

**SUPPORTING STATEMENT  
SOUTHEAST REGION AQUACULTURE PROGRAM  
OMB CONTROL NO. 0648-0703**

**INTRODUCTION**

The [Magnuson-Stevens Fishery Conservation and Management Act](#) (MSFCMA) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans (FMPs) for any fishery in waters under its jurisdiction. The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries; NMFS) manages aquaculture operations in federal waters of the Gulf of Mexico (Gulf) under the Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico (Aquaculture FMP). This Aquaculture FMP proposes to implement an offshore aquaculture program in the Gulf in conjunction with a final rule, RIN 0648-AS65). Changes have been made to some burden estimates; there are several changes in information collection titles and other terminology. Also, three new information collections have been added, previously not included as not seen as requiring approval under the PRA.

This request is for a new collection of information (resubmission with changes from the proposed rule).

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

Aquaculture in federal waters is considered "fishing" under the MSFCMA. Fishing includes activities and operations related to the taking, catching, or harvesting of fish (Sec 3 (16) of the MSFCMA). Any FMP prepared by the Council, or by the Secretary, must include provisions specified in Sec 303(a) of the MSFCMA. Additionally, numerous discretionary provisions may be prescribed, including measures, requirements, or conditions and restrictions determined to be necessary and appropriate for the conservation and management of a fishery (Sec. 303(b)(14) of the MSFCMA). While current regulations authorize NOAA Fisheries to grant Exempted Fishing Permits (EFPs) for aquaculture in federal waters, such permits are of limited duration and are not intended for the large-scale production of fish. As a result, commercial aquaculture in federal waters is not viable under the current permitting process. A FMP must therefore be developed to authorize the development of commercial aquaculture operations if aquaculture is to become a viable industry in federal waters.

Several years ago, Congress considered national legislation that would have authorized and established a regulatory framework for offshore aquaculture in federal waters. The most recent version of the bill, titled the "National Offshore Aquaculture Act of 2007" (posted as a supplementary document), would have exempted aquaculture from the MSFCMA definition of "fishing." The bill would have also provided regional fishery management councils a consultative role in the development of an offshore aquaculture industry and would not override other existing laws and regulations intended to conserve and manage wild fish stocks. Although

Congress did not act on the proposed legislation, it is possible that similar legislation could be enacted in the future.

The purpose of the Aquaculture FMP is to maximize benefits to the Nation by establishing a regional permitting process to manage the development of an environmentally sound and economically sustainable aquaculture industry in federal waters of the Gulf. The Council initiated this action to provide a programmatic approach to evaluating the impacts of aquaculture proposals in federal waters of the Gulf. This action was also initiated to provide a comprehensive framework for regulating such activities. The Aquaculture FMP and associated Programmatic Environmental Impact Statement (PEIS) are intended to improve the regulatory process for authorizing current and future offshore aquaculture proposals by providing the Council and NOAA Fisheries the information required to review and authorize offshore aquaculture operations.

The primary goal of the Council's proposed aquaculture permitting program is to increase the maximum sustainable yield (MSY) and optimum yield (OY) of federal fisheries in the Gulf by supplementing the harvest of wild caught species with cultured product. The objectives of the Aquaculture FMP are:

1. Provide for the development of environmentally sound and economically sustainable aquaculture fishery to increase the potential yields of the fishery, consistent with the goals and objectives of the MSFCMA;
2. To achieve optimum yield, while not adversely affecting wild stocks, protected resources, and essential fish habitat;
3. To conserve and protect essential fish habitat through proper aquaculture facility siting;
4. To obtain necessary data and information for issuing aquaculture permits and monitoring potential impacts of aquaculture operations;
5. To minimize user conflicts among aquaculture permit operations, commercial fishermen, and recreational anglers;
6. To prevent or mitigate to the extent practicable adverse impacts to wild stocks, protected resources, and essential fish habitat resulting from aquaculture activities;
7. To reduce the nation's dependence on imports by supplementing the harvest of domestic fisheries with cultured products to meet growing United States (U.S.) consumer demand; and,
8. To promote and facilitate effective enforcement of the aquaculture management program.

Supplementing the harvest of domestic fisheries with cultured product will help the U.S. meet consumers' growing demand for seafood and may reduce the nation's dependence on seafood imports. Currently, the U.S. imports over 90 percent of the seafood consumed in the country, and the annual U.S. seafood trade deficit is at an all time high of over \$11 billion. One half of imported seafood products are produced by aquaculture operations. This worldwide trend toward aquaculture production is expected to continue in response to consumers' continued demand for safe, healthy seafood.

The primary goal of federal fishery management, as described in National Standard 1 of the MSFCMA, 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." OY is defined as the amount of fish that provides 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 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 MSY of each Council-managed fishery is 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 local, regional, and national economies, and their capacity to meet the Nation's nutritional needs.

The environmental permitting, reporting and siting conditions associated with the proposed aquaculture program are consistent with the Council's policy to encourage environmentally responsible marine aquaculture. These conditions are intended to ensure the operations of all offshore aquaculture facilities permitted in the Gulf are consistent with the MSFCMA National Standard (Section 6.12) and do not compromise Council objectives for wild fisheries. Council objectives for wild fisheries include, but are not limited to:

1. Stabilize or sustain wild stocks over the long term (Spiny Lobster FMP (1982), Coastal Migratory Pelagics FMP (1983), Red Drum FMP Amendment 1 (1987), Reef Fish FMP Amendment 1 (1990);
2. Rebuild overfished stocks (Reef Fish FMP (1984);
3. Conserve and protect fish habitat (Reef Fish FMP (1984), Red Drum FMP Amendment 1 (1987);
4. Minimize impacts on protected species, consistent with the requirements of the Endangered Species Act and Marine Mammal Protection Act (Shrimp FMP (1981); and,
5. Minimize user conflicts (Spiny Lobster FMP (1982), Coastal Migratory Pelagics FMP Amendment 1 (1985), Reef Fish FMP Amendment 1 (1990).

These conditions will assist the Council in promoting the development of a robust commercial aquaculture fishery in the Gulf, without threatening the long-term sustainability or viability of wild fisheries or their contributions to the local, regional, and national economies.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The administrative functions associated with the aquaculture program (e.g., registration and account setup, landing transactions and most reporting requirements) are intended to be accomplished online via the aquaculture website; 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 will be available from Customer Service by calling Monday through Friday between 8 a.m. and 4:30 p.m. eastern time. If some online reporting functions are not available at the time of initial implementation of the aquaculture program,

participants may comply by submitting the required information via email to the NOAA Fisheries Southeast Region using the appropriate forms that are available on the website. Once online functions are available, participants must comply by using the online system unless alternative methods are specified.

Operators of aquaculture facilities would be required to submit all information described below to NOAA Fisheries, with the exception of the bill of lading information which will accompany each shipment of cultured product. Currently, all submissions would be via email, phone or standard mail, unless otherwise noted. NOAA Fisheries will examine all reports and monitoring of aquaculture operations. Operators must follow monitoring and reporting procedures consistent with NOAA Fisheries guidelines that will be available on the aquaculture website (Uniform Resource Locator (URL) not yet available) and from the RA upon request. Operators must also comply with all applicable monitoring and reporting requirements specified in their valid Army Corps of Engineers (ACOE) under Section 10 for a permit and valid Environmental Protection Agency (EPA), National Pollutant Discharge Elimination System (NPDES) permit. Additionally, dealers who purchase aquaculture product from facilities would be required to submit information on those purchases.

*Federal Permit Application for Offshore Aquaculture in the Gulf of Mexico* (mail) – Required information on the application/renewal 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, and copies of currently valid Federal permits applicable to the proposed aquaculture operation.

