

**SUPPORTING STATEMENT
SURF CLAM/OCEAN QUAHOG ITQ ADMINISTRATION
OMB CONTROL NO. 0648-0240**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is requesting a revision of OMB Control No. 0648-0240, to continue management of the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) developed under the authority of the [Magnuson-Stevens Fishery Conservation and Management Act](#) (16 U.S.C. 1801 et seq, Section 303). This revision would enable NMFS to collect information required from an amendment to the regulations that reopened a portion of the Georges Bank (GB) Closed Area, per RIN 0648-BC21.

Individual transferable quota

Amendment 8 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan became effective September 30, 1990. The amendment provided for individual transferable quotas (ITQs) by species (surfclam or ocean quahog) for individuals who were qualified to receive an ITQ for either or both species. ITQs were issued in September 1990 to individual owners, based on their percentage share of the annual allowed quota for harvest.

Allocations are expressed in terms of bushels, but tracked and transferred in terms of the cages in which harvested product is landed and shipped (a cage contains 32 bushels of product). To facilitate enforcement and tracking, sequentially numbered tags are issued to each owner on an annual basis and all cages of product must be tagged, with tag use reported by both the harvesting vessel and the purchasing dealer. Each allocation owner is issued an allocation permit which specifies the amount of their allocation and the tag numbers they are required to use during the harvest of their allocation. Individual allocations are transferable per regulations found at 50 CFR 648.74(b). Owners may transfer their allocation on a permanent basis or may transfer tags to other vessel owners to use on a temporary (annual) basis. This transferability means that the allocation ownership frequently changes.

The ITQ Allocation Transfer Form is required by NMFS to process and register ITQ transactions. Information required on the transfer form includes allocation owner name, allocation number (assigned by NMFS for internal tracking), and the numbers of tags associated with the transfer. Once processed, new allocation permits are issued and all NMFS databases are updated.

Shucking clams at sea

Because of potential difficulties in disposing of clam shells on shore, Amendment 8 allowed for the Regional Administrator to approve requests to shuck product at sea. However, because of the difficulties involved in converting the volume of shucked clam meats to bushels, the regulations allow shucking at sea only if the vessel carries a NMFS-approved observer. The observer is necessary to certify the amount, in bushels, of unshucked product that the vessel has processed at sea. The regulations authorizing this collection are found at 50 CFR 648.75.

This information collection includes the form to request the transfer of ITQ allocation or cage tags and the application to request authorization to shuck product at sea. The latter collection includes the cost of carrying a NMFS-approved observer if the application is accepted. These two information collections are necessary to the administration and the monitoring of quota for the Atlantic surfclam and ocean quahog ITQ programs.

Reopened Portion of the GB Closed Area

The GB Closed Area has been closed to the harvest of surfclams and ocean quahogs since 1990 due to red tide blooms that cause paralytic shellfish poisoning (PSP). The closure was implemented based on advice from the U.S. Food and Drug Administration (FDA), after samples tested positive for toxins that cause PSP. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death in humans.

Due to inadequate testing or monitoring of this area for the presence of PSP-causing toxins, the closure was made permanent in 1999. NMFS has issued exempted fishing permits (EFPs) since 2008 to surfclam and ocean quahog vessels to conduct research in the closure area. Testing of clams on GB by the FDA in cooperation with NMFS and the fishing industry under the EFPs demonstrate that PSP toxin levels have been well below the regulatory limit established for public health safety. The FDA, the industry, and NMFS also developed a Protocol for Onboard Screening and Dockside Testing in Molluscan Shellfish that is designed to test and verify that clams harvested from the GB continue to be safe. The protocol was formally adopted into the National Shellfish Sanitation Program (NSSP) at the October 2011 Interstate Shellfish Sanitation Conference (ISSC).

