 25,000 bushel quota is harvested, at which time the effort restrictions operating in the Mid-Atlantic Area would be imposed.

5. The provisions of the original FMP regarding ocean quahogs are continued unchanged except that the OY, DAH, DAP, and annual quota for ocean quahogs are increased as shown in the above table.

6. The prohibition on the entry of additional vessels into the surf clam fishery is continued in the Mid-Atlantic Area. The moratorium is lifted in the New England Area. Vessels with permits issued pursuant to the moratorium in both New England and the Mid-Atlantic may fish in both areas on both quotas. Vessels entering the fishery in New England that do not meet the moratorium conditions may not fish south of the dividing line. The moratorium does not preclude replacement of vessels involuntarily leaving the fishery during the time when the moratorium is in effect.

7. The provision to close surf clam beds to fishing wherein over 50% of the clams are under 4 1/2 inches in length and less than 1 1/2 inches in length is continued. It is recommended that special measures be instituted to manage such closed areas when they are reopened to insure that such openings do not lead to premature closures in the fishery and to prevent overfishing of the newly opened beds.

8. A surf clam minimum size limit of 4 1/2 inches is imposed.

9. The licensing provisions of the original FMP are continued. The reporting requirements are continued with minor revisions.

to fishermen caused by the 200,000 pound quota and effort restriction. These comments were aired at July 10 and 11 New England hearings.

The final Amendment #2 was published in August of 1979. Plan objectives were the same. Two management areas were established using the dividing line between the New England and Mid-Atlantic Council authority as the separator. The summary of the Amendment is included here.

The major difference between the drafts and the final, as far as New England was concerned, was that the quota was increased to 400,000 pounds of surf clams. The Mid-Atlantic Council did not believe that the 400,000 pound quota of surf clam meats was restrictive on the New England fishery due to the small size of past catches from the New England region. It believed that the quota left much room for expansion. Additionally, it was very concerned over the influence of "New England clams" on market prices and feared that too high a quota would lead to adverse economic impact on Mid-Atlantic, as well as New England, interests. They were also concerned over the need for a foreign allocation since any unharvested New England quota, brought about by setting that quota too high, would indicate excess capacity thus obligating the Secretary of Commerce to make the excess available to foreign fishermen.

The Mid-Atlantic Council appeared to make a sincere attempt to accomodate New England interests under the constraints which it had to work. While the proposed New England quota may not have been great enough to encourage expansion and growth of the New England surf clam industry in the Fishery Conservation Zone, the Mid-Atlantic Council's concerns, legal and otherwise, were appreciated. Lifting of the moratorium was at least a good first step, especially since no one was sure of the fishery's growth potential. However, the Mid-Atlantic Council did feel that if the New England industry could harvest the 400,000 pounds quota, then the New England Council would have had solid grounds on which to base an argument for an increased quota and more offshore survey work by NMFS to better assess the resource and its potential.

At December 1979 Council meetings it was reported that the Mid-Atlantic Council was investigating ways to remove the moratorium from their area as well. They were looking at schemes such as stock certificate programs. Apparently, vessels which formerly sold their surf clams to smaller processors were selling to larger processors because a higher price was offered. Smaller processors were therefore finding it difficult to acquire an adequate supply to meet their needs and wanted to bring in their own boats by removing the moratorium.

The Mid-Atlantic Council developed another amendment to its Surf Clam/Ocean Quahog Plan - Amendment #3 (January 1981) to revise and extend the Plan indefinitely. Proposed objectives were:

- 1) Prevent the exploitation of these resources from exceeding those levels which reduce the probability of successful recruitment to the fisheries.
- 2) Provide the greatest degree of flexibility to all harvesters of these resources consistent with the attainment of the other objectives of this Plan.
- 3) Optimize yield per recruit.
- 4) Increase understanding of the conditions of the stocks and fishery.

