

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 190927–0047]

RIN 0648–BI83

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 7**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in Framework Amendment 7 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico (Gulf) and Atlantic Region (FMP) (Framework Amendment 7), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). This proposed rule would revise the commercial and recreational minimum size limit for the Gulf zone of the Gulf migratory group of cobia (Gulf cobia). The purpose of this proposed rule is to reduce harvest of Gulf cobia in the Gulf zone in response to concerns about the status of the stock until additional stock information becomes available.

**DATES:** Written comments must be received by November 4, 2019.

**ADDRESSES:** You may submit comments on the proposed rule, identified by “NOAA–NMFS–2019–0036,” by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0036](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0036) click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Rich Malinowski, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov)

without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in required fields if you wish to remain anonymous).

Electronic copies Framework Amendment 7 that contain an environmental assessment and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/modifications-gulf-mexico-migratory-group-cobia-size-and-possession-limits>. **FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: [rich.malinowski@noaa.gov](mailto:rich.malinowski@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The CMP fishery in the Gulf and Atlantic region is jointly managed by the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council) (Councils) under the FMP, and includes king mackerel, Spanish mackerel, and Gulf cobia. The FMP was prepared by the Councils and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the FMP, each Council can develop individual framework amendments to the FMP for actions that are specific to that Council’s jurisdiction.

**Background**

Two migratory groups of cobia exist in the southeastern US: the Atlantic migratory group and the Gulf migratory group. The Atlantic migratory group ranges from Georgia through New York and is managed by the Atlantic States Marine Fisheries Commission (84 FR 4736, February 19, 2019). The Gulf migratory group ranges in the Gulf from Texas through Florida and in the Atlantic off the east coast of Florida. The Gulf migratory group is further divided into the Gulf zone and the Florida east coast zone. The Gulf zone is defined as encompassing an area of the exclusive economic zone (EEZ) north of a line extending east of the United States/Mexico border, and north and west of the line of demarcation between the Atlantic Ocean and the Gulf (the Councils’ boundary) (50 CFR 622.369(c)(1)(i)). The Florida east coast zone encompasses an area of the EEZ south and east of the line of demarcation between the Atlantic Ocean and the Gulf, and south of a line

extending due east from the Florida/Georgia border (50 CFR 622.369(c)(1)(ii)).

Within the Gulf migratory group, the Gulf Council is responsible for management in the Gulf zone, and the South Atlantic Council is responsible for management in the Florida east coast zone. Framework Amendment 7 is only applicable to the Gulf zone for Gulf cobia. The South Atlantic Council is not presently considering management changes to the Florida east coast zone.

The most recent stock assessment of Gulf cobia (SEDAR 28 2013) determined that Gulf cobia is not overfished and is not undergoing overfishing. The Gulf Council’s Scientific and Statistical Committee (SSC) accepted the stock assessment for management advice. The Gulf Council’s SSC recommended the overfishing limit and acceptable biological catch levels for the entire Gulf cobia stock, including the Florida east coast zone, based on the results of the SEDAR 28 (2013) stock assessment. Subsequently, Amendment 20B to the FMP implemented the two zones for Gulf cobia as well as annual catch targets (ACT) and annual catch limits (ACL) for each zone (80 FR 4216, January 27, 2015).

Within the Gulf zone, Gulf cobia is managed using a stock ACT (quota) and ACL, among other measures. There are no sector-specific allocations for the commercial and recreational sectors. Landings of Gulf cobia from the Gulf zone remained relatively consistent from 2012 through 2016; however, a decrease in landings was observed in 2017. During the 2018 June and August Gulf Council meetings fishers provided public testimony that they were witnessing a decrease in the presence of Gulf cobia in the Gulf zone, and requested that the Gulf Council address concerns about the potential health of the Gulf cobia stock in the Gulf zone. Landings of Gulf zone cobia from 2018, which became available following the Gulf Council’s transmittal of Framework Amendment 7, revealed that 2018 landings did in fact continue to decline from previous years. These public comments were primarily from charter vessel and headboat operators, and private angling stakeholders. Recreational landings account for greater than 90 percent of all Gulf zone cobia landings.

