

Atlantic States Marine Fisheries Commission

American Lobster Management Board

May 20, 2013
1:15.-3:15 p.m.
Alexandria, Virginia

Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

1. Welcome/Call to Order (*D. Grout*) 1:15 p.m.
2. Board Consent 1:20 p.m.
 - Approval of Agenda
 - Approval of Proceedings from February 2013
3. Public Comment 1:25 p.m.
4. Consider Draft Addendum XXI for public comment (*T. Kerns*) **Action** 1:35 p.m.
 - Review working group definition of ownership
 - Overview of Draft Addendum XXI options
 - Consider approval of Addendum XXI for public comment
5. Overview of Mid-Atlantic Fishery Management Council Action on special management zones impacts to the commercial lobster fishery (*T.Kerns*) 3:05 p.m.
6. Other Business/Adjourn 3:15 p.m.

The meeting will be held at the Crowne Plaza Hotel, 901 North Fairfax Street, Alexandria, Virginia; 703-683-6000

Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015

MEETING OVERVIEW

American Lobster Management Board Meeting
Monday, May 20, 2013
1:15-3:15 p.m.
Alexandria, Virginia

Chair: Doug Grout (NH) Assumed Chairmanship: 01/12	Technical Committee Chair: Josh Carloni (NH)	Law Enforcement Committee Representative: Joe Fessenden (ME)
Vice Chair: Dan McKiernan	Advisory Panel Chair: Vacant	Previous Board Meeting: February 19, 2013
Voting Members: ME, NH, MA, RI, CT, NY, NJ, DE, MD, VA, NC, NMFS (12 votes)		

2. Board Consent

- Approval of Agenda
- Approval of Proceedings from February 19, 2013

3. Public Comment – At the beginning of the meeting public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

4. Consider Draft Addendum XXI for public comment (1:35-3:05 p.m.) Action
<p>Background</p> <ul style="list-style-type: none"> • The Board delayed moving forward with the proposed measures regarding changes in the LCMA 2 and 3 transferability measures to allow for further clarity. • A subcommittee of industry and board members met in September to work on the Board task • The PDT had drafted a revised draft addendum for public comment at the February meeting • The Board tasked a working group of commissioners and industry members to define ownership in the context of the draft Addendum
<p>Presentations</p> <ul style="list-style-type: none"> • Review working group recommendations by T. Kerns (Supplemental Materials) • Overview of Draft Addendum XXI options by T. Kerns
<p>Action for consideration</p> <ul style="list-style-type: none"> • Approve Draft Addendum XXI for public comment

5. Overview of MAFMC action on special management zones impacts to the commercial lobster fishery (3:05-3:15 p.m.)
<p>Background</p> <ul style="list-style-type: none"> • The Board ask staff to present possible impacts to the commercial lobster fishery

through action taken by the MAFMC regarding special management zones
Presentations <ul style="list-style-type: none">• Overview of possible impacts to lobster commercial fishery T. Kerns (Briefing CD)
Action for consideration <ul style="list-style-type: none">• None

6. Other Business/Adjourn

DRAFT

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**DRAFT PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
AMERICAN LOBSTER MANAGEMENT BOARD**

**Crowne Plaza Hotel - Old Town
Alexandria, Virginia
April 30, 2012**

These minutes are draft and subject to approval by the American Lobster Management Board. The Board will review the minutes during its next meeting.

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INDEX OF MOTIONS

1. **Approval of Agenda by consent** (Page 1).
2. **Move to approve Addendum XVIII for public comment with changes made today** (Page 12). Motion by Bill McElroy; second by Bill Bill Adler. Motion carried (Page 12).
3. **Move to adopt the terms of reference as presented by the technical committee** (Page 20). Motion by David Simpson; second by Pat Augustine. Motion carried (Page 22).
4. **Move to postpone until the summer meeting acting on the terms of reference** (Page 20). Motion by Mark Gibson; second by Pat Augustine. Motion was defeated (Page 22).
5. **Move to approve the draft terms of reference for the peer review panel** (Page 22). Motion by David Simpson; second by Pat Augustine. Motion carried (Page 22).
6. **Move to adjourn by consent** (Page 26).

ATTENDANCE**Board Members**

Terry Stockwell, ME, proxy for P. Keliher (AA)
 Steve Train, ME (GA)
 G. Ritchie White, NH (GA)
 Douglas Grout, NH (AA)
 Dennis Abbott, NH, proxy for Rep. Watters (LA)
 Rep. Sarah Peake, MA (LA)
 Jocelyn Cary, MA, Legislative Proxy
 William Adler, MA (GA)
 DanMcKiernan, MA, proxy for P. Diodati (AA)
 Robert Ballou, RI (AA)
 Mark Gibson, RI, Administrative proxy
 Rick Bellavance, RI, proxy for Rep. Martin (LA)
 William McElroy, RI (GA)

David Simpson, CT (AA)
 Lance Stewart, CT (GA)
 James Gilmore, NY (AA)
 Pat Augustine, NY (GA)
 Brian Culhane, NY, proxy for Sen. Johnson (LA)
 Peter Himchak, NJ DFW, proxy for D. Chanda (AA)
 Tom Fote, NJ (GA)
 John Clark, DE, proxy for D. Saveikas (AA)
 Roy Miller, DE (GA)
 Bernie Pankowski, DE, proxy for Sen. Venables (LA)
 Tom O'Connell, MD (AA)
 Russell Dize, MD, proxy for Sen. Colburn (LA)
 Bob Ross, NMFS

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

Ex-Officio Members

Josh Carloni, Technical Committee Chair

Staff

Vince O'Shea
 Robert Beal
 Toni Kerns

Mike Waine
 Chris Vonderweidt

Guests

Jason Didden, MA FMC
 Michelle Duval, NC DMR
 David Spencer, AOLA
 Bonnie Spinnazola, AOLA
 Alison Fairbrother, Public Trust Project
 Chris Jones, MD DNR
 Peter Burns, NOAA
 Jay Lugar, MSC
 Peter Burns, NMFS

Mary Beth Tooley, Camden, ME
 Jeff Kaelin, Lund's Fisheries
 John German, LISLA
 William Ball, Ofc. of Sen. Collins, ME
 Kyle Molton, Ofc. of Rep. Pingree, ME
 Jay Lugar, MSC
 Patrick Paquette, MSBA/RFA
 Steve Goodman, NMFS
 Janice Plante, Commercial Fisheries News

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel, Alexandria, Virginia, April 30, 2012, and was called to order at 3:25 o'clock p.m. by Chairman Douglas Grout.

CALL TO ORDER

CHAIRMAN DOUGLAS GROUT: This is a meeting of the ASMFC American Lobster Management Board. My name is Doug Grout. I am Chair of this board.

APPROVAL OF AGENDA

CHAIRMAN GROUT: The first item on the agenda is board consent of approval of the agenda. Are there any changes? Yes, Pete.

MR. PETER HIMCHAK: Mr. Chairman, I didn't see on the agenda any time allocation for maybe some reporting on where we are with implementing Addendum XVII measures. I see all the other states from Area 5 here, so they might want to know what New Jersey is doing on the regulation front. It will be a quick update.

CHAIRMAN GROUT: Can I add that under other business; would that be appropriate?

MR. HIMCHAK: Yes, that would be fine.

CHAIRMAN GROUT: Any other changes to the agenda? Is there any objection to approving the agenda as amended? No objection, we'll move on.

APPROVAL OF PROCEEDINGS

CHAIRMAN GROUT: We also have in our packet an approval of the proceedings of the February 2012 board meeting. Were there any changes needed for that? Is there any objection to approving the minutes of the meeting? Seeing none, I see them approved.

PUBLIC COMMENT

CHAIRMAN GROUT: We also have a place on our agenda here for public comment on items that are not on the agenda. Is there anybody that would like to provide public comment? Yes.

MR. MIKE TYLER: Mike Tyler from Connecticut, Commercial Lobstermen's Association. There are two things I would like to bring briefly. One is that I have a concern or we have a concern that the Lobster Advisory Panel has not been involved in the process

basically since the moratorium. I was wondering why they haven't been convened and do you plan on convening them in the future?

They were part of the process for an awful long time. We have representatives from states. It is a vehicle for us as the public to bring issues to the board without going through the public at the end of the meeting and then coming up with a question and we can have representation on the board.

CHAIRMAN GROUT: Didn't we have the advisors meet before the last addendum?

MS. TONI KERNS: We've been engaging the Lobster Conservation Management Teams instead of the LAP because these management program changes have been specific to Southern New England. Traditionally with the way the Lobster Board works, anything that is a coast-wide issue goes to the advisory panel and area-specific changes go to the Lobster Conservation Management Teams. Because the Lobster Board set up those LCMTs, it's a special case on how the Lobster Board works.

MR. TYLER: The other thing that I would like – I am disappointed because it is an opportunity for us to talk among our peers with issues that other states might vote against when we feel that it's something that would be in our favor. The other thing that I wanted to say is that Representative Minor from Connecticut, who is not here, since the last meeting brought up a House Bill that would address some of the pesticide use along the shoreline.

I think it is everyone's duty among this board here or panel that when things like this come up, I think that they should be supported. If it doesn't even pass out of the Environment Committee, at least he has been proactive in bringing about some awareness. Thanks.

ELECTION OF A VICE-CHAIR

CHAIRMAN GROUT: Thank you. Any other comments from the public? Okay, the next item on the agenda is election of a vice-chair. David.

MR. DAVID SIMPSON: I would like to nominate Dan McKiernan for vice-chair.

CHAIRMAN GROUT: Seconded by Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman, and I move that we close nominations and cast one vote for the new vice-chairman.

CHAIRMAN GROUT: Any objection to that? Thank you, Dan; we appreciate your service.

DISCUSSION OF DRAFT ADDENDUM XVIII FOR PUBLIC COMMENT

CHAIRMAN GROUT: Okay, the next agenda item is to consider Draft Addendum XVIII for public comment. Toni has a presentation on this.

MS. KERNS: Draft Addendum XVIII was on your briefing CD, and I'm going to go through this addendum. I realize that it's a little more complicated than some other addendums so I'll try to be as thorough as possible. The Lobster Board gave direction to the plan development team to scale the Southern New England Fishery to the size of the resource.

Included in this was an option that would result in a minimum reduction in traps fished by 25 percent. At the last board meeting the plan development team had several questions related to the goals of this addendum, and the board put together a working group to clarify those questions. The working group altered this language in the initial motion from the board to change the language from traps fished to traps allocated.

This was due to the information that we have available across all entities in terms of data for the lobster fishery, and traps allocated was the most common factor that we have amongst all the agencies that is consistent versus traps fished. The board should consider and note this language change.

With this language change, the addendum proposes the consolidation program for LCMA 2 and 3 to address latent effort and reductions in traps allocated. For trap limits to be effective in reducing harvest and rebuilding the stock, we need to consolidate this fishery. Without addressing latent effort from the fishery, any effort to consolidate the fishery will be undermined as well as latent effort needs to be addressed to prevent effort from coming back into the fishery as the stock grows.

In 2007 the Area 2 allocation program was implemented by the states. The National Marine Fisheries Service is still going through rulemaking to allocate to the federal permit holders. From the data that I have collected so far, which is not a complete set of information, there is approximately 40 percent latency in Area 2.

In 2003 the Area 3 allocation program was implemented. Addendum I reduced their traps on a sliding scale and then trap allocations were again reduced by 5 percent in 2007 and 2008 and then another 2.5 percent in 2009 and 2010. I do not have a good estimate for latency in Area 3 to give to the board yet, but I'm working with NOAA Fisheries to get that information before the document is released for public comment.

Trap allocations are the only aspect of the current regulations that provide a mechanism to allow for consolidation. The industry will need to right size itself to the available resource in Southern New England; and from the last assessment this is approximately 50 percent of its historic level. This addendum proposes trap banking for Area 3 and Area 3.

Trap allocation banking will allow the permit holder to obtain trap allocation from other permit holders in excess of the individual's trap limit on an area-specific basis. The additional allocation would not be able to be fished until it is activated by the permit holder's governing agency. Banking is proposed to allow flexibility for industry members to plan and scale their business to the future of the fishery both for individuals and corporations.

The provision will enhance the ability of a lobster business to plan for their future with the benefit that bank traps do not enter the fishery except on a predictable schedule. Entities will be able to purchase a large number of traps in a single transaction versus making numerous small transitions every year, which would reduce the administrative burden for both management agencies as well as industry.

There is also a proposed controlled growth for Area 2 and 3. Controlled growth limits the rate of trap increases that may result from the implementation of trap transferability, and it is intended to allow an entity to annually move traps from their banked account to their active account each year at a predictable rate.

First I'm going to go through the proposed management options for Area 2. They're a little bit different than Area 3 although some of them have the same concepts. For Area 2 we propose an initial trap reduction. Option 2 is a 25 percent reduction in the trap allocation, and that would be Year 1. This is the LCMT preferred option.

It would reduce the allocation from what the individuals were given in 2007 if they were allocated by the states, and it would reduce by 25 percent once the National Marine Fisheries Service adopts rulemaking for allocations in Area 2 we're hoping in the coming year. This reduction also would reduce any other allocations that were obtained by the permit holder since their allocation was given to them in 2007.

I've underlined here transfers would not occur prior to the 25 percent cut. This information was not in the addendum as it was written, but it was a clarification that was made after the CD was done. This is just to ensure that some of that latent effort gets out of the system before transfers occur since there is at least 40 percent latency in Area 2.

Then we would do additional trap reductions in Area 2. These would be on an annual basis and proposed over a five-year period. Annual trap allocation reductions would be assessed on both active traps as well as traps that were banked with the annual reduction, and those traps would be permanently retired for conservation purposes.

If an initial reduction is implemented in Year 1, then the annual trap reductions would start in Year 2 and continue through Year Six, so total reductions including the 25 percent would be over six years. The annual reductions would be 5 percent reductions in the trap allocation for five years, totaling 25 percent. The total reduction in traps, if both options were approved, would be a 50 percent reduction from your trap allocation.

Next is looking at some rules governing trap allocation transfers. Through the transferability addendum, entities were able to transfer full or partial trap allocations of qualified traps from one another, but we established different rules governing those transfers whether it was a full business sale or a partial business sale.

From Addendum XII our status quo is that if an individual transfers a trap that has multiple LCMA's allowed to be fished on it, then once that trap is transferred the buyer has to choose a single LCMA that that trap will be fished in, and the privileges for the other LCMA's are forfeited. That is status quo as we currently operate.

Option 2 would allow any LCMA to be fished when transferring a multi-LCMA trap, but you would still be bound by the most restrictive rule. This slide is going to look a little bit similar but it is flipped.

When you are selling your full business under the current rules in Addendum XII, you may fish any LCMA that is transferred with that permit. If it's a multiple LCMA permit, you can choose any of the LCMA's on there but still bound by the most restrictive rule.

Option 2 is that the entity must choose the single LCMA to fish on a multi-LCMA transfer of traps and privileges for the other LCMA's would be forfeited. I think the rationale behind having this up for changes in management is to set potentially the same rules for a full business sale or a partial business sale because currently they are opposite.

Trap allocation banking; trap allocation that is owned but may not be fished and are held in a banking account is what we call a trap allocation. An entity who owns the maximum individual trap cap but less than the ownership cap in an area may purchase traps from another fisherman and deposit those into the allocation in his or her trap allocation bank account until the maximum ownership cap is reached.

Each entity with a state or a federal permit for an LCMA is entitled to establish one single trap allocation banking account for each permit. Each trap allocation account will be partitioned by the LCMA and an entity's total of the active and bank accounts cannot exceed the ownership cap for that LCMA. Traps in the account may not be fished until activated according to the governing agency and the release of banked trap allocation would be subject to the provisions of the addendum. Traps in the banked account are subject to trap reductions, but a transfer tax will not be assessed on traps when activated from the permit holder's banked account.

Option 1 is to not allow banking, status quo. Option 2 is to allow up to 800 traps to be banked by an individual or a corporation at a given time, and that is the LCMT preferred option. Ownership caps; this ownership cap goes along with the trap banking that I just discussed. An ownership cap is the maximum number of traps an entity may own for each LCMA, so it's a combination of your individual allocated traps or your active traps plus the number of traps that are in your banked account.

Option 1, status quo, limiting the number of permits; currently we have a monopoly clause for Area 2, so that sort is like an ownership cap. Our monopoly clause is we do not allow more than two permits per entity with the exception of those that had more than two permits prior to 2003, and this was done through Addendum VII.

Option 2 here is that an entity could not own more than 1,600 traps, and that would be 800 active traps and 800 banked traps. This is the LCMT preferred option. The one point where I'm not sure what was the intention of the LCMT is if they wanted to have any sort of monopoly clause because I don't believe Option 2 limits the number of permits an individual could own. It just says you can't own more than 1,600 traps, but you could have more than one permit as an individual. This is something to think about for clarification.

Next for Area 2 is looking at controlled growth. Controlled growth is intended to allow an entity to annually move traps from their banked account to their active account on an annual basis. Controlled growth applies to the individual's allocation by LCMA and not an individual's total allocation.

Option 1 is status quo; no limits on growth. Option 2 would be a maximum of 400 traps could be moved annually each year, and that is the LCMT's preferred option. Option 3 is to allow a maximum of 800 traps to be moved annually each year. The controlled growth provision would be effective in the same year that NOAA Fisheries implements transferability.

A full transfer of all qualified and banked traps would be exempt from the controlled growth provision, so a full business sale would not have to follow under these rules. Looking at the Area 2 transfer tax, currently the transfer tax in Area 2 is 10 percent for all transfers whether that be a partial or a full business sale.

This addendum is not proposing to change that 10 percent but changing the method in which a transferability tax could be approved. Option 1 is status quo; to make changes for the tax you would do this through the addendum or the amendment process. Option 2 is changes would be made through board action, and the board would be restricted in the amount that they would allow. To change it, it would have to be anywhere from 5 to 20 percent, and the adjustment would only be on an annual basis and it would be for the following fishing year.

Next I'm going to go through the proposed changes for LCMA 3. First we're going to look at annual trap reductions. Trap allocations would be reduced from the 2012 permit trap allocation, and this is because they have already had several reductions in their allocations since they were initially allocated in 2003. The reductions would occur for both active and banked traps.

Option 1, status quo, no action; and Option 2 is a 2.5 percent reduction of trap allocations per year for ten years, and this is the LCMT preferred option. Option 3 is a 5 percent reduction of trap allocations for five years. Both of these add up to a 25 percent reduction. Next is looking at the transfer tax. The transfer tax in Area 3 under status quo is a conservation tax of 20 percent for partial transfers and 10 percent is assessed on full business sales.

Option 2 looks at the conservation tax of 10 percent for all transfers, whether it be full or partial, and this is the LCMT preferred option. Also for the transfer tax, it is looking at how we adopt the transfer tax for Area 3, and this is exactly as was proposed for the Area 2, which for the Option 2 proposes that through board action limits the amount you can have on a transfer tax, and it would be just on an annual basis. I'm not going to rehash that.

Trap allocation transfers for LCMA 3; and this is exactly like what I went over for Area 2 is that the commission has different rules for entities that have a multi-LCMA trap allocation and they transfer traps. The current regulation on the partial transfers is that the buyer has to decide which LCMA they want to fish it in. They can only choose one LCMA and then all the other LCMA that trap has history in are forfeited. Option 2 allows that history to retain.

Just like in Area 2, the full business transfers, status quo is that on a full business sale all of the history follows the trap on a multi-LCMA transfer. Under Option 2 the individual would have to choose one LCMA and all the other LCMA history would be forfeited. This addendum proposes a change for LCMA 3 in that it is proposing to give a designation.

We would split Area 3 into three designation areas. Those three designation areas follow the biological stock assessment units. It would be Gulf of Maine, Georges Bank and Southern New England. Fishermen would annually designate one of the three areas to fish in for the entire year. It would be part of their permit renewal process.

And just like you can turn on and off whether or not you're fishing traps or you're trawling for lobster, you could just turn on Southern New England or Gulf of Maine. Changes could be made from year to year, but fishermen would still be bound by the most restrictive rule for the area that they designated. Option 1 is status quo, no designation; Option is to designate.

