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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

Including, Regulatory Impact Review, and Regulatory Flexibility Act Analysis

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ABBREVIATIONS USED IN THIS DOCUMENT

ACL	Annual Catch Limit
AM	Accountability Measure
AVHRR	Advanced Very High Resolution Radiometer
Council	Gulf of Mexico Fishery Management Council
CMP	Coastal Migratory Pelagics of the South Atlantic and Gulf of Mexico
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
ELog	Electronic Logbook
EJ	Environmental Justice
E.O.	Executive Order
FMP	Fishery Management Plan
Gulf	Gulf of Mexico
MMPA	Marine Mammal Protection Act
MRIP	Marine Recreational Information Program
NAO	NOAA's Administrative Order
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OY	Optimum Yield
RA	Regional Administrator
RFA	Regulatory Flexibility Act
RFAA	Regulatory Flexibility Act Analysis
RIR	Regulatory Impact Review
Secretary	Secretary of Commerce
SEDAR	Southeast Data Assessment and Review
SEFSC	Southeast Fisheries Science Center
SRD	Science and Research Director
SRHS	Southeast Region Headboat Survey

CHAPTER 1. INTRODUCTION

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the National Marine Fisheries Service (NMFS) and regional fishery management councils to end overfishing, rebuild overfished stocks, and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production, recreational opportunities, and protecting marine ecosystems.

Accurate fisheries information about catch, effort, and discards is necessary to achieve OY from federally managed fish stocks. The for-hire recreational sector harvests a substantial proportion of the annual catch limit (ACL) for several federally managed fish species (e.g., red snapper). The for-hire component includes headboat vessels, which are vessels carrying recreational anglers where payments are on a per angler basis. In the Gulf of Mexico (Gulf) and South Atlantic, harvest from the recreational headboat fishery is monitored by NMFS at the Southeast Fisheries Science Center's (SEFSC) Beaufort Laboratory. Headboat operators must provide daily catch records for all trips, which includes information on fishing effort and harvest. Information about discarded fish from headboats has been collected since 2004.

Gulf of Mexico Fishery Management Council

- Responsible for conservation and management of fish stocks
- Consists of 17 voting members, 11 appointed by the Secretary of Commerce, 1 representative from each of the five Gulf states, the Southeast Regional Director of NMFS, and 4 non-voting members
- Responsible for developing fishery management plans and amendments, and recommends actions to NMFS for implementation

National Marine Fisheries Service

- Responsible for preventing overfishing while achieving optimum yield
- Approves, disapproves, or partially approves Council recommendations
- Implements regulations

1.1 Background

The Gulf of Mexico Fishery Management Council (Council) is considering alternatives that would change the frequency of fishery data reporting by headboat operators. The Council is considering several changes that would require electronic reporting for the reef fish and coastal migratory pelagic species for this segment of the recreational sector. The Council recognizes that improved data reporting in these fisheries could reduce the likelihood that ACLs are exceeded and accountability measures (AMs) are triggered. The harvest from headboats contributes to recreational landings that count towards the recreational ACLs and quotas. Headboat harvest is monitored in the Southeast Region Headboat Survey (SRHS). Delays in receiving and processing monthly headboat data may potentially allow the recreational ACL to be exceeded. Electronic reporting via computer/internet could reduce delays and result in fewer recreational ACL overruns.

The SRHS received fiscal year 2012 funding from the Marine Recreational Information Program Operations (MRIP) Team for *Pilot Project, Phase II: Survey-Wide Implementation of Electronic Logbook Reporting on Headboats Operating in the U.S. South Atlantic and Gulf of Mexico*. The objective of this project was to develop and implement a web-based portal and mobile application for electronic logbook data entry in the U.S. Atlantic and Gulf of Mexico headboat sector. This project included development by a software contractor of additional features of the web-based data form useful to users and scientists (e.g., depth, location, maps). The software contractor and SRHS staff will provide technical support to all participants during each stage of the transition process. These procedures were tested for the first 60 days of the project and implemented January 1, 2013. However, the proper legal framework needs to be developed to ensure that electronic logbook reporting becomes the accepted procedure, as well as to ensure that timely and complete reporting is linked to the ability to possess and maintain a for-hire permit in the applicable fisheries.

This amendment affects headboat reporting requirements for species managed in the Fishery Management Plans (FMPs) Reef Fish Resources of the Gulf of Mexico (Reef Fish) and Coastal Migratory Pelagics of the South Atlantic and Gulf of Mexico (CMP) (Figure 1.1.1). Although coastal migratory pelagic species are jointly managed, charter/headboat permits are issued separately between the two regions and this framework action would only affect vessels fishing in U.S. federal waters in the Gulf of Mexico (Gulf).

The Council on Environmental Quality regulations implementing National Environmental Policy Act (NEPA) and NOAA's Administrative Order (NAO) 216-6, require decision-makers take into account both context and intensity when evaluating the significance of impacts resulting from a major federal action (40 CFR §1508.27; NAO 216-6, Section 6.01(b)). Evaluating significance with respect to context requires consideration of the local, regional, national, and/or global impacts of the action. The proposed actions in this document are not expected to result in any significant impacts on the human environment, see section 3.0 of this document. As defined in Sections 5.05 b and c. and 6.03d.4 (a) of NAO 216-6 these are routine fisheries actions of an administrative nature, when the action does not have the potential to pose significant effects to the quality of the human environment. As such, NMFS intends to Categorically Exclude this action from the need to prepare an Environmental Assessment or Environmental Impact

Statement. Any events that change the fundamental nature of this proposed action will require a reevaluation of the categorical exclusion to determine its continued validity.

Figure 1.1.1. Jurisdictional boundary of the Gulf of Mexico Fishery Management Council.

1.2 Purpose and Need

The purpose of this amendment is to modify the data reporting requirements for federally permitted headboat vessels in the Gulf to ensure effort, landings, and discard information of managed fish stocks are recorded accurately and in a timely manner. The need for this amendment is to prevent overfishing and ensure ACLs are not exceeded.

1.3 What is a Headboat?

Headboats are generally defined as vessels that hold a valid Certificate of Inspection issued by the United States Coast Guard to carry more than six passengers for hire and possess a valid Gulf charter/headboat reef fish permit or a CMP for-hire permit. In the Gulf, this definition was modified by the SRHS to include only large capacity vessels that fish primarily as

headboats (i.e., charges by the "head"). Currently, a vessel is selected by the Science and Research Director (SRD) to participate in the SRHS if it meets all, or a combination, of these criteria:

1) Vessel licensed to carry more than 15 passengers.
2) Vessel fishes in the exclusive economic zone (EEZ) or state and adjoining waters for coastal migratory pelagic fish or reef fish.
3) Vessel charges primarily per person (i.e., by the "head").

The number of participating headboats by state between 2003 and 2013 is provided in Table 1.4.1. In 2013, Florida and Texas accounted for approximately 52% and 23% of the headboats, respectively.

1.4 What Are the Current Reporting Requirements?

Fishery data from headboats are monitored by the SEFSC Beaufort Laboratory. Daily catch records are obtained for all trips and are filled out by the headboat operators or approved personnel. Headboat trips are sub-sampled for data on species lengths and weights by authorized NMFS port agents. In addition, biological samples (scales, otoliths, spines, reproductive tissues, and stomachs) are collected as part of the dockside sampling protocols.

Table 1.4.1. Number of headboats included in the SRHS by state (2003 - 2013).

Year	State					Total
	Alabama	Florida	Louisiana	Mississippi	Texas	
2003	6	33	5	0	20	64
2004	4	42	10	0	22	78
2005	4	41	10	0	23	78
2006	5	43	10	0	23	81
2007	7	39	10	0	22	78
2008	7	39	11	0	22	79
2009	8	39	6	0	22	75
2010	8	37	4	5	19	73
2011	8	47	4	5	18	82
2012	8	38	5	5	16	72
2013	8	37	4	5	16	70

Source: NMFS - Headboat vessel files

If selected by the SRD, the owner or operator of a vessel with a charter/headboat permit must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program. Headboats that are selected to participate in the survey are required to report information about their fishing trips, including fishing effort and harvest information. Prior to January 1, 2013, vessels submitted completed paper forms to the NMFS port agents or mailed

them to SEFSC Beaufort Laboratory for processing. Forms were due each month, and either made available to a fisheries statistics reporting agent or postmarked no later than seven days after the end of each month. On January 1, 2013, the SRHS started collecting logbook data electronically in the U.S. South Atlantic and Gulf of Mexico. Headboat operators now have the ability to submit trip reports through a secure website and mobile application using computers, tablets, or smart phones.

