

Review of Petition for Rulemaking to Prohibit Fishing Gears on Oriental Artificial Reef (AR-396)

N.C. Division of Marine Fisheries

Aug. 29, 2013



Artificial Reef Program

- Administers ocean and estuarine artificial reefs through:
 - Design and development operations
 - Biological and material monitoring
 - User outreach
 - Maintaining permits for material deployments and marking requirements
- Includes 42 ocean and 10 estuarine permitted reefs
 - Of these 52 reefs, only one reef has had a documented user conflict

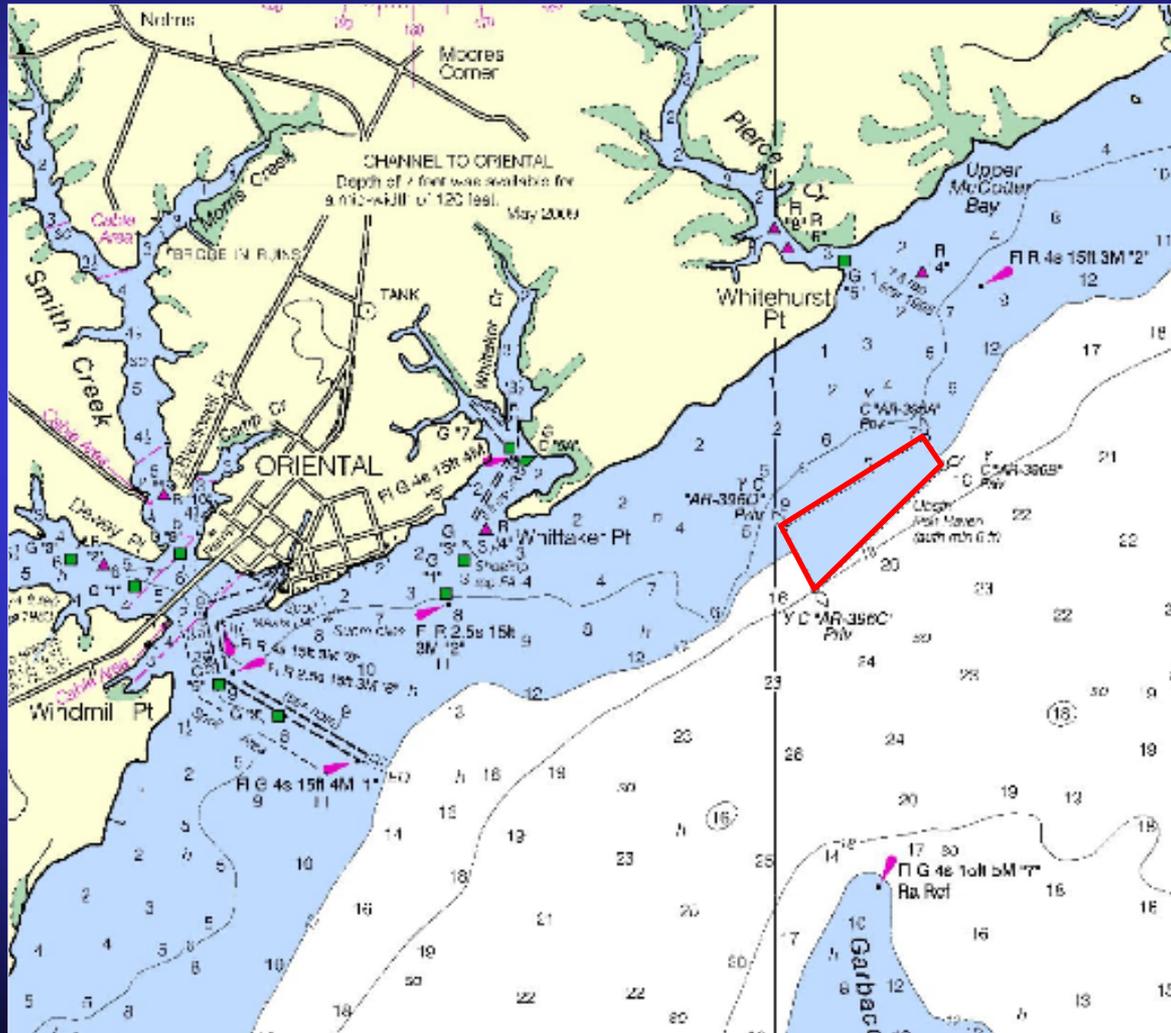


Oriental Artificial Reef (AR 396)

- Located on the north side on the Neuse River near Oriental
- Construction began in 1972
- Site is 63 acres and contains tires, limestone, scrap metal, concrete pipe and various designs of reef balls



Oriental Artificial Reef (AR 396)



Petition Request:

Add provisions to 15A NCAC 03I .0109(a) (1) that:

- Allow artificial reefs and research sanctuaries in internal coastal waters to be closed or restricted to all commercial gear within a 100-yard buffer zone;
- Allow restriction of cast nets, collapsible crab traps, gigs or pointed implements, hand operated rakes, minnow traps, and seines.



Petition Request

Amend 15A NCAC 03J .0402(a) to close the Oriental Artificial Reef (AR - 396) year round to:

- Commercial fishing gear;
- Cast nets, collapsible crab traps, gigs or pointed implements, hand operated rakes, minnow traps, seines.



Petitioner's Reason for Proposed Rule

New rules need to be adopted to better protect these fish and oyster-friendly environments for research and monitoring.



DMF Concerns About Requested Rule Changes:

- There have been no reported conflicts between or among user groups at this site.
- Artificial reefs are the property of the state of North Carolina; once materials go into the water it is public trust regardless of funding source and is managed by strict statutory authority.



N.C. Public Trust Doctrine

- “It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry...
- Common public trust uses include navigation and commerce, fishing, bathing (swimming), and hunting
- Marine Fisheries Commission lacks statutory authority to grant petitioner’s request without demonstrated need
- Request is contrary to the constitution of North Carolina



DMF Recommendation

Consideration of any gear restrictions on artificial reefs should be based on:

- Public Trust Doctrine
- Appropriateness of gear considering potential impacts to the created habitat; for example entanglement or bottom disturbing gears
- User conflicts

