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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200706-0181]

RIN 0648-BH72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Gulf of Mexico Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in the Gulf For-hire Reporting Amendment, as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council (South Atlantic Council). The Gulf For-hire Reporting Amendment includes amendments to the Fishery Management Plans (FMPs) for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and the Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP). This final rule revises reporting requirements for an owner or operator of a charter vessel or headboat (for-hire vessel) with a Federal charter vessel/headboat

permit for Gulf Reef Fish or Gulf CMP species. The purpose of this final rule is to increase and improve fisheries information collected from federally permitted for-hire vessels in the Gulf. The information is expected to improve recreational management of the for-hire component of the reef fish and CMP fisheries in the Gulf.

DATES: This final rule is effective on January 5, 2021, except for §§ 622.26(b)(5) and 622.374(b)(5)(ii) through (v), which are delayed indefinitely. The Administration will publish a document in the **Federal Register** announcing the effective date of those provisions.

ADDRESSES: Electronic copies of the Gulf For-hire Reporting Amendment may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/southeast/et*.

The Gulf For-hire Reporting Amendment includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act (RFA) analysis, and fishery impact statement.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted at any time to Adam Bailey, NMFS Southeast Regional Office,

adam.bailey@noaa.gov, or by email to

OIRA_Submission@omb.eop.gov, or fax to 202-395-5806.

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 is managed under the CMP FMP, an FMP jointly managed by the Gulf Council and South Atlantic Council. The Gulf Council manages the reef fish fishery under the Reef Fish FMP. These FMPs are implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On June 21, 2018, NMFS published a notice of availability (NOA) for the Gulf For-hire Reporting Amendment and requested public comment (83 FR 28797). On September 19, 2018, the Secretary of Commerce (Secretary) approved the Gulf For-hire Reporting Amendment under section 304(a)(3) of the Magnuson-Stevens Act. On October 26, 2018, NMFS published a proposed rule for the Gulf For-hire Reporting Amendment and requested public comment through November 26, 2019 (83 FR 54069). On November 20, 2018, NMFS extended the proposed rule comment period through January 9, 2019 (83 FR 58522). The proposed rule

and the Gulf For-hire Reporting Amendment outline the rationale for the actions contained in this final rule. A summary of the management measures described in the Gulf For-hire Reporting Amendment and implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

This final rule requires an owner or operator of a vessel with a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species (hereafter referred to as a Gulf for-hire vessel owner or operator) to submit an electronic fishing report (also referred to as a logbook), via NMFS-approved hardware and software, for each fishing trip before offloading fish from that fishing trip. If no fish are landed, the electronic fishing report must be submitted within 30 minutes after the completion of the fishing trip. This final rule also requires a Gulf for-hire vessel owner or operator to notify NMFS prior to departing for any trip and declare whether they are departing on a for-hire trip or on another trip type. If the vessel will be operating as a charter vessel or headboat during the specified trip, the vessel owner or operator must also report details of the trip's expected completion. Lastly, this final rule requires that a Gulf for-hire vessel owner or operator use NMFS-approved hardware and software with

global positioning system (GPS) location capabilities that, at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS. NMFS expects the time period between the publication date and effective dates for this final rule will allow time for affected fishery participants to purchase and install approved hardware and software, as well as comply with all other requirements in this rule.

Electronic Fishing Reports

This final rule requires a Gulf for-hire vessel owner or operator that is operating the permitted vessel as a for-hire vessel to submit an electronic fishing report for each trip before offloading fish from the vessel, or within 30 minutes after the end of each trip if no fish were landed. The electronic fishing report must include any species that were caught or harvested in or from any area (e.g., in state, Federal, or foreign waters, in the Gulf, Atlantic, Pacific Ocean, etc.), as well as information about the permit holder, vessel, location fished, fishing effort, discards, and socio-economic data.

A Gulf for-hire vessel owner or operator is required to submit the fishing report using hardware and software approved by NMFS for use in the Gulf for-hire reporting program, which could include sending data through a

cellular or satellite-based service. Approved hardware used to submit a fishing report means devices such as computers, tablets, and phones that allow for internet access via a cellular or satellite signal and are capable of supporting and operating approved software. Software for such devices must be approved by the NMFS Southeast Regional Office, and vendors seeking NMFS type-approval can find technical specifications and procedures at <https://www.fisheries.noaa.gov/southeast/et>. NMFS will evaluate potential applications and software as they are submitted by vendors and post a list of approved items on the website.

Consistent with the previous regulations, a Gulf for-hire vessel owner or operator who is selected to report to the Southeast Region Headboat Survey (SRHS), managed and operated by the NMFS Southeast Fisheries Science Center (SEFSC), will submit fishing reports to that program upon implementation of this final rule. However, as a result of this final rule, those vessel owners or operators reporting to the SRHS must report before offloading fish from the vessel, or within 30 minutes after the end of each trip if no fish were landed. Public reporting burden is estimated to average 10 minutes per electronic fishing report.

A vessel monitoring system (VMS) unit, either cellular- or satellite-based, could also be used to submit a fishing report but must be approved by the NMFS Office of Law Enforcement (OLE) for use in the Gulf for-hire reporting program. Existing NMFS type-approved VMS units for commercial fisheries will be evaluated and potentially modified by the vendors to meet the Gulf for-hire reporting requirements. Vendors wishing to submit VMS hardware and software for NMFS OLE type-approval can find technical specifications and procedures at 50 CFR 600, subpart Q. NMFS OLE published a final rule in the **Federal Register** that will modify the existing NMFS VMS type-approval regulations to include cellular-based VMS in addition to satellite-based VMS, and to allow VMS communications to be sent through secure cellular communication services (85 FR 40915, July 8, 2020). NMFS OLE maintains a list of all approved VMS units for each applicable Federal fishery or area at <https://www.fisheries.noaa.gov/national/enforcement/noaa-fisheries-type-approved-vms-units>.

NMFS will post approved software for electronic fishing reports that meet the NMFS type-approval for the Gulf for-hire reporting program, as well as post other

useful references on the Southeast Region website at <https://www.fisheries.noaa.gov/southeast/et>.

This final rule also extends other provisions to federally permitted charter vessels that currently apply to headboats to allow for modified reporting during catastrophic conditions and to address delinquent reporting. During NMFS-declared catastrophic conditions, such as after a hurricane, NMFS may accept paper reporting forms, and can modify or waive reporting requirements. Also, a delinquent fishing report will result in a prohibition on the harvest or possession of the applicable species by the for-hire vessel permit holder until all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements.

Trip Declaration

This final rule requires a Gulf for-hire vessel owner or operator to submit a trip declaration to NMFS before departing from any a dock, berth, beach, seawall, or ramp. The trip declaration will indicate whether the vessel is departing on a commercial, charter, headboat, private recreational, or non-fishing type of trip. For instance, if a vessel is taken to a separate dock to get fuel, and then does not start a fishing trip, the trip declaration would be completed as a non-fishing trip. No additional

information is required on the trip declaration if the vessel is not making a for-hire fishing trip. If the vessel will be departing on a for-hire trip (charter or headboat), the owner or operator must also report the expected trip completion date, time, and landing location. The trip declaration must be accomplished as described above for the fishing reports. All software approved for submitting fishing reports will also be approved for submitting trip declarations.

In the Gulf, an owner or operator of a federally permitted commercial reef fish vessel is already required to submit a trip declaration, either through a VMS unit or by telephone. To reduce duplicative trip declarations, an owner or operator of a vessel with both a Gulf commercial reef fish permit and a Gulf for-hire permit leaving for a commercial trip can meet the requirements of both programs by submitting a trip declaration only using the commercial program declaration form, if they use VMS hardware and software that has been approved for both programs. However, a for-hire trip declaration may not be submitted using the commercial telephone system. Therefore, if a vessel owner or operator chooses to declare a commercial trip through the use of the telephone system, they must also declare the trip using hardware and software approved for the Gulf for-

hire reporting program. An owner or operator of a vessel with both a Gulf commercial reef fish permit and a Gulf charter vessel/headboat permit who is leaving on a for-hire trip can meet the requirements of both programs by submitting a trip declaration if they use the Gulf for-hire reporting program declaration form, and they use VMS hardware and software that has been approved for both programs. If an owner or operator of a vessel with both a Gulf commercial reef fish permit and a Gulf for-hire permit chooses to maintain two types of hardware and software, one approved for the commercial program and one approved for the for-hire program, they must submit trip declarations to both programs regardless of the type of trip. NMFS is considering possible modifications to each program to reduce duplicative declarations in the future.

If leaving on a for-hire trip, the trip declaration requires the landing location for the end of the trip, and these landing locations must be added to any approved software before their use. Landing locations must be submitted to NMFS through the Landing Location Request form for verification and inclusion on reporting platforms. NMFS staff will verify that the location exists and can reasonably be expected to be a vessel landing location, *e.g.*, the location is adjacent to a waterway. NMFS

anticipates verifying landing location requests within two business days of receipt. If verified, the location will be assigned a code and shared with any vendors with approved software for inclusion in future updates. At this time, NMFS cannot specify how long it will take vendors to make these updates. If NMFS cannot verify the landing location, the applicant will be notified. NMFS will process requests submitted on weekends and holidays during normal business hours. Any approved landing location for the commercial individual fishing quota (IFQ) programs in the Gulf will also be a valid landing location in the Gulf for-hire reporting program and does not need to be resubmitted. However, because of stricter qualifications for an approved landing location in the commercial IFQ programs, a verified for-hire landing location is not automatically an approved landing location for the Gulf IFQ programs.

The Gulf Council determined that trip declarations will improve effort estimation for for-hire vessels and improve the ability of port agents and law enforcement to meet a vessel at end of a trip for biological sampling and landings validation. Public reporting burden to complete the trip declaration requirement is estimated to average 2 minutes per trip.

Location Tracking and Reporting

This final rule requires that a Gulf for-hire vessel have NMFS-approved hardware and software on board with GPS location capabilities that, at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS. This rule requires the collection of a vessel's position at least hourly, unless the in-port 4-hour position reporting exemption is met, as specified in 50 CFR 622.26(b)(5)(ii)(C) and 622.374(b)(5)(iv)(C).

The proposed rule for the Gulf for-hire reporting program distinguished between a satellite and cellular vessel location tracking device by referring to the former as a VMS unit and the latter as a GPS unit or GPS portion of the hardware. However, to be consistent with the NMFS OLE final rule, any cellular- or satellite-based vessel location tracking device is hereafter referred to as a cellular or satellite VMS.