Next is looking at trap and permit cap on ownership. We're proposing several types of restraints on ownership to inhibit the excessive consolidation of the industry. There are three different things that we're looking at; a cap on the number of individual active traps a single permit may fish, a cap on the number of traps a single permit may fish and own, as well as a cap on the aggregate number of federal permit and traps an entity or a company may own.

First looking at the trap cap, Option 1 is status quo; the trap cap would be 2,000 traps in Area 3. Option 2 as specified in the table on Page 11, we would have a trap cap for Southern New England alone and a trap cap for Georges Bank and Gulf of Maine. Option 2 assumes that NOAA Fisheries would implement a 2,000 trap cap in the proposed federal rulemaking that is being considered currently and that a cut of the allocated traps by 25 percent as proposed in Section 3.2.1 of the addendum.

And then also NOAA Fisheries adopts a lower trap cap for LCMA 3; or if a different cut occurs, then we would adjust the schedule accordingly. And the trap cap looks like so; it starts off with 2,000 traps for both areas; and then for Southern New England it will drop down to 1,800 traps at the end of Year Ten; and for Georges Bank and Gulf of Maine it drops to 1,513 traps at the end of the ten years.

Next is looking at the ownership cap. The ownership cap as a reminder is the maximum number of traps that an entity may own in an LCMA, which is a combination of their active traps and their banked traps. Option 1 is status quo, no ownership cap. Option 2 is the ownership cap is as proposed in the table on Page 12. Again, it is contingent on what NOAA Fisheries adopts in their rulemaking.

An entity who owns traps above the cap in each area would be allowed to keep their allocation of qualified traps, but all transfers of the qualified traps after the date of implementation would be subject to the ownership cap; meaning that you would not be able to transfer more than the cap in any given year.

You can see for Southern New England the maximum cap would start off at 2,396 traps and in the end would get down to 1,800 traps. Lastly, looking at the restrictions on traps is the aggregate ownership cap. Addendum IV limited the number of federal permits that any single entity or company could own to five permits with the exception of a small group of permit holders that were grandfathered in.

Option 1 holds that true, so no one may own more than five permit, status quo. Option 2 is that no single company or individual may own or share ownership of more than five qualified LCMA 3 permits and cannot own greater than five times the individual ownership cap of traps. Any entity that owns more than the aggregate cap at the time of implementation may retain that overage; but when transferring traps after the implementation date, they are subject to the aggregate cap.

Part of the reason why this is being proposed in the document is because while ASMFC has the rule that you can't have more than five permits, the National Marine Fisheries Service has yet to adopt this rule, so there really is no limit on the number of federal permits. This second option not only limits the number of permits, but it also limits the number of traps an entity can own together.

In addition to the language that is not in the document, after discussing with NOAA Fisheries we thought it would be best to put this information in before the document went out for public comment. If this second option were to be adopted under the aggregate ownership cap, the board would recommend to NOAA Fisheries to establish a control date for the number of permits or traps a single company or individual may own or share ownership of for LCMA 3. This is just to prevent a large number of individuals buying up on traps or permits.

The aggregate ownership cap for Gulf of Maine and Georges Bank starts off at 10,000 traps and drops down to 7,565. For Southern New England it also starts off at 10,000 but drops down to 9,000 traps. Trap banking works quite similarly for Area 3 as it does for Area 2. The banked traps would be held in the account and could not be fished until they were activated by the governing agency. Option 1, status quo, no banking would be permitted. Option 2, up 396 traps could be banked. Option 3, up to 900 traps could be banked; and Option 4, up to 2,396 traps could be banked.

This is equal to the maximum ownership cap and is the LCMT preferred option. What is unique to Area 3 versus Area 2 is that if you owned the maximum trap allocation for the Southern New England portion, at the end of Year Ten then you actually would not be able to have any banked traps because their ownership cap is 1,800 and their individual maximum trap cap is 1,800, so that would prevent from owning any banked traps if you had the maximum.

Looking at controlled growth for Area 3; again, controlled growth is intended to allow the entity to annually move trap allocation from the trap allocation bank account and add them to their active traps on an annual basis. Option 1, status quo, no action; Option 2, a maximum of 100 traps could be moved per year, and this is the LCMT preferred option.

Option 3 is a maximum of 200 traps could be moved per year. The provision would be effective in the same year that NOAA Fisheries implemented transferability; and again the full transfer of qualified and banked traps would be exempt from controlled growth. This addendum would propose some changes to our annual review process.

So included in the compliance reports for states and governing agencies that had Area 2 and 3 fishermen which are due on July 1st, they would also include for each of these areas by area the number of traps fished, the number of traps transferred, the rate of those transfers, the maximum number of traps fished and the degree of consolidation that have been undergone in those areas.

If the existing Lobster Management Program is revised by approval of this addendum, the Lobster Board would need to designate dates by which states would be required to implement the measures in this addendum. The board would also need to determine, if approved, those management changes that should be recommended to NOAA Fisheries for implementation in federal waters. Since an entire section of this document is for Area 3, and those are federal waters fishermen only, it would be recommended that those provisions be recommended to NOAA Fisheries. That is what I have for the addendum and I'm happy to take questions.

MR. WILLIAM A. ADLER: These are just questions. With regard to somewhere in that addendum on Area 2, I guess it was, there was an option that could transfer traps around to any area. Now, I presume you're meaning any area for which they've had history in and not any area like go to the Outer Cape, for instance, because they transferred something. I presume that's what you mean, and I just hope that's what it says. That's my first question.

MS. KERNS: Bill, I need to have a specific section that you're – are you talking about the trap allocation transfers, partial transfer of a multi-area trap allocation and full business sales?

MR. ADLER: I think it was in there. It was in the Area 2 presentation part where it said should we allow them or should they be allowed to go another area. That was also where you used the word "forfeited".

MS. KERNS: Okay, yes, it's only specific to – so when transferring a multi-area LCMA trap allocation, so I'm John and I have a trap that can be fished in Area 2, 3 and 4, and I'm going to sell you 50 of my 100 traps. You would have to choose Area 2, 3 or 4 for those 50 traps that you want to fish in. You would have to choose one of the three, and the other two are forfeited. You can only choose those areas that they have history allocated to.

MR. ADLER: Okay, there is the secret; that they have history in; they can't just go jumping into some other place they haven't got any history in.

MS. KERNS: Yes, it says that in the language; it's that they are authorized to fish in.

MR. ADLER: Okay, the second question was Area 2 continues to have an 800 trap maximum; is that correct?

MS. KERNS: That is correct; the addendum does not change that.

MR. ADLER: All right, third question; in the Area 3 proposal to split Area 3 into three separate areas; it's not that I'm opposed to that at all. It's just that is that something we can do under the addendum process to subdivide an area or is that something that needs a bigger thing?

MS. KERNS: It doesn't change the boundary of the area itself. It's just giving them a sub-allocation of the area, so the boundaries are not specifically changed.

MR. ADLER: All right, that can be done within an addendum like this?

MS. KERNS: Yes.

MR. HIMCHAK: Toni, could you explain to me on Appendix 1, the Figure 3.2.1, the Area 3 to 5 overlap? I've never seen an Area 3/5 overlap before.

MS. KERNS: Pete, I'm trying to remember which document that it's from. I'm going to have to look in my previous addendums to know where it's from, which addendum established that overlap. These are the current boundaries of all management areas.

MR. HIMCHAK: Yes, because I wasn't aware that there was an Area 3/5 overlap similar to Areas 2 and 3. It just caught my attention.

CHAIRMAN GROUT: Okay, while Toni is looking at that, Steve.

MR. STEPHEN TRAIN: Mr. Chairman, I don't know if I can ask the question if Toni is still looking at something else, though. You okay?

MS. KERNS: Yes.

MR. TRAIN: On Page 11 of the document it says the area selected will be noted on the permit and remain in effect for the entire fishing year and fishermen will be allowed to change the area designation once a year, and then it says fishermen will be bound by the most restrictive rule and trap allocation. My question is if somebody fished in Southern New England and Gulf of Maine they're restricted to the lower trap limit; but if they decide next year not to fish the Gulf of Maine, do they jump back to the higher trap limit? It said that it's reviewed annually.

MS. KERNS: Yes, I believe that is the intention that they are allowed to do that. Yes, they will be able to switch back because they would only be able to designate one area per year, anyway.

MR. ADLER: That's federal only, correct, what you just said, because our Area 2 people can't decide to go and fish in the Gulf of Maine, which would be Area 1.

MS. KERNS: It's only for Area 3 and Area 3 is all federal permitted fishermen.

MR. DAN McKIERNAN: Toni, a quick question; on Page 8 to 9 there are Options 1, 2 and 3, and you put them up on the board. It has to do with controlled growth. I'm curious; isn't Option 1 and Option 3 essentially the same since Option 1 is no restriction on growth and Option 3 is a maximum of 800 traps could be moved, and that is the trap limit. It seems like those two are functional equivalence. Just think about that before the addendum goes out. It seems like it's the same effect.

MS. KERNS: Eight hundred traps would be a full business sale, so in this sense, yes. Are you suggesting that we take it out?

MR. McKIERNAN: I would recommend number three be taken out because it would be the same as

number one. Doug, are you going to take comments at all or we just taking questions right now?

CHAIRMAN GROUT: Questions right now and then comments once we get through with the questions. I have a couple of questions about the Area 3. The first question was more of a curiosity question on the trap banking. Options 2, 3 and 4 have some very unique numbers for the amount that you can trap, anywhere from 396 to 2,396. I was wondering from the LCMA standpoint why those unique numbers were chosen as opposed to something that was more rounded.

MS. KERNS: If I may defer to the Area 3 LCMT Chairman to answer that question because I do not know the answer.

MR. DAVID SPENCER: The reason for such a wide variety of numbers is we have allocations ranging from the maximum number I think initial allocation from 3,200 down to people with several hundred traps. We had assured people that when transferability came in even the smallest operator could grow within the confines of a rebuilding schedule.

If we didn't allow somebody with, let's say, 200 traps to purchase 2,000 or whatever the appropriate number is, we felt it wasn't fair to really the smaller operators. You still can't, no matter what this number says, go above your ownership cap; so a lot of these numbers, if you have a full allocation, don't mean anything. It's just a mechanism to allow the very smallest Area 3 fisherman to become one of the larger ones. That's probably the simplest way to put it.

CHAIRMAN GROUT: And the preferred option is 2,396 that would apply to all of them?

MR. SPENCER: Just for that reason, yes.

CHAIRMAN GROUT: Why 96; why not 2,300?

MR. SPENCER: Because 2,396 was the buy-up-once option at the very beginning of this; and if you followed all the reduction down, you'd end up at the total allowable trap cap.

CHAIRMAN GROUT: I knew there was a logical reason behind it. I had one other question while you're up here. When we split out the trap caps and actually the aggregate ownership caps in the Georges Bank, Gulf of Maine and then Southern New England, it strikes that if our goal is to right size the

fishery to the resource that the reductions in Gulf of Maine and Georges Bank are much greater than they are in Southern New England. Do you have a reason why those reductions aren't flip-flopped and there is more of a reduction in Southern New England?

MR. SPENCER: The caps aren't really reductions. They're individual allocations. The reduction is aggregate. The history behind it is the LCMT preferred a 15/13 trap cap and at an LCMT meeting the Southern New England contingent made a compelling argument that historically they had fished larger trap allocations than the fellows to the east. That is why there is differential there. It really doesn't speak to the number of traps in the area. It's just what one individual may be fishing.

CHAIRMAN GROUT: Yes, they're actively fish traps is what it says.

MR. SPENCER: Yes. Could I just add to that answer to that because it was something I wanted an opportunity to comment on? It was going back to something Bill Adler said. We did split this area up, and it only has to be into two areas, the Southern New England and not Southern New England. That really all it has to be. It is not our intention to make these permanent designations throughout all lobster management. It is really specific to this addendum and I think from an Area 3 perspective that's important to point out.

CHAIRMAN GROUT: As we get to comments, I just have a couple of questions for Toni on process here. First of all, one of the slides indicated that we might want to include a reference to a control date. Does the board need to take action to put that in or can that just be left in as a correction to the addendum that is going to be included? Do you need board action on that?

MS. KERNS: I don't need board action since that's how I presented the information to you today.

CHAIRMAN GROUT: Is everybody comfortable with that? The same thing applies to changing the concept of this addendum from reductions in traps fished to allocated traps. Since you presented it in this addendum and if we approve the addendum, we will have in effect changed the purpose of this addendum?

MS. KERNS: The board does not have to vote to make that change, but they need to note that the intention – it's noted that the intention of this motion has been changed from "traps fished" to "traps

allocated" and that everybody is in concurrence with that.

CHAIRMAN GROUT: Okay, discussion? Dan.

MR. McKIERNAN: To those of you who don't have a dog in this fight, this seems like a really confusing and dizzying array of rules. One the one hand I apologize for that, but it is a really good plan crafted by the industry with the state delegations input and NMFS' input as to what is doable and what is possible in terms of dealing with this currency of traps and going forward.

Just so I don't get approached by my friends from Northern New England about changing the objectives of this plan, I don't want to you think it's a bait and switch on the allocated versus reduction; because it needs to be stated clearly here that if we want to reduce traps fished in Area 2, we need more than a 25 percent reduction in trap allocation.

The plan as written calls for six steps of trap cuts and we intend to go forward with those. Whether we change the language in the objectives of the document, we don't intend to change the cuts because we do want to get into the bone. If the language is to talk about trap allocation because it is a common denominator, then that's acceptable, but just so everybody knows we plan to go further in Area 2.

Obviously, it's a challenge because in Area 3 you have three stock units, and only one of them needs help so it's awful difficult to drive all three components of the offshore fishery under the same conservation mandates. To Toni, I think we do need one minor change, and that is I think we need a zero percent option on trap tax because at some point in time going forward I think we can stop taxing these trap transfers.

That's one minor change I think we might want to consider, a number as low as zero. I know in the Outer Cape we continue to cut traps, but at some point in the history of lobster management you need to stop taxing them. Otherwise, you force them to go away. Thank you to those who helped put this together; David Spencer, David Borden of our staff and Lenny and Bill McElroy, Mark Gibson, and Doug, and Toni. It was complicated but I think it's a good plan and I look forward to the hearings.

I do have one other comment, which has to do with the trap allocation banking. It was brought to my attention that because of the trap – I'm sorry, there is a permit limit of two. We probably need a third

option which allows a single person who might have two boats, two permits already in Area 2 an opportunity to bank traps for each of those permits and boats.

So under Option 3 if we could add a very similar option to 2, but at the very end just add an expression for each permit held up to a maximum of two permits. The reason for that is in the event that we do have someone who has an inshore boat and an offshore boat, with someone being hired to run that second boat offshore, if they want to maintain that two-boat business they should have that opportunity.

Keep in mind that in the state portion of the fishery anyone who has a state permit in Rhode Island and a state permit in Massachusetts, which gives them the right to fish in state waters, that's an owner/operator fishery, but the second boat, if it's exclusively federal they can have a second boat under the current rules.

MS. KERNS: Dan, just to be clear, I think you were talking about under the ownership cap section of the document and not trap banking, right, because the ownership cap is the one that says an entity cannot own more than 1,600 traps active or 800 banked?

MR. McKIERNAN: That's right, Toni, thank you.

MS. KERNS: Okay, and then because some Area 2 fishermen are also federal fishermen, then they may not have been subjected to – or under the provision of Addendum XII, which established the two-permit monopoly clause, may I recommend that we add the same language that we have under the aggregate trap cap for Area 3 that says, “Any entity that owns more than two permits at the time of implementation of the regulation may retain that overage; however, all transfers of traps after the implementation date are subject to the ownership cap”?

MR. McKIERNAN: Yes, that makes sense.

MR. TERRY STOCKWELL: Mr. Chairman, similar to Dave Simpson's approach to herring in the northern Gulf of Maine, I'm very comfortable with this proposed addendum developed by the industry in the Southern New England states. Thank you for your efforts. One question though probably to Dan is as I look at it – and you're right it is very complicated and confusing to me at this point – have you thought about how you're going to assess and measure your performance over the course of time?

MR. McKIERNAN: Certainly, as Toni mentioned, the annual review will come in and each jurisdiction

is expected to report on the degree of consolidation, the number of traps fished, the number of traps transferred, et cetera. It's our expectation that after Year Six we will have reduced the trap allocations 25 and five years at 5. Then that's how we'll measure. If you're asking me are we going to measure fishing mortality or something in the biological aspect of the stock, I don't see that; but in terms of the consolidation and the shrinking of the fleet will certainly be clearly measurable.

MR. STOCKWELL: My only related comment was to what you're alluding at the end, the difference between trap reduction and effort reduction; not anything disparaging but just a thought as I think about how to support moving this ahead.

MR. McKIERNAN: Well, I can say, Terry, that at the large whale take reduction team, our Southern New England fishermen all played this card as the rationale for relief from the large whale plan, and so I hope it does come o pass because I don't want to go back there.

MR. SIMPSON: Just to follow up on the bookkeeping question; the bookkeeping would be done by the state or federal government that is issuing the license; is that how it would work? Are you allowing transfer of traps between Massachusetts residents and Rhode Island residents for state waters fisheries; how is that sort of thing handled?

MR. McKIERNAN: David, that principle didn't change from Addendum XII, I believe, which is we've outlined in that addendum the kind of transfers that would be available once transferability takes place. If you are a dual permit holder, which means you have a permit fishing in state waters and in federal waters, those are not going to be transferable to another state unless, of course, that allocation is given up to fish in the state waters. We can't constrain the movement of federal traps between states, but we can constrain the movement of traps between states.

MR. BOB ROSS: As other plan development team members have mentioned, this addendum has gone through a lot of facilitation between the states, NMFS and the industry. NMFS is very appreciative of our participation in this process to frontload some of our concerns with what is becoming a very complicated process here of transferability. Although we have embraced this concept and have worked closely with the states and the industry, I still have to caution all that we have a very onerous, complicated federal regulatory process to go through.

Some of these issues may or may not be possible at the federal level in the current form. If I can remind the board here, this Area 2/Outer Cape/Area 3 transferability process has been ongoing for unfortunately several years, and part of that was the difficulty on NMFS part of integrating all our multiple regulatory requirements with the flexibility that the commission and the lobster industry wants.

All that said, I fully support the process. NMFS has been in rulemaking on this Area 2/Outer Cape/Area 3 transferability process. Again if I can pull back ancient history here, we actually did a fairly extensive draft environmental impact statement which was released in April 2010. If the board will recollect, ay 2010 was when the technical committee informed the board of the Southern New England recruitment failure.

At that point the board asked NMFS to delay moving forward with this transferability process subject to the evolution of the Southern New England recruitment failure. Obviously, NMFS has been an active participant in the Southern New England process and also in moving forward through the PDT process this Addendum XVII, which addressed the Southern New England issue. Now we're looking at Addendum XVIII and potentially Addendum XIX.

I guess my point here is that a lot of the measures in this proposed addendum include issues that deal with transferability. At this point we are in rulemaking on our transferable regulatory action and it will be difficult, if not possible, for us to quickly integrate some of the proposals here such as banking, controlled growth, splitting Area 3, et cetera.

This information has been provided to the plan development team and I believe at prior board meetings I have tried to indicate that we would have a challenge incorporating some of these measures in the immediate future when we turn on transferability. I just again want to point that out to the board. We expect to provide some fairly extensive written comment on this addendum during the public comment period, also. Thank you.

CHAIRMAN GROUT: Thank you, Bob. Any other discussion? Okay, there were a number of suggestions, changes or modifications to this document, and I'd like to have Toni go over them for the board just to make sure everybody is in line at this point. After you hear this, if there are any objections to those changes being made please bring them up. If there is no objection, at that point I'll be looking for a motion to approve the addendum for

public comment as changed at today's meeting. Toni, can you give us a rundown of the suggested changes that were offered up today?

MS. KERNS: I will include the ones that were not initially written into the document when it was put on the CD. Starting on Page 6, included in Option 2 under the initial trap reduction, the 25 percent reduction and that transfers would not occur until that 25 percent cut has been completed.

