EXECUTIVE SUMMARY

Humans Rely on the Ocean

The ocean covers almost three quarters of planet Earth. It is full of amazing wildlife and incredible underwater ecosystems. The ocean drives our global climate, produces the oxygen we depend upon, and stores carbon and excess heat driven by greenhouse gas emissions. The ocean is imperative to our very survival. The ocean provides millions with food security, jobs and is a source of clean energy. We recreate at the ocean, we go fishing on the ocean, we bring our families to the ocean to make memories that can be passed down to younger generations. We are connected to the ocean.

The ocean is under stress, worsened by climate change. Every single day humans make demands on the ocean. Some demands have led to overfishing, nutrient pollution, ecosystem degradation, and plastic pollution. As populations increase, so do our demands, and at a time where we are seeing our ocean waters warm, acidify, lose oxygen, and rise. Storms come earlier and stronger, flooding is more frequent, fish are moving north. As uses like offshore shipping, ocean mining, and fishing increase, and plans for large offshore wind energy projects become reality, there will be ripple effects to the long-term health of our ocean and coasts for decades to come.

The Mid-Atlantic ocean is changing, which impacts important recreational fish and fish habitat areas. Climate change is already impacting the Mid-Atlantic Bight and the larger Northeast Shelf Large Marine Ecosystem, placing crucial benefits and services like recreation, fishing, and coastal community safety and economies, to name a few, on the line. Anglers and coastal managers see in real time fish shifting northward as ocean waters warm and acidify and conflicting uses mar or destroy important fish habitat.

Mid-Atlantic decision-makers are looking to the ocean for solutions, which may also impact fish and fish habitat areas. With even greater ecosystem and climate impacts on the horizon, Mid-Atlantic states and federal agencies are looking to the ocean and coasts for solutions. The demand for sand along Mid-Atlantic coastlines in the wake of disappearing beaches from intense storms and sea level rise has led to a hunt for offshore sand resources along the eastern seaboard. New Jersey anglers and the Littoral Society have long been concerned with the real identified impacts to offshore fish habitat from sand mining. In addition, the development of offshore wind in the Mid-Atlantic Bight will be necessary to ensure the U.S. transitions to fully renewable energy from dirty fossil fueled energy sources to mitigate carbon dioxide emissions. Offshore wind must be developed and sited responsibly, because even

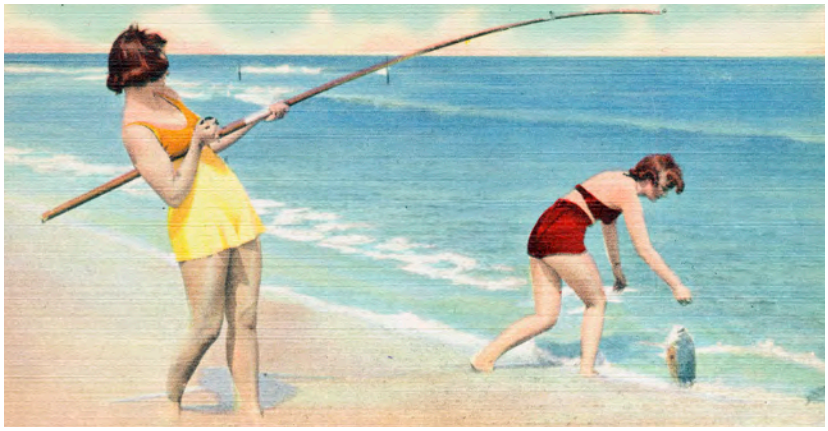
with its climate mitigation benefits, it can have impacts to the offshore environment.

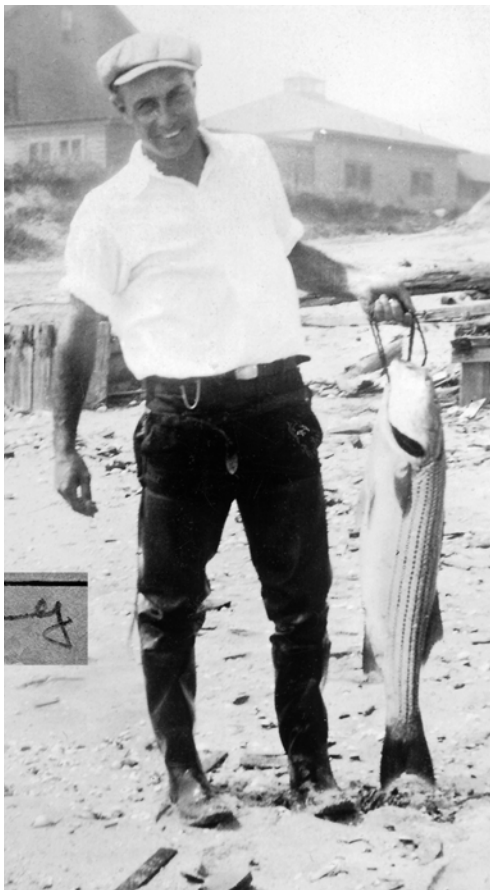
Mid-Atlantic states protect fish and fish habitat in many ways, with strongest regulatory protections found through state Coastal Policies identified in federally approved Coastal Management Plans. States protect fish and fish habitat in a variety of ways, but one of the strongest tools a state has to protect them during the development and permitting of activities like offshore sand mining or wind development is through a federally approved Coastal Management Plan under the authority granted to states in the Coastal Zone Management Act.

