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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200211-0052]

RIN 0648-BI83

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic 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: Final rule.

SUMMARY: NMFS issues regulations 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 final rule revises the commercial and recreational minimum size limit for the Gulf zone of the Gulf migratory group of cobia (Gulf cobia). The purpose of this final 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: This final rule is effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER***].

ADDRESSES: Electronic copies of Framework Amendment 7 that contain an environmental assessment and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office Web site 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*.

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.

On October 3, 2019, NMFS published a proposed rule for Framework Amendment 7 and requested public comment (84 FR

52864). The proposed rule and the Framework Amendment 7 outline the rationale for the actions contained in this final rule. A summary of the management measures described in the Framework Amendment 7 and implemented by this final rule is described below.

Background

Two migratory groups of cobia exist in the southeastern US: the Atlantic migratory group and the Gulf migratory group. The Atlantic migratory group is a genetically distinct stock that 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 was informed of the proposed changes for cobia harvested in the Gulf zone but decided not to consider changes to the cobia management measures for the Florida east coast zone.

Within the Gulf zone, among other measures, Gulf cobia is managed using a stock annual catch target (quota) and annual catch limit with 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 April, 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 continued to decline from previous years. The 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 daily Federal possession limit of two Gulf migratory group cobia per person per day applies to both sectors and has been in effect since Amendment 5 to the FMP was implemented in 1990 (55 FR 29370, July 19, 1990).

Although the 2013 stock assessment (SEDAR 28 2013) did not indicate that Gulf cobia are overfished or undergoing overfishing, the Gulf Council decided to take a precautionary approach and reduce fishing mortality in case the observed decrease in landings indicates an unknown

issue with the health of the stock. An update to the stock assessment began in late 2019, and is expected to be available to the Gulf Council and its scientific and statistical committee in the summer of 2020.

Framework Amendment 7 includes alternatives to revise the Gulf zone minimum size limit, as well as the possession limit. However, the Gulf Council chose not to make any modifications to the possession limit at this time.

Management Measure Contained in this Final Rule

This final rule implements an increase in the commercial and recreational minimum size limit for Gulf cobia in the Gulf zone 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 will 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.

Comments and Responses

NMFS received eight comments from individuals on the proposed rule for Framework Amendment 7, one of which was not related to Gulf cobia. All of the other comments supported the action to increase the Gulf cobia commercial and recreational minimum size limit. Some of the comments in support of the size limit change also suggested a 2-year cobia harvest closure and a no gaffing rule for landed cobia. These comments are outside the scope of the actions considered by the Council and the proposed rule. One comment did not agree with retaining the current possession limit. This comment is summarized below, followed by NMFS' response. There are no changes to this final rule from the proposed rule.

Comment 1: The daily possession limit should be reduced from two fish per person per day to one fish per person per day until the stock size increases.

Response: NMFS disagrees that the possession limit should be reduced. The Council considered reducing the possession limit to one fish per person per day along with vessel trip limits of two, four, and six fish per vessel. However, the Council decided not to change the possession limit, or implement a vessel limit because there was public comment in opposition to the action, and a reduction in the possession limit to one fish would have minimal benefit to

the stock given that most trips (greater than 95 percent) do not catch more than one cobia per person.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with Framework Amendment 7, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. 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 final rule. Accordingly, the Paperwork Reduction Act does not apply to this final rule. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

In compliance with section 604 of the RFA, NMFS prepared a final regulatory flexibility analysis (FRFA) for

this final rule. The FRFA follows.

No public comments received by NMFS were in opposition to the action in the Framework Amendment 7 and no changes to this final rule are made as a result of public comment. No comments were received from the Office of Advocacy for the Small Business Administration.

NMFS agrees that the Gulf Council's choice of preferred alternative will best achieve the objectives of Framework Amendment 7 while minimizing, to the extent practicable, the adverse effects on fishermen, support industries, and associated communities.

NMFS expects this final rule to directly affect 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 final 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. This final rule will 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 final rule would be secondary to any direct effect on anglers and, therefore, would be an indirect effect of this final rule. Indirect effects are not relevant 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 final 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 \$188,000 (2018 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 \$2.33 million (2018 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 November 8, 2019, there were 1,286 valid (non-expired) or renewable Gulf CMP for-hire permits and 34 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 August 20, 2019, 68 Gulf headboats were registered in the

SRHS. As a result, of the 1,320 vessels with Gulf CMP for-hire permits (including historical captain permits), up to 68 may primarily operate as headboats and the remainder as charter vessels. The average charter vessel is estimated to receive approximately \$88,000 (2018 dollars) in annual revenue. The average headboat is estimated to receive approximately \$267,000 (2018 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 final rule are believed to be small entities based on the NMFS size standard.

On July 18, 2019, the Small Business Administration (SBA) issued an interim final rule (84 FR 34261) effective August 19, 2019, that adjusted the monetary-based industry size standards (*i.e.*, receipts- and assets-based) for inflation for many industries. For fisheries for-hire

businesses and marinas, the rule changes the small business size standard from \$7.5 million in annual gross receipts to \$8 million (as discussed in the July 18, 2019, issue of the **Federal Register** on pages 34273 and 34279 that adjusts NAICS 487210 (Scenic and Sightseeing Transportation, Water) and 713930 (Marinas)).

Pursuant to the RFA, and prior to SBA's July 18, 2019 interim final rule, an initial regulatory flexibility analysis was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former SBA size standards, all entities subject to this action were considered small entities, and they all would continue to be considered small under the new standards. As a result, NMFS has determined that the new size standards do not affect the analyses prepared for this action.

NMFS has not identified any other small entities that would be directly affected by this final rule.

This final rule will 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 increase in the minimum size limit is 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 (2018 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 Gulf Council decided to retain the current possession limit. Because this final 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, will 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 \$72,000 (2018 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 \$138,000 (2018 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 by the Gulf Council 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 will 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 approximately \$15,000 (2018 dollars). This alternative was not selected by the Council, because they determined that the 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 allowed 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 approximately \$12,000 (2018 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 approximately \$4,000 (2018 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 approximately \$2,000 (2018 dollars). This alternative was not selected by the Council, because they determined that the 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.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as 'small entity compliance guides.' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects in 50 CFR Part 622

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

Dated: February 12, 2020.

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)(1) to read as
follows:

§ 622.380 Size limits.

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(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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