The Mid-Atlantic Council decided to propose as its preferred course of action:

- 1) Continue the provision to close areas with large numbers of small surf clams; impose a 5 1/2" surf clam size limit; continue annual and quarterly quotas; and, continue the effort restriction in the existing Plan. The ocean quahog regime would be continued unchanged.
- 2) Revise the fishing week, bad weather make-up day, and effort restrictions.
- 3) Create separate management areas for reopened surf clam areas.
- 4) A proposal to choose between either a) a permit limitation system in the Mid-Atlantic surf clam fishery or b) a ceiling on numbers of surf clam permits. Valid permits in 1981 would be valid in 1982. To retain a permit a vessel must harvest 8,000 bushels of FCZ clams (surf clams or ocean quahogs) annually. The total number of permits may increase or decrease by 5 for every 5 percent increase or decrease in optimum yield. No permit shall be revoked if the vessel caught 8,000 bushels annually.

May hearings were scheduled to discuss these proposed Plan changes.

At May 1981 New England Council meetings the Plan's proposed strategies were discussed. According to one summary of the hearing:

"There were 15-20 people attending the hearing. There was good representation from both Massachusetts and Rhode Island from both the harvesting and processing sectors. My general observation is that most of the comments received were negative concerning most of the proposals. Negative comments were directed at the minimum size of 5 1/2" applying to both New England and Mid-Atlantic areas.

The proposal to create a 25,000 bushels quota for New England waters is opposed. There has never been an adequate survey of the New England waters. Since there has not been any survey work done, a number of people questioned why we had a quota at all.

The major objection related to the limited entry provisions. It should be eliminated. Those in attendance were against both licensing proposals."

According to another summary:

"I don't think anybody has a lot of scientific data on ocean quahogs. We took the position that we would be very supportive of time/area closures for as long a period as is necessary to protect the resource. We see no other reason at the moment for the kind of complicated mess they are in down there. We think these are purely economic measures, and they are discriminatory. The Plan sets some precedents which we feel are undesirable. I would echo the plea that this Council take some action and say it is not in favor of the Plan as it stands."

The Council initially decided to communicate its opposition to several of the proposals contained in the proposed Surf Clam/Ocean Quahog FMP Amendment. The specific items of concern related to regulations affecting the New England area and were as follows:

Surf Clams:

1. 5 1/2" minimum size
2. 25,000 bushel fixed quota
3. Imposition of effort restrictions when 1/2 of the quota has been harvested
4. Licensing provision 5a and 5b in the current amendment

Ocean Quahogs:

1. inclusion of the New England area in the 4-6 mil. bu. quota
2. possible effort restrictions in New England when 1/2 of the quota has been reached

In addition, it shall be the position of the Council to respectfully request that the Mid-Atlantic Council initiate the following actions:

Surf Clams: The New England area should continue as a separate management unit without any other restriction. New England vessel licenses subject to the moratorium should be able to retain these fishing privileges in the Mid-Atlantic area without the requirement to land minimum quantities. In addition, the Council endorses the proposed survey in the New England area.

Ocean Quahogs: A separate management area should be established for ocean quahogs in the New England area similar to that established for surf clams. There should be no quota or other effort restrictions imposed on the New England ocean quahog fishery.

The New England Council respectfully requests that the Mid-Atlantic Council appoint two New England fishing industry representatives to the surf clam and ocean quahog advisory subpanel.

However, at the urging of the Regional Director, the Council agreed to take an alternative action. The Regional Director had stated:

"I have some personal concerns with the motion the way it is. What I would suggest is that we defeat or withdraw the motion and that the Chair authorize our Surf Clam Committee to meet, sit down and work with the Mid-Atlantic Council staff and put together comments for their consideration. My concern is that, as I see the motion, I don't think it will have a significant impact on the Mid-Atlantic Council. These people can come back and let us know the results of the meeting and then if our efforts did not work, we can send a letter. I would like to see the Councils work together to build a compatible plan. I would recommend defeating the motion and taking that course of action."

