

09/08/2022

Modification to Location Reporting Requirements for For-Hire Vessels



Final Framework Action under the Fishery Management Plans for the Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region

Including Environmental Assessment, Regulatory Impact Review, and
Regulatory Flexibility Act Analysis

September 2022



This is a publication of the Gulf of Mexico Fishery Management Council Pursuant to National Oceanic and Atmospheric Administration Award No. NA20NMF4410007.

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ENVIRONMENTAL ASSESSMENT COVER SHEET

Framework Action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region: Modification to Location Reporting Requirements for For-Hire Vessels, including Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis.

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Type of Action

Administrative
 Draft

Legislative
 Final

This Environmental Assessment is being prepared using the 2020 CEQ NEPA Regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020, and reviews begun after this date are required to apply the 2020 regulations unless there is a clear and fundamental conflict with an applicable statute. 85 Fed. Reg. at 43372-73 (§§ 1506.13, 1507.3(a)). This Environmental Assessment began on April 6, 2022, and accordingly proceeds under the 2020 regulations.

ABBREVIATIONS USED IN THIS DOCUMENT

ACL	Annual Catch Limit
AM	Accountability Measures
BiOp	Biological Opinion
CEQ	Council on Environmental Quality
CFpA	Cash Flow per Angler
CHG	federal for-hire vessel permit for Gulf CMP species
CMP	Coastal Migratory Pelagic Fish
CMP FMP	Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region
Council	Gulf of Mexico Fishery Management Council
CZMA	Coastal Zone Management Act
DLM	Data Limited Monitoring
DPS	distinct population segments
EA	Environmental Assessment
eCFR	electronic Code of Federal Regulations
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
EJ	environmental justice
EMTU	enhanced mobile transceiver unit
EMTU-C	enhanced mobile transceiver unit – cellular
E.O.	Executive Order
ESA	Endangered Species Act
FES	Fishing Effort Survey
FLEC	Florida East Coast
FMP	Fishery Management Plan
GDP	Gross Domestic Product
GMFMC	Gulf of Mexico Fishery Management Council
GPS	Global Positioning System
HAB	harmful algal bloom
HAPC	Habitat Areas of Particular Concern
HCHG	historical captain permit for Gulf CMP species
HMS	Highly Migratory Species
HRCG	historical captain permit for Gulf reef fish species
IFQ	Individual Fishing Quota
IRFA	Initial Regulatory Flexibility Analysis
LGBTQ+	lesbian, gay, bisexual, transgender, queer
LDWF	Louisiana Department of Wildlife and Fisheries
Magnuson-Stevens Act	Magnuson-Stevens Conservation and Management Act
MMPA	Marine Mammal Protection Act
MRIP	Marine Recreational Information Program
MSST	Minimum Stock Size Threshold
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act

NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NRFCC	National Recreational Fisheries Coordination Council
OLE	Office of Law Enforcement
PAH	Polycyclic aromatic hydrocarbons
ppt	parts per thousand
PS	producer surplus
RIR	Regulatory Impact Review
RCG	federal for-hire vessel permit for Gulf reef fish species
Reef Fish FMP	Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico
RFA	Regulatory Flexibility Act
RFFA	reasonably foreseeable future actions
Secretary	Secretary of Commerce
SEFHIER	Southeast For-Hire Integrated Electronic Reporting Program
SEIS	Supplemental Environmental Impact Statement
SEFSC	Southeast Fisheries Science Center
SL	standard length
SRD	Science and Research Director
SRHS	Southeast Region Headboat Survey
SSC	Scientific and Statistical Committee
TNR	trip net revenue
TPWD	Texas Parks and Wildlife Division
ww	whole weight
VMS	Vessel Monitoring System

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CHAPTER 1. INTRODUCTION

1.1 Background

Use of electronic technology in the federally permitted for-hire component of the recreational sector (i.e., charter vessels and headboats) has continued to expand in recent years. The available technologies may provide improvements to data collection for fisheries management by improving timeliness, data quality, accessibility, integration, and the cost-effectiveness of collecting and processing of fishery-dependent data. Electronic technologies, including the use of vessel monitoring systems¹ (VMS), has been utilized in the commercial sector for over a decade. The first application of electronic technologies in the Gulf of Mexico (Gulf), occurred in 2007 under Amendment 18A to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) (GMFMC 2005a) that required all vessels with a Gulf Commercial Reef Fish permit, including dual-permitted vessels (i.e., both a charter vessel/headboat permit and a commercial reef fish permit), to have VMS units.

The Southeast Region Headboat Survey (SRHS) began requiring logbooks from selected vessels in the Gulf in 1986 and is the longest continuous time series of recreational fisheries data in federal waters along the southeast coast.² While SRHS converted from a paper logbook to an electronic reporting logbook in 2013, the remainder of the for-hire fleet did not have logbook reporting requirements. An FMP amendment to modify reporting requirements for charter vessels and headboats became effective on January 5, 2021, requiring declarations prior to leaving the dock, electronic logbooks, and the use of location-positioning equipment as “approved hardware/software with global positioning system (GPS) capabilities” that included both satellite and cellular devices³ (GMFMC 2017a). The effective date to have an operating VMS permanently affixed to the vessel was delayed until March 1, 2022.⁴ In 2020, the National Marine Fisheries Service (NMFS) Office of Law Enforcement (OLE) modified the VMS type-approval regulations to allow for the approval of cellular units.⁵ NMFS explained in the for-hire electronic reporting final rule (85 FR 44005):

“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.”⁶

¹ Vessel Monitoring System means a satellite and/or cellular based system designed to monitor the location and movement of vessels using onboard VMS units that send Global Positioning System position reports to an authorized entity.

² <https://spo.nmfs.noaa.gov/sites/default/files/pdf-content/mfr7911.pdf>

³ The amendment (GMFMC 2017a) referred to location-positioning equipment as “approved hardware/software with global positioning system (GPS) capabilities” to include both satellite and cellular devices; however, the published final rule referred to all type-approved units using the term “VMS”.

⁴ §§ 622.26(b)(5) and 622.374(b)(5)(ii) through (v)

⁵ See 50 C.F.R. § 600.1500 et seq.

⁶ <https://www.govinfo.gov/content/pkg/FR-2020-07-21/pdf/2020-15275.pdf>

These VMS requirements apply to all for-hire vessels with federal Gulf charter vessel/headboat permits for reef fish or coastal migratory pelagic (CMP) fish. Vessels with these permits are required to be equipped with a type-approved satellite or cellular VMS unit that:

1. Is permanently affixed to the vessel,
2. Operates 24 hours a day,
3. Collects location data once an hour for transmission to NMFS,
4. Has been properly installed by a certified and authorized installer (selected by the VMS vendor),
5. Has been activated through the NMFS Help Desk (completed by the VMS vendor).

The purpose of electronic reporting for the for-hire fleet is to improve accuracy and timeliness of landings, discards, effort, and socioeconomic data. The VMS verifies vessel activity and, therefore, allows for validation of the for-hire effort portion of the data and aids with enforcement. Therefore, this equipment must be operating at all times, and if a vessel's VMS unit is not functioning, a power-down exemption must be requested and the vessel cannot move on water for a minimum of 72 hours, while the problem is remedied. Power down exemptions may also be used when it is known that the vessel will not move on the water for at least a period of 72 hours, even with a functioning VMS unit (e.g. in dry dock for repairs to the vessel).

For-Hire VMS Requirements

The Gulf of Mexico Fishery Management Council (Council) and NMFS began work on an amendment in 2014 to modify reporting requirements for vessels issued Gulf charter vessel/headboat permits under the Reef Fish FMP and the FMP for CMP Resources in the Gulf of Mexico and Atlantic Region (CMP FMP). The Council considered alternatives that would require electronic reporting of information from vessels possessing a federal charter vessel/headboat permit for Gulf reef fish and/or CMP fish. The intent of the amendment was to improve data reporting in these fisheries to reduce the likelihood of exceeding annual catch limits and triggering accountability measures. Further, gathering additional data elements may improve estimates of bycatch, discard mortality rates, and fill in data gaps. The final rule for the amendment requires federally permitted charter vessels and headboats to:

1. Notify NMFS through a trip declaration (also referred to as a "hail-out") before departing for any trip to identify the trip type and activity (i.e., if the trip will be for-hire, commercial, or other trip type). If the vessel will be operating as a for-hire vessel, additional trip information is required such as expected arrival date, time, and verified landing location.
2. Submit an electronic logbook via NMFS-approved hardware and software for each fishing trip before offloading fish from a verified landing location for that trip or within 30 minutes after the end of each trip if no fish were landed.
3. Use a NMFS-approved VMS unit with GPS location capabilities that, at a minimum, archives vessel position data hourly during a trip for transmission to NMFS.

Since NMFS issued the for-hire reporting final rule, discussions have occurred during Council meetings about the burdens of these requirements on permit holders, vessel owners, and

operators, including concerns about the ramifications of VMS equipment failure. Although there are multiple applications to report the trip declaration and logbook information should one method fail to transmit the appropriate data, there are no alternative methods to verify the vessel's activity if the VMS unit fails. Permit holders, vessel owners, and operators have voiced their concern regarding potential loss of trips and revenue, as well as clients who may refuse to book future trips due to trip cancellations, if the VMS equipment fails. Currently, federal regulations require the vessel owner or operator to contact NMFS if their equipment is not operating properly and follow the instructions provided.⁷ These instructions may include, but are not limited to, manually communicating the vessel's positions to a designated NMFS contact, or returning to port until the VMS is operable. In the response to comments in the final rule (85 FR 44005) implementing these requirements, NMFS further explained:

“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.”⁸

Permit holders and operators of federally permitted for-hire vessels requested that the Council begin exploring options to allow vessels to start or continue fishing trips in the event of a VMS failure. This would allow vessels to move on-the-water without an operating VMS unit for a pre-determined period, and provide time for repair of the VMS unit. Satellite VMS units have a low observed failure rate (Appendix D). As cellular VMS units are new, there are insufficient data to determine failure rates from continual operation at sea. Table 1.1.1 provides a list of NMFS type-approved units for the Southeast For-Hire Integrated Electronic Reporting (SEFHIER) Program in the Gulf. This list is compiled from information found at <https://www.fisheries.noaa.gov/southeast/rules-and-regulations/approved-vessel-monitoring-system-vms-units-reporting-southeast-hire-integrated>. Because there are alternative methods to declare trips and submit trip reports, a vessel with an approved VMS failure exemption must still abide by all other reporting requirements, including submittal of trip declarations and logbooks.

⁷ SEFHIER customer support can be reached at 1-833-707-1632

⁸ <https://www.federalregister.gov/documents/2020/07/21/2020-15275/fisheries-of-the-caribbean-gulf-of-mexico-and-south-atlantic-electronic-reporting-for-federally>

Table 1.1.1. NMFS type-approved VMS units for the SEFHIER Program by vendor, unit name, data transmission and form availability. Table is up-to-date as of August 15, 2022 using the information from the SEFHIER Program website.

VMS Vendor	Unit Name	Data Transmission	With Forms? ¹
AddValue	IFleetONE ⁴	Satellite	Yes
Atlantic Radio Telephone	ZenVMS-LTE	Cellular	No
Atlantic Radio Telephone	ZenVMS-SAT	Satellite	No
Faria Beede	WatchDog 750 ⁴	Satellite	Yes
Faria Beede	FB Eterm-C	Cellular	Yes
MetOcean	OmniCom VMS EMTU ⁴	Satellite	Yes
MetOcean	OmniCom Global EMTU ⁴	Satellite	Yes
Nautic Alert	Insight X3 VMS ⁴	Satellite	Yes
Nautic Alert	Insight X3	Cellular	No
Skymate	m1600 ⁴	Satellite	Yes
Skymate	I1500 ⁴	Satellite	Yes
Woods Hole Group/CLS	NEMO EMTU-C	Cellular	No
Woods Hole Group/CLS	Triton Advanced ⁴	Satellite	Yes
Woods Hole Group/CLS	Leo ^{2,4}	Satellite	Yes
Woods Hole Group/CLS	Thorium TST ^{3,4}	Satellite	Yes

¹With forms means that these approved VMS units satisfy the positioning requirement of the SEFHIER program, and have the capability to submit the required declaration and logbook forms. Without forms means that these units satisfy the positioning requirement of the SEFHIER program, but do not have the capability to submit the required reports.

²No longer available for purchase.

³No longer approved for new installations.

⁴Also approved for use in the commercial Gulf reef fish fishery

Note: VMS units are type-approved by fishery and that fishery's requirements.

Commercial Vessels

The VMS equipment failure exemption would not apply to any vessels that have a federal commercial reef fish permit. Therefore, this exemption would not apply to vessels with both a federal charter vessel/headboat reef fish or CMP permit and a federal commercial reef fish permit. Vessels with a valid federal commercial reef fish permit must have a VMS unit operating onboard the vessel at all times or they cannot leave the dock. Additionally, this equipment failure exemption would not apply to vessels with Highly Migratory Species (HMS) permits because these permits have separate VMS requirements.⁹

At its October 2021 meeting, the Council decided to remove all alternatives for commercial vessels (see Appendix A) to simplify and expedite the document. The exemption request came from stakeholders, and SEFHIER Program participants who must abide by the new VMS requirement that became effective in March 2022. VMS requirements for commercial vessels with a reef fish permit have been in effect since 2007 and NMFS has documented a very low percentage of VMS failures in

⁹ See 50 C.F.R §635.69.

the commercial sector. The Council discussed this low failure rate as well as the differences in for-hire and commercial operations. Operators of for-hire vessels have paying customers on-board waiting to go fishing and do not have the same flexibility as operators of commercial vessels to reschedule trips. Therefore, for federally permitted for-hire vessels, a VMS failure could result in loss of clients and revenue.

Vessel Permits

Requirements to maintain onboard operational VMS equipment apply to all for-hire vessels with Gulf reef fish or CMP federal permits, vessels with Gulf Historical Captain Permits, vessels with a Gulf commercial reef fish permit, and all dual-permitted vessels with a combination of these for-hire and commercial federal permits.

A federal charter vessel/headboat permit is required for vessels to take paying passengers to fish for reef fish and CMP species in Gulf federal waters. The federal permits do not distinguish between charter vessels and headboats; there is a charter vessel/headboat permit for reef fish, and a charter vessel/headboat permit for CMP fish. A federal for-hire permit is valid for one year after it has been renewed or transferred. If the permit is not renewed or transferred before the end of the year when it is valid, it expires. An expired permit may not be used for fishing, but the permit holder may still renew or transfer the permit during the year of renewable status. If the permit is not renewed by the end of the renewable period, the permit is terminated and may not be reissued. Completion of permit transfers require an operating VMS unit on the vessel that receives the transferred permit. As such, permit transfers cancel any existing power-down exemptions.

Power down exemptions are obtained through a Power Down Exemption Request Form (Appendix C) which is available online at the NMFS website. Vessels may not move on the water for a minimum period of 72 consecutive hours (3 days) with a power down exemption in place.

All vessels with a federal Gulf charter vessel/headboat permit were required to have an operational VMS unit onboard by March 1, 2022. The data provided in Table 1.1.2 reflect vessels with valid or renewable federal Gulf charter vessel/headboat and/or commercial reef fish permits. As explained above, the exemption considered in this framework action would only apply to the VMS requirements associated with a federal charter/headboat reef fish and/or CMP permit.

Table 1.1.2. Number of vessels by permit type and vessel homeport state that may be affected by actions and alternatives in this framework action. Total number of permits does not equal the total number of vessels as many vessels have multiple permits.

Vessels by Permit Type	State of Homeport						
	AL	FL	LA	MS	TX	Non-Gulf*	Total
Commercial Reef Fish	41	660	35	5	67	6	814
Comm. Reef Fish & at least one Charter/Headboat permit	16	141	4	0	19	0	180
Charter/Headboat CMP	149	806	106	25	199	15	1299
Charter/Headboat Reef Fish	150	811	107	25	188	7	1288
Historical Captain CMP	1	2	0	1	0	0	4
Historical Captain Reef Fish	1	2	0	1	0	0	4
Total Vessels with at least one For-Hire Permit	156	835	108	27	201	15	1342

Source: Southeast Fisheries Permits database through August 26, 2021. Personal Communication, J. Stephen

* Non-Gulf refers to the vessel homeport state being outside of the Gulf region but the vessel permit is still a federal Gulf permit.

In this framework action, the Council is considering alternatives that would allow federally permitted for-hire vessels with malfunctioning VMS equipment to continue to operate within an established timeframe, if the equipment failure is submitted to and validated by NMFS. Satellite VMS, which has been required on vessels with commercial Gulf reef fish permits since March 2007, has an observed low failure rate; however, there is still the potential for equipment failure. In the long-term, NMFS expects the type-approved units for the SEFHIER Program to perform similarly to the units used in the Gulf reef fish commercial sector. However, in the near-term, unit performance and failure rates are unknown for the new cellular type-approved units that are expected to be installed in high numbers on vessels in the for-hire fleet. The choice of which unit to install, both cellular or satellite, and which manufacturer and unit model, is made by the permit holder. The vessel operators may be unfamiliar with the VMS equipment and some of the vessel VMS unit types may be different than those used in the commercial fleet (see Table 1.1.1). The Council recognizes that owners and operators of federally permitted for-hire vessels could incur loss of revenue and dissatisfied clients should a VMS unit malfunction and a for-hire vessel cannot move on the water. The Council would like to mitigate potential loss to these for-hire permit holders while minimizing the loss of valuable data to NMFS and impacts to compliance with the program requirements.

1.2 Purpose and Need

The purpose of this action is to establish a mechanism for owners and operators of vessels with a federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species to report a malfunction with a vessel's location-positioning device and provide the ability for permit holders to obtain a limited exemption to location-positioning requirements.

The need is to mitigate trip delays or cancellations and subsequent loss of revenue due to the inability of onboard VMS equipment to record and transmit location-positioning information.

1.3 History of Management

The following actions pertain to the federal for-hire component of the recreational sector and the commercial reef fish component of the commercial sector. These actions include pertinent permit and reporting requirements, including use of VMS units in the commercial reef fish fleet.

Reef Fish Amendment 18A (GMFMC 2005) addressed issues involving grouper management but also included the requirement to have VMS units onboard all commercially permitted reef fish vessels, including charter vessels with commercial reef fish permits operating in the Gulf in order to improve enforcement of area restrictions. This requirement helped prevent excessive fishing pressure in stressed areas or on spawning aggregations of reef fish, and enhanced the ability of enforcement agencies to detect and prevent the use of fishing gear in areas where that gear is restricted because it could potentially damage sensitive habitat.

Reef Fish Amendment 26 (GMFMC 2006) established an individual fishing quota (IFQ) system for the commercial red snapper fishery and required all fishing vessels engaged in harvesting red snapper under the IFQ program be equipped with VMS units that allowed for submission of pre-landing notifications.

Reef Fish Amendment 29 (GMFMC 2009) established an IFQ system for the commercial grouper-tilefish fishery and required all fishing vessels engaged in harvesting grouper and tilefish under the IFQ program be equipped with VMS units that allowed for submission of pre-landing notifications.

Reef Fish Amendment 30B (GMFMC 2008b) required that all vessels with federal commercial or charter vessel/headboat permits for reef fish comply with federal reef fish regulations, if those regulations are stricter than state regulations, when fishing in state waters.

A **Framework Action** for Reef Fish and CMP (GMFMC 2013) modified the frequency of reporting, for selected headboat vessels, to a weekly basis (or at intervals shorter than a week if notified by the Science and Research Director via electronic reporting, with reports due by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so stating had to be submitted for that week.

The **Generic Amendment** for Reef Fish and CMP (GMFMC 2017a): “Modifications to Charter Vessel and Headboat Reporting Requirements,” modified charter vessel and headboat reporting requirements by requiring the owner or operator of a vessel with a federal charter vessel/headboat permit for Gulf Reef Fish or CMP fish to: 1) Notify NMFS (hail-out/ submit a trip declaration) before departing for any trip to identify trip type; 2) Submit an electronic fishing report via NMFS-approved hardware and software for each fishing trip before offloading fish from that fishing trip or within 30 minutes after the end of each trip if no fish were landed; 3) Use a NMFS-approved VMS unit with GPS location capabilities that, at a minimum, archives vessel position data during a trip for transmission to NMFS.

An **Abbreviated Framework Action** for Reef Fish and CMP (GMFMC 2019b) allowed permit holders with historical captain permits, that were valid as of October 25, 2018, the option to replace them with standard federal charter vessel/headboat permits.

CHAPTER 2. MANAGEMENT ALTERNATIVES

2.1 Action: Modify VMS requirements for vessels with a Charter Vessel/Headboat permit for Reef Fish or a Charter Vessel/Headboat permit for Coastal Migratory Pelagic Fish to allow for an exemption to VMS requirements to address equipment failure.

Alternative 1: No Action. Maintain the requirement that vessels with charter vessel/headboat permits for reef fish and/or coastal migratory pelagic fish (CMP) have an approved vessel monitoring system (VMS) unit onboard, operating at all times, unless exempted by National Marine Fisheries Service (NMFS) under a power-down exemption.

Preferred Alternative 2: Create an exemption to the VMS requirements to address equipment failure and set a limit on the number of calendar days that the NMFS-approved equipment failure exemption is valid, for vessels with charter vessel/headboat permits for reef fish and/or CMP fish:

Option 2a: The exemption will be valid for up to 7 days from provisional approval date.¹⁰

Preferred Option 2b: The exemption will be valid for up to 10 days from provisional approval date.¹⁰

Option 2c: The exemption will be valid for up to 14 days from provisional approval date.¹⁰

Preferred Alternative 3: Create an exemption to the VMS requirements to address equipment failure and set a limit on the number of times a permit holder can request the exemption each calendar year, per vessel:

Option 3a: The permit holder may not request more than one exemption per vessel per calendar year.

Preferred Option 3b: The permit holder may not request more than two exemptions per vessel per calendar year.

Option 3c: The permit holder may not request more than three exemptions per vessel per calendar year.

Note: **Alternatives 2 and 3** can be selected concurrently.