1.5 History of Management

From 1972 to 1983, the SRHS paid headboat operators for keeping records. The amount of payment was related to the length of a trip, which in turn affected the size and complexity of the catch. Headboat operators were paid $1.50 for each record of a "full day" trip, $1.25 for a "three-quarter" day trip, and $1.00 for a "half" day trip.

In 1984, the Reef Fish FMP implemented headboat reporting requirements for purposes of data collection. These reporting requirements have been unchanged and provided the basis for the SRHS logbook program until recently. In December 2012, headboat owners were sent a notification letter from the SRD informing them the SRHS would begin using electronic reporting forms as of January 1, 2013.

Headboat Permit History

Amendment 2 (1987) to the CMP FMP (implemented in 1987) required that charter vessels and headboats fishing in the EEZ of the Gulf or Atlantic for coastal migratory pelagic species have permits.

Amendment 11 (1996) to the Reef Fish FMP (implemented in 1996) required that charter vessels and headboats fishing in the Gulf EEZ have federal permits when fishing.

Amendment 14 (2002) to the CMP FMP (implemented 2002) established a 3-year moratorium on the issuance of charter vessel and head boat permits unless sooner replace by a comprehensive effort limitation system. The control date for eligibility was established as March 29, 2001. Also includes other provisions for eligibility, application, appeals, and transferability.

Amendment 20 (2002) to the Reef Fish FMP was submitted to NMFS in June 2001 and approved in May 2002. The amendment established a three-year moratorium on the issuance of charter vessel or headboat (for hire) permits for the reef fish fishery, coastal migratory pelagics in the exclusive economic zone (EEZ) of the Gulf. NMFS promulgated the charter moratorium regulations (67 FR, 43558, June 28, 2002) to implement Amendment 14 to the CMP FMP and Reef Fish FMP and Amendment 20 to the Reef Fish FMP. However, after reviewing the administrative record, NMFS determined that the amendments contained an error that did not correctly reflect the actions approved by the Council. Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive

charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations.

Emergency Rule (2002)

The regulations promulgated under the charter vessel moratorium (67 FR 43558, June 28, 2002), also require all charter vessel/headboat operators in the Gulf EEZ have a valid limited access "moratorium permit," as opposed to the prior open access charter permit, beginning December 26, 2002. If these limited access permits had not been issued prior to this date, all legal fishing activities conducted by the recreational for-hire sector in the Gulf EEZ would have closed. Cessation of these fishing operations would have resulted in severe social and economic disruption to the for-hire sector and those coastal communities dependent on these fisheries. To ensure that no qualified participants in the fisheries were wrongfully excluded under the moratorium, due to an error in the rule, and to fully comply with Magnuson-Stevens Act requirements, NMFS promulgated an emergency rule (67 FR 77193, December 17, 2002) that extended certain permit-related deadlines contained in the final rule implementing the charter vessel/headboat permit moratorium for reef fish and coastal migratory pelagic fish in the Gulf. The emergency rule: 1) deferred the date for having a "moratorium permit" aboard vessels operating in these fisheries until June 16, 2003; 2) automatically extended the expiration date of valid or renewable "open access" permits for these fisheries until June 16, 2003; 3) extended the deadline for issuance of "moratorium permits" to no later than June 6, 2003; and 4) extended the deadline for resolution of appeals to February 18, 2003, or 30 days after an oral hearing, if applicable. Additionally, the emergency rule allowed those persons who were ineligible under the promulgated regulations to receive their open access charter vessel/headboat permits until they can obtain a new permit under the revised moratorium eligibility criteria approved by the Council.

CHAPTER 2. MANAGEMENT ALTERNATIVES

2.1 Action 1: Modify Frequency of Data Reporting Requirements for Headboats

Alternative 1 (No Action). Retain existing permits and data reporting systems for the for-hire sector. Currently, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf of Mexico (Gulf) coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, South Atlantic snapper-grouper, or Atlantic dolphin and wahoo has been issued, or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, snapper-grouper, or Atlantic dolphin or wahoo in or from state waters adjoining the applicable Gulf, South Atlantic, or Atlantic exclusive economic zone (EEZ), and who is selected to report by the Science and Research Director (SRD), must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD. Completed records for charter vessels must be submitted to the SRD weekly, postmarked no later than seven days after the end of each trip (Sunday). Completed records for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked no later than seven days after the end of each month. As of January 1, 2013, forms must be submitted via electronic reporting (i.e., computer or internet) as specified by the SRD.

Alternative 2. *Weekly*. Require that selected headboat vessels submit fishing records to the SRD weekly via electronic reporting (i.e., computer or internet). Weekly = seven days after the end of each week (Sunday).

Alternative 3. *Daily*. Require that selected headboat vessels submit fishing records to the SRD daily via electronic reporting (i.e., computer or internet). Daily = by noon of the following day.

* If a trip lasts longer than one day, the report must be submitted by noon on the day following the end of the trip.

Preferred Alternative 4. *Weekly or intervals less than a week*. Require that selected headboat vessels submit fishing records to the SRD weekly or at intervals shorter than a week if notified by the SRD via electronic reporting (i.e., computer or internet). Weekly = seven days after the end of each week (Sunday).

* It is the Gulf of Mexico Fishery Management Council's intent that headboats that are in catastrophic conditions, paper reporting may be authorized (catastrophic measure). A notice would be published in the Federal Register defining the catastrophic conditions.

** "No trip forms" must be submitted at the same frequency, via the same process, and for the same species as specified for "trip" forms in Action 1. A headboat owner/operator would only be authorized to harvest or possess Gulf reef fish or coastal migratory pelagic species if previous reports have been submitted by the headboat owner/operator and received by National Marine Fisheries Service (NMFS) in a timely manner. Any delinquent reports would need to be submitted and received by NMFS before a headboat owner/operator could harvest or possess federally managed species from the EEZ or adjacent state waters.

Discussion

All operators selected to report to the headboat survey are required to report landings and effort data from all trips made. For each trip, there must be an accurate record of the name and official number of the vessel, the operator's name, the number of fish of each species taken, the number of anglers aboard, the date(s), location, and duration of fishing, minimum, maximum, and primary depth fished, and number of fish released. Reporting is required for trips fishing in state waters as well as in the federal waters of the EEZ.

Alternative 1 (No Action) requires for-hire vessels in the reef fish and coastal migratory pelagic fisheries (CMP) selected to report by the SRD to maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, and on forms provided by the SRD. **Alternative 1** does not require headboat operators with reef fish or CMP permits to submit their data at intervals less than monthly, and would retain existing data reporting systems for the for-hire sector. Monthly reporting intervals may be inadequate to prevent annual catch limits (ACLs) from being exceeded due to reporting delays.

Alternatives 2-3, and Preferred Alternative 4 would require that headboats submit data as specified by the SRD, on forms provided by the SRD, and the forms would be electronic and submitted via computer/internet. However, during catastrophic conditions only, paper-based reporting may be used as a backup. The Regional Administrator (RA) will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the *Federal Register*, NOAA weather radio, fishery bulletins, and other appropriate means, and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. The RA has the authority to waive or modify reporting time requirements.

Historically, federally permitted headboat vessels did not report electronically, but as of January 1, 2013, vessel operators have begun electronic submission of their fisheries data. **Alternatives 2-3,** and **Preferred Alternative 4** could improve timeliness and accuracy of fisheries data collected from headboat vessels by increasing the reporting frequency. **Alternative 2** would require submission of reports for trips made during the reporting week (Sunday through Saturday). These reports would be submitted no later than 7 days after the end of each week (Sunday) for the previous week's fishing activities. If a vessel is inactive for a reporting week, a "no activity" report must be submitted for that week. **Alternative 3** would require daily reporting, including a report of days when no fishing activity occurred. **Preferred Alternative 4** would require submission of a report for each trip made during the reporting week including a report of days when no fishing activity occurred. However, **Preferred Alternative 4** would permit the SRD to change the frequency of reporting as appropriate. **Alternative 3** would provide the most timely reporting of the actions considered, but would impose additional burden on the industry as compared to **Alternative 2** or **Preferred Alternative 4**. Additionally, management needs may not require daily reporting to effectively monitor fisheries and prevent exceeding the ACL for federally managed species. **Alternative 2** would provide a balance of timeliness and accuracy necessary to manage the fishery while imposing less burden on

administrators and industry than **Alternative 3** or **Preferred Alternative 4**. **Preferred Alternative 4** would also balance the need for timely data while minimizing industry or administrative burden, yet would also provide additional flexibility to accommodate unusual circumstances that may occur. **Preferred Alternative 4** is also compatible with proposed modifications to headboat data reporting for permitted vessels managed by the South Atlantic Fishery Management Council and would reduce the administrative burden and simplify reporting requirements for vessel owners or operators harvesting species managed jointly by the Gulf and South Atlantic Councils (i.e., species managed under the CMP FMP).

