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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket 130702585-4484-01]

RIN 0648-BD42

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

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

ACTION: Proposed rule; request for comments.

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

DATES: Comments must be received by 5 p.m. local time, on [insert date 45 days after date of publication in the FEDERAL REGISTER].

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

- Electronic Submission: Submit all electronic public comments via the Federal

e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0060 click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

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

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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

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

SUPPLEMENTARY INFORMATION:

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

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

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 et seq. Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing fisheries of the Northeastern U.S. also appear at 50 CFR part 648. States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the EEZ, as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit,

regardless of where they fish.

Special Management Zone Measures Background

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

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

The SMZ recommendations from the Council were established under the FMP's black sea bass provisions (§ 648.148). A monitoring committee, consisting of representatives from the Council, NMFS Greater Atlantic Regional Fisheries Office, and NMFS Northeast Fisheries

Science Center was formed to review the DFW SMZ request. The FMP's implementing regulations require the monitoring committee to review scientific and other relevant information to evaluate the SMZ requests in the form of a written report, considering the following criteria:

(1) Fairness and equity;

(2) Promotion of conservation;

(3) Avoidance of excessive shares;

(4) Consistency with the objectives of Amendment 9 to the FMP, the Magnuson-Stevens Act, and other applicable law;

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

(6) Impacts on historical uses.

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

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

Following these meetings, the Council held three public hearings on the proposed SMZs (Ocean City, Maryland, January 15, 2013; Lewes, Delaware, January 16, 2013; and Toms River,

New Jersey, January 17, 2013), and final recommendations on the SMZs were made by the Council at its February 12-13, 2013, meeting in Hampton, Virginia. NMFS subsequently has reviewed the Council's recommendations through the development of an EA and this proposed rule.

Proposed SMZ Measures

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

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

In order to facilitate the codification of the coordinates for the five SMZ reef areas, this rule proposes to re-organize 50 CFR 648.148 in its entirety. This rule would to redesignate the special management zone designation criteria and process provisions, currently at 50 CFR 648.148(a)-(e), in 50 CFR 648.148(a). The coordinates of the five SMZ reef areas proposed to

be created by this rule would be codified at 50 CFR 648.148(b). The re-organization of the existing regulations concerning the special management zones designation criteria and process into CFR 648.148(a) is a change only to the format; no substantive changes are intended or proposed for those provisions. NMFS also proposes to add new § 648.14(p)(1)(vi) to cross reference to the new coordinates at § 648.148(b).

Table 1. Reef Site 9.

CORNER	N. LATITUDE	W. LONGITUDE
9SE	38° 39.71016'	-74° 59.0883'
9SW	38° 39.82578'	-75° 1.11264'
9NW	38° 41.1048'	-75° 0.63288'
9NE	38° 41.03244'	-74° 58.45098'
9SE	38° 39.71016'	-74° 59.0883'

Table 2. Reef Site 10.

CORNER	N. LATITUDE	W. LONGITUDE
10SE	38° 35.93706'	-74° 55.44408'
10SW	38° 36.0759'	-74° 57.57864'
10NW	38° 37.36314'	-74° 57.01812'
10NE	38° 37.21938'	-74° 54.96474'
10SE	38° 35.93706'	-74° 55.44408'

Table 3. Reef Site 11.

CORNER	N. LATITUDE	W. LONGITUDE
11SE	38° 39.61578'	-74° 42.81462'
11SW	38° 39.7797'	-74° 45.20484'
11NW	38° 41.11092'	-74° 44.73474'
11NE	38° 40.97472'	-74° 42.3459'
11SE	38° 39.61578'	-74° 42.81462'

Table 4. Reef Site 13.