Discussion:

Alternative 1 (No Action) would maintain the current requirement that vessels with charter vessel/headboat permits for reef fish and/or CMP fish have an approved VMS unit onboard,

¹⁰ Provisional approval means that the permit holder properly submits the equipment failure exemption through the NMFS approved method, meets the provisional criteria (e.g., vessel is in the system, vessel has no commercial reef fish permits, number of exemptions not exceeded), and receives approval with the understanding that documentation to verify the equipment failure will need to be submitted.

operating at all times, unless exempted by NMFS under a power-down exemption. These vessels may electronically submit a VMS Power Down Exemption Request Form¹¹ (Appendix C) to power down onboard cellular- or satellite-based location-tracking equipment. After receiving approval from the Southeast Division, Office of Law Enforcement, the VMS unit may be turned off. Power down exemptions require a minimum power-down period of 72 consecutive hours (3 days). During the time listed in the power down exemption, the vessel is prohibited from moving on the water. Under **Alternative 1**, if a vessel's VMS unit malfunctions prior to leaving the dock, the vessel may not leave the dock and the operator must 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. The intent of having a VMS unit permanently affixed to the vessel and operational at all times is to improve effort information by validating for-hire trips (GMFMC 2017a). Validation of fishing effort can be achieved through the transmission of VMS data in tandem with declaration of trip type and the associated logbook report. In the event of VMS equipment failure, **Alternative 1** only allows for submission of a VMS Power Down Exemption Request Form (Appendix C), which could provide time needed for equipment repair, but would not allow the vessel to leave the dock if the VMS equipment is not functioning, and therefore could result in loss of trips, clients, and revenue.

Preferred Alternative 2 and **Preferred Alternative 3** would allow a permit holder, vessel owner or operator to continue to operate on the water if their VMS unit malfunctions, by requesting an equipment failure exemption. The Equipment Failure Exemption form would be separate from the Power Down Exemption Request Form, as they apply to distinct exemptions. It is NMFS' discretion to determine the method of submission for requesting an equipment failure exemption by the permit holder and may require certain information to obtain an immediate equipment failure exemption to continue fishing as well as post equipment failure exemption information to verify VMS equipment failure. The process to obtain an equipment failure exemption would require submission of a request for exemption from the permit holder, a provisional approval/denial process which includes validation criteria, and later submission of the documentation of the equipment failure for final approval. This information would be included in the enforcement and permits database systems. Initial submission may include, but not be limited to, information about the vessel (e.g., registration number, name) and associated permits. Prior to submission of an Equipment Failure Exemption Form, the operator first must troubleshoot the unit for common, easily fixed actions (e.g., contact vendor, reboot unit, and ensure wires are connected properly). Due to the need to respond rapidly to an Equipment Failure Exemption Form submission, provisional approval would be granted electronically upon completion of general validation checks (e.g., does not exceed selected number of submissions per year, is not dually-permitted with the commercial reef fish permit). Upon receipt of a provisional approval, the vessel may move on water without an operational VMS unit. Submission of documentation of the failure (e.g., receipt of repair, replacement unit documentation) would be required to move from a provisional to final approval of the equipment failure exemption. Failure to submit documentation of approval within the established time-frame would invalidate the provisional approval and result in a referral to law enforcement.

¹¹ https://grunt.sefsc.noaa.gov/apex/fer/t/fer_forms/home

Regulations require that no person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.¹²

The Gulf of Mexico Fishery Management Council (Council) is not limited to choosing only **Preferred Alternative 2** or **Preferred Alternative 3**, and may choose an option under each Alternative to constrain each exemption to a set number of days and limit the number of uses per year. NMFS would determine how any exemption chosen by the Council would be requested, processed, and documented. On or before the effective date of this equipment failure exemption, these processes would be available on the Southeast For-Hire Integrated Electronic Reporting (SEFHIER) website.

Preferred Alternative 2 would create an exemption to the VMS requirement to address equipment failure and set a limit on the number of days that each exemption would be valid. The VMS informs the effort estimate of the for-hire fleet and is therefore important to maintain the integrity of the SEFHIER Program. If VMS data used for validation of trips and effort estimates are missing for a period of time, the resulting accuracy of the effort estimates for this component of the fishery could be reduced. **Option 2a**, **Preferred Option 2b**, and **Option 2c**, provide different lengths of time during which the exemption would be valid: 7, 10, or 14 calendar days from the submittal date. **Option 2a** would provide the shortest exemption period; seven calendar days may be reasonable time to have a VMS unit repaired or have a new unit shipped and installed if the vendor provides same day or expedited shipping, even if the failure occurs over a weekend or holiday. Installations and repairs to VMS units must be made by an approved vendor or technician. Vendors with type-approved VMS units have indicated they have adequate supplies of VMS units available to quickly ship throughout the Gulf of Mexico region and are readily available to answer questions and offer repairs (Appendix D). **Preferred Option 2b** allows an exemption up to 10 calendar days from submittal date. This is the intermediate option, which would allow more flexibility to permit holders while reducing the risk of significant data gaps. **Option 2c** would allow the exemption up to 14 calendar days from submittal date. **Preferred Option 2b** and **Option 2c** may ease the burden on the permit holder by providing a longer period of time to complete repairs without compromising business operations. However, these options may increase the risk of negatively affecting the accuracy of the effort estimation for the for-hire fleet. The magnitude of this risk depends on the number of vessels that are operating under the exemption and the number of trips taken by those vessels during any given time as well as over the long-term. Some vessels take multiple trips per day.

Preferred Alternative 3 would create an exemption to the VMS requirement to address equipment failure by limiting the number of times a permit holder can request the exemption each calendar year, per vessel. **Option 3a** limits the permit holder to no more than one exemption per vessel per calendar year. NMFS has approved satellite units for the SEFHIER program that have been in use by the commercial fleet, and NMFS expects these units to perform similarly on for-hire vessels. NMFS also expects the newly type-approved satellite VMS units to perform similarly to those that have been operating in the commercial sector; however, the long-term performance of the cellular VMS units on vessels is not known and allowing one exemption per vessel per calendar year would only allow the permit holder one opportunity to either repair

¹² See 50 CFR 622.26(b)(5)(ii)(F); 50 C.F.R §622.28 (g); 50 CFR 622.374(b)(5)(iv)(F).

the VMS unit or consider installing a new one per year. This would be the first use of both satellite and cellular VMS units in the for-hire fleet. **Preferred Option 3b** limits the permit holder to no more than two exemptions per vessel per calendar year and **Option 3c** limits the permit holder to no more than three exemptions per vessel per calendar year. The “per vessel” exemption accounts for permit holders who own multiple vessels. It is expected, based on vendor responses, that observed satellite VMS failure rates in the commercial fleet range from less than 1% up to 5% depending on the unit (yearly, multi-year, or lifetime depending on vendor; see Appendix D). It appears feasible that the three exemption requests within a calendar year should be adequate to account for any issues vessel operators may have with onboard VMS equipment, although failure rates of cellular and satellite VMS units are still unknown.

More than one exemption could be used consecutively, if more time is needed for repairs or installation of a new unit, but this could lead to a prolonged gap in location data collection. There is concern with widening data gaps if equipment failure exemptions are used consecutively. For example, use of consecutive exemptions increases from 20 days (consecutive use of **Preferred Option 2b** with **Preferred Option 3b**) to 42 days (consecutive use of **Option 2c** with **Option 3c**). Multiple vessels using sequential exemptions could potentially lead to increased data gaps for longer periods of time.

With **Preferred Options 2b** and **3b**, a vessel may use two exemptions consecutively for a total of 20 days, per calendar year. However, this does not mean that all days for each exemption may be used once a VMS unit is properly functioning. Permit holders must resume the use of the VMS unit as soon as the unit is functional. For example, if the failed unit is repaired 5 days into the 10-day exemption, the unit must be turned on and transmitting accurate vessel position data on that fifth day.

Because permit renewals do not all begin and end on fixed calendar year dates but instead, are valid for one year from the date the permit holder applies for the permit, it may be difficult for NMFS to track exemption requests based on individuals’ permit renewal dates. The limit established under **Preferred Alternative 3** would be tracked from January 1 to December 31 of each year. The exemption is tied to the vessel and the permit holder at the time of submission. If either of these change through a permit transfer, the number of exemptions would be set to zero and any existing equipment failure exemptions would end. Note that changing the specific for-hire limited access permits associated with a vessel would not restart the exemption count. For example, John Doe has the limited access reef fish for-hire permit RCG-10 on vessel 1234567. John Doe transfers permit RCG-10 to another vessel or permit holder, and places permit RCG-25 on vessel 1234567. Since the exemption is for the vessel’s VMS unit, changing from permit RCG-10 to RCG-25 would not set the number of exemptions to 0 within the calendar year, as it is the same vessel and permit holder. The number of requests per year would be associated with the calendar year of the requested date for the exemption. Therefore, if a vessel submitted a request for an exemption on December 28, 2022, this exemption would extend to January 7, 2023, but only be counted against the total number of exemptions allowed in calendar year 2022.

CHAPTER 3. AFFECTED ENVIRONMENT

The actions considered in this framework action with associated environmental assessment (EA) would affect fishing in federal waters of the Gulf of Mexico (Gulf). Descriptions of the physical, biological, economic, social, and administrative environments (affected environments) completed in the environmental impact statements (EIS) in the Generic Essential Fish Habitat (EFH) Amendment (GMFMC 2004a), and the Generic Annual Catch Limits/Accountability Measures (ACL/AM) Amendment (GMFMC 2011a) apply to the Fishery Management Plan (FMP) for Reef Fish Resources in the Gulf of Mexico (Reef Fish FMP). Descriptions of the affected environments for reef fish are further described in Reef Fish Amendments 30B (GMFMC 2008b), 32 (GMFMC 2011b), 40 (GMFMC 2014), 28 (GMFMC 2015a), and 50A (GMFMC 2019d). Below, information on each of these environments is summarized or updated, as appropriate.

3.1 Description of the Fishery

The proposed actions would be expected to affect federally permitted charter vessels and headboats in the Gulf reef fish and Gulf and Atlantic region coastal migratory pelagic (CMP) fisheries. Descriptions of the reef fish and CMP fisheries are contained in Sections 3.2-3.5 of this document as well as the Modifications to Charter Vessel and Headboat Reporting Requirements Generic Framework Action (GMFMC 2017a), which is incorporated herein by reference.

A charter vessel/headboat permit (for-hire) is required when taking passengers for-hire fishing in federal waters for Gulf reef fish and CMP species. As described in Table 1.1.2, there were 1,342 vessels with at least one valid (non-expired) or renewable Gulf reef fish or CMP for-hire permit (including historical captain permits), as of August 2021. A permit in renewable status is an expired limited access permit that may not be actively fished, but is renewable for up to one year after expiration. If the permit is not renewed or transferred by the end of the renewable period, the permit is terminated and may not be reissued. Both the Gulf reef fish and CMP for-hire permits are limited access permits. Most for-hire vessels possess more than one permit. Additionally, 180 of these vessels had a Gulf commercial reef fish permit.

The same charter vessel/headboat permit is issued to both charter vessels and headboats, though information on the primary method of operation is collected on the permit application form. Some vessels may operate as both a charter vessel and a headboat, depending on the season or purpose of a trip. A subset of vessels with a charter vessel/headboat permit are selected for participation within the Southeast Region Headboat Survey (SRHS), although this survey does not contain all vessels self-identifying as headboats.

3.2 Description of the Physical Environment

The Gulf has a total area of approximately 600,000 square miles (1.5 million km²), including state waters (Gore 1992). It is a semi-enclosed, oceanic basin connected to the Atlantic Ocean by the Straits of Florida and to the Caribbean Sea by the Yucatan Channel (Figure 3.2.1).

Oceanographic conditions are affected by the Loop Current, discharge of freshwater into the northern Gulf, and a semi-permanent, anti-cyclonic gyre in the western Gulf. The Gulf includes both temperate and tropical waters (McEachran and Fehhelm 2005). Gulf water temperatures range from 54° F to 84° F (12° C to 29° C) depending on time of year and depth of water. Mean annual sea surface temperatures ranged from 73° F through 83° F (23-28° C) including bays and bayous (Figure 3.2.1) between 1982 and 2009, according to satellite-derived measurements.¹³ In general, mean sea surface temperature increases from north to south with large seasonal variations in shallow waters.

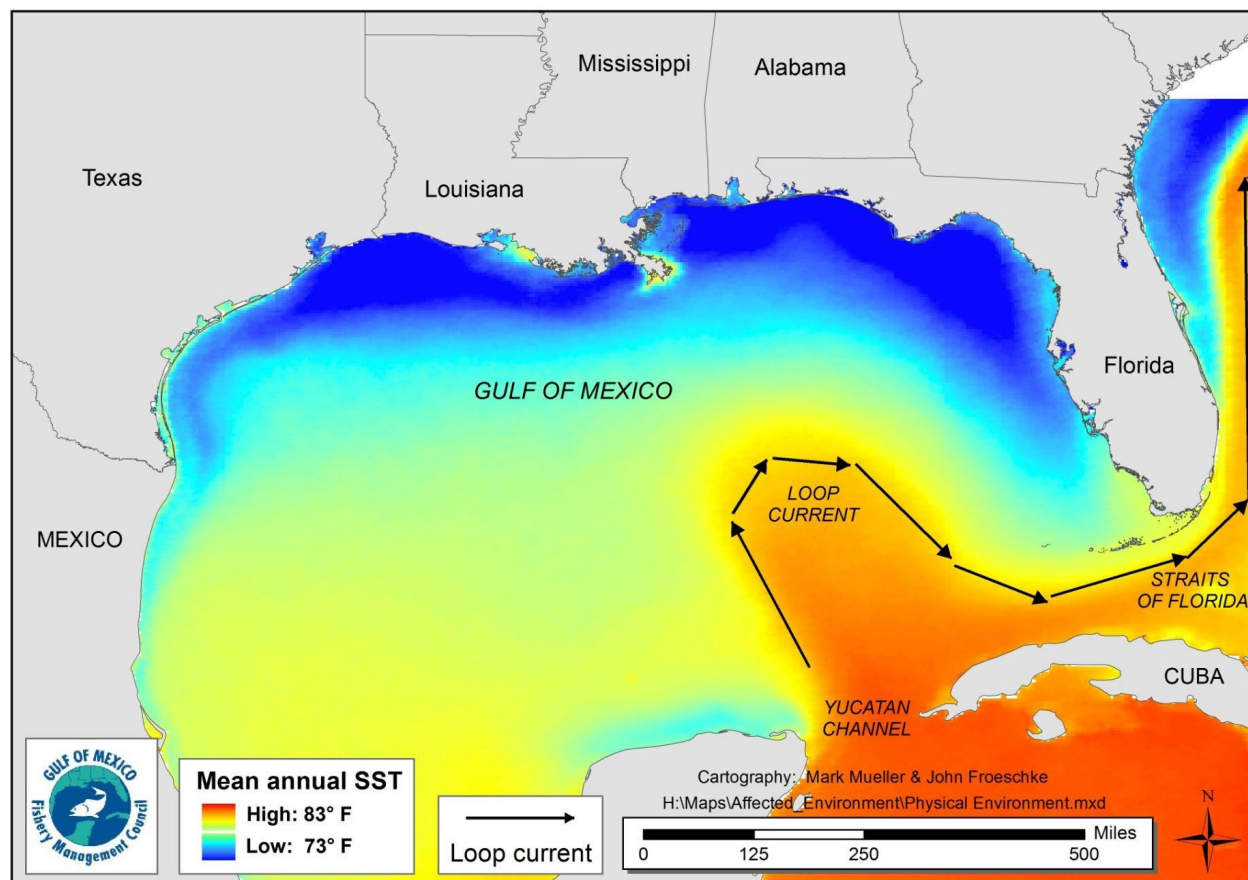


Figure 3.2.1. Physical environment of the Gulf including major feature names and mean annual sea surface temperature as derived from the Advanced Very High-Resolution Radiometer Pathfinder Version 5 sea surface temperature data set (<http://accession.nodc.noaa.gov/0072888>).

The physical environment for Gulf reef fish is also detailed in the Generic EFH Amendment, the Generic ACL/AM Amendment, and Reef Fish Amendment 40 (GMFMC 2004a; GMFMC 2011a; GMFMC 2014, respectively), and is incorporated by reference and further summarized below. In general, reef fish are widely distributed in the Gulf, occupying both pelagic and benthic habitats during their life cycle. A planktonic larval stage lives in the water column and feeds on zooplankton and phytoplankton (GMFMC 2004a). Juvenile and adult reef fish are typically demersal and usually associated with bottom topographies on the continental shelf (less

¹³ NODC 2012: <http://accession.nodc.noaa.gov/0072888>

than 100 m) which have high relief, i.e., coral reefs, artificial reefs, rocky hard bottom substrates, ledges and caves, sloping soft-bottom areas, and limestone outcroppings.

The physical environment for Gulf CMP fish is detailed in the Generic EFH Amendment, the Generic ACL/AM Amendment, and Amendment 18 (GMFMC and SAFMC 2011), which discuss the Gulf habitat for CMP species, and is hereby incorporated by reference.

Cobia is distributed worldwide in tropical, subtropical, and warm-temperate waters. Cobia is found in the western Atlantic Ocean from Nova Scotia, Canada, south to Argentina, including the Caribbean Sea, and is abundant in warm waters off the coast of the U.S. from the Chesapeake Bay south and throughout the Gulf. Cobia prefers water temperatures between 68°F-86°F. As a pelagic fish, cobia is found over the continental shelf and around offshore rocky outcrops, coral reefs, and artificial reefs. Cobia prefers to reside near any structure that interrupts open water, including pilings, buoys, platforms, anchored boats, and flotsam. Cobia is also found inshore inhabiting bays, inlets, and mangroves (SEDAR 2018a).

King mackerel is a pelagic species that is found throughout the western Atlantic from the Gulf of Maine to Brazil, including the Gulf and Caribbean Sea, and from the shore to 200 m (656 ft) depths. Adults inhabit the coastal waters out to the edge of the continental shelf. Within that area, the occurrence of king mackerel is governed by temperature and salinity. It is seldom found in water temperatures less than 20°C; salinity preference varies, but it generally prefers high salinity, but less than 36 parts per thousand (ppt).

Adults are migratory, and the CMP FMP recognizes two migratory groups (Gulf and Atlantic). Typically, adult king mackerel is found in the southern climates (south Florida and extreme south Texas/Mexico) in the winter and farther north in the summer; however, some king mackerel overwinter in deeper waters off the mouth of the Mississippi River, and off the coast of North Carolina. Food availability and water temperature are likely the causes of these migratory patterns. King mackerel live up to 26 years for females and 23 years for males (GMFMC and SAFMC 1985; MSAP 1996; Brooks and Ortiz 2004).

Spanish mackerel is also a pelagic species occurring in depths up to 75 meters (225 feet) but primarily found in depths of 20 meters (60 feet) or less. It occurs in coastal zones of the western Atlantic from southern New England to the Florida Keys and throughout the Gulf (Collette and Russo 1979). Adults usually are found from the low-tide line to the edge of the continental shelf, and along coastal areas. They inhabit estuarine areas (especially higher salinity areas) during seasonal migrations, but are considered rare and infrequent in many Gulf estuaries.

Spawning occurs along the inner continental shelf from April to September (Powell 1975). Eggs and larvae occur most frequently offshore over the inner continental shelf at temperatures between 20°C (68°F) and 32°C (89.6°F) and salinities between 28 and 37 ppt. It is found frequently in water depths from 9 meters (27 feet) to about 84 meters (252 feet), but is most common in < 50 meters (150 feet).

Juveniles are most often found in coastal and estuarine habitats and at temperatures greater than 25°C (77°F) and salinities greater than 10 ppt. Although they occur in waters of varying salinity,

juveniles appear to prefer higher marine salinity levels and generally are not considered estuarine-dependent. Like king mackerel, adult Spanish mackerel are migratory, generally moving from wintering areas of south Florida and Mexico to more northern latitudes in spring and summer. Spanish mackerel generally mature at age 1 to 2 and have a maximum age of approximately 11 years (Powell 1975).

Detailed information pertaining to the Gulf area closures and marine reserves is provided in Amendment 32 (GMFMC 2011b). There are environmental sites of special interest that are discussed in the Generic EFH Amendment (GMFMC 2004a) that are relevant to this amendment and management. These include the longline/buoy area closure, the Edges Marine Reserve, Tortugas North and South Marine Reserves, individual reef areas and bank habitat areas of particular concern (HAPC) of the northwestern Gulf, the Florida Middle Grounds HAPC, the Pulley Ridge HAPC, and Alabama Special Management Zone. These areas are managed with gear restrictions to protect habitat and specific reef fish species. These restrictions are detailed in the Generic EFH Amendment (GMFMC 2004a).

With respect to the National Register of Historic Places, there is one site listed in the Gulf. This is the wreck of the *U.S.S. Hatteras*, located in federal waters off Texas. Historical research indicates that over 2,000 ships sunk on the Federal Outer Continental Shelf between 1625 and 1951, and thousands more sunk closer to shore in state waters during the same period. Only a handful of these have been scientifically excavated for archeological benefit.¹⁴

Northern Gulf of Mexico Hypoxic Zone

Every summer in the northern Gulf, a large hypoxic zone forms. It is the result of allochthonous materials and runoff from agricultural lands by rivers to the Gulf, increasing nutrient inputs from the Mississippi River, and a seasonal layering of waters in the Gulf. The layering of the water is temperature and salinity dependent and prevents the mixing of higher oxygen content surface water with oxygen-poor bottom water. For 2019, the extent of the hypoxic area was estimated to be 6,952 square miles and ranks as the eighth largest event over the past 33 years the area has been mapped.¹⁵ The hypoxic conditions in the northern Gulf directly affect less mobile benthic macroinvertebrates (e.g., polychaetes) by influencing density, species richness, and community composition (Baustian and Rabalais 2009). However, more mobile macroinvertebrates and demersal fishes (e.g., gray snapper) are able to detect lower dissolved oxygen levels and move away from hypoxic conditions. Therefore, although not directly affected, these organisms are indirectly affected by limited prey availability and constrained available habitat (Baustian and Rabalais 2009; Craig 2012). As mentioned above, red grouper is primarily distributed in the eastern Gulf and so is not generally affected by this hypoxic zone; however, some localized hypoxic conditions do arise (Alcock 2007; Gravinese et al. 2020). For example, red tide blooms in the eastern Gulf may cause fish kills and the decomposing biomass can result in the rapid depletion of dissolved oxygen in coastal and estuarine waters.

¹⁴ Further information can be found at <http://www.boem.gov/EnvironmentalStewardship/Archaeology/Shipwrecks.aspx>.

¹⁵ <http://gulfhypoxia.net>

Greenhouse Gases

The Intergovernmental Panel on Climate Change has indicated greenhouse gas emissions are one of the most important drivers of recent changes in climate. Wilson et al. (2014) inventoried the sources of greenhouse gases in the Gulf from sources associated with oil platforms and those associated with other activities such as fishing. A summary of the results of the inventory are shown in Table 3.2.1 with respect to total emissions and from fishing. Commercial fishing and recreational vessels make up a small percentage of the total estimated greenhouse gas emissions from the Gulf (2.04% and 1.67%, respectively).

Table 3.2.1. Total Gulf greenhouse gas emissions estimates (tons per year) from oil platform and non-oil platform sources, commercial fishing, and percent greenhouse gas emissions from commercial fishing vessels of the total emissions*. Data are for 2011 only.

