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Sent: Tuesday, May 10, 2016 11:11 AM

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Subject: Re: Public Comments on Cobia Fishery Policy In North Carolina

Dear NC Marine Fisheries Commissioners,

On top of the above information, we have learned that Texas A&M published a study refuting the notion that there are two distinct migratory groups of cobia. <http://agrifilecdn.tamu.edu/gold/files/2012/05/Gold-et-al.-2013.pdf> Here is the summary:

"Cobias that were sampled from the coastal waters of Virginia, Mississippi, and Louisiana were genetically homogeneous based on assays of microsatellite genotypes and mtDNA haplotypes. This finding is consistent with observed migration patterns and tag-and-release studies of Cobias. Adult Cobias appear to overwinter primarily off the Florida Keys and then undergo seasonal migrations during the spring, moving northward along the U.S. Atlantic as well as to the north and west into the Gulf (Shaffer and Nakamura 1989; Franks et al. 1991). Limited tagging studies (Franks et al. 1991; Hammond 2001) indicate fairly regular mixing of Cobias between the Gulf and U.S. Atlantic. Interestingly, Cobias have been reported to overwinter in deep waters of the Gulf (Franks et al. 1991), and fish tagged in both the Gulf and the U.S. Atlantic have been recaptured near the release locality over 1 year later (Franks et al. 1991; Hammond 2001). The range of sample localities in our study approximates the range where Cobia aquaculture facilities occur in U.S. waters (Benetti and Orhun 2002), suggesting that broodstock from the Gulf or the U.S. Atlantic could be used for Cobia aquaculture in either region. There are two caveats to the suggestion that Cobias in the Gulf and those in the U.S. Atlantic can be used interchangeably for aquaculture."

The rationale of scientific evidence demonstrating that there were two unique migratory groups was initially used as the justification for the zone split where East Florida was removed from the South Atlantic management zone in public meetings. Last night, the SAFMC completely changed their story. They indicated that they have never reported that there were two distinct groups, and that their "science" was merely that cobia grew at a different rate in the two management zones and that is now their justification for the zone split. Keep in mind, the zone split reduced the Atlantic ACL from 1.4 million plus pounds to 620,000 pounds.

Please note, we recognize that this would include the Florida catch, and the ACL still would have been exceeded for 2015. However, the 1.4 million pound ACL was to be increased based on the recommendation in Amendment 20B (E. Florida was given an increase) and the overage would not have been statistically significant. Further, the chart that SAFMC is presenting to you showing that the ACL would have been exceeded in 2013 and several other years prior to 2015 would be falsified. Reality is, using the old Key West-New York structure, 2015 would have been the only ACL overage in the past decade if you include Florida catches.

Given the following:

1. The selection of a finite accountability measure with an early end of season closure is discriminatory against the states residing at the end of the migration pattern. The zone split (which was NOT grounded in science) has created inequitable burden for Virginia and North Carolina, while providing Florida with an excessive share of the privilege. This stands in direct violation of the Magnuson Stevens Act National Standard 4.
2. The lack of use of best science available- a violation of National Standard 2 that makes this policy not achieve the maximum sustainable yield, which is a violation of National Standard 1.
3. The lack of consideration given to the potentially devastating economic impacts

... the citizens of North Carolina have had their due process violated. The members of this Commission have the responsibility to take actions that result in the best outcome for the entire fishery ecosystem, and that includes your peers who actively engage in the fishery for employment or recreation.

We recommend the following:

- 1) NCMFC should not comply with the federal closure. NCMFC should maintain current creel limits (1 fish per person at 33 inches FL). Any compliance and reduction in creel will be used to validate NOAA/SAFMC actions and data in the greater debate over changing federal fisheries management.
- 2) NCMFC should request that NOAA issue an interim final rule to suspend the closure, recalculate the ACL with a fair allocation that is equitable across states, and review catch data for the three year time period before re-issuing any closure if needed.
- 3) The North Carolina Attorney General should file a federal lawsuit against NOAA for violating National Standard 2, 4 and 8 due to the lack of representation in the development of Amendment 18 and 20b of the Cobia Fisheries Management Plan and the resulting inequitable allocation of the cobia ACL, resulting in more significantly greater burden to North Carolina and Virginia citizens versus those in other states within the management zone and the natural migration pattern of the cobia stock.

Thank you. The Undersigned (Listed in the Previous email.)

On Fri, Apr 29, 2016 at 12:08 PM, Jonathan French <french60wasp@gmail.com> wrote:
Dear North Carolina Marine Fisheries Commission Members,

I and the other undersigned recreational anglers, charter boat captains, and small business owners are writing to recommend that the NCMFC to not comply with the June 20th federal closure of the cobia fishery. This closure is the byproduct of the creation of regulatory levers created by the South Atlantic Council that repeatedly comes into conflict with the National Standards of Fishery Management authored by the Magnuson Stevens Act.

As one of hundreds of cobia fishermen who live and/or fish in the the areas most significantly impacted, please consider that travel to Morehead City is prohibitive for many of us. Please include the following comments in the record to reflect the opinions of all stakeholders, not only those who have the bandwidth and resources to attend the in person meeting.

