

DECISION DOCUMENT

for

Amendment 7 to the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic and Amendment 33 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region



March 2014

Why is the South Atlantic Council Taking Action?

The South Atlantic Fishery Management Council (South Atlantic Council) was approached by recreational fishermen who requested a change in the regulations that currently make it illegal to bring filleted dolphin and wahoo into the U.S. exclusive economic zone (EEZ) from Bahamian waters. Fishermen contend that storing fish safely with head and fins intact is difficult and impractical due to the size of the fish. The purpose of Amendment 7 to the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic (Dolphin Wahoo Amendment 7) is to allow fishermen to bring dolphin and wahoo fillets from The Commonwealth of The Bahamas (The Bahamas) into the U.S. EEZ. Regulations at 50 C.F.R. § 622.186 (b) currently allow fillets of snapper grouper species from The Bahamas to be brought into the U.S. EEZ. The need for this action is to increase economic and social benefits to fishermen by removing unnecessary restrictions and implementing regulations for dolphin and wahoo that are consistent with snapper grouper species.

In December 2013, the South Atlantic Council made a motion to add a provision to leave the skin on dolphin and wahoo, and explore a hail-in or Vessel Monitoring System (VMS) provision. The South Atlantic Council also moved to set bag/possession limits for dolphin and wahoo brought into the U.S. EEZ from the Bahamas to allow two fillets per fish, for a maximum of 36 fillets, or 18 fish intact (or any combination). Additionally, the South Atlantic Council made a motion to address the issue of transporting species under the Snapper Grouper Fishery Management Unit (FMU) from The Bahamas into the U.S. EEZ along similar guidelines as is under consideration for dolphin and wahoo.

List of Council Motions from December 2013

1. Snapper Grouper

- a. Direct staff to include an action in the appropriate amendment to address the issue of transporting snapper grouper fillets from the Bahamas. Guidance to construct the action similarly to that in Dolphin Wahoo Amendment 7.
- b. Staff have modified DW Am 7 to DW Am 7/SG Am 33 to address this motion.

2. Dolphin Wahoo

- a. Modify Dolphin Wahoo Amendment 7 to allow dolphin wahoo fillets to be brought into the U.S. EEZ consistent with Bahamian bag limits, as long as the skin is on the fish, there are valid Bahamian cruising and fishing permits onboard, and also explore a hail in or VMS provision.
- b. Set bag/possession limits for dolphin and wahoo brought into the U.S. EEZ from the Bahamas to allow two fillets per fish, for a maximum of 36 fillets, or 18 fish intact (or any combination).
- c. Send the comprehensive allocation/accountability amendment to scoping.
- d. The Council gave the following direction to staff:
 1. Run the modified DW Amendment 7 by LE AP.
 2. Explore sale of fish from The Bahamas caught under these provisions.
 3. Cannot bring dolphin/wahoo caught in The Bahamas into the U.S. if those species are currently closed or prohibited under U.S. law.
 4. Confer with FWC biologists, managers, LE, and legal representation regarding:
 - Sale issues for dolphin and wahoo recreationally caught in The Bahamas
 - Prohibited species (queen conch, Nassau grouper)
 - Possession limits
 - What to do during U.S. EEZ closures
 - Problems with the bag/vessel limits in fish vs. # lbs and that the Bahamian limits are multispecies and not all those species are regulated by the Council
 - No check out from Bahamas
 - Hail in – how and with whom would they do that?
 - Use caution in granting exemptions
 5. Do not consider changes to wahoo allocations in the Comprehensive Allocation/Accountability Amendment.

Note: Staff have modified the Accountability Measure/Dolphin Allocation Amendment. DW7/SG33 has been modified to incorporate the snapper grouper committee motion and motions from the dolphin wahoo committee. The DW7/SG 33IPT met on January 24, 2014 and their recommendations are included as Appendix A. The IPT is recommending restructuring the Actions/Alternatives and the Committee/Council will need to provide guidance on how to move forward.

Florida Fish and Wildlife Commission comments on the IPT proposed actions is included as Appendix B.

