

Final Supplement to the Final Programmatic Environmental Impact Statement for the Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico (COVER SHEET)

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ABSTRACT

In 2009, the Gulf of Mexico Fishery Management Council (Council) submitted the Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico (Aquaculture FMP/FPEIS)¹, and its associated rulemaking, to the National Marine Fisheries Service (NMFS) for agency review under procedures of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The Aquaculture FMP/PEIS entered into effect by operation of law on September 3, 2009. On the same date, the NOAA Administrator announced that the agency would develop a new national policy for marine aquaculture which would include guidance for federal waters. On June 9, 2011, NOAA released its Marine Aquaculture Policy (NOAA Aquaculture Policy) and announced its intentions to move forward with rulemaking for the Aquaculture FMP/FPEIS. Draft implementing regulations for the Aquaculture FMP/FPEIS were published on August 28, 2014 (79 FR 51424). The NMFS is currently reviewing comments on the draft regulations and plans to publish final regulations in 2015. After regulations are finalized, NMFS can begin accepting applications for Gulf Aquaculture Permits under the Aquaculture FMP/FPEIS.

¹ The Aquaculture FMP includes a Final Programmatic Environmental Impact Statement (FPEIS). A copy of this document can be downloaded at:

http://www.gulfcouncil.org/fishery_management_plans/aquaculture_management.php

On April 20, 2010, an explosion occurred on the Deepwater Horizon (DWH) Macondo 252 (MC252) oil rig, resulting in the release of million barrels of oil into the Gulf of Mexico (Gulf). In addition, Corexit 9500A dispersant was applied as part of the effort to constrain the spill. After 85 days, the well was successfully capped in a coordinated effort on July 15, 2010.

In January 2013, NMFS published a Notice of Intent (78 FR 5403) to prepare a draft Supplement to the Aquaculture FMP/FPEIS (DSFPEIS) in order to consider new circumstances and information arising from the DWH blowout. The DSFPEIS was made available for public comment in February 2014 (79 FR 9199)² and NMFS received six comment letters. Public comments were reviewed by NMFS and used to inform this final SFPEIS document. The response to comments is located in Appendix C.

² On February 28, 2014 a second Federal Register Notice was published announcing an extension of the comment period (79 FR 11428).

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Acronyms/Abbreviations

ACOE	Army Corps of Engineers
AP	Advisory Panel
APHIS	Animal and Plant Health Inspection Service, US Department of Agriculture
Aquaculture FMP	Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico
BOEMRE	Bureau of Ocean Energy Management, Regulation and Enforcement
BP	British Petroleum
BSEE	Bureau of Safety and Environmental Enforcement
CEA	Cumulative Effects Analysis
CEQ	Council for Environmental Quality
CFR	Code of Federal Regulations
CMSP	Coastal and Marine Spatial Planning
Council	Gulf of Mexico Fishery Management Council
DOC	U. S. Department of Commerce
DSFPEIS	Draft Supplement to the Final Programmatic Environmental Impact Statement
DWH	Deepwater Horizon
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EFP	Exempted Fishing Permit
E.O.	Executive Order
EPA	Environmental Protection Agency
FAO	Food and Agriculture Organization of the United Nations
FDA	Food and Drug Administration
FMP	Fishery Management Plan
FMU	Fishery Management Unit
FPEIS	Final Programmatic Environmental Impact Statement
GCCF	Gulf Coast Claims Facility
GMO	Genetically Modified Organism
GPS	Global Positioning System
Gulf	Gulf of Mexico
HAB	Harmful Algal Bloom
HAPC	Habitat Areas of Particular Concern
HMS	Highly Migratory Species
IFQ	Individual Fishing Quota
MC252	Macondo 252
MFMT	Maximum Fishing Mortality Threshold

MMS	Minerals Management Service
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
MSST	Minimum Stock Size Threshold
MSY	Maximum Sustainable Yield
NAA	National Aquaculture Act
NAAHP	National Aquatic Animal Health Plan
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRDA	Natural Resource Damage Assessment
OCS	Outer Continental Shelf
OIE	World Organization of Animal Health
OMB	Office of Management and Budget
ONRR	Office of Natural Resources Revenue
OPA	Oil Pollution Act
OY	Optimum Yield
PAH	Polycyclic Aromatic Hydrocarbon
PEIS	Programmatic Environmental Impact Statement
RA	Regional Administrator of NMFS (Southeast Region)
SEDAR	Southeast Data Assessment Review
SEP	Socioeconomic Panel
SSC	Scientific and Statistical Committee
SMZ	Special Management Zone
USCG	United States Coast Guard
USDA	United States Department of Agriculture

