

NMFS's Response to Council Motion – Dolphin Wahoo Amendment 12
February 7, 2020

Council motion from September 2019 meeting:

MOTION #11: REQUEST THAT NMFS PROVIDE INFORMATION ON FEASIBILITY OF THE ADDITIONAL BULLET AND FRIGATE ACTIONS IN AMENDMENT 12 (BEYOND DESIGNATION AS ECOSYSTEM COMPONENT SPECIES) AND PRESENT THIS TO THE COUNCIL AT THE MARCH 2020 COUNCIL MEETING. ALSO PROVIDE INFORMATION ON:

1. THE JURISDICTIONAL ISSUE – EXAMINE THE PRECEDENT OF EXTENDING CMP MANAGEMENT THROUGH THE MAFMC; IF INCLUDING AS AN ACTION IN AN AMENDMENT WILL NOT WORK, THEN HOW DOES THE SAFMC GAIN AUTHORITY FOR A SPECIES ALONG THE ENTIRE EAST COAST?
 2. FROM AN ECOSYSTEM COMPONENT SPECIES PERSPECTIVE, WHAT ARE APPROPRIATE REGULATORY ACTIONS THAT COULD PREVENT DEVELOPMENT OF AN UNREGULATED FISHERY BEFORE THE COUNCIL CAN DEVELOP AN AMENDMENT TO DETERMINE WHETHER MANAGEMENT IS NEEDED? FOR EXAMPLE, COMMERCIAL TRIP LIMITS AND A TOTAL QUOTA.
 3. ALLOWABLE GEARS FOR DOLPHIN INCLUDES AUTOMATIC REEL, BANDIT GEAR, HANDLINE, PELAGIC LONGLINE, ROD AND REEL, AND SPEAR (INCLUDING POWERHEADS). IF BULLET AND FRIGATE ARE ADDED TO THE DOLPHIN WAHOO FMP AS ECOSYSTEM COMPONENT SPECIES, WOULD THIS LIST OF ALLOWABLE GEARS APPLY? (NOTE: CURRENT COMMERCIAL FISHERY (NON-FMP) ALLOWABLE GEAR INCLUDES TRAWL, GILLNET, HOOK AND LINE, LONGLINE, HANDLINE, ROD AND REEL, BANDIT GEAR, CAST NET, LAMPARA NET, AND SPEAR.)
- APPROVED BY COUNCIL

NMFS Responses:

1. Can frigate mackerel and bullet mackerel be added to the Dolphin Wahoo Fishery Management Plan (FMP) as ecosystem component (EC) species?

Response: Yes, if the South Atlantic Fishery Management Council (South Atlantic Council) “desire[s] to list [them]” in the FMP “in order to achieve ecosystem management objectives,” 50 C.F.R. § 600.305(d)(13), and the stocks do not require conservation and management, *see id.* §§ 600.305(c)(1)-(4) (discussing factors for determining whether stocks require conservation and management). The term “EC species” is not used in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), but is a concept used only in the National Standard Guidelines for stocks that are not in need of conservation and management. *See id.* §§ 600.305(c)(5), (d)(13) and 600.310(d)(1) (explaining EC species).

2. If frigate mackerel and bullet mackerel are added to the Dolphin Wahoo FMP as EC species, will the EC species designation apply outside of the South Atlantic Council's jurisdiction?

Response: No, the current Secretarial designation of the South Atlantic Council as the lead for the dolphin and wahoo fishery is not going to automatically extend to EC species subsequently added to the plan. Absent some Secretarial designation as the lead Council for managing the new stocks, the South Atlantic Council's authority would be limited to its geographic jurisdiction. Thus, any regulatory requirements for EC species would be geographically limited to the South Atlantic Council's jurisdiction and potentially to vessels over which the South Atlantic Council already had some jurisdiction as a condition of being permitted under the Dolphin Wahoo FMP.

