

certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR

8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective January 2, 2004.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Incorporation-by-reference, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 21, 2003.

Kerrigan G. Clough,

Acting Regional Administrator, Region VIII.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 031007250-3250-01; I.D. 091503E]

RIN 0648-A063

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the Fishery Management Plan for the Dolphin and Wahoo Fishery off the Atlantic States (FMP). For the dolphin and wahoo fishery in the exclusive economic zone (EEZ) off the Atlantic states (Maine through the east coast of Florida), this proposed rule would require vessel owners to obtain commercial vessel and charter vessel/headboat permits and submit reports; operators of commercial vessels, charter vessels, and headboats to obtain operator permits; and dealers to obtain permits and submit reports; establish bag and trip limits and a minimum size limit (dolphin only); close the longline fisheries in areas closed to the use of such gear for highly migratory pelagic species; prohibit sale without a commercial vessel permit; specify allowable gear; and establish a framework procedure by which the South Atlantic Fishery Management Council (Council) could establish and modify certain management measures in a timely manner. In addition, the FMP would specify maximum sustainable yield (MSY), optimum yield (OY), the determinants of overfishing (maximum fishing mortality threshold (MFMT)) and overfished (minimum stock size threshold (MSST)), the management unit, the fishing year, and essential fish habitat (EFH) and EFH habitat areas of particular concern (EFH-HAPCs). The intended effects are to conserve and manage dolphin and wahoo and to ensure that no new fisheries for dolphin and wahoo develop.

DATES: Comments on this proposed rule must be received no later than 5 p.m., eastern time, on December 18, 2003.

ADDRESSES: Copies of the FMP may be obtained from the South Atlantic Fishery Management Council, One

Southpark Circle, Suite 306, Charleston, SC 29407-4699; phone: 843-571-4366; fax: 843-769-4520; e-mail: safmc@noaa.gov. The FMP includes a Final Environmental Impact Statement (FEIS), an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

Written comments on this proposed rule must be mailed to Steve Branstetter, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Robert Sadler, Southeast Region, NMFS, at the above address, and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, phone: 727-570-5305, fax: 727-570-5583, e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Council prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Landings of dolphin and wahoo from Atlantic waters have increased in recent years. Given that the Atlantic dolphin and wahoo fishery is historically a recreational fishery, concern was raised when commercial landings in the Atlantic increased, due in part to an increasing number of longliners that were targeting dolphin or modifying their fishing practices so that dolphin and wahoo constituted a greater portion of their catch. In addition, additional longline effort may be directed to the Atlantic dolphin and wahoo fishery due to closures in the fishery for highly migratory species. The Council is concerned that an increase in landings of dolphin and wahoo could result in localized depletion of stocks and a shift in the historical levels of catch between commercial and recreational fishermen. Accordingly, through the FMP, the Council is adopting a precautionary and risk-averse approach to management that will maintain the current harvest level of dolphin and wahoo and ensure that no new fisheries for these species develop in the EEZ off the Atlantic states (Atlantic EEZ).

Permits

Information obtained on permit applications and from vessel and dealer reporting would provide baseline data on participants and the activities of vessels and dealers in the Atlantic dolphin and wahoo fishery that currently are not available. Such data are essential to further information collection efforts and the formulation of sound management measures for the fishery.

Commercial Vessel Permits

To be eligible for exemption from the bag and possession limits for dolphin and wahoo in the Atlantic EEZ, or to sell dolphin and wahoo harvested in the Atlantic EEZ, this proposed rule would require a vessel to have on board a Federal commercial permit for Atlantic dolphin and wahoo, effective 120 days after the final rule containing the permit requirements is published. As an exception to this permit requirement, a vessel with a Federal commercial permit in a fishery other than the Atlantic dolphin and wahoo fishery would have a 200-lb (91-kg) trip limit, in lieu of a bag and possession limit, and would be allowed to sell dolphin or wahoo, provided that all fishing on and landings from that trip were north of 39° N. lat.

NMFS would issue an Atlantic dolphin and wahoo commercial permit for a vessel that has a Federal commercial permit for king mackerel, South Atlantic snapper-grouper, or Atlantic swordfish or for a vessel whose owner meets both the earned income requirement and the landings requirement. An owner would meet the earned income requirement if he or she derived at least 25 percent of earned income or at least \$10,000 from commercial fishing (i.e., the harvest and first sale of fish) or from charter/headboat fishing during one of the 3 calendar years 1996, 1997, or 1998. An owner would meet the landings requirement if he or she owned a vessel that landed and sold at least 250 lb (113 kg) of dolphin and/or wahoo harvested from the Atlantic during one of the 3 calendar years 1996, 1997, or 1998, or during the period January 1, 1999, through May 21, 1999.

If a vessel has a Federal commercial vessel permit issued by the Regional Administrator, Southeast Region, NMFS (RA) in the king mackerel, South Atlantic snapper-grouper, or swordfish fishery, dolphin and wahoo would be added to the fisheries for which the permit is valid upon written request to the RA from the owner or operator for such addition.

An owner of a vessel who desires a commercial vessel permit based on the earned income and landings requirements would be required to obtain a permit application form from, and submit it to, the RA. Information on the application form and accompanying documentation would consist of the standard information and documentation required for commercial vessel permits issued by the RA, as specified at 50 CFR 622.4(b)(3). Such information and documentation would not be required if they are available to the RA through a valid permit issued in another fishery. The landings requirement would have to be documented by a listing of landings by date, species, amount, and dealer. Only qualifying landings verified by reports received or dealer records dated on or before June 21, 1999, by the following would qualify: (1) Fishing vessel logbooks received by the Science and Research Director of either the NMFS' Southeast or Northeast Fisheries Science Centers; (2) state trip ticket systems; or (3) for landings not covered by vessel logbook or state trip ticket system requirements, dealer records accompanied by signed affidavit(s). NMFS believes that restricting verification of landings to these three modes would ensure that documentation is consistent with applicable reporting requirements, and, where no reporting requirements existed, would provide a practical alternative with reasonable verification, i.e., dealer records with signed affidavits. This approach should accommodate qualification consistent with Council intent, while minimizing the potential for fraudulent documentation of landings. Dealer records must definitively show dates and amounts of landings of the species known as dolphin and/or wahoo and the vessel's name, official number, or other reference that clearly identifies the vessel. Dealer records must contain a sworn affidavit by the dealer confirming the accuracy and authenticity of the records. A sworn affidavit is a written statement wherein the individual signing the affidavit affirms that the information presented is accurate and can be substantiated, under penalty of law. Only landings that were harvested, landed, and sold in compliance with state and Federal regulations would be used to establish eligibility.