Purpose and Need for Action

Purpose: The purpose of this management measure is to allow fishermen to bring dolphin and wahoo fillets from The Bahamas into the U.S. EEZ.

Need: The management measure is needed to increase the social and economic benefits to fishermen by removing impediments to the possession of fish in the U.S. EEZ that were legally harvested in Bahamian waters and the harvest of which would not adversely impact U.S. resources.

Committee Action:

The IPT would like the South Atlantic Council to revisit and revise the purpose and need to make it more specific to the actions and alternatives the IPT are proposing for this amendment.

What would Dolphin Wahoo Amendment 7/Snapper Grouper Amendment 33 do?

Action 1. Allow fillets of dolphin, wahoo, and species under the Snapper Grouper FMU, lawfully harvested by fishermen from The Bahamas to be brought into the United States through the Atlantic EEZ.

Alternative 1. No Action. Dolphin and wahoo fillets cannot be possessed in the EEZ.

Current relevant regulations for dolphin and wahoo at 50 C.F.R. § 622.276 (Landing fish intact) are:

- (a) Dolphin and wahoo in or from the Atlantic EEZ must be maintained with head and fins intact. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.
- (b) The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

Current relevant regulations for snapper grouper at 50 C.F.R. § 622.186 (landing fish intact) are:

- (a) South Atlantic snapper grouper in or from the South Atlantic EEZ must be maintained with head and fins intact, except as specified in paragraph (b) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.
- (b) In the South Atlantic EEZ, snapper grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel is in transit through the South Atlantic EEZ. For the purpose of this paragraph, a vessel is in transit through the South Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ.

Alternative 2. Fillets of dolphin, wahoo, and species under the Snapper Grouper FMU, lawfully harvested by fishermen from The Bahamas may be brought into the United States through the Atlantic EEZ provided that:

- a. Fish were harvested consistent with Bahamian bag limits.
- b. Skin is left intact on the fillet.
- c. Valid Bahamian cruising and fishing permits are onboard.
- d. The number of dolphin and wahoo must not exceed 18 fish intact or 36 fillets (2 fillets per fish) or any combination.

Dolphin Wahoo Amendment 7/Snapper Grouper Amendment 33 would allow dolphin and wahoo that are lawfully harvested in Bahamian waters to be exempt from the requirement that they be maintained with head and fins intact in the Atlantic EEZ, provided valid Bahamian fishing and cruising permits are on board the vessel, and the vessel is in transit through the Atlantic EEZ. A vessel is in transit through the Atlantic EEZ when it is on a direct and continuous course through the Atlantic EEZ and no one aboard the vessel fishes in the EEZ.

While in Bahamian waters, fishermen would be required to obtain the necessary Bahamian cruising and fishing permits and obey all Bahamian regulations. If dolphin or wahoo are retained from Bahamian waters and the vessel transits back into U.S. waters with any filleted dolphin or wahoo, Bahamian cruising and fishing permits must remain on the vessel. If there are no filleted fish onboard once the vessel returns to the Atlantic EEZ, all U.S. possession and size limits must be adhered to regardless of where the fish were caught. If there are filleted fish onboard while the vessel is in the U.S. EEZ, the vessel and fishermen would be required to abide by all U.S. federal regulations including possession limits. Furthermore, the vessel possessing fillets may not engage in any fishing, and must remain in a continuous transit until reaching a U.S. port.

Dolphin Wahoo Amendment 7/Snapper Grouper Amendment 33 considers actions that will require skin to remain on dolphin, wahoo, and snapper grouper FMU species, tracking of vessels with fillets onboard in the U.S. EEZ, and exempting snapper grouper species caught in The Bahamas from U.S. bag limit restrictions.

Committee Action:

The IPT recommends the above action be deleted and replaced with the following 6 actions based on direction given to staff at the December 2013 meeting of the South Atlantic Council (IPT rationale is included as Appendix A).

Pros and Cons of Dolphin Wahoo Amendment 7/ Snapper Grouper Amendment 33

Pros

- Fillets take up less room in a cooler, thus easier to transport safely.
- Regulations would be consistent for bringing dolphin, wahoo and snapper grouper species from The Bahamas into the U.S. EEZ.

