

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 697**

[Docket No. 210827–0170]

RIN 0648–BK63

Fisheries of the Atlantic; Atlantic Migratory Group Cobia; Amendment 1 and Addendum 1 to Amendment 1

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations related to Amendment 1, and Addendum 1 to Amendment 1, to the Interstate Fishery Management Plan (FMP) for Atlantic Migratory Group Cobia (Interstate FMP), as prepared and submitted by the Atlantic States Marine Fisheries Commission (ASMFC). As described in Amendment 1 and Addendum 1, this proposed rule would modify the commercial quota and the process for a commercial quota closure for Atlantic migratory group cobia (Atlantic cobia) in Federal waters. The purpose of this proposed action is to increase the commercial quota as a result of the most recent stock assessment and to allow the ASMFC to monitor commercial landings for any needed commercial in-season closure while ensuring the long-term sustainability of the Atlantic cobia stock.

DATES: Written comments must be received on or before October 4, 2021.

ADDRESSES: You may submit comments on the proposed rule, identified by “NOAA–NMFS–2021–0054,” by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA–NMFS–2021–0054” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 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 without change. All personal identifying information (e.g., name, address), 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 the required fields if you wish to remain anonymous).

Electronic copies of Amendment 1 and Addendum 1 may be obtained from the ASMFC website at http://www.asmfc.org/uploads/file/6009e765AtlanticCobia_AddendumI_Oct2020.pdf.

FOR FURTHER INFORMATION CONTACT: Frank Helies, telephone: 727–824–5305, or email: Frank.Helies@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for Atlantic cobia in Federal waters is managed under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) by regulations at 50 CFR part 697. Separate migratory groups of cobia are managed in the Gulf of Mexico and Atlantic. Atlantic cobia is managed from Georgia through New York. The southern management boundary for Atlantic cobia is a line that extends due east of the Florida and Georgia state border at 30°42′45.6″ N latitude. The northern management boundary for Atlantic cobia is the jurisdictional boundary between the Mid-Atlantic and New England Fishery Management Councils, as specified in 50 CFR 600.105(a).

The final rule to implement Amendment 31 to the FMP for Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP) and Amendment 1 to the Interstate FMP removed Atlantic cobia from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and transitioned the management of Atlantic cobia in Federal waters to the Atlantic Coastal Act (84 FR 4733, February 19, 2019). All weights described in this rule are in round and eviscerated weight, combined.

Background

The ASMFC approved Amendment 1 to the Interstate FMP in 2019 and Addendum 1 to Amendment 1 in 2020. Amendment 1 and Addendum 1 provide for an increase in the commercial quota and a revision to the process for a commercial in-season closure. This proposed rule would serve to implement certain measures in Federal waters contained within Amendment 1 and Addendum 1.

In 2020, a new Southeast Data, Assessment, and Review (SEDAR) assessment was completed for Atlantic cobia (SEDAR 58). SEDAR 58 indicated that Atlantic cobia was not overfished nor undergoing overfishing, and that the allowable harvest could be increased based on updated commercial and recreational catch estimates. Based on the results of the SEDAR 58 and new stock projections from February 2020, in October of 2020, the ASMFC approved an increase to the Atlantic cobia annual total harvest quota of 80,112 fish for the 2020–2022 fishing seasons to be implemented in Federal waters through this proposed rule. Through Amendment 1 and Addendum 1, the ASMFC also adjusted the commercial and recreational allocation percentages and changed the methodology used to close the commercial sector when the quota is reached.

Currently, the total Atlantic cobia quota is allocated 8 percent to commercial harvest and 92 percent to recreational harvest. The ASMFC changed these sector allocations to 4 percent to the commercial sector and 96 percent to the recreational sector to account for changes in the recreational catch estimates from the Marine Recreational Information Program Fishing Effort Survey. When defining these allocations in terms of numbers of fish, the updated allocations would result in a commercial quota of 3,204 fish and a recreational quota of 76,908 fish. As described in Amendment 1 and Addendum 1, using an average commercial weight of 22.82 lb (10.35 kg), this is equivalent to a commercial quota of 73,116 lb (33,165 kg) in round and gutted weight, combined. In addition, the ASMFC would closely monitor commercial landings to ensure the commercial quota is not exceeded.

