

the petition of Iowa Telecommunications Services, Inc. (Iowa Telecom), for reconsideration of the Commission's *Data Gathering Order* published Wednesday, April 12, 2000 (65 FR 19675). Iowa Telecom requested the Commission to adopt annual statistical sampling for certain rural telephone companies in lieu of reporting Form 477 data.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Beers, Deputy Chief, or John C. K. Hays, Senior Attorney, Industry Analysis and Technology Division, Wireline Competition Bureau, at (202) 418-0952.

**SUPPLEMENTARY INFORMATION:** Iowa Telecommunications Services, Inc. (Iowa Telecom), in a petition for reconsideration of the *Data Gathering Order*, asked the Commission to adopt annual statistical sampling for certain rural telephone companies in lieu of reporting Form 477 data. The Commission denied the petition finding that Iowa Telecom has not raised materially new or persuasive arguments beyond those considered in the *Data Gathering Order*, nor has it alleged substantially changed circumstances to justify the requested relief. Parties wishing to revisit these arguments more generally may do so in the context of the Notice of Proposed Rulemaking in WC Docket No. 04-141.

#### Ordering Clauses

*It is further ordered* that, pursuant to sections 1-5, 10, 11, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151-155, 160, 161, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, and sections 1.106 and 1.429 of the Commission's rules, 47 CFR 1.106 and 1.429, the petition for reconsideration filed by Iowa Telecommunications Services, Inc. is *denied*.

*It is further ordered* that CC Docket No. 99-301 is *terminated*.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-11321 Filed 5-26-04; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 622

[Docket No. 031007250-4079-02; I.D. 091503E]

RIN 0648-A063

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery Off the Atlantic States

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the approved measures of the Fishery Management Plan for the Dolphin and Wahoo Fishery off the Atlantic States (FMP). For the dolphin and wahoo fishery in the exclusive economic zone (EEZ) off the Atlantic states (Maine through the east coast of Florida), this final rule will require vessel owners to obtain commercial vessel and charter vessel/headboat permits and, if selected, submit reports; require operators of commercial vessels, charter vessels, and headboats to obtain operator permits; require dealers to obtain permits and, if selected, submit reports; establish bag limits and a minimum size limit (dolphin only); close the longline fisheries in areas closed to the use of such gear for highly migratory pelagic species; prohibit sale without a commercial vessel permit; specify allowable gear; and establish a framework procedure by which the South Atlantic Fishery Management Council (Council) could establish and modify certain management measures in a timely manner. The FMP also specifies maximum sustainable yield (MSY), optimum yield (OY), the determinants of overfishing (maximum fishing mortality threshold (MFMT)) and overfished (minimum stock size threshold (MSST)), the management unit, the fishing year, and essential fish habitat (EFH) and EFH habitat areas of particular concern (EFH-HAPCs). In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effects are to conserve and manage dolphin and wahoo and to ensure that no new fisheries for dolphin and wahoo develop.

**DATES:** This final rule is effective June 28, 2004, except for the amendments to §§ 622.4(a)(1)(i)(E), 622.4(a)(2)(xii), 622.4(a)(4), 622.5(a)(1)(vi), 622.5(a)(2)(i), 622.5(b)(1), 622.5(c)(8), 622.39(f), 622.41(l)(2), 622.44(f), and 622.45(i) that are effective September 24, 2004 and the amendments to § 622.4(a)(5) and 622.4(i) that are effective November 23, 2004.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) may be obtained from NMFS, Southeast Regional Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Robert Sadler, Southeast Region, NMFS, at the above address, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, phone: 727-570-5305, fax: 727-570-5583, e-mail: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Council prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On September 26, 2003, NMFS announced the availability of the FMP and requested comments on it (68 FR 55573). NMFS published a proposed rule to implement the FMP and requested comments on the proposed rule through December 18, 2003 (68 FR 62267, November 3, 2003). NMFS partially approved the FMP on December 23, 2003; NMFS disapproved the restrictive qualifying criteria for a commercial vessel permit, commercial vessel permit transfer provisions, commercial trip limits for dolphin applicable to vessels with a commercial permit for Atlantic dolphin and wahoo, designation of sargassum as EFH, and the designation of sargassum as an EFH-HAPC. The rationale for the approved measures in the FMP is provided in the preamble to the proposed rule and is not repeated here.

#### Comments and Responses

NMFS received 75 letters from the public during the comment periods on the FMP and the proposed rule. The comments are summarized below along with NMFS' responses.

*Comment 1:* The FMP represents a much needed management strategy for the dolphin and wahoo stocks of the U.S. Atlantic Coast. This proactive strategy will maintain healthy stocks of dolphin and wahoo for all user and

interest groups. Recreational fishermen have not been restricted from catching large numbers of small dolphin, and the proposed bag and size limits will curb those excessive catches. Similarly, capping the commercial effort in this predominantly recreational fishery will ensure that the historical allocation is maintained between sectors. Prohibiting the sale of fish caught under the bag limit, without appropriate state and Federal commercial permits, will reduce the incentive for recreational fishermen to catch excess quantities of fish with the sole intent of selling the catch, and will reduce the potential for health issues from the sale of improperly handled and processed fish.

