

Coastal Migratory Pelagics Amendment 31 (Atlantic cobia management)



Advisory Panel Summary

Why is the South Atlantic Council considering action?

After the 2015 overage and subsequent shortened 2016 recreational season for Atlantic cobia, the South Atlantic Council started work on Framework Amendment 4 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 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 in federal waters 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 an amendment with options to remove Atlantic cobia from the federal fishery management plan, or for complementary management of Atlantic cobia with ASMFC.

ASMFC’s Interstate Fishery Management Plan

In November 2017, the ASMFC approved management measures for Atlantic cobia in state waters. Recreational limits follow those set up in CMP Framework Amendment 4 with a 36” FL minimum size (or TL equivalent) and 1-fish per person or 6-fish per vessel limit, whichever is more restrictive. The recreational ACL will be allocated to states based on an average of the 5-year (2011-2015) and 10-year time period (2006-2015) (**Table 1**). These allocations are soft harvest targets, with landings monitored every three years. A portion of the recreational ACL (1%) will be allocated to de minimis states. De minimis states may match the regulations of the adjacent non-de minimis state OR accept a 1-fish per vessel limit with a minimum size limit of 29” FL. Commercial limits also follow those set up in CMP Framework Amendment 4 with 33” FL minimum size and 2-fish per person or 6-fish per vessel, whichever is more restrictive. State implementations plans were submitted to ASMFC for approval in January 2018. The new regulations went into effect April 1, 2018.

Table 1. State-specific allocations of a coastwide recreational harvest limit that is equivalent to the federal Atlantic cobia ACL of 620,000 pounds whole weight.

State	Allocation	Soft Target with Current ACL
Georgia	9.5%	58,311 pounds
South Carolina	12.2%	74,885 pounds
North Carolina	38.5%	236,313 pounds
Virginia	39.8%	244,292 pounds
<i>De minimis</i>	1%	6,200 pounds

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. Alternatively, 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 would still be dependent on the most recent stock assessment and the best available science.

Can Atlantic cobia be removed from the CMP FMP?

Yes, a species can be removed from a federal management unit (FMU). However, the NMFS has guidelines for determining whether to include species in an FMU for purposes of federal conservation and management (50 CFR §600.305(c)). The Magnuson-Stevens Act requires a council to prepare an FMP for each fishery under its authority that is in need of conservation and management (302(h)(1)). Not every fishery requires federal management. A council should consider the following 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.

If Atlantic cobia is removed, what happens in federal waters?

If Atlantic cobia is removed from the CMP FMP, regulations could be extended into federal waters. The Atlantic Coastal Fisheries Cooperative Management Act, Section 5103, establishes management between the Atlantic states and specifies involvement of and coordination with the Secretary of Commerce and NMFS. In the absence of federal management under the Magnuson-Stevens Act, the Secretary may, after consultation with the appropriate Council, implement regulations in the EEZ. These regulations would have to be compatible with the interstate management plan and be consistent with the National Standards. Additionally, ASMFC interstate fishery management efforts receive federal support for “collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning.”

What about the upcoming stock assessment for cobia?

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 is set to begin in Spring 2018 with results anticipated fall of 2018. The SEDAR 58 Stock Assessment will take place throughout 2019, with result available to the South Atlantic Council in late-2019 or mid-2020.

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

Once receiving the results, the Gulf and South Atlantic Councils would begin work on an amendment to the CMP FMP based on the additional information provided by the Stock ID Workshop. National Standard 3 allows the Councils to define a management unit (the portion of

a fishery identified in an FMP) based on several considerations including: biological, geographic, economic, technical, social, or ecological perspectives (50 CFR §600.320(d)(1)).

If the Councils decide to move the stock boundary, ASMFC will add an addendum or an amendment to their Atlantic cobia interstate FMP. ASMFC’s addendum and amendment process is similar to the Council’s process for a framework or full amendment (**Table 2**). There will be several opportunities to comment on any amendment the Councils consider and any addendum or amendment ASMFC might undertake to address a shift in stock boundary.