The vessel location tracking data can be transmitted through a cellular or satellite-based service. Cellular-based systems collect and store data while a vessel is not within range of a cellular signal, *e.g.*, during the majority of fishing trips in Federal waters, and then transmit the data when the vessel is within cellular range. While a vessel is within cellular range, *e.g.*, nearshore or at the dock, data transmission will be closer to real-time.

Satellite-based systems transmit data as they are collected.

VMS units, whether cellular or satellite-based, will be type-approved by NMFS OLE. Vendors wishing to submit a satellite VMS unit for NMFS OLE type-approval can find technical specifications and procedures at 50 CFR 600, subpart Q for current requirements and type-approval process. NMFS OLE recently published a final rule to implement type-approval requirements for cellular VMS and to allow VMS communications to be sent through secure cellular communication services, and this information will also be located at 50 CFR 600, subpart Q. Approved cellular and satellite VMS units for each applicable Federal fishery or area will continue to be listed at

<https://www.fisheries.noaa.gov/national/enforcement/noaa-fisheries-type-approved-vms-units>. NMFS SERO will post all approved hardware and software for the Gulf for-hire reporting program, including VMS units approved by NMFS OLE, at *<https://www.fisheries.noaa.gov/southeast/et>*.

Each Gulf for-hire vessel owner or operator is responsible for using an approved VMS that will automatically transmit vessel location data at some time before offloading fish at the end of each trip, or within 30 minutes after a trip is completed if no fish were

landed. The type of VMS (cellular or satellite) that is capable of transmitting vessel location data as required may depend on the area where the vessel docks. The vessel's cellular or satellite VMS must be permanently affixed to the vessel and must have uninterrupted power, unless the owner or operator applies for and is granted an exemption to power-down the unit, as specified in 50 CFR 622.26(b)(5)(ii)(D) and 622.374(b)(5)(iv)(D), e.g., if the vessel is removed from the water for repairs.

Satellite VMS units and some cellular VMS units will allow users to enter and transmit fishing reports and trip declarations in addition to automatically recording and transmitting GPS coordinates. Other cellular VMS units will only be capable of automatically recording and transmitting GPS coordinates, but will be able to connect to another device that is capable of transmitting fishing reports and trip declarations. Therefore, depending on the VMS unit selected by the vessel owner or operator, a separate device, such as a smartphone or tablet, and an additional wireless service plan may be required to submit fishing reports and trip declarations.

In the Gulf, an owner or operator of a federally permitted commercial reef fish vessel is already required to have a satellite VMS unit permanently affixed to the

vessel. NMFS has also issued Gulf charter vessel/headboat permits to some of these vessels. However, not all satellite VMS units approved for use on commercial reef fish vessels may be approved for use in the Gulf for-hire reporting program. Satellite VMS units approved by NMFS for commercial reef fish vessels will need software updates by the vendors to meet the for-hire reporting requirements in this final rule. If a satellite VMS unit required for the Gulf commercial reef fish fishery is not capable of meeting the Gulf for-hire electronic reporting requirements, the owner or operator will need to purchase a VMS unit that is approved for both commercial reef fish and for-hire vessels, or keep the satellite VMS unit for commercial trips and purchase a separate cellular or satellite VMS unit that meets the Gulf for-hire reporting requirements in this final rule.

To allow more time for the type-approval process and sufficient time for for-hire vessel owners and operators to obtain the devices, the requirement that Gulf for-hire vessels have NMFS-approved hardware and software with GPS location capabilities will be delayed until NMFS announces the effective date in a subsequent document published in the **Federal Register**. However, before that effective date, NMFS will notify affected permit holders through a fishery

bulletin when cellular or satellite VMS units approved for the Gulf for-hire reporting program may be used voluntarily to submit fishing reports and trip declarations.

This final rule has similar requirements for powering down a cellular or satellite VMS unit that currently apply to vessels in the commercial reef fish fishery. Regulations allow an owner or operator of a commercial vessel to discontinue the use of a VMS unit for a specific time period, provided they request and obtain a VMS power-down exemption letter, which authorizes the power-down, from the NMFS OLE Southeast Division (50 CFR 622.28). To obtain NMFS' authorization for powering down a cellular or satellite VMS unit for the Gulf for-hire reporting program, the permit holder must fill out the VMS Power-down Exemption Request form, and submit the form by email or mail to NMFS OLE. NMFS OLE must approve each power-down request before the vessel operator may turn off the vessel's VMS unit. The VMS Power-down Exemption Request form is available on the NMFS website for the Gulf for-hire reporting program, <https://www.fisheries.noaa.gov/southeast/et>. NMFS estimates a VMS power-down exemption request will require an average of 5 minutes to complete per occurrence.

Other Electronic Reporting Programs

On February 24, 2020, NMFS published in the **Federal Register** the final rule to implement electronic reporting requirements contained in the South Atlantic For-Hire Reporting Amendment applicable to the for-hire component of recreational fisheries in the South Atlantic Council's jurisdiction (85 FR 10331). Under the South Atlantic for-hire reporting program, an owner or operator of a vessel issued a Federal charter vessel/headboat permit for species managed under the FMPs for CMP (in the Atlantic), Atlantic Dolphin and Wahoo, or South Atlantic Snapper-Grouper, and is operating as a for-hire vessel, will have to submit on a weekly basis an electronic fishing report for each trip using NMFS-approved hardware and software. Although the information collected in the South Atlantic fishing report is expected to be the same as for the Gulf fishing report, the frequency of trip reporting will be different, and neither a trip declaration nor location tracking device is required in the South Atlantic for-hire reporting program.

A Gulf for-hire vessel owner or operator must follow the Gulf reporting regulations regardless of where they fish or any other Federal permits they hold, including those that hold both Gulf and South Atlantic for-hire permits. However, the South Atlantic Council's intent is to prevent multiple reporting of the same for-hire trip by

allowing the owner or operator of a vessel with multiple Federal for-hire permits to fulfill the South Atlantic requirements by submitting reports under other programs, if those reporting requirements are more stringent. Therefore, a vessel owner or operator with a Federal for-hire permit for an applicable fishery managed by the South Atlantic Council who is required to report under the Gulf for-hire reporting program, will not also need to report under the South Atlantic's program. Thus, an owner or operator with Federal for-hire permits from both areas must submit fishing reports before offloading fish, submit a trip declaration, and have a location tracking device aboard their vessel according to the Gulf requirements in this final rule.

Changes From the Proposed Rule

The proposed rule distinguished between satellite and cellular devices by referring to the former as VMS units and the latter as GPS units. However, during development of the Gulf for-hire reporting program, NMFS determined that it was appropriate for NMFS OLE to test and type-approve cellular-based vessel tracking devices. Therefore, to make descriptions of a vessel tracking device consistent between the NMFS OLE regulations at 50 CFR 600, subpart Q and the requirements in this final rule, any cellular- or

satellite-based vessel location tracking device is referred to as a cellular or satellite VMS.

Similarly, the NMFS OLE final rule to specify the type-approval requirements for cellular VMS requires that position reporting be fully automatic, which is the same specification as position reporting by a satellite VMS unit. Automatically populating these data prevents alteration or unintended modification. NMFS estimated in the proposed rule that if it was necessary to submit separate fishing and location reports at the end of each trip, the reporting burden to submit separate location information could be an additional 2 minutes per trip. An added benefit to a for-hire vessel owner or operator with automation of location data submission is that the potential burden of having to submit vessel location data after a fishing trip is removed from this final rule.

In this final rule, NMFS has revised the name for the required pre-trip declaration and the associated electronic form name. In the proposed rule, NMFS referred to this as the Trip Notification form, but this final rule refers to this as the Trip Declaration form. The requirements to submit a Trip Declaration form remain the same as stated in the proposed rule. NMFS made the change in this final rule to increase the consistency of terms used to describe

various forms across platforms, and "declaration" is a familiar term already used by some fishermen for a similar requirement in the commercial sector of the Gulf reef fish fishery.

NMFS is also adding regulatory text in 50 CFR 622.26(b)(6) and 622.374(b)(6) to clarify that the trip declaration is required any time the vessel departs from a dock, berth, beach, seawall, or ramp. In the proposed rule, these paragraphs stated that the declaration is required prior "to the departure of any trip," but did not define trip. The term "trip" is defined 50 CFR 622.2, in part, as "a fishing trip." However, the proposed rule did not refer to this definition and various regulations in 50 CFR part 622 use the term "fishing trip" as opposed to "trip." Therefore, to avoid any confusion about when the trip declaration is required, for the purpose of paragraphs 622.26(b)(6) and 622.374(b)(6), NMFS is specifying that a "trip" begins anytime the vessel departs from a dock, berth, beach, seawall, or ramp, and terminates with return to a dock, berth, beach, seawall, or ramp, regardless of the duration or purpose, including non-fishing activities. This revision more clearly describes the reporting requirements under this rule.

This final rule changes the methods for a vessel owner

or operator to submit the VMS power-down exemption request form to NMFS. In the proposed rule on page 54071, NMFS stated that the form would be accepted by mail or fax, and that NMFS expected an electronic method of submission to be available by the effective date of this final rule.

However, NMFS has determined few vessel owners or operators would use fax. Therefore, to streamline administration of the Gulf for-hire reporting program, NMFS will not accept this form by fax. NMFS also continues to work on developing the electronic form, but does not expect it to be available until after the effective date. As of this final rule, NMFS can accept the VMS Power-down Exemption Request form by mail or email, and will provide vessel owners and operators with any new information about the available methods to submit the form on the NMFS website for the Gulf for-hire reporting program,

<https://www.fisheries.noaa.gov/southeast/et>.

This final rule also makes minor changes in §§ 622.26(b)(1) and (5), and 622.374(b)(1)(i) and (5)(i) to more clearly separate the logbook and VMS requirements and to make it clear that NMFS approved hardware and software for both the logbook and VMS will be posted on the NMFS Southeast Region website.

Finally, in response to public comment about reporting

to the SRHS (*Comment 10*), NMFS adds regulatory text in §§ 622.26(b)(1) and 622.374(b)(1)(i) to make it clear, that if selected by the NMFS Science Research Director, a Gulf for-hire vessel owner or operator must report via the SRHS. As of April 2020, there were 69 Gulf for-hire vessels that report via the SRHS and the software used by the SRHS will be approved for the Gulf for-hire reporting program.

