New England Fishery Management Council
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E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

July 30, 2014

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

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

Dear John:

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

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

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

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

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

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

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

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

Please contact me if you have any questions.

Sincerely,

Terry Stockwell
NEFMC Chairman

cc: Christopher Moore, MAFMC
Robert Beale, ASMFC
Enclosure

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

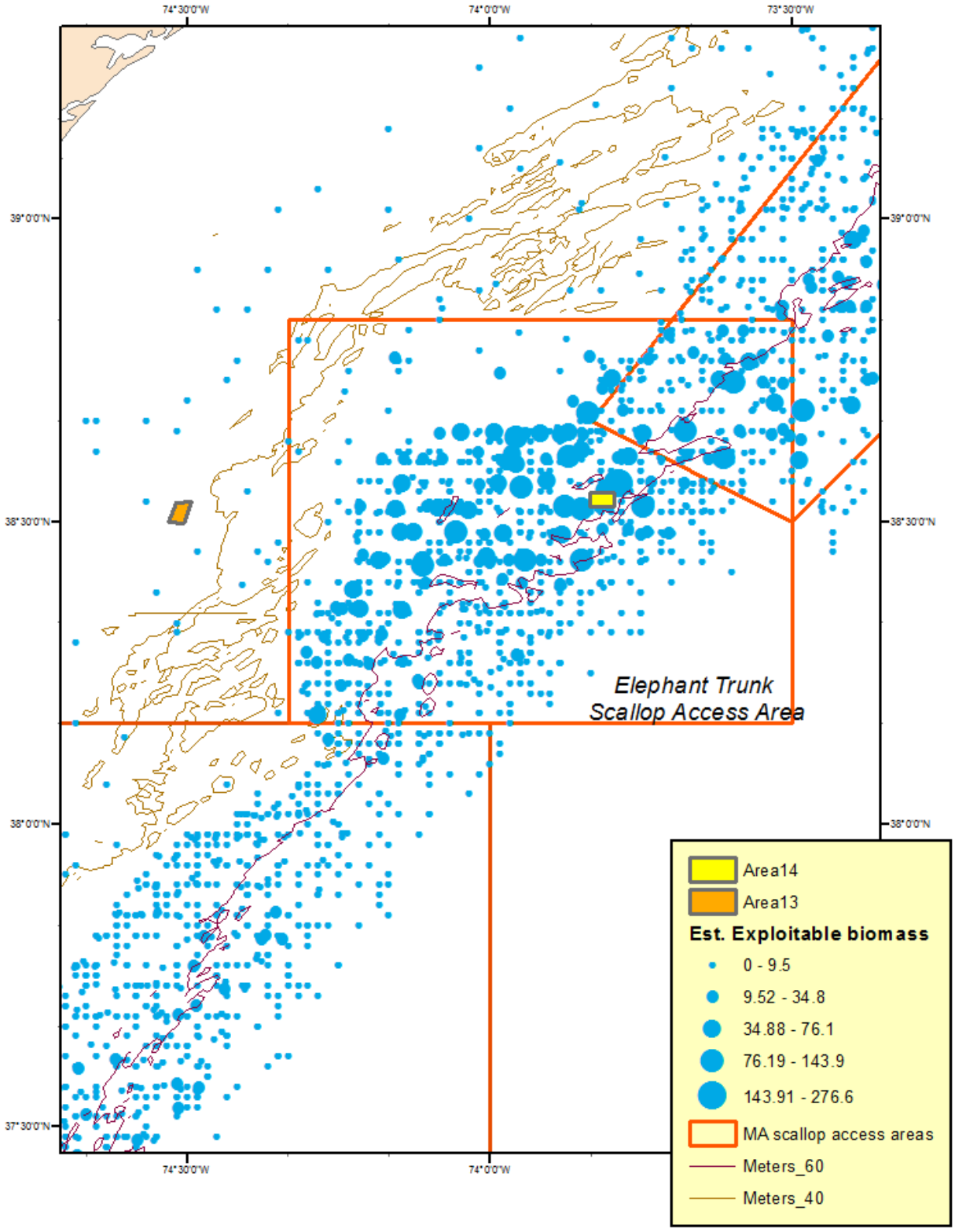


Figure 2 – Fishing location data for trips with scallops as primary species landed (VTR data 2008-2012)