Management Measures Contained in This Proposed Rule

This proposed rule would modify the commercial quota and the process for closing the commercial sector in Federal waters when the quota is reached.

Commercial Quota

The current Atlantic cobia commercial quota of 50,000 lb (22,680 kg) was established through the final rule to implement Amendment 1 to the Interstate FMP (84 FR 4733, February 19, 2019). As a result of SEDAR 58, this proposed rule would increase the commercial quota to 73,116 lb (33,165 kg). The ASMFC is responsible for monitoring of commercial landings during the fishing year.

Process To Close the Commercial Sector

The current process requires an in-season closure in Federal waters during the fishing year for the commercial sector when the quota is reached or projected to be reached. When the NMFS Scientific Research Director estimates that the sum of commercial landings (cobia that are sold) reaches or is projected to reach the commercial quota, then NMFS will prohibit the sale and purchase of cobia for the remainder of that fishing year (a commercial closure). For example, in 2020, NMFS projected that commercial landings would reach the commercial quota on November 6, and therefore, NMFS closed the commercial sector on November 6, 2020, through December 31, 2020 (85 FR 70085; November 4, 2020).

This proposed rule would retain the possibility of an in-season closure if commercial landings reach the quota. This proposed rule also would change the closure language in the current regulations regarding in-season quota monitoring so that commercial landings would be monitored by the ASMFC and not by NMFS. Currently, NMFS monitors the commercial quota and closes the commercial sector when the quota is met or projected to be met. The new process would transfer quota monitoring responsibility to the ASMFC. Because Atlantic cobia are primarily landed in state waters, the ASMFC determined that they are better suited to monitor cobia landings and ensure the risk of early closures is minimized. During the fishing year, if the ASMFC estimates that the sum of commercial landings (cobia that are sold), reaches or is projected to reach the commercial quota, then the ASMFC would notify NMFS of the need for a commercial closure of the exclusive economic zone (EEZ) and NMFS would close the commercial sector. During any such closure, the harvest, sale, trade, barter, or purchase of Atlantic cobia would be prohibited for the remainder of that fishing year. When considering this proposed increase to the commercial quota, and when compared to cobia landings in previous fishing years, NMFS estimates that a commercial in-season closure is still possible as a result of the commercial quota being reached, but expects that any such closure would occur later in the fishing year than under the current commercial quota.

NMFS may consider additional commercial and recreational regulatory changes to be implemented through rulemaking for Atlantic cobia as

described in Amendment 1 and Addendum 1 in future rulemaking.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Interstate FMP, the Atlantic Coastal Act, the applicable provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is described below.

A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble. The Atlantic Coastal Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or record keeping compliance requirements are introduced in this proposed rule.

This proposed rule directly affects commercial fishing businesses that sell Atlantic cobia harvested within the EEZ off Georgia to New York. Atlantic cobia is harvested mostly in state waters and is primarily a bycatch, not targeted, commercial species in the Mid-Atlantic and South Atlantic. During the past 6 years (2015–2020), 17 percent of total Atlantic cobia commercial landings were of fish taken from the EEZ.

In the South Atlantic, from 2015 through 2019, there were, on average, 82 federally permitted commercial vessels with reported landings of Atlantic cobia from the South Atlantic (excluding Florida, which is outside of the Atlantic cobia stock boundary). These vessels had average annual dockside revenue from landings of Atlantic cobia of \$37,663 (2019 dollars). In the Mid-Atlantic, from 2015 through 2019, there were, on average, 31 federally permitted commercial vessels with reported landings of Atlantic cobia and, on average, each of these vessels earned approximately \$2,100 (2019 dollars) per year from the sale of Atlantic cobia.