*Response:* The actions approved by NMFS effectively manage and conserve the dolphin and wahoo resources of the U.S. Atlantic Coast. This rule does not attempt to rectify a biological problem with the stocks; neither stock is overfished or approaching an overfished condition because of overfishing. The FMP has specific objectives to maintain healthy stocks of dolphin and wahoo, while optimizing social and economic benefits to the fishery.

*Comment 2:* The proposed 10–dolphin and 2–wahoo bag limits along with the 20–inch (50.8–cm) size limit for dolphin off Florida and Georgia are an appropriate first step to cap the current effort and participation in the fishery, but may be too lenient. A minimum size limit of 24 inches (61 cm) fork length for dolphin and at least 40 inches (102 cm) for wahoo would be more appropriate. A bag limit of five or less dolphin per person per day would be more appropriate.

*Response:* Alternative bag and size limits for dolphin and wahoo were considered but rejected. The intent is to cap, but not reduce, the current participation and catch in the dolphin and wahoo fishery. More restrictive and area-inclusive bag, boat, and size limits were projected to reduce the catch and landings in the recreational fishery. For wahoo, no size limits were proposed because of human safety issues associated with the release of wahoo and the subsequent potential for increased discard mortalities.

*Comment 3:* Recreational fishermen are already overburdened with regulations restricting their right to catch fish. Recreational fishermen should not be subject to catch restrictions or restrictions on their ability to sell their fish caught under the bag limit. The proposed prohibition of sale of fish caught under the bag limit will impact recreational anglers who supplement their low or fixed incomes from the incidental sale of their catch.

*Response:* The Magnuson-Stevens Act defines recreational fishing as fishing for sport or pleasure, and commercial fishing as fishing where the harvested catch is intended to enter commerce through sale, barter, or trade. In accordance with these definitions, NMFS has approved the prohibition of the sale of dolphin and wahoo without the appropriate state and Federal commercial vessel permits. The intent of the action is to deter recreational fishermen from targeting excessive amounts of dolphin or wahoo with the primary purpose of selling the excess portion of their catch to offset fishing trip expenses. This, in turn, will reduce the potential for excessive harvest and localized depletions of the stocks.

*Comment 4:* The current licensing and permitting requirements in the for-hire sector are already excessive, and additional permitting requirements for for-hire vessels are unnecessary and burdensome. The sale of dolphin caught under the recreational bag limit by the for-hire fleet represents a substantial contribution to the market. Without these sales, there would be little dolphin available, and the price for these fish would increase substantially. The for-hire sector should be allowed to continue to sell fish caught under the recreational bag limits to supplement the income from chartering the vessel without the need for additional permits.

*Response:* The Council is addressing the sale of recreationally caught fish on a species-by-species basis. NMFS approved the Council's proposed action to prohibit the sale of wahoo caught under the recreational bag limit. However, recognizing the importance of the sale of dolphin to the for-hire industry, NMFS approved the Council's proposed action to restrict the sale of dolphin caught under the bag limit. For-hire vessels operating as a charter, and that possess appropriate state and Federal commercial permits, will be allowed to continue to sell dolphin caught under the bag limit. In combination with the reporting requirements associated with the commercial vessel permit, NMFS and the Council will have the opportunity to better monitor the catch and landings in the fishery, and thus be able to make more informed decisions regarding the management of the stocks.

*Comment 5:* The ability to obtain a commercial vessel permit that will allow for-hire and commercial vessels to sell their catch should not be restricted by the proposed qualifying criteria. Catches of dolphin and wahoo are incidental to the catch of many other species. Annual catches and landings of these species by individual fishermen or

vessels are well below the proposed 250–pound (lb) (113–kg) criterion. Commercial and for-hire vessels should be allowed to sell their incidental catches of dolphin and wahoo without the need for a commercial permit.

*Response:* The intent of this action is to establish a permit system that capped, but that does not reduce, the current participation and catch in the dolphin and wahoo fishery. Additionally, the proposed qualifying criteria were intended to capture the historical participants in the fishery.

NMFS conducted a Supplemental Initial Regulatory Flexibility Analysis (SIRFA) to complement the RFA findings in the FMP. The SIRFA analysis examined current participation of vessels and their landings during the calendar years 2000 through 2002; after the control date of May 21, 1999. The SIRFA concluded that many small-time operators who currently participate in the dolphin and wahoo commercial fishery would not qualify for a permit, but several hundred vessels that have no demonstrated current or historical participation in the dolphin and wahoo fishery would qualify for the permit. On a related note, participants that do not qualify for a commercial vessel permit can only obtain a permit through transfer. The FMP states that transfers may only occur through the sale of the vessel for which the permit is issued. The FMP does not provide any rationale as to why such a restrictive method of transfer is necessary.

The proposed qualifying criteria for a commercial vessel permit does not adequately address historical and current participation in the fishery, as required by section 303(b)(6) of the Magnuson-Stevens Act. Additionally, the criteria are inconsistent with the Council's intent of capping the fishery and capturing the historical participants. Therefore, NMFS approved the requirement for a Federal vessel permit for commercial and for-hire vessels, but disapproved the proposed restrictive qualifying criteria to obtain a commercial vessel permit. With the disapproval of the qualifying criteria, these will be open-access permits with no transfer provisions. In combination with the reporting requirements associated with the commercial vessel and for-hire permit, this action will provide NMFS and the Council with the appropriate mechanism to monitor the catch and landings in the fishery, and thus be able to make more informed decisions regarding the management of the stocks.

