



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160302174-6999-02]

RIN 0648-BF81

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Dolphin and Wahoo Fishery off the Atlantic States; Regulatory
Amendment 1**

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Regulatory Amendment 1 for the Fishery Management Plan for the Dolphin and Wahoo Fishery off the Atlantic States (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule establishes a commercial trip limit for Atlantic dolphin for vessels with a Federal commercial permit for Atlantic dolphin and wahoo. The purpose of this final rule is to reduce the chance of an in-season closure of the dolphin commercial sector as a result of the annual catch limit (ACL) being reached during the fishing year, and to reduce the severity of economic or social impacts caused by these closures.

DATES: This rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Regulatory Amendment 1, which includes an environmental assessment, an assessment under the Regulatory Flexibility Act (RFA), a regulatory impact review, and fishery impact statement, may be obtained from www.regulations.gov or the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/dw/2016/reg_am1/documents/pdfs/dw_reg_am1.pdf.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS SERO, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery of the Atlantic is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act).

On June 30, 2016, NMFS published a proposed rule for Regulatory Amendment 1 and requested public comment (81 FR 42625). The proposed rule and Regulatory Amendment 1 outline the rationale for the action contained in this final rule. A summary of the action implemented by Regulatory Amendment 1 and this final rule is provided below.

Management Measure Contained in This Final Rule

This final rule establishes a commercial trip limit for dolphin for vessels that have a Federal commercial permit for Atlantic dolphin and wahoo.

Dolphin Commercial Trip Limit

Currently, no commercial trip limit exists for vessels that possess a Federal commercial permit for Atlantic dolphin and wahoo. However, there is a commercial trip limit of 200 lb (91 kg) of dolphin and wahoo, combined, for vessels that do not have a Federal commercial permit for Atlantic dolphin and wahoo but do have a Federal commercial permit in any other fishery, provided that all fishing and landings from that trip occur north of 39° N. lat. (50 CFR 622.278(a)(2)). This final rule establishes a commercial trip limit of 4,000 lb (1,814 kg), round weight, for the dolphin commercial sector in the Atlantic, once 75 percent of the commercial ACL is reached. This trip limit remains in effect until the end of the fishing year or until the commercial ACL is met, whichever comes first. This trip limit applies to vessels that have a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat. There will be no applicable trip limit for the dolphin commercial sector in the Atlantic prior to 75 percent of the commercial ACL being reached. The Council determined that establishing this commercial trip limit would reduce the chance of early closures

during the fishing year as a result of the accountability measures being triggered, and thereby reduce the severity of any economic or social impacts as a result of a commercial sector closure.

Comments and Responses

NMFS received four comments on the proposed rule and Regulatory Amendment 1. One comment was outside the scope of the amendment and two were in support of the amendment as proposed. Those comments are not addressed below. The remaining single commenter opposed the management actions in the proposed rule and Regulatory Amendment 1; summaries of and responses to the comments in opposition to the proposed rule and Regulatory Amendment 1 are below.

Comment 1: The commercial trip limit selected in Regulatory Amendment 1 is not supported by the best available science, as mandated by the Magnuson-Stevens Act. No peer-reviewed stock assessment has ever been conducted for dolphin. Dolphin is the highest priority in the Council's list of species in need of a peer-reviewed stock assessment yet no Southeast Data, Assessment, and Review (SEDAR) assessment has been scheduled or requested. NMFS should conduct a stock assessment of dolphin in the Atlantic before implementing Regulatory Amendment 1.

Response: NMFS disagrees that dolphin needs to be assessed before implementing this amendment and has certified that

Regulatory Amendment 1 is based on the best scientific information available. Although dolphin is not currently scheduled for a stock assessment, it is a short-lived, highly productive species that is not considered to be vulnerable to overfishing. The decision to manage the fishery represented a precautionary and risk-averse approach to management. The Report to Congress on the Status of U.S. Fisheries indicates that dolphin is not overfished and is not undergoing overfishing. The Southeast Fisheries Science Center listed dolphin as a stock assessment priority; however, the Council did not include dolphin in its list of long-term priorities due to the need to revise assessments that had already been completed with updated data from the Marine Recreational Information Program. Thus, dolphin is not the highest priority of species in need of a peer-reviewed stock assessment and the Council and NMFS need not await a stock assessment to proceed with the Regulatory Amendment 1.

Comment 2: The dolphin fishery is in need of management measures that will, when implemented, eliminate the need for commercial trip limits. NMFS should only implement Regulatory Amendment 1 as a temporary measure to give the Council and NMFS time to develop new management measures based on a new stock assessment. Therefore, a sunset date to the trip limit action should be included in Regulatory Amendment 1, to allow the

commercial trip limits for the longline component of the commercial sector to be valid for a set number of years.

Response: Regulatory Amendment 1 establishes a dolphin commercial trip limit of 4,000 lb (1,814 kg), round weight, once 75 percent of the commercial ACL is reached. The Council did not consider a sunset date for the action in this amendment. In the future, if deemed necessary, the Council could modify or remove the trip limit.

Comment 3: The dolphin commercial trip limit will negatively impact commercial fishermen in the North Atlantic more significantly than fishermen in the Mid-Atlantic or South Atlantic as a result of dolphin's migratory patterns, in violation of National Standard 4. The fishing year should be changed from beginning on January 1 to begin on June 1 to allow the fishermen in the North Atlantic better access to the resource.

