

Modification to Location Reporting Requirements for For-Hire and Commercial Vessels



Framework Action to the Fishery Management Plans for Reef Fish and Coastal Migratory Pelagic Resources in the Gulf of Mexico

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ENVIRONMENTAL ASSESSMENT COVER SHEET

Name of Action

Framework Action to the Fishery Management Plans for Reef Fish and Coastal Migratory Pelagic Resources in the Gulf of Mexico: Modification to Location Reporting Requirements for For-Hire and Commercial Vessels.

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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 30, 2021, and accordingly proceeds under the 2020 regulations.

ABBREVIATIONS USED IN THIS DOCUMENT

| | |
|---------|--|
| ACL | Annual Catch Limit |
| CMP | Coastal Migratory Pelagics |
| Council | Gulf of Mexico Fishery Management Council |
| eCFR | electronic Code of Federal Regulations |
| EMTU | enhanced mobile transceiver unit |
| FMP | Fishery Management Plan |
| GMFMC | Gulf of Mexico Fishery Management Council |
| GPS | Global Positioning System |
| HMS | Highly Migratory Species |
| IFQ | Individual Fishing Quota |
| IRFA | Initial Regulatory Flexibility Act Analysis |
| NMFS | National Marine Fisheries Service |
| OLE | Office of Law Enforcement |
| RIR | Regulatory Impact Review |
| SEFHIER | Southeast For-Hire Integrated Electronic Reporting Program |
| SEIS | Supplemental Environmental Impact Statement |
| SRD | Science and Research Director |
| SRHS | Southeast Region Headboat Survey |
| 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), and commercial fleets has continued to expand in recent years; the available technology is improving and expanding in fisheries management to collect more, and better data. The first application of electronic technologies in the Gulf of Mexico (Gulf), occurred in late 2006 under Amendment 18A (GMFMC 2005) that required all vessels with a Gulf Commercial Reef Fish permit to have location-tracking Vessel Monitoring Systems¹ (VMS), including dual-permitted vessels (i.e., both a charter/headboat permit and a commercial reef fish permit). In 2007, the Individual Fishing Quota (IFQ) program began electronic reporting utilizing an online system. Electronic reporting in the IFQ programs includes an advanced notice of landing ('hail-in' or landing notification) that can be entered via website, VMS, or phone service, landing transactions, and transfers of shares and allocation. The Southeast Region Headboat Survey (SRHS) converted from a paper logbook to an electronic reporting logbook in 2013. An amendment to modify electronic reporting requirements for charter vessels and headboats became effective on January 5, 2021, except for the requirements² that specify having a VMS permanently affixed to the vessel and subsequent collection and transmission of data using the VMS unit, which are currently delayed. These new requirements apply to all for-hire vessels with federal Gulf charter/headboat permits for reef fish or coastal migratory pelagic (CMP) species. The purpose and need for VMS requirements differs between sectors. The purpose of electronic reporting, including VMS requirements, for the for-hire fleet is to improve accuracy and timeliness of landings, discards, effort, and socioeconomic data. Essentially, for-hire effort data can be validated through the onboard VMS, as it verifies vessel activity. In the commercial sector, the purpose of mandating an onboard VMS was to improve enforceability of area restrictions in order to prevent excessive fishing pressure in stressed areas or on spawning aggregations of reef fish, and to enhance the ability of enforcement agencies to detect and prevent the use of fishing gear in closed areas. The VMS units also serve as a means of at-sea reporting for the IFQ programs, a critical enforcement component of these programs. Regardless of the purpose for the onboard VMS, this equipment must be operating at all times and if a vessel's VMS unit is not functioning, the vessel cannot leave the dock until the problem is remedied.

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

For-Hire VMS Requirements

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

1. 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.
2. Notify NMFS (hail-out/submit a trip declaration) before departing for any trip to identify if the trip will be for-hire or another trip type. If the vessel will be operating as a for-hire vessel, the other details of the trip will need to be provided.
3. Use NMFS-approved hardware and software with global positioning system (GPS) location capabilities that, at a minimum, archives vessel position data during a trip for transmission to NMFS.