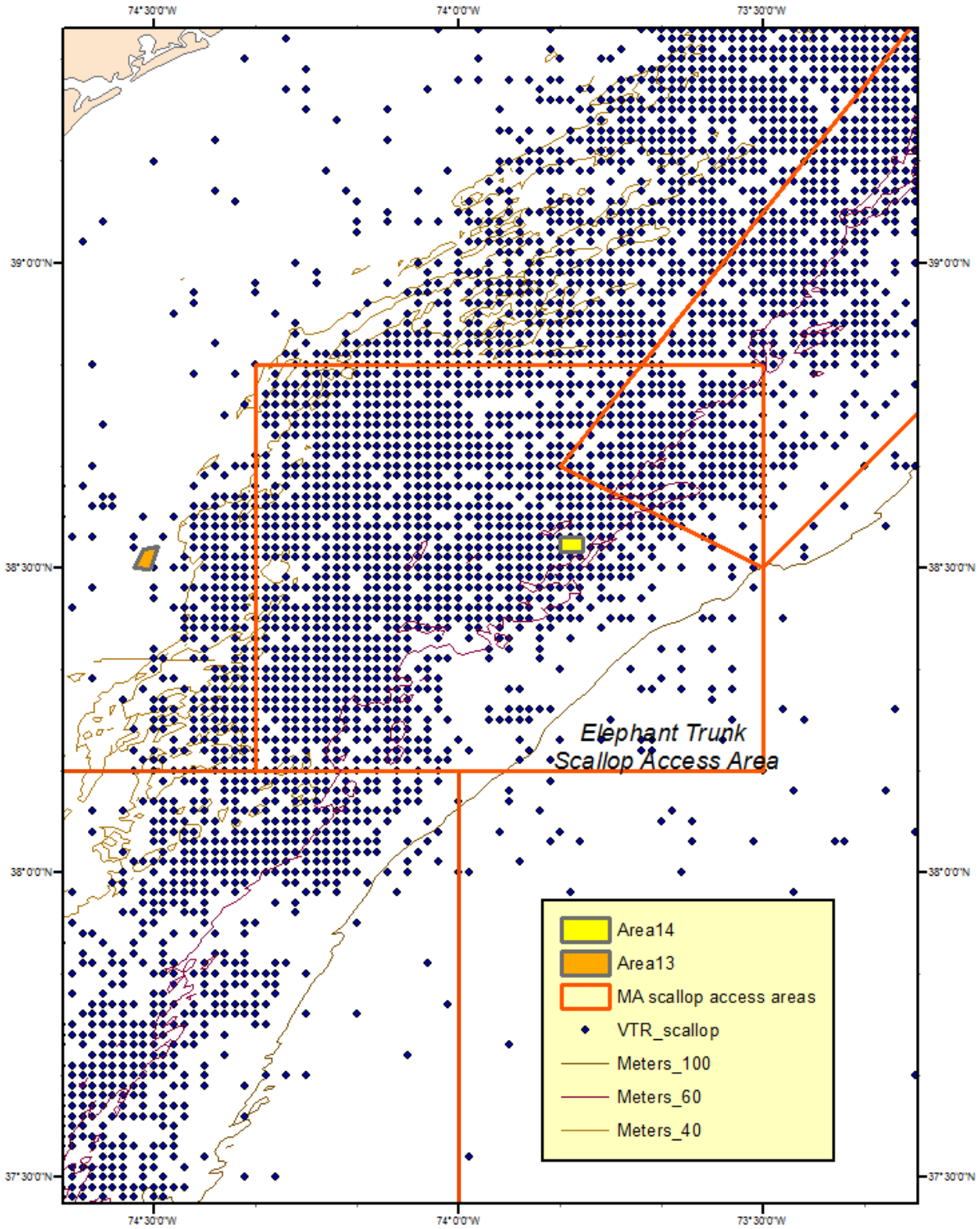
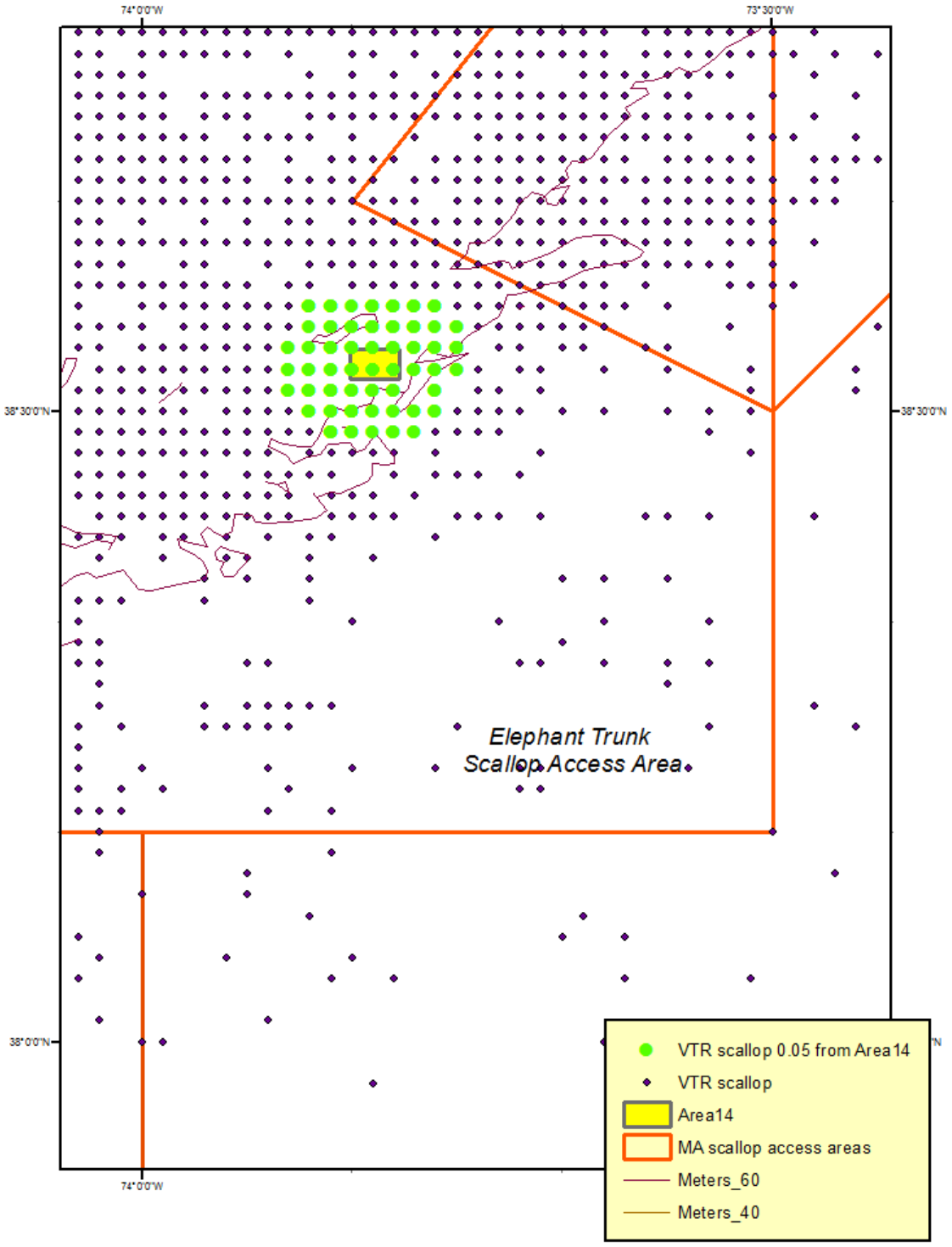


