

Options for Special Management Zone Designation of Delaware Artificial Reefs in the EEZ

1. No Action

Under this option the Council would take no action and the Delaware artificial reef sites in the EEZ would remain open to all gear types. This option would deny the Delaware request to grant SMZ status for its EEZ reef sites and allegations of gear conflicts would likely continue. Delaware could potentially lose a portion or all of its funding for maintenance and construction of artificial reef sites in the EEZ under the Wallops-Breux Sportfish Restoration Program if no action is taken.

2. Designate some or all of the Delaware permitted artificial reef sites as SMZs

2a. Designate reef sites 9, 10, 11, 13 and 14 as SMZ (i.e., all five reef sites)

Under this option all five of the Delaware reef sites would be designated as SMZs as described in Amendment 9 to the Summer Flounder, Scup and Black Sea Bass FMP. Provisions of Amendment 9 allow the Council to prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification within the SMZ. If the Council chooses this option, the specific gear(s) that would be prohibited would be determined by the Council under option 3 below. The degree of potential impact from this option on various fishing sectors would depend on which gears were prohibited within the SMZ and the duration of the SMZ designation.

2b. Designate reef sites 11, 13 and 14 as SMZs (only sites with documented potential for gear conflicts)

Little or no commercial fishing activity was documented in the vicinity of reef sites 9 and 10, so there appears to be little opportunity for gear conflicts to occur at these sites (especially for fixed pot/trap gear). Therefore, it would appear unnecessary to designate these sites as SMZs on the basis of amelioration of gear conflicts. However, commercial fishing activity on sites 11, 13 and 14 was documented at these sites based on VTR data, so the potential for gear conflicts exists at these sites. As noted above, the potential impact on various sectors of the fisheries would depend on the gears prohibited and the seasonal extent of the SMZ designation.

2c. Designate reef sites 9, 10, 13 and 14 as SMZs but not site 11

During the original permit process for reef sites 9, 10 and 11, the Council opposed the granting of a permit for reef site 11 by the COE because there were indications that considerable commercial fishing activity took place at this location. Therefore, the Council could designate reef sites 9, 10, 13, and 14 as SMZs but not site 11 based on the argument that it would remain consistent with that historical position. However, site 11 appears to be the area that has the greatest potential for gear conflicts between hook & line gear and fixed pot/trap gear and,

therefore, the Council would not be addressing the primary justification given by the state of Delaware for the SMZ designation request (i.e., amelioration of gear conflicts).

3. Gear Restrictions

3a. Prohibit use of fixed pot/trap gear on sites designated as SMZs

Under this alternative, the Council would prohibit the use of fixed pot/trap gear on reef sites designated as SMZs. This gear restriction would apply during the time periods associated with the options under alternative set 4 below. This option responds to the basis for Delaware's SMZ request which was to ameliorate gear conflicts on its artificial reef sites between hook & line and fixed pot/trap gear.

3b. Restrict fishing activities in designated SMZ sites to hook & line and spear fishing gear only

Under this alternative, the Council would prohibit the use all fishing gear on reef sites designated as SMZs, except hook & line and spear-fishing gear (during periods of SMZ designation as per the option chosen under alternative set 4) . Under this alternative, the use of commercial hook & line fishing gear within the designated boundaries of SMZs would still be permitted, however the use of all other commercial fishing gears would be prohibited (i.e., gill nets, long lines, etc.).

4. Seasonal SMZ Restrictions

4a. Designate SMZs during periods when recreational fishery for black sea bass is open

The original request by Delaware for SMZ designation was based on the stated need to reduce gear conflicts between hook & line and fixed pot/trap gear on its EEZ reef sites under provisions of Amendment 9 (black sea bass FMP amendment). Since the rationale for the SMZ request is related to the black sea bass fishery and its management, the Council could designate all or some of the Delaware EEZ reef sites as SMZs when the recreational season for black sea bass is open.

4b. Designate SMZs year round

Under this alternative the SMZ designation for any or all of the five artificial reefs would be in effect for the entire calendar year.

4c. Designate SMZs during periods peak recreational fishing effort (e.g., Memorial Day to Labor Day)

The purpose of this alternative to be to attempt to reduce gear conflicts of Delaware reefs sites by designating SMZs during periods when the chance of gear conflicts would be expected to be at a maximum (i.e., during periods of peak recreational fishing activity).

5. SMZ Buffer

5a. no buffer

5b. 1000 yard buffer (equivalent to 0.5 nautical miles)

Law enforcement personnel indicated that any SMZ designations by the Council should include a buffer around the boundaries of the artificial reef to allow for adequate enforcement. Under this alternative, the areas designated as SMZs would include the area within the published boundaries of the reef included in the COE permit plus a buffer of 1000 yards (0.5 nautical miles). This buffer was specifically recommended by personnel from the US Coast Guard and NMFS Office of Law Enforcement.