The final rule became effective on January 5, 2021; however, NMFS delayed implementation of the VMS requirements for vessel location reporting to allow more time to evaluate and approve hardware and software for use in the Gulf for-hire reporting program. Although the amendment (GMFMC 2018) referred to location-positioning equipment as “approved hardware/software with GPS capabilities” to include both satellite and cellular devices, the final rule referred to all type-approved units using the term “VMS.” The proposed rule and final rule used the same language as the amendment when referencing location-positioning equipment; however, the final rule also stated:

“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” (85 FR 44005).

Since the final rule became effective, ongoing discussions have occurred during Council meetings about the burdens of these requirements on captains, including concern from the charter vessel/headboat captains regarding circumstances if VMS equipment failure occurs. Since mandatory trip declarations and catch reporting has now been in place since January 5, 2021, there are multiple options to report the trip declaration and logbook should one method fail to transmit the appropriate data. However, there is still some concern regarding potential loss of trips and subsequent loss of revenue and clients should VMS equipment fail. Currently, federal

regulations require the vessel owner or operator to contact NMFS (cellular VMS)³ or NMFS Office for Law Enforcement (satellite VMS)⁴ if their equipment is not operating properly and follow the instructions provided. These instructions may include, but are not limited to manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable. In the response to comments in the final rule 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 powerdown exemption request to NMFS to provide time needed for equipment repair” (85 FR 44005).

Permit holders and captains requested the Council begin exploring options to allow vessels to start or continue fishing trips if the approved VMS unit fails. Table 1.1.1 provides a list of NMFS type-approved units for the Southeast For-Hire Integrated Electronic Reporting Program (SEFHIER). 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> and is current as of August 9, 2021.

Table 1.1.1. NMFS type-approved VMS units for the SEFHIER Program by vendor, unit name, data transmission and form availability

| VMS Vendor | Unit Name | Data Transmission | With Forms?* |
|----------------------|------------------|-------------------|--------------|
| AddValue | IFleetONE | Satellite | Yes |
| Faria Beede | WatchDog 750 | Satellite | Yes |
| Faria Beede | FB Eterm-C | Cellular | Yes |
| Skymate | m1600 | Satellite | Yes |
| Skymate | I1500 | Satellite | Yes |
| Woods Hole Group/CLS | Triton Advanced | Satellite | Yes |
| Woods Hole Group/CLS | Leo** | Satellite | Yes |
| Woods Hole Group/CLS | Thorium TST**** | Satellite | Yes |
| Woods Hole Group/CLS | NEMO EMTU-C | Cellular | No |
| Nautic Alert | Insight X2 VMS | Satellite | No |
| Orolia/McMurdo | OmniTracs FMCT/G | Satellite | No |

*With 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

³ See 50 C.F.R. § 622.26(b)(5)(ii)(G).

⁴ See 50 C.F.R. § 622.28(h).

satisfy the positioning requirement of the SEFHIER program, but do not have the capability to submit the required reports.

**No longer available for purchase.

***No longer approved for new installations.

Commercial VMS Requirements

Vessels with a commercial reef fish permit are required to have onboard an operating VMS unit approved by NMFS. This rule became effective in late 2006, after a delay due to the provision requiring VMS as a condition of renewing or transferring a commercial vessel permit for Gulf reef fish. Unlike the VMS requirements for the for-hire reporting program, only satellite VMS units are type-approved for vessels with commercial reef fish permits. Table 1.1.2 provides a list of NMFS type-approved units for commercial vessels with reef fish permits.