Figure 3 – VTR locations for trips with scallops as primary species landed within 2 nautical miles of Area 14



25 July 2014 RE: SMZs around federal reefs

To: Members of the ASMFC Interstate Fisheries Management Program Policy Board ;

Let me start by saying: I'm all for SMZ's that help reefs achieve the desired results. But let me continue by sharing my fear: It's that the funders of reefs will be given the ability to dictate the usage of the reefs they fund.

Why am I so afraid of this? It's because it is too easy for states to cater to funders offering donations or grants ... and in doing so, give special interest groups (with money) control, while the permit holder (the State) retains the liability. Clearly States have the authority to embrace this policy with property that they own (state waters reef sites).

But the issue before you now; the one that is before NMFS, is not concerning state waters reefs, it is concerning 5 reefs that a builder constructed on Federal property. Because these reefs are built on Federal property, you need to see this from the Federal point of view.

It's clear that there's a need for rules that help achieve desired results from reefs. That's why Congress authorized the establishment of SMZs. Without SMZs there are several current uses of reef sites that will remain in bitter conflict, and there are potential uses of the sites that could destroy the reefs themselves. SMZs are the only effective tool to avoid these undesired results. The CFR authorizing the establishment of SMZ addresses this by saying: "*The SMZ will prohibit ... the use of specific types of fishing gear that are not compatible with **the intent** of the artificial reef ..... (50 CFR 648.146)*" .

