

Modification of For-Hire Vessel Trip Declaration Requirements



Abbreviated 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 Regulatory Impact Review and
Regulatory Flexibility Act Analysis

January 2023



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FRAMEWORK ACTION: MODIFICATION OF FOR-HIRE VESSEL TRIP DECLARATION REQUIREMENTS

Abbreviated Framework Action to 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: Modification of For-Hire Vessel Trip Declaration Requirements including Regulatory Impact Review, Regulatory Flexibility Act Analysis.

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ABBREVIATIONS USED IN THIS DOCUMENT

AP	Advisory Panel
CFR	Code of Federal Regulations
CMP	Coastal Migratory Pelagic (species or Fishery Management Plan)
Council	Gulf of Mexico Fishery Management Council
FMP	Fishery Management Plan
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OLE	Office of Law Enforcement (NOAA)
PRA	Paperwork Reduction Act
RIR	Regulatory Impact Review
RFAA	Regulatory Flexibility Act Analysis
SEFHIER	Southeast For-Hire Integrated Electronic Reporting (Program)
SRHS	Southeast Region Headboat Survey
VMS	Vessel Monitoring System

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CHAPTER 1. INTRODUCTION

1.1 Background

Electronic technologies have been used in fisheries management to collect data from fishermen to improve accuracy and timeliness of reported data. Available reporting programs may also provide improvements to data quality, accessibility, and integration of data for fisheries management. Although electronic trip reporting is not new, its use by those participating in the federally permitted for-hire component of the recreational sector (i.e., charter vessels and headboats) is more recent than its use in the commercial fleet.

The final rule to implement an amendment to the Fishery Management Plans (FMPs) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP) modifying reporting requirements for charter vessels and headboats became effective on January 5, 2021. This final rule requires charter vessel/headboat (for-hire) permit holders with Gulf of Mexico (Gulf) Reef Fish or Coastal Migratory Pelagic (CMP) species permits to make trip declarations prior to leaving the dock, submit electronic logbooks to report harvest from fishing activity, and install Vessel Monitoring Systems (VMS) to report location data every hour (GMFMC 2017; 85 FR 44005, July 21, 2020). This electronic reporting is implemented through the National Marine Fisheries Service (NMFS) Southeast For-Hire Integrated Electronic Reporting (SEFHIER) program. The purpose of the SEFHIER program is to provide more accurate and reliable fisheries information about for-hire catch, effort, and discards. Data are collected directly from for-hire fishermen through NMFS-approved software programs. Compliance checks, data validation, and final estimation calculations utilize declarations, logbooks, VMS positioning, and dockside intercepts. Prior to departure, program participants must make a trip declaration or “hail-out” indicating that they intend to move their vessel on the water. The declaration notifies NMFS Office of Law Enforcement (OLE) and identifies the type of trip being taken (i.e., fishing or non-fishing trip), start date/time of the trip, and assists in determining if a logbook should be expected for the trip. For-hire fishing trip declarations require an estimated return date/time and a landing location. Estimated return date/times aid law enforcement, port agents, and validation survey staff in knowing when to meet the vessel upon return and are critical components to validate the information collected by the SEFHIER program. Current regulations require vessels with federal for-hire permits for Gulf Reef Fish or Gulf CMP species to submit a trip declaration prior to the vessel moving on the water:

§ 622.26 *Recordkeeping and reporting.*

Trip declaration requirements. *For purposes of this paragraph (b)(6), a trip begins anytime the vessel departs from a dock, berth, beach, seawall, or ramp, and terminates with return to a dock, berth, beach, seawall, or ramp, regardless of the duration or purpose, including non-fishing activities. Prior to departure for each trip, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued must notify NMFS and report the type of trip, the U.S. Coast Guard vessel documentation number or state vessel registration number, and whether the vessel will be operating as a charter vessel or headboat, or is departing on another type of trip, such as a commercial trip. If the vessel will be operating as a charter vessel*

*or headboat during the trip, the owner or operator must also report the expected trip completion date, time, and landing location.*¹

§ 622.374 *Recordkeeping and reporting.*

Trip declaration requirements in the Gulf. *For purposes of this paragraph (b)(6), a trip begins anytime the vessel departs from a dock, berth, beach, seawall, or ramp, and terminates with return to a dock, berth, beach, seawall, or ramp, regardless of the duration or purpose, including non-fishing activities. Prior to departure for each trip, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued must notify NMFS and report the type of trip, the U.S. Coast Guard vessel documentation number or state vessel registration number, and whether the vessel will be operating as a charter vessel or headboat, or is departing on another type of trip, such as a commercial trip. If the vessel will be operating as a charter vessel or headboat during the trip, the owner or operator must also report the expected trip completion date, time, and landing location.*²

Trip declarations are required each time a vessel departs from a dock, berth, beach, seawall, or ramp. SEFHIER program participants and other industry stakeholders expressed concern that submitting multiple declarations for non-fishing activities is an undue burden on vessel owners and operators. Under the Paperwork Reduction Act (PRA), the reporting burden for these requirements is estimated to average two minutes for each trip declaration. SEFHIER program participants question the need to submit a trip declaration each time a vessel moves to acquire ice or fuel, or other non-fishing activities because separate trip declarations for each of these type of short duration trips is overly burdensome. In the previous amendment to modify for-hire trip reporting requirements (GMFMC 2017), the alternative to require for-hire vessel operators to declare prior to departing on any type of trip was intended to provide better estimates of effort with an improved validation process than provided through the MRIP for-hire phone survey (charter vessels) and Southeast Region Headboat Survey (SRHS). The declaration was also intended to better inform law enforcement officers when a for-hire vessel leaves the dock as well as identify the type of trip. More specifically, making the decision to require declarations for every trip was anticipated to provide a greater level of resolution for estimating fishing effort than the other data collection programs for charter vessels and headboats (MRIP For-Hire Telephone Survey (FHS) and SRHS). After certification and calibration of catch and effort data to MRIP [FHS and the Access Point Angler Intercept Survey (APAIS)], the additional resolution brought about by the SEFHIER program requirements could decrease uncertainty in the projected season lengths and aid the Council and NMFS in making better informed management decisions. Even though the addition of trip declarations would increase the burden on vessel operators relative to no trip declaration requirements, the Council's selection of trip declarations as the preferred alternative was intended to aid in the prioritization of dock-side intercepts that could further improve catch and effort fishery data from for-hire vessels. Table 1.1.1. provides the number of trip declarations by trip type; this includes declarations made by vessels in the

