

MEETING REPORT

South Atlantic Mackerel Cobia Advisory Panel and Cobia Sub-Panel

April 19-20, 2017

N. Charleston, SC

The Mackerel Cobia Advisory Panel (AP) and Cobia Sub-Panel met jointly to discuss topics supporting management of the coastal migratory pelagics fishery, including Atlantic (GA-NY) cobia, Florida east coast cobia, Atlantic Spanish mackerel, and Atlantic king mackerel. Below is a summary of the group's discussions and recommendations. The AP/Sub-Panel approved motions for recommendations to the Council, but a summary of all viewpoints relevant to each motion/recommendation are included.

AP Members

Ira Laks, AP Chair- *FL/Charter*
Stephen Swann, AP Vice Chair- *FL/Rec*
Stephen Donalson- *FL/Rec*
Steve English- *FL/Commercial*
Skip Feller- *VA/Charter/Mid-Atlantic
Liaison*
Manuel Herrera - *FL/Commercial*
Ryan Howard- *GA/Charter*
Bill Kelly- *FL/Commercial*
Robert Olsen- *SC/Charter*
Greg Peralta- *SC/Rec*
Gary Robinson- *FL/Commercial*
Tom Roller- *NC/Charter*

Cobia Sub-Panel Members

Wes Blow- *VA*
Bill Gorham- *NC*
Howard Ellis, Jr- *SC*
Bill Weeks- *GA*

AP Members not in attendance

Selby Lewis- *NC/Commercial*
David Forcinito- *NC/Dealer*

Council Members

Michelle Duval, SAFMC Chair
Ben Hartig, Mackerel Cobia Committee
Chair
Mel Bell
Zack Bowen
Mark Brown
Chris Conklin

South Atlantic Council and SEDAR Staff

Kari MacLauchlin, CMP Lead
Julia Byrd
John Carmichael
Kimberly Cole
Chip Collier
Mike Errigo
John Hadley
Kim Iverson
Cameron Rhodes
Amber Von Harten
Gregg Waugh, Executive Director

SC DNR

Mike Denson

NOAA General Counsel

Shepherd Grimes

Approval of Agenda and 2016 Meeting Minutes

The agenda was approved, along with the minutes from the February 2016 AP meeting.

Recent CMP Actions

Council staff provided a status update on recent amendments that the AP had discussed at previous meetings. The proposed rule for CMP Framework Amendment 4 includes actions to revise management for Atlantic cobia and was published on February 21, 2017, with a comment period that closed March 23, 2017. CMP Framework Amendment 5 rule published on March 1, 2017, and the comment period closed March 31, 2017. Last, the revised king mackerel boundary, ACLs and Atlantic southern zone management measures in CMP Amendment 26 will go into effect on May 11, 2017.

1) Cobia

Following an overview of Atlantic and Florida east coast cobia management, with a focus on recreational Atlantic cobia, the AP/Sub-Panel discussed several topics related to cobia.

Discussion on Emergency Action

Following the shortened recreational seasons for Atlantic cobia in 2016 and 2017, there have been substantial requests from the public for the Council to request that NMFS take emergency action to change the stock boundary for Atlantic and Gulf cobia back to the boundary before CMP Amendment 20B (at the Councils' boundary). Council staff reviewed the NOAA's criteria and guidance for emergency action, and Shepherd Grimes of NOAA General Counsel was in attendance to provide input and answer questions from AP/Sub-Panel members.

Mr. Grimes outlined several reasons that the situation would likely not meet the criteria for emergency action. Policy guidelines for implementing the statute, the only legal requirement in the statute is that NMFS finds that there is an emergency. The guidelines specify how NMFS will carry out the process if NMFS determines that there is an emergency.

