

Regulatory Amendment 34 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region

*(Special Management Zones off North and
South Carolina)*

Decision Document

Background

In March 2019, the Council received requests from the North Carolina Division of Marine Fisheries (NCDMF) and the South Carolina Marine Resources Division (SCMRD) to extend Special Management Zone (SMZ) designation to 34 permitted artificial reef sites in the exclusive economic zone (EEZ). The Snapper Grouper FMP (SAFMC 1983) established a framework for designating SMZs. The stated intent of a SMZ is to *provide 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 NCDMF requested that fishing gear other than handline, rod and reel, and spear be prohibited within the proposed 30 SMZs off North Carolina. Further, the state requested that harvest of snapper grouper species with spearfishing gear be limited to the recreational bag limit for those species¹. There are currently no artificial reefs in the EEZ off North Carolina that have been designated as SMZs.

Twenty-eight artificial reef sites in the EEZ off South Carolina are already designated as SMZs. Four additional artificial reef sites were established in recent years and the SCMRD requested these sites be designated as SMZs with the same restrictions on fishing gear as existing SMZs, namely limiting allowable gear within the sites to handline, rod and reel, and spear

¹ Note: the use of rebreathers to harvest snapper grouper species with spearfishing gear is prohibited.

(excluding powerheads) and limiting harvest of snapper grouper species to the applicable recreational bag limits.

Actions in this amendment

1. Designate 30 artificial reefs in the exclusive economic zone off North Carolina as special management zones
2. Designate four artificial reefs in the exclusive economic zone off South Carolina as Special Management Zones

Objectives for this meeting

- Review public hearing comments
- Modify document as appropriate
- Consider recommending for formal review

Expected amendment timing

Process Steps		Dates
✓	Guidance to begin amendment	March 2019
✓	Guidance to conduct scoping	September 2019
✓	Scoping hearings held	October 2019
✓	Review scoping comments, modify as needed, select preferred alternatives, and consider approval for public hearings	March 2020
✓	Public hearings held	May 2020
	Review public hearing comments, modify as needed, and consider approving for formal review	June 2020

Purpose and Need Statement

(Modified and approved in March 2020)

Purpose: Designate artificial reef sites in the exclusive economic zone off North Carolina and South Carolina as special management zones and restrict fishing gear use within the areas.

Need: Reduce adverse effects to snapper grouper species and optimize fishing opportunities at the artificial reef sites.

Committee Action

- NONE REQUIRED

Actions and Alternatives

Action 1. Designate 30 artificial reefs in the exclusive economic zone off North Carolina as Special Management Zones

Alternative 1 (No Action). There are currently no artificial reef sites in the exclusive economic zone off North Carolina designated as special management zones. The allowable gear for the snapper grouper fishery management plan for the commercial and recreational sectors are handline, rod and reel, spear, bandit gear, powerhead, pot, and longline (the last two are commercial sector only). **Do not designate artificial reef sites as special management zones or implement new restrictions on fishing gear used to harvest snapper grouper species from artificial reefs in the exclusive economic zone off North Carolina.**

Alternative 2. Designate 30 artificial reef sites in the exclusive economic zone off North Carolina as special management zones. Within the special management zones, harvest of snapper grouper species would only be allowed with handline, rod and reel, and spear. All harvest would be limited to the applicable recreational bag limit.

Preferred Alternative 3. Designate 30 artificial reef sites in the exclusive economic zone off North Carolina as special management zones. Within the special management zones, harvest of snapper grouper species would only be allowed with handline, rod and reel, and spear. All harvest by spear would be limited to the applicable recreational bag limit.