Charter Vessel/Headboat Permits

To possess a dolphin or wahoo in or from the Atlantic EEZ on board a charter vessel or headboat, this proposed rule would require that a valid Federal charter vessel/headboat permit for

Atlantic dolphin and wahoo be on board that vessel, effective 120 days after the final rule containing the permit requirements is published. There would be no earned income or landing requirements for these charter vessel/headboat permits.

The owner of a vessel who desires a charter vessel/headboat permit for the Atlantic dolphin and wahoo fishery would be required to obtain a permit application form from, and submit it to, the RA.

An owner of a charter vessel or headboat who desires to sell dolphin would be required to obtain a commercial vessel permit for dolphin and wahoo in addition to the charter vessel/headboat permit. (The sale of wahoo harvested in the Atlantic EEZ by a vessel operating as a charter vessel or headboat would not be allowed.)

Operator Permits

To enhance enforcement of fishery regulations, this proposed rule would require an operator of a commercial vessel or a charter vessel/headboat in the Atlantic dolphin and wahoo fishery to obtain a permit, effective 180 days after the final rule that contains this measure is published. "Operator" is defined as the master or other individual aboard and in charge of a vessel. Each vessel that has a Federal commercial vessel or charter vessel/headboat permit for the Atlantic dolphin and wahoo fishery would be required to have on board at least one person who has a valid operator permit when the vessel is at sea or offloading. In addition to penalties that currently exist for violations of the regulations, an operator permit could be sanctioned. For example, a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 would not be allowed aboard any vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. To enhance enforceability of this measure, a vessel's owner and operator would be responsible for ensuring that a person with such a suspended, revoked, or modified operator permit is not aboard his/her vessel. A list of persons whose operator permits are revoked, suspended, or modified would be readily available from the RA.

The RA would mail application forms to owners of vessels with permits for the Atlantic dolphin and wahoo fishery and applications also would be available from the RA upon request. Information required on an application would include name, address, and other identifying information, such as date of

birth, height, weight, and hair and eye color, of the applicant, and other information necessary for the issuance or administration of the permit. In addition, each applicant would be required to provide two recent (no more than 1-yr old) color, passport-sized photographs. In general, an operator permit would be valid for a 3-year period (i.e., from the operator's birth month in year X through the operator's birth month in year X+3). However, there are two instances in which the period of validity would probably not be 3 years—when an initial permit is issued and when a permit is not renewed immediately upon its expiration (birth month in year X+3). An initial permit or a permit not renewed immediately upon its expiration would expire at the end of the operator's birth month that is between 2 and 3 yr after issuance.

An operator of a vessel in the Atlantic dolphin and wahoo fishery would be required to present his/her operator permit for inspection upon the request of an authorized officer. Because an operator permit is a Federal picture identification card issued without verification of the information on the application, the operator would be required to also present one other form of personal identification that includes a picture. Otherwise, an operator whose permit had been revoked could use an additional operator permit obtained under an assumed name.

Dealer Permits

This rule would require a dealer of dolphin or wahoo to obtain a dealer permit for such species, effective 120 days after the final rule that contains this measure is published. "Dealer" is defined as a person who first receives dolphin or wahoo by way of purchase, barter, or trade or who first receives dolphin or wahoo harvested from the Atlantic EEZ upon transfer ashore. To obtain such permit, the applicant would have to have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and have a physical facility at a fixed location in such state(s). A dealer who desires a dealer permit for the Atlantic dolphin and wahoo fishery would be required to obtain a permit application form from, and submit it to, the RA.

Effective Dates for Permitting Requirements

As noted above, commercial vessel, charter vessel/headboat, and dealer permits would be required in the fishery 120 days after the final rule containing these measures is published. Operator permits would be required 180 days

after the final rule is published. These time periods are considered adequate for vessel owners, vessel operators, and dealers currently in the fishery to obtain applications, collect necessary data, if required, and complete and submit applications and for the RA to process the applications and issue permits.

Fees

As specified at 50 CFR 622.4(f), a fee would be charged for each application for a permit or written request for change in a permit. The applicable fee would be specified on the appropriate form.

Vessel Identification

This proposed rule would require that a vessel with a Federal commercial vessel or charter vessel/headboat permit for the Atlantic dolphin and wahoo fishery display and maintain its official number in the manner prescribed at 50 CFR 622.6(a). The requirements at 50 CFR 622.6(a) apply to all vessels that have been issued permits by the RA.

Recordkeeping and Reporting

This proposed rule would require owners or operators of vessels (commercial and charter vessel/headboat) and dealers, who have permits for Atlantic dolphin and wahoo and are selected by the Science and Research Director (SRD) of the Northeast or Southeast Fisheries Science Center, to submit reports. Forms and accompanying instructions for such reporting would be available from the SRD.

The Council may also receive from the Atlantic Coastal Cooperative Statistics Program additional information necessary for effective management of the fishery.

Minimum Size Limits

Most dolphin are mature by the time they reach a size of 18 inches (45.7 cm), and all are mature by the time they reach 24 inches (61.0 cm). Florida and Georgia have minimum size limits for dolphin within their jurisdictions of 20 inches (50.8 cm), fork length. A corresponding minimum size limit in the EEZ off Florida and Georgia would prevent the targeting of small dolphin, discourage waste by overharvest and discard, and enhance enforceability of Florida's and Georgia's minimum size limits. Accordingly, this proposed rule would establish a minimum size limit for dolphin in or from the EEZ off Georgia and Florida of 20 inches (50.8 cm), fork length.

Bag and Possession Limits

Dolphin

This proposed rule would establish daily bag and possession limits of dolphin in or from the Atlantic EEZ of 10 per person or 60 per vessel, whichever is less, except, on board a headboat, 10 per paying passenger. These bag and possession limits would reduce the practice of harvesting large quantities or entire schools of small, immature dolphin. Given the rapid growth rate of dolphin, an increase in overall yield of the fishery would be expected by a delay in catch of even a few months.

Wahoo

This proposed rule would establish a daily bag and possession limit of wahoo in or from the Atlantic EEZ of 2 per person. The 2-fish bag and possession limit would reduce the potential for excessive harvest of wahoo and promote a conservation ethic in the fishery.

