

participation. The OMB Peer Review Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal government’s scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005.

To satisfy the requirements under the OMB Peer Review Bulletin, the Waycott *et al.* (2021) manuscript was subjected to peer review in accordance with the Bulletin. Our proposed action relies upon new information within the manuscript, which we consider “influential scientific information.” While the manuscript was published in the peer-reviewed journal *Frontiers in Marine Science*, and peer reviewed by that journal prior to publication, we also peer reviewed the manuscript. We established a peer review plan that consisted of subjecting the manuscript to review by a panel of four expert reviewers identified by NOAA’s Genetics Group. The peer review plan, which included the charge statement to the peer reviewers, and the resulting peer review report are posted on the NOAA peer review agenda at: <https://www.noaa.gov/organization/information-technology/peer-review-plans>. In meeting the OMB Peer Review Bulletin requirements, we have also satisfied the requirements of the 1994 joint U.S. Fish and Wildlife Service and NMFS peer review policy (59 FR 34270, July 1, 1994).

### Classification

*National Environmental Policy Act (NEPA)*

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing to the best scientific and commercial data available. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions. (See NOAA Administrative Order 216–6A and the Companion Manual for NOAA Administrative Order 216–6A, regarding Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities).

*Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act*

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species.

Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

*Executive Order 13132, Federalism*

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state and local law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of these circumstances is applicable to this proposed rule.

### List of Subjects

*50 CFR Part 223*

Threatened marine and anadromous species.

*50 CFR Part 226*

Designated critical habitat.

Dated: December 16, 2021.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, 50 CFR part 223 and part 226 are proposed to be amended as follows:

### PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

#### § 223.102 [Amended]

■ 2. In § 223.102, in the table in paragraph (e), under the subheading “Marine Plants”, remove the entry for “Seagrass, Johnson’s (*Halophila johnsonii*)”.

### PART 226—DESIGNATED CRITICAL HABITAT

■ 3. The authority citation for part 226 continues to read as follows:

**Authority:** 16 U.S.C. 1533.

#### § 226.213 [Removed and Reserved]

■ 4. Remove and reserve § 226.213.

[FR Doc. 2021–27631 Filed 12–22–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

RIN 0648–BL00

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery of the Atlantic; Amendment 10

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

**ACTION:** Announcement of availability of fishery management plan amendment; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) submitted Amendment 10 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery of the Atlantic (Dolphin and Wahoo FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 10 to the Dolphin and Wahoo FMP (Amendment 10) would revise the acceptable biological catch (ABC), annual catch limits (ACLs), sector allocations, accountability measures (AMs), and additional management measures for dolphin and wahoo. The additional management measures would address commercial trip limits, authorized fishing gear, the operator permit (card) requirement for dolphin and wahoo, and the recreational vessel limit for dolphin. The purpose of Amendment 10 is to base conservation and management measures for dolphin and wahoo on the best scientific information available and increase net benefits from the fishery.

**DATES:** Written comments must be received on or before February 22, 2022.

**ADDRESSES:** You may submit comments on Amendment 10, identified by “NOAA–NMFS–2021–0093,” by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) and enter “NOAA–NMFS–2021–0093” in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of

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

Electronic copies of Amendment 10, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-10-changes-catch-levels-sector-allocations-accountability-measures-and-management>.

**FOR FURTHER INFORMATION CONTACT:** Nikhil Mehta, telephone: 727–824–5305, or email: [nikhil.mehta@noaa.gov](mailto:nikhil.mehta@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to the Secretary of Commerce (the Secretary) for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the Dolphin and Wahoo FMP that is being revised by Amendment 10. If approved, Amendment 10 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

### Background

The Council manages the dolphin and wahoo fishery in Federal waters from Maine south to the Florida Keys in the Atlantic under the Dolphin and Wahoo FMP.