Emission source	CO ₂	Greenhouse CH ₄	Gas N ₂ O	Total CO _{2e} **
Oil platform	5,940,330	225,667	98	11,611,272
Non-platform	14,017,962	1,999	2,646	14,856,307
Total	19,958,292	227,665	2,743	26,467,578
Commercial fishing	531,190	3	25	538,842
Recreational fishing	435,327	3	21	441,559
Percent commercial fishing	2.66%	>0.01%	0.91%	2.04%
Percent recreational fishing	2.18%	>0.01%	0.77%	1.67%

*Compiled from Tables 6-11, 6-12, and 6-13 in Wilson et al. (2014). **The CO₂ equivalent (CO_{2e}) emission estimates represent the number of tons of CO₂ emissions with the same global warming potential as one ton of another greenhouse gas (e.g., CH₄ and N₂O). Conversion factors to CO_{2e} are 21 for CH₄ and 310 for N₂O.

3.3 Description of the Biological and Ecological Environment

The biological environment of the Gulf, including the species addressed in this amendment, is described in detail in the Generic EFH Amendment (GMFMC 2004a), Generic ACL/AM Amendment (GMFMC 2011a), Reef Fish Amendments 30B (GMFMC 2008b) and 32 (GMFMC 2011b), and in Reef Fish Amendment 53 (GMFMC 2021), CMP Amendment 34 (GMFMC and SAFMC 2022) and Amendment 18 GMFMC and SAFMC 2011, and is incorporated here by reference and further summarized below.

3.3.1 General Information on Reef Fish Species

The National Ocean Service collaborated with the National Marine Fisheries Service (NMFS) and the Council to develop distributions of reef fish (and other species) in the Gulf (SEA 1998). Reef fish are widely distributed in the Gulf, occupying both pelagic and benthic habitats during

their life cycle. In general, both eggs and larval stages are planktonic. Larval fish feed on zooplankton and phytoplankton.

Status of Reef Fish Stocks

The Reef Fish FMP currently encompasses 31 species (Table 3.3.1). The NMFS Office of Sustainable Fisheries updates its Status of U.S. Fisheries Report to Congress¹⁶ on a quarterly basis. Stock assessments and status determinations have been conducted and designated for many reef fish stocks and can be found on the Council¹⁷ and the SEDAR¹⁸ websites.

Of the stocks for which stock assessments have been conducted, the last quarterly report of the 2022 Status of U.S. Fisheries classifies only two as overfished and undergoing over-fishing, greater amberjack and gag, and three stocks as undergoing overfishing (cobia, lane snapper, Jacks Complex). See the NMFS' Overfishing and Overfished Stocks List by Mapping Region, <https://media.fisheries.noaa.gov/2022-04/q1-2022-stock-status-map.pdf>.

The status of both assessed and unassessed stocks, as of the most recent version of the Status of U.S. Fisheries Report, is provided in this link, <https://media.fisheries.noaa.gov/2022-04/Q1%202022%20FSSI%20and%20non%20FSSI%20Stock%20Status%20Tables.pdf>. Reef Fish Amendment 44 (GMFMC 2017c), was implemented December 2017, and modified the minimum stock size threshold for seven species in the Reef Fish FMP to 50% of B_{MSY} . Red snapper and gray triggerfish are now listed as not overfished but rebuilding, because the biomass for the stock is currently estimated to be greater than 50% of B_{MSY} , but below B_{MSY} .

A stock assessment was conducted for Atlantic goliath grouper (SEDAR 47 2016). The Council's Scientific and Statistical Committee (SSC) accepted the assessment's general findings that the stock was not overfished or experiencing overfishing. Although the SSC determined Atlantic goliath grouper to not be experiencing overfishing, the SSC deemed the assessment not suitable for stock status determination and management advice.

Stock assessments were conducted for seven reef fish stocks (including vermilion snapper) using the Data Limited Methods Toolkit (DLMTToolkit; SEDAR 49 2016). This method allows the setting of the OFL and acceptable biological catch (ABC) based on limited data and life history information, but does not provide assessment-based status determinations. Several stocks did not have enough information available to complete an assessment even using the DLMTToolkit.

The remaining species within the Reef Fish FMP have not been assessed at this time. Therefore, their overfished status is unknown (Table 3.2.2.1). For those species that are listed as not undergoing overfishing, that determination has been made based on the annual harvest remaining below the OFL. No other unassessed species are scheduled for a stock assessment at this time.

¹⁶<https://www.fisheries.noaa.gov/national/population-assessments/fishery-stock-status-updates>

¹⁷www.gulfcouncil.org

¹⁸www.sedarweb.org

Table 3.3.1.2. Status of species in the Reef Fish FMP grouped by family.

Common Name	Scientific Name	Stock Status		Most recent assessment or SSC workshop
		Overfishing	Overfished	
Family Balistidae – Triggerfishes				
gray triggerfish	<i>Balistes capriscus</i>	N	N	SEDAR 43 2015
Family Carangidae – Jacks				
greater amberjack	<i>Seriola dumerili</i>	Y	Y	SEDAR 70 2020
lesser amberjack	<i>Seriola fasciata</i>	Y	Unknown	SEDAR 49 2016
almaco jack	<i>Seriola rivoliana</i>	Y	Unknown	SEDAR 49 2016
banded rudderfish	<i>Seriola zonata</i>	Y	Unknown	
Family Labridae – Wrasses				
hogfish	<i>Lachnolaimus maximus</i>	N	N	SEDAR 37 2014
Family Malacanthidae – Tilefishes				
tilefish (golden)	<i>Lopholatilus chamaeleonticeps</i>	N	N	SEDAR 22 2011a
blueline tilefish	<i>Caulolatilus microps</i>	N	Unknown	
goldface tilefish	<i>Caulolatilus chrysops</i>	N	Unknown	
Family Serranidae – Groupers				
gag	<i>Mycteroperca microlepis</i>	Y	Y	SEDAR 72 2021
red grouper	<i>Epinephelus morio</i>	N	N	SEDAR 61 2019
Scamp	<i>Mycteroperca phenax</i>	Unknown	Unknown	
black grouper	<i>Mycteroperca bonaci</i>	N	N	SEDAR 19 2010
yellowedge grouper	<i>Hyporthodus flavolimbatus</i>	N	N	SEDAR 22 2011b
snowy grouper	<i>Hyporthodus niveatus</i>	N	Unknown	SEDAR 49 2016
speckled hind	<i>Epinephelus drummondhayi</i>	N	Unknown	SEDAR 49 2016
yellowmouth grouper	<i>Mycteroperca interstitialis</i>	Unknown	Unknown	SEDAR 49 2016
yellowfin grouper	<i>Mycteroperca venenosa</i>	Unknown	Unknown	
warsaw grouper	<i>Hyporthodus nigritus</i>	N	Unknown	
*Atlantic goliath grouper	<i>Epinephelus itajara</i>	N	Unknown	SEDAR 47 2016
Family Lutjanidae – Snappers				
queen snapper	<i>Etelis oculatus</i>	N	Unknown	
mutton snapper	<i>Lutjanus analis</i>	N	N	SEDAR 15A Update 2015
blackfin snapper	<i>Lutjanus buccanella</i>	N	Unknown	
red snapper	<i>Lutjanus campechanus</i>	N	N	SEDAR 52 2018
cubera snapper	<i>Lutjanus cyanopterus</i>	N	Unknown	
gray snapper	<i>Lutjanus griseus</i>	N	N	
lane snapper	<i>Lutjanus synagris</i>	Y	Unknown	SEDAR 49 Update 2019
silk snapper	<i>Lutjanus vivanus</i>	N	Unknown	
yellowtail snapper	<i>Ocyurus chrysurus</i>	N	N	SEDAR 64 2020
vermilion snapper	<i>Rhomboplites aurorubens</i>	N	N	SEDAR 67 2020
wenchman	<i>Pristipomoides aquilonaris</i>	N	Unknown	SEDAR 49 2016

Note: *Harvest is prohibited for Atlantic goliath grouper in federal waters (i.e., ACL and ABC is set at zero) and benchmarks do not reflect appropriate stock dynamics. Species status based on the NOAA Quarter 1 2022 Fishery Stock Status Index (FSSI) report. The most recent stock assessment is provided for reference, and the stock status determination may reflect more current information than reported in the latest stock assessment. †

3.3.2 General Information on Coastal Migratory Pelagic Species

Status of Coastal Migratory Pelagic Fish Stocks

Amendment 34 (GMFMC and SAFMC 2022) discusses the Gulf habitat for CMP species, and is hereby incorporated by reference. A summary of this information is provided below. The South Atlantic and Gulf of Mexico Fishery Management Councils developed Amendment 34 and transmitted it to the Southeast Regional Office to address updated scientific information provided by an update to SEDAR 38 (2020). The update was completed in April 2020, with data through the March 2017/February 2018 fishing year. The stock assessment indicated that Atlantic migratory group king mackerel was not overfished nor undergoing overfishing.

Amendment 18 (GMFMC and SAFMC 2011) discusses the Gulf habitat for CMP species, and is hereby incorporated by reference. Both the Gulf and Atlantic king mackerel were assessed in SEDAR 38 (2014). The SEDAR 38 assessment determined that Gulf and Atlantic king mackerel were not overfished and were not experiencing overfishing. Both the Gulf and Atlantic Spanish mackerel were assessed in SEDAR 28 (2013a&b). The assessments determined that Gulf and Atlantic Spanish mackerel were not overfished and were not experiencing overfishing.

Cobia is a member of the family Rachycentridae, and is managed in the CMP FMP because of its migratory behavior. Currently, no commercial vessel permit is required for harvest or sale of cobia. For-hire vessels must have a charter vessel/headboat CMP permit to land cobia. The regulations in the FMP also apply to cobia in the Mid-Atlantic region.

The first Gulf Group Cobia assessments concluded that the population status was virtually unknown, given the degree of uncertainty in the estimates from the assessment model (Thompson 1996; Williams 2001). The only statement that could be made with any degree of certainty about Gulf cobia was that the population had increased since the 1980s. It was not until SEDAR 28 (2013c) that Gulf and Atlantic cobia were determined to be genetically distinct, and Gulf Group Cobia was not overfished and not experiencing overfishing. Two migratory groups of cobia were created through Amendment 18 (GMFMC and SAFMC 2011), with the division occurring at the Council boundary in Monroe County, Florida. However, the data workshop for SEDAR 28 determined the division between migratory groups should be at the Florida/Georgia state line. Anglers expressed concern to the Gulf Council about decreased landings and infrequent sightings of Gulf Zone cobia in times and places where they have previously seemed abundant. Anglers asked the Gulf Council to reduce fishing mortality until the next stock assessment was completed. Framework Amendment 7 to the CMP FMP, implemented in 2020, increased the Gulf Zone cobia minimum size limit, in hopes to allow more fish to spawn before being harvested. SEDAR 28 Update (2020) determined the Gulf Group Cobia was not overfished, but was undergoing overfishing. Due to the implementation timing of Framework Amendment 7 and the SEDAR 28 Update terminal year of data (2017), this assessment was not able to capture any changes to the Coastal Migratory Pelagic stock status from the Gulf Zone increased size limit. The next stock assessment for Gulf Group Cobia is not scheduled at this time.

King Mackerel

King mackerel (*Scomberomorus cavalla*) is a marine pelagic species that is found throughout the western Atlantic from the Gulf of Maine to Brazil, including the Gulf and Caribbean Sea, and from the shore to 200 m (656 ft) depths. The habitat of adults is the coastal waters out to the edge of the continental shelf. Within the area, the occurrence of king mackerel is governed by temperature and salinity. They are seldom found in water temperatures less than 20°C and generally prefer higher salinity 36 parts per thousand (ppt) or less.

Adults are migratory, and the CMP FMP of the Gulf and Atlantic Region recognizes two migratory groups (Gulf and Atlantic). Typically, adult king mackerel are found in the southern climates (south Florida and extreme south Texas/Mexico) in the winter and farther north in the summer; however, some king mackerel overwinter in deeper waters off the mouth of the Mississippi River, and off the coast of North Carolina. Food availability and water temperature are likely the causes of these migratory patterns. King mackerel live up to 26 years for females and 23 years for males (GMFMC and SAFMC 1985; MSAP 1996; Brooks and Ortiz 2004).

Adults are known to spawn in areas of low turbidity, with salinity and temperatures of approximately 30 ppt and 27°C, respectively. There are major spawning areas off Louisiana and Texas in the Gulf (McEachran and Finucane 1980); and off the Carolinas, Cape Canaveral, and Miami in the western Atlantic (Wollam 1970; Schekter 1971; Mayo 1973). Spawning occurs generally from May through October with peak spawning in September (McEachran and Finucane 1980). Eggs are believed to be released and fertilized continuously during these months. Fifty percent of females are sexually mature between 450 to 499 mm (17.7 to 19.6 inches standard length (SL) in length and most are mature by the time they are 800 mm (35.4 inches SL, or by about age 4. Fifty percent of males are sexually mature at age 3, at a length of 718 mm SL (28.3 inches). Females in U.S. waters, between the sizes of 446 – 1,489 mm SL (17.6 to 58.6 inches) are estimated to release 69,000 – 12,200,000 eggs throughout the spawning season each year.

Larvae of king mackerel have been found in waters with temperatures between 26 – 31° C (79 – 88° F). This larval developmental stage has a short duration. King mackerel can grow up to 0.54 – 1.33 mm SL (0.02 to 0.05 inches) per day. This shortened larval stage decreases the vulnerability of the larvae, and is related to the increased metabolism of this fast-swimming species. Juveniles are generally found closer to shore than adults and occasionally in estuaries.

Spanish Mackerel

Spanish mackerel (*Scomberomorus maculatus*) are migratory and move into specific areas to spawn, and mature at age 1-2 years. They primarily eat other fish species (herring, sardines, and menhaden) and to a lesser extent crustaceans and squid at all life stages (larvae to adult). They are eaten primarily by larger pelagic predators like sharks, tuna, and bottlenose dolphin.

Spanish mackerel are also a pelagic species occurring in depths up to 75 meters (225 feet) but primarily found in depths of 20 meters (60 feet) or less. They occur in coastal zones of the western Atlantic from southern New England to the Florida Keys and throughout the Gulf

(Collette and Russo 1979). Adults usually are found from the low-tide line to the edge of the continental shelf, and along coastal areas. They inhabit estuarine areas (especially higher salinity areas) during seasonal migrations, but are considered rare and infrequent in many Gulf estuaries.

Spawning occurs along the inner continental shelf from April to September (Powell 1975). Eggs and larvae occur most frequently offshore over the inner continental shelf at temperatures between 20°C (68°F) and 32°C (89.6°F) and salinities between 28 and 37 ppt. They are found frequently in water depths from 9 meters (27 feet) to about 84 meters (252 feet), but are most common in less than 50 meters (150 feet).

Juveniles are most often found in coastal and estuarine habitats and at temperatures greater than 25°C (77°F) and salinities greater than 10 ppt. Although they occur in waters of varying salinity, juveniles appear to select higher marine salinity levels and generally are not considered estuarine-dependent. Like king mackerel, adult Spanish mackerel are migratory, generally moving from wintering areas of south Florida and Mexico to more northern latitudes in spring and summer. Spanish mackerel generally mature at age 1 to 2 and have a maximum age of approximately 11 years (Powell 1975).

Cobia

Cobia is distributed worldwide in tropical, subtropical and warm-temperate waters. Cobia is found in the western Atlantic Ocean from Nova Scotia, Canada, south to Argentina, including the Caribbean Sea, and is abundant in warm waters off the coast of the U.S. from the Chesapeake Bay south and throughout the Gulf. Cobia prefers water temperatures between 68°F-86°F. As a pelagic fish, cobia is found over the continental shelf and around offshore rocky outcrops, coral reefs, and artificial reefs. Cobia prefers to reside near any structure that interrupts open water, including pilings, buoys, platforms, anchored boats, and flotsam. Cobia is also found inshore inhabiting bays, inlets, and mangroves (SEDAR 28 Update 2020).

Cobia is an opportunistic predator that feeds on crustaceans, cephalopods, shrimp, and small fish (Arendt et al. 2001; Franks et al. 1996). Gulf cobia can weigh up to a record 61 kilograms (kg) (135 lbs ww), but are more common at weights of up to 23 kg (50 lbs ww). They reach lengths of 50-120 centimeters (cm; 20-47 inches), up to a maximum of 200 cm (79 inches). Gulf cobia grow quickly and have a moderately long life span. Maximum ages observed for cobia in the Gulf were 9 and 11 years for males and females, respectively. Females reach sexual maturity at approximately three years of age and males at approximately two years (SEDAR 28 Update 2020). During fall and winter months, cobia migrates south, offshore to warmer waters.

3.3.3 Bycatch

Many of the reef fish species co-occur with each other and can be incidentally caught when fishermen target certain species. In some cases, these fish may be discarded for regulatory reasons and thus are considered bycatch. Bycatch practicability analyses have been completed for red snapper (GMFMC 2004c, GMFMC 2007, GMFMC 2014, GMFMC 2015a), grouper (GMFMC 2008a, GMFMC 2010, GMFMC 2011a, GMFMC 2011b, GMFMC 2012a), vermilion snapper (GMFMC 2004b, GMFMC 2017b), greater amberjack (GMFMC 2008c, GMFMC

2012b, GMFMC 2015b), gray triggerfish (GMFMC 2012c), hogfish (GMFMC 2016) and most recently in red grouper Amendment 53 (GMFMC 2021). These analyses examined the effects of fishing on these species.

The gillnet portion of the CMP fishery has no documented interaction with marine mammals; NMFS classifies the gillnet portion of the CMP fishery as Category II (similar risk to marine mammals), analogous with other gillnet fisheries. Additional information on CMP Bycatch have been completed in Framework Amendment 7 to the CMP FMP (GMFMC 2019c), and is hereby incorporated by reference and summarized below.

In general, these analyses have found that reducing bycatch provides biological benefits to managed species, as well as benefits to the fishery through less waste, higher yields, and less forgone yield. However, in some cases, actions are approved that can increase bycatch through regulatory discards, such as increased minimum sizes and closed seasons. Under these circumstances, there is some biological benefit to the managed species that outweigh any increases in discards from the action.

3.3.4 Protected Species

NMFS manages marine protected species in the Southeast region under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). A summary of these two laws and more information is available on NMFS Office of Protected Resources website.¹⁹ ESA-listed species or Distinct Population Segments (DPS) of marine mammals, sea turtles, fish, and corals occur in the EEZ of the Gulf and South Atlantic. There are numerous stocks of marine mammals managed within the Southeast region. All marine mammals in U.S. waters are protected under the MMPA.

The five whale species that may be present in the Gulf (sperm, sei, fin, blue, and Rice's²⁰) are listed as endangered under the ESA. Rice's whales are the only resident baleen whales in the Gulf. Manatees, listed as threatened under the ESA, also occur in the Gulf and South Atlantic and are the only marine mammal species in this area managed by the U.S. Fish and Wildlife Service.

Sea turtles, fish, and corals that are listed as threatened or endangered under the ESA and occur in the Gulf include the following: sea turtles (Kemp's ridley, Northwest Atlantic DPS of loggerhead, North Atlantic and South Atlantic DPS of green, leatherback, and hawksbill); fish (Gulf sturgeon, U.S. DPS of smalltooth sawfish, Nassau grouper, oceanic whitetip shark, and giant manta ray); and coral (elkhorn, staghorn, lobed star, mountainous star, boulder star, and rough cactus).

¹⁹ <https://www.fisheries.noaa.gov/about/office-protected-resources>

²⁰ Rice's whale was known at the time of listing as the Gulf Bryde's whale, but was later identified as morphologically and genetically distinct from other whales under the Bryde's whale complex. Therefore, NMFS revised the Enumeration of endangered marine and anadromous species accordingly (86 FR 47022, Aug. 23, 2021).

Additionally, critical habitat designated under the ESA for the Northwest Atlantic Ocean DPS of loggerhead sea turtle, sawfish, and Gulf sturgeon occurs in the Gulf, though only loggerhead critical habitat occurs in federal waters.

The gear used by the Gulf reef fish fishery is classified in the MMPA 2022 List of Fisheries as a Category III fishery (87 FR 23122). This classification indicates the annual mortality and serious injury of a marine mammal stock resulting from any fishery is less than or equal to 1% of the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. Dolphins are the only species documented as interacting with the reef fish fishery. Bottlenose dolphins prey upon bait, catch, and/or released discards of fish from the reef fish fishery. They are also a common predator around reef fish vessels, feeding on the discards. Marine Mammal Stock Assessment Reports and additional information are available on the NMFS Office of Protected Species website.²¹

The most recent biological opinion (BiOp) for the Reef Fish FMP was completed on September 30, 2011. The BiOp determined the operation of the Gulf reef fish fishery managed under the Reef Fish FMP is not likely to adversely affect ESA-listed marine mammals or coral, and was not likely to jeopardize the continued existence of sea turtles (loggerhead, Kemp's ridley, green, hawksbill, and leatherback) or smalltooth sawfish. Since issuing the opinion, in memoranda dated September 16, 2014, and October 7, 2014, NMFS concluded that the activities associated with the Reef Fish FMP are not likely to adversely affect critical habitat for the Northwest Atlantic Ocean loggerhead sea turtle DPS and four species of corals (lobed star, mountainous star, boulder star, and rough cactus).

On September 29, 2016, NMFS requested re-initiation of Section 7 consultation on the operation of reef fish fishing managed by the Reef Fish FMP because new species (i.e., Nassau grouper [81 FR 42268] and green sea turtle North Atlantic and South Atlantic DPSs [81 FR 20057]) were listed under the ESA that may be affected by the proposed action. NMFS determined that the operation of the fishery during the re-initiation period is not likely to adversely affect these species.

On January 22, 2018, NMFS published a final rule (83 FR 2916) listing the giant manta ray as threatened under the ESA. On January 30, 2018, NMFS published a final rule (83 FR 4153) listing the oceanic whitetip shark as threatened under the ESA. In a memorandum dated March 6, 2018, NMFS revised the reinitiated consultation on the Reef Fish FMP to address the listings of the giant manta and oceanic whitetip and determined that fishing under the Reef Fish FMP during the revised re-initiation period is not likely to jeopardize the continued existence of listed sea turtle species, smalltooth sawfish, the green turtle DPSs, Nassau grouper, the giant manta, or the oceanic whitetip.

