

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 20, 2007.

Galen R. Tromble,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No.070719385-7574-02]

RIN 0648-AV59

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Revision of Vessel Monitoring System (VMS) Requirements for Commercial Gulf Reef Fish Vessels

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise VMS requirements applicable to the commercial reef fish fishery in the Gulf of Mexico (Gulf) and to revise the allowable methods for complying with the advance notification of landing requirement in the Gulf red snapper individual fishing quota (IFQ) program. Regarding the VMS program, this final rule allows commercial reef fish vessel owners or operators to reduce the frequency of VMS transmissions while in port; extends the existing power-down exemption to include reef fish vessels while in port; and adds a grandfather clause to address VMS units approved for use in the Gulf reef fish fishery. Regarding the IFQ program, this final rule expands the allowable methods for communicating the required advance notification of landing. The intended effects of this final rule are to resolve an unanticipated technological problem with the VMS draining power from vessels that are in port without access to external power sources; provide a grandfather clause for previously approved Gulf reef fish VMS units; and facilitate compliance with the advance notification of landing requirement in the IFQ program. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in

this final rule and publishes the OMB control numbers for those collections.

DATES: This rule is effective January 28, 2008.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) may be obtained from Peter Hood, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; e-mail peter.hood@noaa.gov.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address (above) and to David Rostker, OMB, by e-mail at David_Rostker@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT:

Peter Hood, telephone 727-824-5305; fax 727-824-5308; e-mail peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 6, 2007, NMFS published the proposed rule to revise VMS requirements applicable to the commercial Gulf reef fish fishery and revise the allowable methods for complying with the advance notification of landing requirement in the Gulf red snapper IFQ program and requested public comment (72 FR 43583). The rationale for the measures contained in this final rule is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

Comment 1: Several commenters indicated the 4-hour in port reporting exemption, while it would reduce the overall power consumption by VMS units, was insufficient to address the VMS power drain issue addressed in this final rule. Commenters suggested reducing in-port reporting to less than once every 4 hours, for example, once every 12 hours. Other suggestions included using a vessel's ignition switch to power VMS units on and off, or tying VMS units to global positioning systems (GPS), so VMS only power on when vessels are in motion.

Response: The 4-hour in port reporting exemption is designed to reduce battery power drain when vessels have returned from fishing activities. If the vessel is not used for an extended period of time, batteries could be drained while in port creating safety problems for vessels. Vendors of VMS units have indicated a 4-hour reporting interval, while in port and without access to external power sources, should reduce the battery drain sufficiently to solve this issue. However, for vessel owners/operators who anticipate their vessels to be inactive for longer periods, this rule also provides the ability for them to power down their VMS unit if in port or continuously out of the water for more than 72 hours. This can be accomplished through the power-down exemption from NMFS OLE. Once an owner/operator is authorized to use this exemption, they need only send a report via their vessel's VMS terminal to the NMFS OLE VMS program each time they meet the power-down exemption criteria and wish to power down their VMS unit.

Revising the in port reporting interval to time periods longer than 4 hours would require VMS vendors to reconfigure their units to a time period longer than they recommend is needed to solve this problem. The power-down exemption provides owners/operators an alternative to the 4-hour in port reporting exemption to conserve battery power. Currently VMS units are tied to GPS such that if a vessel enters or leaves a port, the vessel's VMS unit recognizes this movement and activates the VMS accordingly (i.e., once every 4 hours in port or once every hour out of port). The rationale for requiring 1-hour position reports once a vessel is out of port, even when the vessel is not moving, is to ensure that vessel owners/operators are not engaging in illegal activities, such as anchoring in closed areas, or fishing during closed seasons. NMFS OLE currently does not allow VMS units to be powered on or off through the ignition system, and is not considering this as an allowable capability at this time. This could create another safety issue by draining battery power should the ignition switch be left on when the engine is not running.

Comment 2: One commenter expressed concern about who will pay for VMS units to be reconfigured to allow in-port reporting, power-down exemption requests, trip declarations, and red snapper IFQ program 3-hour notifications. The commenter also expressed concern about the cost of the actual transmission of these reports through the VMS terminal.

