

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket 130702585–4484–01]

RIN 0648–BD42

Fisheries of the Northeastern United States; Special Management Zones for Five Delaware Artificial Reefs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures to implement Special Management Zones for five Delaware artificial reefs under the black sea bass provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The implementing regulations for the Special Management Zones require NMFS to publish proposed measures to provide an opportunity for public comment. The intent of these measures is to promote orderly use of the resource by reducing user group conflicts, and help maintain the intended socioeconomic benefits of the artificial reefs to the maximum extent practicable.

DATES: Comments must be received by 5 p.m. local time, on August 4, 2014.

ADDRESSES: You may submit comments on this document, identified NOAA–NMFS–2014–0060, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2014-0060 click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail and Hand Delivery:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on SMZ Measures.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.),

confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the Special Management Zones measures are available from Paul Perra, NOAA/NMFS, Sustainable Fisheries Division, 55 Great Republic Drive, Gloucester, MA 01930. The Special Management Zone measures document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, (978) 281–9153.

SUPPLEMENTARY INFORMATION: The Delaware Fish and Wildlife Department (DFW) has requested and the Mid-Atlantic Fishery Management Council has recommended that five Delaware artificial reef sites, currently permitted by the U.S. Corps of Engineers in the Exclusive Economic Zone (EEZ), be designated as Special Management Zones (SMZs) under the regulations implementing the Council’s Summer Flounder, Scup and Black Sea Bass Fishery Management Plan (FMP).

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the FMP developed by the Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35° 13.3’ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing fisheries of the Northeastern

U.S. also appear at 50 CFR part 648. States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission’s plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the EEZ, as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish.

Special Management Zone Measures Background

The DFW requested in June 2011 that the Council designate five artificial reef sites, currently permitted by the U.S. Corps of Engineers in the EEZ, as SMZs under the regulations implementing the Council’s FMP. The SMZ request noted that the DFW has received complaints from hook-and-line anglers regarding fouling of their fishing gear in commercial pots and lines on ocean reef sites for more than 10 years. It also noted that the U.S. Fish and Wildlife Service (FWS) Sportfish Restoration Program (SRP) had notified DFW that these gear conflicts are not consistent with the objectives of the SRP program, which provides funding for the building and maintenance of the artificial reefs. In order to comply with the goals of the SRP, the FWS is requiring that state artificial reef programs be able to limit gear conflicts by state regulations in state waters or by SMZs for sites in the EEZ.

The Council process for devising SMZ management measures is to recommend measures to NMFS for rulemaking, and is described in the following section. All meetings are open to the public and the materials utilized during such meetings, as well as any documents created to summarize the meeting results, are public information and typically posted on the Council’s Web site (www.mafmc.org) or are available from the Council by request. Extensive background on the SMZ management measures recommendation process is therefore not repeated in this preamble.

The SMZ recommendations from the Council were established under the FMP’s black sea bass provisions (§ 648.148). A monitoring committee, consisting of representatives from the Council, NMFS Greater Atlantic Regional Fisheries Office, and NMFS Northeast Fisheries Science Center was formed to review the DFW SMZ request. The FMP’s implementing regulations require the monitoring committee to review scientific and other relevant information to evaluate the SMZ

requests in the form of a written report, considering the following criteria:

- (1) Fairness and equity;
- (2) Promotion of conservation;
- (3) Avoidance of excessive shares;
- (4) Consistency with the objectives of

Amendment 9 to the FMP, the Magnuson-Stevens Act, and other applicable law;

- (5) The natural bottom in and surrounding potential SMZs; and
- (6) Impacts on historical uses.

The Council then considered the monitoring committee's recommendations and any public comment in finalizing its recommendations. The Council forwarded its final recommendations to NMFS for review. NMFS is required to review the Council's recommendations to ensure that they are consistent with the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters.

The timeline for establishing the SMZs is summarized here: The DFW requested SMZ status for the artificial reefs in June 2011; the Council and NMFS established a monitoring committee to review the request in April 2012; the monitoring committee provided a report to the Council evaluating the SMZ request in October 15–18, 2012, in Long Branch, New Jersey, and December 10–13, 2012, in Baltimore, Maryland.

Following these meetings, the Council held three public hearings on the proposed SMZs (Ocean City, Maryland, January 15, 2013; Lewes, Delaware, January 16, 2013; and Toms River, New Jersey, January 17, 2013), and final recommendations on the SMZs were made by the Council at its February 12–13, 2013, meeting in Hampton, Virginia. NMFS subsequently has reviewed the Council's recommendations through the development of an EA and this proposed rule.

Proposed SMZ Measures

NMFS is proposing the Council's recommended measures that would

apply in the Federal waters of the EEZ and to all vessels: That all five Delaware artificial reefs, including a 0.46-km buffer around each artificial reef, be established as year-round SMZs, and within the established areas of the SMZs, all vessels would only be allowed to conduct fishing with hook and line and spear (including the taking of fish by hand). The five designated SMZ reef areas are U. S. Army Corps of Engineers permit Delaware artificial reef sites 9, 10, 11, 13, and 14. The five Delaware artificial reef sites are off the coast of Delaware at various distances from approximately 4 to 58 nautical miles (7.4 to 107.0 km), rectangular in shape, and encompass areas 3.21 to 4.11 square km.

The boundaries of the proposed SMZs artificial reef sites, including their buffers, encompass 7.4 to 8.8 square km, and are in Federal waters bounded by the following coordinates connected by straight lines in the sequence specified in Tables 1–5 below (coordinates include a 500-yard (0.46-km) squared-off buffer placed around each artificial reef site).

In order to facilitate the codification of the coordinates for the five SMZ reef areas, this rule proposes to re-organize 50 CFR 648.148 in its entirety. This rule would to redesignate the special management zone designation criteria and process provisions, currently at 50 CFR 648.148(a)–(e), in 50 CFR 648.148(a). The coordinates of the five SMZ reef areas proposed to be created by this rule would be codified at 50 CFR 648.148(b). The re-organization of the existing regulations concerning the special management zones designation criteria and process into CFR 648.148(a) is a change only to the format; no substantive changes are intended or proposed for those provisions. NMFS also proposes to add new § 648.14(p)(1)(vi) to cross reference to the new coordinates at § 648.148(b).