*Notification to Delay Permit Issuance* (mail; no associated form; see Section 622.101(d)(3)(iii) of the final rule) – NMFS will allow permit applicants to defer initial issuance of a Gulf aquaculture permit for up to 2 years from the date the RA notifies the applicant of the decision to grant the permit. The initial permit will be issued 30 days after the RA notifies the applicant of the decision to grant the permit, unless NMFS receives a written request from the applicant before the end of the 30 day period to defer issuance of the permit.

*Annual Report for Gulf Aquaculture Permittees* (mail or website) – The Operator’s annual report is designed to be a summary of all activities that have occurred in the previous calendar year.

*Baseline Environmental Survey* (mail; no associated form; see Section 622.101(a)(2)(v) of the final rule) – The permittee must submit a baseline environmental survey of the proposed aquaculture site. The survey must be conducted, and the data, analyses, and results must be summarized and presented, consistent with the guidelines specified by NMFS in coordination with other federal agencies with similar requirements (e.g., EPA). These guidelines will include, but may not be limited to, 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.

*Certification for Broodstock and Juveniles* (mail) – The permittee must certify that: 1) broodstock used to produce juveniles to stock into offshore aquaculture operations were

originally harvested from U.S. waters of the Gulf and have originated from the same population or sub-population of fish where the aquaculture facility is located or are progeny of such wild broodstock; 2) that all broodstock animals 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; 3) no genetically engineered animals or transgenic animals are used or possessed in the aquaculture facility; and 4) fin clips or other genetic information have been submitted for each individual broodstock animal in accordance with procedures specified by NOAA Fisheries (available on the SERO Web site).

*Request to Harvest Broodstock* (website) - At least 30 days prior to each time a permittee or their designee intends to harvest broodstock from the EEZ or state waters, that would be used to produce juvenile fish for an aquaculture facility in the Gulf EEZ, submit a request from to the NOAA Fisheries RA, including the following information: the number of animals, species, and size, the methods, gears, and vessels (including USCG documentation or state registration) to be used for capturing, holding, and transporting broodstock, the date and specific location of intended harvest, and the location to which broodstock will be delivered.

*Broodstock Post-Harvest Report* (website) – Operators must submit a report including the number and species of broodstock collected, their size (length and weight), and the geographic location where the broodstock were captured. The report must be submitted to the NOAA Fisheries RA no later than 15 days after the date of harvest.

*Notification to Transport Cultured Juveniles to Offshore Systems* (phone or website) - Operators would be required to notify NOAA Fisheries 72 hours in advance of transporting cultured animals from the hatchery to offshore aquaculture systems (unless the hatchery is integrated into the offshore aquaculture facility). A 72-hour notification window will aid enforcement and NOAA Fisheries staff and allow them the opportunity to be present at a facility.

*Request to Transfer Gulf Aquaculture Permit* (mail) - A Gulf Aquaculture Permit is transferable to an eligible person, i.e., a U.S. citizen or permanent resident alien. 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 Regional Administrator (RA) transfer the permit to him/her. Such a person must complete and submit to the RA a permit transfer request form that is available from the RA. A request for permit transfer must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers. The seller must sign the back of the permit, and have the signed transfer document notarized. A transfer is valid only for the duration of the permit being transferred.

*Notification of Entanglement or Interaction* (website) – Operators would be required to notify NOAA Fisheries within 24 hours of discovery of any entanglements or interactions with marine mammals, endangered species, or migratory birds occur. This reporting requirement for the operators will allow NOAA Fisheries to assess the severity of the problem and identify solutions for addressing and preventing future entanglements, or interactions.

*Marine Mammal Authorization Program form* (MMAP form available at [http://www.nmfs.noaa.gov/pr/interactions/mmap/mmap\\_reporting\\_form.pdf](http://www.nmfs.noaa.gov/pr/interactions/mmap/mmap_reporting_form.pdf)) – Operators would be required to submit this form to NOAA Fisheries within 48 hours when there is an incidental mortality or injury to a marine mammal.

*Notification of Major Escapement Event* (website) – Operators would be required to notify NOAA Fisheries of escapement episodes within 24 hours of the event. This reporting requirement for the operators will allow NOAA Fisheries to assess the severity of the problem and identify solutions for addressing and preventing future escapements.

*Notification of Reportable Pathogen Episode* (website) - Operators would be required to report pathogen episodes within 24 hours of discovery. Twenty-four hours is considered a reasonable time frame for response and will allow NOAA Fisheries and other agencies to more quickly and efficiently respond to these events.

The following two requirements involve the harvest and sale of aquacultured product. First, an operator must provide the harvest and landing notification including the information listed below to NOAA Fisheries 72 hours before such activity begins. Once the aquacultured product is purchased by an authorized dealer, s/he must complete the Dealer Landing Transaction Report.

*Harvest and Landing Notification* (phone or website) – This is intended to create consistency in the process of reporting and to aid enforcement in conjunction with the notification requirements. Operators would be required to notify NOAA Fisheries 72 hours in advance of harvest and 72 hours in advance of landing of cultured animals. A 72-hour notification window will aid enforcement and NOAA Fisheries staff and allow them the opportunity to be present at a facility or landing location when these events occur. Landings and transactions of cultured species harvested from allowable aquaculture systems in the Gulf EEZ would be tracked using an electronic reporting system developed by NOAA Fisheries. Transactions would be initiated by the Gulf aquaculture dealer. Aquaculture permit holders would verify landings transactions before reporting is complete. If aquaculture permit holders indicate an error occurred during completion of a landing transaction, NOAA Fisheries may require participants to complete a landing transaction correction form.

*Bill of Lading* (no associated form; see Section 622.106(a)(15) of the final rule) – Any cultured animals 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. This form will aid enforcement with traceability of cultured products from the Gulf. Bill of lading forms are standard in shipments of goods and therefore no additional form is necessary. However, under this rule NOAA Fisheries requires each bill of lading to 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.

The electronic reporting process would also be used to collect and monitor landing transactions (i.e. when an aquaculture permit holder sells cultured species to a permitted dealer), including the following information:

- Date, time, and location of transaction;
- The actual ex-vessel value of cultured species sold;
- The weight of the catch sold by species; and,
- Information necessary to identify the fisherman, vessel, and dealer involved in the transaction.

*Federal Permit Application for an Annual Dealer Permit* (mail) - Regulations at 50 CFR 622.101 require a Gulf aquaculture dealer permit to sell or attempt to sell an allowable aquaculture species cultured in the Gulf exclusive economic zone (EEZ). This will be addressed

by having the dealer check the applicable box on the application in OMB Control No. 0648-0205, Southeast Region Permit Family of Forms. No new form is necessary for this collection.

*Dealer Report for Landing and Sale* (website) - 1A dealer who purchases fish from an aquaculture facility in the Gulf EEZ must complete a landing transaction report for each landing and sale of cultured fish via the aquaculture website at the time of the transaction in accordance with reporting form and instructions provided on the website. This report includes, but is not limited to, 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 whole 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. 1After the dealer submits the report and the information has been verified, the website will send a transaction approval code to the dealer and the aquaculture permit holder.

*Assurance Bond* (mail or email; no associated form; see Section 622.101(a)(2)(xiii) of final rule) - An assurance bond sufficient to cover the costs of removal of all components of an aquaculture facility, including cultured animals<sup>1</sup>, is required for operators, to minimize environmental impacts in the case of unforeseen circumstances arising from the operation of such a facility. The assurance bond would also cover the costs of removing animals with OIE (World Organization of Animal Health)-reportable pathogens, genetically engineered animals or transgenic animals if an operator does not remove these animals upon order by NOAA Fisheries. The guidelines for the assurance bond will be available on the SERO Web site.

