

DOLPHIN WAHOO COUNCIL MOTIONS
Charleston, South Carolina
September 20, 2013

REPORT

The Dolphin Wahoo Committee met on September 16, 2013. After receiving updates on the status of commercial and recreational landings, the Committee received a summary of the comments received regarding Dolphin Wahoo Amendment 5 public hearings in August 2013. The Committee discussed final development of Amendment 5, clarified language as needed, chose preferred alternatives where needed, and voted to recommend to the Council that the amendment is completed and ready to be sent to the Secretary for formal review. The Committee also discussed the issue of bringing dolphin and wahoo fillets from the Bahamas into the US EEZ.

The Committee and Council made the following motions:

MOTION #1: ACCEPT THE IPT'S RECOMMENDED LANGUAGE CHANGES FOR ACTION 2.

MOTION APPROVED BY COMMITTEE

MOTION APPROVED BY COUNCIL

MOTION #2: SELECT SUB-ALTERNATIVES 2C AND 3C AS THE PREFERRED SUB-ALTERNATIVES FOR ACTION 2.

MOTION APPROVED BY COMMITTEE

SUBSTITUTE MOTION: SELECT ALTERNATIVE 2, SUB-ALTERNATIVE 2C AND ALTERNATIVE 3, SUB-ALTERNATIVE 3C AS THE PREFERRED ALTERNATIVES AND SUB-ALTERNATIVES FOR ACTION 2.

MOTION APPROVED BY COUNCIL

Action 2: Revise the accountability measures (AMs) for dolphin and wahoo

Alternative 1 (No Action). (1) Commercial sector. If commercial landings as estimated by the Science and Research Director (SRD), reach or are projected to reach the commercial ACL, the Regional Administrator shall publish a notice to close the commercial sector for the remainder of the fishing year.

(2) Recreational sector. If recreational landings, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the RA shall publish a notice to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

Preferred Alternative 2. If commercial landings as estimated by the Science and Research Director (SRD) reach or are projected to reach the commercial ACL, the Regional Administrator shall publish a notice to close the commercial sector for the remainder of the fishing year. Additionally,

Sub-alternative 2a. If the commercial ACL is exceeded, the RA shall publish a notice to reduce the commercial ACL in the following fishing year by the amount of the commercial overage, only if the species is overfished.

Sub-alternative 2b. If the commercial ACL is exceeded, the RA shall publish a notice to reduce the commercial ACL in the following fishing year by the amount of the commercial overage, only if the total ACL (commercial ACL and recreational ACL) is exceeded.

Preferred Sub-alternative 2c. If the commercial ACL is exceeded, the RA shall publish a notice to reduce the commercial ACL in the following fishing year by the amount of the commercial overage, only if the species is overfished and the total ACL (commercial ACL and recreational ACL) is exceeded.

Preferred Alternative 3. If recreational landings, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings.

Sub-alternative 3a. If necessary, the RA shall publish a notice to reduce the length of fishing season and the recreational ACL in the following fishing year by the amount of the recreational overage, only if the species is overfished. The length of the recreational season and recreational ACL will not be reduced if the RA determines, using the best scientific information available, that a reduction is unnecessary.

Sub-alternative 3b. If necessary, the RA shall publish a notice to reduce the length of fishing season and the recreational ACL in the following fishing year by the amount of the recreational overage, only if the total ACL (commercial ACL and recreational ACL) is exceeded. The length of the recreational season and recreational ACL will not be reduced if the RA determines, using the best scientific information available, that a reduction is unnecessary.

Preferred Sub-alternative 3c. If necessary, the RA shall publish a notice to reduce the length of fishing season and the recreational ACL in the following fishing year by the amount of the recreational overage, only if the species is overfished and the total ACL (commercial ACL and recreational ACL) is exceeded. The length of the recreational season and recreational ACL will not be reduced if the RA determines, using the best scientific information available, that a reduction is unnecessary.

MOTION #3: ACCEPT IPT'S RECOMMENDED LANGUAGE CHANGES FOR ACTION 4.