TABLE 1—REEF SITE 9

Corner	N. Latitude	W. Longitude
9SE	38°39.71016'	–74°59.0883'
9SW	38°39.82578'	–75°1.11264'
9NW	38°41.1048'	–75°0.63288'
9NE	38°41.03244'	–74°58.45098'
9SE	38°39.71016'	–74°59.0883'

TABLE 2—REEF SITE 10

Corner	N. Latitude	W. Longitude
10SE	38°35.93706'	–74°55.44408'
10SW	38°36.0759'	–74°57.57864'
10NW	38°37.36314'	–74°57.01812'
10NE	38°37.21938'	–74°54.96474'
10SE	38°35.93706'	–74°55.44408'

TABLE 3—REEF SITE 11

Corner	N. Latitude	W. Longitude
11SE	38°39.61578'	–74°42.81462'
11SW	38°39.7797'	–74°45.20484'
11NW	38°41.11092'	–74°44.73474'
11NE	38°40.97472'	–74°42.3459'
11SE	38°39.61578'	–74°42.81462'

TABLE 4—REEF SITE 13

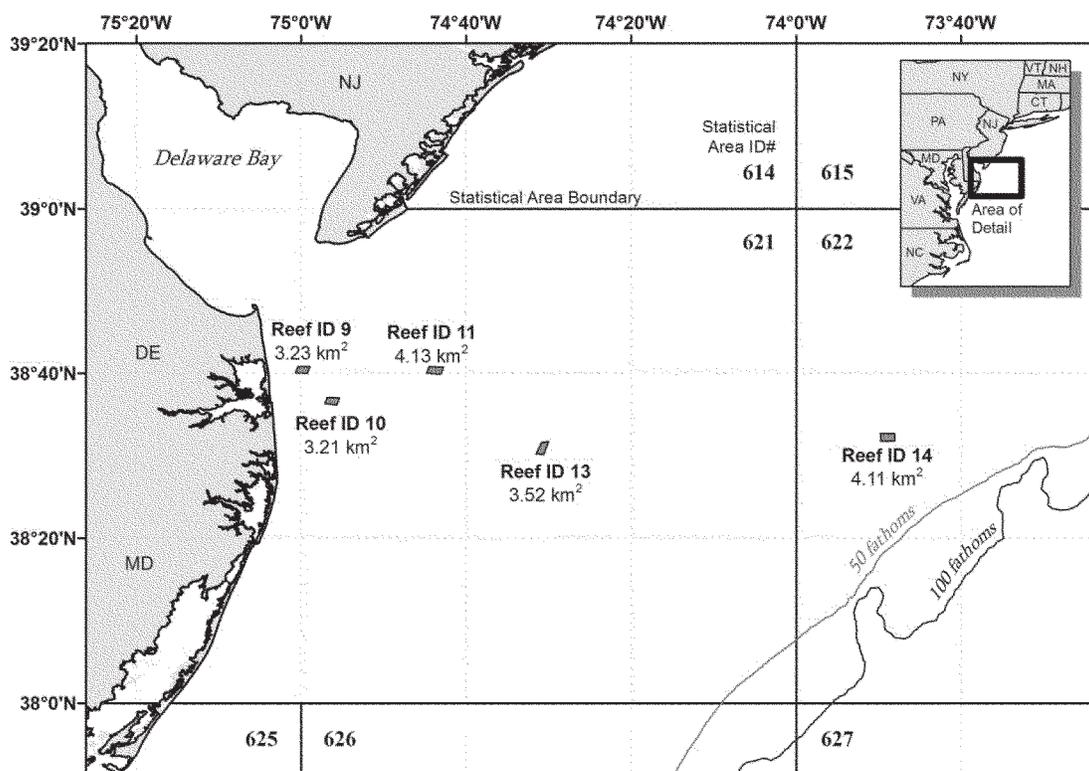
Corner	N. Latitude	W. Longitude
13SE	38°29.87118'	–74°30.34818'
13SW	38°30.00876'	–74°31.93008'
13NW	38°31.83384'	–74°31.09968'
13NE	38°32.04756'	–74°29.5839'
13SE	38°29.87118'	–74°30.34818'

TABLE 5—REEF SITE 14

Corner	N. Latitude	W. Longitude
14SE	38°31.55286'	–73°47.75244'
14SW	38°31.55286'	–73°0.08164'
14NW	38°32.94684'	–73°50.08158'
14NE	38°32.94714'	–73°47.75232'
14SE	38°31.55286'	–73°47.75244'

Figure 1. shows the location of the five proposed artificial reef sites off the coast of Delaware.

Figure 1. Location of Five Delaware Artificial Reef Sites in the EEZ Proposed for SMZ Status.



Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), which is included in the EA and supplemented by information contained in the preamble to this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows. A copy of this analysis is available from the Greater Atlantic Regional Fisheries Office (see ADDRESSES).

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

This proposed action will not duplicate, overlap, or conflict with any other Federal rules. NMFS did not consider any alternatives that would provide additional fishing opportunities beyond what was recommended by the Council because of the thorough consideration of alternatives by the SMZ monitoring committee and Council.

Description of the Reasons Why Action by the Agency Is Being Considered

DFW requested and the Council has recommended that five Delaware artificial reef sites, currently permitted by the U.S. Corps of Engineers in the EEZ, be designated as SMZs to limit recreational/commercial gear conflicts on the artificial reefs, and to maintain FWS SRP funding for the building and maintenance of the artificial reefs.

Statement of the Objectives of and the Legal Basis for This Proposed Rule

To eliminate current and/or future potential for recreational/commercial gear conflicts on the five Delaware

artificial reefs in order to maintain access to the reefs for recreational fishing. This action is proposed through the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of the Proposed Rule

This action does not introduce any new reporting, recordkeeping, or other compliance requirements.

Description of an Estimate of the Number of Small Entities To Which the Proposed Rule Would Apply

The Small Business Administration (SBA) defines a small commercial finfish fishing business as a firm with annual receipts (gross revenues) of up to \$19 million. A small commercial shellfishing business is a firm with annual receipts of up to \$5 million and small for-hire recreational fishing businesses are defined as firms with receipts of up to \$7 million.

Having different size standards for different types of fishing activities creates difficulties in categorizing businesses that participate in multiple fishing related activities. For purposes

of this assessment, business entities have been classified into the SBA-defined categories based on the activity that produced the highest percentage of average annual gross revenues from 2010–2012. This classification is now possible because vessel ownership data have been added to Northeast permit database. The ownership data identify all individuals who own fishing vessels. Using this information, vessels can be grouped together according to common owners. The resulting groupings were treated as a fishing business for purposes of this analysis. Revenues

summed across all vessels in a group and the activities that generate those revenues form the basis for determining whether the entity is a large or small business.

