

APPENDIX F. REGULATORY FLEXIBILITY ACT ANALYSIS

1 Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. The RFA does not contain any decision criteria; instead the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the fishery management plan or amendment (including framework management measures and other regulatory actions) and to ensure the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

The RFA requires agencies to conduct a Regulatory Flexibility Act Analysis (RFAA) for each proposed rule. The RFAA is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. An RFAA is conducted to primarily determine whether the proposed action would have a “significant economic impact on a substantial number of small entities.” The RFAA provides: 1) A description of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for, the proposed rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) a description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; 5) an identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule; 6) a description and estimate of the expected economic impacts on small entities; and 7) an explanation of the criteria used to evaluate whether the rule would impose “significant economic impacts.”

2 Statement of the need for, objective of, and legal basis for the rule

The need and objective of this proposed action are provided in Chapter 1. In summary, the objective of this proposed action is to increase the social and economic benefits of fishermen by eliminating a restriction on the possession of dolphin or wahoo fillets from fish harvested in Bahamian waters. The Magnuson-Stevens Fishery Conservation and Management Act provides the statutory basis for this proposed action.

3 Description and estimate of the number of small entities to which the proposed action would apply

This proposed action would apply to any private, commercial, or for-hire vessel capable of traveling from the U.S. to The Commonwealth of The Bahamas (The Bahamas) and able to obtain a Bahamian fishing and cruising permit. However, the Bahamian permit would only allow recreational harvest, private anglers (and associated vessels) are not small entities under the RFA, and any fish brought to the U.S. could not be sold. As a result, this proposed action would not apply to commercial finfish harvesting businesses or private vessels, and the only small entities that this proposed action would be expected to directly affect would be for-hire businesses.

It is unknown how many for-hire businesses this proposed action, if implemented, would be expected to directly affect. It could be presumed that vessels currently permitted to harvest dolphin and wahoo in the U.S. Exclusive Economic Zone (EEZ) would be most likely to travel to The Bahamas, obtain the necessary permits, harvest dolphin or wahoo, and want to bring fillets back to the U.S. On November 1, 2013, 1,565 vessels had the required for-hire permit to harvest dolphin or wahoo in the EEZ. However, this total includes all vessels in all Atlantic states. It might be presumed, because of the geographic proximity, that most vessels interested in harvesting dolphin or wahoo in The Bahamas and returning with fillets likely originate in Florida. However, vessels departing from other states, or vessels that seasonally re-locate to Florida from other states would also be included in the universe of potentially affected vessels. Because a federal permit would not be required, for-hire vessels that only fish in state waters and do not possess any federal permit, as well as vessels with another federal permit and not the dolphin/wahoo for-hire permit, would also be able to possess these fillets. As a result, it is unknown whether the vessel count represented by the number of federal dolphin/wahoo for-hire permits is a reasonable estimate of the number of vessels that may be affected by this proposed action. From 2010 to date, only two vessels have received citations for the illegal possession of dolphin or wahoo fillets in the EEZ. As a result, it might be concluded that relatively few for-hire vessels would be directly affected by this proposed action. However, it is unknown how many vessels may regularly transport fillets and not be inspected, or how demand for fishing in The Bahamas by U.S. registered vessels may increase if this proposed action is implemented. Nevertheless, because of the travel distance, travel to and fishing in The Bahamas would be expected to be a specialized service and not a regular practice for a substantial portion of the for-hire fleet.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.0 million (NAICS code 487210, fishing boat charter operation) for all its affiliated operations worldwide. The SBA revised the receipts threshold for certain fishing-related businesses, including commercial finfish fishing, through a final rule issued on June 20, 2013, that went into effect on July 22, 2013 (78 FR 37398). The receipts threshold for the for-hire industry, however, was not changed as a result of this or other recent review and rulemaking by the SBA.

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average annual revenue for a for-hire vessel in the South Atlantic is approximately \$114,000 (2012 dollars) for charterboats and approximately \$201,000 (2012 dollars) for headboats. Because these average annual revenue estimates are significantly less than the SBA revenue threshold, all for-hire businesses expected to be directly affected by this proposed action are determined, for the purpose of this analysis, to be small business entities.

4 Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records

This proposed action would not require any new reporting, record-keeping, or other compliance requirements associated with reporting or record-keeping that may require professional skills.

5 Identification of all relevant federal rules, which may duplicate, overlap or conflict with the proposed rule

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

6 Significance of economic impacts on a substantial number of small entities

Substantial number criterion

This proposed action, if implemented, would be expected to potentially directly affect an unknown number of for-hire vessels. Although only two vessels from 2010 to date have been intercepted attempting to transport dolphin or wahoo fillets from The Bahamas through the EEZ, this proposed action would be expected to result in an increase in the number of vessels traveling to The Bahamas and returning with fillets. However, because of the travel distance, this would be expected to be a specialized service and not a regular practice for a substantial portion of the for-hire fleet. As a result, this proposed action would not be expected to directly affect a substantial number of the small entities.

Significant economic impacts

The outcome of “significant economic impact” can be ascertained by examining two factors: disproportionality and profitability.

Disproportionality: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

All entities expected to be directly affected by the measures in this proposed action are determined for the purpose of this analysis to be small business entities, so the issue of disproportionality does not arise.

Profitability: Do the regulations significantly reduce profits for a substantial number of small entities?

This proposed action would not be expected to reduce profits for a substantial number of small entities. This proposed action would allow for-hire fishing vessels the opportunity, subject to Bahamian regulations, to harvest dolphin and wahoo in Bahamian waters, fillet the fish to facilitate storage, and transport the fillets through the U.S. EEZ. This would be expected to allow these vessels the opportunity to expand their portfolio of services offered and provide an opportunity for these businesses to increase their revenue and profit. Because this would be a new service, data is not available to provide estimates of the potential increase in revenue or profits. Nevertheless, the decision to offer this service would be voluntary on the part of any for-hire business and would only be provided if expected to be economically beneficial. Thus, this proposed action would be expected to have an unquantifiable positive economic effect on an unknown number of small business entities.

7 Description of the significant alternatives to the proposed action and discussion of how the alternatives attempt to minimize economic impacts on small entities

This proposed action, if implemented, would not be expected to have a significant adverse economic effect on a substantial number of small entities. As a result, the issue of significant alternatives is not relevant.