Response: Configuring VMS units to allow 4-hour in port reporting, as well as placing and upgrading OLE required forms on the VMS units, is paid for by NMFS. This includes forms for trip declarations, power-down exemptions, and red snapper IFQ 3-hour notifications. Actual notifications and power-down requests sent by owners/operators to NMFS OLE through their VMS units are paid by vessel owners/operators to their respective VMS communication provider. The cost of the transmission depends on the type of VMS unit and communication provider plan purchased by the vessel owner/operator. Forms developed by NMFS to transmit the required information are designed to minimize costs to the fishermen. Estimated cost per transmission of the NMFS-based forms is estimated to range between approximately 13 and 24 cents, based on the type of form. Trip declarations and IFQ 3-hour notifications may also be transmitted via phone and IFQ 3-hour notifications may be transmitted through the internet, on the red snapper IFQ website. For the power-down exemption, requests to power-down the VMS unit would require a report sent through the VMS unit. Depending on which VMS communication provider an owner/operator uses, powering down the VMS unit could result in a cost savings because position reports would not be sent during this time.

Comment 3: One commenter expressed concern regarding how often power-down exemptions need to be requested. The commenter asked if power-downs could only be requested through the VMS unit, and how much time was required to approve an exemption request.

Response: Power-down exemptions need only be applied for once and the letter authorizing the exemption is required to remain on the vessel when the VMS unit is powered down. Power-down exemption applications are available online at <http://sero.nmfs.noaa.gov/vms/vms.htm> or from OLE at NOAA Fisheries Service, Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701. Approval for a power-down exemption should take no more than 5 days. Once a power-down exemption letter has been authorized for a vessel, an owner/operator will only need to successfully send a report via their VMS unit to NMFS OLE, containing the required information, prior to each power down.

Comment 4: Two commenters suggested vessels having both a for-hire and commercial reef fish permit should be allowed to power down their VMS

unit when fishing as a for-hire vessel in order to save power.

Response: Current regulations state an owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat issued such a permit, even when under charter, must ensure that such vessel has an operating VMS unit approved by NMFS for use in the Gulf reef fish fishery on board at all times, regardless of whether the vessel is underway or in port, unless exempted by NMFS under the power down exemptions.

Comment 5: Three commenters expressed concern that repairs to VMS units can be time consuming. Two of these commenters requested VMS vendors or fleet owners be allowed to carry "loaner" units to replace VMS units being serviced.

Response: The time needed for a vendor to install a "loaner" VMS unit and for NMFS OLE to verify the unit is working properly will likely take more time than repairing a VMS unit. Current operating agreements with VMS vendors require vendors to state their operating procedures for VMS unit repairs. These repairs should be completed in a timely manner. If an owner or operator of a vessel experiences delays in the repair of their unit, they should report the details of the needed repair and problems encountered immediately to NMFS OLE. NMFS OLE will investigate the incident and work with the vendor and owner or operator of the VMS unit to rectify the problem.

Comment 6: Several commenters expressed that VMS units are an unnecessary burden on commercial reef fish fishermen, creating both economic and social hardships. Additionally, several people commented that VMS units are not practical for smaller vessels, stating that these vessels rarely venture far enough offshore to enter closed areas and have little room to safely house the VMS units.

Response: These comments fall outside the scope of this rule which only addresses VMS reporting requirements, VMS power-down exemptions, and red snapper IFQ 3-hour notification reporting methods. However, regulations implementing the Reef Fish FMP contains several area-specific measures in which fishing is restricted or prohibited to protect habitat, protect spawning aggregations, or reduce fishing pressure. Unlike size, bag, and trip limits, where the catch can be monitored when a vessel returns to port, area restrictions require at-sea enforcement. Because of the sizes of these areas and their distances from shore, the effectiveness of enforcement

through over flights and at-sea interception is limited. VMS allows a more effective means to monitor vessels for intrusions into restricted areas, and could be an important component of a possible future electronic logbook system.

VMS units were required on all commercial reef fish vessels rather than just larger vessels, such as longliners, because most of the area restrictions in the Gulf of Mexico, with the exception of the longline/buoy gear boundary and the stressed area boundary, apply to all gear types. The size of VMS units should not be a factor. The size of the computer and monitor of the system is no larger than other commonly used electronic equipment such as radios and fish-finders.

Comment 7: Several commenters expressed concern about the security of vessel location data.

Response: This comment falls outside the scope of this rule. Vessel location data may be disclosed to fishery managers and enforcement agents, or when required by a court order. Computers and monitors showing vessel location data are maintained in secure rooms, and access to these rooms is restricted to authorized personnel. Individuals may request vessel location data for their own permitted vessel(s). NMFS will respond to any other request for vessel location data consistent with the confidentiality provisions of the Magnuson-Stevens Act and the Freedom of Information Act, particularly Exemption (b)(4) pertaining to trade secrets or other confidential business information.

