



**MID-ATLANTIC**  
FISHERY MANAGEMENT COUNCIL

# Consideration of SMZ Designation for Delaware Artificial Reefs in the EEZ

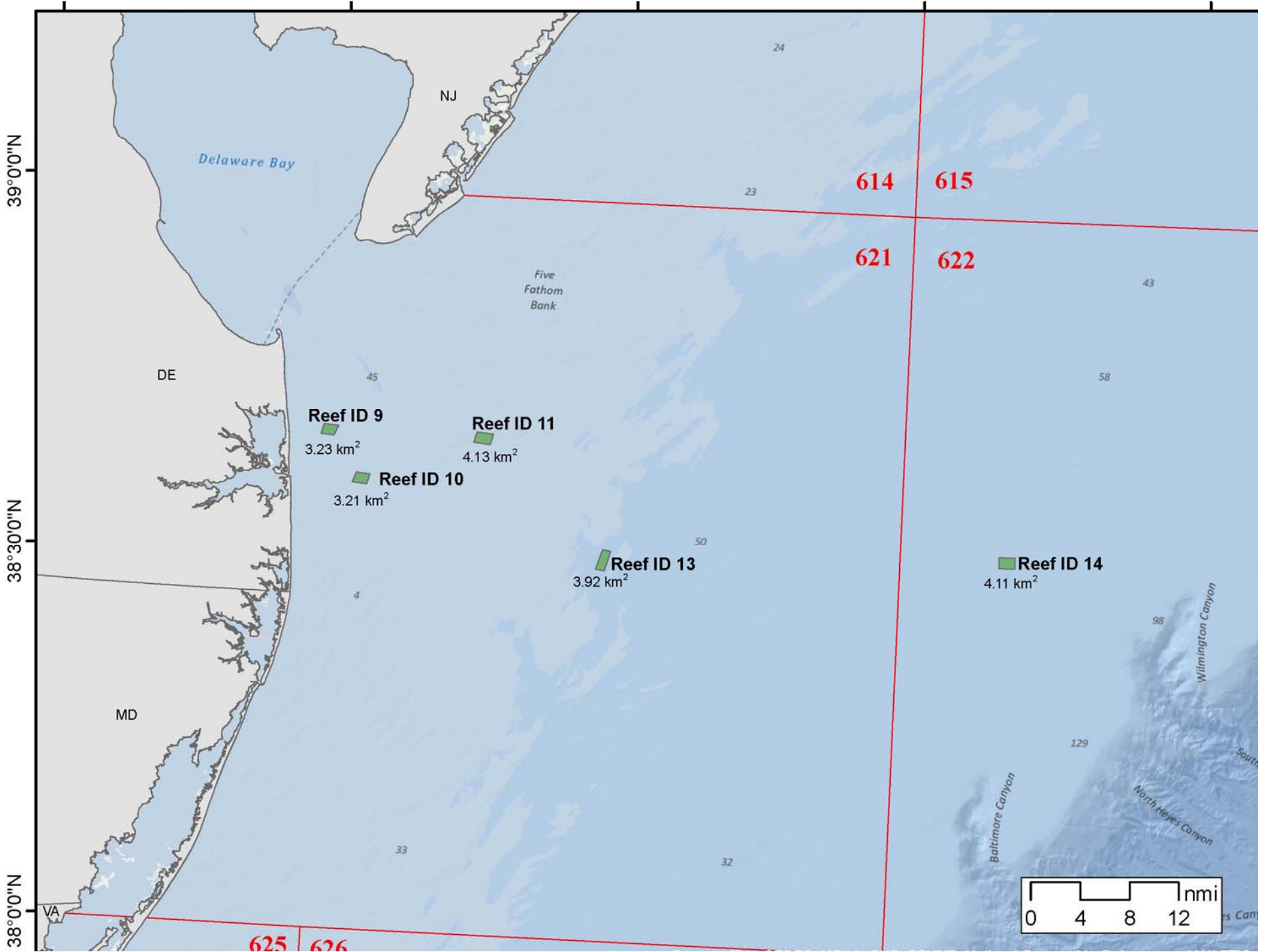
Options for Public Hearings

# Delaware SMZ Request

- June 2011 the Delaware Division of Fish and Wildlife requested SMZ status for five permitted artificial reef in EEZ under Am 9 to SF, SC, BSB FMP
- Justification based on need to ameliorate gear conflicts on DE EEZ reefs between fishermen using hook and line gear and fixed pot/trap gear
- DE DFW faced with loss of funding for its reef program under Wallops-Breaux SFR Program

# Delaware Response

- Enacted state legislation prohibiting use of commercial gear on artificial reefs in state waters
- Seeking SMZ status for 5 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
- DE 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 in August 2012
- 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 Report 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 DE's request based **solely** on need to resolve **gear conflicts** between hook and line fishermen and fixed pot/trap gear on DE EEZ reefs



## 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

- SMZ designation would require analysis under APA, NEPA, RFA, MMPA, ESA, PRA, IQA, Executive Orders 12866 and 13132, and NFEA.
- Preliminary analysis only at this stage; more complete analysis of consistency with each law or EO would be necessary if Council takes action
- 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 (NFEA) of 1984

- Purpose is to promote and facilitate responsible and effective efforts to establish artificial reefs in US waters
- Established five National Standards relative to location, construction, monitoring and management of artificial reefs
- Required development of National Artificial Reef Plan (most recent update occurred in 2007)

# NFEA

## National Standards

- Enhance fishery resources to maximum extent practicable;
- Facilitate access and use by US recreational and commercial fishermen;
- Minimize conflicts among competing uses of waters covered under this title and the resources in such waters;
- Minimize environmental risks and risks to personal health and property; and
- Be consistent with generally accepted principles of international law and shall not create any unreasonable obstruction to navigation.