The current ABC for dolphin and wahoo was implemented in 2014 by Amendment 5 to the Dolphin and Wahoo FMP (Amendment 5), and are based on the Council's Scientific and Statistical Committee's (SSC) recommendations using the third highest annual landings value during 1999–2008 (79 FR 32878; June 9, 2014). The landings did not include recreational landings from Monroe County, Florida, and were based on recreational data from the Marine

Recreational Information Program's (MRIP) Coastal Household Telephone Survey (CHTS) method. In April 2020, the Council's SSC recommended new ABC levels for dolphin and wahoo using the third highest annual landings value during 1994–2007. These landings include recreational landings from Monroe County, Florida, and used MRIP's Fishing Effort Survey (FES) method, which is considered more reliable by the Council's SSC, the Council, and NMFS, and more robust compared to the CHTS survey method. The new ABC recommendations within Amendment 10 for dolphin and wahoo are also based on the new weight estimation procedure from NMFS Southeast Fisheries Science Center (SEFSC) that uses a 15 fish minimum sample size and represents the best scientific information available.

The current total ACLs for both dolphin and wahoo were implemented in 2014 by Amendment 5 and are equal to the ABCs for dolphin and wahoo. Amendment 10 would revise the total ACLs for dolphin and wahoo to equal the new ABC values.

The current sector allocations for dolphin were implemented in 2016 by Amendment 8 to the Dolphin and Wahoo FMP (Amendment 8), with 10.00 percent of the total ACL to the commercial sector and 90.00 percent of the total ACL to the recreational sector (81 FR 3731; January 22, 2016). In 2015, the commercial sector was closed because the commercial ACL was met during that fishing year. In Amendment 8, the Council set the commercial allocation at the average of the percentages of the total commercial catch for 2008–2012, and the resulting 10 percent of the total ACL for the commercial allocation was expected to prevent subsequent closures of the commercial sector. The current sector allocations for wahoo were implemented in 2014 by Amendment 5, with 3.93 percent of the total ACL to the commercial sector and 96.07 percent of the total ACL to the recreational sector. The Council decided on these wahoo allocations by balancing long-term catch history with recent catch history, and determined this method as the most fair and equitable way to allocate fishery resources since it considered past and present participation. The current allocations for both dolphin and wahoo were applied to the respective species' total ACLs (equal to the ABCs) to obtain the sector ACLs.

Amendment 10 would specify commercial and recreational allocations for dolphin at 7.00 percent and 93.00 percent, respectively. For wahoo, Amendment 10 would specify

commercial and recreational allocations at 2.45 percent and 97.55 percent, respectively. These proposed allocations would be applied to the respective species' proposed total ACLs (equal to the proposed ABCs) using the third annual highest landings value during 1994–2007 to determine the proposed sector ACLs. The proposed sector ACLs for dolphin and wahoo were derived from landings which include recreational landings from Monroe County, Florida, use MRIP's FES method, and SEFSC'S new weight estimation procedure. For dolphin, the Council has determined that the proposed allocations and revised sector ACLs could avoid a decrease in the current pounds of dolphin available to either sector's ACL. For wahoo, the Council's intent is to maintain the current commercial ACL and allocate the remaining revised ACL to the recreational sector.

Amendment 10 does not propose any changes to the commercial AMs for dolphin or wahoo. The current recreational AMs for dolphin and wahoo were implemented in 2014 by Amendment 5, and do not contain an in-season AM but instead require a monitoring for persistence in recreational landings during the year following any recreational ACL overage. Further, the current recreational post-season AMs state that if the combined commercial and recreational landings exceed the combined commercial and recreational ACLs, and dolphin and wahoo are overfished, the recreational ACL for the following year will be reduced by the amount of the recreational overage in the prior fishing year, and the recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the reduced ACL. The Regional Administrator (RA) will determine using the best scientific information available if a reduction in the recreational ACL and a reduction in the length of the following fishing season is unnecessary. These recreational post-season AMs for dolphin and wahoo are not viable because the post-season AMs would not be triggered as there is not a peer-reviewed stock assessment for dolphin and wahoo, and such an assessment is unlikely to be conducted in the near future. Therefore, there is no likely method to determine their stock status. Amendment 10 would establish a trigger to implement post-season AMs and once triggered, specify the post-season AMs for dolphin and wahoo that would not be based on their stock status.

In 2017, Regulatory Amendment 1 to the Dolphin and Wahoo FMP and

associated final rule implemented the current commercial trip limit for dolphin of 4,000 lb (1,814 kg), round weight, once 75 percent of the commercial ACL is reached (82 FR 8820; January 31, 2017). Prior to reaching 75 percent of the commercial ACL, there is no commercial trip limit for dolphin. In 2004, the original Dolphin and Wahoo FMP and associated final rule implemented the current commercial trip limit for wahoo of 500 lb (227 kg); and a commercial trip limit of 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N latitude, for a vessel that does not have a Federal commercial vessel permit for dolphin and wahoo but has a Federal commercial vessel permit in any other fishery.