1. EXECUTIVE SUMMARY

The Aquaculture FMP/FPEIS considered ten actions, each with an associated range of management alternatives, for establishing a regional permitting process in the Gulf for marine aquaculture operations. These actions included measures to establish: An aquaculture permitting system; operational conditions and restrictions for permit issuance and use; a list of species allowed for aquaculture; grow-out systems allowed for culture; siting requirements for aquaculture facilities; restricted access zones surrounding aquaculture facilities; recordkeeping and reporting requirements; biological reference points and status determination criteria; and a framework procedure for modifying aquaculture regulations. These measures are in accordance with the procedures prescribed in the MSFCMA.

Prior to the Aquaculture FMP/FPEIS, the only legal avenue for commercial-scale finfish aquaculture in federal waters (exclusive economic zone, EEZ) was under an exempted fishing permit (EFP), as provided at 50 CFR 600.745. However, an EFP is intended to authorize the targeting or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Specifically, an EFP authorizes activities for limited testing, public display, data collection, exploration, health and safety, environmental cleanup, and/or hazard removal purposes. The NMFS also has authority under the Fish and Wildlife Coordination Act, the essential fish habitat (EFH) provisions of the MSFCMA, the Endangered Species Act, and the Marine Mammal Protection Act to comment and provide conservation recommendations on projects permitted, licensed, or funded by other federal agencies. In the case of aquaculture, this may include permits required from the Army Corp of Engineers (ACOE), Environmental Protection Agency (EPA), or other federal agencies.

On September 2, 2004 (69 FR 53682), NMFS published a Notice of Intent (NOI) in the *Federal Register* to prepare a draft PEIS and to announce scoping meetings regarding the actions proposed in the Aquaculture FMP/FPEIS. The purpose of the Aquaculture FMP/FPEIS 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 the Gulf and a comprehensive framework for regulating such activities.

The range of actions and alternatives considered in the draft PEIS for the Aquaculture FMP were based on information derived from six scoping meetings held by the Council from February 17 – March 1, 2004. Further input was provided through the Council's public hearing comment process prior to submission of the Aquaculture FMP and a 45-day comment period for the draft PEIS, which was announced in the *Federal Register* on September 12, 2008 (73 FR 53001), and through a Fishery Bulletin sent by NMFS to stakeholders that same day. The comment period

ended on October 27, 2008. Comments were received by 13 organizations or city governments, and the Chairman of the U.S. House of Representative's Committee on Natural Resources. Additionally, 19 form letters and one petition with 5,773 signatures were received, as well as two additional comments from the general public. These comments were used by NMFS to improve the final PEIS (FPEIS) and the draft rule implementing the Aquaculture FMP. A notice of availability (NOA) for the FPEIS analyzing impacts on the human environment for the Aquaculture FMP was published in the *Federal Register* on June 26, 2009 (74 FR 30569).

On June 4, 2009, NMFS published in the *Federal Register* a Notice of Availability of the Aquaculture FMP/FPEIS. The public comment period on the Aquaculture FMP/FPEIS ended on August 3, 2009. Pursuant to the MSFCMA, the Secretary may approve, disapprove, or partially approve an FMP within 30 days of the end of the comment period (in this case by September 2, 2009). If the Secretary does not notify the Council within 30 days that he/she has taken one of the specified actions, the statute provides that the FMP shall take effect as if approved. Because the statutory period passed without any action being taken, the Aquaculture FMP/FPEIS entered into effect by operation of law on September 3, 2009.

Also on September 3, 2009, NOAA announced that it would begin development of a new national aquaculture policy which would provide context for the Aquaculture FMP/FPEIS. NOAA solicited public comments and conducted a series of seven public 'listening sessions' during April and May 2010. A draft of the policy was released in February 2011 for a 60-day public comment period. On June 9, 2011, the final NOAA Aquaculture Policy was released and an announcement was made that NOAA would move forward with implementing the Aquaculture FMP/FPEIS.³

In January 2013, NMFS published a Notice of Intent (78 FR 5403) to prepare a draft Supplement to the Aquaculture FMP/FPEIS (DSFPEIS) in order to consider new circumstances and information arising from the DWH blowout. The DSFPEIS was made available for public comment in February 2014 (79 FR 9199)⁴ and NMFS received six comment letters. Public comments were reviewed by NMFS and used to inform this final SFPEIS.