NMFS published a final rule on April 15, 2019, listing the Gulf Bryde's (now Rice's whale) whale as endangered. In a memorandum dated June 20, 2019, NMFS revised the re-initiation

²¹<https://www.fisheries.noaa.gov/topic/marine-mammal-protection>

request to include the Gulf Bryde's whale (Rice's whale) and determined that fishing under the Reef Fish FMP during the re-initiation period will not jeopardize the continued existence of any of the newly listed species discussed above.²²

NMFS completed a biological opinion on June 18, 2015, evaluating the impacts of the CMP fishery on ESA-listed species. In the biological opinion (NMFS 2017), NMFS determined that the operation of the CMP fishery is not likely to adversely affect ESA-listed whales, corals, and have no effect on Gulf sturgeon. NMFS also determined that the CMP fishery is not likely to adversely affect designated critical habitat for elkhorn and staghorn coral or the Northwest Atlantic DPS of loggerhead sea turtle. The 2015 (NMFS 2015) biological opinion concluded that the CMP fishery's continued authorization is likely to adversely affect, but is not likely to jeopardize, green, hawksbill, Kemp's ridley, leatherback, or the Northwest Atlantic DPS of loggerhead sea turtles, as well as smalltooth sawfish. NMFS completed an Amendment to the 2015 biological opinion on November 18, 2017. The amended biological opinion (NMFS 2017) concluded that the CMP fishery's continued authorization is not likely to adversely affect Nassau grouper and is likely to adversely affect, but is not likely to jeopardize, the North Atlantic and South Atlantic DPSs of green sea turtle. A revised incidental take statement was issued.

In a memorandum dated June 11, 2018, NMFS reinitiated consultation on the CMP FMP to address the listings of the giant manta ray and oceanic whitetip shark. The consultation memo determined that fishing under the CMP FMP during the reinitiation period is not likely to adversely affect oceanic whitetip sharks and will not appreciably reduce the likelihood of the giant manta ray's survival or recovery within its range.

In a memorandum dated July 8, 2019, NMFS determined that because of the very limited overlap between the CMP fishery and Gulf Bryde's whale (Rice's whale) habitat and the utilization of a gear types unlikely to pose an entanglement risk, the risk of adverse effects from interactions with fishing under the CMP FMP were discountable. In that same July 8, 2019, memorandum, NMFS concluded that the activities associated with the CMP FMP were not likely to adversely affect the continued existence of the species during the revised reinitiation period.

There is no information to indicate marine mammals and birds rely on Gulf reef fish or CMP species for food, and they are not generally caught by fishers harvesting reef fish or CMP species. Additionally, there is no evidence that the reef fish fishery or CMP fishery as a whole is adversely affecting seabirds.

Primary gear types used in the Gulf reef fish fishery are classified in the Final List of Fisheries for 2022 (87 FR 23122) as Category III gear. The primary gear in the Gulf CMP fishery used to harvest CMP species is hook-and-line, which is classified as a Category III fishery. This classification indicates the annual mortality and serious injury of a marine mammal stock resulting from any fishery is less than or equal to one percent of the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock,

²² Any official change to the name of the species listed under the ESA as the Gulf of Mexico Bryde's whale has no effect on NMFS's conclusion that the activities associated with the Reef Fish FMP will not jeopardize the continued existence of the species during the revised reinitiation period.

while allowing that stock to reach or maintain its optimum sustainable population. The Gulf CMP gillnet component of the CMP fishery is classified as Category II fishery. This classification indicates an occasional incidental mortality or serious injury of a marine mammal stock resulting from the fishery (1-50 % annually of the potential biological removal). The gillnet portion of the CMP fishery has no documented interaction with marine mammals; NMFS classifies gillnet portion of the CMP fishery as Category II based on analogy (similar risk to marine mammals) with other gillnet fisheries.

3.3.5 Red Tide

Red tide is a common name for harmful algal blooms (HAB) caused by species of dinoflagellates and other organisms that cause the water to appear to be red. Red tide blooms occur in the Gulf almost every year, generally in late summer or early fall. They are most common off the central and southwestern coasts of Florida between Clearwater and Sanibel Island, but may occur anywhere in the Gulf. More than 50 species capable of causing red tides occur in the Gulf, but one of the best-known species is *Karenia brevis*. This organism produces toxins capable of killing fish, birds, and marine animals.²³ The factors causing red tide blooms are complex (Alcock 2007). Blooms are thought to begin to develop offshore at depth. When oceanic or wind currents push the bloom to the coast where nutrient levels increase, blooms are able to increase in size. The source of the coastal nutrients can come from natural or man-made sources. Optimum water temperature for *K. brevis* growth occurs between 72°F and 82°F (22°C and 28°C) and optimal salinities occur between 31 and 37 ppt. Although climate change has been predicted to increase likelihood of blooms of other HABs, the effects on *K. brevis* are less known. On one hand, increasing water temperatures may increase above the optimal range, hindering growth, but increased temperatures in conjunction with higher levels of CO₂ may promote growth causing higher concentrations of *K. brevis* in blooms (Errera et al. 2014).

The effects of red tide on fish stocks have been well established. After *K. brevis* cells die, they release brevetoxins. When these are absorbed through the gills or ingested, they affect the nervous and respiratory functions of fish and cause mortality. It is unknown whether mortality occurs via absorption of the brevetoxins across gill membranes (Abbott et al. 1975, Baden 1988), ingestion of toxic biota (Landsberg 2002), or from some indirect effect of red tide such as hypoxia (Walter et al. 2013). During severe *K. brevis* blooms, large fish kills can occur (e.g., Flaherty and Landsberg 2011, Smith 1975, Steidinger and Ingle 1972). This can add to fish mortality as the decaying biomass from the blooms create hypoxic conditions. In 2005, a severe red tide event occurred in the Gulf along with an associated large decline in multiple abundance indices for red grouper, gag, red drum, and other species thought to be susceptible to mortality from *K. brevis* bloom events. In 2018, a severe red tide event occurred off the southwest coast of Florida from Monroe County to Sarasota County that persisted for more than 10 months; the impacts on fish stocks will likely be considered in future stock assessments.

²³ <http://myfwc.com/research/redtide/general/about/>

3.3.6 Climate Change

Climate change projections predict increases in sea-surface temperature and sea level; decreases in sea-ice cover; and changes in salinity, wave climate, and ocean circulation.²⁴ These changes are likely to affect plankton biomass and fish larvae abundance that could adversely affect fish, marine mammals, seabirds, and ocean biodiversity. Kennedy et al. (2002) and Osgood (2008) have suggested global climate change could affect temperature changes in coastal and marine ecosystems that can influence organism metabolism and alter ecological processes such as productivity and species interactions, change precipitation patterns and cause a rise in sea level. This could change the water balance of coastal ecosystems; altering patterns of wind and water circulation in the ocean environment; and influence the productivity of critical coastal ecosystems such as wetlands, estuaries, and coral reefs. The National Oceanic and Atmospheric Administration Climate Change Web Portal²⁵ predicts the average sea surface temperature in the Gulf will increase by 1-3°C for 2010-2070 compared to the average over the years 1950-2010. For reef fishes, Burton (2008) speculated climate change could cause shifts in spawning seasons, changes in migration patterns, and changes to basic life history parameters such as growth rates. The smooth puffer and common snook are examples of species for which there has been a distributional trend to the north in the Gulf. For other species, such as red snapper and the dwarf sand perch, there has been a distributional trend towards deeper waters. For other fish species, such as the dwarf goatfish, there has been a distributional trend both to the north and to deeper waters. These changes in distributions have been hypothesized as a response to environmental factors, such as increases in temperature.

The distribution of native and exotic species may change with increased water temperature, as may the prevalence of disease in keystone animals such as corals and the occurrence and intensity of toxic algae blooms. Hollowed et al. (2013) provided a review of projected effects of climate change on the marine fisheries and dependent communities. Integrating the potential effects of climate change into the fisheries assessment is currently difficult due to the time scale differences (Hollowed et al. 2013). The fisheries stock assessments rarely project through a time span that would include detectable climate change effects. However, some stocks have shown increases in abundance in the northern Gulf (Fodrie et al. 2010) and Texas estuaries (Tolan and Fisher 2009) during the interval between 1979 and 2006. This may be a result of increasing water temperatures in coastal environments.

3.3.7 Deepwater Horizon MC252 Oil Spill

The Deepwater Horizon oil spill occurred on April 20, 2010 and released large amounts of crude oil into the Gulf. Crude oil contains polycyclic aromatic hydrocarbons (PAH), which are highly toxic chemicals that tend to persist in the environment for long periods of time, in marine environments can have detrimental impacts on marine finfish, especially during the more vulnerable larval stage of development (Whitehead et al. 2012). When exposed to realistic, yet toxic levels of PAHs (1–15 µg/L), greater amberjack larvae develop cardiac abnormalities and physiological defects (Incardona et al. 2014). The future reproductive success of long-lived

²⁴ <http://www.ipcc.ch/>

²⁵ <https://www.esrl.noaa.gov/psd/ipcc/>

species, including red drum and many reef fish species may be negatively affected by episodic events resulting in high-mortality years or low recruitment. These episodic events could leave gaps in the age structure of the population, thereby affecting future reproductive output (Mendelsohn et al. 2012). Other studies have described the vulnerabilities of various marine finfish species, with morphological and/or life history characteristics similar to species found in the Gulf, to oil spills and dispersants (Hose et al. 1996; Carls et al. 1999; Heintz et al. 1999; Short 2003).

Increases in histopathological lesions were found in red snapper in the area affected by the oil, but Murawski et al. (2014) found that the incidence of lesions had declined between 2011 and 2012. The occurrence of such lesions in marine fish is not uncommon (Sindermann 1979; Haensly et al. 1982; Solangi and Overstreet 1982; Khan and Kiceniuk 1984, 1988; Kiceniuk and Khan 1987; Khan 1990). Red snapper diet was also affected after the spill. A decrease in zooplankton consumed, especially by adults (greater than 400 mm total length) over natural and artificial substrates may have contributed to an increase in the consumption of fish and invertebrate prey – more so at artificial reefs than natural reefs (Tarnecki and Patterson 2015). In addition to the crude oil, over a million gallons of the dispersant, Corexit 9500A[®], was applied to the ocean surface and an additional hundreds of thousands of gallons of dispersant was pumped to the mile-deep wellhead (National Commission 2010). No large-scale applications of dispersants in deep water had been conducted until the *Deepwater Horizon* MC252 oil spill. Thus, no data exist on the environmental fate of dispersants in deep water. The effect of oil, dispersants, and the combination of oil and dispersants on fishes of the Gulf remains an area of concern.

3.4 Description of the Economic Environment

3.4.1 Commercial Sector

The actions in this proposed amendment only pertain to the for-hire component of the recreational sector (charter vessels and headboats). As a result, a description of the economic environment for the commercial sector is not provided.

3.4.2 Recreational Sector

The recreational sector is comprised of the private and for-hire modes. The private mode includes anglers fishing from shore (all land-based structures) and private/rental boats. The for-hire mode is composed of charter vessels and headboats, which carry paying passengers. Charter vessels generally carry fewer passengers and charge a fee on an entire vessel basis, whereas headboats carry more passengers and payment is per person. The type of service, from a vessel- or passenger-size perspective, affects the flexibility to search different fishing locations during the course of a trip and target different species because larger concentrations of fish are required to satisfy larger groups of anglers.

Permits

For-hire vessels in the Gulf are required to have a limited access Gulf charter vessel/headboat for Coastal Migratory Pelagic Fish permit (CHG permit) or Gulf historical captain permit for coastal migratory pelagic fish (HCHG permit) to fish for or possess CMP species in or from the Gulf EEZ. As shown in Table 3.4.2.1, the number of valid or renewable²⁶ CHG permits decreased from 2015, but increased in 2018 and had relatively little change in 2019 (Table 3.4.2.1). The HCHG permit was established in Reef Fish Amendment 20/CMP Amendment 14 (GMFMC 2003). The number of HCHG permits remained stable from 2015-2019 (Table 3.4.2.2). Recently, many of the HCHG permits have been converted into standard CHG permits. On February 1, 2022, there were 3 valid or renewable HCHG permits (GMFMC 2022).

Table 3.4.2.1. Number of valid or renewable CHG permits, 2015-2019.

Year	Number of Permits
2015	1274
2016	1260
2017	1260
2018	1267
2019	1266

Source: NMFS SERO SF Access Permits Database.

Table 3.4.2.2. Number of valid or renewable HCHG permits, 2015-2019.

Year	Number of Permits
2015	35
2016	34
2017	34
2018	34
2019	34

Source: NMFS SERO SF Access Permits Database.

²⁶ A renewable permit is an expired permit that may not be actively fished, but is renewable for up to one year after expiration.

Similar, but separate, permits are required to fish for or possess Gulf Reef fish species. Charter vessel/headboat vessels in the Gulf are required to have a limited access charter vessel/headboat for Reef fish permit (RCG) or the historical captain permit for reef fish (HRCG) to fish for or possess coastal reef fish species. Similar to the CHG permits, the total number of valid or renewable RCG permits has been slowly decreasing from 2015. There were about 1% less valid or renewable RCG permits in 2019, relative to 2015 (Table 3.4.2.3). The HRCG permit was established in Reef Fish Amendment 20/CMP Amendment 14 (GMFMC 2003). The number of valid or renewable HRCG permits experienced little change from 2015-2019. Recently, many of the HRCG permits have been converted into standard RCG permits. On February 1, 2022, there were 3 valid or renewable HRCG permits (GMFMC 2022).

Table 3.4.2.3. Number of valid or renewable RCG 2015-2019.

Year	Number of Permits
2015	1294
2016	1282
2017	1280
2018	1279
2019	1277

Source: NMFS SERO SF Access Permits Database.

Table 3.4.2.4. Number of valid or renewable HRCG permits, 2015-2019.

Year	Number of Permits
2015	34
2016	33
2017	33
2018	33
2019	33

Source: NMFS SERO SF Access Permits Database.

Although the for-hire permit application collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a headboat or a charter vessel and vessels may operate in both capacities. However, only selected federally permitted headboats are required to submit harvest and effort information to the NMFS

SRHS.²⁷ The SRHS is divided into discrete geographical/statistical areas to which headboat trips and associated catch are assigned. Participation in the SRHS is based on determination by the SEFSC that the vessel primarily operates as a headboat and on vessels within each geographical/statistical area. As of March 9, 2021, 69 Gulf headboats were registered in the SRHS and another 39 operating in the FLEC Zone. The majority of these headboats were located in Florida (76 total), followed by Texas (16), Alabama (9), and Mississippi/Louisiana (5).

Landings

This section contains landings data from the Southeast Fisheries Science Center (SEFSC) Marine Recreational Information Program – Fishing Effort Survey (MRIP-FES) ACL monitoring data set, which includes estimates from the NMFS SRHS program, with the addition of landings estimates provided by the Louisiana Department of Wildlife and Fisheries (LDWF), and the Texas Parks and Wildlife Department (TPWD). Gulf CMP species are managed under individual species stock ACLs, and Reef fish species are managed under both individual and complex species stock ACLs. The ACL landings for each species group in this section is specified in terms of whole weight (ww).

Gulf landings of CMP species remained consistent from 2015-2019, ranging from a low of 7.02 million lbs in 2017 to a high of 8.19 million in 2019. Shore mode trips accounted for 45% of all landings on average from 2015–2019, followed by private mode (42%), and then the charter mode (11%) (Figure 3.4.2.1). Headboats accounted for only 1% of all landings. Florida (63%) and Alabama (26%) accounted for the majority of landings on average in the gulf from 2015-2019 of CMP species. Louisiana, Texas, and Mississippi all accounted for 2% of the total landings respectively (Figure 3.4.2.2). Seasonal landings for CMP species have fluctuated from 2015-2019, but on average peak landings of CMP species occurred MRIP wave 4 (July/August) followed by MRIP wave 3 (May/June) (Figure 3.4.2.3).

²⁷ All owners and operators of vessels issued Gulf of Mexico charter vessel/headboat permits are required to comply with the new Southeast For-Hire Integrated Electronic Reporting Program. Under this program, the vessel owner or operator must declare trips prior to departure and submit electronic fishing reports prior to offloading fish, or within 30 minutes after the end of a trip, if no fish are landed. Those vessels selected to report to the SRHS (i.e., federally permitted headboats) continue to submit their reports under the new requirements directly to the SRHS program. For more information, see: https://www.fisheries.noaa.gov/southeast/recreational-fishing-data/southeast-hireelectronic-reporting-program?utm_medium=email&utm_source=govdelivery

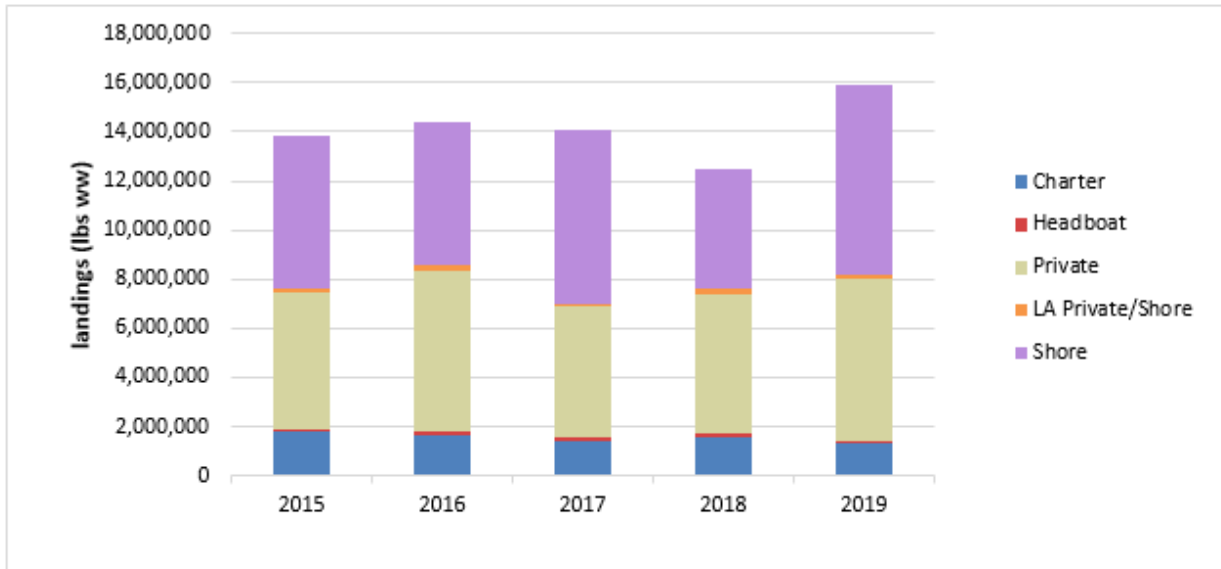


Figure 3.4.2.1. Recreational landings of Gulf CMP species (king mackerel, Spanish mackerel and cobia) by mode. Landings are in MRIP-FES.
Source: SEFSC MRIP-FES ACL data set (Dec 2021)

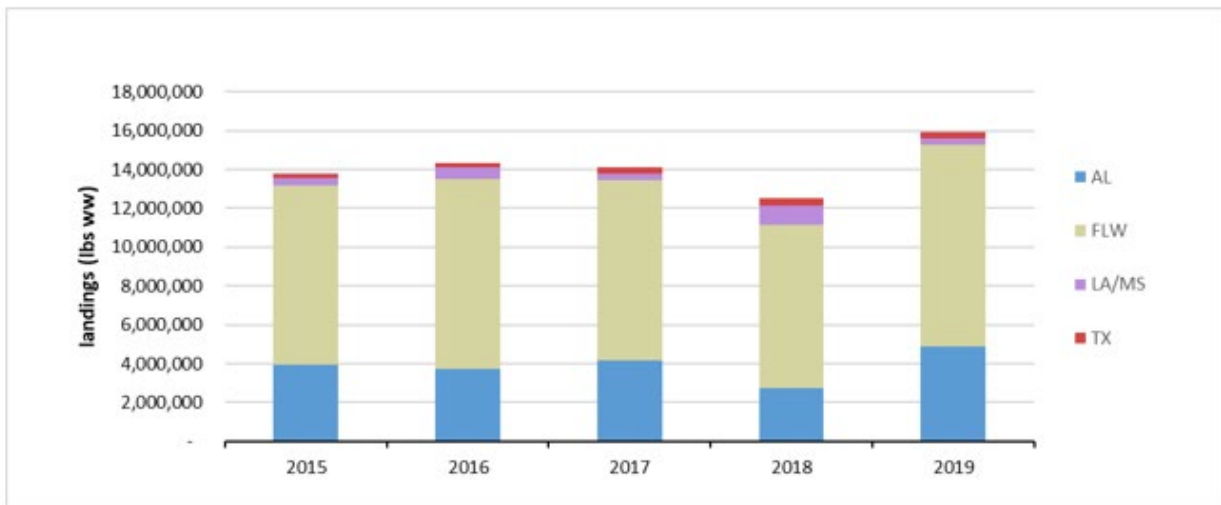


Figure 3.4.2.2. Recreational landings of Gulf CMP species (king mackerel, Spanish mackerel and cobia) by state.* Landings are in MRIP-FES.
Source: SEFSC MRIP-FES ACL data set (July 2021).
*Louisiana and Mississippi are combined here to align with the way headboat landings were reported.

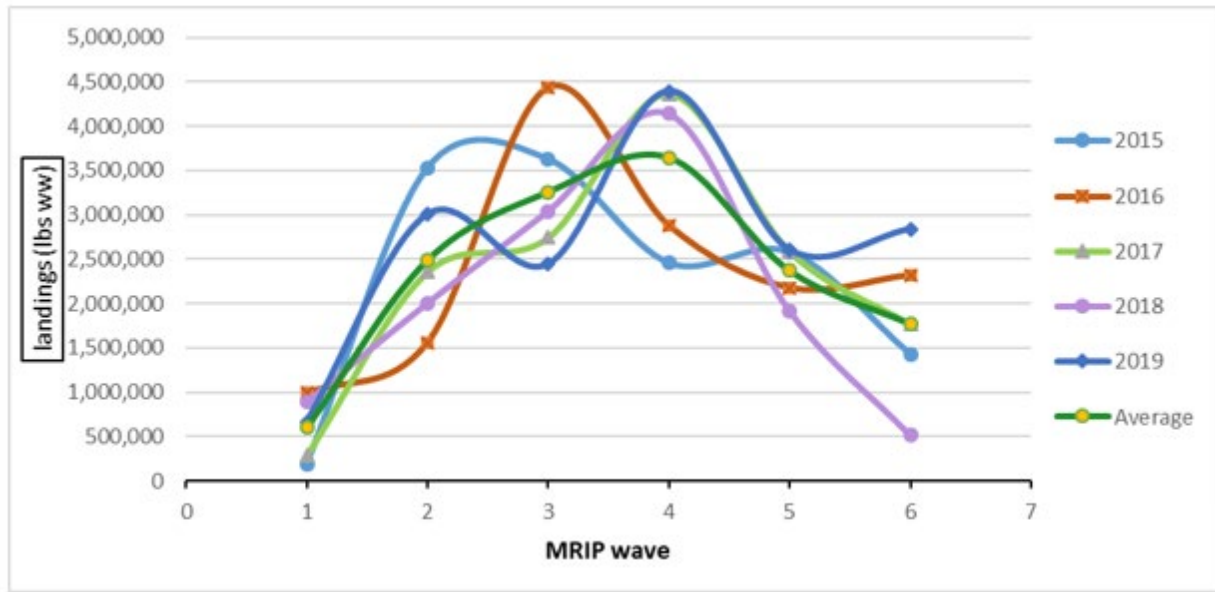


Figure 3.4.2.3. Recreational landings of Gulf CMP species (king mackerel, Spanish mackerel and cobia) by MRIP wave. Landings are in MRIP-FES. Source: SEFSC MRIP-FES ACL data set (Dec 2021).

