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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130802673-4053-02]

RIN 0648-BD49

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Revisions to Headboat Reporting Requirements for Species Managed
by the Gulf of Mexico Fishery Management Council

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management
measures described in a framework action to the Fishery
Management Plans for the Reef Fish Resources of the Gulf of
Mexico (Gulf), as prepared by the Gulf of Mexico Fishery
Management Council (Gulf Council); and Coastal Migratory Pelagic
(CMP) Resources of the Gulf and South Atlantic Region, as
prepared by the Gulf Council and the South Atlantic Fishery
Management Council (South Atlantic Council) (Headboat Reporting
Framework). This final rule modifies the recordkeeping and
reporting requirements for headboat owners and operators who
fish for species managed by the Gulf Council through the
previously mentioned FMPs. These revisions require fishing

records to be submitted electronically (via computer or internet) on a weekly basis or at intervals shorter than a week if notified by the NMFS' Southeast Fisheries Science Center (SEFSC) Science and Research Director (SRD), and prohibit headboats from continuing to fish if they are delinquent in submitting reports. Additionally, this final rule includes two corrections to regulatory text. The purpose of this final rule is to obtain timelier fishing information from headboats to better monitor recreational annual catch limits (ACLs), improve stock assessments, and improve compliance with reporting in Gulf fisheries.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the Headboat Reporting Framework, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by e-mail at [OIRA Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast

Regional Office, NMFS, telephone 727-824-5305; e-mail:
Rich.Malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Councils manage the fisheries for Gulf reef fish and Gulf and South Atlantic CMP under their respective FMPs. The FMPs were prepared by the Gulf and South Atlantic Councils and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 25, 2013, NMFS published a proposed rule for the framework and requested public comment (78 FR 63946). The proposed rule and framework outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

This final rule requires electronic reporting for headboat vessels in the Gulf reef fish and Gulf coastal migratory pelagic fisheries; increases the reporting frequency for headboat vessels in these fisheries; and prohibits headboats from continuing to fish if they are delinquent in submitting their reports. As explained in the preamble to the proposed rule, this rule will require headboat owners and operators, who are selected by the SRD, to use an electronic logbook (eLog) form through the "Southeast Region Headboat Survey," an electronic reporting system developed by the SEFSC for trips completed, and

to submit no fishing reports when no trips are taken. This form is available through a password protected Web site that can be accessed by personal computer, computer tablet, or "smart" phone (an application can be downloaded on both Android phones and iPhones). The Web site can be accessed at <https://selogbook.com>. An access code is required to log in to the Web site. Bluefin Data also requires a current email address for each vessel owner to send access codes and other information regarding the Web site to vessel owners. Once Bluefin Data registers a vessel owner and provides the vessel owner with an access code via email, the vessel owner is able to log in to the Web site and create a password for his account. The vessel owner can register more than one vessel under his password and more than one captain. The vessel owner determines who can access the Web site using his password.

Additionally, this final rule includes two corrections to regulatory text. An interim final rule to reorganize the 50 CFR part 622 regulations published on April 17, 2013 (78 FR 22950), and included a restructuring of the prohibition section to just include general prohibitions instead of specific prohibitions. Then a final rule that published on July 31, 2013 (78 FR 46292), added a prohibition that prohibited any person from failing to comply with the passenger capacity requirements in §§ 622.20(b)(1)(iv) and 622.373(e). A final rule for the

reorganization of 50 CFR part 622 published on September 19, 2013 (78 FR 57534), that changed the prohibition section back to specific prohibitions instead of general prohibitions, however, NMFS inadvertently did not include the prohibition from the July 31, 2013, rule into the final reorganization rule. The preamble to the final reorganization rule clearly indicated that the intent was to replace the general prohibitions with all relevant specific prohibitions and stakeholders should have understood that the omission of this specific prohibition was not intentional. Therefore, that prohibition is added back into the regulations through this final rule. A final rule that published on September 18, 2013 (78 FR 57313), included new quotas for Gulf red snapper, based on the framework action entitled "Red Snapper 2013 Quota Increase and Supplemental Recreational Season". These quotas were established in pounds and then codified in pounds, round weight, along with their kilogram conversions. However, the kilogram conversions were incorrect in that final rule. This final rule corrects those conversions.

Comments and Responses

NMFS received six comment submissions on the framework action and the proposed rule; one from an environmental organization and five from individuals. Two individuals and the environmental organization expressed general support for the

action in the framework. Two individuals opposed requiring electronic reporting. One of these commenters thought daily reporting should be required while the other commenter thought bi-monthly reporting was sufficient. One comment was on issues outside the scope of the action in the framework and this final rule, and one comment was related to the economic analysis in the proposed rule. A summary of the comments and NMFS' responses to those comments appears below.

Comment 1: Daily reporting should be required so it can be verified before the boat docks, which currently occurs in the commercial sector.