*Comment 6:* Trip limits on dolphin are counter-productive to the economics of commercial harvest of these

incidentally caught species. Short trips, resulting from restrictive trip limits, would increase fixed production costs to the vessel owner and fishermen. Restrictive trip limits for dolphin would lead to regulatory discards once the quantity of fish is met during a trip. Trips with high quantities of landings of dolphin occur during a brief 4- to 6-week period in the late spring and early summer in the South Atlantic region. Current commercial landings of dolphin are far less than the proposed 1.5 million-lb (680,400-kg) or 13-percent cap on the commercial fishery, thus trip limits are likely to have economic impacts on the commercial fishery.

*Response:* The SIRFA conducted by NMFS, which examined the trips and landings of dolphin and wahoo, concluded that the majority of trips would not exceed the proposed trip limit for dolphin. However, for trips that did exceed the proposed trip limits, dolphin accounted for 16 to 33 percent of the value of the landings.

Although the Council was justifiably concerned that the commercial sector might rapidly expand its effort and landings in the dolphin fishery, the implementation of the time and area closures for the highly migratory species (HMS) fishery in the South Atlantic region in 2001 appears to have curtailed that potential. The existing data do not show that the commercial dolphin fishery is expanding, nor is such an expansion likely to occur. Commercial landings of dolphin (from both the for-hire and commercial sectors) have declined from peak landings of 2.2 million lb (997,920 kg) in 1995 and 1.5 million lb (680,400 kg) in 1997 to less than 1.0 million lb (453,600 kg).

The intent of this action is to cap the current participation and effort in the fishery. The Council rejected alternatives for several actions because of their potential to reduce current participation and effort. By capping the commercial fishery at 1.5 million lb (680,400 kg) or 13 percent of the total landings, NMFS has determined that a trip limit on dolphin, which is projected to reduce commercial landings, is unnecessarily burdensome and restrictive on that segment of the fishery at this time. Therefore, NMFS disapproved the proposed trip limit on dolphin.

By contrast, establishing a commercial trip limit of 500 lb (227 kg) for wahoo is not expected to have a significant effect on the current catch and effort in the fishery. The FMP indicates that an Atlantic-wide 500-lb (227-kg) commercial trip limit on wahoo is anticipated to have less than a 3-percent impact on commercial landings. The SIRFA analysis supports this finding, noting that more than 99 percent of all trips land less than 500 lb (227 kg) per trip. NMFS has approved the commercial trip limit for wahoo.

*Comment 7:* The conclusion of non-significance under Executive Order (E.O.) 12866 in the SIRFA differs from that under the Regulatory Flexibility Act (RFA) and the determination of the FMP and should be explained further in the final rule.

*Response:* The criteria under which significance is determined is different under E.O. 12866 and the RFA. Therefore, the finding of significance under the RFA has no direct bearing on the determination under E.O. 12866. Although the FMP, as proposed, is

projected to significantly reduce profits for a substantial number of small entities, as per the RFA analysis, it has been determined to not be significant because of the criteria in Section 3(F) of E.O. 12866.

#### Changes From the Proposed Rule

In accordance with the partial approval of the FMP measures, the following proposed amendments have been removed from this final rule: (1) The revisions to the transfer provisions in § 622.4(g)(1); (2) the addition of § 622.4(s) regarding restrictive commercial vessel permit eligibility criteria, special application procedures, and transfer restrictions; (3) the revision to the prohibitions in § 622.7(b); and (4) the commercial trip limits in § 622.44(f)(1)(i)—that paragraph has been restructured accordingly.

#### Explanation of Effective Dates

As indicated in the proposed rule (68 FR 62267, November 3, 2003), this final rule establishes a delayed effective date, September 24, 2004, for the commercial vessel, charter vessel/headboat, and dealer permit requirements and a delayed effective date, November 23, 2004, for the operator permit requirement. In addition, there are a number of other regulatory provisions in this final rule that are dependent, directly or indirectly, on those permit requirements and, therefore, must share the respective, delayed effective dates.

The following table lists those regulatory provisions that have effective dates different than the standard effective date, June 28, 2004, that applies to all other provisions of this final rule.

Affected Paragraph	Management Measure	Effective Date
§ 622.4(a)(1)(i)(E)	Charter/Headboat permit requirement	September 24, 2004.
§ 622.4(a)(2)(xii)	Commercial permit requirement	September 24, 2004.
§ 622.4(a)(4)	Dealer permit requirement	September 24, 2004.
§ 622.4(a)(5)	Operator permit requirement	November 23, 2004.
§ 622.4(i)	Requirement to display operator permit	November 23, 2004.
§ 622.5(a)(1)(vi)	Commercial vessel reporting requirement	September 24, 2004.
§ 622.5(a)(2)(i)	Commercial vessel reporting deadline	September 24, 2004.
§ 622.5(b)(1)	Charter/Headboat reporting requirement	September 24, 2004.
§ 622.5(c)(8)	Dealer reporting requirement	September 24, 2004.
§ 622.39(f)	Bag and possession limits	September 24, 2004.
§ 622.41(l)(2)	Sea turtle protection measures for longliners	September 24, 2004.
§ 622.44(f)	Commercial trip limits	September 24, 2004.
§ 622.45(i)	Restrictions on sale or purchase	September 24, 2004.

#### Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an FRFA, based on the Regulatory Impact Review. A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The objectives of the final rule are to address local reduction in fish abundance, market disruption, inter-sector conflict and reduced social and economic benefits. The final rule will create

permit requirements and trip, bag and size limits; specify allowable gear; place restrictions on recreational sales; establish reporting requirements; and establish a framework regulatory procedure to allow for timely implementation of certain potential

future actions. The final rule will apply to all entities that operate in the dolphin and wahoo fisheries.

Approximately 1,700–3,300 vessels and/or Florida Saltwater Product Licensees (SPLs) were identified with logbook-reported or trip-ticket reported commercial landings of dolphin and wahoo on the U.S. Atlantic Coast during at least one year of the 1996–2002 period. On average, the annual gross revenue by these entities varied from \$4,000 to \$123,000. Of these vessels, the larger vessels participate in the Atlantic HMS longline fishery and landed approximately ten times as much dolphin and wahoo as the smaller Southeast coastal fisheries vessels and the vessels with Florida SPLs. The smaller vessels, however, were relatively more dependent on revenue from the harvest of dolphin and wahoo.

The final rule will establish four types of permits to allow continued operation in the dolphin or wahoo fishery: A dealer permit, a commercial vessel permit, a for-hire vessel (charter vessel or headboat) permit, and an operator permit for either commercial or for-hire vessels. A for-hire vessel could possess both a commercial vessel permit and a for-hire vessel permit. Qualification for a vessel permit simply requires application. The requirements for the various permits and reporting do not require professional skills, and, therefore, may be deemed not to be onerous on the affected participants.

All of the 1,700–3,300 entities with logbook-reported or trip-ticket reported commercial landings of dolphin and wahoo on the U.S. Atlantic Coast during at least one year of the 1996–2002 period may be expected to obtain a commercial vessel permit. In addition, approximately 6,800 for-hire vessels on the U.S. Atlantic Coast have no demonstrated record of sale of dolphin and wahoo. These vessels may choose to obtain a for-hire vessel permit to harvest and possess, but may choose to not obtain a commercial vessel permit to sell, dolphin and wahoo caught in the U.S. Atlantic EEZ. Among for-hire fishing vessels, average revenues for charter vessels are estimated at \$26,000–\$69,000, while average revenues for headboats are estimated at \$123,000–\$300,000.

There are two general classes of small business entities that will be directly affected by the final rule: commercial fishing vessels and for-hire (charter vessel or headboat) fishing vessels. The Small Business Administration defines a small business that engages in charter fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual

receipts up to \$6.0 million per year. The revenue benchmark for a small business that engages in commercial fishing is a firm with receipts up to \$3.5 million. Based on the revenue profiles provided above, all commercial and for-hire entities operating in the dolphin and wahoo fisheries are considered small entities.

The requirements for the dealer, commercial-vessel, for-hire vessel, and operator permits are not expected to restrict qualification for these permits. Costs will be limited to the permit fee, which is not onerous and is not expected to substantially affect business profits.

The wahoo commercial trip limit is expected to reduce gross revenues by 6–8 percent for 10 vessels. This dollar loss in annual gross revenues, \$500–\$1,400 per vessel, translates directly into a loss in profits assuming no change in prices, trip costs and fishing effort.

The allowable gear restriction is expected to reduce fishery profits for an unknown number of vessels by \$11,000 a year in total for all vessels combined. The \$11,000 estimate reflects the value of dolphin and wahoo landed by gear types that will no longer be allowed under the final rule. Since available data do not allow the identification of the number of vessels this would impact, it is not possible to determine the average annual revenues of these vessels.

The prohibition on the sale of recreationally caught dolphin and wahoo, except for for-hire vessels that possess the necessary state and Federal commercial permits, is not expected to adversely impact gross revenues or profits of small entities. Available data suggest that sales by for-hire vessels are from vessels that are additionally legally permitted to operate as commercial vessels. Further, there is no evidence to indicate that angler demand for for-hire services will decline as a result of recreational sales restrictions.

The framework procedure is not expected to have any direct impacts on participants or profits since it merely establishes a structure for possible future action. Additionally, specifying the fishing year will have no impact on fishing behavior and, therefore, have no impact on business profits.

The impact of the recreational dolphin and wahoo bag limits, and recreational dolphin minimum size limits on for-hire profits cannot be determined. Although the approved bag and size limits are expected to restrict the harvest behavior of some recreational anglers, there are insufficient data to establish the impact of these measures on angler demand for

for-hire services and, hence, revenues or profits.

The dolphin minimum size limit is expected to reduce ex-vessel revenues of commercial fishing operations that operate off Georgia and Florida by approximately 3 percent.