Changes from the Proposed Rule

In § 622.9(a)(2)(iv)(D), the requirement for an e-mail confirmation of a power-down authorization from NMFS OLE has been removed, and revised language has been added to require only that the person requesting the power-down exemption receive a confirmation, through the VMS terminal, that the power-down report was successfully delivered. NMFS believes that this revision will result in more timely and efficient processing of power-down exemption requests without compromising enforceability.

Classification

The Regional Administrator, Southeast Region, NMFS determined that this rule is necessary for the conservation and management of the commercial Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA for this final rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

This rule will allow vessels "in port" to send a VMS position report once every 4 hours, rather than every hour, and extend the VMS power-down exemption to vessels that are "in port," subject to obtaining a letter of exemption and following OLE notification and confirmation procedures, rather than require removal of the vessel from the water (dry-docking) for the exemption. This rule will also allow continued use of a VMS unit that was previously approved for the Gulf reef fish fishery if that unit is subsequently removed from the approved list. This grandfathering is limited to the life of the grandfathered VMS unit. Once the grandfathered unit is no longer functional, a VMS unit from the approved list is required. Finally, this rule will broaden allowable methods for advance notification of landing in the commercial red snapper fishery.

The objectives of this rule are to address an unanticipated technological problem in the VMS requirements for the Gulf of Mexico commercial reef fish fishery that could result in power drainage of vessels "in port" that lack an external power source, include a grandfather clause in the VMS requirements, and expand the methods for advance notification of landing in the commercial red snapper IFQ fishery.

No significant economic issues were raised by public comments. Therefore, no changes were made in the final rule as a result of such comments.

The VMS components of the rule will apply to all vessels permitted to operate in the Gulf of Mexico commercial reef fish fishery. Some for-hire vessels also participate in the commercial reef fish fishery, and this sector is included in the following description of affected entities. The advance notification of landing component of the rule will apply to only that subset of the commercial reef fish fishery vessels that also operate in the commercial red snapper IFQ fishery.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S.

including fish harvesters, for-hire operations, fish processors, and fish dealers. A business involved in fish harvesting 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 average annual total receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the average annual receipts threshold is \$6.5 million (NAICS code 713990, recreational industries).

Approximately 1,145 vessels are estimated to be permitted to operate in the Gulf of Mexico commercial reef fish fishery. Over the period 2001–2003, an average of 1,050 vessels per year landed an average total of 19.2 million lb (8.7 million kg) gutted weight (GW) of Gulf reef fish per year with an ex-vessel value of \$50.75 million (2006 dollars). Median annual reef fish landings were 5,705 lb (2,588 kg) per vessel. The median vessel took 12 trips per year, spent approximately 31 days at sea annually, and derived approximately 98 percent of its gross revenues from reef fish harvests. Median gross revenues from all species harvested by these vessels, which includes non-reef fish species, were approximately \$19,000 (2006 dollars) for each of the 3 years.

The commercial reef fish fishery is conducted using two primary gears, longlines and hand or vertical lines. Within the longline fleet, over the same period (2001–2003), an average of 166 vessels per year landed an average total of approximately 6.5 million lb (3.0 million kg) GW of reef fish per year with an ex-vessel value of approximately \$17.64 million (2006 dollars). The median vessel took 14 trips per year, spent 113–121 days at sea annually, and derived approximately 97 percent of its gross revenues from reef fish harvests. Median gross revenues per year from all species harvested by these vessels ranged from approximately \$109,000 (2006 dollars) to \$115,000 (2006 dollars).

Within the vertical-line fleet, over the same period (2001–2003), an average of 899 vessels per year landed an average total of approximately 11.6 million lb (5.3 million kg) GW of reef fish per year with an ex-vessel value of approximately \$30.44 million (2006 dollars). The median vessel took 14 trips per year, spent 33–35 days at sea annually, and derived approximately 97 percent of its gross revenues from reef fish harvests. Median gross revenues from all species harvested by these

vessels were approximately \$15,000 (2006 dollars) for each of the 3 years.

Alternative estimates derived from 1994 fishery data of the performance of vessels in this fishery show annual average gross and net revenues per vessel range from approximately \$27,000 (2006 dollars) in gross revenues and \$5,000 (2006 dollars) in net revenues for low-volume handline vessels to approximately \$133,000 (2006 dollars) (\$25,000 net) for high-volume longline vessels. These values are comparable to the more recent estimates of ex-vessel revenues and provide insight to net revenue estimates, which are not available from the more recent data.

