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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 161103999-7615-02]

RIN 0648-BG43

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 4

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Framework Amendment 4 to the Fishery Management Plan for the Coastal Migratory Pelagics Fishery of the Gulf of Mexico and Atlantic Region (FMP) as prepared and submitted by the South Atlantic Fishery Management Council (Council). For the recreational sector, this final rule establishes bag and vessel limits, and revises the minimum size limit and accountability measures (AMs) for Atlantic migratory group cobia (Atlantic cobia). This final rule also establishes a commercial trip limit for Atlantic cobia. Framework Amendment 4 and this final rule apply to the commercial and recreational harvest of Atlantic cobia

in the exclusive economic zone (EEZ) from Georgia through New York. The purpose of Framework Amendment 4 and this final rule is to slow the rate of harvest of Atlantic cobia and reduce the likelihood that landings will exceed the commercial and recreational annual catch limits (ACL), thereby triggering the AMs and reducing harvest opportunities.

DATES: This final rule is effective [*insert date of 30 days after date of publication in the Federal Register*].

ADDRESSES: Electronic copies of Framework Amendment 4 may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/2016/framework_am4/index.html. Framework Amendment 4 includes an environmental assessment, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Karla Gore, Southeast Regional Office, NMFS, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic fishery of the Gulf and Atlantic Regions is managed under the FMP and includes the management of the Gulf and Atlantic migratory groups of king mackerel, Spanish mackerel, and cobia. The FMP was prepared by the Council

and is implemented through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On February 21, 2017, NMFS published a proposed rule to implement Framework Amendment 4 and requested public comment (82 FR 11166).

The AM for the recreational sector requires that if the recreational annual catch limit (ACL) is exceeded, and the stock ACL (recreational ACL plus commercial ACL) is exceeded, the recreational AM is triggered. To determine whether an ACL was exceeded, the FMP requires that a 3-year average of landings be compared to the ACL unless an ACL changed, in which case the sequence of future ACLs begins again starting with a single year of landings compared to the ACL for that year, followed by 2-year average landings compared to the ACL in the next year, followed by a 3-year average of landings ACL for the third year and thereafter. Because Amendment 20B to the FMP changed the Atlantic cobia ACLs beginning in 2015 (80 FR 4216, January 27, 2015), NMFS could only use the 2015 landings to determine whether the recreational and stock ACLs were exceeded such that the AM was triggered for the 2016 fishing year. In 2015, recreational landings for Atlantic cobia exceeded the 2015 recreational ACL and the stock ACL, and the recreational AM

required that the 2016 recreational season for Atlantic cobia in Federal waters close on June 20, 2016 (81 FR 12601, March 10, 2016).

For the 2017 fishing year, the FMP required recreational landings to be averaged for the 2015 and 2016 fishing years, and the average of those landings exceeded the 2016 recreational ACL and the 2016 stock ACL. Therefore, the recreational AM was triggered, requiring that the 2017 recreational season for Atlantic cobia in Federal waters again close early in the fishing year on January 24, 2017 (82 FR 8363, January 25, 2017).

These recreational closures likely had negative social and economic impacts on the recreational sector, including recreational anglers, charter vessels and headboat (for-hire) businesses.

The following actions in Framework Amendment 4 and this final rule are intended to slow the rate of harvest of Atlantic cobia and reduce the likelihood that sector landings will exceed the sector and stock ACLs, thereby triggering the AMs and reducing harvest opportunities. The goal is to also provide equitable access for all participants in the Atlantic cobia component of the coastal migratory pelagics fishery.

Management Measures Contained in This Final Rule

For the recreational sector, this final rule establishes bag and vessel limits, and revises the minimum size limit and AMs for Atlantic cobia. This final rule also establishes a commercial trip limit for Atlantic cobia. As a result of the recreational bag and possession limits and the commercial trip limit, Atlantic migratory cobia will no longer be subject to the two fish per person per day possession limit for limited harvest species.

Recreational Minimum Size Limit

The current minimum size limit for the recreational harvest of Atlantic cobia in the EEZ is 33 inches (83.8 cm), fork length. This final rule increases the recreational minimum size limit for the Atlantic cobia recreational sector to 36 inches (91.4 cm), fork length. This modification will result in a recreational harvest reduction in the Atlantic, that in combination with the recreational bag and vessel limits, is expected to slow the rate of recreational harvest and thereby reduce the likelihood of exceeding the recreational and stock ACLs and thereby triggering the AM.

