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Part III

## Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622
Fisheries of the Caribbean, Gulf, and South Atlantic; Aquaculture; Proposed Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 600 and 622**

**[Docket No. 080225276–4124–01]**

**RIN 0648–AS65**

## Fisheries of the Caribbean, Gulf, and South Atlantic; Aquaculture

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement the Fishery Management Plan for Regulating Offshore Aquaculture in the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). The FMP entered into effect by operation of law on September 3, 2009. If implemented, this rule would establish a comprehensive regulatory program for managing the development of an environmentally sound and economically sustainable aquaculture industry in Federal waters of the Gulf of Mexico (Gulf), *i.e.,* the U.S. exclusive economic zone (EEZ). The purpose of this rule is to increase the yield of Federal fisheries in the Gulf by supplementing the harvest of wild caught species with cultured product.

**DATES:** Written comments on this proposed rule must be received on or before October 27, 2014.

**ADDRESSES:** You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2008–0233,'' by any of the following methods:

- *Electronic Submissions:* Submit electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2008-0233,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jess Beck-Stimpert, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the FMP, which includes a final programmatic environmental impact statement (FPEIS), an initial regulatory flexibility analysis (IRFA), and a regulatory impact review (RIR) may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; and the Office of Management and Budget (OMB), by email at *OIRASubmission@omb.eop.gov,* or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Jess Beck-Stimpert, 727–824–5301.

**SUPPLEMENTARY INFORMATION:** Aquaculture in the Gulf will be managed under the FMP. The FMP was prepared by the Council and is being implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).\n

### Background

Worldwide demand for protein is increasing and fisheries production from wild stocks will not likely be adequate to supply the world demand for fisheries products without supplementation through aquaculture. In the United States, approximately 84 percent of all seafood consumed is currently imported from other countries, creating an annual trade deficit of over 9 billion dollars. It is estimated by 2025, 2 million more metric tons of seafood will be needed over and above what is consumed today. Aquaculture is one method to meet current and future demands for seafood.

It has been NOAA's long-standing interpretation that the Magnuson-Stevens Act provides authority to regulate aquaculture, and thus, that fishery management councils have the authority to prepare a fishery management plan covering all aspects of aquaculture in the EEZ. The Magnuson-Stevens Act defines a ''fishery,'' a key term establishing the reach of Magnuson-Stevens Act regulatory authority, as ''one or more stocks of fish . . . and any fishing for such stocks.'' 16 U.S.C. 1802(13). ''Stock of fish'' means ''a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.'' 16 U.S.C. 1802(42). ''Fishing'' is defined as ''the catching, taking or harvesting of fish;'' ''any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;'' and ''any operations at sea in support of, or in preparation for, any activity described in'' the definition. 16 U.S.C. 1802(16).

Because the Magnuson-Stevens Act contains no definition of ''harvesting,'' NMFS looks to the ordinary meaning of that word. ''Harvest'' is ''the act or process of gathering in a crop.'' Merriam-Webster Dictionary (2011). ''Crop'' is defined as ''the produce of cultivated plants, esp. cereals, vegetables, and fruit;'' ''the amount of such produce in any particular season;'' or ''the yield of some other farm produce: the lamb crop.'' World English Dictionary (2011). Together, these definitions provide a sound basis for concluding that ''fishing'' includes the catch, take, or harvest of cultured stocks, and thus, that aquaculture activities are within the scope of the term ''fishery'' as used in the Magnuson-Stevens Act. Further, the fact that the definition of ''fishing'' includes not just harvesting itself, but also activities expected to result in harvesting fish, and operations at sea in support of such activities, provides a sound basis for concluding that ''fishing'' as used in the Magnuson-Stevens Act encompasses, in addition to harvesting the fish from aquaculture operations, other activities at sea that are integral to aquaculture operations, such as stocking and growing fish in net pens and cages at sea.

Prior to the FMP, there was no process for accommodating commercial-scale offshore aquaculture in the Gulf of Mexico EEZ, other than live rock aquaculture, which is authorized under Amendments 2 and 3 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf. NMFS may issue an exempted fishing permit (EFP) to conduct offshore aquaculture in Federal waters; however, an EFP is of limited duration and is not intended for commercial production of fish and shellfish. The Council developed the FMP under the authority of the Magnuson-Stevens Act to authorize the development of commercial aquaculture operations in Federal waters of the Gulf. The FMP was initiated to provide a comprehensive framework for

authorizing and regulating offshore aquaculture activities. The FMP also establishes a programmatic approach for evaluating the potential impacts of proposed aquaculture operations in the Gulf.

**Gulf Aquaculture Permits**

If implemented, the rule would require persons to apply for and obtain a Gulf aquaculture permit. This permit would authorize the operation of an offshore aquaculture facility in the Gulf EEZ and allow the sale of allowable aquaculture species cultured at an offshore aquaculture facility in the Gulf EEZ. Persons issued a Gulf aquaculture permit also would be authorized to harvest, or designate hatchery personnel or other entities to harvest, and retain live wild broodstock of an allowable aquaculture species, and to possess or transport cultured species in, to, or from an offshore aquaculture facility in the Gulf EEZ. Permit eligibility would be limited to U.S. citizens and permanent resident aliens. Gulf aquaculture permits would be transferable as long as the geographic location of the aquaculture facility site was unchanged and all applicable permit requirements were completed and updated at the time of transfer. The Gulf aquaculture permit would be effective for 10 years, and could be renewed in 5 year increments thereafter. The permit would initially cost $10,000, and a $1,000 fee would be assessed annually. The renewal period for a Gulf Aquaculture permit is 5 years; a renewal application would cost $5,000. These fees are based on the NOAA Finance Handbook. A Gulf aquaculture permit must be prominently displayed and available at the aquaculture facility.

A dealer who receives species cultured at an offshore aquaculture facility in the EEZ would be required to have a Gulf aquaculture dealer permit. As defined in 50 CFR 600.10, dealer means the person who first receives fish by way of purchase, barter, or trade. The cost of a Gulf aquaculture dealer permit would be $50.00 if this is the only permit that is applied for, or $12.50 if this permit is applied for in conjunction with another type of permit. Dealer permits would be issued annually and must be prominently displayed and available on the dealer's premises. A Gulf aquaculture dealer permit is not transferable.

**Electronic System Requirements, Account Setup, and Information**

The administrative functions associated with this aquaculture program, such as account setup, landing transactions, and reporting, are designed to be accomplished online; therefore, all participants would need access to a computer and the Internet to participate. NMFS would mail permittees information and instructions for using the online system and setting up an online aquaculture account, upon issuance of a Gulf aquaculture permit or a Gulf aquaculture dealer permit. Assistance with online functions would be available from the Permits Office, Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

Additionally, as a backup to the online system during catastrophic conditions, the NMFS Southeast Regional Administrator (RA) would provide each aquaculture permittee with paper forms for complying with the basic required reporting requirements of the aquaculture program. The RA would determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are affected by the catastrophic conditions. The RA would provide timely notice to affected participants and would authorize the affected participants' use of paper forms for the duration of the catastrophic conditions. Program functions would be limited under the paper-based system. Assistance in complying with the requirements of the paper-based system would be available via the Permits Office, Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

If some online functions are not available at the time of initial implementation of this aquaculture program, participants may comply by submitting the required information via email using the appropriate forms that are available on the Southeast Regional Office (SERO) Web site at *http://sero.nmfs.noaa.gov.* Once online functions are available, participants would have to comply by using the online system unless alternative methods are specified.

**Application Requirements**

Applications for a Gulf aquaculture permit will be available from the RA. Applicants would need to complete and submit the application form and all required supporting documents to the RA at least 180 days prior to the date the applicant desires the permit to be effective. Required information on the application form would include: Business, applicant, and hatchery contact information, documentation of U.S. citizenship or resident alien status, a baseline environmental assessment of the proposed site, a description of the geographic location and dimensions of the aquaculture facility and site, a description of the equipment, allowable aquaculture systems, and methods to be used for grow-out, a list of species to be cultured and estimated production levels, a copy of an emergency disaster plan (an emergency plan in the event of a disaster), and copies of currently valid Federal permits applicable to the proposed aquaculture operation.

The applicant also would be required to obtain an assurance bond sufficient to cover costs associated with removing all components of the aquaculture facility, including cultured animals. The Council determined that requiring an assurance bond is necessary and appropriate for the conservation and management of the fishery because it will reduce the potential for navigational hazards and long-term impacts on the environment that could result if structures and animals remain in the water after an operation terminates its business. See 16 U.S.C. 1853(b)(14).

The applicant would also be required to provide a document certifying that all broodstock or progeny of such broodstock were originally harvested from U.S. waters of the Gulf and were from the same population or sub-population where the facility is located, and that no genetically modified or transgenic animals would be used or possessed at the aquaculture facility. The Council is requiring this certification in order to minimize risks to wild stocks in the event that escapement of cultured animals occurs. This proposed prohibition on genetically modified and transgenic animals is consistent with the 2011 NOAA Marine Aquaculture Policy which supports the use of ''only native or naturalized species in Federal waters unless best available science demonstrates use of non-native or other species in Federal waters would not cause undue harm to wild species, habitats, or ecosystems in the event of an escape.'' Although the terms ''genetically modified'' and ''transgenic'' are used in this rulemaking, NOAA notes that many agencies in the U.S. Government, including the Food and Drug Administration (FDA), use the more scientifically precise term ''genetically engineered'' to refer to these animals. The FDA defines genetically engineered animals as those ''modified by rDNA techniques, including the entire lineage of animals that contain the modification. The term ''genetically engineered animal'' can refer to both animals with heritable rDNA constructs and animals with non-heritable rDNA constructs (*e.g.,* those modifications intended to be used as gene therapy).'' Genetic modification,

on the other hand, includes a number of different kinds of changes that can be introduced, for example, by altering ploidy, chemical or radiation mutagenesis, or any selective breeding or assisted reproductive technologies.

The applicant would also be required to provide a copy of the contractual agreement with a certified aquatic animal health expert. An aquatic animal health expert is defined as a licensed doctor of veterinary medicine or a person who is certified by the American Fisheries Society, Fish Health Section, as a ''Fish Pathologist'' or ''Fish Health Inspector.''

**Public Comment Process Regarding Gulf Aquaculture Permit Applications**

Once the RA has determined an application is complete, notification of receipt of the application would be published in the **Federal Register**. Interested persons would be given up to 45 days to comment on the application and comments would be requested during public testimony at a Council meeting. The RA would notify the applicant in advance of any Council meeting and offer the applicant an opportunity to appear in support of their application. After public comment ends, the RA would notify the applicant and the Council in writing of the decision to issue or deny the Gulf aquaculture permit. Reasons the RA may deny a permit might include: Failing to disclose material information; falsifying statements of material facts; issuing the permit would pose significant risk to marine resources, public health, or safety; issuing the permit would result in conflicts with established or potential oil and gas infrastructure, access to outer continental shelf (OCS) energy or marine mineral resources, safe transit to and from infrastructure and future geological and geophysical surveys; or the activity proposes activities inconsistent with the objectives of the FMP, Magnuson-Stevens Act, or other applicable laws. The RA also may consider revisions to the application made by the applicant in response to public comment before approving or denying the Gulf aquaculture permit.

**Consultation With Other Federal Agencies**

During the permit application process the RA will consult with the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement, and other Federal agencies as appropriate, to address and resolve any conflicts in use of the OCS, with special emphasis on OCS energy programs for resolving and documenting the proposed solution of existing conflicts.

**Operational Requirements, Monitoring Requirements, and Restrictions**

Permittees would have to abide by operational requirements, monitoring requirements, and restrictions, as specified in the regulations applicable to aquaculture (50 CFR part 622 and 40 CFR part 451). To ensure that Gulf Aquaculture permits are used, permittees would be required to place 25 percent of allowable aquaculture systems approved for use at a specific aquaculture facility in the water at the permitted site within 2 years of permit issuance and cultured fish would have to be placed in allowable aquaculture systems at the site within 3 years of permit issuance. Failure to comply with any of the operational requirements, monitoring requirements or restrictions would be grounds for revocation of the permit.

