

Dr. Michelle Duval, Chair, South Atlantic Marine Fisheries Council  
Dr. Roy Crabtree, NOAA Fisheries Regional Administrator, Southeast Region  
In Care Of: Kim Iverson, Public Information Officer

Dear Dr. Duval and Dr. Crabtree,

A Jonathan E. French sent you the following letter, I am resending the letter to state that I have read, fully understand, and fully endorse his statements as follows.

Thank you,

Lawrence Gray  
P.O. Box 2426  
Kitty Hawk, NC 27949

---

March 4, 2016

Dr. Michelle Duval, Chair, South Atlantic Marine Fisheries Council  
Dr. Roy Crabtree, NOAA Fisheries Regional Administrator, Southeast Region  
In Care Of: Kim Iverson, Public Information Officer  
4055 Faber Place Drive, Suite 201  
North Charleston SC 29405

Dear Dr. Duval and Dr. Crabtree,

Thank you for the opportunity to offer public comments on the proposed 2016 Recreational Season for Atlantic Cobia. I am deeply opposed to a proposed shortening of the season for three reasons:

- 1) The 2015 catch data that triggered the proposed closure is such an outlier that SAFMC should consider a review period to revisit stock assessments and data collection methods.
- 2) If the 2015 catch data is accurate, that would indicate that the historic catch data that was utilized to calculate the 2015 ACL is woefully inaccurate and should not be utilized to trigger a closure.
- 3) North Carolina has already instituted a reduced creel limit and is weighing a larger size limit. Virginia already has a one fish per day limit. SAFMC should allow the impact of these measures to be calculated before requiring states to adhere to an economically devastating closure.
- 4) The intent of the Magnuson Stevens Act (MSA) is to develop fisheries management policies that produce optimum yield while balancing the needs of the fishery with the economic impact on the local communities. The public admission by SEDAR in the 2013 stock assessment that data collection on the cobia stock assessments and catch data having a high degree of inaccuracy from the recent Fisheries Management Plan meeting would suggest that the burden of proof required by the MSA has not been met to justify a closure that would have a devastating economic impact on Virginia and North Carolina coastal communities. Similar comments in the same plan (and by SAFMC representatives at the recent North Carolina Marine Fisheries Commission meeting) indicating that the cobia biomass is not overfished. Despite the inflexibility of the MSA, I do not believe that the intent of the MSA is to close a healthy fishery.

Instead of a closure, I recommend the following actions:

- 1) Amend the Fisheries Management Plan to reflect the following:
  - a. Amend Accountability Measures to better factor economic hardships and potentially inaccurate historical catch data. One year overages of the ACL should trigger reductions of creel limits in federal waters. A MINIMUM of a three-year average resulting in an annual average ACL overage should be utilized to initiate a shortened season/closure. This is necessary to reflect the cyclical nature of fishing and minimize the impact of unique outlier seasons. This will also allow SAFMC to see the impact of the reduced creel limits many states have already approved instead of guessing that the impact of those reduced daily creel limits will not be enough to get under the ACL. Let those measures have an opportunity to be evaluated.

b. Conduct a revised stock assessment for ONLY Georgia-New York zone population of fish and recalculate the ACL based on the average annual catch of cobia from 2015-2018 using the new zoning paradigm and data calculation methods. Either the historical catch data was artificially low and the ACL wasn't an appropriate measurement for the health and scope of the fishery, or the data collection for 2015 was inaccurate. A more accurate data collection should be the burden of proof to justify a closure. A default equation should not take the place of appropriate data collection, even if appropriate data collection is "hard" for regulators, especially in the face of the devastating economic impact a closure will cause for families.

c. In the wake of the zone split, the East Florida positive variance should be considered. The allocation of 880,000 pounds to Florida (and only caught 330,000 pounds) and only 620,000 pounds of ACL to the rest of the Atlantic states (especially Virginia and North Carolina where cobia remain in our waters all summer) does not treat the Mid-Atlantic equitably to Florida and the MSA specifically says that the laws impact should not negatively impact one state to another state's benefit. The resulting catches show that there are more fish to catch for a longer period of time in Virginia and North Carolina than there are in Florida. The Georgia-New York zone should receive at least 250,000 pounds of Florida's 2015 ACL for future ACL calculations.