# National Artificial Reef Plan 2007 Update

- Federal agencies may provide some regulatory functions regarding fishing practices on specially designated artificial reefs (e.g., Special Management Zones).....(cite the South Atlantic snapper/grouper and GOM reef fish, BSB FMPs)

# Impacts on Historical Uses

## Recreational fishing

- Recreational fishing activity in 2011 highest at reef site 11 (\$840K in expenditures), followed by 10 (\$490K), 13 (\$200K), and 9 (\$40K). No estimate for site 14.
- Overall, charter/headboats accounted for greatest amount of fishing activity at all reef sites with greater use of offshore sites

## Impacts on Historical Uses Commercial fishing (pot/trap)

- Pot/trap fishing activity occurred at reef sites 11 and 13 (little or no pot/trap activity at other sites); no pot/trap activity at site 14 but some trawl and dredge activity
- Pot/trap activity at sites 11 and 13 produced average revenue of \$7K and \$27K per year from 2008-2010; or about 0.6% of value of total ex-vessel landings by pot/trap gear in NJ, DE, and MD
- On average, 2008-2010 ex-vessel revenue derived from site 11 comprised 4% of total vessel revenue for vessels that fished site 11; vessels fishing 13 derived 11% of total revenue from that site (data confidential)



## Impacts on Historical Uses Summary and conclusions

- Little or no pot/trap activity reported at sites 9, 10, or 14; unlikely any gear conflicts occurring at those sites ; 14 currently used by other gear types
- Moderately low pot/trap activity at 11 and 13; given relatively high recreational activity at those sites, gear interactions may have been occurring

# Impacts on Historical Uses Summary and conclusions

- Significant precedent exists in other regions (S. Atlantic) to conclude that designation of DE reefs as SMZs would be consistent with MSA and other applicable law

# Impacts on Historical Uses Summary and conclusions

- Council recommendation for Delaware reef sites has implications for other reef sites currently permitted in the EEZ
- Monitoring team analysis based solely on the issue of gear conflict at 5 DE reef sites;
- Conclusion that SMZ designation for all 5 sites would not impact a significant number of entities might have been different if Council were considering SMZ status for other EEZ reef sites simultaneously

## SMZ Team Recommendations

- 1. SMZ decision largely driven by policy considerations; Council should develop long term solution to this issue which considers all relevant factors
- 2. Council should consider designating all five DE artificial reefs as SMZs when recreational season for black sea bass is open (SMZ to include prohibition of fixed pot/trap gear) to ameliorate any real or potential gear conflicts; enforcement recommended 1000 yard buffer surrounding reef (currently 500 meters in S. Atlantic)

## 2012 Recreational season for black sea bass

- Open Jan 1 - Feb 28; Closed March 1 - May 18;  
Open May 19 – Oct 14; Closed Oct 15 – 31; Open  
Nov 1 – Dec 31
- SMZ would be in effect Jan - Feb and May 19 – Oct  
14 and Nov - Dec;
- No SMZ restrictions March 1 – May 18; Oct 15 – 31
- BSB recreational season subject to change in future  
(likely longer when stock is rebuilt);

## Recommendations

- 3. Future considerations might cause Council to change or revise SMZ designations and accompanying restrictions
- 4. Council should review the 2007 National Artificial Reef Plan and modify (if necessary) and implement the Artificial Reef Policy it adopted in 1995

# August Council Motion

- tasked staff to develop options for SMZ designation of Delaware reefs in EEZ for Council consideration
- convene public hearings (November) to receive comments on proposed options
- Council considers action on DE SMZ request at December Council meeting

# SMZ Options

- 1. No Action
- 2. Designate all or some of the Delaware reef sites as SMZs



# SMZ Options

- 2a. designate reef sites 9, 10, 11, 13 and 14 as SMZs (i.e., all five reef sites)
- 2b. designate reef sites 11, 13 and 14 as SMZs (only sites with documented potential for gear conflicts)
- 2c. designate reef sites 9, 10, 13 and 14 as SMZs but not site 11

## 3. Gear restrictions

- 3a. Prohibit use of fixed pot/trap gear on sites designated as SMZs
- 3b. Restrict fishing activities in designated SMZ sites to hook & line and spear fishing gear only

## 4. Seasonal restrictions

- 4a. Designate SMZs during periods when recreational fishery for black sea bass is open
- 4b. Designate SMZs year round
- 4c. Designate SMZs during periods of peak recreational fishing effort (e.g., Memorial Day to Labor Day)

## 5. SMZ Buffer

- 5a. no buffer
- 5b. 1000 yard buffer (equivalent to 0.5 nautical miles)
- 5c. 500 meter buffer (equivalent to 0.25 nautical miles)

# October Council Action

- Motion to modify/adopt options for public hearings
- Staff recommendation is to hold two public hearings in November (Cape May, NJ and Ocean City, MD)
- Council to consider final recommendation to NMFS at December meeting

# Questions?

