



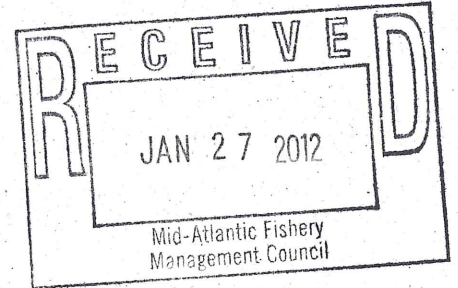
Atlantic Coastal Cooperative Statistics Program

1050 N. Highland Street, Suite 200A-N | Arlington, VA 22201

703.842.0780 | 703.842.0779 (fax) | www.accsp.org

January 24, 2012

Rich Seagraves
Mid-Atlantic Fishery Management Council
800 N. State St, Suite 201
Dover, DE 19901



Dear Mr. Seagraves,

At its November 8, 2011 meeting, the ACCSP Coordinating Council approved the proposal entitled "Observer Program Expansion for Mid-Atlantic (New York, New Jersey) and Rhode Island Small Mesh Otter Trawls" submitted by the ASMFC and the MAFMC for the amount of \$133,466.

The NOAA Grants Office has been notified of this award. This year they will be sending you "Guidelines for Submitting to the Grants Office" to help aid and streamline the submission process. I recommend that the appropriate agency personnel begin gathering the information necessary for submitting to the documents to the NOAA Grants Office soon to facilitate the timely approval of this proposal.

Please send electronic copies of your grant application and reports, as well as any other documents on procedures your staff may develop while accomplishing this project to the ACCSP Program Manager, Ann McElhatton (ann.mcelhatton@accsp.org). This will allow us to track progress and report to all program partners. In this way, lessons learned in ASMFC and the MAMFC may be utilized by our other state and federal partners for the implementation and/or enhancement of their own programs.

Congratulations on your award.

Sincerely,

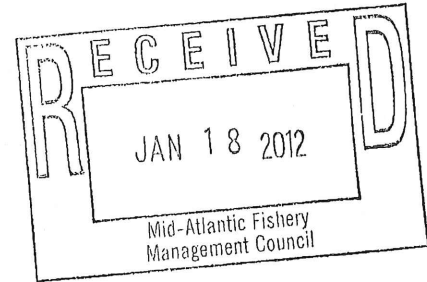
Michael S. Cahall
Director, Atlantic Coastal Cooperative Statistics Program

cc: Pat Campfield
Melissa Paine



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
OFFICE OF GENERAL COUNSEL
55 Great Republic Drive
Gloucester, Massachusetts 01930

January 12, 2012



Christopher M. Moore, Ph.D.
Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, Delaware 19901-3910

Dear Chris,

This letter responds to your correspondence of October 18, 2011, to me in which you asked for legal advice regarding whether the Mid-Atlantic Fishery Management Council (Council) could assume responsibility for the administration of the Research Set Aside (RSA) Program either directly or through a contractual agreement with a third party. Specifically, you asked: (1) could the RSA Program operate using contracts, instead of grants, with those whose research proposals are accepted in order to conduct research on board fishing vessels and to make compensation trips to harvest RSA amounts of fish; (2) can the Council enter into contractual agreements with outside entities to fund scientific research under the RSA Program; (3) can the Council enter into a contractual agreement with a third party to sell RSA species of fish at auction to generate revenues to fund scientific research; and (4) can revenues generated from the auction of RSA species of fish be deposited in a fund established by the Council.

I have consulted with the Department of Commerce's Office of General (DOC/GC) with respect to a number of these questions. DOC/GC advised that there is no basis upon which to revise its original advice that, as presently configured, the RSA Program should operate using a grant funding mechanism as opposed to a contract award. NOAA's primary purpose with respect to this program is not to acquire services from the applicants for its direct benefit or use. Rather, the agency is providing financial assistance (in this case, amounts of fish that can be sold to offset the cost of conducting research) to the researchers to accomplish a public objective focused on fisheries research. This determination is dispositive and supports the use of federal assistance to fund these projects.