*Contract with Aquatic Animal Health Expert* (mail or email) – A certified aquatic animal health expert would be responsible for certifying juveniles as pathogen-free prior to stocking. Additionally, the animal health expert would be responsible for diagnosing pathogens if an outbreak occurs and reporting information about outbreaks to NOAA Fisheries. The aquatic animal health expert would have to be either a licensed doctor of veterinary medicine or certified by the American Fisheries Society, Fish Health Section, as a fish pathologist or fish health inspector. An operator must also provide a copy of the USDA/Animal and Plant Health Inspection Service (APHIS) VS 17-141 form (OMB Control No. 0579-0278) to NOAA Fisheries prior to stocking allowable species into offshore aquaculture systems. This form must have been signed by the expert with whom the operator has developed a contract, following collection and testing of tissue samples to ensure that fish are free from any OIE-reportable pathogens.

*Emergency Disaster Plan* (mail or email; no associated form; see Section 622.101(a)(2)(xvi)) - Requiring an emergency disaster plan from operators will help businesses prepare their operations in the event of a disaster, thereby reducing risks of impacting the physical and biological environment.

*Fin Clip Samples* (mail; no associated form; see Section 622.106(a)(4)(ii) ) - Operators would be required to obtain and submit broodstock fin clips, or other genetic material, to NOAA Fisheries. This requirement will allow for enforcement and monitoring in the event that the use of genetically engineered animals or transgenic animals is suspected. NOAA Fisheries personnel would be able to identify source broodstock using fin clips or other genetic material and compare it to the genetic make-up of offspring used for culture.

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<sup>1</sup> The assurance bond would not be required to cover the costs of removing an oil or gas platform.

*Pinger/Location Device* (no associated form; see Section 622.106(a)(2) of the final rule) – Permittees must maintain a minimum of one properly functioning electronic locating device (e.g., GPS device, pinger with radio signal) on each allowable aquaculture system, i.e., net pen or cage, placed in the water at the aquaculture facility. Cost will vary anywhere from several hundred to several thousand dollars, depending on the type and size.

*Marking Restricted Access Zone* (no associated form; see Section 622.104(c) of the final rule) – Permittees 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 letters at least 6 inches in height and in a color that contrasts with the color of the floating device. The restricted access zone corresponds to the coordinates on the permittees’ Army Corps Section 10 permit for the facility. The marking requirement is in line with U.S. Coast Guard regulations which require the marking of structures, sunken vessels, and other obstructions for the protection of maritime navigation (Title 33 C.F.R. 64).

*Genetic Testing* (no associated form; see Section 622.108(a)(2) of the final rule) – It may be necessary to conduct genetic testing to determine that all broodstock (and 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, that juveniles stocked in cages are the progeny of wild broodstock, or other genetic testing necessary to carry out the requirements of the Aquaculture FMP. In conducting this testing, NOAA Fisheries may enter into cooperative agreements with States, may delegate the testing authority to any State, or may contract with any non-Federal Government entities. NOAA Fisheries 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.

NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA Fisheries decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

As stated above in the response to Question 2, once system implementation is completed, most information would be submitted via a web-based system, with email an option in the meantime and paper submission an option only in catastrophic circumstances.



The real-time capability of such an electronic process would be advantageous to aquaculture permit holders, NOAA Fisheries, and enforcement personnel.

The application must be mailed to the NOAA Fisheries Permit Office at 263 13th Avenue South, St. Petersburg, FL 33701 and documents related to it may be mailed or e-mailed.

**4. Describe efforts to identify duplication.**

The Magnuson-Stevens Act's operational guidelines require each FMP to evaluate existing state and federal laws that govern the fisheries in question, and the findings are made part of each FMP. Each Fishery Management Council membership is comprised of state and federal officials responsible for resource management in their area. These two circumstances allow identification of other collections that may be gathering the same or similar information. In addition, each FMP undergoes extensive public comment periods where potential applicants review the proposed permit application requirements. Therefore, NOAA Fisheries is confident it is aware of similar collections if they exist.

Several pieces of information were found to be duplicative between the *Notification of Entanglement or Interaction* and the *Marine Mammal Authorization Program form* (see #2 above). These duplications only pertain to incidents involving marine mammals and not to other protected species such as turtles and sea birds. Duplicative information between both forms includes: name and contact info of the owner/operator, date, time and location of event, species involved and type of mortality or injury. The *Notification of Entanglement or Interaction* form collects additional details not collected on the *Marine Mammal Authorization Program form*, such as: marine mammal interactions that do not result in injury or mortality, location of injuries on the body, behavior of the marine mammal(s) involved during the event, location and type of any gear left on the marine mammal(s), biological information about the marine mammal (if known) and steps taken to prevent future interaction/entanglement. The *Marine Mammal Authorization Program form* also collects information not collected on the *Notification of Entanglement or Interaction* form, such as: name and Coast Guard (or state registration number) of the vessel involved in the marine mammal event and whether the incident was incidental or intentional.

It has been determined that the other information proposed to be collected is not being collected elsewhere; therefore, this data collection would not cause duplication.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

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.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

NOAA Fisheries would be unable to manage the Aquaculture program if this collection were not conducted or were conducted less frequently. The approved participants would be unknown and harvest rates could not be determined, which may result in detrimental effects.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

No special circumstances are associated with this information collection.

**8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The notice of availability of the Aquaculture FMP, and the proposed rule to implement the FMP (RIN 0648-AS65) included a request for comments on this data collection.

NMFS received over 1,100 public comments on the proposed rule and many of them relate to the collection of information requirements. The comments related to this collection of information requirement and NMFS responses are summarized below.

*Comment:* NMFS requested public comment regarding whether it is necessary for facilities to provide a Notice of Harvest to NMFS 72 hours prior to harvesting cultured animals to ensure that only cultured animals are landed (this corresponds to issue 5 in the Public Participation section of the proposed rule). NMFS received several comments opposing the requirement to notify NMFS 72 hours prior to harvesting. These comments indicated that this requirement would be burdensome as harvesting may occur on a daily basis and weather conditions and other factors may impact harvest schedules.

*Response:* NMFS has determined that it is appropriate to require the Notice of Harvest. The 72-hour notification window is intended to aid law enforcement and NMFS staff by allowing them the opportunity to be present at a facility when harvesting occurs to verify that permittees are harvesting only cultured species (*e.g.*, through genetic testing) and that they remain within their production cap. Permittees can provide notification to NMFS either by phone or web-based form and may use this same method to provide updates on harvest times, etc. should inclement weather or other circumstances arise. This requirement was contained in the FMP and the preamble to the proposed rule and NMFS is adding it to the regulations in this final rule.

*Comment:* NMFS requested public comment on 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 approved aquaculture system, including mortalities. In addition, NMFS requested public comment on the extent to which this information aids enforcement of production quotas and auditing (this corresponds to issue 6 in the Public Participation section of the proposed rule). NMFS received one comment requesting that this requirement be maintained for enforcement purposes. NMFS did not receive any comments opposing this requirement.

*Response:* NMFS has determined that this requirement is necessary to provide the data needed to effectively enforce individual production quotas and for auditing purposes. This type

of recordkeeping is standard practice in the aquaculture industry and therefore no additional costs are anticipated. Therefore, NMFS has not made any changes to this requirement.

*Comment:* NMFS requested public comment on the practical utility and additional cost of the 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) (this corresponds to issue 7 in the Public Participation section of the proposed rule). NMFS received one comment related to this issue which urged NMFS to maintain strict record-keeping requirements.

*Response:* NMFS has determined that it's appropriate to require that permittees maintain original or copies of invoices for feed for 3 years from the date of purchase. This requirement will assist NMFS and the EPA in the event that water quality problems arise as a result of the type of feed being used. Further, the EPA regulations (40 CFR 451.21(g)(1)) only require that NPDES permittees maintain records documenting the feed amounts while NMFS' requirement will provide information on the type of feed purchased as well as require permittees keep this information for 3 years. NMFS does not anticipate this requirement will result in additional costs to the applicant as the applicant will receive this information as part of their normal business activity. This requirement was contained in the preamble to the proposed rule and NMFS is adding it to the regulations in this final rule.