Fingerlings or other juvenile animals obtained for grow-out at an aquaculture facility in the EEZ could only be obtained from a hatchery located in the U.S. All broodstock used for spawning at a hatchery supplying fingerlings or other juvenile animals to an aquaculture facility in the Gulf EEZ would have to be certified by the hatchery owner as having been marked or tagged (*e.g.,* dart or internal wire tag). Prior to stocking fish in allowable aquaculture systems, the applicant would have to provide NMFS with a copy of an animal health certificate signed by an aquatic animal health expert certifying that the fish have been inspected and are visibly healthy and the source population tests negative for World Organization of Animal Health (OIE) pathogens specific to the cultured species or additional pathogens that are subsequently identified as reportable pathogens in the National Aquatic Animal Health Plan (NAAHP). This process must be repeated for each new stocking event. This requirement is intended to prevent the spread of pathogens and disease to wild fish and cultured fish at an aquaculture facility.

The use of biologics, pesticides, and drugs would have to comply with all applicable United States Department of Agriculture (USDA), Environmental Protection Agency (EPA), and FDA requirements. Use of aquaculture feeds would have to be conducted in compliance with EPA feed monitoring and management guidelines (40 CFR 451.21). Applicants also would have to comply with all monitoring and reporting requirements specified in their EPA National Pollutant Discharge Elimination System (NPDES) permit and their Army Corp of Engineer's (ACOE) Section 10 permit. Additionally, permittees would have to inspect allowable aquaculture systems for entanglements or interactions with marine mammals, protected species, and migratory birds. The frequency of inspections will be specified by NMFS as a condition of the permit. Permittees would also have to monitor and report environmental assessment data to NMFS in accordance with procedures specified by NMFS in guidance available on the SERO Web site.

At least 30 days before each time a permittee or the permittee's designee intends to harvest broodstock from the Gulf, including state waters, they would be required to submit a request for broodstock harvest to the RA. The request would have to include information on the number, size, and species to be harvested, the methods, gear, and vessels used for capturing, holding, and transporting broodstock, the date and specific location of intended harvest, and the location where the broodstock would be delivered. Only gear and methods specified in 50 CFR 600.725 for the respective fishery could be used for harvest—except rod-and-reel could be used to harvest red drum. The RA could deny a request to harvest broodstock if allowable methods or gear were not proposed for use, the number of broodstock was more than necessary for spawning and rearing activities, or on other grounds inconsistent with FMP objectives or other Federal laws. The RA would provide the permittee a written determination if a broodstock harvest request is denied. If a broodstock harvest request is approved, the permittee would be notified by the RA and required to submit a report to the RA within 15 days of the date of harvest summarizing the number, size, and species harvested, and the location where the broodstock were captured.

**Remedial Actions by NMFS To Address Pathogen Episodes**

NMFS, in cooperation with the USDA's Animal and Plant Health Inspection Service (APHIS), may order movement restrictions and/or removal of all cultured animals upon confirmation by USDA's APHIS reference laboratory that a reportable or emerging pathogen exists and poses a threat to the health of wild or cultured fish.

**Remedial Actions by NMFS To Address Genetic Issues**

NMFS may sample cultured animals to determine genetic lineage. If cultured animals are determined to be genetically

modified or transgenic, then NMFS would order the removal of all cultured animals for which such determination applies. These remedial actions by NMFS are intended to prevent or mitigate adverse impacts associated with aquaculture in the Gulf EEZ. In conducting the genetic testing to determine that all broodstock or progeny of such broodstock were originally harvested from U.S. waters of the Gulf, were from the same population or sub-population where the facility is located, and that juveniles stocked in cages are the progeny of wild broodstock, or other genetic testing necessary to carry out the requirements of the FMP, NMFS may enter into cooperative agreements with States, may delegate the testing authority to any State, or may contract with any non-Federal Government entities. As a condition of the permit, NMFS may also require the permittee to contract a non-Federal Government third party approved by the RA if the RA agrees to accept the third party testing results. The non-Federal Government third party may not be the same entity as the permittee.

**Biological Reference Points, Status Determination Criteria, Annual Catch Limits and Accountability Measures**

The primary goal of Federal fishery management, as described in National Standard 1 of the Magnuson-Stevens Act, is to conserve and manage U.S. fisheries to ''* * * prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' Optimum Yield (OY) is defined as the amount of fish that provide the greatest net benefits to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems. While economic and social factors are to be considered in defining the OY of each fishery, OY may not exceed the maximum sustainable yield (MSY), or the maximum amount of fish that can be removed without impairing the fishery's ability to replace removals through natural growth or replenishment. OY must prevent overfishing and, in the case of an overfished fishery, must provide for rebuilding stock biomass to a level consistent with that which would produce MSY. The Magnuson-Stevens Act also requires that annual catch limits (ACLs) and accountability measures (AMs) be established at a level that prevents overfishing and achieves OY.

The MSY and OY of each Council-managed fishery are currently limited by the fishery's biological potential. However, establishing an aquaculture fishery would increase total yield above and beyond that which can be produced solely from wild stocks. Increasing the seafood production potential of these fisheries will increase their contributions to national, regional, and local economies, and their capacity to meet the Nation's nutritional needs.

The National Standard 1 Guidelines set out standard approaches for specifying reference points and management measures, but also recognize that there may be circumstances, such as harvests from aquaculture operations, that do not fit these standard approaches. 50 CFR 600.310(h)(3). In these circumstances, the Council may propose alternative approaches for satisfying the National Standard 1 requirements of the Magnuson-Stevens Act.

Aquaculture operations would harvest all cultured fish and invertebrates produced, excluding losses due to natural mortality. Due to cultured versus wild stocks being harvested, it would not be possible to overharvest the cultured species. Thus, as contemplated by the National Standard 1 Guidelines, the Council selected an alternative approach to specifying reference points and management measures for the aquaculture fishery.

If implemented, this rule would establish an ACL for offshore aquaculture in the Gulf EEZ of 64 million lb (29 million kg), round weight, which is equal to OY and MSY specified by the Council. This maximum level of harvest represents the average landings of all marine species in the Gulf, except menhaden and shrimp, between 2000–2006. The Council determined that setting the MSY and OY at this level will allow for the future assessment of impacts of aquaculture as the industry grows to determine if the specified MSY and OY levels are adequately protecting wild stocks and habitat.

This rule would also limit a person, corporation, or other entity from producing more than 20 percent of the total annual ACL (12.8 million lb (5.8 million kg), round weight) for offshore aquaculture in the Gulf EEZ. The restrictions on production are intended to constrain landings to less than or equal to the ACL. If, however, the ACL is exceeded in a given year, NMFS would issue a control date, after which entry into the aquaculture fishery may be limited or prohibited. The control date would serve as an AM while the Council initiates a review of the OY proxy, ACL, and the Gulf aquaculture program.

The Council further specified overfished and overfishing criteria from existing FMPs for wild stocks, consistent with the provisions at 50 CFR 600.310(d)(7). It is conceivable that some level of aquaculture in the Gulf could result in adverse impacts to wild stocks, which could result in overfishing of wild stocks and depletion of wild stocks. Therefore, the most logical way to assess impacts of overharvest in aquaculture operations is not on the cultured fish actually harvested, but the wild stocks remaining in the surrounding environment. Overfishing and overfished thresholds for wild stocks have been approved by the Council for evaluating the status of managed stocks and stock complexes. These thresholds will be used by NMFS to determine if offshore aquaculture in the Gulf EEZ is adversely affecting wild populations, causing them to become overfished or undergo overfishing. This approach is consistent with 50 CFR 600.310(d)(7), which strongly encourages councils to designate a primary FMP for stocks identified in more than one fishery. In this case, the primary FMPs for overfished and overfishing determination purposes are the FMPs established to manage wild stocks. Consistency with the Magnuson-Stevens Act National Standards Section 6.12 of the FMP discusses the preferred alternatives in the FMP as they relate to the Magnuson-Stevens Act and the ten National Standards.

**Measures To Enhance Enforceability**

Permittees would be required to provide NMFS personnel and authorized officers access to their aquaculture facility and records in order to conduct inspections and determine compliance with applicable regulations relating to Gulf aquaculture in the EEZ. In conducting the inspections, NMFS may enter into cooperative agreements with States, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. As a condition of the permit, NMFS may also require the permittee to contract a non-Federal Government third party approved by the RA if the RA agrees to accept the third party inspection results. The non-Federal Government third party may not be the same entity as the permittee.

Permittees participating in the aquaculture program would be allowed to offload cultured fish at aquaculture dealers only between 6 a.m. and 6 p.m., local time. All fish landed would have to be maintained whole with heads and fins intact. Spiny lobster would have to be maintained whole with tail intact until landed ashore. Any cultured fish

harvested from an aquaculture facility and being transported would have to be accompanied by the applicable bill of lading through landing ashore and the first point of sale.

Any person transporting cultured fingerlings or other juvenile animals from a hatchery to an aquaculture facility, other than a hatchery that is integrated with an aquaculture facility, would be required to notify NMFS at least 72 hours prior to transport. NMFS also would have to be notified 72 hours prior to harvest of cultured fish at an aquaculture facility and 72 hours prior to the intended time of landing. The landing notification would include the time, date, and port of landing. This notification could be provided to NMFS by telephone or by accessing the Web-based form available on the Web site.

Any vessel transporting cultured animals to or from an aquaculture facility would be required to stow fishing gear below deck or in an area where it is not normally used or readily available for fishing. Possession of any wild fish, with the exception of broodstock associated with a hatchery in the Gulf EEZ, would be prohibited within the boundaries of an aquaculture facility's restricted access zone. Except when harvesting broodstock, the possession of wild fish aboard an aquaculture operation's transport and service vessels, vehicles, or aircraft would be prohibited. Stowage and possession requirements are intended to enhance enforcement by preventing the simultaneous possession of cultured and wild fish.

**Species Allowed for Aquaculture**

The FMP allows owners and operators of aquaculture facilities in the Gulf EEZ to culture all species native to the Gulf that are managed by the Council and included in a fishery management unit (FMU) under a current FMP, except those species in the shrimp and coral FMU's. Under the FMP, no genetically modified or transgenic animals could be cultured in the Gulf. The Council and NMFS are proposing this requirement to minimize the risk to wild stocks in the event that escapement of cultured animals occurs. The FMP states that the Council will request NMFS develop concurrent rulemaking to allow aquaculture of highly migratory species.

**Allowable Aquaculture Systems for Grow-Out**

Aquaculture systems (*e.g.,* cages or net pens) used for growing fish would be evaluated by the RA on a case-by-case basis. The structural integrity and ability of proposed aquaculture systems to withstand physical stresses associated with major storm events (*e.g.,* hurricanes) would be reviewed by the RA, using engineering analyses, computer and physical oceanographic models, or other required documentation. The RA also would evaluate the potential risks of proposed aquaculture systems to essential fish habitat, endangered or threatened species, marine mammals, wild fish stocks, public health, or safety. The RA may approve or deny a proposed aquaculture system after determination of significant risks. If the RA denies use of a proposed aquaculture system, then the applicant would be provided a written determination from the RA of such findings. Any allowable aquaculture system approved for use would have to be marked with a minimum of one properly functioning locating device (*e.g.,* GPS device) in the event that the allowable aquaculture system is damaged or lost. The U.S. Coast Guard also requires structures be marked with lights and signals to ensure compliance with private aids to navigation (33 CFR 66.01).

**Siting Requirements and Conditions**

Aquaculture facilities would be prohibited in Gulf EEZ marine protected areas, marine reserves, habitat areas of particular concern, Special Management Zones, permitted artificial reef areas, and coral areas specified in 50 CFR part 622. No aquaculture facility could be sited within 1.6 nm (3 km) of another aquaculture facility to minimize transmission of pathogens between facilities. NMFS notes there is no widely accepted standard for how far apart facilities should be sited and specifically seeks comment on this distance. Permit sites would have to be twice as large as the combined area of the allowable aquaculture systems (*e.g.,* cages and net pens) to allow for best management practices such as the rotation of systems for fallowing. NMFS also would evaluate additional siting criteria on a case-by-case basis. Criteria considered would include results of a baseline environmental assessment; site depth; frequency of harmful algal blooms or hypoxia; and location relative to marine mammal migratory pathways, important natural habitats, and fishing grounds. NMFS may deny use of a proposed aquaculture site if it poses significant risks to essential fish habitat, endangered or threatened species, would result in user conflicts with commercial or recreational fishermen or other marine resource users, the depth of the site is not sufficient for the allowable aquaculture system, substrate and currents at the site would inhibit the dispersal of wastes and effluents, the site would pose risk to the cultured species due to low dissolved oxygen or harmful algal blooms, or other grounds inconsistent with FMP objectives or applicable Federal laws.