Table 1.1.2. NMFS type-approved VMS units for the commercial reef fish fishery by vendor, unit name, data transmission and form availability. Only satellite VMS units are approved for this fishery.

| VMS Vendor | Unit Name | Data Transmission | With Forms?* |
|-----------------------------|----------------------|--------------------------|---------------------|
| AddValue | IFleetONE | Satellite | Yes |
| Faria Beede | WatchDog 750 | Satellite | Yes |
| Skymate | m1600 | Satellite | Yes |
| Skymate | I1500 | Satellite | Yes |
| Woods Hole Group/CLS | Triton Advanced | Satellite | Yes |
| Woods Hole Group/CLS | Leo** | Satellite | Yes |
| Woods Hole Group/CLS | Thorium TST*** | Satellite | Yes |
| Nautic Alert | Insight X2 VMS | Satellite | No |
| Network Innovations | Sailor VMS Gold | Satellite | No |
| Network Innovations | Sailor VMS Gold Plus | Satellite | No |
| Orolia | OmniCom VMS EMTU | Satellite | No |
| Orolia | OmniCom Global EMTU | Satellite | No |
| McMurdo | OmniTracs FMCT/G | Satellite | No |

* The forms are only approved for use in the SEFHIER program. With 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.

**No longer available for purchase.

***No longer approved for new installations.

Prior to departure for any commercial trip, vessel owners or operators landing IFQ species are responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 24 hours, in advance of landing, at approved landing locations, to report the time and location of landing, estimated landings in pounds gutted weight for each IFQ share category, and the IFQ dealer(s) where the IFQ species are to be received. The landing notification requirement is intended to provide law enforcement officers the opportunity to be present at the point of landing so they can

monitor and enforce IFQ requirements dockside. Vessel operators in the IFQ program have multiple methods to submit these notifications. Landing notifications can be made by using the form on the VMS screen, by phone, or by logging into their online IFQ account. If using the VMS unit for landing notification, users will be required to input the VMS code for both their landing location and dealer, which can be found on the Catch Share Online System.⁵

Vessel Permit Holdings

Requirements to maintain onboard operational VMS equipment impacts all for-hire vessels with Reef Fish permits or CMP permits, vessels with Commercial Reef Fish permits and all dual-permitted vessels with a combination of these permits. Table 1.1.3 provides the number of vessels, by permit and by vessel home port state, that must meet these requirements. It should be noted that these VMS equipment failure exemptions would not apply to any vessels that have HMS (Highly Migratory Species) permits that also participate in HMS fisheries in the Gulf of Mexico (i.e pelagic longline) because these permits have their own VMS requirements. Any HMS permitted vessel with pelagic longline gear onboard the vessel must have an operational VMS unit, or they cannot leave the dock.⁶

Table 1.1.3 Total number of permits, by permit type and vessel home port state, in the Gulf 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.

| Permit Type | AL | FL | GA | LA | MS | TX | Total |
|-------------------------------|-----|------|----|-----|----|-----|-------|
| Commercial Reef Fish** | 39 | 656 | 1 | 35 | 5 | 66 | 802 |
| Charter/Headboat CMP* | 147 | 796 | 1 | 105 | 24 | 193 | 1266 |
| Charter/Headboat Reef Fish* | 148 | 801 | 1 | 105 | 23 | 183 | 1261 |
| Historical Captain CMP* | 1 | 3 | | | 1 | | 5 |
| Historical Captain Reef Fish* | 1 | 3 | | | 1 | | 5 |
| Total | 336 | 2259 | 3 | 245 | 54 | 442 | 3339 |

Source: Southeast Fisheries Permits Office, Personal Communication J. Dudley, August 2021

*Vessels with these permits do not currently submit position-reporting data to NMFS but will have to begin using an onboard VMS unit to submit these data as soon as NMFS decides the effective date of §§ 622.26(b)(5) and 622.374(b)(5)(ii) through (v).

**Vessels with commercial reef fish permits are currently required to report vessel position data through a NMFS-approved VMS unit.