Commercial Trip Limits

Commercial trip limits are limits on the amount of fish that can be possessed on board a vessel or landed at any time. The following trip limits would be applicable to a vessel that has a commercial permit for Atlantic dolphin and wahoo and is not operating as a charter vessel or headboat:

Dolphin – 3,000 lb (1,361 kg) north of 31° N. lat. and 1,000 lb (454 kg) south of 31° N. lat.

Wahoo – 500 lb (227 kg).

The trip limit for a fishing vessel, except for a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery would be 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip were north of 39° N. lat. (A charter vessel/headboat permit is not a commercial vessel permit.) A vessel operating as a charter vessel or headboat must comply with the bag limits.

As is the case with other commercial trip limits, transfer at sea of dolphin or wahoo would not be permitted. In addition, dolphin and wahoo would be allowed to be eviscerated, but would be required to be maintained with head and tail intact. For the purpose of determining compliance with the commercial trip limits, weights would be calculated based upon the legal form in which the fish are possessed or landed, i.e., round, eviscerated, or any combination thereof. The proposed trip limits are intended to cap the

commercial fisheries without unduly affecting historical catches.

Closed Areas

The principal gear used in the commercial fishery for dolphin and wahoo is pelagic longline, similar to the gear used extensively for Atlantic highly migratory species (HMS) (Atlantic tunas, billfish, sharks, and swordfish). Regulations at 50 CFR Part 635 prohibit the use of pelagic longlines at certain times and areas in the Atlantic EEZ by vessels that have Federal permits for HMS. These time/area closures were implemented because observer data and vessel logbooks indicate that pelagic longline fishing for Atlantic swordfish and tunas results in catch of non-target finfish species such as bluefin tuna, billfish, and undersized swordfish, and of protected species, including threatened and endangered sea turtles. Also, pelagic longline gear incidentally hooks marine mammals and sea birds. The incidental catch of animals that are hooked but not retained due to economic or regulatory factors contributes to overall fishing mortality, which may significantly impair rebuilding of overfished finfish stocks or the recovery of protected species. Continued use of pelagic longline gear for dolphin and wahoo during times and in areas where such gear is not allowed for HMS would subvert the management goals of the time/area closures. Accordingly, this proposed rule would apply the time/area closures applicable to the HMS fishery in the Atlantic EEZ to the fishery for Atlantic dolphin and wahoo. These areas are the Northeastern United States closed area, closed from June 1 through June 30 each year; the Charleston Bump closed area, closed from February 1 through April 30 each year; and the East Florida Coast closed area, closed year round.

Restrictions on Recreational Sale

This proposed rule would prohibit the sale of dolphin and wahoo caught in a recreational fishery, except that dolphin caught aboard a charter vessel or headboat that has both charter vessel/headboat and commercial vessel permits could be sold. However, a vessel with both a charter vessel/headboat permit and a commercial permit but operating as a charter vessel or headboat cannot sell dolphin in excess of the bag limit. The Council concluded that dolphin and wahoo are so important to the recreational sector that prohibiting sale of dolphin and wahoo caught by that sector would reduce overexploitation and excessive targeting for sale. In addition, it would eliminate a significant amount of concern that

commercial fishermen must adhere to food quality standards and vessel safety requirements that recreational fishermen who sell fish caught under a bag limit can avoid. The exception for dolphin caught under the bag limit on board vessels operating as charter vessels or headboats would recognize an historical practice that has been economically significant for such vessels. These for-hire vessels would only be allowed to sell bag-limit caught fish if they possess both charter vessel/headboat and commercial vessel permits. The requirement of a commercial vessel permit, which has reporting requirements associated with it, would provide for better reporting and documentation of landings and sales of dolphin and wahoo by this segment of the fishery.

Authorized Gear

Under this proposed rule, the following would be the only authorized gear types in the fisheries for dolphin and wahoo in the Atlantic EEZ: Automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that had on board gear types other than authorized gear types would not be allowed to possess a dolphin or wahoo. NMFS would evaluate new gear if and when appropriate.

The proposed authorized gear types include virtually all gear types currently used in the dolphin/wahoo fishery. Specifying allowable gear would discourage introduction of new gear into the fishery. The introduction of new gear could exacerbate the potential for localized depletion, increased bycatch, and problems associated with conflict/competition between gear types.

Framework Procedure for Management Measures

This rule proposes a framework procedure by which adjustments could be made in a timely manner to the management measures applicable to the Atlantic dolphin and wahoo fishery. The adjustment procedure is virtually identical to that currently in effect for the management of snapper-grouper, wreckfish, and golden crab in the South Atlantic EEZ and is discussed at length in the FMP. These measures include: Biomass levels, age-structured analyses, MSY, OY, ABC, TAC, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing definitions and other status determination criteria, time frame for

recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for the RA to close a fishery when a quota is reached or is projected to be reached or reopen a fishery when additional quota becomes available, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

Additional Measures in the FMP

In addition to the measures described above, for the management of dolphin and wahoo the FMP would specify the management unit and fishing year, EFH, and EFH-HAPC as follows:

Management unit – The population of dolphin (*Coryphaena equiselis* or *C. hippurus*) and wahoo (*Acanthocybium solandri*) in the Atlantic EEZ and in adjoining state waters.

Fishing year – January 1 through December 31.

EFH – The Gulf Stream, Charleston Gyre, Florida Current, and Pelagic Sargassum.

EFH-HAPC – Off North Carolina: the Point, Ten-Fathom Ledge, and Big Rock; off South Carolina: the Charleston Bump and Georgetown Hole; off Florida: the Point off Jupiter Inlet, the Hump off Islamorada, Marathon Hump, and the Wall off the Keys; and in the Atlantic EEZ: Pelagic Sargassum.

The FMP would also specify MSY, OY, MFMT, MSST. Because data for these values are not discrete for Atlantic dolphin and wahoo, they are based on dolphin and wahoo in the Atlantic, U.S. Caribbean, and Gulf of Mexico and are as follows:

MSY: Dolphin – Between 18.8 and 46.5 million lb (8.5 and 21.1 million kg).

Wahoo – Between 1.41 and 1.63 million lb (.64 and .74 million kg).

OY: Dolphin – Between 14.1 and 34.9 million lb (6.4 and 15.8 million kg).