Cons

- A vessel with fillets onboard must be in continuous transit within the U.S. EEZ (i.e., cannot stop or fish).
- Vessels could be restricted to U.S. and Bahamian possession limits, and must be in compliance with all other U.S. and Bahamian regulations (i.e. have valid Bahamian cruising and fishing permits and no more than 18 fish total in any combination of king mackerel, tuna, dolphin, or wahoo).
- Law enforcement concerns (Appendices A & B)

Action 1: Exempt dolphin and wahoo harvested lawfully in The Bahamas from regulations that require them to be landed with head and fins intact in the U.S. EEZ.

Alternative 1 (No Action): Dolphin and wahoo in or from the Atlantic EEZ must be maintained with head and fins intact. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

Alternative 2: Allow dolphin and wahoo brought into the U.S. EEZ from The Bahamas as fillets. The vessel must have valid current Bahamian cruising and fishing permits onboard the vessel. The vessel must be in continuous transit in the U.S. EEZ.

Subalternative 2a: Two fillets of dolphin or wahoo, regardless of the size of the fillet will count as 1 fish towards the possession limit.

Subalternative 2b: Regardless of the number of dolphin/wahoo fillets, 10 lbs of fillets will be counted as one fish.

Subalternative 2c: Regardless of the number of dolphin/wahoo fillets, 20 lbs of fillets will be counted as one fish.

Subalternative 2d: Regardless of the number of dolphin/wahoo fillets, 30 lbs of fillets will be counted as one fish.

Subalternative 2e: Regardless of the number of dolphin/wahoo fillets, 40 lbs of fillets will be counted as one fish.

Note: *The IPT would like the Council to determine the upper bound for the number of pounds of fillets they would like to be counted as one fish. The IPT thinks 40 lbs of fillets is probably too high.*

Action 2. Exempt dolphin and wahoo harvested lawfully from The Bahamas from the bag and possession limits in the U.S. EEZ.

Alternative 1 (No Action): The bag limit for the possession of dolphin and wahoo lawfully harvested from the Bahamas, is 10 dolphin (60 dolphin per boat)/2 wahoo per person per day, in the U.S. EEZ.

Alternative 2: Exempt dolphin and wahoo lawfully harvested in The Bahamas from regulations for bag limits in the U.S. EEZ.

Note: *If Alternative 2 in Action 1 is selected as preferred, a sub-alternative could be selected to define a fish in terms of fillets.*

Action 3: Establish reporting requirements for vessels bringing fillets of dolphin, wahoo, and snapper grouper species into the U.S. EEZ from The Bahamas.

Alternative 1 (No Action): There are no reporting requirements.

Alternative 2: Vessels lawfully bringing fillets of dolphin, wahoo, and snapper grouper species into the U.S. EEZ from The Bahamas must call law enforcement identifying themselves as having fish harvested in The Bahamas onboard.

Alternative 3: Vessels lawfully bringing fillets of dolphin, wahoo, and snapper grouper species into the U.S. EEZ from The Bahamas must have an operating, NMFS-approved VMS unit onboard.

Note: *The IPT would like the Council to decide if they consider adding a VMS to recreational vessels is a viable alternative for this action.*

Action 4. Require fillets of dolphin, wahoo, and snapper grouper species brought into the U.S. EEZ from The Bahamas to have the skin intact.

Alternative 1 (No Action): Snapper grouper fillets possessed in the U.S. EEZ from The Bahamas are currently not required to have skin intact.

Alternative 2: Snapper grouper fillets brought into the U.S. EEZ from The Bahamas must have the skin intact.

Alternative 3. Dolphin and wahoo fillets brought into the U.S. EEZ from The Bahamas must have the skin intact.

Action 5: Remove the exemption that allows fillets of snapper grouper species harvested lawfully in The Bahamas to be landed in the U.S. EEZ.

Alternative 1 (No Action): In the South Atlantic EEZ, snapper grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel is in transit through the South Atlantic EEZ.

