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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604-1758-02]

RIN 0648-XF106

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
2017 Recreational Accountability Measures and Closure for
Atlantic Migratory Group Cobia**

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for Atlantic migratory group cobia that are not sold (recreational) in the exclusive economic zone (EEZ) of the Atlantic. In 2015 and 2016, recreational landings of Atlantic migratory group cobia (Atlantic cobia) exceeded the stock annual catch limit (ACL), and therefore, AMs for the recreational sector are triggered for 2017. NMFS closes the recreational sector for Atlantic cobia in Federal waters on January 24, 2017, and it will remain closed for the remainder of the fishing year through December 31, 2017. This closure is necessary to protect the resource of Atlantic cobia.

DATES: This rule is effective from 12:01 a.m., local time, January 24, 2017, until 12:01 a.m., local time, January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *mary.vara@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish, which includes king mackerel, Spanish mackerel, and cobia, is managed under the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Separate migratory groups of cobia were established in Amendment 18 to the FMP (76 FR 82058, December 29, 2011) and revised in Amendment 20B to the FMP (80 FR 4216, January 27, 2015). The southern boundary in Federal waters for Atlantic cobia is a line that extends due east of the Florida and Georgia state border at 30°42'45.6" N. lat. The northern boundary in Federal waters for Atlantic cobia is at the jurisdictional boundary between the Mid-Atlantic and New England Fishery Management Councils. The northern boundary begins at the

intersection point of the state waters of Connecticut, Rhode Island, and New York at 41°18'16.249" N. lat. and 71°54'28.477" W. long. and proceeds southeast in Federal waters to 37°22'32.75" N. lat. and the intersection point with the outward boundary of the EEZ as specified in the Magnuson-Stevens Act.

Cobia in the Gulf of Mexico and Atlantic are unique among Federally managed species in the southeast region, because no commercial permit is required to harvest and sell them. The distinction between commercial and recreational sectors is not as clear as other Federally managed species in the southeast region. For example, regulations at 50 CFR part 622 specify ACLs and AMs for cobia that are sold and cobia that are not sold. However, for purposes of this temporary rule, Atlantic cobia that are sold are considered commercially caught, and those that are not sold are considered recreationally caught. All weights in this temporary rule are in round and gutted weight.

The AMs specified at 50 CFR 622.388(f)(2)(i) require NMFS, if commercial and recreational landings combined exceed the stock ACL, to reduce the length of the following fishing season by the amount necessary to ensure landings may achieve the applicable recreational annual catch target, but do not exceed the applicable recreational ACL in that following fishing year, by filing a notification with the Office of the Federal

Register. By reducing the length of the following fishing season, NMFS would close the recreational sector for Atlantic cobia prior to the end of the fishing year.

NMFS has determined that total landings of Atlantic cobia exceeded the 2016 stock ACL of 670,000 lb (303,907 kg). Thus, the recreational AM, to shorten the following recreational fishing season, is triggered for 2017.

NMFS expects that recreational harvest of cobia will remain open in state waters from Georgia through New York despite a closure in Federal waters and that the stock ACL in 2017 is expected to be exceeded, because historical recreational landings of cobia in state waters from Georgia through New York have represented 87 percent of total recreational landings from state and Federal waters. Accordingly, the recreational sector for Atlantic cobia will be closed at 12:01 a.m., local time, on January 24, 2017, and remain closed until the start of the next fishing year on January 1, 2018.

During the recreational closure, the possession limit of two cobia per day remains in effect (50 CFR 622.383(b)) for Atlantic cobia that are sold. The possession limit applies to cobia harvested in or from the EEZ in the Gulf of Mexico, Mid-Atlantic, or South Atlantic, regardless of the number of

trips or duration of a trip. In addition, a person who fishes in the EEZ may not combine this harvest limitation with a harvest limitation applicable to state waters. Atlantic cobia taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and may not be transferred in the EEZ.

The commercial quota for Atlantic cobia is 50,000 lb (22,680 kg), round weight, for the current fishing year, January 1 through December 31, 2017, as specified in 50 CFR 622.384(d) (2). The sale or purchase of Atlantic cobia taken under the possession limit is allowed until the commercial quota is reached or is projected to be reached. If commercial landings of Atlantic cobia reach or are projected to reach the commercial quota specified in § 622.384(d) (2), the Assistant Administrator for NOAA Fisheries (AA) will file a notification with the Office of the Federal Register to prohibit the sale and purchase of Atlantic cobia for the remainder of the 2017 fishing year.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Atlantic cobia and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.388(f) (2) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment, pursuant to the authority set forth at 5 U.S.C. 553(b) (B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the AMs for Atlantic cobia have already been subject to notice and comment, and all that remains is to notify the public of the recreational closure for the remainder of the 2017 fishing year. Additionally, there is a need to immediately implement the closure to prevent further recreational harvest and prevent its ACL from being exceeded, which will protect the Atlantic cobia resource. Prior notice and opportunity for public comment on this action would be contrary to the public interest, because those affected by the closure need as much advance notice as NMFS is able to provide.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d) (3).

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

Dated: January 10, 2017.

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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