This action will reopen a portion of the existing GB Closed Area for the harvest of surfclams and ocean quahogs at the request of the Mid-Atlantic Fishery Management Council (MAFMC) and the industry. The reopening is based upon the recent adoption of the protocol and the regulatory authority of the NMFS Northeast Regional Office Regional Administrator to impose harvest restrictions when considering reopening PSP closures. NMFS published a similar proposal to open a portion of the GB Closed Area in the Federal Register on June 30, 2010 (75 FR 37745); this rule was later withdrawn due to comments in opposition of opening the GB Closed Area without a testing protocol in place. Now that the protocol has been formally adopted, NMFS is reopening a portion of the GB Closed Area with the requirement that the protocol be used on all trips into the area. The protocol is necessary to ensure shellfish harvested are safe for human consumption.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

ITQ transfer form

The information on the ITQ transfer form is used by NMFS to maintain a proper accounting of an individual or corporation's quota share. Allocation permits, which are mailed to the allocation holder after each transaction, serve as receipts showing the allocation holder's current account balance. The allocation permits are used by NMFS Office of Law Enforcement to verify that individual harvesters are authorized to use the tags they possess, and to ensure that individual allocations are not exceeded since overfishing of individual allocations would lead to overfishing of the overall species quota. Specific questions on the form include the type of transfer requested (permanent or temporary), the name and ITQ allocation numbers of the transferor and the transferee, and the cage tags requested to be transferred. These data fields are necessary in order to identify the companies or individuals and ITQ tags involved in the transaction.

If an entity is a new entrant to the fishery, an ITQ allocation number needs to be assigned. This is a one-time requirement per entity. Section 4 of the application requests standard contact information (name, address, fishing vessel, and telephone number) as well as verification that the entity is eligible to own a documented vessel under the terms of [46 U.S.C. 12102\(a\)](#), Vessels Requiring Documentation. This section of the United States Code outlines the U.S. citizenship requirements for documenting a vessel with the U.S. Coast Guard. Since the ITQ program conveys certain ownership rights over a natural resource of the Northeastern U.S., it is required that the allocation owner meet the same citizenship requirements as that required to document a fishing vessel. This requirement is authorized at [50 § 648.74\(b\)\(1\)](#). Both parties involved in the transfer, or their authorized agents, are required to sign the form.

Shucking clams at sea

The information contained in the application to shuck product at sea is used by the NMFS to evaluate if the process used to shuck at sea allows for the proper accounting of the harvest in terms of unshucked bushels, which is the measure used to monitor the quota. The NMFS-approved observer is necessary to certify the information reported in the vessel's shellfish logbook. Information requested includes the applicant's contact information (name, address, and ITQ allocation number), specifications of the harvesting vessel, and accommodations for the observer. Specifications on the harvesting vessel and the harvesting process are required in order to evaluate if the operations facilitate the proper accounting of harvested unshucked product. As mentioned previously, the quotas are monitored and enforced using unshucked bushels. Thus any authorization to deviate from this method of accounting needs to be thoroughly evaluated. Since a NMFS-approved observer is required to certify the vessel's shellfish logbook, NMFS requires that suitable accommodations for the observer are available on the vessel.

Reopened Portion of the GB Closed Area

The results from the testing protocol will be used regularly by a number of entities including the harvesters, the FDA, laboratories, seafood dealers, the State Shellfish Control Authority (SSCA) in the state of landing, and possibly the general public as well to assist with the coordination, testing, and monitoring of shellfish harvested from the reopened area. Although a number of entities may use the information, they will all essentially be utilizing the data for the same purpose: to determine if shellfish harvested are safe for human consumption. Secondly, data obtained from test results may also be archived and further analyzed to assist in determining if additional areas are suitable for reopening or if there should be additional closures. The following information is required under the protocol:

- Submission of concurrence from state of landing
- Maintain and submit harvest records
- Compile and submit laboratory test results
- Create and maintain a written onboard lot segregation plan
- Provide notification prior to unloading.

NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA Fisheries Service decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Both the application to shuck at sea and the ITQ transfer form are available online in a fillable and printable version through the NMFS forms portal at http://www.nmfs.noaa.gov/gpea_forms/forms.htm.

