

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

RIN 0648-BD08

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery Off the Atlantic States; Amendment 5**

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for the Dolphin and Wahoo Fishery off the Atlantic States (FMP) for review, approval, and implementation by NMFS. Amendment 5 proposes actions to revise the acceptable biological catch (ABC), annual catch limits (ACLs) and accountability measures (AMs) for the commercial and recreational sectors for dolphin and wahoo, and update the framework procedures for the FMP. The purpose of Amendment 5 is to help achieve optimum yield (OY) within the dolphin and wahoo fishery and to minimize socio-economic impacts in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before April 29, 2014.

**ADDRESSES:** You may submit comments on Amendment 5 identified by “NOAA–NMFS–2013–0170” by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0170](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0170), click the “Comment Now!” 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](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 5, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/dw/2013/am5/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/dw/2013/am5/index.html).

**FOR FURTHER INFORMATION CONTACT:**

Nikhil Mehta, Southeast Regional Office, telephone: 727–824–5305, or email: [nikhil.mehta@noaa.gov](mailto: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 is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

**Background**

The final rule for the Comprehensive ACL Amendment included Amendment 3 to the FMP, which established ACLs (including ACL allocations to both the recreational and commercial sectors), acceptable biological catches (ABCs), recreational annual catch targets (ACTs), and accountability measures (AMs) for dolphin and wahoo (77 FR 15916, March 16, 2012). Recreational catch estimates used in the Comprehensive ACL Amendment were determined with data collected by the Marine Recreational Fisheries Statistics Survey (MRFSS), which was the best scientific information available at that time. NMFS has made significant improvements in the data collection and catch estimation methodologies that are used to collect and analyze the recreational data for the computation of ABCs, as well as ACLs and ACTs. NMFS now estimates recreational landings using the Marine Recreational Information Program (MRIP).

The MRIP collects recreational data on a more frequent basis and provides more accurate recreational catch estimates by accounting for potential biases such as possible differences in catch rates at high-activity and low-activity fishing sites, as well as variation in fishing effort throughout the day. As described in Amendment 5, the MRIP values used to estimate recreational landings, along with updates to headboat and commercial landings, are now the best scientific information available to revise the ABC catch estimates, ACLs, recreational ACTs, and AMs for dolphin and wahoo. Updates to the commercial and headboat landings were included in the revisions to the ACLs and ACTs, because the ABC control rule and subsequent ABCs and ACLs established in the Comprehensive ACL Amendment used data from both the recreational and commercial sectors (77 FR 15916, March 16, 2012). The headboat and commercial data updates reflect NMFS’s ongoing data quality assurance and quality control protocols and reflect the best available scientific information.

These revisions are necessary because if the ABC, ACL, and ACT values are not updated using the new MRIP estimates, the recreational ACLs would be based on MRFSS data while the landings information being used to track the recreational ACLs would be estimated using MRIP data. This would result in inconsistencies in how the ACLs are calculated versus how the ACLs are monitored.

**Actions Contained in Amendment 5**

Amendment 5 would revise the ABCs, ACLs, and AMs for the commercial and recreational sectors for dolphin and wahoo, revise the recreational ACTs for dolphin and wahoo, and update the framework procedures for the FMP.

**Dolphin and Wahoo ABCs**

Amendment 5 would revise the ABCs for dolphin and wahoo. The ABC for dolphin would increase from 14,596,216 lb (6,620,732 kg) to 15,344,846 lb (6,960,305 kg). The ABC for wahoo would increase from 1,491,785 lb (676,662 kg) to 1,794,960 lb (814,180 kg). The revised ABCs would be established using MRIP data as opposed to the current ABCs that were established using MRFSS data.

**Dolphin Commercial and Recreational ACLs**

Amendment 5 would revise the dolphin commercial and recreational ACLs. The current dolphin commercial ACL of 1,065,524 lb (483,314 kg) would be increased to 1,157,001 lb (524,807

kg). The current dolphin recreational ACL of 13,530,692 lb (6,137,419 kg) would be increased to 14,187,845 lb (6,435,498 kg). The increases in the ACLs for dolphin are not large, and negligible effects are expected to the stock and the human environment.

