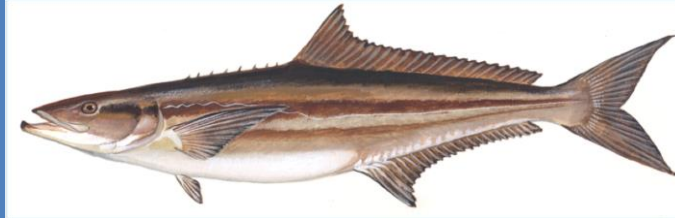


# Coastal Migratory Pelagics Amendment 31 (Atlantic cobia management)



## Decision Document

### 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. The final rule for CMP Framework Amendment 4 was published on August 4, 2017, with an effective date of September 5, 2017. 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 with a season in state waters of May 1 through August 31, 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 Coastal Migratory Pelagics Amendment 31 with options to remove Atlantic cobia from the federal fishery management plan, or for complementary management of Atlantic cobia with ASMFC.

In March 2018, the Council reviewed public comments and a draft amendment document. The Council decided to delay taking final action on the amendment until the June 2018 meeting when preliminary results from the Cobia Stock ID Workshop and comments from the Advisory Panel would be available for consideration. Additionally, the Council has requested more information on how ASMFC intends to address regulations in federal waters under the preferred alternative before the amendment's approval.

### **ASMFC's Atlantic Cobia Interstate FMP**

In November 2017, the ASMFC approved the Interstate FMP for Atlantic cobia, which supports complementary Atlantic cobia management with the South Atlantic Council. In February 2018, the ASMFC approved the state implementation plans for the Interstate FMP. The state implementation plans became effective in April 2018. Management measures for Atlantic cobia in state waters for 2018 are provided in the Interstate FMP and the state implementation plans.

The base management measures contained within the ASMFC's Interstate FMP match the current federal regulations for Atlantic cobia. For the recreational sector these include a recreational bag limit of one fish per person, a six fish per vessel per day, and a minimum size limit of 36 inches FL or TL equivalent. Regulations in each state must match the base management measures or be more restrictive. The Interstate FMP also provides the opportunity for states to declare *de minimis* status for their recreational Atlantic cobia sector if landings constitute less than 1% of the recreational Atlantic cobia harvest over the most recent three years. *De minimis* states would be required to adopt the regulations (including season) of the closest adjacent non-*de minimis* state or accept a one fish per vessel per day trip limit and 29-inch FL minimum size. Maryland, Delaware, and New Jersey have declared a *de minimis* status. The recreational regulations specified in the state implementation plans can be found in **Table 1**.

The Interstate FMP sets state-specific allocations of an Atlantic recreational harvest limit that is equivalent to the federal Atlantic group cobia recreational ACL (**Table 1.6.2**). The Interstate FMP requires evaluation of recreational harvest overages of state-specific allocations over a three-year time period. If overages occur, states are required to adjust management measures to reduce harvest in the subsequent three-year period.

**Table 1.** State-specific recreational management measures for Atlantic cobia.

State*	Bag Limit	Vessel Limit Private	Vessel Limit For-Hire	Min Size Limit	Season	Allocation
Virginia	1/person	3/vessel		40 TL	June 1 - Sept 30	244,292 pounds
North Carolina	1/person	2/vessel May; 1/vessel June-Dec	4/vessel	36 FL	May 1- Dec 31	236,313 pounds
South Carolina	1/person	Southern Cobia Zone 3/vessel; Other areas 6/vessel		36 FL	Southern Cobia Zone - June; Other areas all year	74,885 pounds
Georgia	1/person	6/vessel		36 FL	March 1 - October 31	58,311 pounds

\* States north of Virginia requested de minimis status.

