



# **NJ SMZ Request**

Summary of Public Comments  
Mid-Atlantic Fishery Management  
Council Meeting  
December 12, 2017  
Baltimore, MD

# 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-Breiaux 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
- See Dec 8 2016 letter from C.E. Sculley articulating USFWS position on SMZ designation of 13 reef sites (Council website under supplemental info)

# New Jersey Response

- Enacted state regulations restricting use of commercial gear on artificial reef 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

# SMZ Procedure

- Monitoring Team Report presented to Council
- Chair may schedule three 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 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

## Consistency with other applicable law

- Delaware SMZ designation required analysis under APA, NEPA, RFA, MMPA, ESA, PRA, IQA, NFEA 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.

## National Fishing Enhancement Act (1984) Purpose

- "to promote and facilitate responsible and effective efforts to establish artificial reefs in waters covered under this title"
- Based on BSIA, artificial reefs in the waters covered under this title shall be sited and constructed and subsequently, monitored and managed in a manner which will –

# National Fishing Enhancement Act

## Section 203

1. enhance fishery resources to the maximum extent practicable;
2. facilitate access and utilization by US recreational and commercial fishermen;
3. minimize conflicts among competing use of the waters covered under this title, and resources in such waters;
4. minimize environmental risks and risks to personal health and property;
5. be consistent with general principles of international law and shall not create unreasonable obstructions to navigation.

## 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

# Public Comment Summary

## Three Public Hearings

- Brooklyn, NY,
- Toms River, NJ
- Cape May, NJ
- A total of 26 individuals testified with 13 in favor of establishing all 13 NJ reef sites as SMZs and 13 opposed to SMZ designation

# Public Comment Summary

## Written comments

- Council received 642 written comments
- The vast majority (628 or 98 %) of the written comments were in favor of designating all 13 sites located off the coast of New Jersey in federal waters as SMZs.
- Petition with 4500+ signatures in favor of SMZ designation

# Public Comment Summary

## In favor

- Included recreational and diving communities/fishing organizations
- proliferation of gear conflicts with pot/trap gear being fished directly on the reef sites
- loss of terminal fishing tackle (hooks, bottom rigs, lures and sinker, etc.) that get snagged on commercial traps, buoy and ground lines (costs them money)



# Public Comment Summary

## In favor

- fouling of anchors on commercial gear;
- difficulty in fishing the areas due to trap congestion on some sites;
- the proliferation of lost traps (ghost gear) which continue to foul recreational fishing gear;
- lost bottom time for divers

# Public Comment Summary

## In favor

- commercial gear on the reefs is a hazard to navigation and poses safety risks;
- failure to designate the reefs as SMZs will result in the loss of SFR Program funding which is necessary to build new reefs and to maintain the existing reef system off the coast of New Jersey.

# Public Comment Summary

## Comments - Opposed

- No gear conflicts exist or they are over-stated;
- prohibition of commercial gear is fundamentally unfair - they want access to the reef sites (especially for small scale inshore fishermen);
- lack of access to inshore reefs will increase their costs and reduce supply of seafood to local markets (especially to supply the summer tourist market);

# Public Comment Summary

## Comments - Opposed

- Seeking a compromise that will allow some access to the reefs by the commercial sector; and
- SMZs which prohibit commercial gear on the reefs are in violation of the National Fisheries Enhancement Act.

# Questions?



*Photo Courtesy Artist  
Dr. Kent Ullberg*