Emergency action can be used to prevent significant economic loss or to preserve economic opportunities, and changing the boundary and ACL back to those in place before Amendment 20B may meet that guideline. However, there is a requirement that the event be recent and unforeseen, and the situation with cobia may not meet that requirement. The stock assessment was completed in 2012 and the changes from Amendment 20B were implemented in 2015. There have been two years with early closures. This detracts from the argument that the event is recent and unforeseen, because emergency action is not applicable if there has been a long-standing problem that just has not been addressed by administrative action.

It was pointed out that public comment recommending that the Council request emergency action was received after the 2016 early closure, and that the 2016 overage indicates that administrative action taken (state actions, federal closure, Framework Amendment 4) did not help to address the overage. There is also concern that there will always be an overage due to MRIP estimates being used to evaluate if the ACL has been exceeded.

Mr. Grimes also noted that there are legal concerns for an emergency rule due to the administrative record built for the stock assessment and CMP Amendment 20B. All federal rule-making under MSA is evaluated by the standards of the Administrative Procedures Act and this allows for on-the-record rule-making. When considering National Standard 2, the stock assessment went through a review process and was determined to be the best scientific information available. Additionally, the regulations in Amendment 20B were reviewed and approved by the Council with the decisions on the record, and evaluated and determine to be in compliance with the federal mandates. To change reverse those regulations (back to the boundary/ACL prior to Amendment 20B) would require that the Council build the record again demonstrating that the decision was wrong or there is new information available. This will take time and there is not as strong administrative record supporting emergency action as the administrative record supporting the decisions made in Amendment 20B. If the Council developed an amendment to make those changes, there would be a strong record of the decision in addition to review of the scientific information used to make the decision.

In response to a question about setting the boundary in SEDAR 28 based on ease of management, Mr. Grimes clarified that management units can be set based on factors other than scientific information about stock structure, including geographic and political factors (e.g., at a state line). Additionally, if the management boundary is moved south, the ACL for Atlantic cobia would not change from the ACL set in Amendment 20B based on the ABC from the stock assessment and SSC. All landings from this area would count towards the current Atlantic ACL in place. There are record issues with changing the management unit because a record has already been built for the current boundary and ACL, which have been determined to be the appropriate management unit and ACL to prevent overfishing.

Some AP members did not feel that there was good reason to request emergency action to change the boundary/ ACL. There was concern voiced about the MRIP data, because of some data outliers that do not seem feasible (an example would be a very high landings estimate for one week that is likely not possible). Mr. Grimes pointed out the MRIP has limitations but is the only data available and meets the requirement for best available scientific information, although he noted that Texas does not participate in MRIP and the state provides their recreational estimates to NMFS. If states have recreational data, NMFS will evaluate the data and if the information is compatible with the MRIP program, and the states' data can be used in place of MRIP estimates.

Mr. Grimes specified that National Standard 1 is the highest priority, and the current ACL in place has a record that it is appropriate to prevent overfishing. An emergency action changing the current ACL may compromise the ability to meet National Standard 1.

Because of the negative economic impacts on businesses associated with the recreational cobia fishery in North Carolina and Virginia, there should be some documentation of the reasons that an emergency action would not apply to Atlantic cobia, such as an official NMFS responses to a Council request for emergency action.

The following motion was approved although not with majority support:

MOTION # 1: RECOMMEND THAT THE COUNCIL REQUEST NMFS TAKE EMERGENCY ACTION TO RESET THE STOCK BOUNDARY AND ACLS TO AMENDMENT 18.
APPROVED. (6 in favor; 5 opposed; 4 abstained)

Ongoing Cobia Research

Dr. Mike Denson of the South Carolina Department of Natural Resources (SC DNR) will present about ongoing cobia research, including work on distinct population segments in South Carolina along with additional studies around the region. The information will be incorporated into the research track assessment, which will evaluate the stock structure for cobia.

SEDAR Activities for Cobia

Julia Byrd, SEDAR staff, provided an overview to the AP/Sub-Panel on upcoming SEDAR activities for cobia, which include the research track assessment scheduled for 2018 and the operational assessment scheduled for 2020. AP and Sub-Panel members also indicated if they are interested in serving as commercial and recreational fishing representatives for the assessments.