This rule would apply to all Federal permit holders except recreational for-hire permit holders. Thus, the affected business entities of concern are businesses that hold commercial Federal fishing permits with the exception of those that fish with hook and line. While all business entities that hold commercial Federal fishing permits could be directly affected by

these regulations, not all business entities that hold Federal fishing permits fish in the areas identified as potential SMZs. Those who actively participate, i.e., land fish, in the areas identified as potential SMZs would be the group of business entities that are directly impacted by the regulations.

The number of possible affected entities as well as an enumeration of the number of commercial fishing vessels with recent activity at the five reef sites, by gear type are described in detail in Table 6.

TABLE 6—NUMBER OF REPORTED VESSEL TRIP REPORTS OF COMMERCIAL FISHING TRIPS WITHIN 0.46 KM OF THE REEF SITES, BY GEAR TYPE

	Reef site and gear type						
	9	10		11	13	14	
		Trawl	Pot/Trap	Pot/Trap	Pot/Trap	Dredge	Trawl
2004	0	0	0	10	3	0	0
2005	0	0	1	25	0	0	0
2006	0	0	0	7	2	0	0
2007	0	0	0	0	1	0	0
2008	0	0	0	4	10	0	0
2009	0	0	0	8	14	17	7
2010	0	1	0	3	12	0	0

NMFS considered two option under this action, the no buffer and two SMZ buffer zones around the five artificial reefs. The no buffer alternative would have had no effect on the commercial vessels operating near the artificial reefs, so assessments of commercial activity within the 500-yard (0.46 km) buffer zone is included in this IRFA summary. The buffer area was recommended to improve enforcement of the recommended SMZ management measures for the artificial reefs. The 0.46-km buffer is the preferred measure. The no buffer alternative and an alternative for a 1,000-yard (0.91-km) buffer were not preferred because they were considered either too small for enforcement to effectively protect the SMZs (no buffer) or needlessly too large (1,000-yard (0.91-km) buffer) and disruptive to commercial fishing near the artificial reefs.

During 2008, 2009, and 2010, only 2 commercial vessels reported landings within 0.46 km of the reef sites in each of these years, 1 vessel reported landings in two of the three years, and

12 vessels reported landings in only one of the three years. This implies a total of 15 unique commercial vessels reported landings within 0.46 km of the reef sites from 2008–2010.

Based on the ownership data classification process described above, all of the directly affected participating commercial fishing vessels were found to be unique fishing business entities. The ownership data indicated that no two affected vessels were owned by the same business entity. Total revenue earned by these business was derived from both shellfishing and finfishing, but the highest percentage of average annual revenue for the majority of the businesses was from shellfishing. Of the 15 unique fishing business entities potentially estimated to be affected by implementation of a 0.46-km buffer around the five reef sites, 9 entities earned the majority of their total revenues (i.e., from all species and areas fished) from landings of shellfish, and 6 entities earned the majority of their total revenues from landings of finfish. Thus, under the 0.46-km buffer

alternative, nine of the potentially affected businesses are classified as shellfishing business entities and six as finfishing business entities.

Average annual gross revenue estimates calculated from the most recent 3 years of available Northeast regional dealer data (2010–2012) indicate that only one of the potentially affected shellfishing business entities under the preferred 0.46-km buffer alternative would be considered large according to the SBA size standards. In other words, one business, classified as a shellfishing business, averaged more than \$5 million annually in gross revenues from all of its fishing activities during 2010–2012. Therefore, under the preferred 0.46-km buffer alternative, 14 of the 15 potentially affected business entities are considered small (8 shellfish and 6 finfish) and 1 business entity is considered large (shellfish).

Table 7 shows the number of potentially affected business entities by percent of total average annual gross revenue landed within 0.46 km of the reef sites.

TABLE 7—NUMBER OF POTENTIAL BUSINESS ENTITIES AFFECTED BY PERCENT OF TOTAL AVERAGE ANNUAL GROSS REVENUE LANDED WITHIN 0.46 KM OF THE REEF SITES

Business entity	Percent of total average annual gross revenue (2010–2012)			
	<5%	5–9%	10–19%	20–29%
Shellfish (Small)	6	1	1	0
Shellfish (Large)	1	0	0	0
Finfish (Small)	3	1	1	1

Of the eight shellfishing businesses categorized as small in this assessment, six obtained less than 5 percent of their total average annual gross revenues from landings within 0.46-km of the reef sites, one obtained between 5–9 percent, and one between 10–19 percent. The only business entity defined as large (shellfish) in this assessment, under the preferred 0.46-km buffer, earned less than 5 percent of its total average annual gross revenues from landings at the reef sites. Finally, of the six finfish business entities defined as small finfishing businesses, under the preferred 0.46-km buffer, three obtained less than 5 percent of their total average annual gross revenues from landings at the reef sites, one obtained between 5–9 percent, one obtained between 10–19 percent, and one between 20–29 percent.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council initially considered a range of alternatives for the provisions proposed in this action, such as seasonal restrictions, which Delaware permitted artificial reef sites to designate as SMZs, and gear restrictions associated with the SMZs. NMFS considered three alternatives for the seasonal closures that would prohibit commercial gears in the SMZs: all year (Alternative 1), when the recreational black sea bass season was open (Alternative 2), or from Memorial Day to Labor Day (Alternative 3). Under Alternative 1, NMFS would designate all or some of the Delaware EEZ reef sites as SMZs when the recreational season for the federal black sea bass is open. Since the rationale for the SMZ request relates to the black sea bass fishery this alternative seeks to reduce gear conflicts throughout the recreational season for black sea bass on the artificial reefs. The open season for black sea bass can vary by state and year. But as an example, NMFS implemented black sea bass recreational fishery open seasons from May 19–October 14 and November 1–December

31 for 2013. Delaware implemented open black sea bass season from January 1–February 28, May 19–October 14 and November 1–December 31 in 2013. If this Alternative is selected, the ability of the recreational fleet to fish the reefs during the Federal season could differ from the regulations for the state in which the fish will be landed. In this case the more restrictive regulations must be followed. Under Alternative 2 the SMZ designation for any or all of the five artificial reefs would be in effect for the entire calendar year. Under Alternative 3, the SMZ designation for any or all of the five artificial reefs would be in effect from Memorial Day to Labor Day. This alternative attempts to reduce gear conflicts at 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).