3. *THE JURISDICTIONAL ISSUE – EXAMINE THE PRECEDENT OF EXTENDING CMP MANAGEMENT THROUGH THE MAFMC; IF INCLUDING AS AN ACTION IN AN AMENDMENT WILL NOT WORK, THEN HOW DOES THE SAFMC GAIN AUTHORITY FOR A SPECIES ALONG THE ENTIRE EAST COAST?*

Response: The South Atlantic Council could gain authority for a species along the entire east coast through a request for Secretarial designation. The Magnuson-Stevens Act provides that, if a fishery extends beyond the geographical area of authority of any one Council, the Secretary “may designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan.” 16 U.S.C. § 1855(f)(1)(A). For example, the Secretary designated the South Atlantic Council as the lead for managing the dolphin and wahoo fishery throughout the entire mainland U.S. Atlantic coastline. Note that this provision requires that the designated Council “shall” prepare a Fishery Management Plan for the fishery. *See id.* § 1802(13) (defining “fishery,” in part, as “one or more stocks of fish which can be treated as a unit for purposes of conservation and management...and...any fishing for such stocks”).

4. *FROM AN ECOSYSTEM COMPONENT SPECIES PERSPECTIVE, WHAT ARE APPROPRIATE REGULATORY ACTIONS THAT COULD PREVENT DEVELOPMENT OF AN UNREGULATED FISHERY BEFORE THE COUNCIL CAN DEVELOP AN AMENDMENT TO DETERMINE WHETHER MANAGEMENT IS NEEDED? FOR EXAMPLE, COMMERCIAL TRIP LIMITS AND A TOTAL QUOTA.*

Response: Management measures can be specified for EC species in a Council's area of jurisdiction and for the FMP. For example, Councils in other regions have designated EC species and implemented vessel limits to prevent rapid expansion of a fishery for the EC species. However, commercial trip or vessel limits and recreational bag limits of the two mackerel species by dolphin wahoo permitted vessels would not likely result in substantial harvest limitations and protection for the EC species. Here, there is no indication that vessels harvesting dolphin and wahoo are the same vessels harvesting bullet mackerel and frigate mackerel. Bullet mackerel and frigate mackerel have largely been reported landed commercially using gill net, pound net, float trap, and otter trawl gear types, none of which are allowable gear in the dolphin wahoo fishery. The South Atlantic Council may be able to

justify the implementation of limits as precautionary measures to reduce the potential for the rapid expansion of their harvest in the dolphin wahoo fishery. But again, there is no indication that vessels harvesting dolphin and wahoo are the same vessels harvesting bullet mackerel and frigate mackerel. In addition, there is no clear indication of a likely future increase in harvest of bullet and frigate mackerel by dolphin wahoo vessels.

Annual quotas on harvest seem extremely challenging to justify for EC species in this situation. Annual catch limits, which are functional equivalent to an annual quota, are required for stocks and stock complexes in need of conservation and management. It is counterintuitive to set a quota for an EC species which is not in need of conservation and management. While there are no examples of annual quotas for EC species in other regions, the final rule for the Pacific Fishery Management Council's CEBA-1 established an annual vessel limit of 30 metric tons combined weight of all EC species in a calendar year.

5. *ALLOWABLE GEARS FOR DOLPHIN INCLUDES AUTOMATIC REEL, BANDIT GEAR, HANDLINE, PELAGIC LONGLINE, ROD AND REEL, AND SPEAR (INCLUDING POWERHEADS). IF BULLET AND FRIGATE ARE ADDED TO THE DOLPHIN WAHOO FMP AS ECOSYSTEM COMPONENT SPECIES, WOULD THIS LIST OF ALLOWABLE GEARS APPLY? (NOTE: CURRENT COMMERCIAL FISHERY (NON-FMP) ALLOWABLE GEAR INCLUDES TRAWL, GILLNET, HOOK AND LINE, LONGLINE, HANDLINE, ROD AND REEL, BANDIT GEAR, CAST NET, LAMPARA NET, AND SPEAR).*

Response: The list of allowable gear types could apply to bullet and frigate mackerel if they are added as EC species if there was support for why the gear restrictions were needed to protect EC species. However, it could be difficult to justify such restrictions for EC species which the Council has determined are “not in need of conservation and management.”