Response: NMFS disagrees. The amendment does not violate National Standard 4 because it is intended to lengthen the fishing year for all commercial fishermen fishing in the Atlantic. The Council did not consider revising the fishing year in Regulatory Amendment 1. In the future, if deemed necessary, the Council could revise the fishing year.

Comment 4: This amendment violates National Standard 9 and "no less than 4 U.N. resolutions and the UN FAO Code of Conduct

for Responsible Fisheries" because the implementation of commercial trip limits will cause an increase in regulatory discards.

Response: NMFS disagrees. Marine fisheries in the United States are scientifically monitored and regionally managed under a number of requirements, including the ten national standards in the Magnuson-Stevens Act. The National Standards are requirements that must be followed in any FMP to ensure sustainable and responsible fishery management. When reviewing FMPs, FMP amendments, and regulations, the Secretary of Commerce must ensure that they are consistent with the National Standards. National Standard 9 states: Conservation and management measures shall, to the extent practicable, (a) minimize bycatch and (b) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The dolphin and wahoo fishery is managed under the FMP which is consistent with the National Standards. As discussed in the bycatch practicability assessment included in the Regulatory Amendment, the magnitude of discards in the dolphin and wahoo fishery is small, and bycatch is believed to be minimal in both the commercial and recreational sectors. Action was taken in the original FMP to reduce bycatch by prohibiting the use of surface and pelagic longline gear for dolphin and wahoo within any "time or area closure" closed to the use of pelagic gear for highly migratory

pelagic species in the Council's area of jurisdiction. Although this action may increase the regulatory discards when the commercial trip limit is triggered, any increase is likely to be minimal.

The commenter did not provide any information on, or citation to, the United Nations resolutions that it believes the rule violates, and thus NMFS cannot evaluate the comment that the rule is inconsistent with those resolutions. However, to the extent that those resolutions seek to minimize bycatch, this final rule is consistent with them. As explained above, although the final rule may increase regulatory discards when the rule is implemented, NMFS does not believe those increases in regulatory discards violate National Standard 9 or other efforts to minimize bycatch.

In addition, with respect to the comment that the rule violates the United Nation's 1995 Code of Conduct for Responsible Fisheries (CCRF), NMFS disagrees. Similar to National Standard 9, the CCRF seeks to minimize bycatch. As explained above, the final rule is consistent with National Standard 9 and thus is consistent with other initiatives to minimize bycatch, including the CCRF.

Comment 5: If trip limits are implemented, all forms of mortality, including regulatory discards, must be accounted for accurately in order to determine the effect of overall mortality

on stock status. It is essential that NMFS collect data on discards of dolphin with the implementation of a commercial trip limit.

Response: As described in the response to comment 4, the bycatch in the dolphin fishery is minimal. Information on dolphin landings and discards are collected through a variety of ways in the Atlantic. Commercial dolphin fishermen who are selected by the NMFS Science and Research Director are required to maintain and submit fishing records. Commercial dolphin fishermen are also required to submit logbooks with trip and effort information. Currently, discard data are collected using a supplemental form that is sent to a stratified random sample of 20 percent of the active Federal dolphin and wahoo commercial permit holders in the dolphin and wahoo fishery. For the recreational sector, estimates of the number of recreational discards are available from the Marine Recreational Information Program and the NMFS Southeast Headboat Survey.

Additionally, the Council is currently developing the Bycatch Reporting Amendment to improve bycatch reporting in all of their managed fisheries. This amendment is intended to improve data collection on discards, including regulatory discards.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of Atlantic dolphin and is consistent with Regulatory Amendment 1, the FMP, the Magnuson-Stevens Act, and other applicable law.

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

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. NMFS did not receive any comments from SBA's Office of Advocacy or the public on the certification in the proposed rule.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial

fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the SBA's current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA that are published after July 1, 2016. *Id.* at 81194.

Pursuant to the RFA, and prior to July 1, 2016, a certification was developed for this regulatory action using SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are finfish commercial fishing businesses and were considered small under the previously applicable SBA size standards. These commercial fishing businesses will not exceed the new threshold standard for small businesses, and thus they all will continue to be considered small under the new standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action.

The Chief Counsel for Regulation of the Department of Commerce hereby reaffirms that the rule will not have a significant economic impact on a substantial number of small entities. Because this final rule, if implemented, will not have

a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Dolphin, Fisheries, Fishing, Trip limits.

Dated: December 22, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS amends 50 CFR part 622 as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.278, revise paragraph (a) to read as follows:

§ 622.278 Commercial trip limits.

* * * * *

(a) *Trip-limited permits*--(1) *Atlantic wahoo*. (i) The trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) See § 622.280(b)(1) for the limitations regarding wahoo after the ACL is reached.

(2) The trip limit for a vessel that does not have a Federal commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery is 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N. lat. (A charter vessel/headboat permit is not a commercial vessel permit.)

(3) *Atlantic dolphin*. (i) Once 75 percent of the ACL specified in § 622.280(a)(1)(i) is reached, the trip limit is 4,000 lb (1,814 kg), round weight. When the conditions in this paragraph (a)(3)(i) have been met, the Assistant Administrator will implement this trip limit by filing a notification with the Office of the Federal Register. This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) See § 622.280(a)(1) for the limitations regarding dolphin after the ACL is reached.

* * * * *

[FR Doc. 2016-31463 Filed: 12/29/2016 8:45 am; Publication Date: 12/30/2016]