

176 Mulberry Street  
New York NY 10013

March 3, 2016

South Atlantic Fishery Management Council  
4055 Faber Place Drive, Suite 201  
North Charleston SC 29405

Re: Dolphinfish

Dear Council Members and Support Staff,

The American Bluefin Tuna Association (ABTA) represents handgear tuna fishermen on the U.S. East Coast who target bluefin, bigeye, yellowfin and northern albacore tunas. ABTA (<http://www.theabta.com>) is actively involved in the international and domestic management of all these tuna stocks. In 2015, 3,129 vessels were issued General Category permits, 3,596 vessels were issued Charter/Headboat (CHB) permits and 20,157 vessels were issued Recreational permits for Atlantic tunas. ABTA is also actively involved in the management of the General handgear Commercial swordfish permit (Amendment 8) and 651 vessels were issued permits in this category in 2015.

ABTA is also concerned with the management of other pelagic fish stocks that may be incidental bycatch or targeted species in the U.S. multi-species tropical tunas fishery, such as dolphinfish or skipjack tuna.

### **Purpose of this letter**

The purpose of this letter is to discuss the domestic management of dolphinfish stock.

### **Need**

The US East Coast commercial dolphinfish fishery was unfortunately and unavoidably closed on June 30, 2015 because the commercial sector ACL was fully utilized prematurely. This event raises important issues of a general nature regarding the present management of dolphinfish and highlights certain inequities that need to be addressed by the Council with accuracy and alacrity.

## **Management**

Dolphinfish is managed by the South Atlantic Fishery Management Council (SAFMC) as one management unit for the entire U.S. East Coast pursuant to an agreement between the SAFMC and the Mid-Atlantic and New England Fishery Management Councils.

## **Fishery**

The fishery consists of:

- Recreational vessels
- Charter/Headboat (CHB) vessels that can operate as commercial vessels or as “for hire” vessels.
- Commercial fishing vessels: either handgear or longline gear

Any Highly Migratory Species (HMS)-permitted vessel, whether commercial, CHB or recreational, targeting tropical tunas will incur dolphinfish catch as incidental catch or targeted catch. Bigeye, albacore, yellowfin and skipjack tunas as well as dolphinfish preferentially inhabit the same foraging areas on the U.S. East Coast at the same time of year, in waters having similar temperature ranges. Consequently, any fisherman targeting any of these tuna species will likely interact with dolphinfish. Therefore, the management of dolphinfish is of great importance for all sectors of the tropical tunas fishery.

The foregoing statements can also be applied to any pelagic longline vessels targeting swordfish or highly migratory tropical species, as well.

## **Problem**

The ACL for the dolphinfish fishery is presently set at 15,344,846 lbs. The average of landings, 2008-2014 were 845,476 lbs. (commercial) and 6,260,604 lbs. (recreational) for a total average of landings of 7,106,080 lbs. (see Table 1).

Table 1

Commercial and Recreational Landings of Dolphinfinch 2008-2015		
	Commercial (lbs.)	Recreational (lbs.)
2008	780,818	7,833,547
2009	1,222,944	7,570,195
2010	706,281	6,243,399
2011	792,209	6,518,302
2012	708,852	6,097,291
2013	614,349	4,320,889
2014*	1,092,879	5,240,608
<i>Average</i>	<i>845,476</i>	<i>6,260,604</i>

Sources: SEFSC ACL Data; \* indicates trip ticket data and recreational landings data from SEFSC.

Clearly, there is more than sufficient ACL for both recreational and commercial sectors. However, notwithstanding this fact, the commercial sector was closed on June 30, 2015 for the balance of the season due to the fact that the commercial ACL was fully utilized prematurely. This event highlights the fact that the present FMP schema for ACL distribution is not *an equitable distribution of the resource* to all the participants.

**What recent steps have been taken or contemplated?**

1. Dolphin Wahoo Amendment 8 to the FMP increased the commercial sector ACL for dolphinfinch by 2.46%, from 7.54% (1,157,001 lbs) to 10% (1,534,485 lbs). The amendment was tendered for formal review on February 27, 2015. Unfortunately, the increase in commercial ACL was not yet officially in place prior to June 30, 2015, when the commercial fishery was closed. The Need for Action given in the Amendment 8 Decision Document was to “maintain optimum yield for dolphin in the commercial sector” but, in actual fact, this decision does not effectively address optimum yield and is therefore in violation of National Standard One.