Wahoo – Between 1.41 and 1.63 million lb (.64 and .74 million kg).

MFMT: Dolphin and wahoo – A fishing mortality rate (F) in excess FMSY(F30%Static SPR).

MSST: Dolphin and wahoo – A ratio of current biomass ($B_{current}$) to biomass at MSY or (1-M) times B_{MSY} , where 1-M should never be less than 0.5.

In addition, the FMP would establish an annual cap of 1.5 million lb (.68 million kg) or 13 percent of total landings, whichever is greater, for the commercial fishery for dolphin in the Atlantic EEZ. Should the catch exceed this level, the Council would review data and evaluate the need for additional regulations.

Availability of the FMP

Additional background and rationale for management of dolphin and wahoo

are contained in the FMP. The availability of the FMP was announced in the **Federal Register** on September 26, 2003 (68 FR 55573). Written comments on the FMP must be received by November 25, 2003. In the preamble to the final rule, NMFS will address all comments received on the FMP or on this proposed rule that are received during their respective comment periods.

Classification

At this time, NMFS has not determined that the FMP is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an IRFA, based on the RIR, for this proposed rule. A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The objectives of the proposed rule are to address local reduction in fish abundance, market disruption, inter-sector conflict and reduced social and economic benefits. The proposed rule would create permit requirements and trip, bag and size limits; specify allowable gear; place restrictions on recreational sales; and establish reporting requirements. In addition, the FMP would establish biological parameters that would not appear in codified text.

No duplicative, overlapping, or conflicting Federal rules have been identified.

Approximately 1,700–3,300 vessels and/or Florida Saltwater Product Licenses (SPLs) were identified with logbook- or trip-ticket reported commercial landings of dolphin and wahoo on the U.S. Atlantic coast during at least one year of the 1996–2002 period. This period of assessment is relevant since it allows identification of permit qualifiers based on fishery participation during the January 1, 1996, through May 21, 1999, period, as well as identification of current participants that would not be expected to qualify for a permit. On average, the annual gross revenue by these entities varied from \$4,000 to \$123,000. Of these vessels, the larger vessels participate in the Atlantic Highly Migratory Species (HMS) longline fishery and landed approximately ten times as much dolphin and wahoo as the smaller Southeast coastal fisheries vessels and the Florida SPLs. The smaller vessels,

however, were relatively more dependent on revenue from the harvest of dolphin and wahoo.

The proposed rule would establish four types of permits to allow continued operation in the dolphin or wahoo fishery: a dealer permit, a commercial vessel permit, a for-hire vessel (charter vessel or headboat) permit, and an operator permit for either commercial or for-hire vessels. A for-hire vessel could possess both a commercial vessel permit and a for-hire vessel permit if qualifying criteria for both permits were met.

Approximately 1,300 vessels are expected to qualify for the commercial vessel dolphin-wahoo permit. This total includes strictly commercial vessels as well as those for-hire vessels that meet the commercial vessel permit requirements. All of these 1,300 vessels have documented Atlantic coast landings of dolphin and wahoo, and most would qualify on the basis of already having Federal permits for commercial fishing in the EEZ for snapper-grouper, king mackerel, or swordfish, as specified in the proposed FMP. An owner may also qualify for a commercial vessel permit if he/she derived at least 25 percent of his/her earned income, or at least \$10,000, from commercial or for-hire fishing, during one of the 3 calendar years 1996, 1997, or 1998, and the owner can document that he/she owned a vessel that landed and sold at least 250 lb (113 kg) of dolphin and/or wahoo harvested from the Atlantic during one of the 3 calendar years 1996, 1997, 1998, or during the period January 1, 1999, through May 21, 1999. Among the estimated 1,300 vessels discussed above, there are only a few that are expected to qualify for a commercial permit on the basis of meeting the 250-lb (113-kg) and \$10,000 criteria of the proposed rule. The number of vessels that may qualify under the 250-lb (113-kg) and 25-percent earned income from fishing criteria cannot be determined since information on total earned income is unavailable at this time.

As many as 900 additional vessels would qualify for a commercial vessel permit on the basis of having federal permits for commercial fishing in the EEZ for snapper-grouper, king mackerel, or swordfish. However, these vessels do not have documented Atlantic coast landings of dolphin or wahoo, and, therefore, there may be no incentive to obtain a permit, although applications might be submitted for speculative purposes. The number of vessels with snapper-grouper, king mackerel, or swordfish permits has declined over time because each of these three permits is either under a moratorium or limited

access program, and no new vessels can enter the fisheries, except via transfer and purchase of existing permits.

There are 387–1,998 entities with logbook or trip-ticket reported commercial landings of dolphin and wahoo on the U.S. Atlantic coast during at least one year of the 1996–2002 period that are not expected to qualify for a commercial vessel dolphin and wahoo permit as a result of their inability to meet either the harvest or income requirements.

In addition to the commercial entities discussed above, approximately 6,800 for-hire vessels on the U.S. Atlantic coast could obtain a for-hire vessel permit to harvest and possess, but not sell, dolphin and wahoo caught in the U.S. Atlantic EEZ. Average revenues for charter vessels are estimated at \$26,000–\$69,000, while average revenues for headboats are estimated at \$123,000–\$300,000.

To obtain a commercial vessel permit, information must be provided to establish qualification, such as information on total earned income and fishing income in 1996, 1997, or 1998, and landings of dolphin and wahoo during the period January 1, 1996, through May 21, 1999. All of the required information is common in the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. A dealer permit requires possession of a state dealer's license and proof that the applicant has a physical facility at a fixed location in the state where the state license is issued. The dealer, if selected by the Science and Research Director, must additionally report data needed to monitor the dolphin and wahoo fisheries. Qualification for a for-hire permit simply requires an application. The requirements for the various permits and reporting do not require professional skills, and, therefore, may be deemed not to be onerous on the affected participants.

There are two general classes of small business entities that would be directly affected by the proposed rule: commercial fishing vessels and for-hire (charter vessel or headboat) fishing vessels. The Small Business Administration defines a small business that engages in the charter fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to \$6.0 million per year. The revenue benchmark for a small business that engages in commercial fishing is a firm with receipts up to \$3.5 million. Based on the revenue profiles provided above, all commercial and for-hire entities

operating in the dolphin and wahoo fisheries are considered small entities. Although the proposed rule will apply to all entities that operate in the dolphin and wahoo fisheries, the proposed rule is expected to adversely impact from 23–60 percent of entities currently operating in the fisheries (the 387–1,998 entities that are not expected to qualify for a permit).