Commercial Permit Requirement for Cobia

The Gulf of Mexico and South Atlantic Councils have considered a permit requirement for cobia in past amendments, with the most recent being CMP Amendment 20A. The AP and Sub-Panel discussed a potential commercial permit requirement for harvest of cobia in the Mid-Atlantic and South Atlantic (including Florida east coast). Currently there is no commercial permit requirement to harvest cobia that are sold, but there is a possession limit of 2/person/day.

With the recreational closure for Atlantic cobia, there has been increased interest in participating in the commercial sector of Atlantic cobia fishery. Additionally there is confusion about how federal dealer requirements apply to cobia caught in federal waters and/or on vessels with other federal permits, because there is no commercial permit requirement for cobia.

The AP and Sub-Panel discussed the costs and benefits of a commercial permit requirement, including:

- Without a commercial permit, cobia may not be being counted, or may be counted twice.
- Because cobia may not be sold to federal dealers, some landings may not be captured as quickly as with the weekly electronic reports from federal dealers. State dealers may not be required to report weekly and this may affect the ability of NMFS to monitor the quotas effectively, and implement an in-season closure to prevent landings from exceeding the ACL or quota.
- Cobia has typically been a bycatch for commercial trips because of the 2/person possession limit, but in recent years is a directed fishery in some areas for certain parts of the year.
- The permit requirement could be satisfied by holding another commercial permit or with a commercial landings requirement, so that fishermen do not have to purchase another permit.
- A permit requirement could result in fish being discarded, because they cannot be kept and sold without the permit.
- A federal permit requirement may negatively affect fishermen working only in state waters, if they were excluded from the commercial fishery or were required to purchase a federal permit and comply with federal reporting requirements.
- A permit requirement may help reduce illegal sales and loopholes, and benefit legitimate fishermen who commercially fish for cobia.

The AP and Sub-Panel approved the following motion:

MOTION # 2: ASK FOR A LIMITED ACCESS COBIA FEDERAL COMMERCIAL PERMIT, WITH REQUIREMENTS TO HAVE A HISTORY OF COMMERCIAL SALES (COBIA) OR HAVE A FEDERAL COMMERCIAL PERMIT (ANY SPECIES) TO QUALIFY.
APPROVED. (12 in support, 2 abstained)

Bag limit for cobia from federal waters off the Florida east coast

In federal waters off the Florida east coast, the commercial and recreational possession limit for cobia is 2 fish per person per day. Cobia caught in Florida state waters is limited to 1 fish per person per day. The AP and Sub-panel discussed modifying the recreational limit for cobia from federal waters off the Florida east coast, including considering a bag limit of 1/person for cobia from federal waters, and possible boat limits. Main points in the discussion included:

- A 1/person limit would be consistent with regulations in Florida state waters, and with the rest of the Atlantic coast.
- There is no reason to change the bag limit because Florida east coast quota has not been met in recent years.
- Although a trip in federal waters does not always result in reaching the bag limit, it is good to have the option to catch 2/person.

The AP approved the following motion:

MOTION #3: RECOMMEND THAT THE COUNCIL LOOK INTO POTENTIAL OPTIONS FOR A RECREATIONAL BOAT LIMIT FOR FEDERAL WATERS OFF THE FLORIDA EAST COAST.
APPROVED. (9 in support, 4 abstained)

Cobia Fishery Performance Review

The Council has requested the AP and Sub-panel discuss the current status of the fishery from their experiences and knowledge. The Cobia Fishery Performance Report (FPR) includes input from AP and Sub-Panel members about availability, abundance, sizes, changes in effort, changes in demand for commercial and for-hire services, and other factors characterizing the cobia fishery. The Cobia FPR is attached at the end of this meeting report and is also available on the SAFMC website.