2. An initiative imposing commercial trip limits is awaiting ratification.  
Proposed: a trip limit of 4,000 lbs would be put into effect after 75% of the commercial ACL is utilized.
3. A White Paper was published in December 2015, “Development of Dolphin Wahoo Amendment 10” that discusses a range of actions including:
  - a. Modification of Purpose and Need to allow a directed commercial fishery for dolphinfish.
  - b. Discussion of commercial gear sector allocations for longline and hook and line.
  - c. Conversion of the presently open access commercial permit to a limited access permit.
  - d. Establish a common pool allocation or reserve category allocation.
  - e. Consider permanent or temporary allocation shifts between commercial and recreational sectors.
  - f. Consider a circle hook requirement for the dolphinfish fishery.

## **Summary – Opinion**

An equitable redistribution of the ACL is clearly necessitated by recent events. Achieving an equitable distribution of ACL will obviate the need for other fishery management “tools” recently implemented or contemplated for implementation that intend to address this problem. Further, this redistribution is mandated if the FMP is to address the requirement of achievement, *on a continuing basis*, of “optimum yield”, a primary goal reflected in National Standard One.

## **Issues**

### **1. Conversion of the presently open access commercial permit to a limited access permit.**

Given that there is sufficient quota for both commercial and recreational sectors to function normally without any evidence supporting concern for over-utilization of ACL, there is no need to contemplate conversion of the commercial fishery to a limited access fishery.

Should there be concern for an increase in fishing effort in the commercial fishery? The largest percentage of landings comes from the pelagic longline fleet

and this is already a limited access fishery. Any potential increase in the number of permits by new participants using hook and line gear should not have a significant impact on effort, by virtue of the fact that each fish is caught individually, one at a time, severely restricting landings. Statistics indicate that the number of commercial permits have been relatively stable for the last five years.

Every effort should be made to *ensure* that the commercial fishing permit remains an open access fishery. Why? Any restraint imposed by a limited access fishery does not take into account the fact that any vessel targeting tropical pelagic species, whether holding a dolphinfish permit or not, will interact with dolphinfish. “Avoidance strategies” intended to limit or eliminate interaction with dolphinfish are not feasible because they will not achieve the purpose intended. Therefore, conversion to a limited access fishery will invariably result in regulatory discards by non-permitted vessels, and this is a violation of National Standard Nine.

NS9 requires NMFS to “avoid or minimize bycatch” and “minimize the mortality of bycatch which cannot be avoided”. 16 U.S.C § 1851(a)(9). See also § 1853(a)(11) requiring all FMPs to contain measures to minimize bycatch and bycatch mortality. NS9 guidelines explain that bycatch may “impede efforts to protect marine ecosystems and achieve sustainable fisheries” by increasing the uncertainty as to the amount of fish killed by fishing activities and by precluding “more productive uses of fishery resources” 50 C.F.R. § 600.350(2)(b).

## **2. Establish a new control date**

If it is not necessary to contemplate conversion of the commercial fishery to a limited access fishery, it is not necessary to establish a control date.

However, if a control date is established, it should be borne in mind that the presently proposed control date of June 30, 2015 is prejudicial to Northeast fishermen, in violation of National Standard Four.

Typically, dolphinfish begin to appear in Northeast waters in their northerly migration around the beginning of July whereas the dolphinfish commercial fisheries in the South and Mid-Atlantic typically become active earlier in the year. Heaviest landings by longline occur in the South Atlantic during the second quarter. Based upon an average of 2010-2015 landings data segmented by

quarter and gear-type, approximately 64% of handgear landings and approximately 90% of longline landings occur in the first two quarters (Source: trip ticket dataset provided by SEFSC). In 2015, 100% of the ACL was fully utilized by June 30, before dolphinfish reached the Northeast in their annual northerly migration.