**Aquaculture Facility Restricted Access Zones**

A restricted access zone would be established for each facility. Restricting access around aquaculture facilities would afford additional protection to an operation's equipment and allowable aquaculture systems, and increase safety by reducing potential encounters between fishing vessels and aquaculture facility equipment. The boundaries of the restricted access zone would correspond to the coordinates listed on the approved ACOE Section 10 permit for the site. Restricted access zone boundaries would have to be clearly marked with a floating device, such as a buoy. No recreational or commercial fishing, other than aquaculture, may occur within the restricted access zone. Only fishing vessels that have a copy of the aquaculture facility's permit with an original signature of the permittee would be allowed to operate in or transit through the restricted access zone.

**Recordkeeping and Reporting Requirements**

Gulf aquaculture permittees would be required to report to NMFS major escapement events; findings of reportable pathogens; and entanglements or interactions with marine mammals, protected species, or migratory birds. All of these events would have to be reported within 24 hours of discovery of the event. Major escapement is defined as the escape, within a 24-hour period, of 10 percent of the fish from a single allowable aquaculture system (*e.g.,* one cage or one net pen) or 5 percent or more of the fish from all allowable aquaculture systems combined, or the escape, within any 30-day period, of 10 percent or more of the fish from all allowable aquaculture systems combined. Reportable pathogens include any OIE pathogen or pathogens that are identified as reportable pathogens in the NAAHP. If no major escapement, finding of reportable pathogen, or entanglement or interaction occurs during a given fishing year, then a permittee would be required to submit by January 31 of the following year an annual report to the RA indicating no event occurred. If major escapement occurs, the permittee would be required to provide to NMFS contact and permit information, the duration and location of escapement, the cause(s) of

escapement, the quantity, size, and percent of fish that escaped, by species, actions being taken to address the escapement and prevent future escapements. If an entanglement or interaction occurs, the permittee would be required to submit to NMFS information on the date, time, and location of the event, the species involved, the number of mortalities or acute injuries, causes of entanglement or interaction, and steps being taken to address the entanglement or interaction. If reportable pathogens are discovered, the permittee would be required to provide NMFS information on the reportable pathogen present, the percent of cultured animals infected, the findings of the aquatic animal health expert, plans for confirmatory testing, testing results (when available), and actions being taken to address the pathogen episode.

In addition to the above-mentioned reporting requirements, permittees also would be required to provide to NMFS on a continuing basis valid copies of all state and Federal permits required for conducting offshore aquaculture and copies of state and Federal permits for each hatchery from which fingerlings or other juvenile animals are obtained. In addition, permittees would be required to report to NMFS if there is a change to the hatchery (or hatcheries) used for obtaining fingerlings or other juvenile animals. The NMFS notes that permittees are also required to report use of new animal drugs in accordance with 40 CFR 451.3.

For recordkeeping requirements, aquaculture facilities must maintain: Monitoring reports related to aquaculture activities required by state and Federal permits, a daily record of fish introduced or removed from each allowable aquaculture system, and original or copies of purchase invoices for feed, and sale records. These records would have to be provided to NMFS or authorized officers upon request, and be maintained for a period of 3 years.

Aquaculture dealers would be required to complete a landing transaction report when purchasing cultured fish from a Gulf aquaculture permit holder. The transaction report would include the date, time, and location of the transaction; the identity of the Gulf aquaculture permit holder, vessel transporting cultured fish to port, and dealer involved in the transaction; and the quantity, average price, and average weight of each species landed and sold.

## Framework Procedures

The RA may modify MSY, OY, permit application requirements, operational requirements and restrictions, including monitoring requirements, allowable aquaculture system requirements, siting requirements, and recordkeeping and reporting requirements in accordance with the framework procedure in the Aquaculture FMP.

## Availability of the FMP

Additional background and rationale for the measures discussed above are contained in the FMP. The availability of the FMP was announced in the **Federal Register** on June 4, 2009 (74 FR 26829). The comment period for the FMP closed on August 3, 2009. All comments received on the FMP or on this proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be significant, but not economically significant, for purposes of Executive Order 12866.

NMFS prepared a Draft Programmatic Environmental Impact Statement (DPEIS) for this amendment. A notice of availability for the DPEIS was published on September 12, 2008 (73 FR 53001). On June 26, 2009, a notice of availability was published for the final PEIS (74 FR 30569). On April 20, 2010, an explosion occurred on the Deepwater Horizon (DWH) MC252 oil rig, resulting in the release of millions of barrels of oil into the Gulf of Mexico (Gulf). In addition, Corexit 9500A dispersant was applied as part of the effort to contain the spill. On January 25, 2013 NMFS issued a Notice of Intent (78 FR 5403) to prepare a supplement to the Final Programmatic Environmental Impact Statement (SFPEIS) for the FMP to consider new information from the Deepwater Horizon MC252 blowout.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

If implemented, the rule would establish a regional permitting process to manage the development of an environmentally sound and economically sustainable aquaculture industry in Federal waters of the Gulf. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

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

If implemented, the rule would directly affect entities that seek to locate offshore aquaculture and hatchery operations in the Gulf EEZ, entities that seek to purchase cultured animals from those waters at the first point of sale, and entities that presently operate commercial fishing vessels in areas of the Gulf EEZ where offshore aquaculture and hatchery operations will be sited.

The rule would require entities that seek to locate offshore aquaculture and hatchery operations in the Gulf EEZ to apply for a Gulf aquaculture permit and, if approved, to comply with application and operational requirements and restrictions of that permit. Permits would be valid for 10 years. Approved entities could renew the permit at 5-year increments after the first 10 years in order to continue operations. The Council considered several alternatives to how long a permit is effective and NMFS specifically seeks comment on whether 10 years is appropriate.

In addition to these requirements, potential offshore aquaculture operations would be required to use allowable species native to the Gulf, allowable marine aquaculture systems, comply with siting requirements and conditions, mark the restricted access zones around their facilities, comply with specific recordkeeping and reporting requirements, and individually not produce more than 20 percent of the 64 million lb (29 million kg), round weight, of those species that would be allowed to be produced by all federally permitted offshore aquaculture operations in the Gulf EEZ combined. The average time to prepare an application and supporting documents (baseline environmental assessment, assurance bond, contract with aquatic animal health expert, emergency disaster plan) for a Gulf aquaculture permit is estimated to be 33 hours. The cost of the permit application would be $10,000 initially with a subsequent annual fee of $1,000. The cost of the permit was calculated consistent with the NOAA Finance Handbook. The skill levels associated with the preparation of the required documentation for an

aquaculture permit application and the recordkeeping and reporting requirements of an aquaculture operation are not expected to necessitate the expertise of personnel beyond those whom would be typically employed by a marine aquaculture business. The operational requirements specified by the rule, however, are expected to increase by an unknown amount the operating costs of an entity that engages in offshore aquaculture and hatchery operations in the Gulf EEZ relative to the operating costs that would be expected to occur under the other alternatives considered. With respect to the compliance requirements associated with operation siting and restricted access zone marking, these costs are unknowable, but are expected to fall within the customary costs of normal business operation.

The rule also would require any entity that intends to purchase cultured animals from the Gulf EEZ at the first point of sale to apply for and be issued a Gulf aquaculture dealer permit. The annual cost incurred by an entity that seeks to obtain such a permit would be $50.00 if this is the only permit that is applied for, or $12.50 if this permit is applied for in conjunction with another type of permit. Completion of the permit application is estimated to take only minimal time, because virtually all dealers would already have another Federal dealer permit, and NMFS intends to utilize that existing permit data. In most cases, the only additional information required would be to check the box requesting a Gulf aquaculture permit. No special skills are expected to be required to prepare the dealer permit application.

Under the rule, no fishing vessels may operate in or transit through restricted access zones unless they have a copy of the facilities' aquaculture permit onboard. Such compliance would not be expected to require special navigational or other vessel-operation skills. The expected costs associated with this prohibition are discussed below.

At present, there are no entities, large or small, that have offshore aquaculture or hatchery operations in or purchase cultured animals from the Gulf EEZ. However, businesses that engage in finfish and shellfish farming and hatcheries (NAICS 112511 and 112512) and other aquaculture (NAICS 112519) may seek to locate aquaculture or hatchery operations in the Gulf EEZ. The Small Business Administration (SBA) size standard for these businesses is $0.75 million in annual receipts. NMFS estimates that from 5 to 20 offshore aquaculture facilities may be established in the Federal waters of the Gulf within the next 10 years as a result of the rule.

NMFS expects offshore aquaculture in the Gulf would be finfish aquaculture, most likely red drum, cobia or other similar species. NMFS estimates that because of distances from shore, depths of waters, Gulf weather and sea conditions, and other environmental factors, the smallest economically viable offshore aquaculture operation in the Gulf EEZ would raise finfish in 6 cages, requiring an initial investment of $2.89 million ($1.5 million for an aquaculture support vessel, $0.96 million for six cages and associated equipment, $0.33 million for land and onshore support facilities, and $0.1 million for service vessels). Total variable cost (feed, fingerlings, trips to and from cages, etc.) for one grow-out cycle is expected to exceed $1 million. These figures exceed the SBA size standard for businesses in finfish, shellfish and other aquaculture which is no more than $0.75 million in average annual receipts.

Based on those estimates of the magnitude of initial investment and operating costs expected to be required to establish and operate the smallest economically viable offshore aquaculture operation in the Gulf EEZ for finfish, NMFS expects that any entities that would seek to develop and locate an aquaculture operation in the Gulf EEZ would not be considered small businesses under the SBA size standards. The receipts-based size standards, with exceptions for NAICS Codes 112511 and 112512, were adjusted for inflation and the adjusted size standards went into effect on July 14, 2014. The SBA size standards associated with aquaculture in the Gulf EEZ are provided in the following table.

| Industry | NAICS code | SBA small business size standard |
|---|---|---|
| **Aquaculture and Hatchery Permit** | | |
| Finfish Farming | 112511 | $0.75 million. |
| Finfish Hatcheries | | |
| Shellfish Farming | 112512 | $0.75 million. |
| Shellfish Hatcheries | | |
| **Dealer Permit** | | |
| Fresh and Frozen Seafood Processing | 311712 | 500 employees. |
| Fish and Seafood Merchant Wholesalers | 424460 | 100 employees. |
| Supermarkets and Other Grocery | 445110 | $32.5 milion ($30 million). |
| Fish and Seafood Markets | 445220 | $7.5 million ($7 million). |
| Warehouse Clubs and Superstores | 452910 | $29.5 million ($27 million). |
| Full Service Restaurants | 722511 | $7.5 million ($7 million). |
| **Restricted Access Zones** | | |
| Finfish Fishing | 114111 | $20.5 million ($19 million). |
| Shellfish Fishing | 114112 | $5.5 million ($5 million). |
| Other Marine Fishing | 114119 | $7.5 million ($7 million). |
| Charter boat fishing | 487210 | $7.5 million ($7 million). |

As discussed above, if implemented, the rule would require entities that purchase cultured animals from Federal waters of the Gulf at the first point of sale to obtain an aquaculture dealer permit. As defined in 50 CFR 600.10, dealer means the person who first receives fish by way of purchase, barter, or trade. Such entities are expected to be fish and seafood merchant wholesalers (NAICS 424460), fresh and frozen seafood processors (NAICS 311712), supermarkets and other grocery (NAICS 445110), fish and seafood markets (NAICS 445220), warehouse clubs and

superstores (NAICS 452910) and full-service restaurants (NAICS 722110). The SBA size standards for the wholesalers and processors are 100 employees and 500 employees, respectively. A supermarket or other grocery is classified as a small business if its annual receipts do not exceed $32.5 million, and, similarly, a fish and seafood market is classified as a small business if its annual receipts do not exceed $7.5 million. A full-service restaurant or a warehouse club/superstore is classified as a small business if its annual receipts do not exceed $7.5 million or $29.5 million, respectively. Because there are presently no animals cultured in the Gulf EEZ, there is much uncertainty regarding the numbers of entities, both large and small, that would be directly affected by the aquaculture dealer permit requirement. However, as stated previously, the annual cost and average time to these entities would be no greater than $50 and 20 minutes, which do not represent a significant economic impact.