However, to address this properly, you need to understand the ***intent of the reef.***

Artificial reefs, like all other construction projects, are simply complexes built on property on which there is ownership. And no matter who the builder is, it is the ***owner of the site*** who ***determines the intent*** of the project. In this situation, the Federal Governments owns the sites. And no matter what, the builder says, Congress, has outlined the results that it expects to achieve from various uses .. ***utilizing .. properly designed artificial reefs*** on these sites. To assure that builders have objectives that are consistent with Congress', Congress requires that a builder apply for and receive a federal permit from the Army Corps prior to beginning construction. It further requires that the Army Corps review these projects continually to assure that the National Standards by which these projects are managed are adhered to. Each of your states holds such a permit and is answerable to the Army Corps.

That brings us to the current situation: Delaware (the builder) constructed 5 reefs on federal property. And, under pressure from its funder, it has asked NMFS to create SMZs to ban all commercial gear from these reefs so that recreational fishermen can have unfettered access. This is exactly the situation that I feared. It is a funder (or builder DNREC seeking grant money) that is attempting to implement its agenda on a reef site that it doesn't own. What's scary about this is that since money talks in our society, DNREC has already done this on its state waters reefs, and at Delaware's request, NMFS has gone so far as to make a formal proposal to actually do it on Federal property too.

This would be OK .... IF what the funder and DNREC wanted was compatible with what Congress wanted. But that's the problem: their goals are similar, yet significantly different.

(As similar as a playground *for white children only* is similar to a playground *for children*. To understand the difference on the reef issue, consider how SFR wants to help recreational fishermen only (even to the detriment of commercial fishermen); but Congress wants to help both groups. Congress' goals are outlined in 33 USC 2101 and the Standards for reef management outlined in 33 USC 2102).

Given that the funder's wishes are in the case of commercial fishermen, contrary to those of Congress, whether or not to create this SMZ should be a clear cut, black and white, question that has one simple answer ... NO!

When you debate this issue, please remember these facts:

A. These are the U.S. Government's (not Delaware's or Sport Fish Restoration Fund (SFR)) reefs
B. U.S. Congress (not Delaware or SFR) *set the intent* of these reefs by outlining its desired results.
C. U.S. Congress set the National Standards in 33 USC 2102 by which it wants NMFS to manage these reefs.

Finally, consider this question:

Do you want to have a hodgepodge of reef projects in federal waters, each of which has its usage dictated by the funder?

If YES, then be prepared for memorial reefs (pets and persons) where no fishing is permitted; Private club reefs (members only); *MPAs* constructed by PEW or other NGOs or by chemical companies that are installing concrete structures containing .. GOD only knows what..... Hang on for the ride because It all comes with allowing funders to dictate the usage of reef areas and override Congress' goals.

Here's the nitty-gritty: Each of your states probably has its hand in the SFR grant cookie jar. So you all have an underlying inclination to say to each other.... "let's vote to let each other do it". But going after grant money is not justification to vote for NMFS to violate federal law by implementing SMZs that will produce results contrary to Congress' goals. Yes you need money. And YES we need SMZs. But Congress outlined how SMZs should work in Federal Laws 33 USC 2101 and 2102. (It's about time for yu'all to read those Federal laws (attached)) If you don't like what those laws say, you can't just ignore them. You've got to go back to Congress, where all 50 states have a say, and get them changed. But for Heaven's sake, don't sit here and say that because you represent a state that doesn't like what those federal laws says, (and you need money,) it justifies your voting for NMFS to override Congress.

Do we need SMZs..... yes. But **NO ... not this one**. We need ones that help Congress achieve **its** goals for its Federal reefs rather than ones like this one that only fulfills the goals of funders !!

The Old Fisherman
Walter Chew

2101. Congressional statement of findings and purpose

(cite: 33 USC 2101)

(a) The Congress finds that—

(1) although fishery products provide an important source of protein and industrial products for United States consumption, United States fishery production annually falls far short of satisfying United States demand;

(2) overfishing and the degradation of vital fishery resource habitats have caused a reduction in the abundance and diversity of United States fishery resources;

(3) escalated energy costs have had a negative effect on the economics of United States commercial and recreational fisheries;

(4) commercial and recreational fisheries are a prominent factor in United States coastal economies and the direct and indirect returns to the United States economy from commercial and recreational fishing expenditures are threefold; and

*(5) **properly designed**, constructed, and located artificial reefs in waters covered under this chapter can*

- *enhance the habitat and diversity of fishery resources;*
- *enhance United States **recreational and commercial** fishing opportunities;*
- *increase the **production of fishery products** in the United States;*
- *increase the energy efficiency of **recreational and commercial** fisheries; and*
- *contribute to the United States and coastal economies.*

(b) The purpose of this chapter is to promote and facilitate responsible and effective efforts to establish artificial reefs in waters covered under this chapter

2102. Establishment of standards

(cite: 33 USC 2102)

*Based on the best scientific information available, artificial reefs in waters covered under this chapter shall be sited and constructed, and subsequently monitored **and managed in a manner which will—***

(1) enhance fishery resources to the maximum extent practicable;

*(2) facilitate access and utilization by United States **recreational and commercial** fishermen;*

*(3) minimize conflicts **among competing uses** of waters covered under this chapter and the resources in such waters;*

(4) minimize environmental risks and risks to personal health and property; and

(5) be consistent with generally accepted principles of international law and shall not create any unreasonable obstruction to navigation.