Your remaining questions really turn on a determination as to whether the Council has the legal authority to take over administration of the RSA Program. It matters not whether the Council does this directly or under contract with a third party. The functions of a fishery management council are set forth in section 302(h) of the Magnuson-Stevens Fishery Conservation and Management Act (Act). None of these functions contemplate that the Council can take over administration of the RSA Program. This would put the Council in the role of conducting a scientific research program, which is more properly the province of an organization like the Northeast Fisheries Science Center. Such activity would be well beyond the Council function in section 302(h)(7) that empowers the Council to develop research priorities, as it currently does for the RSA Program. These research priorities cannot be implemented through a research

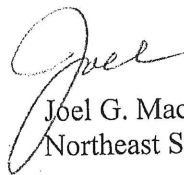


program administered by the Council but must be submitted to the agency for its "consideration in developing research priorities and budgets for the region of the Council." Similarly, the "basket" provision in section 302(h)(8) does not support the administration of the RSA Program by the Council. It allows the Council to conduct "other activities" which are required by, or provided for in, the Act or which are necessary and appropriate for to the functions enumerated in section 302(h). These other activities are circumscribed by sections 302 and 303 of the Act which outlines the authorities and functions of the Council. Further, if you look at section 404 of the Act respecting fisheries research, it is the Secretary who is charged with initiating the research program "in cooperation with the Councils." The cooperation of the Councils is limited by section 302(h)(7) to making recommendations on research priorities. The "other activities required by, or provided for, in the Act" language runs more to the administration of those activities mentioned in section 302(f). There is no authority vested in the Council in sections 302, 303, or 404 of the Act to run a research program such as the RSA Program.

While your remaining questions need not be answered in light of the limitations on the Council's functions noted above, they deserve some comment. The only auction authority contained in the Act appears at section 303a(d) which deals with auctioning off allocations under a limited access privilege program to collect royalties. Given that Congress limited the auction authority to this activity, the canons of statutory construction do not support an additional Congressional intent to allow the Council to auction off RSA species of fish. As above, it matters not that the auction is conducted by a third party under contract with the Council. Further, monies generated as the result of the auction might be considered program income which must be applied to the administration of the Council's grant or returned to the agency. Finally, a fund to receive the monies from the auction can only be established if there is express statutory authority to do so. There is no such authority in the Act.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



Joel G. MacDonald
Northeast Section Chief

Seagraves, Richard J.

From: Seagraves, Richard J.
Sent: Monday, December 12, 2011 11:58 AM
To: 'Paul Perra'; 'Scott Steinbeck'
Cc: Moore, Christopher
Subject: Delaware SMZ Request
Attachments: Delaware SMZ Request.pptx; aerial flight survey of artificial reefs DE (2).doc; Tab 09_Special_Management_Zone_Presentation .pdf

Hello Fellas-

Congratulations on being appointed to the newly formed Technical Working Group to evaluate the request for designation of SMZ status for DE permitted artificial reefs in the EEZ from the State of Delaware. Attached please find the official request letter from DE, the pertinent sections of the SF/SC/BSB FMP dealing with SMZ requests, PPT presented by J. Tinsman at MAFMC Council meeting, and recreational survey report for DE reef sites..

I'd like to have a brief conference call next week to begin discussing our strategy for handling the DE SMZ request. This would include discussion of :

1. timeline for SMZ evaluation
2. review of pertinent FMP sections
3. review of S. Atlantic SMZ designations
4. identification of information, data, reports etc.for analysis
5. discuss Outline for SMZ Request Report to Council
6. analytical assignments.

Please let me know if you are available on the following dates for a 10:00 a.m. or 2 p.m. conference call: 12/19, 12/20, 12/21, or 12/22. Thanks.

Rich

Delaware SMZ Request Working Group
Meeting 1
Dec 21, 2011
Summary Notes

Scott Steinbeck and Rich Seagraves met via conference call to discuss the development of analyses and a report to support a Council decision relative to the State of Delaware request to designate its permitted artificial reef sites in the EEZ as Special Management Zones.

Seagraves to contact DE requesting geographical boundary description of each reef site as per Army Corps permits.

Steinbeck asked about the level of analysis and documentation required for this exercise. The RA may take regulatory action based on Council recommendation, but is unclear what level of regulatory analysis and documentation is required (NEPA, Reg Flex, RIR etc). These questions referred to Perra.

General consensus was that analyses will likely be mostly qualitative in nature. DE has provided survey estimates of recreational fishing activity on its permitted reefs, so some estimation of economic value of the reefs for rec fishery is possible, although total economic impact in general is difficult to quantify. Quantifying commercial fishing activity on the reef sites will be more problematic. Catch and effort data for the commercial sector are available but the resolution relative to area fished in these data will not allow determination of catch/effort associated with specific reef locations. Steinbeck to begin looking at commercial C/E data but analysis will likely be qualitative in nature.