Any commercial Northeast fisherman contemplating participation in the dolphinfish fishery in 2015 may have decided not to secure a dolphinfish/wahoo permit for 2015 because of NMFS' Southeast Fishery Bulletin of June 19, 2015, announcing the closure of the commercial dolphinfish fishery on June 24 (later revised to June 30) 2015. These fishermen, whether new entrants or existing permit holders, would not have met the proposed control date requirement.

*However, most, if not all, new or existing participants in the South Atlantic or Mid-Atlantic commercial dolphinfish fishery would likely have secured permits for 2015 well in advance of the proposed control date.*

Further, if this control date is to be used in any future fishery management action and if it is ultimately to also take into account individual landings associated with this permit, Northeast fishermen would clearly not have been able to achieve any landings in 2015 due to the closure of the fishery. This would disadvantage Northeast fishermen as compared with South Atlantic or Mid-Atlantic fishermen who would have had no difficulty achieving landings well before the closure.

Consequently, Northeast fishermen are, in either or both of the above cases, disadvantaged as compared with fishermen from Mid-Atlantic or South Atlantic states.

NS4 prohibits discrimination in the allocation of fishing privileges. The provision specifies, “[i]f it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual corporation, or other entity acquires an excessive share of such privileges.” 16 U.S.C. § 1851(a)(4). NS4 guidelines define “allocation” and “assignment” as follows:

*An “allocation” or “assignment” of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure*

*(or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4. Adoption of an FMP (or other management measure) that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitations of permits to a certain number of vessels or fishermen. 50 C.F.R. § 600.325(c)(1)*

NS4 guidelines explain that an FMP “may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the [optimum yield], and if the measures conform with paragraphs (c)(3)(i) through (c)(3)(iii) of this section.” 50 C.F.R. § 600.325(c), (c)(3)(i)-(iii) (requiring such measures to be implemented with “[f]airness and equity,” to “[p]romote conservation” and to avoid giving “excessive shares” of fishing privileges to any person or entity).

### **3. Proposal to modify Purpose and Need to allow a directed commercial fishery for dolphinfish.**

This issue begs the question: when is a fishery considered “incidental” and when is it considered “directed”? This question must be viewed in the context of the multi-species tropical tunas fishery. In addressing this question, the Council should acknowledge that, in most cases, dolphinfish are caught “opportunistically” while targeting other tropical species. Longline is an excellent example. A longline of 30-40 miles in length can be deployed with 5-700 hooks in a given set with the intention of targeting tropical tunas. In this instance, longline is fishing in a “multi-species format” because it has only minimal control over the percentage of each species caught. If, in any given set, a large percentage of the catch is dolphinfish, is this vessel “targeting” dolphinfish? If, in the same instance, a high percentage of the catch is yellowfin and a small percentage is dolphinfish, is the dolphinfish to be considered “incidental” or “targeted” catch?

Fishing for tropical pelagic species involves utilization of “remote sensing” data (salinity, sea surface temperature, altimetry, current and chlorophyll density data) in addition to imagery that identifies large movements of water known as cyclonic

or anti-cyclonic eddies – oceanic events involving warm water, often laden with fish – which advect out of the Gulf Stream from time to time in the direction of the Continental Shelf. Fishermen are guided mostly by this data, by temperature gradients and bathymetry in determining where to fish. Fishermen have no way of analyzing the data to determine abundance of any specific species. Science indicates that dolphinfish distribution is strongly influenced by SST and CHL<sup>1</sup> and sargassum<sup>2 3</sup>. However, tropical tunas are also influenced by SST and CHL.

There are a handful of longline vessels that specifically target dolphinfish off the coast of North and South Carolina<sup>4 5</sup> but the majority of longline vessels are targeting tunas and swordfish<sup>6</sup>.

Finally, It is likely that the most significant attribute of dolphinfish that can have a pronounced effect on species abundance, and therefore on catch, bycatch or incidental catch is the high variability in recruitment of dolphinfish.

The Council should consider the “incidental/target” conundrum and ask itself: is this question answerable and, more importantly, how does it impact on the present fishery management issues under study?