Because the ITQ transfer form is used to transfer a privilege, NOAA General Counsel requires a hard copy of the ITQ Transfer Form with an original signature. However, General Counsel has since revised this decision and has now determined that a unique electronic password and pin are also acceptable forms of verification in lieu of original signatures. NMFS is currently working to allow ITQ transfer forms to be completed and submitted electronically through our existing fish-on-line web application currently used in the Northeast Region for similar leasing programs in other fisheries.

The method of transmitting the collection of information requirements in the protocol is not specifically outlined. The protocol was developed primarily by the industry, the FDA, and the SSCA and was approved by the NSSP at the ISSC. NMFS adopted the protocol as it was approved. Therefore, it is not NMFS's position to further dictate the terms and conditions of the protocol including the methods of transmission outside of what is in the currently approved protocol. Therefore, the method of submission will be worked out by the industry, the FDA, and the SSCA. NMFS is only concerned that the protocol is followed, hence the method of submission will be largely up to the industries discretion. Due to the nature of the requirements in the protocol, it is likely that the majority of the requirements will likely need to be completed in writing and submitted as such, however it is not required to be hand written and, therefore, could be hand written and could be completed and submitted through a computer. However the notification requirement only requires a notification be made, and, therefore, it is likely electronic means will be used such as cellular phone or via shipboard electronic equipment such as VHF radio, email, or the vessel's vessel monitoring system.

Upon implementation a copy of the protocol will be mailed to all Atlantic surfclam and ocean quahog permit holders. A copy of the protocol is also available online at www.nero.noaa.gov/sfd/clams/ApprovedProtocol.pdf

4. Describe efforts to identify duplication.

The information requested is unique to this fishery; thus, there is no duplication of items in this collection with other collections. Since NMFS is the lead agency implementing the Magnuson-Stevens Act, NMFS is very aware of all information collections required from fishermen.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Small businesses are the primary respondents of the data collection. The form used to gather data on ITQ transfers is designed to be simple and easy to complete, thus saving time for both the respondents and managers of the system. The ability to make timely transfers gives these businesses the flexibility to make rational business decisions. The application to shuck product at sea is required only if the entity wishes to shuck product at sea.

The authorization to shuck at sea is valid for one year.

Vessels are only required to follow the protocol if they wish to fish in the reopened portion of the GB Closed Area. The protocol was developed by the industry and NMFS did not add any additional reporting requirements to it that would further increase burden.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The frequency of submission is dependant upon how often the allocation holder desires to transfer quota. If the information collection was not conducted, NMFS could not properly monitor and enforce the quota restrictions in the Atlantic surfclam and ocean quahog ITQ

program. If the application and the requirement to carry an observer for operations where product is shucked at sea were removed then a means to verify the quantity of product harvested by the vessel would not exist. The consequences from the removal of either of these information collections would compromise the ability of NMFS to conserve and manage the resource.

If the collection is not conducted under the protocol, shellfish harvested from the reopened portion of the GB Closed Area would not be adequately monitored and screened for PSP. This could potentially result in toxic shellfish being released to the public for human consumption. This could be harmful to public health as well as it would likely result in long term damage to the industry as the public may purchase and consume less shellfish products if incidences of illness increase as a result of consuming shellfish.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

This information collection is consistent with OMB guidelines.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The proposed rule for the reopening of GB action published August 31, 2012, and a number of comments were received in support of the collection of information requirements in this action. However, because the Federal Register notice did not specifically request comments on the collection of information requirements, a second Federal Register Notice, with a 30-day comment period, was published on October 22, 2012 (77 FR 64488), which specifically solicited public comment on the information collection requirements. Two comments were received, both in support of the information collection requirements contained in the rule. These comments also stated that Federal Register Notice for the PRA measures overestimated the public burden associated with these requirements, because they expected fewer states to be used for landing, and that smaller vessels would not find it feasible to fish in this area and then economically land their catch at the nearest available processing plant. Because PRA burden is estimated at the maximum number of participants, no changes are necessary as a result of these comments.