On Page 8, 3.1.6 under the ownership cap I'll add an Option 3 which has the same language as Option 2 but also includes that you couldn't have anymore than two permits and put in the sort of grandfathering clause that is in the Area 3 language. Under controlled growth I will delete Option 3, which is the movement of 800 traps. Under the transfer tax I will adjust it that the transfer tax can be adjusted between zero and 20 percent, and I'll do the same for the Area 3 transfer tax. I will add the recommendation to NOAA Fisheries under the aggregate ownership cap that they issue a control date if that option were to be adopted.

MR. ADLER: This is just a suggestion and thinking in terms of the public hearings. Would it be possible to put in examples of what you mean by a particular scenario rather than having the people at the public hearing reading the thing and going, well, how does that fit in the real world where I live? I didn't know if you can do that, but I think you've done it in the past under some other things where you put Joe had this and he wanted that, whatever. If it would be possible to do that, it might help the public hearing process on the particular things. That's my only concern here.

MS. KERNS: I can do that, Bill, where applicable.

MR. TRAIN: Mr. Chairman, this doesn't affect me so much, but I'm not sure, Toni, you and Dan got on the same page on that last change. You talked about making it so it goes away at time of transfer and I thought Dan wanted the guy fishing with a federal permit in federal waters and fishing with a state permit in state waters to be able to maintain two trap banks, one for each boat or business. You're talking about it going away at time of transfer the way it was in Area 3 for anyone over the trap cap. Did I hear it wrong?

CHAIRMAN GROUT: Dan, what did you want?

MR. McKIERNAN; Well, I just wanted a third option that sort of gives entities that might already

have two boats, two permits, and might want to create two bank accounts the option to continue that. We may not carry that forward. I'm not necessarily campaigning that as a final action but as an option that should be in there.

MS. KERNS: When I was talking about similar to the Area 3 language, because NOAA Fisheries never implemented monopoly clauses in either Area 2 or Area 3, there are individuals that are fishing beyond the five permits or two permits that is allowed depending on which area you're in.

Once they do implement, then the data of implementation would be the cutoff anything beyond two or five for each of the areas; but when transferring traps, they would be subject to that two permit or five permits. I think we're on the same page. It just allows for those that have already built up to hold them, but doesn't allow any individuals to go beyond two or five.

MR. WILLIAM A. McELROY: Mr. Chairman, I just wanted to get a point of clarification on the reductions. Toni stated that we clarified it by saying that we wouldn't allow transfers until the reductions had occurred, the first 25 percent reduction. We want to be clear that those transfers should still be allowed in the same fishing year that the reduction occurs.

We're not trying to create a circumstance where someone with an 800-pot string gets cut down to 600 and has to wait until the following year to build themselves back up. It should be the following day that they can build themselves back up so in that same fishing year they would be able to make themselves whole if they're able to find the qualified allocation to buy. Thank you.

CHAIRMAN GROUT: Toni seems to be clear on that. Bob.

MR. ROSS: On the ownership monopoly issue, NMFS has voiced some concerns and it's not just in lobster. Those of you involved in the council process are aware of some of the other fisheries addressing very similar issues about ownership caps. The dilemma NMFS is wrestling with obviously is a situation where we don't only have owner/operators; we also have partnerships and corporations.

I believe as in the real business world out there beyond fisheries it can be very challenging to identify all ownership in corporate entities. Although we fully support recommendations by the commission to move forward with a control date to address ownership caps, I just wanted to highlight that this is

not a simple process to identify all owners in corporate entities. There are other federal fisheries currently looking at this issue and we hope to capture the results of their reviews also. Thank you.

CHAIRMAN GROUT: Any other discussion? **Do we have a motion to move forward with this for public comment with the changes made today?** Bill.

MR. McELROY: **So move.**

CHAIRMAN GROUT: Bill McElroy; seconded by Bill Adler. Discussion on the motion? Any comments from the audience? Okay, back to the board; do you need time to caucus on this? I don't see anybody nodding their head. I'm going to read the motion; move to approve Addendum XVIII for public comment with changes made today. The motion was made by Mr. McElroy and seconded by Mr. Adler. All those in favor raise your hand, ten in favor; any opposed; any abstentions; any null votes. **The motion carries; ten, zero, zero, zero.**

MS. KERNS: Pete, I did not make the lovely chart that is in the back of this addendum. I had just given all the area boundaries to my GIS guru. I believe they may have made an error when entering the data points I gave them, so we'll go back and see if we can get that fixed. Thank you for noting that.

MS. HIMCHAK: So there essentially is no Area 3/5 overlap?

MS. KERNS: Not that I see in the area boundaries.

MR. ROSS: Since that a federal waters fishery, I would love to rattle off which addendum out of, but that was definitely a request and a recommendation from the commission to establish a 3/5 overlap area, which was I would say done about five years ago now. I don't have a specific addendum I can point you to at this point.

CHAIRMAN GROUT: Bonnie, do you have something to add to that specific issue?

MS. BONNIE SPINAZZOLA: Just very quickly; the New Jersey and Southern New England and Maryland and Delaware people, whoever fished down that way, felt that because the Area 4 was so far inshore or Area 3 came so far inshore down that way their trawls were crossing over the Area 3 line, between the Area 3 and 4 line. They requested of Area 3 that we give them that space into Area 3, and we granted that request.

CHAIRMAN GROUT: Thank you, Bonnie. Okay, I have one other question in relationship to this, and that is we had a motion at the last meeting to try and right size the fishery and we've had plans incorporated in this addendum to try and address that for two LMAs. The question is when are the other LMAs who are involved with Southern New England going to bring forward their proposal and does the board want to have some kind of time constraint on that? David.

MR. SIMPSON: I think you can hear the interconnection between trap allocations and state permitting authority or federal permitting authority, and as a reflection of that Connecticut has been working at this very issue and in a larger context of our state commercial licensing. It is not largely; it's exclusively an economic question so more appropriate I think for the state that is doing the licensing and managing the fishery to address.

We very fortunately have a much simpler situation in Area 6 where there are no federal waters and instead it's a small internal waters body that is shared between New York and Connecticut. Connecticut fully intends to go ahead with making some adjustments that make more economic sense and certainly reporting out on that to the commission and talking with New York as we move along. There are bigger things that go beyond the board, things like renewal requirements and things like that that will change the number of licenses out there and therefore the number of traps being fished. We are taking it as part of a bigger overall exercise with our commercial fisheries.

MR. HIMCHAK: Well, suffice it to say that during all the LCMT meetings and the public hearings on Addendum XVII, they were so preoccupied with what we were going to do with that addendum nobody really offered anything up on Addendum XIX. I'll speak for Area 4 because I know it the best.

We may have to borrow some of the concepts from today's addendum insofar as the pool of latent permits out there is huge. If we start in with a reduction mechanism for the 30 guys that left in the fishery, are we going to allow them to acquire other traps and bank them or are we just opening the door for new entries into the fishery.

I understand the concept of the addendum we just approved today for public hearing, and we may have to borrow some of the concepts to scale down the fishery and deal with latent permits at the same time. As far as the timetable, we're working on getting

regulations done for next year, so I can't give you a timetable right now.

MR. McELROY: Mr. Chairman, I don't think that it's necessary for us to at this point put a timetable on the rest of the region. In simple English, roughly three-quarters of the landings in Southern New England come out of either Area 3 or Area 2. The other areas clearly are struggling with what to do.

It's not like they're ignoring it; and I think if they need a little bit of time to try to figure what is the best way to move forward, from my point of view as an Area 2 representative and a representative from Rhode Island, I don't feel at all that it would be untoward to give them a little bit of leeway to figure out how to deal with a pretty intractable problem. Thank you.

CHAIRMAN GROUT: Any other comments? Is the board comfortable with that; just having an open-ended timeframe for the remaining areas to come forward with something? Pete.

MR. HIMCHAK: Just to refresh my memory, Addendum XIX would be implemented in 2014, correct, or is it 2015?

MS. KERNS: Well, we don't have an Addendum XIX yet because none of you have provided us with ways to scale back your fishery.

MR. HIMCHAK: That's my point, but the crystal ball timeline for us to get this thing developed and implemented would be 2015?

MS. KERNS: The board never gave a date so there is no crystal ball.

CHAIRMAN GROUT: That's the reason I was asking the question because there was no specific date to come forward, and I want to make sure the board is comfortable with that being open-ended. Dave.

MR. SIMPSON: Yes, I'll follow up with some more specifics that I left out. At least for Connecticut we've had two meetings already. We formed a working group of industry and other parties that are interested; the Connecticut Fund for the Environment and some university people associated with Sea Grant, an economist and an outreach person and others.

We've had two meetings so far and we're hoping to have a third this spring. The idea is to have

something to forward to the legislature for statutory license changes next session next year. That's our timetable for working. The details of what we might want to do particularly for lobster beyond licensing toward traps, that has to follow after that.

Frankly, that's why we're on this timetable of implementing Addendum XVII in 2013 because we want to get that in place, that little step before – because it takes a couple of years to get license changes made. That's the timetable we're on is this time next year we hope to have something approved by the legislature.

CHAIRMAN GROUT: Okay, seeing no other comment, then we'll leave it open-ended and maybe once in a while check back with the states and see where the progress is maybe next year some time. Toni, you have a question?

MS. KERNS: I did not get a chance to ask what states wanted to have public hearings on Draft Addendum XVIII. Okay, thank you.

TERMS OF REFERENCE FOR THE 2014 AMERICAN LOBSTER STOCK ASSESSMENT

CHAIRMAN GROUT: Okay, the next item on the agenda is consideration of the terms of reference for the 2014 stock assessment. Josh, I hear you have a little presentation or an overview for us.

MR. JOSHUA CARLONI: Yes, I do. I'm not a seasoned veteran with regards to stock assessments. This will be my first one so hopefully you guys will take it easy on me today. I do have Genny here to help answer any question you guys may have. The term of reference one, collect and evaluate available data sources; looking into historical commercial and recreational discards in the fishery-independent data; provide descriptions of each data source, geographic location, sampling methodology; discuss data strengths and weaknesses and their potential effects on the assessment; justify inclusion or elimination of each data source; explore improved methods for calculating catch-at-length matrix; describe calculations or standardization of abundance indices.

Term of reference two; use the University of Maine Model to estimate population parameters for each stock unit and analyze model performance, population parameters such as effective exploitation abundance; modify the University of Maine Model for new data sources; explore estimation of growth parameters and estimate uncertainty; evaluate

stability of the model; perform and present model diagnostics; perform sensitivity analysis to examine implications of model assumptions such as but not limited to natural mortality and growth.

Term of reference two, continued; explain model strengths and limitations; justify choice of CVs effective sample sizes or likelihood weighting schemes; state assumptions made and explain the likely effects of assumptions on synthesis of input and model outputs; conduct projections assuming uncertainty in current and future conditions for all stocks; compare projections retrospectively.

This is term of reference three and four; develop simple empirical indicator-based trend analyses or reference abundance and effective exploitation for stocks and substocks, and this may be done for areas of special interest or concern such as possibly Long Island Sound or Stat Area 514. Update the current fishing mortality and abundance biological reference points; if possible develop alternative maximum sustainable yield based reference points or proxies that may account for changing productivity regimes.

Terms of reference five and six; characterize uncertainty of model estimates, reference points and stock status; perform retrospective analyses; assess magnitude and direction of retrospective patterns detected and discuss implications of any observed retrospective patterns for uncertainty in population parameters and reference points.

Terms of reference seven and eight; report stock status as related to current overfishing and overfished reference points, both current and any alternative recommended reference points; include simple description of the historical and current condition of the stock in laymen's terms – and this is just text providing a simple description maybe as good way to communicate to stakeholders – address and incorporate to the extent possible recommendations from the 2009 benchmark peer review and 2010 Center for Independent Expert Review; develop detailed short- and long-term prioritized list of recommendations for future research, data collection and assessment methodology; highlight improvements to be made by the next benchmark review; recommend timing of the next benchmark assessment and intermediate updates if necessary relative to biology and current management of the species.

Now, those are the terms of reference for the board. We also are going to present for the peer review, so I don't know if you guys want to – if there are any

questions on that first segment and then we can have questions on the second segment after.

MR. ADLER: When I read this over, the word “discard”, of course, I don’t what you mean by discard. You know, they go over alive, that type of thing. It’s a little bit different than what fish do, so that was one thing. Also, the abundance indices; are you planning to, for instance, look at some of the – does this include looking at some of the outside of – for instance, in Area 2 where the lobsters seem to be as opposed to where they used to be and does the technical committee or the biologists, I should say, are they going to take that into consideration when they’re counting numbers or whatever. Do you want me to keep going?

MR. CARLONI: I’ll start with those, if you don’t mind. For the abundance indices – and Genny can help out here as well, but we’re looking at all available data sources and we’re going to kind of put them through the ringer and see which ones will help out with the stock assessment. As to your point, we definitely are going to be looking at trawl survey data, ventless trap survey data and hopefully be able to touch on some of those areas that you’re talking about. Unfortunately, there is a lack of sampling in certain areas so we’re going to do the best we can with the information that we have out there.

MR. ADLER: All right, if I may, Mr. Chairman, that answered several of my questions. Basically I am saying look at the ventless trap, look at everything, go outside where the fishermen say that they are and add that into your statistics so we don’t get into a bugaboo when you do come back with something and they go, well, you’ve got all wrong; ask them, see what you can do.

Also possible recommendations; I like the part about number seven there under current conditions of the stock in laymen’s terms; that is very good. Please don’t forget that part so we don’t have to explain what some of these technical terms are. Number eight, extend possible recommendations from the 2009 benchmark peer review and CIE review, it’s vague what they said, but they said something. I remember they said something so please do include that into the sources, and I’ll be quiet now. Thank you.

MR. CARLONI: Just in response to your first question, the ventless trap survey and some of our other surveys are set up in a random stratified way to hopefully catch some of that change and where the fishery is going over time.

MR. HIMCHAK: I guess under terms of reference three or what was on the CD number six that you may be getting to next, the concept of stocks and substock areas, boy, that got my attention. I’m thinking of like the mudhole in Area 4, there is a lot of literature coming out now about populations of lobsters that are biologically and socially segregated from – and, boy, we had a lot of discussions on the Southern New England stock homogeneity from Cape Cod to Cape Hatteras.

Fortunately, we do have sea sampling data from 2007. I’m really looking for some answers on a lot of the issues that came up after the last stock assessment on the Southern New England stock. The hypothesis of females moving to deeper water; was that declared null and void by the CIE experts or is that going to be tested again? There are a lot of dynamics going in within the Southern New England stock, and, boy, I hope I get a lot more output by areas and not just one blanket read. That’s my fear.

MR. CARLONI: Yes, we are going to take that into consideration and look at areas of special concern, as I stated. No promises, but trawl survey data had shown females moving to deeper water as well it was seen in the commercial fishery. Do you want to expand on that, Genny?

DR. GENNY NESSLAGE: I guess the technical committee wasn’t anticipating redrawing the stock unit boundaries, but we absolutely do want to take a very close look at the dynamics within the Southern New England stock, specifically the inshore/offshore movements, what the data are actually saying about that, and especially taking a look at what is going on in Long Island Sound versus Narragansett Bay versus offshore New Jersey and so. We are definitely planning to take a very close look at all the available data to try and get a handle on what might be going on in those areas. We did not plan to redesign the stock units for this benchmark. Does that answer your question?

MR. HIMCHAK: Yes, it does, it gives me some relief because the last benchmark assessment the only data that really applied to us, you had our landings data, which were very suspect I have to admit. We have the NMFS trawl survey and an inshore trawl survey which really wasn’t designed to get lobsters, and that’s what tied us into the whole Southern New England reference point and doom and gloom of where we’re going. At least now with sea-sampling data I think we have more to contribute towards what may ultimately be our fate.

DR. NESSLAGE: I have spoken with Peter Clark about including those bio-samples. We have a plan for adding them in and we do plan to include the New Jersey Trawl Survey data as well.

MR. MARK GIBSON: Mr. Chairman, I had some thoughts along the lines of Peter. I would have thought that the first one up on the list would be an evaluation of stock structure in the current assessment areas with the potential evaluation of possible changes to those or inclusion of strata within the stock assessment to better inform on smaller spatial scales.

I don't see that listed. Number three doesn't say that; it is just simpler indicators on a finer-scale basis. Had I been putting this list together, that is what I would have put up front and center is a review of the stock structure in with the potential for evaluating finer-scale assessment strata within the main assessment for Southern New England.

If that was number one; then our current list of number one, I think that is smeared together too much. That should be actually expanded into three terms of reference. One would be fishery-dependent data, which are your landings, recreational catches, any discards if they exist, bio-samples of that, measures of fishing effort, industry catch rates with an evaluation of those in terms of what has been described in the bullets under it.

Item 2 should be all of your fishery-independent data; you know, your trawl surveys, ventless traps, settlement indices, whatever else you have out there; an evaluation of those and the sampling intensity on those. Number three ought to be a life history information because I think there are some important considerations or new information on growth and changes in natural mortality rates.

I think those ought to be all broken out as independent terms of reference for summarization and evaluation purposes. Then I think you'd be left that the University of Maine Model would become actually number five, and I don't have any problems with that because I think you talk about in there that the model would be modified to incorporate whatever new sources of information have come to the fore and whatever structural modification you need to make to include those. Those are my suggestions. Thank you.

CHAIRMAN GROUT: Mark, are you suggesting that this board – the board is going to have to approve these terms of reference. One of the things you

talked about initially was evaluating the stock boundaries, the stock structure. I can tell you that's going to be a heavy lift and are you willing to modify this – there might be a need given the resources to take something off if you're going to go that direction with it. Certainly, if you want to make a recommendation for changes, you can, but keep that in mind.

MR. GIBSON: Is your intent to approve these today or just take input and see a revised list at another time?

CHAIRMAN GROUT: It's on the agenda as an action item, so that was to approve today. Could we come back?

MS. KERNS: Well, we're going to start working on the assessment so it would be best to approve today.

MR. GIBSON: Certainly, my comments are on the record about the need of expansion of Item 1 into three; and if the technical group is clear – and I'm assuming they are – that all those sources of information need to be spelled out in the assessment and evaluated for inclusion, I'm okay with that. The stock structure one I'm not okay with; that is going to be a problem. If we come forward with another Southern New England stock assessment which is from Cape Cod all the way down to where Pete Himchak talks about, we're going to have all the same problems all over again. I think that has to be in there.

MR. CARLONI: We're always looking at any new information that is coming out as to the lines drawn up for a stock and any new information that would change that. I personally don't see a problem of us looking into that. This is a heavy workload here, but my assumption is we're going to get the same answer from the data that we have now, and that is why it was originally drawn up as Southern New England. I don't think a lot has changed since then, but we can certainly talk about it on the technical committee level.

MR. GIBSON: Well, I listened to a paper at the Shell Disease Symposium about lobsters in Rhode Island Sound that were different than lobsters in Narragansett Bay. I think some things have changed in terms of our understanding. I look forward to your report on that.

CHAIRMAN GROUT: Okay, the basic modification you made to one was making it a little bit more organized is what I saw, but at this point you're

comfortable with the way three is written to get information out?

MR. GIBSON: I don't like it, but it's up to the rest of the board. I'm only one vote.

MR. HIMCHAK: I'm just afraid that we're going to be back arguing the same points for the Southern New England stock, and at some point we're – I've seen powerpoint presentations and have had them sent to me from workshops on populations within the Southern New England area that are biologically and socially segregated from others either due to natural barriers or behavioral issues. We need to do something on a finer scale than the whole Southern New England area.

MS. KERNS: If the board wants us to change the parameters in which we use to define the stock units, which we have set already, then they need to let us know now; and if we're going to change those parameters, I think that's a heavy enough lift for the stock assessment committee in which we would delay this assessment. The current parameters that we're using now to the technical committee's knowledge there has not been additional data brought forward to the technical committee.

Now, there may be some additional information on different types of parameters that have come out at these other meetings, but those are not the parameters that we're using to define biological stock units. If we need to change that and the board does not want to delay the assessment, then we're going to need some heavy lifting from those non-technical committee members and from those individuals that want us to make those changes to help the technical committee out to go forward.