Response: NMFS disagrees that daily reporting should be required for headboats. The Council considered requiring daily reporting for headboats but did not select that alternative because it would impose a more burdensome requirement on the industry when daily reporting may not be necessary to effectively monitor the fisheries. The alternative selected by the Council requires weekly reporting but also allows the SRD to require more frequent reporting if necessary. NMFS agrees with the Council that requiring weekly reporting, with the flexibility to require more frequent reporting if necessary, ensures that the timely and accurate data necessary to manage the fishery is received while imposing less burden on administrators and industry.

With respect to the commercial sector, daily reporting and dockside verification are not generally required. Commercial landings are reported on a per trip basis by dealers. Currently, most dealers are required to report bi-monthly, however, the Council developed the Generic Dealer Reporting Amendment to change the frequency of dealer reporting to weekly. The proposed rulemaking implementing that amendment published on January 2, 2014 (79 FR 81). The only commercial vessel permit holders that must report estimated catch before docking are those that participate in the Gulf red snapper and grouper/tilefish individual fishing quota (IFQ) programs. This allows NMFS the opportunity to intercept an IFQ vessel at the dock to verify that this data is accurate and is necessary for enforcement reasons that are not present outside the IFQ programs.

Comment 2: Bi-monthly reporting is sufficient because requiring more frequent reporting will inhibit headboat productivity.

Response: NMFS disagrees that requiring weekly, as opposed to bi-monthly, reporting will increase the administrative burden on headboat owners to such an extent that productivity is inhibited. Headboat operators will be required to record and submit the same information as is currently required but will be submitting it on a more regular basis. Further, although more

frequent reporting may increase the direct costs to headboat businesses, it is also expected to increase the accuracy of the harvest monitoring process, which will increase economic benefits. The Council determined, and NMFS agrees, that requiring weekly reporting will allow managers to obtain the data necessary to more effectively manage harvest while minimizing costs to headboat businesses.

Comment 3: Reporting by phone and/or mail along with electronic reporting should be allowed, at least for a transition period during initial implementation of electronic reporting.

Response: NMFS disagrees that allowing alternative reporting methods is necessary during the initial implementation of the electronic reporting requirement. Since January 1, 2013, the SRD has requested that headboat owners and operators report electronically. Currently, 95 percent of headboats are reporting electronically. The remaining 5 percent have known that electronic reporting would be required since the Council took final action on the framework action in June 2013. Additional time to comply with the new requirement is unnecessary and would delay the benefits of transitioning to this more timely and accurate method of reporting.

Comment 4: Dockside sampling frequency should be increased and a Gulf at-sea headboat observer program should be

established to validate logbook data and better define bycatch and discards. In addition, the collection of economic data should be included as part of the electronic logbook program.

Response: Such additional data collection elements are beyond the scope of the current rulemaking. However, the Gulf Council or NMFS could, in the future, consider increasing the amount of dockside and onboard sampling to validate electronic logbook data and collect economic data as part of the logbook program.

Comment 5: The rule would affect more businesses than forecasted; the projected reporting expense of \$374 per business per year "can have negative effects" on small businesses; and the assessment understated the significance of the economic effects of the proposed rule.

Response: NMFS disagrees that the analysis in the proposed rule understated the significance of the economic effects of the reporting change on headboat businesses. The analysis stated that the rule would directly affect all headboat businesses permitted to operate in the Gulf EEZ. Thus, all appropriate businesses were included in the assessment. With respect to the estimated reporting expense, the commenter misinterpreted this expense. As discussed in the proposed rule, this estimate equals the labor burden for reporting via either paper or electronic means. Because paper reports have been required,

this estimate equals the current reporting labor cost as well as the reporting cost for electronic reporting and thus would not be a new business expense. Any new expense that might be incurred as a result of this rule would be associated with a possible need to purchase a computer and acquire internet access. However, as also discussed in the proposed rule, computers and internet access are believed to be routinely used by businesses in general and in this industry. Additionally, electronic reporting has been requested by the SRD since January 1, 2013. As a result, few, if any, of the businesses directly affected by this rule would be expected to have to incur any new expenses to meet the requirements of this rule.

Changes from the Proposed Rule

In the proposed rule, the requirements for headboat reporting methods and frequency of reporting for coastal migratory pelagic fish were separated into Gulf requirements (§ 622.371(b)(1)(ii) and (b)(2)(ii)) and South Atlantic requirements (§ 622.371(b)(1)(iii) and (b)(2)(iii)). The South Atlantic Fishery Management Council proposed identical headboat reporting requirements and that proposed rule also separated the requirements for headboat reporting methods and frequency of reporting for coastal migratory pelagic fish into Gulf requirements and South Atlantic requirements. The final rule implementing the South Atlantic changes to the headboat

reporting requirements published before this final rule.