Under the Interstate FMP, the base management measures for the commercial sector in state waters are the same as what is specified in the final rule for Amendment 4 to the CMP FMP. Management measures include a 33-inch FL minimum size limit and a possession limit of two fish per person, with a six fish maximum vessel limit, whichever is more restrictive. Regulations in each state must match the base management measures or be more restrictive. Annual harvest under those management measures is expected to constrain commercial harvest to the current ACL. The current commercial ACL of 50,000 pounds applies to the entire commercial sector from Georgia through New York.

If Atlantic cobia is retained in the CMP FMP, a recreational quota allocated to each state in the Interstate FMP would be based on the recreational ACL specified by the South Atlantic Council. The Interstate FMP would also establish a coastwise commercial quota based on the commercial ACL specified by the South Atlantic Council. Alternatively, if Atlantic cobia is removed from the CMP FMP, the ASMFC may choose to base recreational and commercial quotas on a different overall harvest limit. Any management measures specified by the ASMFC would still be dependent on the most recent stock assessment and the best available science.

ASFMC's South Atlantic State/Federal Fishery Management Board (State Board) discussed management of Atlantic cobia in federal waters upon the removal Atlantic cobia from Federal management under the Magnuson-Stevens Act at their May 2018 meeting. The State Board initiated an amendment to the ASMFC Interstate FMP to reflect the removal of Atlantic cobia from the CMP FMP and establish recommendations for measures in federal waters. ASMFC staff will develop a draft Public Information Document (PID), which will describe management options that should be considered in the draft amendment. The State Board will review the draft PID at their Summer 2018 meeting. After the State Board approves the PID, the document would be released for public comment. Tentatively, the State Board will take final action on the amendment in Fall 2019, with implementation in Early 2020 (**Table 2**).

**Table 2.** Tentative timeline for implementation of an amendment to ASMFC’s Interstate FMP to address management of Atlantic cobia in federal waters under ACFCMA.

Process Step	Timing
Draft Public Information Document considered for public comment.	August 2018
Public comment period.	August and September 2018
South Atlantic State/Federal Fisheries Board reviews comments and provides direction for development of a draft amendment.	October 2018
South Atlantic State/Federal Fisheries Board reviews draft amendment and considers approval for public comment.	May 2019
Public comment period.	June and July 2019
South Atlantic/Federal Fisheries Board considers final approval of options and amendment.	August 2019
Implementation	Early 2020

During the period between implementation of CMP Amendment 31 and the implementation of an amendment to the Interstate FMP, ASMFC has requested NOAA Fisheries promulgate the current federal regulations under the ACFMCA to replace the existing Magnuson-Stevens Act based regulations in federal waters. Implementation of management measures under ACFMCA during the development of an amendment to the Interstate FMP will ensure that there is not a lapse in management of Atlantic cobia in federal waters.

### **SEDAR 58 Stock ID Workshop and Benchmark Assessment**

The SEDAR Steering Committee has recommended a Benchmark Assessment be conducted for Atlantic cobia. This process will include a Stock ID Workshop to develop stock structure recommendations prior to the start of the SEDAR 58 Data Workshop. The Stock ID process began in Spring 2018:

Stock ID Workshop: April 10-12, 2018

Stock ID Review Workshop: June 5-7, 2018

Stock ID Joint Cooperator Technical Review: July/August 2018

**Preliminary results from the Stock ID Workshop suggest that a change in the management boundary is not warranted.**

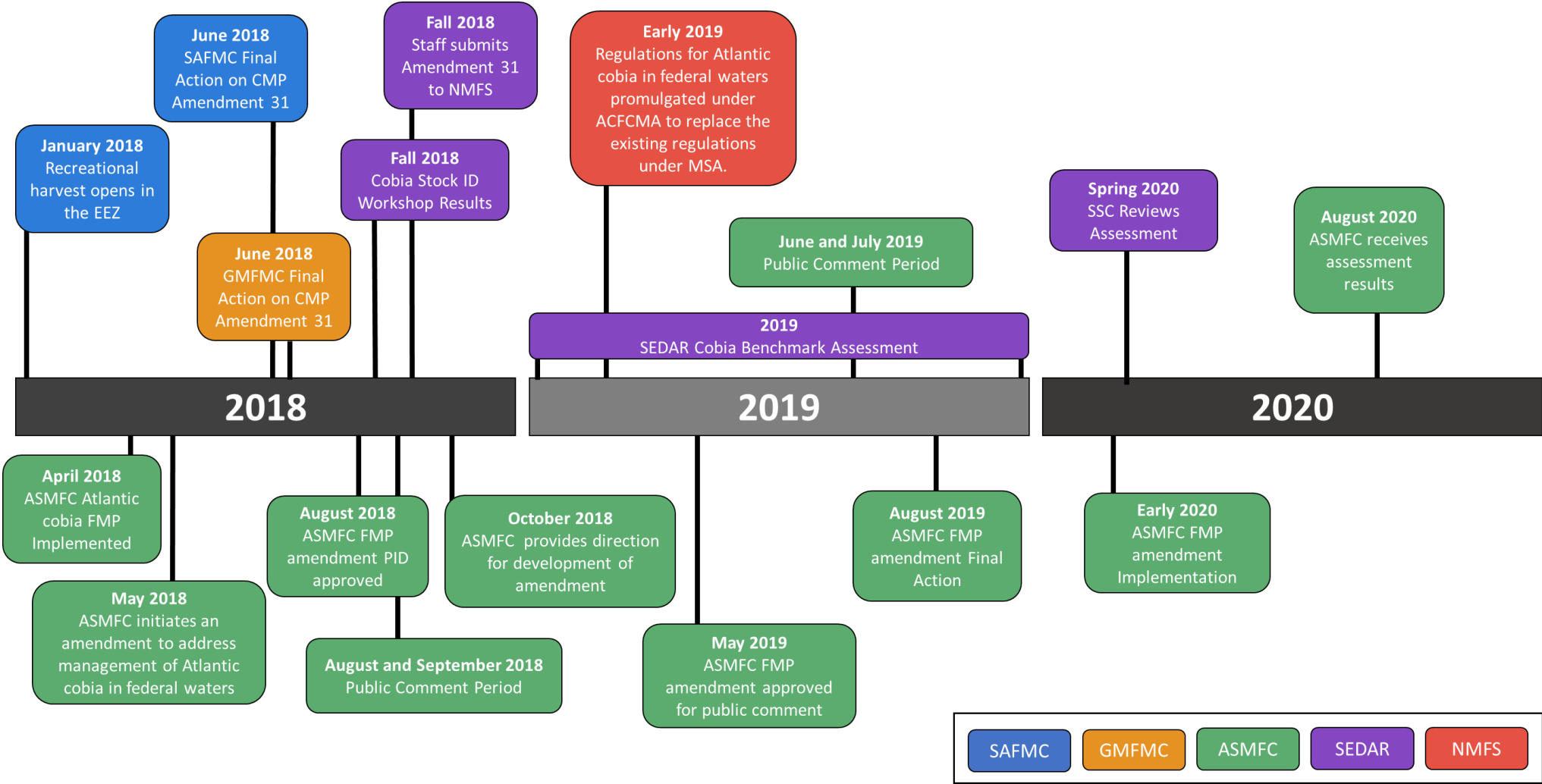
Final results from the Stock ID Workshop are anticipated fall of 2018. The SEDAR 58 Stock Assessment will take place throughout 2019 with exact dates to be determined. Results from the Benchmark Assessment are tentatively scheduled to be available to South Atlantic SSC in Fall 2019 or Spring 2020 and to the South Atlantic Council in December 2019 or June 2020.