NMFS considered three different SMZ site area designations in this action: designate all sites (sites 9, 10, 11, 13 and 14) (Alternative 1), designate sites 11, 13, and 14 (Alternative 2), or designate sites 9, 10, 13, and 14 (Alternative 3). Under Alternative 1, NMFS would designate all five of the Delaware reef sites as SMZs. Under Alternative 2, NMFS would designate reef sites 11, 13 and 14 as SMZs. 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) unless there is some unforeseen shift in commercial fishing effort. 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. While gill nets and long lines are not currently reported being used on the artificial reefs, they pose further potential for gear conflicts because of their ability to restrict recreational fishing on the reefs by causing fouling or snagging of hooks as recreational vessels attempt to fish on or drift over the artificial reefs. Also, displaced pot fishing vessels from the artificial reef may shift to long lines or gill nets to maintain access to their same

fishing grounds, and this would continue the recreational/commercial gear conflicts on the artificial reef sites. Under Alternative 3, NMFS would designate reef sites 9, 10, 13 and 14 as SMZs. 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, NMFS 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.

Different gear types were considered to be prohibited in the SMZs: prohibit the use of fixed pot/trap gear (Alternative 1), or prohibit the use of all gear except hook and line, and spear fishing (Alternative 2). Under Alternative 1 (the preferred alternative), NMFS would prohibit the use of fixed pot/trap gear on reef sites designated as SMZs. Under Alternative 2, NMFS would prohibit the use all fishing gear on reef sites designated as SMZs, except hook & line and spear-fishing gear. 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.).

These multiple alternatives were narrowed to only consider all five sites as SMZs with a year round closure to all commercial gear except hook and line and spear fishing. The five site SMZ alternative with the year round closure to all commercial gear except hook and line and spear fishing in combination with no buffer, 0.46 km buffer, or 0.91 km buffer was then analyzed for its effects on small entities.

The 0.46-km buffer alternative is the preferred measure and the only significant alternative which accomplishes the stated objectives of applicable statutes and which minimizes any significant economic

impact on small entities. The 0.46-km buffer is considered large enough to effectively protect the SMZs, while not being overly disruptive to commercial fishing near the artificial reefs. NMFS considered two alternatives to the selected provision, the no buffer alternative and the 0.91-km buffer alternative. The no buffer alternative was considered too small for enforcement and makes enforcement of the SMZs impractical, undermining the objectives of the proposed action. The 0.91-km buffer alternative was considered too severe and would cause undue economic impacts.

An assessment of potential impacts by gear type was examined to investigate whether business entities might be disproportionately impacted according to the type of fishing gear employed by the business. If the artificial reefs are designated as SMZs through this action, commercial fishing effort in the SMZs would likely shift to other open areas mitigating potential revenue losses, but fishing businesses that employ fixed gear likely fish at the reef sites because catch rates are higher and because conflicts with mobile gear vessels are reduced. Forcing fixed gear vessels out of the SMZ sites may increase the likelihood of conflicts with vessels in other areas, and expose them to additional costs if their gear is dragged through by vessels fishing mobile gear. Nonetheless, vessels that drag mobile gear through the proposed 0.46-km closed buffer area around the reef sites will also have to shift to other areas that are potentially less productive, so it is difficult to ascertain with certainty whether disproportionate impacts will occur according to the type of fishing gear employed.

There were four business entities that employed pot/trap gear within 0.46 km of the artificial reef sites in at least one of the three years included in this assessment (2008–2010). All four businesses entities were determined to be “small” according to the SBA size standards. Two of the four business entities obtained less than 5 percent of their total average annual gross revenues from landings at the reef sites, one obtained between 5–9 percent, and one between 10–19 percent. Thus, there will likely be adverse economic consequences for at least four small business entities that employ pot/trap gear in the areas under consideration for SMZ designation. The economic losses suffered by the four small business entities displaced from the SMZs, however, will likely be mitigated to some degree by redirection of fishing effort to other areas. The combined areas under consideration for SMZ

designation represent about 10 square km of the total available fishing area over the continental shelf off of Delaware so alternative fishing areas are prevalent. A quantitative assessment of these changes on revenues for the four small business entities under SMZ designation is not possible to a lack of sufficient data. Additionally, there were no small business entities that reported pot/trap landings at more than one of the reef sites in any given year.

Business entities that use mobile gear (dredge and trawl) also reported trips within 0.46 km of reef site 14 on their VTRs. There were no reported trips at the other reef sites, except for one trip within 0.46 km of reef site 10 in 2010. There were 11 business entities that employed mobile gear within 0.46 km during the three years included in this assessment (2008–2010). However, none of the businesses demonstrated a consistent pattern of annual landings since all 11 reported trips in only one of the three years. Ten of the businesses were determined to be “small” according to the SBA size standards and one was categorized as “large.” Six of the 11 business entities obtained less than 5 percent of their total average annual gross revenues from landings at the reef sites, 2 obtained between 5–9 percent, and 1 between 10–19 percent, and 1 between 20–29 percent. Sea scallops comprised 99 percent of the total value on those mobile gear trips occurring within 0.46 km of reef site 14. This action would preclude the 11 mobile gear vessels from fishing within 0.46 km of reef site 14 or any of the other reef sites. As previously mentioned though, commercial fishermen are only required to report location information once on their VTRs when fishing within a single NMFS statistical area, even when using mobile gear that can be towed over the bottom for hours covering many miles. In fact, according to VTR data in 2010, the average limited access sea scallop dredge trip covered approximately 9.3 km per haul and consisted of 66 hauls per trip. This means that the average limited access dredge vessel covered approximately 614 km total per trip in 2010. The area under consideration surrounding reef site 14 is only approximately 2.5 square nautical miles (4.6 square km) so the majority of the scallop landings on those trips in 2010 likely occurred in areas that will remain open under this action. Therefore, given that all but one mobile gear trip was reported in only one year within 0.46 km of reef 14 during 2004–2010, the impacts of the proposed action on earnings by mobile gear vessels is likely

to be minimal under the Council preferred buffer zone of 0.46 km.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 16, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.14, paragraph (p)(1)(vi) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(p) * * *

(1) * * *

(vi) *Special management zone.* Fail to comply with any of the restrictions for special management zones specified in § 648.148(b).

* * * * *

■ 3. In § 648.148, the introductory paragraph is removed, paragraphs (a) and (b) are revised, and paragraphs (c), (d) and (e) are removed, as follows:

§ 648.148 Special management zones.

(a) *General.* The recipient of a U.S. Army Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the MAFMC as a special management zone (SMZ). The MAFMC may 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. The establishment of an SMZ will be effected by a regulatory amendment, pursuant to the following procedure: A SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Greater Atlantic Fisheries Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report.

