

Dated: May 12, 2014.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 130403322-4454-02]

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:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 5 to the Fishery Management Plan for the Dolphin and Wahoo Fishery off the Atlantic States (FMP) (Amendment 5), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This rule revises the annual catch limits (ACLs) and accountability measures (AMs) for the commercial and recreational sectors of dolphin and wahoo, and updates the framework procedures for the FMP. In addition, Amendment 5 revises the acceptable biological catch (ABC) values and recreational annual catch targets (ACTs) for dolphin and wahoo. The purpose of Amendment 5 and this rule is to help achieve optimum yield (OY) within the dolphin and wahoo fishery, and to minimize any negative socio-economic impacts to the affected fishing participants, to the extent practicable, in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** This rule is effective July 9, 2014.

**ADDRESSES:** Electronic copies of Amendment 5, which includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_](http://sero.nmfs.noaa.gov/sustainable_)

[fisheries/s\\_atl/dw/2013/am5/index.html](http://fisheries/s_atl/dw/2013/am5/index.html).

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** The dolphin and wahoo fishery of the Atlantic 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.

On February 28, 2014, NMFS published a notice of availability for Amendment 5 and requested public comment (79 FR 11383). On March 14, 2014, NMFS published a proposed rule for Amendment 5 and requested public comment (79 FR 14466). NMFS approved Amendment 5 on May 23, 2014. The proposed rule and Amendment 5 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Amendment 5 and this final rule is provided below.

#### Management Measures Contained in This Final Rule

This final rule revises the commercial and recreational ACLs and AMs for dolphin and wahoo, and updates the framework procedures for the FMP. The purpose of this rule is to help achieve OY for dolphin and wahoo and minimize any potential negative socio-economic impacts to the affected fishing participants, to the extent practicable, in accordance with the requirements of the Magnuson-Stevens Act. All weights in this final rule are given in round weight.

#### Dolphin Commercial and Recreational ACLs

This final rule revises the dolphin commercial and recreational ACLs. The dolphin commercial ACL increases from 1,065,524 lb (483,314 kg) to 1,157,001 lb (524,807 kg). The dolphin recreational ACL increases from 13,530,692 lb (6,137,419 kg) to 14,187,845 lb (6,435,498 kg). The effects of the increases in the ACLs for dolphin are expected to be negligible to the stock and the human environment.

#### Wahoo Commercial and Recreational ACLs

This final rule revises the wahoo commercial and recreational ACLs. The wahoo commercial ACL increases from 64,147 lb (29,097 kg) to 70,542 lb (31,997 kg). The wahoo recreational ACL increases from 1,427,638 lb (647,566 kg) to 1,724,418 lb (782,183 kg). The effects of the increases in ACLs for wahoo are also 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).

These in-season AMs will not change; however, this final rule also provides that if the commercial ACL is exceeded in a fishing year, then the commercial ACL for the respective species in the following fishing year will be reduced by the amount of the commercial ACL overage in the prior year. 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 (payback), combined with the in-season AM closure, would offer greater protection to the stocks and provides 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 NMFS Southeast Regional Administrator (RA) shall publish a notice to reduce the length of the following recreational fishing season 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 RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

This final rule modifies these recreational AMs to reduce the length of the fishing season as well as 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 provides additional protection to the dolphin and wahoo stocks. The Council determined that this set of AMs best meets the objectives of the FMP, while complying with the requirements of the Magnuson-Stevens Act.

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

This final rule adds to the regulatory amendment process changes to the ABC control rule, ACLs, ACTs, and AMs, as management measures that can be revised via the framework procedures of the FMP. Additionally, this rule allows 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 document to the RA containing an analysis of the relevant biological, economic, social, and administrative information necessary to support the action. If, based on the information provided by the Council, the RA determines the modifications are 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.

#### **Additional Measures Contained in Amendment 5**

In addition to the measures contained in this final rule, Amendment 5 revises the ABCs and recreational ACTs for dolphin and wahoo. Amendment 5 increases the ABC for dolphin from 14,596,216 lb (6,620,732 kg) to 15,344,846 lb (6,960,305 kg). The ABC for wahoo increases from 1,491,785 lb (676,662 kg) to 1,794,960 lb (814,180 kg). Amendment 5 also increases the current dolphin recreational ACT of 11,595,803 lb (5,259,768 kg) to 12,769,061 (5,791,949 kg) and the current wahoo recreational ACT of 1,164,953 lb (528,414 kg) to 1,258,825 lb (570,993 kg). All of these increases are based on the best scientific information available about these species, and reflect the most recent and accurate catch estimates.

#### **Comments and Responses**

A total of four comments were received on Amendment 5 and the proposed rule from an individual, a

commercial fishing association, and a Federal agency. The Federal agency submission stated that they had no comment on the proposed rule or Amendment 5. In two comment submissions, the commercial fishing association expressed support for the actions to increase the dolphin and wahoo commercial ACLs, the revisions to the AMs for both species, and the revisions to the framework procedures. An individual submitted a comment critical of the actions contained in Amendment 5 and the proposed rule; NMFS' response is summarized below.

