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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 161103999-7146-01]

RIN 0648-BG43

**Fisheries of the Caribbean, Gulf of Mexico, and South
Atlantic; Coastal Migratory Pelagic Resources in the Gulf
of Mexico and Atlantic Region; Framework Amendment 4**

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures
described in Framework Amendment 4 to the Fishery
Management Plan for the Coastal Migratory Pelagics Fishery
of the Gulf of Mexico and Atlantic Region (FMP) as prepared
and submitted jointly by the Gulf of Mexico Fishery
Management Council and South Atlantic Fishery Management
Council (Councils). For the recreational sector, this
proposed rule would establish bag and vessel limits, and
revise the minimum size limit and accountability measures
(AMs) for Atlantic migratory group cobia (Atlantic cobia).
This proposed rule would also establish a commercial trip
limit for Atlantic cobia. Framework Amendment 4 and this

proposed rule apply to the commercial and recreational harvest of Atlantic cobia in the exclusive economic zone (EEZ) from Georgia through New York. The purpose of Framework Amendment 4 and this proposed rule is to slow the rate of harvest of Atlantic cobia and reduce the likelihood that landings will exceed the commercial and recreational annual catch limits (ACL), thereby triggering the AMs and reducing harvest opportunities.

DATES: Written comments must be received on or before [insert date of 30 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2016-0167," by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0167, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of Framework Amendment 4 may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/2016/framework_am4/index.html. Framework Amendment 4 includes an environmental assessment, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Karla Gore, Southeast Regional Office, NMFS, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic fishery of the Gulf and Atlantic Regions is managed under

the FMP and includes the management of the Gulf and Atlantic migratory groups of king mackerel, Spanish mackerel, and cobia. The FMP was prepared jointly by the Councils and is implemented through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, optimum yield from federally managed fish stocks. All weights described in this proposed rule are in round weight.

The current recreational AM for Atlantic cobia provides that if landings exceed the stock ACL (commercial and recreational ACLs combined), then during the following fishing year, the length of the recreational season will be reduced by the amount necessary to ensure recreational landings may achieve the recreational annual catch target (ACT) of 500,000 lb (226,796 kg) for 2016 and subsequent fishing years), but do not exceed the recreational ACL.

The current commercial AM for Atlantic cobia provides that if commercial landings reach or are estimated to reach the commercial quota (ACL), then the commercial sector will be closed for the remainder of the fishing year. The

commercial quota for Atlantic cobia is 50,000 lb (22,680 kg)

Additionally, cobia is currently defined as a limited harvest species and no person may possess more than two cobia per day in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, regardless of whether harvested by the commercial or recreational sector.

In 2015, recreational landings for Atlantic cobia exceeded the 2015 recreational ACL of 630,000 lb (285,763 kg) and the 2015 stock ACL of 690,000 lb (312,979 kg). Therefore, as a result of the stock ACL being exceeded in 2015, the 2016 recreational season for Atlantic cobia in Federal waters closed on June 20, 2016 (81 FR 12601, March 10, 2016). Because the recreational closure occurred during months of high recreational effort for cobia, the early closure had negative social and economic impacts on recreational anglers, charter vessel and headboat (for-hire) businesses, for-hire clients, and associated businesses such as tackle shops.

The following actions in Framework Amendment 4 and this proposed rule are intended to slow the rate of harvest of Atlantic cobia and reduce the likelihood that sector landings will exceed the sector and stock ACLs, thereby triggering the AMs and reducing harvest opportunities. The

goal is to provide equitable access for all recreational participants in the participants in the Atlantic cobia component of the coastal migratory pelagics fishery.

Management Measures Contained in This Proposed Rule

For the recreational sector, this proposed rule would establish bag and vessel limits and revise the minimum size limit and AMs for Atlantic cobia. This proposed rule would also establish a commercial trip limit for Atlantic cobia. As a result of the proposed recreational bag and possession limits and the commercial trip limit, Atlantic migratory cobia would no longer be subject to the two fish per person per day possession limit for limited harvest species.

Recreational Minimum Size Limit

The current minimum size limit for the recreational harvest of Atlantic cobia in the EEZ is 33 inches (83.8 cm), fork length. This proposed rule would increase the recreational minimum size limit for the Atlantic cobia recreational sector to 36 inches (91.4 cm), fork length. This modification would result in a recreational harvest reduction in the Atlantic, that in combination with the proposed recreational bag and vessel limits, would be expected slow the rate of recreational harvest and thereby reduce the likelihood of exceeding the recreational and stock ACLs and thereby triggering the AM.

Recreational Bag and Vessel Limits

This proposed rule would remove Atlantic cobia from the limited harvest species possession limit and would establish a recreational bag limit of one fish per person per day or six fish per vessel, whichever is more restrictive.