#### **4. Establish a common pool allocation or reserve category allocation.**

The establishment of a common pool allocation is a workaround on the problem of the present inequitable distribution of the resource, discussed in Point. No. 1, above. It does not address the structural problem of the inequity in the distribution and does not directly and effectively address the issue of “optimum yield”, per NS1.

The establishment of “rollover”, a fixed percentage of unused commercial quota from a given year, to be available for use in the subsequent year makes sense, given dolphinfish biological attributes. This is a highly migratory species with a

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<sup>1</sup> Farrell, E.R., Boustany, A.M., Halpin, P.N., Hammond D.L., Dolphinfish (*Coryphaena hippurus*) distribution in relation to biophysical ocean conditions in the northwest Atlantic, Fisheries Research, Vol 151, PP 177-190,

<sup>2</sup> Rooker, J.R., Turner, J.P., Holt, S.A., Trophic ecology of Sargassum-associated fishes in the Gulf of Mexico determined from stable isotopes and fatty acids, Mar. Ecol. Prog. Ser. 313 (2006), PP 249-259

<sup>3</sup> Casazza, T.L., Ross, S.W., Fishes associated with pelagic Sargassum and open water lacking Sargassum in the Gulf Stream off North Carolina, Fish. Bull., 106 (2008), PP 348-363

<sup>4</sup> Ibid.

<sup>5</sup> South Atlantic Fishery Management Council, Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic (2003)

<sup>6</sup> Beerkircher, L.R., Brown C.J., Lee, D.W., 2004, SEFCS pelagic observer program data summary for 1992-2002. NOAA Tech Memorandum. NMFS-SEFSC 486

known high variability in recruitment. Therefore, annual swings in abundance are to be expected and a rollover will enable the fishermen to better negotiate these swings in abundance from year to year, having a positive economic outcome for the fishermen without increasing ACL.

#### **5. Establish commercial gear sector allocations for longline and hook and line.**

There is sufficient ACL for both recreational and commercial sectors to function normally without implementing gear sector allocations for longline and hook and line.

#### **6. Consider a circle hook requirement for the dolphinfish fishery.**

Is there a biological reason for implementing a circle hook requirement in the commercial dolphinfish fishery? The HMS circle hook ruling is aimed at interaction with loggerhead and leatherback turtles. This is a requirement for pelagic longline vessels because of the potential for interactivity between longline gear and turtles. This has become a necessity because these species are under protection of the Endangered Species Act. However, interaction between hook and line gear and turtles is insignificant or nearly non-existent and therefore there is no need to implement a ruling requiring all commercial dolphinfish permit holders to use circle hooks.

#### **7. Proposal to implement trip limits in the commercial dolphinfish fishery**

Any constraints imposed in the form of trip limits in the commercial fishery is wholly undesirable and should be avoided at all cost. Any such constraint will invariably result in dead discarding of dolphinfish, a wasteful practice that is potentially in violation of National Standard Nine, as discussed in Point No. 1, and no less than 4 United Nations Resolutions.

Further, trip limits is likely a violation of NS4. If trip limits are implemented after three-quarters of the ACL is caught, trip limits will unfairly and negatively effect Northeast fishermen.

#### **Final Comment**

In the discourse involving solutions to the problems of the commercial dolphinfish fishery, there has been mention of the potential impact of Amendment 7 to the

HMS FMP. Amendment 7, promulgated in January 2015, established a gear restricted area (GRA) for pelagic longline vessels off of Cape Hatteras in order to address excessive interaction between PLL vessels and Atlantic bluefin tuna. The theory under discussion by the Council is that displaced effort or redirected effort due to this new GRA has resulted in the early utilization of the commercial dolphinfish ACL in 2015. However, the data clearly indicates that this trend – the increase in dolphinfish catch – actually began in the prior year in the South Atlantic, and to a lesser degree, in the Mid-Atlantic. Therefore, it is not possible that the Hatteras GRA was an important factor in the early closure of the fishery.

I appreciate your time and consideration of the foregoing.

Cordially,

David Schalit  
Vice President  
American Bluefin Tuna Association

cc: Rich Ruais, Executive Director, ABTA  
Ralph Pratt, President, ABTA