

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 Licensees (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