Alternative 2: Require snapper grouper lawfully harvested in Bahamian waters to be maintained with head and fins intact.

Note: NMFS OLE would like the Council to consider this new action as the current regulation regarding snapper grouper fillets from the Bahamas is difficult to enforce.

Action 6. Exempt snapper grouper species harvested lawfully from The Bahamas from the bag and possession limits in the U.S. EEZ.

Alternative 1 (No Action): Snapper grouper species lawfully harvested from The Bahamas are subject to the bag and possession limits in the U.S. EEZ.

Alternative 2: Exempt snapper grouper lawfully harvested in The Bahamas from regulations for bag limits in the U.S. EEZ.

Note: The IPT would like the Council to consider this new action to keep parity between snapper grouper species with what is under consideration for dolphin and wahoo.

Timing for Amendment 7

Approved at December 2013 meeting:

- South Atlantic Council Law Enforcement Advisory Panel to provide guidance on March 3, 2014.
- South Atlantic Council to provide guidance on actions and alternatives, March 3-7, 2014.
- IPT to provide analysis between March and June 2014 towards a public hearing draft.
- South Atlantic Council will review the document at the June 2014 meeting and vote whether to send the document out for public hearings.
- Public hearings in August 2014.
- Distribute to MAFMC & NEFMC for the to publicize/hold public hearings and provide comments to SAFMC.
- South Atlantic Council reviews public input, revises document as necessary, and takes final action in September 2014.

**Appendix A. Discussion and Concerns Regarding
Dolphin Wahoo Amendment 7/Snapper Grouper Amendment 33**
Prepared by the IPT, January 24, 2014

Discussion:

- The “Purpose and Need” for this amendment needs to be re-visited once the actions and alternatives are finalized, which could impact the NEPA document prepared. The current purpose and need is not applicable to the current amendment. The intent needs to be specified by South Atlantic Council at the March 2014 meeting. Depending on the actions that are in the document, NEPA could require this document be an EA.
- Need to specify that this amendment refers only to recreational sector, not commercial.
- Specifying numbers of fish is more efficient than referring to pounds.
- Size limits could apply to fillets.
- Request South Atlantic Council to provide guidance on retaining alternative to consider VMS and hail-in/hail-out.
- Can NMFS OLE request a hail-in system maintained by Florida?
- In considering a “skin on” provision, the South Atlantic Council need to make sure it applies to snapper-grouper species as well as dolphin and wahoo.
- The South Atlantic Council needs to consider that Bahamian foreign vessel and fishing permits are issued for 90-days. It is possible a vessel that went to The Bahamas on a previous trip and could have valid Bahamian permits onboard, but did not fish in The Bahamas on the current trip.

NMFS OLE Concerns:

- No OLE agreement exists with the Bahamas.
- Species identification at sea is difficult, especially if the fish are frozen.
- OLE does not have certified scales onboard their vessels to weigh the fish.
- It is easy to conceal fillets on a vessel.
- It is expensive to send fish out for DNA analysis (to determine if fillets belong to a prohibited species, or a species taken out of season).
- Difficult to prove fish were caught in Bahamian waters and not in the U.S. EEZ.
- Recommend removing the current exemption of head and fins intact for snapper-grouper species.
- Clarify in amendment and regulations that sales of filleted dolphin, wahoo, and snapper-grouper species harvested recreationally in the Bahamas will be prohibited.
- No administrative mechanism to implement call-in procedures (Alternative 2 of Action 3).
- OLE would like the South Atlantic Council to require VMS on recreational vessels that want to have fillets on board (Alternative 3 of Action 3).
- Need to address vessels holding onto a U.S. bag limit and a Bahamian bag limit at the same time. For example, a vessel leaves Florida , catches U.S. bag limit, goes to the Bahamas, gets their bag limit and then transits back to Florida with two bag limits both onboard.

Questions/Issues regarding Bahamian regulations:

- Are we presuming 60 lbs of demersal fish to mean fillets of snapper-grouper are allowed in The Bahamas?
Bahamian regulations are not clear on this. They state 60 lbs of demersal fish (which applies to snapper grouper species) and are not clear on whether fish are whole or fillets although saying fish implies whole fish. The regulations do not prohibit filleting fish so in actual fact the 60 lbs can be whole or fillets.
- How many recreational fishing and cruising permits does The Bahamas give out annually?