The prohibition of surface and pelagic longline gear for dolphin and wahoo during time and area closures in the South Atlantic is not expected to result in any reduction in profits for current participants. It is not expected that any vessels would attempt to operate in this manner since they would have to give up their more valuable HMS permit in order to do so. Available data indicate that such vessels cannot profitably operate exclusively harvesting dolphin and wahoo.

A number of public comments received addressed the rule's economic impact. Those comments were addressed elsewhere in this document (see comments 5, 6, and 7). No changes were made in the final rule as a result of such comments.

Following is a discussion of alternatives that were not adopted in the final rule.

Rejected alternatives regarding the permit requirement would have: (1) imposed permit-qualification criteria, or (2) not required vessel permits (no-action alternative). Under the alternative that would have required permit-qualification criteria, losses for the 387–1,998 entities that would not have been expected to meet the criteria for a commercial vessel permit are estimated at 4–32 percent of annual gross revenue on average. The dollar loss in gross revenue translates into loss in vessel profit, assuming no change in prices, trip costs, and fishing effort. Individually, these non-qualifying entities had annual gross revenues from fishing that ranged from less than \$10 to \$70,000 or more, and annual landings of dolphin and wahoo that ranged from less than 10 lb (4.5 kg) to 4,000 lb (1,814 kg) or more. It is estimated that 58–476 out of these 387–1,998 entities could have been driven out of business, assuming a 50 percent-loss-in-gross criterion.

Approximately 1,300 vessels would have been expected to meet the commercial vessel dolphin-wahoo permit qualification criteria. This total includes vessels that exclusively operate as commercial vessels as well as those for-hire vessels that meet the commercial vessel permit requirements. All of these 1,300 vessels have documented Atlantic Coast landings of dolphin and wahoo, and most would have qualified on the basis of already having Federal permits for commercial

fishing in the EEZ for snapper-grouper, king mackerel, or swordfish, as specified in the proposed FMP. An owner would also have qualified for a commercial vessel permit if he/she derived at least 25 percent of his/her earned income, or at least \$10,000, from commercial or for-hire fishing during one of the 3 calendar years 1996, 1997, or 1998, and the owner can document that he/she owned a vessel that landed and sold at least 250 lb (113 kg) of dolphin and/or wahoo harvested from the Atlantic during one of the 3 calendar years 1996, 1997, 1998, or during the period January 1, 1999, through May 21, 1999.

Among the estimated 1,300 vessels discussed above, only a few would have been expected to qualify for a commercial permit on the basis of meeting the 250-lb (113-kg) and \$10,000 criteria. The number of vessels that would have qualified under the 250-lb (113-kg) and 25-percent earned income from fishing criteria cannot be determined since information on total earned income is unavailable.

As many as 900 additional vessels might have met the qualification criteria on the basis of having Federal permits for commercial fishing in the EEZ for snapper-grouper, king mackerel, or swordfish. However, these vessels do not have documented Atlantic Coast landings of dolphin or wahoo, and, therefore, there may have been no incentive to obtain a permit, although applications might have been submitted for speculative purposes. The number of vessels with snapper-grouper, king mackerel, or swordfish permits has declined over time because each of these three permits is either under a moratorium or limited access program, and no new vessels can enter the fisheries, except via transfer and purchase of existing permits.

The rejected alternatives respecting the sale of recreationally-caught fish include: (1) unregulated sale (no-action alternative), (2) a 3–5 year phase-out of sale by for-hire vessels with necessary commercial permits, and (3) no sale, whereas the approved alternative would allow sale by for-hire vessels with the necessary commercial permits. The final rule would have less economic impact on small entities than the 3–5 year phase-out and no-sale alternatives. Compared with the no-action alternative, the final rule is not expected to have a significant economic impact on for-hire vessels. Available data suggest that sales by for-hire vessels are from legally permitted commercial vessels. Further, there is no evidence to indicate that angler demand for for-hire

services will decline as a result of the sales restrictions.

Rejected alternatives to implementing a commercial trip limit for dolphin would: (1) establish a 1,000/3,000-lb (454/1,361-kg) trip limit or (2) specify a trip limit of from 1,000 to 5,000 lb (454 to 2,268 kg). Both alternatives would be expected to cause direct negative economic impacts. A 1,000/3,000-lb (454/1,361-kg) trip limit would be expected to result in an annual loss of \$96,000. A 1,000-lb (454-kg) trip limit would result in an expected loss of \$157,000 per year, while 3,000-lb (1,361-kg) and 5,000-lb (2,268-kg) trip limits would result in losses of \$50,000 and \$22,000 per year, respectively. Each alternative is, therefore, more restrictive than the final rule.

Only a status quo measure (no-action alternative) was considered as an alternative to the commercial wahoo trip limit. Since maintaining the status quo would impose no new restriction, the adverse impact of the approved measure would be avoided. However, annual landings of wahoo have been close to the estimated maximum sustainable yield and NMFS determined that the approved alternative would best meet the objectives of the FMP.