On average, the losses for the 387–1,998 entities that are not expected to qualify for the commercial vessel permit are estimated at 4–32 percent of annual gross revenue. The dollar loss in gross revenue translates into loss in vessel profit, assuming no change in prices, trip costs, and fishing effort. Individually, these non-qualifying entities had annual gross revenues from fishing that ranged from less than \$10 to \$70,000 or more, and annual landings of dolphin and wahoo that ranged from less than 10 lb (4.5 kg) to 4,000 lb (1814 kg) or more. It is estimated that 58–476 out of the 387–1,998 entities that are not expected to qualify for a permit could be driven out of business, following a 50 percent-loss-in-gross criterion.

The requirements for the dealer, for-hire vessel, and operator permits are not expected to restrict qualification for these permits. Costs of this proposed alternative will be limited to the permit fee, which is not onerous and is not expected to substantially affect business profits.

Thirty-three of 201 vessels in the HMS longline fishery recorded trips in the area where the proposed 3,000–lb (1361–kg) dolphin trip limit would apply with landings in excess of the proposed limit, while 53 of 1,076 vessels in the Southeast coastal fishery recorded trips in the area where the proposed 1,000–lb (454–kg) trip limit would apply with landings in excess of the proposed limit. Among Florida SPLs, 54 of 2,697 SPLs recorded trips exceeding the 1,000–lb (454–kg) trip limit. As a result of the proposed limits, the HMS longline vessels could experience losses in annual gross revenue of approximately \$2,100–\$3,100, while the vessels in the Southeast coastal fishery and Florida SPLs could experience losses in annual gross revenue of approximately \$800–\$6,100. The dollar loss in gross revenue translates into a dollar loss in annual profit, assuming no change in prices, costs and fishing effort. The annual gross revenue for the impacted vessels averaged \$185,000 per vessel for the HMS longline fishery, and \$14,000–\$33,000 for the Southeast coastal fishery vessels and Florida SPLs. The projected losses, therefore, equate to 1–2 percent for impacted vessels in the HMS

longline fishery and 8–18 percent for impacted Southeast coastal vessels and impacted Florida SPLs.

The proposed alternative for wahoo commercial trip limits is expected to reduce gross revenues by 6–8 percent for 10 vessels. This dollar loss in annual gross revenues, \$500–\$1,400 per vessel, translates directly into a loss in profits assuming no change in prices, trip costs and fishing effort.

The proposed alternative for allowable gear is expected to reduce fishery profits for an unknown number of vessels by \$11,000 a year (total reduction for all such vessels combined). Since available data do not allow the identification of the number of vessels this would impact, it is not possible to determine the average annual revenues of these vessels and, thus, it is not possible to determine the significance of this action with certainty. However, since the total impact is so small, the impact of this measure is not expected to be significant.

The proposed alternative to prohibit the sale of recreationally caught dolphin and wahoo, except for for-hire vessels that possess the necessary state and Federal commercial permits, is not expected to adversely impact gross revenues or profits of small entities. Available data suggest that sales by for-hire vessels are from legally permitted commercial vessels. Further, there is no evidence to indicate that angler demand for for-hire services will decline as a result of recreational sales restrictions.

The proposed alternative to establish a framework procedure is not expected to have any direct impacts on participants or profits since it merely establishes a structure for future action. Additionally, the proposed alternative to establish the fishing year will have no impact on fishing behavior and, therefore, have no impact on business profits.

The impact of the proposed alternatives to establish recreational dolphin and wahoo bag limits, and recreational dolphin minimum size limits on for-hire profits cannot be determined. Although the proposed bag and size limits are expected to restrict the harvest behavior of some recreational anglers, there are insufficient data to establish the impact of these measures on angler demand for for-hire services and, hence, revenues or profits.

The proposed dolphin minimum size limit is expected to reduce ex-vessel revenues of commercial fishing operations that operate off Georgia and Florida by approximately 3 percent. In itself, this is not expected to be

significant. It cannot be determined, however, how this restriction will interact with the proposed trip limits.

The proposed prohibition of surface and pelagic longline gear for dolphin and wahoo during time and area closures in the South Atlantic is not expected to result in any reduction in profits for current participants. It is not expected that any vessels would attempt to operate in this manner since they would have to give up their more valuable Highly Migratory Species permit in order to do so. Available data indicate that vessels cannot profitably operate exclusively for dolphin and wahoo.

Among the 14 separate actions in the proposed rule, 11 are not expected to result in significant economic impacts. Seven of the 11 actions have only two alternatives, the proposed action and status quo, and they have previously been discussed. For the four alternatives with more than two alternatives, the alternatives are as follows:

The rejected alternatives respecting the sale of recreationally-caught fish include (1) unregulated sale (no-action alternative), (2) a 3–5 year phase out of sale by for-hire vessels with necessary commercial permits, and (3) no sale, whereas the preferred alternative would allow sale by for-hire vessels with the necessary commercial permits. The proposed alternative would have less economic impact on small entities than the 3–5 year phase out and no-sale alternatives. Compared with the no-action alternative, the proposed alternative is not expected to have a significant economic impact on for-hire vessels. Available data suggests that sales by for-hire vessels are from legally permitted commercial vessels. Further, there is no evidence to indicate that angler demand for for-hire services will decline as a result of the sales restrictions. NMFS determined that the proposed alternatives would best meet FMP objectives.

To limit the possession and landing of dolphin and wahoo that are recreationally caught in the Atlantic EEZ, bag and/or boat limits are proposed. For dolphin, the rejected alternatives would provide (1) no bag or boat limit (no-action alternative), (2) a boat limit of 18–60 fish, (3) a daily bag limit of 5–10 fish per person, excluding captain and crew on for-hire vessels, or (4) a daily bag limit of 10 fish per person or 60 fish per boat, whichever is less (with the 60 fish boat limit not applying north of 39° North (Delaware Bay, Delaware). The proposed alternative would establish a bag limit of 10 fish per person per day, or 60 fish per vessel, whichever is less, with the vessel limit

not applying to headboats. For wahoo, the rejected alternatives would provide (1) no bag limit (no action alternative), or (2) a bag limit of 2 fish per person per day, excluding captain and crew, whereas the proposed alternative would establish a bag limit of 2 fish per person per day.