Comments and Responses

NMFS received 109 comments during the public comment periods on the NOA and proposed rule for the Gulf For-hire Reporting Amendment. The majority of the comments were opposed to the Gulf For-hire Reporting Amendment and proposed rule. NMFS acknowledges the comments in favor of all or part of the actions in the Gulf For-hire Reporting Amendment and the proposed rule, and agrees with them. Some comments in support of the proposed rule included that the requirements will help ensure the recreational for-hire component gets credit for the fish they catch and that the data will be more timely and accurate, will lead to better stock assessments, and will assist in making management decisions, such as reducing catch limit buffers that are in place to prevent harvest overages.

Some commenters made suggestions about how to implement the final rule. These comments included: NMFS

should set compliance and validation targets; NMFS should establish dock-side validation rates by incorporating existing on-site sampling and monitoring programs operated by the Marine Recreational Information Program (MRIP) and the Gulf states for cost efficiencies; NMFS should consider some method of incentivizing participation in the program to maximize compliance during initial implementation; the program should provide reports back to vessel owners and operators; and NMFS should provide educational materials to vessel operators to share with their customers. NMFS will consider all of the suggestions and may implement them in the future, if appropriate.

Some comments were outside the scope of the Gulf For-hire Reporting Amendment and the proposed rule and are not addressed in this final rule. Comments in opposition to all or some of the actions contained in the Gulf For-hire Reporting Amendment and the proposed rule are summarized below, as well as NMFS' respective responses. NMFS made one change in response to public comment on the Gulf For-hire Reporting Amendment and the proposed rule. See the response to *Comment 10* below.

Comment 1: Data collection is a research tool and therefore should be NMFS', rather than fishermen's, responsibility.

Response: The Gulf for-hire reporting program is designed to both monitor for-hire landings to determine in-season closures and post-season quota adjustments, and to enhance data collection efforts to provide for better fisheries management, such as through more data-rich stock assessments. As such, collection of these data is not a research tool but a management tool for the reef fish and CMP fisheries, and responsibility for the program is appropriately shared by NMFS and the fishermen. The fishermen are required to have the necessary equipment and report in a timely manner as conditions of their Federal for-hire permits because they possess the information that the Gulf Council and NMFS need to improve management. NMFS is responsible for performing quality control, validating the reports, and using the data, as appropriate, to help achieve various management objectives.

Comment 2: MRIP should take the lead in designing and executing the for-hire electronic reporting to avoid problems with different state-based surveys that have different designs and calibrations.

Response: NMFS does not agree that MRIP should take the lead in designing and executing the Gulf for-hire electronic reporting program. As designed by the Gulf Council, with input from both the Southeast Regional Office

and MRIP, all federally permitted for-hire vessels (charter vessels and headboats) will report at the end of each trip through NMFS approved software. This will avoid relying on surveys with different designs and potential issues with calibrations.

Comment 3: It is not clear if MRIP will still collect data from non-federally permitted for-hire vessels, which operate solely in state waters, or how the Gulf for-hire reporting program will affect future funding for the MRIP survey.

Response: MRIP will continue to survey state permitted vessels fishing exclusively in state waters. The Gulf for-hire reporting program is not anticipated to affect funding for MRIP.

Comment 4: Explain how Gulf States' fisheries management agencies are going to be involved in the implementation and dock-side validation of the Gulf for-hire reporting program.

Response: NMFS anticipates that Gulf States' fisheries management agencies will continue to operate as they currently do through the Gulf Fisheries Information Network (GulfFIN) in conjunction with MRIP. GulfFIN is a state-Federal cooperative program managed by the Gulf States Marine Fisheries Commission that collects, manages, and

disseminates statistical data and information on the marine and estuarine commercial and recreational fisheries in the Gulf. All five Gulf States participate in GulfFIN, and NMFS staff is working with GulfFIN to incorporate the Gulf for-hire reporting program into their validation program. As additional funding for dock-side validation becomes available, staff with the Gulf for-hire reporting program will communicate with MRIP, GulfFIN, and the state agencies to develop any needed changes in methodology and staffing requirements.

Comment 5: Explain how NMFS will validate the data collected from the Gulf for-hire reporting program. As of the proposed rule publication date, October 26, 2018, NMFS has not provided a cost estimate or their approach to ensure adequate dockside validation. Without dockside validation, there is a concern over the efficacy of this type of data collection program.

Response: The Gulf Council chose to require a trip declaration and vessel location tracking device to validate effort (fishing trips). These requirements will allow NMFS to determine when a fishing trip was taken, and the length of that trip. The trip declaration will also allow port agents to know when and where a trip will end for further sampling. NMFS received funding to support port samplers,

who will work with Gulf state fisheries management agencies to validate catch on for-hire vessels.

Comment 6: The Gulf and South Atlantic for-hire reporting programs should be effective starting on the same date to avoid confusion and promote compliance.

Response: Currently, the South Atlantic for-hire reporting program will be effective on September 1, 2020, although NMFS is considering whether to delay that effective date to be consistent to the extent practicable with the effective date of this final rule. NMFS originally intended to have an effective date for the logbook and trip declaration requirements in this final rule consistent with the September 1, 2020, effective date for the South Atlantic for-hire reporting program. However, at its June 2020 meeting, the Gulf Council requested that NMFS delay the effective date of this rule to January 2021. NMFS agrees that it is appropriate to provide permit holders with additional time to comply with the requirements of this rule. Therefore, the effective date for the logbook and trip declaration requirements in this final rule is January 5, 2021, and the effective date for the additional requirements in this final rule, e.g., vessel location tracking devices, will be announced in a subsequent document published in the **Federal Register**.

Comment 7: Based on a presentation to the Gulf Council in August 2018, NMFS planned to publish the final rule before approval of the amendment, which creates the perception that public comments are a waste of stakeholder time.

Response: NMFS did not plan to publish a final rule before approval of the Gulf For-hire Reporting Amendment. The presentation referred to in the comment showed timelines for both the Gulf and South Atlantic for-hire reporting programs, and the comment confuses the dates for the two programs. The NOA for the Gulf For-hire Reporting Amendment published in the **Federal Register** on June 21, 2018, with comments due on August 20, 2018 (83 FR 28797). NMFS considered these comments prior to approval of the Gulf For-hire Reporting Amendment on September 19, 2018. The proposed rule for the Gulf for-hire reporting program published in the **Federal Register** on October 26, 2018, with comments due by November 26, 2018 (83 FR 54069). The comment period was extended to January 9, 2019, to accommodate anyone effected by Hurricane Michael (83 FR 58522). In implementing this final rule, NMFS considered comments on both the NOA and the proposed rule and they are all addressed in this final rule.

Comment 8: Permit holders with Federal for-hire

permits in the Gulf who also possess Atlantic and Highly Migratory Species (HMS) Federal permits, and primarily or entirely fish in Atlantic waters should report based on requirements in the applicable Atlantic fishery, and not the requirements in the Gulf for-hire reporting program.

Response: The Gulf Council decided to require an owner or operator of any vessel with a Federal Gulf charter vessel/headboat permit to comply with the requirements of the Gulf for-hire reporting program, regardless of where they are fishing, to have a comprehensive program for Gulf-permitted vessels and improve validation and enforcement. By requiring that all Gulf for-hire vessels have location tracking, NMFS can validate a trip was taken and the location of trips, as well as ensure vessel owners and operators are reporting as required.

To prevent duplicate reporting, for-hire owners or operators who are required to report under both the South Atlantic for-hire reporting program and the Gulf for-hire reporting program will be able to comply with the requirements of the South Atlantic program by reporting under the Gulf program, as the requirements of the Gulf for-hire reporting program are more stringent than the South Atlantic. The data required in the fishing report will be the same for the two systems, but the Gulf requires

more frequent reporting, a trip declaration, and a location tracking device permanently attached to the vessel and on at all times.

For-hire owners or operators who are required to report under an Atlantic HMS reporting program will have to report under that program and the Gulf for-hire reporting program. Owners or operators with both Gulf and HMS charter vessel/headboat permits can choose to report through a single reporting system that is approved for both programs, such as eTRIPS, but must report before off-loading fish. Depending on which reporting system is used, initially for-hire vessel owners or operators may have to submit multiple reports to satisfy both HMS and Gulf reporting requirements. However, reporting options should be available upon or shortly after implementation of this rule that allow both reporting requirements to be met with a single report.

Comment 9: There should be an exemption from the Gulf for-hire reporting program requirements for federally permitted vessels that are not being used or only fish in state waters.

Response: If a vessel is not being used but is still federally permitted, the owner or operator can submit a Power-down Exemption Request form to NMFS. If NMFS grants a

power-down exemption, the owner or operator may turn-off the vessel location tracking device for the specified period. However, those vessels may not leave the dock while under the exemption. By tracking vessels, NMFS can validate a trip was taken and the location of trips, as well as ensure vessel owners and operators are reporting as required. Therefore, the Council determined, and NMFS agrees, that there should not be an exemption for federally permitted vessels that fish in state waters only.

Comment 10: Headboats should be able to continue reporting to the SRHS.

Response: NMFS agrees. Gulf for-hire vessel owners or operators who currently report to the SRHS will continue to report through the SRHS software, which will be approved for use in Gulf for-hire reporting program. However, as stated in the proposed rule, these owners or operators will now be required to report before off-loading fish, or within 30 minutes after the fishing trip has ended if no fish were harvested. These owners or operators will also be required to submit a trip declaration before departing for any trip and have a location tracking device permanently attached to the vessel and operational at all times, unless NMFS has approved a VMS power-down exemption. If a new vessel is selected to report to the SRHS, the owner or

operator of that vessel will also use the approved SRHS software consistent with the requirements stated above. NMFS has added language in 50 CFR 622.26(b)(1) and 622.374(b)(1)(i) to make this clear.

Comment 11: It is unclear how the data collected through the Gulf for-hire reporting program will be incorporated into future stock assessments and how it will reduce uncertainty in fisheries management.

Response: In the short term, the information reported through the Gulf for-hire reporting program will be used to validate minimum estimates of for-hire fishing effort. NMFS official estimates of catch and effort from the for-hire component will continue to come from MRIP until the Gulf for-hire reporting program is certified as statistically valid and a transition plan is prepared and executed. NMFS anticipates working with state and Federal partners to validate catch and effort, and design a statistically valid sampling regime in 2021. Also, the Gulf for-hire reporting program includes measures that are expected to help produce data robust enough to be certified through MRIP. These measures include the trip declaration prior to leaving port, and, and the submission of the electronic fishing report before catch is off-loaded from a fishing vessel.