Rejected alternatives to the dolphin bag and/or boat limits would provide: (1) no bag or boat limit (no-action alternative), (2) a boat limit of 18–60 fish, (3) a daily bag limit of 5–10 fish per person, excluding captain and crew on for-hire vessels, or (4) a daily bag limit of 10 fish per person or 60 fish per boat, whichever is less (with the 60 fish boat limit not applying north of 39° N. latitude (Delaware Bay, Delaware)). The final rule will establish a bag limit of 10 fish per person per day, or 60 fish per vessel, whichever is less, with the vessel limit not applying to headboats. For wahoo, the rejected alternatives would provide: (1) no bag limit (no action alternative), or (2) a bag limit of 2 fish per person per day, excluding captain and crew, whereas the approved alternative will establish a bag limit of 2 fish per person per day.

Rejected alternatives to the minimum size (fork length) limit for dolphin would provide: (1) no minimum size (no-action alternative), or (2) an 18–24 inch (46–61 cm) minimum size, whereas the approved alternative would establish a 20-inch (51-cm) minimum size for Florida and Georgia, and no minimum size limit farther north.

The impact of other alternatives to establish recreational dolphin and wahoo bag limits, and dolphin minimum size limits on for-hire profits cannot be determined. Although the

approved bag and size limits are expected to restrict the harvest behavior of some recreational anglers, there are insufficient data to establish the impact of these measures on angler demand for for-hire services and, hence, revenues or profits. While the approved alternative for minimum size limits for dolphin is expected to reduce ex-vessel revenue in Georgia and Florida for commercial vessels when compared with the no-action option, the approved alternative covers just the EEZ off Georgia and Florida, whereas the rejected alternatives would apply to the entire Atlantic EEZ. The rejected alternative would cover a larger area than the approved action and, therefore, would be more restrictive. Further, although an 18- or 19-inch (46- or 48-cm) minimum size limit would be less restrictive than the approved 20-inch (51-cm) minimum size, the rejected alternative would also allow for a minimum size limit that is more restrictive than the approved action, i.e., limits greater than 20 inches (51 cm). NMFS determined that the respective approved alternatives for the bag and size limits would best meet the objectives of the FMP.

Copies of the FRFA are available upon request (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been approved by OMB under OMB control numbers 0648–0487 for the permit-related requirements, 0648–0013 for the dealer reporting requirements, and 0648–0371 for the vessel reporting requirements. The estimated public reporting burdens are as follows: 20 minutes for a charter vessel/headboat permit application or commercial vessel permit application; 60 minutes for commercial vessel records including a listing of landings; 5 minutes for a request to add the commercial vessel permit or charter vessel permit to a vessel already holding other vessel permits; 5 minutes for a dealer permit application; 60 minutes for an operator permit application; 12 minutes for a vessel catch and effort report; 2 minutes per form to prepare a no-fishing report; and 15 minutes for a dealer monthly report of dolphin and wahoo receipts and prices.

The requirement for a commercial vessel or charter vessel/headboat permit automatically makes the permit holder subject to a requirement that the vessel display its official number. This requirement has been approved by OMB under OMB control number 0648-0358. The reporting burden for the display of a vessel's official number is estimated at 45 minutes per response.

The estimates of public reporting burdens for these collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these or any other aspects of the collections of information to NMFS and OMB (see ADDRESSES).

**List of Subjects**

*50 CFR Part 600*

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

*50 CFR Part 622*

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 20, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR parts 600 and 622 are amended as follows:

**PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.10, add the definitions “Automatic reel” and “pelagic longline” in alphabetical order to read as follows:

**§ 600.10 Definitions.**

\* \* \* \* \*

*Automatic reel* means a reel that remains attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is paid out from and retrieved on the reel electrically or hydraulically.

\* \* \* \* \*

*Pelagic longline* means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

\* \* \* \* \*

■ 3. In § 600.725, in paragraph (v) table, under heading “I. New England Fishery Management Council (NEFMC),” add entry 24; under heading “II. Mid-Atlantic Fishery Management Council (MAFMC),” add entry 28; and under heading “III. South Atlantic Fishery Management Council,” add entry 24; new entries are added in numerical order to read as follows:

**§ 600.725 General prohibitions.**

\* \* \* \* \*

(v) \* \* \*

Fishery	Authorized gear types
I. New England Fishery Management Council (NEFMC)	
24. Dolphin/wahoo fishery (FMP managed by SAFMC)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
II. Mid-Atlantic Fishery Management Council (MAFMC)	
28. Dolphin/wahoo fishery (FMP managed by SAFMC)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
III. South Atlantic Fishery Management Council (SAFMC)	
24. Dolphin/wahoo fishery (FMP)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.1, the first sentence of paragraph (b) is revised, and in Table 1, the entry “FMP for the Dolphin and Wahoo Fishery off the Atlantic States” is added in alphabetical order to read as follows:

**§ 622.1 Purpose and scope.**

\* \* \* \* \*

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, South Atlantic, or Atlantic EEZ, as indicated in Table 1 of this section. \* \* \*

TABLE 1—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
FMP for the Dolphin and Wahoo Fishery off the Atlantic States	SAFMC	Atlantic

■ 3. In § 622.2, in the definition of “Coastal migratory pelagic fish,” paragraph (4) is revised; the definition of “Dealer” is revised; and definitions of “Atlantic,” “Dolphin,” “North Atlantic,” “Pelagic longline,” and “Wahoo” are added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Atlantic* means the North Atlantic, Mid-Atlantic, and South Atlantic.