Within this framework action, the Council is considering alternatives that would give an exemption, with certain constraints, to vessels with VMS equipment that has malfunctioned, as long as the permit holder documents the equipment failure and works with NMFS to remedy the situation within a reasonable timeframe. Use of satellite VMS on vessels with commercial Gulf reef fish permits has been effective since March 2007. The observed satellite VMS failure rate is low; however, there is still the potential for equipment failure. This framework action would apply the exemption to vessels in the commercial and for-hire fleet. For vessel owner/operators

⁵ <https://secatchshares.fisheries.noaa.gov/>

⁶ See 50 C.F.R §635.69.

required to participate in the SEFHIER Program, the VMS requirements are new and the reliability of some of the type-approved units is unknown. In the long-term, type-approved units for this program are expected to perform similarly to the units used in the Gulf reef fish commercial fishery; however, in the near-term, unit performance and failure rates are unknown as the SEFHIER Program is new and newly type-approved units may be installed on vessels in the for-hire fleet as the choice of which unit to install is left to the permit holder. The vessel operators may be unfamiliar with the equipment and the vessel types may be different than those used in the commercial fleet. The Council recognizes that charter vessels could face loss of revenue and clients, and commercial vessels could face loss of revenue and delayed trips, if they are required to remain at the dock due to equipment failure and would like to mitigate the situation while expediting methods to fix malfunctioning equipment to avoid loss of valuable location data.

1.2 Purpose and Need

The purpose of this action is to establish a mechanism to report a malfunction with a vessel's location-positioning device and provide an exemption to location-positioning requirements.

The need is to mitigate trip delays or cancellations and subsequent loss of revenue due to the inability 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.

Reef Fish Amendment 18A (2005) addressed issues involving grouper management but also included the requirement to have Vessel Monitoring Systems (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 (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 to enhance enforcement of the red snapper fishery IFQ program.

Reef Fish Amendment 29 (2008) established an IFQ system for the commercial grouper and tilefish fishery and expanded use of VMS into this fishery. It allowed a permit holder to fully benefit from catch histories (s)he is entitled to while simplifying the permit renewal process and reducing costs. A permit holder could install a VMS unit on one of his vessels and transfer catch

histories associated to his other permits. Preferred Alternative 2 could therefore contribute to a faster reduction in the number of permits and ease permit renewal requirements. Preferred Alternative 2: Establish approved landing sites for all IFQ programs in the commercial reef fish fisheries. All IFQ participants must land at one of these sites to participate in the IFQ program. Preferred Option (a) Approved landing sites will be selected by fishermen but must be approved by NMFS Office of Law Enforcement.

Reef Fish Amendment 30B (2009) required that all vessels with federal commercial or charter vessel/headboat permit 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 Coastal Migratory Pelagics (2013) modified the frequency of headboat reporting to a weekly basis (or at intervals shorter than a week if notified by the SRD) 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.

Generic Amendment for Reef Fish and Coastal Migratory Pelagics (2017) modified charter vessel and headboat reporting requirements by requiring the owner or operator of a vessel with a federal charter/headboat permit for Gulf Reef Fish or CMP fish to: 1) 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; 2) Notify NMFS (hail-out/ submit a trip declaration) before departing for any trip to identify trip type; 3) Use NMFS-approved hardware and software with global positioning system (GPS) location capabilities that, at a minimum, archives vessel position data during a trip for transmission to NMFS.

CHAPTER 2. MANAGEMENT ALTERNATIVES

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

Alternative 1: No Action. Maintain the requirement that vessels with charter/headboat permits for Reef Fish and/or Coastal Migratory Pelagics (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.

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 Charter/Headboat permits for Reef Fish and/or CMP:

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.

Discussion:

Alternative 1 (No Action) would maintain the current requirement that vessels with charter/headboat permits for reef fish and/or CMP have an approved VMS unit onboard, operating at all times, unless exempted by NMFS under a power-down exemption. These vessels may electronically submit a VMS Power Down Exemption Request form to power down onboard cellular- or satellite-based location-tracking equipment and receive the approved form from the Southeast Office of Law Enforcement; the minimum power-down period is 72 hours (3 days). During this time, the vessel is prohibited from moving on the water. Under **Alternative 1**, if a vessel's VMS unit malfunctions or fails 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 was expected to improve effort information by improving the potential to validate for-hire trips (GMFMC 2017). By having an onboard VMS unit that is always operational, unless the vessel is under a power-down exemption, validation of fishing effort can be achieved through the transmission of VMS data in tandem with declaration of trip type. In the event of VMS equipment failure within **Alternative 1**, submission of a VMS Power Down Exemption Request to NMFS could provide time needed for equipment repair. **Alternative 2** and **Alternative 3** would provide options for an exemption, with reasonable constraints, to vessel owner/operators allowing them to begin or continue a trip should their onboard VMS unit malfunction or fail.