Making a change to the parameters that we use to define biological stock units is a big job. We try to make it clear that the stock assessment committee and the technical committee has a very large load as it is with these terms of reference, and so any additional big job we would either have to take something out or delay the assessment.

MR. HIMCHAK: What does term of reference number three mean, then, when you start talking about developing effective exploitation for stocks and substock areas?

DR. NESSLAGE: The technical committee talked a long time about whether or not we could apply the University of Maine Model at a substock level. At the end of the last benchmark review, I attempted kind of a draft preliminary run for Area 514 and for

Long Island Sound just to see whether or not it would work. I was not terribly successful.

Now, I didn't spend a ton of time trying to tune that model, I admit. It was one of those things we tried right before peer review in case someone asked us about it. It would require a lot of very specific information from each one of those areas. I guess the technical committee then kind of decided that perhaps applying this monster model to the substock areas may be a bit of overkill.

That's where we're coming from with this term of reference in that perhaps we can apply trend analyses, something like we've seen with – well, you'll see tomorrow eel and river herring have used ARIMA. We have tried other meta-analyses of biological data, survey data to try and get a handle on where the stock is relative to historic levels.

That information may be useful for management. I guess the idea being that we don't think we can pull off a full-blown analysis for each of these substocks. Every time you add another one of these – just to tack on to Toni's comment; that every time you add another stock unit to this analysis, it's a huge lift, so please keep that in mind. As appropriate as it may be, it is a large amount of work.

MR. HIMCHAK: One last point – and I'll cut this short – Area 4 is a huge area, okay, geographically. I don't know how many square nautical miles it is. The fishery is in the mudhole. They're all in the mudhole, on the rim, and so it's like a distinct – it's a distinct bottom type that the lobster – I mean, where is the recruitment coming in that is supplying the mudhole. They're doing great out there on their lobster fishery.

When I see issues like that and then see what we had with the recruitment in Buzzard's Bay and Long Island Sound and everything, it's like I can't reconcile the two, and it's like what is going on in the mudhole or out in Area 3? Are we all tied into poor recruitment in Buzzard's Bay and shell disease? That is the way the Southern New England output is going to portray us and nothing is going to change, but we do have sea-sampling data.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, it seems like one of the other options is to ask the question why the board couldn't make a policy decision to just change the line.

CHAIRMAN GROUT: It's something to consider. Pat.

MR. AUGUSTINE: Mr. Chairman, we're seesawing back and forth. I listened to Mark Gibson make some comments about some reports he has read recently. My question would be have those been peer reviewed? Should they be appropriate? In response to Pete Himchak's comments, if not now when.

Maybe we've got to go back and look at the terms of reference and knock something else off; but if we're going to end up approximately where we are with an assessment of the overall stock of the last one, of what value. There are obviously enough questions that have been raised and put on the table that it's worth, in my humble opinion, to delay if we have to and make sure that we have established the right terms of reference, that we have taken out those areas that are not necessary at this time and the new areas are areas of a new assessment or paperwork that has been put on the market that, again, have been peer reviewed that we really should look at.

It has been a long time in coming to do this benchmark and it's a lot of work and there is a tremendous amount of effort that the technical committee is going to have to put into this. But at the end of the day are we going to end up basically where we were? You said you looked at one model and tried to fit it.

It took time and you're going to look at several other models to see if you can mix and match. The real question is if there is more appropriate data at this point in time that we should really consider before we take the next step I would move to table – or not table it but to postpone this next step before we go down this road and six months from now or a year from now end up about where we are with Peter still being able to say we've got data that shows that we have a unique area by itself here and we're lumped in to a body of animals that is inconsistent.

It doesn't fit; we've mixed and matched; we've pulled a big area together for convenience purposes, and that's what it comes out to be. I don't mean to preach. It just seems to me the technical committee's time is so valuable for the effort that they have to put in here, to have them spend time doing parts on the terms of reference that may not adequately give us what we need.

It may make it easier; but with that uncertainty, I really think we have to take a hard look. Again, the question I ask is have those documents or papers that Mark Gibson mentioned, have they been peer reviewed or have we taken a date certain and have

said this is the deadline, we're not going to look at anything after this date. If that's the case, then that's another issue by itself. That's my concern as a board member here.

I do think that our technical committees are so stressed for the amount of effort that they have to put in and the work they do, and they're all dedicated, every single one them on every single species, this one I think is extremely important because had we taken a different decision – the board had taken a decision earlier last year to literally put the Southern New England people out of business, lobstermen out of business on some – excuse my humble opinion – some assessment that this is the case and that it is basically the lobstermen's fault because the stock is doing what it is doing, when in fact it's a combination of several issues.

That's my concern, Mr. Chairman, and I hope someone looks at this whole process before we just say let's approve the terms of reference and move forward and find out six months or a year from now we have not really gained any ground. Thank you for listening to me, Mr. Chairman.

MR. McELROY: Mr. Chairman, in reference to what Mark was referencing and Pat was just questioning as to those studies that show we have sub-populations, there is a scientist by the name of Jelle Atema – and I might have mispronounced his name – who has been doing DNA studies on lobsters. His report is currently being peer reviewed. I don't think the peer review has been completed, but it's underway. His DNA studies show that there is a clear difference between Western Long Island Sound lobsters and Eastern Long Island Sound lobsters, Block Island Sound lobsters, Narragansett Bay lobsters and Buzzard's Bay lobsters and Maine lobsters.

He has looked at some of those and all have different DNA characteristics. As a fisherman for 37 years, I have been able to, down through the years, fish across Area 2. Within that, Emeli has found various sub-populations. As an observant fisherman, we have been able to see – you look at a guy taking out at the same weigh-out station and you can look at the lobsters and they're different.

You can tell that's a Coxes Ledge lobster, that's a Narragansett Bay lobster, that's a Block Island lobster, and now the DNA work is showing that is absolutely the case, that they are different, they are distinct. If we try to say that all of Southern New

England is the same, we're going to make a horrible mistake.

I keep going back to what Pete Himchak said at one of the very earliest meetings when we were discussing this, and his comment was how in the world can lobsters that are off of the New Jersey Coast in deep water repopulate Long Island Sound, Western Long Island Sound? The scientific answer is they can't; it isn't going to happen.

If we're setting up a stock assessment that is going to push us right down the same wrong path that we went before, we're not doing anybody any good. Like Pat just said, the time that the technical committee has to devote is valuable time and we can't have them running up trees. We already know that there is some differences; so to push us into the same circumstance where we can't acknowledge the reality that things are different there, we're making a terrible mistake. Thank you.

CHAIRMAN GROUT: Josh, do you have a response to that?

MR. CARLONI: Just a quick response; there are a lot of questions out there with lobster and unfortunately we don't have all the answers and we're doing our best. Unfortunately, we're dealing with lack of funding in a lot of areas as well. From my standpoint, of course, we can look at it, but I think with the lack of data it's going to be really hard to make that case. The papers that you spoke of, the technical committee will be looking at those and looking at all the current research that's out there.

MR. SIMPSON: I think everyone appreciates the problem that we're all facing and the technical committee is facing. There are just limitations to the level of geographic specificity that we can do any kind of full-blown, analytic assessment on, so I appreciate the approach they're taking that they will try to go for some what I see as a big picture view for Southern New England/Mid-Atlantic area, but then do what they can to provide insight into a finer spatial scale for management purposes.

I think that is the thing is probably the next time we come around for an Addendum XVII kind of what are we going to about it type of action, we will probably be relying pretty heavily on that finer spatial scale and probably tweaking based on the kinds of comments that were just made here. I mean it's evident in little Long Island Sound that things really are different west of the Connecticut River, for example, versus east of the Connecticut River, and so

there is probably a different prescription for each of those different cases.

I think looking ahead the management is probably going to rely more heavily on the detail that you were able to provide – the assessment committee is able to provide on those finer scales and it will be taken in a broader context of the overall Southern New England assessment, but you can't will this stuff to be.

MR. STOCKWELL: Mr. Chairman, I certainly appreciate the comments and concerns of Southern New England and the Mid folks on delaying the assessment, but I have an even greater concern about delaying and potentially impacting the board's ability to continue to manage the Gulf of Maine fishery as its current high level of catch and abundance. We have got a good thing going right now; and without timely assessments to help guide us in the future, we have a risk of jeopardizing that. I'm not of the science mind that many others around the table here right now, but we need to move forward with something.

DR. LANCE STEWART: I was just going to add my two cents to the different stocks of American lobster. There is a lot of data going back to the seventies; tagging studies that have shown different migrational trends at different seasons of the year and a definite separation of several Southern New England stocks.

Millstone Point Nuclear Power Plant data for 30 years shows a separation and migration trends and affinity for different water temperatures. I am glad to see that Jelle Atema's DNA work kind of put the icing on the cake, that really does show how we have behavioral trends and different population segregations; especially as Peter is mentioning south of Hudson Canyon, entirely different resettlement area due to water-borne larval settlement and kind of an isolation of a stock. These things do exist and there is a lot of old references and literature that could go to the technical committee's purpose.

MR. McKIERNAN: If the premise is that we've got these stocklets, then we've got a real problem if we're going to locally deplete the stocklets. We can sit around and say, well, we want more refined analysis, but are we really ready to manage lobsters on the scale that is being talked about here? I don't think so. If we were, then we'd be closing Buzzard's Bay because it is practically abandoned of lobster. We'd close Western Long Island Sound or we'd be finding all these little discrete areas. I'm not sure we're ready for that as managers. Be careful what you ask for.

CHAIRMAN GROUT: Okay, Lobster Board, we've had a lot of discussion on this and some concern that has been brought up. Are you comfortable with Item 3; will it get at what you want or Vince has also made a suggestion that maybe this is a policy decision that we can make. What we have as a task here is to approve terms of reference for our stock assessment; and so a question for you is are you satisfied with what these terms of reference are right now? Dave.

MR. SIMPSON: With all of the context of the discussion we just had in mind, **I would move to adopt the terms of reference as presented by the technical committee.**

CHAIRMAN GROUT: And Pat is going to second it.

MR. AUGUSTINE: I will, Mr. Chairman, as long as the comments, as Mr. Simpson noted, and the technical committee – and, John, you responded you can highlight those four or five areas where you're going to put some special attention to, and I'm sure you'll capture that, Toni, so that they are a part of the document and then I would definitely second it.

CHAIRMAN GROUT: I am going to turn to the technical committee chair and to Genny Nessler and also Toni and make sure that they're clear on what you would like them to do.

MS. KERNS: I'm looking at Genny, Pat, right now, and she is the contributor to these as well as some board members to these TORs, and I am not sure where I would change the language in the current TORs as it is to get at your highlights that you just brought up. If you want us to change language here, I would need some specifics.

MR. GIBSON: Mr. Chairman, based on what I'm hearing from staff, I think I need to move to postpone adoption of these until the summer meeting so that we can see the fleshed-out clarification we have been talking about. It is clear at your table they're not clear as to what those are and I don't think we're going to get to those on the fly today. **I would move to postpone adoption of the final TORs until the summer meeting after we've had time to flesh these out.**

CHAIRMAN GROUT: Is there a second? Pete seconded the motion. Ritchie and then I've people all over the board.

MR. G. RITCHIE WHITE: Mr. Chairman, I'm not in favor of delaying, but if we do delay I hope the maker of the motion to delay will give a specific task to the technical committee so they will come back with an analysis of exactly what you want, that we're very specific to them in our direction. Thank you.

MR. ADLER: Mr. Chairman, would it be possible that if the motion to send it forward gets the technical committee going on what they have written and that if there were some additional things that the board would like for them to look at, they could be handed in at the August meeting but at least it gets the technical committee going with what they've got already.

CHAIRMAN GROUT: In response to that, I'm going to ask the technical committee a question. Do you need to know where you're going with the stock boundaries and the analysis, that you need to do that before you start work on the stock assessment or can you do that after you start working on the stock assessment?

DR. NESSLAGE: I'm in the process of working with the technical committee to develop the data base right now, and the first step that we do in that process is to define the stock unit; so if you want different stock units, we need to know now, please.

MR. STOCKWELL: I'm uncomfortable with delaying the process into the summer. My question to Toni is staff workload, timing, how that is going to impact the rest of the issues that everyone is working on. Is it just a three-month delay or is it going to ripple into a further complicated mess than that?

MS. KERNS: Terry, I think it would all depend on how many stock units the board wants the stock subcommittee to put together. The more stock units, the more model runs, the more analysis there needs to be; and do we even have the data to do some of those model runs in a more confined stock unit. For some of them we won't because there hasn't been data collection for long enough in those areas. It could be probably as little as six months.

MR. STOCKWELL: How about you start on the Gulf of Maine?

MS. KERNS: The way the data base is built and how we parse out the data, it's hard to do those piecemeal for some aspects.

MR. STOCKWELL: It's a pretty big piecemeal.

MR. AUGUSTINE: Would it be possible to – and I don't support tabling this either. I think we've gone quite a ways at this point in time, but there were points put on the table, both addressed to Dr. Genny and John and to Toni, that I thought were stated clearly enough that they could be added on to with some detail.

Mr. Himchak just mentioned to me on a side comment that really the board should take a look at what other documents are available that the board may be able to be more pointed. I'm not sure what we're asking to do is create more work. We're asking to be – I'll use the word accurate – be more accurate or more pointed on what data we have and what data we don't have.

I think where Mr. Gibson was going was that if there are units – and I noticed Toni said some of these units are too small and you can't put them together. Well, maybe, Dr. Genny, you can put together those units that are close to each other, if you will, that logically makes sense. Maybe it's different combinations if it's a fact that these are distinct groups and originally they were all put together collectively because we had a larger data base to draw some conclusion from.

If they are distinct sets in each of all these areas, what does it accomplish? Mr. McKiernan says, well, gee, if we do it separately we might have to I guess close down some of those areas – well, maybe we do, maybe we do, and I think that's something that the board has to consider at a later date. But right now we're trying to get at – as I understand it, we're trying to get at the root of the problem.

You're trying to come up with a benchmark, an assessment; and if we're putting apples and oranges together, what is going to be different with this assessment than we've had in the past? So, take the terms of reference; if there are two or three items that board members have asked John and Dr. Genny and Toni to look at, can you identify one bullet, two bullets or three bullets that would be added to the terms of reference that would satisfy the board's need, that would help us point you in a different direction that will give us more valid information. I can't say it any clearer than that, but I surely would not support tabling it; if it's two or three items that we would like to have addressed that quite frankly you will not be able to give us any better information we make this decision two months from now.

MR. GIBSON: In response to Ritchie White's question on what my term of reference would be, it would be for the technical committee – you can start

your data compilation tomorrow with the existing stock structure, but the term of reference I'm looking for is that within the existing Southern New England stock area that has already been specified relative to the past assessment with the Gulf of Maine Model; is it possible to specify within that substrata or strata within that, it receive special treatment within the overall assessment.

I point to the tautog example. We assessed tautog on a coast-wide basis, but where data is available we create a substratum within that and allowed it to be assessed on a smaller scale. That's the term of reference I'm looking for; and if that can be done, I'd be happy to withdraw the motion, but I don't think Item 3, the way it's written right now, has the rigor necessary to give us the information we're going to need. That's the concept I'm trying to look at.

You do your Southern New England assessment the way you have before with your new pieces of information, ventless trap surveys, whatever they are, but then evaluate whether it's possible to create a cell within that. I'm sure the UMM Model can do that sort of thing. I get that's it work, but you can probably create an Area 2 or Southern New England cell, you can probably create an Area 6 cell, and they have to spin inside the big model that is currently defined.

You can start your data compilation tomorrow; and whether or not you have subsets of data, I think that has got to be a term of reference. I mean we've put a lot of money and effort into this advanced stock assessment model. We've got to use it; we've got to use it for what its capabilities are.

DR. NESSLAGE: Tell me if I'm misinterpreting your statement, please, but I think what I hear you are asking for is using the University of Maine Model with sub-regional dynamics within it, that would be enormous. I don't want to sound like a whiner and I think it would be a fabulous exercise.

I would like to see that as well, but that would be several years in the making, I anticipate. It took us multiple years, what, five or six years to develop the University of Maine Model for one stock. In addition to that, I don't think we have the data at the spatial resolution that you're asking for to parameterize that model. If we could, we would love to build one for the Gulf of Maine. It would have had inshore/offshore dynamics; figure out what is going on in 514.

We would love to do all these things; but as data rich as lobster is and the number of bio-samples we collect and the number of surveys that are conducted, we don't have that information at the spatial resolution to be able to do that sort of substock dynamics modeling. I wish we could but we don't, I don't believe; and to build that kind of model would take years.

MR. GIBSON: Don't we think that is what should come out of – that's why the term of reference should be there so that the group can evaluate and say we don't have the data to do this; sorry, we couldn't fulfill this term of reference, here is the research and data needs; you need to do that. I mean I'd much rather see that answer in the stock assessment and have the peer reviewers say it than just discard the notion at the table.

MR. McKIERNAN: Genny, wasn't Area 514 isolated in the last stock assessment with comments from the technical committee about different trends, so isn't that what we're talking about? I mean maybe it can be as simple as just as you develop or as you collect all of your data sets, if you're seeing anomalous trends, maybe you point those out on a sub-region basis as opposed to running a full model in those sub-regions.

DR. NESSLAGE: That's kind of what we were trying to get at with number three; and I'm not sure which part of the wording is throwing folks off. That's exactly our intent is to identify areas where we can, where the data are available that seem to indicate that there are different things going on compared to the coast-wide trends.

I think it's important to take a look at coastwide; it's important to take a look at Gulf of Maine, Southern New England and Georges Bank trends and then also where we can take a close look at the data as they're available at substock regions, but I can't promise that we can build a University of Maine Model with substock dynamics and all the bells and whistles in a reasonable timeframe for you to be able to keep moving with management.

That was our intent and perhaps if there is some way we can reword number three or whatever number it is now, that would be really – I think that's the level the technical committee is at and that's what we're trying to do. If you can provide any wording suggestions, we'd be happy to entertain that, of course.

MR. SIMPSON: I appreciate what she is saying and I will just say understand given our Addendum XVII

experience, we are more than likely to try to manage by these finer scales; so anything you can give us at the finer scale is what we're after.

CHAIRMAN GROUT: Is that clear? **All right, we have a motion to postpone until the summer meeting acting on these terms of references.** Any further discussion on this? Do you need time to caucus? All right, I'm going to call the question. All those in favor raise your hand; all those opposed; abstentions; null votes. **The motion fails one, nine, zero, zero.**

We now have the main motion to move to adopt the terms of reference as presented by the technical committee. Motion by Mr. Simpson; seconded by Mr. Augustine. Any further discussion? Do you need to caucus? Seeing nobody shaking their head, all those in favor raise your hand, ten in favor; any opposed; null votes and abstentions. **The motion passes ten, zero, zero, zero.**

Okay, now we have terms of reference for the peer review panel. Do you want Josh to go over these – they are on the CD – or are you ready to approve them as is or would you like to go over them? **I would like a motion to approve the draft terms of reference for the peer review panel.**

MR. SIMPSON: **So moved.**

CHAIRMAN GROUT: Seconded by Pat Augustine. Discussion on the motion? Any caucusing on this? Okay, all those in favor raise your hand; all opposed; null; abstentions. **The motion carries ten, zero, zero, zero.** David, is this to the next issue? Okay, come on up. I'll give you a chance since I didn't give the public a chance to discuss our vote on this.

MR. SPENCER: Mr. Chairman, this may be a little bit outside the borders of the terms of reference, but I think it's critical especially given the tremendous lack of data available for a stock assessment in federal waters. As with many other stock assessments in other fisheries now, there is a caucus of industry with the technical and/or stock assessment committee prior to doing this.

I think even though this isn't hard scientific data, I think it's anecdotal information that if you're looking at trends, the trends start on the water and fishermen are the first people that see this. I think it could add a lot of value in helping make the assumptions that the scientists have to make for the information going into the stock assessment model. I guess my question is has there been any discussion or is there any intent to

have an industry/technical committee meeting prior to the assessment? Thank you.