MOTION APPROVED BY COMMITTEE

MOTION APPROVED BY COUNCIL

MOTION #4: SELECT ALTERNATIVE 1 AS THE PREFERRED ALTERNATIVE FOR ACTION 4.

MOTION APPROVED BY COMMITTEE

MOTION APPROVED BY COUNCIL

Action 4: Establish a commercial trip limit for dolphin in the exclusive economic zone (EEZ) throughout the SAFMC's area of jurisdiction.

Preferred Alternative 1. No action. There is no commercial trip limit for dolphin for commercial dolphin wahoo permit holders.

Alternative 2. 1,000 lbs ww trip limit for commercial dolphin wahoo permit holders.

Sub-Alternative 2a: south of 31° N. Latitude

Sub-Alternative 2b: north of 31° N. Latitude

Alternative 3. 2,000 lbs ww trip limit for commercial dolphin wahoo permit holders.

Sub-Alternative 3a: south of 31° N. Latitude

Sub-Alternative 3b: north of 31° N. Latitude

Alternative 4. 3,000 lbs ww trip limit for commercial dolphin wahoo permit holders.

Sub-Alternative 4a: south of 31° N. Latitude

Sub-Alternative 4b: north of 31° N. Latitude

Alternative 5. 4,000 lbs ww trip limit for commercial dolphin wahoo permit holders.

Sub-Alternative 5a: south of 31° N. Latitude

Sub-Alternative 5b: north of 31° N. Latitude

Alternative 6. 5,000 lbs ww trip limit for commercial dolphin wahoo permit holders.

Sub-Alternative 6a: south of 31° N. Latitude

Sub-Alternative 6b: north of 31° N. Latitude

Alternative 7. 10,000 lbs ww trip limit for commercial dolphin wahoo permit holders.

Sub-Alternative 7a: south of 31° N. Latitude

Sub-Alternative 7b: north of 31° N. Latitude

During the committee meeting, NOAA GC Monica Smit-Brunello indicated that the wording for **Preferred Alternative 2** needed modification to clarify what the alternative would do. In the course of modifying **Preferred Alternative 2**, **Preferred Alternative 3** needed minor modifications, as well.

Below is a summary of the changes recommended by NOAA GC for **Action 3**.

Changes to Preferred Alternative 2:

- 1) Removes two descriptive paragraphs under the section titled: ABC, Annual Catch Limits (ACLs), and Annual Catch Targets (ACTs) Adjustment Procedure because those paragraphs conflicted with the proposed framework changes.
- 2) Includes information in a new #10 that describes what activities the NMFS Regional Administrator is authorized to conduct through notice action.

- 3) Includes a new #11 that describes what happens if NMFS decides not to publish the proposed rule for the recommended management measures.

Changes to Preferred Alternative 3:

- 4) Minor wording changes to the **Preferred Alternative 3** description and renumbers the sections under **Preferred Alternative 3** to accommodate the new numbering under **Preferred Alternative 2**.
- 5) Notice that section #11 under **Preferred Alternative 2** is essentially repeated under **Preferred Alternative 3** as section #13. This section needs to apply regardless of whether the Council decides to keep only one of the alternatives as a preferred alternative, or should the Council send the amendment to the Secretary with both preferred alternatives, but the Secretary only approves one of the alternatives.

MOTION: ACCEPT RECOMMENDED CHANGES BY NOAA GC FOR ACTION3, PREFERRED ALTERNATIVES 2 AND 3.

MOTION APPROVED BY COUNCIL

Action 3: Revise the framework procedure in the Dolphin Wahoo FMP

Alternative 1. No action. Do not modify the framework procedure established in the Dolphin Wahoo FMP (SAFMC 2003). The existing framework (p.160 of the Dolphin Wahoo FMP (2003) includes the following text:

If the RA concurs that the Council's recommendations are consistent with the goals and objectives of the plan, the National Standards, and other applicable law, he/she shall implement the regulations by proposed and final rules in the *Federal Register* prior to the appropriate fishing year or such dates as may be agreed upon with the Councils. A reasonable period for public comment shall be afforded, consistent with the urgency, if any, of the need to implement the management measure.