\* \* \* \* \*

*Coastal migratory pelagic fish* \* \* \* (4) Dolphin, *Coryphaena hippurus* (Gulf of Mexico only).

\* \* \* \* \*

*Dealer*, in addition to the definition specified in § 600.10 of this chapter, means the person who first receives rock shrimp harvested from the EEZ or dolphin or wahoo harvested from the Atlantic EEZ upon transfer ashore.

*Dolphin* means the species *Coryphaena equiselis* or *C. hippurus*, or a part thereof, in the Atlantic. (See the definition of *Coastal migratory pelagic fish* for dolphin in the Gulf of Mexico.)

\* \* \* \* \*

*North Atlantic* means the Atlantic Ocean off the Atlantic coastal states from the boundary between the United States and Canada to the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter.

\* \* \* \* \*

*Pelagic longline* means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

\* \* \* \* \*

*Wahoo* means the species *Acanthocybium solandri*, or a part thereof, in the Atlantic.

\* \* \* \* \*

■ 4. In § 622.4, the first sentence of paragraph (a)(4) is revised, and

paragraphs (a)(1)(i)(E), and (a)(2)(xii) are added; and paragraph (a)(5), and the last sentence of paragraph (i) are revised to read as follows:

**§ 622.4 Permits and fees.**

- (a) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

(E) Atlantic dolphin and wahoo. (See paragraph (a)(5) of this section for the requirements for operator permits in the dolphin and wahoo fishery.)

\* \* \* \* \*

- (2) \* \* \*

(xii) *Atlantic dolphin and wahoo.* (A) For a person aboard a vessel to be eligible for exemption from the bag and possession limits for dolphin or wahoo in or from the Atlantic EEZ or to sell such dolphin or wahoo, a commercial vessel permit for Atlantic dolphin and wahoo must be issued to the vessel and must be on board, except as provided in paragraph (a)(2)(xii)(B) of this section. (See paragraph (a)(5) of this section for the requirements for operator permits in the Atlantic dolphin and wahoo fishery).

(B) The provisions of paragraph (a)(2)(xii)(A) of this section notwithstanding, a fishing vessel, except a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery, is exempt from the bag and possession limits for dolphin and wahoo and may sell dolphin and wahoo, subject to the trip and geographical limits specified in § 622.44(f)(2). (A charter vessel/headboat permit is not a commercial vessel permit.)

\* \* \* \* \*

(4) *Dealer permits.* For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, rock shrimp harvested from the South Atlantic EEZ, dolphin or wahoo harvested from the Atlantic EEZ, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, Atlantic dolphin and wahoo, or wreckfish, respectively, must be issued to the dealer. \* \* \*

(5) *Operator permits.* (i) The following persons are required to have operator permits:

(A) An operator of a vessel that has or is required to have a valid permit for South Atlantic rock shrimp issued under this section.

(B) An operator of a vessel that has or is required to have a charter vessel/

headboat or commercial permit for Atlantic dolphin and wahoo issued under this section.

(ii) A person required to have an operator permit under paragraph (a)(5)(i) of this section must carry on board such permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(iii) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section must ensure that at least one person with a valid operator permit is aboard while the vessel is at sea or offloading.

(iv) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section and the operator of such vessel are responsible for ensuring that a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 is not aboard that vessel.

\* \* \* \* \*

(i) \* \* \* An operator of a vessel in a fishery in which an operator permit is required must present his/her operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

\* \* \* \* \*

■ 5. In § 622.5, paragraphs (a)(1)(vi) and (c)(8) are added, and the first sentence of paragraph (a)(2)(i) and paragraph (b)(1) are revised to read as follows:

**§ 622.5 Recordkeeping and reporting.**

\* \* \* \* \*

- (a) \* \* \*

- (1) \* \* \*

(vi) *Atlantic dolphin and wahoo.* The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4 (a)(2)(xii), or whose vessel fishes for or lands Atlantic dolphin or wahoo in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(2) *Reporting deadlines.* (i) Completed fishing records required by paragraphs (a)(1)(i), (ii), (iv), and (vi) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. \* \* \*

\* \* \* \* \*

(b) *Charter vessel/headboat owners and operators—(1) Coastal migratory pelagic fish, reef fish, snapper-grouper, and Atlantic dolphin and wahoo.* The

owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, South Atlantic snapper-grouper, or Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, snapper-grouper, or Atlantic dolphin or wahoo in or from state waters adjoining the applicable Gulf, South Atlantic, or Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

\* \* \* \* \*

- (c) \* \* \*

(8) *Atlantic dolphin and wahoo.* (i) A dealer who has been issued a permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of Atlantic dolphin and wahoo and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) For the purposes of paragraph (c)(8)(i) of this section, in the states from Maine through Virginia, or in the waters off those states, "SRD" means the Science and Research Director, Northeast Fisheries Science Center, NMFS, (see Table 1 of § 600.502 of this chapter), or a designee.

(iii) On demand, a dealer who has been issued a dealer permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of dolphin and wahoo.