MS. KERNS: David, as a part of the data workshop any individual can bring forward data to be reviewed as part of that, and we'll send out notices of how that data should be submitted and the timeframe for it to be submitted. Any individual can come to that data workshop and participate. There are only some times when we have to ask folks to leave if there is confidential data being presented at that time.

MR. SPENCER: Okay, thank you. I guess my recommendation would be this should be something that is talked about and explored and I think not done just formally to caucus people. I think there are a lot of trends and it's over a time series, a lot of uncertainties can become a little more certain if that dialogue is created. I think certainly industry wants to see the best possible stock assessment and feels that their involvement on the front end would be very beneficial. Thank you.

DISCUSSION OF POSSIBLE IMPACTS OF POTENTIAL COUNCIL ACTION IN CLOSED AREA II

CHAIRMAN GROUT: Thank you, David. The next issue is there a letter in your meeting materials under Item 7 here that I sent to the board and to the council back in January. Basically if you can bring it out and open it up to the tables and graphs that I associated with this, I had an offshore lobster company that works out of New Hampshire come to me.

When they heard that the New England Fishery Management Council was going to potentially be looking at moving both the habitat closure area in Closed Area 2 and the groundfish, and there was also a potential that we would be looking at evaluating whether there still needed to be a groundfish mortality closure out there out light of the fact that we were under catch shares, they brought a video to me showing me pictures out on their boats of numerous berried females coming up in their traps. They brought in logbooks, VTRs, showing the amount of lobsters that were being discarded out in that area. What I had my staff do is take a look at all the VTR data and not just from that company that occurred out in Areas 561 and 562, which is out in Closed Area 2. Indeed, it did show a significant increase in the amount of discarded lobsters going on during some of the summer months out there.

Sometimes it was actually exceeding the amount of lobsters harvested. I then was looking for some sea-

sampling data and the Atlantic Offshore Lobstermen's Association had actually been doing some of this sea sampling with their captains recording some data. It was indicating a very high percentage of those lobsters – 90 percent were females and 62 percent of them were egg females.

The concern here is that if we were to open up – if the council in the future were to take management actions to open up that area to bottom-tending mobile gear there may be an impact on berried female lobsters out there because there seems to be an indication that there is a large concentration of them out there at certain times of the year.

I wanted to bring this up to the council's awareness so that when they make their decisions on whether to open this area up or not, they take this into consideration. I wanted the Lobster Board to be aware of this in case the council didn't take action or when they took their action and they were to open it up, that we may need to take some kind of management action if we desire to protect some of these berried females that are in high concentrations out there.

I wanted to ask, first of all, Terry, as chairman of the groundfish committee; do you know where the groundfish committee and the groundfish PDT is at on evaluating whether we still need the groundfish mortality closures out there?

MR. STOCKWELL: I'm going to give a little bit of an overview to what Doug has been talking about. This last fall the New England Council prioritized an analysis of all the groundfish closed areas and all the habitat areas with the goals of opening up the areas and closing areas consistent with the new SASI Model and groundfish spawning measures.

It's a joint action between the groundfish committee and the habitat committee. Frankly, it's moving at the speed of metal rusting primarily because of higher council priorities and higher groundfish committee priorities, including Gulf of Maine cod, Georges Bank yellowtail; implementing a cost-effective monitoring program for the groundfish fishery in 2013; and the upcoming specifications for 2013 and '14.

We've had some staff reconfigurations, but Groundfish PDT mentioned to me last week that he anticipated beginning work on this again some time in the latter part of the fall realistically. Doug did present this letter to the habitat committee and it didn't go over really well. One of the questions that

was asked – and I think I’m going to pose that to Toni and other folks around the table – is there any other data that we can bring to the council that will support the information that Doug and the Lobstermen’s Association brought up, because we’re trying to be a data-driven process here.

CHAIRMAN GROUT: Well, I can tell you that I don’t think to my knowledge there is any state-run sea-sampling program out in that area. We do have the VTR data which clearly we’ve at least through August of 2011 have tapped into that data completely. Another piece of data that I would like to possibly task our technical committee with is what is the impact of mobile-tending bottom gear on lobsters and berried female lobsters in particular? Is there any kind of a negative effect of those gear types on lobsters and female lobsters with eggs in them? Unless people have any objection to that, I’d like to at least task the technical committee with that, to get that piece of information. Bill.

MR. ADLER: Yes, I support that completely. Remember, what we’re trying to do here is all the rules we make try to make more eggs. I’ve read your letter and I’ve read the thing. It’s not all year. It’s just a certain time that perhaps the council, when they do get rolling on something, could consider getting that information; and if they have to open it up, they could open it up at a different time and just keep it closed as a compromised way of going.

We can’t have a massacre of eggers, not intentionally, but a massacre of eggers when we’re trying to produce eggers for the stock. I don’t know whether it’s impinging upon this board to send a letter to the NEPA process or whether it has even got to that point yet. I think we are concerned or we should be concerned; and at the appropriate time if we need to make a statement I think we should because we are managing lobster and we’re under a heck of a lot of trouble all over the place and we don’t need this. Thank you.

MR. CARLONI: I would just caution the board when looking at this on a monthly basis that this – and the technical committee needs to look at this closer, but this monthly layout of discards in certain months could be a reflection of the effort in those months as well and not a reflection of actually what is out there. I would just caution by doing a season closure that we don’t have information that I know of to show that they’re not actually there. We could put an effort standard on this or something of that nature; but as it stands right now I would caution against.

MR. SIMPSON: I think it’s good information to bring forward and for the council to be aware of and for the board to be aware of. It sounds like the New England Council is probably a few years off from – two or three years, anyway, from making any kind of decision on this, and that will give them plenty of time to think about all the ramifications of opening those areas including what that does for efficiency and overall effort that is expended out there; where that effort will come from which may provide benefits to egg-bearing lobsters that we’re not even talking about now. I think this has plenty of time and need to play itself out a little further.

CHAIRMAN GROUT: And just a response to that, while I agree with you that it could take as long as two or three years, I think the intent of the council in their priorities is that this might be something that might be implemented as soon as next year. At least that has been what the priorities were. Dennis.

MR. DENNIS ABBOTT: Mr. Chairman, is there any evidence that these egg-bearing females that show up there at any point in time have been V-notched indicating they have migrated from Gulf of Maine out there?

CHAIRMAN GROUT: The data that we looked at didn’t include that because VTRs don’t identify V-notch. Now, Bonnie, do some of your captains record V-notches? Just so I can repeat what you said, it is not in the data that was presented to me, but you may have the data.

MS. SPINAZZOLA: And I will get it to you.

CHAIRMAN GROUT: And she will get it to me and I will give it to the technical committee.

MR. STOCKWELL: Despite this being a council priority, I think implementation next year is a little optimistic given all the other council’s priorities. It is definitely on the table. I guess a question or a thought for the technical committee is to network with the observer data. The groundfish boats that work in that area outside have around a 30 percent rate of coverage and they should have all the bycatch data for you to work with.

MR. McELROY: Mr. Chairman, as a lobsterman this is probably going to sound kind of funny, but just because lobsters are bearing eggs in an area that draggers go through doesn’t automatically mean that the draggers are going to catch them. I wouldn’t feel comfortable as a lobster board member recommending that we tell a bunch of draggers

that they can't come into an area unless we can actually ascertain that is going to create a problem.

I have been in the business for a long while and typically what happens at least Southern New England is when the lobsters are available for potting, the draggers don't catch them; and when the draggers are catching them, the trappers aren't. It seems like you'd think that they might be available and vulnerable at that point, but that doesn't guarantee it.

To suggest that a piece of ground that could be very valuable for the ground fishermen be held in abeyance because it might be a problem for lobsters, I don't think reaches the level of a recommendation by this board. We need some concrete evidence that in fact there would be the slaughter of eggers, and I for one don't think that would occur, and I'd be reluctant to support it.

MR. WHITE: Mr. Chairman, would it make any sense writing a letter to the council expressing our concern for the area and saying that we're looking at accumulating additional information and that we would certainly like the chance to give input if and when this process moves forward.

CHAIRMAN GROUT: That certainly is an option that we could do if the board feels that is warranted. Steve.

MR. TRAIN: Mr. Chairman, I could echo a lot of what Bill said. I'm a lobsterman and I'm also a ground fisherman and I go shrimping. A properly rigged net isn't going to dig much. A lot of them are going to get out of the way. The size mesh we have now, you're not going to see too many of the smaller eggers, anyway. I know in Georges you see a lot of big lobsters.

We work around draggers all the time when we're lobstering around the shrimpers. You don't get them the same way. If they're trapping they're not getting in the net. If the guy is getting them in the net, we're not always trapping them. Just because they're there when the trappers are seeing them, it doesn't mean they're going to be there when the groundfish boats want to work; and even if they are, it doesn't mean they're going to catch them.

CHAIRMAN GROUT: Anything further? Would you like a letter; is there any objection to a letter being sent? I see no objection. We will send a letter to the council to consider this and we'll task the technical committee with looking at the effects of

mobile-tending bottom gear on lobsters and berried females. Bob.

MR. ROBERT E. BEAL: Just to be consistent with the process, we usually send those letters through the Policy Board and then on to the council.

CHAIRMAN GROUT: That's a good point. The only thing we have is reporting on the implementation of Amendment XVII measures. Yes.

OTHER BUSINESS

MR. HIMCHAK: Mr. Chairman, I'll be very quick and very brief here. I want to bring up some issues particular to Area 5 in lobster management; and if you read the proceedings from the February board meeting, Pages 21 to 23, it talks about de minimis requirements in states that are de minimis and that are fishing in Area 5.

It seems like nothing was really resolved at that point on if they didn't sea sampling how would you evaluate a reduction in that area. In some of these states they had confidential landings and they were actually higher than what New Jersey's landings are in Area 5. I see Delaware and Maryland here, but we are going to implement mandatory V-notching this July.

It's either this July or maybe a couple of weeks earlier than that when the document is filed. This was a recommendation of our Marine Fisheries Council Lobster Committee, was that we would put in mandatory V-notching for Areas 4 and 5 this year and then have a seasonal closure of February and March in 2013. We have sea sampling scheduled for 2012 for Area 4, eighteen trips; in Area 5, six trips. And, of course, we're going to raise the Area 3 minimum size gauge.

Again, I don't know – and if you read the proceedings in the February board meeting, we don't know what de minimis states are going to do as far as sea sampling and validation of the success of the V-notching. And if we can't pass through technical committee approval, then they have to fall back to the April 29 through the month of May closure, which is disastrous for the black sea bass fishery. When our council meets May 10th, we will our regulations finalized and I will reach out to the other states in Area 5 to see – although I don't know what they're required to do.

MS. KERNS: Pete, they're required to put in the same regulations that you have for Area 4 and the

onerous is on those states to prove to the technical committee that it did in fact do the reduction that it is supposed to do. If not, then you would fall back to the closure. The closure is for no permitted take of lobster. They would be able to continue to sea bass fish. They just would not be able to bring any bycatch in of lobster.

MR. HIMCHAK: Okay, that helps.

MR. SIMPSON: Along those lines, I was curious with the loss of interjurisdictional fisheries funds and a lot of states including Connecticut rely on that almost exclusively for lobster research and monitoring, how will that affect some of the states that are moving forward or LMAs that are moving forward with V-notching and their ability to verify that the appropriate amount of V-notching is taking place?

CHAIRMAN GROUT: Any of those states want to respond to that who were putting forward V-notching? Toni, do you know the answer?

MS. KERNS: We went over this discussion with the technical committee on Tuesday on what programs were going to be subject to potential no longer programs for next year. Across the board the ventless trap survey and port sampling would be the first to go for them, but sea sampling would still be a priority for the majority of the states.

There may be one state that thinks that they would still be able to continue to do the ventless trap survey next year unless other funding comes forward. It's important to note that to the board because it's a survey that we're putting a lot of effort into for this new assessment that we may not have any longer. Rhode Island may have some sea sampling?

MR. CARLONI: No.

MR. GIBSON: Our sea-sampling program is funded by an FTE supported entirely by IJF; and with that zeroed out as of May 1, we have no funds. We're looking right now to how we can reprogram what we have to get through 2012; but lacking a replacement or a reinstatement of that, we might not have a sea-sampling program in 2013.

MS. KERNS: So that will be a problem for validating the V-notching program for Area 2.

ADJOURNMENT

CHAIRMAN GROUT: Any other comments on this issue? Any other items? So moved to adjourn.

(Whereupon, the meeting was adjourned at 6:03 o'clock p.m., April 30, 2012.)

**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

SMZ Monitoring Team

**Joel Macdonald
Paul Perra
Richard Seagraves
Scott Steinback**

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.

1.0 Introduction

At its June 2011 meeting in Port Jefferson, New York, the Mid-Atlantic Fishery Management Council (Council) received a request from the State of Delaware's Division of Fish and Wildlife (DFW) to designate its five artificial reefs located in the Exclusive Economic Zone (EEZ) as Special Management Zones (SMZs). Amendment 9 to the Summer Flounder, Scup and Black Sea Bass FMP (approved by NOAA on 17 October 1996; see 61 FR 58467, Nov. 15, 1996) incorporated a provision into the FMP (Section 9.1.2.7) that allows for the designation of artificial reefs in the EEZ as SMZs, if so petitioned by the permit holder.

The current regulatory language (as of July 19, 2012) pertaining to the SMZ provision of the FMP can be found at 50 CFR Part 648: Subpart I - Management of the Black Sea Bass Fishery as follows:

§ 648.148 Special management zones.

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) A SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Northeast Region, and NMFS Northeast Fisheries Science Center will evaluate the request 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 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.

(b) 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.

(c) The MAFMC, following review of the SMZ monitoring team'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.

(d) 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.

(e) 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.

1.1. Formation of SMZ Monitoring Team

Based on requirements described above, an SMZ Monitoring Team (MT) was formed consisting of members of MAFMC Staff, the Northeast Fisheries Science Center (NEFSC), and the Northeast Regional Office (NERO) to evaluate the SMZ request submitted to the MAFMC by Delaware (see appendix i). The role of the MT is to evaluate Delaware's SMZ request for 5 reef sites in the EEZ based on the criteria developed in Amendment 9 in the form of a written report.

1.2 Basis/Justification for Delaware's SMZ Request

In a letter to Dr. Chris Moore dated April 19, 2011 (appendix ii), the DFW formally requested that the Council designate its five artificial sites currently permitted in the EEZ, (as defined by the Army Corps of Engineer [COE] permit number CENAP-OP-R-20050059-1) under the SMZ provisions of Amendment 9 to the Summer flounder, Scup and Black Sea bass FMP described above. In the SMZ request letter it was noted that "the DFW has been receiving complaints from hook and line anglers regarding fouling of fishing gear in commercial pots and lines on ocean reef sites for more than 10 years". In a presentation to the Council at its June 2011 meeting, the DFW also identified "a gear conflict between hook and line fishermen and fixed pot/trap fishermen" (including fixed commercial gear targeting black sea bass, lobster and conchs) in which hook and line fishermen foul their hooks on this fixed gear resulting in lost rigs (on both actively fished pots and lost "ghost" gear).

In its SMZ request letter, the DFW also noted that "more recently the USFWS Sportfish Restoration Program Office in Hadley, MA has begun receiving complaints from fishing groups and individuals from the Mid-Atlantic" (the SMZ MT assumed these complaints refer to gear conflicts). Finally, the DFW noted that they were notified by USFWS in March 2011 "that when gear conflicts occur, pot fishing on reef sites is not consistent with the objectives of their Sportfish Restoration Program. State reef programs must be able to limit gear conflicts by regulations in state waters or by way of SMZ's for sites in the EEZ in order to comply with the goals of the Sportfish Restoration Program." This theme was also articulated during a presentation to the Council by the USFWS entitled *Dingell – Johnson Sport Fish Restoration Program(SFRP) - Recreational and Commercial Fishing Conflicts on Artificial Reefs - Implications for Federal Funding*. That presentation described the artificial reef grant objectives of USFWS to be "to increase diversity, abundance and availability of reef-dependent

species sought by recreational fishermen through creation of artificial reefs and to provide increased fishing opportunities for recreational anglers". The major issues from the USFWS perspective include 1) proliferation of commercial fishing traps/pots on artificial reefs constructed with Dingell-Johnson Sport Fish Restoration (SFR) funds, 2) commercial/recreational gear conflict interferes 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 Exclusive Economic Zone. The USFWS noted the following implications for SFR funding in cases where commercial/recreational gear conflicts are not remedied: 1) replacement of expended funds 2) suspension or termination of project for noncompliance and 3) declare the State ineligible to participate in SFR program. In April 2011, the USFWS terminated SFR Program funding for New Jersey's artificial reef program based on concerns regarding conflicts involving hook and line recreational fishermen and fixed pot/trap gear on the states artificial reefs (see 12 April 2011 letter from John Organ to Bob Martin in appendix ii).

Thus, the following evaluation by the SMZ Monitoring Team of Delaware's request for SMZ status for its 5 reef sites in the EEZ focuses on the proliferation of gear conflicts between recreational fishermen and fixed pot/trap gear described by DFW in its 12 April 2011 letter and the contention that gear conflicts are contravening the goals of its artificial reef program. As noted above, this contention is consistent with policy guidance relative to acceptable uses of artificial reefs funded with SFR funds as articulated by the USFWS.

It is important for the Council to note that there are 30 additional artificial reefs permitted to other states which exist within the EEZ portion of the black sea bass management unit (Table 1). The USFWS policy of termination of SFR Program funding to state reef programs for failure to resolve the stated gear conflict issue has already been put into action relative to New Jersey's reef program (see appendix ii) through termination of SFR Program funding for that state's artificial reef program. An important policy implication for Council consideration is that SFR Program funding for Delaware's artificial reef program, as well as other state artificial reef programs in the Mid-Atlantic region, may be terminated by the USFWS if solutions to the gear conflict concerns raised by the USFWS are not addressed.

2.0 History of Development of Delaware Reef Sites

The Delaware DFW received authorization to begin constructed artificial reef sites at 11 sites in the Delaware Bay and the Atlantic Ocean in November 1994 (pursuant to COE Permit CENAP-OP_R_199400886-1). That permit allowed for construction of three reef sites in the EEZ including reef sites 9, 10 and 11 (see below for a complete description of each reef site). Deployment of materials on reefs sites 9 and 10 began in August 1995 and on site 11 in January 1996.

The DFW received a second permit from the COE in January 2006 (permit number CENAP-OP-R-200500059-1) that authorized the continued deployment of artificial reef materials at the 11 original sites (referenced above) and at three new sites, two of which are located in the EEZ (reef sites 13 and 14). Deployment of reef materials on reef site 13 commenced in December 2007 and to date, no materials have been deployed by DFW on site 14 (J. Tinsman, pers. comm.). It is

important to note that DFW's original COE permit pre-dated the implementation of the SMZ provision implemented in Amendment 9. However, an opportunity existed for the DFW to petition the Council for SMZ status for any and/or all of its reef sites during the permitting process in 2006.

2.1 Delaware Reef Sites Description

The Delaware artificial reefs are part of a complex of 14 artificial reefs sites, permitted by the US Army Corps of Engineers and maintained by the State of Delaware. The sites are in Delaware Bay and the Atlantic Ocean. Only the five artificial reef sites (sites 9, 10, 11, 13, and 14) maintained in Federal waters are described here (Figure 1).

Site 9

Artificial Reef Site #9 is located 4.5 nautical miles northeast of Indian River Inlet, Delaware and has an authorized minimum vertical clearance of fifty (50) feet above all structures at mean low water elevation. It has a depth range is 52-64 ft. The nearest ports are Roosevelt Inlet (12 NM) and Indian River Inlet (4.5 NM). The epifaunal community is blue mussel. The fish in the area are black sea bass, tautog, weakfish, striped bass, summer flounder, and croaker. The primary substrate is sand. Latitude and longitude corner coordinates are: SE 38°39.970' - 074°59.300' - SW 38°40.050' - 075°00.700' - NE 38°40.800' - 074°58.900' 9 52'-64' - NW 38°40.850' - 075°00.400'.