Appropriate regulatory changes recommended by the Council that may be implemented by the Regional Administrator by proposed and final rules in the *Federal Register* are:

- a. Adjustment of the best estimate of maximum sustainable yield (MSY, range and/or best point estimate).
- b. Adjustment of the best estimate of optimum yield (OY, range and/or best point estimate).
- c. Initial specification of acceptable biological catch (ABC) and subsequent adjustment of the ABC range and/or best estimate when this information becomes available.
- d. Setting or modifying total allowable catch (TAC).
- e. Reopening of a previously closed area/season, timeframe for recovery of dolphin and wahoo should they become overfished, or fishing year which may not be adjusted by more than two months.
- f. Bag limits.
- g. Size limits.
- h. Tackle configuration (e.g., minimum hook size).
- i. Season/area closures (including spawning area closures).
- j. Gear restrictions and/or prohibitions.
- k. Permitting restrictions.
- l. Trip limits.

- m. Overfishing/overfished definitions and related thresholds (e.g., minimum stock size threshold (MSST) and maximum fishing mortality threshold (MFMT)).
- n. Annual specification/quota setting process.
- o. Assessment Panel composition and process.
- p. Identification, designation, and modification of essential fish habitat (EFH) and EFH-habitat areas of particular concern (HAPCs).
- q. Management measures to reduce or eliminate the impact of fishing gear/activities on EFH or EFH-HAPCs.
- r. Specify quota for scientific research.
- s. Designation of areas for scientific research.
- t. Regulations of longline length if ongoing research with marine mammals documents usefulness.
- u. Any other action to minimize the interaction of fishing gear with endangered species or marine mammals.
- v. Allocations and modifications to allocations.

Preferred Alternative 2. Include the following in the Dolphin Wahoo FMP framework: Update the framework procedure to revise the specification of Total Allowable Catch (TAC) for the Dolphin Wahoo FMP in terms that incorporate ACLs, ACTs, and AMs. Such modifications would be based upon new scientific information indicating such modifications are prudent. Changes to the ACLs, ACTs and AMs will be made using the following procedure once the new ACLs, ACTs and AMs are established by the Council. The framework language will reflect SEDAR and SSC roles in setting MSY, OY, and ABC. The framework will also allow for modifications of the acceptable biological catch (ABC) Control Rule for dolphin and wahoo.

Modification of the Acceptable Biological Catch (ABC) Control Rule Procedure

1. Modifications to the ABC Control Rule will be proposed to the South Atlantic Council by the South Atlantic Council's Scientific and Statistical Committee (SSC).
2. At the Council meeting following the receipt of the recommended changes to the ABC Control Rule, the South Atlantic Council will determine if changes are needed to the ABC Control Rule and make changes as appropriate.

Dolphin Wahoo FMP Framework Procedure for Specification of Annual Catch Limits, Annual Catch Targets, Overfishing Limits, Acceptable Biological Catch (ABC) Control Rule, ABC, and annual adjustments:

Procedure for Specifications:

1. At times determined by the SEDAR Steering Committee, and in consultation with the South Atlantic Council and NMFS Southeast Regional Office (SERO), stock assessments (or future assessment updates) will be conducted under the SEDAR process for stocks managed under the Dolphin Wahoo FMP. Each SEDAR stock assessment or assessment update will: a) assess to the extent possible the current biomass, biomass proxy, or SPR levels for each stock; b) estimate fishing mortality (F) in relation to F_{MSY} (MFMT) and F_{OY} ; c) determine the overfishing limit (OFL); d) estimate other population parameters

deemed appropriate; e) summarize statistics on the fishery for each stock or stock complex; f) specify the geographical variations in stock abundance, mortality recruitment, and age of entry into the fishery for each stock or stock complex; and g) develop estimates of B_{MSY} .