When the Gulf for-hire reporting program replaces

MRIP, NMFS expects the Gulf for-hire reporting program to make it easier to track landings in a timely manner and reduce uncertainty in the data because landings information would be collected from all federally permitted for-hire vessels rather than a subset of vessels. Once the Gulf for-hire data have been collected and analyzed, NMFS will evaluate the information to determine its use in stock assessments.

Comment 12: It is unclear how NMFS will protect data that are being reported, and prevent misuse by staff or public distribution.

Response: NMFS will protect these data in accordance with applicable law. For example, under section 402(b)(1) of the Magnuson-Stevens Act, the data submitted to NMFS under the Gulf For-hire Reporting Amendment shall be confidential and shall not be disclosed, except under the limited circumstances specified in the Magnuson-Stevens Act, such as to Council or Federal employees who are responsible for fishery management. As noted in 50 CFR 600.415(e), anyone "having access to these data are prohibited from unauthorized use or disclosure and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216-100." Additionally, all data reported through the Gulf for-

hire reporting program will be collected through software that meets standards set out by NMFS, including data confidentiality and protection of personal information online, and will be treated as confidential in accordance with NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics. The release of data in aggregate or summary form that does not directly or indirectly disclose the identity or business of any person who submits the information is authorized under section 402(b)(3) of the Magnuson-Stevens Act.

Comment 13: Collecting discard data would be very cumbersome when there are multiple customers on the vessels.

Response: NMFS acknowledges that implementation of this final rule will increase the time that Gulf for-hire vessel owners or operators spend reporting fishing activities. However, vessel owners or operators may choose to input catch and discard data in real-time instead of dockside to reduce potential recall issues. Accurate and reliable fisheries information about catch, effort, and discards is critical to population assessments and management actions.

NMFS understands some for-hire vessel owners or operators will need to adjust their fishing practices to

keep track of fish that are discarded during a busy fishing day. To assist these owners and operators, NMFS and the Gulf Council held outreach workshops to share tools that can help to ensure accurate reports are completed, and NMFS will continue with these outreach efforts.

Comment 14: The existing state data collection programs are superior to the new Gulf for-hire reporting program and better suited to the states' fishermen.

Response: The state data collection programs provide each state with the data necessary to manage some state and Federal fisheries. However, the various state data collection programs are different from each other in numerous ways and some do not collect data on all federally managed species. The Gulf for-hire reporting program will be collecting more detailed data on catch, landings, and fishing effort for all federally managed species in a consistent format throughout the Gulf, and is designed to produce data that NMFS expects will be able to replace the estimates generated by MRIP.

Comment 15: NMFS should not require reporting of economic information. Requiring operators to submit their financial information leads to a lack of buy-in and trust among participants. There are other methods to collect this information such as surveying websites, directly surveying

permit holders, or simply asking the question on a random basis rather than for every trip.

Response: NMFS disagrees that reporting economic information should not be required. With implementation of this final rule, NMFS will require the reporting of five economic values per trip: the charter fee, the fuel price and estimated amount of fuel used, number of paying passengers, and the number of crew for each trip. During the development of the Gulf For-hire Reporting Amendment, NMFS and the Gulf Council discussed data elements to be reported through the Gulf for-hire reporting program, including economic data. The collection of economic information will enhance the Gulf Council and NMFS' ability to monitor and assess the economic effects of fishing regulations and environmental factors. This information will improve the best scientific information available for regulatory decision-making; will increase the accuracy of economic impacts and value estimates specific to the for-hire industry; and will support further value-added research efforts and programs aimed at increasing net benefits to fishery stakeholders and the U.S. economy. Also, this information will help generate estimates of lost revenue when a disaster occurs (e.g., hurricane, oil spill). For example, information collected by the

Individual Fishing Quota programs was instrumental during the 2010 Deepwater Horizon MC 252 oil spill to account for lost revenue. Information reported by individuals and businesses will be kept confidential, as explained in the response to *Comment 12*.

Economic information collected as part of the electronic logbooks will be superior, in terms of quality and usefulness, to information that can be obtained from websites or separate surveys. Data gathered from websites or separate surveys are frequently outdated, often suffer from small sample size issues, and are not linked to trip characteristics. By capturing the variation in these economic data across trips, NMFS can extract information about the value of individual trip characteristics (e.g., the marginal value per fish for a given species). Using available regional averages for fuel prices in particular would fail to capture differences in prices at a more localized level or by fuel grade.

Comment 16: Daily or weekly reporting is frequent enough and trip-level reporting is unnecessary for for-hire data collection. Reporting before fish are off-loaded or within 30 minutes after the trip has ended does not give Gulf for-hire vessel owners or operators enough time to complete their electronic reports and submit them. The time

allowed for transmitting an electronic report should be longer.

Response: NMFS disagrees that trip level reporting is unnecessary and that Gulf for-hire vessel owners or operators will not have enough time to complete and submit their reports. NMFS estimates that it will take about 10 minutes per trip to complete each report. NMFS expects that some of the approved software programs will allow some data to be stored or auto-populated to make it quicker and easier to input data. NMFS also notes that this final rule requires submission of an electronic fishing report within 30 minutes of completing each trip only if no fish are on board, in which case the report would be very short. If fish are on board, the report must be submitted any time before offloading the fish, but not within any specific time period.

NMFS expects these reporting requirements to increase data accuracy, as well as provide more timely information of charter vessel activity. Reporting on a per trip basis is also expected to reduce recall bias. Additionally, NMFS expects this requirement to help improve validation because law enforcement and port agents will be provided the opportunity to inspect and verify landings after the reports are submitted. As explained in the response to

Comment 11, more timely collection of harvest data will make it easier for NMFS to track landings and constrain harvests to the annual catch limits. Harvest overages have the potential to severely impact fish stocks, which may lead to lower catch rates and more stringent harvest limits in the future. In turn, this may reduce revenue and profits for fishing businesses, including industry support businesses, and diminish fishing opportunities for anglers and associated economic value.

Comment 17: NMFS should notify a Gulf for-hire vessel owner or operator that their electronic fishing report was submitted successfully, or if deficiencies exist, how a fishing report can be corrected.

Response: Software approved by NMFS will include an on-screen confirmation after a vessel operator submits a fishing report. Approved software will also send error messages to the on-screen display, noting any issues that need to be fixed before the report can be successfully transmitted. If NMFS determines that information is missing or incomplete after an electronic fishing report is transmitted successfully, NMFS will contact the for-hire vessel owner or operator for additions or corrections to the report.

Comment 18: There are concerns about the ability to

change the estimated time of arrival given during the trip declaration and what the consequences will be if the landing time later changes, e.g., due to an unexpected or emergency situation.

Response: Modifications to the trip declaration will be possible on vessels with satellite-based VMS units. However, there is no requirement for a federally permitted Gulf for-hire vessel to arrive within a certain period around the time estimated at the beginning of the trip. Under any emergency condition, NMFS encourages the vessel operator to return to port without delay.

Comment 19: Describe what recourse NMFS can take against a Gulf for-hire vessel owner or operator who fails to submit a trip declaration form before the beginning of a trip.

Response: If a Gulf for-hire vessel owner or operator does not submit the trip declaration as required by this final rule, NMFS OLE and the NOAA Office of General Counsel will determine the appropriate action consistent with the 2019 Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions. Additional information on the 2019 Policy can be found at <https://www.gc.noaa.gov/enforce-office3.html>.

Comment 20: The increased number of trip declarations

and post-trip reports that law enforcement officers will receive causes concern. The Gulf For-hire Reporting Amendment should be submitted to the Gulf Council's Law Enforcement Technical Committee for their review and input prior to implementation.

Response: The Law Enforcement Technical Committee (Committee) reviewed the Gulf For-hire Reporting Amendment that described the Gulf for-hire reporting program at its October 2016 meeting. During that meeting, the Committee discussed the action in the Gulf For-hire Reporting Amendment that would require charter vessels and headboats to notify NMFS before starting a trip (trip declaration) and to notify NMFS before completing a trip. The Committee did not express any concerns about the trip declaration. However, the Committee did not think notifying NMFS before completing a trip would improve enforcement because many for-hire vessels depart and return at known locations on a schedule known to law enforcement officers, and officers currently engage for-hire vessels while they are at-sea. NMFS notes that the Council decided not to require a notification before completing a trip.

Comment 21: There should be a backup reporting option that allows a Gulf for-hire vessel owner or operator to call in a logbook report or trip declaration, or fill out a

paper logbook in case the electronic device is not online or working properly. There should also be a method to exempt a Gulf for-hire vessel owner or operator from the requirement to have a functioning VMS unit if the unit stops functioning.

Response: NMFS disagrees that there should be a paper or telephone reporting option, except when there are catastrophic conditions, as discussed below. Electronic-based fishery reporting programs have been developed and used successfully in the NMFS Southeast Region and in other regions. NMFS also encourages for-hire permit holders to consider having appropriate backups for equipment.

Further, there are a number of ways that both the trip declaration and logbook can be submitted electronically. The trip declaration can be submitted via an internet browser on a computer or tablet, through a mobile application, or through some VMS units before leaving the dock. Some VMS units may also allow for the submission of fishing reports. Fishing reports may also be submitted via a mobile application or internet browser, for example, by using a tablet or calling information in to someone at the business's office who would then submit the logbook via a personal computer. Thus, a number of electronic options are available if one does not work.

If a vessel's location tracking system is not functioning, the vessel operator will need to contact the hardware vendor to see if the situation can be repaired. If the problem is not remedied, the vessel cannot leave the dock and the operator will need to notify NMFS of the situation. If a fishing trip is underway when the location tracking system ceases functioning, the owner or operator must immediately contact NMFS and follow NMFS' instructions. Such instructions may include, but are not limited to, manually communicating the vessel's positions to a location designated by NMFS, or returning to port until the GPS or VMS is operable. The operator may submit a VMS power-down exemption request to NMFS to provide time needed for equipment repair.

An option for paper-based reporting is only available under catastrophic conditions as determined by the NMFS Regional Administrator, such as after a hurricane. If the NMFS Regional Administrator determines that catastrophic conditions exist, NMFS would announce that to the fleet, and then may accept paper reporting forms, and can modify or waive reporting requirements.

Comment 22: Requiring a location tracking system is unnecessary to provide validation of a vessel trip. The same validation of a vessel trip can be provided using a

pre- and post-trip notification requirement because for-hire vessels only rarely deviate from a fixed operating schedule.