(1) Evaluation criteria. In establishing a SMZ, the SMZ monitoring team will consider the following criteria:

- (i) Fairness and equity;
- (ii) Promotion of conservation;
- (iii) Avoidance of excessive shares;
- (iv) 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;

(v) The natural bottom in and surrounding potential SMZs; and

(vi) Impacts on historical uses.

(2) The MAFMC Chairman may schedule meetings of MAFMC's industry advisors and/or the SSC to review the report and associated documents and to advise the MAFMC. The MAFMC Chairman may also schedule public hearings.

(3) The MAFMC, following review of the SMZ monitoring teams's report, supporting data, public comments, and other relevant information, may recommend to the Regional Administrator that a SMZ be approved. Such a recommendation will be accompanied by all relevant background information.

(4) The Regional Administrator will review the MAFMC's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in the **Federal Register** in accordance with the recommendations. If the Regional Administrator rejects the MAFMC's recommendation, he or she shall advise the MAFMC in writing of the basis for the rejection.

(5) The proposed rule to establish a SMZ shall afford a reasonable period for public comment. Following a review of

public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the record and consistent with the Magnuson-Stevens Act and other applicable law.

(b) *Approved/Established SMZs—Delaware Special Management Zone Areas.* Special management zones are established for Delaware artificial reef permit areas # 9, 10, 11, 13, and 14 in the area of the U.S. Exclusive Economic Zone. From January 1 through December 31 of each year, no fishing vessel or person on a fishing vessel may fish in the Delaware Special Management Zones with any gear except hook and line and spear fishing (including the taking of fish by hand). The Delaware Special Management Zones are defined by straight lines connecting the following points N. latitude and W. longitude in the order stated:

(1) Delaware artificial reef # 9:
 (i) 38°39.71016' lat., 74°59.0883' long.;
 (ii) 38°39.82578' lat., 75°1.11264' long.;
 (iii) 38°41.1048' lat., 75°0.63288' long.; and
 (iv) 38°41.03244' lat., 74°58.45098' long.; and then ending at the first point.

(2) Delaware artificial reef # 10:
 (i) 38°35.93706' lat, 74°55.44408' long;

(ii) 38°36.0759' lat., 74°57.57864' long.;
 (iii) 38°37.36314' lat., 74°57.01812' long.; and
 (iv) 38°37.21938' lat., 74°54.96474' long.; and then ending at the first point.
 (3) Delaware artificial reef # 11:
 (i) 38°39.61578' lat., 74°42.81462' long.;
 (ii) 38°39.7797' lat.; 74°45.20484' long.;
 (iii) 38°41.11092' lat., 74°44.73474' long.; and
 (iv) 38°40.97472' lat., 74°42.3459' long.; and then ending at the first point.
 (4) Delaware artificial reef # 13:
 (i) 38°29.87118' lat.; SE. 74°30.34818' long.;
 (ii) 38°30.00876' lat., 74°31.93008' long.;
 (iii) 38°31.83384' lat., 74°31.09968' long.; and
 (iv) 38°32.04756' lat., 174°29.5839' long.; and then ending at the first point.
 (5) Delaware artificial reef # 14:
 (i) 38°31.55286' lat., 73°47.75244' long.;
 (ii) 38°31.55286' lat., 73°50.08164' long.;
 (iii) 38°32.94684' lat.; 73°50.08158' long.; and
 (iv) 38°32.94714' lat, 73°47.75232' long.; and then ending at the first point.

[FR Doc. 2014–14358 Filed 6–18–14; 8:45 am]

BILLING CODE 3510–22–P

NOAA Fisheries Proposed Rulemaking on Special Management Zones (SMZs) for Five Artificial Reefs off the Coast of Delaware

Proposed Action

NOAA's National Marine Fisheries Service (NOAA Fisheries), Northeast Regional Office, has published a proposed rule to implement SMZs for five artificial reefs in Federal waters off the coast of Delaware. These measures are intended to promote the orderly use of the resource, reduce user group conflicts, and maintain the intended socioeconomic benefits of the artificial reefs to the maximum extent practicable. This rule is in response to the recommendations of the Delaware Fish and Wildlife Department (DFW) and the Mid-Atlantic Fishery Management Council (Council) that the SMZs be established.

Background

The DFW requested that the Council designate five artificial reef sites, currently permitted by the U.S. Corps of Engineers in the Exclusive Economic Zone (EEZ), as SMZs under the regulations implementing the Council's Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The SMZ request noted that the DFW has received complaints from hook-and-line anglers regarding fouling of their fishing gear in commercial pots and lines on ocean reef sites for more than 10 years. It also noted that the U.S. Fish and Wildlife Service (FWS) Sportfish Restoration Program (SRP) had notified DFW that these gear conflicts are not consistent with the objectives of the SRP, which provides funding for the building and maintenance of the artificial reefs. In order to comply with the goals of the SRP, the FWS is requiring that state artificial reef programs be able to limit gear conflicts by state regulations in state waters or by SMZs for sites in the EEZ. The major issues from the FWS's perspective include: 1) Proliferation of commercial fishing traps/pots on artificial reefs constructed with SRP funds; 2) commercial/recreational gear conflicts interfere with accomplishment of artificial reef grant objectives; and 3) absence of mechanisms to manage commercial fishing on reefs located in state-controlled waters and the EEZ.

The FWS has terminated SRP funding for New Jersey's artificial reef program because that state has no mechanism to manage recreational/commercial gear conflicts on its artificial reefs. Concern over the recreational/commercial gear conflicts on the DFW artificial reefs, and the FWS termination of SRP funding for New Jersey's artificial reef program, led DFW to petition the Council for SMZ status for its five Federal waters artificial reefs.

Based on requirements in the FMP, the Council formed an SMZ Monitoring Team (Team) that evaluated the DFW request based on the following criteria: 1) Fairness and equity; (2) promotion of conservation; (3) avoidance of excessive shares; (4) consistency with the objectives of Amendment 9 to the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law; (5) the natural bottom in and surrounding potential SMZs; and (6) impacts on historical uses.

After a review of the Team's report, and input from three public hearings, the Council recommend that all five artificial reefs be established as SMZs through a regulatory amendment. The action would allow only hook-and-line and spear fishing, including the taking by hand, in the artificial reef designated areas (all year round), and these measures would be implemented with a 500-yard buffer around each artificial reef site.