Gulf landings of reef fish species overall remained consistent from 2015-2019, ranging from a low of 1.33 million lbs. in 2017 to a high of 1.57 million in 2019. Private/rental vessel trips accounted for 72% of all landings on average from 2015–2019 (Figure 3.4.2.4). Charter vessels landings made up about 15% of all recreational reef fish species landings. The shore mode accounted for 3% of all recreational reef fish landings, and headboats accounted for only 1% of all landings. Florida (66%) and Alabama (24%) accounted for the majority of landings on average in the Gulf from 2015-2019 of reef fish species. Louisiana, Texas, and Mississippi all accounted for 2% of the total landings respectively (Figure 3.4.2.5). Seasonal landings for reef fish species from 2015-2019, on average peaked during MRIP wave 3 (May/June) followed by MRIP wave 4 (July/August) (Figure 3.4.2.6).

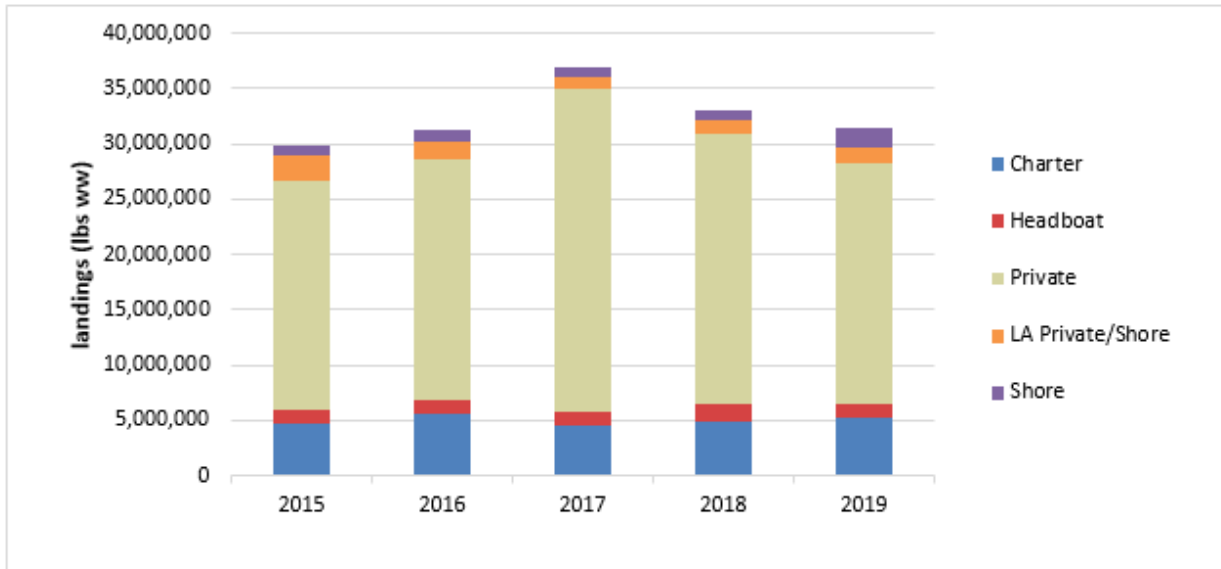


Figure 3.4.2.4. Recreational landings of Gulf reef fish by mode. Landings are in MRIP-FES. Source: SEFSC MRIP-FES ACL data set (July 2021).

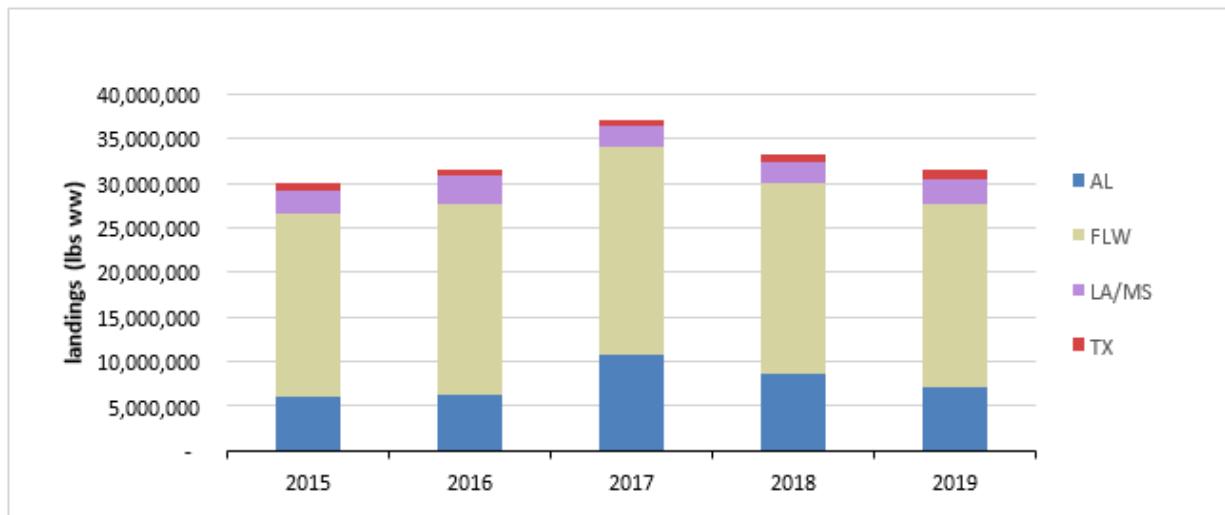


Figure 3.4.2.5. Recreational landings of Gulf reef fish by state. Landings are in MRIP-FES. Source: SEFSC MRIP-FES ACL data set (July 2021).

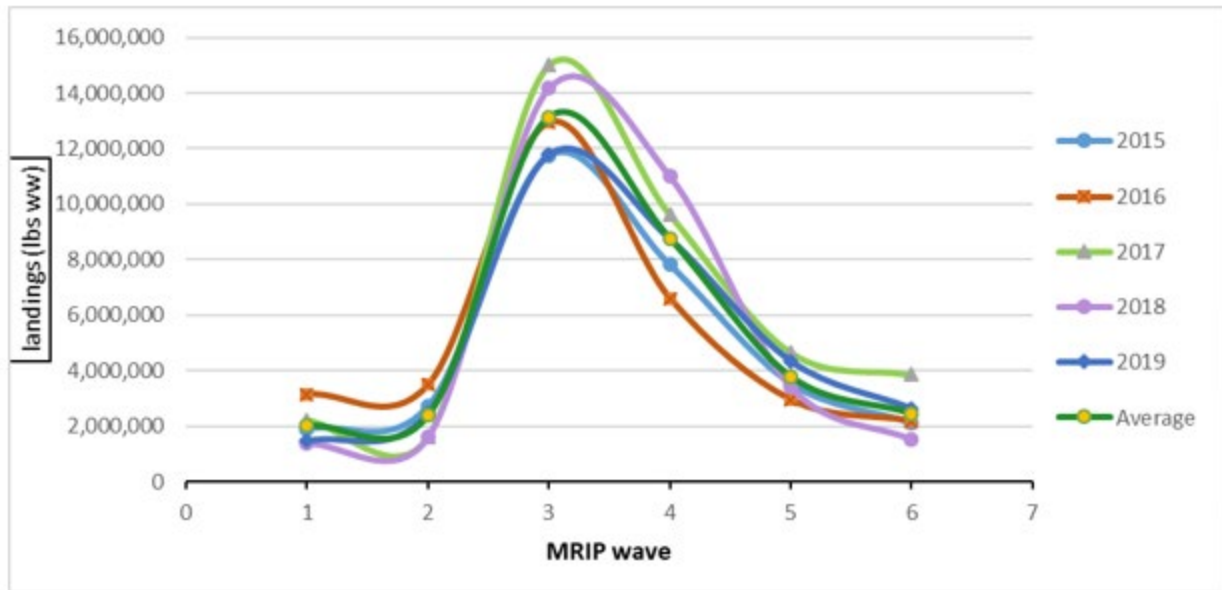


Figure 3.4.2.6. Recreational landings of Gulf reef fish by MRIP Wave. Landings are in MRIPFES.

Source: SEFSC MRIP-FES ACL data set (July 2021).

Angler Effort

Recreational effort derived from the MRIP database can be characterized in terms of the number of trips as follows:

- Target effort - The number of individual angler trips, regardless of duration, where the intercepted angler indicated that the species or a species in the species group was targeted as either the first or the second primary target for the trip. The species did not have to be caught.
- Catch effort - The number of individual angler trips, regardless of duration and target intent, where the individual species or a species in the species group was caught. The fish did not have to be kept.
- Total recreational trips - The total estimated number of recreational trips in the Gulf, regardless of target intent or catch success.

A target trip may be considered an angler’s revealed preference for a certain species, and thus may carry more relevant information when assessing the economic effects of regulations on the subject species than the other two measures of recreational effort. Given the subject nature of this action, the following discussion focuses on target trips for CMP and reef fish in the Gulf.

The number of charter vessel trips that targeted CMP species fluctuated in most Gulf states from 2015 through 2019 (Table 3.4.2.5.). Florida and Alabama recorded the greatest number of these trips during this period (Table 3.4.2.5.).

Table 3.4.2.5. Charter mode recreational target trips for Gulf CMP by state, 2015-2019.

Year	Alabama	Florida	Louisiana*	Mississippi	Texas
2015	8,497	56,151	N/A	1,709	870
2016	7,460	39,952	2,468	483	1,255
2017	6,504	72,937	1,405	243	902
2018	3,224	80,460	1,785	895	2,896
2019	4,950	61,483	517	783	1,952
Average	6,127	62,197	1,544	823	1,575

Source: MRIP database, SERO, NMFS (February 2022) for AL, FL and MS. LDWF Recreational Creel Survey for LA. TPWD Marine Sport-Harvest Monitoring Program for TX.

*LA began collecting target effort beginning in 2016.

Note 1: The estimates for AL, FL, and MS are based on MRIP FES.

Note 2: Headboat information is unavailable.

The number of charter vessel trips that targeted reef fish increased overall from 2015 through 2019, with some fluctuation, in all Gulf states except Louisiana (Table 3.4.2.6). In Louisiana, there was a steady decline in such trips during this period.

Table 3.4.2.6. Charter mode recreational target trips for Gulf reef fish by state, 2015-2019.

Year	Alabama	Florida	Louisiana*	Mississippi	Texas
2015	23,232	142,241	N/A	338	2,321
2016	41,098	160,120	14,220	1,427	3,552
2017	35,034	148,271	13,352	2,414	4,464
2018	33,891	172,933	13,132	326	4,547
2019	45,793	186,830	12,586	2,866	4,713
Average	35,810	162,079	13,323	1,474	3,919

Source: MRIP database, SERO, NMFS (February 2022) for AL, FL and MS. LDWF Recreational Creel Survey for LA. TPWD Marine Sport-Harvest Monitoring Program for TX.

*LA began collecting target effort beginning in 2016.

Note 1: The estimates for AL, FL, and MS are based on MRIP FES.

Note 2: Headboat information is unavailable.

Estimates of total effort by the headboat mode are provided in terms of angler days, or the total number of standardized full-day angler trips.²⁸ The headboat angler days provided are for all Gulf species. Headboat angler days were fairly stable across the Gulf States from 2015 through 2019 (Table 3.4.2.7). There was, however, a downward trend in reported angler days in Florida from 2016 on. On average (2015 through 2019), Florida accounted for the majority of headboat angler days reported, followed by Texas and Alabama; whereas, Mississippi and Louisiana combined, accounted for only a small percentage (Table 3.4.2.7). Headboat effort in terms of angler days for the entire Gulf was concentrated most heavily during the summer months of June through August on average (2015 through 2019; Table 3.4.2.8).

²⁸ Headboat trip categories include half-, three-quarter-, full-, and 2-day trips. A full-day trip equals one angler day, a half-day trip equals .5 angler days, etc. Angler days are not standardized to an hourly measure of effort and actual trip durations may vary within each category.

Table 3.4.2.7. Gulf headboat angler days and percent distribution by state (2015 through 2019).

	Angler Days				Percent Distribution			
	FL	AL	MS-LA**	TX	FL	AL	MS-LA	TX
2015	176,375	18,008	3,587	55,135	69.7%	7.1%	1.4%	21.8%
2016	183,147	16,831	2,955	54,083	71.3%	6.5%	1.1%	21.0%
2017	178,816	17,841	3,189	51,575	71.1%	7.1%	1.3%	20.5%
2018	171,996	19,851	3,235	52,160	69.6%	8.0%	1.3%	21.1%
2019	161,564	18,607	2,632	52,456	68.7%	7.9%	1.1%	22.3%
Average	174,380	18,228	3,120	53,082	70.1%	7.3%	1.3%	21.3%

Source: NMFS SRHS (February, 2020).

*headboat data from Mississippi and Louisiana are combined for confidentiality purposes.

Table 3.4.2.8. Gulf headboat angler days and percent distribution by month (2015 – 2019).

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	Headboat Angler Days											
2015	9,444	10,594	22,827	20,684	20,973	44,731	45,192	26,637	15,114	17,246	9,757	9,906
2016	7,954	13,233	21,829	18,691	21,693	50,333	49,881	21,775	13,596	15,827	11,823	10,381
2017	8,998	14,007	21,032	19,383	19,186	47,673	54,028	22,984	10,289	11,054	11,299	11,488
2018	5,524	13,694	20,762	17,584	16,876	54,251	53,304	24,819	13,235	10,633	8,183	8,377
2019	2,330	12,819	21,796	16,299	18,271	46,046	47,594	24,212	11,369	13,687	10,389	10,447
Avg	6,850	12,869	21,649	18,528	19,400	48,607	50,000	24,085	12,721	13,689	10,290	10,120
	Percent Distribution											
2015	3.7%	4.2%	9.0%	8.2%	8.3%	17.7%	17.9%	10.5%	6.0%	6.8%	3.9%	3.9%
2016	3.1%	5.1%	8.5%	7.3%	8.4%	19.6%	19.4%	8.5%	5.3%	6.2%	4.6%	4.0%
2017	3.6%	5.6%	8.4%	7.7%	7.6%	19.0%	21.5%	9.1%	4.1%	4.4%	4.5%	4.6%
2018	2.2%	5.5%	8.4%	7.1%	6.8%	21.9%	21.6%	10.0%	5.4%	4.3%	3.3%	3.4%
2019	1.0%	5.4%	9.3%	6.9%	7.8%	19.6%	20.2%	10.3%	4.8%	5.8%	4.4%	4.4%
Avg	2.7%	5.2%	8.7%	7.4%	7.8%	19.5%	20.1%	9.7%	5.1%	5.5%	4.1%	4.1%

Source: NMFS SRHS (Feb, 2020)

Economic Value

According to Savolainen et al. (2012), the average charter vessel operating in the Gulf is estimated to receive approximately \$90,000 (2019 dollars) in gross revenue and \$27,000 in net income (gross revenue minus variable and fixed costs) annually. The average headboat is estimated to receive approximately \$272,000 (2019 dollars) in gross revenue and \$79,000 in net income annually. More recent estimates of average annual gross revenue for Gulf headboats are provided in Abbott and Willard (2017) and D. Carter, (SEFSC, pers. comm., 2018). Abbott and Willard (2017) suggest that Savolainen, et al.'s estimate of average annual gross revenue for headboats may be an underestimate, as data in the former suggest that average gross revenue in 2009 for the vessels in their sample was about \$480,000 (2019 dollars). Further, their data suggest average annual gross revenue per vessel had increased to about \$580,000 (2019 dollars) by 2014. However, Abbott and Willard's estimates are based on a sample of 17 headboats that chose to participate in the headboat Collaborative Program in 2014, while Savolainen, et al.'s are based on a random sample of 20 headboats. The headboats that participated in the Collaborative may be economic highliners, in which case Abbott and Willard's estimates would overestimate average annual gross revenue for Gulf headboats. Carter (2018) recently estimated that average annual gross revenue for Gulf headboats were approximately \$427,515 (2019 dollars) in 2017. This estimate is likely the best current estimate of annual gross revenue for Gulf headboats, as it is based on a relatively large sample of 63 boats, or more than 90% of the active fleet, and is more recent.

However, gross revenues overstate the annual economic value and profits generated by for-hire vessels. Economic value for for-hire vessels can be measured by producer surplus (PS) per passenger trip (the amount of money that a vessel owner earns in excess of the cost of providing the trip). Estimates of revenue, costs, and trip net revenue trips taken by headboats and charter vessels in 2017 are available from Souza and Liese (2019). They also provide estimates of trip net cash flow per angler trip, which approximate PS per angler trip. According to Table 3.4.2.9, after accounting for transactions fees, supply costs, and labor costs, net revenue per trip was 42% of revenue for Gulf charter vessels and 54% of revenue for Southeast headboats, or \$779 and \$1,811 (2019 dollars), respectively. Given the respective average number of anglers per trip for each fleet, PS per trip is estimated to be \$141 for charter vessels and \$64 for headboats.

Table 3.4.2.9. Trip economics for offshore trips by South Atlantic charter vessels and Southeast headboats in 2017 (2019\$).

	Gulf Charter Vessels	Southeast Headboats
Revenue	100%	100%
Transaction Fees (% of revenue)	3%	6%
Supply Costs (% of revenue)	27%	19%
Labor Costs (% of revenue)	27%	22%
Net Revenue per trip including Labor costs (% of revenue)	42%	54%
Net Revenue per Trip	\$779	\$1,844
Average # of Anglers per Trip	4.7	28.2
Trip Net Cash Flow per Angler Trip	\$141	\$64

Trip net revenue (TNR), which is the return used to pay all labor wages, returns to capital. When TNR is divided by the number of anglers on a trip, it represents cash flow per angler (CFpA). The estimated CFpA value for an average Gulf charter angler trip is \$234 (2019 dollars) and the estimated CFpA value for an average Gulf headboat angler trip is \$98 (Souza and Liese 2019). Estimates of CFpA for all individual CMP or Reef Fish species target trips, in particular, are not available.

Business Activity

The desire for recreational fishing generates economic activity as consumers spend their income on various goods and services needed for recreational fishing. This spurs economic activity in the region where recreational fishing occurs. It should be clearly noted that, in the absence of the opportunity to fish, the income would presumably be spent on other goods and services and these expenditures would similarly generate economic activity in the region where the expenditure occurs. As such, the analysis below represents a distributional analysis only.

Estimates of the business activity (economic impacts) associated with recreational angling for CMP and Reef Fish in the Gulf were calculated using average trip-level impact coefficients derived from the 2016 Fisheries Economics of the U.S. report (NMFS 2018) and underlying data provided by the National Oceanic and Atmospheric Administration (NOAA) Office of Science and Technology. Economic impact estimates in 2016 dollars were adjusted to 2019 dollars using the annual, not seasonally adjusted gross domestic product (GDP) implicit price deflator provided by the U.S. Bureau of Economic Analysis.

Business activity (economic impacts) for the recreational sector is characterized in the form of jobs (full- and part-time), income impacts (wages, salaries, and self-employed income), output impacts (gross business sales), and value-added impacts (contribution to the GDP in a state or region). Estimates of the average annual economic impacts (2015–2019) resulting from Gulf Zone CMP and Reef fish species target charter trips are provided in Table 3.4.2.6 and Table 3.4.2.7. The average impact coefficients, or multipliers, used in the model are invariant to the “type” of effort (e.g., target or catch) and can therefore be directly used to measure the impact of other effort measures such as CMP and Reef Fish catch trips. To calculate the multipliers from Table 3.4.2.6 & Table 3.4.2.7, simply divide the desired impact measure (sales impact, value-added impact, income impact or employment) associated with a given state by the number of target trips for that state.

The estimates provided in Table 3.4.2.6 and Table 3.4.2.7 only apply at the state-level. Addition of the state-level estimates to produce a regional (or national) total may underestimate the actual amount of total business activity, because state-level impact multipliers do not account for interstate and interregional trading. It is also important to note that these economic impacts estimates are based on trip expenditures only and do not account for durable expenditures. Durable expenditures cannot be reasonably apportioned to individual species. As such, the estimates provided in Table 3.4.2.6 and Table 3.4.2.7 may be considered a lower bound on the economic activity associated with those trips that targeted CMP and Reef Fish.

Estimates of the business activity associated with headboat effort are not available. Headboat vessels are not covered in MRIP in the Southeast, so, in addition to the absence of estimates of target effort, estimation of the appropriate business activity coefficients for headboat effort has not been conducted.

Table 3.4.2.10 Estimated average annual economic impacts (2015-2019) from Gulf charter vessel CMP target trips, by state, using state-level multipliers. All monetary estimates are in 2020 dollars in thousands.

	FL	AL	MS	LA*	TX
	Charter Mode				
Target Trips	62,197	6,127	823	1,544	1,575
Value Added Impacts	\$22,665	\$2,658	\$384	\$763	\$664
Sales Impacts	\$38,060	\$4,834	\$725	\$1,433	\$1,102
Income Impacts	\$13,244	\$1,516	\$221	\$450	\$372
Employment (Jobs)	336	51	8	16	9

Source: Effort data from MRIP, LDWF LA Creel, and TPWD; economic impact results calculated by NMFS SERO using NMFS (2021) and underlying data provided by the NOAA Office of Science and Technology.

*LA estimates exclude 2015.

Note: Headboat information is unavailable.

Table 3.4.2.11 Estimated annual average economic impacts (2015-2019) from Gulf charter vessel reef fish target trips, by state, using state-level multipliers. All monetary estimates are in 2020 dollars in thousands.

	FL	AL	MS	LA*	TX**
	Charter Mode				
Target Trips	162,079	35,810	1,474	13,323	3,919
Value Added Impacts	\$59,062	\$15,535	\$688	\$6,582	\$1,652
Sales Impacts	\$99,182	\$28,251	\$1,299	\$12,364	\$2,744
Income Impacts	\$34,514	\$8,861	\$396	\$3,880	\$926
Employment (Jobs)	876	296	15	138	22

Source: Effort data from MRIP, LDWF LA Creel, and TPWD; economic impact results calculated by NMFS SERO using NMFS (2021) and underlying data provided by the NOAA Office of Science and Technology.

*LA estimates exclude 2015.

**Texas estimates are for red snapper and grouper (generic, not by species) target trips only.

Note: Headboat information is unavailable.