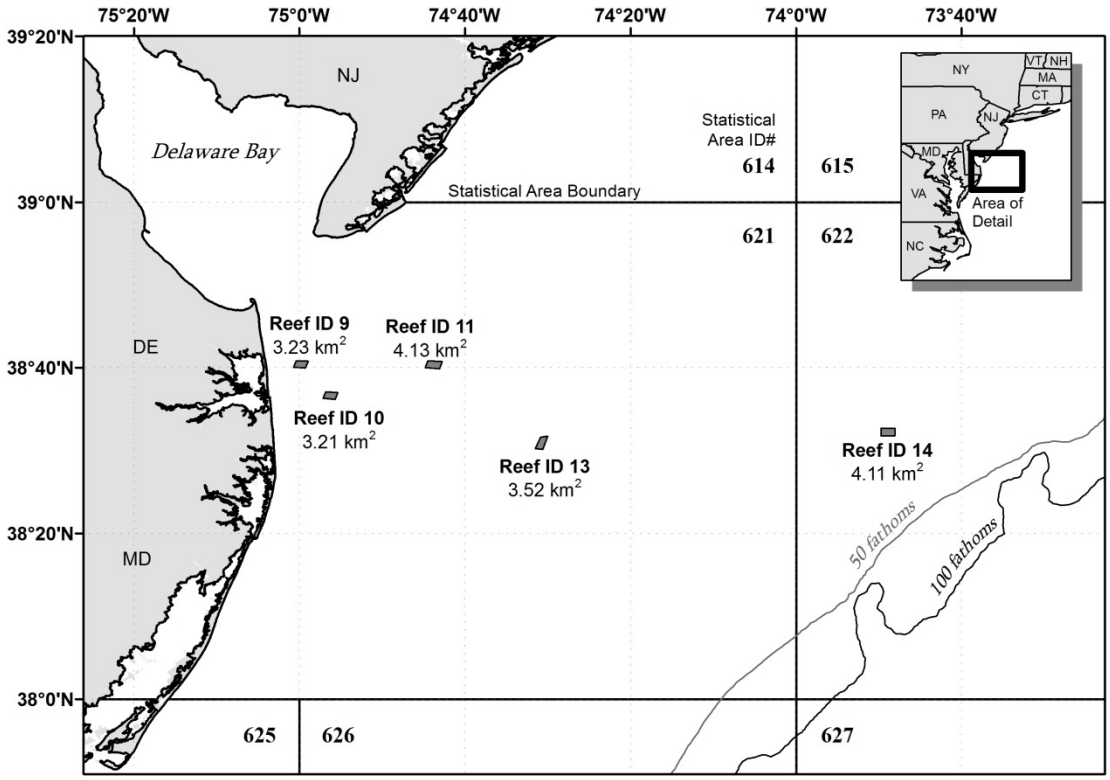
CORNER	N. LATITUDE	W. LONGITUDE
13SE	38° 29.87118'	-74° 30.34818'
13SW	38° 30.00876'	-74° 31.93008'
13NW	38° 31.83384'	-74° 31.09968'
13NE	38° 32.04756'	-74° 29.5839'
13SE	38° 29.87118'	-74° 30.34818'

Table 5. Reef Site 14.

CORNER	N. LATITUDE	W. LONGITUDE
14SE	38° 31.55286'	-73° 47.75244'
14SW	38° 31.55286'	-73° 50.08164'
14NW	38° 32.94684'	-73° 50.08158'
14NE	38° 32.94714'	-73° 47.75232'
14SE	38° 31.55286'	-73° 47.75244'

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

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



Classification

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

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

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

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

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

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

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

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

To eliminate current and/or future potential for recreational/commercial gear conflicts on the five Delaware artificial reefs in order to maintain access to the reefs for recreational fishing. This action is proposed through the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq.

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

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

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

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

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

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

This rule would apply to all Federal permit holders except recreational for-hire permit holders. Thus, the affected business entities of concern are businesses that hold commercial Federal fishing permits with the exception of those that fish with hook and line. While all business entities that hold commercial Federal fishing permits could be directly affected by these regulations, not all business entities that hold Federal fishing permits fish in the areas identified as potential SMZs. Those who actively participate, i.e., land fish, in the areas identified as potential SMZs would be the group of business entities that are directly impacted by the regulations.

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

Table 6. Number of Reported Vessel Trip Reports of Commercial Fishing Trips within 0.46 km of the Reef Sites, by Gear Type

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

NMFS considered two option under this action, the no buffer and two SMZ buffer zones around the five artificial reefs. The no buffer alternative would have had no effect on the

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

During 2008, 2009, and 2010, only 2 commercial vessels reported landings within 0.46 km of the reef sites in each of these years, 1 vessel reported landings in two of the three years, and 12 vessels reported landings in only one of the three years. This implies a total of 15 unique commercial vessels reported landings within 0.46 km of the reef sites from 2008-2010.

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

of finfish. Thus, under the 0.46-km buffer alternative, nine of the potentially affected businesses are classified as shellfishing business entities and six as finfishing business entities.

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

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

Table 7. Number of Potential Business Entities Affected by Percent of Total Average Annual Gross Revenue Landed within 0.46 km of the Reef Sites

	Percent of Total Average Annual Gross Revenue (2010-2012)			
Business Entity	<5%	5-9%	10-19%	20-29%
Shellfish (Small)	6	1	1	0
Shellfish (Large)	1	0	0	0
Finfish (Small)	3	1	1	1

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

sites. Finally, of the six finfish business entities defined as small finfishing businesses, under the preferred 0.46-km buffer, three obtained less than 5 percent of their total average annual gross revenues from landings at the reef sites, one obtained between 5-9 percent, one obtained between 10-19 percent, and one between 20-29 percent.