2) Spanish Mackerel

Gillnet mesh size

The minimum mesh size for Spanish mackerel gillnets is 3.5 inches (8.9 cm), stretched mesh. The AP and Sub-Panel discussed revising the minimum mesh size, and also ways to clarify and standardize how mesh size is measured. AP members noted that the mesh size specification was put into place when there were no trip limits and no quotas in place, and that there is a minimum size limit of 12 inches. Because there have been changes in the fishery over the years, the way that mesh size is measured requires a tool that may or may not be available. Clarification of the mesh size requirements and standardization of how mesh is measured will help in enforcement and compliance.

The AP and Sub-Panel approved the following motion:

MOTION #4: RECOMMEND THAT THE COUNCIL CONSIDER CHANGING THE MESH SIZE REQUIREMENTS FOR SPANISH MACKEREL GILLNETS TO BE:

- 3 INCH MINIMUM SIZE MESH – MEASURE BY STRETCH TILL CENTER NOTCH TOUCHES, UP TO .277 MM.
- ANYTHING GREATER THAN .277 MM WILL NEED TO BE 3.5 INCH MINIMUM MESH SIZE.

APPROVED. (All in support)

Commercial Spanish mackerel permits

The federal commercial permit for Spanish mackerel is open access and is required for commercial harvest of Spanish mackerel in the Gulf, South Atlantic and Mid-Atlantic. Limited entry for the Spanish mackerel commercial permit has been considered by the Council but never included in an amendment. The Council has also considered an action to establish a Spanish mackerel gillnet endorsement but removed the action due to lack of public support.

Off the east coast of Florida, there are a small number of vessels (~20) that participate every year in the Spanish mackerel gillnet fishery. These are full-time commercial fishermen who participate in several fisheries throughout the year. AP members report that there has been an increase in the number of part-time boats in the Spanish mackerel gillnet fishery at certain times during the season that drive the price of fish down.

Points raised during the discussion on limited entry Spanish mackerel commercial permits and gillnet endorsements included:

- There cannot be a limited amount of fish (ACL/quota) but an unlimited amount of permits.
- Part-time participants on the Florida east coast gillnet fishery may impact the environment because they are not skilled using the gear and may impact habitat.
- Limitation on the number of participants for the Florida east coast would help protect the overwintering stock that are targeted.
- Limited entry would at least require more investment, which would weed out some part-time participants.
- For Keys fishermen, the Gulf Spanish mackerel quota has not been met in recent years and there is no reason to restrict the Spanish mackerel commercial permit or have a gillnet endorsement.
- AP members felt that the issue with effort may be specific to the Florida east coast.
- It is possible to have a limited entry endorsement (for gillnets on the Florida east coast) on an open access permit (per NOAA GC).

The AP and Sub-Panel approved the following motion:

MOTION #5: RECOMMEND THAT THE COUNCIL EXAMINE A POTENTIAL LIMITED ACCESS FOR THE SPANISH MACKEREL COMMERCIAL FISHERY IN THE SOUTH ATLANTIC, BASED ON CONTROL DATES AND/OR LANDINGS.

APPROVED. (11 in support, 2 abstained)

3) King Mackerel

Latent effort/permits in the king mackerel commercial fishery

The federal commercial permit for king mackerel is a limited entry permit and is required for commercial harvest of king mackerel in the Gulf, South Atlantic, and Mid-Atlantic. In a previous amendment, the Councils considered removing king mackerel commercial permits that did not meet a minimum landings requirements but did not move forward on that action due to public opposition.

Points raised during the discussion include:

- Low trip limits for the Gulf Southern Zone have deterred some fishermen from making trips because trips are not profitable. This could result in some permits being designated ‘latent’.
- The Council needs to explore the different reasons why a permit has low or no landings—some permit holders may keep the permit in their portfolio for when they need the permit.
- A 2-for-1 requirement would require more of an investment and would result in a reduction of permits over time.
- The Councils could create a non-transferable permit to reduce the number of permits over time without taking away permits.
- Allow one vessel to have two permits, and allow two trip limits (or maybe 1.5x the trip limit). This would consolidate the effort, allow vessels to maximize trip revenue, and reduce the number of permits with no or low landings.

