

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 and 903(a), (b) & (e)

(7 Del.C. §§901 & 903(a), (b) & (e))

7 DE Admin. Code 3550

### PROPOSED

#### REGISTER NOTICE

SAN # 2021-02

DOCKET # 2021-R-F-0007:

#### 3550 Cobia (*Rachycentron canadum*)

1. TITLE OF THE REGULATIONS:

Amend 7 DE Admin. Code 3550 Cobia to implement changes to the minimum size, vessel limit and season depending on the option chosen.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Atlantic States Marine Fisheries Commission adopted Addendum I to the Interstate Fishery Management Plan (FMP) for Atlantic Migratory Group Cobia (FMP) in October 2020, which mandated changes to recreational *de minimis* measures.

Cobia presence in Delaware waters is sporadic, but they are targeted by anglers when known to be present. Delaware had no reported commercial or recreational Cobia landings in the three years preceding adoption of the FMP. Therefore, Delaware qualified for *de minimis* status under the 2017 FMP criteria and adopted compliant *de minimis* measures in 2020. However, Addendum I redefined the recreational *de minimis* measures, so Delaware must adopt either of the following two *de minimis* options to remain in compliance with the plan:

Delaware's proposed Cobia management options (**Bolded items** are changes to current measures)

	<b>Option 1</b> <i>De Minimis</i>	<b>Option 2</b> Nearest Non- <i>De Minimis</i> State
	Recreational	Recreational
Min. Length	<b>37"</b>	40" ( <b>only 1/vessel &gt; 50"</b> )
Possession Limit	1	1
Vessel Limit	<b>1</b>	<b>2</b>
Open Season	<b>All Year</b>	<b>June 15 - Sept. 15</b>

Option 1 reflects the *de minimis* management measures outlined in Addendum I to the FMP and Option 2 reflects the management measures in place for the nearest non-*de minimis* jurisdiction (Virginia). Addendum I does not require any changes to the commercial Cobia management measures that Delaware adopted in 2020.

Adoption of either option will ensure compliance with Addendum I to the FMP, as required by the Atlantic Coastal Fisheries Cooperative Management Act (16 USC §§5101, *et seq.*). The proposed action is expected to complement federal management in a consistent manner throughout the management unit and provide for the long-term stability of the stock. Given the sporadic occurrence of Cobia in Delaware waters, it is unlikely that the proposed action will have significant, measurable, or predictable costs to the affected Delaware fisheries or their dependent businesses.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C. §901 & §903(a), (b) & (e)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The proposed amendments may be inspected online starting July 1, 2021 at [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or in-person, by appointment only, by contacting John H. Clark, by phone at (302)739-9914 or by email at [John.Clark@delaware.gov](mailto:John.Clark@delaware.gov).

A virtual public hearing will be held on **Thursday, July 22, 2021, beginning at 6 p.m.** The web link to the virtual meeting is found on the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use: Fish. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 173 319 0455. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The Department will accept public comment through the close of business on **Friday, August 6, 2021**. Comments pertaining to the above matter will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address: Theresa Newman, Hearing Officer, DNREC-Office of the Secretary, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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### **3550 Cobia (*Rachycentron canadum*)**

#### **4.0 Recreational Seasons**

- 4.1 It is unlawful for a recreational fisherman to possess any Cobia during the periods of January 1 through May 31 and September 16 through December 31.
- 4.2 It is lawful for a recreational fisherman to possess Cobia during the period of June 1 through September 15 in accordance with Sections 2.0 and 3.0.

#### **2.01.0 Recreational Possession Limits**

- ~~2.1.1~~ It is unlawful for a recreational fisherman to possess more than one Cobia per day or per trip, whichever is longer.
- ~~2.2.1.2~~ Except in accordance with ~~4.0 Section 3.0~~ of this ~~section~~ regulation, it is unlawful to have aboard any vessel more than ~~three~~ one Cobia.

#### **3.0 2.0 Recreational Size Limit**

It is unlawful for a recreational fisherman to possess any Cobia that measures less than ~~40~~ 37 inches in total length.

#### **4.0 3.0 Commercial Possession Limits**

- 4.1 ~~3.1~~ A commercial fisherman may take and reduce to possession no more than two Cobia per day or per trip, whichever is longer, using commercial fishing gear for which said fisherman is lawfully permitted.
- 4.2 ~~3.2~~ It is unlawful for a commercial fisherman to possess more than two Cobia per day or per trip, whichever is longer.
- 4.3 ~~3.3~~ Notwithstanding subsections ~~4.1 3.1~~ and ~~4.2 3.2~~, a commercial fishing vessel may have up to six Cobia per day or per trip, whichever is longer, onboard provided the number of Cobia does not exceed twice the number of commercial fishermen onboard that vessel.

#### **5.0 4.0 Commercial Size Limit**

It is unlawful for a commercial fisherman to possess, trade, barter or sell or attempt to trade, barter or sell any Cobia that measure less than 37 inches in total length.

OR

#### **1.0 Recreational Seasons**

- 1.1 It is unlawful for a recreational fisherman to possess any Cobia during the periods of January 1 through ~~May 31~~ June 14 and September 16 through December 31.
- 1.2 It is lawful for a recreational fisherman to possess Cobia during the period of June 4 15 through September 15 in accordance with Sections 2.0 and 3.0.

## **2.0 Recreational Possession Limits**

- 2.1 It is unlawful for a recreational fisherman to possess more than one Cobia per day or per trip, whichever is longer.
- 2.2 Except in accordance with 4.0 of this section, it is unlawful to have aboard any vessel more than ~~three~~ two Cobia with only one that measures greater than 50 inches in total length.

## **3.0 Recreational Size Limit**

It is unlawful for a recreational fisherman to possess any Cobia that measures less than 40 inches in total length.

## **4.0 Commercial Possession Limits**

- 4.1 A commercial fisherman may take and reduce to possession no more than two Cobia per day or per trip, whichever is longer, using commercial fishing gear for which said fisherman is lawfully permitted.
- 4.2 It is unlawful for a commercial fisherman to possess more than two Cobia per day or per trip, whichever is longer.
- 4.3 Notwithstanding subsections 4.1 and 4.2, a commercial fishing vessel may have up to six Cobia per day or per trip, whichever is longer, onboard provided the number of Cobia does not exceed twice the number of commercial fishermen onboard that vessel.

## **5.0 Commercial Size Limit**

It is unlawful for a commercial fisherman to possess, trade, barter or sell or attempt to trade, barter or sell any Cobia that measure less than 37 inches in total length.

**23 DE Reg. 936 (05/01/20)**

**25 DE Reg. 66 (07/01/21) (Prop.)**