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

The Council initially considered a range of alternatives for the provions proposed in this action, such as seasonal restrictions, which Delaware permitted artificial reef sites to designate as SMZs, and gear restrictions associated with the SMZs. NMFS considered three alternatives for the seasonal closures that would prohibit commercial gears in the SMZs: all year (Alternative 1), when the recreational black sea bass season was open (Alternative 2), or from Memorial Day to Labor Day(Alternative 3). Under Alternative 1, NMFS would designate all or some of the Delaware EEZ reef sites as SMZs when the recreational season for the federal black sea bass is open. Since the rational for the SMZ request relates to the black sea bass fishery this alternative seeks to reduce gear conflicts throughout the recreational season for black sea bass on the artificial reefs. The open season for black sea bass can vary by state and year. But as an example, NMFS implemented black sea bass recreational fishery open seasons from May 19-October 14 and November 1-December 31 for 2013. Delaware implemented open black sea bass season from January 1-February 28, May 19-October 14 and November 1-December 31 in 2013. If this Alternative is selected, the ability of the recreational fleet to fish the reefs during the Federal season could differ from the regulations for the state in which the fish will be landed. In

this case the more restrictive regulations must be followed. Under Alternative 2 the SMZ designation for any or all of the five artificial reefs would be in effect for the entire calendar year. Under Alternative 3, the SMZ designation for any or all of the five artificial reefs would be in effect from Memorial Day to Labor Day. This alternative attempts to reduce gear conflicts at Delaware reefs sites by designating SMZs during periods when the chance of gear conflicts would be expected to be at a maximum (i.e., during periods of peak recreational fishing activity).

NMFS considered three different SMZ site area designations in this action: designate all sites (sites 9, 10, 11, 13 and 14) (Alternative 1), designate sites 11, 13, and 14 (Alternative 2), or designate sites 9, 10, 13, and 14 (Alternative 3). Under Alternative 1, NMFS would designate all five of the Delaware reef sites as SMZs. Under Alternative 2, NMFS would designate reef sites 11, 13 and 14 as SMZs. Little or no commercial fishing activity was documented in the vicinity of reef sites 9 and 10, so there appears to be little opportunity for gear conflicts to occur at these sites (especially for fixed pot/trap gear) unless there is some unforeseen shift in commercial fishing effort. However, commercial fishing activity on sites 11, 13 and 14 was documented at these sites based on VTR data, so the potential for gear conflicts exists at these sites. While gill nets and long lines are not currently reported being use on the artificial reefs, they pose further potential for gear conflicts because of their ability to restricting recreational fishing on the reefs by causing fouling or snagging of hooks as recreational vessels attempt to fish on or drift over the artificial reefs. Also, displaced pot fishing vessels from the artificial reef may shift to long lines or gill nets to maintain access to their same fishing grounds, and this would continue the recreational/commercial gear conflicts on the artificial reef sites. Under Alternative 3, NMFS would designate reef sites 9, 10, 13 and 14 as SMZs. During the original permit process for reef

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

Different gear types were considered to be prohibited in the SMZs: prohibit the use of fixed pot/trap gear (Alternative 1), or prohibit the use of all gear except hook and line, and spear fishing (Alternative 2). Under Alternative 1 (the preferred alternative), NMFS would prohibit the use of fixed pot/trap gear on reef sites designated as SMZs. Under Alternative 2, NMFS would prohibit the use all fishing gear on reef sites designated as SMZs, except hook & line and spear-fishing gear. Under this alternative, the use of commercial hook & line fishing gear within the designated boundaries of SMZs would still be permitted, however the use of all other commercial fishing gears would be prohibited (i.e., gill nets, long lines, etc.).

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

The 0.46-km buffer alternative is the preferred measure and the only significant alternative which accomplishes the stated objectives of applicable statues and which minimizes any significant economic impact on small entities. The 0.46-km buffer is considered large

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

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

There were four business entities that employed pot/trap gear within 0.46 km of the artificial reef sites in at least one of the three years included in this assessment (2008-2010). All four businesses entities were determined to be "small" according to the SBA size standards. Two of the four business entities obtained less than 5 percent of their total average annual gross

revenues from landings at the reef sites, one obtained between 5-9 percent, and one between 10-19 percent. Thus, there will likely be adverse economic consequences for at least four small business entities that employ pot/trap gear in the areas under consideration for SMZ designation. The economic losses suffered by the four small business entities displaced from the SMZs, however, will likely be mitigated to some degree by redirection of fishing effort to other areas. The combined areas under consideration for SMZ designation represent about 10 square km of the total available fishing area over the continental shelf off of Delaware so alternative fishing areas are prevalent. A quantitative assessment of these changes on revenues for the four small business entities under SMZ designation is not possible to a lack of sufficient data. Additionally, there were no small business entities that reported pot/trap landings at more than one of the reef sites in any given year.