¹ [https://www.ecfr.gov/current/title-50/chapter-VI/part-622/subpart-B/section-622.26#p-622.26\(b\)\(6\)](https://www.ecfr.gov/current/title-50/chapter-VI/part-622/subpart-B/section-622.26#p-622.26(b)(6))

² [https://www.ecfr.gov/current/title-50/chapter-VI/part-622/subpart-Q/section-622.374#p-622.374\(b\)\(6\)](https://www.ecfr.gov/current/title-50/chapter-VI/part-622/subpart-Q/section-622.374#p-622.374(b)(6))

Southeast Region Headboat Survey (SRHS). These data, however, are not comprehensive as there are still some complications with the automated compliance and validation processes.

Table 1.1.1 Preliminary number of trip declarations made by SEFHIER program participants by trip type and whether the trip intended to fish. These declarations range from January 1, 2022 to November 29, 2022.

Trip Type	Intended Fishing Trips	Non-Intended Fishing Trips	Total Trips
Charter	47011	2535	49546
Headboat	10253	1323	11576
Recreational	238	1516	1754
Commercial	0	134	134

Source: data pulled from SEFHIER database by Michelle Masi on 11/30/22

Prior to implementation of these for-hire reporting requirements, federally permitted for-hire vessels did not have any trip declaration requirements; however, commercial fisheries in the Gulf have had declaration requirements for several years. Commercial reef fish permit holders are required to submit trip declarations, although the information submitted differs in key ways from the for-hire forms. The federally permitted reef fish commercial vessels must also submit a pre-landing notification three to 24 hours in advance of landing. The declaration for the Gulf federally permitted for-hire fleet combines information from a traditional declaration (e.g., type of trip) with information from pre-landing notifications (e.g., estimated return time, landing location). This combination eliminates the need for an at-sea notification to supply enforcement with an expected return time and location.

Table 1.1.2. Examples of fishing trips or chartered activity that require a trip declaration or “hail-out” and non-fishing trips that do not require a declaration. This list is not comprehensive.

FISHING TRIP or CHARTERED ACTIVITY	NON-FISHING TRIP or NON-CHARTERED ACTIVITY
Taking clients on for-hire fishing trips	Traveling to a fuel dock to purchase fuel or to the pump-out station
Fishing for bait, retrieving bait traps, or cast netting for bait.	Traveling to purchase bait, ice, refreshments from bait shop
Commercial fishing	Traveling to pick up clients
Private angler fishing	Taking family out for a non-fishing cruise
Taking clients on for-hire (chartered) dolphin sunset, or eco-tour cruise	Traveling to boat ramp

As a result of stakeholder concern about the requirement to submit multiple trip declarations and discussing alternative options at various Advisory Panel (AP) and Gulf of Mexico Fishery Management Council (Council) meetings, a limited exemption was proposed to decrease the burden of multiple trip declarations. Decreasing the number of required declarations would be possible because the onboard VMS unit provides positioning information, which can be used to aid in enforcement and compliance of the program. This abbreviated framework action affects reporting requirements for vessels issued Gulf charter vessel/headboat permits under the Reef Fish and CMP FMPs. This action attempts to decrease the burden on vessel owners and/or

operators by creating an exemption from the trip declaration requirement under specific circumstances. Vessels with other permit requirements must continue to follow the trip declaration and reporting requirements that apply to the vessel's other permits. It should also be noted that, from here on in the document, the expression dock-to-dock covers the language in the regulations that refers to "...vessel departs from a dock, berth, beach, seawall, or ramp, and terminates with return to a dock, berth, beach, seawall, or ramp."

1.2 Purpose and Need

The purpose of this action is to reduce the number of trip declarations required to be submitted by Gulf Reef Fish and CMP permitted for-hire vessels while conducting on-the-water activities, in a manner that maintains the data integrity of the for-hire electronic reporting program in the Gulf. The need for this action is to reduce the burden associated with submitting trip declarations, outside of fishing or chartered trip activity, without negatively impacting data needed to manage these fisheries.

1.3 Modifications to For-Hire Vessel Trip Declaration Requirements

Over the course of several AP and Council meetings, stakeholders expressed concern regarding the burden placed upon them by electronic reporting requirements, especially when multiple trip declarations are necessary. Industry members have stated they understand why for-hire electronic reporting was implemented, principally to improve fisheries information collected from Gulf federally permitted for-hire vessels, but indicated that some of the reporting components seem to be excessive. After discussion with NMFS and Council members, NMFS and the NMFS OLE proposed a solution to ease the burden of multiple trip declarations by allowing an exemption within a set amount of time, to conduct non-fishing activities. This proposal is possible because the VMS positioning information also assists with the compliance and enforcement of the program and can be used to validate the trip status with the declaration. With consideration for the current SEFHIER program requirements and the feasibility of several options to decrease trip declaration burdens while maintaining the integrity of for-hire data collection, NMFS recommended a 60-minute exemption window in which vessels may move on the water from dock-to-dock to conduct non-fishing trips without having to submit a trip declaration. The 60-minute time window was based on how often the VMS units' record positions and discussion included that most non-fishing and non-chartered trips are short transits. Increases in the exemption window may affect the Agency's ability to detect non-compliance through VMS positioning alone and diminish data integrity. At a subsequent Council meeting, discussion of exemption options shifted from an exemption within a set timeframe to only requiring trip declarations for trips with fishing activity, or trips with fishing activity and/or chartered activity, such as sunset and dolphin cruises. Trip declaration requirements remain unchanged for fishing trips. A trip declaration must be made prior to any fishing trip.