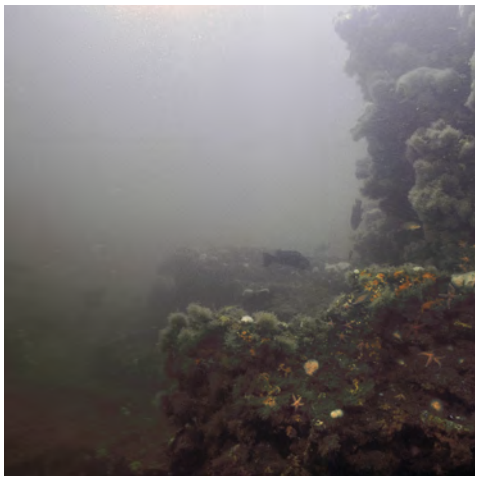
Mid-Atlantic states use a variety of enforceable policies in their Coastal Zone Management Act-approved programs to protect fish and fish habitat. Some focus on types of ecosystems, some on coastal uses, and some on both. What each has in common is the purpose of serving in the interest of protecting important state coastal resources. One rule, the New Jersey Prime Fishing Areas Rule stands out.

One important coastal policy is New Jersey's Prime Fishing Areas Rule. New Jersey's coastal policies identify a set of special areas, which are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements that they require individualized, focused attention and special management rules. Prime Fishing Areas (PFAs) are a part of New Jersey's special areas. PFAs include tidal water areas and water's

Recreational fishing has long been a favorite pastime – and a thriving business – at the Jersey Shore. Vintage postcards highlight fishing at Ocean Grove (below left, Boston Public Library, CC-BY 2.0). An angler, possibly at Keansburg, shows off an impressive catch, circa 1927 (below right, Doc Searls, CC BY 2.0).







New Jersey's Prime Fishing Areas include offshore rock outcroppings (left, Donna Blaszcak), sand ridges and canyons as well as coastal jetties (right, John Gattuso).

edge areas which have a demonstrable history of supporting a significant local intensity of recreational or commercial fishing activity and include:

- all coastal jetties, groins, public fishing piers or docks and artificial reefs;
- features such as rock outcroppings, sand ridges or lumps, rough bottoms;
- aggregates such as cobblestones, coral, shell and tubeworms;
- slough areas and offshore canyons;
- areas identified in "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay" Figley and McCloy (1988); and
- those areas identified on the map titled, New Jersey's Specific Sport Ocean Fishing Grounds.

Permitted uses for Prime Fishing Areas include recreational and commercial fishing and shellfishing, scuba diving, and other water related recreational activities, but prohibited uses include sand or gravel mining which would alter existing bathymetry such that it reduces the high fishery productivity of these areas.

The Prime Fishing Areas Rule contains a unique aspect as there are both unidentified PFAs fitting the Rule's general description as well as a set of identified, mapped PFAs found on a digital map. Not only are these areas identified and mapped, but they extend several nautical miles into federal waters off the coasts of every Mid-Atlantic state except Virginia, though concentrated off New Jersey. Given the PFAs Rule status as part of New Jersey's enforceable policies, it creates obligations within the New Jersey Department of Environmental Protection (NJDEP) and often federal agencies looking to propose activities offshore to review the potential impacts to PFAs found within proposed project areas.

It is important to understand how decision-makers have interpreted enforceable policies like the PFAs Rule in planning, regulatory and federal consistency reviews. This project reviewed publicly available documents and identified five main takeaways about the operation of the PFAs Rule. First, the PFAs Rule can

Cape May scallop boats (above) and an oyster packing plant in Port Norris (below). New Jersey's Prime Fishing Areas include productive shellfish resources (John Gattuso).

be viewed as a static set of fixed areas and proposed activities are considered as either being "in" or "out" of an area, even though the PFAs Rule, on its face, is broader than fixed areas. Second, in some cases, the PFAs Rule is considered and the proposed activities are deemed consistent if they are among the enumerated permitted uses. Third, in some cases the PFAs Rule is considered and the proposed activities deemed consistent if they are not expressly prohibited. Fourth, in the most significant examples, expressly prohibited activities have been allowed to proceed as conditionally approved and thus consistent, with no clear rationale provided as to how those conditions satisfy the intent of the PFAs Rule and its prohibition.

