

Dated: August 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–18172 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220818–0171]

RIN 0648–B118

Fisheries of the Northeastern United States; Amendment 20 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 20 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. The Mid-Atlantic Fishery Management Council developed this action to limit the amount of surfclam or ocean quahog individual transferable quota share or annual allocation in the form of cage tags that an individual or their family members could hold. These changes are intended to ensure the management plan is consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act, and to improve the management of these fisheries.

DATES: Comments must be received by September 23, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0112, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2020–0112 in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Surfclam/Ocean Quahog Excessive Shares Amendment.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Copies of Amendment 20, including the draft Environmental Assessment (EA), are available on request from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the internet at <https://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION:

Background

This action proposes regulations to implement Amendment 20, also known as the Excessive Shares Amendment, to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council developed this amendment to establish limits to the amount of individual transferable quota (ITQ) quota share or cage tags such that any particular individual, corporation, or other entity can not acquire an excessive share of such privileges, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make administrative changes to improve the efficiency of the FMP.

The Magnuson-Stevens Act requires that any FMP or implementing regulation be consistent with ten national standards for fishery conservation and management. National Standard 4 stipulates that, “If it becomes necessary to allocate or assign fishing privileges among various United

States fishermen, such allocation shall be . . . carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.” When the Council adopted Amendment 8 to the Atlantic Surfclam and Ocean Quahog FMP, which created the individual transferable quota (ITQ) system for managing the fishery, it relied on Federal antitrust laws to prevent entities from acquiring excessive shares. In 2002, the Government Accountability Office (GAO) released a report titled, *Better Information Could Improve Program Management* (GAO–03–159, December 11, 2002). One of the recommendations from that report was for the Council to define what constitutes an excessive share for this fishery. By 2007, the Council had begun development of an FMP amendment to address this recommendation as well as implement a cost recovery program and accountability measure requirements that were introduced by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109–479). The accountability measure provisions were subsequently removed and were implemented as part of the Council’s Annual Catch Limit and Accountability Measure Omnibus Amendment (76 FR 60605, September 29, 2011).

As part of the development of this action, an economic consulting company, Compass Lexecon, was contracted to evaluate the fishery and to provide advice on how to set an excessive share limit on ITQ systems that could protect against market power without constraining the workings of competition. The 2011 Compass Lexecon report and associated Center for Independent Experts review indicated that, in order to implement an excessive shares definition, managers would need more reliable information regarding quota share ownership, and would need to better monitor control of the quota by tracking transfers and long-term leases of cage tags in the surfclam and ocean quahog fisheries.

In 2012, the Council voted to split the FMP amendment that was under development. The cost recovery provisions became Amendment 17 (81 FR 38969, June 15, 2016). The Council requested that NMFS create a data collection program as authorized under Section 402A of the Magnuson-Stevens Act, and the Council subsequently established a new fishery management action team (FMAT) to develop recommendations for the program. The new program became effective on January 1, 2016 (80 FR 42747, July 20, 2015), and collected more detailed

information about the individual owners of companies holding quota share and annual cage tags than was previously available.

In 2017, the Council reformed the FMAT to continue development of the Excessive Shares Amendment. The FMAT developed a wide range of options for defining an excessive share in this fishery and for potential management measures to prevent anyone from acquiring an excessive share. The full range of alternatives considered by the Council is described in the amendment document and not repeated here.

In December 2019, the Council selected preferred alternatives, and approved the Excessive Shares Amendment for submission to NMFS. However, additional work was needed to prepare the environmental analysis of the action and for NMFS to develop the systems and protocols that would be needed to effectively monitor and enforce the excessive share caps approved by the Council.