Alternative 2 creates an exemption to the VMS requirement to address equipment failure and constrains the exemption by setting a limit on the number of days that the NMFS-approved exemption method is valid. No lapse in transmission of data from VMS units would be the most beneficial in providing continuous and robust data and for the integrity of the for-hire electronic reporting program; specifically, the effort estimate of the for-hire fleet that is directly informed by the location-tracking portion. If VMS data used for validation of trips and effort estimates is missing for a substantial period of time, the resulting accuracy of the effort estimates for this component of the fishery could be reduced. **Option 2a** provides the shortest amount of time for an exemption to be valid at 3 days from submittal date. Although **Option 2a** would provide the shortest exemption period, in the event of VMS failure, three days could be a reasonable amount of time for a VMS unit to be repaired or have a new unit shipped and installed if the vendor provided same day or expedited shipping. Repairs to VMS units must be made by a qualified marine electrician and installations must be made by an approved vendor technician. Vendors with type-approved VMS units have indicated they have adequate supplies of VMS units available to quickly ship throughout the Gulf region and are readily available to answer questions and repair VMS units. **Option 2b** allows an exemption to be valid for up to 7 days from submittal date; this option is the intermediate option to **Options 2a and 2c**, allowing for a compromise in terms of balancing flexibility to vessel owners while striving to maintain the integrity of the data and **Option 2c** allows the exemption to be valid for up to 10 days from submittal date. **Options 2b and 2c** may ease the burden on the vessel owner or operator by providing a longer period of time to complete repairs without compromising business operations; however, these options may have more of a detrimental effect on the accuracy of the effort estimation for the for-hire fleet if enough data gaps exist. The three options provide a reasonable range of days to allow vendors an adequate amount of time to repair or install a new, properly functioning VMS unit onboard the vessel.

Alternative 3 creates an exemption to the VMS requirement to address equipment failure and constrains the exemption by setting a limit on 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. There are type-approved units for the Southeast For-Hire Integrated Electronic Reporting Program (SEFHIER) program that have also been approved for the commercial fleet; these units are expected to perform similarly in this program, despite the unknowns and uncertainties associated with a new program. It is also expected for the other newly type-approved satellite VMS units perform similarly to those operating in the commercial fishery for many years. One exemption per vessel per calendar year would allow the permit holder an opportunity to either repair the VMS unit or consider installing

a new one and could account for equipment failure for any vessel owners or operators who choose to install a cellular VMS unit. This will be the first use of these types of VMS units in the for-hire fleet. **Option 3b** limits the permit holder to no more than two exemptions per vessel per calendar year and is an intermediate option between allowing only one exemption per vessel per calendar year and three exemptions per vessel per calendar year. **Option 3c** limits the permit holder to no more than three exemptions per vessel per calendar year. The exemption alternative specifies “per vessel” to account for permit holders who own multiple vessels. It is expected, based on observed VMS failure rates in the commercial fleet, that three exemption requests within a calendar year is adequate to account for any issues vessel operators may have with onboard VMS equipment, although failure rates of cellular VMS units in the for-hire fishery are still unknown. 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. **Alternative 3** exemption requests would be tracked from January 1 to December 31 of each year.

NMFS staff will determine the specific methods used to implement whichever options the Council chooses as preferred. These options may vary and include methods such as call-in or an electronic form to alert NMFS of the issue and similar methods to request a VMS equipment failure exemption. Exemption requests may be subject to approval through the Paperwork Reduction Act prior to implementation.

2.2 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.

Discussion:

Alternative 1 (No Action) would maintain the 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. Vessels with Commercial Reef Fish permits may request a power down exemption. The request form must be submitted and approved in order for the vessel's unit to be turned off. The request form to power down onboard satellite-based location-tracking equipment must be received and approved by the Southeast Office of Law Enforcement; during this time, the vessel is prohibited from moving on the water. Vessels with a Commercial Reef Fish permit are already required to have a functioning satellite-based VMS unit onboard at all times. Under **Alternative 1**, submission of a VMS Power Down Exemption Request to NMFS could provide time needed for equipment repair, in the event of VMS equipment failure.