Trip Declaration Exemption Options

At its June 2022 meeting, the Council decided to proceed with an abbreviated framework action to provide options that would exempt for-hire vessel owners and/or operators from the trip

declaration requirement each time the vessel moves on the water (dock-to-dock) to conduct non-fishing trips. The Council approved the selection of three options to be presented in this abbreviated framework action: 60 minutes, 90 minutes, or 120 minutes. These options were deemed reasonable timeframes in which non-fishing activities may be conducted without placing an undue administrative burden on NMFS to analyze data for compliance and accuracy, or weaken trip validations. The options were also considered feasible because of the additional hourly vessel position information provided by the VMS unit. During initial discussions, NMFS indicated that a shorter time-limited exemption window would be beneficial to maintain data integrity.

The exemption window would cover each “trip,” as defined by 50 CFR 622.26 and 622.374, which begins when a vessel leaves a dock and ends when a vessel arrives at a dock, regardless of whether it is the same dock from which the vessel departed. For example, if a vessel leaves a slip and travels 30 minutes to a fuel dock, but must wait 60 minutes at the fuel dock to purchase fuel because other vessels are also waiting for fuel, the trip is 30 minutes (dock-to-dock) and would be covered under this 60-minute exemption. The time the vessel waits to refuel is not considered part of the trip, as the vessel has reached its destination. Once a trip has ended, a new trip would not begin until the vessel leaves the fuel dock. If the vessel leaves the fuel dock and travels 45 minutes to return to its slip, the exemption would apply to that non-fishing trip as well, as it would constitute a new trip that is less than 60 minutes. There is no limit proposed to the number of exemptions that could apply in a single day, so long as each non-fishing trip is completed (dock-to-dock) within the timeframe selected.

At its August 2022 meeting, the Council discussed adding an option that would pivot away from a time-limited exemption for non-fishing trips to one requiring trip declarations only for trips engaging in any type of fishing or any chartered activity. Fishing activity would include commercial, for-hire, and private recreational fishing activities. Chartered activity would include any other activity with paying passengers³ on-board the vessel, such as sunset or dolphin cruises. This option would provide the for-hire fleet with more flexibility to complete non-fishing, non-chartered activities but allows NMFS to continue to collect some socioeconomic data on the for-hire fleet when paying passengers are onboard, but may not be engaged in fishing activity. Enforcement can confirm that vessels being monitored at sea through the VMS positions are indeed performing the activity that the trip declared, by providing a trip declaration that differentiates between fishing activity and other chartered activity that does not include fishing. Requiring declarations for trips engaging in fishing or any chartered activity would also assist in determining fleet characteristics (e.g., percentage part-time of other activity like cruises to supplement business or commercial activity), and decreases the administrative burden for the SEFHIER program through use of automation to identify non-compliance.

³ In the definition of “charter fishing”, the Magnuson-Stevens Fishery and Conservation Management Act (MSA) refers to “passenger for hire” as defined in 46 U.S. Code § 2101. That “means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.” Consideration means “an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.”

Option 1: The exemption from the trip declaration requirement would apply to non-fishing trips that are completed in 60-minutes or less.

This 60-minute window was recommended because timeframes exceeding one hour could result in location positions from vessels' VMS unit without defined activity from a trip declaration. VMS units report positions hourly, at random, every 60 minutes and the location information is available and monitored by NMFS. Due to the hourly position reporting from VMS units, 60 minutes or less for a trip declaration exemption may be the best option to maintain data integrity through sufficient trip validations. The 60-minute exemption balances the need to maintain the integrity of the data, while allowing sufficient time to complete most non-fishing trips. Additionally, this option would not increase the administrative burden on NMFS to analyze data for compliance and accuracy, whereas the other options could potentially increase the administrative burden.

Option 2: The exemption from the trip declaration requirement would apply to non-fishing trips that are completed in 90-minutes or less.

This intermediate option would provide more time to conduct business by allowing vessel owners and/or operators to move on the water from dock to dock without having to declare a non-fishing trip. During Council meeting discussion, industry members indicated that 60-minutes may not be enough time to complete certain activities, especially if a vessel must travel a longer distance for fuel, ice, or passengers, or have to wait at a dock for fuel. However, as explained above, the time a vessel waits at a dock is not part of a "trip" because the trip ends when the vessel arrives at a new dock. Based on industry activity, it is also unlikely that any fishing trip could be completed within a 90-minute window, making it improbable that a vessel could illegally conduct fishing trips without a declaration in this amount of time. However, this option may be more difficult to ensure compliance and verify vessel activity because it may lead to more VMS location positions that cannot be validated because there would be no way to define vessel activity from a declaration. This would increase the administrative burden for NMFS to analyze data for compliance, accuracy, and enforcement of the program. It is also possible that increased exemption times could result in vessel operators forgetting to submit a trip declaration prior to fishing activities or for non-fishing trips longer than 90 minutes.

Option 3: The exemption from the trip declaration requirement would apply to non-fishing trips that are completed in 120-minutes or less.