Respecting the minimum size (fork length) for possession and landing of dolphin that is caught in the Atlantic EEZ, the rejected alternatives would provide (1) no minimum size (no-action alternative), or (2) an 18–24 inch minimum size, whereas the preferred alternative would establish a 20 inch minimum size for Florida and Georgia, and no minimum size limit farther north.

Compared with the respective no-action alternatives, the impact of other alternatives to establish recreational dolphin and wahoo bag limits, and dolphin minimum size limits on for-hire profits cannot be determined. Although the proposed bag and size limits are expected to restrict the harvest behavior of some recreational anglers, there is insufficient data to establish the impact of these measures on angler demand for for-hire services and, hence, revenues or profits. None of these actions is expected to have a significant economic impact on for-hire vessels. While the preferred alternative for minimum size limits for dolphin is expected to reduce ex-vessel revenue in Georgia and Florida for commercial vessels when compared with the no-action option, the economic impact on small entities is not expected to be significant. The proposed action covers just the EEZ off Georgia and Florida, whereas the rejected alternatives would apply to the entire Atlantic EEZ. The rejected alternative would cover a larger area than the proposed action and, therefore would be more restrictive. Further, although an 18- or 19-inch minimum size limit would be less restrictive than the proposed 20-inch minimum size, the rejected alternative would also allow for a minimum size limit that is more restrictive than the proposed action, i.e., limits greater than 20 inches. NMFS determined that the respective proposed alternatives for the bag and size limits would best meet FMP objectives.

The proposed alternatives that specify the requirement for and qualifications of the commercial permit and establish the commercial wahoo trip limit are expected to cause direct negative economic impacts, as described above, but have only status quo measures (no-action alternative) as considered alternatives. Since maintaining the status quo would impose no new restriction, the adverse impacts of the

proposed measures would be eliminated/avoided. However, the status quo alternatives would not meet the Council's objectives.

The proposed alternative that establishes the commercial dolphin trip limit is expected to cause direct negative economic impacts, as described above, and has, in addition to a no-action alternative, an alternative that would specify a trip limit of from 1,000 to 5,000 lb (454 to 2,268 kg). Depending upon the amount specified, the 1,000–5,000 lb (454–2,268 kg) trip limit may have more or less negative economic impact than the proposed 1,000/3,000–lb (454/1,361–kg) trip limit, which is expected to result in an annual loss of \$96,000. A 1,000–lb (454–kg) trip limit would result in an expected loss of \$157,000 per year, while 3,000–lb (1,361–kg) and 5,000–lb (2,268–kg) trip limits will result in losses of \$50,000 and \$22,000 per year, respectively. Thus, the proposed alternative will result in a lower loss than a 1,000–lb (454–kg) limit, while the 3,000–lb (1,361–kg) limit will reduce the annual loss by \$46,000 and the 5,000–lb (2,268–kg) limit will reduce the annual loss by \$74,000. NMFS concluded, however, that the more liberal limits would not best achieve the goals of the FMP.

In conclusion, the proposed rule would affect all entities that operate in the dolphin and wahoo fisheries and all such entities are small entities. Further, the proposed rule is expected to adversely impact from 23–60 percent of the small entities currently operating in the commercial dolphin and wahoo fishery. Those entities expected to be adversely impacted by the proposed rule are expected to experience, on average, an estimated 4–32 percent reduction in annual gross revenue. These losses are expected to result in 58–476 vessels potentially being driven out of business, following a 50 percent-loss-in-gross criterion. Additionally, the approximate 1,300 vessels/SPLs that are projected to qualify for the proposed permit are expected to experience losses in profits of 1–18 percent attributable to the proposed dolphin trip limits.

Copies of the IRFA and RIR are available upon request (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and

that have been submitted to OMB for approval. These requirements and the estimated public reporting burden for them are: 20 minutes for a charter vessel/headboat permit application or commercial vessel permit application; 60 minutes for commercial vessel records including a listing of landings; 5 minutes for a request to add the commercial vessel permit or charter vessel permit to a vessel already holding other vessel permits; 5 minutes for a dealer permit application; 60 minutes for an operator permit application; 12 minutes for a vessel catch and effort report; 2 minutes per form to prepare a no-fishing report; and 15 minutes for a dealer monthly report of dolphin and wahoo receipts and prices.

The requirement for a commercial vessel or charter vessel/headboat permit automatically makes the permit holder subject to a requirement that the vessel display its official number. This requirement has also been submitted to OMB for approval. The reporting burden for the display of a vessel's official number is estimated at 45 minutes per response.

The estimates of public reporting burdens for these collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NMFS seeks your comments regarding: Whether these proposed

collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burdens of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these or any other aspects of the collections of information to NMFS and OMB (see ADDRESSES).

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 27, 2003.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR parts 600 and 622 are proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 et seq.

2. In § 600.10, definitions are added in alphabetical order to read as follows:

§ 600.10 Definitions.

* * * * *

Automatic reel means a reel that remains attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel electrically or hydraulically.

* * * * *

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

* * * * *

3. In § 600.725, in paragraph (v) table, under heading "I. New England Fishery Management Council (NEFMC)," add entry 24; under heading "II. Mid-Atlantic Fishery Management Council (MAFMC)," add entry 28; and under heading "III. South Atlantic Fishery Management Council," add entry 24; new entries are added in numerical order to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
I. New England Fishery Management Council (NEFMC)	
* * * * *	* * * * *
24. Dolphin/wahoo fishery (FMP managed by SAFMC)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
II. Mid-Atlantic Fishery Management Council (MAFMC)	
* * * * *	* * * * *
28. Dolphin/wahoo fishery (FMP managed by SAFMC)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
III. South Atlantic Fishery Management Council (SAFMC)	
* * * * *	* * * * *
24. Dolphin/wahoo fishery (FMP managed by SAFMC)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
* * * * *	* * * * *

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

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

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

5. In § 622.1, the first sentence of paragraph (b) is revised and in Table 1, the following entry is added in alphabetical order to read as follows:

§ 622.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, South Atlantic, or Atlantic EEZ, as indicated in Table 1 of this section. * * *

TABLE 1.—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* * * * *	* * * * *	* * * * *
FMP for the Dolphin and Wahoo Fishery off the Atlantic States	SAFMC	Atlantic
* * * * *	* * * * *	* * * * *

6. In § 622.2, in the definition of “Coastal migratory pelagic fish,” paragraph (4) and the definition of “Dealer” are revised, and definitions of “Atlantic,” “Dolphin,” “North Atlantic,” “Pelagic longline,” and “Whahoo” are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Atlantic means the North Atlantic, Mid-Atlantic, and South Atlantic.