All of the businesses that operate the above 113 federally permitted vessels are expected to operate primarily in the commercial fishing industry (NAICS

code 11411). For Regulatory Flexibility Act purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial 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 its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. The maximum annual dockside revenue that any of the permitted vessels had during the 5-year period was approximately \$0.3 million (2019 dollars). Therefore, NMFS concludes that all of the above 113 permitted vessels represent a small commercial fishing business.

For-hire fishing captains and crew are allowed to sell Atlantic cobia harvested from the EEZ under the recreational possession limit when the commercial season is open; however, the respective Atlantic states require individuals to have a commercial fishing license in the state where the cobia is sold, and typically the vessels used to harvest those cobia have a Federal charter/headboat coastal migratory pelagics permit. From 2015 through 2019 less than 5 of the 1,712 currently permitted for-hire vessels sold Atlantic cobia, and the average revenue from those sales was approximately \$11 (2019 dollars) annually per vessel.

A business that is primarily in the for-hire fishing industry (NAICS code 487210) is a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and its combined annual receipts that are no more than \$8.0 million for all of its affiliated operations worldwide. Average annual gross revenue of federally permitted charter vessels and headboats in the South Atlantic is \$125,261 per charter vessel and \$271,835 per headboat in 2019 dollars. Hence, NMFS expects the less than five for-hire fishing vessels that would be annually affected by the proposed rule are small businesses.

This proposed rule would increase the commercial quota of Atlantic cobia from 50,000 lb (22,680 kg) to 73,116 lb (33,165 kg). This rule would also revise the decision criteria used to close Federal waters to commercial fishing for Atlantic cobia. The Federal commercial season would close if the sum of the cobia landings that are sold, as estimated by the ASMFC, reach or are projected to reach the commercial quota, and the ASMFC notifies NMFS of

the need for a commercial closure of the EEZ.

The increase in the commercial quota from 50,000 lb (22,680 kg) to 73,116 lb (33,165 kg) would allow for an additional 23,116 lb (10,485 kg) of cobia to be sold by small commercial fishing businesses. As stated previously, an average of 17 percent of annual commercial landings of cobia are from the EEZ, and 17 percent of the 23,116-lb (10,485 kg) increase translates to an additional 3,930 lb (1,782 kg) of Atlantic cobia that could be harvested from the EEZ annually.

The average dockside price of Atlantic cobia has increased in the past 4 years, and especially since 2019. Using the average dockside price from 2019 through 2020, an additional 3,930 lb (1,782 kg) of cobia would translate to additional revenue of \$16,427 (2019 dollars), and if spread evenly across the average 113 small commercial fishing businesses that report harvesting Atlantic cobia annually, each of those small businesses would benefit with an additional \$145 annually (2019 dollars) in revenue. For the 113 commercial fishing vessels and small businesses that operate them, that additional revenue represents up to 0.13 percent of their average annual revenue from all

landings. If the less than five small for-hire fishing businesses that, on average, annually sell bag-limit quantities of cobia harvested from the EEZ were to double their revenues from cobia sales, those increases would represent 0.01 percent or less of their average annual revenue.

Based on the analysis described above, NMFS concludes that this rule would not have a significant economic impact on a substantial number of small businesses. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paper Reduction Act of 1995.

List of Subjects in 50 CFR Part 697

Atlantic, Cobia, Fisheries, Fishing, South Atlantic.

Dated: August 30, 2021.

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 697 is proposed to be amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.28, revise paragraph (f)(1) to read as follows:

§ 697.28 Atlantic migratory group cobia.

* * * * *

(f) * * *

(1) *Commercial quota.* The following quota applies to persons who fish for cobia for commercial purposes—73,116 lb (33,165 kg). If the sum of the cobia landings that are sold, as estimated by the ASMFC, reach or are projected to reach the quota specified in this paragraph (f)(1), then the ASMFC will notify NMFS of the need for a commercial closure of the EEZ. NMFS will then subsequently file a notification with the Office of the Federal Register to prohibit (for commercial purposes) the harvest, sale, trade, barter, or purchase of cobia for the remainder of the fishing year.

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