CHAPTER 3. AFFECTED ENVIRONMENT

3.1 Physical Environment

Description of the Physical Environment

The Gulf of Mexico (Gulf) has a total area of approximately 600,000 square miles (1.5 million km^2), including state waters (Gore 1992). It is a semi-enclosed, oceanic basin connected to the Atlantic Ocean by the Straits of Florida and to the Caribbean Sea by the Yucatan Channel (Figure 3.1.1). Oceanographic conditions are affected by the Loop Current, discharge of freshwater into the northern Gulf, and a semi-permanent, anti-cyclonic gyre in the western Gulf. The Gulf includes both temperate and tropical waters (McEachran and Fechhelm 2005). Mean annual sea surface temperatures ranged from 73 through 83º F (23-28º C) including bays and bayous (Figure 3.2.1) between 1982 and 2009, according to satellite-derived measurements (NODC 2012: http://accession.nodc.noaa.gov/0072888). In general, mean sea surface temperature increases from north to south with large seasonal variations in shallow waters.

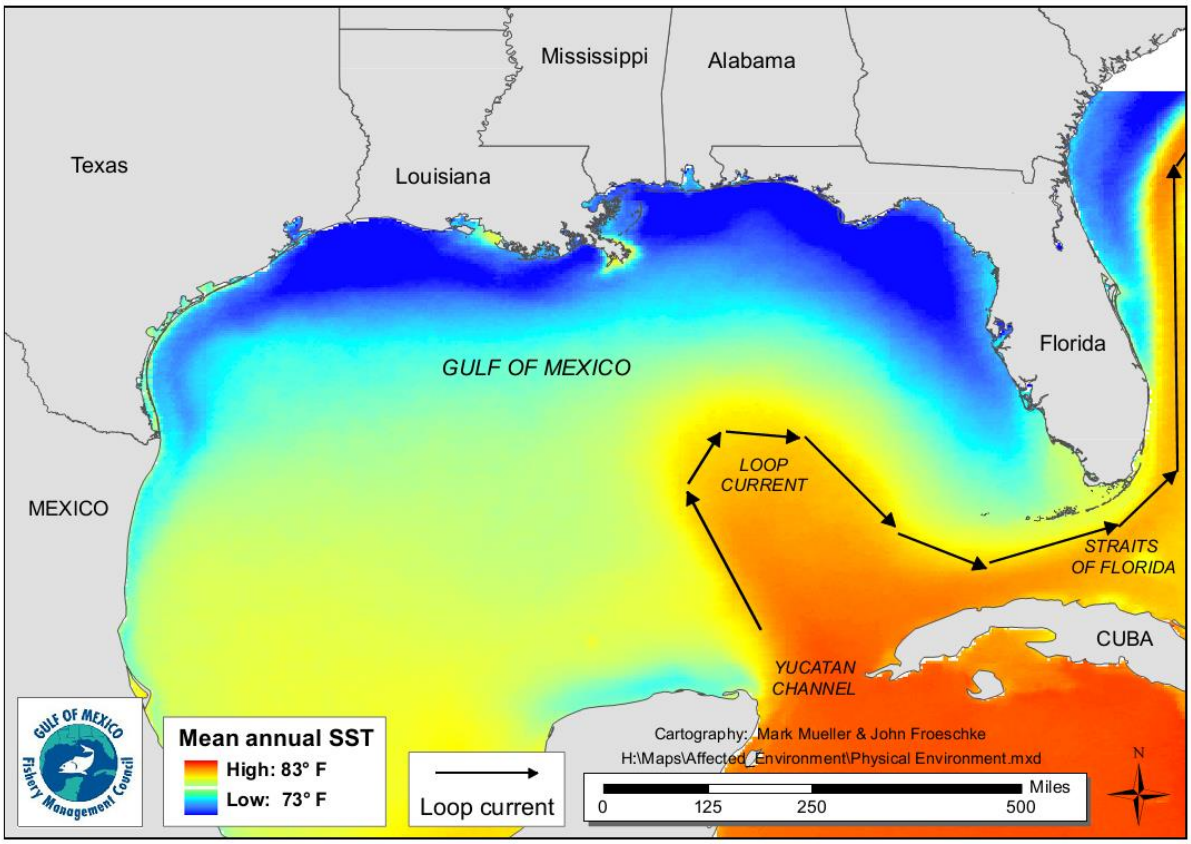

Figure 3.1.1. Mean annual sea surface temperature derived from the Advanced Very High Resolution Radiometer (AVHRR) Pathfinder Version 5 sea surface temperature data set (http://pathfinder.nodc.noaa.gov).

The physical environment for Gulf reef fish and coastal migratory pelagic (CMP) species, is further detailed in the Environmental Impact Statement for the Generic Essential Fish Habitat (EFH) Amendment and the Generic Annual Catch Limits/Accountability Measures Amendment (refer to GMFMC 2004; GMFMC 2011) and are hereby incorporated by reference.

Information on the habitat utilized by species in the reef fish complex and CMPs is included in GMFMC (2011) available at:
http://www.gulfcouncil.org/docs/amendments/Final%20Generic%20ACL_AM_Amendment-September%209%202011%20v.pdf

Generic Amendment 3 (GMFMC, 2005) addressed EFH requirements, habitat areas of particular concern, and adverse effects of fishing in the following fishery management plans of the Gulf of Mexico: Reef Fish, Red Drum, and Coastal Migratory Pelagics and hereby incorporated by reference.

Effects on the Physical Environment

The action proposed in this amendment should not have any direct impact on the physical environment. The actions would not affect the way the fisheries are currently conducted. The new reporting requirements for headboat vessels are not expected to result in a reduction in the number of vessels participating in the fisheries, or modify any fishing methods, or fishing efforts. There is no expectation that there would be any changes to the type of gear used that may positively or negatively affect any of the identified or functional aspects of the ecosystem. Data gathered through the proposed reporting methodologies may lead to additional management measures that would have impacts, most likely positive, on the physical environment, through reductions in effort or modifications to annual catch limits and annual catch targets. However, any such impacts would result from future actions.

3.2 Biological/Ecological Environment

Description of the Biological/Ecological Environment

The species affected by this amendment are covered by the Fishery Management Plans for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP), and Coastal Migratory Pelagics of the Gulf of Mexico and South Atlantic Region (CMP FMP). Many of the species in the Gulf region are assessed through the Southeast Data, Assessment, and Review (SEDAR) process. A complete description of the life history characteristics of these species can be found in GMFMC (2011) available at:
http://www.gulfcouncil.org/docs/amendments/Final%20Generic%20ACL_AM_Amendment-September%209%202011%20v.pdf

There are 28 different species of marine mammals that may occur in the Gulf. All 28 species are protected under the Marine Mammal Protection Act (MMPA) and six are also listed as endangered under the Endangered Species Act (ESA) (i.e., sperm, sei, fin, blue, humpback, and North Atlantic right whales). Other species protected under the ESA occurring in the

Gulf include five sea turtle species (Kemp's ridley, loggerhead, green, leatherback, and hawksbill); two fish species (Gulf sturgeon and smalltooth sawfish); and two coral species (elkhorn, *Acropora palmata* and staghorn, *A. cervicornis*). Information on the distribution, biology, and abundance of these protected species in the Gulf are included in the final EIS to the Council's Generic Essential Fish Habitat amendment (GMFMC, 2004), the February 2005 ESA BiOp on the reef fish fishery (NMFS 2005), and the *Acropora* Status Review (*Acropora* Biological Review Team, 2005). Marine Mammal Stock Assessment Reports and additional species information is also available on the NMFS Office of Protected Species website: http://www.nmfs.noaa.gov/pr/species/.