As explained above, the proposed increase in the recreational minimum size limit, and the proposed recreational bag limit and vessel limit are expected to slow the harvest rate and reduce the likelihood that recreational landings will exceed the ACL and trigger the recreational AMs for the following fishing year.

Recreational AMs

This proposed rule would revise the recreational AMs for Atlantic cobia. Currently, if the sum of commercial and recreational landings of cobia exceed the stock ACL, then during the following fishing year, the length of the recreational fishing season will be reduced to ensure that the harvest achieves the recreational ACT, but does not exceed the recreational ACL. Also, the current recreational AM uses a moving average of the most recent 3 years of landings to compare to the ACL. Additionally, if Atlantic cobia are overfished, and the stock ACL is exceeded, then during the following fishing year the recreational ACL and

ACT would be reduced by the amount of any recreational ACL overage.

Framework Amendment 4 would remove the current 3-year average of landings to compare to the ACL. NMFS expects that using a single year of landings to determine if an overage occurred will better represent the patterns and behavior of the Atlantic cobia fishery. Cobia landings can be variable; including very high or very low recreational landings into a 3-year average can result in an artificial reduction or lengthening of the recreational fishing season, respectively.

The proposed recreational AM would require that if the recreational ACL and the stock ACL are exceeded, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings, and, if necessary, the Assistant Administrator for Fisheries, NOAA (AA) will file a notification with the Office of the Federal Register to reduce the recreational vessel limit, to no less than 2 fish per vessel to ensure recreational landings achieve the recreational ACT, but do not exceed the recreational ACL in that fishing year. Any reduction to the proposed recreational vessel limit would only apply for the fishing year in which it is implemented. Additionally, if the reduction to the vessel limit is

insufficient to ensure that recreational landings will not exceed the recreational ACL, then the length of the recreational fishing season would also be reduced to ensure recreational landings do not exceed the recreational ACL in that fishing year. The recreational vessel limit and the length of the recreational fishing season would not be reduced if NMFS determines, based on the best scientific information available, that a recreational vessel limit and fishing season reduction are unnecessary.

Commercial Trip Limit

There is currently no specific commercial trip limit for Atlantic cobia. However, as previously discussed, Atlantic cobia is currently a limited harvest species and there is a possession limit of two cobia per person per day for both sectors. This proposed rule would remove Atlantic cobia from the limited harvest species possession limit and establish a commercial trip limit for Atlantic cobia of two fish per person per day or six fish per vessel per day, whichever is more restrictive.

Establishing a commercial trip limit will reduce the rate of harvest of cobia to help ensure the commercial and stock ACLs are not exceeded and the AMs triggered, resulting in a reduced season length or reduced vessel

limit for the recreational sector and a commercial closure as a result of exceeding the commercial quota.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Regional Administrator, Southeast Region, NMFS, has determined that this proposed rule is consistent with Framework Amendment 4, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule, if adopted, would not have significant economic impacts on a substantial number of small entities. The factual basis for this determination is as follows:

A description of this proposed rule, why it is being considered, the objectives of, and legal basis for this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble of this proposed rule. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

NMFS expects this proposed rule to directly affect federally permitted commercial fishermen fishing for Atlantic cobia. Recreational anglers fishing for Atlantic cobia would also be directly affected by the proposed action, but they are not considered business entities under the RFA. Charter vessel and headboat operations are business entities but they are only indirectly affected by the proposed rule. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

From 2010 through 2015, excluding the Mid-Atlantic states, an annual average of 98 vessels took 318 commercial trips that combined landed an average of 13,469 lb (6,109 kg) gutted weight of Atlantic cobia annually with a dockside value (2014 dollars) of \$31,115. Average annual dockside revenue from Atlantic cobia represented approximately 3.6 percent of total dockside revenues from

trips that landed Atlantic cobia from 2010 through 2015. For the Mid-Atlantic states during the same time period, an annual average of 24 vessels took 178 commercial trips that combined landed an average of 14,732 lb (6,682 kg) landed weight of Atlantic cobia annually with a dockside value (2014 dollars) of \$39,227. For these vessels, per vessel revenue (2014 dollars) from Atlantic cobia was approximately \$1,644. On average, vessels in the South Atlantic that harvested Atlantic cobia also took 2,338 commercial fishing trips per year without Atlantic cobia landings. Combining all sources of revenues, the average annual dockside revenues of vessels that landed Atlantic cobia was \$74,066 (2014 dollars) per vessel. Annual dockside revenues from Atlantic cobia landings represented, on average, approximately 0.4 percent of the total dockside revenues from all commercial landings from 2010 through 2015 of vessels that landed Atlantic cobia. On average, the crew size per trip, including captains, of vessels in the South Atlantic that landed Atlantic cobia was 1.8 persons for hook and line vessels, 2.0 persons for gillnet vessels, and 2.4 persons for vessels using other gear types. The overall average crew size per trip for all vessels landing Atlantic cobia was less than 2 persons. Similar information on overall revenues from all sources and crew size for

vessels in the Mid-Atlantic is not available. However, it is expected that the crew size for vessels in the Mid-Atlantic would be similar to that for vessels in the Southeast because they employ similar gear types in fishing for Atlantic cobia. Vessels that caught and landed Atlantic cobia may also operate in other fisheries, such as the shellfish fisheries, the revenues of which are not known and are not reflected in these totals. Based on revenue information, all commercial vessels directly affected by the proposed rule may be assumed to be small entities.