Site 10

Artificial Reef Site #10 is located 5.5 nautical miles east of Indian River Inlet and has an authorized minimum vertical clearance of fifty (50) feet above all structures at mean low water elevation. It has a depth range of 56-64 ft. The nearest port is Indian River Inlet (5.4 NM). The epifaunal community is blue mussel. Fish in the area are black sea bass, tautog, weakfish, striped bass, summer flounder, and croaker. The primary substrate is hard sand. Latitude and longitude corner coordinates are: SE 38°36.200' - 074°55.674' - SW 38°36.296' - 074°57.150' - NE 38°37.000' - 074°55.375' - NW 38°37.100' - 074°56.800'.

Site 11

Artificial Reef Site #11 is located 16.5 nautical miles east of Indian River Inlet and has an authorized minimum vertical clearance of fifty (50) feet above all structures at mean low water elevation. It has a depth range of 68-88 ft. The nearest port is Indian River Inlet (16.5 NM). The epifaunal community is blue mussel. Fish in the area are black sea bass, tautog, bluefish, and summer flounder. The primary substrate is sand. Latitude and longitude corner coordinates are: SE 38°39.880' - 074°43.050' - SW 38°40.000'.074°44.800' - NE 38°40.750' - 074°42.750' - NW 38°40.850' - 074°44.500'.

Site 13

Artificial Reef Site #13 is located 26 nautical miles east of Indian River Inlet and has an authorized minimum vertical clearance of sixty (60) feet above all structures at mean low water

elevation. It has a depth range of 120-130 ft. The nearest port is Indian River Inlet (26 NM) and Cape Henlopen (32 NM). The epifaunal community is soft coral, northern coral, anemone, and ectoproct. Fish in the area are black sea bass, tautog, winter flounder, cod, and red hake. The primary substrate is sand. Latitude and longitude corner coordinates are: SE 38°30.140' - 074°30.580' - SW 38°30.220' - 074°31.500', NE 38°31.735' - 074°30,020' - NW 38°31.616' - 074°30.865.

Site 14

Artificial Reef Site #14 is located 58 nautical miles east of Indian River Inlet and has an authorized minimum vertical clearance of eighty (80) feet above all structures at mean low water elevation. It has a depth range of 180-186 ft. The nearest port is Indian River Inlet (58 NM), Cape Henlopen (612 NM), Cape May Inlet (55 NM), and Ocean City MD (61NM). The epifaunal community is soft coral, northern coral, anemone, and ectoproct. Fish in the area are black sea bass, tautog, winter flounder, cod, and red hake. The primary substrate is sand. Latitude and longitude corner coordinates are: SE 38°31.800' - 073°48.067' - SW 38°31.800' - 073°49.767' - NE 36°32.700' - 073°48.067' - NW 38°32.700' - 073°49.767'.

Materials Allowed on the Reefs:

Under the US Army Corps of Engineers permit for the Delaware reef program, artificial reef materials permitted for use on the sites are (2) separate categories. The first are specifically designed reef materials. These design materials are materials constructed to maximize surface area for attracting organisms to provide specific habitat requirements for targeted reef fish and other marine species. The second category of reef materials allowed is identified as materials of opportunity. Materials of opportunity that could be used for construction of artificial reef structures would include, but not limited to, concrete, rock, surplus ships, barges, tanks, armored personnel carriers, and obsolete subway cars. In accordance with the National Artificial Reef Plan, and the US Army Corps of Engineers, all materials of opportunity, must be properly cleaned, dismantle where necessary, and inspected prior to deployment to assure that they are clean and free of contaminants.

3.0 SMZ Monitoring Team Evaluation Based of the Criteria Established in Amendment 9

3.1 Evaluation relative of SMZ request relative to National Standard 4

There are six criteria listed in Amendment 9 as described above in section 1.0. The first three criteria for SMZ evaluation: (1) fairness and equity; 2) promotion of conservation; and (3) avoidance of excessive shares are related to the National Standard 4 of the MSA which sets forth criteria Councils must follow when allocation of fishery resources or access to those resources are contemplated.

Discrimination among residents of different states

First and foremost, National Standard 4 requires that management measures or programs promulgated under MSA shall not discriminate between residents of different states. An FMP

may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. An FMP may not incorporate or rely on a state statute or regulation that discriminates against residents of another state. Conservation and management measures that have different effects on persons in various geographic locations are permissible if they satisfy the other guidelines under Standard 4.

Examples of these precepts are:

- (1) An FMP that restricted fishing in the EEZ to those holding a permit from state X would violate Standard 4 if state X issued permits only to its own citizens.
- (2) An FMP that closed a spawning ground might disadvantage fishermen living in the state closest to it, because they would have to travel farther to an open area, but the closure could be justified under Standard 4 as a conservation measure with no discriminatory intent.

In the case of SMZ designation for Delaware reefs in the EEZ, the Monitoring Committee sees no evidence of discrimination of residents of any particular state regardless of the Council's decision relative to SMZ status. Rather, the decision to designate an artificial reef as an SMZ represents an allocation of access to areas of the ocean within the geographic boundaries of the reef site in question (and any additional areas surrounding the SMZ deemed necessary to address practical law enforcement concerns) to those using the gear type allowed in the SMZs. Access to the SMZs is not restricted to fishermen from any particular state. All fishermen using the gear type allowed in the SMZs can access this area to fish regardless of the state from which they departed. While there may be a disadvantage to those fishermen from states which are not adjacent to the SMZs, this is not considered to be discriminatory within the context of National Standard 4 as can be seen in Example 2 above.

Allocation of fishing privileges

An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (3)(i) through (3)(iii) described below.

(1) Definition. An "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, *assignment of ocean areas to different gear users*, and limitation of permits to a certain number of vessels or fishermen. Given the very limited amount of ocean area occupied by the SMZs of the available fishing area on the continental shelf off Delaware, this allocation might well be considered *de minimis* in nature.

(2) Analysis of allocations. Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an

existing allocation system should be examined. Allocation schemes considered, but rejected by the Council, should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed below in paragraph (3) of this section.

(3) Factors in making allocations. An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3)(i) through (c)(3)(iii) of this section:

(i) Fairness and equity.

(A) An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For example, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, if there is a rational connection between an objective of harvesting a species at its maximum size, closing a nursery area to fishing would be allowable.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo.

Part A above notes that allocation of fishing privileges should be considered in relation to achievement of OY or to achieve an objective of the FMP. In this case, the Council is being asked to restrict access to Delaware artificial reef sites in the EEZ to those recreational and commercial fishermen using rod and reel and hand line gear only in order to ameliorate gear conflicts between this gear type and fixed pot/trap gear. While this action would further the stated objectives of the Delaware Artificial Reef Program, it does not specifically address any of the stated FMP objectives nor serve to achieve OY. Neither conclusion is surprising given the extremely small area of the ocean area occupied by the artificial reefs for which SMZ designation is sought.

The designation of these artificial reefs as SMZs will serve one of the MSA's purposes, that is the promotion of recreational fishing. It is important to continue funding for the establishment and maintenance of the artificial reef program because these areas serve to enhance recreational fishing for certain species of fish such as black sea bass in the areas of the reefs. These areas provide forage and shelter for these species with benefits accruing for both recreational and commercial fishermen using compatible gear types. While fixed pot/trap fishermen would be disadvantaged because they would no longer have access to these areas, the area affected comprises an insignificant percentage of the overall area where fishing with these gear types is

not constrained. Fostering the orderly conduct of a fishery within these areas for compatible gear types is a legitimate objective particularly where the impact on those using non-compatible gear is certainly not significant.

Part B requires the Council to evaluate the tradeoffs between benefits and costs to the two user groups relative to SMZ designation on Delaware EEZ reef sites. If the Council ultimately decides to designate Delaware reefs as SMZs (which includes gear restrictions), some positive benefits would be expected to accrue to fishermen using rod and reel and handline gear through reduced gear conflicts. However, prohibition of fixed pot/trap gear as part of an SMZ designation would have a negative impact on that sector of the fishery since they would be denied access to these areas. However, given the small size of the areas affected and the few fixed pot/trap fishermen operating in these areas, the amount of these losses is speculative. Certainly, there will be adverse economic consequences for the few fixed pot/trap gear fishermen who concentrate their efforts in these areas. However, it may be stated generally that there will not be a significant impact on a substantial number of small entities. Further, the economic losses suffered by fixed pot/trap gear fishermen who are displaced from these areas could be mitigated to some degree by redirection of fishing effort to other fishing areas. The Monitoring Team lacks sufficient data to evaluate these tradeoffs quantitatively.

There are numerous other artificial reefs which are currently authorized by COE permits to states other than Delaware. The fairness and equity of the instant proposal to designate the five Delaware artificial reef sites in question as SMZs should be viewed in light of the fact that there are 30 other artificial reefs permitted to other states that currently exist in federal waters within the management unit.

(ii) Promotion of conservation. Numerous methods of allocating fishing privileges are considered "conservation and management" measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

As noted above, the SMZ designation request received by the DFW is based on the stated need to reduce gear conflicts between hook and line fishermen and fixed pot/trap gear on Delaware reef sites in the EEZ. Certainly, the significant reduction or elimination of gear conflicts falls within the ambit of "wise use" of the resource in the artificial reef sites through the promotion of at least social benefits. More trips may be made to these areas if fishermen realize that they may no longer lose gear to fixed pot/trap gear. This could result in increased economic benefits for those commercial and recreational fishermen who choose to fish in these areas. Further, the elimination of fixed pot/trap gear should reduce or eliminate the presence of ghost fishing gear in the SMZ area. Certainly, given the small size of these artificial reef areas in comparison to the totality of available fishing grounds, these conservation benefits are expected to be less than significant. This conclusion does not have any measureable impact on the overall management

scheme since fishing mortality for the sea bass stock is controlled by annual quotas which are allocated to the recreational and commercial sectors of the fishery based on historical performance of each sector. Thus limiting access to the artificial reef areas under an SMZ designation would not be expected to affect achievement of the FMPs conservation objectives one way or another.

(iii) Avoidance of excessive shares. An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

In the instant proposal, there is no direct allocation of quantifiable fishing privileges to individuals or entities in the form of individual fishing quotas. If the 5 reef sites in question were designated as SMZs, any fishermen, whether recreational or commercial, using appropriate gear could fish in the area without limitation (though subject to other restrictions imposed under the black sea bass FMP). The most that can be said is that the proposal represents an allocation to a particular gear type, that is rod and reel and handline (or other gears types if final action on this request results in prohibition of fixed pot/trap gear only). However, within the allowable gear sectors, no one individual or entity has an excessive share of the fishing privileges since anyone can participate at any level of fishing effort. Nor does the allocation to these particular gear sectors represent an excessive allocation of fishing privileges vis a vis other gear sectors. The areas under consideration for SMZ allocation represent 5.422 square nautical miles of the total available fishing area over the continental shelf off Delaware. The fishing privileges in these areas yield but a small fraction of the total fishery-wide catch of species that are found in the artificial reef areas.

3.2 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;

Consistency with Objectives of the FMP

The objectives of the Summer Flounder, Scup and Black Sea Bass FMP are to:

- 1) reduce fishing mortality in the summer flounder, scup, and black sea bass fisheries to ensure that overfishing does not occur;
- 2) reduce fishing mortality on immature summer flounder, scup, and black sea bass to increase spawning stock biomass;
- 3) improve the yield from the fishery;
- 4) promote compatible management regulations between state and Federal jurisdictions;
- 5) promote uniform and effective enforcement of regulations; and
- 6) minimize regulations to achieve the management objectives stated above.

The designation of Delaware's five artificial reefs as SMZs appears to be unrelated to the first three management objectives which are designed to insure compliance with National Standard 1 (prevent overfishing), promote conservation of the resources managed under the FMP by

reducing mortality on juvenile fish and improving yield from the fishery. For example, if fixed pot/trap gear were prohibited from DE reef sites in the EEZ, it is likely that fishing effort by that gear type would shift to open areas. Even if all of the forgone catch of this sector from DE reef sites was not recouped in open areas, the amount of catch in question (see below) is small relative to the overall quota for the fishery. Thus, any conservation benefits and/or effects on fishing mortality, reduction in mortality of juvenile fish and improvements in yield are expected to be minimal. Since fishing mortality in the black sea bass fishery is controlled by quotas, the issue of designation of SMZs to address gear conflicts would not be expected to affect the conservation of the black sea bass resource.

In terms of objective number 4, the designation of DE reefs as SMZs would promote compatibility between state and federal regulations in as much as Delaware has already passed legislation prohibiting the use of fixed pot/trap gear on its permitted reef sites located in state waters. Therefore, an SMZ designation for DE reef sites in the EEZ that prohibited the same gear types would be compatible with state of Delaware regulations in this regard.

Objective 5 of the FMP specifies that the Council promote uniform and effective enforcement of regulations. The request for SMZ status for Delaware reefs is unrelated to this objective.

Objective 6 seeks to minimize the regulatory burden on the public to achieve the first five objectives of the FMP. The case has been made that the designation of Delaware permitted reefs in the EEZ as SMZs has little to do with the achievement of the first five FMP objectives. Therefore, one could reasonably conclude that SMZ designation in this case is not necessary to achieve those objectives. Rather, the sole purpose of the designation of DE reef sites as SMZs is to ameliorate gear conflicts (which is not contemplated in the any of the FMP objectives).

Consistency with the Magnuson Stevens Act and Other applicable Law

For purposes of this report, the regulations intend that a consideration of consistency with the Magnuson-Stevens Act and other applicable law be a facial examination to identify any aspects of a proposed designation that may be inconsistent with the law. If the Council ultimately decides to forward a recommendation for designation to NMFS to implement SMZs through regulation, then a much more in-depth analysis of the consistency of the ultimate recommendation will be conducted.

When the SMZ provision was first recommended to NMFS by the Council in Amendment 9, an assessment of its consistency with the MSA was conducted by the Office of General Counsel during the review process leading to its approval. There is a provision at section 303(b)(2)(A), which deals with the discretionary provisions of an FMP or amendment, that contemplates measures such as an SMZ. It reads:

[Any fishery management plan may....] designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear

The designation of the five, or fewer, artificial reef sites in Federal waters off Delaware's coast does not raise any issues with respect to the national standards other than national standard 4, which is discussed above, or other provisions of the Magnuson Stevens Act.

There are a number of additional statutes and Executive Orders that must be considered when implementing any action recommended herein. These include the Administrative Procedure Act (APA), the Coastal Zone Management Act (CZMA), the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the Paperwork Reduction Act, the Information Quality Act, Executive Order 12866, and Executive Order 13132. At this seminal stage, most of these statutes and Executive Orders are inapplicable since we have no final recommendation by the Council or action taken by NMFS. Without these, for example there is no Federal activity or action for purposes of the CZMA and NEPA. However, since the State of Delaware is proposing these areas, which are located in Federal waters off its coast, for designation one can infer that the proposal is consistent with its approved Coastal Zone Management Plan. Similarly, since the scope of the final areas to be designated as SMZ is unsettled, it is difficult to predict actual impacts on listed species and marine mammals. One should expect that since designation would eliminate fishing with fixed pot/trap gear in the areas, the impact on any listed species or marine mammals in the SMZs due to vertical lines in the water column would be significantly diminished. Given the limited expanse of water and bottom encompassed by the SMZs and the relative small number of fishermen that would be displaced by an SMZ designation, the economic impacts to be considered under the RFA and Executive Order 12866 would not be significant fleet wide. Further, it is reasonable to anticipate that the action will not have a significant impact on the human environment under the NEPA analysis associated with implementing SMZs. Since an SMZ designation, as currently conceived, does not have an information generating or reporting component, the Paperwork Reduction Act and the Information Quality Act are not implicated. Lastly, since a designation would have to be implemented through the normal rulemaking process, the requirements of the APA will be satisfied.

The South Atlantic Fishery Management Council (SAFMC) has designated 51 artificial reefs in the EEZ off South Carolina, Georgia and Florida as SMZs under provisions contained in the Snapper Grouper FMP. The SMZ designations apply to each artificial reef and a 500 m buffer zone surrounding the boundaries of each reef and include a prohibition on the use of fish pots, fish traps, trawls and electric reels on permitted reef sites. In some of the SMZs, the use of powerheads (bang-sticks) to harvest fish is also prohibited and individuals harvesting fish using spearguns are limited to the recreational bag/size limits established within the snapper grouper management plan.

It is important for the Council to note that the basis for the SMZ designation by the SAFMC was fundamentally different from the rationale stated by DFW. The DFW request is based on the need to ameliorate gear conflicts between the hook/line and fixed pot/trap gear. The rationale for designating artificial reefs contained in the Snapper Grouper FMP was as follows: "The intent of a SMZ is to create incentive to create artificial reefs and fish attraction devices that will increase biological production and/or create fishing opportunities that would not otherwise exist. The drawback to investing in artificial reefs or fish attraction devices is that they are costly and have

limited advantages that can be rapidly dissipated by certain types of fishing gear (e.g., traps harvesting black sea bass from artificial reefs). Fishing gear that offers 'exceptional advantages' over other gear to the point of eliminating the incentive for artificial reefs and fish attraction devices for users with other types of fishing gear prevent improved fishing opportunities that would not otherwise exist". While a reduction in gear conflicts was discussed as a collateral benefit of SMZ designation by the SAFMC, the primary factor they considered relative to SMZ designation was related to the achievement of perceived conservation benefits on reef sites through prohibition of efficient gear types such as pot/trap gear, long lines and bang sticks.

3.3 The natural bottom in and surrounding potential SMZs

The Middle Atlantic Bight (the area of the U.S. east coast and continental shelf between Cape Cod, Mass., and Cape Hatteras, N.C.) is characterized as being a homogeneous habitat of relatively flat topography, composed of soft sediments, mostly sands, but grading to silt-clay in deeper areas except for relic sand and gravel ridges, exposed Holocene to Pleistocene clay or sandstone in some areas, and glacially exposed rock along the southern New England coast (Steimle and Zetlin 2000). The natural bottom in and surrounding potential SMZs (in this case the five reef sites permitted to the DFW) is described above.

For the sites in question (9.10, 11, 13 and 14), there are no Habitat Areas of Particular Concern designations within them. The areas are Essential Fish Habitat (EFH) for a number of species, but it is unlikely that the creation of SMZs at the sites in question would have an adverse effect on the EFH or the species. It may actually benefit EFH if the fishing pressure is reduced or certain gears are prohibited.

A review of energy development site proposals for the Mid-Atlantic Area shows reef site 11 is within the BOEM Wind Energy Area (WEA) for Delaware where the OCS could be leased. However, BOEM has worked closely with the State of Delaware and others (including NMFS) on the Task Force in developing the boundaries of the WEA. As a result, the reef site will not be part of any lease. Though the NEPA process of the leasing and site assessments, any potential impacts to reef from wind facilities proposed nearby will be evaluated.

3.4 Impacts on historical uses

3.4.1 Recreational Fishery

Recreational fishing data, at the five reef sites considered in this impact assessment, were derived from aerial surveys conducted by the Delaware Department of Natural Resources and Environmental Control (DNREC), NMFS' Marine Recreational Fisheries Statistics Survey (MRFSS), Northeast Federal Vessel Trip Reports, and angler expenditure data collected by NMFS.

The DNREC has conducted bi-weekly randomized aerial flight surveys over Delaware's permitted artificial reef sites since 1997. The aerial flight surveys follow a stratified, random sampling design, and provide bi-monthly recreational fishing estimates of vessel and angler trips by two modes (headboat or private/charter) on the reef sites. Headboats are identified by the

presence of the required Coast Guard life raft on the top deck. Private and charter boats are not distinguishable from one another by air, and thus are classified together. Recreational vessels identified as drifting or anchored are included in the survey. Sailboats and vessels in transit are not included in the counts. A complete description of the DNREC aerial survey program and methods can be found in Hense, *et. al.* (2012).

Data collected through the MRFSS program, which became the Marine Recreational Information Program (MRIP) in 2011, provides estimates of recreational catch, effort, and participation across states, fishing modes, and two-month waves. The MRFSS data is also post-stratified spatially to provide estimates of catch and effort according to area fished (inland, state waters, and the federal exclusive economic zone). The MRFSS spatial estimates, however, are generally not sufficient for describing recreational fishing activity at a more disaggregate level - such as recreational fishing activity occurring at an artificial reef. Please see <http://www.st.nmfs.noaa.gov/st1/recreational/index.html> for further information on the MRFSS program.