Further, the regulatory action requiring this collection of information was requested by the industry, including the specifics of the collection of information requirements. Specifically, the collection of information requirements required under this regulatory action were collaboratively developed by the industry the United States Food and Drug Administration, and State marine resource agencies. As such, NMFS is implementing these requirements on request of the industry. The collection of information requirements under this action have been tested and under development since 2008 and are fully supported by the industry and requested by the

industry. Further, these requirements were officially nationally recognized as the industry operating standard in October 2011. As such no further consultation with industry on these requirements is necessary at this point in time.

The ITQ management system was developed under the Magnuson-Stevens Act, and was the subject of extensive public hearing and public comment. As the ITQ management system has evolved operationally, comment has been obtained on an ongoing basis through the Mid-Atlantic Fishery Management Council's Industry Advisors and Surfclam/Ocean Quahog Subcommittee.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts are made.

10. Describe any assurance or confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The NMFS General Counsel has ruled that allocation information is public information because the ITQ system assigns shares of a public resource to the allocation holders. Industry participants are well aware of this fact, and they are among the primary requesters of this information as they seek to transfer or obtain allocation.

The information submitted under the protocol is also public as it is distributed to state and other Federal agencies with the intent of making it publicly available for analysis. It is in fact beneficial to make this information available to the public as it displays that the product being harvested is safe for human consumption and could potentially lead to other areas being reopened for shellfish harvesting.

The respondents are aware that the data collected with the testing protocol is not confidential, and is available to the public. The industry was involved in developing the protocol, and they know that having the information publicly available for use by the FDA is essential to continuing to monitor the area, in order to ensure shellfish harvested are safe for human consumption. It is in fact advantageous for the industry to make this information publicly available so the public is informed that shellfish harvested are safe for consumption, allowing the industry to maintain the Atlantic surfclam and ocean quahog markets.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No sensitive questions are asked.

12. Provide an estimate in hours of the burden of the collection of information.

Table 1 below summarizes the burden hours estimated for this collection. The average annual number of ITQ transfer requests processed by NMFS from 2009 to 2011 was 387. It is estimated that each form takes approximately 5 minutes to complete. Thus, the annual burden for the ITQ Transfer Request Form is approximately 33 hours. NMFS did not receive any applications to shuck at sea from 2009 to 2011. It is estimated that the time to gather the necessary information pertaining to the shuck at sea application takes 30 minutes per submission. The requirements under the protocol are based on the number of vessels that landed surfclams or ocean quahogs and the number of trips taken into the area in 2011. All of the requirements under the protocol include an annual burden of 2,400 hours. **The total burden for this collection of information is 2,433 hours.**

Table 1. Cost and burden hours

Information Collection	Number of Respondents	Frequency of Responses	Number of Responses	Average Time per Response	Total Response Time	Cost to Public	Cost to Government
ITQ Transfer Request Form ^{1,2,3}	169 ²	5 ²	387	5 minutes	32 hours	\$174	\$807
Shuck-at-Sea Application ¹	1	1	1	30 minutes	30 minutes (rounded to 1 hour)	\$109,200	\$25
Protocol - Submission of concurrence from state of landing	11	1	11	60 minutes	11 hours	\$5	\$25
Protocol - Maintain and submit harvest records	47	46 ⁵	2,162	30 minutes	1,081 hours	\$973	0
Protocol - Compile and submit laboratory test results	47	46 ⁵	2,162	30 minutes	1,081 hours	\$973	0
Protocol - Create and maintain a written onboard lot segregation plan	47	1	47	60 minutes	47 hours	\$21	\$100
Protocol - Provide notification prior to unloading	47	46 ⁵	2,162	5 minutes	180 hours	\$0	\$0
TOTAL	369	146	6,932		2,433 hours	\$111,346 ⁴	\$957
PERVIOUS APPROVAL TOTAL	170	6	388		33 hours	\$109,371 ⁴	\$832
NET CHANGE	+199	+140	+6,544		+2,400 hours	+\$1,975	+\$125

¹ Based on 2009 to 2011 annual averages.