Seagraves would like to recruit Joel MacDonald to the WG since Council decision to designate these reef sites as SMZs will essentially be based on legal and policy considerations. The pair agreed to a target completion date for WG report completion in time for presentation to Council at its June 2012 meeting.

Next meeting of the WG was tentatively set for first week in January.



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE
FISHERIES BUILDING
3002 Bayside Drive - Dover, DE 19901
P.O. Box 330 - Little Creek, DE 19961
(302) 735-2964

April 19, 2011

Dr. Christopher M. Moore, Executive Director
Mid-Atlantic Fishery Management Council
Suite 201
800 N. State St.
Dover, Delaware 19901

Dear Chris,

I am writing to request time on the June 14-16, 2011 MAFMC meeting agenda to present Delaware's request for Special Management Zone (SMZ) status for our five permitted artificial reef sites in the EEZ. As you know, Amendment #9 to the Summer Flounder Management Plan (1995), which is essentially the Black Sea Bass Management Plan, contains a provision under section 9.1.2.7 (pages 51-52) by which a holder of a USACOE permit for an artificial reef site in the EEZ may request SMZ status for the area within the permitted site in order to regulate fishing on the site by limiting fishing gear types. This provision is modeled after similar language in the SAFMC Snapper-Grouper Plan. Although SMZ status has never been requested under the Black Sea Bass Plan, this provision has been used routinely under the Snapper-Grouper Plan. Delaware has been considering making this request for some time but recent developments have added additional urgency to this request.

To offer a brief history of this subject, the Delaware Division of Fish and Wildlife 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 2007, we attended several MAFMC meetings and made presentations to the Ecosystem Committee regarding this conflict. At that time the Committee took no official position and we were referred to the Demersal Committee. No SMZ request was made at that time. More recently, the USFWS Sportfish Restoration Program Office in Hadley, MA, has begun receiving complaints from fishing groups and individuals from the mid-Atlantic region. Wallop-Breaux funding is an important federal funding source for many state reef programs. In March, 2011, USFWS personnel attended the ASMFC/GSMFC Reef Committee meeting in St. Petersburg, FL and informed state reef coordinators that when gear conflicts occur, pot fishing on reef sites is not consistent with the intent 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. If states do not comply, the SFR Program may respond in several ways. In April, 2011, the SFR Program exercised one of these options. The New Jersey Reef Program was informed that their Sportfish Restoration Program funds for reef development had been terminated, effective immediately, until the reef permit holder addressed these gear conflicts (enclosure).

Delaware's Good Nature depends on You!

If a spot can be found on the agenda for this issue, I would envision making a short presentation, including our formal SMZ request, Bill Figley, from Reef Rescue (NJ) would make a short presentation and Vaughn Douglas of the Sportfish Restoration Program would present his agency's position. Should other states within the region join me in this effort, they would present their requests as well.

I have spoken with Tom Hoff and Jessica Coakley about this issue and have been advised to address this request to you. I will leave it to your discretion as to whether the presentation would best be made to the Demersal Committee or to all voting members of the Council. I appreciate your consideration of this issue and if you have any questions, please contact me at your convenience.

Sincerely,



Jeff C. Tinsman

Delaware Reef Program Coordinator

cc: Tom Hoff, MAFMC staff
Jessica Coakley, MAFMC staff
Dave Saveikis, Director, DFW
Craig Shirey, Fisheries Administrator
Richard W. Cole, proxy for Dave Saveikis

Delaware's Good Nature depends on You!



United States Department of the Interior

FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589



In Reply Refer To:
FWS/Region 5/MBSP-WSFR

APR 12 2011

WSFR – New Jersey

Bob Martin, Commissioner
Department of Environmental Protection
401 E. State Street, 7th Floor, East Wing
P.O. Box 402
Trenton, New Jersey 08625-0402

Dear Mr. Martin:

I am writing to you regarding conflicts involving fishing gear used on artificial reefs constructed and maintained with Dingell-Johnson Sport Fish Restoration (SFR) funds in New Jersey. Over the past several months, I have been contacted by phone, mail, and personal visits by a variety of New Jersey recreational anglers who have claimed that proliferation of lobster pots and fish traps for commercial purposes interferes with hook and line and spear recreational fishing. My staff has investigated the allegations and confirmed that the use of pots and traps is interfering with the purposes for which the reefs were constructed.