Summary of Environmental Effects:

Biological Effects

- **Alternative 2** and **Preferred Alternative 3** would be expected to impart biological benefits to snapper grouper stocks relative to **Alternative 1 (No Action)**. Of these, **Alternative 2** is more restrictive; hence, it would impart the greatest biological benefits of the alternatives considered.
- **Preferred Alternative 3** would reduce the potential of negative biological effects attributed to commercial spearfishing on snapper grouper species at the artificial reef sites. However, the potential would still exist for anglers to disproportionately remove large individuals from an area leading to negative biological effects.
- Special management zones are considered Essential Fish habitat (EFH) and EFH-Habitat Areas of Particular Concern (HAPC). The proposed action would promote conservation and enhance protection of EFH and EFH-HAPCs in the exclusive economic zone (EEZ) off North Carolina.
- No direct adverse effects to protected resources are expected because these artificial reefs already exist and already attract fishing. Proposed restrictions may provide some small

benefit to sea turtles to the extent that entangling gear and derelict gear would be minimized relative to the baseline.

Economic Effects

- **Preferred Alternative 3** may lead to reduced commercial revenue generated from the sites and thus reduced direct economic benefits for the commercial sector.
- **Preferred Alternative 3** may result in increased trip costs if vessels need to travel further to areas where other commercial gear could be used for snapper grouper species or these species could be harvested in commercial quantities.
- If snapper grouper species are available for harvest in higher quantities due to the proposed action, then recreational landings may increase leading to higher overall consumer surplus and thus result in positive indirect economic benefits for the recreational sector.
- **Alternative 2** is the most restrictive and thus has the highest potential costs for the commercial sector and highest potential benefits for the recreational sector followed by **Preferred Alternative 3**, and **Alternative 1 (No Action)**.

Social Effects

- Since **Alternative 2** is more restrictive than **Preferred Alternative 3**, it would result in greatest short-term negative social effects and the greatest long-term positive social effects to coastal communities.
- **Alternative 2** would provide more consistency in regulations than **Preferred Alternative 3**. This would reduce confusion and aid in compliance and enforcement efforts leading to indirect positive social effects.

Administrative Effects

- **Alternative 2** and **Preferred Alternative 3** would likely have increased administrative effects in the form of at-sea enforcement of the regulations at the proposed SMZs.
- **Preferred Alternative 3** would have greater administrative effects than **Alternative 2** since the latter would limit all harvest to the recreational bag limit, not just harvest by one gear type.

IPT Recommendations/Comments:

None

Law Enforcement Advisory Panel (AP) Comments and Recommendations:

Comments from the LE AP were requested on the amendment via email on May 11, 2020. Below are comments submitted by individual AP members:

The representative for NOAA's Office of General Counsel, Enforcement Section (GCES), submitted the following for the Council's consideration:

The *Guidelines for Resource Managers on the Enforceability of Fishery Management Measures* produced by the LEAP of the Atlantic States Marine Fisheries Commission in 2015 offers some recommendations for the establishment of closed areas that NOAA Office of Law Enforcement and GCES support.

- It is critical to have clearly defined areas. Use exact latitude/longitude and straight lines with regularly shaped areas as much as possible. Avoid general descriptions such as distance offshore, or a center point and radius. Do not use depth contours to define closed areas.
- Closed areas are more likely to be understood by fishermen, and to result in less unintentional non-compliance, if they are regular in shape, and where possible, oriented north-south and east-west in concert with latitude/longitude boundaries.
- Successful prosecution of violations must generally include the capability to conduct vessel monitoring, aerial and at-sea surveillance. Even with VMS capability, law enforcement must document the violation at-sea to gather sufficient evidence for prosecuting the violation.
- Depending on the fishery and gear type, restrictions on only certain activities within a closed area may require at-sea boarding to document a violation. The more complete the closure to all fishing activity, the easier it is to enforce and successfully prosecute violations.
- Large, contiguous areas are preferable to more numerous, smaller areas. If possible, the area should be closed to transit with fishing gear onboard. If transit is allowed, regulations should clearly specify the proper stowage of fishing gear during transit through the closed area. Transit must be specified as continuous, direct and expeditious. If an allowance for loitering or stopping is included in regulations, there should be a mandatory call-in or reporting requirement.
- Gear closure areas or regulated mesh areas are very difficult to enforce. If regulations only prohibit the use of a particular gear type within a closed area, possession of that gear within the closed area should be prohibited.