Table 2. ASMFC Interstate Fishery Management Plan addendum and amendment processes.

SAFMC Amendment Process (12-18 months)	ASMFC Addendum Process (6-8 months)	ASMFC Amendment Process (12-16 months)
Council directs staff to start work on an amendment	Draft addendum is developed and approved by board <i>(Public can comment at the board meeting)</i>	Public Information Document is developed and approved by board <i>(Public can comment at the board meeting)</i>
<i>Scoping Public Comment Period</i>	<i>Public comment period including hearings for the states that request hearings Advisory Panel review/comments</i>	<i>Public comment period and hearings including Advisory Panel Comment</i>
Council reviews scoping comments and approves actions and alternatives to be analyzed <i>(Opportunity for public comment)</i>	Board reviews comments and considers final approval of options and addendum	Board reviews comments and gives direction on what to include in draft amendment
Council reviews draft amendment and approves for public hearings <i>(Opportunity for public comment)</i>	Implementation	Board reviews draft amendment and approves for public comment
<i>Public hearings Public Comment Period Scientific & Statistical Committee</i>		<i>Public comment including hearings (minimum of 3 hearings) and Advisory Panel review and comment</i>
Council reviews public hearing comments and takes final action <i>(Opportunity for public comment)</i>		Board reviews comments and considers final approval of options and amendment
Amendment is sent for Secretarial Review <i>(Opportunity for public comment)</i>		Implementation
Implementation		

Where is the Council currently in the Amendment process?

In December 2017, the Committee reviewed a draft document for Coastal Migratory Pelagics Amendment 31, chose a preferred alternative (Alternative 2: Remove Atlantic cobia from the CMP FMP) and approved the document for public hearings. In March 2018, the Council reviewed comments from the public hearings. Majority of comments supported removing

Atlantic cobia from the federal management unit and taking final action as soon as possible. There were a few comments expressing concern about timing related to the upcoming stock ID workshop. The Council discussed enforcement of Atlantic cobia in federal waters under Preferred Alternative 2, and the timing for Amendment 31 relative to the upcoming Stock ID Workshop for Atlantic cobia and the amount of time the State of South Carolina may need to get regulations approved in state waters given that have to go through the S.C. Legislature.

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 (**Table 3**). 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.

Table 3. Proposed timing for CMP Amendment 31.

Amendment Steps	Dates
✓ Scoping	August 2017
✓ Council reviews scoping comments and approves actions/alternatives to be analyzed.	September 2017
✓ Council reviews the draft amendment, selects preferred alternative, modifies the document as necessary, and approves for public hearings.	December 2017
✓ Public hearings	January 2018
✓ South Atlantic Council considers public comments and timing of other actions related to Atlantic cobia management.	March 2018
□ Atlantic cobia Stock ID Workshop	April 2018
□ Gulf Council discusses amendment.	April 2018
□ Atlantic cobia Stock ID Review Workshop	June 2018
□ South Atlantic Council takes final action.	June 2018
□ Gulf Council takes final action.	June 2018
□ CMP Amendment 31 submitted for Secretarial Review.	July 2018
□ Implementation	2019

What action is being proposed in Amendment 31?

Action 1. Revise the management system for Atlantic 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 regions (CMP FMP).

What does this mean?

- ASMFC manages Atlantic cobia in state waters. The South Atlantic Council manages Atlantic cobia in federal waters.

Preferred Alternative 2: Remove Atlantic cobia from the CMP FMP.

What does this mean?

- Atlantic cobia would be managed by ASMFC only.
- State's can regulate state registered vessels out into federal waters.
- ASMFC *may* choose to extend regulations into federal waters.

Alternative 3: Establish a policy in the CMP FMP for complimentary management of Atlantic cobia with the Atlantic States Marine Fisheries Commission (ASMFC).

What does this mean?

- Updates the CMP FMP to acknowledge ASMFC's role in managing Atlantic cobia.
- The South Atlantic Council would continue managing Atlantic cobia in federal waters and would consider implementation of state regulations in federal waters on a case-by-case base. Changes would go through the Council's amendment process.