*Comment:* NMFS should not increase the dolphin and wahoo recreational ACLs because of uncertainty associated with recreational landings data.

*Response:* NMFS disagrees that the recreational ACLs should not be changed for dolphin and wahoo. Recreational ACLs for dolphin and wahoo were established in the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012), using data generated by the Marine Recreational Fisheries Statistics Survey (MRFSS), which was the best scientific information available at that time. In 2013, following an independent review by the National Research Council and as directed by Congress within the Magnuson-Stevens Act, NMFS replaced MRFSS with the Marine Recreational Information Program (MRIP) to provide more accurate recreational catch estimates. MRIP is expected to reduce potential bias and increase the accuracy, timeliness, and spatial resolution of recreational catch and effort estimates. In Amendment 5, MRIP methods have been used to recalculate previous MRFSS estimates dating back to 1986, and are the basis for all new ACL estimates.

The recreational ACL revisions are necessary because if the ABC, ACL, and ACT values for dolphin and wahoo are not updated with the new MRIP estimates, then the ACLs would be based on MRFSS data while the landings being used to track the ACLs would be estimated using MRIP data. That would result in an inconsistency in how ACLs are calculated versus how they are monitored. In addition to using MRIP data, the dolphin and wahoo ACLs are being updated to include revisions to commercial and for-hire landings data. Revising the ACLs using MRIP values to estimate recreational landings, as well as updates to headboat and commercial landings, represent the best scientific information available in accordance with National Standard 2 of the Magnuson-Stevens Act.

#### **Classification**

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of Atlantic dolphin and wahoo and is consistent with Amendment 5, the FMP, the Magnuson-Stevens Act, and other applicable law.

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

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none was prepared.

#### **List of Subjects in 50 CFR Part 622**

Atlantic Dolphin, Fisheries, Fishing, Wahoo.

Dated: June 3, 2014.

**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 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. Section 622.280 is revised to read as follows:

#### **§ 622.280 Annual catch limits (ACLs) and accountability measures (AMs).**

(a) *Atlantic dolphin*—(1) *Commercial sector.* (i) If commercial landings for Atlantic dolphin, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,157,001 lb (524,807 kg), round weight, the AA will

file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic dolphin is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for Atlantic dolphin and wahoo has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) In addition to the measures specified in paragraph (a)(1)(i) of this section, if the combined Atlantic dolphin commercial and recreational landings exceed the combined commercial and recreational ACLs specified in paragraphs (a)(1)(i) and (a)(2)(i) of this section, and Atlantic dolphin are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the commercial ACL for that following year by the amount of the commercial overage in the prior fishing year.

(2) *Recreational sector.* (i) If recreational landings for Atlantic dolphin, as estimated by the SRD, exceed the recreational ACL of 14,187,845 lb (6,435,498 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings.

(ii) If the combined Atlantic dolphin commercial and recreational landings exceed the combined commercial and recreational ACLs specified in paragraphs (a)(1)(i) and (a)(2)(i) of this section, and Atlantic dolphin are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the recreational ACL for that following year by the

amount of the recreational overage in the prior fishing year, and reduce the recreational fishing season by the amount necessary to ensure recreational landings do not exceed the reduced ACL. However, the recreational ACL and the length of the recreational fishing season will not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduced recreational ACL and a reduction in the length of the following fishing season is unnecessary.

(b) *Atlantic wahoo*—(1) *Commercial sector.* (i) If commercial landings for Atlantic wahoo, as estimated by the SRD, reach or are projected to reach the commercial ACL of 70,542 lb (31,997 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic wahoo is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for Atlantic dolphin and wahoo has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) In addition to the measures specified in paragraph (b)(1)(i) of this section, if the combined Atlantic wahoo commercial and recreational landings exceed the combined commercial and recreational ACLs specified in paragraphs (b)(1)(i) and (b)(2)(i) of this section, and Atlantic wahoo are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the commercial ACL for that following year by the amount of the commercial overage in the prior fishing year.

(2) *Recreational sector.* (i) If recreational landings for Atlantic wahoo, as estimated by the SRD, exceed

the recreational ACL of 1,724,418 lb (782,183 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings.

(ii) If the combined Atlantic wahoo commercial and recreational landings exceed the combined commercial and recreational ACLs specified in paragraphs (b)(1)(i) and (b)(2)(i) of this section, and Atlantic wahoo are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the recreational ACL for that following year by the amount necessary to ensure recreational landings do not exceed the reduced ACL. However, the recreational ACL and the length of the recreational fishing season will not be reduced during the following year if the RA determines, using the best scientific information available, that a reduced recreational ACL and a reduction in the length of the following fishing season is unnecessary.

■ 3. In § 622.281, paragraph (a) is revised to read as follows:

**§ 622.281 Adjustment of management measures.**

\* \* \* \* \*

(a) *Atlantic dolphin and wahoo.* Biomass levels, age-structured analyses, MSY, OY, OFL, TAC, ABC, ABC Control Rule, ACLs, ACTs, AMs, 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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