* * * * *

Coastal migratory pelagic fish * * *

(4) Dolphin, *Coryphaena hippurus* (Gulf of Mexico only).

* * * * *

Dealer (in addition to the definition specified in § 600.10 of this chapter) means the person who first receives rock shrimp harvested from the EEZ or dolphin or wahoo harvested from the Atlantic EEZ upon transfer ashore.

Dolphin means the species *Coryphaena equiselis* or *C. hippurus*, or a part thereof, in the Atlantic. (See the definition of *Coastal migratory pelagic fish* for dolphin in the Gulf of Mexico.)

* * * * *

North Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the United States and Canada to the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter.

* * * * *

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

* * * * *

Wahoo means the species *Acanthocybium solandri*, or a part thereof, in the Atlantic.

* * * * *

7. In § 622.4, the first sentence of paragraph (a)(4), paragraphs (a)(5), (g)(1), and the last sentence of paragraph (i) are revised, and paragraphs (a)(1)(i)(E), (a)(2)(xii), and (s) are added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(1) * * *
(i) * * *
(E) Atlantic dolphin and wahoo. (See paragraph (a)(5) of this section for the requirements for operator permits in the dolphin and wahoo fishery.)

* * * * *

(2) * * *
(xii) *Atlantic dolphin and wahoo.* (A)

For a person aboard a vessel to be eligible for exemption from the bag and possession limits for dolphin or wahoo in or from the Atlantic EEZ or to sell such dolphin or wahoo, a commercial vessel permit for Atlantic dolphin and wahoo must be issued to the vessel and must be on board, except as provided in paragraph (a)(2)(xii)(B) of this section. (See paragraph (a)(5) of this section for the requirements for operator permits in the Atlantic dolphin and wahoo fishery).

(B) The provisions of paragraph (a)(2)(xii)(A) of this section notwithstanding, a fishing vessel, except a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery, is exempt from the bag and possession limits for dolphin and wahoo and may sell dolphin and wahoo, subject to the trip and geographical limits specified in § 622.44(f)(2). (A charter vessel/headboat permit is not a commercial vessel permit.)

* * * * *

(4) *Dealer permits.* For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, rock shrimp harvested from the South Atlantic EEZ, dolphin or wahoo harvested from the Atlantic EEZ, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, Atlantic dolphin and wahoo, or wreckfish, respectively, must be issued to the dealer. * * *

(5) *Operator permits.* (i) The following persons are required to have operator permits:

(A) An operator of a vessel that has or is required to have a valid permit for

South Atlantic rock shrimp issued under this section.

(B) An operator of a vessel that has or is required to have a charter vessel/headboat or commercial permit for Atlantic dolphin and wahoo issued under this section.

(ii) A person required to have an operator permit under paragraph (a)(5)(i) of this section must carry on board such permit and one other form of personal identification that includes a picture (driver’s license, passport, etc.).

(iii) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section must ensure that at least one person with a valid operator permit is aboard while the vessel is at sea or offloading.

(iv) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section and the operator of such vessel are responsible for ensuring that a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 is not aboard that vessel.

* * * * *

(g) *Transfer*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel permit for dolphin and wahoo, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South

Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

* * * * *

(i) * * * An operator of a vessel in a fishery in which an operator permit is required must present his/her operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

* * * * *

(s) *Commercial vessel permits for Atlantic dolphin and wahoo*—(1) *Eligibility.* (i) An owner of a vessel may obtain a commercial vessel permit for Atlantic dolphin and wahoo if his/her vessel has a Federal commercial permit for king mackerel, South Atlantic snapper-grouper, or Atlantic swordfish.

(ii) An owner may also obtain a commercial vessel permit for Atlantic dolphin and wahoo if he/she--

(A) Derived at least 25 percent of his/her earned income, or at least \$10,000, from commercial fishing (i.e., harvest and first sale of fish) or from charter vessel/headboat fishing during one of the 3 calendar years 1996, 1997, or 1998; and

(B) Owned a vessel that landed and sold at least 250 lb (113 kg) of dolphin and/or wahoo harvested from the Atlantic during one of the 3 calendar years 1996, 1997, 1998, or during the period January 1, 1999, through May 21, 1999.

(2) *Applications based on permits for king mackerel, South Atlantic snapper-grouper, or Atlantic swordfish.* A vessel owner who desires a commercial vessel permit for Atlantic dolphin and wahoo based on having one of the permits specified in paragraph (s)(1)(i) of this section must submit a request for the addition of Atlantic dolphin and wahoo to his/her permit to the RA.

(3) *Applications based on earned income/landings.* (i) A vessel owner who desires a commercial vessel permit for Atlantic dolphin and wahoo based on the earned income and landings criteria in paragraph (s)(1)(ii) of this section must submit an application for such permit to the RA. Application forms are available from the RA.

(ii) Information requested on the application includes the standard

information required in paragraph (b)(3)(ii) of this section and documentation of earned income and landings, as specified in paragraph (s)(1)(ii) of this section. The landings requirement must be documented by a listing of landings by date, species, amount, and dealer. Only qualifying landings verified by reports received or dealer records dated on or before June 21, 1999, by the following would qualify: (1) Fishing vessel logbooks received by the Science and Research Director of either the NMFS' Southeast or Northeast Fisheries Science Centers; (2) state trip ticket systems; or (3) for landings not covered by vessel logbook or state trip ticket system requirements, dealer records accompanied by signed affidavits. Dealer records must definitively show dates and amounts of landings of the species known as dolphin and/or wahoo and the vessel's name, official number, or other reference that clearly identifies the vessel. Dealer records must contain a sworn affidavit by the dealer confirming the accuracy and authenticity of the records. A sworn affidavit is a written statement wherein the individual signing the affidavit affirms that the information presented is accurate and can be substantiated, under penalty of law. Only landings that were harvested, landed, and sold in compliance with state and Federal regulations will be used to establish eligibility.