Excessive Share Caps

Under the Council's preferred alternative, separate caps would be established for quota share and for annual cage tags for both the surfclam and ocean quahog ITQ programs. The amount of quota share that an individual or entity could have ownership in would be capped at 35 percent of the surfclam quota and 40 percent of the ocean quahog quota. A higher cap would be established for cage tags in recognition that additional temporary consolidation through leasing or other transactions may be warranted within a fishing year to meet market demand because of the limited number of processors available. There is a limited market for fresh surfclams or ocean quahogs. The fisheries largely rely on a small number of processing plants to convert these species into final products or ingredients for other food companies. These plants operate by leasing cage tags from multiple quota shareholders and then providing those tags to harvesting vessels that deliver clams, as needed by the plants. The amount of annual cage tags that an individual or entity could have in a given year would be capped at 65 percent for surfclam and 70 percent for ocean quahog.

No person or entity currently exceeds the proposed quota share cap, nor has any entity exceeded the proposed cap on annual cage tags in recent years. The analysis conducted by Compass Lexecon did not support a conclusion that market power was being exercised through withholding of quota in this

fishery. The Council's preferred cap limits were chosen to ensure that potential future consolidation does not reach the level of an excessive share of this fishery, and were not intended to restrict current quota share holdings.

Once implemented, NMFS would determine where each individual or entity that holds quota share is relative to the cap. This determination is based on the allocation held in whole or in part by that individual and the allocation held in whole or in part by their immediate family members. When an ITQ permit holder submits an application to transfer quota share and/or cage tags, NMFS would review the total allocation held by the ITQ permit holder and their immediate family members to determine whether the transfer would exceed the quota share cap or cage tag cap. If the ITQ permit is held by a business or partnership, the allocation held by the owners of that business (and their family members, if applicable) would be used in that determination.

An individual's immediate family members, for the purposes of monitoring these caps would consist of the individual's: Spouse and the spouse's parents; children and their spouses; parents and their spouses; siblings and their spouses; and grandparents and grandchildren and their spouses.

The excessive share caps would be monitored using a calculation of potential control. A person or entity would be considered to have potential control of any allocation held by themselves, their family members, or any business they have an ownership interest in. Here is a set of example calculations of potential control.

Example 1, Potential control of allocation by an individual or a company: Sue holds 2 percent of the Atlantic surfclam quota in her own name. She is also a part owner, along with Mary, of ABC Clams, a business that holds 5 percent of the quota. Mary's brother has 4 percent of the quota in his own name. For the purpose of monitoring the quota share cap:

- Sue has potential control of 7 percent (the 2 percent of the quota in her name plus the 5 percent of the quota held by the company she part owns);
- Mary has potential control of 9 percent (the 5 percent of the quota held by the company she part owns plus the 4 percent of the quota held by her brother); and
- ABC Clams, Inc., has potential control of 11 percent of the quota (the 5 percent of the quota it holds directly plus the quota controlled by its owners, which in this case is the 2 percent of the

quota Sue holds separately and the 4 percent of the quota Mary's brother holds).

Example 2, Potential control of allocation by an individual or a company and transfers of quota allocation: Sue's son, John, wishes to get into the business. He submits an application to transfer 3 percent of the quota from another quota shareholder. When we process his transfer application, we see that, as a result of the transfer, John would have potential control of 10 percent (his new 3 percent plus his mother's 7 percent of the quota allocation, which includes her own quota and her ownership in ABC Clams); Sue would also have potential control of 10 percent; ABC Clams, Inc., would have potential control of 14 percent, and Mary would still be connected to the same 9 percent. The transfer would be approved because no entity would be over the proposed 35-percent cap.

Example 3, Potential control of allocation by an individual or a company and the total, cumulative cap on transfers of quota allocation: Before the start of each fishing year, the total quota is converted from bushels into tags for the industry-standard 32-bushel (1,700 L) cages. Each quota shareholder is allocated cage tags based on the amount of quota share they hold. For simplicity, this example will assume the total quota equates to 1,000 tags, so shareholders receive 10 tags for each 1 percent of the quota they hold. As a result, and continuing with the examples described above, Sue receives 20 tags, John gets 30 tags, and ABC Clams gets 50 tags. In addition, based on the proposed surfclam cage tag cap of 65 percent, no entity could hold or potentially control more than 650 tags over the course of the fishing year. The rules of potential control are the same for tags as they are for quota share. Therefore, while Sue received 20 tags to her personal allocation, she is still considered to have potential control of the 30 tags that John received and the 50 tags that ABC Clams received, for a total of 100 tags toward the 650-tag cap. Likewise, John will start off the year at 100 tags, ABC Clams at 140 tags, and Mary at 90 tags. If John and Sue both transfer their tags to ABC Clams, the transfer would make no change to the cap total for John, Sue, or ABC Clams (each of those entities were considered to have potential control of those tags through ownership and family connections). However, the additional tags would now count toward Mary's potential control, bringing her total to 140 (50 tags initially held by ABC Clams, 50 tags transferred in from Sue