*What happens if the Stock ID Workshop indicates a change in the boundary between Atlantic and Gulf cobia?*

If information suggested that a possible management shift in the boundary of between the Gulf and Atlantic stocks of cobia was needed, this would be evaluated by the Gulf and South Atlantic

Councils and their SSCs. Any change in the boundary would be made through an amendment to the CMP FMP, along with an amendment or addendum to the ASFMC Interstate FMP. National Standard 3 indicates that, to the extent practicable, that an individual stock shall be managed throughout its range. The choice of a management unit depends on the focus of the fishery management plan's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. The Councils would consider these factors when deciding if a management boundary should be changed.

**Tentative Timeline of actions for CMP Amendment 31, ASMFC Interstate FMP, and SEDAR 58**



## Action in this amendment

- **Action:** Revise the management system for Atlantic migratory group cobia.

## Objectives for this meeting

- Review Coastal Migratory Pelagics Amendment 31 to revise the management system for Atlantic cobia.
- Vote whether to recommend sending Coastal Migratory Pelagics Amendment 31 to the U.S. Secretary of Commerce for approval.

## Expected amendment timing

	Process Step	Date
✓	South Atlantic Council directs staff to begin work on an amendment considering complementary and sole management of Atlantic cobia with ASMFC.	June 2017
✓	Scoping webinar.	August 2017
✓	South Atlantic Council reviews scoping comments and approved actions/alternatives to be analyzed.	September 2017
✓	South Atlantic Council reviews the draft amendment, selects preferred alternative, modifies the document as necessary, and approves for public hearings.	December 2017
✓	Public hearings	January 2017
✓	South Atlantic Council reviews public hearing comments and modifies the document as necessary.	March 2018
✓	Gulf Council reviews the draft amendment, selects preferred alternative.	April 2018
	South Atlantic Council considers final action.	June 2018
	Gulf Council considers final action	June 2018
	Implementation	Late 2018/Early 2019

## Purpose and need statement

### **Purpose for Actions**

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

### **Need for Actions**

The need is to provide for effective management of Atlantic cobia and fair and equitable access to harvest opportunities without reducing protection to the stock.



# Proposed Actions and Alternatives

## Action 1. Revise the management system for Atlantic migratory group cobia.

**Alternative 1 (No Action):** Continue the current management of Atlantic cobia via the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region.

**Preferred Alternative 2:** Remove Atlantic cobia from the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region.

**Alternative 3:** Establish a policy in the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region for complementary management of Atlantic cobia with the Atlantic States Marine Fisheries Commission.

**Alternative 4:** Establish a framework procedure in the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region for an enhanced cooperative management system with the Atlantic States Marine Fisheries Commission that allows changes to Atlantic cobia management through National Marine Fisheries Service rulemaking.

### Discussion:

- **Alternative 1 (No Action)** would not change the current management structure for Atlantic cobia. ASMFC would manage Atlantic cobia in state waters and the South Atlantic Council would manage Atlantic cobia in federal waters.
- **Preferred Alternative 2** would remove Atlantic cobia from the Fishery Management Plan for Coastal Migratory Pelagic Resources (CMP FMP) as well as the regulatory measures associated with it. NMFS would **simultaneously** promulgate regulations under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) to replace the existing Magnuson-Stevens Act regulations in federal waters.
  - Scientific support (collection and analysis of data, biological and socioeconomic research, management planning) would be available to ASMFC through NMFS.
- **Alternative 3** would update the CMP FMP to acknowledge ASMFC's role in management of Atlantic cobia and how the South Atlantic Council would go about considering changes made in state waters for implementation in federal waters.
  - South Atlantic Council would decide whether to adopt ASMFC regulations in federal waters on a case by case basis consistent with the ASFMC Interstate FMP.
  - This alternative gives the South Atlantic Council the flexibility to continue to manage Atlantic cobia, but most of the management responsibility would be by the states through the ASFMC Interstate FMP.