Atlantic States Marine Fisheries Commission

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MEMORANDUM

July 28, 2014

To: **ISFMP Policy Board**

From: **Sturgeon Stock Assessment Subcommittee**

RE: **Atlantic Sturgeon Benchmark Stock Assessment Timelines**

Through the process of data gathering and preliminary model development, the Atlantic Sturgeon Stock Assessment Sub-Committee (SASC) has determined two possible timelines for completion of the Atlantic sturgeon benchmark assessment. The Atlantic Sturgeon SASC seeks input from the Policy Board on their preferred timeline, based on management needs and objectives.

The primary difference between the two timelines is the scale at which the assessment can be carried out and the ability of the assessment to incorporate the newest and most up-to-date data sources. The shorter timeline can only use currently available data, and as a result, will be able to complete many analyses only at the coastwide level. The longer timeline will allow the SASC to conduct a more comprehensive assessment on a stock or DPS scale that will incorporate the most recent data from studies currently underway.

Atlantic sturgeon are a relatively data-poor species, compared to some of the commercial finfish that the Commission manages. In 2010, federal ESA Section 6 funding was dedicated to sturgeon research, resulting in a number of on-going projects that will improve our understanding of spawning, movement patterns, stock structure, and abundance. In addition, NOAA has recently dedicated money for genetic testing of archived samples. This means that over the course of the next year or so, new and more comprehensive data will become available that will enhance our ability to assess Atlantic sturgeon.

The SASC has identified a number of different types of models that should be explored for Atlantic sturgeon. These include:

- **Trend Analysis:** a statistically robust way to identify trends in relative abundance from fishery-independent and -dependent indices. These analyses can determine whether Atlantic sturgeon abundance has increased or decreased relative to a reference time period (e.g., long-term mean or start of the moratorium) but will not provide estimates of mortality or total abundance
- **Tagging Model:** will provide estimates of total mortality and potentially, depending on assumptions, total abundance
- **Data Poor Models:** e.g., Stochastic Stock-Reduction Analysis, Catch-Free Model. These models can provide information on historical stock size and potential productivity of the stock, as well as population trends, but may not provide an assessment of current status
- **SPR Reference Points:** will provide a benchmark to determine the appropriate level of total mortality for the stock, but will not provide a status determination unless a measure of current mortality is available

- **Historical Proxy Reference Points:** will provide a benchmark for index trends to be compared against (such as long-term mean of a dataset or the start of the moratorium), but will not necessarily be biologically meaningful

Model Scale, Type, and Output	Timeline 1: 2015	Timeline 2: 2017
Coastwide		
Trend analysis (relative change in abundance)	●	●
Tagging model (estimates of total mortality)	●	●
Data-poor model (historical stock size, potential productivity)	●	●
SPR reference points	●	●
Historical proxy reference points for indices	●	●
DPS, System, or Stock-Specific		
Trend analysis (relative change in abundance)	◖	●
Tagging model (estimates of total mortality)	○	●
Data-poor model (historical stock size, potential productivity)	○	●
SPR reference points	◖	●
Historical proxy reference points for indices	◖	●

●: Will be completed
◖: May be completed for some systems
○: Will not be completed

The ability to apply the tagging and data-poor models and the trend analyses to DPS or river system depends on our ability to identify the population of origin of tagged or sampled individuals and, in the case of the data poor models, of catch and bycatch. For some indices we may be able to use size and/or behavior thresholds, but acoustic tagging data indicate that we cannot assign a population of origin based simply on location of capture. The studies currently underway, along with the additional genetic analysis of tagged fish and bycatch, will provide critical data to assign individuals to a population and allow us to verify our size and behavior criteria for non-genotyped fish in a sample. Furthermore, some systems may not have enough conventionally tagged fish to run a standard tagging model. Estimates of total mortality for these systems will rely on acoustic tagging data, much of which will not be available over the short term. In addition, these studies will also provide new information on life history parameters and movement patterns for systems that have limited or old data.

The SASC seeks Policy Board input on this issue, in order to prioritize their work and develop a timeline for completion of the assessment.