*Comment:* The final rule should outline specific parameters for the baseline environmental survey (formerly referred to as the baseline environmental assessment).

*Response:* NMFS is currently working with other Federal permitting agencies to develop guidance for the baseline environmental survey. This document will be made available on the Web site when the rule becomes effective. Potential applicants are encouraged to contact NMFS and other Federal regulatory agencies early in the permit application process with any questions about the guidance document.

*Comment:* The proposed rule places the responsibility for conducting an environmental assessment on each permit applicant.

*Response:* The proposed rule stated that applicants for Gulf aquaculture permits are required to submit environmental assessments to NMFS, along with their applications. The term "environmental assessment" used in that context refers to baseline environmental assessments, which will contain survey and data requirements that NMFS will use to review and approve proposed aquaculture sites during the permit application process.

Because the term "environmental assessment" is also a common NEPA term, NMFS changed the term "baseline environmental assessment" to "baseline environmental survey" in this final rule to avoid confusion. The baseline environmental survey requirement is separate from any additional NEPA analysis which NMFS may undertake for individual aquaculture applications during the permit review process.

*Comment:* The criteria for Gulf aquaculture permit renewals should be explicitly stated.

*Response:* Section 622.101(d)(6) of the final rule states the requirements and timing criteria for permit renewals. Applicants must submit a completed renewal application form and all required supporting documentation to the RA at least 120 days and 30 days prior to the date they desire the aquaculture permit or aquaculture dealer permit renewal to take effect, respectively. The application forms will indicate the specific information and documentation required, which will be a sub-set of the information and documentation required for initial

issuance of the permit as specified in § 622.101(a)(2) of this final rule. NMFS considers compliance with recordkeeping and reporting requirements (including annual reports) as specified in the regulations as information necessary for administration of the permit, and may decline to process a renewal request until all the applicable requirements are met. Further, as stated in § 622.101(d)(8), a permit application may be denied in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

*Comment:* The requirement that permittees deploy at least 25 percent of aquaculture systems within 2 years of permit issuance and stock juveniles into these systems within 3 years of permit issuance does not take into account the long lead times required to establish an aquaculture operation. NMFS should allow at least 5 years for these activities or require permittees to submit a site development plan and ensure that certain milestones are met.

*Response:* The Council determined, and NMFS agrees, the 2- and 3-year time requirements for deploying systems and stocking juveniles, respectively, were considered reasonable for an aquaculture facility to begin operation.

Permittees may request a 1-year extension of these deadlines in the event of a catastrophe (e.g., hurricane). The RA will approve or deny the extension request after determining if catastrophic conditions exist and whether or not the permittee was affected by the catastrophic conditions. The RA will provide the determination and the basis for it, in writing to the permittee.

*Comment:* NMFS should implement a streamlined permitting process with other Federal agencies to reduce any conflicting or duplicative requirements. Additionally, a Memorandum of Understanding (MOU) should be developed between the appropriate Federal agencies, and agencies should be provided adequate time and resources to build enforcement capacity.

*Response:* NOAA chairs the Interagency Working Group on Aquaculture's Regulatory Task Force, which is charged with coordinating Federal aquaculture permitting processes to reduce duplication and streamline permitting processes. As part of that effort, NMFS and other Federal agencies are developing an interagency MOU to facilitate the needed coordination.

*Comment:* There should be at least a 60-day public comment period on each Gulf aquaculture permit application. Another comment stated that any public comment period requirement is burdensome and unnecessary.

*Response:* The Council determined, and NMFS agrees, that, as a general rule, a 45-day comment period is sufficient for purposes of commenting on individual aquaculture applications because this provides the public ample time to review and comment on applications without unduly delaying the review process.

NMFS disagrees that the comment period is burdensome and unnecessary. The public comment period on individual aquaculture applications is a critical component of the approval process. Public comments received on individual applications may allow NMFS to identify potential user conflicts and other issues that may be relevant to NMFS' decision regarding whether to approve a permit. Facilitating public participation in the decision to issue a Gulf aquaculture permit is an important part of the process that will improve NMFS' decision making without unduly burdening the permit applicant.

*Comment:* The final rule should establish grounds for revoking, suspending, or modifying permits and explain when NMFS will take remedial actions.

*Response:* Section 622.101(d)(8) of this final rule specifies that a permit may be revoked, suspended, or modified in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904. Section 904.301(a) specifies the bases for permit sanction or denials, including “The commission of any violation prohibited by any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel.” Thus, reasons for revoking permits include, but are not limited to, failure to comply with the monitoring, recordkeeping or reporting requirements of NMFS and other Federal agencies, failure to maintain valid ACOE Section 10 and EPA NPDES permits and failure to abide by permit terms and conditions.

Section 622.108 addresses remedial actions by NMFS and provides that in addition to permit sanction and denials, NMFS may order movement restrictions or the removal of all cultured animals if pathogens are identified or it is determined the genetically engineered or transgenic animals were used.

*Comment:* The 180-day time period for review of a Gulf aquaculture permit is excessive and should be changed to 90 days, after which time the permit should be issued if NMFS has not made a decision.

*Response:* NMFS disagrees that a 180-day time period for permit review is excessive and that a 90-day permit review timeframe would be adequate. The Council determined, and NMFS agrees, that 180 days is a reasonable amount of time to review and process individual permit applications, conduct public comment periods, and complete necessary consultations without unduly delaying or prolonging the approval process.

*Comment:* Several commenters stated that 10-year permit terms and 5-year renewals are not long enough to attract significant commercial investment and that permits should be issued for longer periods of time. In contrast, several other commenters stated that permit terms should be issued for shorter periods of time to ensure permits are thoroughly reviewed on a more frequent basis.

*Response:* The Council determined, and NMFS agrees, the initial permit term of 10 years with 5-year renewals strikes the best balance between providing adequate time to establish operations and funding, while not granting excessively long permit durations which would make it difficult for NMFS to review and address any unexpected problems related to user conflicts or other issues. However, in response to industry concerns, NMFS has also determined that it is appropriate to make an administrative change to the permitting process to allow permit holders to request additional time to secure financing and prepare for production without changing the 10-year effective period of the initial issuance. Therefore, NMFS is modifying the requirements in section 622.101(d)(3)(iii) to allow the applicant to defer initial issuance of a Gulf aquaculture permit for up to 2 years from the date the RA notifies the applicant of the decision to grant the permit. The Council may choose to change the permit duration terms in the future after more information is known about the impacts and feasibility of aquaculture operations in the Gulf EEZ. Additionally, as discussed above, in the event of a significant unexpected problem requiring urgent action to protect public health, interest, or safety, NMFS may consider withdrawing, suspending, revoking, or annulling a permit pursuant to the Administrative Procedure Act, 5 U.S.C. 558(c).

*Comment:* The \$10,000 permit application fee is prohibitive and unnecessary given the nascent status of the offshore aquaculture industry.

*Response:* NMFS disagrees. The fee schedule for permit applications is based on criteria

set forth in the NOAA Finance Handbook and reflects the administrative costs associated with review of Gulf aquaculture permit applications and permit issuance. These costs include meeting with potential applicants to provide guidance and identifying critical issues before applications are finalized, reviewing application packages (e.g., site surveys, systems, business information) to determine the impacts of proposed operations on NOAA trust resources and associated requirements consulting with the Council and the public on proposed operations, and legal and technical support informing determinations regarding permit issuance. Details on the NOAA Finance Handbook can be found at: <http://www.corporateservices.noaa.gov/finance/Finance%20Handbook.html>.

*Comment:* NMFS should explain the contingencies for transferring a Gulf aquaculture permit.