The minimum size limit for Gulf cobia in both the Gulf and South Atlantic is 33 inches (83.8 cm), fork length, and has been in effect since the implementation of the original CMP FMP in 1983 (48 FR 5270, February 4, 1983). This minimum size limit applies to both sectors, and corresponds with

the length at which life history information indicates that 50 percent of cobia are sexually mature (sexes combined) and capable of reproduction (SEDAR 28 2013). The current daily Federal possession limit of two fish per person per day for both sectors has been in effect since Amendment 5 to the FMP was implemented in 1990 (55 FR 29370, July 19, 1990). The Gulf Council intends Framework Amendment 7 to take a precautionary approach. Although the 2013 stock assessment (SEDAR 28 2013) did not indicate that Gulf cobia are overfished or undergoing overfishing, the Gulf Council decided to reduce fishing mortality in response to constituent concerns, in case the decrease in landings observed in 2017 indicates an unknown issue with the health of the stock. The management measures considered in Framework 7 do not reflect those adopted for Atlantic cobia, because the Atlantic and Gulf cobia are separate and genetically distinct stocks with different growth, recruitment, and migratory patterns. Atlantic cobia can reach similar sizes as Gulf cobia, but do so over a longer lifespan (approximately 15 years compared to 11 years for Gulf cobia). Therefore, management measures appropriate for Atlantic cobia may not be appropriate for Gulf cobia.

As a result of recent decreases in landings and concerns about declining landings expressed by stakeholders, the Gulf Council decided to explore options for reducing fishing mortality of Gulf cobia in the Gulf zone at its April 2018 meeting. Framework Amendment 7 includes alternatives to revise the Gulf zone minimum size limit, as well as the possession limit, prior to the completion of the next stock assessment. This stock assessment is scheduled to begin in late 2019, and is expected to be available to the Gulf Council and their SSC in late 2020.

#### **Management Measure Contained in This Proposed Rule**

This proposed rule to implement Framework Amendment 7 would increase the commercial and recreational minimum size limit for Gulf cobia in the Gulf zone. The Gulf zone commercial and recreational minimum size limit would be increased from 33 inches (83.8 cm), fork length, to 36 inches (91.4 cm), fork length. The Gulf Council determined that increasing the minimum size limit to 36 inches (91.4 cm), fork length, would reduce fishing mortality by requiring fishers to release all Gulf cobia in the Gulf zone that are less than the minimum size limit. Raising the minimum size limit would accordingly increase the probability of a

sexually mature Gulf zone cobia being able to spawn before being harvested, resulting in positive biological effects for the stock in the form of additional recruitment to the spawning stock over time. Harvest is expected to be reduced by 10.3 percent for the commercial sector, and 26.1 percent for the recreational sector, as a result of increasing the minimum size limit.

#### **Measure Contained in Framework Amendment 7 Not in This Proposed Rule**

In addition to the action in Framework 7 and this proposed rule to increase the Gulf zone cobia minimum size limit, Framework Amendment 7 also contains an action with alternatives to revise the possession limit for cobia in the Gulf zone by reducing the individual possession limit and/or creating vessel limits. As described in 50 CFR 622.383(b), the current possession limit for Gulf cobia is two fish per person per day in or from the Gulf EEZ, regardless of the number of trips or duration of a trip.

At its October 2018 meeting, the Gulf Council decided to retain the current possession limit, because there was public opposition to the action and comparatively less of a reduction in fishing mortality from a possession limit than raising the minimum size limit. The Council determined that the reduction in harvest predicted as a result of the proposed increase in the minimum size limit (10.3 percent for the commercial sector and 26.1 percent for the recreational sector) would be sufficiently protective until the next planned stock assessment for the entire Gulf cobia stock is available in late 2020.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Framework Amendment 7, the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule, as required by section 603 of the RFA (5 U.S.C. 603). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act

provides the statutory basis for this proposed rule. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

This proposed rule, if implemented, would apply to all commercial vessels, charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest cobia in the Gulf zone. Because no Federal permit is required for the commercial harvest or sale of Gulf cobia, the distinction between commercial and recreational fishing activity for the purposes of this proposed rule is whether the fish are sold. Individuals that harvest Gulf cobia under the recreational possession limit in Federal waters and who do not subsequently sell these fish are considered to be recreational anglers. The RFA does not consider recreational anglers to be small entities, so they are outside the scope of this analysis and only the impacts on businesses that engage in commercial fishing (*i.e.*, those that sell their harvests of Gulf cobia) will be discussed.