This option would provide the most time to complete non-fishing trips without the requirement for a for-hire vessel owner and/or operator to submit a trip declaration. This increased time interval may be especially important for vessels that would have to travel longer distances to complete such tasks as obtaining ice, fuel, or traveling to where passengers will board the vessel. However, this option would also be the most cumbersome for NMFS to ensure compliance and verify vessel activity, thereby increasing the administrative burden. This option may lead to even more VMS location positions that cannot be validated, and there would be no way to define vessel activity from a declaration. As a result, this option may weaken data integrity, the ability to determine when illegal fishing activity is taking place, and the overall accuracy and efficacy of the program more than the previous two options. As with Option 2, the increased time durations for an exemption associated with Option 3 would increase the administrative burden for NMFS to analyze data for compliance, accuracy, and enforcement, and could result in more potential for vessel operators to forget to make a trip declaration prior to fishing activities.

Preferred Option 4: Require federally-permitted for-hire vessel owners and/or operators to submit a trip declaration for trips that will be engaging in any type of fishing or chartered activity.

This preferred option would eliminate trip declarations for for-hire vessel owners and/or operators on federal for-hire vessels with Gulf reef fish or CMP charter vessel/headboat permits except when on trips engaging in fishing or chartered activities. Trips with paying passengers on board would require a trip declaration, even if passengers do not engage in fishing activity. This preferred option is similar to Options 1-3 in that it would require trip declarations when engaging in fishing activity (e.g., taking clients on fishing trips, checking bait traps even without clients on board), but also specifies that trip declarations would be required for vessels engaging in chartered activity such as sunset or dolphin cruises. This preferred option does not specify any time limit for non-fishing and non-chartered activities, which would not require a declaration. Vessels would have an unlimited amount of time to engage in non-fishing activities (e.g., traveling to pick up clients, traveling to fuel the vessel). **Preferred Option 4** differs from Options 1-3 by specifically including trip declaration requirements for chartered activity. Options 1-3 do not explicitly require a trip declaration for chartered activity, but it is unlikely that chartered activity could be completed within the time limits set forth in the first three options. **Preferred Option 4** would eliminate the need for program participants to keep track of transit time and would also allow program administrators to more specifically distinguish vessel activity, for analytical needs, into fishing vs. chartered activity. The Law Enforcement Technical Committee (LETC) also reviewed this action at its October 2022 meeting and provided a consensus statement. The LETC felt it was sufficient to declare a trip when setting out to fish only; the Committee was not concerned about inshore vessel activity. By consensus, the Committee supported **Preferred Option 4** (declare any fishing or charter activity, only), and is not concerned that this option would make law enforcement more difficult. The enforcement of offshore activity would still be possible through validation of activity through the additional VMS location information.

CHAPTER 2. REGULATORY IMPACT REVIEW

2.1 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 coastal migratory pelagic (CMP) fisheries.

2.2 Problems and Objectives

The problems and objectives addressed by this action are discussed in Chapter 1.

2.3 Description of Fisheries

2.3.1 Commercial Sector

This proposed regulatory action only pertains 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.

2.3.2 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 renewable⁴ 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	1,274
2016	1,260
2017	1,260
2018	1,267
2019	1,266

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.

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

⁴ A renewable permit is an expired permit that may not be actively fished, but is renewable for up to one year after expiration.

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	1,294
2016	1,282
2017	1,280
2018	1,279
2019	1,277

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.⁵ The SRHS is divided into discrete geographical/statistical areas to which headboat

⁵ 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

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 Sept 14, 2022, 69 Gulf headboats were registered in the SRHS and another 41 operating in the Florida East Coast (FLEC) Zone. The majority of these headboats were located in Florida (79 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 (FES) ACL monitoring data set, which includes estimates from the NMFS SRHS program, 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).

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

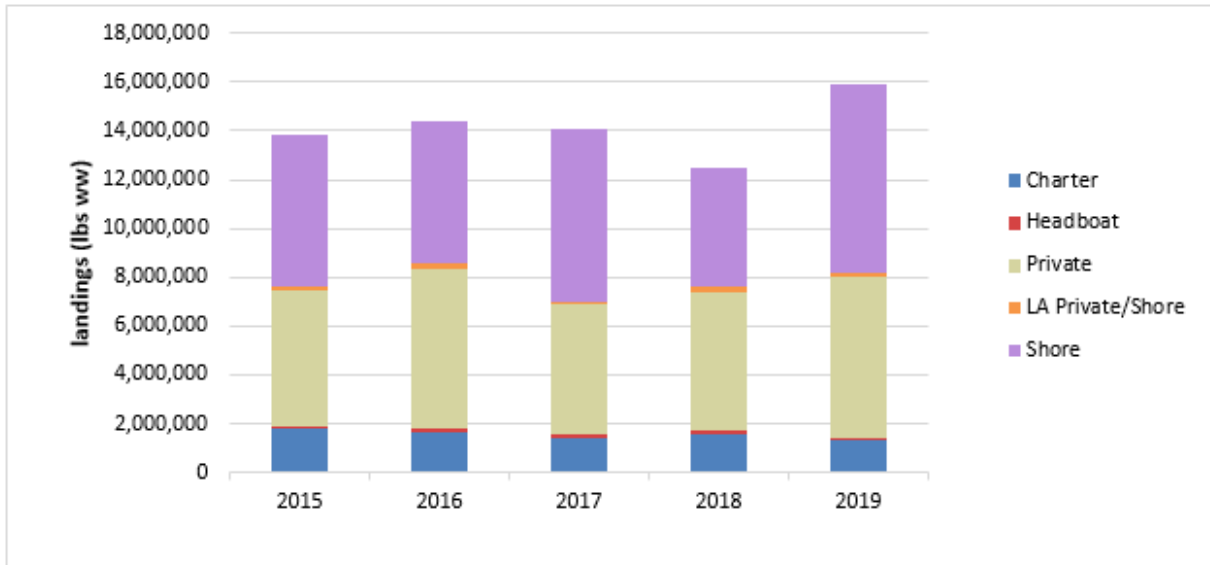


Figure 3.4.2.1. Recreational landings of Gulf CMP species (king mackerel, Spanish mackerel and cobia) by mode. Landings are in MRIP-FES.
Source: SEFSC MRIP-FES ACL data set (Dec 2021)

