



# Amendment 12 to the Fishery Management Plan for the Dolphin Wahoo Fishery of the Atlantic

(Adding bullet mackerel and frigate mackerel as ecosystem component species)

Options Paper

September 2019

## Background

In March 2018, the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council; MAFMC) requested that the South Atlantic Fishery Management Council (South Atlantic Council; SAFMC) consider managing frigate mackerel (*Auxis thazard*) and bullet mackerel (*Auxis rochet*) as ecosystem component (EC) species in the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery of the Atlantic (Dolphin Wahoo FMP). The National Marine Fisheries Service (NMFS) disapproved inclusion of these two species in the Mid-Atlantic Council's Unmanaged Forage Omnibus Amendment. NMFS stated that the reasons for disapproval included the following: 1) inconsistency with National Standard 2 and an insufficient connection to that Council's FMPs; 2) not meeting the Mid-Atlantic Council Scientific and Statistical Committee's (SSC) criteria for forage species; and 3) inconsistency with criteria for EC species as outlined in the NS guidelines at 50 C.F.R. § 600.305 that explains EC species

should not include target stocks that are caught for sale or personal use. NMFS goes on to state that the mackerel species “are caught and sold by commercial vessels and are retained for personal use as bait by recreational fisheries in Federal waters, creating competing interests and conflicts among user groups, both of which are criteria that could exclude consideration of bullet and frigate mackerel as EC species under the National Standard Guidelines.”<sup>1</sup>

At the December 2018 meeting, the Dolphin Wahoo Committee of the South Atlantic Council received a presentation on the presence of the two mackerel species in the diets of dolphin and wahoo and discussed the request from the Mid-Atlantic Council to manage bullet mackerel and frigate mackerel as EC species in the Dolphin Wahoo FMP. The presentation slides for the dietary information presented can be found by clicking [HERE](#). At the March 2019 meeting, the South Atlantic Council discussed a white paper on mechanisms and regulatory parameters for adding EC species to a FMP, ways that other Councils have addressed EC species in their FMPs, as well as background information on fisheries for bullet mackerel and frigate mackerel. The South Atlantic Council voted to send the topic of adding bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP as EC species out for scoping in the spring of 2019.

At the June 2019 meeting, the South Atlantic Council reviewed scoping comments and directed staff to start work on Amendment 12 to the Dolphin Wahoo FMP (Amendment 12) that would add bullet mackerel and frigate mackerel to the FMP as EC species and provide an options paper for the amendment at the September 2019 South Atlantic Council meeting. In developing the options paper, the South Atlantic Council directed the amendment’s interdisciplinary plan team (IPT) to focus on the potential options that were taken out for scoping (**Table 1**). Additionally, the Council discussed exploring a prohibition on sale of bullet mackerel and frigate mackerel as a potential measure.

**Table 1.** Potential options for developing measures to address bullet mackerel and frigate mackerel as EC species in the Dolphin Wahoo FMP that were taken out to scoping in the spring of 2019.

Options	Description
1) Request guidance from the SSC	Request guidance from the SSC on identifying prey species to be listed as ecosystem components.
2) Designate EC species with no management related items	Designate EC species with no management related items such as trip or possession limits. This is similar to actions taken to list some snapper grouper species as EC species in the Snapper Grouper FMP and may elevate the importance of the species for research and monitoring purposes.
3) Prohibit or limit a directed fishery (trip limit)	Prohibit directed fisheries for designated EC species by establishing a trip limit which can be based on a total amount or a percent of total trip landings. This trip limit can apply across all gears or can focus on specific gears.
4) Prohibit or limit a directed fishery (annual vessel limit)	Prohibit directed fisheries for designated EC species by establishing an annual vessel limit.
5) Implement a reporting requirement	Establish or focus reporting requirements towards EC species such as through logbooks or dealer reports.

<sup>1</sup> The Federal Register Notice with NMFS approved and disapproved measures can be found at <https://thefederalregister.org/82-FR/40721>

6) Implement a permit requirement	Establish permit requirements for EC species.
7) Implement a protocol for building directed fisheries for EC species	Establish a mechanism or protocol for allowing the development of a directed fishery for species listed as ecosystem components.
8) Other options???	Under National Standards General guidelines “ <i>management measures can be adopted in order to...address other ecosystem issues.</i> ” Are there “other ecosystem issues” not listed that need to be addressed in the Dolphin Wahoo FMP and what management measures could be created to do so?