Response: The Gulf Council determined, and NMFS agrees, that requiring each Gulf for-hire vessel be equipped, at a minimum, with archivable vessel location tracking (cellular VMS) best balances the need to collect and report timely information with the need to minimize the cost and time burden to the industry. The vessel location tracking system is an additional mechanism that verifies vessel activity without a report having to be completed by the vessel operators. The vessel location tracking system will allow NMFS to independently determine whether the vessel leaves the dock. This will help validate effort and aid with enforcement of the reporting requirements.

Comment 23: Commenters expressed several concerns regarding the functioning of the location tracking devices, stating: 1) the location tracking system could fail and the vessel would not be able to go fishing or have to return to port, which could cause significant economic and social harm; 2) it is not clear what a vessel owner or operator should do if GPS signal fails during a trip and does not record the position of the vessel; 3) the GPS unit may not function while being stored under roofs, awnings, or in

enclosed buildings; and 4) having the GPS unit on all the time could drain the vessel's battery.

Response: 1) NMFS acknowledges that for-hire businesses may incur financial losses if the location tracking system fails and results in the cancellation of for-hire trips. Therefore, NMFS encourages Gulf for-hire permit holders to consider having an appropriate backup as for other necessary equipment. An outright cancellation would result in an average loss of approximately \$648 in net operating revenue (NOR) (2 percent of estimated average annual net income), based on NMFS' estimate that charter vessels earn approximately \$162 (2018 dollars) NOR per angler per trip and assumes an average of four anglers per trip. For headboats, NMFS estimates that a cancellation would result in an average loss of approximately \$1,749 in NOR (2 percent of estimated average annual net income), based on estimated earnings of approximately \$53 (2018 dollars) in NOR per angler per trip, and assuming an average of 33 anglers per trip. These values are rough estimates only. Individual for-hire businesses may earn more or less per trip depending on the prices they charge, variable trip costs, and their number of paying passengers. Additionally, some for-hire vessels may take multiple trips in any given day, increasing the potential cost of system

malfunctions. Unexpected cancellations or early termination of trips may negatively affect customer satisfaction and future booking rates for the affected for-hire businesses, leading to an additional loss in economic value. It is difficult to estimate the failure rate of the location tracking devices or resultant economic effects with available data. However, the failure rate of satellite VMS units in the commercial reef fish fishery is estimated to be less than one percent of commercial trips.

2) If the GPS or VMS unit fails during a trip, the owner or operator must immediately contact NMFS and follow NMFS' instructions. Such instructions may include, but are not limited to, manually communicating the vessel's positions to a location designated by NMFS, or returning to port until the GPS or VMS is operable. NMFS will also provide instructions on how to make any necessary correction to the data for that trip.

3) NMFS agrees that satellite-based VMS units may be disrupted by structures but is testing the ability of a number of cellular-based VMS units to transmit under different conditions. In general, these cellular-based VMS units will work anywhere a cellular phone would work, including in buildings. NMFS encourages permit holders to choose the appropriate device for their situation.

4) NMFS does not expect that a continually operating VMS unit will drain the vessel's battery. VMS units have been required for vessels with Federal commercial permits for Gulf reef fish since 2006. Some of those vessels are relatively small and have not reported any problems with batteries draining due to the VMS units being on all the time. The VMS units vary in amperage draw, but the units generally draw less than 1,000 milliamperes while active. NMFS may approve solar-powered cellular VMS units that can store power lasting for 1 to 2 weeks. Furthermore, some units may allow a Gulf for-hire vessel owner or operator to use a 4-hour position reporting option when in-port, which would further reduce battery usage.

Comment 24: Explain the costs and monthly fees for the location tracking devices.

Response: NMFS is currently testing six cellular-based units that range in purchase price from \$150 to \$800. The monthly service fee for these units range from \$10 to \$40 per month. The unit vendor determines these costs. The NMFS VMS re-imbusement program is available to fishermen for the purchase of approved satellite-based VMS units, and NMFS OLE is undergoing rulemaking that would also make reimbursement available for cellular-based VMS units. Satellite-based VMS that are currently approved for the

commercial Gulf reef fish program cost approximately \$3,000 per unit. Monthly service fees, which NMFS expects to range from approximately \$40 to \$75, will be the responsibility of the fisherman.

Comment 25: The monthly service fee for VMS units will be too high. A 2012 study from Louisiana State University found that smaller operators owe substantial sums on the loans on their vessels. Not only does the owner or operator's net income need to be considered but also their cash flow. These operators cannot afford to decrease their net incomes or cash flow for the sake of gathering information. The logistical and financial burden that the regulations would put on vessel owners is concerning.

Response: NMFS understands there will be additional costs to vessel operators to pay for data collection. NMFS also acknowledges that charter and headboat businesses may have substantial loan payments and other operating costs, such as insurance, overhead, maintenance, and trip costs (e.g., fuel, labor, supplies, etc.), that affect both their net income and cash flow. NMFS cannot reference the study to which the commenter referred to, because no additional detail about the study or source was provided. According to the best scientific information available, which includes a 2012 study published by the Center for Natural Resource

Economics and Policy, Louisiana State University, average monthly cash outflows (fixed and variable costs) for charter and headboat businesses are estimated to be approximately \$5,171 (2018 dollars) and \$15,758, respectively. In comparison to existing costs, NMFS believes the ongoing monthly fee (estimated at \$10 to \$40 per month) would not materially alter cash flows, profits, or the solvency of for-hire businesses.

NMFS expects that reporting on a trip level basis before off-loading fish will result in more effective and timely management, which is a potential benefit that will outweigh the costs that would be incurred by the industry and NMFS.

Comment 26: Installing a vessel location tracking system and an electronic reporting device on smaller vessels may be impractical or unfeasible.

Response: The results of pilot testing of VMS units on charter vessels as small as 30 feet in length indicate that the units and antennae can be placed successfully. Also, VMS units have been required for vessels with Federal commercial permits for Gulf reef fish since 2006. Some of those Gulf reef fish vessels are relatively small and fishermen have not found the systems to be impractical or unfeasible.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with the Gulf For-hire Reporting Amendment, the respective FMPs, the Magnuson-Stevens Act, and other applicable laws.

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 final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. 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 preamble.

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

Public comments relating to socio-economic implications and potential impacts on small businesses are addressed in the responses to *Comments 15, 16, and 23* through 25 in the **Comments and Responses** section of this final rule. No changes to this final rule were made in response to these public comments. No comments were received from the Office of Advocacy for the Small Business

Administration (SBA).

NMFS agrees that the Gulf Council's choice of preferred alternatives will best achieve its objectives for the Gulf For-hire Reporting Amendment 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 vessels with a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species. The analysis presented in this final rule has been updated to incorporate new data and information that became available after the proposed rule published. In 2018, there were 1,368 vessels with at least one valid (non-expired) or renewable Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species, including historical captain permits. These Gulf charter vessel/headboat permits are limited access permits. More than one type of Federal charter vessel/headboat permit has been issued to most for-hire vessels. Among the 1,368 vessels with at least one Gulf charter vessel/headboat permit, 1,260 for-hire vessels had Federal permits for both Gulf reef fish and Gulf CMP species, 49 had only a Gulf reef fish permit, and 59 had only a Gulf CMP permit. Additionally, 172 of these vessels had a Gulf commercial reef fish permit. Finally, 365 of the vessels

with at least one Gulf charter vessel/headboat permit had at least one charter vessel/headboat permit for Atlantic CMP species, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper species.

Although the application for a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a charter vessel or a headboat, and vessels may operate in both capacities on different trips. However, if a for-hire vessel meets the selection criteria used by the SRHS and is selected to report by the Science and Research Director (SRD) of the NMFS SEFSC, it is considered to operate primarily as a headboat and is required to submit catch and effort information to the SRHS. As of June 2018, there were 70 Gulf headboats that participate in the SRHS. As a result, the estimated 1,368 for-hire vessels that will be affected by this final rule are expected to consist of approximately 1,298 charter vessels and 70 headboats. The average charter vessel operating in the Gulf is estimated to receive approximately \$88,000 (2018 dollars) in gross revenue and \$26,000 in net income (gross revenue minus variable and fixed costs) annually. The average headboat is estimated to receive approximately \$267,000 (2018 dollars)

in gross revenue and \$78,000 in net income annually.

On July 18, 2019, the 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 interim final rule changes the small business size standard from \$7.5 million in annual gross receipts to \$8 million. See 84 Fed. Reg. at 34273 (adjusting NAICS 487210 (Scenic and Sightseeing Transportation, Water) and 713930 (Marinas)).

Pursuant to the Regulatory Flexibility Act, 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. NMFS has determined that the new size standards do not affect analyses prepared for this action.

This final rule requires a Gulf federally permitted for-hire vessel owner or operator to submit an electronic fishing report to NMFS for each trip via NMFS-approved

hardware and software, prior to offloading fish from the vessel. NMFS does not expect the submission of an electronic fishing report to require special professional skills. The use of computers, the internet, smartphones, or other forms of electronic connections and communication is commonplace in the business environment. All headboat operators have been required to submit electronic fishing reports since January 2014 and are expected to be proficient with electronic reporting. As a result, NMFS expects that all affected headboat businesses have existing staff with the appropriate skills and experience needed to comply with this final rule. However, charter vessel operators have not been subject to mandatory electronic reporting of fishing activity and, therefore, may lack experience reporting such, beyond the collection and compilation of similar information for their own business management purposes. As a result, although NMFS does not expect the information required to be reported to be complex or substantially beyond that necessary to meet the record-keeping needs of normal fishing business operational purposes, these operators may need some time to become proficient in the reporting requirements. The hiring of new employees with specialized skills, however, should not be necessary.

While no conflicting Federal rules have been identified, an estimated 365 vessels have Federal permits to harvest species managed by both the Gulf Council and the South Atlantic Council. Among these 365 vessels, up to 70 may primarily operate as headboats in the Gulf. NMFS has published a final rule to require electronic reporting for owners and operators of federally permitted charter vessels in the South Atlantic and modify the reporting deadline for owners and operators of headboats (85 FR 10331, February 24, 2020). To reduce redundant reporting, the South Atlantic Council will accept, as fulfillment of the requirements of its for-hire reporting program, reports submitted under other programs, if the reporting requirements in those other programs are more stringent than those of the South Atlantic for-hire reporting program and meet the core data elements identified by the South Atlantic Council. Because NMFS expects the reporting requirements under this final rule to meet these criteria, an owner or operator of a for-hire vessel that has both Gulf and South Atlantic charter vessel/headboat permits and that is required to submit electronic reports under this final rule will not be required to also report under the South Atlantic Council's for-hire reporting program. However, Gulf for-hire vessel owners or operators may also possess one or more Federal

for-hire permits to harvest species managed by NMFS or other regional fishery management councils. It is unknown how many vessels currently fit this description. However, the number is expected to be small. The owner or operator of a Gulf for-hire vessel with Federal for-hire permits in other regions will also have to comply with any applicable reporting requirements under those permits.