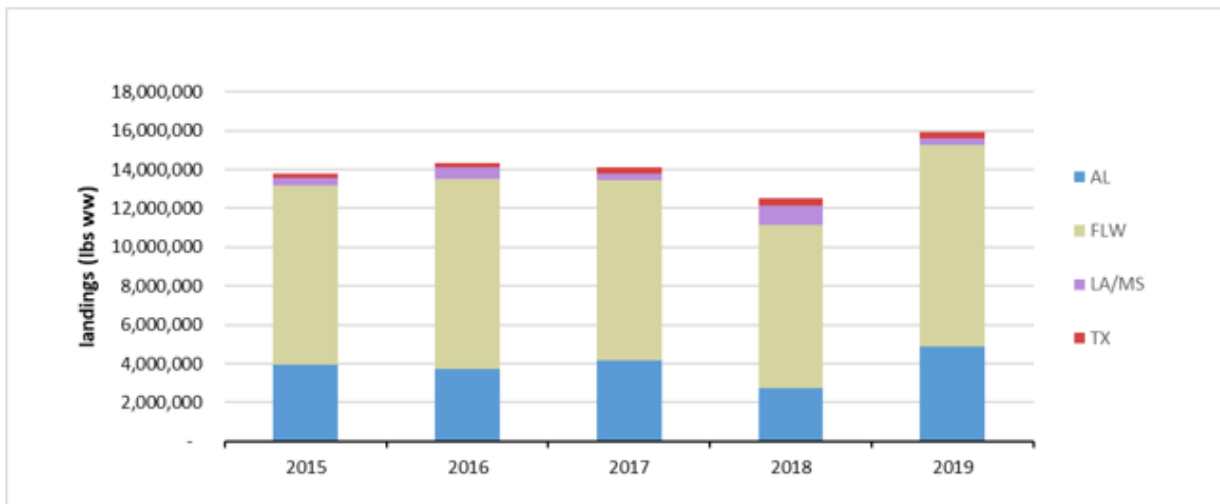


Figure 3.4.2.2. Recreational landings of Gulf CMP species (king mackerel, Spanish mackerel and cobia) by state.* Landings are in MRIP-FES.
Source: SEFSC MRIP-FES ACL data set (July 2021).
*Louisiana and Mississippi are combined here to align with the way headboat landings were reported.

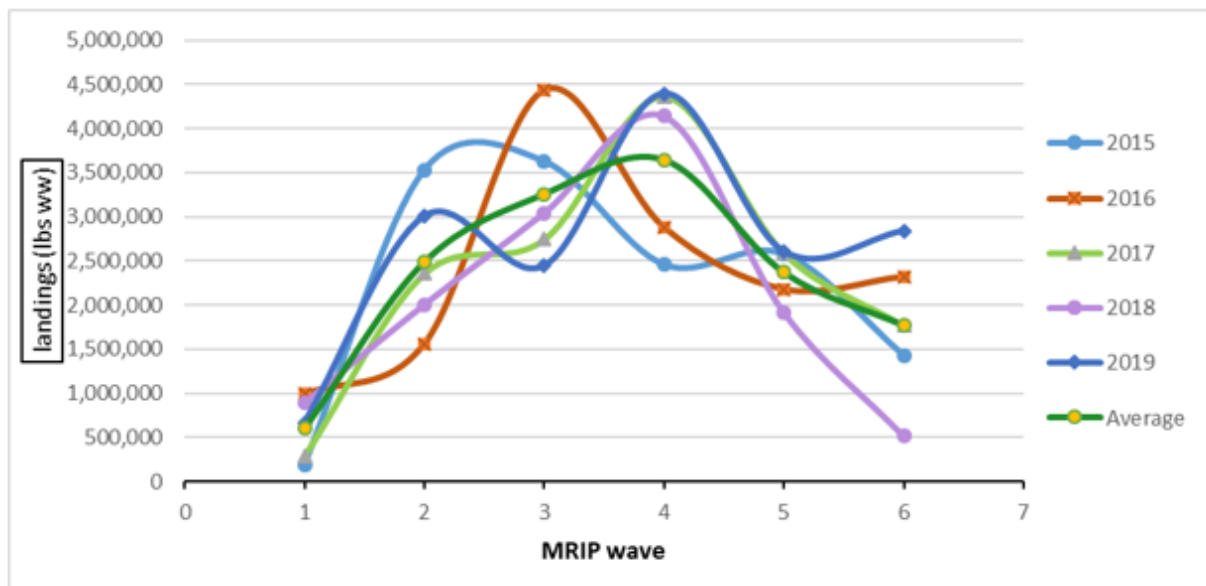


Figure 3.4.2.3. Recreational landings of Gulf CMP species (king mackerel, Spanish mackerel and cobia) by MRIP wave. Landings are in MRIP-FES.
Source: SEFSC MRIP-FES ACL data set (Dec 2021).

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).