### **What are ecosystem component species?**

EC species are defined as “*stocks that a Council or the Secretary has determined do not require conservation and management, but desire to list in an FMP in order to achieve ecosystem management objectives*” (50 C.F.R §600.305(d)(13)).

### **What should be considered when determining if a species or stock requires “conservation and management”?**

According to National Standards General guidelines as found in 50 C.F.R §600.305(c)(1) “*...a Council should consider the following non-exhaustive list of factors when deciding whether additional stocks require conservation and management:*

- (i) *The stock is an important component of the marine environment.*
- (ii) *The stock is caught by the fishery.*
- (iii) *Whether an FMP can improve or maintain the condition of the stock.*
- (iv) *The stock is a target of a fishery.*
- (v) *The stock is important to commercial, recreational, or subsistence users.*
- (vi) *The fishery is important to the Nation or to the regional economy.*
- (vii) *The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.*
- (viii) *The economic condition of a fishery and whether an FMP can produce more efficient utilization.*
- (ix) *The needs of a developing fishery, and whether an FMP can foster orderly growth.*
- (x) *The extent to which the fishery is already adequately managed by states, by state/Federal programs, or by Federal regulations pursuant to other FMPs or international commissions, or by industry self-regulation, consistent with the requirements of the Magnuson-Stevens Act and other applicable law.”*

If it is determined that a stock requires conservation and management then “*such stocks must have ACLs, other reference points, and accountability measures. Other stocks that are identified in an FMP (i.e., EC species or stocks that the fishery interacts with but are managed primarily under another FMP)...do not require ACLs, other reference points, or accountability measures*” (50 C.F.R §600.310(d)(1)).

### **Bullet and frigate mackerel biology and connection to dolphin and wahoo**

Bullet mackerel are also called bullet tuna (**Figure 1**). They can reach about 20 inches in length and resemble frigate mackerel. They feed on a variety of prey, especially clupeoids (i.e. herrings and sardines), crustaceans, and squids. Bullet mackerel are found nearly worldwide in warm waters. In the western Atlantic, they are found from Cape Cod to the Gulf of Mexico and often form schools (Collette and Klein-MacPhee 2002; Froese and Pauly 2016).



**Figure 1.** Photo of a bullet mackerel (*Auxis rochei*).

Photo credit: [www.ncfishes.com](http://www.ncfishes.com)

Frigate mackerel are also called frigate tuna (**Figure 2**). They can reach two feet in length and form schools. They feed on a variety of fish, squids, and small crustaceans. In the western North Atlantic they are mostly found from North Carolina to Florida (Kells and Carpenter 2011, Froese and Pauly 2016).



**Figure 2.** Photo of a frigate mackerel (*Auxis thazard*).

Photo credit: [www.ncfishes.com](http://www.ncfishes.com)

Both bullet and frigate mackerel (*Auxis* spp.) have been identified in the diets of dolphin and wahoo in the North Atlantic (Runderhausen et al. 2010; Poland 2014). Wahoo particularly have shown a strong reliance on bullet and frigate mackerel, with one study indicating that the *Auxis* species were the most dominant forage species observed by mass and number in the diets of wahoo (Poland 2014). While dolphin tend to have more diverse diets and a lower reliance on the *Auxis* species, bullet and frigate mackerel have been identified as important prey for dolphin at times (Runderhausen et al. 2010; Poland 2014).

### **Fisheries for bullet mackerel and frigate mackerel**

According to data provided by a query of the landings database for the Atlantic Coast Cooperative Statistics Program (ACCS), commercial landings of frigate mackerel over the past 20 years were only reported by dealers in the Mid-Atlantic and New England regions. There were no reported commercial landings of bullet mackerel. Bullet mackerel and frigate mackerel are similar in appearance and it is possible that some landings of bullet mackerel may have been

misidentified as frigate mackerel. Additionally, federal observer data has included records of small amounts of bullet mackerel caught in bottom trawl tows which resulted in landings of longfin squid, black sea bass, and summer flounder, indicating that the species are caught in some commercial fishing operations as bycatch.