NMFS expects this final rule will directly affect an estimated 1,368 Gulf for-hire vessel owners or operators. Because all entities expected to be affected by this final rule are small entities, NMFS has determined that this final rule will affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

This final rule will require a Gulf federally permitted for-hire vessel owner or operator to submit a fishing report to NMFS for each trip via electronic reporting. These submissions will need to be made prior to offloading fish using NMFS-approved hardware and software. If no fish are retained on a for-hire trip, the fishing report will have to be submitted within 30 minutes of arriving at the dock, following the conclusion of the trip. Because the majority of charter and headboat trips are

half-day trips, this final rule may require multiple submissions in a single day. Submission of an electronic report is estimated to take approximately 10 minutes per trip, which is approximately equivalent to the time burden of the current headboat reporting requirements. However, this final rule provides less flexibility to headboat owners and operators in terms of how and when to allocate labor resources for reporting. NMFS expects that the time and labor associated with filing these fishing reports will be borne by existing vessel personnel and will not represent the need for additional staff. However, it may require that vessel personnel, as opposed to onshore support staff, complete the fishing reports. There is an opportunity cost associated with redirecting effort from normal trip operations to the fishing report submission process. Fishing reports could be completed during transit back to port or within normal business activities, once the vessel is tied up to the dock. NMFS expects each business to adopt the strategy most efficient to its staffing and operational characteristics, thus minimizing any resultant implicit or explicit costs. These costs cannot be estimated with available data.

Because electronic reporting has been a requirement for headboat owners and operators for the past 6 years, the

labor and costs associated with reporting have been internalized within each headboat business. For charter vessel owners, if treated as a new and distinct explicit labor cost, the annual reporting burden is estimated to cost approximately \$340,000 to \$1.14 million (2018 dollars) in total, or \$262 to \$878 per charter vessel on average. These cost estimates have been updated since the proposed rule published to correct for an inadvertent computational error and to reflect more recent permit counts. The new values do not alter any of NMFS' previous conclusions contained in the proposed rule. These are upper bound cost estimates and are equivalent to 1 percent or less of average annual charter vessel gross revenue, but up to 3.4 percent of average annual charter vessel net income. However, as previously stated, the reporting burden will likely be absorbed by existing vessel personnel, and therefore, labor costs will likely be less. Some of the effort to complete the fishing reports may be redirected from current operational activities, such as normal trip record-keeping that a vessel completes for standard business purposes. The information that is required under electronic reporting will be accessible to the reporting vessel. Therefore, in addition to satisfying reporting obligations, it may also support business operations. In

effect, the for-hire reporting program may serve as the record repository for this component of a vessel owner or operator's business records. In addition to the need to maintain records on the number of trips and passengers a vessel takes, the services for-hire vessels sell require reasonable levels of fishing success. Thus, records of what species a vessel catches, where they are caught, the time of the year they are caught, and how these change over time are vital to managing a successful business. As a result, the information that is required under the Gulf for-hire reporting program should be substantially duplicative of information already recorded by these businesses and should augment their ability to monitor and adjust their fishing practices, supporting more successful operations.

Additionally, this final rule requires that, prior to departing for any trip, a Gulf for-hire vessel owner or operator notify NMFS, report the vessel identification number, and declare the type of trip (e.g., for-hire or other trip). When departing on a for-hire trip they will also need to report the expected return time, date, and landing location. Trip declarations may be submitted using the same NMFS-approved hardware and software that is required for submitting fishing reports. Although the trip declaration requirement represents an additional time

burden on for-hire vessel operators, the opportunity cost of complying with such is expected to be low, because of the limited amount of information that needs to be submitted to NMFS. NMFS estimates that a trip declaration will require 2 minutes to complete.

Finally, this final rule will require affected vessel owners or operators to use NMFS-approved hardware and software with GPS location capabilities that, at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS. NMFS estimates the time burden to submit a trip report at 10 minutes per trip. However, transmission of vessel positions will be automatic and not require any additional time burden by the vessel operator. The cellular or satellite VMS will need to be permanently affixed to the vessel and have uninterrupted power, unless the owner or operator applies for and is granted an exemption to power-down a cellular or satellite VMS unit.

In addition to the total burden on vessel operators' time, estimated at up to 12 minutes per trip, as discussed earlier, examples of costs borne by the for-hire fleet may include the purchase and installation costs of the approved hardware units and associated service charges. In the proposed rule, NMFS presented cost estimates to the for-hire industry for several general options including a

tablet-based system, a handheld GPS, and a smartphone-based system, where the smartphone is hardwired to a vessel's GPS. These cost estimates have been updated since the proposed rule published and are now based on vendor quotes for six different cellular-based location tracking devices selected for testing by NMFS. If a vessel does not already have an approved type of hardware (e.g., an approved VMS unit), the estimated startup costs for each affected vessel will range from \$150 to \$800 in the year of implementation. At the top end of this range, these costs are equivalent to 1 percent of average annual headboat net income and 3.1 percent of average annual charter vessel net income. The recurring monthly cost per vessel to use the location tracking device is estimated to be \$10 to \$40. On an annual basis, these reoccurring charges will be equivalent to up to 0.6 percent of average annual headboat net income and 1.8 percent of average annual charter vessel net income. Some of the cellular-based location tracking devices will allow users to enter and transmit electronic fishing reports in addition to recording and transmitting GPS coordinates. Other devices will only be capable of recording and transmitting GPS coordinates. Therefore, depending on the location tracking device selected for use, a separate mobile device, such as a smartphone, and

wireless service plan may be required to submit fishing reports. Some vessel owners and operators may be more or less affected than others by this final rule depending on their existing technology assets and data service plans at the time of implementation, the location tracking device that they select, and the availability of wireless service coverage at their port of landing. For the affected vessels that currently do not have any wireless carrier contract and who select a location tracking device that does not support fishing report submission, the estimated additional cost for an unlimited data plan will range from approximately \$60 to \$85 per month. This is an upper bound estimate based on advertised rates from four major wireless service providers in 2019 and cheaper plans may be available. A basic smartphone may be purchased for as low as \$100 and some providers bundle free phones with their service plans. NMFS assumes that most owners or operators of for-hire vessels already have a basic smartphone and data plan in order to meet the needs of their businesses. NMFS also assumes that owners and operators of for-hire vessels will choose a combination of technology that best satisfies their profit maximization strategies, while meeting the requirements of this final rule.

The following discussion describes the alternatives that were not selected as preferred by the Gulf Council.

Four alternatives were considered for the action to modify the frequency and mechanism of data reporting for charter vessels. The first alternative, the no-action alternative, would retain current reporting requirements for federally permitted charter vessels. This would not be expected to alter for-hire business costs 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 Gulf Council because it would forgo important biological, economic, and social benefits from improved management as afforded by more timely and accurate estimates of effort, landings, and discards.

The second alternative would require the owner or operator of a federally permitted charter vessel to submit fishing reports to the SRD weekly, or at intervals shorter than a week if notified by the SRD, via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by Tuesday following each reporting week. Although this alternative could result in additional implicit or explicit costs to affected vessels relative to the *status quo*, it would be less burdensome than this final rule, because charter

vessels would have a longer period of time to report and more flexibility in terms of when and how to report. This alternative would be less likely than the preferred alternative to interfere with normal operations during charter trips and would allow for onshore support staff assistance, as well potentially cheaper data transmission methods (e.g., via a personal computer or laptop connected to the internet). This alternative was not selected by the Gulf Council because it would result in less timely data, as well as potentially less accurate data, due to a lack of dockside validation and greater potential for recall bias.

The third alternative would require the owner or operator of a federally permitted charter vessel to submit fishing reports to the SRD daily via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by noon (local time) of the following day. The costs of this alternative to affected small entities, in terms of magnitude, would likely fall between those of the second alternative and those of this final rule. There would be less flexibility than under the second alternative in terms of when reports are filed. However, it would still be possible to utilize onshore support staff and technology resources to meet the requirements. Even though the data would be timelier under

daily reporting than weekly reporting, and recall bias would likely be reduced, the Gulf Council did not select this alternative because the lack of dockside validation would still be a major drawback in ensuring high quality and accurate data.

Four alternatives were considered for the action to modify the frequency and mechanism of data reporting for headboats. The first alternative, the no-action alternative, would retain current reporting requirements for federally permitted headboats. This would not be expected to alter for-hire business costs 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 Gulf Council because it would forgo important biological, economic, and social benefits from improved management as afforded by more timely and accurate estimates of effort, landings, and discards.

The second alternative would require the owner or operator of a federally permitted headboat to submit fishing reports to the SRD weekly, or at intervals shorter than a week if notified by the SRD, via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by Tuesday following each reporting week, which is 5 days sooner than

under the *status quo*. Although this alternative could result in additional implicit or explicit costs to affected vessels relative to the *status quo*, it would be less burdensome than this final rule, because headboats would have a longer period of time to report and more flexibility in terms of when and how to report. This alternative would be less likely than the preferred alternative to interfere with normal operations during headboat trips and would allow for onshore support staff assistance, as well potentially cheaper data transmission methods (e.g., via a personal computer or laptop connected to the internet). This alternative was not selected by the Council because it would result in less timely data, as well as potentially less accurate data, due to a lack of dockside validation and greater potential for recall bias.

The third alternative would require the owner or operator of a federally permitted headboat to submit fishing reports to the SRD daily via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by noon (local time) of the following day. The costs of this alternative to affected small entities, in terms of magnitude, would likely fall between those of the second alternative and those of this final rule. There would be less flexibility

than under the second alternative in terms of when reports are filed. However, it would still be possible to utilize onshore support staff and technology resources to meet the requirements. Even though the data would be timelier under daily reporting than weekly reporting and recall bias would likely be lower, the Council did not select this alternative because the lack of dockside validation would still be a major drawback in ensuring high quality and accurate data.

