



# 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. 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.
6) Implement a permit requirement	Establish permit requirements for EC species.

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

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?

**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 (ACCSP), 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.

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

The Dolphin Wahoo Advisory Panel (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.

## Objectives for this meeting

- Review the draft purpose and need for the amendment, make modifications as appropriate, and provide rationale.
- Review the options for actions and alternatives that should initially be considered for further development in Amendment 12 and make modifications as appropriate.
- Consider timing of the amendment.

## 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.

### **IPT Recommendation/Comments:**

- Initial recommendations are in the text above.

- The initial purpose and need emphasizes the importance of bullet and frigate mackerel to wahoo, since dietary studies show a particularly strong reliance on the *Auxis* species as forage.

**Committee Action:**

- APPROVE THE IPT’S SUGGESTED PURPOSE AND NEED STATEMENTS.
- DO NOT APPROVE THE IPT’S SUGGESTED PURPOSE AND NEED STATEMENTS (COMMITTEE TO SUGGEST MODIFICATIONS).
- OTHER?

## 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.

**IPT Recommendation/Comments:**

- This is intended to address Option #2 from **Table 1**. “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.”
- This action would be necessary to add bullet and frigate mackerel to the Dolphin Wahoo FMP and would serve as an initial step towards implementing any subsequent actions.

**Committee Action:**

- APPROVE ACTION 1 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12.
- DO NOT APPROVE ACTION 1 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12 (COMMITTEE TO SUGGEST MODIFICATIONS).
- OTHER?

## **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.

### **IPT Recommendation/Comments:**

- This is intended to address Option #6 from the **Table 1**. “Establish permit requirements for EC species.”
- A permit requirement is necessary to make regulatory actions (reporting requirements, trip limits, bag limits, vessel limits, etc.) binding or enforceable for fishing vessels. This is particularly important since vessels engaged in fishing for dolphin and wahoo are not likely to harvest large quantities of bullet mackerel or frigate mackerel given the list of allowable gears for the fishery.
- There is no private recreational permit for South Atlantic Council-managed species, so **Alternative 3** is only intended to cover the for-hire component of the recreational sector.
- Sub-alternatives are similar to those that the Mid-Atlantic Council is considering for chub mackerel.
- The IPT included an alternative covering the for-hire sector for the Council’s consideration. The Council should initially review the alternative to comply with regulatory requirements (e.g., National Environmental Policy Act), as well as the National Standard Guidelines. If it is the intent of the Council to exempt the recreational sector from a permit requirement, then it would be helpful if this is stated and rationale is provided.

### **Committee Action:**

- APPROVE ACTION 2 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12.
- DO NOT APPROVE ACTION 2 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12 (COMMITTEE TO SUGGEST MODIFICATIONS).
- OTHER?



### **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.

#### **IPT Recommendation/Comments:**

- This is intended to address Option #5 from **Table 1**. “Establish or focus reporting requirements towards EC species such as through logbooks or dealer reports.”
- Alternatives for the private recreational and for-hire sectors are not included since reporting of landings and discards will be required with the proposed charter vessel electronic logbook, in addition through MRIP.
- Reporting requirements are specific to and differ between FMPs. Those reporting requirements are explicitly laid out in a FMP and in the regulations. Depending on the permitting requirement selected in **Action 2**, this action may not be necessary but should be retained for now if it is the Committee’s intent to continue consideration of a reporting requirement for bullet and frigate mackerel.

#### **Committee Action:**

- APPROVE ACTION 3 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12.
- DO NOT APPROVE ACTION 3 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12 (COMMITTEE TO SUGGEST MODIFICATIONS).
- OTHER?

### **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.

#### **IPT Recommendation/Comments:**

- This is intended to address Option #3 from **Table 1**. “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.”

- Regarding **Alternative 2**:
  - Does the Council want to pursue trip limits for specific gears or apply trip limits to all gears?
  - Should this apply to each mackerel species separately or both species combined?
  - For **Sub-alternative 2b**, a percentage of total catch could be very difficult to enforce at sea in circumstances where there are large quantities of other species onboard.

**Committee Action:**

- APPROVE ACTION 4 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12.
- DO NOT APPROVE ACTION 4 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12 (COMMITTEE TO SUGGEST MODIFICATIONS).
- OTHER?