The SFR Act (16 U.S.C. 777) states that "fish restoration and management projects" shall be construed to mean projects designed for the restoration and management of all species of fish that have material value in connection with *sport or recreation* in the marine and/or fresh waters of the United States. Sport fish are limited to aquatic, gill-breathing, vertebrate animals, bearing paired fins, and *having material value for sport or recreation*. Eligible projects are those having as their purpose the restoration, conservation, management, and enhancement of sport fish, and *the provision for public use and benefits from these resources*.

Federal regulations implementing the SFR Act (50 CFR Part 80) mandate the following:

- States must apply SFR funds only to activities or purposes approved by the Regional Director. If otherwise applied, such funds must be replaced or the State becomes ineligible to participate.
- When property is used for purposes that interfere with the accomplishment of approved purposes, the violating activities must cease, and any adverse effects resulting must be remedied.
- The State is responsible for the accountability and control of all assets to assure that they serve the purpose for which acquired throughout their useful life.

Bob Martin, Commissioner

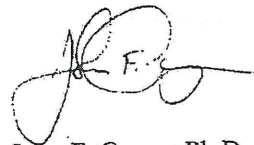
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- The Secretary of the Interior may terminate or suspend those projects in noncompliance, or may declare the State ineligible for further participation in program benefits until compliance is achieved.

Because of the aforementioned conflicts that clearly violate provisions of the SFR Act and its implementing regulations, I am terminating all further SFR funding for the artificial reef program in New Jersey, effective the date of this letter. Funding can be restored when appropriate action is taken to eliminate the conflicts that currently interfere with recreational fishing on these reefs.

If you have any questions or require further information regarding this matter, please contact me at 413-253-8501 or via email at john_organ@fws.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "J. F. Organ". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

John F. Organ, Ph.D.
Chief, Division of Wildlife
and Sport Fish Restoration

cc: David Chanda

From Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan
(pages 51-52)

9.1.2.4.2. Recreational Harvest Limit

Beginning in year 3, a recreational harvest limit would be allocated to the recreational fishery to reduce exploitation rates on the fully recruited age groups. The harvest limit would be based on projected stock size estimates for that year as derived from the latest stock assessment information. Estimates of stock size coupled with the target fishing mortality rate would allow for a calculation of total allowable landings. Based on the historic proportion of commercial and recreational landings, 51% of the total allowable landings would be allocated to the recreational fishery.

The annual recreational harvest limit will be set at a range of between 0 and the maximum allowed by the recreational share of the adopted fishing mortality rate reduction strategy.

9.1.2.5. Experimental Fishery

The Regional Director, in consultation with the Executive Director, may exempt any person or vessel from the requirements of this FMP for the conduct of experimental fishing beneficial to the management of the black sea bass resource or fishery.

The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

1. have a detrimental effect on the black sea bass resource and fishery or cause any quota to be exceeded; or
2. create significant enforcement problems.

Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

All experimental activities must be consistent with the fishing mortality rate reduction schedule in the FMP.

It is the Council's intention that experimental fisheries are short-term fisheries to answer specific management questions and are not used to resolve short-comings in existing fishery management plans.

9.1.2.6. Enforcement recommendations

It is recommended that violators of the mesh regulations be severely punished. This is necessary to minimize abuses of the flexibility introduced into the management regime that allow for several meshes onboard. Examples of possible penalties include permit sanctions and requiring that offenders carry only the legal mesh on board.

9.1.2.7. Special Management Zones

Upon request to the Council from a permittee (possessor of a Corps of Engineers permit) for an artificial reef, the modified area and an appropriate surrounding area of an artificial reef or fish attraction device (or other modification of habitat for the purpose of fishing) could be designated as a Special Management Zone (SMZ). The SMZ would prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the permittee for the artificial reef or fish attraction device. The establishment of an SMZ would be done by regulatory amendment:

1. A monitoring team (the team will be comprised of members of Council staff, NMFS Northeast Region, and the NMFS Northeast Fisheries Science Center) will evaluate the request in the form of a written report considering the following criteria:

- a. fairness and equity
 - b. promote conservation
 - c. excessive shares
 - d. consistency with the objectives of the FMP, the Magnuson Act, and other applicable law
 - e. the natural bottom in and surrounding potential SMZs and impacts on historical uses
2. The Council Chairman may schedule meetings of Industry Advisors and/or Scientific and Statistical Committee (SSC) to review the report and associated documents and to advise the Council. The Council Chairman may also schedule public hearings.
 3. The Council, following review of the Team's report, supporting data, public comments, and other relevant information, may recommend to the Northeast Regional Director of the National Marine Fisheries Service (RD) that a SMZ be approved. Such a recommendation would be accompanied by all relevant background data.
 4. The RD will review the Council's recommendation, and if he concurs in the recommendation, will propose regulations in accordance with the recommendations. He may also reject the recommendation, providing written reasons for rejection.
 5. If the RD concurs in the Council's recommendations, he shall publish proposed regulations in the *Federal Register* and shall afford a reasonable period for public comment which is consistent with the urgency of the need to implement the management measure(s).

