

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

MEXICAN GULF FISHING COMPANY, <i>et al.</i>	:	Civil Action No. 2:20-cv-2312
	:	
	:	Section “E” (1)
	:	
<i>Plaintiffs,</i>	:	Judge Suzie Morgan
	:	
v.	:	Magistrate Judge Janis Van Meerveld
	:	
U.S. DEPARTMENT OF COMMERCE, <i>et al.</i>	:	
	:	Plaintiffs’ Motion for Summary
<i>Defendants.</i>	:	Judgment and Defendants’ Cross- Motion for Summary Judgment

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’
COUNTER STATEMENT OF UNDISPUTED FACTS**

Pursuant to Local Rule 56.2, Plaintiffs submit this response to Federal Defendants’ “Counter-Statement of Uncontested Facts.” *See* ECF No. 79-2. The facts of this case are by and large found in the Administrative Record filed by the Federal Defendants on July 26, 2020. *See* ECF Nos. 62-70. Other facts are derived, *inter alia*, from documents published by Federal Defendants in the Federal Register and publicly accessible websites and databases maintained by the Federal Defendants.

1. Statement not disputed.
2. Statement not disputed.
3. Statement not disputed.
4. Statement partial disputed as incomplete. Plaintiffs agree that 16 U.S.C. § 1801(a)(8)

states: “The collection of reliable data is essential to the effective conservation, management, and scientific understanding of fishery resources of the United States.” However, not all data is “essential.” Section 1801(a)(8) refers to scientific, ecological, and other fish-related data. It does not refer to, for example, the hourly GPS position of charter vessels.

5. Statement not disputed.
6. Statement not disputed.

7. Statement not disputed.

8. Statement not disputed but legal conclusion regarding the proper interpretation of 16 U.S.C. § 1853(b)(4) is address in Plaintiffs' accompanying brief.

9. Statement not disputed.

10. Statement not disputed.

11. Statement not disputed.

12. Statement not disputed.

13. Statement partially disputed as unclear. Neither the statement nor the record defines "effort."

14. Statement not disputed.

15. Statement partially disputed as unclear. Neither the statement nor the record defines "effort."

16. Statement not disputed.

17. Statement not disputed.

18. Statement not disputed.

19. Statement not disputed.

20. Statement partially disputed as unclear. Neither the statement nor the record defines "effort."

21. Statement not disputed.

22. Statement not disputed.

23. Statement disputed. This statement is an unsupported and conclusory assertion of opinion regarding the necessity of the regulatory requirements and is not a statement of fact. The need for the information allegedly provided by the three requirements are not quantified or separated treated.

24. Statement disputed. This statement is an unsupported and conclusory assertion of opinion regarding the necessity of the regulatory requirements and is not a statement of fact. The need for each of the three regulatory requirements is not quantified or separated treated.

25. Statement disputed. The Final Rule will increase compliance costs for the regulated community. *See* 85 Fed. Reg. 44,013-15. Moreover, NMFS recognizes that “additional staffing would still be needed to evaluate and track the incoming information.” AR 11232.

26. Statement not disputed. However, the pertinent information is captured by the electronic fishing reports and not by the VMS.

27. Statement disputed. There is no explanation why the hail-out requirement does not already provide information regarding when a vessel leaves or returns.

28. Statement not disputed.

29. Statement not disputed.

30. Statement not disputed.

31. Statement not disputed.

32. Statement not disputed.

33. Statement not disputed.

34. Statement not disputed.

35. Statement not disputed.

36. Statement disputed. Quoted language from the final rule is an unsupported and conclusory assertion of opinion and is not a statement of fact. Analysis of NMFS’s statistics database indicates charter fishing makeup a small portion of recreational fishing (approximately 3%) and a negligible portion of overall fishing (approximately 0.2 %) in the Gulf of Mexico. *See* ECF Nos. 73-1 at 8-10.

37. Statement not disputed.

38. Statement not disputed.

39. Statement not disputed.

40. Statement not disputed.

41. Statement not disputed.

42. Statement partially disputed as unclear. Plaintiffs agree that a reimbursement program exists, but the website cited does not provide sufficient information to understand the extent to which reimbursements are available.

43. Statement not disputed.

44. Statement disputed. NMFS could not have determined that GPS tracking of charter vessels was “necessary” for the management of the fishery because Federal Defendants admit that an alternative exists. “The alternative to validate such a trip [via GPS tracking] would be to require plaintiffs to submit ‘no fishing’ reports and to increase staffing[.]” ECF No. 79-1 at 46.

45. Statement disputed. The statement is an assertion of an unsupported and conclusory opinion regarding criticality and not a statement of fact. Moreover, the electronic fishing reports already provide information regarding total landings.

46. Statement disputed. A vessel’s reported position, particularly when it is docked, may be verified through numerous methods other than affixing a GPS device. These methods including visual inspection, interviews, and other techniques routinely used by law enforcement personnel. Indisputably, there is also no reason for NMFS to know a vessel’s whereabouts when it is not being used for fishing.

47. Statement not disputed.

48. Statement not disputed.

49. Statement partial disputed as incomplete. Plaintiffs agree Federal Defendants approved two cellular VMS devices on or around September 13, 2021. However, the approved cellular

VMS devices are unable to transmit GPS data “when not within range of a cellular signal,” which includes “the majority of fishing trips in Federal waters.” 85 Fed. Reg. 44,007.

50. Statement partially disputed as incomplete. There is no explanation why fish reports signed by both the charter boats captain and the customers are less accurate.

51. Statement not disputed.

52. Statement partially disputed as unclear. Neither the statement nor the record defines “effort.”

53. Statement not disputed.

54. Statement partial disputed. NMFS’s expectation is an unsupported and conclusory assertion of opinion.

55. Statement partially disputed. Plaintiffs agree that the preamble of the Final Rule asserts that collection of certain business information “will help generate estimates of lost revenue when a disaster occurs (e.g., hurricane, oil spill).” 85 Fed. Reg. 44,011. But the preamble provided no supporting evidence or analysis. As such, the quoted language is an assertion and not statement of fact.

56. Statement disputed and is incomplete. This statement reflects the opinion of the Technical Data Committee and is not a statement of fact. Despite expressing the opinion reflected in the opinion, the Technical Data Committee recommended against electronic reporting of charter fees.

57. Statement partially disputed as incomplete. The Technical Data Committee also recommended against collection of data regarding number of crew members because it was ambiguous. AR 07839.

58. Statement partially disputed as incomplete. The terms change from “socio-economic data” in the NPRM to “economic values” in the Final Rule. *Compare* 83 Fed. Reg. at 54,071 *with* 85 Fed. Reg. at 44,011.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2021, an electronic copy of the foregoing was filed electronically via the Court's ECF system, which effects service upon counsel of record.

/s/John J. Vecchione