*Response:* Permit transfer provisions are outlined in § 622.101(d)(5) of this final rule. Gulf aquaculture permits are transferable as long as the geographic location of the aquaculture facility site remains unchanged and all applicable permit requirements were completed and updated at the time of transfer. The transferee must also be a U.S. citizen or permanent resident alien in order to be eligible for a permit.

*Comment:* The proposed rule estimates the average time to prepare a Gulf aquaculture permit application and supporting documents to be 33 hours. This is an underestimation. The final rule should also correct the assumption that the baseline environmental survey will require 24 hours to complete as this will likely take several weeks or more.

*Response:* NMFS agrees and has recalculated the estimated time it will take to prepare a permit application and supporting documents (assurance bond, contract with a certified aquatic animal health expert, emergency disaster plan) to be approximately 51 hours. This estimate does not include the time necessary to complete a baseline environmental survey, which could take up to 320 hours based on the calculation of work necessary to conduct the survey on a site that would produce approximately 12.8 million lb (5.8 million kg) annually. NMFS notes that the actual time to complete an application and baseline environmental survey may vary as it will depend on the complexity of the operation, as well as the location and size of the proposed site.

*Comment:* The requirement to land cultured fish between 6 a.m. to 6 p.m. local time is unreasonable. Restricting landing times to daylight hours may increase production losses due to predators or environmental factors. The ability to land at night should be allowed.

*Response:* NMFS agrees that restricting the time a vessel can arrive at a dock (*i.e.*, “land”) with cultured fish is overly restrictive. The regulations at 50 CFR 600.10 define “land” as “begin offloading fish, to offload fish, or to arrive in port or at a dock, berth, beach, seawall, or ramp.” The FMP, and the codified text in the proposed rule, stated that species cultured at an aquaculture facility must be “landed ashore” between 6 a.m. and 6 p.m., local time. However, the preamble to the proposed rule stated that permittees participating in the aquaculture program would be allowed to “offload” cultured animals at aquaculture dealers only between 6 a.m. and 6 p.m., local time. NMFS has determined that using the more precise term “offload” in this context is consistent with the objective of the requirement, which is to aid enforcement, while also allowing vessels the flexibility to arrive at the dock at any time. By restricting offloading times, law enforcement will be able to ensure that vessels are landing only cultured species (*e.g.*, secure tissue samples to be tested against broodstock DNA). For the purposes of this requirement, NMFS is defining the terms “offload” in § 622.106(a)(14) to mean “to remove cultured animals from a vessel.”

*Comment:* The requirement for permittees to notify NMFS at least 72 hours prior to harvesting fish from offshore aquaculture systems is problematic as harvest timeframes can change due to weather and other factors.

*Response:* The Council determined, and NMFS agrees, the 72-hour notification window is necessary to allow law enforcement and NMFS staff the opportunity to be present at a facility when harvesting occurs to verify that permittees remain within their production cap and that only cultured species are harvested. If the anticipated harvest times are delayed or change due to inclement weather or other circumstances, then permittees can update NMFS by phone or web-based form.

*Comment:* The proposed rule states that permittees must notify NMFS within 72 hours of landing to ensure that only cultured animals are landed. Another way to verify that only cultured animals are landed is by conducting tissue analysis (*e.g.*, fatty acid composition) on landed fish.

*Response:* NMFS is aware of studies which have demonstrated that commercial feed diets fed to cultured animals can help to distinguish these fish from their wild counterparts. However, the 72-hour notification requirement is different as it allows law enforcement the opportunity to intercept fish at the time of landing. NMFS will employ genetic verification techniques, when necessary, to verify that only cultured fish are landed.

*Comment:* The final rule should explicitly state that only federally managed species are allowed to be cultured in the Gulf EEZ and explain the mechanism for managed species in the Gulf EEZ.

*Response:* Section 622.105(b) of the final rule states that the only species that may be cultured in the Gulf EEZ under the FMP are species of coastal migratory pelagic fish, Gulf reef fish, red drum, and spiny lobster that are managed by the Council. As explained in the preamble, anyone wishing to culture species in the Gulf EEZ that are not managed by the Council would have to apply for an EFP. Information on applying for an EFP can be found at 50 CFR 600.745.

*Comment:* The requirement that aquaculture systems be fitted with a locating device should be removed.

*Response:* NMFS disagrees. Locating devices will allow operators to locate, and potentially retrieve, aquaculture structures in the event that they break free or are transported away from the permitted site. The Council determined, and NMFS agrees, this requirement is necessary to help prevent long-term damage to habitat and increase navigational safety.

*Comment:* Permittees should report pathogen episodes directly to APHIS so that APHIS can confirm the presence of reportable pathogens and take the appropriate steps to implement control or eradication measures.

*Response:* NMFS disagrees that it is necessary for permittees to report pathogen episodes directly to APHIS rather than NMFS. Section 622.102(a)(1)(i)(C) of this final rule requires permittees to report all findings or suspected findings of any OIE or NAAHP reportable pathogen episodes to NMFS within 24 hours of diagnosis. Upon confirmation by an APHIS-approved reference laboratory that a reportable pathogen exists and the determination that the pathogen poses a significant risk to the health of wild or farmed aquatic organisms, NMFS, in cooperation with APHIS, will take appropriate actions, which may include the removal of all cultured animals from the offshore aquaculture systems. The Council determined, and NMFS agrees, this process provides the necessary safeguards to adequately address any pathogen episodes.

*Comment:* The final rule should include details regarding health screening of cultured animals and specify which criteria will be used to certify that cultured animals are free of OIE-reportable pathogens prior to stocking.

*Response:* NMFS disagrees that the final rule needs to provide additional details regarding diagnostic testing (*i.e.*, health screening) as these methods will vary for each cultured species and may change over time. In regard to diagnostic techniques used to detect OIE-reportable diseases, methods relevant to the OIE-listed diseases can be found in the Manual of Diagnostic Tests for Aquatic Animals at:

<http://www.oie.int/international-standard-setting/aquatic-manual/>.

NMFS and APHIS staff will work closely with the permittee and designated aquatic animal health expert for each facility to ensure that appropriate diagnostic testing is conducted prior to each stocking event. NMFS believes this process provides sufficient safeguards against the potential spread of pathogens and disease from cultured to wild fish at an aquaculture facility.

*Comment:* When reporting an OIE or NAAHP pathogen, notification should be made within 48 hours of the discovery of a mortality rate of 5 percent or more that occurs within a 7-day period. NMFS should also require that epidemiological samples be submitted to a certified aquatic animal health expert for diagnosis.

*Response:* The Council determined, and NMFS agrees, the current requirement to report all reportable pathogens within 24 hours of diagnosis, regardless of the mortality rate of the cultured animals affected, is necessary to ensure wild stocks and other marine resources are appropriately safeguarded. The less conservative threshold and reporting timeframe suggested could result in a longer period of time before the reportable pathogen issue is addressed. The current requirement will allow NMFS and other agencies to more quickly and efficiently respond to reportable pathogen events.

NMFS will work in cooperation with APHIS and the aquaculture facility staff to collect samples for testing, conduct testing at APHIS-approved laboratories, and take any actions needed to address pathogen episodes.

*Comment:* NMFS should cap the amount of fish meal and fish oil used by aquaculture operations and require the use of alternative feeds which do not contain these ingredients.

*Response:* NMFS disagrees that it is necessary to specify which feeds can and cannot be used in aquaculture. The percentage of fish meal and fish oil used in aquaculture feeds has decreased in recent years and continues to decrease, in part because many feeds which are free of or low in fish meal and oil are now commercially available. The world supply of fish meal and fish oil from pelagic fisheries has remained relatively constant over the past 20 years at around 6 million metric tons, even as aquaculture operations continue to expand. Alternate ingredients being used in aquaculture feeds include soybeans, barley, rice, peas, canola, lupine, wheat gluten, corn gluten, algae, as well as seafood and farm animal processing co-products.