9.1.2.8. Other measures

Only persons with a federal dealer permit may buy black sea bass at the point of first sale landed by a vessel that has a commercial moratorium permit issued pursuant to this FMP.

Owners or operators of vessels with moratorium permits may sell black sea bass at the point of first sale only to a dealer that has a federal dealer permit issued pursuant to this FMP.

Owners or operators of vessels with moratorium permits may not land black sea bass during a period when the Regional Director has determined that the commercial quota has been landed.

All black sea bass on vessels fishing with a mesh smaller than the legal minimum size must have any black sea bass on board boxed in a manner that will facilitate enforcement personnel knowing whether the vessel has 100 lbs or more of black sea bass on board to meet the minimum mesh size criterion. Any unboxed black sea bass on board a vessel fishing with a net smaller than the legal minimum is considered a violation of this FMP. A standard 100 pound tote has a liquid capacity of 18.2 gallons (70 liters), or a volume of not more than 4,320 cubic inches (2.5 cubic feet).

The Regional Director may place sea samplers aboard vessels if he determines a voluntary sea sampling system is not giving a representative sample from the black sea bass fishery.

No foreign fishing vessel shall conduct a fishery for or retain any black sea bass. Foreign nations catching black sea bass shall be subject to the incidental catch regulations set forth in 50 CFR 611.13, 611.14, and 611.50.

No vessel may use a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

No person may assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this FMP.

Peer Review of
Evaluation of Acceptable Biological Catch (ABC) Control Rules for Mid-Atlantic Stocks
Ground Rules

The Mid-Atlantic Fishery Management Council (MAFMC) entered into a contractual agreement with the University of Maryland (UMD) to conduct a management strategy evaluation to evaluate various ABC control rule approaches that were being contemplated by the MAFMC for its managed species. The Council has established the peer review procedure described below to obtain an independent peer review of the MSE Final Report submitted by UMD to the Council in August 2011.

Dr. Douglas Vaughan (MAFMC SSC member) will serve as the Chair of the Review Panel. The Review Panel members are Dr. Jim Berkson (Univ. of Florida/SAFMC SSC), Dr. Chris Legault (NEFSC/NEFMC SSC Chair), and Dr. Andre Punt (Univ. of Washington/PFMC SSC). The final report submitted to the MAFMC entitled *Evaluation of Acceptable Biological Catch (ABC) Control Rules for Mid-Atlantic Stocks* will be sent to the Review Panel along with Terms of Reference (TOR) provided by the MAFMC SSC Chair (developed in consultation with the Council Chair and Executive Director). Review Panel members will provide a critical review of the manuscript that addresses the TOR provided. Reviewers will be given 20 working days to review the manuscript and address each of the TOR and provide written comments to the Review Panel Chair by January 9, 2012. No attribution for specific comments will be made to individual reviewers (i.e., reviewers remain anonymous). At the discretion of the Review Panel Chair, a webinar may be necessary in order to resolve any disagreement among the three reviewers. It will be the responsibility of the Chair to determine if consensus has been reached with respect to each TOR.

Review panel members that are eligible (including the Review Panel Chair) will be compensated for five (5) days (at the prevailing MAFMC SSC compensation rate) to review the manuscript and develop written comments addressing the TOR (if no webinar is necessary). The findings of the panel will be summarized by the Review Panel Chair in a written report transmitted to the SSC Chair upon completion of the review.

"Evaluation of Acceptable Biological Catch (ABC) Control Rules for Mid-Atlantic
Stocks"

Peer Review Panel
Terms of Reference

1. Evaluate the study design and methodology, with particular reference to models and model assumptions, selected to evaluate ABC control rule performance.
2. Evaluate the statistical treatment and interpretation of modeling results.
3. Determine if the conclusions are supported by study results and if the information is of sufficient scientific rigor to be used for management purposes.