The AP and Sub-Panel approved the following motion:

MOTION #6: RECOMMEND THAT THE COUNCIL DEVELOP OPTIONS TO ADDRESS LATENT KING MACKEREL PERMITS:

- ALLOW TWO KING MACKEREL PERMITS ON A VESSEL FOR A HIGHER TRIP LIMIT
 - 2-FOR-1 REQUIREMENT TO GET A KING MACKEREL PERMIT
- APPROVED. (10 in support, 2 opposed, 1 abstained)

Trip limit for hook-and-line Atlantic king mackerel on Spanish mackerel gillnet trips

The AP and Sub-Panel discussed allowing a trip limit of hook-and-line caught Atlantic king mackerel on Spanish mackerel gillnet trips. Currently a small number of vessels on the Florida east coast who participate in the Spanish mackerel gillnet and the hook and line king mackerel fisheries have to remove gillnets from the boat in order to hook and line for king mackerel, because gillnet is not an authorized gear for king mackerel in that zone. This requirement increases trip costs due to the time to return to the dock to leave the gillnets, and then go back out to fish for king mackerel. There was some concern about an increase in the number of boats if this is allowed, but the AP and Sub-Panel approved the following:

MOTION #7: RECOMMEND THAT THE COUNCIL CONSIDER AN ALLOWANCE OF KING MACKEREL HOOK AND LINE LIMIT ON SPANISH MACKEREL GILLNET TRIPS WITH GILLNET MESH OF 3.5” OR SMALLER, AND .277 OR LESS.

APPROVED. (All supported)

4) Chair and Vice Chair; Term Limits; Cobia Sub-Panel

The AP decided to specify that chair and vice chair elections will occur every three years. The AP selected Ira Laks as Chair and Stephen Swann as Vice Chair for the next three years. Additionally, the AP recommended that the Cobia Sub-Panel members be designated as regular AP members.

MOTION #8: BRING THE CHAIR/VICE CHAIR TO A VOTE EVERY 3 YEARS. MOTION APPROVED. (All supported)

MOTION #9: NOMINATE IRA LAKS AS CHAIR AND STEPHEN SWANN AS VICE CHAIR FOR NEXT 3 YEARS. APPROVED. (All supported)

MOTION #10: RECOMMEND THAT THE SUB-PANEL MEMBERS BECOME MEMBERS OF THE MACKEREL COBIA AP, WITH ONE CHAIR/VICE CHAIR. APPROVED. (All supported)

5) Other Business

Under Other Business, the AP/Sub-Panel discussed Atlantic king mackerel trip limits in the Atlantic Southern Zone. Revised trip limits (established through Amendment 26) will go into effect on May 11, 2017. However, some fishermen on the Florida east coast have expressed concern about the new trip limits, especially the 50-fish limit for March 1-31 from the Flagler/Volusia line to the Miami-Dade/Monroe line.

RECOMMENDATION: Florida representatives on the AP recommended that the Council review the March trip limits and consider a 75-fish limit for all of Season 1 (March through September).

The AP/Sub-Panel also brought up mandatory reporting for recreational cobia, with points including:

- Better data will help show the real levels of catch in the different areas.
- Several states already have recreational reporting requirements or voluntary programs, but there needs to be some consistency across the board (and all states should have reporting requirements).
- Headboats and charter boats are already required or will soon be required to report electronically each week, and private recreational fishermen should have to do the same.
- There was some concern expressed about a requirement instead of voluntary for private recreational.
- The Snapper Grouper AP and the Council have been discussing required reporting for red snapper to get better data on private recreational catch.
- Improved recreational reporting could provide an alternative to MRIP.
- which had also been discussed during the Cobia discussions:

MOTION #11: MOTION: RECOMMEND THE COUNCIL EXPLORE RECREATIONAL REPORTING REQUIREMENTS FOR COBIA. APPROVED. (All supported)