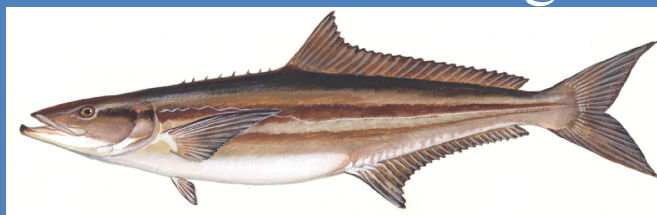


# Coastal Migratory Pelagics Amendment 31 (Atlantic Cobia Management)



## Options Paper

### Background

After the 2015 overage and subsequent shortened 2016 recreational season for Atlantic cobia, the South Atlantic Council started work on an amendment to revise Atlantic cobia management measures to help reduce the rate of harvest (extend the season) and to reduce the likelihood that the ACL would be exceeded in future years<sup>1</sup>. Additionally, the South Atlantic Council requested that the Atlantic States Marine Fisheries Commission (ASMFC) consider complementary management for cobia, and the Commission began work on an interstate management plan.

The recreational closure in federal waters for 2016 became effective on June 20, 2016, at which time South Carolina also closed their state waters to recreational harvest. Virginia and North Carolina implemented harvest limits but kept state waters open through August and September, respectively. Georgia did not close state waters, but most cobia are caught in federal waters off Georgia.

Following notification that 2016 landings had again exceeded the Atlantic cobia ACL, NMFS closed the recreational season on January 24, 2017. South Carolina closed state waters to track the federal closure. Georgia did not close state waters but requested that NMFS open federal waters to allow Georgia fishermen to have some access to cobia. Virginia implemented harvest limits with a season in state waters of June 1 through September 15, 2017, and North Carolina specified harvest limits during a season in state waters of May 1 through August 31, 2017.

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<sup>1</sup> The final rule for CMP Framework Amendment 4 published on August 4, 2017, with an effective date of September 5, 2017.

In May 2017, the ASMFC's South Atlantic State/Federal Fisheries Management Board approved a motion to request that the South Atlantic Council transfer sole management of cobia to the ASMFC, which would require that Atlantic cobia be removed from the federal fishery management plan. In June 2017, the South Atlantic Council directed staff to start work on an amendment with options to remove Atlantic cobia from the federal fishery management plan, or for complementary management of Atlantic cobia with ASMFC.

### **MSA Considerations**

NMFS guidelines for determining whether to include species in an FMU for purposes of federal conservation and management direct the Councils to consider the following seven factors (50 CFR §600.340(b)(2)):

- (i) The importance of the fishery to the Nation and to the regional economy.
- (ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.
- (iii) The extent to which the fishery could be or is already adequately managed by states, by state/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Magnuson-Stevens Act.
- (iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.
- (v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.
- (vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.
- (vii) The costs associated with an FMP, balanced against the benefits.

### **Landings**

In recent years, the proportion of Atlantic cobia caught in state waters has increased (**Table 1**), and landings from state and federal waters count towards the ACL. Atlantic cobia are included in a federal fishery management plan, there is a federal mandate to set an annual catch limit (ACL) and associated accountability measures.

**Table 1.** Landings of Atlantic cobia in state and federal waters from 2012- 2016 (recreational and commercial, in lbs)

	Landings from state waters (% of total landings)	Landings from federal waters (% of total landings)	Unknown <sup>1</sup>
2012	41.6%	57.2%	1.2%
2013	79.1%	19.5%	1.4%
2014	79.1%	17.2%	3.8%
2015	80.2%	18.1%	1.7%
2016 <sup>2</sup>	92.3%	7.0%	0.7%

Data source: MRIP and SEFSC ACL Dataset (5/2/17).

<sup>1</sup> Landings that cannot be designated as state or federal waters are from commercial landings.

<sup>2</sup> Recreational harvest in federal waters closed in 2016 on June 20th, which may have resulted in a relatively lower proportion of landings from federal waters for 2016.