Commercial landings of frigate mackerel have been variable but typically are relatively low, averaging 4,508 pounds whole weight (lbs ww) annually over the past twenty years of available data (1998 through 2017) and 1,677 lbs ww annually over the past ten years (2008 through 2017) (**Table 2**). Based on the relatively low annual landings in most years, it appears that frigate mackerel are typically caught incidentally to other species. The average ex-vessel price and value have been highly variable as well, with ex-vessel prices as low as \$0.16/lb ww to upwards of \$1.50/lb ww and annual ex-vessel values of less than \$538 to upwards of \$9,792 (2017 dollars). The species have largely been landed commercially using gill net, pound net, float trap, and otter trawl gears. None of these gears are allowed for use in the dolphin wahoo fishery, therefore presumably these landings were not made on commercial trips landing dolphin or wahoo.

**Table 2.** Commercial landings, ex-vessel value, and ex-vessel price for frigate mackerel landed from the U.S. Atlantic Ocean, 1998-2017 (2017 dollars). \* denotes confidential data.

Year	Landings (lbs ww)	Ex-Vessel Value	Average Ex-Vessel Price
1998	2,989	\$664	\$0.22
1999	36,472	\$5,875	\$0.16
2000	19,682	\$9,792	\$0.50
2001	6,343	\$6,705	\$1.06
2002	1,714	\$1,763	\$1.03
2003	4,013	\$2,430	\$0.61
2004	*	*	*
2005	*	*	*
2006	*	*	*
2007	*	*	*
2008	*	*	*
2009	*	*	*
2010	*	*	*
2011	3,467	\$3,052	\$0.88
2012	457	\$538	\$1.18
2013	*	*	*
2014	5,674	\$6,215	\$1.10
2015	*	*	*
2016	894	\$1,342	\$1.50
2017	*	*	*
20-year average	4,508	\$2,391	\$0.93
10-year average	1,677	\$1,654	\$1.14

Source: ACCSP Commercial Landings Query.

Recreational landings have been variable and sporadic, averaging 1,159 lbs ww for bullet mackerel, 3,571 lbs ww for frigate mackerel, and 4,730 lbs ww for both species combined annually over the past twenty years of available data (1998 through 2017) (**Table 3**). Recreational catches of bullet mackerel and frigate mackerel have largely occurred in the South Atlantic Region, with some limited catches reported from the Mid-Atlantic Region. Based on the relatively low annual landings, it appears that bullet mackerel and frigate mackerel are typically caught incidentally to other species. Fishermen have also noted that these species are used as bait. In most circumstances, the catch estimates are accompanied by a relatively high percent standard error (PSE), which is likely reflective of relatively few intercepts.

**Table 3.** Recreational landings of bullet mackerel and frigate mackerel from the U.S. Atlantic Ocean, 1998-2017.

Year	Bullet Mackerel Landings (lbs ww)	PSE	Frigate Mackerel Landings (lbs ww)	PSE	Combined Landings (lbs ww)
1998	211	113.9	0	-	211
1999	0	-	0	-	0
2000	0	-	0	-	0
2001	0	-	0	-	0
2002	0	-	0	-	0
2003	0	-	0	-	0
2004	0	-	0	-	0
2005	0	-	0	-	0
2006	0	-	0	-	0
2007	0	-	0	-	0
2008	0	-	0	-	0
2009	0	-	0	-	0
2010	0	-	322	86	322
2011	166	74.6	0	-	166
2012	296	99.5	51,856	101.3	52,152
2013	0	-	17,592	66.3	17,592
2014	786	50.5	0	-	786
2015	0	-	1,618	95.3	1,618
2016	11,467	31.5	0	-	11,467
2017	10,247	30.9	34	101	10,281
20-year average	1,159	-	3,571	-	4,730
10-year average	2,296	-	7,142	-	9,438

Source: ACCSP Recreational Landings Query based on MRIP data.

Note: Headboat landings from the South Atlantic Region, while minimal, are not included. Over the time series examined, there were no reported headboat landings of bullet mackerel. There were no headboat landings of frigate mackerel reported until 2011. From 2011 to 2017 headboat landings were relatively low and averaged 117 lbs ww annually.

## **Advisory Panel Review and Public Input**

### **Scoping Comments**

Scoping was held in May 2019 to gather public comments on the concept of adding bullet and frigate mackerel to the Dolphin Wahoo FMP as EC species. The Council received 117 comments during scoping, with the vast majority of commenters expressing support for the Council adding the two species as ecosystem components. A summary of the comments can be found by clicking [HERE](#).