The rule would create restricted access zones in the Gulf EEZ that could directly affect entities that engage in commercial and for-hire fishing by prohibiting their fishing vessels from fishing or transiting in these zones. Businesses that engage in commercial fishing are classified in the finfish, shellfish and other marine fishing business categories (NAICS 114111, 114112, and 114119) and those that engage in for-hire fishing are classified in the scenic and sightseeing transportation that includes charter boat fishing (NAICS 487210). SBA defines a small commercial and for-hire fishing businesses as one with annual receipts no greater than $29.5 million and $7.5 million, respectively. For this analysis, NMFS assumes that all commercial and for-hire fishing businesses that operate in the Gulf EEZ are small business entities, because the revenue data available indicate they fall within SBA's small entity size standards. Gulf commercial and for-hire fishing businesses may experience direct adverse economic impacts in the form of reduced landings and revenues and/or increased operating costs if the restricted access zones around aquaculture and hatchery facilities force these fishing businesses to change where they historically or currently fish or transit. Although the overall adverse economic impact of these restrictions cannot be determined, the incidence and magnitude of the adverse economic impact of restricted access zones on Gulf fishing businesses is expected to be minor as a result of the provisions within the rule that would enable the restriction of aquaculture and hatchery sites to areas of the Gulf EEZ that are not important to commercial and for-hire fishing. As a result, it is expected that the areas where aquaculture and hatchery production will develop will not include waters that are important to commercial and for-hire fishing. Consequently, no significant direct adverse economic impacts on Gulf commercial and for-hire fishing businesses are expected to occur as a result of the rule.

In summary, the only small entities that would be expected to be directly affected by the rule are current or prospective seafood dealers and commercial and for-hire fishermen. The direct costs to seafood dealers would be limited to minor permitting costs, while the direct economic impacts to fishing operations are not expected to be significant, because aquaculture and hatchery production is not expected to develop in areas that are important to commercial and for-hire fishing. No other potential direct adverse economic impacts on small entities have been identified. Thus, it is expected that this rule would not result in a significant direct adverse economic impact on a substantial number of small entities. However, NMFS specifically invites comments on this finding.

Three alternatives, including the status quo no-action alternative, were considered for the action to establish a Gulf aquaculture permit. This proposed rule would support the development of a commercial offshore aquaculture industry in the Gulf EEZ by creating a transferrable permit that authorizes commercial offshore aquaculture and hatchery operations in Federal waters of the Gulf. The no-action alternative would not support the development of a commercial offshore aquaculture industry in the Gulf EEZ, because the only existing means of permitting similar activities, an Exempted Fishing Permit (EFP) or a Letter of Acknowledgment, are not viable options for authorizing commercial offshore aquaculture or hatchery operations. The third alternative would support the development of commercial offshore aquaculture in the Gulf EEZ by creating two transferrable permits—an operations permit and a siting permit—with separate processes. However, the separation of the permitting process would be expected to increase the time and costs required to obtain the necessary permits to engage in commercial offshore aquaculture and could generate unexpected negative consequences such as creating compatibility issues between approved operation plans and permitted sites (*e.g.,* aspects of a specific operation plan may only be appropriate if the operation is to occur at a certain site).

Three alternatives, including the status quo no-action alternative, were considered for the action to establish permit requirements and restrictions. This rule would establish specific application requirements and operational requirements and restrictions. The no-action alternative would not establish any application or operational requirements and restrictions for commercial aquaculture and hatchery operations in the Gulf EEZ, which could result in significant negative externalities and adverse economic impacts. The third alternative would establish permit requirements and restrictions identical to the application and issuance requirements of an EFP. However, EFP requirements are insufficient to address the potentially significant negative externalities that could result from long-term commercial aquaculture and hatchery operations. The proposed rule is the most transparent although most burdensome on offshore aquaculture and hatchery operations of the alternatives considered. However, among the alternatives considered, the proposed rule is also expected to be the most effective in reducing the incidence and severity of the costs of potential negative externalities created by commercial offshore aquaculture and hatcheries.

Two alternatives, one with four sub-alternatives, were considered for the action to specify the duration of a Gulf aquaculture permit. This proposed rule (one of the sub-alternatives of the second alternative) would establish a permit that is effective for 10 years and renewable in 5-year increments. The first alternative would establish a permit that is effective for 1 year, unless otherwise specified in the permit or a superseding notice or regulation. This alternative was considered to be of an insufficient duration to allow the development of commercial offshore aquaculture. Two of the sub-alternatives would establish permit durations of 5 and 20 years without renewal, but these also were considered to be of insufficient duration to encourage the development and sustainability of commercial offshore aquaculture. The last sub-alternative would establish a permit of indefinite duration, which would be expected to create the greatest benefit to offshore aquaculture and hatchery operations. However, a permit of indefinite duration would indefinitely prevent others from

benefitting from the use of the areas where the aquaculture and hatchery operations were located, as well as eliminate the review opportunity enabled by a periodic permit renewal requirement.

Four alternatives, including the status quo no-action alternative, were considered for the action to specify the species allowed for aquaculture and included in the Aquaculture FMU. This rule would allow the aquaculture and inclusion in the Aquaculture FMU of all species native to the Gulf that are managed by the Council, except shrimp and corals. The no-action alternative would allow the aquaculture of any species native to the Gulf and not develop an Aquaculture FMU. The third alternative would restrict the set of allowable species for aquaculture and inclusion in the Aquaculture FMU to species native to the Gulf and in the reef fish, red drum, and coastal migratory pelagics FMPs. This alternative would allow the smallest number of species to be aquacultured among the alternatives considered, which could result in the smallest economic benefit to offshore aquaculture operations and, conversely, the smallest amount of direct competition with Gulf fishermen. The fourth alternative would allow the aquaculture and inclusion in the Aquaculture FMU of all species native to the Gulf that are managed by the Council, except goliath and Nassau grouper, shrimp, and corals. This alternative would allow the aquaculture of more species than the third alternative but fewer species than the no-action alternative. The proposed rule would allow for the aquaculture of the second largest number of species among the alternatives considered, which represents, potentially, the second highest economic benefit to offshore aquaculture operations and second highest potential economic costs to Gulf fishermen as a result of market competition and other externalities. The species prohibitions of the rule, however, are consistent with the understanding that shrimp aquaculture is more appropriate for land-based systems, and coral harvest, except as allowed under a live rock permit or for scientific research, is prohibited in the Gulf EEZ.

Three alternatives, including the status quo no-action alternative, were considered for the action to specify marine systems allowable for aquaculture in the Gulf EEZ. This rule would specify the process and criteria that would be used for system approval, but would not specify allowable systems. The no-action alternative would rely on existing NMFS authority to approve or disapprove specific systems based on unspecified evaluation criteria and determination of appropriateness. The absence of specified evaluation criteria could result in the approval of systems that result in unanticipated adverse environmental and economic consequences relative to the more systematic process and criteria of the rule. The third alternative would limit the set of allowable systems to cages and pens. Although this alternative is the most transparent among the alternatives considered in that the system options are fewer and, therefore, more easily evaluated by both the public and agency, this restriction could potentially deny the use of more economically and environmentally beneficial production systems. The rule would have the potential flexibility of allowing the use of a system that best meets an operation's production goals, while addressing the need to reduce potential negative externalities that could result from the aquaculture operation. This flexibility might also better foster innovation in this field.

Three alternatives, including the status quo no-action alternative, were considered for the action to establish marine aquaculture and hatchery siting requirements and conditions. The proposed rule would restrict the areas where aquaculture and hatcheries can occur, the distance between sites, and the total area of each site in the Gulf EEZ. The no-action alternative would allow offshore aquaculture and hatchery facilities to be located anywhere the ACOE would permit, potentially including historical or recently important fishing areas. This alternative would have the greatest potential of directly impacting fishing by allowing aquaculture and hatchery operations to be located in important harvest areas. The third alternative would establish marine aquaculture zones and restrict aquaculture and hatchery sites to these zones. Although the third alternative would establish zones that do not conflict with important fishing areas, this alternative would reduce the flexibility of site location, which could require the use of inferior sites with higher start-up and operational costs. Also, confining aquaculture and hatchery operations to designated zones could result in density problems with associated environmental and economic costs. The proposed rule would give aquaculture and hatchery operations greater flexibility in locating their operations than the third alternative, and would be expected to reduce or eliminate the siting of aquaculture and hatchery facilities in important fishing areas, which would reduce or eliminate any direct costs this alternative would impose on commercial and for-hire fishing businesses that fish in these important areas.

Three alternatives, including the status quo no-action alternative, were considered for the action to establish restricted access zones around aquaculture facilities. This rule would create a restricted access zone around each aquaculture and hatchery facility in the Gulf EEZ. These restricted access zones would correspond with the coordinates on the approved ACOE siting permit. Fishing would be prohibited in these restricted access zones. No recreational or commercial fishing vessel could operate in or transit through these zones unless they have a copy of the facilities' aquaculture permit onboard. Additionally, each facility would be required to mark the boundaries of its restricted access zone. The no-action alternative would not establish restricted access zones or restrict fishing around aquaculture and hatchery facilities and would be expected to result in the largest risk, among the alternatives considered, of a fishing vessel colliding with or fishing gear damaging an aquaculture facility. As a result, the no-action alternative would be expected to have the greatest likelihood among the alternatives considered of resulting in injury to personnel and loss of cultured and wild-caught fish, equipment and vessels. The third alternative would establish buffer zones of varying uniform distances from aquaculture facilities. However, the boundaries of these zones would not be required to be marked, which could make detection of the boundaries difficult, thereby diminishing their utility. The third alternative also could result in buffer zones that are larger than the restricted access zones that would be established by the rule, thereby increasing the area where fishing would be prohibited, resulting in potentially increased adverse economic impacts on fishermen compared to the rule.

Two alternatives, including the status quo no-action alternative, were considered for the action to establish recordkeeping and reporting requirements for offshore aquaculture. If implemented, the rule would establish 17 recordkeeping and reporting requirements on aquaculture operations. Although these requirements are expected to increase the operating costs of aquaculture operations, these requirements are considered to be necessary to manage the aquaculture fishery and reduce the incidence and severity of adverse environmental events. The no-action alternative would

not establish any recordkeeping or reporting requirements or impose any additional costs on aquaculture operations. However, the absence of mandatory reporting and record-keeping requirements would be expected to decrease the ability to effectively monitor the conduct of the aquaculture industry as well as reduce the incidence and severity of adverse environmental events.

Two alternatives, including the status quo no-action alternative, and multiple sub-alternatives were considered for the action to establish a production cap for individual entities. The rule proposed here would limit the annual production of an individual entity or corporation to 12.8 million lb (5.8 million kg), round weight, which is 20 percent of the maximum 64 million-lb (29 million-kg), round weight, OY. The no-action alternative would not limit the production of individual entities. The two sub-alternative production caps would establish lower caps than the rule, limiting the production by an individual entity to either 5 or 10 percent of the OY. Each of these sub-alternatives would be expected to result in lower economic benefits to aquaculture producers and associated businesses, because the lower caps may adversely affect the ability to take advantage of greater economies of scale. Conversely, the lower the cap, the greater the number of potential individual aquaculture producers and associated potential increase in economic and social benefits derived from increased competition. The 20-percent cap in the rule was selected as a reasonable limit on production concentration while still enabling the potential realization of economy-of-scale benefits.