Business entities that use mobile gear (dredge and trawl) also reported trips within 0.46 km of reef site 14 on their VTRs. There were no reported trips at the other reef sites, except for one trip within 0.46 km of reef site 10 in 2010. There were 11 business entities that employed mobile gear within 0.46 km during the three years included in this assessment (2008-2010). However, none of the businesses demonstrated a consistent pattern of annual landings since all 11 reported trips in only one of the three years. Ten of the businesses were determined to be "small" according to the SBA size standards and one was categorized as "large." Six of the 11 business entities obtained less than 5 percent of their total average annual gross revenues from landings at the reef sites, 2 obtained between 5-9 percent, and 1 between 10-19 percent, and 1 between 20-29 percent. Sea scallops comprised 99 percent of the total value on those mobile gear trips occurring within 0.46 km of reef site 14. This action would preclude the 11 mobile

gear vessels from fishing within 0.46 km of reef site 14 or any of the other reef sites. As previously mentioned though, commercial fishermen are only required to report location information once on their VTRs when fishing within a single NMFS statistical area, even when using mobile gear that can be towed over the bottom for hours covering many miles. In fact, according to VTR data in 2010, the average limited access sea scallop dredge trip covered approximately 9.3 km per haul and consisted of 66 hauls per trip. This means that the average limited access dredge vessel covered approximately 614 km total per trip in 2010. The area under consideration surrounding reef site 14 is only approximately 2.5 square nautical miles (4.6 square km) so the majority of the scallop landings on those trips in 2010 likely occurred in areas that will remain open under this action. Therefore, given that all but one mobile gear trip was reported in only one year within 0.46 km of reef 14 during 2004-2010, the impacts of the proposed action on earnings by mobile gear vessels is likely to be minimal under the Council preferred buffer zone of 0.46 km.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 16, 2014

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

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

§ 648.14 Prohibitions.

* * * * *

(p) * * *

(1) * * *

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

* * * * *

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

§ 648.148 Special management zones.

(a) General. The recipient of a U.S. Army Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the MAFMC as a special management zone (SMZ). The MAFMC may prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification within the SMZ. The establishment of an SMZ will be effected by

a regulatory amendment, pursuant to the following procedure: A SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Greater Atlantic Fisheries Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report.

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

(i) Fairness and equity;

(ii) Promotion of conservation;

(iii) Avoidance of excessive shares;

(iv) Consistency with the objectives of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law;

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

(vi) Impacts on historical uses.

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

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

(4) The Regional Administrator will review the MAFMC's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in

the Federal Register in accordance with the recommendations. If the Regional Administrator rejects the MAFMC's recommendation, he or she shall advise the MAFMC in writing of the basis for the rejection.

(5) The proposed rule to establish a SMZ shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the record and consistent with the Magnuson-Stevens Act and other applicable law.

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

(1) Delaware artificial reef # 9:

(i) 38° 39.71016' lat., 74° 59.0883' long.;

(ii) 38° 39.82578' lat., 75° 1.11264'long;

(iii) 38° 41.1048' lat., 75° 0.63288' long; and

(iv) 38° 41.03244' lat., 74° 58.45098' long; and then ending at the first point.

(2) Delaware artificial reef # 10:

(i) 38° 35.93706' lat, 74° 55.44408' long;

(ii) 38° 36.0759' lat., 74° 57.57864' long;

(iii) 38° 37.36314' lat., 74° 57.01812' long; and

(iv) 38° 37.21938' lat., 74° 54.96474' long; and then ending at the first point.

(3) Delaware artificial reef # 11:

(i) 38° 39.61578' lat., 74° 42.81462' long.;

(ii) 38° 39.7797' lat.; 74° 45.20484' long.;

(iii) 38° 41.11092' lat., 74° 44.73474' long.; and

(iv) 38° 40.97472' lat., 74° 42.3459' long.; and then ending at the first point.

(4) Delaware artificial reef # 13:

(i) 38° 29.87118' lat.; SE. 74° 30.34818' long.;

(ii) 38° 30.00876' lat., 74° 31.93008' long.;

(iii) 38° 31.83384' lat., 74° 31.09968' long.; and

(iv) 38° 32.04756' lat., l74° 29.5839' long.; and then ending at the first point.

(5) Delaware artificial reef # 14:

(i) 38° 31.55286' lat., 73° 47.75244' long.;

(ii) 38° 31.55286' lat., 73° 50.08164' long.;

(iii) 38° 32.94684' lat.; 73° 50.08158' long.; and

(iv) 38° 32.94714' lat, 73° 47.75232' long.; and then ending at the first point.

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