and John, plus the 40 tags initially allocated to her brother).

Using tags to land surfclams does not reduce the calculation of potential control of cage tags, nor does transferring tags to another allocation holder. Continuing this example, ABC Clams uses all 100 tags it physically holds to land surfclams for a processor. The company agrees to acquire, through a temporary transfer, an additional 200 tags from another source in order to continue fishing. Because the potential control of allocation is considered cumulative in any given fishing year, this results in ABC Clams having potential control of 340 tags, even though it only has 200 tags physically in its possession. The tag transfer would also result in a corresponding increase to the potential control calculations for Sue (300 tags), John (300 tags), and Mary (340 tags). If ABC Clams decides to transfer 50 tags to another company, the transfer would not reduce ABC Clams calculation of potential control because ABC Clams controlled those tags at some point during the fishing year. If, later in the year, ABC Clams acquires another 50 tags to replace those it transferred earlier, its potential control would increase to 390 tags. In this way, acquiring tags during the fishing year would increase the calculated potential control, but using tags to land clams or transferring tags to others would not reduce the level of potential control.

If an entity inadvertently exceeds a cap, they would be required to take action to correct the situation. Such an overage could occur because of a change in company ownership that does not require a transfer application, for example. There may be a number of ways an entity could address such an overage and NMFS would not specify how the overage is to be corrected.

The Magnuson-Stevens Act specifies that any information submitted to the Secretary by any person in compliance with the requirements of the Act is confidential unless it falls under one of the listed exceptions. One of these exceptions is for information that is required to be submitted to the Secretary for any determination under a limited access program. If these regulations are finalized as proposed, the ownership information used by NMFS to monitor and enforce these caps would likely meet this exception and would no longer be subject to the Act's confidentiality requirements. This would include the identities of individuals who own businesses that hold quota share and annual cage tags as well as the family relationships that are used to link those individuals.

The information collection program implemented in 2016 included a wide range of information to ensure the Council had the data it needed to design and analyze a range of alternative management measures. The monitoring and enforcement of the caps being proposed do not require continued collection of some data elements, which would no longer be collected. The ITQ Ownership form would be modified to remove the collection of the names of corporate officers. The ITQ transfer form would be modified to remove most of the questions under "additional transaction details" except for total price. The questions being removed include broker fees and whether the transfer is part of a long-term contract.

Multi-Year Specifications

The FMP currently limits multi-year specifications to a maximum duration of three years. The proposed change would allow the Council to develop specifications for the number of years needed to align with the stock assessment schedule approved by the Northeast Region Coordinating Council (NRCC). The NRCC is comprised of representatives from the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, the Atlantic States Marine Fisheries Commission, the NMFS Greater Atlantic Regional Fisheries Office, and the Northeast Fishery Science Center. One of its roles is to develop a schedule for fishery stock assessments that balances the needs of the numerous fisheries in the region with the available resources. The current schedule calls for an updated stock assessment every four years for surfclam and every six years for ocean quahog. These assessment intervals are the result of recent improvements to the methods used to survey these wild populations. Changing the duration of specifications to match the assessments will allow the Council, Council staff, and NMFS staff to avoid spending time developing new specifications packages when no new information on the health of the stocks are available. The Council and its Scientific and Statistical Committee will continue the current practice of reviewing the specifications each year, and making mid-cycle adjustments if conditions warrant.

Pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed that this proposed rule is necessary and appropriate for the purpose of implementing Amendment 20.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with Amendment 20, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

A complete description of the measures, why they are being considered, and the legal basis for proposing and implementing these measures for the surfclam and ocean quahog fisheries are contained above in the preamble to this proposed rule.

The measures proposed by this action apply to surfclam and ocean quahog allocation owners. These are the individuals or entities that received initial individual transferable quota (ITQ) allocations (*i.e.*, owners of record) at the beginning of each fishing year. There were 64 allocation owners of record for surfclam and 33 for ocean quahog in 2019.

For Regulatory Flexibility Act purposes, NMFS has established a size standard for small businesses, including their affiliated operations, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as small if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11.0 million for all its affiliated operations worldwide. For other types of businesses, the SBA size standards for the relevant NAICS codes were used to categorize businesses by industry description. Of the 64 initial surfclam allocation owners of record for 2019, 19 were categorized as "Commercial Fishing," with 100 percent of them classified as small entities (under \$11 million in revenues). Of the nine allocation owners that were categorized as "Fish and Seafood Merchant Wholesalers," one was classified as a small entity (under 100 employees) (11

percent) and eight were classified as large entities (89 percent). Eight allocation owners were categorized as "Commercial Banking," one of which was classified as a small entity (under \$550 million in assets) (12 percent), and seven of which were classified as large entities (88 percent). Six allocations were categorized as "Credit Unions," with 100 percent of them classified as large entities (over \$550 million in assets). There were also five allocations categorized as "Sector 92" (Public Administration sector); therefore, small business size standards are not applicable for these five allocation owners. Lastly, the SBA classification for the remaining 17 surfclam allocation owners was unknown due to lack of information.

Of the 33 initial ocean quahog allocation owners of record for 2019, 14 were categorized as "Commercial Fishing," with 100 percent of them classified as small entities. Of the six allocation owners that were categorized as "Fish and Seafood Merchant Wholesalers," two were classified as small entities (33 percent) and four were classified as large entities (67 percent). One allocation owner was categorized as "Commercial Banking" and one was categorized as "Credit Unions" with 100 percent of them classified as large entities. The SBA classification for the remaining allocations owners is unknown.

The proposed measures are administrative in nature and are not expected to have impacts on the prosecution of the surfclam and ocean quahog fisheries, including landings levels (no changes in surfclam or ocean quahog ex-vessel revenues are expected), fishery distribution, or fishing methods and practices. The proposed action is not expected to result in changes to the manner in which the surfclam and ocean quahog fisheries are prosecuted, or the manner in which the industry operates. An analysis of the operation of the fishery in 2017 shows that if the proposed caps had been in place, all entities would have fallen below the proposed cap levels. As such, no entity would have been constrained by those cap levels, and the caps would help prevent future excessive consolidation of the fishery. The proposed change to the maximum duration of multi-year specifications is administrative and would not affect how the fishery currently operates.

The proposed actions would have no impact on the way the fishery operates, and, therefore, is not expected to disproportionately affect small entities. Nor are the proposed actions expected to have a significant economic impact

on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the collection of information 0648–0240 by removing the section of the ITQ Ownership form that requires identification of corporate officers and removing some of the "additional transaction details" questions from the ITQ transfer form. The Council chose not to use this information to define or monitor the excessive share caps and collecting the information would no longer be necessary. Removing these questions is not anticipated to change to the number of respondents or responses and would not have a measurable reduction in burden hours or costs. An extension of the collection is also requested through this action. Public reporting burden for the ITQ ownership form is estimated to be one hour to complete for new entrants and five minutes to review a pre-filled form for renewing entities. The ITQ transfer form is estimated to take five minutes to complete. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at www.reginfo.gov/public/do/PRAMain.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 18, 2022.

Samuel D. Rauch, III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.14, add paragraph (j)(3)(viii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(j) * * *

(3) * * *

(viii) Take action to circumvent an ITQ quota share cap or cage tag cap specified in 648.74(a)(2) or fail to take corrective action if such cap is exceeded inadvertently.