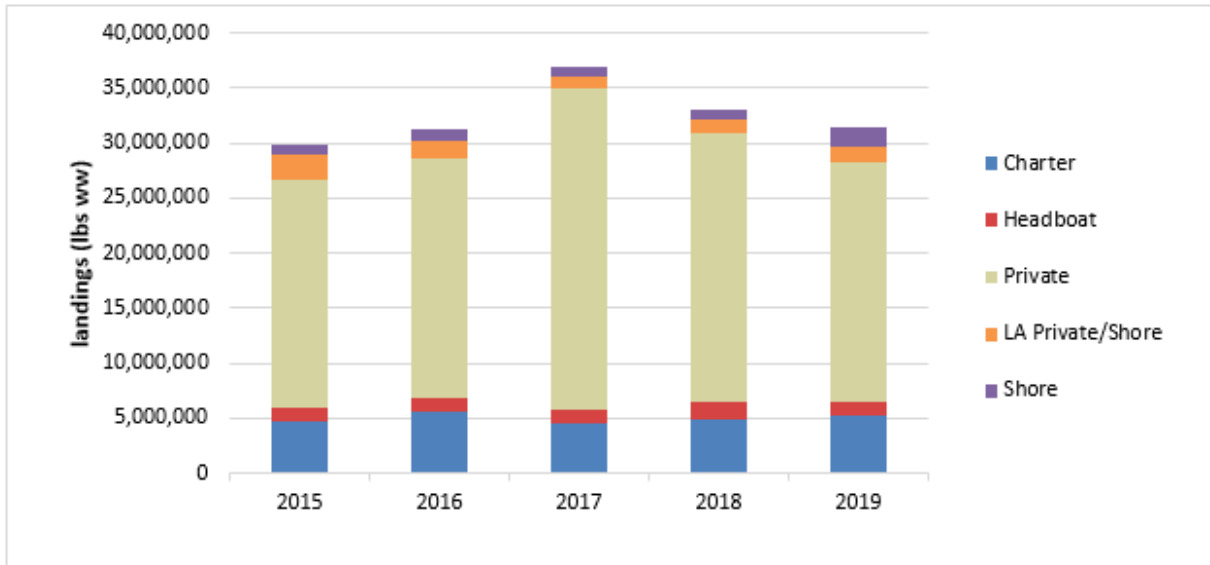


Figure 3.4.2.4. Recreational landings of Gulf reef fish by mode. Landings are in MRIP-FES. Source: SEFSC MRIP-FES ACL data set (July 2021).

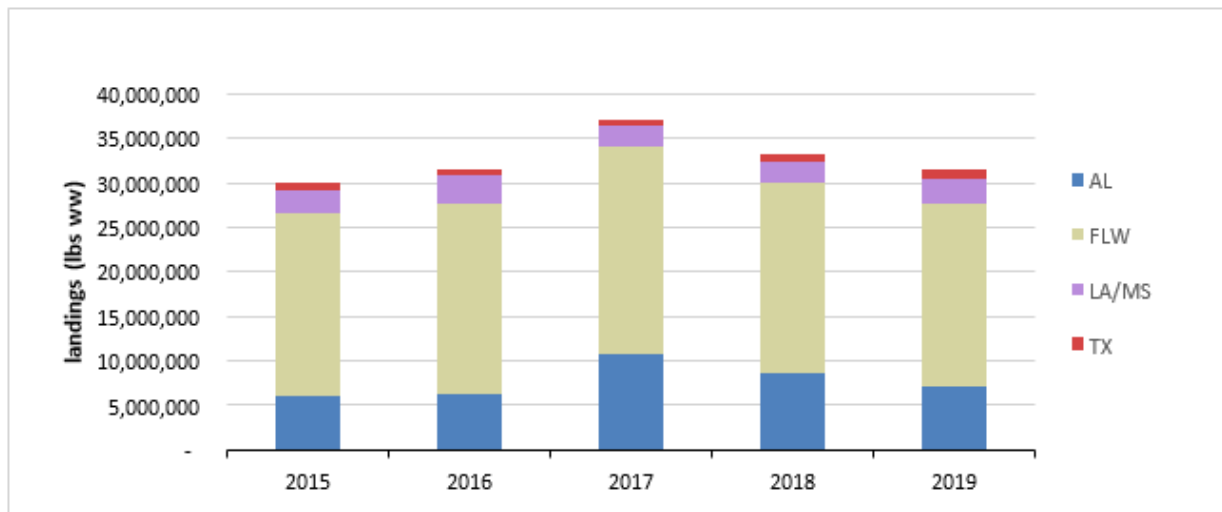


Figure 3.4.2.5. Recreational landings of Gulf reef fish by state. Landings are in MRIP-FES. Source: SEFSC MRIP-FES ACL data set (July 2021).

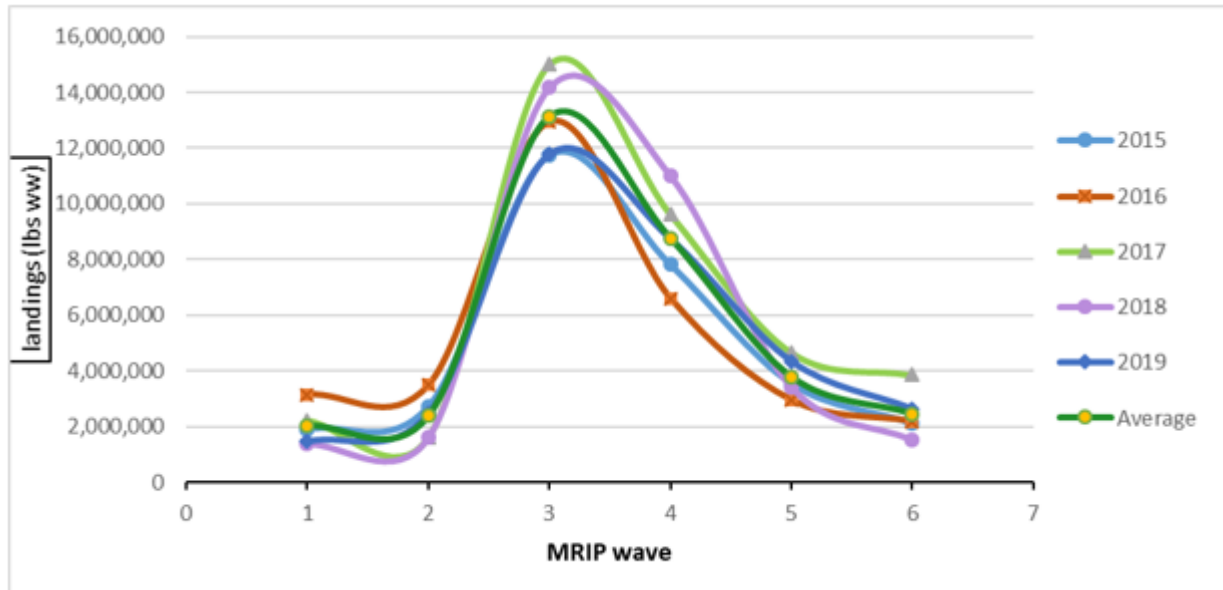


Figure 3.4.2.6. Recreational landings of Gulf reef fish by MRIP Wave. Landings are in MRIP FES.