**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.

**IPT Recommendation/Comments:**

- This is intended to address Option #4 from **Table 1**. “Prohibit directed fisheries for designated EC species by establishing an annual vessel limit.”
- This action would be very difficult to track and enforce across commercial vessels potentially fishing in the entire Atlantic EEZ and would add a notable administrative burden.

**Committee Action:**

- APPROVE ACTION 5 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12.
- DO NOT APPROVE ACTION 5 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12 (COMMITTEE TO SUGGEST MODIFICATIONS).
- OTHER?

## **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.

### **IPT Recommendation/Comments:**

- The IPT included an action and alternatives that would cover the recreational sector for the Council's consideration. The Council should initially review the action and alternatives to comply with regulatory requirements (e.g., National Environmental Policy Act), as well as the National Standard Guidelines. If it is the intent of the Council to exempt the recreational sector from a bag or vessel limit, then it would be helpful if this is stated and rationale is provided.

### **Committee Action:**

- APPROVE ACTION 6 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12.
- DO NOT APPROVE ACTION 6 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12 (COMMITTEE TO SUGGEST MODIFICATIONS).
- OTHER?

## **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.

### **IPT Recommendation/Comments:**

- This intended to address Option #7 from **Table 1**. “Establish a mechanism or protocol for allowing the development of a directed fishery for species listed as ecosystem components.”
- There are statutory notification requirements for managing new species (Section 305(a) of the Magnuson-Stevens Act and codified in 50 C.F.R. § 600.747)(see **Appendix**). Also, other councils that have pursued a similar action essentially require that the unmanaged forage species come under “formal management” where ACLs, other reference points, and accountability measures must be put in place to expand a fishery. As such, this action may not be necessary since stipulations and notification requirements already exist.
- Should the Council want to pursue this action, a series of guidelines or a policy will need to be developed to compliment **Alternative 2**.

### **Committee Action:**

- APPROVE ACTION 7 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12.
- DO NOT APPROVE ACTION 7 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12 (COMMITTEE TO SUGGEST MODIFICATIONS).
- OTHER?

### **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.

### **IPT Recommendation/Comments:**

- This action was requested for consideration by the Council during the Dolphin Wahoo Committee in June.

### **Committee Action:**

- APPROVE ACTION 8 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12.
- DO NOT APPROVE ACTION 8 AND THE PROPOSED RANGE OF ALTERNATIVES FOR CONSIDERATION IN AMENDMENT 12 (COMMITTEE TO SUGGEST MODIFICATIONS).
- OTHER?

### **Action 9. Other actions that should be considered in Amendment 12?**

### **Committee Action:**

- NONE REQUIRED

- THE COMMITTEE MAY WANT TO DISCUSS IF THERE ARE OTHER ACTIONS THAT SHOULD BE INITIALLY DEVELOPED IN AMENDMENT 12.

## Scientific and Statistical Committee (SSC) Review

The first option in **Table 1** is to “request guidance from the SSC on identifying prey species to be listed as ecosystem components.” This option was included in the table to reflect the action taken by the Mid-Atlantic Council to task their SSC with helping provide guidelines on which species should be included in their Unmanaged Forage Omnibus Amendment. The South Atlantic Council has already narrowed down the forage species to concentrate on (bullet mackerel and frigate mackerel) and the SSC is scheduled to review Amendment 12 at their October 2019 meeting. Unless otherwise specified by the Committee, the SSC will be provided an overview of the Council’s initial considerations in Amendment 12 and asked if there are any comments on the amendment.

### **Committee Action:**

- NONE REQUIRED
- THE COMMITTEE MAY WANT TO DISCUSS IF THERE ARE ANY ADDITIONAL SPECIFIC TASKS OR QUESTIONS THAT SHOULD BE POSED TO THE SSC.

### **Committee Action:**

- APPROVE ALL ACTIONS IN DOLPHIN WAHOO AMENDMENT 12, AS MODIFIED, TO BE REVIEWED IN DECEMBER 2019.
- APPROVE ALL ACTIONS IN DOLPHIN WAHOO AMENDMENT 12, AS MODIFIED, TO BE REVIEWED AT A LATER DATE (COMMITTEE TO SUGGEST OTHER DATE).
- OTHER?

**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.