### **Habitat Protection and Ecosystem Based Management Advisory Panel Review**

At the Fall 2018 Meeting of the Habitat and Ecosystem Advisory Panel (AP) presentations were made outlining the significant scientific data identifying the importance of frigate and bullet mackerel as forage prey for wahoo and dolphin. In keeping with renewed efforts by fisheries management entities to proactively address potential threats to currently unmanaged species in addition to the growing emphasis on developing ecosystem management approaches the AP recommended that the Council begin monitoring the bullet and frigate mackerel species.

This issue was revisited by the Habitat and Ecosystem AP at the Spring 2019 meeting. The AP strongly recommended the Council take proactive actions for bullet and frigate mackerel due to sound existing science regarding their importance as prey for wahoo and dolphin. Additionally, the AP felt that a dedicated scientific study should target bullet and frigate mackerel in conjunction with other identified forage prey to enable the future development of comprehensive fisheries management plans.

### **Dolphin Wahoo Advisory Panel Review**

The Dolphin Wahoo AP met via webinar of August 22, 2019 and was provided information on the Council's consideration of adding bullet mackerel and frigate mackerel as ecosystem component (EC) species to the Dolphin Wahoo FMP, including background information on the two mackerel species and options that the Council is initially considering in Amendment 12. The AP expressed general support for designating bullet mackerel and frigate mackerel as EC species, with some members noting in their experience wahoo particularly target the *Auxis* species as forage and fishermen use them as effective live baits as well as troll around mackerel schools when targeting wahoo. The AP felt that the Council should consider a "conservative approach" that would help ensure there are not major increases in the harvest of bullet mackerel and frigate mackerel.

The AP made the following motions:

**MOTION #1: RECOMMEND THAT THE SOUTH ATLANTIC COUNCIL DESIGNATE BULLET AND FRIGATE MACKEREL AS ECOSYSTEM COMPONENT SPECIES IN THE DOLPHIN WAHOO FMP. ALSO THE AP ENDORSES THAT THE SOUTH ATLANTIC COUNCIL PROACTIVELY PROTECTS THE SPECIES AS PREY. APPROVED BY AP (6 IN FAVOR/0 OPPOSED/1 ABSTENTION)**

**MOTION #2:** CONSIDER REGULATORY ACTIONS IN CONJUNCTION WITH ADDING BULLET AND FRIGATE MACKEREL AS ECOSYSTEM COMPONENT SPECIES.  
APPROVED BY AP (6 IN FAVOR/0 OPPOSED/1 ABSTENTION)

For Motion #2, the AP initially discussed the options that would prohibit sale or implement a commercial trip limit for bullet mackerel and frigate mackerel. After further discussion, the AP felt that they did not have enough information to recommend specific options but suggested that the Council consider options to avoid an unexpected escalation in landings of the two mackerel species in addition to designating the two species as EC components in the Dolphin Wahoo FMP.

## Proposed measures in this plan amendment

- Designate bullet mackerel and frigate mackerel as EC species in the Dolphin Wahoo FMP.
- Establish a permit requirement for bullet mackerel and frigate mackerel.
- Establish reporting requirements for bullet mackerel and frigate mackerel.
- Establish a commercial trip limit for bullet mackerel and frigate mackerel.
- Establish a commercial annual vessel limit for bullet mackerel and frigate mackerel.
- Establish a recreational bag or vessel limit for bullet mackerel and frigate mackerel.
- Establish a process for allowing the development of a directed fishery for bullet and frigate mackerel.
- Establish a prohibition on sale of bullet mackerel and frigate mackerel.

## Potential amendment timing

September 2019	Review options and provide guidance.
December 2019	Review amendment and modify as appropriate.
March 2019	Review amendment, modify as appropriate, and consider approval for public hearings.
June 2019	Review public comment and modify amendment as appropriate.
September 2020	Review amendment, modify as appropriate, and consider approval for formal review.

## DRAFT Purpose and Need statement

The *purpose* is to add bullet mackerel and frigate mackerel to the Fishery Management Plan for the Dolphin Wahoo Fishery of the Atlantic based on their importance as forage fish for wahoo. Designate bullet mackerel and frigate mackerel as ecosystem component (EC) species to address data collection issues and limit the potential for adverse biological effects.

The *need* is to safeguard the role of bullet mackerel and frigate mackerel as forage species for wahoo by preventing the development of directed fisheries on these EC species.