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■ 3. In § 648.72;

■ a. Revise paragraph (a) introductory text,

■ b. Revise paragraph (a)(1) introductory text, and;

■ c. Revise paragraph (b).

The revisions to read as follows:

§ 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas.* The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified by the Regional Administrator for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section.

(1) *Quota reports.* On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for

public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

* * * * *

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a multi-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the MAFMC's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current multi-year period. Such modification shall be in effect for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a multi-year period.

* * * * *

■ 4. In § 648.74, revise paragraphs (a)(2) and (b)(3) to read as follows:

§ 648.74 Individual Transferable Quota (ITQ) Program.

(a) * * *

(2) *ITQ ownership caps.* (i) *Quota share.* A business or individual is not eligible to be issued an ITQ permit and is not eligible to acquire additional quota share, if, as a result of the issuance of the permit or quota share transfer, the business or individual, or any other person who is a shareholder or partner, or their immediate family member, would individually or

collectively have an ownership interest in more than 35 percent of the total surfclam quota or 40 percent of the total ocean quahog quota.

(ii) *Cage tags.* A business or individual is not eligible to be issued an ITQ permit and is not eligible to acquire additional cage tags, if, as a result of the issuance of the permit or cage tag transfer, the business or individual, or any other person who is a shareholder or partner, or their immediate family member, would individually or collectively have an ownership interest in more than 65 percent of the total surfclam cage tags issued that year or 70 percent of the total ocean quahog cage tags issued that year.

(iii) *Enforcement.* The following conditions apply for the purposes of monitoring and enforcing these caps.

(A) Any partial or shared ownership is counted as full ownership by each party for the purpose of monitoring these caps. For example, if two people share ownership of a business with quota share, the full amount of quota share held by the business counts toward the cap for both owners.

(B) Having an ownership interest includes, but is not limited to, persons who are shareholders in a corporation that holds an ITQ permit, who are partners (general or limited) to an ITQ permit holder, who are immediate family members of an ITQ permit holder, or who, in any way, partly own an entity that holds an ITQ permit.

(C) Immediate family members include individuals connected by the following relationships:

- (1) Spouse, and parents thereof;
- (2) Children, and spouses thereof;
- (3) Parents, and spouses thereof;
- (4) Siblings, and spouses thereof; and
- (5) Grandparents and grandchildren, and spouses thereof.

(D) The quota share and cage tag caps do not apply to a bank or other lender that holds ITQ quota share as collateral on a loan as described in paragraph (a)(1)(i)(C) of this section. The quota share held as collateral and the associated cage tags will be treated as if it is held by the borrower.

(E) Compliance with these ownership caps is based on the total amount of

quota share or cage tags controlled throughout a fishing year. In this instance, control means the cumulative total amount of quota share or cage tags, including the amount held by the ITQ permit at the start of the fishing year plus any quota share or cage tags acquired by the ITQ permit throughout the fishing year. This measure of control during the fishing year is increased by acquiring quota share or cage tags from other ITQ permits, but is not reduced by any quota share or cage tags that are transferred to another ITQ permit.

(iv) *Review.* The MAFMC shall review these ITQ ownership cap measures at least every 10 years, or sooner as needed. Such a review should include an evaluation of the effects and effectiveness of the caps in the fishery and whether the cap levels remain appropriate or should be adjusted.

(b) * * *

(3) *Denial of ITQ transfer application.* The Regional Administrator may reject an application to transfer surfclam or ocean quahog ITQ quota share or cage tags for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid surfclam or ocean quahog ITQ permit for the appropriate species; the transfer is not allowed under paragraph (a)(1)(ii)(C)(3) of this section; the transferor's or transferee's surfclam or ocean quahog ITQ permit has been sanctioned pursuant to an enforcement proceeding under 15 CFR part 904; the transfer would result in exceeding an ownership cap under paragraph (a)(2) of this section; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer ITQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

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[FR Doc. 2022-18201 Filed 8-23-22; 8:45 am]

BILLING CODE 3510-22-P