#### *Wahoo Commercial and Recreational ACLs*

Amendment 5 would revise the wahoo commercial and recreational ACLs. The wahoo commercial ACL would be increased from 64,147 lb (29,097 kg) to 70,542 lb (31,997 kg). The wahoo recreational ACL would be increased from 1,427,638 lb (647,566 kg) to 1,724,418 lb (782,183 kg). The effects of the small increases in ACLs for wahoo are expected to be negligible to the stock and the human environment.

#### *Dolphin and Wahoo Commercial AMs*

The current commercial AMs for dolphin and wahoo close the commercial sector for the respective species for the remainder of the fishing year, if commercial landings as estimated by the Science and Research Director (SRD), reach or are projected to reach the commercial ACL (in-season closure).

Amendment 5 would also provide that if the commercial ACL is met or projected to be met, then the commercial ACL for the respective species in the following fishing year would be reduced by the amount of the commercial ACL overage. However, the commercial ACL overage adjustment would only be applied if the species is overfished and the total ACL (combined commercial and recreational ACLs) is exceeded. The Council determined the commercial ACL overage adjustment, combined with the in-season AM closure, would offer greater protection to the stocks and provided the best management strategy for the commercial sector based on the biology and recent catch levels of dolphin and wahoo.

#### *Dolphin and Wahoo Recreational AMs*

The current recreational AMs for dolphin and wahoo provide that if recreational landings, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the length of the following recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will not be reduced during the following fishing year if the NMFS

Southeast Regional Administrator (RA) determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

Amendment 5 would modify the recreational AM to reduce the length of the fishing season and the recreational ACL in the fishing year following any recreational ACL overage, if the stock is overfished and the total ACL (commercial and recreational ACLs combined) is exceeded. However, the recreational ACL overage adjustment and fishing season reduction would not be applied if the RA determines, using the best scientific information available, that such a reduction is unnecessary. The ability to reduce the recreational ACL when an overage of the respective ACL occurs would provide additional protection to the dolphin and wahoo stocks.

#### *Dolphin and Wahoo Recreational ACTs*

Amendment 5 would increase the current dolphin recreational ACT of 11,595,803 lb (5,259,768 kg) to 12,769,061 lb (5,791,949 kg) and increase the current wahoo recreational ACT of 1,164,953 lb (528,414 kg) to 1,258,825 lb (570,993 kg). The current recreational ACTs for dolphin and wahoo function as performance standards, and do not have management measures associated with them, such as triggering AMs.

#### *Dolphin and Wahoo FMP Framework Procedures*

The current framework procedures for dolphin and wahoo were implemented in 2004 through the FMP (69 FR 30235, May 27, 2004). Amendment 5 would revise the framework procedures for the FMP. These revisions would include adding an ABC control rule, ACLs, ACTs, and AMs to the measures that could be revised via the framework amendment process. Additionally, Amendment 5 would allow an ABC, ACL, and ACT to be modified using an abbreviated framework procedure, whereby after the Council has taken final action to change an ABC, ACL, and/or ACT, the Council would submit a letter containing an analysis of the relevant biological, economic, social, and administrative information necessary to support the action to the NMFS RA. Based on the information provided by the Council, the RA would determine whether or not the requested modifications are warranted. If the requested modifications may be warranted, NMFS would develop the appropriate documentation to comply with the National Environmental Policy Act and other applicable law, and propose the action through rulemaking.

NMFS anticipates this expedited process will shorten the time it would take to make routine changes to harvest limits in response to new scientific information, while allowing the public adequate time to comment on any change.

#### *Dolphin Trip Limit*

Amendment 5 also contained an action to establish a commercial trip limit for dolphin in the Atlantic exclusive economic zone. However, the Council chose to take no action on that issue at this time because a commercial trip limit would have very little effect on constraining harvest of dolphin as most commercial trips harvest 1,000 lb (454 kg) or less of dolphin and the ACL had not been met. The Council has not historically imposed trip limits on fishers in the commercial sector if an ACL has not been met.

A proposed rule that would implement measures outlined in Amendment 5 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 5 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

#### **Consideration of Public Comments**

The Council submitted Amendment 5 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 5 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received on or before April 29, 2014, will be considered by NMFS in the approval, partial approval, or disapproval decision regarding Amendment 5. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: February 25, 2014.

**James P. Burgess,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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