2) Develop new, more robust, and more transparent data collection methods.

3) Include Virginia representation on the SAFMC when that council makes decisions impacting Virginia fishermen.

4) Hold more public meetings where Virginia and North Carolina fishermen can participate in the face-to-face public comment when SAFMC impact their fisheries.

5) If a closure is instituted after a minimum three year catch average is determined to be over the ideal ratio for sustainability of the cobia biomass, those closures should be instituted on a rolling basis matching the cobia's migration pattern. This will allow the states to both share the burden of a limited season and access the fishery equally.

Below is the justification of these actions.

Outlier: 2015 Catch Data

The accepted best practice for statisticians when there is a significant variance in traditional performance isn't to panic and declare an emergency. The responsible action is to conduct a root cause analysis of the data collection to confirm that there was no significant change that caused the variance.

Review of the historical catch data seems clearly to indicate that the 2015 catch data for Virginia and North Carolina is a huge outlier. According to NOAA's own data (\*Personal communication from the National Marine Fisheries Service, Fisheries Statistics Division February 27, 2016 <https://www.st.nmfs.noaa.gov/SASStoredProcess/do> ), Virginia averaged 275,791 pounds of recreational cobia catch from 2008-2015. That means, if the data is accurate, Virginia recreational anglers caught 3.125 times as many fish in 2015 as in an average year. When you examine the average annual catch from 2008-2014 (without factoring 2015 into the average), you find that according to the data, Virginia anglers caught 4.4 times the poundage of cobia than the average for the previous seven years. North Carolina 2015 catches according to NOAA were 2.228 times the average catch from 2008-2015 (and 2.7 times the average annual catch from 2008-2014.)

Virginia

FINAL 2008 COBIA 116,420 65.1 0

FINAL 2009 COBIA 445,993 31.3 0

FINAL 2010 COBIA 254,414 38.9 0

FINAL 2011 COBIA 107,424 57.8 0

FINAL 2012 COBIA 26,537 74.3 0

FINAL 2013 COBIA 221,800 50.5 0

FINAL 2014 COBIA 171,463 47.1 0

PRELIMINARY 2015 COBIA 862,281 39.2 0

Total 2,206,332 275,791

North Carolina

FINAL 2008 COBIA 82,566 52.7 0

FINAL 2009 COBIA 166,195 37.6 0  
FINAL 2010 COBIA 498,581 23 0  
FINAL 2011 COBIA 145,796 46.4 0  
FINAL 2012 COBIA 104,106 31.9 0  
FINAL 2013 COBIA 506,067 30.2 0  
FINAL 2014 COBIA 247,386 30.7 0  
PRELIMINARY 2015 COBIA 675,859 29 0  
Total 2,426,556 303,319

#### South Carolina

FINAL 2008 COBIA 32,497 69.3 0  
FINAL 2009 COBIA 62,332 68.8 0  
FINAL 2010 COBIA 67,946 53.1 0  
FINAL 2011 COBIA 0 . 0  
FINAL 2012 COBIA 201,223 80.6 0  
FINAL 2013 COBIA 9,873 63 0  
FINAL 2014 COBIA 26,439 56.6 0  
PRELIMINARY 2015 COBIA 125,181 47.1 0  
TOTAL 525,491 65, 686

#### Georgia

FINAL 2008 COBIA 320,174 66.3 0  
FINAL 2009 COBIA 2,009 110.1 0  
FINAL 2010 COBIA 89,840 56.1 0  
FINAL 2011 COBIA 74,651 67 0  
FINAL 2012 COBIA 97,766 57.6 0  
FINAL 2013 COBIA 25,183 56.3 0  
FINAL 2014 COBIA 19,079 71.5 0  
PRELIMINARY 2015 COBIA 32,027 74.7  
TOTAL 660,729 82,591  
661,701

This kind of a staggering outlier would indicate one of three things:

- 1) North Carolina and Virginia anglers had the most robust and catchable cobia population accessible to them in the better part of 30 years.
- 2) Fishing pressure on cobia tripled more than tripled from one year to the next, overfishing the stock.
- 3) Something is wrong with the data collection methods that indicate either the historical catch data used to determine the 620,000 pound ACL was woefully inaccurate, or the data collection for 2015 was woefully inaccurate.