Three alternatives were considered for the action to implement trip declaration requirements for federally permitted charter vessels and headboats. The first alternative, the no-action alternative, would maintain current reporting requirements for for-hire vessels and would not require trip declarations or landing notifications. Therefore, it would not be expected to result in any direct economic effects on any small entities. The Gulf Council did not select the first alternative because it would not satisfy the data needs required for dockside validation and would not aid in enforcement. The second alternative and two options were selected as preferred, and require that both federally permitted charter vessels and headboats submit trip declarations to NMFS prior to departing on any trip. The

third alternative would require the owner or operator of a federally permitted charter vessel or headboat to provide a landing notification and submit fishing reports via NMFS-approved hardware and software, prior to arriving at the dock at the end of each for-hire trip. The third alternative contained two options. The first and second options would require federally permitted charter vessels and headboats, respectively, to comply with the landing notification requirement. The Gulf Council did not select the third alternative because requiring vessels to provide a landing notification and submit fishing reports prior to arriving at the dock is not necessary with the preferred reporting alternatives, which require fishing reports be submitted at the end of each trip.

Four alternatives were considered for the action to implement hardware and software requirements for reporting. The first alternative, the no-action alternative, would not change current reporting requirements for for-hire vessels. Therefore, it would not be expected to result in any direct economic effects on any small entities. This alternative was not selected by the Gulf Council because there is currently no reporting platform for charter vessels, and therefore, no means by which charter vessels would be able to submit electronic reports. Additionally, this

alternative would not allow for the same level of trip validation, because it would not require GPS unit hardware to be permanently affixed to the vessel.

The second alternative and two options were selected as preferred and require charter vessel and headboat owners or operators to submit fishing reports via NMFS-approved hardware and software. Under this preferred alternative and options, a for-hire vessel owner or operator is also required to use NMFS-approved hardware and software with GPS location capabilities that, at a minimum, archive vessel position data during a trip. The cellular or satellite VMS needs to be permanently affixed to the vessel.

The third alternative would require for-hire vessel owners or operators to submit fishing reports via NMFS-approved hardware and software with GPS location capabilities that, at a minimum, provide real-time vessel position data to NMFS. The cellular or satellite VMS would need to be permanently affixed to the vessel. The third alternative contained two options. The first and second options would require federally permitted charter vessels and headboats, respectively, to comply with the hardware and software requirements of the third alternative. The startup costs, as presented in the proposed rule, for each

affected for-hire vessel under the third alternative and two options were estimated to be approximately \$300 in the year of implementation. The recurring annual service cost associated with the transmission of real-time location data in subsequent years was estimated to be approximately \$200 per vessel. Since the proposed rule published, NMFS has received several vendor price quotes and has updated the technology cost estimates associated with this final rule. Therefore, NMFS cannot make a direct comparison with the hypothetical cost estimates of this alternative. In the proposed rule, the recurring costs for this alternative were estimated to be higher than for the preferred alternative. If comparable cost estimates were available, NMFS assumes the third alternative, which would require real-time transmission of GPS location coordinates (satellite VMS), would still be more expensive than the archival GPS units (cellular VMS) allowed by this final rule. As discussed earlier, depending on the device that is used for location tracking, a separate mobile device, such as a smartphone, and wireless service plan would potentially be required to submit electronic fishing reports as well. This could result in an additional expense in the range of \$60 to \$85 per month. The third alternative

was not selected by the Gulf Council because it was expected to result in higher costs to industry.

The fourth alternative would require for-hire vessel owners or operators to submit fishing reports via NMFS-approved hardware and software that provide real-time vessel position data to NMFS via satellite VMS. The antenna and junction box would need to be permanently affixed to the vessel. The fourth alternative contained two options. The first and second options would require federally permitted charter vessels and headboats, respectively, to comply with the hardware and software requirements of the fourth alternative. The estimated startup costs for each affected vessel to purchase, install, and operate a satellite VMS unit would range from \$2,500 to \$4,400 in the year of implementation. This would be equivalent to approximately 10 to 17 percent of average annual charter vessel net income and 3 to 6 percent of average annual headboat net income. The recurring annual cost associated with maintaining and operating satellite VMS hardware and software in subsequent years was estimated to be approximately \$750 per vessel. The fourth alternative was not selected by the Council, because the estimated startup and recurring costs to the industry were much higher than those of the preferred alternative.

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.

This final rule contains collection-of-information requirements that have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA), temporary Control Number 0648-0770. NMFS will merge the collection-of-information requirement implemented by this final rule with the existing, approved information collection under OMB Control Number 0648-0016, Southeast Region Logbook Family of Forms. This final rule requires owners or operators of vessels with Federal charter vessel/headboat permits for Gulf reef fish or Gulf CMP species, and when operating as such, to submit an electronic fishing report to NMFS for each trip

via NMFS-approved hardware and software, prior to offloading fish from the vessel. Public reporting burden for these requirements are estimated to average 2 minutes to complete the trip declaration and 10 minutes per fishing report. NMFS estimates a VMS power-down exemption request will require an average of 5 minutes to complete per occurrence. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and compiling, reviewing, and submitting the information to be collected.

Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to 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. All currently approved collections of information may be viewed at http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 622

Atlantic, Charter vessel, Cobia, Fisheries, Fishing, Gulf of Mexico, Headboat, King mackerel, Recordkeeping and reporting, Reef fish, South Atlantic, Spanish mackerel, Vessel monitoring systems.

Dated: July 10, 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 § 622.20, revise paragraph (b) (1) (ii) (A) (2) to read as follows:

§ 622.20 Permits and endorsements.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) * * *

(2) Charter vessel and headboat recordkeeping and reporting requirements specified in § 622.26(b);

* * * * *

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

§ 622.26 Recordkeeping and reporting.

* * * * *

(b) *Charter vessel/headboat owners and operators--*(1) *General reporting requirement.* The owner or operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), and whose vessel is operating as a charter vessel or headboat, regardless of fishing location, must submit an electronic fishing report of all fish harvested and discarded, and any other information requested by the SRD for each trip within the time period specified in paragraph (b)(2) of this section. The electronic fishing report must be submitted to the SRD via NMFS approved hardware and software, as posted on the NMFS Southeast Region website. If selected by the SRD, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued must report via the NMFS approved software for the Southeast Region Headboat Survey.

(2) *Reporting deadlines.* Completed electronic fishing reports required by paragraph (b)(1) of this section must be submitted to the SRD prior to removing any fish from the

vessel. If no fish were retained by any person on the vessel during a trip, the completed electronic fishing report must be submitted to the SRD within 30 minutes of the completion of the trip, e.g., arrival at the dock.

(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) 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**, and other appropriate means, such as fishery bulletins or NOAA weather radio, and will authorize the affected participants' use of paper forms 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) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received

within the applicable time specified in paragraph (b) (2) of this section is delinquent. A delinquent report automatically results in the owner and operator of a charter vessel or 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.

(5) *Hardware and software requirements for vessel location tracking.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued must ensure that the vessel is equipped with NMFS-approved hardware and software with a minimum capability of archiving GPS locations as posted on the NMFS Southeast Region website. The vessel location tracking device can be either a cellular or satellite VMS unit, and must be permanently affixed to the vessel and have uninterrupted operation.

(i) *Use of a NMFS-approved satellite VMS.* An owner or

operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, and who uses a NMFS-approved satellite VMS to comply with the reporting and recordkeeping requirements of this section, must adhere to the VMS requirements specified in § 622.28, except for the trip declaration requirements specified in § 622.28(e). For trip declaration requirements, see paragraph (b)(6) of this section.

(ii) *Use of NMFS-approved cellular VMS.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, and who uses NMFS-approved cellular VMS to comply with the reporting and recordkeeping requirements of this section must comply with the following--

(A) *Cellular VMS unit operation and replacement.*

Ensure that such vessel has an operating cellular VMS unit approved by NMFS on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power-down exemption specified in paragraph (b)(5)(ii)(D) of this section. An operating cellular VMS unit includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS maintains a current list of approved cellular VMS

units and communication providers, which is available at <https://www.fisheries.noaa.gov/southeast/about-us/sustainable-fisheries-division-gulf-mexico-branch>. If NMFS OLE removes a cellular VMS unit from the approved list, a vessel owner who purchased and installed such a unit prior to its removal from the approved list will still comply with the requirement to have an approved unit, unless otherwise notified by NMFS OLE. At the end of a cellular VMS unit's service life, it must be replaced with a currently approved unit.

(B) *Hourly position reporting requirement.* An owner or operator of a vessel using a NMFS-approved cellular VMS unit as specified in paragraph (b) (5) (ii) (A) of this section must ensure that the required cellular VMS unit archives the vessel's accurate position at least once per hour, 24 hours a day, every day of the year, unless exempted from this requirement under paragraphs (b) (5) (ii) (C) or (D) of this section.

(C) *In-port exemption.* While in port, an owner or operator of a vessel with a NMFS-approved cellular VMS unit configured with the 4-hour position reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly position reporting requirement specified in paragraph (b) (5) (ii) (B) of this section. Once the vessel is

no longer in port, the hourly position reporting requirement specified in paragraph (b) (5) (ii) (B) of this section applies. For the purposes of this section, "in port" means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(D) *Power-down exemption.* An owner or operator of a vessel subject to the requirement to have a cellular VMS unit operating at all times as specified in paragraph (b) (5) (ii) (A) of this section can be exempted from that requirement and may power down the required cellular VMS unit if--

(1) The vessel will be continuously out of the water or in port, as defined in paragraph (b) (5) (ii) (C) of this section, for more than 72 consecutive hours;

(2) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS. The letter of exemption must be maintained on board the vessel and remains valid for the period specified in the letter for all subsequent power-down requests conducted for the vessel consistent with the provisions of paragraphs (b) (5) (ii) (D) (3) and (4) of this section.

(3) Prior to each power down, the owner or operator of the vessel files a report using a NMFS-approved form that

includes the name of the person filing the report, vessel name, U.S. Coast Guard vessel documentation number or state vessel registration number, charter vessel/headboat reef fish permit number, vessel port location during cellular VMS power down, estimated duration of the power-down exemption, and reason for power down; and

(4) Prior to powering down the cellular VMS unit, the owner or operator of the vessel receives a confirmation from NMFS that the information was successfully delivered.

(E) *Installation and activation of a cellular VMS unit.* Only a cellular VMS unit that has been approved by NMFS for the Gulf reef fish fishery may be used, and the cellular VMS unit must be installed by a qualified marine electrician. When installing and activating or when reinstalling and reactivating the NMFS-approved cellular VMS unit, the vessel owner or operator must--

(1) Follow procedures indicated on the VMS installation and activation form, which is available from NMFS; and

(2) Submit a completed and signed VMS installation and activation form to NMFS as specified on the form.