- **Alternative 4** would set up a procedure in which ASMFC can propose rules directly to the National Marine Fisheries Service (NMFS), without formal action from the South Atlantic Council.
  - Rules would still need to meet Magnuson-Stevens Fishery Conservation and Management Act standards and CMP FMP objectives.
  - The South Atlantic Council would be informed of ASMFC rules and provide comment on whether the rules meet standards and requirements of the CMP FMP, Magnuson-Stevens Act, and other applicable law.
  - The South Atlantic Council could still adjust Atlantic cobia management through the normal amendment and rulemaking process.

### **Analysis of MSA Considerations**

Removal of Atlantic cobia from the CMP FMP under **Preferred Alternative 2** would require consideration of NMFS guidelines at 50 CFR §600.305(c). The Magnuson-Stevens Act section 302(h)(1) requires a Council to prepare an FMP for each fishery under its authority that requires (or in other words, is in need of) conservation and management. 16 U.S.C. 1852(h)(1). Not every fishery requires federal management. Any stocks that are predominately caught in federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, are considered to require conservation and management (50 CFR § 600.305(c)(1)). Beyond such stocks, Councils may determine that additional stocks require “conservation and management.” (see Magnuson-Stevens Act definition at 16 U.S.C. 1802(5)). Councils should consider the following non-exhaustive list of factors when deciding whether additional stocks require conservation and management:

- i. The stock is an important component of the marine environment.
- ii. The stock is caught by the fishery.
- iii. Whether an FMP can improve or maintain the condition of the stock.
- iv. The stock is a target of a fishery.
- v. The stock is important to commercial, recreational, or subsistence users.
- vi. The fishery is important to the Nation or to the regional economy.
- vii. The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.
- viii. The economic condition of a fishery and whether an FMP can produce more efficient utilization.
- ix. The needs of a developing fishery, and whether an FMP can foster orderly growth.
- x. The extent to which the fishery is already adequately managed by states, by state/federal programs, or by federal regulations pursuant to other FMPs or international commissions, or by industry self-regulation, consistent with the requirements of the Magnuson-Stevens Act and other applicable law.

The guidelines, at 50 CFR § 600.305(c)(4), recommend a stepwise consideration of the factors.

- Consideration of factors (i) and (ii) weighs in favor of retaining Atlantic cobia in the CMP FMP. The stock is generally an important component of the marine environment and is commonly harvested commercially and recreationally.

- Factor (iii), given recent changes in recreational harvest of the stock and that the vast majority of landings occur in state waters, management under the CMP FMP has not proven effective at constraining harvest. This apparent inability of the CMP FMP to effectively manage the stock could easily result to overfishing the stock, and ultimately to an overfished condition.
- Factors (iv) through (vi) generally weigh in favor of retaining the stock in the CMP FMP. However, while Atlantic cobia is a target stock in the CMP fishery (factor iv), it has been harvested more in state waters, particularly in recent years, which makes it of greater potential importance to the states. Although harvest of the stock is important to recreational and commercial users (factor v), it is estimated to make only a modest contribution to the Nation or regional economy on an annual basis (factor vi).
- Factors (vii) through (ix) do not support retaining Atlantic cobia in the CMP FMP. The CMP FMP has proven ineffective at resolving the primary ongoing user conflict (factor vii) between different state's anglers, and it doesn't currently appear to be capable of promoting a more efficient utilization of the resource (factor viii). Given the age of the CMP fishery and historical level of exploitation, there is little, if any, room for growth or need for additional development (factor ix).
- Factor (x), given the recent implementation of the ASMFC's Interstate FMP, and ongoing efforts assume complete authority over the harvest of Atlantic cobia, management by the states in conjunction with the ASMFC and Secretary of Commerce is believed to be adequate to meet the management needs of the stock.

Based on the above analysis, factors iii, vii, viii, ix, and x, weigh in favor of removing Atlantic cobia from the CMP FMP. Among those, factors iii and x combine to provide the strongest support for removal.