2. The South Atlantic Council will consider SEDAR stock assessments or other documentation the South Atlantic Council deems appropriate to provide the biological analysis and data listed above in paragraph 1. Either the SEFSC or the stock assessment branch of a state agency may serve as the lead in conducting the analysis, as determined by the SEDAR Steering Committee. After reviewing the SEDAR stock assessments, the SSC will prepare a written report to the South Atlantic Council specifying an OFL and may recommend a range of ABCs for each stock complex that is in need of catch reductions for attaining or maintaining OY. The OFL is the annual harvest level corresponding to fishing at MFMT (F_{MSY}). The ABC range is intended to provide guidance to the SSC and is the amount of the OFL as reduced due to scientific uncertainty in order to reduce the probability that overfishing will occur in a year. To the extent practicable, the probability that overfishing will occur at various levels of ABC and the annual transitional yields (i.e., catch streams) calculated for each level of fishing mortality within the ABC range should be included with the recommended range.

For overfished stocks, the recommended range of ABCs shall be calculated so as to end overfishing and achieve stock population levels at or above B_{MSY} within the rebuilding periods specified by the South Atlantic Council and approved by NMFS. The SEDAR report or SSC will recommend rebuilding periods based on the provisions of the National Standard Guidelines, including generation times for the affected stocks. Generation times are to be specified by the stock assessment panel based on the biological characteristics of the individual stocks. The report will recommend to the South Atlantic Council a B_{MSY} level and a MSST from B_{MSY} . The report may also recommend more appropriate estimates of F_{MSY} for any stock. The report may also recommend more appropriate levels for the MSY proxy, OY, the overfishing threshold (MFMT), and overfished threshold (MSST). For stock or stock complexes where data are inadequate to compute an OFL and recommended ABC range, the SSC will use other available information as a guide in providing their best estimate of an OFL corresponding to MFMT and ABC range that should result in not exceeding the MFMT.

3. The SSC will examine SEDAR reports or other new information, the OFL determination, and the recommended range of ABC. In addition, the SSC will examine information provided by the social scientists and economists from the South Atlantic Council staff and from the SERO Fisheries Social Science Branch analyzing social and economic impacts of any specification demanding adjustments of allocations, ACLs, ACTs, AMs, quotas, bag limits, or other fishing restrictions. The SSC will use the ABC control rule to set their ABC recommendation at or below the OFL, taking in account scientific uncertainty. If the SSC sets their ABC recommendations equal to OFL, the SSC will provide its rational why it believes that level of fishing will not exceed MFMT.

4. The Council may conduct a public hearing on the reports and the SSC's ABC recommendation at, or prior, to the time it is considered by the Council for action. Other public hearings may be held also. The Council may request a review of the report by its Dolphin Wahoo Advisory Panel and optionally by its socioeconomic experts and convene these groups before taking action.

5. The South Atlantic Council, in selecting an ACL, ACT, AM, and a stock restoration time period, if necessary, for each stock or stock complex for which an ABC has been identified, will, in addition to taking into consideration the recommendations and information provided for in paragraphs 1, 2, 3, and 4, utilize the following criteria:

- a.** Set ACL at or below the ABC specified by the SSC or set a series of annual ACLs at or below the projected ABCs in order to account for management uncertainty. If the South Atlantic Council sets ACL equal to ABC, and ABC has been set equal to OFL, the South Atlantic Council will provide its rationale as to why it believes that level of fishing will not exceed MFMT.
- b.** May subdivide the ACLs into commercial, for-hire, and private recreational sector ACLs that maximize the net benefits of the fishery to the nation. The Sector ACLs will be based on allocations determined by criteria established by the South Atlantic Council and specified by the South Atlantic Council through a plan amendment. If, for an overfished stock, harvest in any year exceeds the ACL or sector ACL, management measure and catch levels for that sector will be adjusted in accordance with the AMs established for that stock.
- c.** Set ACTs or sector ACTs at or below ACLs and in accordance with the provision of the AM for that stock. The ACT is the management target that accounts for management uncertainty in controlling the actual catch at or below the ACL. If an ACL is exceeded repeatedly, the South Atlantic Council has the option to establish an ACT if one does not already exist for a particular stock and adjust or establish AMs for that stock as well.