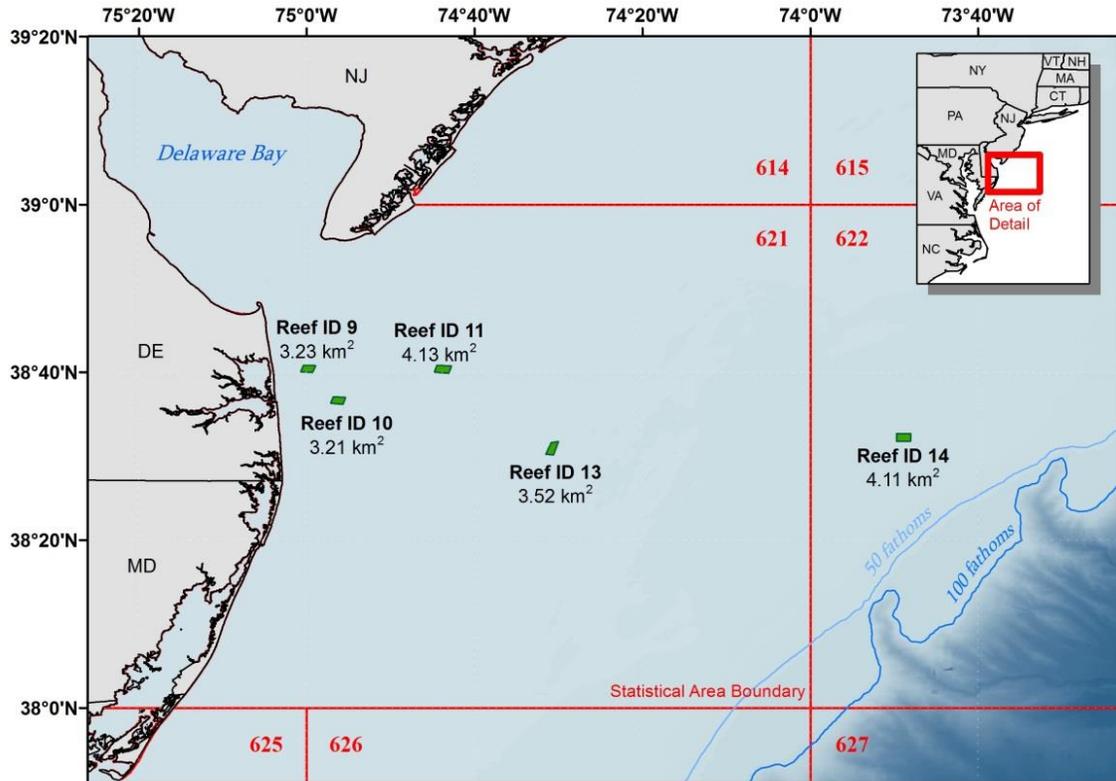
NOAA Fisheries has developed an Environmental Assessment and proposed rule to evaluate and consider implementation of the Council's recommendations.

The measures proposed for the SMZs are not expected to be controversial; some small amount of commercial fishing (mostly black sea bass pot fishing) will no longer be allowed on the comparatively small areas of the five artificial reefs. The total area designated as SMZs would encompass 11.9 square nautical miles (Attachment 1). The recreational fishing fleet would retain access to the artificial reefs sites, and the State of Delaware would maintain its SRP funding for its artificial reef program. Commercial activity would continue to be allowed on the artificial reefs through hook-and-line fishing.

Summer flounder, scup, and black sea bass are managed jointly by the Council and the Atlantic States Marine Fisheries Commission (Commission), with the implementing of complementary action in state waters to the Council's FMP by the Commission. The five proposed SMZs are all in Federal waters. However, the black sea bass pot fishery that takes place on or near the artificial reefs also may catch and land lobsters. There is no Council FMP for lobsters although NOAA Fisheries issues lobsters regulations in close cooperation with the Commission under the Atlantic Coastal Fisheries Cooperative Management Act.

Attachment 1

**Five Artificial Reef Sites in the EEZ (DE Artificial Reef Sites 9, 10, 11, 13, and 14)
Considered for Special Management Zone (SMZ) Designation**





STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DELAWARE COASTAL
MANAGEMENT PROGRAM

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Phone: (302) 739- 9283
Fax: (302) 739-2048

May 20, 2014

John K. Bullard
National Marine Fisheries Service – Northeast Region
55 Great Republic Drive
Gloucester, MA 01930-2276

**RE: Delaware Coastal Management Federal Consistency Determination
Delaware Artificial Reef Special Management Zones
FC # 2014.0055**

Dear Mr. Bullard:

The Delaware Coastal Management Program (DCMP) has received and reviewed your consistency determination for the proposed rule to establish Special Management Zones (SMZs) for five artificial reef sites in Delaware in federal waters under the black sea bass provisions of the Summer flounder, Scup, and Black Sea Bass Fishery Management Plan. Based upon our review and pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency determination for the above referenced project.

However, we offer the following comments for your thoughtful consideration:

Delaware is committed to maintaining quality recreational fishing opportunities consistent with the U.S. Fish and Wildlife Service's Sport Fish Restoration Office funding requirements. To this end, fishing gear conflicts were required to be minimized at our artificial reef sites. Delaware's request to the Mid-Atlantic Fisheries Management Council (MAFMC) for the establishment of the SMZs to reduce gear conflicts included only the area within the permitted reef sites. During the MAFMC process, the U.S. Coast Guard added the 500 yard buffer around each site to the SMZ area. This increases the total area of the closure by more than 50%. We believe this should be reconsidered for the following reasons in order to minimize adverse impacts to the commercial watermen using pot/trap gear:

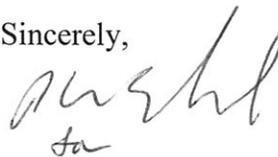
1. Delaware's SMZ regulations for sites in state waters include only the area of the permitted site, without buffers. Delaware Fish & Wildlife Enforcement agents do not consider this to be an enforcement problem.

Delaware's good nature depends on you!

2. In permitting ocean sites, Delaware included only featureless bottom within sites, but in most cases natural wrecks were adjacent to sites, within the proposed 500 yard buffer. These are traditional areas for commercial pot fisherman and should not be lost.
3. The precedent for this proposed buffer may be SMZs established by the South Atlantic Fishery Management Council for Snapper/grouper. These have been in effect for over 20 years. At that time, LORAN C was the best navigational aid available, crude by today's standards. Today we have GPS which is far more accurate, and AIS (Automatic Identification System) with which it is possible to identify vessels and pinpoint their location from a considerable distance. These should be sufficient for enforcement purposes and the 500 yard buffer should be eliminated.

We ask that your agency consider modifying the boundaries of the SMZ proposal for the reef sites in Delaware based on the reasons stated above. If you have any questions please do not hesitate to contact me or Tricia Arndt of my staff at (302) 739-9283.