All five of the reef sites are located in federal waters and both commercial and for-hire vessels fishing in those waters, for federally permitted species, are required to submit Vessel Trip Reports (VTRs) to NMFS. As part of this mandatory reporting requirement, the latitude and longitude of the area fished on a given trip are recorded. Questions remain concerning the reliability of the spatial data recorded on the logbooks, but these data provide at least some ability to identify commercial and for-hire trips fishing on the reef sites.

Inflation adjusted angler expenditure data collected in New Jersey and Delaware in 2006 are used to estimate anglers' trip expenditures and the gross revenue earned by for-hire boats fishing on the five reef sites. These data were collected as part of a nationwide angler expenditure study conducted by NMFS and are described in Gentner and Steinback (2006).

Reef Site 9

DNREC aerial survey data show that the number of private/charter angler trips has ranged from a low of 216 in 2010 to a high of 538 in 2006 (Figure 2). Private/charter angler trips increased in 2011 though after four consecutive years of declines. The number of angler trips taken aboard headboats has been consistently lower than private/charter angler trips every year since 2004. In 2005 and in 2009, the DNREC aerial survey data show anglers did not take a single trip to reef site 9 aboard headboats. In total, between 288 and 1,087 angler trips have been taken annually to reef site 9 between 2004 and 2011.

The number of private/charter boat trips far exceeded the number of headboat trips taken to reef site 9 each year since 2004 (Figure 3; DNREC aerial survey data). The number of private/charter boat trips ranged from a low of 64 in 2010 to a high of 149 in 2006. Headboat boat trips reached a high of 26 in 2004 and have fallen to 10 during the past two years. The number of passengers on each headboat trip fishing on reef site 9 since 2004 averaged about 22, whereas private/charter trips averaged about 3.5.

Reef Site 10

Reef site 10 is estimated to have considerably more recreational fishing activity than reef site 9. DNREC aerial survey data show that 3,610 angler fishing trips were taken aboard private/charter boats in 2011 and another 2,200 angler fishing trips occurred aboard headboats (Figure 4). Private/charter angler effort and headboat angler effort has generally been increasing at reef site 10 since 2006.

The number of private/charter boat trips and headboat trips to reef site 10 are also considerably higher than at reef site 9. In 2011, 1,034 private/charter boat trips were estimated to have fished at reef site 10 and another 108 headboat trips (Figure 5). This is about 13 times higher than the number of boat trips taken to reef site 9 in 2011.

Reef Site 11

Recreational fishing activity at reef site 11 has consistently been the highest of the five reef sites during the past 8 years. The number of angler trips occurring at the site reached over 16,000 in 2005, and has declined since, but still exceeded 9,600 in 2010 and 2011 (DNREC aerial survey data; Figure 6).

The number of boat trips reached over 2,600 in 2005 and 2007 (Figure 7). Since 2005 the number of boat trips has declined, but still exceeds the number of boat trips taken to any of the other four reef sites.

Reef Site 13 (Del-Jersey-Land Inshore)

Reef site 13 was permitted in 2006 and was added to the DNREC aerial flight survey in 2009. Survey estimates have shown increasing recreational fishing activity at the site since 2009. Angler fishing trips at reef site 13 have increased from 440 in 2009, to 700 in 2010, to 1,969 in 2011 (Figure 8). In 2011 there was an 80% increase in private/charter angler trips and a 281% increase in headboat angler trips, relative to 2010 levels.

The number of recreational fishing boat trips at reef site 13 has also steadily increased over the past 3 years. The total number of boat trips increased from 86 in 2010, to 123 in 2011, and 240 in 2011 (Figure 9).

Reef Site 14 (Del-Jersey-Land Offshore)

Reef site 14 is located 58 miles off shore and is not included in the DNREC aerial flight survey program. The total level of recreational fishing activity occurring at the site is generally unknown.

NMFS' Northeast VTR Data

Annual Northeast VTR data also provide an indication of the number of for-hire boat trips (headboat and charter) occurring at each reef site. The reported latitude and longitude

coordinates of for-hire trips contained in the VTR data base from 2004 through 2010 were overlaid onto the coordinates of the 5 artificial reefs using geographical information system mapping (GIS). All for-hire VTR trips that occurred within 0.25 nautical miles of the reefs were retained for this assessment.

The numbers of for-hire VTR trips that reported fishing within 0.25 nautical miles of the reef sites during 2004 through 2010 are shown in Table 2. Reef site 11 attracted the highest level of for-hire activity, followed by reef site 10 and then 9. Only one for-hire trip was reported at site 13 and one trip at site 14 during this time period.

Since the VTRs measure headboat and charter activity combined, these data are not directly comparable to the DNREC estimates of recreational fishing activity. Nonetheless, when compared to the DNREC estimates of headboat activity alone, the reported number of for-hire fishing trips from the VTRs is considerably lower than reported by the DNREC. This may be because federally permitted for-hire vessels are only required to report location information for a given trip once when fishing within a single NMFS statistical area – which are considerably larger than the coordinates of a reef site. Therefore, the location information in the VTRs may not accurately reflect all of the areas fished on a given trip. The VTR estimates of for-hire fishing activity at the five reef sites should be considered a lower bound approximation of the actual number of trips occurring at the sites.

VTR landings reported for charter and headboats fishing within 0.25 nautical miles of the reef sites from 2008 through 2010 were calculated for reef site 10 and 11. Twelve different species were reported being harvested by recreational fishermen at reef site 10. Black sea bass, fluke, croaker, triggerfish, and scup were the primary species harvested, in order, at reef site 10. Eighteen different species were reported being harvested by recreational fishermen at reef site 11 from 2008 through 2010, but almost $\frac{3}{4}$ were black sea bass and fluke. There was no reported for-hire fishing activity at reef site 14 in the VTR time series from 1995-2010.

Social and Economic Assessment

The total value recreational anglers place on the opportunity to fish at each of the 5 reef sites can be separated into (1) actual expenditures and (2) non-monetary benefits associated with satisfaction. In other words, anglers incur expenses to fish (purchases of gear, bait, boats, fuel, etc.), but do not pay for the fish they catch or retain nor for the enjoyment of many other attributes of the fishing experience (socializing with friends, being out on the water, etc.). Despite the obvious value of these fish and other attributes of the experience to anglers, no direct expenditures are made for them, hence the term "non-monetary" benefits. In order to determine the magnitude of non-monetary benefits associated with fishing at the five reef sites, demand curves for recreational fishing must be constructed. Unfortunately, data limitations preclude the ability to construct these demand curves for recreational fishing at the five reef sites. Therefore, the angler assessment provided here is limited to describing only actual expenditures by anglers fishing at the five reef sites.

Anglers' expenditures generate and sustain employment and personal income in the production and marketing of fishing-related goods and services. An economic study of marine recreational

fishermen conducted in 2006 estimated that average trip expenditures were \$39.14 for anglers fishing from a private/rental boat and \$107.13 for anglers that fished from a party/charter boat in the Northeast region of the U.S. (Gentner and Steinback 2008). Trip-related goods and services included expenditures on private transportation, public transportation, food, lodging, boat fuel, private boat rental fees, party/charter fees, access/boat launching fees, equipment rental, bait, and ice.

Apart from trip-related expenditures, anglers also purchase fishing equipment and other durable items that are used for many trips (i.e., rods, reels, clothing, boats, etc.). Although some of these items may have been purchased specifically to fish at one of the artificial reef sites, the fact that these items can be used for multiple trips creates difficulty when attempting to associate durable expenditures with the artificial reefs. Therefore, only trip-related expenditures are used in this assessment.

Assuming the average trip expenditures estimated in Gentner and Steinback (2008) are equivalent to the expenditures of anglers fishing at the five reef sites, total angler expenditures at each reef site can be estimated by multiplying the expenditure estimates by the number of angler trips fished at a reef site by mode. Proportions calculated from MRIP angler effort data were used to assign separate estimates of private boat angler effort and charter angler effort to the single DNREC private/charter effort estimate for each reef site. MRIP effort estimates in 2011 from DE and NJ anglers fishing in federal waters were used to calculate the proportions (75% private boat, 25% charter).

Table 4 shows the estimated total trip expenditures incurred by anglers to fish at each of the five reef sites in 2011. Anglers fishing at reef site 11 spent the most (\$838.4 thousand) while anglers fishing at reef site 9 spent the least (\$39.7 thousand). Expenditure estimates for reef site 14 are unavailable because the DNREC does not include that site in their aerial survey program. In total, across all reef sites, charter/headboat angler expenditures were over three times higher than private boat angler expenditures. Private boat anglers spent an estimated \$333.0 thousand on trip expenditures while charter/headboat anglers spent over \$1.2 million to fish at reef sites 9, 10, 11, and 13.

A component of angler trip expenditures when fishing aboard a charter/headboat is the passenger access fee. Access fees, in turn, are the primary income generator for for-hire businesses. By multiplying the inflation adjusted average for-hire passenger fare estimated in Gentner and Steinback (2008) by the number of charter/headboat angler trips fished at each reef site, an estimate of gross earnings by for-hire businesses from each reef site can be developed. In 2011, for-hire boats earned an estimated \$16.2 thousand in gross revenue from fishing at reef site 9, \$201.5 thousand fishing at site 10, \$355.5 thousand fishing at site 11, and \$97.3 thousand fishing at site 13.

3.4.2 Commercial Fishery

Commercial fishing data were obtained from Northeast federal dealer reports (VTRs) and the federal Northeast permit data base. In combination, these data provide estimates of total annual landings, the ex-vessel value of landings, and descriptive information about the permitted vessels

fishing on the reef sites. These data provide the capability to identify vessels that fished on the reef sites and to compare total annual gross revenues earned by each of those vessels to their annual gross revenues earned while fishing only at the reef sites.

3.4.2.1 NMFS' Northeast VTR Data

The same GIS procedure described above to estimate the number of for-hire trips that occurred at each reef site was used to evaluate commercial fishing activity by reef site. That is, the reported latitude and longitude coordinates of commercial fishing trips contained in the VTR data base from 2004 through 2010 were overlaid onto the coordinates of the 5 artificial reefs using geographical information system mapping (GIS; Figure 10-12). All commercial fishing VTR trips that occurred within 0.25 nautical miles of the reefs were retained for this assessment.

The number of commercial fishing VTR trips that reported fishing within 0.25 nautical miles of the reef sites during 2004 through 2010 are shown in Table 3. No trips were reported within the coordinates of reef site 9 from 2004 through 2010. One commercial trip using pot gear was reported at reef site 10 in 2005 and one trip using otter trawl gear in 2010. Reef site 11 had 25 trips that set pot gear within 0.25 nautical miles of the reef in 2005, but the number of trips has declined since then and only 3 trips were reported in 2010. Commercial fishing trips setting pot gear at reef site 13 have generally been increasing since 2004. In 2010 12 trips were reported within 0.25 nautical miles of reef site 13. No commercial fishing pot trips were reported at reef site 14 from 2004 through 2010, but 17 trips using dredge gear and 7 trawl trips were reported in 2009.

VTR commercial landings from trips that reported fishing within 0.25 nautical miles of the reef sites varied across reefs. From 2008 through 2010, at reef site 11, lobster, channeled whelk, and black sea bass comprised the majority of landings. Lobster comprised 23% of total landings and 43% of ex-vessel value, channeled whelk 30% of landings and 25% of value, and black sea bass 22% of landings and 25% of total value. Landings at reef site 13 from 2008 through 2010 consisted primarily of black sea bass. Black sea bass comprised 84% of total landings and 87% of total ex-vessel value. No commercial fishing trips were reported at reef site 14 in 2008 or 2010, but in 2009 there were 17 reported trips using dredge gear and 7 using trawl gear. Landings on these trips in 2009 consisted almost entirely of scallops. Scallops comprised 98% of the landings and 99% of the total value. No commercial landings were reported at reef site 9 from 2008 through 2010 and only 1 trawl trip was reported at reef site 10 in 2010. Confidentiality rules prohibit releasing information on fewer than three vessels.

The spatial location data contained in the VTRs for vessels using stationary gear, such as pot/trap gear, may underestimate the frequency of trips setting gear with 0.25 nautical miles of the reef sites. Similar to for-hire vessel trips, vessels using pot/trap gear are only required to report location information for a given trip once when fishing within a single NMFS statistical area – which are considerably larger than the coordinates of a reef site. Therefore, the location information in the VTRs may not accurately reflect all of the areas fished on a given trip. The VTR estimates of commercial fishing activity at the five reef sites should be considered a lower bound approximation of the actual number of trips occurring at the sites.

3.4.2.2 Social and Economic Assessment

The ex-vessel value of landings at each reef site provide an indication of the importance of the sites to commercial fishermen. For purposes of this assessment, VTR data were used to calculate landings values at each reef site during 2008, 2009, and 2010. The reported latitude and longitude coordinates of commercial fishing trips in the VTR data base, that used pot/trap gear, were overlaid onto the coordinates of the 5 artificial reefs using geographical information system mapping (GIS). All pot/trap commercial fishing trips that occurred within 0.25 nautical miles of the reefs were retained. There was one reported otter trawl trip that occurred within 0.25 nautical miles of reef site 10 in 2010, 17 scallop dredge trips near reef site 14 in 2009, and 7 otter trawl trips also within 0.25 miles of reef site 14 in 2009 that were not included in this assessment. Vessels using mobile gear are not likely to interact with recreational fishing boats so those trips were excluded from the assessment.

Commercial fishing vessels using pot/trap gear reported landings at reef site 11 and reef site 13 in 2008, 2009, and 2010. There were no reported pot/trap landings at the other three reef sites during this time period. The total ex-vessel value of landings within 0.25 miles of reef 11 was less than \$10 thousand annually during 2008, 2009, and 2010 (Table 5). Vessels using pot/trap gear at reef site 13 earned more than \$20 thousand each year, reaching \$31.8 thousand in 2010. On average, ex-vessel revenues earned while fishing at reef site 11 represented approximately 4% of each vessel's total annual gross earnings from all of their fishing trips during 2008, 2009, and 2010. Vessels fishing at reef site 13 earned approximately 11% of their total annual earnings while fishing at reef site 13. Due to confidentiality restrictions only aggregate earnings estimates from each reef site can be provided.

The pot/trap earnings estimates shown here likely underestimate the frequency of trips setting gear with 0.25 nautical miles of the reef sites. As previously mentioned, commercial fishing vessels are only required to report location information for a given trip once when fishing within a single NMFS statistical area. NMFS statistical areas are considerably larger than the coordinates of a reef site, so the location information in the VTRs may not accurately reflect all of the areas fished on a given trip. Therefore, the VTR estimates of commercial fishing activity at the five reef sites should be considered a lower bound approximation of the actual number of trips occurring at the sites.

3.4.3 Recreational and Commercial Fishery Summary

In summary, there were no reported pot/trap landings in the VTR data base within 0.25 miles of reef site's 9, 10, and 14 from 2004 through 2010. Although the VTR data base may underestimate the number of commercial vessels setting gear at the reef sites, there likely have been minimal to no gear conflicts between recreational and commercial vessels fishing at reef site's 9, 10, and 14.

Moderately low levels of commercial pot/trap activity were reported in the VTRs at reef site's 11 and 13 from 2004 through 2010. The total ex-vessel value of pot/trap landings at reef site 11 was less than \$10 thousand annually during 2008, 2009, and 2010, and at reef site 13, less than \$32 thousand annually. The combined value of the landings at reef site's 11 and 13 comprised

less than 0.6% of the total annual ex-vessel value landed by pot/trap gear (excluding crab trap gear and inshore lobster trap gear) in New Jersey, Delaware, and Maryland during 2008 (\$6.4 million), 2009 (5.4 million), and 2010 (\$5.9 million). Commercial pot/trap vessels setting gear at reef site's 11 and 13 earned less than 5% of their total annual gross earnings, on average, from their reef site 11 landings during 2008, 2009, and 2010 and less than 12% from their reef site 13 landings. Also, there were no vessels that reported pot/trap landings at more than one of the reef sites in any given year. Due to the low number of pot/trap vessels setting gear at reef site's 11 and 13, confidentiality restrictions prohibit indicating the exact number of vessels that have been fishing at these sites.

Although commercial pot/trap effort has been moderately low at reef site's 11 and 13, considering the estimated high level of historical recreational fishing activity at reef site 11 and the estimated increasing recreational fishing activity at reef site 13 during the past few years, gear interactions may have been occurring at these sites.

4.0 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 (see comment letters to COE from D. Keifer and D. Cohen in appendix ii).
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 the black sea bass management unit. The conclusion reached in the 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 currently permitted to the states simultaneously.

5.0 Recommendations

Based on the weight of evidence examined, the SMZ Monitoring Team recommended 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 SFRP 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 season 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 (appendix iii).

6.0 References

Gentner, Brad and Scott Steinback (2008). The economic contribution of marine angler expenditures in the United States, 2006. NOAA Technical Memorandum NMFS-F/SPO-94.

Hense, Zina, William Whitmore, Scott Newlin, and Jeffrey Tinsman (2012). Aerial flight survey estimating fishing effort on Delaware artificial reef sites over a fifteen year period (1997-2011). Delaware Department of Natural Resources and Environmental Control Report.

Steimle, F.W and C. Zetlin (2000). Reef Habitats in the Middle Atlantic Bight: Abundance, Distribution, Associated Biological Communities, and Fishery Resource Use. Marine Fisheries Review. Vol 62(2). pp 24-42.

7.0 Tables and Figures

Table 1 Artificial reefs currently permitted by state within the black sea bass FMP management unit (Maine to North Carolina).

State	Number of Reef Sites	Comments
Maine, New Hampshire, Massachusetts, Rhode Island and Connecticut	0	
New York	2	There are 2 sites, but 1's permit has expired and may or may not be renewed
New Jersey	13	
Delaware	5	
Maryland	7	MD's ocean reefs are now permitted and managed by the City of Ocean City, MD
Virginia	5	
*North Carolina	3	The 3 different sites are under 1 permit
total	35	
*NC information includes only reef sites north of Cape Hatteras		
Survey conducted on 7/24/12 by Paul Perra by contacting State Marine Fisheries Managers and/or Artificial Reef Program Managers		

Table 2. Number of Reported VTR For-Hire Trips within 0.25 Nautical Miles of the Reef Sites

	Reef Site				
	9	10	11	13	14
2004	3	0	15	0	0
2005	2	4	10	0	0
2006	2	4	26	1	0
2007	3	7	25	0	0
2008	4	20	20	0	1
2009	10	18	15	0	0
2010	0	0	2	0	0

Table 3. Number of Reported VTR Commercial Fishing Trips within 0.25 Nautical Miles 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

Table 4. Estimated Angler Trip Expenditures by Reef Site and Mode in 2011*

Reef Site	Private Boat	Charter/Headboat	Total
9	\$9,891	\$29,823	\$39,714
10	\$118,237	\$370,842	\$489,078
11	\$184,069	\$654,307	\$838,376
13	\$20,536	\$179,146	\$199,681
14	-	-	-

*The angler trip expenditure estimates from 2006 were converted to 2011 dollars using the Bureau of Labor Statistics Consumer Price Index.