Although NMFS type-approved satellite-based VMS units in this fishery don't often fail, based on anecdotal evidence, **Alternatives 2 and 3** in **Action 2** would provide exemption options for vessels with Commercial Reef Fish permits to address equipment failure. The **Action 2 Alternative 2** options are the same options provided in **Action 1 Alternative 2**. **Option 2a** would provide an exemption valid up to three days from submittal date. In the event of VMS failure, three days could be a reasonable amount of time for a VMS unit to be repaired or have a new unit shipped and installed if the vendor provided same day or expedited shipping. **Option 2b**, allowing a valid exemption up to 7 days from the submittal date is an intermediary option

and provides a reasonable number of days for a commercial vessel to either fix or install a new VMS unit prior to embarking on a trip or completing a trip and returning within the valid number of days to complete repairs. **Option 2c** provides 10 days from submittal date for a valid exemption; this option allows the most time for repairs or installation of a new VMS unit and could provide an adequate timeframe for commercial vessels that may take longer trips. Although only satellite-based VMS units are approved for use in the commercial reef fish fishery, the assurance by the vendors to repair or replace malfunctioning equipment in a timely manner remains the same.

The Action 2 **Alternative 3** options are the same options provided in Action 1 Alternative 3. **Option 3a** would allow the permit holder to request one exemption per vessel per calendar year. Since the requirement of VMS units onboard vessels with commercial reef fish permits, the fishery has operated without any exemptions in the event of equipment failure and have had to make necessary scheduling and trip adjustments until the unit is operational again. One exemption per vessel per calendar year would allow the permit holder an opportunity to either repair the VMS unit or consider installing a new one. **Option 3b** would allow two exemptions per vessel per calendar year and **Option 3c** would allow three exemptions per vessel per calendar year. The exemption alternative specifies “per vessel” to account for permit holders who own multiple vessels. It is expected, based on observed VMS failure rates in the commercial fleet, that three exemption requests within a calendar year is adequate to account for any issues vessel operators may have with onboard VMS equipment. Vendors have attested to the ruggedness and durability of their VMS units, which have been utilized by commercial vessels in this fishery since 2007. Although the commercial reef fish fishery operates differently than the for-hire reef fish and coastal migratory pelagic fisheries, the impetus for applying an equipment failure exemption to the commercial reef fish fishery is similar to that of the for-hire: to mitigate trip delays or cancellations and subsequent loss of revenue due to the inability to record and transmit location-positioning information.

CHAPTER 3. REFERENCES

GMFMC. 2005. Final amendment 18A to the fishery management plan for the reef fish resources of the Gulf of Mexico, including environmental assessment, regulatory impact review, and initial regulatory flexibility analyses. Gulf of Mexico Fishery Management Council. Tampa, Florida. 199 pp. <https://gulfcouncil.org/wp-content/uploads/RF-Amend-18A-Final-2005-10.pdf>

GMFMC. 2006. Final amendment 26 to the Gulf of Mexico reef fish fishery management plan to establish a red snapper individual fishing quota program, including a supplemental environmental impact statement, initial regulatory flexibility analysis, and regulatory impact review. Gulf of Mexico Fishery Management Council, Tampa, Florida. 298 pp. <https://gulfcouncil.org/wp-content/uploads/FISHERY%20MANAGEMENT/REEF%20FISH/Amend26031606FINAL.pdf>

GMFMC. 2008. Amendment 29 to the reef fish fishery management plan – effort management in the commercial grouper and tilefish fisheries, including final environmental impact statement and regulatory impact review. Gulf of Mexico Fishery Management Council. Tampa, Florida. 88 pp. <https://gulfcouncil.org/wp-content/uploads/FISHERY%20MANAGEMENT/REEF%20FISH/Final%20Reef%20Fish%20Amdt%2029-Dec%2008.pdf>