Vessels that operate in the commercial red snapper fishery are part of the commercial reef fish fishery and are included in the description of the reef fish vessels provided above. With the implementation of the two-class license system in the red snapper fishery in 1998, 764 vessels were licensed to participate in the commercial red snapper fishery, though only 616 vessels recorded landings through 2004. Summary statistics specific to the red snapper fishery comparable to those of the reef fish fishery as a whole are not available. Further, substantial changes in the composition and characteristics of the commercial red snapper fleet are anticipated to develop under the IFQ program implemented in January 2007. Projections of fleet size under the IFQ program, which are expected to result from consolidation of quota shares, do not exceed 100 vessels. Total fleet-wide net revenues to owners, captain and crew from all species harvested by vessels operating in the red snapper fishery are estimated to range from approximately \$14.5 million (2006 dollars) to approximately \$26 million (2006 dollars) under annual total allowable catch (TAC) levels for harvest from all sectors of 5.0 million lb (2.3 million kg) and 9.12 million lb (4.14 million kg), respectively, of which the commercial fishery is allocated 51 percent of the TAC. Based on these revenue projections, the average net revenue per vessel would range from \$145,000 to \$260,000 (2006 dollars) if the fleet consolidates to 100 vessels, or \$290,000 to \$520,000 (2006 dollars) if the fleet consolidates to 50 vessels.

Approximately 237 vessels permitted to participate as for-hire vessels (charterboats or headboats) also possess commercial reef fish permits. While these vessels are included in the description of commercial vessels provided above, in general, for-hire vessels would be expected to have

different production profiles than vessels that operate exclusively as commercial vessels. Production characteristics likely vary by the extent to which a vessel operated primarily as a commercial vessel or a for-hire vessel. However, information is only available on the for-hire fleet as a whole, and production characteristics for vessels that operate in both commercial fisheries and the for-hire fishery are unknown. On average, charterboats, which charge a fee on a boat-wide basis, generate approximately \$82,000 (2006 dollars) in annual revenues and approximately \$39,000 in annual operating profits. The average headboat, which charges a fee on the individual passenger (head) basis, generates approximately \$431,000 (2006 dollars) in annual revenues and approximately \$361,000 in annual operating profits.

Some fleet activity exists in the commercial red snapper fishery and in the commercial finfish fisheries in general, but the extent of such activity is unknown. The maximum number of reef fish permits reported owned by the same entity is six permits. Additional affiliation may exist between permits (and the revenues associated with those permits) and an entity, but cannot be identified using existing data. Given the average economic performance provided above, NMFS determines that all entities operating in the Gulf of Mexico commercial reef fish fishery are, for purposes of this analysis, to be small business entities.

This rule will reduce current electronic reporting requirements when a vessel is "in port" and simplify conditions for power-down exemptions. The requirement for these vessels to have a type-approved VMS unit would remain, and the operation of these units does not require specialized skill. The email notification requirements and power-down exemption application procedures will remain and do not require special skills. The expansion of landing notification methods will encompass other electronic means. The commercial red snapper IFQ program was designed around and requires an electronic environment in order to set up accounts and manage transactions. Therefore, the new methods are unlikely to require new or special skills by fishery participants. Further, no single method will be required, such that a participant could select the method that best fits his skills and circumstances.

All Gulf of Mexico commercial reef fish permitted vessels will be affected by this rule. Since all of these vessels have been determined for the purpose of this analysis to be small business entities, it is determined that this rule

is expected to affect a substantial number of small entities. Since all entities that will be affected by this rule have been determined to be small business entities, the issue of disproportionality of impacts between large and small entities does not arise.

No direct or indirect adverse economic effects on any affected entities are expected to occur as a result of this rule. Therefore, no reductions in profitability for any entities are expected. This rule will reduce the frequency with which the required VMS units will be required to send an electronic location signal when vessels are "in port" and not actively fishing. This is expected to reduce the power requirements for vessel operation, reducing the likelihood of battery drainage and compromised vessel operation and safety. This rule will also expand qualification conditions for vessels seeking power-down exemptions to the VMS operating requirements to apply to vessels being "in port" and not require removal of the vessel from the water (dry-docking). This is expected to further reduce the power requirements and compliance costs to qualify for exemption, since vessels could remain on the water. Allowing the continued use of a VMS unit that is removed from the list of type-approved units is expected to reduce the need to replace units before the end of their service life, allowing vessels to receive the full economic benefits of their unit. Finally, expanding the methods that vessels in the commercial red snapper fishery can use to satisfy the advance landing notification requirements is expected to reduce the likelihood that unloading and sale of their harvests would be delayed, thereby avoiding the costs of such delay and increasing the profitability of their operation.