Three alternatives, including the status quo no-action alternative, were considered for the action to specify an organizational framework for modifying the aquaculture biological reference points, status determination criteria, and management measures. The proposed rule would establish framework authority that would support the development and implementation of timely changes as necessary in response to changing aquaculture technologies or unforeseen fishery and environmental conditions. The no-action alternative would not specify framework authority, which would result in a requirement for the development of a full plan amendment in order to develop and implement necessary changes to the Aquaculture FMP. Requiring the development of a full plan amendment in order to develop and implement necessary changes to the FMP might delay necessary management actions, potentially resulting in increased adverse environmental and economic effects relative to the rule, and would not achieve the Council's objectives. The third alternative would establish framework procedures just for changing the biological reference points. This alternative would limit the Council's ability to make timely changes for the broader category of management actions that the rule would support and, as a result, also would be expected to potentially result in increased adverse environmental and economic effects compared to the rule. The rule would give the Council and NMFS the greatest amount of flexibility among the alternatives considered in responding to changing fishery conditions, such as aquaculture technologies and practices, which in turn would support the development and implementation of timely regulatory changes and the greatest net economic benefits to offshore aquaculture producers and Gulf fishermen.

In addition to actions discussed above, two alternatives were considered, including the status quo no-action alternative, and multiple sub-alternatives for an action to establish biological reference points and status determination criteria for offshore aquaculture. The FMP establishes an MSY and OY at 64 million lb (29 million kg), round weight. The FMP also requires NMFS to publish a control date, after which entry into the aquaculture fishery could be limited or restricted, if industry production exceeded the OY. The no-action alternative would not establish biological reference points, status determination criteria, or require the establishment of a control date. Because the specification of biological reference points and status determination criteria are mandatory components for an FMP, the no-action alternative would not support the development of an aquaculture industry in the Gulf EEZ and would not achieve the Council's objectives. Three of the biological reference point sub-alternatives would establish MSYs and OYs that are less than those of the rule, ranging from 16 to 36 million lb (7.3 to 16.3 million kg), round weight, while one sub-alternative would establish higher levels, 190 million lb (86 million kg), round weight. The lower values would be expected to result in lower economic benefits to the aquaculture industry and lower potential indirect costs to fishermen in competitive markets and associated industries compared to the proposed rule, while the higher values would be expected to result in the reverse.

This rule contains collection-of-information requirements subject to the PRA. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

The collections and the associated estimated average public reporting burden per response are provided in the following table.

| Collection requirement | Estimated burden per response |
|---|---|
| Federal Permit Application for Offshore Aquaculture in the Gulf of Mexico (for new permits and renewals) | 3 hours. |
| Annual Report | 10 minutes. |
| Baseline Environmental Assessment | 24 hours. |
| Certification for Broodstock and Juveniles | 10 minutes. |
| Request to Harvest Broodstock | 30 minutes. |
| Broodstock Post-Harvest Report | 30 minutes. |
| Request to Transfer Gulf Aquaculture Permit | 3 hours. |
| Notification of Entanglement or Interaction | 30 minutes. |
| Notification of Major Escapement Event | 30 minutes. |
| Notification of Reportable Pathogen Episode | 30 minutes. |
| Notification to Transport Cultured Juveniles to Offshore Systems | 10 minutes. |
| Harvest and Landing Notification | 30 minutes. |
| Dealer Permit Application | 30 minutes. |
| Dealer Report for Landing and Sale | 30 minutes. |
| Assurance Bond | 1 hour. |

| Collection requirement | Estimated burden per response |
|---|---|
| Contract with Aquatic Animal Health Expert | 1 hour. |
| Emergency Disaster Plan | 4 hours. |
| Fin Clip Samples | 10 hours. |
| Broodstock Marking Requirement | 8 hours. |

These requirements have been submitted to OMB for approval. These estimates of the public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Public comment is sought regarding: Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

**Public Participation**

It is the policy of the Department of Commerce, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section. All comments must be received by midnight of the close of the comment period.

In addition to accepting comments on the actions discussed in the preamble above, NMFS is particularly interested in comments from the public concerning:

(1) The definition of ''significant risk'' and whether it is a different standard than what is established under the Endangered Species Act.

(2) The use of the term ''genetically modified organism'' in the rule and whether it should be changed to ''genetically engineered animal'' to be consistent with terminology used by the FDA. The FDA uses the term ''genetically engineered animal'' as opposed to ''genetically modified organism'' because ''genetically engineered animal'' more accurately describes the use of modern biotechnology. Modern biotechnology means the application of *in vitro* nucleic acid techniques, including, among others, recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles, or fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection of plants or other organisms.

(3) Whether the definition of ''genetically modified organism'' should be removed and a definition for ''genetically engineered animal'' should be added in § 622.2 of the rule, which is more consistent with the definition used by FDA. FDA defines the term ''genetically engineered animal'' as an ''animal modified by rDNA techniques, including the entire lineage of animals that contain the modification. The term 'genetically engineered animal' can refer to both animals with heritable rDNA constructs and animals with non-heritable rDNA constructs (e.g., those modifications intended to be used as gene therapy).'' An animal that has been altered such that its ploidy has been changed (*e.g.,* a triploid animal) is not considered to be genetically engineered provided that that animal does not contain genes that have been introduced or otherwise altered by modern biotechnology.

(4) Whether it would be sufficiently protective to require broodstock to be collected from another population within the Gulf of Mexico, rather than the same population or sub-population where the facility is located. What additional costs or burdens does the requirement to collect from the same sub-population impose on aquaculture facilities?

(5) Whether it is necessary for facilities to provide a Notice of Harvest to NMFS in order to ensure that only cultured animals are landed.

(6) The additional costs, if any, of maintaining a daily record of the number of fish introduced into and number or pounds and average weight of fish removed from each allowable aquaculture system, including mortalities. In addition, the extent to which this information aids enforcement of production quotas and auditing.

(7) The practical utility and additional cost of the proposed requirement to maintain original purchase invoices for feed, or copies of such invoices, for 3 years from the date of purchase in light of the recordkeeping requirement in EPA regulations at 40 CFR 451.21(g)(1).

(8) Additionally, NMFS seeks public comment on the draft Supplemental Information Report (SIR). Because the FMP entered into effect in 2009, NMFS has prepared a draft supplemental information report (SIR) to evaluate whether there is a need for supplemental NEPA analysis on the FMP, specific to the passage of time. The Council on Environmental Quality regulations state that agencies shall prepare supplements to either draft or final environmental impact statements if: The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). The draft SIR concludes that there are no substantial changes to the proposed action or significant new circumstances or information that require the preparation of an additional supplement to the Final Programmatic Environmental Impact Statement for the FMP. The draft SIR can be accessed at: (*http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/aquaculture/index.html*).

**List of Subjects**

*50 CFR Part 600*

Administrative practice and procedures, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

*50 CFR Part 622*

Aquaculture, Fisheries, Fishing, Gulf of Mexico, Reporting and recordkeeping requirements.

Dated: August 22, 2014.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 600 and 622 are proposed to be amended as follows:

## PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. *et seq.*

■ 2. In § 600.725, in paragraph (v), in the table, under the heading ''IV. Gulf of Mexico Fishery Management Council'', entry 21 ''Offshore aquaculture (FMP)'' is added to read as follows:

**§ 600.725 General prohibitions.**

* * * * *

(v) * * *

| Fishery | Authorized gear types |
|---|---|
| * * * * * * * | |
| *IV. Gulf of Mexico Fishery Management Council* | |
| * * * * * * * | |
| 21. Offshore aquaculture (FMP) | Cages, net pens. |
| * * * * * * * | |

* * * * *

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

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

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

■ 4. In § 622.1, in Table 1, an entry for ''FMP for Regulating Offshore Marine Aquaculture in the Gulf'' is added in alphabetical order to read as follows:

**§ 622.1 Purpose and scope.**

* * * * *

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

| FMP Title | Responsible fishery management council(s) | Geographical area |
|---|---|---|
| * * * * * * * | | |
| FMP for Regulating Offshore Marine Aquaculture in the Gulf | GMFMC | Gulf. |
| * * * * * * * | | |

* * * * *

■ 5. In § 622.2, definitions for ''Aquaculture'', ''Aquaculture facility'', ''Aquaculture system'', ''Aquatic animal health expert'', ''Cultured animals'', ''Genetically modified organism'', ''Significant risk'', ''Transgenic animal'' and ''Wild fish'' are added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

* * * * *

*Aquaculture* means all activities, including the operation of an aquaculture facility, involved in the propagation and rearing, or attempted propagation and rearing, of allowable aquaculture species in the Gulf EEZ.

*Aquaculture facility* means an installation or structure, including any aquaculture system(s) (including moorings), hatcheries, equipment, and associated infrastructure used to hold, propagate, and rear allowable aquaculture species in the Gulf EEZ under authority of a Gulf aquaculture permit.

*Aquaculture system* means any cage, net pen, enclosure, structure, or gear deployed in waters of the Gulf EEZ for holding and producing allowable aquaculture species.

* * * * *

*Aquatic animal health expert* means a licensed doctor of veterinary medicine or a person who is certified by the American Fisheries Society, Fish Health Section, as a ''Fish Pathologist'' or ''Fish Health Inspector.''

* * * * *

*Cultured animals* means animals which are propagated and/or reared by humans.

* * * * *

*Genetically modified organism* means an organism (*i.e.,* animal) that has been transformed by the insertion of one or more transgenes (an isolated gene sequence often, but not always, derived from a different species than that of the recipient). An animal with triploidy is not genetically modified, unless the animal also includes one or more transgenes.

* * * * *

*Significant risk* means likely to jeopardize the continued existence of endangered or threatened species or adversely modify their critical habitat; is likely to seriously injure or kill marine mammals; is likely to result in unmitigated adverse effects on essential fish habitat; is likely to adversely affect wild fish stocks and cause them to become overfished or undergo overfishing; or otherwise may result in harm to public health or safety, as determined by the RA.

* * * * *

*Transgenic animal* means an animal whose genome contains a nucleotide sequence that has been intentionally modified in vitro, and the progeny of such an animal.

* * * * *

*Wild fish* means fish that are not propagated or reared by humans.

* * * * *

■ 6. In § 622.4, in the introductory text, a sentence is added after the second sentence to read as follows:

**§ 622.4 Permits and fees—general.**

* * * See subpart F for permit requirements related to aquaculture of species other than live rock. * * *

* * * * *

■ 7. In § 622.13, paragraphs (pp) and (qq) are revised and paragraph (rr) is added to read as follows:

**§ 622.13 Prohibitions—general.**

* * * * *

(pp) Fail to comply with any provision related to the Offshore Marine Aquaculture program in the Gulf of Mexico as specified in this part.

(qq) Falsify any information required to be submitted regarding the Offshore Marine Aquaculture program in the Gulf of Mexico as specified in this part.

(rr) Fail to comply with any other requirement or restriction specified in this part or violate any provision(s) in this part.

■ 8. Subpart F is added to read as follows:

## Subpart F—Offshore Marine Aquaculture in the Gulf of Mexico

**§ 622.100 General.**

This subpart provides the regulatory structure for enabling environmentally sound and economically sustainable aquaculture in the Gulf EEZ. Offshore marine aquaculture activities are authorized by a Gulf aquaculture permit or Gulf aquaculture dealer permit issued under § 622.101 and are conducted in compliance with the provisions of this subpart. Aquaculture of live rock is addressed elsewhere in this part and is exempt from the provisions of this subpart.

(a) *Electronic system requirements.* (1) The administrative functions associated with this aquaculture program, *e.g.,* registration and account setup, landing transactions and most reporting requirements, are intended to be accomplished online via the Southeast Regional Office (SERO) Web site at *http://sero.nmfs.noaa.gov;* therefore, a participant must have access to a computer and Internet access and must set up an appropriate online aquaculture account to participate. Assistance with online functions is available from the Permits Office, Monday through Friday between 8 a.m. and 4:30 p.m. eastern time; telephone: 1(877)376–4877. If some online reporting functions are not available at the time of initial implementation of this aquaculture program, this will be indicated on the SERO Web site and participants may comply by submitting the required information via email using the appropriate forms that are available on the Web site. Once online functions are available, participants must comply by using the online system unless alternative methods are specified.

(2) The RA will mail each person who is issued a Gulf aquaculture permit or a Gulf aquaculture dealer permit information and instructions pertinent to using the online system and setting up an online aquaculture account. The RA also will mail each permittee a user identification number and will provide each permittee a personal identification number (PIN) in a subsequent letter. Each permittee must monitor his/her online account and all associated messages and comply with all online reporting requirements.