Recreational Bag and Vessel Limits

Atlantic cobia is currently a limited harvest species with a possession limit of two cobia per person per day for both the commercial and recreational sectors. This final

rule would remove Atlantic cobia from the limited harvest species possession limit and would establish a recreational bag limit of one fish per person per day or six fish per vessel, whichever is more restrictive.

Recreational AMs

This final rule would enhance the recreational AMs for Atlantic cobia. Currently, if recreational landings of Atlantic cobia exceed the recreational ACL and the sum of the commercial and recreational landings of cobia exceed the stock ACL, then during the following fishing year, the length of the recreational fishing season will be reduced to ensure that the harvest achieves the recreational ACT, but does not exceed the recreational ACL. The current recreational AM uses a moving average of the most recent 3 years of landings to compare to the recreational ACL. Finally, if Atlantic cobia are overfished, and the stock ACL is exceeded, then during the following fishing year the recreational ACL and ACT would be reduced by the amount of any recreational ACL overage.

The recreational AM in this final rule requires that if the recreational ACL and the stock ACL are exceeded, then during the following fishing year recreational landings will be monitored for a persistence in increased landings. Further, if necessary to prevent landings from

exceeding the recreational ACL during the next fishing year, and based on the best scientific information available, the Assistant Administrator for Fisheries, NOAA (AA), will file a notification with the Office of the Federal Register to reduce the recreational vessel limit, to no less than two fish per vessel. NMFS notes that the recreational bag limit implemented through this final rule of one cobia per person would still apply during any reduction of the recreational vessel limit. Any reduction to the recreational vessel limit would only apply for the fishing year in which it is implemented. In addition, the AM requires that if the reduction to the vessel limit is insufficient to ensure that recreational landings will not exceed the recreational ACL, then the length of the recreational fishing season would be reduced to ensure that recreational landings do not exceed the recreational ACL in that fishing year. This AM is intended to help prevent recreational landings from exceeding the recreational ACL in that fishing year.

The recreational vessel limit and the length of the recreational fishing season would not be reduced if NMFS determines, based on the best scientific information available, that a recreational vessel limit and fishing season reduction are unnecessary to prevent landings from

exceeding the recreational ACL. The Council determined that first reducing the vessel limit to no less than two fish per vessel, prior to any reduction in or closure of the recreational sector, was a preferable first step in the AM rather than first reducing the length of the recreational season, because they determined that greater negative socio-economic impacts result from a reduced season.

Also, this final rule will change the AM to compare the recreational ACL with the most recent single year of landings instead of a moving average of the most recent 3 years that was established in Amendment 18 to the FMP (76 FR 82058, December 29, 2011). The Council selected a comparison of 3-year average of landings to the recreational ACL as their preferred alternative in Amendment 18 because they decided that it would ensure that the amount of the previous year's total ACL overage would be accounted for in the subsequent year's AM protection with a reduced season, and thus would be biologically beneficial. However, the Council has reevaluated the use of a 3-year average in Framework Amendment 4, as well as in recent amendments to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP). The Council has determined that when using the methodology established through Amendment 18, an exceptionally high and

unusual spike in landings incorporated into a 3-year running average could penalize anglers for the next several years whenever there is an evaluation of an ACL overage. Conversely, incorporating a year of abnormally low recreational landings into the 3-year average could result in an AM not being triggered when high landings are encountered in subsequent years, which could have negative biological effects on the stock. The revised AMs implemented here will reduce the likelihood of those longer term adverse effects.

Furthermore, the Council is taking action through Framework Amendment 4 to enhance the recreational AM by considering both a reduction in the vessel limit and the recreational season length, if needed, to prevent recreational landings from exceeding the recreational ACL in that fishing year, instead of only reducing the length of the fishing season. Thus, the revised recreational AM provides additional measures to reduce the risk of exceeding the recreational ACL while providing opportunities to extend the recreational fishing season. Using the most recent year of landings for the cobia AM is expected to result in a more timely and accurate representation of recreational landings and therefore, respond to the best scientific information available.