Effects on the Biological/Ecological Environment

As noted, the action proposed in this amendment would not affect the way the fisheries are currently conducted, nor lead to changes in the types of gear used in the fisheries. Thus, there would be no direct biological impacts from any of the actions. Data gathered through the proposed reporting methodologies may lead to additional management measures that would have impacts, most likely positive, on the biological environment, through reductions in effort or modifications to annual catch limits and annual catch targets. However, any such impacts would result from future actions.

The headboat electronic reporting requirement is a process for providing a means of collecting data from the industry, and does not directly affect the biological environment, but does have an indirect effect. There will be positive indirect biological effects because having weekly electronic reporting for headboats will make it easier to track landings in a timely manner. This data collection along with other recreational data collection will help prevent exceeding annual catch limits, leading to healthier fish stocks by reducing the likelihood of overfishing.

With no changes in the way the fisheries are conducted, the actions would have no effect on EFH. Effects on EFH would only ensue if the establishment of these actions created the need for future management measures or changed the existing operations. Such impacts could be positive or negative, but would most likely be positive, given that the actions are intended to provide more precise information about catch and bycatch in the fishery.

Because of the primary gears used, hook-and-line, the Gulf reef fish fishery is classified in the 2012 MMPA List of Fisheries as Category III fishery (76 FR 73912). This classification indicates the annual mortality and serious injury of a marine mammal stock resulting from the fishery is less than or equal to 1% of the potential biological removal. Dolphins are the only species documented as interacting with this fishery. Bottlenose dolphins may feed on the bait, catch, and/or released discards of the reef fish fishery.

The Gulf and South Atlantic CMP hook-and-line fishery is classified in the 2012 MMPA List of Fisheries as Category III fishery (76 FR 73912). This classification indicates the annual mortality and serious injury of a marine mammal stock resulting from the fishery is less than or equal to 1% of the potential biological removal. Dolphins are the only species documented as interacting with this fishery. Bottlenose dolphins may feed on the bait, catch, and/or released

discards of the reef fish fishery. The Gulf and South Atlantic CMP gillnet fishery is classified in the 2012 MMPA List of Fisheries as Category II fishery (76 FR 73912). This classification indicates an occasional incidental mortality or serious injury of a marine mammal stock resulting from the fishery (1-50% annually of the potential biological removal[1]). The fishery has no documented interaction with marine mammals; NOAA Fisheries Service classifies this fishery as Category II based on analogy (i.e., similar risk to marine mammals) with other gillnet fisheries. Bottlenose dolphins are the only species documented as interacting with this fishery. Bottlenose dolphins may predate and depredate on the bait, catch, and/or released discards. Additional information related to CMPs and marine mammals can be found in Amendment 18 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic Region (August 2011) and is hereby incorporated by reference.

3.3 Economic Environment

Description of the Economic Environment

A description of the economic environment is provided in Section 4.3.

Effects on the Economic Environment

A discussion of the economic effects of the proposed action is provided in Section 4.4

3.4 Social Environment

Description of the Social Environment

The proposed action in this amendment is expected to affect Gulf headboat fishing businesses associated with the CMP and reef fish fisheries. These vessels are currently included in the Southeast Region Headboat Survey (SRHS). A description of the current requirements for participants of the SRHS and a description of the information collected in the survey are given to provide context. The number of headboats participating in the SRHS is described at the state and community level. The description is based on the geographical distribution of vessels participating in the SRHS. A spatial approach enables the consideration of fishing communities and consideration of the importance of fishery resources to those communities, as required by National Standard 8.

SRHS Requirements and Survey Questions

Since January 1, 2013, vessels participating in the SRHS have been required to submit their reports electronically (through eLog, the online portal). Completed reports must be submitted monthly. Captains are required to submit a trip report for each trip made. Trip reports include a list of each species caught including the number kept and the number released. Other information reported on trip reports includes: the captain's name, trip report number, departure and return date and time, area fished (latitude and longitude in degrees and minutes), number of anglers, and minimum, maximum, and primary fishing depth.

Vessels Participating in SRHS

A total of 70 Gulf of Mexico vessels are currently included in the SRHS (Table 3.4.1). A large portion of these vessels are located in Florida (approximately 53%), although participating vessels are located throughout all the Gulf states (Table 3.4.1).

Table 3.4.1. Gulf of Mexico SRHS vessels by state in 2013.

State	Number of Vessels
AL	8
FL	37
LA	4
MS	5
TX	16

Source: SRHS 2013.

Communities with the largest number of vessels participating in the SRHS are presented in Figure 3.4.1. Concentrations of vessels are located in the Florida Panhandle (Destin and Panama City Beach); the Tampa Bay area in Florida (Clearwater and Tarpon Springs); Fort Myers Beach, Florida; Orange Beach, Alabama; Biloxi, Mississippi; and Port Aransas, Galveston, and South Padre Island, Texas (Figure 3.4.1).

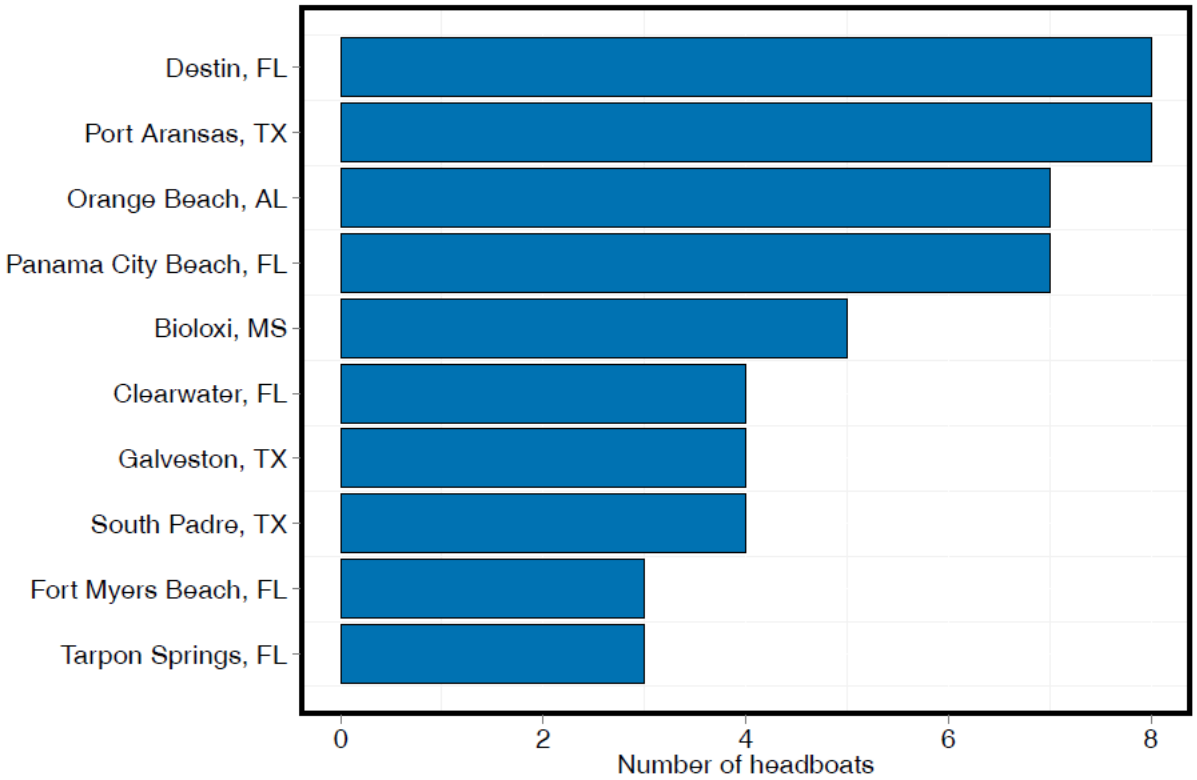

Figure 3.4.1. Top communities by number of SRHS participating vessels. Source: SRHS 2013.

Environmental Justice

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

Gulf of Mexico headboat fishing businesses participating in the CMP and reef fish fisheries would be expected to be affected by this proposed action; however any impacts are expected to be minimal. This action is expected to impact the administrative procedures of participating headboat businesses and would require the submission of electronic reports on a more frequent basis than currently required. Information on race and ethnicity of headboat business owners and their employees is not available; however it is very unlikely that there would be a disproportionately high impact on businesses including members of minority populations, as impacts are expected to be so minimal. As explained in Section 5.3, a headboat is estimated to earn approximately $247,000 (annual mean). Therefore, it is expected that there would be no impact to low-income populations as owners of these businesses are likely not in poverty. As discussed elsewhere in the document (such as in the Effects on the Social Environment section, Chapter 4, and Chapter 5) because the economic and social effects would be expected to be minimal to non-existent in the short-run (headboats have been reporting electronically since January 1, 2013) and positive in the long-run (more timely harvest reporting supporting improved management decisions), no adverse effects would be expected to accrue to headboat customers, or associated businesses and communities. Thus, no EJ concerns are expected to arise based on this proposed action.