6. The South Atlantic Council will provide the SSC specification of OFL; SSC recommendation of ABC; and its recommendations to the NMFS RA for ACLs, sector ACLs, ACTs, sector ACTs, AMs, sector AMs, and stock restoration target dates for each stock or stock complex, estimates of B_{MSY} and MSST, estimates of MFMT, and the quotas, bag limits, trip limits, size limits, closed seasons, and gear restrictions necessary to avoid exceeding the ACL or sector ACLS, along with the reports, a regulatory impact review and proper National Environmental Policy Act (NEPA) documentation, and the proposed regulations within a predetermined time as agreed upon by the South Atlantic Council and RA. The South Atlantic Council may also recommend new levels or statements for MSY (or proxy) and OY.

7. The South Atlantic Council will review recommendations of the ABC Control Rule as proposed by their SSC at the Council meeting following the recommended changes. The South Atlantic Council will determine whether the recommended changes to the ABC Control Rule for dolphin and wahoo meet the goals of the Dolphin Wahoo FMP. If the

South Atlantic Council agrees with the recommended changes to the ABC Control Rule, they will include those changes in a framework amendment. If the South Atlantic Council does not agree with the recommended changes to the ABC Control Rule, they will notify the SSC of their reasons for not approving the changes.

8. The RA will review the South Atlantic Council's recommendations and supporting information, and, if he concurs that the recommendations are consistent with the objectives of the FMP, the National Standards, and other applicable law, he shall forward for publication notice of proposed rules to the Assistant Administrator (providing appropriate time for additional public comment). The RA will take into consideration all public comment and information received and will forward for publication in the *Federal Register* of a final rule within 30 days of the close of the public comment, or such other time as agreed upon by the South Atlantic Council and RA.

9. Appropriate regulatory changes that may be implemented by final rule in the *Federal Register* include:

- a.** ACLs or sector ACLs, or a series of annual ACLs or sector ACLs.
- b.** ACTs or sector ACTs, or a series of annual ACTs or sector ACTs and establish ACTs for stocks which do not have an ACT.
- c.** AMs or sector AMs.
- d.** Bag limits, size limits, vessel trip limits, closed seasons or area, gear restrictions, and quotas designed to achieve OY and keep harvest levels from exceeding the ACL or sector ACL.
- e.** The time period specified for rebuilding an overfished stock, estimated MSY and MSST for overfished stocks, and MFMT.
- f.** New levels or statements of MSY (or proxy) and OY for any stock.
- g.** New levels of total allowable catch (TAC).
- h.** Adjust fishing seasons/years.

10. The NMFS Regional Administrator is authorized, through notice action, to conduct the following activities.

- a.** Close the commercial fishery of a dolphin or wahoo species or species group that has a commercial quota or sub-quota at such time as projected to be necessary to prevent the commercial sector from exceeding its sector ACL or ACT for the remainder of the fishing year or sub-quota season.
- b.** Close the recreational fishery of a dolphin or wahoo species or species group at such time as projected to be necessary to prevent recreational sector ACLs or ACTs from being exceeded.
- c.** Reopen a commercial or recreational season that had been prematurely closed if needed to assure that a sector ACL or ACT can be reached.

11. If NMFS decides not to publish the proposed rule for the recommended management measures, or to otherwise hold the measures in abeyance, then the Regional

Administrator must notify the Council of its intended action and the reasons for NMFS concern along with suggested changes to the proposed management measures that would alleviate the concerns. Such notice shall specify: 1) The applicable law with which the amendment is inconsistent; 2) the nature of such inconsistencies; and 3) recommendation concerning the action that could be taken by the Council to conform the amendment to the requirements of applicable law.