Because all entities expected to be directly affected by this proposed rule are assumed to be small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities; however, the issue of disproportionate effects on small versus large entities does not arise in the present case.

The proposed rule would establish a commercial cobia trip limit of two fish per person per day and would also implement a limit of six fish per vessel per day, whichever is more restrictive. This action would affect only those vessels with a crew of more than three persons. Noting that the 2010 through 2015 average crew size for vessels landing Atlantic cobia was less than two persons per trip, it is likely that this action would have only minor effects on

vessel revenues. It is, therefore, expected that this proposed rule would not have significant economic impacts on a substantial number of small entities.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this rule does not implicate the Paperwork Reduction Act.

The information provided above supports a determination that this proposed rule would not have significant economic impacts on a substantial number of small entities. Because this proposed rule, if implemented, is not expected to have significant economic impacts on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Cobia, Fisheries, Fishing, Gulf of Mexico, South Atlantic.

Dated: February 14, 2017.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator,
for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, 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 § 622.380, revise paragraph (a) to read as follows:

§ 622.380 Size limits.

* * * * *

(a) *Cobia*. (1) In the Gulf--33 inches (83.8), fork length.

(2) *In the Mid-Atlantic or South Atlantic*. (i) 33 inches (83.8), fork length, for cobia that are sold (commercial sector).

(ii) 36 inches (91.4 cm), fork length, for cobia that are not sold (recreational sector).

* * * * *

3. In § 622.382, revise paragraph (a) introductory text and add paragraph (a)(1)(vi) to read as follows:

§ 622.382 Bag and possession limits.

* * * * *

(a) *King mackerel, Spanish mackerel, and Atlantic migratory group cobia--*

(1) * * *

(vi) Atlantic migratory group cobia that are not sold (recreational sector)--1, not to exceed 6 fish per vessel per day.

* * * * *

4. In § 622.383, revise paragraph (b) to read as follows:

§ 622.383 Limited harvest species.

* * * * *

(b) *Gulf migratory group cobia*. No person may possess more than two Gulf migratory group cobia per day in or from the EEZ, regardless of the number of trips or duration of a trip.

5. In § 622.385, add paragraph (c) to read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(c) *Cobia*. (1) *Atlantic migratory group*. Until the commercial ACL specified in § 622.384(d) (2) is reached, 2 fish per person, not to exceed 6 fish per vessel.

(2) [Reserved]

6. In § 622.388, revise paragraph (f) to read as follows:

§ 622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(f) *Atlantic migratory group cobia*. (1) The following ACLs and AMs apply to cobia that are sold (commercial sector):

(i) If the sum of the cobia landings that are sold, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.384(d) (2) (ACL), the AA will 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;

(ii) In addition to the measures specified in paragraph (f)(1)(i) of this section, if the sum of the cobia landings that are sold and not sold in or from the Atlantic migratory group, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the applicable quota (ACL), as specified in paragraph (f)(1)(i) of this section, for that following year by the amount of any applicable sector-specific ACL overage in the prior fishing year.

(2) The following ACLs and AMs apply to cobia that are not sold (recreational sector). If recreational landings for cobia, as estimated by the SRD, exceed both the recreational ACL of 620,000 lb (281,227 kg), and the stock ACL, as specified paragraph (f)(3) of this section, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings, and, if necessary, the AA will file a notification with the Office of the Federal Register to reduce the recreational vessel limit, specified in § 622.382(a)(1)(vi), to no less

than 2 fish per vessel to ensure recreational landings achieve the recreational ACT, but do not exceed the recreational ACL in that fishing year. Any recreational vessel limit reduction that is implemented as described in this paragraph is only applicable for the fishing year in which it is implemented. Additionally, if the reduction in the recreational vessel limit is determined by the AA to be insufficient to ensure that recreational landings will not exceed the recreational ACL, the AA will also reduce the length of the recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in that fishing year. The recreational vessel limit and the length of the recreational fishing season will not be reduced if NMFS determines, based on the best scientific information available, that a recreational vessel limit and fishing season reduction are unnecessary. The recreational ACT is 500,000 lb (226,796 kg).

(3) The stock ACL for Atlantic migratory group cobia is 670,000 lb (303,907 kg).

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