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 FHS.

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 FHS.

Note 2: Headboat information is unavailable.

Estimates of total effort by the are provided in terms of angler days, or the total number of standardized full-day angler trips.⁶ The angler days provided are for all Gulf species. 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).

⁶ 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 SRHS 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 SRHS 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.

2.4 Impacts of Management Measures

Since January 2021, Gulf for-hire permit holders have been required to make trip declarations prior to leaving the dock, submit electronic logbooks to report harvest from fishing activity, and install Vessel Monitoring Systems (VMS) to report location data every hour. Trip declarations are required every time a vessel leaves the dock, regardless of the purpose of the trip, i.e., declarations must be submitted for fishing and non-fishing trips. For charter and headboat operators, options considered in this regulatory action intend to lighten the reporting burden. Options included would grant exemptions from trip declaration requirements based on predetermined time intervals or on the intended nature of the trip.

Option 1 would exempt non-fishing trips completed within 60 minutes from trip declaration requirements. Options 2 and 3 would exempt non-fishing trips lasting up to 90 minutes and up to 120 minutes, respectively. For these time-based options, the number of trips exempted from declaration requirements would increase as the time duration allowed to complete exempted trips lengthens. Frequency distributions of recorded trip declarations by trip duration are currently not available. Although available data do not allow to estimate the number of trips that would be exempted under each option, it can be inferred that, all other things equal, Option 3 would exempt the greatest number of trips, followed by Option 2, and finally Option 1. Therefore, for for-hire operators, Option 3 would be expected to be the most beneficial because it would correspond to the smallest number of trip declarations and contribute the most to lightening the burden associated with the declaration of non-fishing trips. Although not quantifiable at this time due to data limitations, economic benefits expected to result from Option 3 and other time-based options would be measured by the opportunity costs of time saved by for-hire operators due to fewer trip declarations. Option 3 would be particularly advantageous to operators who routinely travel longer distance (and thus take more time) to fuel their vessels or get ice or travel to meet passengers. Along with ongoing outreach efforts to promote compliance with declaration requirements, fewer trip declarations would be expected to increase industry buy-in

and result in higher compliance rates with the requirements. However, Option 3 would also be associated with an increased burden borne by regulators to ensure compliance with trip declaration requirements and ascertain for-hire vessels' activity.

Option 1, which sets the maximum duration of trips exempted from declaration requirements to 60 minutes, would exempt the smallest number of trips. Therefore, in terms of reducing the time burden associated with trip declarations, Option 1 would be the least beneficial to for-hire operators. However, because it accounts for the hourly position reporting from VMS units, Option 1 would be the best time-based option to ensure appropriate data collection to maintain data integrity and lower the regulatory burden to evaluate trip declaration data for compliance and accuracy. Option 2, which sets an intermediate time interval for exempted trips, would be expected to result in greater economic effects to for-hire operators and an increased regulatory burden relative to Option 1. Conversely, Option 2 would be expected to result in fewer economic effects to for-hire operators and a lower regulatory burden relative to Option 3.

Rather than time-based exemptions, **Preferred Option 4** relies on the purpose of the trip to determine exemptions from trip declaration requirements. **Preferred Option 4** would mandate federally-permitted for-hire vessel owners and/or operators to complete a trip declaration for trips that will be engaging in fishing or chartered activity. **Preferred Option 4** would be expected to result in the greatest economic benefits to the for-hire sector because it would exempt all non-fishing trips and non-chartered activity (as defined in Table 1.1.2.) from trip declarations requirements, regardless of trip duration. Economic benefits to the for-hire sector expected to result from **Preferred Option 4** can be measured by the opportunity costs of time savings due to fewer trip declarations. As indicated in Section 1.1., it takes on average two (2) minutes to submit a trip declaration. Based on Table 1.1.1., 5,508 non-intended fishing trips (8.7% of the total number of trips declared) were declared in 2022 (as of 11/29/2022). Therefore, time saved by the for-hire sector due to the exemption proposed by **Preferred Option 4** would amount to 11,016 minutes or 183.6 hours. The average hourly wage rate for a captain is estimated at \$25.33, based on 2021 estimates from the Bureau of Labor Statistics⁷. Based on the number of non-intended fishing trips that would be exempted from declaration requirements, the average time to complete a declaration, and the average wage rate for captains, economic benefits to the for-hire sector due to time savings are estimated at \$4,651. Because available information does not indicate the proportion of non-fishing trips that are chartered trips (which would be subject to trip declaration requirements), the time savings estimate provided is an upper bound value. This estimate is expected to increase as participation in trip declarations improves (more trips declared). In addition, the exemption of non-intended fishing trips from trip declaration requirements would be expected to foster industry's acceptance and be translated into more compliance with declaration requirements. **Preferred Option 4** would also be expected to result in an increased burden borne by regulators to ensure compliance with trip declaration requirements and ascertain for-hire vessels' activity.

In summary, positive economic effects expected to result from **Preferred Option 4** include the time savings to the for-hire sector (estimated at \$4,651) and the value of expected increases in compliance with the trip declaration requirements. Adverse economic effects expected from **Preferred Option 4** would result from a potentially greater burden to ensure appropriate data

⁷ https://www.bls.gov/oes/current/naics2_11.htm

collection to evaluate trip declaration data for compliance and accuracy. However, net benefits expected to result from **Preferred Option 4** cannot be quantified due to insufficient data.