For-hire vessels sell fishing services to recreational anglers. The proposed changes to the FMP would not directly alter the services sold by these for-hire vessels. Any change in anglers' demand for these fishing services (and associated economic effects) as a result of this proposed rule would be secondary to any direct effect on anglers and, therefore, would be an indirect effect of this proposed rule. Indirect effects are not germane to the RFA; however, because for-hire captains and crew are allowed to harvest and sell Gulf cobia under the possession limit when the commercial season is open, for-hire businesses, or employees thereof, could be directly affected by this proposed rule as well.

Although no Federal permit is required for the commercial harvest and sale of Gulf cobia, vessels with other Federal commercial permits are required to report their catches for all species harvested, including Gulf cobia. On average from 2013 through 2017, there were 277 federally permitted commercial vessels with reported landings of cobia in the Gulf zone. Their average annual vessel-level revenue from all species for 2013 through 2017 was approximately \$184,000 (2017 dollars) and cobia harvested from the Gulf zone accounted for less than one percent of this revenue. The maximum annual revenue from all species reported by a single one of these vessels from 2013 through 2017 was approximately \$2.28 million (2017 dollars). Finally, it is unknown how many non-federally permitted vessels

may have fished commercially for Gulf cobia in Federal waters during this time.

For-hire vessels in the Gulf are required to have a limited access Gulf Charter Vessel/Headboat for Coastal Migratory Pelagics permit (Gulf CMP for-hire permit) to fish for or possess CMP species in or from the Gulf. As of December 4, 2018, there were 1,286 valid (non-expired) or renewable Gulf CMP for-hire permits and 32 valid or renewable Gulf CMP historical captain for-hire permits. Although the for-hire permit application collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a headboat or a charter vessel and vessels may operate in both capacities. However, only federally permitted headboats are currently required to submit harvest and effort information to the NMFS Southeast Region Headboat Survey (SRHS). Participation in the SRHS is based on determination by the Southeast Fisheries Science Center that the vessel primarily operates as a headboat. As of June 11, 2018, 70 Gulf headboats were registered in the SRHS. As a result, of the 1,318 vessels with Gulf CMP for-hire permits (including historical captain permits), up to 70 may primarily operate as headboats and the remainder as charter vessels. The average charter vessel is estimated to receive approximately \$86,000 (2017 dollars) in annual revenue. The average headboat is estimated to receive approximately \$261,000 (2017 dollars) in annual revenue.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses that would be directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard.

The Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S. including for-hire businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has

combined annual receipts not in excess of \$7.5 million for all its affiliated operations worldwide. All of the for-hire businesses that would be directly regulated by this proposed rule are believed to be small entities based on the SBA size criteria. NMFS has not identified any other small entities that would be directly affected by this proposed rule.

This proposed rule would increase the commercial and recreational minimum size limit for cobia in the Gulf zone from 33 inches (83.8 cm), fork length, to 36 inches (91.4 cm), fork length. This proposed increase in the minimum size limit would be expected to reduce aggregate annual cobia landings by 10.3 percent or 7,319 lb (3,320 kg) and decrease aggregate annual ex-vessel revenue by approximately \$25,000 (2017 dollars). If this \$25,000 decrease in ex-vessel revenue is divided by the average number of federally permitted commercial vessels that harvested and sold cobia from 2013 through 2017, it results in an average loss of \$90 per vessel per year. If it is divided by the average number of federally permitted commercial vessels that harvested and sold cobia from 2013 through 2017, plus the number of vessels with a Federal CMP for-hire permit, it results in an average loss of \$16 per vessel per year. The economic costs to each vessel would be expected to vary based on individual fishing practices and location; however, such distributional effects cannot be quantified with available data.

Framework Amendment 7 also contains an action to consider modification of the possession limit for cobia in the Gulf zone; however, the Council decided to retain the current possession limit. Because this proposed rule would not make any changes to the current possession limit, no additional direct economic effects would be expected.