In addition to this final SFPEIS, NMFS prepared a draft supplemental information report (draft SIR) to evaluate the need for additional NEPA analysis on the FMP specific to the passage of

³ On February 8th, 2013 the Council approved (vote of 13-4) additional language to the proposed implementing regulations for the Aquaculture FMP/FPEIS. These changes included addition of aquaculture gear types into section 50 CFR 600.725, definition of terms and additional details pertaining to FMP requirements.

⁴ On February 28, 2014 a second Federal Register Notice was published announcing an extension of the comment period (79 FR 11428).

time from when the Aquaculture FMP/FPEIS entered into effect (2009-present).⁵ The public comment period on the draft SIR ended on October 27, 2014. The NMFS is reviewing comments received on the draft SIR and is preparing a final SIR.

2. INTRODUCTION

The purpose of the Aquaculture FMP/FPEIS is to develop a regional permitting process for regulating and promoting environmentally sound and economically sustainable aquaculture in federal waters of the Gulf. The Aquaculture FMP/FPEIS would allow for up to 20 offshore aquaculture operations to be permitted in the Gulf with an estimated annual production of up to 64 million pounds (whole weight, ww).

The actions in the Aquaculture FMP/FPEIS establish a regionally based framework for regulating aquaculture activity in federal waters of the Gulf under the authority of the MSFCMA. The Aquaculture FMP/FPEIS includes measures which:

- Establish an aquaculture permitting process.
- Establish operational conditions and restrictions for permit issuance and use.
- Establish permit duration of 10 years and 5-year renewal periods.
- Allow the culture of native, non-genetically modified and non-transgenic species managed by the Council, with the exception of shrimp and corals.
- Provide guidelines for approval of grow-out systems allowed for culture.
- Establish criteria for siting marine aquaculture facilities.
- Create a restricted access zone for each aquaculture facility.
- Establish numerous recordkeeping, reporting and operational requirements designed to minimize or mitigate potential environmental impacts.
- Establish biological reference points and status determination criteria.
- Specify framework procedures for modifying biological reference points and management measures.

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 approximately 91% percent of the seafood consumed in the country, and the annual U.S. seafood trade deficit is over \$10.4 billion (NOAA Fish Watch <http://www.fishwatch.gov/faq.htm#faq10>). 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.

⁵ The draft SIR was released for public comment on August 28, 2014. A copy of the draft SIR can be downloaded at: http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/aquaculture/index.html.

Status of Aquaculture Operations in the Gulf of Mexico

In 2012 and 2013, the ACOE and EPA issued renewal permits (Section 10 and National Pollutant Discharge Elimination System (NPDES), respectively) to BioMarine Technologies, Inc. These permits allow BioMarine Technologies to site an aquaculture facility in federal waters approximately 7 nautical miles south of Perdido Key, Alabama (Latitude 31.15667° North, and Longitude -87.52127° West); however, to date no aquaculture systems have been placed in the water.

NOAA's Marine Aquaculture Policy

On June 9, 2011, NOAA released its final Aquaculture Policy. NOAA's Aquaculture Policy (Appendix A) is intended to enable the development of all forms of sustainable U.S. marine aquaculture within the context of NOAA's multiple stewardship missions and broader social and economic goals.⁶

NOAA held series of regional 'Listening Sessions' in April and May 2010 in order to solicit public input into the policy. In addition, a 60-day public comment period was held on the draft policy. The final policy establishes a framework to allow sustainable domestic marine aquaculture to contribute to the U.S. seafood supply, support coastal communities and important commercial and recreational fisheries, and help to restore species and habitat. The NOAA Aquaculture Policy also includes an appendix which includes guidance for aquaculture in federal waters (see Appendix B).

Priorities in the NOAA Aquaculture Policy include:

- Making timely management decisions based on the best scientific information available;
- Advancing sustainable aquaculture science;
- Ensuring aquaculture decisions protect wild species and healthy coastal and ocean ecosystems;
- Developing sustainable aquaculture in locations compatible with other uses;
- Working with partners domestically and internationally;
- And promoting a level playing field for U.S. aquaculture businesses engaged in international trade.