In 2004, the original Dolphin and Wahoo FMP and associated final rule also implemented the currently authorized commercial gear types in the dolphin and wahoo fishery in the Atlantic Exclusive Economic Zone (EEZ) as 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 (including trap, pot, or buoy gear) other than authorized gear types may not possess dolphin or wahoo. In 2016, the Atlantic Offshore Lobstermen's Association initially requested that the Council modify the fishing gear regulations to allow the lobster fishery's historical practice of harvesting dolphin while in the possession of lobster pots to continue. Amendment 10 would allow a vessel in the Atlantic EEZ that possesses both a Federal Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) required to fish using trap, pot, or buoy gear; or is in compliance with permit requirements specified for the spiny lobster fishery in 50 CFR 622.400 to retain dolphin and wahoo caught by rod and reel while in possession of such gear types.

In 2004, the original Dolphin and Wahoo FMP and associated final rule implemented the requirement for a vessel operator or a crewmember to hold a valid operator permit (also called an operator card) for the Atlantic dolphin and wahoo commercial permit or a charter vessel/headboat permit for Atlantic dolphin and wahoo to be valid. The operator permit requirement was implemented to improve enforcement within the fishery, aid in data collection, and decrease costs to vessel owners from fishery violations by vessel operators. However, in actuality, the

benefits of operator permits to improve enforcement have not occurred as they have not been widely used as an enforcement tool since implementation. Rather, other methods of fishery enforcement, such as vessel permits and landings, have been used by law enforcement for the fishery. Because the expected benefits from operator permits are not being realized, Amendment 10 would remove the requirement for operator permits in the dolphin and wahoo fishery.

The current dolphin recreational bag limit of 10 fish per person, not to exceed 60 fish per vessel in the Atlantic EEZ, was implemented by the final rule for the original Dolphin and Wahoo FMP in 2004. Since then, interest in recreational harvest of dolphin has increased and Council public testimony, especially from Florida and its constituents, has recommended a decrease in the recreational retention limits to further control recreational harvest. Amendment 10 would decrease the dolphin recreational vessel limit for charter vessels and private recreational vessels, excluding headboats. The dolphin individual recreational bag limit or 10 fish per person in the Atlantic EEZ remains unchanged.

#### **Actions Contained in Amendment 10**

Amendment 10 would revise the catch levels (ABCs and ACLs), sector allocations, AMs, and management measures for dolphin and wahoo. Management measures would address commercial trip limits, authorized fishing gear, the operator permit requirement for dolphin and wahoo, and the recreational vessel limit for dolphin.

If approved and implemented, Amendment 10 and the proposed rule could be expected to result in potential positive direct and indirect benefits to managing the dolphin and wahoo fishery and its commercial and recreational fishers. Revisions to the ABCs, ACLs, sector allocations, and AMs incorporate best scientific information available. Changes to recreational vessel limits for dolphin would reduce the likelihood of recreational landings reaching the revised recreational ACL. Commercial trip limits, authorized gear, and operator permit requirements respond to requests from the public in managing the dolphin and wahoo fishery more efficiently.

#### **ABC**

As discussed, Amendment 10 would revise the ABC based on the new MRIP FES catch estimation procedures and new SEFSC fish weight estimation

procedure, which represent the best scientific information available. The proposed ABC was also recommended by the Council's SSC.

#### **ACLs**

##### *Dolphin*

The current total ACL for dolphin is 15,344,846 lb (6,960,305 kg), round weight. Amendment 10 would revise the total ACL for dolphin to 24,570,764 lb (11,145,111 kg), round weight, based on the ABC recommended by the Council's SSC. The revised total ACL is equal to the ABC as described in Amendment 10 and is based upon best scientific information available. As a species, dolphin are highly fecund, spawn throughout a wide geographical range, have an early age at first maturity, and a short generation time and so therefore, dolphin's life-history could support the increase in the total ACL. The Report to Congress on the Status of U.S. Stocks indicates dolphin is not overfished, and is not undergoing overfishing. Additionally, the Council noted that based on the last 20 years of total landings data for dolphin, it appears unlikely that harvest would consistently exceed the proposed total ACL, commercial landings are well tracked through electronic dealer reporting requirements, there is a commercial trip limit in place, and recreational landings for dolphin exhibit relatively low percent standard errors (PSE). The Council also noted that setting the ACL equal to the ABC may allow dolphin fishers to take advantage of years of exceptionally high abundance of dolphin.