Here are the reasons North Carolina should vote non-compliance:

- 1) As required by the Magnuson Stevens Act all stakeholders must have proper representation in the fisheries management and no entity (be it state, sector of industry, etc.) acquires an excessive share of the privilege.

National Standard 4 clearly states:

“Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (a) fair and equitable to all such fishermen; (b) reasonably calculated to promote conservation; and (c) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privilege.”

National Standard 8 clearly states:

“Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirement of paragraph (2) [i.e., National Standard 2], in order to (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts on such communities.”

Virginia had no voting representation in the creation of the Fisheries Management Plan and the resulting ACL reduction and zone split. Proxy representation for Virginia from the Mid-Atlantic Fisheries Management Council did not speak one time on the record for the interests of Virginia. As result, Virginians face the most punitive closure date and an unfair allocation of the resource.

All the SAFMC representatives from North Carolina are from Raleigh or Morehead City southward. Not surprisingly, cobia fishermen south of Cape Lookout retain a full season, while boat fishermen north of Cape Hatteras lose most of their season. Northern Outer Banks pier anglers will lose their entire season, as the first cobia are often not landed on the Northern OBX piers until July.

South Carolina and Georgia have full representation, and due to the migratory pattern of cobia, their fishermen will not lose a single day of cobia fishing. East Florida had three votes and they received an excessive share of the privilege with a full season and more ACL than the other Mid-Atlantic states combined (880,000 pounds) in the zone split and ACL allocation.

NOAA even acknowledges that Florida and the Gulf management area will benefit from these policies at the expense of Virginia and North Carolina. In the Amendment20b draft language that was submitted to SAFMC for consideration in December, 2013, NOAA officials noted the following:

"Action 6, Preferred Alternative 3, Option d modifies the Gulf and Atlantic migratory group ACLs and recreational annual catch targets (ACTs) for cobia. The ACLs and ACTs for cobia needed to be set lower for the South Atlantic and higher in the Gulf of Mexico than they had been in the past based on the results of a stock assessment. In the South Atlantic region the combined annual value of expected losses for both commercial and recreational fisheries is expected to be approximately \$175,000 per year. However, these losses to fishermen in the South Atlantic region could nearly all be made up by increased opportunities to land more cobia in the Gulf of Mexico."

Source: SAFMC FMP DRAFT Amendment 20B Page 152 http://safmc.net/briefing-book/December-2013-briefing-book/Mackerel/MackerelAttach3a_CMPAm20BDocument.pdf

Virginia and North Carolina suffer inequitable burden, while Florida received an excessive share of the privilege. This is a CLEAR violation of National Standard 4 and 8. As result, North Carolina's attorney general should sue NOAA and North Carolina should not comply with the closure.

This fact, and NOAA cannot dispute that it is a fact, should end all discussion. Additional issues with data acuity will be debated endlessly, but reality is that NOAA violated these basic tenants of the federal law.

2) In the only year (after an ACL change) that a 1 year overage could trigger a closure, there was a 402% jump in the Virginia catch and a 180+% increase in the GA-NY catch. The Virginia catch was almost 400+% over the previous 7 year average. This is statistically dubious for the following reasons:

- a. The jump is dependent on a massive increase (400 additional boats per day assuming 100 fishing days) from 2014 to 2015.
- b. There was not a corresponding jump in Virginia citations (13% increase) despite NOAA claims that the average fish caught was 5 pounds higher than in 2014.
- c. The calculation was based on peak wave data and appears to count fish being caught during August, where wind conditions significantly limited days on the water.
- d. Data assertions are not corroborated by charter captains, recreational fishermen, or state fisheries officers.

Even members of the scientific community cast doubt upon NOAA's findings. NOAA commissioned noted marine scientists to review the methodology used for the SEDAR28 stock assessment and annual catch calculations. Patrick L. Cordue, an internationally recognized expert on fisheries management, submitted the peer review on the data collection methods for the SEDAR28 report:

“I cannot recommend any of the model runs for this assessment. The abundance indices are not defensible. The composition data were not properly prepared (and are over-weighted). The model was over-parameterized.”

SOURCE SEDAR 28: Gulf of Mexico Cobia and Spanish Mackerel Stock Assessment Review
P.L. Cordue Fisheries Consultant New Zealand For CIE Independent System for Peer Review

https://www.st.nmfs.noaa.gov/Assets/Quality-Assurance/documents/peer-review-reports/2013/2013_02_19%20Cordue%20SEDAR%2028%20GM%20spanish%20mackerel%20cobia%20assessment%20report%20review%20report.pdf

3) If we want to go further, there has been a pattern of misinformation that has been presented by NOAA and SAFMC to justify these closures.

NOAA staff members were advocating for an ACL split and ACL reductions as early as September, 2010 on the record almost 3 years prior to the publication of the SEDAR28 Cobia Stock Assessment.