## Options for Proposed Actions

Note: The order of the options for actions differs from how they are presented in **Table 1**. Since many decision points may affect other actions (i.e. whether the *Auxis* species are added to the FMP and if there is a permit requirement), the IPT suggested this reordering to reflect how initial decisions would need to be made before any desired regulatory measures could be made effective.

### **Action 1. Designate bullet mackerel and frigate mackerel as ecosystem component species in the Dolphin Wahoo Fishery Management Plan**

**Alternative 1 (No Action).** There are no ecosystem component species in the Dolphin Wahoo Fishery Management Plan.

**Alternative 2.** Add bullet mackerel and frigate mackerel to the Dolphin Wahoo Fishery Management Plan and designate the two mackerel species as ecosystem component species.

**Note:** The Council only approved Action 1 for inclusion in Amendment 12 at their September 2019 meeting. The other actions in this amendment may or may not be further considered, depending upon guidance received from the National Marine Fisheries Service on parameters regarding the Council's ability to add EC species to an FMP and implement regulatory measures.

### **Action 2. Establish a permit requirement for bullet mackerel and frigate mackerel**

**Alternative 1 (No Action).** There is no permit requirement for bullet mackerel and frigate mackerel harvested in the Atlantic Exclusive Economic Zone.

**Alternative 2.** Require a permit for bullet mackerel and frigate mackerel commercially harvested in the Atlantic Exclusive Economic Zone.

**Sub-alternative 2a.** An Atlantic Dolphin/Wahoo Commercial Permit.

**Sub-alternative 2c.** Any federal commercial permit.

**Sub-alternative 3c.** Create a new bullet mackerel and frigate mackerel commercial permit.

**Alternative 3.** Require a permit for bullet mackerel and frigate mackerel recreationally harvested onboard for-hire vessels in the Atlantic Exclusive Economic Zone.

**Sub-alternative 3a.** An Atlantic Charter/Headboat for Dolphin/Wahoo Permit.

**Sub-alternative 3b.** Any federal for-hire permit.

**Sub-alternative 3c.** Create a new bullet mackerel and frigate mackerel for-hire permit.

### **Action 3. Establish reporting requirements for bullet mackerel and frigate mackerel**

**Alternative 1 (No Action).** There are no federal reporting requirements for bullet mackerel and frigate mackerel harvested or discarded in the Atlantic Exclusive Economic Zone.

**Alternative 2.** Require reporting of bullet mackerel and frigate mackerel harvested or discarded onboard commercial vessels in the Atlantic Exclusive Economic Zone onboard vessels.

## **Action 4. Establish a commercial trip limit for bullet mackerel and frigate mackerel**

**Alternative 1 (No Action).** There is no commercial trip limit for bullet mackerel and frigate mackerel harvested in the Atlantic Exclusive Economic Zone.

**Alternative 2.** Establish a commercial trip limit for bullet mackerel and frigate mackerel harvested in the Atlantic Exclusive Economic Zone:

**Sub-alternative 2a.** Not to exceed X pounds.

**Sub-alternative 2b.** Not to exceed X percent of the total harvested species on board by weight upon offloading of catch.

## **Action 5. Establish an annual commercial vessel limit for bullet mackerel and frigate mackerel**

**Alternative 1 (No Action).** There is no annual commercial limit per vessel for bullet mackerel and frigate mackerel harvested in the Atlantic Exclusive Economic Zone.

**Alternative 2.** Establish an annual commercial limit per vessel for bullet mackerel and frigate mackerel harvested in the Atlantic Exclusive Economic Zone:

**Sub-alternative 2a.** not to exceed X pounds.

## **Action 6. Establish a recreational bag and vessel limit for bullet mackerel and frigate mackerel**

**Alternative 1 (No Action).** There is no recreational bag or vessel limit for bullet mackerel and frigate mackerel harvested in the Atlantic Exclusive Economic Zone.

**Alternative 2.** Establish a recreational bag limit for bullet mackerel and frigate mackerel harvested in the Atlantic Exclusive Economic Zone:

**Sub-alternative 2a.** Not to exceed X number of bullet mackerel or frigate mackerel per person onboard.

**Sub-alternative 2b.** Not to exceed X pounds of bullet mackerel or frigate mackerel per person onboard.

**Alternative 3.** Establish a recreational vessel limit for bullet mackerel and frigate mackerel harvested in the Atlantic Exclusive Economic Zone:

**Sub-alternative 3a.** Not to exceed **X** number of bullet mackerel or frigate mackerel per vessel.

**Sub-alternative 3b.** Not to exceed **X** pounds of bullet mackerel or frigate mackerel per vessel.

### **Action 7. Establish a process that allows new fisheries for bullet mackerel and frigate mackerel to develop or existing fisheries to expand**

**Alternative 1 (No Action).** Bullet mackerel and frigate mackerel are currently unmanaged species in the Atlantic Exclusive Economic Zone.