### **Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA)**

The ACFCMA establishes management between the Atlantic states and specifies involvement of and coordination with the Secretary of Commerce and NMFS. For this amendment, there is one specific section to highlight:

#### **Sec. 5103. - State-Federal cooperation in Atlantic coastal fishery management**

(a) Federal support for State coastal fisheries programs The Secretary in cooperation with the Secretary of the Interior shall develop and implement a program to support the interstate fishery management efforts of the Commission. The program shall include activities to support and enhance State cooperation in collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning.

#### **(b) Federal regulation in exclusive economic zone**

(1) In the absence of an approved and implemented fishery management plan under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and after consultation with the appropriate Councils, the Secretary may implement regulations to govern fishing in the exclusive economic zone that are (A) compatible with the effective implementation of a coastal fishery management plan; and (B) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851).

### **ASMFC Draft Interstate Management Plan for Cobia**

In August 2017, the South Atlantic State/Federal Fisheries Management Board of the ASMFC reviewed the draft interstate plan for cobia and approved it for public comment. The draft plan includes proposed limits for commercial and recreational harvest:

- Recreational
  - o Bag limit of 1/person up to 6/ vessel
  - o Minimum size limit 36" fork length (FL)
- Commercial
  - o Possession limit of 2/person up to 6/vessel
  - o Minimum size limit 33" FL

Additionally, the draft plan includes options for season and allocations for the recreational sector. Two options propose state-by-state quotas, which would be based on the current recreational ACL for Atlantic cobia. States that are designated as *de minimus* would have a separate allocation of the overall recreational ACL and may have different management measures.

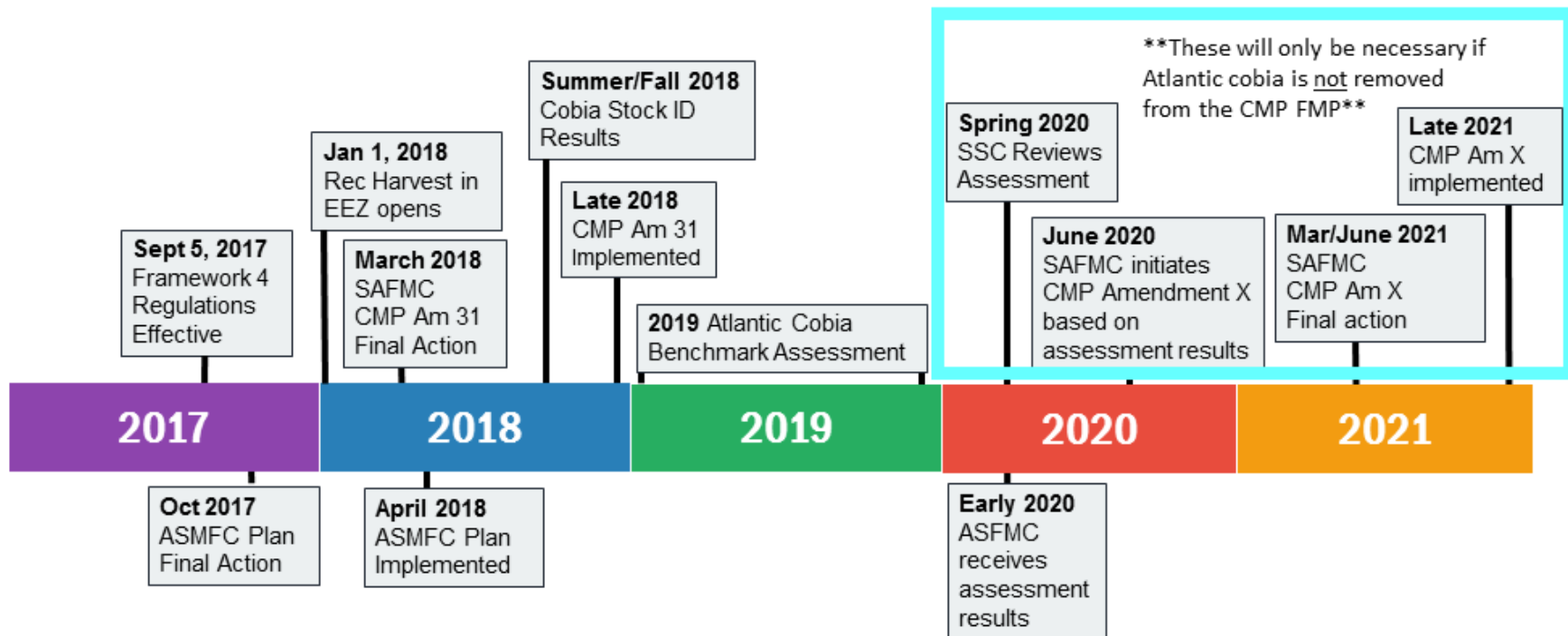
In addition, there is an option that would establish a coastwide season with specified bag/vessel limits.