Consistent with these general recommendations, NOAA OLE and GCES would point out the inherent difficulties involved in patrolling these numerous small scattered areas and enforcing the proposed regulations that would allow transit and some but not all fishing.

Such areas, if created, should be in the shape of a box and should be defined using latitude and longitude coordinates, consistent with practice the Council has followed in creating past SMZs. Any slight increase in area size attributable to using a box rather than a circle to define the areas is more than made up for by ease of use and enforcement.

The representative of the U.S. Coast Guard (USCG) on the LE AP concurred with the comments above, adding:

- The USCG enforcement of a square area (or a shape four points parallel to lat. & longs; with 90-degree angles) is more effective than a centroid with a radius. The main tool used by the public and LE to determine position is a marine GPS; a GPS is much better suited to showing someone if they are ‘in’ or ‘out’ of a given area that is square.
- With the proposed SMZs being relatively small, the threshold for reading the GPS position to determine if a boater is ‘in’ or ‘out’ of the SMZ gets into the hundredths of decimal places. So, the smaller the area the more room there is for error/inaccuracy.
- When an area is circular (centroid with a radius), the tools to determine or detect a violation are not as readily available when compared to a squared shape.
- To instruct officers, the USCG already has a precedent to using ‘square’ areas and GPS to detect violations; these ‘best practices’ have been institutionally built into USCG enforcement.

Scientific and Statistical Committee (SSC) Comments and Recommendations:

The SSC received the draft amendment for their review via email on May 22, 2020. Below are individual comments from SSC members:

- The discussion does not explicitly describe how increased bycatch may not be consistent with the Council’s efforts to rebuild or end overfishing for certain fish stocks most likely to be affected (e.g., red porgy).
- The science behind artificial reefs is still controversial. Also, the amendment is really a management/allocation decision, not a scientific/biological/assessment one. Although there are several statements in the document about gear restrictions reducing impact on fish, no scientific data are provided to support this. It may be that allowing only hook and line might catch fewer fish than allowing traps and longlines, but that really depends on effort (6 anglers = 1 trap?) and other variables that for which no data are provided.
- Concerns about the cost-benefit analysis included in the amendment in that the net benefits from the proposed actions need to outweigh the costs. The current analysis is insufficient to prove net benefits to society will increase.

Snapper Grouper AP Comments and Recommendations:

The Snapper Grouper AP discussed this amendment at their October 2019 meeting and had the following comments:

- One AP member from North Carolina stated an opinion that during the past few years, research and fisheries enhancement programs have become mostly funded by the NC recreational fishing license due to state budget cuts. He stated that in fairness the

artificial reefs should then favor recreational angling by restricting very efficient commercial gear.

- One AP member from North Carolina explained how the artificial reefs were founded upon private funding by recreational fishing organizations, and how the NC Division of Marine Fisheries came to own and assume management of the artificial reefs.
- One AP member from North Carolina stated that the proposed gear restrictions would likely not directly affect commercial fishermen in the southern portion of North Carolina as the proposed sites (except two of them) are close to shore.
- One AP member inquired as to how enforcement would address a situation in which a commercial vessel (e.g., with bandit gear) stopped to fish an artificial reef with rod and reel during a commercial trip.
- The AP inquired as to whether there would be buffer zones specified around the reefs as part of the SMZ designation.
- One AP member from Florida pointed out that North Carolina does not have a Joint Enforcement Agreement with NOAA Fisheries like the rest of the South Atlantic states.
- Suggest including definition of various types of gear in the document.

MOTION #2: WITH RESPECT TO ACTION 1, REQUEST THAT THE COUNCIL DESIGNATE THE 30 ARTIFICIAL REEFS WITHIN THE EEZ OFF NC AS SMZs. RESTRICT LEGAL GEAR (COMMERCIAL AND RECREATIONAL) TO HANDLINE, ROD AND REEL AND SPEARFISHING AND LIMIT SPEARFISHING HARVEST TO THE RECREATIONAL BAG LIMIT.
APPROVED BY AP (11 IN FAVOR, 3 ABSTENTIONS)

Public Comments:

Scoping and public hearing comments submitted online are available [HERE](#).