**Alternative 2.** Establish a process that allows new fisheries for bullet mackerel and frigate mackerel to develop or existing fisheries to expand in the Atlantic Exclusive Economic Zone.

### **Action 8. Prohibit the sale of bullet mackerel and frigate mackerel**

**Alternative 1 (No Action).** Bullet mackerel and frigate mackerel caught from the Atlantic Exclusive Economic Zone may be sold.

**Alternative 2.** Prohibit the sale of bullet mackerel and frigate mackerel caught from the Atlantic Exclusive Economic Zone.

### **Sources Cited:**

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### **Appendix**

#### **Regulations implementing Magnuson-Stevens Act Provision regarding new fisheries and gears.**

#### **50 C.F.R. §600.747 Guidelines and procedures for determining new fisheries and gear.**

(a) *General*. Section 305(a) of the Magnuson-Stevens Act requires the Secretary to prepare a list of all fisheries under the authority of each Council, or the Director in the case of Atlantic highly migratory species, and all gear used in such fisheries. This section contains guidelines in paragraph (b) for determining when fishing gear or a fishery is sufficiently different from those listed in §600.725(v) as to require notification of a Council or the Director in order to use the gear or participate in the unlisted fishery. This section also contains procedures in paragraph (c) for notification of a Council or the Director of potentially new fisheries or gear, and for amending the list of fisheries and gear.

(b) *Guidelines*. The following guidance establishes the basis for determining when fishing gear or a fishery is sufficiently different from those listed to require notification of the appropriate Council or the Director.

(1) The initial step in the determination of whether a fishing gear or fishery is sufficiently different to require notification is to compare the gear or fishery in question to the list of authorized fisheries and gear in §600.725(v) and to the existing gear definitions in §600.10.

(2) If the gear in question falls within the bounds of a definition in §600.10 for an allowable gear type within that fishery, as listed under §600.725(v), then the gear is not considered

different, is considered allowable gear, and does not require notification of the Council or Secretary 90 days before it can be used in that fishery.

(3) If, for any reason, the gear is not consistent with a gear definition for a listed fishery as described in paragraph (b)(2) of this section, the gear is considered different and requires Council or Secretarial notification as described in paragraph (c) of this section 90 days before it can be used in that fishery.

(4) If a fishery falls within the bounds of the list of authorized fisheries and gear in §600.725(v) under the Council's or Secretary's authority, then the fishery is not considered different, is considered an allowable fishery and does not require notification of the Council or Director before that fishery can occur.

(5) If a fishery is not already listed in the list of authorized fisheries and gear in §600.725(v), then the fishery is considered different and requires notification as described in paragraph (c) of this section 90 days before it can occur.

(c) *Procedures.* If a gear or fishery does not appear on the list in §600.725(v), or if the gear is different from that defined in §600.10, the process for notification, and consideration by a Council or the Director, is as follows:

(1) *Notification.* After July 26, 1999, no person or vessel may employ fishing gear or engage in a fishery not included on the list of approved gear types in §600.725(v) without notifying the appropriate Council or the Director at least 90 days before the intended use of that gear.

(2) *Notification procedures.* (i) A signed return receipt for the notice serves as adequate evidence of the date that the notification was received by the appropriate Council or the Director, in the case of Atlantic highly migratory species, and establishes the beginning of the 90-day notification period, unless required information in the notification is incomplete.

(ii) The notification must include:

(A) Name, address, and telephone number of the person submitting the notification.

(B) Description of the gear.

(C) The fishery or fisheries in which the gear is or will be used.

(D) A diagram and/or photograph of the gear, as well as any specifications and dimensions necessary to define the gear.

(E) The season(s) in which the gear will be fished.

(F) The area(s) in which the gear will be fished.

(G) The anticipated bycatch species associated with the gear, including protected species, such as marine mammals, sea turtles, sea birds, or species listed as endangered or threatened under the ESA.