Effects on the Social Environment

Any direct impacts on the social environment resulting from this action would be minimal. This action affects approximately 70 headboat operations that are already participating in the SRHS. These businesses have been required to submit their reports electronically since January 1, 2013. The change proposed here is to increase the frequency required for submitting the electronic reports. Currently, reports must be submitted monthly (**Alternative 1**). No impacts are expected from maintaining the status quo.

Changes to administrative requirements oblige affected people to change their routine or behavior, which in turn, involves an adjustment period to learn the new procedure. Because the requirement for electronic submission began this year, many survey participants are still adjusting to the online system. While increasing the frequency for submitting the reports could compound any problems people are having during the adjustment period, increasing the frequency of reporting is likely to be less burdensome of a procedural change than learning to

use the online system. Nevertheless, it is difficult to separate the impacts of increasing reporting frequency from the recent change to electronic reporting, as the requirements on headboat operators are related.

Indirect effects will also be minimal, but are expected to be positive over the long term. Headboat operators, along with many others in the recreational sector, support improving the collection of landings data for timelier quota monitoring. The lag time in data collection and analysis of recreational landings is currently inadequate for monitoring quotas in-season. The more frequent the electronic reports are required to be submitted, the closer we can get to obtaining 'real time' data. However, only headboats are participating in the mandatory headboat survey and corresponding electronic reporting system. Thus, although the greatest indirect benefits would be expected from the most frequent reporting time frame (**Alternative 3**, daily reporting), these benefits would not be realized until comparable data reporting systems are implemented for the rest of the recreational sector. For example, a program for electronic reporting by charter boats is under development. Nevertheless, it is a preliminary step toward achieving the goal of real time landings monitoring for the recreational sector.

Generally, there is a tradeoff in direct impacts from adjusting to more frequent reporting, and the indirect benefits of real time data collection. The most frequent reporting time frame (**Alternative 3**) could result in the most demanding adjustment period, but provide the greatest benefits in the long-term, once the remaining vessels in the recreational sector also report daily. Requiring reporting at less frequent intervals, such as weekly or intervals less than a week (**Preferred Alternative 4**) and weekly reporting (**Alternative 2**) would result in fewer direct impacts as headboat operators have more time to become comfortable using the online reporting system. The flexibility in specifying the reporting interval of **Preferred Alternative 4** would facilitate modification of the time interval as reporting programs are expanded to the rest of the recreational sector.

3.5 Administrative Environment

Description of the Administrative Environment

Federal Fishery Management

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

Responsibility for federal fishery management decision making is divided between the U.S. Secretary of Commerce (Secretary) and eight regional fishery management councils that represent the expertise and interests of constituent states. Regional Councils are responsible for

preparing, monitoring, and revising management plans for fisheries needing management within their jurisdiction. The Secretary is responsible for collecting and providing the data necessary for the Councils to prepare fishery management plans and for promulgating regulations to implement proposed plans and amendments after ensuring that management measures are consistent with the Magnuson-Stevens Act and with other applicable laws. In most cases, the Secretary has delegated this authority to NMFS.

The Gulf of Mexico Fishery Management Council (Council) is responsible for conservation and management of fishery resources in federal waters of the Gulf. These waters extend from 9 to 200 miles offshore from the seaward boundary of the states Florida and Texas; and from 3 to 200 miles offshore from the seaward boundary of the states of Alabama, Mississippi, and Louisiana. The Council has seventeen voting members: one from NMFS; one each from the state fishery agencies of Florida, Alabama, Mississippi, Louisiana and Texas; and 11 public members appointed by the Secretary. Non-voting members include representatives of the U.S. Fish and Wildlife Service, U.S. Coast Guard), Department of State, and Gulf States Marine Fisheries Commission (GSMFC).

Public interests also are involved in the fishery management process through participation on advisory panels and through Council meetings, which, with few exceptions, are open to the public. The Councils use Scientific and Statistical Committees to review the data and science being used in assessments and fishery management plans/amendments. In addition, the regulatory process is in accordance with the Administrative Procedures Act, in the form of "notice and comment" rulemaking.

Gulf of Mexico States

The state governments of Louisiana, Mississippi, and Alabama, have the authority to manage fisheries that occur in waters extending three nautical miles, while west Florida and Texas authority is nine miles from their respective shorelines. Louisiana's marine fisheries are managed by the Louisiana Department of Wildlife and Fisheries. The Marine Resources Division of the Mississippi Department of Natural Resources regulates Mississippi's marine fisheries. Alabama's Department of Conservation and Natural Resources manages Alabama's marine fisheries. Texas' marine fisheries are managed by the Texas Department of Wildlife and Fisheries, and Florida's marine fisheries are managed by the Florida Fish and Wildlife Commission. Each Gulf state fishery management agency has a designated seat on the Council.

The Gulf states are also involved in the management of marine fisheries through the GSMFC in management of marine fisheries. This commission was created to coordinate state regulations and develop management plans for interstate fisheries. The GSFMC does not possess any regulatory authority.

Effects on the Administrative Environment

Alternative 1 (No Action) would result in no change in administrative burden. **Alternatives 2**, **3**, and **4** would result in an increase in administrative burden needed to track headboat vessel compliance. **Alternative 3**, the requirement to report daily would place a greater administrative

burden on headboat vessel compliance and upon NMFS than **Alternative 2** and **Preferred Alternative 4,** which would require weekly reporting. The difference between **Alternative 2** and **Preferred Alternative 4** is that in **Preferred Alternative 4** the SRD may require reporting intervals less than a week. In **Alternatives 2, 3** and **Preferred Alternative 4,** the requirement to submit "no trip forms" on a weekly basis would increase the number of responses from headboats, and is expected to result in an increase in the number of headboat operators that are non-compliant. The anticipated increase in non-compliant operators would result in an increase in the administrative burden to law enforcement.

CHAPTER 4. REGULATORY IMPACT REVIEW

4.1 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 proposed regulations are a "significant regulatory action" under the criteria provided in Executive Order (E.O.) 12866. This RIR analyzes the expected economic impacts of a proposed emergency action to allow vessels with commercial reef fish permits to temporarily suspend their permit.

4.2 Problems and Objectives

A discussion of the problems and objectives of this proposed action is provided in Sections 1.2 and 1.3. In summary, headboat data needs to be received in a more timely and efficient manner to reduce the likelihood that annual catch limits (ACLs) will be exceeded and to prevent overfishing.

4.3 Description of the Fishery

This proposed action would be expected to affect headboats permitted to operate in the Gulf of Mexico (Gulf) reef fish and coastal migratory pelagic (CMP) fisheries. Descriptions of the Gulf reef fish fishery are contained in GMFMC (2011; general reef fish), GMFMC (2012; grouper), and GMFMC (2013; red snapper) and are incorporated herein by reference. Descriptions of the Gulf CMP fishery are contained in GMFMC/SAFMC (2011) and GMFMC/SAFMC (2013) and are incorporated herein by reference.

Headboats are part of the for-hire fleet. A Gulf charter vessel/headboat permit (hereafter referred to as a for-hire permit) is required to harvest Gulf reef fish and CMP species in the Exclusive Economic Zone (EEZ) in the Gulf. On March 1, 2013, 1,440 unique vessels had one (either a reef fish or CMP permit) or both for-hire permits.

The for-hire permits do not distinguish between charter vessels and headboats, though information on the primary method of operation is collected on the permit application form. Some vessels may operate as both a charter vessel and a headboat, depending on the season or purpose of trip. Headboat effort and harvest data, however, is collected through the NMFS Southeast Region Headboat Survey. Participation in the survey program varies, but in 2013, 70

headboats were selected to participate in the survey and have either a reef fish or CMP for-hire permit.