Along with the release of the policy, NOAA announced two initiatives that the agency would be moving forward with. These initiatives included: 1) Developing a 'National Shellfish Initiative' to increase shellfish farming and restoration; and 2) drafting implementing regulations for the Aquaculture FMP/FPEIS. On July 11, 2011, NOAA Administrator Dr. Lubchenco, announced a

⁶ The Department of Commerce (DOC) also released its Aquaculture Policy on the same date. This Aquaculture Policy is intended to guide DOC's actions and decisions on aquaculture and to provide a national approach for supporting aquaculture within the context of DOC's broad economic development, trade, and stewardship missions.

third initiative related to the NOAA Aquaculture Policy, the ‘Aquaculture Technology Transfer Initiative’, which will foster public-private partnerships on regional projects that showcase innovative sustainable practices, jump start private sector investments, and create employment opportunities in coastal communities.

Deepwater Horizon

On April 20, 2010, an explosion occurred on the DWH MC252 oil rig, resulting in the release of millions of barrels of oil into the Gulf. The fire burned for 36 hours before the rig sank, and hydrocarbons leaked into the Gulf for 85 days before the well was closed and sealed. Eleven people died as a result of the explosion and dozens of others were injured. In addition, Corexit 9500A dispersant was applied as part of the effort to constrain the spill.

The initial closed area (May 2, 2010) extended from approximately the mouth of the Mississippi River to south of Pensacola, Florida and covered an area of 6,817 square statute miles. The coordinates of the closed area were then periodically modified in response to changes in the size and location of the area affected by the spill. At its largest size on June 2, 2010, the closed area covered 88,522 square statute miles, or approximately 37% of the Gulf EEZ. On April 19, 2011, the last area closed to fishing was reopened. Approximately one third of the Gulf was closed to fishing and impacted important spawning areas during the spawning season for many species.

A comprehensive description of the affected biological environment in the Gulf was included in the Aquaculture FMP/FPEIS; however, the affected biological environment may have been modified when the DWH blowout occurred. Through the Natural Resource Damage Assessment (NRDA) process, NOAA and the other trustees continue to work toward a better understanding of the effects of the DWH blowout on the environment and resources of the northern Gulf.

Additional NEPA Analysis

In addition to this final SFPEIS, NMFS prepared a draft supplemental information report (draft SIR) to evaluate the need for additional NEPA analysis on the FMP specific to the passage of time from when the Aquaculture FMP/FPEIS entered into effect (2009-present).⁷ The draft SIR includes a synthesis of updated environmental and socio-economic information relative to offshore aquaculture in the Gulf as well as Individual Fishing Quota (IFQ) fisheries; it does not include analysis on the potential impacts of the DWH blowout as that information is included in this final SFPEIS. The public comment period on the draft SIR ended on October 27, 2014. The NMFS will review comments received on the draft SIR and prepare a final SIR.

⁷ The draft SIR was released for public comment on August 28, 2014. A copy of the draft SIR can be downloaded at: http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/aquaculture/index.html.

Restoration Activities in the Gulf of Mexico

As of December 2014, fifty four early restoration projects have been funded as part of the Natural Resources Damage Assessment (NRDA). Additionally, fifty projects totaling \$390 million have been approved for the Gulf Environmental Benefit Fund (administered by the National Fish and Wildlife Foundation) for projects designed to protect, restore and enhance natural and living resources across the Gulf Coast.⁸ Currently, the first phase of bucket two restoration proposals under the RESTORE Act are being evaluated.

1502.22 Incomplete or Unavailable Information

The information in this DSFPEIS underwent a robust review process to ensure consistency with 40 CFR 1502.22, the relevant text of which reads:

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

- a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.
- b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:
 1. A statement that such information is incomplete or unavailable;
 2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
 3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment;
 4. and the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.
- c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or

⁸ <http://www.nfwf.org/gulf/Pages/gulf-projects.aspx#.U7LR3PldVws>

after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

Although this document contains analyses of the effects of the DWH blowout on the physical, environmental and socioeconomic resources, there are references to incomplete or unavailable information. At the time this DSFPEIS was prepared, the best available scientific information was used to update the descriptions of the affected environment and impact analyses, and to develop conclusions regarding the various resources.

The data obtained to support the conclusions within this DSFPEIS indicate that although the environmental baseline was altered by the DWH blowout, impacts to the physical, environmental, and socioeconomic resources from implementation of the Aquaculture FMP are not expected to substantially change from those described in the Aquaculture FMP/FPEIS.