The current commercial and recreational ACLs for dolphin are and 1,534,485 lb (696,031 kg), round weight, and 13,810,361 lb (6,264,274 kg), round weight, respectively. These are based on the current commercial and recreational allocations of 10.00 percent and 90.00 percent, respectively. The proposed commercial and recreational ACLs for dolphin in Amendment 10 are 1,719,953 lb (780,158 kg), round weight, and 22,850,811 lb (10,364,954 kg), round weight, respectively. The proposed dolphin sector ACLs in Amendment 10 would be based on the commercial and recreational allocations of 7.00 percent and 93.00 percent, respectively.

##### *Wahoo*

The current total ACL for wahoo is 1,794,960 lb (814,180 kg), round weight. Amendment 10 would revise the total ACL for wahoo to 2,885,303 lb (1,308,751 kg), round weight based upon the ABC recommended by the Council's SSC. The revised total ACL is

equal to the ABC and is based upon best scientific information available. Wahoo also exhibit rapid growth rates, are highly migratory, and are sexually mature at an early age and so their life history also supports an increase in the ACL. The overfishing and overfished status of wahoo is unknown, however, recent studies found that wahoo did not show a negative decline in relative abundance in recent years. The Council noted that commercial landings for wahoo are also well tracked through electronic dealer reporting requirements, there is a commercial trip limit of 500 lb (227 kg), and that recreational landings for wahoo exhibit relatively low PSEs. The Council also noted that setting the ACL equal to the ABC will allow wahoo fishers to take advantage of years when there is exceptionally high abundance of wahoo.

The current commercial and recreational ACLs for wahoo are 70,542 lb (31,997 kg), round weight, and 1,724,418 lb (782,183 kg), round weight, respectively. These are based on the current commercial and recreational allocations of 3.93 percent and 96.07 percent, respectively. The proposed commercial and recreational ACLs for wahoo in Amendment 10 are 70,690 lb (32,064 kg), round weight, and 2,814,613 lb (1,276,687 kg), round weight, respectively. The proposed wahoo sector ACLs in Amendment 10 are based on the commercial and recreational allocations of 2.45 percent and 97.55 percent, respectively.

No biological effects are expected to the dolphin and wahoo stocks from these allocation changes because the proposed sector ACLs would not change the proposed total ACLs for dolphin and wahoo. The commercial sector for dolphin and wahoo has effective in-season AM already in place to help constrain commercial harvest, and Amendment 10 considers modifications to the post-season AMs to both stocks to reduce the risk of the recreational ACL from being exceeded. In deciding on new sector allocations, the Council wanted to recognize the needs of the recreational sector for dolphin and wahoo which would exhibit higher landings than previously estimated with the new accounting of recreational landings using MRIP's FES method. At the same time the Council did not want to reduce the commercial ACLs on a pound basis for dolphin and wahoo and noted that the proposed allocations and sector ACLs would strike a balance between the needs of both sectors.

#### *AMs*

##### *Dolphin*

Amendment 10 would revise the recreational AMs for dolphin. The current in-season closure and stock status based post-season AM would be replaced. The proposed recreational AM in Amendment 10 would be a post season AM that would be triggered in the following fishing year if the total ACL (commercial and recreational ACLs, combined) is exceeded. The Council's intent is to avoid closing recreational harvest in-season and extend maximum fishing opportunities to the recreational sector without triggering the recreational AM, as long as the commercial sector is under harvesting its sector ACL. The revised recreational AM trigger would also help ensure sustainable harvest by preventing the total ACL from being exceeded on a consistent basis. Once triggered, the proposed post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season would not be reduced if the RA determines, using the best available science, that the season reduction is not necessary. The Council noted that there would be a relatively low likelihood of the recreational AM for dolphin being triggered, because the proposed recreational ACL is based on the proposed ABC which is set at a relatively high level of landings that has not often been observed in the dolphin portion of the dolphin and wahoo fishery. Additionally, any determination that the total ACL had been exceeded would allow for the monitoring of landings during the following season to evaluate whether the elevated landings from the previous fishing year are continuing to persist in the fishery. That information would inform decisions on whether a fishing season closure would actually need to occur to constrain harvest to the ACL.