Finally, and importantly, it appears the PFAs Rule leads some reviewers to conflate prime fishing grounds with Prime Fishing Areas. PFAs include as a subset the identified grounds, but extend more broadly to "tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local intensity of recreational or commercial fishing activity." The plain text of the Rule requires a factual, case by case analysis of an area's historical capacity to support fishing activity. The instances in which the PFAs Rule has been applied suggest that the NJDEP and those seeking consistency determinations have often taken an inappropriately narrow view of the rule's protections by not looking at historical fishing or relying solely on mapped PFAs. This has shown up as conditional approvals or modified activities meant to limit PFA impacts.

Prime Fishing Areas are important to New Jersey's recreational fishing community who should be important stakeholders in state and federal planning and permitting outreach. In the 2003 PFA Rule amendment, New Jersey prioritized the voices of recreational fishermen. Anglers consistently fish in and around New Jersey's PFAs and have a wealth of information regarding the status, species, and use of these areas. Yet anglers have been historically under-consulted or consulted in an ad hoc and one-time manner for projects that will impact recreationally important species or their habitat. State and federal coastal managers analyzing coastal areas, potential projects and impacts would do well to increase the outreach and engagement to anglers. Decision-makers should engage anglers to better understand the ocean data portals, provide transparency and opportunities to be a part of how, whether, and when PFAs or similar areas should be studied and protected.

Recommendations

The Society has identified a set of 10 recommendations to assist decision-makers in closing knowledge and process gaps around state protections like Prime Fishing Areas that can lead to better understanding and protection of fish and fish habitat.

1. New Jersey DEP should develop guidance that includes adopting a process for identifying and protecting Prime Fishing Areas. The guidelines should:

> Identify currently unmapped but known or acknowledged areas that exhibit the characteristics and recreational activity identified in the Rule;

> Develop a definition and set standards for what "significant degree" means in determining non-allowable alteration of fisheries productivity value;

> Define and articulate presumptive uses allowed, prohibited, and discouraged by the Rule;

> Institute periodic reviews of PFAs species presence or absence with recreational anglers given data gaps in real-time information and shifts in population distributions due to climate change and other ecosystem disturbances; and

> Review bathymetric changes to inform evolving PFA conditions.

2. NJDEP should develop a Geographic Location Description for New Jersey's Prime Fishing Areas that can complement the rule as an existing special area enforceable policy, adding an additional layer of analysis and consideration for PFAs outside of state waters.

3. NJDEP should develop a public online repository for coastal and

Miss Barnegat Light, a charter fishing boat out of Long Beach Island, New Jersey (John Gattuso).

A young angler shows off her catch (American Littoral Society).

offshore state or federal projects implicating New Jersey coastal resources. This online repository should contain the department analyses over the life of a project from start to finish. As the New Jersey sand mining analysis shows, many complex offshore projects tier off older, broader analyses, making it imperative that stakeholders have one place to go to understand the actions the state is taking or has taken in developing and permitting a project in order to engage in conversations around new projects, project phases and modifications or changes to existing projects.

4. NJDEP should require applicants to describe Prime Fishing Areas or fishing grounds being considered in or near a state or federal proposed activity by any commonly-known fishing ground name during the environmental review processes to ensure appropriate recreational angler stakeholder engagement.

5. To meet the increasing demands for offshore resources and increasing potential for conflicting uses and impacts to fish and fish habitat:

> Member states must review the Mid-Atlantic Regional Council on the Ocean's (MARCO) purpose and commitments and strengthen them around protecting places like PFAs; and

> The Mid-Atlantic Committee on the Ocean (MACO) must strengthen its work to better coordinate project planning and siting across the region.

6. Mid-Atlantic states should consider developing a mapped geographic information system (GIS) layer for each fish and fish habitat protective mechanism in order to inform potential resource conflicts as early as possible.

7. MARCO should work with its member states to develop a network and engagement plan for recreational anglers throughout the region to ensure opportunities to capture and integrate on the water experience and observations resident in the recreational angling community. Part of the network's scope could be to assist states in developing areas similar to New Jersey's mapped PFAs for inclusion on the Mid-Atlantic Data Portal.

8. MARCO and MACO must facilitate additional engagement of stakeholders with their Offshore Renewable Energy work group by adding public interest member voices.

9. Federal regulators should provide permanent moorings for anglers wishing to anchor near the turbines to conduct stationary fishing. This would provide a safer environment for fishermen, while minimizing any interaction between anchoring gear and the structure or cables.

10. Mid-Atlantic states should increase transparency and public access to decision documents regarding impacts to state coastal resources, including to:

> House and publish federal consistency reviews and on a publicly accessible and searchable web portal; and

> Develop an online repository for coastal and offshore state or federal projects implicating state coastal resources that contains the department analyses over the life of a project from start to finish.