In regard to environmental and socioeconomic resources, the short- and long-term effects of the DWH blowout are still being examined and this process could take years or decades. The NRDA process is ongoing and research is also being conducted by the Bureau of Ocean Energy, Management, Regulation and Enforcement (BOEMRE) Environmental Studies Program, as well as numerous state agencies and research institutions. Although there is incomplete or unavailable information related to the short- and long-term effects of the DWH blowout, based on the information known at this time, there is no indication that the conclusions related to the impacts of implementing the actions in the Aquaculture FMP/FPEIS have been changed due to the DWH blowout. In the future, if significant new information on the short- or long-term effects of the DWH blowout becomes available and bears on the actions or their impacts a new supplement to the Aquaculture FMP/FPEIS will be prepared.

All reasonably foreseeable impacts were considered, including impacts that could have catastrophic consequences, even if their probability of occurrence is low. The analysis of impacts contained herein is supported by credible scientific evidence, is not based on pure conjecture, and it is within the rule of reason.

3. PURPOSE AND NEED

The purpose of this FSFPEIS is to take into account new circumstances or information resulting from the DWH blowout. This information is needed in order to consider potential changes to the environment linked to the DWH blowout and determine if and how such changes may affect the actions analyzed in the Aquaculture FMP/FPEIS.

4. MANAGEMENT ALTERNATIVES

This section provides a summary of the various alternatives considered by the Council for each of the ten actions (see Section 4.0 of the Aquaculture FMP/FPEIS for further discussion). A summary table of all Actions and Preferred Alternatives is provided in Appendix D. No new alternatives are being proposed at this time.

4.1 Action 1: Aquaculture Permit Requirements, Eligibility, and Transferability

Preferred Alternative 2: Require a NMFS Gulf Aquaculture Permit to authorize a person to:

- Deploy or operate an offshore aquaculture facility in the Gulf EEZ. An offshore aquaculture facility means an installation or structure, including any allowable aquaculture systems (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; and,
- Sell, only at the first point of sale, or attempt to sell an allowable aquaculture species cultured at an offshore aquaculture facility in the Gulf EEZ.

Persons issued a Gulf Aquaculture Permit for the activities authorized above would also be authorized to:

- Harvest or designate hatchery personnel or other entities to harvest and retain onboard a vessel wild live broodstock of an allowable aquaculture species native to the Gulf for offshore aquaculture, regardless of where broodstock were harvested or possessed in U.S. waters of the Gulf. Offshore aquaculture means all activities, including the operation of an offshore aquaculture facility, involved in the propagation and rearing of allowable aquaculture species in the Gulf EEZ. (Note: additional requirements for harvesting broodstock are specified in Action 8, Preferred Alternative 2(n)).
- Possess or transport fish or invertebrates in or from the Gulf EEZ to be cultured at an aquaculture facility (e.g., broodstock, fingerlings) or possess or transport fish or invertebrates from an aquaculture facility for landing ashore and sale.

Require a Gulf aquaculture dealer permit to receive cultured organisms from the Gulf EEZ. However, an owner or operator of an aquaculture facility with a Gulf Aquaculture Permit may purchase juvenile fish from a hatchery located in the Gulf EEZ without obtaining a dealer permit. Requirements for obtaining a dealer permit are specified in the Code of Federal Regulations (CFR) at 50 CFR 622.4(a)(4)(iii) and 50 CFR 622.4(b).

Landing of allowable aquaculture species cultured in the Gulf EEZ is prohibited at non-U.S. ports, unless first landed at a U.S. port. In addition, require any vessel, aircraft, or vehicle authorized for use in aquaculture operations have a copy of the Gulf Aquaculture Permit onboard. Each copied permit must include an original signature of the Gulf Aquaculture Permit holder. (Reporting requirements are specified in Table 4.1.2 of the Aquaculture FMP/FPEIS)

Eligibility for a Gulf Aquaculture Permit is limited to U.S. citizens or permanent resident aliens.

A Gulf Aquaculture Permit is:

- (a) transferable only if the geographic location of the aquaculture site remains unchanged. The transferor and transferee must complete the application for permit transfer, have their signatures notarized, and mail the signed application to the Regional Administrator (RA) at least 30 days prior to the date on which the transferee desires to have the transfer effective. Approval of the transfer by the RA is contingent on all applicable permit requirements being completed, and, if necessary, updated. (Preferred)

Rejected Alternatives

Alternative 1: No Action, an EFP for conducting aquaculture would be required.

Alternative 3: Require separate NMFS siting and operating permits for conducting offshore marine aquaculture in the Gulf EEZ. A siting permit would authorize use of a site for conducting aquaculture. An operating permit would authorize the activities specified in Preferred Alternative 2. Eligibility for Gulf aquaculture operating and siting permits is limited to U.S. citizens or permanent resident aliens.