2.5 Public and Private Costs of Regulations

The preparation, implementation, enforcement, 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. Costs to the private sector are discussed in Section 2.4. Estimated public costs associated with this action include:

Council costs of document preparation, meetings, public hearings, and information dissemination.....	\$12,570
NMFS administrative costs of document preparation, meetings and review	\$17,780
TOTAL	\$30,350

The estimate provided above does not include any law enforcement costs. Any enforcement duties associated with this action would be expected to be covered under routine enforcement costs rather than an expenditure of new funds. Council and NMFS administrative costs directly attributable to this amendment and the rulemaking process will be incurred prior to the effective date of the final rule implementing this amendment.

2.6 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 executive order (E.O). Based on the information in Sections 2.4 -2.5, the costs and benefits resulting from this regulatory action are not expected to meet or exceed the \$100 million threshold, and thus this action has been determined to not be economically significant for the purposes of E.O. 12866.

CHAPTER 3. REGULATORY FLEXIBILITY ACT ANALYSIS

3.1 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.

3.2 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 reduce the number of trip declarations required to be submitted by for-hire vessels with valid Charter Vessel/Headboat (for-hire) permits for Gulf Reef Fish and/or Coastal Migratory Pelagics (CMP) while conducting on-the-water activities in a manner that maintains the data integrity of the for-hire electronic reporting program in the Gulf. The objective of this proposed regulatory action is to reduce the burden associated with submitting trip declarations, outside of fishing or chartered trip activity, without negatively impacting data needed to manage these fisheries. The Magnuson-Stevens Act serves as the legal basis for the proposed regulatory action. All estimates in the following analysis are in 2021 dollars.

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

This proposed regulatory action would modify for-hire vessel trip declaration requirements by only requiring federally-permitted for-hire vessel owners and/or operators to submit a trip declaration for trips that will be engaging in any type of fishing or chartered activity as opposed to submitting a declaration every time a for-hire vessel leaves a dock.

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 \$14 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.

3.4 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 only need to submit a trip declaration for trips engaging in fishing or chartered activity as opposed to all trips. As such, this proposed regulatory action is expected to reduce reporting costs, as described further in section 3.6. In addition, the exemption of non-fishing and non-charter activity trips from the trip declaration requirements would be expected to foster greater acceptance of the reporting requirements, which in turn is expected to enhance compliance with the declaration requirements.

3.5 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.

3.6 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 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 economic profits for for-hire permit holders relative to the status quo, albeit minimally on average per for-hire fishing business. Specifically, since for-hire fishing businesses would be required to submit fewer trip declarations under the proposed regulatory action, the opportunity costs associated with the time needed to submit those declarations would be expected to decrease. On average, it takes two (2) minutes to submit a trip declaration. As of November 29, 2022, 5,508 trips for purposes other than fishing or charter activity (8.7% of the total number of trips declared) were declared in 2022. Therefore, time saved by the for-hire sector due to the exemption proposed by this regulatory action would amount to 11,016 minutes or 183.6 hours. The average hourly wage rate for a fishing captain is estimated at \$25.33, based on 2021 data from the Bureau of Labor Statistics.⁸ Given the number of trips that would be exempted from declaration requirements, the average time to complete a declaration, and the average wage rate for captains, opportunity costs to for-hire vessels are expected to be reduced by \$4,651, or about \$3.47 per for-hire fishing business. This estimate of the reduction in opportunity costs is expected to increase as participation in trip declarations improves.

3.7 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.

⁸ https://www.bls.gov/oes/current/naics2_11.htm

CHAPTER 4. REFERENCES

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APPENDIX A. TRIP DECLARATION EXAMPLES

Screenshot of a trip declaration example using the VESL application. The user must fill out each field and click save before submitting the declaration.

The screenshot shows the 'New Trip' form in the VESL application. The form is titled 'New Trip' and contains a section for 'Trip Details / Declaration'. The fields are as follows:

Field	Value
Vessel *	Gulf Vessel
Captain	Capt. Mark Parson
Trip Activity	Fishing Trip w/...
Trip Type	Charterboat
Trip Start (EDT) *	08/12/22 12:00 PM
Estimated Trip End (EDT)	08/12/22 06:00 PM
Landing Location	MAXIMO PARK BOAT R...

At the bottom of the form are two buttons: 'SAVE' (dark blue) and 'SUBMIT' (green).

Screenshot of a trip declaration example using the eTrips application. The user must fill out each field before submitting the declaration.

12:12 PM Fri Aug 12 100%

☰ ← Create New Trip Declaration - Hail Out

Trip Type
Charter

Vessel
NMFSS TEST BOAT

Permit
(NMFS-SER) 13302 (Operator)

End Port
FL > PINELLAS > MAXIMO MOORINGS MARINA

Trip Start Date

CANCEL SUBMIT

12:12 PM Fri Aug 12 100%

☰ ← Create New Trip Declaration - Hail Out

Trip Start Date
Fri 8/12/2022

Trip Start Time
12:00 PM

Time Zone
The single Time Zone that will be used for all values of time reported on this notification.
EST

Trip End Date
Intended trip end date
Fri 8/12/2022

CANCEL SUBMIT

12:12 PM Fri Aug 12 100%

☰ ← Create New Trip Declaration - Hail Out

Intended trip end time
6:00 PM

Intending to Fish?
Is the vessel leaving the dock with intention to fish? (Y/N)
YES

Landing Location
Please enter the landing location (VMS) code.
316 - MAXIMO PARK BOAT RAMP

Gear Type
Fishing gear intended for this trip. Required of all vessels with a valid Commercial Gulf Reef Fish permit.
HOOK AND LINE, ELECTRIC

CANCEL SUBMIT