Although headboats tend to be larger than charter vessels, on average, the key distinction between the two types of operations is how the fee is determined. On a charter vessel trip, the fee charged is for the entire vessel regardless of how many passengers are carried. The fee charged for a headboat trip is paid per individual angler (per "head"). Information on Gulf headboat operating characteristics, including average fees and net operating revenues, is included in Savolainen et al. (2012) and is incorporated herein by reference. On average, a headboat business is estimated to earn receive approximately $247,000 (2012 dollars) per year in revenue.

4.4 Economic Impacts of the Proposed Action

The collection of harvest data is an essential and integral part of the fishery management process. The management of each species requires knowledge of the status of each stock, determination (quantification) of annual catch limits (ACLs), harvest monitoring systems to ensure harvests do not exceed the ACLs, and the implementation of rebuilding plans, when necessary. Calculating ACLs incorporates both biological and economic information (and social information; see the social effects discussion). This calculation determines, in theory, the amount of harvest (separately but in tandem with the suite of controlling mechanisms, such as, for example, season, trip, bag, and size limits) that will optimize the socioeconomic benefits to the nation while achieving certain biological goals (recovery, sustainability, etc.). ACLs are sufficiently important that exceeding them triggers accountability measures (AMs) which, roughly defined, are preventive and corrective measures to ensure that overages are neither large nor persistent. In certain instances, overages are required to be "repaid" through decreased harvest in the subsequent fishing year. Because socioeconomic information is embedded in the calculation of the ACL and the determination of the manner in which it can be harvested, corrective action is generally assumed to produce adverse short-term economic effects. These effects would be expected to generally take the form of the following effects, among others: reduced for-hire revenue, profit, and angler consumer surplus; and, possible spill-over effects on the commercial sector, such as reduced revenue and profit to commercial vessels (because of reduced harvest limits); disruption of product flow to the market in terms of the amount of product and timing of delivery (reducing the amount and price of domestic product to consumers, though substitution opportunities would be expected) if the stock status is harmed and requires a reduction of the ACL in both sectors.

Thus, adequate harvest monitoring is essential to fishery management and improved harvest monitoring would be expected to result in increased economic benefits because it would be expected to result in better resource protection, sustainable harvests, and fewer disruptions of normal fishing behavior. From this perspective, the assessment of proposed alternatives for this proposed action evaluates the expected change in economic effects from the perspective of the extent to which these alternatives would be expected to differ in supporting improved harvest monitoring compared to the associated cost burden to headboat businesses for compliance.

Alternative 1 (No Action) would not result in any changes in the frequency or method of headboat reporting and, as a result, would not be expected to result in any direct change in costs to or other economic effects on permitted headboat businesses. Discussions of the current reporting requirements for all federally-permitted Gulf headboats are provided in Chapter 1 and Section 2.1. As discussed in these sections, electronic reporting has been the method of reporting required by the Science and Research Director (SRD) for headboats since January 1, 2013. Fishing logbooks for each month are required to be submitted within seven days of the end of each month. However, electronic reporting is only required by the SRD and is not specifically required by federal regulations. Federal regulations address reporting requirements more generally by stating that headboat operators must submit fishing records "if selected by the SRD" and "on forms provided by the SRD" (§ 622.5 Recordkeeping and reporting). As a result, although in practice all headboats are "selected" for reporting by the SRD and most headboat businesses are believed to follow the current SRD electronic reporting requirements, in the absence of a more complete legal framework, i.e., the approval of federal regulations which state that all headboats must report electronically, electronic reporting may not be universal and some vessels not transition from paper logbooks submitted through the mail.

Because electronic reporting is expected to support better fishery management and associated increased economic benefits, incomplete electronic reporting by all vessels in the industry would be expected to result in reduced economic benefits. Electronic reporting is efficient because the information provided is directly integrated into an electronic system that allows combination of records and tabulation of harvests. With electronic reporting, data do not have to be manually input from paper forms, faxes, or scanned documents. As discussed above, the specification of ACLs and AMs has increased the need for more timely collection of harvest data. The current frequency of data reporting may be expected to increase the likelihood of harvest overages. Harvest overages in one sector, in combination with the harvest from other sectors, could impact the status of a stock or a recovery plan. Overages also have the potential, depending on the AMs, to result in significant disruption in fishing behavior the following year and reduce revenue and profit for for-hire vessels (and commercial vessels if the fishery ACL is adversely affected) and associated businesses, and reduce consumer surplus to recreational anglers.

Because **Alternative 1 (No Action)** would not change the headboat reporting requirements, this alternative would be expected to continue to result in these indirect economic effects. Although headboat businesses would not have to bear any change in direct costs associated with reporting, reductions in short-term economic benefits could indirectly arise if data collection is delayed because all logbooks are not submitted electronically, or the frequency of reporting is not consistent with the needs of harvest monitoring.

Alternatives 2-4 would require electronic reporting, but vary by reporting frequency. As discussed with respect to **Alternative 1 (No Action)**, electronic reporting is currently required by the SRD for federally-permitted Gulf headboats. As a result, few, if any, headboat businesses would be expected to have to incur new operating costs associated with electronic reporting under **Alternatives 2-4**. Even for headboat businesses that may not currently be using the electronic reporting system, any increase in operating expenses should be minor. The use of computers and the internet is commonplace and a vital tool in business management. The Small Business Administration estimated that in 2010 approximately 94% of businesses had a

computer and 95% of these had internet service (SBA 2010). As a result, the majority of the affected entities would not be expected to need to incur operational expenses to report electronically. For those few entities that might need to incur these new expenses, these expenses would not be expected to constitute significant increase in business expenses. Computers under $750 are readily available and internet services under $100 per month would be expected to be available in most locations. Alternatively, smart phones are available for approximately $200 with monthly service fees of under $100. As stated in the previous section, the estimated average annual revenue for a headboat business is approximately $247,000 (2012 dollars). As a result, the reporting method component of **Alternatives 2-4** would be expected to minor to no direct economic effect on headboat businesses.

In addition to the costs to headboat businesses, the costs of data processing should be considered. As previously discussed, the current requirement for electronic reporting eliminates the need for costly manual data input. Electronic reporting also potentially reduces the time required to acquire the data, process it, compute regional (area or species) harvest totals, and take management action, when appropriate. Fax reporting, however, or any other form of reporting that does not directly load the data into a database, would require manual data input, potentially delaying the completion of these tasks. As a result, the direct costs associated with data management and the indirect costs associated with potentially delayed management response would be expected to increase as the flexibility of the reporting requirements to allow non-electronic reporting increases. From this perspective, **Alternative 2** would be expected to result in the highest costs, followed by **Preferred Alternative 4**, and **Alternative 3**.

Alternatives 2-4 vary in the frequency of reporting and range from daily reporting (**Alternative 3**) to weekly (**Alternative 2**). Despite the labor efficiencies that electronic bookkeeping and reporting support, labor would still be required to ensure all trips are properly recorded. The distribution of labor to record trips would need to be consistent with the reporting frequency and some reporting frequencies may not be consistent with the optimal workflow for some businesses, resulting in an increase in labor costs. For example, some businesses may already have the habit of recording trips as they occur and no increase in labor costs would be expected to result from any of the reporting frequencies considered. Other businesses may feel that "accumulating" trips and compiling their records a couple times each week, bi-weekly, or even once a month is best for their operation. As a result, the more frequent that reports would be required, the greater the potential cost to headboat businesses and to the administration in ensuring the data are correctly archived into the system. From this perspective, the ranking of the options from most to least costly would be the following: **Alternative 3** (daily); **Preferred Alternative 4** (weekly or daily, as determined by the SRD); and **Alternative 2** (weekly).

In addition to the direct costs to headboat businesses associated with reporting frequency, the direct federal costs associated with data management would be expected to be affected by the frequency of reporting. Despite the integrated nature of electronic reporting, systems maintenance and data processing needs may increase the more frequently reports are submitted. For example, daily reporting may require full-time staff attention, whereas weekly reporting may allow rotation of staff resources to and from other duties. As a result, the ranking of the options from the perspective of administrative costs would be expected to mirror the ranking from the perspective of the reporting costs to headboat businesses provided in the previous paragraph.