3.5 Description of the Social Environment

This action affects the federally permitted for-hire component of the recreational sector in the Gulf, only. The proposed action would provide a short-term exemption to the requirement for federally permitted charter vessels and headboats to carry a working VMS unit, as established through the Generic Amendment to the Reef Fish and CMP FMPs Modifications to Charter Vessel and Headboat Reporting Requirements (Generic Amendment; GMFMC 2017a). The Generic Amendment included a description of for-hire communities and is incorporated by reference. Additional descriptions of for-hire communities fishing for reef fish (GMFMC 2019a) and CMP (GMFMC 2021) include updated permit information and are incorporated by reference.

A federal charter vessel/headboat permit is required for vessels to take paying passengers to fish for reef fish and CMP species in federal waters. The federal permits do not distinguish between charter vessels and headboats; there is a charter vessel/headboat permit for reef fish, and a charter vessel/headboat permit for CMP fish. In the Gulf, the charter vessel/headboat permits for reef fish and CMP are limited access; existing permits may be renewed or transferred, but no new permits are available. The respective charter vessel/headboat historical captain permits for reef fish and CMP are limited access and may be renewed by the permit holder, but may not be transferred to a new owner. They may only be transferred to another vessel owned or leased by the historical captain. Historical captain permits that are not renewed or transferred to another vessel are terminated. Recently, many of the historical permits were converted to standard permits (GMFMC 2019b). There are currently 3 valid or renewable Gulf reef fish historical captain for-hire permits and 3 valid or renewable Gulf CMP historical captain for-hire permits (GMFMC 2022).

A permit is valid for one year after it has been renewed or transferred. If the permit is not renewed or transferred before the end of the year when it is valid, it expires but stays in renewable status for one year. An expired permit may not be used for fishing, but the permit holder may still renew or transfer the permit during the year of renewable status. If the permit is not renewed or transferred by the end of the renewable period, the permit is terminated and may not be reissued. The annual application fee for these permits is \$25 for the first permit and \$10 for each additional permit.

Table 1.1.2 provides the number of federal for-hire permits by state. Table 3.5.1 provides a list of communities for which the most federally permitted for-hire vessels are homeported, to provide information on the geographic distribution of recreational fishing involvement. Most vessels that have a federal for-hire permit possess both the reef fish and CMP fish permits, and the ranking of communities for each permit is similar, with the same 12 communities occupying the top 12 positions on both lists. It would be most likely for the effects described in Section 4.1.4 to occur within these communities.

Table 3.5.1. Top ranking communities based on number of charter/headboat permits for reef fish and CMP fish, including historical captain permits.

Reef Fish			CMP Fish		
State	Community	#Permits	State	Community	#Permits
FL	Destin	62	FL	Destin	60
FL	Panama City	53	FL	Panama City	54
AL	Orange Beach	53	AL	Orange Beach	52
FL	Naples	41	FL	Naples	41
FL	Key West	38	FL	Key West	39
FL	Pensacola	24	FL	Pensacola	24
FL	Sarasota	22	FL	Sarasota	21
FL	Clearwater	19	FL	Clearwater	19
TX	Galveston	19	TX	Galveston	19
FL	St. Petersburg	18	FL	St. Petersburg	18
FL	Cape Coral	16	FL	Cape Coral	16
FL	Fort Myers	16	FL	Fort Myers	16
FL	Crystal River	14	FL	Corpus Christi	15
FL	Tampa	13	FL	Crystal River	13
TX	Corpus Christi	13	TX	Port Aransas	13
			AL	Gulf Shores	13
			FL	Tampa	13

Source: NMFS SERO permit office, August 26, 2021. Communities with 13 or more valid/renewable permits are included, based on permitholder address.

3.5.1 Environmental Justice, Equity, and Underserved Communities

Federal agencies are required to consider the impacts and/or address the inequalities of their policies on minority populations, low-income populations, disadvantaged communities, and/or

underserved communities. These requirements are outlined in the following Executive Orders (E.O.).

E.O. 12898 requires federal agencies conduct their programs, policies, and activities in a manner to ensure individuals or populations are not excluded from participation in, or denied the benefits of, or subjected to discrimination because of their race, color, or national origin. In addition, and specifically with respect to subsistence consumption of fish and wildlife, federal agencies are required to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. The main focus of E.O. 12898 is to consider “the disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories...” generally referred to as environmental justice (EJ).

E.O. 13985 requires federal agencies to recognize and work to redress inequalities in their policies and programs that serve as barriers to equal opportunity, including pursuing a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Federal agencies must assess how programs and policies perpetuate systemic barriers to opportunities and benefits to people of color and other underserved groups in order to equip agencies to develop policies and programs that deliver resources and benefits equitably to all.

E.O. 13985 provides definitions for equity and underserved communities, which expand the definition of a community from being geographically situated, or place-based, as defined through the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act), to also include communities that share a particular characteristic (e.g., crew of commercial reef fish fishing vessels). Equity means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. The term “underserved communities” refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of “equity.”

E.O. 14008 calls on agencies to make achieving EJ part of their missions “by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”

Information on race, ethnicity, and income status of federally permitted for-hire business owners, and the captains, crew, and other employees who work for these businesses is not available, because these data are not collected by NMFS or other agencies. As discussed in GMFMC

(2017a), federally permitted for-hire fishing businesses participating in the Gulf reef fish and CMP fisheries were expected to be affected by the new requirements for reporting and vessel position monitoring, but these effects were expected to be minimal to non-existent in the short term and positive over the long term. The effects of this current action are expected to be positive by providing an exemption in the case of equipment failure, allowing a scheduled fishing trip to proceed that would otherwise be prohibited due to malfunctioning equipment. These positive effects would accrue to any operator regardless of income or minority status. Although the proposed action is not expected to result in any disproportionate effects on low-income or minority populations, or other identified underserved communities, and would not affect individuals differentially based on their race, ethnicity, or income status, the lack of effects on EJ populations cannot be assumed.

3.6 Description of the Administrative Environment

3.6.1 Federal Fishery Management

Federal fishery management is conducted under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), originally enacted in 1976 as the Fishery Conservation and Management Act. The Magnuson-Stevens Act claims sovereign rights and exclusive fishery management authority over most fishery resources within the EEZ. The EEZ is defined as an area extending 200 nautical miles from the seaward boundary of each of the coastal states. The Magnuson-Stevens Act also claims authority over U.S. anadromous species and continental shelf resources that occur beyond the EEZ.

Responsibility for federal fishery management decision-making is divided between the Secretary of Commerce (Secretary) and eight regional fishery management councils that represent the expertise and interests of constituent states. Regional councils are responsible for preparing, monitoring, and revising management plans for fisheries needing management within their jurisdiction. The Secretary is responsible for promulgating regulations to implement proposed plans and amendments after ensuring management measures are consistent with the Magnuson-Stevens Act and with other applicable laws summarized in Appendix B. In most cases, the Secretary has delegated this authority to NMFS.

The Gulf Council is responsible for fishery resources in federal waters of the Gulf. These waters extend 200 nautical miles offshore from the seaward boundaries of Alabama, Florida, Louisiana, Mississippi, and Texas, as those boundaries have been defined by law. The length of the Gulf coastline is approximately 1,631 miles. Florida has the longest coastline extending 770 miles along its Gulf coast, followed by Louisiana (397 miles), Texas (361 miles), Alabama (53 miles), and Mississippi (44 miles).

The Gulf Council consists of seventeen voting members: 11 public members appointed by the Secretary; one each from the fishery agencies of Texas, Louisiana, Mississippi, Alabama, and Florida; and one from NMFS. The public is also involved in the fishery management process.

3.6.2 State Fishery Management

The purpose of state representation at the Council level is to ensure state participation in federal fishery management decision-making and to promote the development of compatible regulations in state and federal waters. The state governments of Texas, Louisiana, Mississippi, Alabama, and Florida have the authority to manage their respective state fisheries. Each of the five Gulf states exercises legislative and regulatory authority over their states' natural resources through discrete administrative units. Although each agency is the primary administrative body with respect to the states' natural resources, all states cooperate with numerous state and federal regulatory agencies when managing marine resources. Descriptions of individual state management and data collection programs can be found at the Web Pages shown in Table 3.6.2.1.

Table 3.6.2.1. Gulf state marine resource agencies and web pages.

State Marine Resource Agency	Web Page
Alabama Marine Resources Division	http://www.outdooralabama.com/
Florida Fish and Wildlife Conservation Commission	http://myfwc.com/
Louisiana Department of Wildlife and Fisheries	http://www.wlf.louisiana.gov/
Mississippi Department of Marine Resources	http://www.dmr.ms.gov/
Texas Parks and Wildlife Department	http://tpwd.texas.gov/

CHAPTER 4. ENVIRONMENTAL CONSEQUENCES

4.1 Action: Modify Vessel Monitoring System (VMS) requirements for vessels with a Charter Vessel/Headboat permit for Reef Fish or a Charter Vessel/Headboat permit for Coastal Migratory Pelagic Fish to allow for an exemption to VMS requirements to address equipment failure.

4.1.1 Direct and Indirect Effects on the Physical Environment

Alternative 1, (No Action) would maintain the requirement that as of March 1, 2022, vessels with charter vessel/headboat permits for Reef Fish or Coastal Migratory Pelagic Fish (CMP) have an approved VMS unit onboard, operating at all times, unless exempted by National Marine Fisheries Service (NMFS) under a power-down exemption. **Preferred Alternatives 2 and 3** would provide equipment failure exemptions, with limitations, that would allow for vessels to temporarily continue fishing trips, in the event of VMS equipment failure. It is unlikely that this action would directly or indirectly affect the physical environment as requirements that allow for an equipment failure exemption would only allow intended fishing activity to occur as previously planned. Equipment failure exemptions provided in **Preferred Alternatives 2 and 3** would not likely result in an increase in effort or interactions with the physical environment compared to **Alternative 1** unless VMS unit failure is much higher than anticipated and vessels are unable to fish as planned, leading to a loss of trips and less interaction with the physical environment. There may be differences in effects to the physical environment among the options provided in **Preferred Alternatives 2 and 3** as the options increase in number and duration moving from **Options 2a and 3a** to **Options 2c and 3c**. However, this would be unlikely to have an increased effect on the physical environment, as number of trips and fishing activity would remain similar to previous years.

Generally, there are effects on the physical environment from fishing effort associated with fishing gear contacting bottom habitat and anchoring. Recreational fishing for reef fish species is commonly conducted with vertical-line gear that has the potential to snag and entangle bottom structures (Barnette 2001). Potential bottom substrate damage can also occur when deploying a vessel's anchor. Additionally, preferred fishing sites, like reefs, are targeted and revisited multiple times by fishing vessels, which increases the potential for prolonged effects to the physical environment (Bohnsack 2000). However, this fishing activity would occur regardless of whether a limited equipment failure exemption is or is not provided. To the extent there are any effects on the physical environment, they would likely be minimal because this action would not change how the reef fish or CMP fishery is prosecuted overall.

4.1.2 Direct and Indirect Effects on the Biological Environment

While this action would not directly affect the biological environment, it may impact the quality of the data, which could have an indirect impact in how biological resources are managed.

Alternative 1 would maintain the requirement for charter vessels/headboats with federal reef fish and/or CMP permits to have an approved VMS unit onboard, operating at all times, unless exempted by NMFS under a power down exemption. This could provide more data on biological interactions, and the location of those interactions, than has previously been available, before the requirement to have an operational VMS unit onboard the vessel at all times.

Preferred Alternative 2 and **Alternative 3** would allow for an equipment failure exemption to the VMS requirement by providing a set number of exemptions, and days per exemption to be used in the event of VMS equipment failure, allowing for some flexibility to permit holders while still attempting to mitigate the risk of significant data gaps. However, as the number of trips completed without VMS increases, data gaps become wider. Therefore, compared to **Alternative 1**, **Preferred Alternative 2** and **Alternative 3** may weaken data collection efforts and potentially adversely impacting management measures based on these data. **Options 2a** and **3a**, would provide only one exemption per year and be the most restrictive in the number of days allowed per exemption (7 days) but would also likely decrease the chance of data gaps compared to the other options in **Preferred Alternatives 2** and **3**. The chance for data gaps to occur and therefore potentially proliferate indirect biological impacts increases for **Preferred Options 2b** and **3b** as they provide more exemptions per year (2 per year) and more days per exemption (10 days) to move on the water without a functioning VMS. **Options 2c** and **3c** have the greatest potential for data gaps allowing for the highest number of exemptions per vessel per year (3 per year) and the maximum number of days per exemption (14 days). There is also concern with widening data gaps if equipment failure exemptions are used consecutively. Use of consecutive exemptions increases from 20 days (consecutive use of **Preferred Option 2b** with **Preferred Option 3b**) to 42 days (consecutive use of **Option 2c** with **Option 3c**). Therefore, the management measures considered in **Preferred Alternatives 2** and **3** could be associated with indirect adverse biological effects on managed species due to the diminished effectiveness of the Southeast For-Hire Integrated Electronic Reporting (SEFHIER) data collection program, which supports the design of fishery management policy. Regardless, any impacts to the biological environment are expected to be minimal, especially if the occurrence of VMS failure is expected to be rare. Permit holders, vessel owners or operators must still meet all other reporting requirements of the SEFHIER Program, and this action would not change how the reef fish or CMP fishery is prosecuted overall. Because of this, any effects on target species or other species such as non-target fish species, sea turtles and marine mammals, are expected to be unchanged.

4.1.3 Direct and Indirect Effects on the Economic Environment

Alternative 1 (No Action) would not consider additional exemptions to the requirements that vessels with reef fish or CMP charter vessel/headboat permits have a NMFS-approved VMS unit onboard, operating at all times. Currently, vessels can receive a power-down exemption from NMFS but cannot fish during that time. **Alternative 1** would maintain the status quo and would therefore not be expected to result in economic effects.

Preferred Alternative 2 would establish an exemption to the for-hire VMS requirements to account for equipment failure and set a maximum number of days for exemption. **Option 2a**, **Preferred Option 2b**, and **Option 2c** would grant exemptions valid for up to 7, 10, and 14 days from the submittal date. As opposed to the existing power-down exemptions, **Preferred**

Alternative 2 would allow vessels to continue to fish during the exemption period. **Option 2c**, which would grant the longest exemption period, would be associated with more flexibility for for-hire operators in the event of an equipment failure. Relative to **Alternative 1**, the added flexibility afforded by the exemption in **Preferred Alternative 2** would shield for-hire operators from potential economic losses that could result from trip cancellations and associated revenue losses due to equipment failures. Therefore, relative to **Alternative 1**, **Preferred Alternative 2** would be expected to result in economic benefits to the for-hire sector by allowing operators to run trips and collect revenues that would have been forgone without the exemptions due to equipment failure. Economic benefits to the for-hire sector cannot be quantified at this time due to insufficient information relative to potential revenue losses that would be associated with trip cancellations due to equipment failures. These potential losses would be determined by the expected value of the forgone trip revenues between the VMS failure incident and the resumption of usual business activities following the VMS repair. The expected value would be calculated based on the probability of equipment failure times the average revenue per trip times the number of trips that would be cancelled. Anecdotal evidence gathered from VMS failure incidents in the commercial sector suggest that failure rates of approved VMS equipment are very low, suggesting that the expected value of potential for-hire revenue losses due to equipment failure may be relatively small. However, these potential economic shortfalls may not be negligible, especially if the VMS equipment fails during the high season. However, because the exemption would allow for-hire operators to run trips without proper functioning VMS, it may also result in data gaps. As the number of trips completed without VMS increases, data gaps become wider thereby weakening data collection efforts and potentially adversely impacting management measures based on these data. Therefore, under **Preferred Alternative 2**, increases in the number of exemptions granted could be associated with adverse economic effects due to the diminished effectiveness of data collection programs which support the design of fishery management policy.

Preferred Alternative 3 would limit the number of times an exemption from the VMS requirement could be requested for each vessel per calendar year. **Options 3a** and **3c** would cap the number of exemptions per vessel per calendar year at one or three, respectively. **Preferred Option 3b** would allow for-hire operators to request up to two exemptions per year. **Option 3c**, which would allow up to three exemptions per year, would provide for-hire operators more opportunities to avoid the adverse economic effects that would stem from revenue losses due to equipment failure. However, as discussed under **Preferred Alternative 2**, the more trips that are completed without a functioning VMS, the greater the impact on the data collection program, which could result in adverse economic effects due to the diminished effectiveness of resulting management measures.

Temporary exemptions to provide for-hire trips without a functioning VMS unit, as allowed by **Preferred Alternative 2-Preferred Option 2b** and **Preferred Alternative 3- Preferred Option 3b** are expected to be associated with costs borne by for-hire operators receiving the exemptions. For each exemption, reporting costs would be commensurate with the opportunity costs of the for-hire operator's time devoted to completing and submitting the exemption form. The average time needed to complete and submit the online form to NMFS is estimated at five (5) minutes (NMFS SERO, pers. Comm. 2022). In addition, for each exemption, an operator is assumed to spend 15 minutes to gather and provide supporting evidence to document the VMS unit failure.

Therefore, an operator who submits two exemptions in a given year, as allowed by **Preferred Alternative 3 – Preferred Option 3b**, would be expected to spend 10 minutes to fill out and submit the forms and 30 minutes to document the failure; for a total of 40 minutes. The average hourly wage rate for a captain is estimated at \$25.33, based on 2021 estimates from the Bureau of Labor Statistics.²⁹ Therefore, each for-hire operator who submits the maximum number of exemptions allowed in a year would be expected to incur reporting and documentation costs estimated at \$17 per year. It follows that no reporting costs would be borne by operators who do not file for exemptions. There were approximately 1,342 vessels with valid federal for-hire permits in the Gulf of Mexico (Gulf) as of August 26, 2021 (Table 1.1.2). On average, it is estimated that 2% of the VMS units could fail per year, based on data submitted by vendors (J. Stephen, National Marine Fisheries Service Southeast Regional Office, pers. comm. 2022); resulting in up to 27 for-hire operators who could experience a VMS unit failure and request two exemptions each (assuming that no one experiences repeated failures in a given year). Therefore, on average, Gulf-wide reporting costs associated with VMS failure exemptions could total \$460 per year, approximately. Estimated VMS failure reporting and documentation costs reported here would be expected to increase should the failure rate increase. This section only discusses costs borne by for-hire operators. Administrative costs supported by NMFS are detailed in Section 4.5 below.

4.1.4 Direct and Indirect Effects on the Social Environment

This action addresses the potential situation in which a federally permitted for-hire vessel is prepared to make a trip, or is already underway, and the vessel's required VMS unit fails. As of March 1, 2022, when the requirement for a vessel to carry a working VMS went into effect, under **Alternative 1** (No Action) the vessel cannot leave the dock until the problem is remedied. Direct negative effects would result for the vessel's operator and passengers in the event a trip is delayed (lesser effects) or canceled (greater effects). If such problems occur frequently among many vessels, negative indirect effects could result through loss of trust by and among for-hire operators, their passengers, and fishery managers. While the likelihood of a VMS failure impeding a trip departure is assumed to be low, the failure rate among the various NMFS-approved VMS units (Table 1.1.1) remains unknown. The amount of time that may be needed to repair or replace a malfunctioning unit also remains unknown. The failure rate of VMS units resulting in trip disruption for the commercial sector is unknown, but reported to be low. However, the effects from a VMS equipment failure on a commercial trip (e.g., trip delay) would be less severe than for the for-hire sector, which relies on scheduled departures.

Positive effects from **Preferred Alternatives 2 and 3** would occur in the event that a validly granted exemption allows a for-hire trip to proceed that would otherwise have been prevented from doing so as a result of a malfunctioning VMS unit. The effects would be direct for the operator who received the exemption and the trip's passengers. The extent of these effects would relate to the frequency of the occurrence among vessels in the fleet, which is assumed to be low. VMS units are assumed to be reliable and an equipment malfunction is assumed to occur rarely. The time needed to repair a malfunctioning unit would vary depending on the problem. While some repairs could likely be addressed quickly, professional service would need to be

²⁹ https://www.bls.gov/oes/current/naics2_11.htm

scheduled and technicians may only be available on weekdays. Thus, the more time allowed for an operator to remedy a malfunctioning unit, the less likely it is for a scheduled for-hire trip to be disrupted. **Option 2c** would provide the longest time period to remedy the problem at 14 days, providing operators with the greatest flexibility and allowing vessels to continue fishing the longest under an exemption. **Preferred Option 2b** would provide an intermediary period of 10 days, and **Option 2a** would provide the shortest period of 7 days. At the same time, there is a tradeoff between the flexibility afforded from an exemption and the resulting loss of VMS data from trips taken under an exemption. The social effects of this potential data loss are unclear, but would be related to any diminished effectiveness of data collection programs.

Preferred Alternative 3 specifies the number of exemptions within a calendar year that may be requested. Similar to **Preferred Alternative 2**, positive effects would be realized to the extent that an exemption prevents the disruption of a scheduled for-hire trip. Allowing for one exemption request per year (**Option 3a**) would likely be sufficient to cover most occurrences of VMS failure, as the units are considered reliable. Allowing for up to three exemption requests per year, **Option 3c** would provide operators with the most flexibility to avoid negative effects from trip disruptions or cancelations in the event a vessel's VMS unit continues to malfunction. The effects of **Preferred Option 3b** would be intermediary. Similar to the duration of an exemption (**Preferred Alternative 2**), the more exemptions that are granted, the greater the potential for loss of VMS data.

4.1.5 Direct and Indirect Effects on the Administrative Environment

Implementation of the equipment failure exemption would directly affect the administrative environment. This is largely because NMFS does not presently have a means to securely collect, process and archive submitted equipment exemption requests or documentation of equipment failure for each request. The equipment exemption would benefit vessel owners and operators by allowing them to move the vessel on water without an operational VMS. However, vessel permit holders would be required to electronically submit the equipment exemption form prior to moving on the water.

As the number of trips completed without VMS increases, data gaps would become wider thereby weakening data collection efforts, compliance, and the ability to calibrate SEFHIER reported data to existing data collections. This delay may adversely impact future management actions in the Southeast region, which would also increase the administrative burden. The VMS data are used in the SEFHIER program compliance tracking, data analysis, and enforcement, by allowing NMFS to validate when fishing activity likely occurred and when a trip report should be expected. For vessels operating without an active VMS, NMFS would need to develop a gap analysis to account for any missing data.