For any quota (coastwide or allocations to states) proposed in the draft interstate plan:

- If Atlantic cobia is maintained in the federal fishery management plan, a quota allocation to each state by ASMFC would be based on the ACL established by the South Atlantic Council.
- If Atlantic cobia is removed from the federal fishery management plan, the ASMFC may choose to base quotas on a different overall harvest limit. Any management measures by the ASMFC will still be dependent on the most recent stock assessment and the best available science.

Public hearings are scheduled for September 2017. The South Atlantic Board is scheduled to take final action in October 2017. The draft interstate plan is available at:  
[http://www.asmfc.org/files/PublicInput/DraftCobiaFMP\\_PublicComment\\_Aug2017.pdf](http://www.asmfc.org/files/PublicInput/DraftCobiaFMP_PublicComment_Aug2017.pdf).

**Expected Timeline of ASMFC and Council actions**



## Action in this amendment

**Action 1.** Revise the management system for Atlantic cobia.

## Objectives for this meeting

- Review public input
- Consider MSA requirements for including a species in a federal management plan
- Review and approve the Purpose and Need
- Review and approve the action(s) and alternatives to be analyzed

## Expected amendment timing

✓June 2017	Council directs staff to start work on the amendment
✓August 2017	Scoping webinar
September 2017	Council reviews scoping comments and approves action(s) and alternatives to be analyzed
December 2017	Council reviews the draft amendment, selects preferred alternative(s), modifies the document as necessary, and approves for public hearings
January 2018	Public hearings
March 2018	Council takes final action on CMP Amendment 31
April 2018	Gulf Council takes final action on CMP Amendment 31
April 2018	CMP Amendment 31 sent in for Secretarial Review

# Draft Purpose and Need Statement

## Purpose for Actions

The purpose is to reduce complexity of management and facilitate improved coordination of state and federal management of Atlantic cobia.

## Need for Actions

The need is to provide for effective management of Atlantic Cobia without reducing protection to the stock.

### **Committee Actions:**

- 1) REVIEW AND MODIFY THE SUGGESTED PURPOSE AND NEED STATEMENT.**
- 2) APPROVE PURPOSE AND NEED STATEMENT.**

# Proposed Action and Alternatives

## **Action. Revise the management system for Atlantic cobia**

### **Potential Alternatives:**

**Alternative 1 (No Action).** Retain Atlantic cobia in the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic regions (CMP FMP).

**Alternative 2.** Remove Atlantic cobia from the CMP FMP. The Atlantic States Marine Fisheries Commission (ASMFC) would manage cobia through the interstate management plan. Essential fish habitat for cobia would no longer be identified and described (MSFCMA §303(a)(7)).

**NOTE:** Discussion for this alternative would include reference to the Atlantic Coastal Fisheries Cooperative Management Act, and that in the absence of a federal fishery management plan, the Secretary could extend regulations in an interstate plan into the EEZ. In addition, the discussion will indicate that NMFS will continue to provide the scientific support and stock assessments for Atlantic cobia.

**Alternative 3.** Establish process for complementary management of Atlantic cobia with the ASMFC.

- NMFS would continue to apply the mandated annual catch limit (ACL) for Atlantic cobia and implement accountability measures, as necessary. The South Atlantic Council would establish the ACLs and AMs through the CMP FMP.
- ASMFC would establish management measures for cobia harvest in state waters. Harvest would be subject to the Atlantic cobia ACL.
- South Atlantic Council would update the CMP FMP to provide consistent regulations for cobia harvest in federal waters through the amendment process, with Gulf Council approval of actions not suitable for a framework amendment.