Preferred Alternative 3. Institute an abbreviated process titled an Abbreviated Framework Procedure for revising ABCs, ACLs and ACTs according to the existing ABC Control Rule as outlined below:

12. Adjustments to ABCs, ACLs, and ACTs according to the existing ABC Control Rule(s) and formulas for specifying ACLs and ACTs that have been approved by the Council and that were implemented in a fishery management plan amendment to the FMP. This abbreviated process is authorized as follows:

- a.** Following the Scientific and Statistical Committee's (SSC's) review of the stock assessment, the Council will determine if changes are needed to ABC, ACL, and/or ACT and will so advise the RA.
- b.** The Council will first hold a public hearing during the Council meeting during which they will review the stock assessment and the SSC's recommendations. In addition, the public will be advised prior to the meeting that the Council is considering potential changes to the ABC, ACL, and/or ACT and the Council will provide the public the opportunity to comment on the potential changes prior to and during the Council meeting.
- c.** If the Council then determines that modifications to the ABC, ACL, and/or ACT are necessary and appropriate, they will notify the RA of their recommendations in a letter with the Council's analysis of the relevant biological, economic, and social information necessary to support the Council's action.
- d.** The RA will review the Council's recommendations and supporting information. If the RA concurs that the Council's recommendations are consistent with the objectives of the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and all other applicable law, the RA is authorized to implement the Council's proposed action through publication of appropriate notification in the Federal Register, providing appropriate time for additional public comment as necessary.
- e.** If the Council chooses to deviate from the ABC control rule(s) and formulas for specifying ACLs and ACTs that the Council previously approved and that were implemented in a fishery management plan amendment to the FMP, this abbreviated process would not apply, and either the framework procedure would apply with the preparation of a regulatory amendment or a fishery management plan amendment would be prepared. Additionally, the Council may choose to prepare a regulatory amendment or a fishery management plan amendment even if they do not deviate from the previously approved ABC control rule(s) and formulas for specifying ACLs and ACTs.

13. If NMFS decides not to publish the proposed rule for the recommended management measures through this Abbreviated Framework Procedure, or to otherwise hold the measures in abeyance, then the RA must notify the South Atlantic Council of its intended action and the reasons for NMFS concern along with suggested changes to the proposed management measures that would alleviate the concerns. Such notice shall specify: 1) The applicable law with which the amendment is inconsistent; 2) the nature of such inconsistencies; and 3) recommendation concerning the action that could be taken by the South Atlantic Council to conform the amendment to the requirements of applicable law.

MOTION: APPROVE DOLPHIN WAHOO AMENDMENT 5 FOR FORMAL SECRETARIAL REVIEW AND DEEM THE CODIFIED TEXT AS NECESSARY AND APPROPRIATE. GIVE STAFF EDITORIAL LICENSE TO MAKE ANY NECESSARY EDITORIAL CHANGES TO THE DOCUMENT/CODIFIED TEXT AND GIVE THE COUNCIL CHAIR AUTHORITY TO APPROVE THE REVISIONS AND RE-DEEM THE CODIFIED TEXT.

Motion approved by committee

MOTION APPROVED BY COUNCIL

MOTION: DIRECT COUNCIL STAFF TO BEGIN A NEW DOLPHIN WAHOO AMENDMENT TO ALLOW FOR BRINGING DOLPHIN AND WAHOO FILLETS FROM THE BAHAMAS INTO THE US EEZ AND THE ACTION AND ALTERNATIVES ARE AS SHOWN IN THE ISSUE PAPER. THIS AMENDMENT WILL BE BROUGHT TO THE COUNCIL AT OUR DECEMBER 2013 MEETING.

Motion approved by committee

MOTION APPROVED BY COUNCIL

MOTION: ACCEPT TIMING AND TASK AS PRESENTED

MOTION APPROVED BY COUNCIL

Timing and Task:

1. October 2013 – Finalize Amendment 5 and send amendment to SECRETARY for formal review.
2. September through December 2013 – Develop Dolphin Wahoo Amendment 7 with one action to address bringing dolphin and wahoo fillets from the Bahamas into the US EEZ. The action and alternatives are as follows:

Action: Allow dolphin and wahoo fillets to be brought into the United States through the Atlantic EEZ from the Bahamas

Alternative 1 (No Action): Do not allow dolphin and wahoo fillets to be brought in to the US EEZ.

Alternative 2: In the Atlantic EEZ, dolphin and wahoo 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 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.

3. December 2013 Council Meeting - Hold a public hearing for Dolphin Wahoo Amendment 7 and approve for submission to the Secretary of Commerce for final review.