Sincerely,



Sarah W. Cooksey, Administrator
Delaware Coastal Management Program

SWC/tka
cc: File 2014.0055
Paul Perra-NMFS
Jeff Tinsman-DFW

Delaware's good nature depends on you!



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

July 30, 2014

Mr. John Bullard
Regional Administrator
NMFS, Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930

RE: Request for comments on proposed rule to implement special management zones (SMZs) for five Delaware Artificial Reefs

Dear John:

The New England Fishery Management Council (NEFMC) staff has reviewed the proposed rule and Draft Environmental Assessment (EA) prepared for measures to implement special management zones for five Delaware artificial reefs under the Black Sea Bass Fishery Management Plan. We have several concerns about this potential action and process.

First, the NEFMC has a clear interest in this proposed action. While these areas are in the Mid-Atlantic off the coast of Delaware, Area 14 is almost 60 miles offshore and overlaps with fishing grounds used by the sea scallop, skate and monkfish fisheries, which are managed by the NEFMC. Area 14 is located at a depth of about 60 meters and is within the Elephant Trunk scallop rotational area, an area that has had special management status in the Scallop FMP since 2004 when it was first closed to protect juvenile scallops. Since that time this area has become one of the more productive and valuable scallop access areas in the entire region.

Second, the analyses of potential fishery impacts in the Draft Environmental Assessment are incomplete. The EA includes some analysis of the potential impacts on the sea scallop fishery, but potential impacts on the monkfish and skate fisheries are not addressed. There is no map in the EA that overlays other fishery management areas with the artificial reef sites/SMZs, so it is difficult to evaluate the effects of the SMZs at a glance. As noted above, Area 14 is within the Elephant Trunk scallop rotational area, and overlaying scallop biomass data from the Northeast Fishery Science Center dredge survey confirms that this area overlaps with high concentrations of offshore scallop beds (Figure 1).

Vessel Trip Report (VTR) fishing locations (one point per trip) are the primary data source used to evaluate the potential impacts on fisheries. The EA recognizes that using VTR data to estimate fishing activity in such small areas likely underestimates the impacts, but no attempt has been made to correct for this or to consider other data sources that are available such as vessel monitoring system data (VMS). Council staff has plotted similar VTR data with updated years (2008-2012) for the scallop fishery to highlight this concern (Figure 2). Only three reported locations fall within the boundaries of the Area 14 SMZ, and all scallop catch and revenue from these trips was about 192,000 pounds and \$1.2 million dollars. However, if VTR fishing locations reported within two

nautical miles (or 0.05 decimal degrees) of Area 14 are considered as well, the catch and revenue estimates are much higher; over 3 million pounds and over \$20 million dollars (Figure 3). This is a very simplistic method to expand VTR data to describe potential fishery impacts. If possible, the final EA should consider more sophisticated geoprocessing methods, or use Vessel Monitoring System (VMS) data to better quantify overlaps with fishing effort. For example, the Northeast Fishery Science Center developed a method to analyze VTR data which infers fishing effort in circular bands around a single VTR points. This approach is currently being used to evaluate impacts in the New England Council's Omnibus Essential Fish Habitat Amendment 2 and could be used in this EA.

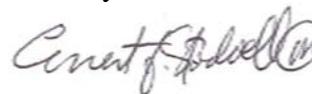
In addition, the EA should acknowledge that scallop fishing effort in Area 14 shows substantial inter-annual variation due to its status as a scallop rotational access area, and a complete lack of scallop fishing during a particular year may be due to a rotational area closure. During other years there has been controlled access but relatively high levels of fishing, and at times the area has reverted to an open area and was fished more sporadically. This cycle of closures and opening is expected to continue in the future if this area continues to be a productive area. Most recently, Elephant Trunk was closed to the scallop fishery on December 12, 2012. The area will remain closed for over two years and is scheduled to reopen to limited fishing in 2015 through either 2017 or 2018.

Finally, the EA concludes overall that designating SMZs with gear restrictions for all five reefs would have, "negligible impacts on trawl or scallop fishing because it would not alter their fishing activities" and "vessels using dredges or trawls would avoid the rough bottom of the small artificial reef areas". These conclusions may be valid for the other four areas that already have artificial reefs, but there is currently no artificial reef in Area 14. Therefore, implementing an SMZ for Area 14 would essentially close an area that is actively fished, does not have rough bottom and that does not currently have an artificial reef, at a potential scallop revenue loss of between \$1 million to \$20 million.

While the full Council has not had an opportunity to discuss this proposal, I urge NMFS not to implement an SMZ to address gear conflicts in Area 14 until an artificial reef is actually placed there, or to consider exempting mobile bottom tending gears from the Area 14 SMZ. As there is currently no artificial reef in Area 14, implementing a SMZ at this time would create adverse impacts on fisheries active in that area with no associated benefits.

Please contact me if you have any questions.

Sincerely,



Terry Stockwell
NEFMC Chairman

cc: Christopher Moore, MAFMC
Robert Beale, ASMFC
Enclosure

Figure 1 – Estimated exploitable biomass in kg from all NEFSC scallop dredge survey tows (1979-2005)