Alternative 1 (No Action), would maintain the requirement that vessels with federal reef fish and/or CMP federal charter/headboat permits have an approved VMS unit onboard, operating at all times, unless exempted by NMFS under a power-down exemption. The burden on law enforcement would not change under **Alternative 1**, since VMS reporting requirements are already in effect. **Preferred Alternatives 2 and 3** would require NMFS to develop and

implement the mechanism to complete the exemption request and approval process. These alternatives would also require NMFS to develop and maintain a list of vessels that request the exemption throughout the calendar year and to retain records relating to the exemption. The burden on law enforcement would also increase under **Preferred Alternatives 2 and 3**. Outreach and communication would be needed to notify and educate the public, as well as increased enforcement efforts to verify exemptions are valid. **Options 2a and 3a**, would be less of an administrative burden than **Preferred Options 2b and 3b** as they would allow fewer exemptions to be granted per vessel per year and a reduced time period for each exemption. **Options 2c and 3c**, would increase the administrative burden compared to the **Preferred Option 2b and 3b** as they provide more exemptions per vessel per year to be granted and a longer duration of time per exemption.

Preferred Alternatives 2 and 3 would also represent an additional administrative burden relative to **Alternative 1** due to the need for NMFS to develop a system capable of collecting equipment failure exemption data as well as the need to build a process to collect, evaluate, store, and link the data collected from this equipment exemption. In addition, NMFS would need to build a process and records retention protocol for submission of information documenting the equipment failure, and link that information to the original request.

The first step for NMFS would be to develop an electronic equipment failure request form using the SEFHIER data system. This form would provide a security check for submission of the equipment failure exemption form, but would not directly integrate into other data systems (e.g., Permits, VMS, law enforcement). Initial costs to build the equipment failure exemption system would be \$2,203 (Table 4.1.5.1). The longer-term solution for NMFS would be to build the request process into the permitting system, which would provide increased security (user name and password), reduced burden on permit holders (e.g., autofill fields), increased quality assurance checks on submitted data, integration across internal data systems, and reduced administrative burden for data management. This additional one-year cost is estimated to be \$200,000 for year 2 (Table 4.1.5.1). NMFS would also incur recurring annual costs estimated to be \$35,063 for staff to process and review equipment failure exemption request forms, to receive, process and archive documentation of equipment failure and to maintain the electronic form and data collection system (Table 4.1.5.1).

NMFS would need to determine evaluation criteria to determine automatic approval or denial. This would require complex interactions with the permit and VMS systems to ensure the vessel submitted has not changed owners, does not exceed the number of approved equipment exemptions, does not exceed the allowed exemption days, and has submitted documentation within expected timeframes. NMFS would also need to build a communications module for informing law enforcement of vessels operating under an equipment failure. Finally, the permit system would need to be modified to ensure that transferred permits automatically end any equipment failure exemption on a vessel. The work required is considerable and requires the use of developers, database architects, and subject matter experts to ensure that the system is built to meet these needs. The digital equipment exemption request form must be submitted and approved consistent with the requirements of the Paperwork Reduction Act. The administrative burden would be expected to increase with **Preferred Alternative 2, Option 2b and Preferred Alternative 3, Option 3b**, respectively, for both permit holders, vessel owners, operators, and

NMFS. **Options 2a** and **3a**, would be less of an administrative burden than **Preferred Options 2b** and **3b** as they allow fewer exemptions to be granted per vessel per year and a reduced time period for each exemption. **Options 2c** and **3c**, would increase the administrative burden compared to the **Preferred Option 2b** and **3b** as they provide more exemptions per vessel per year to be granted and a longer duration of time per exemption. The longer the exemptions are valid the amount of lost data increases, and the work needed by NMFS to analyze and process the data also increases. Table 4.1.5.1 provides estimated costs to develop and implement the proposed action.

Table 4.1.5.1. NMFS cost estimates for the development of the equipment failure exemption system.

Activity	Description	Total Cost in 2021 dollars
Development Costs for Equipment Failure Exemption System (1st Year Only)	Initial build in SEFHIER's data system	\$1,025
	Working groups cost to determine requirements for product build out.	\$1,178
Total Costs for Equipment Failure Exemption System (Year 1)		\$2,203
Data Management and Review Costs (Annual)	Processing time for submissions including validations and review of documentation submitted	\$33,895
	Data analysis review for annual summaries	\$1,169
Total Annual Costs for Data Management		\$35,063
Development Costs for Fully Viable System (Future Build, one-year cost in year 2)	Additional cost to build a fully viable equipment failure exemption system with increased security and system integration	\$200,000

4.2 Cumulative Effects Analysis

While this environmental assessment (EA) is being prepared using the 2020 Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) Regulations, the cumulative effects discussed in this section meet the two-part standard for “reasonable foreseeability” and “reasonably close causal connection” required by the new definition of effects or impacts. Below is a five-step cumulative effects analysis that identifies criteria that must be considered in an EA.

1. The area in which the effects of the proposed action will occur.

The affected area of this proposed action encompasses the state and federal waters of the Gulf, as well as Gulf communities that are dependent on reef fish fishing. Most relevant to this proposed action is reef fish and CMP species and those who fish for them. For more information about the area in which the effects of this proposed action would occur, please see Chapter 3, Affected Environment that describes these important resources as well as other relevant features of the human environment.

2. The impacts that are expected in that area from the proposed action.

The proposed action would modify VMS reporting requirements for federally-permitted charter vessels and headboats in the Gulf. The environmental consequences of the proposed action are analyzed in detail in Section 4.1. This action is not expected to have significant beneficial or adverse cumulative effects on the physical and biological/ecological environments because the action is not expected to alter the general manner in which these vessels operate or the manner in which the reef fish or the CMP fisheries as a whole are prosecuted (Sections 4.1.1 and 4.1.2). These actions would likely have some positive direct and indirect effects on the social and economic environments, due to the ability to continue charter fishing operations while the vessel's VMS unit is being repaired, but may also adversely affect the quality of the data collected depending on the number of equipment failure exemptions and length of time the exemptions are in effect (Sections 4.1.3 and 4.1.4). The action is expected to affect the administrative environment, but not to any significant level compared to SEFHIER's normal operating budget (Section 4.1.5).

3. Other past, present and reasonable foreseeable future actions (RFFAs) that have or are expected to have impacts in the area.

Other fishery related actions –There are numerous actions taken in the Gulf annually. Many of these activities are expected to have impacts associated with them. Relevant past actions are described in the history of management (Section 1.3). Below is a discussion on those present actions and RFFAs that have the potential to combine with the proposed action to result in cumulative effects.

Currently, there are several present and RFFAs that are being considered by the Council for the Reef Fish FMP or implemented by NMFS, which could affect reef fish stocks. These include: Reef Fish Amendment 54 to address greater amberjack overfishing and a Reef Fish Amendment 56 to address gag overfishing. Several framework actions also being developed to address red snapper catch limits, for-hire vessel trip declaration requirements, and allocation review guidelines. Other actions include Amendment 36B, which would revise the red snapper and grouper-tilefish commercial individual fishing quota (IFQ) programs, and commercial electronic logbook reporting. Descriptions of these actions can be found on the Council's Web page at <http://gulfcouncil.org/>.

Currently, there are a few present actions and RFFAs that are being developed by the Councils or considered for implementation by NMFS that could affect CMP stocks. These include: Framework Amendment 11, which would revise the catch limits for Gulf migratory group king mackerel in response to new information on the stock provided in the SEDAR 38 Update stock assessment; Amendment 33, which would revise Gulf king mackerel allocations; a framework action that would modify the Gulf commercial king mackerel gillnet seasonal closure; and a framework action that would modify Gulf migratory group cobia sale provisions.³⁰

³⁰ <http://gulfcouncil.org>

Non-fishery related actions - Forces affecting the reef fish fishery have been described in previous cumulative effect analyses (e.g., Reef Fish Amendment 53 [GMFMC 2021], Amendment 34 [GMFMC and SAFMC 2022]). Four important examples include impacts of the Northern Gulf Hypoxic Zone, red tide, *Deepwater Horizon* MC252 oil spill, and climate change (See Sections 3.1 and 3.2). The cumulative effects from managing the reef fish and CMP fishery have been analyzed in the environmental impact statements (EIS) in the Generic Essential Fish Habitat (EFH) Amendment (GMFMC 2004a), and the Generic Annual Catch Limits/Accountability Measures (ACL/AM) Amendment (GMFMC 2011a), as well in other actions as listed in Section 1.3 and part three of this section.

Reef fish and CMP species are mobile and are able to avoid hypoxic (i.e. the Northern Gulf Hypoxic Zone) and red tide conditions, so any effects from these disturbances on these fish species are likely minimal regardless of this action. However, with red tide, some localized red tide events in coastal and estuarine areas may adversely affect reef fish and CMP species that inhabit these areas.

Impacts from the *Deepwater Horizon* MC252 oil spill are still being examined; however, as indicated in Section 3.3.2, the oil spill had some adverse effects on reef fish species. Further, the impacts on the food web from phytoplankton, to zooplankton, to mollusks, to top predators may be significant in the future. Impacts to CMP species from the oil spill may similarly affect other species that may be preyed upon by CMP species or that might benefit from a reduced CMP species stocks. However, since the majority of the spawning biomass for reef fish and CMP species occurs outside the main areas affected by the *Deepwater Horizon* MC252 oil spill plume, it is less likely that a direct effect on reef fish and CMP species would be detected.

There is a large and growing body of literature on past, present, and future impacts of global climate change induced by human activities. Some of the likely effects commonly mentioned are sea level rise, increased frequency of severe weather events, and change in air and water temperatures. The Intergovernmental Panel on Climate Change has numerous reports addressing their assessments of climate change. Global climate changes could affect the Gulf fisheries as discussed in Section 3.2. However, the extent of these effects cannot be quantified at this time. The proposed action is not expected to significantly contribute to climate change through the increase or decrease in the carbon footprint from fishing, as these actions should not change how the reef fish or CMP fishery is prosecuted. As described in Section 3.2, the contribution to greenhouse gas emissions from fishing is minor compared to other emission sources (e.g., oil platforms).

4. The impacts or expected impacts from these other actions.

The cumulative effects from managing the reef fish and CMP fishery have been analyzed in the EIS in the Generic EFH Amendment (GMFMC 2004a), and the Generic ACL/AM Amendment (GMFMC 2011a), as well in other actions as listed in Section 1.3 and part three of this section. They include detailed analysis of the reef fish and CMP fishery, cumulative effects on non-target species, protected species, and habitats in the Gulf. In general, the effects of these actions are positive as they ultimately act to restore/maintain

the stocks at a level that would allow the maximum benefits in yield and recreational fishing opportunities to be achieved.

5. The overall impact that can be expected if the individual impacts are allowed to accumulate.

This action, combined with other past actions, present actions, and RFFAs, is not expected to have significant beneficial or adverse effects on the physical and biological/ecological environments because this action would only minimally affect current fishing practices (Sections 4.1.1 and 4.1.2). For the social and economic environments, effects should be positive but not significant (Sections 4.1.3 and 4.1.4). The management measures in **Preferred Alternatives 2 and 3, and the Preferred Options 2b and 3b** could be associated with adverse effects, if large data gaps occur, due to the diminished effectiveness of data collection programs which support the design of fishery management policy. However, vessel owner/operators must still meet all other reporting requirements of the SEFHIER Program. Any cumulative effects are expected to be minimal as the proposed action, along with other past actions, present actions, and RFFAs, is not expected to alter the manner in which the reef fish and CMP fishery is prosecuted. Because it is unlikely there would be any changes in how the fisheries are prosecuted, this action, combined with past actions, present actions, and RFFAs, is not expected to have significant adverse effects on public health or safety.

6. Summary

The proposed action is not expected to have individual significant effects to the biological, physical, social, or economic environment. Any effects of the proposed action, when combined with other past actions, present actions, and RFFAs are not expected to be significant. The effects of the proposed action are, and will continue to be, monitored through collection of landings data by NMFS, stock assessments and stock assessment updates, economic and social analyses, and other scientific observations. Landings data for the recreational sector in the Gulf are collected through the Marine Recreational Information Program, the Southeast Region Headboat Survey, the Texas Marine Recreational Fishing Survey, and the Louisiana Department of Wildlife and Fisheries Creel Survey. In addition, the Alabama Department of Conservation and Natural Resources, Mississippi Department of Marine Resources, and Florida Fish and Wildlife Conservation Commission have instituted programs to collect information on reef fish and CMP species, and in particular, recreational landings information. Although not affected by this action, commercial data are collected through trip ticket programs, port samplers, and logbook programs, as well as dealer reporting through the IFQ program.

CHAPTER 5. REGULATORY IMPACT REVIEW

5.1 Introduction

The National Marine Fisheries Service (NMFS) requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest. The RIR does three things: 1) it provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; 2) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem; and, 3) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. The RIR also serves as the basis for determining whether the regulations are a “significant regulatory action” under the criteria provided in Executive Order (E.O.) 12866. This RIR analyzes the impacts this action would be expected to have on the for-hire component of the Gulf of Mexico (Gulf) reef fish and CMP fisheries.

5.2 Problems and Objectives

The problems and objectives addressed by this action are discussed in Section 1.2.

5.3 Description of Fisheries

A description of the economic environment of the Gulf reef fish and coastal migratory pelagic (CMP) fisheries is provided in Section 3.3.

5.4 Impacts of Management Measures

5.4.1 Action: Modify Vessel Monitoring System (VMS) requirements for vessels with a Charter Vessel/Headboat permit for Reef Fish or CMP to allow for an exemption to VMS requirements to address equipment failure.

A detailed analysis of the economic effects expected to result from this action is provided in Section 4.1.3. The following discussion summarizes the expected economic effects of the preferred alternative.

In the event of a VMS unit failure, **Preferred Alternative 2-Preferred Option 2b** and **Preferred Alternative 3- Preferred Option 3b** would allow for-hire operators to request up to two (2) exemptions per year, with each exemption lasting up to 10 days. Relative to **Alternative 1, Preferred Alternatives 2 and 3** would be expected to result in positive economic effects to the for-hire sector by allowing operators to run trips and collect revenues that would have been forgone without the exemptions due to equipment failure. Economic benefits to the for-hire sector cannot be quantified at this time due to insufficient information relative to potential

revenue losses that would be associated with trip cancellations due to equipment failures. These potential revenue losses would correspond to the expected value of the forgone trip revenues between a VMS failure incident and the resumption of usual business activities following the VMS repair or replacement. The expected value of revenue shortfalls would be calculated based on the probability of equipment failure times the average revenue per trip times the number of trips that would have been cancelled. Anecdotal evidence gathered from VMS failure incidents in the commercial sector suggests that failure rates of approved VMS equipment are very low, suggesting that the expected value of potential for-hire revenue losses due to equipment failure may be relatively small.

Because exemptions would allow for-hire operators to run for-hire trips without proper functioning VMS, data gaps would be expected to result. As the number of trips completed without functioning VMS units increases, data gaps become wider thereby weakening data collection efforts and potentially adversely impacting management measures based on these data. The more trips that are completed without a functioning VMS, the greater the adverse impacts on data collection programs, which could result in adverse economic effects due to the diminished effectiveness of resulting management measures.

Preferred Alternative 2-Preferred Option 2b and **Preferred Alternative 3- Preferred Option 3b** are expected to be associated with reporting and documentation costs borne by for-hire operators applying for and receiving the exemptions. For each exemption, reporting costs would be equivalent to the opportunity costs of the for-hire operator's time spent to complete and submit the exemption form and to provide required supporting documents. Each for-hire operator who submits two exemptions per year is expected to incur reporting and documentation costs estimated at \$17 per year. On average, Gulf-wide reporting and documentation costs associated with VMS failure exemptions could total \$460 per year, approximately.

Although positive economic effects expected to result from **Preferred Alternative 2-Preferred Option 2b** and **Preferred Alternative 3- Preferred Option 3b** cannot be quantified at this time, the net economic benefits from this action are expected to be positive based on the magnitude of reporting and documentation costs relative to potential trip revenue losses exemptions would prevent. For reference, the completion of a single charter or headboat trip during a given 10-day exemption period would bring a net revenue of \$779 or \$1,844, respectively (Table 3.4.2.9). Net economic benefits from **Preferred Alternative 2-Preferred Option 2b** and **Preferred Alternative 3-Preferred Option 3b** would be expected to increase as the number of exemptions granted increases.

5.5 Public and Private Costs of Regulations

The preparation, implementation, and monitoring of this or any federal action involves the expenditure of public and private resources, which can be expressed as costs associated with the regulations. Estimated costs associated with this action include:

Council costs of document preparation, meetings, public hearings, and information dissemination.....	\$45,000
NMFS administrative costs of document preparation, meetings and review	\$30,000
NMFS two-year implementation and monitoring costs.....	\$272,330
TOTAL	\$347,330

5.6 Determination of Significant Regulatory Action

Pursuant to E.O. 12866, a regulation is considered a “significant regulatory action” if it is likely to result in: 1) an annual effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; 2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this E.O. Based on the information provided above, this action has been determined to not be economically significant for the purposes of E.O. 12866.

CHAPTER 6. REGULATORY FLEXIBILITY ACT ANALYSIS

6.1 Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. The RFA does not contain any decision criteria; instead the purpose of the RFA is to inform the agency, as well as the public, of the expected economic effects of various alternatives contained in the regulatory action and to ensure the agency considers alternatives that minimize the expected economic effects on small entities while meeting the goals and objectives of the applicable statutes (e.g., the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)).

With certain exceptions, the RFA requires agencies to conduct an initial regulatory flexibility analysis (IRFA) for each proposed rule. The IRFA is designed to assess the effects various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those effects. An IRFA is primarily conducted to determine whether the proposed regulatory action would have a significant economic effect on a substantial number of small entities. In addition to analyses conducted for the Regulatory Impact Review (RIR), the IRFA provides: 1) a description of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for, the proposed regulatory action; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed regulatory action will apply; 4) a description of the projected reporting, record-keeping, and other compliance requirements of the proposed regulatory action, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; 5) an identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule; and 6) a description of any significant alternatives to the proposed regulatory action which accomplish the stated objectives of applicable statutes and would minimize any significant economic effects of the proposed regulatory action on small entities.

In addition to the information provided in this section, additional information on the expected economic effects of the proposed action is included in the RIR.

6.2 Statement of the need for, objectives of, and legal basis for the rule

A discussion of the reasons why action by the agency is being considered is provided in Section 1.1. The purpose of this proposed regulatory action is to establish a mechanism for owners and operators of vessels with a federal Charter Vessel/Headboat permit for Gulf of Mexico (Gulf) reef fish or Gulf Coastal Migratory Pelagic (CMP) species to report a malfunction with a vessel's location-positioning device and provide the ability for permit holders to obtain a limited exemption to location-positioning requirements. The objectives of this proposed regulatory action are to mitigate trip delays or cancellations and subsequent loss of revenue due to the inability of onboard vessel monitoring system (VMS) equipment to record and transmit location-positioning information. The Magnuson-Stevens Act serves as the legal basis for the proposed regulatory action. All estimates in the following analysis are in 2021 dollars.

6.3 Description and estimate of the number of small entities to which the proposed action would apply

This proposed regulatory action would create an exemption for vessels with federal Charter Vessel/Headboat permits for Gulf of Mexico Reef Fish and/or CMP to the VMS requirement to address equipment failure and set a limit of 10 calendar days during which the National Marine Fisheries Service (NMFS)--approved equipment failure exemption is valid. This proposed regulatory action would also limit the number of times a permit holder can request this exemption to two per vessel each calendar year.

As of August 26, 2021, there were 1,342 vessels with valid or renewable Charter Vessel/Headboat permits for Gulf Reef Fish and/or CMP. A valid Charter Vessel/Headboat (for-hire) Gulf reef fish vessel permit is required for for-hire vessels to legally harvest reef fish in the Gulf. A valid Charter Vessel/Headboat Gulf CMP permit is required for for-hire vessels to legally harvest CMP in the Gulf. NMFS does not possess complete ownership data regarding businesses that hold Charter Vessel/Headboat vessel permits for Gulf Reef Fish and/or CMP. Therefore, it is not currently feasible to accurately determine affiliations between vessels and the businesses that own them. As a result, for purposes of this analysis, it is assumed each for-hire vessel is independently owned by a single business, which is expected to result in an overestimate of the actual number of for-hire fishing businesses regulated by this proposed regulatory action. Therefore, this proposed regulatory action is expected to regulate 1,342 for-hire fishing businesses.

The Small Business Administration has established size standards for all major industry sectors in the U.S., including for-hire fishing businesses (NAICS code 487210). A business primarily involved in for-hire fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of \$8 million for all its affiliated operations worldwide. The maximum annual gross revenue for a single headboat in the Gulf was about \$1.46 million in 2017 (D. Carter, pers. comm.). According to Savolainen, et al. (2012), on average, annual gross

revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels, reflecting the fact that businesses that own charter vessels are typically smaller than businesses that own headboats. Based on this information, all for-hire fishing businesses regulated by this proposed regulatory action are determined to be small businesses for the purpose of this analysis.

6.4 Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records

This proposed regulatory action would modify existing reporting requirements. Specifically, a for-hire permit holder would need to submit an online form to claim the proposed exemption to the VMS requirement to address equipment failure. The average time needed to complete and submit the online form to NMFS is estimated at five (5) minutes. In addition, a permit holder is assumed to spend 15 minutes to gather and provide supporting evidence to document the VMS unit failure for each exemption. Therefore, a for-hire permit holder who submits two exemptions in a given year would be expected to spend 10 minutes to fill out and submit the forms and 30 minutes to document the failure, for a total of 40 minutes.

Reporting costs are expected to be commensurate with the opportunity costs of the for-hire permit holder's time devoted to completing and submitting the exemption form. The average hourly wage rate for a fishing captain is estimated at \$25.33, based on 2021 estimates from the Bureau of Labor Statistics.³¹ Therefore, each for-hire permit holder who submits the maximum number of exemptions allowed in a year would be expected to incur reporting and documentation costs estimated at \$17 per year. No reporting costs would be borne by permit holders who do not file for exemptions. There were 1,342 vessels with valid federal for-hire permits in the Gulf as of August 26, 2021. On average, it is estimated that 2% of the VMS units could fail per year. Therefore, it is expected that 27 for-hire permit holders could experience a VMS unit failure, and each could request two exemptions, assuming no one experiences repeated failures in a given year. Therefore, average annual reporting costs associated with VMS failure exemptions would be approximately \$456 in total, or approximately \$.34 per for-hire business.

No special professional skills are necessary to fulfill these modified reporting requirements.

6.5 Identification of all relevant federal rules, which may duplicate, overlap or conflict with the proposed rule

No duplicative, overlapping, or conflicting federal rules have been identified.

³¹ https://www.bls.gov/oes/current/naics2_11.htm

6.6 Significance of economic effects on small entities

Substantial number criterion

If implemented, this proposed regulatory action is expected to regulate all 1,342 for-hire fishing businesses with valid or renewable Charter Vessel/Headboat permits for Gulf Reef Fish and/or CMP. All regulated for-hire fishing businesses have been determined to be small entities for the purpose of this analysis. Based on this information, the proposed regulatory action is expected to affect a substantial number of small businesses.