### **Summary of Effects:**

#### *Biological:*

Regardless of which alternative is selected, the ASFMC has approved and will implement the Interstate FMP in April 2018. This plan is expected to constrain harvest in state waters and provide positive biological benefits to the Atlantic cobia stock.

- As the Interstate FMP would be in place under all alternatives and is expected to control harvest in state waters, the biological effects of **Alternative 1 (No Action), Preferred Alternative 2, Alternative 3, and Alternative 4** would be expected to be very similar because most of the Atlantic cobia harvest (> 80%) occurs in state waters.
- If Atlantic cobia is removed from the CMP FMP under **Preferred Alternative 2**, regulations could be extended into federal waters to constrain harvest in both state and federal waters.
- The difference between **Preferred Alternative 2** and **Alternatives 1 (No Action), 3, and 4** would be that **Preferred Alternative 2** would allow for a more efficient use of resources since Atlantic cobia would already be managed by the ASMFC.

*Economic and Social:*

The long-term economic effects of the alternatives would be dependent upon future management decisions and may be positive or negative, depending on the outcomes of management for the Atlantic cobia stock in state and federal waters. There is no clear ranking of alternatives with regard to social effects, as many cause positive and negative social effects to different coastal communities.

- **Alternative 1 (No Action)** could generate negative social effects for South Carolina and Georgia if recreational harvest of Atlantic cobia continues to exceed the ACL, resulting in harvest closures in federal waters.
- **Preferred Alternative 2** would be expected to decrease management complexity, but long-term social effects would be largely dependent on the future management choices made by ASMFC.
- **Alternatives 3 and 4** would help ensure regulatory consistency between state and federal waters but could still result in negative social effects if harvest of Atlantic cobia continues to exceed the recreational and total ACL.
  - **Alternative 3** would allow for more public participation than **Alternative 4**, but is time consuming. **Alternative 4** would allow managers to react to changes quickly but may result in less time for public participation.
- From a perspective of minimizing potential regulatory complexity resulting from inconsistent regulations between state and federal waters and resulting administrative costs, **Preferred Alternative 2** would be most beneficial, followed by **Alternative 4**, **Alternative 3**, and **Alternative 1 (No Action)**.

### **Mackerel Cobia Advisory Panel and Cobia Sub-Panel Recommendations:**

MC AP members in support of **Preferred Alternative 2** felt that full management by ASMFC would provide necessary flexibility in management. Specifically, it would allow for representation of Mid-Atlantic states in the management process, address concerns with recreational overages do to harvest in state waters, and address concerns regarding landing estimates from the Marine Recreational Information Program (MRIP).

MC AP members in support of complementary management with ASMFC felt that the South Atlantic Council should remain involved in management because of portion of the Atlantic cobia fishery occurs in federal waters. Additionally, accountability measures required by the Magnuson Stevens Act were important to prevent overfishing and it would be prudent to wait until results from the upcoming stock assessment (SEDAR 58) are available before transferring management to ASMFC.

The MCAP and Cobia Sub-Panel passed a motion to adopt **Alternative 4** as their preferred alternative, with eight in favor, seven opposed and one abstention.

**Committee Action:**

- REVIEW ALTERNATIVES UNDER THE ACTION
- APPROVE DOCUMENT FOR FORMAL REVIEW
- OTHER?

**Draft Motions:**

**DRAFT MOTION:** APPROVE COASTAL MIGRATORY PELAGICS AMENDMENT 31 FOR FORMAL SECRETARIAL REVIEW AND DEEM THE CODIFIED TEXT AS NECESSARY AND APPROPRIATE. GIVE STAFF EDITORIAL LICENSE TO MAKE ANY NECESSARY EDITORIAL CHANGES TO THE DOCUMENT/CODIFIED TEXT AND GIVE THE COUNCIL CHAIR AUTHORITY TO APPROVE THE REVISIONS AND RE-DEEM THE CODIFIED TEXT.