5c. 500 meter buffer (equivalent to 0.25 nautical miles)

Law enforcement personnel have indicated that any SMZ designations by the Council should include a buffer around the boundaries of the artificial reef to allow for adequate enforcement. Under this alternative, the areas designated as SMZs would include the area within the published boundaries of the reef included in the COE permit plus a buffer of 500 meters (0.25 nautical miles). The SMZ designations in the South Atlantic include a 500 meter buffer around the reef site boundaries.

Public hearings

Staff recommend two public hearings be held to receive public comment on the proposed options the following locations:

- 1) Cape May, NJ
- 2) Ocean City, MD

**A Report to the Mid-Atlantic Fishery Management Council
on the Delaware Division of Fish and Wildlife's Request for
Special Management Zone (SMZ) Designation for Five Artificial Reef Sites in the EEZ**

August 2012

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Executive Summary

The Delaware Division of Fish and Wildlife (DFW) has petitioned the Mid-Atlantic Council to designate 5 artificial reef sites as Special Management Zones (SMZs) in the EEZ under provisions of Amendment 9 to the Summer Flounder, Scup and Black Sea Bass FMP. The justification for this request was based on the need to ameliorate gear conflicts between hook and line fishermen and fixed pot/trap gear at those sites. The DFW may face termination of funding for its artificial reef program in the EEZ under the US Fish and Wildlife Service Sport Fish Restoration (SFR) Program (which is effectively the DFWs sole source of funding for its reef program) if this alleged gear conflict issue is not resolved.

A Monitoring Team was formed to evaluate the DFW request relative to the following factors: (1) fairness and equity; (2) promotion of conservation; (3) avoidance of excessive shares; (4) consistency with the objectives of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law; (5) the natural bottom in and surrounding potential SMZs; and (6) impacts on historical uses. This report contains an analysis of these factors and recommendations relative to the DFW request. Based on that analysis, the SMZ Monitoring Team reached the following conclusions:

1. There is no evidence of potential gear conflicts on Delaware's artificial reef sites in the EEZ based on the reported levels of fishing activity at those sites from VTR data, *except* at reef sites 11 and 13. Only limited information is available for reef site 14 relative to the levels of recreational fishing activity at that site.
2. Designation of reef sites 9, 10, 13 and 14 as SMZs would be consistent with past Council policy relative to the permitting and deployment of artificial reefs at these sites, but may not be relative to site 11 because the Council was opposed to placement of an artificial reef at this location in 1996 during the original permit application in a letter to the Army Corps of Engineers.
3. Significant precedent exists in other regions (i.e., the South Atlantic) to conclude that the designation of Delaware's five artificial reef sites in the EEZ as SMZs (which would include gear restrictions in those areas) is consistent with the Magnuson Act and other applicable law.
4. The recommendation the Council makes with respect to SMZ designation for Delaware reef sites has important implications for the 30 other permitted artificial reef sites which currently exist within the EEZ portion of black sea bass management unit. The conclusion reached in the current social and economic assessment is that designation of SMZ status for the five Delaware reef sites would not impact a significant number of entities since available evidence indicates that a relatively small number of pot/trap fishermen utilize Delaware reefs in the EEZ. This conclusion might have been different if the Council were considering SMZ status for all 35 EEZ reef sites which are currently permitted to the states.

Based on the weight of evidence examined, the SMZ Monitoring Team recommends the following:

1. Given this decision is largely driven by policy considerations which are entirely under the purview of the Council's policy making function, the Council should convene the Demersal Committee (or if appropriate, a special working group) with industry advisors to develop a long term solution to this issue. It is imperative that this policy analysis consider all relevant factors and considerations and not be based solely on the issue of gear conflicts (as is the case here). Complaints about gear conflicts at New Jersey reef sites in the EEZ have already caused the USFWS to terminate that states SFR Program funding (NJ currently has 13 sites in the EEZ), so this issue extends well beyond the 5 reef sites considered in this analysis.
2. Until such time that the Council can develop a longer term solution to this issue based on a broader consideration of all relevant factors and issues, the SMZ Monitoring Team recommends that the Council consider designating all five of Delaware's artificial reefs located in the EEZ as SMZs during time periods when the recreational season for black sea bass is open. The SMZs would prohibit the use of fixed pot/trap gear within 1000 yards of the five artificial reef sites during the time period when the recreational season for black sea bass is open to ameliorate any real or potential gear conflicts at those sites (1000 yard buffer based on input from USCG and NMFS law enforcement personnel).
3. 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.
4. The Council should review the 2007 National Artificial Reef Plan and modify (if necessary) and implement the artificial reef policy it adopted in 1995.