(3) During catastrophic conditions only, the RA may authorize use of paper-based components for basic required functions as a backup to what would normally be reported electronically. The 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. NMFS will provide each aquaculture permittee the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms also will be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions may be limited under the paper-based system. Assistance in complying with the requirements of the paper-based system will be available via the Permits Office, Monday through Friday between 8 a.m. and 4:30 p.m., eastern time; telephone: 1(877)376–4877.

(b) [Reserved]

**§ 622.101 Permits.**

(a) *Gulf aquaculture permit.* For a person to deploy or operate an aquaculture facility in the Gulf EEZ or sell or attempt to sell, at the first point of sale, an allowable aquaculture species cultured in the Gulf EEZ, a Gulf aquaculture permit must have been issued to that person for that aquaculture facility, and the permit must be prominently displayed and available for inspection at the aquaculture facility. The permit number should also be included on the buoys or other floating devices used to mark the restricted access zone of the operation as specified in § 622.104(c).

(1) *Eligibility requirement for a Gulf aquaculture permit.* Eligibility for a Gulf aquaculture permit is limited to U.S. citizens as defined in the Immigration and Nationality Act of 1952, as amended, and permanent resident aliens lawfully accorded the privilege of residing permanently in the U.S. in accordance with U.S. immigration laws.

(2) *Application for a Gulf aquaculture permit.* Application forms are available from the RA. A completed application form and all required supporting documents must be submitted by the applicant (in the case of a corporation, an officer; in the case of a partnership, a general partner) to the RA at least 180 days prior to the date the applicant desires the permit to be effective. An applicant must provide all information indicated on the application form including:

(i) Applicant's name, address, and telephone number.

(ii) Business name, address, telephone number, date the business was formed, and, if the applicant is a corporation, corporate structure and shareholder information.

(iii) Information sufficient to document eligibility as a U.S. citizen or permanent resident alien.

(iv) Description of the exact location (*i.e.,* global positioning system (GPS) coordinates) and dimensions of the proposed aquaculture facility and proposed site, including a map of the site to scale.

(v) A baseline environmental assessment of the proposed aquaculture site. The assessment must be conducted, and the data, analyses, and results must be summarized and presented, consistent with the guidelines specified by NMFS. NMFS' guidelines will include methods and procedures for conducting diver and video surveys, measuring hydrographic conditions, collecting and analyzing benthic sediments and infauna, and measuring water quality characteristics. The guidelines will be available on the SERO Web site and from the RA upon request.

(vi) A list of allowable aquaculture species to be cultured; estimated start up production level by species; and the estimated maximum total annual poundage of each species to be harvested from the aquaculture facility.

(vii) Name and address or specific location of each hatchery that would provide juvenile animals for grow-out at the proposed aquaculture facility located within the Gulf EEZ and a copy of all relevant, valid state or Federal aquaculture permits issued to the hatchery.

(viii) Prior to issuance of a Gulf aquaculture permit, a copy of currently valid Federal permits (*e.g.,* ACOE Section 10 permit, and Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) permit) applicable to the proposed aquaculture site, facilities, or operations.

(ix) A description of the allowable aquaculture system(s) to be used, including the number, size and dimensions of the allowable aquaculture system(s), a description of the mooring system(s) used to secure the allowable aquaculture system(s), and documentation of the allowable aquaculture system's ability to withstand physical stress, such as hurricanes, wave energy, etc., including a copy of any available engineering analysis.

(x) A description of the equipment and methods to be used for feeding, transporting, maintaining, and removing cultured species from aquaculture systems.

(xi) A copy of the valid USCG certificate of documentation or, if not documented, a copy of the valid state registration certificate for each vessel involved in the aquaculture operation; and documentation or identification numbers for any aircraft or vehicles involved.

(xii) Documentation certifying that:

(A) The applicant agrees to immediately remove cultured animals remaining in allowable aquaculture systems from the Gulf EEZ as ordered by the RA if it is discovered that the animals are genetically modified or transgenic;

(B) The applicant agrees to immediately remove cultured animals remaining in allowable aquaculture systems from the Gulf EEZ as ordered by the RA if fish are discovered to be infected with a World Organization of Animal Health (OIE) reportable pathogen that represents a new detection in the Gulf or a new detection for that cultured species in the US is found at the facility, or additional pathogens that are subsequently identified as reportable pathogens in the National Aquatic Animal Health Plan (NAAHP), or any other pathogen determined by NMFS and APHIS to pose a significant threat to the health of wild aquatic organisms; and,

(C) The applicant agrees to immediately remove all components of the aquaculture system and cultured animals remaining in allowable aquaculture systems from the Gulf EEZ as ordered by the RA if there are any other violations of the permit conditions or regulations other than those listed in paragraphs (a)(2)(xii)(A) and (B) of this section which causes the RA to order such removal.

(xiii) Documentation certifying the applicant has obtained an assurance bond sufficient to cover the costs of removal of all components of the aquaculture facility, including cultured animals remaining in allowable aquaculture systems, from the Gulf EEZ. The assurance bond would not be required to cover the costs of removing an oil and gas platform. The RA will provide applicants a form and associated guidance for complying with the assurance bond requirement. The applicant must also provide documentation certifying the applicant has established a standby trust fund into which any payments made towards the assurance bond can be deposited. The trustee of the standby trust may not be the same entity as the permittee. The assurance bond is payable at the discretion of the RA to a designee as specified in the bond or to a standby trust. When the RA directs the payment into a standby trust, all amounts paid by the assurance bond provider must be deposited directly into the standby trust fund for distribution by the trustee in accordance with the RA's instructions. A permittee will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the assurance bond. The permittee must establish other financial assurance within 60 days after such an event.

(xiv) Certification by the applicant that all broodstock used to provide juveniles to the aquaculture facility were originally harvested from U.S. waters of the Gulf, and that each individual broodstock was marked or tagged at the hatchery to allow for identification of those individuals used in spawning.

(xv) Certification by the applicant that no genetically modified animals or transgenic animals are used or possessed for culture purposes at the aquaculture facility.

(xvi) Copy of a contractual arrangement with an identified aquatic animal health expert to provide services to the aquaculture facility has been obtained. A copy of the license or certification also must be provided to NMFS.

(xvii) A copy of an emergency disaster plan, developed for and to be used by the operator of the aquaculture facility, that includes, procedures for preparing or if necessary removing aquaculture systems, aquaculture equipment, and cultured animals in the event of a disaster (*e.g.,* hurricane, tsunami, harmful algal bloom, chemical or oil spill, etc.);

(xviii) Any other information concerning the aquaculture facility or its operations or equipment, as specified on the application form.

(xix) Any other information that may be necessary for the issuance or administration of the Gulf aquaculture permit, as specified on the application form.

(b) *Gulf aquaculture dealer permit.* For a dealer to receive fish cultured by an aquaculture facility in the Gulf EEZ, that dealer must first obtain a Gulf aquaculture dealer permit. However, an owner or operator of an aquaculture facility with a Gulf aquaculture permit may purchase juvenile fish for grow-out from a hatchery located in the Gulf EEZ without obtaining a dealer permit. To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(1) *Application for a Gulf aquaculture dealer permit.* Application forms are available from the RA. The application must be submitted by the owner (in the case of a corporation, an officer; in the case of a partnership, a general partner). Completed application forms and all required supporting documents must be submitted to the RA at least 30 days prior to the date on which the applicant desires to have the permit made effective. An applicant must provide the following:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Name, address, telephone number, date the business was formed, and other identifying information of the business.

(iii) The address of each physical facility at a fixed location where the business receives fish from an aquaculture facility in the Gulf EEZ.

(iv) Name, address, telephone number, other identifying information, and official capacity in the business of the applicant.

(v) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(2) [Reserved]

(c) *Permit requirements for other aquaculture-related activities.* For a person to do any of the following, such person must have in his/her possession and make available upon request by NMFS or an authorized officer a copy of a valid Gulf aquaculture permit with an original (not copied) signature of the permit owner or owner's agent.

(1) Possess or transport fish in or from the Gulf EEZ to be cultured at an aquaculture facility (*e.g.,* brood stock, fingerlings) or possess or transport fish from an aquaculture facility for landing ashore and sale.

(2) Operate, in support of aquaculture related activities, any vessel, vehicle, or aircraft authorized for use in operations related to an aquaculture facility, *i.e.,* those registered for aquaculture operation use.

(3) Harvest and retain on board a vessel live wild broodstock for use in an aquaculture facility regardless of where the broodstock is harvested or possessed.

(d) *Permit-related procedures*—(1) *Fees.* A fee is charged for each application for a permit submitted under this section and for each request for renewal, transfer or replacement of such permit. The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application or request for renewal, transfer or replacement.

(2) *Review and notifications regarding a Gulf aquaculture permit.* (i) The RA will review each application and make a preliminary determination whether the application is complete. An application is complete when all requested forms, information, and documentation have been received. If the RA determines that an application is complete, notification of receipt of the application will be published in the **Federal Register** with a brief description of the proposal and specifying the intent of NMFS to issue a Gulf aquaculture permit. The public will be given up to 45 days to comment, and comments will be requested during public testimony at a Council meeting. The RA will consult with other Federal agencies, as appropriate, and the Council concerning the permit application during the period in which public comments have been requested. The RA will notify the applicant in advance of any Council meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application. The RA may consider revisions to the application made by the applicant in response to public comment before approving or denying it.

(ii) As soon as practicable after the opportunity for public comment ends, the RA will notify the applicant and the Council in writing of the decision to grant or deny the Gulf aquaculture permit. If the RA grants the permit, the RA will publish a notification of the permit approval in the **Federal Register**. If the RA denies the permit, the RA will advise the applicant, in writing, of the reasons for the denial and publish a notification in the **Federal Register** announcing the denial and the basis for it. Grounds for denial of a Gulf aquaculture permit include the following:

(A) The applicant has failed to disclose material information or has made false statements to any material fact, in connection with the Gulf aquaculture permit application;

(B) Based on the best scientific information available, issuance of the permit would pose significant risk to the well-being of wild fish stocks, marine mammals, threatened or endangered species, essential fish habitat, public health, or safety; or,

(C) Activities proposed to be conducted under the Gulf aquaculture permit are inconsistent with aquaculture regulations in this section, the management objectives of the Aquaculture FMP, or the Magnuson-Stevens Act or other applicable law.

(D) Use of the proposed site is denied based on the criteria set forth in § 622.103(a)(4).

(3) *Initial issuance.* (i) The RA will issue an initial permit to an applicant after the review and notification procedures set forth in paragraph (d)(2)(i) of this section are complete and the decision to grant the permit is made under paragraph (d)(2)(ii) of this section.

(ii) Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 60 days of the date of the RA's letter of notification or request an extension of time by contacting the NMFS Southeast Regional Office before the end of the 60 day timeframe, the application will be considered abandoned.

(4) *Duration.* A Gulf aquaculture permit will initially be issued for a 10-year period and may be renewed in 5-year increments thereafter. An aquaculture dealer permit is an annual permit and must be renewed annually. A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the aquaculture facility is sold and the permit has not been transferred or the dealership is sold. Once the aquaculture permit is no longer valid, all components of the aquaculture facility, including cultured animals remaining in allowable aquaculture systems, must be removed immediately from the Gulf EEZ.

(5) *Transfer.* (i) A Gulf aquaculture permit is transferable to an eligible person, *i.e.,* a U.S. citizen or permanent resident alien if the geographic location of the aquaculture site remains unchanged. An eligible person who acquires an aquaculture facility that is currently permitted and who desires to conduct activities for which a permit is required may request that the RA transfer the permit to him/her. At least 30 days prior to the desired effective date of the transfer, such a person must complete and submit to the RA or via the SERO Web site a permit transfer request form that is available from the RA. The permit transfer request form must be accompanied by the original Gulf aquaculture permit, a copy of a signed bill of sale or equivalent acquisition papers, and a written agreement between the transferor and transferee specifying who is assuming the responsibilities and liabilities associated with the Gulf aquaculture permit and the aquaculture facility, including all the terms and conditions associated with the original issuance of the Gulf aquaculture permit. All applicable permit requirements and conditions must be satisfied prior to a permit transfer, including any necessary updates, *e.g.,* updates regarding required certifications, legal responsibility for assurance bond, other required permits, etc. The seller must sign the back of the Gulf aquaculture permit, and have the signed transfer document notarized. Final transfer of a Gulf aquaculture permit will occur only after the RA provides official notice to both parties that the transferee is eligible to receive the permit and that the transfer is otherwise valid.