Table 5. Ex-vessel Value of Pot/Trap Landings within 0.25 Nautical Miles of Reef Site 11 and 13

	Reef Site 11	Reef Site 13
2008	\$9,237	\$27,315
2009	\$7,625	\$22,037
2010	\$3,159	\$31,790

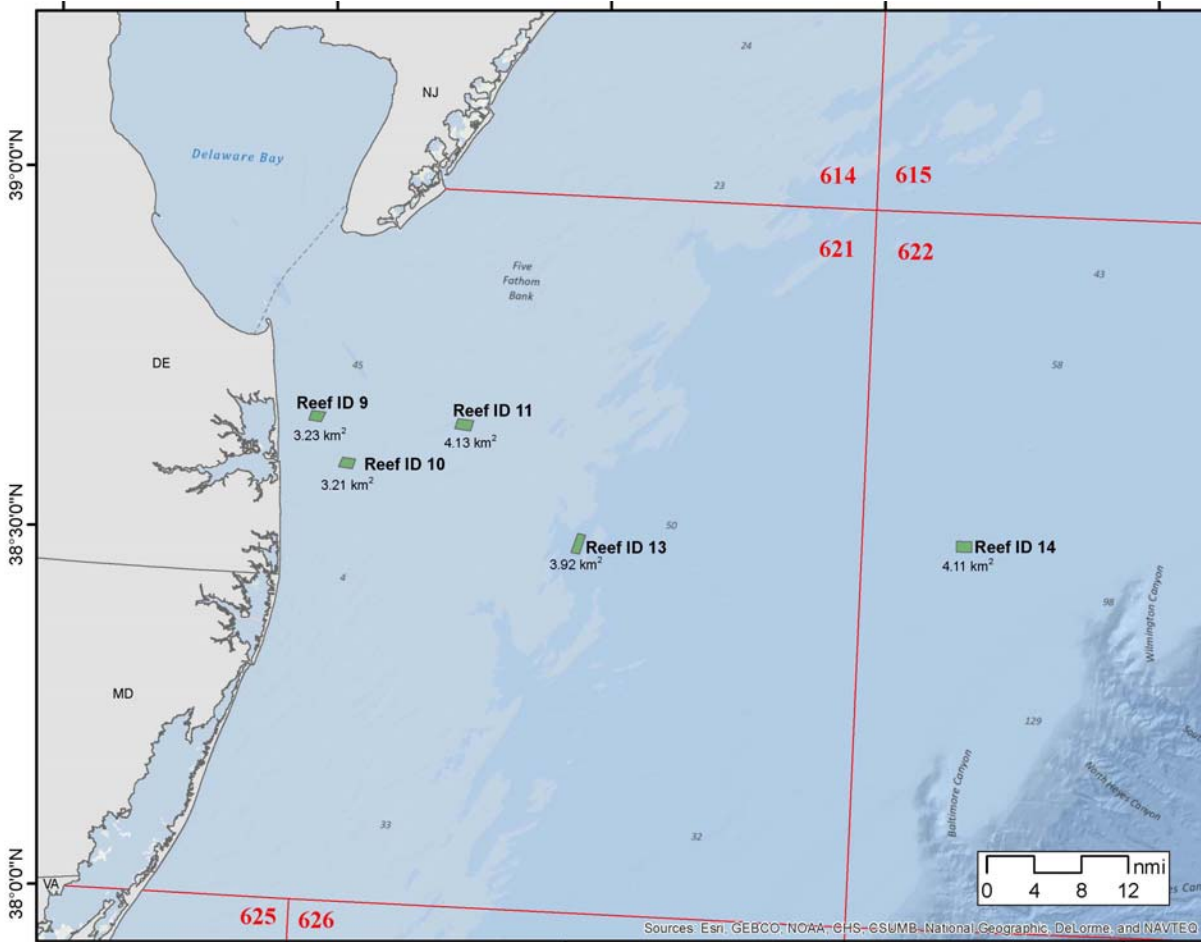


Figure 1. Location of five artificial reef sites in the EEZ for which Delaware has requested SMZ status.

Figure 2. Reef Site 9 - Estimated Number of Angler Trips by Mode

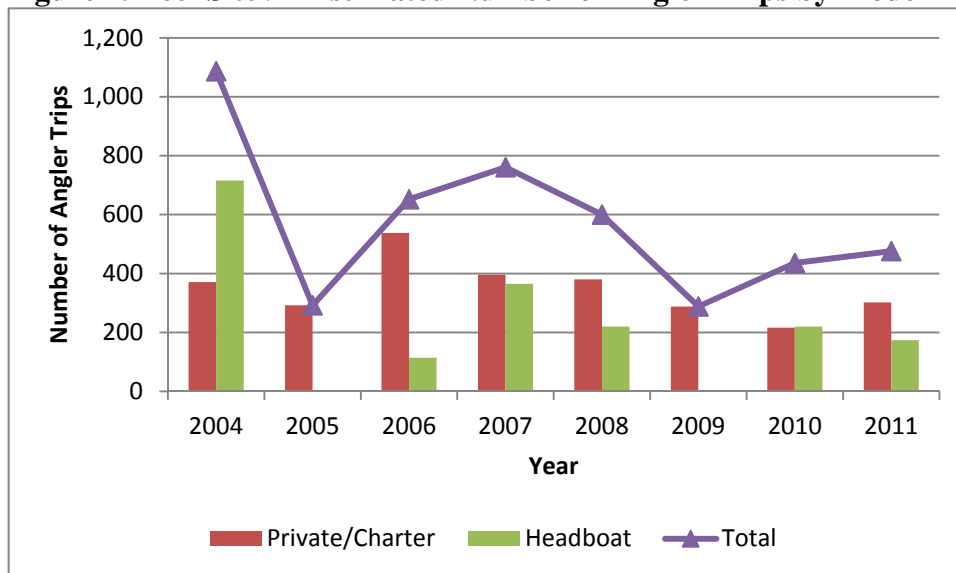


Figure 3. Reef Site 9 – Estimated Number of Boat Trips by Mode

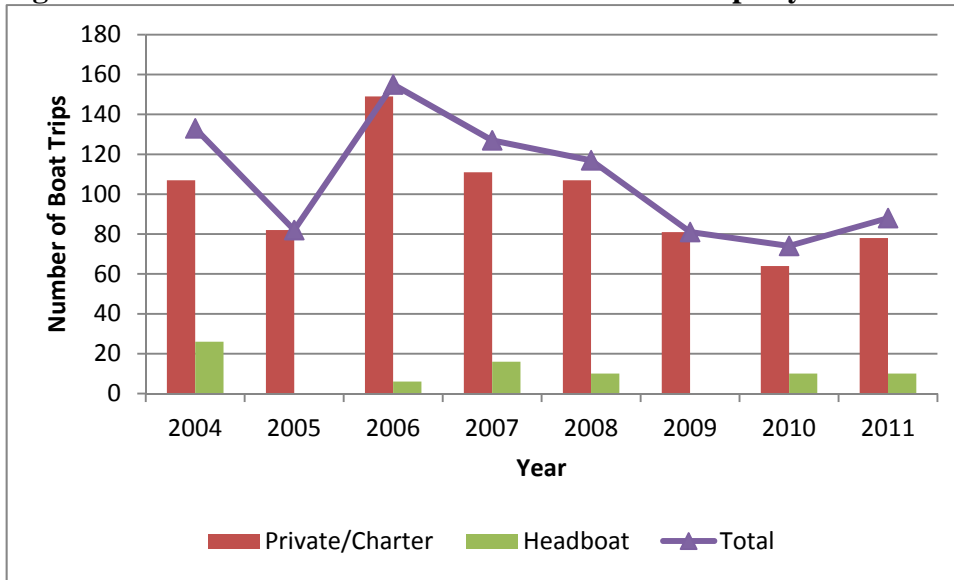


Figure 4. Reef Site 10: Estimated Number of Angler Trips by Mode

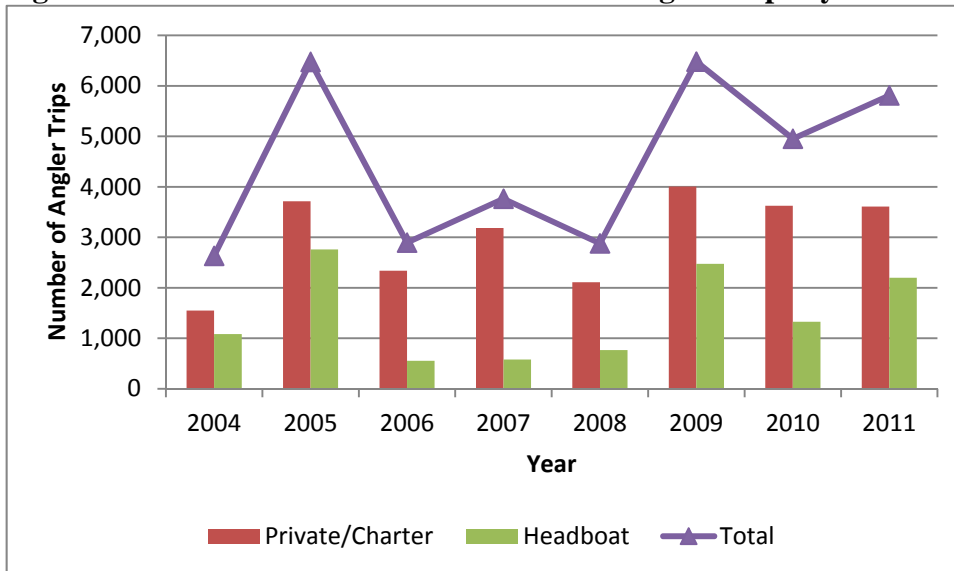


Figure 5. Reef Site 10 – Estimated Number of Boat Trips by Mode

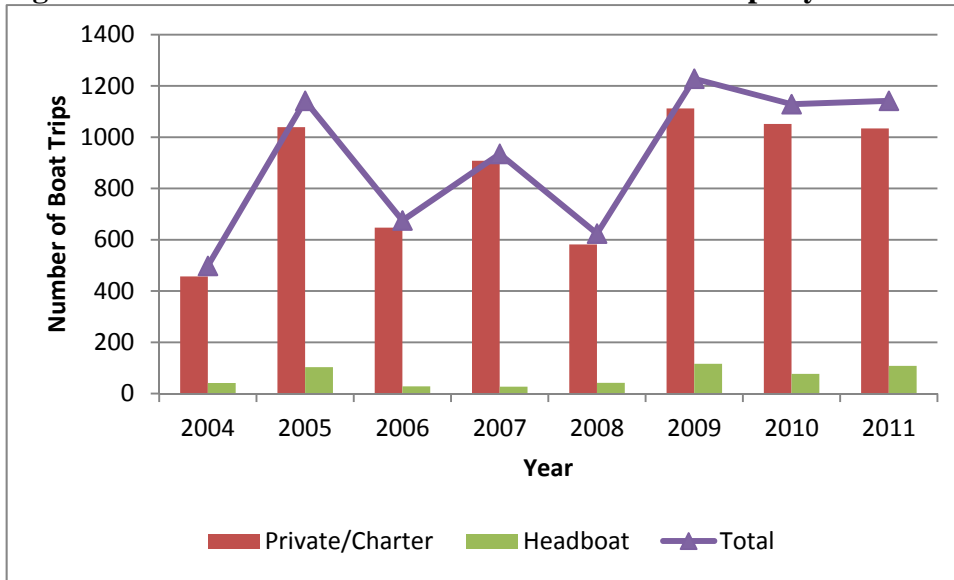


Figure 6. Reef Site 11: Estimated Number of Angler Trips by Mode

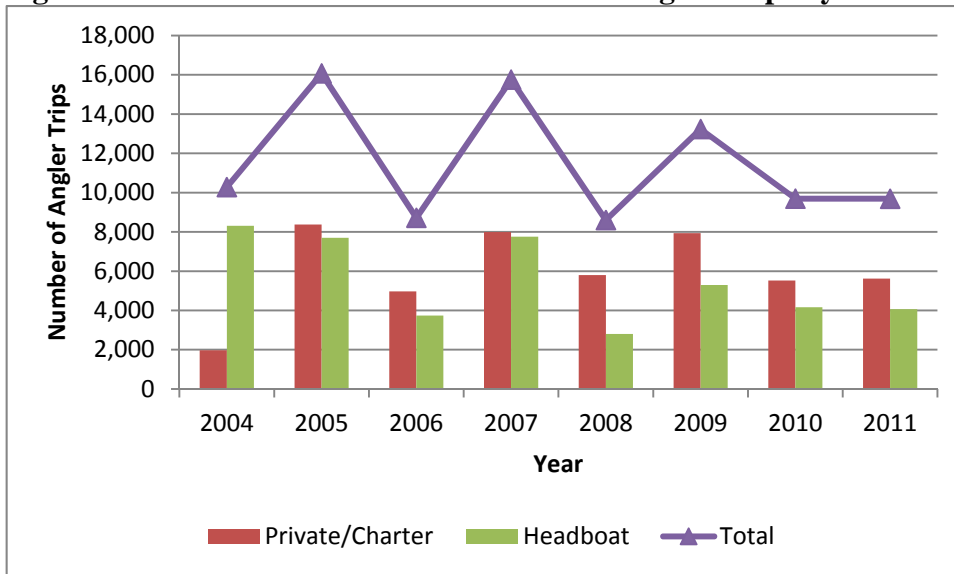


Figure 7. Reef Site 11 – Estimated Number of Boat Trips by Mode

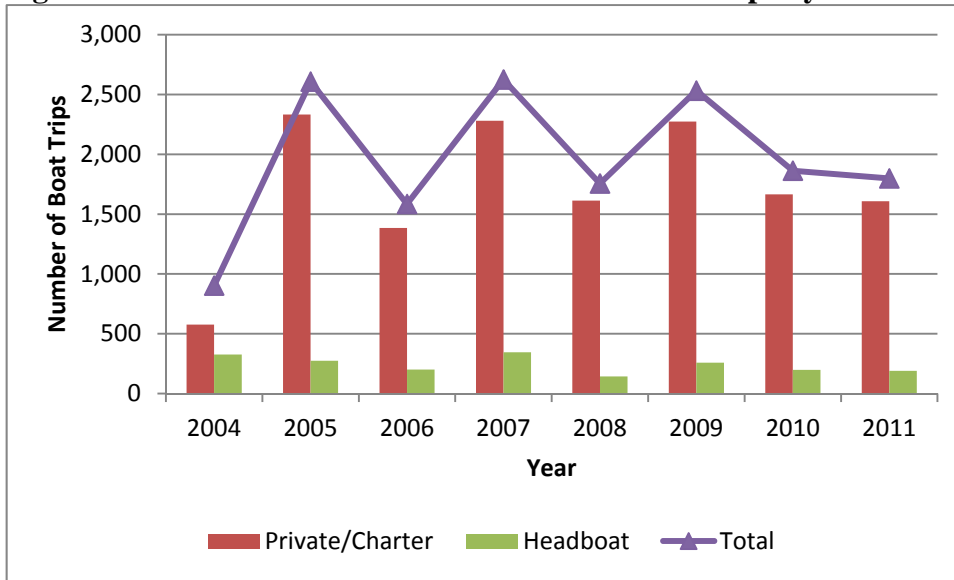


Figure 8. Reef Site 13: Estimated Number of Angler Trips by Mode

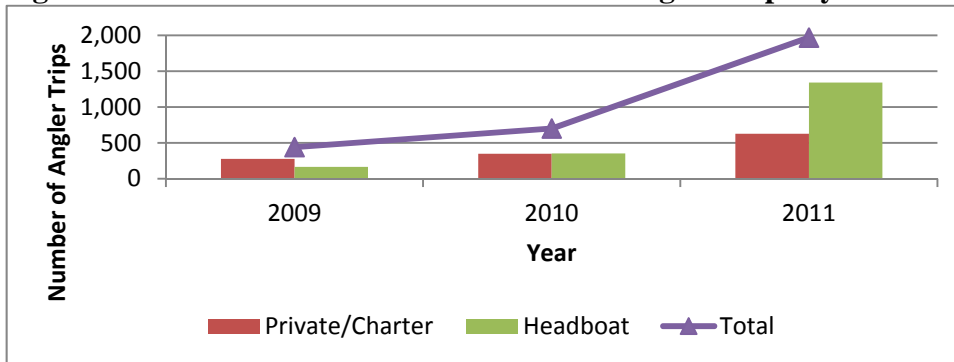
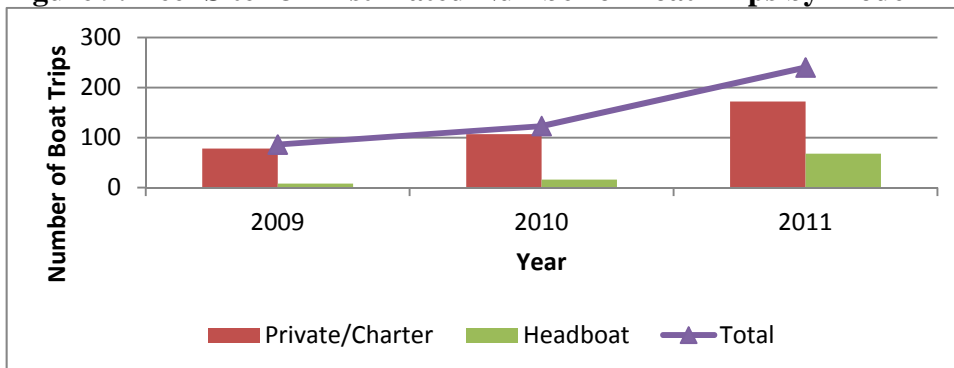


Figure 9. Reef Site 13 – Estimated Number of Boat Trips by Mode



Appendix i

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Appendix iii

Mid-Atlantic Fishery Management Council - Artificial Reef Policy

In June 1995, the Council adopted five policy statements on artificial reefs and the associated effects of reef activities on fisheries under Council authority. The goal was to have Council policy for artificial reefs such that all States in the Mid-Atlantic are treated uniformly. As stated in the National Plan (1985), the Federal role is one of providing technical assistance, guidance and regulations for the proper use of artificial reefs by local governments in a manner compatible with other long-term needs and to improve coordination and communication on artificial reef issues.

1) Each new EEZ artificial reef site proposal must have a stated conservation and management objective.

It is the Council's position that unless an organization (local government or association) has a conservation and management objective for a reef site, there is no way to evaluate the potential costs and benefits associated with a reef proposal. In essence, without stated objectives an artificial reef proposal is little more than "ocean dumping".

2) The MAFMC endorses the National Artificial Reef Plan (1985) and encourages staff to work with ASMFC, NMFS, and the States in the updating of plan.

The MAFMC was not heavily involved in the development of the National Artificial Reef Plan in the early 1980s because of higher priorities for fisheries that were under or attempting to be managed at that time. It is now the understanding that ASMFC is leading the reevaluation and updating of the Reef Plan and staff is encouraged to work closely in this endeavor. Artificial reefs have become much more important to MAFMC activities with the expansive efforts by States to locate additional reefs in the EEZ, as well as our management of additional species that frequently inhabit artificial reefs (e.g. black sea bass).

3) Only materials identified and acceptable in either the National Artificial Reef Plan (1985) or the Reef Material Criteria Handbook (1992) or revisions thereof should be used for the creation of artificial reefs.

The Council wants only materials that are "environmentally acceptable" to be used in artificial reefs. Environmentally acceptable deals with both the toxicity of materials and also the issue that materials have to be compatible with the reef site. The latter deals with the potential energy levels at the site, and the issue that what may be acceptable at one site may be unacceptable at a different site that has a much different energy level at the bottom. The Council is greatly concerned over the usage of tires for artificial reef sites specifically. Tires have recently been shown (MD studies) to be toxic to certain organisms at reef sites with low salinity (e.g. bays and estuaries where salinities of 15 ppt or less occur), but appear to not be toxic in high salinity. The Council still believes that tires are an inappropriate material because of high energy levels in the ocean which inevitably leads to tire structure breakdown and thus mobility off the reef once they get caught up in ocean currents.

4) No fishery management regulations may be implemented for any artificial reef in the EEZ without concurrence by the MAFMC.

The Magnuson Act states that the Council shall "prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority that requires conservation and management... ". It is the intent of the MAFMC that they agree with any attempt at fishery management around any artificial reef in the EEZ in the Mid-Atlantic off of New York through Virginia.

5) The Council will attempt to facilitate communication on the siting of any new artificial reef in the EEZ with various user groups of the proposed site.

Siting of new artificial reef is regulated by the US Army Corps of Engineers and often commercial and sport fishing interests are not well informed of Corps activities. Also individual States may coordinate with fishing interests within their State on artificial reefs, but the highly migratory nature of many fisheries necessitates information transfer to organizations beyond individual States. Council staff will attempt to widely distribute information on new sitings in the initial stages of reef proposals.

These five policy statements should help facilitate Federal, State, and local activities in the Mid-Atlantic and can only be beneficial to the ocean and coastal habitats.