The following discussion describes the alternatives that were not selected as preferred by the Gulf Council.

Four alternatives were considered for the action to increase the commercial and recreational minimum size limit for cobia in the Gulf zone. The first alternative, the no action alternative, would retain the current minimum size limit of 33 inches (83.8 cm), fork length, for both sectors. This would not be expected to alter commercial harvest rates relative to the status quo, so no direct economic effects to small entities would be expected to occur. This alternative was not selected by the Council because it would fail to address concerns about the status of the Gulf cobia in the Gulf zone.

The second alternative, which was selected as preferred, would increase the commercial and recreational minimum size limit for cobia to 36 inches (91.4 cm), fork length, in the Gulf zone.

The third alternative would increase the recreational and commercial minimum size limit for cobia to 39 inches (99.1 cm), fork length, in the Gulf zone. This alternative would be expected to reduce aggregate annual ex-vessel revenue by approximately \$70,000 (2017 dollars). This alternative was not selected by the Gulf Council because they decided a smaller increase in the minimum size limit was appropriate given the uncertainty surrounding potential overfishing and the potential for negative economic effects.

The fourth alternative would increase the recreational and commercial minimum size limit for cobia to 42 inches (106.7 cm), fork length, in the Gulf zone. This alternative would be expected to reduce aggregate annual ex-vessel revenue by approximately \$135,000 (2017 dollars). This alternative was not selected by the Gulf Council because they decided a smaller increase in the minimum size limit was appropriate given the uncertainty surrounding potential overfishing and the potential for negative economic effects.

Three alternatives were considered for the action to modify the possession limit for cobia in the Gulf zone. The first alternative, the no action alternative, was selected as preferred and would maintain the current possession limit.

The second alternative would decrease the per person recreational and commercial possession limit for cobia in the Gulf zone to one fish per day. This alternative would be expected to result in an estimated 6 percent reduction in Gulf cobia commercial landings and an estimated loss in annual ex-vessel revenue of \$14,495 (2017 dollars). This alternative was not selected by the Council, because they determined that the proposed increase in the minimum size limit would be sufficient to address the concerns of potential overfishing of Gulf cobia prior to the next planned stock assessment. In accordance with that determination, and in consideration of potential negative economic effects, the Council decided to maintain the current possession limit for cobia in the Gulf zone.

The third alternative would create a recreational and commercial vessel trip limit for cobia in the Gulf zone. Under this vessel limit, anglers would not be permitted to exceed the per person possession limit. The third alternative

contained three options. The first option would set the recreational and commercial vessel trip limit for cobia in the Gulf zone at two fish, which would be expected to result in an estimated 5 percent reduction in commercial landings and an estimated loss in annual ex-vessel revenue of \$12,080 (2017 dollars). The second option would set the recreational and commercial vessel trip limit for cobia in the Gulf zone at four fish, which would be expected to result in an estimated 1.6 percent reduction in commercial landings and an estimated loss in annual ex-vessel revenue of \$3,865 (2017 dollars). The third option would set the recreational and commercial vessel trip limit for cobia in the Gulf zone at six fish, which would be expected to result in an estimated 0.7 percent reduction in commercial landings and an estimated loss in annual ex-vessel revenue of \$1,691 (2017 dollars). This alternative was not selected by the Council, because they determined that the proposed increase in the minimum size limit would be

sufficient to address the concerns of potential overfishing of Gulf cobia prior to the next planned stock assessment. In accordance with that determination, and in consideration of potential negative economic effects, the Council decided not to implement a vessel trip limit.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule.

#### List of Subjects in 50 CFR Part 622

Cobia, Fisheries, Fishing, Gulf of Mexico, Size limits.

Dated: September 27, 2019.

#### Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

### PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.380, revise paragraph (a)(1) to read as follows:

#### § 622.380 Size limits.

\* \* \* \* \*

(a) \* \* \*

(1) *Gulf migratory group* (i) *Gulf zone*—36 inches (91.4 cm), fork length.

(ii) *Florida east coast zone*—33 inches (83.8 cm), fork length.

\* \* \* \* \*

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