



SMZ Monitoring Committee Report

**Analysis of New Jersey's Request
for SMZ Designation for 13
Artificial Reefs in the EEZ**

New Jersey SMZ Request

- November 2015 the New Jersey DEP requested SMZ status for 13 permitted artificial reef in EEZ under Am 9 to SF, SC, BSB FMP
- Justification based on need to ameliorate gear conflicts on NJ EEZ reefs between fishermen using hook and line gear and fixed pot/trap gear
- NJDEP suffered loss of funding for its reef program under Wallops-Breaux SFR Program (at least partially restored in 2016)

USFWS Wallops-Breux funding for artificial reefs

- Sport Fish Restoration Program funds derived from federal excise tax on sport fishing equipment and motor boat fuel
- Monies used by the states to fund fish restoration and management projects which [USFWS interprets] " shall be construed to mean projects designed for the restoration and management of all species of fish which have material value in connection with *sport or recreation* in the marine and/or fresh waters of the United States

USFWS Wallops-Breaux

- USFWS informed state agencies in March 2011 that use of SFR funded reefs sites deemed incompatible with the objectives of the SFR could result in termination of funding
- Use of commercial pot/trap gear on artificial reef sites determined to be incompatible with SFR objectives; gear conflicts identified as main issue to be addressed by the state reef permit holders

New Jersey Response

- Enacted state regulations restricting use of commercial gear on artificial reefs in state waters
- Seeking SMZ status for 13 permitted reef sites in the EEZ under section 648.48 of BSB regulations (including prohibition of fixed pot/trap gear on those sites)

648.148 BSB Regs Special Management Zones

- Army COE permit holder may request that Council designate artificial reefs and surrounding areas as SMZs
- Council may prohibit or restrain use of specific gear types deemed not compatible with the intent of the artificial reef permit holder through regulatory amendment
- NJ maintains that use of fixed pot/trap gear not compatible with reef program objectives due to gear conflicts with hook and line gear

State of New Jersey Artificial Reef Program

-State of NJ issued permits for ocean reef sites by US Army COE in 1984

-NJ permitted sites include 15 total, with 13 in the EEZ



NJ Reef Program Background

Total expenditure=\$3.21 m

Rec fishermen/divers=\$1,900,000

Federal Aid=\$1,100,000

Corporate=\$110,000

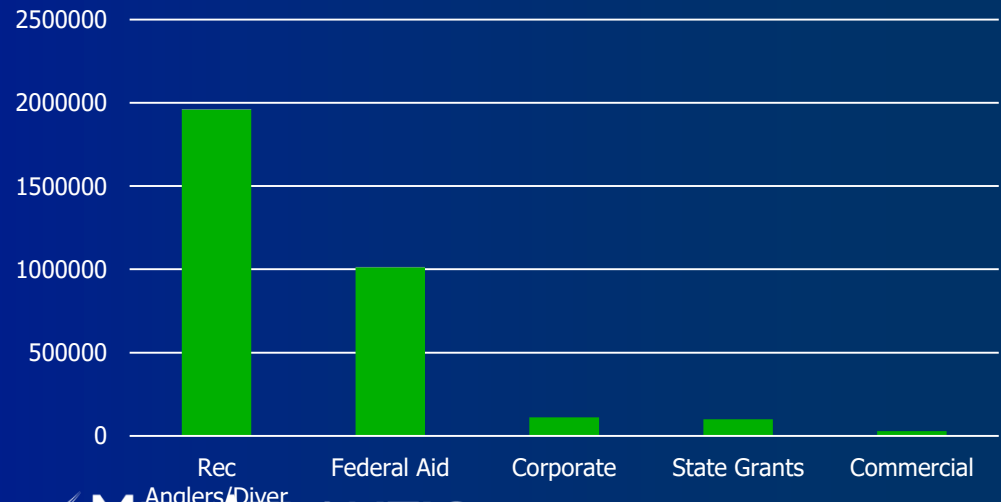
State Grants=\$100,000

Commercial=\$28,500

(Source: NJ DEP)



NJ Reef Program Expenditures
Over last 33 Years



SMZ Procedure

- Monitoring Team Report presented to Council
- Chair may schedule meetings of AP and/or SSC to review Report and advise Council; may also schedule public hearings
- MAFMC may recommend to RA that a SMZ be approved
- If RA concurs, publishes Proposed Rule ; if RA rejects SMZ recommendation - why not in writing
- After review of public comment, RA publishes final rule establishing SMZ if supported by weight of evidence in record and action is consistent with MSA and other applicable law.