The frequency of reporting would also be expected to affect the capabilities of the harvest monitoring process and the associated indirect economic effects previously discussed. In theory, barring system overload (the data reporting and harvest monitoring system has to have the capacity to receive, process, and react to all of the data submitted to be fully effective), the more frequently reports are submitted, the more accurate the harvest monitoring process would be expected to be. The more accurate the harvest monitoring process, the better the management of the resources and associated fisheries, and the greater the economic benefits. From this perspective, the options would, again, have the same ranking provided thus far: **Alternative 3** would be first and **Alternative 2** last, though the metric of evaluation would be greatest benefits rather than greatest costs. However, considerations of system capacity (can the management system handle the data delivery schedule?) and management needs (does the resource need harvest monitoring at that frequency?) are relevant. As a result, although more frequent reporting may seem best, inability of the data collection system to handle the increased reporting frequency may negate the potential benefits. Alternatively, the needs of the resources, on average, may not require reporting at a particular level of increased frequency.

Additionally, **Alternatives 2-4** would prohibit vessels from fishing if required reports have not been submitted within the required timeframe. Although a prohibition on fishing could have a significant adverse economic effect on the affected business, depending on the duration of prohibition and revenue from non-fishing activities, failure to submit the required electronic reports would not be an economically rational business practice in light of the minimal burden to submit reports and potential consequences of non-compliance. As a result, few if any headboat businesses would be expected to experience any reduction in profits as a result of this component of these proposed alternatives.

Combining the considerations of the direct economic effects of reporting with the indirect economic effects of facilitating more effective harvest monitoring is difficult at best and available data do not provide a quantitative basis for comparison. As previously discussed, the key considerations are reporting burden (how much reporting costs are too much?), systems capacity (can the system handle the data, yes or no?), and resource needs (do the resources need monitoring of this frequency, yes or no?). The subjective determinations of these considerations are beyond the scope of this assessment. However, the increase in reporting costs may not be onerous under any of the alternatives considered because most, if not all, of the affected headboat businesses are expected to currently submit their reports electronically, and the ease of electronic submission would be expected to require only a minor, if any, increase in labor costs to increase the frequency of reporting. With fewer than 100 vessels reporting, the data management system would be expected to easily handle the data under any of the proposed reporting frequencies.

4.5 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 that can be expressed as costs associated with the regulations. Costs associated with this specific action include:

Council costs of document preparation, meetings, public hearings, and information dissemination……....$15,000
NMFS administrative costs of document preparation, meetings, and review ……...$10,000
TOTAL……..……...$25,000

The Council and federal costs of document preparation are based on staff time, travel, printing, and any other relevant items where funds were expended directly for this specific action. No change in enforcement cost is anticipated.

4.6 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. Based on the information provided above, this proposed action has been determined to not be economically significant for the purposes of E.O. 12866.

CHAPTER 5. REGULATORY FLEXIBILITY ACT ANALYSIS

5.1 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 impacts of various alternatives contained in the fishery management plan or amendment (including framework management measures and other regulatory actions) and to ensure the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

The RFA requires agencies to conduct a Regulatory Flexibility Act Analysis (RFAA) for each proposed rule. The RFAA is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. An RFAA is conducted to primarily determine whether the proposed action would have a "significant economic impact on a substantial number of small entities." The RFAA 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 rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) a 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 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; 6) a description and estimate of the expected economic impacts on small entities; and 7) an explanation of the criteria used to evaluate whether the rule would impose "significant economic impacts".

5.2 Statement of the need for, objective of, and legal basis for the proposed action

The need for and objective of this proposed action are provided in Chapter 1. In summary, fishery harvest data needs to be received in a more timely and efficient manner to reduce the likelihood that annual catch limits (ACLs) will be exceeded and prevent overfishing. The objective of this proposed action is to require a data reporting system for the headboat sector that will be easier for the industry, provide data in manner that is more easily integrated into the Southeast data management system, provides data in a more timely fashion, and reduces the

likelihood that ACLs are exceeded and overfishing is prevented. The Magnuson-Stevens Fishery Conservation and Management Act provides the statutory basis for this proposed action.

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

This proposed action would directly affect headboats with a Gulf of Mexico (Gulf) federal charter vessel/headboat permit (hereafter referred to as a for-hire permit). Headboats, which charge a fee per passenger, and charter vessels, which charge a fee on a whole vessel basis, are types of vessel operations that participate in the for-hire fishing sector. A federal for-hire permit is required for for-hire vessels to harvest reef fish or coastal migratory pelagic (CMP) species in the Gulf Exclusive Economic Zone. Although the for-hire permit application collects information on the primary method of operation, the resultant permit itself does not identify the permitted vessel as either a headboat or a charter vessel, operation as either a headboat or charter vessel is not restricted by the permitting regulations, and vessels may operate in both capacities. However, only federally permitted headboats are required to submit harvest and effort information to the National Marine Fisheries Service (NMFS) Southeast Region Headboat Survey (SRHS). Participation in the SRHS is based on determination by the Southeast Fisheries Science Center that the vessel primarily operates as a headboat. Seventy vessels were registered in the SHRS as of March 1, 2013. On average, a headboat is estimated to receive approximately $247,000 (2012 dollars) in annual revenue.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed action.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the headboat fishing industry 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 combined annual receipts not in excess of $7.0 million (NAICS code 713990, recreational industries) for all its affiliated operations worldwide. All headboat businesses expected to be directly affected by this proposed rule are believed to be small business entities.

5.4 Description of the projected reporting, record-keeping and other compliance requirements of the proposed action, 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 action would require that all federally permitted Gulf headboats submit logbooks of fishing activity weekly or at intervals shorter than a week if notified by the NMFS Science Research Director (SRD) via electronic reporting (computer, tablet, or smart phone via the internet). For vessels that are inactive, with no chance of actively fishing, inactivity reports may be submitted weekly or during the first week of each month if no trips will be conducted for the duration of that month. These requirements would not be expected to require special professional skills. The information that would be required to be submitted by electronic

logbook is consistent with the information currently provided by the affected entities through paper reporting and computer and internet use is a routine business practice. As a result, all affected small entities would be expected to already have staff with the appropriate skills and training to meet these requirements. A discussion of the expected costs associated with these requirements is provided in Section 4.5.

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

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

5.6 Significance of economic impacts on a substantial number of small entities

Substantial number criterion

This proposed action would be expected to directly affect an estimated 70 vessels that possess a valid or renewable Gulf federal reef fish or CMP for-hire permit. An estimated 1,440 vessels possess one or both Gulf federal for-hire permits and operate in the for-hire sector. The number of vessels that would be expected to be directly affected by this proposed action is approximately 5% of the for-hire fleet. As a result, this proposed action would not be expected to impact a substantial number of small entities.

Significant economic impacts

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 expected to be directly affected by the measures in this proposed action have been determined for the purpose of this analysis to be small business entities, so 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?

Electronic reporting is currently required by the SRD for federally-permitted Gulf headboats. As a result, few, if any, headboat businesses would be expected to incur new operating costs associated with electronic reporting under this proposed action. Even for headboat businesses that may not currently be using the electronic reporting system, any increase in operating expenses should be minor. The use of computers and the internet is commonplace and a vital

tool in business management. The Small Business Administration estimated that in 2010 approximately 94% of businesses had a computer and 95% of these had internet service (SBA 2010). As a result, the majority of the affected entities would not be expected to need to incur operational expenses to report electronically. For those few entities that might need to incur these new expenses, these expenses would not be expected to constitute a significant increase in business expenses. Computers under $750 are readily available and internet services under $100 per month would be expected to be available in most locations. Alternatively, smart phones are available for approximately $200 with monthly service fees of under $100. As previously stated, the estimated average annual revenue for a headboat business is approximately $247,000 (2012 dollars). As a result, the reporting method component of this proposed action would be expected to result in a minor to no direct economic effect on headboat businesses.

This proposed action would require weekly reporting, or at intervals shorter than a week if notified by the SRD, by headboat businesses. The labor outlay of affected headboat businesses would have to be managed to meet the proposed required reporting frequency. Some headboat businesses may already record trips as they occur and no increase in labor costs would be expected to result from the proposed reporting frequency. Other businesses may feel that recording their trips a couple times each week, bi-weekly, or even once a month is best for their operation. As a result, the more frequent that reports would be required, the greater the potential labor cost to headboat businesses. However, electronic bookkeeping and reporting would be expected to constitute a small portion of the overall operating expense of a headboat business and any labor increase to accommodate the reporting frequency requirements of this proposed action would be expected to constitute a minor, if any, increase in business operating costs.

Additionally, this proposed action would prohibit vessels from fishing if required reports have not been submitted within the required timeframe. Although a prohibition on fishing could have a significant adverse economic effect on the affected business, depending on the duration of prohibition and revenue from non-fishing activities, failure to submit the required electronic reports would not be an economically rational business practice in light of the minimal burden to submit reports and potential consequences of non-compliance. As a result, few if any headboat businesses would be expected to experience any reduction in profits as a result of this component of this proposed action.