*Comment:* The public should have access to records on the type and quantity of drugs and other chemicals used in offshore aquaculture as well as ongoing monitoring data for water quality and benthic sampling. In addition, states should play a role in determining monitoring protocols for aquaculture facilities.

*Response:* NMFS does not regulate drugs or chemicals used in offshore aquaculture operations. The use of drugs, pesticides, and biologics are under the authority of FDA, EPA, and USDA, respectively. The EPA sets water quality monitoring protocols for offshore aquaculture



operations and collects monitoring data. Dissemination of information collected by other Federal agencies would be subject to data disclosure provisions that are applicable to those agencies.

NMFS may coordinate the development of monitoring protocols with other Federal agencies or defer to other agencies if those agencies have primary authority. In developing such protocols, NMFS may decide to solicit input from the states and the public.

*Comment:* The assurance bond should cover costs associated with finding, securing, and removing systems and impacts to natural resources caused by equipment or by escaped organisms. The final rule should also specify how much the assurance bond requirement will cost Gulf aquaculture permit holders. Additionally, the rule should indicate how states will be compensated for any impacts from aquaculture operation on state resources.

*Response:* The assurance bond required by the FMP and this final rule will be used to remove aquaculture structures or cultured animals if permittees fail to do so when ordered to by NMFS. The assurance bond cannot be used to compensate for natural resource impacts caused by equipment or by escaped cultured animals. The Council determined, and NMFS agrees, that it is difficult to identify and define the added cost that would be required to compensate for such impacts, and that it is unnecessary to do so because the FMP and this final rule include numerous environmental safeguards (*e.g.*, prohibitions on genetically engineered and transgenic animals) to prevent or minimize such damage. Additionally, the FMP and rule specify that NMFS will review the structural integrity of proposed aquaculture systems and may deny use of a proposed system or specify conditions for its use if it is determined to pose a significant risk to EFH, endangered or threatened marine species, marine mammals, wild fish or invertebrate stocks, public health, or safety.

The cost of the assurance bond will vary depending on the size and scale of the aquaculture facility and must be enough to cover the costs of removal of all components of the facility and cultured animals. NMFS will publish guidance on how to comply with the assurance bond requirement on its Web site when the rule becomes effective.

The FMP and rule do not contain a compensatory mechanism for impacts to state marine resources resulting from aquaculture operations. However, the FMP and rule do contain several regulatory requirements which aim to prevent and manage adverse impacts to marine resources from aquaculture operations. These include disease testing prior to stocking juveniles into offshore aquaculture systems, reporting incidences of OIE and NAAHP reportable pathogens within 24 hours, requiring that only local, native broodstock be used to produce juveniles for stocking in offshore systems, prohibiting the use of genetically engineered and transgenic animals for culture purposes, and reviewing potential sites for habitat concerns prior to permitting aquaculture operations.

In addition, § 622.102 in this final rule lists various recordkeeping and reporting requirements that will allow NMFS to work with a permittee to resolve potential problems and environmental impacts. Permits are also subject to revocation when appropriate.

*Comment:* The inspection requirement and requirements to report the average price and weight of fish produced should be removed as it will result in the loss of intellectual proprietary information.

*Response:* NMFS disagrees. The information NMFS employees and authorized officers access during the inspection process is needed to ensure aquaculture facilities operate in compliance with the applicable regulations relating to aquaculture in the Gulf EEZ. All private or intellectual property information which is required to be submitted in compliance with the requirements of this final rule is protected by the confidentiality of information provisions in

section 402(b) of the Magnuson-Stevens Act and 50 CFR Subpart E (§ 600.405 *et seq.*).

*Comment:* Broodstock should be collected from the same population or sub-population unless it can be shown that genetic homogeneity exists for that species in the Gulf.

*Response:* NMFS agrees. The FMP and this final rule require that all broodstock, or progeny of such broodstock, must be originally collected from the same population or subpopulation where the aquaculture facility is located. This requirement ensures that the genetic make-up of cultured animals originates from the same stock where the facility will operate. Species that are found to be genetically homogeneous would, for all intents and purposes, be considered to be the same population.

*Comment:* The final rule should specify requirements regarding the frequency of broodstock collection and hatchery breeding practices.

*Response:* NMFS disagrees there is a need to regulate the frequency of broodstock collection. The appropriate collection frequency will vary depending on the size and scale of individual operations and the species being cultured.

The FMP and this final rule allow NMFS to monitor the frequency of broodstock collection and minimize any potential adverse impacts of broodstock collection by requiring permittees to obtain the RA's approval prior to each collection event. Collection requests must include information on the number, size, and species to be harvested, the methods, gear, and vessels to be used for capturing, holding, and transporting broodstock, the date and specific location of the intended harvest, and the location where the broodstock will be delivered. The RA may deny a request to harvest broodstock if allowable methods or gear are not proposed for use, the number of broodstock is larger than necessary for spawning and rearing activities, or if the proposed activity is inconsistent with FMP objectives or Federal laws.

Additionally, if a broodstock harvest request is approved, the permittee will be required to submit a report to the RA within 15 days of the date of harvest summarizing the number, size, and species to be harvested, and identifying the location where the broodstock were captured. If this information suggests that more specific requirements pertaining to frequency of broodstock collection are necessary, the Council may consider modifying the FMP to include such requirements.

NMFS also disagrees that hatchery breeding practices should be regulated by this rulemaking. NMFS has determined it is more appropriate to develop guidance on hatchery breeding protocols separately as this will allow for the guidance to be adapted in a more timely manner as information evolves. This guidance will be available on the Web site when the rule becomes effective.

*Comment:* The final rule should allow cultured juveniles to be sourced from hatcheries in foreign countries.

*Response:* NMFS disagrees. As stated in the preamble to this final rule and discussed in the FMP, allowing organisms to be obtained from non-U.S. hatcheries for grow-out would make it difficult to enforce regulatory requirements that are intended to prevent or minimize the environmental impacts of potential escapements (*e.g.*, animals cannot be genetically engineered or transgenic, must be sourced from the same population or subpopulation that occurs where the facility is located, must be certified as pathogen-free prior to stocking in offshore systems, etc.). Therefore, no changes have been made to this requirement.

*Comment:* The proposed rule states that permittees would be required to submit a request to NMFS to harvest broodstock from the Gulf, including state waters. The final rule should

specify that this requirement is for federally managed species only as states may have requirements specific to state-managed species.

*Response:* NMFS agrees. Submission of requests to collect broodstock is a requirement of the Gulf aquaculture permit, which allows the culture of only those federally managed species specified in § 622.105(b) of this rule. Nothing in this rule imposes requirements on the collection of broodstock of those species that are exclusively managed by the states. However, if broodstock for allowable aquaculture species are harvested from state waters, § 622.106(a)(16) (iv) of this rule requires that harvest also comply with all applicable state laws.

*Comment:* NMFS should monitor broodstock collection and establish requirements to reduce or eliminate bycatch.

*Response:* Permittees must submit a request to NMFS to collect broodstock which will allow NMFS to monitor broodstock collection. In this request, permittees will specify the number and size of broodstock proposed for capture and the gear used for capture and these requests will need to be authorized by NMFS. Although bycatch may occur during the capture of broodstock, the amount of bycatch is expected to be small and negligible relative to overall bycatch occurring in each fishery. NMFS may also deny a proposal to harvest broodstock if it was determined that broodstock collection activities would be inconsistent with FMP objectives related to bycatch.

*Comment:* Permittees should be required to monitor and report abundance and prevalence of ectoparasites on cultured and nearby wild fish.

*Response:* NMFS disagrees. Ectoparasites are common in marine ecosystems and are generally not considered a significant enough threat to fish and human health to require additional monitoring and reporting. If new information indicates that ectoparasites are a greater threat to fish and human health than previously determined, the Council may require reporting of ectoparasites in the future.