Results of the Surf Clam Committee's meeting with the Mid-Atlantic's Surf Clam Committee were related at the June

1981 meetings. Apparently the Mid-Atlantic Surf Clam Committee was receptive to many of the New England Council's suggestions. One Council member, Jacob Dykstra, stated:

"I would like to commend the Mid-Atlantic for apparently being responsive to the expressed desire of this Council. On the other hand, I would like the record to show that as far as I am concerned, I don't think there is any concrete biological need for limited entry in this fishery. It seems to me this limited entry scheme is discriminatory. Apparently there are a lot of surf clams available. I would vigorously support closures that would protect small clams or for any biological reason. But, I still very much fail to see any biological reason for the limited entry, and I think it is discriminatory."

The Amendment #3 system to limit permits in the Mid-Atlantic area surf clam fishery as a replacement to the moratorium was not accepted by NOAA. In lieu of this limited entry scheme the Department of Commerce extended the moratorium on entry of vessels into the Mid-Atlantic area. The limited entry scheme had evolved to allow one new permit for every four permits expiring.

The eventual provisions of Amendment #3, which were still in effect as of the end of 1982, are provided in a Mid-Atlantic Council summary of its Surf Clam/Ocean Quahog Plan.

SURF CLAM AND OCEAN QUAHOG PLAN

The original Plan was approved by the Secretary of Commerce in November, 1977, for the period through September 1979. Amendment #1 extended it through 31 December 1979, and revised reporting requirements to bring them in compliance with the amended MFCMA. Amendment #2 extended it through the end of calendar year 1981. Amendment #3 extended the Plan indefinitely and revised it.

The objectives of the Plan are:

1. Rebuild the surf clam populations to allow eventual harvest approaching the 50 million pound level, which is the estimate of maximum sustainable yield over the range of the resource, based on the average yearly catch from 1960 to 1976.
2. Minimize economic dislocation to the extent possible consistent with objective 1 and encourage efficiency in the fishery.
3. Prevent the harvest of ocean quahogs from exceeding maximum sustainable yield and direct the fishery toward achieving Optimum Yield.
4. Provide the greatest degrees of freedom and flexibility to all harvesters of these resources consistent with the attainment of the other objectives of this Plan.
5. Optimize yield per recruit.
6. Increase understanding of the conditions of the stocks and fishery.

The management unit is all surf clams and all ocean quahogs in the Atlantic FCZ.

There is a 5.5" minimum size limit for surf clams in the Mid-Atlantic Area.

Quotas are set annually through a consultative process. For surf clams, the values are between 1.8 and 2.9 million bushels (approximately 30 - 50 million pounds of meats) for the Mid-Atlantic Area and between 25,000 and 100,000 bushels (approximately 425,000 - 1.7 million pounds of meats) in the New England Area. For ocean quahogs, the values are between 4.0 and 6.0 million bushels (40 - 60 million pounds of meats).

In the Mid-Atlantic Area, surf clam quarterly quotas are equal. The bad weather make-up day is in effect during November through April. The fishing week begins at 6:00 am Sunday and ends at 6:00 pm Thursday, but may begin at 12:00 am Sunday under certain conditions. Effort restrictions are set by the Regional Director so as to insure fishing throughout a quarter with the minimum chance of closure while also minimizing the effort changes during the quarter.

In the New England Area, when 50% of the annual surf clam quota has been caught, the Regional Director may reduce the number of days per week, or establish authorized periods, during which surf clam fishing is permitted.

When 50% of the ocean quahog quota has been caught, the Regional Director may reduce the number of days during which fishing for ocean quahogs is allowed.

Areas closed for containing concentrations of small surf clams, when reopened, have allowable catches separate from the overall quota and appropriate effort restrictions will be imposed in such areas to insure that the harvest of the allowable catch extends throughout a predetermined time period. Fishermen are required to advise NMFS if they want to fish in a reopened area.

Amendment #3, as adopted by the Council, included a system to limit permits in the Mid-Atlantic area surf clam fishery as a replacement to the moratorium on entry of new vessels into that fishery. In lieu of implementing that alternative, the Commerce Department extended the moratorium on entry of vessels into the Mid-Atlantic Area surf clam fishery. The Council has begun consideration of ways to resolve this problem.