(H) How the gear will be deployed and fished, including the portions of the marine environment where the gear will be deployed (surface, midwater, and bottom).

(iii) Failure to submit complete and accurate information will result in a delay in beginning the 90-day notification period. The 90-day notification period will not begin until the information received is determined to be accurate and complete.

(3) *Action upon receipt of notification*—(i) *Species other than Atlantic Highly Migratory Species*. (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear, a Council must immediately begin consideration of the notification and send a copy of the notification to the appropriate Regional Administrator.

(B) If the Council finds that the use of an unlisted gear or participation in a new fishery would not compromise the effectiveness of conservation and management efforts, it shall:

(1) Recommend to the RA that the list be amended;

(2) Provide rationale and supporting analysis, as necessary, for proper consideration of the proposed amendment; and

(3) Provide a draft proposed rule for notifying the public of the proposed addition, with a request for comment.

(C) If the Council finds that the proposed gear or fishery will be detrimental to conservation and management efforts, it will recommend to the RA that the authorized list of fisheries and gear not be amended, that a proposed rule not be published, give reasons for its recommendation of a disapproval, and may request NMFS to publish emergency or interim regulations, and begin preparation of an FMP or amendment to an FMP, if appropriate.

(D) After considering information in the notification and Council's recommendation, NMFS will decide whether to publish a proposed rule. If information on the new gear or fishery being considered indicates it is likely that it will compromise conservation and management efforts under the Magnuson-Stevens Act, and no additional new information is likely to be gained from a public comment period, then a proposed rule will not be published and NMFS will notify the appropriate Council. In such an instance, NMFS will publish emergency or interim regulations to prohibit or restrict use of the gear or participation in the fishery. If NMFS determines that the proposed amendment is not likely to compromise conservation and management efforts under the Magnuson-Stevens Act, NMFS will publish a proposed rule in the FEDERAL REGISTER with a request for public comment.

(ii) *Atlantic Highly Migratory Species*. (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear for Atlantic highly migratory species (HMS), NMFS will immediately begin consideration of the notification.

(B) Based on information in the notification and submitted by the Council, NMFS will make a determination whether the use of an unlisted gear or participation in an unlisted HMS fishery will compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act. If it is determined that the proposed amendment will not compromise conservation and management efforts, NMFS will publish a proposed rule.

(C) If NMFS finds that the proposed gear or fishery will be detrimental to conservation and management efforts in this initial stage of review, it will not publish a proposed rule and notify the applicant of the negative determination with the reasons therefor.

(4) *Final determination and publication of a final rule*. Following public comment, NMFS will approve or disapprove the amendment to the list of gear and fisheries.

(i) If approved, NMFS will publish a final rule in the FEDERAL REGISTER and notify the applicant and the Council, if appropriate, of the final approval.

(ii) If disapproved, NMFS will withdraw the proposed rule, notify the applicant and the Council, if appropriate, of the disapproval; publish emergency or interim regulations, if necessary, to prohibit or restrict the use of gear or the participation in a fishery; and either notify the Council of the need to amend an FMP or prepare an amendment to an FMP in the case of Atlantic highly migratory species.

Section 305 (a) of the Magnuson Stevens Act specifying notification requirements for managing new gears and entry.

## **SEC. 305. OTHER REQUIREMENTS AND AUTHORITY. 16 U.S.C. 1855.**

### **104-297**

#### **(a) GEAR EVALUATION AND NOTIFICATION OF ENTRY—**

(1) Not later than 18 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries—

(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 303(a); and

(B) to which section 302(a)(3) applies and all fishing gear used in such fisheries.

(2) The Secretary shall include with such list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).

(3) Effective 180 days after the publication of such list, no person or vessel may employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council, or the Secretary with respect to a fishery to which section 302(a)(3) applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.

(4) A Council may submit to the Secretary any proposed changes to such list or such guidelines the Council deems appropriate. The Secretary shall publish a revised list, after notice and an opportunity for public comment, upon receiving any such proposed changes from a Council.

(5) A Council may request the Secretary to promulgate emergency regulations under subsection (c) to prohibit any persons or vessels from using an unlisted fishing gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary for fisheries to which section 302(a)(3) applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this Act.

(6) Nothing in this subsection shall be construed to permit a person or vessel to engage in fishing or employ fishing gear when such fishing or gear is prohibited or restricted by regulation under a fishery management plan or plan amendment, or under other applicable law.