Summary of scoping comments:

- Scoping hearings were held October 28-30, 2019 with three listening stations in Manteo, Morehead City, and Wilmington, North Carolina.
- One commenter had no objection to the designation and thought it would be useful.
- One commenter stated that artificial reefs off North Carolina were built with recreational funding (Coastal Recreational Fishing License) and it would be helpful to that sector to limit commercial gear on the artificial reefs.
- One commenter maintained the artificial reefs are owned by the federal government and the law (National Fishery Enhancement Act of 1984) requires that the reefs facilitate utilization of the artificial reefs by both commercial and recreational fishermen.
- One commercial fisherman stated that he does not utilize any artificial reefs so the designation would not affect him.

Summary of public hearing comments:

- Public hearings were held via webinar on May 4th and 5th, 2020. Four members of the public (non-Council or agency staff) attended the first webinar while three attended the second webinar. The comment period was from April 20 through May 8.
- Five comments were received online; one comment was provided during the webinar hearings.
- One commenter maintains that the proposed actions would complicate enforcement and provide no biological benefit.
- Two commenters expressed frustration at the level of regulations that have already been imposed on the commercial fishery.
- One commenter supported Alternative 2 under Action 1.
- The Coastal Conservation Association submitted a letter in support of the proposed actions.

Council Rationale:

- Concern over the role of artificial reefs in general. Artificial reefs tend to aggregate fish and make them easier to catch resulting in higher exploitation rates, shorter seasons, potential for user conflict, and enforcement challenges.
- Acknowledgement of the beneficial role artificial reefs play in providing fishing opportunity to the public and creating hardbottom habitat for reef species.
- The framework amendment addresses the placing of gear and/or harvest restrictions as a condition to use existing reefs, many of which were created decades ago and have been in place since.
- The Council is responding to North Carolina's request to extend SMZ designation to artificial reefs in the EEZ off its coast and thus impart the biological and social and economic benefits that were envisioned from the onset of the SMZ designation process in the Snapper Grouper FMP.
- Concern among the public and Council members that spearfishing gear also has the potential to remove large individuals from an area, resulting in negative biological impacts, particularly for species with complex social structures, such as hogfish.
- Bulleted list of input from SG AP regarding spearfishing from their October 2018 meeting:
 - Recreational diving is growing in popularity in North Carolina.
 - AP members report that vessels from Florida are fishing in North Carolina more frequently than before.
 - Recreational diving is having an impact on ledge areas in North Carolina.
 - There has been an increase in free-diving in North Carolina in shallow areas off the shoals.
 - AP members who dive in North Carolina expressed concern that male hogfish are smaller now.
 - A gear endorsement would allow for better characterization of the user group.
 - Off South Carolina, AP members report that diving activity has diminished since 2008 and there appears to be no growth in this sector.

- Some AP members disagreed with the percent of commercial landings attributed to spearfishing gear. They maintain there has been an increase in commercial diving and younger people are entering that portion of the fishery.
- The AP discussed that most of the concerns were from North Carolina and the Florida Keys.
- **Preferred Alternative 3** would best meet the purpose imparting biological benefits to snapper grouper species and ensuring that artificial reefs continue to be utilized for the purpose they were intended, namely, to optimize fishing opportunities.

Committee Action:

- CONSIDER PUBLIC COMMENTS AND MODIFY ACTION 1 AND ITS ALTERNATIVES AS APPROPRIATE
- REVIEW COUNCIL RATIONALE AND MODIFY AS APPROPRIATE

Action 2. Designate additional artificial reefs in the exclusive economic zone off South Carolina as Special Management Zones

Alternative 1 (No Action). There are currently 28 artificial reef sites in the exclusive economic zone off South Carolina designated as special management zones. The allowable gear for the snapper grouper fishery management plan for the commercial and recreational sectors are handline, rod and reel, spear (excluding powerheads), bandit gear, pot, and longline (the last two are commercial sector only). Do not designate additional artificial reef sites as special management zones or implement new restrictions on fishing gear used to harvest snapper grouper species from artificial reef sites in the exclusive economic zone off South Carolina.