In summary, any increase in business expenses as a result of this proposed action would not be expected to be significant because most, if not all, of the affected headboat businesses are expected to currently submit their reports electronically, and the ease of electronic submission would be expected to require only a minor, if any, increase in labor costs.

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

This proposed action, if implemented, would not be expected to have a significant economic impact on a substantial number of small entities. As a result, the issue of significant alternatives is not relevant.

CHAPTER 6: LIST OF PREPARERS

(Interdisciplinary Plan Team Members)

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Randy	Blankinship	NMFS	SE Branch of Highly Migratory Species
Kenneth	Brennan	NMFS/SEFSC	Coordinator, Southeast Region Headboat Survey
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Anik	Clemens	NMFS/SF	Technical Writer Editor
David	Dale	NMFS/HC	EFH Specialist
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Shepherd	Grimes	NOAA/GC	Attorney Advisor
Stephen	Holiman	NMFS/SF	Economist
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NMFS = National Marine Fisheries Service
SAFMC = South Atlantic Fishery Management Council
GMFMC = Gulf of Mexico Fishery Management Council
SEFSC = Southeast Fisheries Science Center
SF = Sustainable Fisheries Division
PR = Protected Resources Division
SERO = Southeast Regional Office
HC = Habitat Conservation Division
GC = General Counsel, Eco=Economics
GSMFC = Gulf States Marine Fisheries Commission

CHAPTER 7. LIST OF AGENCIES, ORGANIZATIONS AND PERSONS CONSULTED

SAFMC Law Enforcement Advisory Panel
SAFMC Snapper Grouper Advisory Panel
SAFMC Scientific and Statistical Committee
SAFMC Information and Education Advisory Panel
North Carolina Coastal Zone Management Program
South Carolina Coastal Zone Management Program
Georgia Coastal Zone Management Program
Alabama Coastal Zone Management Program
Florida Coastal Zone Management Program
Louisiana Coastal Zone Management Program
Mississippi Coastal Zone Management Program
Texas Coastal Zone Management Program
Alabama Department of Conservation and Natural Resources
Florida Fish and Wildlife Conservation Commission
Georgia Department of Natural Resources
Louisiana Department of Wildlife and Fisheries
Mississippi Department of Marine Resources
South Carolina Department of Natural Resources
North Carolina Division of Marine Fisheries
Texas Department of Wildlife and Fisheries
North Carolina Sea Grant
South Carolina Sea Grant
Georgia Sea Grant
Florida Sea Grant
Louisiana Sea Grant
Mississippi-Alabama Sea Grant
Texas Sea Grant
Atlantic States Marine Fisheries Commission
Gulf and South Atlantic Fisheries Development Foundation
Gulf of Mexico Fishery Management Council
National Marine Fisheries Service
- Washington Office
- Office of Ecology and Conservation
- Southeast Regional Office
- Southeast Fisheries Science Center

CHAPTER 8. REFERENCES

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APPENDIX A

Regulations

§§ 622.5, 622.26 & 622.374 Recordkeeping and reporting

Subpart A--General Provisions

§ 622.5 Recordkeeping and reporting--general**.**

(b) Commercial vessel, charter vessel, and headboat inventory. The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under the recordkeeping and reporting requirements in subparts B through V of this part must provide the following information when interviewed by the SRD:

(1) Name and official number of vessel and permit number, if applicable.
(2) Length and tonnage.
(3) Current home port.
(4) Fishing areas.
(5) Ports where fish were offloaded during the last year.
(6) Type and quantity of gear.
(7) Number of full- and part-time fishermen or crew members.

Subpart B--Reef Fish Resources of the Gulf of Mexico

§ 622.26 Recordkeeping and reporting**.**

(b) Charter vessel/headboat owners and operators

(1) Reporting requirement. The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), or whose vessel fishes for or lands such reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) Reporting deadlines

(i) Charter vessels. Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) Headboats. Completed fishing records required by paragraph (b)(1) of this

section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

Subpart Q--Coastal Migratory Pelagic Resources (Gulf of Mexico and South Atlantic)

(b) Charter vessel/headboat owners and operators

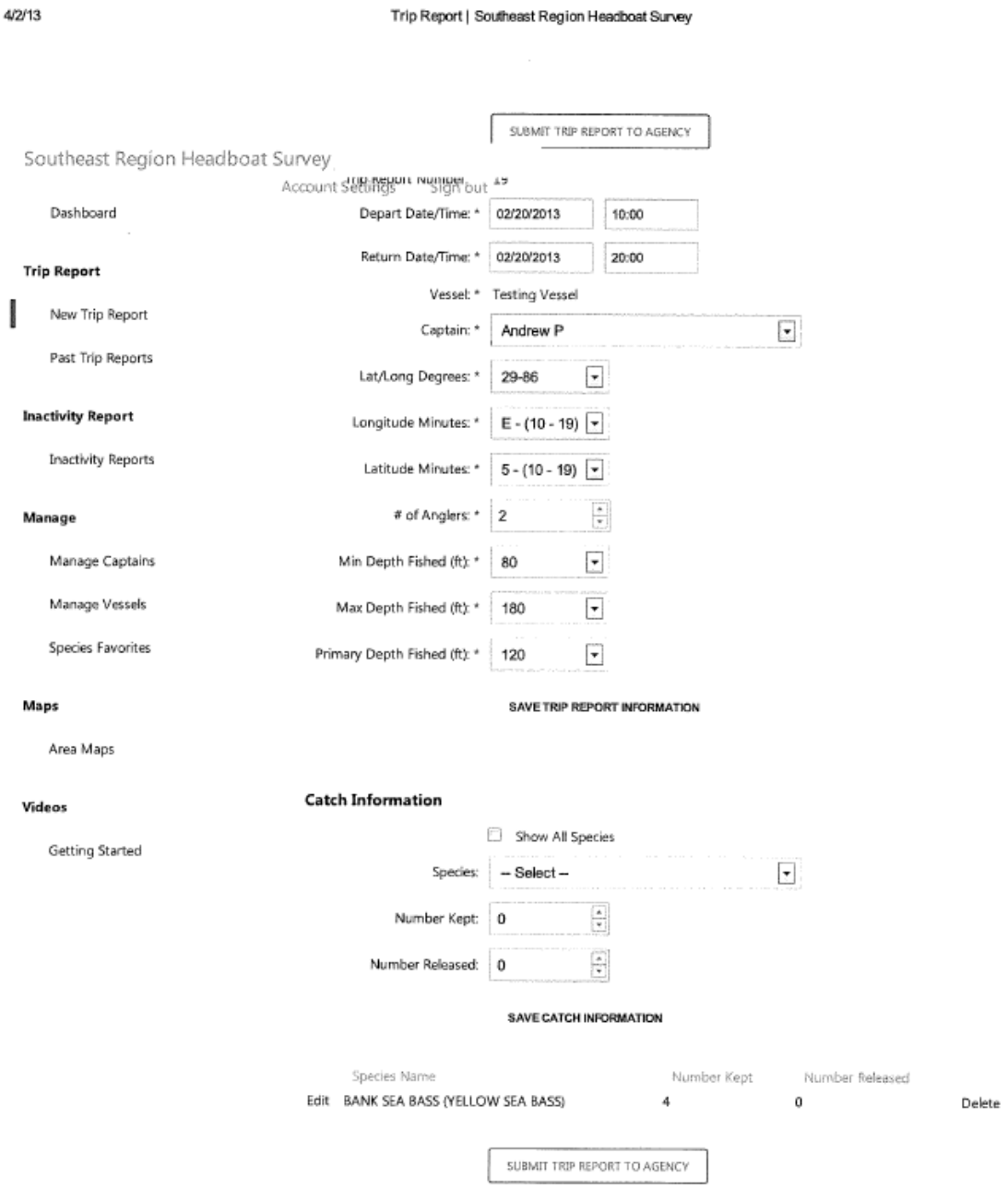
(1) Reporting requirement. The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands such Gulf or South Atlantic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

(2) Reporting deadlines

(i) Charter vessels. Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) Headboats. Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

APPENDIX B

1.1 Example Trip Report

The Southeast Regional Headboat Survey electronic report form that is completed by headboat vessel operators. The forms are completed on a computer and submitted via internet.