OR

- South Atlantic Council would establish a process in which NMFS would update the federal regulations to be consistent with the ASMFC plan, without action by the Council(s).  
Example- Appendix A: Spiny Lobster (amendment in development to update the associated procedure; the below protocol was most recently implemented through Spiny Lobster Amendment 10). Note that all NEPA, MSA and other federal mandates would be applicable for any regulatory changes by NMFS.



**Public Comments:**

- There was concern about the current stock boundary, annual catch limit, and MRIP data used for setting the ACL and for tracking landings.
- Three commenters recommended that the SAFMC and ASMFC delay actions until after the stock assessment.
- Two commenters felt that because cobia are migratory and there may be some changes in the availability in the future, both federal and state management is necessary.
- Some benefits of ASMFC management that were noted included faster processes for management changes, ability to use other data streams for recreational landings, and possibly not being held to the current ACL by removing the federal mandate for ACL.
- One commenter recommended a slot limit similar to reduce the number of large fish being harvested.

**Committee Actions:**

**1) Which sub-alternative do you want to include under Alternative 3?**

- South Atlantic Council would update the CMP FMP to provide consistent regulations for cobia harvest in federal waters through the amendment process, with Gulf Council approval of actions not suitable for a framework amendment.

OR

- South Atlantic Council would establish a process in which NMFS would update the federal regulations to be consistent with the ASMFC plan, without action by the Council(s).

Example: Spiny Lobster Protocol

- Do you want to implement changes for harvest in federal waters through the amendment process, or do you want to establish a process through which NMFS could implement the changes for federal waters with Council consultation but without Council action (i.e., no amendment)?

**2) Modify the alternatives and add alternatives/sub-alternatives, if necessary.**

**3) ACCEPT ALTERNATIVES 1 THROUGH X.**

## **Appendix A. Protocol for Roles of Federal and State of Florida Agencies for the Management of Gulf and South Atlantic Spiny Lobster**

1. The Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and NOAA Fisheries Service acknowledge that the fishery is largely a State of Florida (State) fishery, which extends into the exclusive economic zone (EEZ), in terms of current participants in the directed fishery, major nursery, fishing, landing areas, and historical regulation of the fishery. As such, this fishery requires cooperative state/federal efforts for effective management through the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (Spiny Lobster FMP).
2. The Councils and NOAA Fisheries Service acknowledge that the State is managing and will continue to manage the resource to protect and increase the long-term yields and prevent depletion of lobster stocks and that the State Administrative Procedure Act and rule implementation procedures, including final approval of the rules by Governor and Cabinet, provide ample and fair opportunity for all persons to participate in the rulemaking procedure.
3. The Florida Fish and Wildlife Conservation Commission (FWC) acknowledges that rules proposed for implementation under any fishery management plan amendment, regulatory or otherwise, must be consistent with the management objectives of the Spiny Lobster FMP, the National Standards, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law. Federal rules will be implemented in accordance with the Administrative Procedure Act.
4. The Councils and NOAA Fisheries Service agree that, for any rules defined within an amendment to the Spiny Lobster FMP, the State may propose the rule directly to NOAA Fisheries Service, concurrently informing the Councils of the nature of the rule, and that NOAA Fisheries Service will implement the rule within the EEZ provided it is consistent under paragraph three. If either of the Councils informs NOAA Fisheries Service of their concern over the rule's inconsistency with paragraph three, NOAA Fisheries Service will not implement the rule until the Councils, FWC, and NOAA Fisheries Service resolve the issue.
5. The State will have the responsibility for collecting and developing the information upon which to base the fishing rules, with assistance as needed by NOAA Fisheries Service, and cooperatively share the responsibility for enforcement with federal agencies.
6. Florida FWC will provide to NOAA Fisheries Service and the Councils written explanations of its decisions related to each of the rules; summaries of public comments; biological, economic and social analysis of the impacts of the proposed rule and alternatives; and such other relevant information.
7. The rules will apply to the EEZ for the management area of North Carolina through Texas, unless the Regional Administrator (RA) determines those rules may adversely impact other state and federal fisheries. In that event, the RA may limit the application of the rule, as necessary, to address the problem.