(4) *Transfer.* An owner of a vessel that has a commercial vessel permit for Atlantic dolphin and wahoo may request that the RA transfer the permit to another vessel owned by the same entity or he/she may request that the RA transfer the permit to a new owner of the vessel when he/she transfers ownership of the vessel. Such request must be accompanied by the existing permit and an application for a permit for the replacement vessel.

8. In § 622.5, paragraphs (a)(1)(vi) and (c)(8) are added, and the first sentence of paragraph (a)(2)(i) and paragraph (b)(1) are revised to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(vi) *Atlantic dolphin and wahoo.* The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4 (a)(2)(xii), or whose vessel fishes for or lands Atlantic dolphin or wahoo in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit

such record as specified in paragraph (a)(2) of this section.

(2) *Reporting deadlines.* (i) Completed fishing records required by paragraphs (a)(1)(i), (ii), (iv), and (vi) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. * * *

* * * * *

(b) *Charter vessel/headboat owners and operators*—(1) *Coastal migratory pelagic fish, reef fish, snapper-grouper, and Atlantic dolphin and wahoo.* The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, South Atlantic snapper-grouper, or Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, snapper-grouper, or Atlantic dolphin or wahoo in or from state waters adjoining the applicable Gulf, South Atlantic, or Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

* * * * *

(c) * * *

(8) *Atlantic dolphin and wahoo.* (i) A dealer who has been issued a permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of Atlantic dolphin and wahoo and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) For the purposes of paragraph (c)(8)(i) of this section, in the states from Maine through Virginia, or in the waters off those states, "SRD" means the Science and Research Director, Northeast Fisheries Science Center, NMFS, (see Table 1 of § 600.502 of this chapter), or a designee.

(iii) On demand, a dealer who has been issued a dealer permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of dolphin and wahoo.

* * * * *

9. In § 622.7, paragraph (b) is revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), (p), (q), (r), or (s), or in § 622.18, or in § 622.19.

* * * * *

10. In § 622.35, the section heading is revised and paragraph (h) is added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(h) *Dolphin/wahoo closed areas.* (1) If pelagic longline gear is on board a vessel, a person aboard such vessel may not fish for or retain a dolphin or wahoo—

(i) In the Northeastern United States closed area from June 1 through June 30 each year. The Northeastern United States closed area is that portion of the EEZ between 40° N. lat. and 39° N. lat. from 68° W. long. to 74° W. long.

(ii) In the Charleston Bump closed area from February 1 through April 30 each year. The Charleston Bump closed area is that portion of the EEZ off North Carolina, South Carolina, and Georgia between 34° N. lat. and 31° N. lat. and west of 76° W. long.

(iii) In the East Florida Coast closed area year round. The East Florida Coast closed area is that portion of the EEZ off Georgia and the east coast of Florida from the inner boundary of the EEZ at 31° N. lat.; thence due east to 78° W. long.; thence by a rhumb line to 28°17' N. lat., 79°12' W. long.; thence proceeding in a southerly direction along the outer boundary of the EEZ to 24° N. lat.; thence due west to 24° N. lat., 81°47' W. long.; thence due north to the innermost boundary of the EEZ at 81°47' W. long.

(2) A vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and gangions with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

(3) If a vessel is in a closed area during a time specified in paragraph (h)(1) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area.

11. In § 622.37, paragraph (h) is added to read as follows:

§ 622.37 Size limits.

* * * * *

(h) *Dolphin in the Atlantic off Florida and off Georgia*—20 inches (50.8 cm), fork length.

12. In § 622.38, paragraph (a) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(a) The following must be maintained with head and fins intact: Cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; dolphin and wahoo in or from the Atlantic EEZ; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; yellowtail snapper in or from the Caribbean EEZ; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

* * * * *

13. In § 622.39, paragraph (f) is added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(f) *Atlantic dolphin and wahoo.* Bag and possession limits are as follows:

(1) Dolphin—10, not to exceed 60 per vessel, whichever is less, except, on board a headboat, 10 per paying passenger.

(2) Wahoo—2.

14. In § 622.41, paragraph (c)(1)(v) is revised and paragraph (l) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(1) * * *

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ and little tunny in the South Atlantic EEZ south of 34°37.3' N. lat.—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

* * * * *

(l) *Atlantic dolphin and wahoo*—(1) *Authorized gear.* The following are the only authorized gear types in the fisheries for dolphin and wahoo in the Atlantic EEZ: Automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types other than authorized gear types may not possess a dolphin or wahoo.

(2) *Sea turtle protection measures applicable to pelagic longliners.* The owner or operator of a vessel for which

a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(2)(xii), and that has on board a pelagic longline must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS. Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, as specified in § 635.21(c)(5)(i) and (ii) of this chapter, respectively. For the purpose of this paragraph, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

15. In § 622.44, paragraph (f) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(f) *Atlantic dolphin and wahoo.* (1) The following trip limits apply 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:

(i) *Dolphin*—(A) In or from the Atlantic EEZ north of 31° N. lat., 3,000 lb (1,361 kg).

(B) In or from the Atlantic EEZ south of 31° N. lat., 1,000 lb (454 kg).

(ii) *Wahoo.* In or from the Atlantic EEZ, 500 lb (227 kg).

(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.)

16. In § 622.45, paragraph (i) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(i) *Atlantic dolphin and wahoo.* (1) A person may sell dolphin or wahoo harvested in the Atlantic EEZ only if it is harvested by a vessel that has a commercial permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(2)(xii)(A), or by a vessel authorized a 200-lb (91-kg) trip limit for dolphin or wahoo, as specified in § 622.44(f)(2), and only to a dealer who has a permit for Atlantic dolphin or wahoo, as required under § 622.4(a)(4).

(2) In addition to the provisions of paragraph (i)(1) of this section, a person

may not sell dolphin in excess of the bag limit or any wahoo harvested in the Atlantic EEZ by a vessel while it was operating as a charter vessel or headboat.

(3) Dolphin or wahoo harvested in the Atlantic EEZ may be purchased only by a dealer who has a permit for Atlantic dolphin and wahoo and only from a vessel authorized to sell dolphin or wahoo under paragraph (i)(1) or (i)(2) of this section.

17. In § 622.48, paragraph (m) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(m) *Atlantic dolphin and wahoo.* Biomass levels, age-structured analyses, MSY, OY, ABC, TAC, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing

definitions and other status determination criteria, time frame for recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for the RA to close a fishery when a quota is reached or is projected to be reached or reopen a fishery when additional quota becomes available, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

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