(ii) An aquaculture dealer permit is not transferable.

(6) *Renewal.* An aquaculture facility owner or aquaculture dealer who has been issued a permit under subpart F must renew such permit consistent with the applicable duration of the permit specified in paragraph (d)(4) of this section. The RA will mail an aquaculture facility owner or aquaculture dealer whose permit is expiring an application for renewal at least 6 months prior to the expiration

date of a Gulf aquaculture facility permit and approximately two months prior to the expiration date of an aquaculture dealer permit. An aquaculture facility owner or aquaculture dealer who does not receive a renewal application from the RA within the time frames indicated in this paragraph must contact the RA and request a renewal application. The applicant must submit a completed renewal application form and all required supporting documents to the RA at least 120 days prior to the date on which the applicant desires to have a Gulf aquaculture permit made effective and at least 30 days prior to the date on which the applicant desires to have an aquaculture dealer permit made effective. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 60 days of the date of the RA's letter of notification or request an extension of time by contacting the NMFS Southeast Regional Office before the end of the 60 day timeframe, the application will be considered abandoned.

(7) *Display.* A Gulf aquaculture permit issued under this section must be prominently displayed and available for inspection at the aquaculture facility. The permit number should also be included on the buoys or other floating devices used to mark the restricted access zone of the operation as specified in § 622.104(c). An aquaculture dealer permit issued under this section, or a copy thereof, must be prominently displayed and available on the dealer's premises. In addition, a copy of the dealer's permit, or the aquaculture facility's permit (if the fish have not yet been purchased by a dealer), must accompany each vehicle that is used to receive fish harvested from an aquaculture facility in the Gulf EEZ. A vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer.

(8) *Sanctions and denials.* A Gulf aquaculture permit or aquaculture dealer permit issued pursuant to this section may be revoked, suspended, or modified, and such permit applications may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(9) *Alteration.* A Gulf aquaculture permit or aquaculture dealer permit that is altered, erased, or mutilated is invalid.

(10) *Replacement.* A replacement Gulf aquaculture permit or aquaculture dealer permit may be issued. An application for a replacement permit is not considered a new application.

(11) *Change in application information.* An aquaculture facility owner or aquaculture dealer who has been issued a permit under subpart F must notify the RA within 30 days after any change in the applicable application information specified in paragraphs (a) or (b) of this section. If any change in the information is not reported within 30 days aquaculture operations may no longer be conducted under the permit.

**§ 622.102 Recordkeeping and reporting.**

(a) Participants in Gulf aquaculture activities addressed in subpart F must keep records and report as specified in this section. Unless otherwise specified, required reporting must be accomplished electronically via the SERO Web site. See § 622.100(a)(3) regarding provisions for paper-based reporting in lieu of electronic reporting during catastrophic conditions as determined by the RA. Recordkeeping (*i.e.,* maintaining records versus submitting reports) may, to the extent feasible, be maintained electronically; however, paper-based recordkeeping also is acceptable.

(1) *Aquaculture facility owners or operators.* An aquaculture facility owner or operator must comply with the following requirements.

(i) *Reporting requirements*—(A) *Transport of fingerlings/juvenile fish to an aquaculture facility.* Report the time, date, species and number of cultured fingerlings or other juvenile animals that will be transported from a hatchery to an aquaculture facility at least 72 hours prior to transport. This information may be submitted electronically via the SERO Web site or via phone.

(B) *Major escapement.* Report any major escapement or suspected major escapement within 24 hours of the event. Major escapement is defined as the escape, within a 24-hour period, of 10 percent of the fish from a single allowable aquaculture system (*e.g.,* one cage or one net pen) or 5 percent or more of the fish from all allowable aquaculture systems combined, or the escape, within any 30-day period, of 10 percent or more of the fish from all allowable aquaculture systems combined. The report must include the items in paragraphs (a)(1)(i)(B)(*1*) through (*6*) of this section and may be submitted electronically via the SERO Web site. If no major escapement occurs during a given year, an annual report must be submitted via the Web site on or before January 31 each year indicating no major escapement occurred.

(*1*) Gulf aquaculture permit number;

(*2*) Name and phone number of a contact person;

(*3*) Duration and specific location of escapement, including the number of cages or net pens involved;

(*4*) Cause(s) of escapement;

(*5*) Number, size, and percent of fish, by species, that escaped; and

(*6*) Actions being taken to address the escapement.

(C) *Pathogens.* Report, within 24 hours of diagnosis, all findings or suspected findings of any OIE-reportable pathogen episodes or pathogens that are identified as reportable pathogens in the NAAHP, as implemented by the USDA and U.S. Departments of Commerce and Interior, that are known to infect the cultured species. The report must include the items in paragraphs (a)(1)(i)(C)(*1*) through (*6*) of this section and may be submitted electronically via the SERO Web site. If no finding or suspected finding of an OIE-reportable pathogen episode occurs during a given year, an annual report must be submitted via the SERO Web site on or before January 31 each year indicating no finding or suspected finding of an OIE-reportable pathogen episode occurred. See § 622.108(a)(1) regarding actions NMFS may take to address a pathogen episode.

(*1*) OIE-reportable pathogen;

(*2*) Percent of cultured animals infected;

(*3*) Findings of the aquatic animal health expert;

(*4*) Plans for submission of specimens for confirmatory testing (as required by the USDA);

(*5*) Testing results (when available); and

(*6*) Actions being taken to address the reportable pathogen episode.

(D) *Landing information.* Report the intended time, date, and port of landing for any vessel landing fish harvested from an aquaculture facility at least 72 hours prior to landing. This information may be submitted electronically via the SERO Web site or via phone. The person landing the cultured fish must validate the dealer transaction report required in paragraph (a)(2)(i) of this section by entering the unique PIN number of the Gulf aquaculture permit holder from whom the fish were received when the transaction report is submitted.

(E) *Change of hatchery.* Report any change in hatcheries used for obtaining fingerlings or other juvenile animals and provide updated names and addresses or specific locations (if no address is available) for the applicable hatcheries no later than 30 days after any such change occurs. This information may be

submitted electronically via the SERO Web site.

(F) *Entanglements or interactions with marine mammals, endangered species, or migratory birds.* Report any entanglement or interaction with marine mammals, endangered species, or migratory birds within 24 hours of the event. The report must include the items included in paragraphs (a)(1)(i)(G)(*1*) through (*5*) of this section and may be submitted electronically via the SERO Web site. If no entanglement or interaction with marine mammals, endangered species, or migratory birds occurs during a given year, an annual report must be submitted via the SERO Web site on or before January 31 each year indicating no entanglement or interaction occurred.

(*1*) Date, time, and location of entanglement or interaction.

(*2*) Species entangled or involved in interactions and number of individuals affected;

(*3*) Number of mortalities and acute injuries observed;

(*4*) Cause of entanglement or interaction; and

(*5*) Actions being taken to prevent future entanglements or interactions.

(G) Any other reporting requirements specified by the RA for evaluating and assessing the environmental impacts of an aquaculture operation.

(ii) *Other reporting requirements.* In addition to the reporting requirements in paragraph (a)(1)(i) of this section, an aquaculture facility owner or operator must comply with the following reporting requirements.

(A) Provide NMFS with current copies of all valid state and Federal permits (*e.g.,* ACOE Section 10 permit, EPA NPDES permit) required for conducting offshore aquaculture and report any changes applicable to those permits.

(B) Provide NMFS with current copies of all valid state and Federal aquaculture permits for each hatchery from which fingerlings or other juvenile animals are obtained and report any changes applicable to those permits within 30 days.

(iii) *Recordkeeping requirements.* An aquaculture facility owner or operator must comply with the following recordkeeping requirements.

(A) Maintain for the most recent 3 years and make available to NMFS or authorized officers, upon request, monitoring reports related to aquaculture activities required by all state and Federal permits (*e.g.,* ACOE Section 10 permit, EPA NPDES permit) required for conducting offshore aquaculture.

(B) Maintain records of all sales of fish for the most recent 3 years and make that information available to NMFS or authorized officers upon request. Sale records must include the species and quantity of fish sold in pounds round weight; estimated average weight of fish sold to the nearest tenth of a pound by species; date sold; and the name of the entity to whom fish were sold.

(2) *Aquaculture dealer recordkeeping and reporting requirements.* A dealer who purchases fish from an aquaculture facility in the Gulf EEZ must:

(i) Complete a landing transaction report for each landing and sale of cultured fish via the SERO Web site at *http://sero.nmfs.noaa.gov* at the time of the transaction in accordance with reporting form and instructions provided on the Web site. This report includes date, time, and location of transaction; information necessary to identify the Gulf aquaculture permit holder, vessel, and dealer involved in the transaction; quantity, in pounds round weight, and estimated average weight of each species landed to the nearest tenth of a pound; and average price paid for cultured fish landed and sold by market category. A dealer must maintain such record for at least 3 years after the receipt date and must make such record available for inspection upon request of an authorized officer or the RA.

(ii) After the dealer submits the report and the information has been verified, the Web site will send a transaction approval code to the dealer and the aquaculture permit holder.

(b) [Reserved]

**§ 622.103 Aquaculture facilities.**

(a) *Siting requirements and conditions.* (1) No aquaculture facility may be sited in the Gulf EEZ within a marine protected area, marine reserve, Habitat Area of Particular Concern, Special Management Zone, permitted artificial reef area specified in this part or a coral area as defined in § 622.2.

(2) No aquaculture facility may be sited within 1.6 nautical miles (3 km) of another aquaculture facility and all structures associated with the facility must remain within the sited boundaries.

(3) To allow fallowing and rotation of allowable aquaculture systems within a site permitted by the ACOE and approved by NMFS, the permitted site for the aquaculture facility must be at least twice as large as the combined area of the aquaculture systems (*e.g.,* cages and net pens).

(4) The RA will evaluate siting criteria for proposed offshore aquaculture operations on a case-by-case basis. Criteria considered by the RA during case-by-case review include data, analyses, and results of the required baseline environmental assessment as specified in § 622.102(a)(2)(v); depth of the site; the frequency of harmful algal blooms or hypoxia at the proposed site; marine mammal migratory pathways; the location of the site relative to commercial and recreational fishing grounds and important natural fishery habitats (*e.g.,* seagrasses). The RA may deny use of a proposed aquaculture site based on a determination by the RA that such a site poses significant risks to wild fish stocks, essential fish habitat, endangered or threatened species, marine mammals, will result in user conflicts with commercial or recreational fishermen or other marine resource users, will result in user conflicts with the OCS energy program, the depth of the site is not sufficient for the allowable aquaculture system, substrate and currents at the site will inhibit the dispersal of wastes and effluents, the site is prone to low dissolved oxygen or harmful algal blooms, or other grounds inconsistent with FMP objectives or applicable Federal laws. The information used for siting a facility with regard to proximity to commercial and recreational fishing grounds includes electronic logbooks from the shrimp industry, logbook reported fishing locations, siting information from previously proposed or permitted aquaculture facilities, and other data that would provide information regarding how the site would interact with other fisheries. The RA's determination will be based on consultations with appropriate NMFS and NOAA offices and programs, public comment, as well as siting and other information submitted by the permit applicant. If a proposed site is denied, the RA will deny the Gulf Aquaculture Permit and provide this determination as required by § 622.101(d)(2)(ii).

(b) [Reserved]

**§ 622.104 Restricted access zones.**

(a) *Establishment of restricted access zones.* NMFS will establish a restricted access zone for each aquaculture facility. The boundaries of the restricted access zone will correspond with the coordinates listed on the approved ACOE Section 10 permit associated with the aquaculture facility.

(b) *Prohibited activities within a restricted access zone.* No recreational fishing or commercial fishing, other than aquaculture, may occur in the restricted access zone. No fishing vessel may operate in or transit through the restricted access zone unless the vessel

has on board a copy of the aquaculture facility's permit with an original signature, *i.e.,* not a copy of the signature, of the permittee.