Scenario 1 certainly doesn't meet the MSA burden to close a fishery. Number 2 is a dubious claim, especially given SEDAR's comments in the South Atlantic Cobia Stock Assessment (citation: [http://sedarweb.org/.../S28\\_SAR\\_SACobia\\_WithAddendumFinal\\_5.1...](http://sedarweb.org/.../S28_SAR_SACobia_WithAddendumFinal_5.1...) )

"Current stock status in the base run was estimated to be SSB2011/MSST = 1.75 (Table 5.1), indicating that the stock is not overfished." –SEDAR South Atlantic Cobia Stock Assessment Page 19, PDF

#### Inaccuracy of ACL Calculation and Historical Catch Data

As any statistician that is competent knows, if there is suddenly a 400% occurrence jump in a negative outcome the first step is to determine the root cause and review the data method collection methodology before taking action. If the 2015 catch data for cobia in Virginia and North Carolina is accurate, that would be a clear indicator of one of two phenomenon.

- 1) That thousands of new fish and fishermen that had never factored into the annual cobia fishery miraculously entered the equation in one year, or much more likely...
- 2) That the 2008-2014 data woefully underestimated the size of the cobia population, the number and size of caught fish.

Section 101-627 of the MSA states: “101-627 (8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.” The presence of a 400% outlier in the data is too significant to regard either the Historical Catch Data or the 2015 Catch Data as reliable. In addition, a 400% variance is too large and statistically significant and the economic impact too great to not conduct in-depth root cause analysis. The economic impact on the populations is too great to close a fishery before conducting a root cause analysis.

#### Intent of Magnuson Stevens Act

While the MSA does clearly state that accountability measures must be applied in the face of an ACL overage, I do not feel that an automatic season closure in this case aligns with the intent of the Magnuson Stevens Act. Section 101-627 established the Regional Fishery Management Councils to “exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States.”

A closure of the cobia fishery given the data presented and the process by which the decision was made does not align with these basic premises.

- 1) All the states impacted have not been given an opportunity to participate in the process, as Virginia and Virginia’s recreational fishermen do not have representation on the South Atlantic Marine Fisheries Council. Also, the only public meeting (scheduled for March 7-11 in Jekylls Island Georgia) is not located in a flyable location and isn’t drivable for most Virginian fishermen.
- 2) The North Carolina Marine Fisheries Commission WAS INSTRUCTED TO ISSUE A CLOSURE IN STATE WATERS BY SAFMC chair Michelle Duval BEFORE SAFMC held their public meeting March 7-11th. Here is her brief [http://portal.ncdenr.org/c/document\\_library/get\\_file...](http://portal.ncdenr.org/c/document_library/get_file...) and here is the audio to both her and Louis Daniels, now resigned Executive Director of North Carolina Marine Fisheries telling the board that there will be a federal closure and states that do not close will be out of compliance with state law. <http://portal.ncdenr.org/web/mf/02-2016-mfc-audio>. This action seems to be a fait accompli- already decided before the public “has an opportunity to participate in and advise on the establishment and administration of such plans.”
- 3) As noted earlier, the lack of a root cause analysis and the significant outlier data driving the cobia closure is unacceptable. The economic impact is too great (in my case as a “weekend warrior” fisherman, I spend well over \$8,000 a year between charters, hoteling, gas, food, pier fees, t-shirts, tackle, bait, and everything else involved in taking a family of three to the Outer Banks and the Chesapeake Bay over the summer. Not being allowed to fish for cobia is a nuisance for me, however, that policy takes my \$8,000 out of the local economies of those communities. There are many more like me, and those dollars are counted on by countless families. People will lose their jobs and children will be hurt by this closure. No child should be economically stressed by a closure of, using SEDAR’s own words, a healthy, not overfished, cobia fishery.

Thank You,

Jonathan E. French