*Comment:* Permittees should be required to record and report stocking and harvest information.

*Response:* NMFS agrees. Sections 622.102(a)(1)(i)(A) and (D), require permittees to report stocking and harvest information, respectively, to NMFS at least 72 hours prior to these activities.

*Comment:* The requirement to comply with all monitoring and reporting requirements of other Federal agencies' permits should be removed.

*Response:* NMFS disagrees. Such requirements are necessary to maintain other Federal permits which, in addition to NMFS' permit, are necessary in order to operate offshore aquaculture facilities. Should permittees be unable to secure the appropriate permits or comply with applicable requirements, they would be unable to operate and thus their Gulf aquaculture permit could be revoked or suspended.

*Comment:* The requirement to report landing transactions of cultured animals to NMFS is duplicative to state commercial trip ticket programs.

*Response:* NMFS disagrees. Currently, state trip ticket programs only cover wild caught fish, and not cultured animals, therefore this information is not captured at the state level. Landings and transactions of cultured species harvested from the Gulf EEZ will be tracked using an electronic reporting system developed by NMFS. This system will allow NMFS to cross-check landings reported by permit holders with dealer transactions after cultured animals are

sold.

*Comment:* The final rule should require monitoring and reporting of environmental impacts such as the discharge of feed and waste as well as the use of antibiotics or therapeutants. The final rule should also set limits for water quality impacts.

*Response:* NMFS disagrees. The use of feed, antibiotics and therapeutants is regulated by the EPA under the Clean Water Act and is not under the purview of NMFS. The EPA will establish limits for water quality impacts as part of their NPDES permitting process for individual aquaculture operations.

*Comment:* One commenter stated that NMFS should require reporting of all escapes, while another stated that NMFS should require reporting when escapes exceed 5 percent of the admixed stock (wild and cultured animals).

*Response:* NMFS disagrees that it is necessary to require reporting of all escapes. Permittees are already required to report the escape, within a 24-hour period, of 10 percent of the fish from a single approved aquaculture system (*e.g.*, one cage or one net pen) or 5 percent or more of the fish from all approved aquaculture systems combined, or the escape, within any 30-day period, of 10 percent or more of the fish from all approved aquaculture systems combined. These amounts should allow operations to effectively quantify whether or not losses have occurred. Specifying lower percentages would make it difficult for permittees to quantify when and if escapement has occurred. In addition, the current reporting requirement for escapes is in line with escape reporting requirements of other states with aquaculture facilities (*e.g.*, Maine).

NMFS also disagrees that escapes should only be reported when they exceed 5 percent of the admixed stock for that species. The number of escapes needed to trigger reporting suggested by the commenter is much higher than that approved in the FMP and this final rule and could result in many more fish escaping without requiring permittees to report to NMFS.

*Comment:* Genetic testing should be required as a condition of permit approval to ensure that no genetically engineered animals are being cultured.

*Response:* NMFS disagrees. The Council determined, and NMFS agrees, the certifications required as part of the application process, along with the authority provided NMFS to conduct genetic testing at any time, are sufficient to safeguard against genetic engineering activities. Specifically, applicants must certify that no genetically engineered or transgenic animals are used or possessed in the aquaculture facility, as specified in § 622.101(a)(2)(xv) of this rule. Applicants must also certify that they agree to immediately remove cultured animals remaining in allowable aquaculture systems from the Gulf EEZ, as required by NMFS, if it is discovered that the animals are genetically engineered or transgenic, as specified in § 622.101(a)(2)(xii)(A). At any time, NMFS may sample cultured animals to determine genetic lineage and will order the removal of all cultured animals upon a determination that genetically engineered or transgenic animals were used or possessed at the aquaculture facility, in accordance with § 622.108(a)(2).

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

There are no payments or other remunerations to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

All data that are submitted are treated as confidential in accordance with [NOAA Administrative Order 216-100](#), as stated on the applicable forms.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No questions of a sensitive nature are asked.

**12. Provide an estimate in hours of the burden of the collection of information.**

**All of the items below are one time, annualized, except for the annual report and the dealer permit.**

Collection	Responsible Party	Number of Responses per Responsible Party	Burden Time	Responses	Total One-time/Annual Burden	Annual/Annualized Burden Time
Federal Permit Application for Offshore Aquaculture in the Gulf of Mexico	Operator (20)	1	3 hours	20	60 hours	20 hours
Notification to Delay Permit Issuance	Operator (20)	1	10 minutes	20	200 minutes (3 hours, 20 minutes)	1.11 (1) hour
Annual Report for Gulf Aquaculture Permittees	Operator (20)	1	10 minutes	20	200 minutes (3 hours, 20 minutes)	3 hours
Baseline Environmental Survey	Operator (20)	1	320 hours	20	6,400 hours	2,133.33 (2133) hours
Certification for Broodstock and Juveniles	Operator (20)	1	10 minutes	20	200 minutes (3 hours, 20 minutes)	1.11 (1) hour
Request to Harvest Broodstock	Operator (20)	1	30 minutes	20	10 hours	3.33 (3) hours
Broodstock Post-Harvest Report	Operator (20)	1	30 minutes	20	10 hours	3.33 (3) hours
Request to Transfer Gulf Aquaculture Permit	Operator (20)	1	3 hours	20	60 hours	20 hours

Collection	Responsible Party	Number of Responses per Responsible Party	Burden Time	Responses	Total One-time/Annual Burden	Annual/Annualized Burden Time
Notification of Entanglement or Interaction	Operator (20)	1	30 minutes	20	10 hours	3.33 (3) hours
Marine Mammal Authorization Form	Operator (20)	1	10 minutes	20	200 minutes (3 hours, 20 minutes)	1.11 (1) hours
Notification of Major Escapement Event	Operator (20)	1	30 minutes	20	10 hours	3.33 (3) hours
Notification of Reportable Pathogen Episode	Operator (20)	1	30 minutes	20	10 hours	3.33 (3) hours
Notification to Transport Cultured Juveniles to Offshore Systems	Operator (20)	2	10 minutes	40	400 minutes (6 hours, 40 minutes)	2.22 (2) hours
Harvest and Landing Notification	Operator (20)	4	30 minutes	80	40 hours	13.33 (13) hours
Bill of Lading	Operator (20)	2	5 minutes	40	200 minutes (3 hours, 20 minutes)	1.11 (1) hours
Dealer Permit Application	Dealer (20)	1	30 minutes	20	10 hours	10 hours
Dealer Report for Landing and Sale	Dealer (20)	4	30 minutes	80	40 hours	13.33 (13) hours
Assurance Bond	Operator (20)	1	16 hours	20	320 hours	106.67 (107) hours
Contract with Aquatic Animal Health Expert <i>(no format, developed by the two parties)</i>	Operator (20)	1	16 hours	20	320 hours	106.67 (107) hours
Emergency Disaster Plan <i>(no format, developed individually by operator)</i>	Operator (20)	1	4 hours	20	80 hours	26.67 (27) hours
Fin Clip Samples <i>(no format, consists of collection and mailing of samples)</i>	Operator (20)	1	10 hours	20	200 hours	66.67 (67) hours
Broodstock Marking	Operator (20)	1	8 hours	20	160 hours	53.33 (53) hours
Pinger/Location Device	Operator (20)	1	8 hours	20	160 hours	53.33 (53) hours

Collection	Responsible Party	Number of Responses per Responsible Party	Burden Time	Responses	Total One-time/Annual Burden	Annual/Annualized Burden Time
Marking Restricted Access Zone	Operator (20)	1	8 hours	20	160 hours	53.33 (53 hours)
Genetic Testing	Operator (20)	1	8 hours	20	160 hours	53.33 (53 hours)
<b>TOTALS</b>				<b>640*</b>		<b>2,753</b>

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).**

**Annual costs**

*Annual Report* – Upon permit issuance, the operator will be required to submit an annual report and pay a \$1,000 annual fee by January 31<sup>st</sup> of each year to cover costs associated with review of the annual report, technical assistance, review and tracking of reports and other administrative functions.