Preferred Alternative 2. Designate four additional artificial reef sites in the exclusive economic zone off South Carolina as special management zones. Within the special management zones, harvest of snapper grouper species would only be allowed with handline, rod and reel, and spear (excluding powerheads). All harvest would be limited to the applicable recreational bag limit.

Alternative 3. Designate four additional artificial reef sites in the exclusive economic zone off South Carolina as special management zones. Within the special management zones, harvest of snapper grouper species would only be allowed with handline, rod and reel, and spear (excluding powerheads). All harvest by spear would be limited to the applicable recreational bag limit.

Summary of Environmental Effects:

Biological Effects

- Biological effects under **Preferred Alternative 2** and **Alternative 3**, would be positive relative to **Alternative 1 (No Action)** since the potential for localized depletion would be minimized on four additional reefs.
- Special management zones are considered Essential Fish habitat (EFH) and EFH-Habitat Areas of Particular Concern (HAPC). The proposed action would promote conservation and enhance protection of EFH and EFH-HAPCs in the exclusive economic zone (EEZ) off South Carolina.
- No direct adverse effects to protected resources are expected because these artificial reefs already exist and already attract fishing. Proposed restrictions may provide some small benefit to sea turtles to the extent that entangling gear and derelict gear would be minimized relative to the baseline.

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- **Preferred Alternative 2** would be the most restrictive and thus have the highest potential costs for the commercial sector and highest potential benefits for the recreational sector followed by **Alternative 3**, and **Alternative 1 (No Action)**.

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Administrative Effects

- **Preferred Alternative 2** and **Alternative 3** would likely have increased administrative effects in the form of at-sea enforcement of the regulations at the proposed SMZs.
- **Alternative 3** would have greater administrative effects than **Preferred Alternative 2** since the latter would limit all harvest to the recreational bag limit, not just harvest by one gear type.

IPT Recommendations/Comments:

Clarify whether language regarding powerheads should be included in the alternatives.

Law Enforcement Advisory Panel (AP) Comments and Recommendations:

See summary of comments under Action 1.

SSC Comments and Recommendations:

See summary of comments under Action 1.

Snapper Grouper AP Comments and Recommendations:

See summary of comments under Action 1.

Public Comments:

Scoping and public hearing comments submitted online are available [HERE](#)

One comment letter from the Coastal Conservation Association was submitted in support of the proposed action.

Council Rationale:

In addition to rationale presented under Action 1:

- Twenty-eight artificial reefs in the EEZ off South Carolina are already designated as SMZs with the same restrictions on allowable gear and harvest limit as what is being proposed under Action 2/Preferred Alternative 2.
- South Carolina's request to extend the same designation and regulations to four additional sites would bring consistency in the regulations and promote a more stable regulatory environment and potentially increase compliance.

Committee Action:

- CONSIDER PUBLIC COMMENTS AND MODIFY ACTION 2 AND ITS ALTERNATIVES AS APPROPRIATE
- APPROVE/DISAPPROVE IPT'S SUGGESTED EDITS
- REVIEW COUNCIL RATIONALE AND MODIFY AS APPROPRIATE
- CONSIDER RECOMMENDING REGULATORY AMENDMENT 34 FOR FORMAL REVIEW

DRAFT MOTION: APPROVE SNAPPER GROUPEL REGULATORY AMENDMENT 34 FOR FORMAL SECRETARIAL REVIEW AND DEEM THE CODIFIED TEXT AS NECESSARY AND APPROPRIATE. GIVE STAFF EDITORIAL LICENSE TO MAKE ANY NECESSARY EDITORIAL CHANGES TO THE DOCUMENT/CODIFIED TEXT AND GIVE THE COUNCIL CHAIR AUTHORITY TO APPROVE THE REVISIONS AND RE-DEEM THE CODIFIED TEXT.