GMFMC. 2008. Final reef fish amendment 30B: Gag – end overfishing and set management thresholds and targets, red grouper – set optimum yield, TAC, and management measures, time/area closures, and federal regulatory compliance including environmental impact statement, regulatory impact review, and regulatory flexibility act analysis. Gulf of Mexico Fishery Management Council, Tampa, Florida. 462 pp. https://gulfcouncil.org/wp-content/uploads/FISHERY%20MANAGEMENT/REEF%20FISH/Final%20Amendment%2030B%2010_10_08.pdf

GMFMC. 2013. Framework Action to the Fishery Management Plans for Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic Headboat Electronic Reporting Requirements. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. Available at: <http://www.gulfcouncil.org/docs/amendments/Draft%20Electronic%20Reporting%20for%20Headboats%206-18-13.pdf>

GMFMC. 2017. Final generic amendment 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: Modifications to charter vessel and headboat reporting requirements, including environmental assessment, fishery impact statement, regulatory impact review, and regulatory flexibility act analysis. Gulf of Mexico Fishery Management Council, Tampa, Florida. 185 pp.

<http://gulfcouncil.org/wp-content/uploads/Electronic-Reporting-for-For-Hire-Vessels-5-23-17.pdf>

U.S. Office of the Federal Register. 2020. Gulf for-hire reporting amendment, final rule (NMFS 85 FR 44005). Federal Register 85:140 (21 July, 2020):44005–44021.

APPENDIX A: VMS POWER DOWN REQUEST FORM FOR THE SOUTHEAST FOR-HIRE INTEGRATED ELECTRONIC REPORTING PROGRAM

Vessel Monitoring System (VMS) Power-Down Exemption Request

This form is only for Gulf of Mexico Federally Permitted Charter/Headboat Vessels

OMB No. 0648-0770 | Approval Expires 7/31/2023

Regulations require location tracking devices for Gulf of Mexico federally permitted charter and headboat vessels. These regulations also allow vessel owners and/or operators to temporarily power-down their cellular- or satellite-based VMS unit if they request and receive an approved VMS power-down exemption form from the Southeast Office of Law Enforcement (SE OLE). If a VMS power-down is requested, the minimum power-down period is 72 hours (3 days). During this time, the vessel is prohibited from fishing. To request this power-down exemption authorization, fill out and submit the form below.

* Required

Email *

Your email

Name *

Your answer

Phone Number *

Your answer

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Vessel Monitoring System (VMS) Power-Down Exemption Request

* Required

Vessel Information:

Vessel Name (as listed on permit) *

Your answer

Permit # *

Your answer

Vessel State Registration # or USCG Documentation # *

Your answer

Vessel Location During VMS Power Down *

Please provide an address or GPS coordinates

Your answer

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Vessel Monitoring System (VMS) Power-Down Exemption Request

* Required

Exemption Period

Date VMS to be Turned Off *

Date

mm/dd/yyyy

Estimated Date VMS to be Turned On *

Power-down exemptions are only valid for a time frame of 72 hours (3 days) or greater.

Date

mm/dd/yyyy

Reason for VMS Power Down *

- Repairs
- Vessel Damage/Sinking
- Stored Under Cover
- Not Fishing for Extended Period
- VMS Non-Operable
- Other: _____

NOTE: VMS units must remain on and positioning until the vessel owner or operator receives a power-down exemption approval confirmation from the Southeast Office of Law Enforcement. Once you receive the confirmation, you may power-down the VMS unit for the time period requested above. A vessel owner or operator may request changes to the time period for this exemption through a written request to the Southeast Office of Law Enforcement, as long as the unit will be powered down for a minimum of three days. During the time the VMS unit is powered down, if the owner/operator wishes to move the vessel from its location specified in the request, they may move, but are not permitted to head out to sea or engage in fishing activities. If the vessel will be moved, the VMS unit must be turned on and send GPS positions during transit, according to the regulations at 50 CFR 622.26(b)(5) and 622.374(b)(5). Once the vessel reaches the location where it will remain, the VMS unit may once again be turned off for the rest of the exemption period specified in the request.