##### *Wahoo*

Amendment 10 would revise the recreational AMs for wahoo. The current in-season closure and stock status based post-season AM would be replaced. The proposed recreational AM in Amendment 10 would be a post season AM that would be triggered in the following fishing year if the recreational ACLs are constant and the 3-year geometric mean of landings exceeds the recreational ACL. As described in Amendment 10, whenever the recreational ACL is changed, a

single year of landings would be used an overage determination, beginning with the most recent available year of landings, then a 2-year average of landings from that single year and the subsequent year, then a 3-year average of landings from those 2 years and the subsequent year, and thereafter a progressive running 3-year average would be used to determine if the recreational AM trigger has been met. The Council noted this approach would allow the recreational AM to be triggered if the ACL was exceeded on a consistent basis. A 3-year geometric mean would help to smooth the data and potentially avoid implementing restrictive recreational post-season AMs unnecessarily if there was an anomaly in the recreational landings estimates during those 3 years that was not accurately reflecting an actual increase in the harvest of wahoo. It was also noted by the Council that a geometric mean is less sensitive to being affected by abnormally large variations in landings estimates than using the arithmetic mean or using a single year point estimate. Once triggered, the post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in that year. However, the length of the recreational season would not be reduced if the RA determines, using the best available science, that a fishing season reduction is not necessary. Additionally, any determination that the ACL had been exceeded would allow for the monitoring of landings for the following season to evaluate whether the elevated landings from the previous year are continuing to persist in the fishery. That information would inform decisions on whether a late season harvest closure would actually need to occur to constrain harvest to the ACL. The Council also noted the relatively equitable nature and equally distributed effects of a shortening of the recreational season, as wahoo are often targeted and caught late in the year in many areas of the Atlantic region.

##### *Commercial Trip Limits and Authorized Gear Exemption*

For vessels with a commercial permit for Atlantic dolphin and wahoo, under the current trip limits, dolphin and wahoo may only be harvested and possessed with the authorized gear types onboard. These gear types are automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear. Possession on the vessel of any other gear type results in

a prohibition of the possession of any dolphin or wahoo.

American lobster fishers requested to the Council that they be allowed to possess dolphin or wahoo while they moved from one lobster pot to the next. The Council wanted to allow for the authorized gear exemption based on a request from the Atlantic Offshore Lobstermen's Association to allow the historical practice of harvesting dolphin with rod and reel while in the possession of lobster pots to continue and also take a broader approach to allow vessels fishing with trap, pot, or buoy gear to possess dolphin or wahoo as long as the fish were harvested with rod and reel gear. The Council decided to be more comprehensive and included other trap, pot, and buoy gear.

Amendment 10 would allow for a new category of commercial trip limits for dolphin and wahoo based on a proposed authorized gear exemption for trap, pot, and buoy gear. Amendment 10 would allow the harvest and retention of 500 lb (227 kg), gutted weight, of dolphin and 500 lb (227 kg) of wahoo, on board a vessel in the Atlantic EEZ that possesses both an Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) that allow a vessel to fish using trap, pot, or buoy gear or is in compliance with the permitting requirements for the spiny lobster of the Gulf of Mexico and South Atlantic as described at 50 CFR 622.400, caught by rod and reel while in possession of such gear types. The proposed commercial trip limits in Amendment 10 under the authorized gear exemption may not be combined with the current commercial trip limits for commercially permitted dolphin and wahoo vessels. The Council determined that this additional regulatory flexibility would have positive economic effects within the fishery while also limiting the potential for any unforeseen significant increases in commercial landings through the specific setting of the 500 lb (227 kg), gutted weight, trip limit.

#### *Operator Permits*

Currently, an operator of a vessel with either a commercial permit or a charter vessel/headboat permit for dolphin and wahoo is required to have an operator permit. Such operator permit must be onboard the vessel and the vessel owner is required to have a permitted operator onboard the vessel while it is at sea or offloading. This operator permit requirement was implemented in 2004, through the original FMP for dolphin and wahoo, as a way to assist in law enforcement efforts within the fishery by holding the vessel operator

accountable for any violation of regulations and to aid in data collection (69 FR 30235; May 27, 2004).