(c) *Marking requirement.* The permittee must mark the restricted access zone with a floating device such as a buoy at each corner of the zone. Each floating device must clearly display the aquaculture facility's permit number and the words ''RESTRICTED ACCESS'' in block characters at least 6 inches (15.2 cm) in height and in a color that contrasts with the color of the floating device.

**§ 622.105 Allowable aquaculture systems and species.**

(a) *Allowable aquaculture systems.* The RA will evaluate each proposed aquaculture system on a case-by-case basis and approve or deny use of the proposed system for offshore marine aquaculture in the Gulf EEZ. Proposed aquaculture systems may consist of cages, net pens, enclosures or other structures and gear which are used to culture marine species. The RA will evaluate the structural integrity of a proposed aquaculture system based, in part, on the required documentation (*e.g.,* engineering analyses, computer and physical oceanographic model results) submitted by the applicant to assess the ability of the aquaculture system(s) (including moorings) to withstand physical stresses associated with major storm events, *e.g.* hurricanes, storm surge. The RA also will evaluate the proposed aquaculture system and its operations based on the potential to pose significant risks to essential fish habitat, endangered or threatened species, marine mammals, wild fish stocks, public health, or safety. The RA may deny use of a proposed aquaculture system or specify conditions for using an aquaculture system based on a determination of such significant risks. The RA's evaluation will be based on information provided by the applicant as well as consultations with appropriate NMFS and NOAA offices and programs. If the RA denies use of a proposed aquaculture system or specifies conditions for its use, the RA will deny the Gulf Aquaculture Permit and provide this determination as required by § 622.101(d)(2)(ii).

(b) *Allowable aquaculture species.* Only the following federally managed species that are native to the Gulf, are not genetically modified or transgenic, may be cultured in an aquaculture facility in the Gulf EEZ:

(1) Species of coastal migratory pelagic fish, as defined in § 622.2.

(2) Species of Gulf reef fish, as listed in appendix A to part 622.

(3) Red drum, *Sciaenops ocellatus.*

(4) Spiny lobster, *Panulirus argus.*

**§ 622.106 Aquaculture operations.**

(a) *Operational requirements and restrictions.* An owner or operator of an aquaculture facility for which a Gulf aquaculture permit has been issued must comply with the following operational requirements and restrictions.

(1) *Minimum start-up requirement.* At least 25 percent of allowable aquaculture systems approved for use at a specific aquaculture facility at the time of permit issuance must be placed in the water at the permitted aquaculture site within 2 years of issuance of the Gulf aquaculture permit, and allowable species for aquaculture must be placed in the allowable aquaculture system(s) within 3 years of issuance of the permit. Failure to comply with these requirements will be grounds for revocation of the permit. A permittee may request a 1-year extension to the above time schedules in the event of a catastrophe (*e.g.,* hurricane). Requests must be made in writing and submitted to the RA. The RA will approve or deny the request after determining if catastrophic conditions directly caused or significantly contributed to the permittee's failure to meet the required time schedules. The RA will provide the determination and the basis for it, in writing, to the permittee.

(2) *Marking requirement.* The permittee must maintain a minimum of one properly functioning electronic locating device (*e.g.,* GPS device, pinger with radio signal) on each allowable aquaculture system, *e.g.,* net pen or cage, placed in the water at the aquaculture facility.

(3) *Restriction on allowable hatcheries.* A permittee may only obtain juvenile animals for grow-out at an aquaculture facility from a hatchery located in the U.S.

(4) *Hatchery certifications.* (i) The permittee must obtain and submit to NMFS a signed certification from the owner(s) of the hatchery, from which fingerlings or other juvenile animals are obtained, indicating the broodstock have been individually marked or tagged (*e.g.,* via a Passive Integrated Transponder (PIT), coded wire, dart, or internal anchor tag) to allow for identification of those individuals used in spawning.

(ii) The permittee also must obtain and submit to NMFS signed certification from the owner(s) of the hatchery indicating that fin clips or other genetic materials were collected and submitted for each individual brood animal in accordance with procedures specified by NMFS.

(iii) The certifications required in § 622.106(a)(4)(i) and (ii) must be provided to NMFS by the permittee each time broodstock are acquired by the hatchery or used for spawning.

(5) *Health certification.* Prior to stocking fish in an allowable aquaculture system at an aquaculture facility in the Gulf EEZ, the permittee must provide NMFS a copy of a health certificate (suggested form is USDA/Animal and Plant Health Inspection Service (APHIS) VS 17–141, OMB 0579–0278) signed by an aquatic animal health expert, as defined in § 622.102(a)(1)(xv), certifying that the fish have been inspected and are visibly healthy and the source population is test negative for OIE pathogens specific to the cultured species or pathogens identified as reportable pathogens in the NAAHP as implemented by the USDA and U.S. Departments of Commerce and Interior.

(6) *Use of drugs and other chemicals or agents.* Use of drugs, pesticides, and biologics must comply with all applicable Food and Drug Administration (FDA), EPA, and USDA requirements (*e.g.,* Federal, Food, Drug and Cosmetic Act, 21 U.S.C. 301 *et seq.;* Clean Water Act, 40 CFR part 122; 9 CFR parts 101 through 124; 21 CFR parts 500 through 599; and 40 CFR parts 150 through 189).

(7) *Feed practices and monitoring.* The permittee must conduct feed monitoring and management practices in compliance with EPA regulations at 40 CFR 451.21, if applicable to the facility.

(8) *Monitoring and reporting compliance.* The permittee must monitor and report the environmental assessment parameters at the aquaculture facility consistent with NMFS' guidelines that will be available on the SERO Web site and from the RA upon request. The permittee also must comply with all applicable monitoring and reporting requirements specified in their valid ACOE Section 10 permit and valid EPA NPDES permit.

(9) *Inspection for protected species.* The permittee must regularly inspect allowable aquaculture systems, including mooring and anchor lines, for entanglements or interactions with marine mammals, protected species, and migratory birds. The frequency of inspections will be specified by NMFS as a condition of the permit. If entanglements or interactions are observed, they must be reported as specified in § 622.102(a)(1)(i)(G).

(10) *Fishing gear stowage requirement.* Any vessel transporting

cultured animals to or from an aquaculture facility must stow fishing gear as follows:

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

(iii) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(iv) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (*i.e.,* hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(v) All other fishing gear must be stored below deck or in an area where it is not normally used or readily available for fishing.

(11) *Prohibition of possession of wild fish in restricted access zone.* Except for broodstock, authorized pursuant to paragraph (g)(16) of this section, possession of any wild fish at or within the boundaries of an aquaculture facility's restricted access zone is prohibited.

(12) *Prohibition of possession of wild fish aboard vessels, vehicles, or aircraft associated with aquaculture operations.* Possession and transport of any wild fish aboard an aquaculture operation's transport or service vessels, vehicles, or aircraft is prohibited while engaged in aquaculture related activities, except when harvesting broodstock as authorized by NMFS.

(13) *Maintaining fish intact prior to landing.* Cultured finfish must be maintained whole with heads and fins intact until landed on shore. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. Spiny lobster must be maintained whole with the tail intact until landed on shore.

(14) *Restriction on time of landing.* Species cultured at an aquaculture facility can only be landed ashore between 6 a.m. and 6 p.m., local time.

(15) *Bill of lading requirement.* Any cultured fish harvested from an aquaculture facility and being transported must be accompanied by the applicable bill of lading through landing ashore and the first point of sale. The bill of lading must include species name, quantity in numbers or pounds by species, date and location of landing, Gulf aquaculture permit number of the aquaculture facility from which the fish were harvested, and name and address of purchaser.

(16) *Request to harvest broodstock.* (i) At least 30 days prior to each time a permittee or their designee intends to harvest broodstock from the Gulf, including from state waters, that would be used to produce juvenile fish for an aquaculture facility in the Gulf EEZ, the permittee must submit a request to the RA via the SERO Web site using a Web-based form. The information submitted on the form must include the number, species, and size of fish to be harvested; methods, gear, and vessels (including USCG documentation or state registration number) to be used for capturing, holding, and transporting broodstock; date and specific location of intended harvest; and the location to which broodstock would be delivered.

(ii) Allowable methods or gear used for broodstock capture in the EEZ include those identified for each respective fishery in § 600.725, except red drum, which may be harvested only with handline or rod and reel.

(iii) The RA may deny or modify a request for broodstock harvest if allowable methods or gear are not proposed for use, the number of fish harvested for broodstock is more than necessary for purposes of spawning and rearing activities, or the harvest will be inconsistent with FMP objectives or other Federal laws. If a broodstock collection request is denied or modified, the RA will provide the determination and the basis for it, in writing to the permittee. If a broodstock collection request is approved, the permittee must submit a report to the RA including the number and species of broodstock harvested, their size (length and weight), and the geographic location where the broodstock were captured. The report must be submitted on a Web-based form available on the SERO Web site no later than 15 days after the date of harvest.

(iv) Notwithstanding the requirements in § 622.106(a)(16), all proposed harvest of broodstock from state waters also must comply with all state laws applicable to the harvest of such species.

(17) *Authorized access to aquaculture facilities.* A permittee must provide NMFS employees and authorized officers access to an aquaculture facility to conduct inspections or sampling necessary to determine compliance with the applicable regulations relating to aquaculture in the Gulf EEZ. In conducting the inspections, NMFS may enter into cooperative agreements with States, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. As a condition of the permit, NMFS may also require the permittee to contract a non-Federal Government third party approved by the RA if the RA agrees to accept the third party inspection results. The non-Federal Government third party may not be the same entity as the permittee.

(b) [Reserved]

**§ 622.107 Limitation on aquaculture production.**

No individual, corporation, or other entity will be authorized to produce more than 12.8 million lb (5.8 million kg), round weight, of cultured species annually from permitted aquaculture facilities in the Gulf EEZ. Production of juvenile fish by a hatchery in the Gulf EEZ will not be counted toward this limitation because those fish would be accounted for subsequently via reported harvest at the aquaculture facility where grow out occurs.

**§ 622.108 Remedial actions.**

(a) *Potential remedial actions by NMFS.* In addition to potential permit sanctions and denials in accordance with subpart D of 15 CFR part 904, NMFS may take the following actions, as warranted, to avoid or mitigate adverse impacts associated with aquaculture in the Gulf EEZ.

(1) *Actions to address pathogen episodes.* NMFS, in cooperation with USDA's APHIS, may order movement restrictions and/or the removal of all cultured animals from an allowable aquaculture system upon confirmation by a USDA's APHIS reference laboratory that an OIE-reportable pathogen, or additional pathogens that are subsequently identified as reportable pathogens in the NAAHP exists and USDA's APHIS and NMFS determine the pathogen poses a significant threat to the health of wild or cultured aquatic organisms.

(2) *Actions to address genetic issues.* NMFS may sample cultured animals to determine genetic lineage and, upon a determination that genetically modified or transgenic animals were used or possessed at an aquaculture facility, will order the removal of all cultured animals of the species for which such determination was made. In conducting the genetic testing to determine that all broodstock or progeny of such broodstock were originally harvested from U.S. waters of the Gulf, were from the same population or sub-population where the facility is located, and that juveniles stocked in cages or net pens are the progeny of wild broodstock, or other genetic testing necessary to carry

out the requirements of the FMP, NMFS may enter into cooperative agreements with States, may delegate the testing authority to any State, or may contract with any non-Federal Government entities. As a condition of the permit, NMFS may also require the permittee to contract a non-Federal Government third party approved by the RA if the RA agrees to accept the third party testing results. The non-Federal Government third party may not be the same entity as the permittee.

(b) [Reserved]

**§ 622.109 Adjustment of management measures.**

In accordance with the framework procedures of the FMP for Regulating Offshore Marine Aquaculture in the Gulf of Mexico, the RA may establish or modify the items in paragraph (a) of this section for offshore marine aquaculture.

(a) For the entire aquaculture fishery: MSY, OY, permit application requirements, operational requirements and restrictions, including monitoring requirements, allowable aquaculture system requirements, siting requirements for aquaculture facilities, and recordkeeping and reporting requirements.

(b) [Reserved]

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