SMZ Monitoring Team

- SMZ Monitoring Team formed in March 2015 to evaluate request in form of written report
- Travis Ford, NMFS GARFO
- Karen Greene, NMFS GARFO
- Rich Seagraves, MAFMC staff
- Scott Steinback, NMFS NEFSC

SMZ Monitoring Team SMZ Criteria Evaluated

- 1) Fairness and equity
- 2) Promotion of conservation
- 3) Avoidance of excessive shares
- 4) Consistency with FMP objectives, MSA and other applicable law
- 5) Natural bottom in and surrounding potential SMZs
- 6) Impacts on historical uses

SMZ Request Justification

- SMZ Team evaluated NJ's request based **solely** on need to resolve **gear conflicts** between hook and line fishermen and fixed pot/trap gear on NJ EEZ reefs

Nat. St. 4 Evaluation

- First three criteria are related to NS4
- Fair and equitable?
- Promote conservation?
- Avoidance of excessive shares?
- Normally related to allocation of shares of fishing privileges/quotas, etc.
- In this case - allocation of access to areas of the ocean (which indirectly affects access to quota or quota allocations)

Nat. St. 4 Evaluation

Are residents from different states treated equally?

- SMZ not likely to discriminate among residents of different states

Nat. St. 4 Evaluation

Fair and equitable?

- SMZ designation would benefit hook and line fishermen
- Fixed pot/trap gear sector would suffer loss of catch in SMZ
- However, given small area in question and small number of affected pot/trap fishermen, SMZ MT concluded that SMZ designation would not result in a significant impact on a substantial number entities
- Expected that that much of foregone catch by fixed gear sector could be recouped in open areas

Nat. St. 4 Evaluation

Promotion of conservation

- SMZ designation consideration related to amelioration of gear conflict
- BSB fishing mortality controlled by quotas
- As such, team concluded that SMZ designation unrelated to conservation of black sea bass

Nat. St. 4 Evaluation

Avoidance of excessive shares

- SMZ designation has no direct allocation of quantifiable fishing privileges to individuals or entities in the form of individual fishing quotas
- Within allowable gear types under SMZ no individual or entity has an excessive share of fishing privileges
- Does not appear to be an issue

Consistency with Am 9 objectives

- 1) reduce F to prevent overfishing
- 2) reduce F on immature fish to increase SSB
- 3) improve yield from fisheries
- 4) promote compatible regulations in federal and state waters
- 5) promote uniform and effective enforcement of regulations
- 6) minimize regulations to achieve objectives 1-5

Consistency with Am 9 objectives

- First three objectives address National Standard 1
- SMZ designations appears unrelated to FMP conservation objectives (1-3)
- Same conclusion as was reached for previous discussion about SMZs promoting conservation – appear unrelated in this case since intent of SMZ is to reduce gear conflicts on New Jersey reefs

Amendment 9 objective 4

Promote compatible regulations in federal and state waters

- SMZ designation in EEZ would be compatible with Council recommendation to NOAA that 4 artificial reefs permitted to State of Delaware in the EEZ be designated as SMZs (Council decision in Feb 2013).