Significant economic effects

The outcome of “significant economic impact” can be ascertained by examining two factors: disproportionality and profitability.

Disproportionality: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

All entities directly regulated by this regulatory action have been determined to be small entities. Thus, the issue of disproportionality does not arise in the present case.

Profitability: Do the regulations significantly reduce profits for a substantial number of small entities?

This proposed regulatory action would be expected to increase profits for for-hire permit holders relative to the status quo, albeit minimally on average per for-hire fishing business. Specifically, it is expected to prevent for-hire permit holders from incurring potential profit losses that could result from trip cancellations and associated revenue losses due to equipment failures. Under the proposed regulatory action, for-hire permit holders would be allowed to take trips and collect revenue that would have otherwise been forgone due to equipment failure. The potential increase in profits to for-hire permit holders cannot be quantified due to insufficient information relative to potential revenue losses that would be associated with trip cancellations caused by equipment failures. These potential losses would be determined by the expected value of the forgone trip revenues between the VMS failure incident and the resumption of usual business activities following the VMS repair. Theoretically, the expected value would be calculated based on the probability of equipment failure, the average revenue per trip, and the number of trips that would be cancelled. Anecdotal evidence gathered from VMS failure incidents for commercial fishing businesses suggest that failure rates of approved VMS equipment are about 2% on average, suggesting that the expected value of potential revenue and profit losses to for-hire fishing businesses due to equipment failure are likely to be relatively small. However, the potential revenue and profit losses to for-hire fishing businesses that may experience such failures may not be negligible, especially if the VMS equipment fails during the peak of a fishing season for Gulf reef fish or CMP species.

6.7 Description of significant alternatives to the proposed action and discussion of how the alternatives attempt to minimize economic impacts on small entities

This proposed regulatory action, if implemented, is not expected to reduce the profits of any small entities regulated by this action. As a result, the issue of significant alternatives is not relevant.

CHAPTER 7. LIST OF PREPARERS

PREPARERS

Name	Expertise	Responsibility	Agency
Carly Somerset	Fishery Biologist	Co-Team Lead – Amendment development, biological analyses	GMFMC
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Ava Lasseter	Anthropologist	Social analyses	GMFMC
Jeannette Dudley	Data Analyst	Data analyses	SERO

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Name	Expertise	Responsibility	Agency
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Adam Bailey	Technical writer and editor	Regulatory writer	SERO
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GMFMC = Gulf of Mexico Fishery Management Council; NOAA GC = National Oceanic and Atmospheric Administration General Counsel; SEFSC = Southeast Fisheries Science Center; SERO = Southeast Regional Office of the National Marine Fisheries Service

CHAPTER 8. LIST OF AGENCIES, ORGANIZATIONS, AND PERSONS CONSULTED

National Marine Fisheries Service

- Southeast Fisheries Science Center
- Southeast Regional Office
 - Protected Resources
 - Habitat Conservation
 - Sustainable Fisheries
 - Office of Law Enforcement

NOAA General Counsel

U.S. Coast Guard

Alabama Department of Conservation and Natural Resources/Marine Resources Division

Florida Fish and Wildlife Conservation Commission

Louisiana Department of Wildlife and Fisheries

Mississippi Department of Marine Resources

Texas Parks and Wildlife Department

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APPENDIX A. ACTIONS AND ALTERNATIVES AMENDED, OR CONSIDERED BUT REJECTED

At its October 2021 meeting, the Gulf Council removed Alternative 2, Options 2a in Actions 1 and 2, from further consideration. A subsequent motion was made to add an option, in Actions 1 and 2, for 14 calendar days. This changed the Alternative 2 Options from 3, 7, and 10 calendar days to 7, 10, and 14 calendar days. The Council then moved the entirety of Action 2 to considered but rejected.

Action 1 - Modify requirements for vessels with a Charter/Headboat Reef Fish and/or Charter/Headboat Coastal Migratory Pelagic permit to allow for an exemption to VMS requirements to address equipment failure.

Alternative 2: Create an exemption to the VMS requirement to address equipment failure and set a limit on the number of days that the NMFS-approved exemption method is valid, for vessels with Charter/Headboat permits for Reef Fish and/or CMP:

Option 2a: The exemption will be valid for up to 3 days from submittal date.

Action 2 - Modify requirements for vessels with a Commercial Reef Fish permit to allow for an exemption to VMS requirements to address equipment failure

Alternative 2: Create an exemption to the VMS requirement to address equipment failure and set a limit on the number of days that the NMFS-approved exemption method is valid, in order to address equipment failure for vessels with Commercial Reef Fish permits.

Option 2a: The exemption will be valid for up to 3 days from submittal date.

Action 2 - Modify requirements for vessels with a Commercial Reef Fish permit to allow for an exemption to VMS requirements to address equipment failure.

Alternative 1: (No Action): Maintain requirement that vessels with Commercial Reef Fish permits have an approved VMS unit operating on board at all times unless exempted by NMFS under a power-down exemption.

Alternative 2: Create an exemption to the VMS requirement to address equipment failure and set a limit on the number of days that the NMFS-approved exemption method is valid, in order to address equipment failure for vessels with Commercial Reef Fish permits.

Option 2a: The exemption will be valid for up to 3 days from submittal date.

Option 2b: The exemption will be valid for up to 7 days from submittal date.

Option 2c: The exemption will be valid for up to 10 days from submittal date.

Alternative 3: Create an exemption to the VMS requirement to address equipment failure and set a limit on the number of times a permit holder can request the exemption each calendar year, per vessel:

Option 3a: The permit holder may not request more than one exemption per vessel per calendar year.

Option 3b: The permit holder may not request more than two exemptions per vessel per calendar year.

Option 3c: The permit holder may not request more than three exemptions per vessel per calendar year.

APPENDIX B. OTHER APPLICABLE LAW

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) provides the authority for management of stocks included in fishery management plans (FMP) in federal waters of the exclusive economic zone. However, management decision-making is also affected by a number of other federal statutes designed to protect the biological and human components of U.S. fisheries, as well as the ecosystems that support those fisheries. Major laws affecting federal fishery management decision-making include the Endangered Species Act (Section 3.2.2), E.O. 12866 (Regulatory Planning and Review, Chapter 5) and E.O. 12898 (Environmental Justice, Section 3.4.3). Other applicable laws are summarized below.

Administrative Procedure Act

All federal rulemaking is governed under the provisions of the Administrative Procedure Act (5 U.S.C. Subchapter II), which establishes a “notice and comment” procedure to enable public participation in the rulemaking process. Under the Act, the National Marine Fisheries Service (NMFS) is required to publish notification of proposed rules in the *Federal Register* and to solicit, consider, and respond to public comment on those rules before they are finalized. The Act also establishes a 30-day waiting period from the time a final rule is published until it takes effect. Proposed and final rules will be published before implementing the action in this framework.

Coastal Zone Management Act

Section 307(c)(1) of the federal Coastal Zone Management Act of 1972 (CZMA), as amended, requires federal activities that affect any land or water use or natural resource of a state’s coastal zone be conducted in a manner consistent, to the maximum extent practicable, with approved state coastal management programs. The requirements for such a consistency determination are set forth in the National Oceanic and Atmospheric Administration (NOAA) regulations at 15 CFR part 930, subpart C. According to these regulations and CZMA Section 307(c)(1), when taking an action that affects any land or water use or natural resource of a state’s coastal zone, NMFS is required to provide a consistency determination to the relevant state agency at least 90 days before taking final action.

Upon submission to the Secretary of Commerce, NMFS will determine if this framework is consistent with the Coastal Zone Management programs of the states of Alabama, Florida, Louisiana, Mississippi, and Texas to the maximum extent possible. Their determination will then be submitted to the responsible state agencies under Section 307 of the CZMA administering approved Coastal Zone Management programs for these states.

Data Quality Act

The Data Quality Act (Public Law 106-443) effective October 1, 2002, requires the government to set standards for the quality of scientific information and statistics used and disseminated by federal agencies. Information includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, cartographic, narrative, or audiovisual forms (includes web dissemination, but not hyperlinks to information that others disseminate; does not include clearly stated opinions).

Specifically, the Act directs the Office of Management and Budget to issue government wide guidelines that “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies.” Such guidelines have been issued, directing all federal agencies to create and disseminate agency-specific standards to: (1 ensure information quality and develop a pre-dissemination review process; (2 establish administrative mechanisms allowing affected persons to seek and obtain correction of information; and (3 report periodically to Office of Management and Budget on the number and nature of complaints received.

Scientific information and data are key components of FMPs and amendments and the use of best available information is the second national standard under the Magnuson-Stevens Act. To be consistent with the Magnuson-Stevens Act, FMPs and amendments must be based on the best information available. They should also properly reference all supporting materials and data, and be reviewed by technically competent individuals. With respect to original data generated for FMPs and amendments, it is important to ensure that the data are collected according to documented procedures or in a manner that reflects standard practices accepted by the relevant scientific and technical communities. Data will also undergo quality control prior to being used by the agency and a pre-dissemination review.

National Historic Preservation Act

The National Historic Preservation Act (NHPA) of 1966, (Public Law 89-665; 16 U.S.C. 470 *et seq.*) is intended to preserve historical and archaeological sites in the United States of America. Section 106 of the NHPA requires federal agencies to evaluate the impact of all federally funded or permitted projects for sites listed on, or eligible for listing on, the National Register of Historic Places and aims to minimize damage to such places.

Historical research indicates that over 2,000 ships have sunk on the Federal Outer Continental Shelf between 1625 and 1951; thousands more have sunk closer to shore in state waters during the same period. Only a handful of these have been scientifically excavated by archaeologists for the benefit of generations to come.³²

The proposed action does not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, nor is it expected to

³² <http://www.boem.gov/Environmental-Stewardship/Archaeology/Shipwrecks.aspx>

cause loss or destruction of significant scientific, cultural, or historical resources. In the Gulf of Mexico (Gulf), the *U.S.S. Hatteras*, located in federal waters off Texas, is listed in the National Register of Historic Places.³³ Fishing activity already occurs in the vicinity of this site, but the proposed action would have no additional adverse impacts on listed historic resources, nor would they alter any regulations intended to protect them.

Executive Orders (E.O.)

E.O. 12630: Takings

The E.O. on Government Actions and Interference with Constitutionally Protected Property Rights that became effective March 18, 1988, requires each federal agency prepare a Takings Implication Assessment for any of its administrative, regulatory, and legislative policies and actions that affect, or may affect, the use of any real or personal property. Clearance of a regulatory action must include a takings statement and, if appropriate, a Takings Implication Assessment. The NOAA Office of General Counsel will determine whether a Taking Implication Assessment is necessary for this amendment.

E.O. 12962: Recreational Fisheries

This E.O. requires federal agencies, in cooperation with states and tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities through a variety of methods including, but not limited to, developing joint partnerships; promoting the restoration of recreational fishing areas that are limited by water quality and habitat degradation; fostering sound aquatic conservation and restoration endeavors; and evaluating the effects of federally-funded, permitted, or authorized actions on aquatic systems and recreational fisheries, and documenting those effects. Additionally, it establishes a seven-member National Recreational Fisheries Coordination Council (NRFCC) responsible for, among other things, ensuring that social and economic values of healthy aquatic systems that support recreational fisheries are considered by federal agencies in the course of their actions, sharing the latest resource information and management technologies, and reducing duplicative and cost-inefficient programs among federal agencies involved in conserving or managing recreational fisheries. The NRFCC also is responsible for developing, in cooperation with federal agencies, States and Tribes, a Recreational Fishery Resource Conservation Plan - to include a five-year agenda. Finally, the E.O. requires NMFS and the United States Fish and Wildlife Service to develop a joint agency policy for administering the ESA.

E.O. 13089: Coral Reef Protection

The E.O. on Coral Reef Protection requires federal agencies, whose actions may affect U.S. coral reef ecosystems, to identify those actions, utilize their programs and authorities to protect and

³³ Further information can be found at <http://www.boem.gov/Environmental-Stewardship/Archaeology/Shipwrecks.aspx>.

enhance the conditions of such ecosystems, and, to the extent permitted by law, ensure actions that they authorize, fund, or carry out do not degrade the condition of that ecosystem. By definition, a U.S. coral reef ecosystem means those species, habitats, and other national resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., federal, state, territorial, or commonwealth waters).

Regulations are already in place to limit or reduce habitat impacts within the Flower Garden Banks National Marine Sanctuary. Additionally, NMFS approved and implemented Generic Amendment 3 for Essential Fish Habitat (GMFMC 2005b), which established additional habitat areas of particular concern (HAPC) and gear restrictions to protect corals throughout the Gulf. There are no implications to coral reefs by the actions proposed in this amendment.

E.O. 13132: Federalism

The E.O. on Federalism requires agencies in formulating and implementing policies, to be guided by the fundamental Federalism principles. The E.O. serves to guarantee the division of governmental responsibilities between the national government and the states that was intended by the framers of the Constitution. Federalism is rooted in the belief that issues not national in scope or significance are most appropriately addressed by the level of government closest to the people. This E.O. is relevant to FMPs and amendments given the overlapping authorities of NMFS, the states, and local authorities in managing coastal resources, including fisheries, and the need for a clear definition of responsibilities. It is important to recognize those components of the ecosystem over which fishery managers have no direct control and to develop strategies to address them in conjunction with appropriate state, tribes and local entities (international too).

No Federalism issues were identified relative to the action to modify the gray triggerfish catch levels. Therefore, consultation with state officials under E. O. 12612 was not necessary.


E.O. 13158: Marine Protected Areas

This E.O. requires federal agencies to consider whether their proposed action(s) will affect any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural or cultural resource within the protected area. There are several marine protected areas, HAPCs, and gear-restricted areas in the eastern and northwestern Gulf. The existing areas are entirely within federal waters of the Gulf. They do not affect any areas reserved by federal, state, territorial, tribal or local jurisdictions.


APPENDIX C. POWER DOWN EXEMPTION REQUEST FORM

Portion of online Power Down Exemption Request form available from NOAA Fisheries. The entire form can be found at: https://grunt.sefsc.noaa.gov/apex/fer/r/fer_forms/power-down-request.

3/24/22, 12:10 PM Power Down Request

 Southeast Region eForms 🔍

Home | Power Down Form



****This form is only for Gulf of Mexico Vessels with the federal commercial reef fish and/or the federal for-hire permits****

OMB Control No. 0648-0016 Approval Expires 11/30/2022
For-Hire


Regulations implementing the requirements for location tracking devices by federally permitted charter vessels and headboats in the Gulf of Mexico allow vessel owners or operators to discontinue the use of cellular- or satellite-based VMS units for a minimum period of three days, provided they obtain a VMS power-down exemption letter from the Southeast Office of Law Enforcement (SE OLE). To request this exemption letter, fill out the appropriate information below and submit this completed form.


OMB Control No. 0648-0544 Approval Expires 06/30/2022
Commercial Reef Fish Fishery

Regulations implementing the requirements for VMS within the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico allow for vessel owners and/or operators to discontinue the use of VMS units for a minimum period of 72 hours for specific periods of time, provided they obtain a VMS power-down exemption letter from the Southeast Office of Law Enforcement (SE OLE). To obtain this exemption letter, fill out the appropriate information below and submit this completed form.

***All fields are Required**

Reported Date
03/24/2022

 Name of Person Submitting

 Vessel Official # ▼

USCG Documentation number or, if not documented, State Registration Number

Permit # (please list one of your permits that requires VMS; e.g. permit CHG-1234 then enter 1234 below)

https://grunt.sefsc.noaa.gov/apex/fer/r/fer_forms/power-down-request 1/3

APPENDIX D. VENDOR RESPONSES TO DURABILITY OF VMS UNITS

Responses to Durability of VMS Units - Type Approved Vendors for the Gulf of Mexico For-Hire Fisheries and/or Commercial Reef Fish Fishery of the Gulf of Mexico

Request sent to all vendors:

We request all VMS vendors currently type approved for the Commercial Reef Fish Fishery of the Gulf of Mexico and the Gulf of Mexico For-Hire Fisheries, in the Southeast Region provide a brief summary and/or statement on the durability of their units. Current fishing amendments are pending related to the For-Hire fleet in the SED. There is a concern from the industry on how often a VMS unit may fail and time to replace a malfunctioning unit which would not allow them to fish, per current regulations. Any information and data that will highlight individual vendor's customer service processes and unit durability will aid in alleviating industry concern about being potentially held at the dock due to equipment replacement time.

Received Responses Faria Beede:

Thank you for your request to clarify system durability on the Faria Beede ETerm-C for the Gulf of Mexico For Hire roll-out currently scheduled for December 2021. Faria Beede understands the concern and appreciates the opportunity to respond. Faria Beede, a World-class type- approved manufacturer, with 20+ years of experience producing telematics systems for domestic and international fisheries has worked with supply partners to provide the very best product that is available in the market. The company has the highest levels of confidence that that product will perform as expected. If, for some reason a system does fail, there is both an internal and external mechanism in place to support the customer and keep them fishing.

We understand that many customers have a perception that a malfunctioning system will keep them from their livelihood – fishing. The fact is, the Faria Beede ETerm-C is a hardened system, running mature software and firmware produced by Faria Beede – a company with significant Worldwide telematics experience. With more than 5,000 VMS systems installed in the World's harshest environments the failure rate on telematics system is extremely low with less than 3-5 failures in any calendar year. Many Faria Beede systems are 7+ years old running 24/7/365, so this durability is truly World-class!

The Faria Beede ETerm-C is designed for harsh marine, military, industrial and VMS applications. The product was quickly type approved by NOAA/VISMA in April of 2021. From the first installs in late 2020 until June 7, 2021, no failures were found with the NOAA test systems nor the NOAA test boats nor the Faria Beede private real-World test vessels. The Android-based IP64-rated (International Protection Code) is a perfect fit for a saltwater environment. Fact is, Android products are mature/durable products; even today's most basic Android-based products rarely fail due to dust, dirt, debris, shock, water intrusion, UV, temperature extremes nor vibration. From a supply chain perspective, Faria Beede has positioned itself well for any potential failures. Not only can replacement systems be shipped

within 24 hours by calling the Faria Beede help line, but stock is located in Florida for same-day delivery should it be required. Just as a boat-owner should be checking their tanks for fuel, their baitwells for bait, and their chartplotters / radar and sonar for proper operation, they too should be checking their VMS systems for proper operation. If the system is NOT operating as planned for some reason, a boat owner simply needs to dial the help line at (800) 473-2742 for assistance with troubleshooting and solving most problems in a matter of minutes. In the unlikely event this troubleshooting defines that the unit has actually failed, a new, easy-to-install (in less than 1- hour) replacement will be ready in 24 hours – much more quickly than any engine, electronics or safety failure.

It is worth noting that Faria Beede and its sister company Riverside MFG., LLC have more than 100 years of combined industrial, military and marine experience producing, testing, procuring and providing instrumentation, telematics systems and other complex electrical systems with very low failure rates. The company’s overall return rate is less than 0.5% on all products sold company-wide with VMS telematics solutions always scoring well by internal and external audits. Faria Beede invites you to visit and audit our facilities, work instructions and testing. You will see that the organization is nothing short of World-Class.

If you require additional information, metrics or would like to schedule an on-site audit, please let us know. We look forward to a successful roll-out.

Addvalue:

iFleetONE, a NOAA approved EMTU for VMS, is a maritime satellite communication terminal developed and manufactured by Addvalue to meet all the necessary industrial and regulatory standards. Designed with a reliability metric of Mean Time Between Failures (“MTBF”) of at least 3 years, iFleetONE has been well proven to operate in harsh maritime environments seen by small and medium vessels as its overall field return rate is way below 2%.

Addvalue has forged partnerships to support the sale and after-sale activities for iFleetONE-VMS. These partners, counting renowned marine service companies such as Pivotel, Marlink and Mackay, are trained to provide iFleetONE-VMS installation and maintenance support. There will be sufficient buffer stocks and spare parts in USA to ensure timely repair and replacement to minimize equipment down time.

Skymate:

SkyMate has been a Type-Approved supplier of VMS Systems to the NMFS VMS program for almost 20 years. Our current VMS System (SkyMate m1600VMS) has been approved in all NMFS regions including the Gulf of Mexico For-Hire Fisheries as well as multiple international VMS Type-Approvals. Since 2015 SkyMate has deployed over 1,300 VMS systems, of these over 95% are still functional.

All SkyMate VMS systems are designed/built for marine environments and thoroughly tested in house. SkyMate VMS systems have a CE Mark, IEC 60945, EN 60529, IP67, and have a history of reliability.

With a network of over 100 dealers across the USA (more than 25 dealers in the Gulf of

Mexico) backed by sales reps in the field, 24/7 technical support (703-961-5800, X500) and next day shipping; SkyMate has the team to support our customers quickly and effectively. SkyMate VMS customers can focus on fishing.

Orolia OmniCom

The Orolia OmniCom unit meets and exceed all needed environmental regulations and tests including but not limited to IEC 60945, IEC60529, and IEC60950.

To date we have more than 10000 hours of deployment with less than 3 failures! Our system uptime is measured at 99.99%. Orolia provides 24-hour support via a toll-free number and we have trained agents throughout the USA. Should a replacement unit be needed we can have it anywhere within 24 hours and usually within 12 hours!

Woods Hole Group:

We expect a Triton Advanced EMTU to provide a useful life of a minimum of 5 years once deployed into a marine environment. In the event that a unit may be damaged, or should there be a rare technical failure, we typically keep a stock of 100 units minimum in our Maryland logistics center, where we can overnight spares and/or replacements to the F/V.

APPENDIX E. SUMMARY OF PUBLIC COMMENT

Summary of all written public comments received through June 15, 2022. A link to full comments is available here: https://docs.google.com/spreadsheets/d/e/2PACX-1vTcu960jpHDm8gUsU1pgOWv11o9aQYh6MXh-7H7mSrmjA3Hv6ddOHx8V_JGeEleuQwi0SHpMkb8usAn/pubhtml?gid=1479435103&single=true

50 Public Hearing Video Views

8 comments were received.

- Support for Alternative 2c. 14 days would allot enough time to coordinate repairs.
- Support for Alternative 3c. Allow the captains the greatest possible number of exemptions in a year.
- Gratitude for the Council's efforts to ensure that trips aren't disrupted.
- Support for exemptions to ensure that captains don't miss out on opportunities to fish.
- It's unreasonable to stop trips because the unit they fleet is mandated to have isn't working.
- It's harsh to limit the number of times an exemption can be made because electronics on vessels are unreliable.
- There should be an online form, email, and phone number to use to ask for an exemption that would operate 24/7 and produce a confirmation number immediately.
- Caution against enforcement of the new requirements because they're disruptive to the fleet.
- Consider creating a grading system that considers historic compliance from captains that guides how harshly to respond to future non-compliance issues.