We have requested this information but it is not readily available, as the data are not compiled nationally, but for each individual island. National data are available only for 2012 and indicate the number of individuals that arrived in The Bahamas by boat, but not on a cruise ship. Prior to 2012, data were not separated by cruise ship/non-cruise ship arrivals. Section 3.3.1 in the document states that for 2012, 148,578 passengers arrived by boat.

- Would the Bahamas consider modifying their regulations for bag/possession limits to mirror those in the U.S. EEZ?

The Bahamas was considering comprehensive changes to fishery regulations but with the recent change in government, these have been put on hold.

Other issues to resolve

- Consult with GC, NMFS Office of International Affairs (Monica).
- NOAA GC would like to get in writing from The Bahamas that fillets of dolphin, wahoo, and demersal species are not specifically prohibited in Bahamian waters.
- NOAA GC recommends that a Bahamian fisheries representative be invited to attend a South Atlantic Council meeting during discussions of this amendment prior to the South Atlantic Council voting whether to approve the amendment or not.

Appendix B. Florida FWC comments on IPT proposed actions

- **Action 1: Exempt dolphin and wahoo from requiring heads and fins intact upon landing**
 - Alternative 2 – Staff prefers Sub-alternative 2a that specifies that 2 filets will count as 1 fish. This appears the easiest sub-alternative to enforce. Staff also noted the direct and continuous transit clause is necessary as noted in this alternative.
 - Alternative 3 – Staff prefers having the skin intact as this alternative suggests because an officer cannot identify the species of fish without the skin since this action would allow head and fins to be removed.
- **Action 2: Exempt dolphin and wahoo from bag and possession limits in U.S. EEZ**
 - Alternative 1 - FWC staff prefers no action on this alternative because of enforceability and 60 fish per vessel is still quite a substantial amount of fish.
 - Alternative 2 – FWC staff does not prefer this alternative for a number of reasons. The Bahamian bag limit includes species not regulated by the Council, such as tuna. It also includes species prohibited in Florida, such as Nassau grouper. Thus, FWC staff do not think this alternative should be considered as a viable alternative.
- **Action 3: Reporting requirements for vessels bringing fish back from the Bahamas**
 - FWC staff are still discussing this option and will have another meeting prior to the March Council meeting to finalize our preferred direction.
- **Action 4: Require snapper and grouper filets brought from the Bahamas to have skin intact**
 - Alternative 2 – FWC staff prefers this alternative because an officer cannot currently identify the species of fish without the skin intact.

Issues with Florida's regulations provided by FWC:

- Florida has a landing in whole condition requirement and the current snapper and grouper filet exception and this proposed dolphin and wahoo Amendment goes against these Florida regulations.
- Florida doesn't have a transit provision per se in the reef fish rule but has used this to allow the fish coming back from Bahamas:
 - 68B-14.001 Purpose and Intent, Designation as Restricted Species. (1) Purpose and intent. (b) The prohibitions contained in this chapter are not intended to supersede or conflict with provisions of any federal management plan or regulations operative in Exclusive Economic Zone (EEZ) waters adjacent to Florida waters.
 - From FWS's website on Bringing Fish back from the Bahamas (<http://www.myfwc.com/fishing/saltwater/recreational/bahamas/>) states that Florida recognizes the federal rule exempting landing Bahamian-caught snapper grouper for vessels in direct and continuous transit.
- FWC rules would need to be officially modified to allow these snapper grouper filets and dolphin and wahoo to be brought back to Florida.

- Action 2, Alternative 1 the 60 fish dolphin boat limit for EEZ would be a violation of Bahamian bag limits which state that pelagic bag limit can be no more than 18 total dolphin, wahoo, kingfish, and tuna. A question is whether a person can possess multi day Bahamian bag limits.....because a person could have their U.S. bag limit in board, but they are over the Bahamian limit....