\* \* \* \* \*

■ 6. In § 622.35, the section heading is revised and paragraph (h) is added to read as follows:

**§ 622.35 Atlantic EEZ seasonal and/or area closures.**

\* \* \* \* \*

(h) *Dolphin/wahoo closed areas.* (1) If pelagic longline gear is on board a vessel, a person aboard such vessel may not fish for or retain a dolphin or wahoo—

(i) In the Northeastern United States closed area from June 1 through June 30 each year. The Northeastern United States closed area is that portion of the

EEZ between 40° N. lat. and 39° N. lat. from 68° W. long. to 74° W. long.

(ii) In the Charleston Bump closed area from February 1 through April 30 each year. The Charleston Bump closed area is that portion of the EEZ off North Carolina, South Carolina, and Georgia between 34° N. lat. and 31° N. lat. and west of 76° W. long.

(iii) In the East Florida Coast closed area year round. The East Florida Coast closed area is that portion of the EEZ off Georgia and the east coast of Florida from the inner boundary of the EEZ at 31° N. lat.; thence due east to 78° W. long.; thence by a rhumb line to 28°17' N. lat., 79°12' W. long.; thence proceeding in a southerly direction along the outer boundary of the EEZ to 24° N. lat.; thence due west to 24° N. lat., 81°47' W. long.; thence due north to the innermost boundary of the EEZ at 81°47' W. long.

(2) A vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and gangions with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

(3) If a vessel is in a closed area during a time specified in paragraph (h)(1) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area.

■ 7. In § 622.37, paragraph (h) is added to read as follows:

§ 622.37 Size limits.

\* \* \* \* \*

(h) *Dolphin in the Atlantic off Florida and off Georgia*—20 inches (50.8 cm), fork length.

■ 8. In § 622.38, paragraph (a) is revised to read as follows:

§ 622.38 Landing fish intact.

\* \* \* \* \*

(a) The following must be maintained with head and fins intact: Cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; dolphin and wahoo in or from the Atlantic EEZ; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; yellowtail snapper in or from the Caribbean EEZ; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must

otherwise be maintained in a whole condition.

\* \* \* \* \*

■ 9. In § 622.39, paragraph (f) is added to read as follows:

§ 622.39 Bag and possession limits.

\* \* \* \* \*

(f) *Atlantic dolphin and wahoo*. Bag and possession limits are as follows:

(1) Dolphin—10, not to exceed 60 per vessel, whichever is less, except, on board a headboat, 10 per paying passenger.

(2) Wahoo—2.

■ 10. In § 622.41, paragraph (c)(1)(v) is revised and paragraph (l) is added to read as follows:

§ 622.41 Species specific limitations.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ and little tunny in the South Atlantic EEZ south of 34°37.3' N. lat.—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

\* \* \* \* \*

(l) *Atlantic dolphin and wahoo*—(1) *Authorized gear*. The following are the only authorized gear types in the fisheries for dolphin and wahoo in the Atlantic EEZ: Automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types other than authorized gear types may not possess a dolphin or wahoo.

(2) *Sea turtle protection measures applicable to pelagic longliners*. The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(2)(xii), and that has on board a pelagic longline must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS. Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, as specified in § 635.21(c)(5)(i) and (ii) of this chapter, respectively. For the purpose of this paragraph, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

■ 11. In § 622.44, paragraph (f) is added to read as follows:

§ 622.44 Commercial trip limits.

\* \* \* \* \*

(f) *Atlantic dolphin and wahoo*. (1) The trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(2) The trip limit for a vessel that does not have a Federal commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery is 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N. lat. (A charter vessel/headboat permit is not a commercial vessel permit.)

■ 12. In § 622.45, paragraph (i) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

\* \* \* \* \*

(i) *Atlantic dolphin and wahoo*. (1) A person may sell dolphin or wahoo harvested in the Atlantic EEZ only if it is harvested by a vessel that has a commercial permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(2)(xii)(A), or by a vessel authorized a 200-lb (91-kg) trip limit for dolphin or wahoo, as specified in § 622.44(f)(2), and only to a dealer who has a permit for Atlantic dolphin or wahoo, as required under § 622.4(a)(4).

(2) In addition to the provisions of paragraph (i)(1) of this section, a person may not sell dolphin in excess of the bag limit or any wahoo harvested in the Atlantic EEZ by a vessel while it was operating as a charter vessel or headboat.

(3) Dolphin or wahoo harvested in the Atlantic EEZ may be purchased only by a dealer who has a permit for Atlantic dolphin and wahoo and only from a vessel authorized to sell dolphin or wahoo under paragraph (i)(1) or (i)(2) of this section.

■ 13. In § 622.48, paragraph (m) is added to read as follows:

§ 622.48 Adjustment of management measures.

\* \* \* \* \*

(m) *Atlantic dolphin and wahoo*. Biomass levels, age-structured analyses, MSY, OY, ABC, TAC, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing definitions and other status determination criteria, time frame for recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for

the RA to close a fishery when a quota is reached or is projected to be reached

or reopen a fishery when additional quota becomes available, definitions of

essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

[FR Doc. 04-11907 Filed 5-26-04; 8:45 am]

**BILLING CODE 3510-22-S**