Commercial Trip Limit

Currently, no specific commercial trip limit applies to Atlantic cobia. However, Atlantic cobia is currently a limited harvest species subject to a possession limit of two cobia per person per day for both the commercial and recreational sectors. This final rule will remove Atlantic cobia from the limited harvest species possession limit and establish a commercial trip limit for Atlantic cobia of two fish per person per day or six fish per vessel per day, whichever is more restrictive.

Establishing a commercial trip limit with a maximum vessel limit will reduce the rate of harvest of cobia and increase the likelihood that the commercial and stock ACLs are not exceeded and the AMs are not triggered, resulting in a reduced season length or reduced vessel limit for the recreational sector and a commercial closure as a result of exceeding the commercial quota.

Comments and Responses

NMFS received a total of 133 comments on the proposed rule to implement Framework Amendment 4. The commenters included commercial, private recreational, and charter vessel fishing entities, representatives of fishing associations, and individuals from the general public. Several comments were in support of the measures in

Framework Amendment 4 but some comments opposed at least one of the management measures. Most comments received were outside the scope of this amendment, including requests to modify the management boundary for Atlantic cobia, to transfer management of cobia to the states, and to reopen the Atlantic cobia recreational sector in Federal waters during 2017. Because those comments are outside of the scope of the actions considered in Framework Amendment 4 and the proposed rule, NMFS is not providing responses to those comments in this final rule. Many commenters raised the same issues, and NMFS responds to those collectively below, having identified seven distinct issues raised in the comments specific to Framework Amendment 4 and its proposed rule. These seven specific comments and NMFS' respective responses are summarized below.

Comment 1: Several commenters recommended combinations of recreational minimum size limits and harvest limits that were different than the Council's preferred alternatives. The recommendations included retaining the recreational minimum size limit at 33 inches (83.8 cm), fork length, but decreasing the recreational bag limit to no more than one fish per person or four per vessel; increasing the minimum size limit to 36 inches (91.4 cm), total length, to reduce stress on the fish when trying to determine the fork

length; increasing the minimum size limit to 40 inches (101.6 cm) but reducing recreational vessel limit to four fish per vessel; increasing the minimum size limit to 55 inches (139.7 cm) to protect spawning cobia; and creating upper and lower size limits (slot limit) to protect spawning females.

Response: The Council evaluated alternatives for recreational minimum size limits and bag and vessel limits and considered public comments before choosing their preferred alternatives. The Council selected a minimum size limit of 36 inches (91.4 cm), fork length, because it closely aligned with the minimum size limits in effect in the state waters off North Carolina and Virginia, the states that account for the majority of Atlantic cobia landings and provides increased consistency in the regulations to aid law enforcement and avoid confusion among the public. Also, a size limit greater than 36 inches (91.4 cm) would remove only larger fish, which are most likely female, and that could have an impact on cobia spawning. The Council acknowledged that the recreational sector, particularly charter vessels and headboats, would be negatively affected by vessel limits which could preclude multiple paying passengers on board unable to keep a desired fish. The Council's selection of a recreational

vessel limit of six cobia per vessel per day or a reduced bag limit of one cobia per person per day, whichever is more restrictive, balances the benefits to the cobia stock with the adverse impacts to the recreational sector.

Ultimately, the Council determined that a vessel limit and a minimum size limit of 36 inches (91.4 cm), fork length, best meet the objectives of the amendment and the FMP by balancing both short and long-term social and economic impacts, and are the most appropriate measures to effectively slow the rate of harvest to avoid exceeding an ACL and triggering an AM that would restrict or prohibit access.

Comment 2: The management measures proposed in Framework Amendment 4 should be re-examined after 1 year to determine if they were effective. If so, the measures should be relaxed after that time to allow an increased cobia recreational bag limit.

Response: The Council's intent and the purpose of CMP Amendment 4 is to slow the rate of harvest and extend the cobia fishing seasons. NMFS and the Council will monitor the effectiveness of the cobia regulations in achieving those goals. The Council and NMFS may change management measures in the future, as appropriate.

Comment 3: The recreational AM should apply in both Federal and state waters.