8. NOAA Fisheries Service and the Councils agree that their staffs will prepare the proposed and final rules and the associated National Environmental Policy Act documentation and other documents required to support the rule.

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1. This procedure will function under and be governed by the protocols for cooperative management agreed upon by the FMFC, the Councils, and NMFS.
  2. Based on the best available scientific information, the State of Florida's Marine Fisheries Commission (FMFC) will develop alternative proposed rules and socioeconomic analyses on the effects of these alternatives, hold public hearings (as required by Florida's Administrative Procedure Act), and at a final hearing select each preferred alternative rule for recommendation to the Florida Governor and Cabinet for implementation (see Appendix A). After approval of the rule or rules by the Governor and Cabinet, the FMFC will advise the Councils and Regional Director (RD), NMFS of the recommended rule(s) and proposed implementation date and will provide to the RD and to the Councils the analyses of the effects and impacts of the recommended and alternative rules and summaries of public comment. For rules to be implemented by the start of the fishing season (currently August 11, FMFC must complete these actions on or before February 1. The Councils will submit the rule and supporting analyses to the SSCs who will advise the RD, through the Councils, of the scientific validity of the analyses. The Councils will also submit the rule and supporting analyses to the advisory panels for comment.
  3. The RD will review the recommended rule, analyses, and public record, and if he preliminarily determines that the rule is consistent with the objectives of the FMP, the National Standards, and other applicable law, he will notify the Councils and FMFC of his intent to implement the rule in the EEZ. If in the judgment of the RD, the rule or its supporting record are not consistent with these statutory criteria or the FMP objectives, he will immediately notify the Councils and the FMFC of the deficiencies in the rule or supporting record. The FMFC may submit additional information or analyses to correct the deficiencies in the record.
  4. When in the judgment of either of the Councils the rule is not consistent with the Magnuson Act or the objectives of the FMP, they will inform the RD and FMFC. In this case the RD will/not proceed with implementation of the rule until this issue has been resolved.
  5. When the RD has preliminarily concluded the rule is acceptable, he will draft and publish the proposed rule for implementation by regulatory amendment. Based on State analyses of impacts, the Councils' staffs with assistance from FMFC will prepare the supporting documentation [EA/RIR, etc.] that accompany the proposed rule. The effective date of rules promulgated under this procedure will be the starting date of the next fishing season following approval of the regulatory amendment unless otherwise agreed upon by FMFC, the Councils, and the RD. A reasonable period for public comment on the proposed rule shall be provided.

After reviewing public comment if the RD has concluded the rule is not consistent with the FMP objectives, the National Standards, other applicable law, or the provisions of this procedure, he will notify the Councils and FMFC of that fact and/or the need for proceeding with implementation by FMP amendment. If the supporting record is still deficient, he will delay

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taking action until the record has been supplemented by FMFC and/or Councils' staffs. If the RD has concluded the rule is consistent, he will publish the final rule.

#### PART A (GEAR RESTRICTIONS)

Appropriate rules or regulatory changes that can be implemented under this part include:

- a. Limiting the number of traps that may be fished by each vessel.
- b. Describing the construction characteristics of traps, including requiring escape gaps.
- c. Specification of gear and vessel identification requirements.
- d. Specification of gear that may be utilized or prohibited in directed fishery and specification of bycatch levels that may be taken as incidental catch in non-directed fisheries.
- e. Changes to soak or removal periods and requirements for traps.

#### PART B (HARVEST RESTRICTIONS)

Appropriate rules or regulatory changes that can be implemented under this part include:

- a. Recreational bag and possession limits.
- b. Changes in fishing seasons.
- c. Limitations on use, possession, and handling of undersized lobsters.
- d. Changes in minimum legal size.