Therefore, in this final rule, the paragraphs for Gulf and South Atlantic headboat reporting requirements for coastal migratory pelagic fish have been combined (for both reporting methods and frequency) because when this final rule becomes effective, both Gulf and South Atlantic headboat reporting requirements for coastal migratory pelagic fish will be the same.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the management of the Gulf reef fish and coastal migratory pelagic fisheries and is consistent with the framework, the FMP, 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 Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. In addition to the actions considered in the framework, this final rule makes changes to regulatory text in §§ 622.13 and 622.39. These changes are described in the

preamble to this final rule. These changes correct mistakes that occurred in prior regulatory action and do not impose new restrictions. As a result, none of these changes in the regulatory text would be expected to result in any reduction in profits to any small entities. Comments on the economic analysis are addressed in the comments and responses section (Comment 5) of this final rule. No changes to the final rule were made in response to these comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements subject to the requirements of the Paperwork Reduction Act (PRA), which have been approved by OMB under control number 0648-0016. NMFS estimates that the requirement for Gulf headboat owners and operators to report electronically results in a net zero effect on the reporting burden under OMB control number 0648-0016, because headboat owners and operators will continue to report all species harvested, however, now electronically instead of by paper. NMFS estimates that the requirement for headboat owners and operators to report more frequently (weekly instead of monthly) does not create more burden on headboat owners and operators, because the headboat owners and operators will still be reporting the same amount of information, but just transmitting the data more frequently.

These estimates of the public reporting burden include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Headboat, Reporting and recordkeeping requirements.

Dated: January 28, 2014

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 § 622.13, paragraph (pp) is added to read as follows:

§ 622.13 Prohibitions.

* * * * *

(pp) Fail to comply with the passenger capacity related requirements in §§ 622.20(b)(1)(iv) and 622.373(e).

* * * * *

3. In § 622.26, paragraph (b) is revised to read as follows:

§ 622.26 Recordkeeping and reporting.

* * * * *

(b) Charter vessel/headboat owners and operators--(1) General reporting requirement--(i) Charter vessels. The owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), or whose vessel fishes for or lands such reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by

the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b) (2) of this section.

(ii) Headboats. The owner or operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), or whose vessel fishes for or lands such reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must submit an electronic fishing record for each trip of all fish harvested within the time period specified in paragraph (b) (2) (ii) of this section, via the Southeast Region Headboat Survey.

(2) Reporting deadlines--(i) Charter vessels. Completed fishing records required by paragraph (b) (1) (i) of this section for charter vessels must be submitted to the SRD weekly, postmarked no later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) Headboats. Electronic fishing records required by paragraph (b) (1) (ii) of this section for headboats must be submitted at weekly intervals (or intervals shorter than a week if notified by the SRD) by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so stating must be submitted for that reporting week by 11:59 p.m., local time, the

Sunday following a reporting week.

(3) Catastrophic conditions. During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraph (b) (1) (ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the Federal Register, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) Compliance requirement. Electronic reports required by paragraph (b) (1) (ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the time specified in paragraph (b) (2) (ii) is delinquent. A delinquent report automatically results in the owner and operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued being prohibited from harvesting or possessing

such species, regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

* * * * *

4. In § 622.39, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Commercial quota for red snapper--5.610 million lb (2.545 million kg), round weight.

* * * * *

(2) * * *

(i) Recreational quota for red snapper--5.390 million lb (2.445 million kg), round weight.

* * * * *

5. In § 622.374, paragraph (b) is revised, to read as follows:

§ 622.374 Recordkeeping and reporting.

* * * * *

(b) Charter vessel/headboat owners and operators--(1)

General reporting requirement--(i) Charter vessels. The owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands Gulf or South Atlantic coastal migratory fish in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2)(i) of this section.

(ii) Headboats. The owner or operator of a headboat for which a charter vessel/headboat permit for Gulf coastal migratory fish or South Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands Gulf or South Atlantic coastal migratory pelagic fish in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must submit an electronic fishing record for each trip of all fish harvested within the time period specified in paragraph (b)(2)(ii) of this section, via the Southeast Region Headboat Survey.

(2) Reporting deadlines--(i) Charter vessels. Completed fishing records required by paragraph (b)(1)(i) of this section for charter vessels must be submitted to the SRD weekly, postmarked no later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) Headboats. Electronic fishing records required by paragraph (b)(1)(ii) of this section for headboats must be submitted at weekly intervals (or intervals shorter than a week if notified by the SRD) by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so stating must be submitted for that reporting week by 11:59 p.m., local time, the Sunday following a reporting week.

(3) Catastrophic conditions. During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraph (b)(1)(ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the Federal Register, NOAA weather radio, fishery bulletins, and other

appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) Compliance requirement. Electronic reports required by paragraph (b)(1)(ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the time specified in paragraph (b)(2)(ii) is delinquent. A delinquent report automatically results in the owner and operator of a headboat for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued being prohibited from harvesting or possessing such species, regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

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