Response: The Council does not have jurisdiction in state waters and cannot require states to issue compatible regulations for cobia. The states may or may not issue regulations compatible with the Federal regulations to make fisheries management in state and Federal waters consistent, but the states are not required to do so. The Atlantic States Marine Fisheries Commission (ASMFC) is developing a fishery management plan for cobia in state waters which would complement the Council's plan for management of cobia in Federal waters, but has also recently requested that the Council consider transferring management authority of Atlantic cobia to the ASMFC. Therefore, NMFS recognizes that regulations in state and Federal waters could change as a result of future management decisions.

Comment 4: Commercial cobia fishermen should be subject to the same regulations as the recreational cobia fishermen, specifically for vessel limits, minimum size limits, and AMs.

Response: This final rule implements similar regulations for the commercial and recreational sectors, including a commercial limit of two cobia per person or six

per vessel, whichever is more restrictive, and a recreational limit of one cobia per person or six per vessel, whichever is more restrictive. This rule increases the recreational minimum size limit for the Atlantic cobia recreational sector from 33 to 36 inches (91.4 cm), fork length, while the commercial minimum size limit remains at 33 inches, fork length.

In Framework Amendment 4, the Council and NMFS determined that more conservative regulations are appropriate for the recreational sector because recreational landings greatly exceeded their ACL and were 248 and 217 percent of the recreational ACL in 2015 and 2016, respectively. In comparison, commercial landings were 120 and 97 percent of the commercial ACL in 2015 and 2016, respectively, and the current sector allocations for Atlantic cobia are 8 percent of the stock ACL to the commercial sector and 92 percent to the recreational sector. There is greater uncertainty associated with catch estimates as a result of less timely catch reporting for the recreational sector compared to the commercial sector, because recreational landings are reported in 2-month intervals with a greater than 4-month time lag in the availability of information, while commercial landings are

reported weekly with the information available within a week.

Therefore, the Council determined, and NMFS agrees, that different management measures between sectors for Atlantic cobia is an appropriate approach to increase the likelihood that landings do not exceed the respective sector harvest limits.

Comment 5: Recreational harvest of cobia should be allowed during the 2017 fishing season.

Response: NMFS disagrees. NMFS was required to close the 2017 recreational season as a result of the recreational AM being triggered by an ACL overage. Total landings exceeded the recreational ACL and the total ACL in 2016, which required NMFS to reduce the length of the recreational fishing season in the following fishing year (2017) based on projections of when landings will reach the ACT. NMFS reviewed the best scientific information available and determined that the entire recreational ACL for Atlantic cobia will be caught in state waters during 2017, and the stock ACL will likely be exceeded, and therefore, NMFS closed the recreational harvest of cobia on January 24 (82 FR 8363, January 25, 2017).

Comment 6: Changing the AM to use 1 year of data rather than the 3-year running average of data is flawed

given the low number of cobia data intercepts. A 3-year running average of landings would more fairly represent the fishery because the data are flawed.

Response: NMFS disagrees that the data are flawed, and expects that using the most recent year of landings for the AM should result in a more timely and accurate representation of recreational landings, and better responds to the best scientific information available. The Council previously selected a 3-year running average of landings for the recreational ACL as their preferred alternative in Amendment 18 because they decided that it would be biologically beneficial for the stock by accounting for an overage in the previous year. However, the Council has reevaluated the use of a 3-year average in Framework Amendment 4, as well as in recent amendments to the Snapper-Grouper FMP. The Council has determined that with the methodology established through Amendment 18, an exceptionally high and unusual spike in landings incorporated into a 3-year running average could penalize anglers for the next several years by unnecessarily triggering AMs. Conversely, incorporating a year of abnormally low recreational landings into the 3-year average could result in negative biological effects on the stock by not triggering an AM when it might be needed. The

revised AMs implemented here will reduce the likelihood of those longer term adverse effects.

The Council is taking action in Framework Amendment 4 to enhance the recreational AM by considering both a reduction in the vessel limit and the recreational season length, if needed, to prevent recreational landings from exceeding the recreational ACL in that fishing year.

Comment 7: In violation of the Administrative Procedure Act (APA), the proposed revision to the recreational AM in Framework Amendment 4 was not subject to public comment and did not receive public support. Additionally, the public did not support the provision that allows for a shortened fishing year in the fishing year following an ACL overage.