(F) *Interference with the cellular VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the cellular VMS, or attempt any of

the same.

(G) *Interruption of operation of the cellular VMS.* If a vessel's GPS is not operating properly, the vessel owner or operator must immediately contact NMFS and follow NMFS' instructions. If notified by NMFS that a vessel's cellular VMS is not operating properly, the vessel owner or operator must follow NMFS' instructions. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions, or returning to port until the cellular VMS is operable.

(iii) *Access to position data.* As a condition of authorized fishing for or possession of Gulf reef fish subject to the reporting and recordkeeping requirements in this section, a vessel owner or operator subject to the hardware and software requirements in this section must allow NMFS, the U.S. Coast Guard, and their authorized officers and designees access to the vessel's position data obtained from the cellular VMS.

(6) *Trip declaration requirements.* For purposes of this paragraph (b)(6), a trip begins anytime the vessel departs from a dock, berth, beach, seawall, or ramp, and terminates with return to a dock, berth, beach, seawall, or ramp, regardless of the duration or purpose, including non-

fishing activities. Prior to departure for each trip, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued must notify NMFS and report the type of trip, the U.S. Coast Guard vessel documentation number or state vessel registration number, and whether the vessel will be operating as a charter vessel or headboat, or is departing on another type of trip, such as a commercial trip. If the vessel will be operating as a charter vessel or headboat during the trip, the owner or operator must also report the expected trip completion date, time, and landing location.

* * * * *

4. In § 622.373, revise paragraph (c)(1) to read as follows:

§ 622.373 Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.

* * * * *

(c) * * *

(1) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish is contingent upon compliance with the recordkeeping and reporting requirements specified in § 622.374(b).

* * * * *

5. In § 622.374, revise paragraph (b) to read as

follows:

§ 622.374 Recordkeeping and reporting.

* * * * *

(b) *Charter vessel/headboat owners and operators--*(1) *General reporting requirement--*(i) *Gulf of Mexico.* The owner or operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), and whose vessel is operating as a charter vessel or headboat, regardless of fishing location, must submit an electronic fishing report of all fish harvested and discarded, and any other information requested by the SRD for each trip within the time period specified in paragraph (b)(2)(i) of this section. An electronic fishing report must be submitted to the SRD via NMFS approved hardware and software, as specified in paragraph (b)(5)(i) of this section. If selected by the SRD, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued must report via the NMFS approved software for the Southeast Region Headboat Survey.

(ii) *Atlantic--*(A) *Charter vessels.* The owner or operator of a charter vessel for which a charter vessel/headboat permit for Atlantic coastal migratory

pelagic fish has been issued, as required under § 622.370(b)(1), and whose vessel is operating as a charter vessel, must record all fish harvested and discarded, and any other information requested by the SRD for each trip, and submit an electronic fishing report within the time period specified in paragraph (b)(2)(ii) of this section. The electronic fishing report must be submitted to the SRD via NMFS-approved hardware and software, as specified in paragraph (b)(5) of this section. If the owner or operator subject to this paragraph (b)(1)(ii)(A) has been issued a Federal permit that requires more restrictive reporting requirements, as determined by NMFS and posted on the NMFS Southeast Region website, reporting under those more restrictive regulations will meet the requirements of this paragraph (b)(1)(ii)(A).

(B) *Headboats*. The owner or operator of a headboat for which a charter vessel/headboat permit for Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), and whose vessel is operating as a headboat in state or Federal waters, must record all fish harvested and discarded, and any other information requested by the SRD for each trip in state or Federal waters, and submit an electronic fishing report within the time period specified in paragraph (b)(2)(ii) of this section. The electronic

fishing report must be submitted to the SRD via NMFS-approved hardware and software, as specified in paragraph (b) (5) of this section.

(2) *Reporting deadlines*--(i) *Gulf of Mexico*. Completed electronic fishing reports required by paragraph (b) (1) (i) of this section must be submitted to the SRD prior to removing any fish from the vessel. If no fish were retained by any person on the vessel during a trip, the completed electronic fishing report must be submitted to the SRD within 30 minutes of the completion of the trip, e.g., arrival at the dock.

(ii) *Atlantic*. Completed electronic fishing reports required by paragraph (b) (1) (ii) of this section must be submitted to the SRD by the Tuesday following each previous reporting week of Monday through Sunday, or at shorter intervals if notified by the SRD. If no fishing activity as a charter vessel or headboat occurred during a reporting week, an electronic report so stating must be submitted by the Tuesday following that reporting week, or at a shorter interval if notified by the SRD.

(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 paragraphs (b) (1) (i) and (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**, and other appropriate means, such as fishery bulletins or NOAA weather radio, 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 paragraphs (b) (1) (i) and (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 applicable time specified in paragraphs (b) (2) (i) or (ii) of this section is delinquent. A delinquent report automatically results in the owner and operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf or Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370 (b) (1), 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.

(5) *Hardware and software requirements for electronic reporting--(i) Owner or operator applicability.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf or Atlantic coastal migratory pelagic fish has been issued must submit electronic reports using NMFS-approved hardware and software as posted on the NMFS Southeast Region website.

(ii) *Vessel applicability.* For a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, the NMFS-approved hardware and software must have a minimum capability of archiving GPS locations, and the cellular or satellite VMS must be permanently affixed to the vessel and have uninterrupted operation.

(iii) *Use of a NMFS-approved satellite VMS.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been

issued, and who uses a NMFS-approved satellite VMS to comply with the reporting and recordkeeping requirements of this section, must adhere to the VMS requirements for the Gulf reef fish fishery specified in § 622.28, except for the trip declaration requirements specified in § 622.28(e). For trip declaration requirements, see paragraph (b)(6) of this section.

(iv) *Use of NMFS-approved cellular VMS.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, and who uses NMFS-approved cellular VMS to comply with reporting and recordkeeping requirements of this section must comply with the following--

(A) *Cellular VMS unit operation and replacement.* Ensure that such vessel has an operating cellular VMS unit approved by NMFS on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power-down exemption specified in paragraph (b)(5)(iv)(D) of this section. An operating cellular VMS unit includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS maintains a current list of approved cellular VMS units and communication providers, which is available at

<https://www.fisheries.noaa.gov/southeast/about-us/sustainable-fisheries-division-gulf-mexico-branch>. If NMFS OLE removes a cellular VMS unit from the approved list, a vessel owner who purchased and installed such a unit prior to its removal from the approved list will still comply with the requirement to have an approved unit, unless otherwise notified by NMFS. At the end of a cellular VMS unit's service life, it must be replaced with a currently approved unit.

(B) *Hourly position reporting requirement.* An owner or operator of a vessel using a NMFS-approved cellular VMS unit as specified in paragraph (b) (5) (iv) (A) of this section must ensure that the required cellular VMS unit archives the vessel's accurate position at least once per hour, 24 hours a day, every day of the year, unless exempted from this requirement under paragraphs (b) (5) (iv) (C) or (D) of this section.

(C) *In-port exemption.* While in port, an owner or operator of a vessel with a NMFS-approved cellular VMS unit configured with the 4-hour position reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly position reporting requirement specified in paragraph (b) (5) (iv) (B) of this section. Once the vessel is no longer in port, the hourly position reporting

requirement specified in paragraph (b) (5) (iv) (B) of this section applies. For the purposes of this section, "in port" means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(D) *Power-down exemption.* An owner or operator of a vessel subject to the requirement to have a cellular VMS unit operating at all times as specified in paragraph (b) (5) (iv) (A) of this section can be exempted from that requirement and may power down the required cellular VMS unit if--

(1) The vessel will be continuously out of the water or in port, as defined in paragraph (b) (5) (iv) (C) of this section, for more than 72 consecutive hours; and

(2) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS. The letter of exemption must be maintained on board the vessel and remains valid for the period specified in the letter for all subsequent power-down requests conducted for the vessel consistent with the provisions of paragraphs (b) (5) (iv) (D) (3) and (4) of this section.

(3) Prior to each power down, the owner or operator of the vessel files a report using a NMFS-approved form that includes the name of the person filing the report, vessel

name, U.S. Coast Guard vessel documentation number or state vessel registration number, permit number of the Gulf coastal migratory pelagic charter vessel/headboat permit, vessel port location during cellular VMS power down, estimated duration of the power-down exemption, and reason for power down; and

(4) Prior to powering down the cellular VMS unit, the owner or operator of the vessel receives a confirmation from NMFS that the information was successfully delivered.

(E) *Installation and activation of a cellular VMS unit.* Only a cellular VMS unit that has been approved by NMFS for the Gulf coastal migratory pelagic fishery may be used, and the cellular VMS unit must be installed by a qualified marine electrician. When installing and activating or when reinstalling and reactivating the NMFS-approved cellular VMS unit, the vessel owner or operator must--

(1) Follow procedures indicated on the VMS installation and activation form, which is available from NMFS; and

(2) Submit a completed and signed VMS installation and activation form to NMFS as specified on the form.

(F) *Interference with the cellular VMS.* No person may interfere with, tamper with, alter, damage, disable, or

impede the operation of the cellular VMS, or attempt any of the same.

(G) *Interruption of operation of the cellular VMS.* If a vessel's cellular VMS is not operating properly, the vessel owner or operator must immediately contact NMFS and follow NMFS' instructions. If notified by NMFS that a vessel's cellular VMS is not operating properly, the vessel owner or operator must follow NMFS' instructions. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the cellular VMS is operable.

(v) *Access to position data.* As a condition of authorized fishing for or possession of Gulf coastal migratory pelagic fish subject to the reporting and recordkeeping requirements in this section, a vessel owner or operator subject to the hardware and software requirements in this section must allow NMFS, the U.S. Coast Guard, and their authorized officers and designees access to the vessel's position data obtained from the cellular VMS.

(6) *Trip declaration requirements in the Gulf.* For purposes of this paragraph (b) (6), a trip begins anytime the vessel departs from a dock, berth, beach, seawall, or

ramp, and terminates with return to a dock, berth, beach, seawall, or ramp, regardless of the duration or purpose, including non-fishing activities. Prior to departure for each trip, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued must notify NMFS and report the type of trip, the U.S. Coast Guard vessel documentation number or state vessel registration number, and whether the vessel will be operating as a charter vessel or headboat, or is departing on another type of trip, such as a commercial trip. If the vessel will be operating as a charter vessel or headboat during the trip, the owner or operator must also report the expected trip completion date, time, and landing location.

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