GREGG WAUGH: “And then when we get to cobia; one, the two councils are splitting that so that is one of the joint actions, but for the portion that we will be managing, our likely ACL is going to be considerably below the current catches, so we need to look at modifying our regulations. Right now there is a two-fish bag limit in place so we need to look at modifying those regulations to ensure that the ACL is not exceeded.” Source: September 13, 2010 SAFMC Mackerel Meeting Minutes PAGE 3

<http://safmc.net/images/pdf/MackCmteMinSep10.pdf>

The SEDAR28 Stock Assessment was then published in 2013. The stock assessment refuted the need for a lowered ACL.

“The South Atlantic cobia stock assessment presented by the SEDAR 28 Assessment Workshop (AW) provided the Review Panel (RP) with outputs and results from two assessments models. Therefore, the RP concluded that the stock is not overfished and is not undergoing overfishing.”

http://sedarweb.org/docs/sar/S28_SAR_SACobia_WithAddendumFinal_5.16.2013.pdf

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Then Amendment 20B was authored. Amendment 20B started the pattern of misinformation. Amendment 20B clearly states that the **ACL should be INCREASED for both the Gulf and the Atlantic management zones:**

“Cobia Zones, ACLs, and ACTs: Based on the results of the most recent stock assessment for Gulf and South Atlantic cobia, this rule divides Gulf migratory group cobia into a Gulf zone (Texas through the Gulf side of the Florida Keys) and a Florida east coast zone (east coast of Florida and Atlantic side of the Florida Keys, i.e., the area within the South Atlantic Council’s jurisdiction). The Gulf ACL is allocated between the zones based on landings from the 1998–2012 fishing years. The South Atlantic Council is responsible for regulations for the Florida east coast zone, similar to management of the Florida east coast subzone for king mackerel. This rule also increases the ACLs for both migratory groups, the recreational ACT for the Atlantic migratory group, and the stock ACT for the Gulf zone.”

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http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/2014/am20b/documents/pdfs/cmp_am20b_fr.pdf

This assertion is repeated in the FAQ document for Amendment 20B. Please note, fishermen often rely on the FAQ document due to a lack of bandwidth to read lengthy regulations.

“This option offers increases in the current annual catch limits for both Councils, and is viewed as a fair and equitable distribution of the resource.”

SERO Cobia Fisheries Management Plan Amendment 20B FAQ

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/2014/am20b/documents/pdfs/cmp_a20b_faqs.pdf

NOAA asserts that this document required them to **DECREASE the ACL**. Somehow, in the FMP, they count the increase to East Florida’s ACL as increasing the ACL for the entire Atlantic stock, even though East Florida was removed from the Atlantic management zone AND SAFMC has said repeatedly that they cannot transfer the East Florida ACL to the South Atlantic Management Zone as a solution to this problem.

“The applicable ACTs for the Atlantic migratory group of cobia are 550,000 lb (249,476 kg) for 2014, 520,000 lb (235,868 kg) for 2015, and 500,000 lb (226,796 kg) for 2016 and subsequent fishing years. The applicable ACLs for the Atlantic migratory group of cobia are 670,000 lb (303,907 kg) for 2014, 630,000 lb (285,763 kg) for 2015, and 620,000 lb (281,227 kg) for 2016 and subsequent fishing years.”

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/2014/am20b/documents/pdfs/cmp_am20b_fr.pdf

Note, this reduced ACL in the Atlantic directly conflicts with the guidance from the SEDAR28 that the cobia ACL should be increased in both management zones. In personal communication with me AND with communication with Rep. Rob Wittman (United States House of Representatives Virginia 1st District), NOAA staff emphasize that they were forced to split zones and reduce the ACL for the Georgia to New York zone. The communication ignores the other language calling for the ACL to be increased. The letter to Rep. Wittman can be provided if requested.

As result of these actions by NOAA, we recommend the following action:

- 1) NCMFC should not comply with the federal closure. NCMFC should maintain current creel limits. Any compliance and reduction in creel will be used to validate NOAA/SAFMC actions and data in the greater debate over changing federal fisheries management.
- 2) NCMFC should request that NOAA issue an interim final rule to suspend the closure, recalculate the ACL with a fair allocation that is equitable across states, and review catch data for the three year time period before re-issuing any closure if needed.
- 3) The North Carolina Attorney General should file a federal lawsuit against NOAA for violating National Standard 2, 4 and 8 due to the lack of representation in the development of Amendment 18 and 20b of the Cobia Fisheries Management Plan and the resulting inequitable allocation of the cobia ACL, resulting in more significantly greater burden to North Carolina and Virginia citizens versus those in other states within the management zone and the natural migration pattern of the cobia stock.

NOAA has a responsibility to deliver fair and transparent policy that reflects the intent of the Magnuson Stevens Act and our state government has a responsibility to protect the rights and interest of the citizens of North Carolina and Virginia.

Thank You,

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5/15/16

Commission member , I have been looking at different articles and assessments on the cobia. And from all the papers I have looked at and read there is no need to make and more restrictions on the cobia than have been implemented all ready. NOAA says their reasoning is an overage that occurred last year. But according to the stock assessment's the fish are not being overfished and are not in trouble at all. And that came from their own biologist. The cobia need to be left alone and all of this ruling by fear needs to stop.

Tommy McArthur

Beaufort NC