Response: NMFS disagrees that the revisions to the recreational AM are in violation of the APA. In fact, the public had multiple opportunities to comment at various stages of the rule's development. Framework Amendment 4 was subject to and available for public comment during public hearings conducted by the Council in August 2016 and the public Council meetings during September 2016. Framework Amendment 4 was available on the Council's Web site during the amendment's development and the public was able to submit comments to the Council directly about the

amendment. Additionally, the proposed rule to implement Framework Amendment 4 was subject to a 30 day public comment period, as published in the **Federal Register** (82 FR 11166, February 21, 2017).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is consistent with Framework Amendment 4, the Magnuson-Stevens Act, and other applicable law.

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

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, recordkeeping, or other compliance requirements are introduced by this rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule, if adopted, would not have significant economic impacts on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. NMFS did not receive any comments from SBA's Office

of Advocacy or the public on the certification in the proposed rule. As a result, a final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Cobia, Fisheries, Fishing, Gulf of Mexico, South Atlantic.

Dated: August 1, 2017.

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 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) to read as follows:

§ 622.380 Size limits.

* * * * *

(a) *Cobia*. (1) In the Gulf--33 inches (83.8), fork length.

(2) *In the Mid-Atlantic or South Atlantic*. (i) 33 inches (83.8), fork length, for cobia that are sold (commercial sector).

(ii) 36 inches (91.4 cm), fork length, for cobia that are not sold (recreational sector).

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3. In § 622.382, revise paragraph (a) introductory text and add paragraph (a)(1)(vi) to read as follows:

§ 622.382 Bag and possession limits.

* * * * *

(a) *King mackerel, Spanish mackerel, and Atlantic migratory group cobia--*

(1) * * *

(vi) Atlantic migratory group cobia that are not sold (recreational sector)--1, not to exceed 6 fish per vessel per day.

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4. In § 622.383, revise paragraph (b) to read as follows:

§ 622.383 Limited harvest species.

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(b) *Gulf migratory group cobia*. No person may possess more than two Gulf migratory group cobia per day in or from the EEZ, regardless of the number of trips or duration of a trip.

5. In § 622.385, add paragraph (c) to read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(c) *Cobia*. (1) *Atlantic migratory group*. Until the commercial ACL specified in § 622.384(d)(2) is reached, 2 fish per person, not to exceed 6 fish per vessel.

(2) [Reserved]

6. In § 622.388, revise paragraph (f) to read as follows:

§ 622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(f) *Atlantic migratory group cobia*. (1) The following ACLs and AMs apply to cobia that are sold (commercial sector):

(i) If the sum of the cobia landings that are sold, as

estimated by the SRD, reach or are projected to reach the quota specified in § 622.384(d)(2) (ACL), the AA will file a notification with the Office of the Federal Register to prohibit the sale and purchase of cobia for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (f)(1)(i) of this section, if the sum of the cobia landings that are sold and not sold in or from the Atlantic migratory group, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the applicable quota (ACL), as specified in paragraph (f)(1)(i) of this section, for that following year by the amount of any applicable sector-specific ACL overage in the prior fishing year.

(2) The following ACLs and AMs apply to cobia that are not sold (recreational sector). If recreational landings for cobia, as estimated by the SRD, exceed both the recreational ACL of 620,000 lb (281,227 kg), and the stock ACL, as specified paragraph (f)(3) of this section, then during the following fishing year, recreational landings

will be monitored for a persistence in increased landings, and, if necessary, the AA will file a notification with the Office of the Federal Register to reduce the recreational vessel limit, specified in § 622.382(a)(1)(vi), to no less than 2 fish per vessel to ensure recreational landings achieve the recreational ACT, but do not exceed the recreational ACL in that fishing year. Any recreational vessel limit reduction that is implemented as described in this paragraph is only applicable for the fishing year in which it is implemented. Additionally, if the reduction in the recreational vessel limit is determined by the AA to be insufficient to ensure that recreational landings will not exceed the recreational ACL, the AA will also reduce the length of the recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in that fishing year. The recreational vessel limit and the length of the recreational fishing season will not be reduced if NMFS determines, based on the best scientific information available, that a recreational vessel limit and fishing season reduction are unnecessary. The recreational ACT is 500,000 lb (226,796 kg).

(3) The stock ACL for Atlantic migratory group cobia is 670,000 lb (303,907 kg).

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