Alternative 4: Establish a framework procedure in the CMP FMP for an enhanced cooperative management system with the ASMFC that allows changes to Atlantic cobia management through NMFS rulemaking.

What does this mean?

- Sets 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 need to meet Magnuson-Stevens Act standards and FMP objectives.
- The Council would be informed of ASMFC rules and provide comment on whether the rules meet appropriate federal and FMP standards.
- The Council can still adjust Atlantic cobia management through the normal amendment process.

Discussion

This action includes alternatives to revise the management system for Atlantic cobia. The South Atlantic Fishery Management Council (South Atlantic Council) and the Gulf of Mexico Fishery Management Council (Gulf Council) are considering this change to facilitate coordination between management in state and federal waters to prevent overharvest of Atlantic cobia and ensure fair and equitable distribution of access of the resource throughout the region.

Alternative 1 (No Action) would not change the current management structure for Atlantic cobia. The Atlantic States Marine Fisheries Commission (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 (FMP) for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (CMP FMP) as well as the regulatory measures associated with it. The ASMFC would have the option of extending state management measures into federal waters.

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 is in need of conservation and management. Not every fishery requires federal management. A council should consider the following list of factors when deciding whether additional stocks require conservation and management.

- xi. The stock is an important component of the marine environment.
- xii. The stock is caught by the fishery.
- xiii. Whether an FMP can improve or maintain the condition of the stock.
- xiv. The stock is a target of a fishery.
- xv. The stock is important to commercial, recreational, or subsistence users.
- xvi. The fishery is important to the Nation or to the regional economy.
- xvii. The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.
- xviii. The economic condition of a fishery and whether an FMP can produce more efficient utilization.
- xix. The needs of a developing fishery, and whether an FMP can foster orderly growth.
- xx. 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.

Removal of Atlantic cobia from the CMP FMP would also result in essential fish habitat for the species no longer being identified and described. This could affect NMFS' ability to protect localized areas within EFH that are vulnerable to degradation and especially important ecologically for coastal migratory species. Further, **Preferred Alternative 2** would diminish the effectiveness of the NMFS to protect genetically distinct inshore spawning populations of Atlantic cobia through the EFH consultation process. However, the ASMFC's Interstate FMP does encourage states to ensure protection of habitat areas that have already been identified as important to Atlantic cobia by notifying and working with federal, state, and local agencies.

Under **Preferred Alternative 2**, scientific support would still be available to ASMFC through NMFS. Section 5103(a) of the Atlantic Coastal Fisheries Cooperative Management Act of 1993 states that the Federal government will provide support for state coastal fisheries programs in the form of “collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning.” Additionally, Section 5103(b) states in the absence of a federal FMP, the Secretary may extend state regulations into federal waters.

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. Under **Alternative 3**, the 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 the majority 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 (Magnuson-Stevens 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.

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.

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)**.

Currently, Gulf of Mexico (Gulf) cobia is managed by the Gulf of Mexico Fishery Management Council and a portion of the ACL for Gulf cobia is allocated the Florida East Coast for management by the South Atlantic Council. This action addresses management for Atlantic cobia (GA-NY) only and management of Gulf cobia would not be affected by actions proposed in Amendment 31.

In addition to the actions in Amendment 31, Atlantic cobia is scheduled to undergo a stock ID workshop and benchmark assessment, with results tentatively scheduled to be available in Fall 2018 and Winter 2019, respectively. The South Atlantic Council has the option to postpone work on this amendment until after the stock ID workshop and/or the benchmark assessment. If results from the upcoming Stock ID Workshop for Atlantic cobia indicate a change in the stock boundary for Atlantic and Gulf cobia the Gulf and South Atlantic Councils would need to determine if a change in the management boundary between the stocks is warranted. Any change in management boundary would be addressed with an amendment to the CMP FMP as well as an amendment or addendum to the ASFMC Interstate FMP. This process would involve multiple opportunities for public input.