² The “Number of Respondents” and “Frequency of Responses” treats each surfclam and ocean quahog ITQ allocation permit as separate and distinct entity. This creates a numerical inconsistency because a single entity can hold both types of ITQ allocation permits.

³ The total number of entities using the ITQ Transfer Request Forms will always be two, a transferor and a transferee. This causes a numerical inconsistency between the “Number of Respondents” “Frequency of Responses” and “Number of Responses” because entities frequently submit multiple forms as either transferors or transferees.

⁴ This cost includes the cost to carry a NMFS-approved observer on board the vessel during trips where product is shucked at sea.

⁵ Number of total items based on maximum number of trips per vessel that occurred in the area in 2011.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

The annual cost burden of this collection of information is summarized in Table 1.

The cost burden for the ITQ Transfer Request Form or the Shuck-at-Sea Application is based on the postage of \$0.45 per first-class stamp.

The cost to carry an observer as part of the authorization to shuck product at sea is based upon a rate of \$700 per day at sea to carry the observer, for an average of 156 sea days per vessel.

In regard to the protocol, four of the five new elements require document submission, two of which are annual submissions and the other two are required on each trip; the fifth requires no document submission. Of the 6,544 responses, 4,382 have postage costs in total of 1,972 (4,382 x \$0.45).

The fifth element, the offload notification requirement, does not impose any additional costs as the notification would be completed through a pre-existing email or cellular phone account and is not required to be submitted in writing.

This yields an annual cost of approximately \$111,346 for this collection of information.

14. Provide estimates of annualized cost to the Federal government.

The annual cost to the Federal government is summarized in Table 1.

The cost to the Federal government to process an ITQ Transfer Request Form is based on a rate of \$25 per hour and a processing time of 12 transfers per hour. This gives an annual cost of \$807. The application to shuck product at sea takes approximately 30 minutes per application to process at a rate of \$25 per hour. This gives an annual cost of \$25. Receiving, reviewing, and filing the written onboard lot segregation plan takes 5 minutes per plan received, for a total of 4 hours of burden to the Federal government, at \$25 an hour for a total of \$100. Receiving and processing the concurrence from the state of landing letter will take 5 minutes, at \$25 hour for a total of \$25. Thus, the total cost to the Federal government for this collection of information is estimated to \$957.

15. Explain the reasons for any program changes or adjustments.

This revision includes new collection of information requirements under the terms and conditions of the PSP testing protocol. Responses added: 6,544; hours, 2,400 and recordkeeping/reporting costs, \$1,975.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The results collected under the protocol are not planned for publication; however, it is possible that the data may be published in the future in support of scientific research to reopen or close additional areas on GB. Further, NMFS does not own the information collected under the protocol, so we do not have control over how and if information collected under the protocol will be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

The expiration date will be displayed for the forms under this collection, with the exception of the protocol. The requirements in the protocol do not include any forms for the information submitted under this requirement. Further, NMFS is also not able to display the expiration number on the protocol itself. The testing protocol was developed by industry and was formally adopted into the NSSP at the ISSC. Therefore, although NMFS requires vessels to follow the terms and conditions of the protocol, the protocol itself and the requirements within it are not maintained by NMFS and it is not NMFS's position to modify the document. Therefore, NMFS will also not be able to display the expiration date on the testing protocol itself. However, an expiration date will be displayed in the bulletin that will be mailed to each permit holder who may be required to report under the terms and conditions of the protocol.

Further, vessels harvesting under the protocol are also required to obtain a letter of authorization (LOA) from NMFS. The LOA outlines the harvesting requirements for the reopened area, including the protocol, and by obtaining the LOA, a vessel is acknowledging and agreeing to the terms and conditions of the protocol and the LOA. The LOA is created and issued by NMFS and will therefore include an OMB expiration date. The collection of information requirements for the LOA is being reviewed in conjunction with this package through a revision to the 0202 family of forms.

18. Explain each exception to the certification statement.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.