Public Burden Statement - A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with an information collection subject to the requirements of the Paperwork Reduction Act of 1995 unless the information collection has a currently valid OMB Control Number. The approved OMB Control Number for this information collection is 0648-0770. Without this approval, we could not conduct this survey or information collection. Public reporting for this information collection is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. All responses to this information collection are mandatory to obtain benefits. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing this burden to NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: PRA Officer.

Privacy Act Statement - Authority: The collection of this information is authorized under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C 1801 et seq.). Purpose: In order to manage U.S. fisheries, the National Marine Fisheries Service (NMFS) requires the use of registrations by participants in the United States. Information on NMFS forms can include vessel owner contact information and vessel descriptive information. Permit holder information may be used as sampling frames for surveys, as part of fishery management council analysis to support its decisions.

Routine Uses: The Commerce Department will use this form to inform its decision about whether to issue approval for a vessel to turn off their VMS unit consistent with the regulations at 50 CFR 622.26(b)(5)(ii) (D), 622.28(d), and 622.374(b)(5)(iv)(D), and to restart VMS unit operation for Gulf of Mexico charter vessel/headboat federal permit holders. Making a false statement on this form is punishable by law.

Disclosure of this information is permitted under the Privacy Act of 1974 (5 U.S.C. Section 552a), to be shared within NMFS offices, to coordinate monitoring and management of sustainability of fisheries and protected resources, as well as with the applicable state or regional marine fisheries commissions and international organizations. Disclosure of this information is also subject to all of the published routine uses as identified in the Privacy Act System of Records Notice COMMERCE/NOAA-19, Permits and Registrations for the United States Federally Regulated Fisheries. Disclosure: Furnishing this information is mandatory to obtain benefits. Failure to provide complete and accurate information will prevent the determination of eligibility.

You may also submit your request by email to nmfs.ole.sero@noaa.gov, or by mail to the address below NOAA/NMFS, Southeast Office of Law Enforcement, 263 13th Avenue South, Suite 109, St. Petersburg, FL 33701

A copy of your responses will be emailed to the address you provided.

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APPENDIX B. VMS POWER DOWN REQUEST FORM FOR VESSELS WITH COMMERCIAL REEF FISH PERMITS

OMB No. 0648-0544
Approval Expires 06/30/2022

Vessel Monitoring System (VMS) Mobile Transceiver Unit (MTU) Power-Down Exemption Request For Vessels in the Gulf of Mexico 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 30 days 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 form by mail to the address below, by fax to 727-824-5318 or prefer method, via email to jose.sanjurjo@noaa.gov.
NOAA/NMFS, Southeast Office of Law Enforcement, 263 13th Avenue South, Suite 109, St. Petersburg, FL 33701

Vessel Information:

Vessel Name: _____ Permit #: _____
Vessel State Registration # or USCG documentation #: _____

Vessel Port Location During VMS Power Down: _____

Exemption Period:

Date VMS to be Turned Off: _____
Date VMS to be Turned On: _____

Reason for VMS Power Down: _____

NOTE: VMS units must remain operational until a letter of exemption from the Southeast Office of Law Enforcement is received prior to turning off a vessel's VMS. Upon receipt of the letter of exemption, the vessel owner or operator may discontinue VMS operation for the period requested above. Vessel owners or operators may request changes to the time period for this exemption through a written request to the Southeast Office of Law Enforcement, provided the minimum deactivation period of 30 days is met. Vessels that wish to leave the port specified above during the exemption period for purposes other than engaging in fishing operations may do so, provided the VMS unit is turned on and is operational during transiting according to the regulations at 50 CFR 622.28. Upon reaching another port, the VMS unit may once again be turned off for the duration of the exemption period specified above.

This form is required to obtain approval for a vessel to turn off their VMS unit consistent with the regulations at 50 CFR 622.28(d) and to restart VMS operation for Gulf of Mexico reef fish permit holders. Making a false statement on this form is punishable by law.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. Send comments regarding this burden estimate or suggestions for reducing this burden estimate or any other aspect of this collection of information to Adam Bailey, NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701.