



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210224-0029]

RIN 0648-BK22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery off the Atlantic States; Amendment 12

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 12 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin Wahoo FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would add bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP and designate them as ecosystem component (EC) species. The purpose of this proposed rule and Amendment 12 is to acknowledge the ecological role of bullet mackerel and frigate mackerel as forage fish and to achieve the ecosystem management objectives in the Dolphin Wahoo FMP.

DATES: Written comments must be received on or before *[insert date 30 days after date of publication in the*

FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2020-0146," by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2020-0146", in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 12, which includes a

fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <https://www.fisheries.noaa.gov/action/amendment-12-add-bullet-mackerel-and-frigate-mackerel-ecosystem-component-species>.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or email: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery off the Atlantic states 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-Stevens Act).

Background

The Council manages dolphin and wahoo under the Dolphin Wahoo FMP in Federal waters off the Atlantic states from Maine south to the Florida Keys in the Atlantic. In the western North Atlantic, bullet mackerel are found from Cape Cod to the Gulf of Mexico, and frigate mackerel are found mostly from North Carolina to Florida. As described in Amendment 12, both bullet mackerel and frigate mackerel are found in the diets of dolphin and wahoo in the North Atlantic. In particular, wahoo has been demonstrated to have a strong dietary reliance on bullet and frigate mackerel, indicating that these mackerel species are the most dominant forage species observed in the diets of

wahoo. Dolphin tend to have more diverse diets than wahoo and have a lower reliance on these mackerel species as prey. Additionally, bullet and frigate mackerel have been identified as important forage species for other offshore pelagic predatory species in the Atlantic such as blue marlin and yellowfin tuna. Bullet mackerel feed on a variety of prey, especially clupeoids (*i.e.* herrings and sardines), crustaceans, and squids. Frigate mackerel feed on a variety of fish, squid, and small crustaceans. Therefore, given their presence as a common forage fish and prey food source, bullet mackerel and frigate mackerel are an important component of the marine environment in the Atlantic. There is no stock assessment for dolphin, wahoo, bullet mackerel, or frigate mackerel. In Atlantic Federal waters, dolphin and wahoo are targeted both commercially and recreationally. Annual reported commercial and recreational landings of bullet mackerel and frigate mackerel are low along the entire Atlantic coastline.

Regulations implemented under the Magnuson-Stevens Act define EC species as "stocks that a Council or the Secretary has determined do not require conservation and management, but desire to list in a FMP in order to achieve ecosystem management objectives" (50 CFR 600.305(d)(13)). National Standards (NS) General guidelines state that a Council should consider a non-exhaustive list of 10 factors when deciding whether additional stocks require Federal

conservation and management (50 CFR 600.305(c)(1)). The proposed EC designation for bullet and frigate mackerel was recommended to the Council by the Council's Scientific and Statistical Committee (SSC), their Dolphin Wahoo Advisory Panel (AP), and the Habitat Protection and Ecosystem-Based Management (Habitat) AP, and received extensive positive comments from the public during scoping of Amendment 12. The Dolphin Wahoo AP and Habitat AP members acknowledged that wahoo, in particular, target these mackerel species as prey. The AP members also stated that the Council should consider a conservative approach to ensure there are no major increases in the harvest of bullet mackerel and frigate mackerel in the foreseeable future as a result of any EC designation. This designation would address the Council's growing emphasis on developing ecosystem management approaches to fisheries management and advancing ecosystem management objectives in the Dolphin Wahoo FMP.

The extent to which the low landings of bullet mackerel and frigate mackerel occur within the dolphin and wahoo fishery is unknown; however, it is unlikely that these species are often harvested in conjunction with efforts to target dolphin and wahoo, especially in the commercial sector. Bullet and frigate mackerel have largely been landed commercially in the Mid-Atlantic region using gill net, pound net, float trap, and otter trawl gear, none of which are allowable gear types in the dolphin and wahoo

fishery. Recreational landings of bullet and frigate mackerel have largely occurred in the South Atlantic Region, with some limited catches reported from the Mid-Atlantic Region. Furthermore, recreational fishermen have also noted that these species are used as bait for tuna and billfish, such as blue marlin. NMFS and the Council have determined that bullet mackerel and frigate mackerel are currently not in need of conservation and management, making them eligible for consideration as EC species. This preliminary eligibility determination was done after consideration of the provisions within the NS Guidelines and requirements of the Magnuson-Stevens Act. Furthermore, adding bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP as EC species meets the FMP's ecosystem management objectives (50 CFR 600.305(c)(5) and 600.310(d)(1)).

Management Measures Contained in this Proposed Rule

This proposed rule would add bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP and designate them as EC species. This proposed rule would add no additional management measures to the Dolphin Wahoo FMP as a result of this EC species designation, either for bullet and frigate mackerel, or for dolphin and wahoo.

The proposed rule could be expected to result in potential indirect benefits such as increased awareness among the fishermen, fishing communities, data collecting

agencies, and regulatory entities managing dolphin, wahoo, bullet mackerel, and frigate mackerel. If landings for these two mackerel species were to greatly increase in the future to unsustainable levels, fisheries managers could be made aware of the changing stock status before the stocks are depleted, which may have subsequent beneficial effects on populations of several economically important predatory fish species, including dolphin, wahoo, blue marlin, and yellowfin tuna.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 12, the Dolphin and Wahoo FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are

contained in the preamble and in the **SUMMARY** section of this proposed rule. The objective of this proposed rule is to acknowledge the ecological role of bullet mackerel and frigate mackerel as forage fish in general and specifically as prey for wahoo.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows.

This proposed rule, if implemented, would add bullet mackerel and frigate mackerel to the Dolphin and Wahoo FMP as EC species. Even though this proposed rule would alter the existing regulations to indicate that bullet mackerel and frigate mackerel are EC species in the Dolphin and Wahoo FMP, it would not implement any new management measures, and, therefore, is administrative in nature. As such, this proposed rule would not directly regulate any small entities.

Because this proposed rule, if implemented, is not expected to directly regulate any small entities, it is not expected to affect a substantial number of small entities. Further, because no entities are expected to be affected by this proposed rule, the profits of small entities are also not expected to change, and thus no economic impacts on

small entities are expected.

Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Atlantic, Dolphin, Ecosystem species, Fisheries, Fishing, Wahoo.

Dated: February 24, 2021.

Samuel D. Rauch, III

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

For the reasons set out in the preamble, 50 CFR part 622, is proposed to be amended 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. Add Table 6 to Appendix A to part 622 to read as follows:

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Appendix A to Part 622 - Species Tables

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**TABLE 6 OF APPENDIX A TO PART 622--ATLANTIC DOLPHIN AND
WAHOO**

Dolphin, *Coryphaena equiselis* or *Coryphaena hippurus*

Wahoo, *Acanthocybium solandri*

The following species are designated as ecosystem component
species:

Bullet mackerel, *Auxis rochei*

Frigate mackerel, *Auxis thazard*