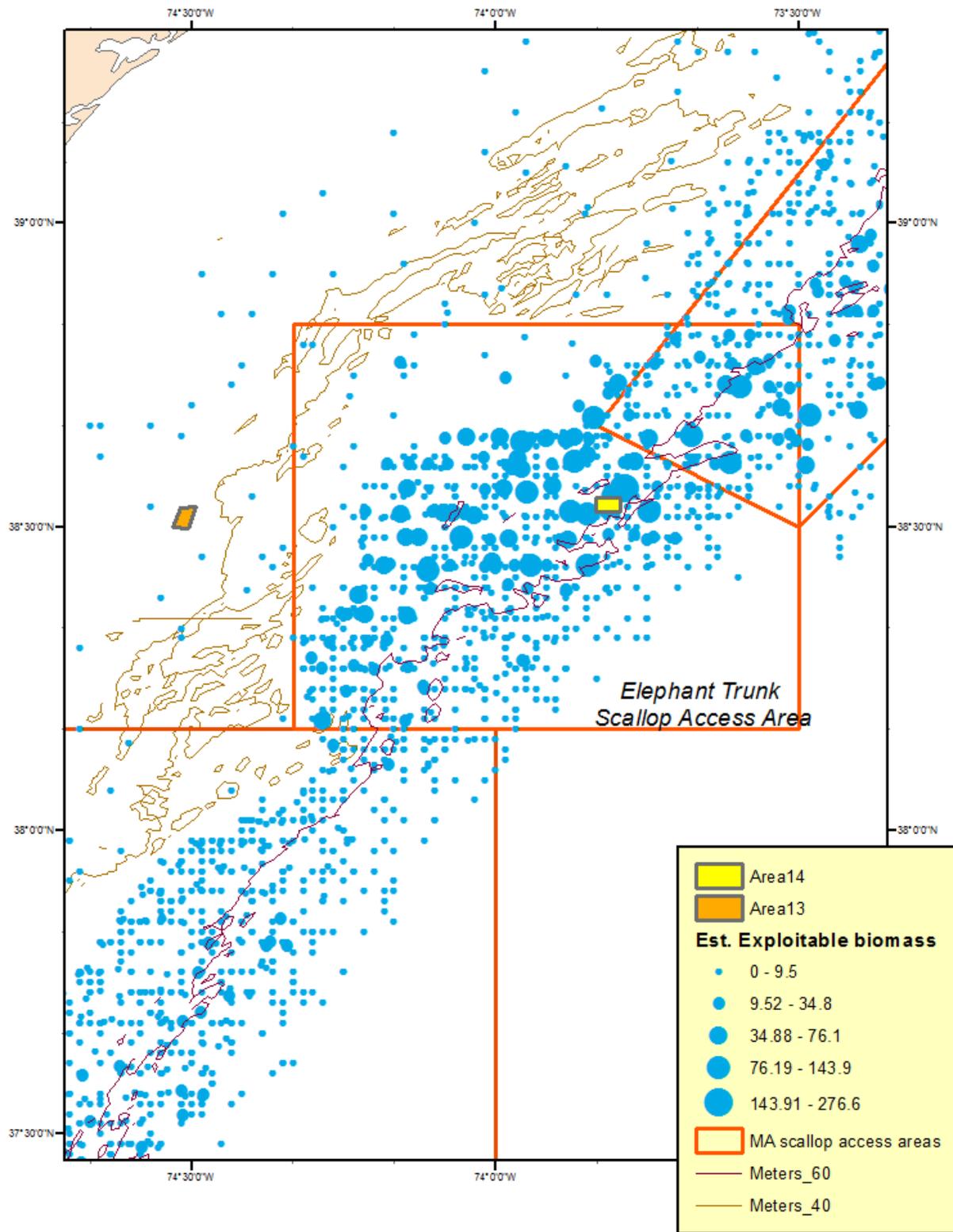


Figure 2 – Fishing location data for trips with scallops as primary species landed (VTR data 2008-2012)

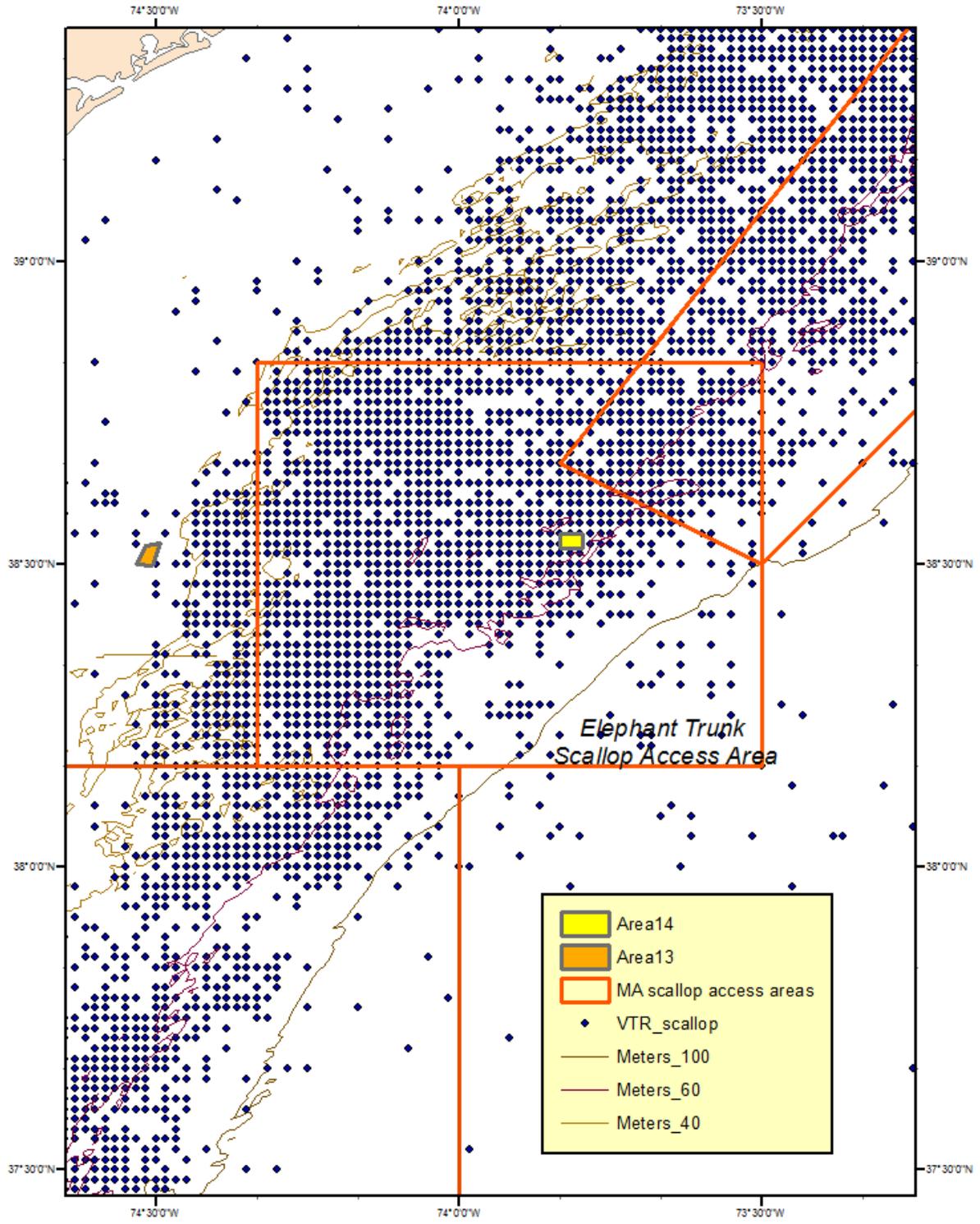


Figure 3 – VTR locations for trips with scallops as primary species landed within 2 nautical miles of Area 14