Amendment 10 would remove the current requirements for operator permits and permitted operators for both the dolphin and wahoo commercial and charter vessel/headboat permitted vessels. At the March 2016 Council meeting, the NMFS Office of Law Enforcement gave a presentation on operator permits, and stated that the operator permits are not actually used to a large extent by them or their law enforcement partners for gathering data, distributing information or enforcement. The Council noted that there is some potential value for operator permits in aiding law enforcement efforts, but the inconsistent requirements between Atlantic fisheries greatly diminishes this utility. Public testimony indicated that operator permits are rarely checked by enforcement personnel during fishing trips and are burdensome for fishermen to renew and maintain. The Council determined that the limited use of operator permits in the dolphin and wahoo fishery did not outweigh the cost to fishermen to obtain the permit, and removing this requirement would yield positive social, economic, and administrative benefits.

#### *Recreational Bag and Vessel Limits for Dolphin*

For Atlantic dolphin, the current bag and possession limits are 10 fish per person, not to exceed 60 fish per vessel, whichever is less, except onboard a headboat where the limit is 10 per paying passenger. Amendment 10 would decrease the recreational dolphin vessel limit from 60 fish per vessel to 54 fish per vessel for charter vessels and private recreational vessels, excluding headboats, in the Atlantic EEZ. The recreational bag limit for private recreational anglers and passengers onboard charter vessels and headboats will remain at 10 fish per person in the Atlantic EEZ. As a result of the proposed possession limit reduction in Amendment 10, the total estimated annual reduction in recreational landings is expected to be 114,051 lb (51,733 kg), round weight. Data analysis in Amendment 10 demonstrated that most of the recreational trips in the Atlantic EEZ targeting dolphin harvested less than 10 fish per vessel. Therefore, as a result of the very small proportion of recreational trips that might reach the proposed vessel limit of 54 fish per vessel, no change in fishing activity or behavior is anticipated. The Council noted that one of the goals of the Dolphin and Wahoo FMP is to maintain a precautionary approach to

management. While there is no Southeast Data and Assessment Review stock assessment for dolphin and the stock is listed as not overfished or undergoing overfishing, the Council heard public testimony, particularly from anglers in Florida that dolphin abundance appears to be low and there was concern over the health of the dolphin stock and the associated fishery. The Council determined a coast-wide reduction in the vessel limit was appropriate to maintain consistency of regulations across the region in the retention limits for dolphin and noted that such a change in retention limits would lead to more substantial harvest reductions than a Florida-specific or regional approach.

#### *Goals and Objectives*

The goals and objectives of the Dolphin and Wahoo FMP were implemented through the original fishery management plan in 2004 and have not been revised since then. In 2016, the Fisheries Allocation Review Policy (NMFS Policy Directive 01-119) encouraged the use of adaptive management with respect to allocation revisions, and recommended periodic re-evaluation and updating of the management goals and objectives of any FMP to ensure they are relevant to current conditions and needs. Amendment 10 would revise these Dolphin and Wahoo FMP goals and objectives in response to the 2016 Fisheries Allocation Review Policy and ensure the goals and objectives reflect the current dolphin and wahoo fishery. Specifically, the revised goals and objectives seek to manage the dolphin and wahoo fishery using a precautionary approach that maintains access, minimizes competition, preserves the social and economic importance of the fishery, as well as promotes research and incorporation of ecosystem considerations where practicable.

#### **Proposed Rule for Amendment 10**

A proposed rule to implement Amendment 10 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 10 to determine whether it is consistent with the Dolphin and Wahoo FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

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

The Council has submitted Amendment 10 for Secretarial review,

approval, and implementation. Comments on Amendment 10 must be received by February 22, 2022. Comments received during the respective comment periods, whether specifically directed to Amendment 10 or the proposed rule, will be considered

by NMFS in the decision to approve, partially approve, or disapprove, Amendment 10. 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: December 17, 2021.

**Ngagne Jafnar Gueye,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021-27845 Filed 12-22-21; 8:45 am]

**BILLING CODE 3510-22-P**