*Annual Site Inspection* – Permittees must provide NOAA Fisheries 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. Expenses for each inspection may include: costs for diving surveys, data collection and analysis, report preparation, air travel costs, vessel chartering to facility site, meals and other incidental expenses. Estimated cost of each inspection will vary depending on the location and size of the operation. In conducting the inspections, NOAA Fisheries may enter into cooperative agreements with States, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. NOAA Fisheries 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.

*Dealer permit (for dealers only)* – Aquaculture dealers will use the form already approved under OMB Control No. 0648-0205 to apply for an aquaculture dealer permit. A request to modify the form will be submitted to reflect the addition of a check box for an Aquaculture Dealer Permit. The cost for each dealer permit would be a maximum of \$50. Dealer permits must be renewed on an annual basis.

**\$1,000 per permittee (\$1,000 x maximum of 20 permits = \$20,000); not including cost for annual site inspection.**

**Dealer permits: \$50 x 20 = \$1,000.**

**Total: \$21,000**

**One-time costs**

*Federal Permit Application for Offshore Aquaculture in the Gulf of Mexico* – The permit applicant will pay a one-time non-refundable fee of \$10,000 for a 10-year permit. This fee will cover costs of processing the permit application. **Annualized to \$3,333).**

*Assurance bond* – The amount of the assurance bond will vary according to the size and location of the facility as well as the type of aquaculture systems used and species being cultured. Until we have some historical information from this information collection, it would be extremely difficult to estimate the cost for such a bond. The ACOE also may require a performance bond for removal of aquaculture structures (at the discretion of the permitting official). If the ACOE bond is sufficient to cover the costs of removal of all components of the aquaculture facility and the cultured animals, then a separate NOAA Fisheries bond may not be required.

*Baseline environmental survey* – Permittees are required to submit a baseline environmental survey of the proposed aquaculture site. The guidelines for this requirement will be developed in consultation with the EPA, and other federal agencies having authority to regulate offshore aquaculture. Cost to conduct a baseline survey will vary depending on the location and size of the proposed operation.

*Fin Clip Samples* – Permittees are required to obtain and submit broodstock fin clips, or other genetic material, to NOAA Fisheries. These samples must be received at least 30 days before juveniles are stocked into offshore cages. This requirement will allow for enforcement and monitoring in the event that the use of genetically engineered or transgenic animals is suspected. NOAA Fisheries personnel would be able to identify source broodstock using fin clips or other genetic material and compare it to the genetic make-up of offspring used for culture. Cost of mailing fin clip material will vary depending on the amount of material being shipped.

*Broodstock Marking* – Permittees must obtain and submit to NOAA Fisheries a signed certification from the owner(s) of the hatchery from which fingerlings or other juvenile animals are obtained indicating 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. Cost of marking will vary depending on the type of tag and the number of broodstock used to produce juveniles for stocking in offshore systems.

*Pinger/Location Device* – Permittees must maintain a minimum of one properly functioning electronic locating device (e.g., GPS device, pinger with radio signal) on each allowable aquaculture system, i.e., net pen or cage, placed in the water at the aquaculture facility. Cost will vary anywhere from several hundred to several thousand dollars, depending on the type and size.

*Marking Restricted Access Zone* – Permittees 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 letters at least 6 inches in height and in a color that contrasts with the color of the floating device. The restricted access zone corresponds to the coordinates on the permittees' Army Corps Section 10 permit for the facility. The marking requirement is in line with U.S. Coast Guard



regulations which requires the marking of structures, sunken vessels, and other obstructions for the protection of maritime navigation (Title 33 C.F.R. 64).

*Genetic Testing* – It may be necessary to conduct genetic testing to determine that all broodstock (and 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, that juveniles stocked in cages are the progeny of wild broodstock, or other genetic testing necessary to carry out the requirements of the Aquaculture FMP. In conducting this testing, NOAA Fisheries may enter into cooperative agreements with States, may delegate the testing authority to any State, or may contract with any non-Federal Government entities. NOAA Fisheries 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. Estimated costs for these tests range from \$32-\$35 per sample (\$33 average).

**Total: \$3,333 per permittee (\$3,333 x maximum of 20 permits = \$66,660); not including costs for assurance bond, baseline environmental survey, obtaining and mailing fin clip samples, broodstock marking, pinger/location device on each aquaculture system, marking the restricted access zone and genetic testing on broodstock and progeny.**

**Costs occurring every 5 years:**

*Federal Permit Application for Offshore Aquaculture in the Gulf of Mexico* (renewal sections only) – After the initial 10 years has passed, the permittee will pay a non-refundable fee of \$5,000 for a 5-year renewal of the permit. This fee will cover costs of processing the permit application. **Annualized to \$1,666.**

**Total annualized five-year costs: \$1,666 per permittee (\$1,666 x maximum of 20 permits = \$33,320.**

**However, this renewal period is not applicable at this time because the renewal requirement won't kick in until 10 years after a permit is initially issued. We will account for this burden at the appropriate time in the future.**

**Total known annual/annualized costs:**

Annual costs: \$1,050 x 20 permits = \$21,000

Application for Gulf Aquaculture Permit (10-year): \$3,333 x maximum of 20 permits = \$66,660

**Total: \$87,660.**

**14. Provide estimates of annualized cost to the Federal government.**

**Annual costs**

*Site Inspection* – Permittees must provide NOAA Fisheries 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. Expenses for each inspection may include: costs for diving surveys, data collection and analysis, report preparation, air travel costs, vessel chartering to facility site, meals and other incidental expenses. Estimated cost of each visit/inspection would vary depending on the location and size of the operation. In conducting the inspections, NOAA Fisheries may enter into cooperative agreements with States, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. NOAA Fisheries 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.

**Total: Cost of site inspection will vary depending on location and size of the site.**

### **One time costs**

*DNA verification* – It may be necessary to conduct DNA verification testing on broodstock fin clips to ensure that the samples submitted are in the proper condition to allow for future testing (e.g., DNA not degraded). Estimated costs for DNA verification testing range from \$6-\$13 per sample (\$10 average).

*Genetic Testing* – It may be necessary to conduct genetic testing to determine that all broodstock (and 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, that juveniles stocked in cages are the progeny of wild broodstock, or other genetic testing necessary to carry out the requirements of the Aquaculture FMP. In conducting this testing, NOAA Fisheries may enter into cooperative agreements with States, may delegate the testing authority to any State, or may contract with any non-Federal Government entities. NOAA Fisheries 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. Estimated costs for these tests range from \$32-\$35 per sample (\$33 average).

*Genetic Marker Development* – In cases where genetic markers do not already exist for a particular species, it may be necessary to develop genetic markers for allowable species cultured under the Gulf Aquaculture Permit. Estimated costs to develop genetic markers for a single species range from \$50,000-\$120,000. This cost does not include collection of genetic material necessary to develop the markers (e.g., fishing trips to collect genetic material from wild fish).

**Total: Costs to the Agency will vary depending on the need to conduct testing, and the number of samples tested, as well as whether any genetic markers need to be developed for purposes of aquaculture. NOTE: this is why the cost in ROCIS is zero at this time.**

### **15. Explain the reasons for any program changes or adjustments.**

This is a new collection of information.

### **16. For collections whose results will be published, outline the plans for tabulation and**

**publication.**

The results from this collection are not planned for statistical publication.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

The OMB Control Number will be displayed.

**18. Explain each exception to the certification statement.**

There are no exemptions to the certification statement identified in Item 19 of OMB 83-I.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The collection does not employ statistical methods.