The alternative considered to the rule was the status quo, or no action. The status quo would maintain current VMS program requirements, maintain the current unanticipated technological problem associated with potential power drainage, require vessels to replace VMS units that were previously type-approved but are removed from the approved list, and limit vessels in the commercial red snapper fishery to a single method of satisfying the advance landing notification requirement. Thus, the status quo would not achieve the NMFS objectives.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under Control Number 0648-0544 for VMS reporting requirements and Control Number 0648-0551 for Gulf red

snapper IFQ reporting requirements. Public reporting for the VMS-related requirements is estimated to average 24 seconds for transmission of position reports and 10 minutes for submission of requests for power-down exemptions. Public reporting for the IFQ-related advance notification of landing is estimated to average 3 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing burden hours, to NMFS (see **ADDRESSES**) and by email to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 20, 2007.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.9, paragraph (a)(2) is revised to read as follows:

§ 622.9 Vessel monitoring systems (VMSs).

(a) * * *

(2) *Gulf reef fish.* The VMS requirements of this paragraph (a)(2) apply throughout the Gulf of Mexico and adjacent states.

(i) *General VMS requirement.* An owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat issued such a permit even when under charter, must ensure that such vessel has an operating VMS approved by NMFS for use in the Gulf reef fish fishery on board at all times

whether or not the vessel is underway, unless exempted by NMFS under the power-down exemptions specified in paragraph (a)(2)(iv) of this section and in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This NOAA Enforcement Vessel Monitoring System Requirements document is available from NMFS, Office for Law Enforcement (OLE), Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800-758-4833. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS OLE maintains a current list of approved VMS units and communication providers which is available from the VMS Support Center, NMFS OLE, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910 or by calling toll free 888-219-9228. If a VMS unit approved for the Gulf reef fish fishery is removed from the approved list by NMFS OLE, a vessel owner who purchased and installed such a VMS unit prior to its removal from the approved list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by NMFS OLE. At the end of a VMS unit's service life, it must be replaced with a currently approved unit for the fishery.

(ii) *Hourly reporting requirement.* An owner or operator of a vessel subject to the requirements of paragraph (a)(2) of this section must ensure that the required VMS unit transmits a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day unless exempted under paragraphs (a)(2)(iii) or (iv) of this section.

(iii) *In-port exemption.* While in port, an owner or operator of a vessel with a type-approved VMS unit configured with the 4-hour reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section. Once the vessel is no longer in port, the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section applies. For the purposes of this paragraph (a)(2) of this section, "in port" means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(iv) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a VMS operating at all times as specified in

paragraph (a)(2)(i) of this section can be exempted from that requirement and may power down the required VMS unit if--

(A) The vessel will be continuously out of the water or in port, as defined in paragraph (a)(2)(iii) of this section, for more than 72 consecutive hours;

(B) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS OLE VMS personnel as specified in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This is a one-time requirement. The letter of exemption must be maintained on board the vessel and remains valid for all subsequent power-down requests conducted consistent with the provisions of paragraphs (a)(2)(iv)(C) and (D) of this section.

(C) Prior to each power-down, the owner or operator of the vessel files a report to NMFS OLE VMS program personnel, using the VMS unit's e-mail, that includes the name of the person filing the report, vessel name, vessel U.S. Coast Guard documentation number or state registration number, commercial vessel reef fish permit number, vessel port location during VMS power down, estimated duration of the power down exemption, and reason for power down; and

(D) The owner or operator enters the power-down code through the use of the VMS Declaration form on the terminal and, prior to powering down the VMS, receives a confirmation, through the VMS terminal, that the form was successfully delivered.

(v) *Declaration of fishing trip and gear.* Prior to departure for each trip, a vessel owner or operator must report to NMFS any fishery the vessel will participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. This information may be reported to NMFS using the toll-free number, 888-219-9228, or via an attached VMS terminal.

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■ 3. In § 622.16, paragraph (c)(3)(i) is revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

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(c) * * *

(3) * * *

(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more

than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Authorized methods for contacting NMFS and submitting the report include calling NMFS Office for Law Enforcement at 1-866-425-7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at ifq.sero.nmfs.noaa.gov. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070809451-7644-02]

RIN 0648-AV79

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 42

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

ACTION: Final rule.

SUMMARY: This rule corrects and clarifies a number of inadvertent errors, omissions, and ambiguities in the regulations implemented by recent actions taken under the Northeast (NE) Multispecies Fisheries Management Plan (FMP), including Amendment 5, Framework Adjustment (FW) 38, Amendment 13, FW 40-A, FW 41, and FW 42. The measures corrected or clarified by this rule ensure that the current regulations maintain consistency with, and accurately reflect, the intent of measures adopted by the New England Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce (Secretary).