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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604-1758-02]

RIN 0648-XF056

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
2016 Commercial Accountability Measures and Closure for
Atlantic Migratory Group Cobia**

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for Atlantic migratory group cobia that are sold (commercial) and harvested from the exclusive economic zone (EEZ) of the Atlantic. NMFS projects that commercial landings of Atlantic migratory group cobia have reached the commercial quota. Therefore, NMFS closes the commercial sector for Atlantic migratory group cobia on December 6, 2016, and it will remain closed until the start of the next fishing year on January 1, 2017. This closure is necessary to protect the resource of Atlantic migratory group cobia.

DATES: This rule is effective from 12:01 a.m., local time,

December 6, 2016, until 12:01 a.m., local time, January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727-824-5305, email: frank.helies@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Separate migratory groups of cobia were established in Amendment 18 to the FMP (76 FR 82058, December 29, 2011), and then revised in Amendment 20B to the FMP (80 FR 4216, January 27, 2015). The southern boundary for Atlantic migratory group cobia occurs at a line that extends due east of the Florida and Georgia state border at $30^{\circ}42'45.6''$ N. lat. The northern boundary for Atlantic migratory group cobia is the jurisdictional boundary between the Mid-Atlantic and New England Fishery Management Councils, as specified in 50 CFR 600.105(a).

Atlantic migratory group cobia are unique among federally managed species in the southeast region, because no Federal commercial permit is required to harvest and sell them. The distinction between commercial and recreational sectors is not as clear as other federally managed species in the southeast region. For example, regulations at 50 CFR part 622 specify quotas, annual catch limits, and AMs for cobia that are sold and cobia that are not sold. However, for purposes of this temporary rule, Atlantic migratory group cobia that are sold are considered commercially-caught, and those that are not sold are considered recreationally-caught.

The commercial quota for Atlantic migratory group cobia is 50,000 lb (22,680 kg), round or gutted weight, for the 2016 fishing year, from January 1 through December 31, as specified in 50 CFR 622.384(d)(2).

The AMs for the commercial sector of Atlantic migratory group cobia, specified at 50 CFR 622.388(f)(1)(i), require that NMFS file a notification with the Office of the Federal Register to prohibit the sale and purchase of cobia for the remainder of the fishing year if commercial landings reach or are projected to reach the commercial quota specified in § 622.384(d)(2). The commercial AM is triggered for 2016, because NMFS projects that commercial landings of Atlantic migratory

group cobia have reached the commercial quota. Accordingly, the commercial sector for Atlantic migratory group cobia is closed at 12:01 a.m., local time, on December 6, 2016, and remains closed until 12:01 a.m., local time, January 1, 2017.

During the commercial closure, the sale and purchase of Atlantic migratory group cobia is prohibited. Additionally, on June 20, 2016, NMFS closed the recreational sector for Atlantic migratory group cobia for the remainder of the 2016 fishing year, because the recreational annual catch target was projected to be reached (81 FR 12601, March 10, 2016). Therefore, the possession limit for recreational Atlantic migratory group cobia is zero for the remainder of the 2016 fishing year. The prohibition on sale and purchase does not apply to Atlantic migratory group cobia that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 6, 2016, and were held in cold storage by a dealer or processor.

The commercial and recreational sectors for Atlantic migratory group cobia will re-open at the beginning of the 2017 fishing year on January 1, 2017.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Atlantic migratory group cobia

and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.388(f)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action is based on the best scientific information available. The Assistant Administrator for NOAA Fisheries finds good cause to waive the requirements to provide prior notice and opportunity for public comment, pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the AMs for Atlantic migratory group cobia have already been subject to notice and comment, and all that remains is to notify the public of the commercial closure for the remainder of the 2016 fishing year. Prior notice and opportunity for public comment on this action would be contrary to the public interest, because of the need to immediately implement the commercial closure to protect Atlantic migratory group cobia, since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public

comment would require time and would potentially result in a harvest that exceeds the commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 28, 2016

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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