Amendment 9 Objective 5

Promote uniform and effective enforcement of regulations

- SMZ action or not unrelated to enforcement of current BSB regulations

Amendment 9 Objective 6

Minimize regulations to achieve Objectives 1-5

- SMZ designation has little to do with achievement of Amendment 9 objectives (primary purpose is to ameliorate gear conflicts)
- Therefore SMZ designation not necessary to achieve those objectives

Consistency with MSA and other applicable law

- Assessment of consistency of SMZ provision with MSA was conducted when Amendment 9 was submitted to NMFS in 1996
- Section 303(b)(2)(A) deals with discretionary provisions of FMPs which contemplate measures such as an SMZ

Section 303(b)(2)(A)

- [any fishery management plan may...] designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted by only specified types of fishing vessels or with specified types of fishing gear
- take home message is that SMZ designation certainly within the Council purview under MSA

Consistency with other applicable law

- Delaware SMZ designation required analysis under APA, NEPA, RFA, MMPA, ESA, PRA, IQA, and Executive Orders 12866 and 13132
- DE SMZ action found to be consistent with relevant federal law and EOs
- SAFMC has designated 51 artificial reefs in EEZ in South Atlantic region setting considerable precedent for being consistent with MSA and other applicable law.

Natural bottom in and surrounding potential SMZs

- Current reef sites exist in areas typical of most of the MAB – homogenous habitat of relatively flat topography composed of soft sediments, mostly sands....
- No HAPC issues

Impacts on Historical Uses

Recreational

MRIP data provide estimates of catch and effort in NJ recreational fisheries (2015)

2000 NJ reef creel survey (Figley 2001) conducted to assess the effectiveness of it's reef program;

Fishing effort from Figley by reef site used to apportion effort by reef site

Impacts on Historical Uses Recreational (Figley 2001)

- 2.8 % of total private boat trips occurred on NJ reef sites
- 18.7% of party/charter effort
- 2015 MRIP effort data apportioned based on Figley results
- 15 years old and conditions may have changed somewhat but importance of reefs likely remains high

Impacts on Historical Uses Recreational (Figley 2001)

- Economic impact analysis conducted by SMZ Monitoring Team indicated that total angler expenditures associated with reef trips in 2015
- Private boat=\$3.5 million
- Part/charter=\$9.7 million
- Total=\$13.2 million

Impacts on Historical Uses

Commercial fishing (pot/trap)

- VTR mapping procedure (DePiper 2014) indicated pot/trap fishing activity occurred at all 13 reef sites
- Ex-vessel revenue obtained from all 13 reef sites was ~ \$25,000 in 2015
- Represents less than 1% of revenue of pot/trap vessels which fished the reef sites
- Reef pot/trap ex-vessel value ranged from 0.19 - 0.31% of total NJ pot/trap landing revenues 2011-2015
- Reef site ex-vessel value ranged from 0.01 - 0.02% of total NJ commercial landing revenues

Impacts on Historical Uses

Summary and conclusions

- Number of pot/trap vessels with reef landings from 2011-2015 ranged from 36-50.
- Approximately 80% to 89% of these vessels obtained less than 1% of their total annual gross revenue from the reef sites during 2011 to 2015

Impacts on Historical Uses Summary and conclusions

- Findings indicate that commercial fishing vessels deploying pot/trap gear off the coast of New Jersey would likely face minimal to no losses in ex-vessel revenue if the artificial reefs are designated as SMZs.

Impacts on Historical Uses

Summary and conclusions

- The results also show potential gear interactions between commercial pot/trap vessels and recreational fishing vessels at two of the 13 artificial reef sites - Cape May and Sea Girt (perceived to be minimal at 11 other sites)

Recommendations

- 1. Council should consider designating all 13 NJ artificial reefs located in the EEZ as SMZs (consistent with Delaware designation).
- 2. The Council would reserve the right to change or revise these SMZs, including any gear restrictions imposed as a result of such designations, if future analyses cause the Council to alter its policy with respect to SMZs during a broader consideration of this issue.

Recommendations

- 3. The Council should review the 2007 National Artificial Reef Plan and modify (if necessary) and implement the artificial reef policy it adopted in 1995 and consider incorporating that policy into ongoing efforts to establish habitat policy within the context of an Ecosystem Approach Fisheries Management

Next steps

- Conduct public hearings in NJ (other States?) during November
- Review public comment and render decision at December 2016 Council meeting

Questions?