A Gulf Aquaculture Permit is:

- (b) not transferable.

Discussion

The Council considered three alternatives for permitting aquaculture facilities in the Gulf EEZ. The first alternative (no action) would have maintained the practice of issuing EFPs for aquaculture. The third alternative would have required both a siting permit as well as an operational permit. The Council chose Preferred Alternative 2, which requires a NMFS Gulf Aquaculture Permit to operate an offshore aquaculture facility.

4.2 Action 2. Application Requirements, Operational Requirements, and Restrictions

Preferred Alternative 3: Establish the following application requirements, operational requirements, and restrictions:

(a) Application Requirements

1. A completed application and all required supporting documents for a Gulf Aquaculture Permit must be submitted by an applicant (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) on a form available from the NMFS RA at least 180 days prior to the date the applicant desires the permit to be effective.
2. An applicant must provide all information indicated on the application form, including, but not limited to:
 - i Applicant's name, address, and telephone number.
 - ii Business name, address, telephone number, and date the business was formed.
 - iii Description of the exact location (i.e., GPS coordinates) and dimensions of the proposed aquaculture facility and proposed site, including a map of the site to scale.
 - iv 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.
 - v Name and address or specific location of each hatchery that would provide juvenile organisms for grow-out at the proposed aquaculture facility located within the Gulf EEZ and a copy of any relevant, valid state or federal aquaculture permits issued to the hatchery.
 - vi Prior to issuance of a Gulf Aquaculture Permit, a copy of all currently valid federal permits (e.g., ACOE Section 10 Permit and EPA NPDES [National Pollutant Discharge Elimination System] permit) applicable to the proposed aquaculture site, facilities, or operations.
 - vii A description of the allowable aquaculture systems to be used, including, but not limited to the size and dimensions of allowable aquaculture systems, 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.
 - viii A description of the equipment and methods necessary for feeding, transporting, maintaining, and removing cultured species from allowable aquaculture systems.
 - ix A copy of the valid U.S. Coast Guard (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.
- x Documentation certifying the applicant has posted an assurance bond sufficient to cover the costs of removal of all components of the aquaculture facility, including cultured organisms 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.
 - xi 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 were from the same population or subpopulation of fish or invertebrates (based on best available science) where the aquaculture facility is located, or progeny of such wild broodstock, and that each individual broodstock was marked or tagged at the hatchery to allow for identification of those individuals used in spawning.
 - xii Certification by the applicant that no genetically modified organisms (GMO) or transgenic organisms are used or possessed in the aquaculture facility. A GMO is an organism 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). A transgenic animal is an animal whose genome contains a nucleotide sequence that has been intentionally modified in vitro, and the progeny of such an animal. The NMFS may sample cultured organisms to determine genetic lineage and will order the removal of all cultured organisms upon a determination that GMOs or transgenic organisms were used or possessed at an aquaculture facility.
 - xiii Certification by the applicant that a contractual arrangement with an identified aquatic animal health expert to provide services to the aquaculture facility has been obtained. An aquatic animal health expert is defined as a licensed doctor of veterinary medicine or is certified by the American Fisheries Society, Fish Health Section, as a “Fish Pathologist” or “Fish Health Inspector”. A copy of the license or certification must also be provided to NMFS.
 - xiv A copy of an emergency disaster plan developed for and to be used by operator of the aquaculture facility, that includes, but is not limited to, procedures for preparing allowable aquaculture systems, offshore aquaculture equipment, and cultured organisms in the event of a disaster (e.g., hurricane, tsunami, harmful algal bloom, chemical or oil spill, etc.).
 - xv Information sufficient to document eligibility as a U.S. citizen or permanent resident alien. This information includes, but is not limited to, corporate structure and shareholder information.

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

xvii Any other information that may be necessary for the issuance or administration of the Gulf Aquaculture Permit, as specified on the application form.

(b) Operational Requirements and Restrictions

1. At least 25 percent of allowable aquaculture systems approved for use at an 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 permitted 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 one-year extension to the above time schedules in the event of a catastrophe (e.g., hurricane). Requests must be made in writing and sent to the RA. The RA will approve or deny the request after determining if catastrophic conditions exist and whether or not the permittee was affected by the catastrophic conditions. The RA shall provide the determination and the basis for it, in writing to the permittee.
2. The permittee must obtain and submit to NMFS a signed certification from the owner(s) of the hatchery from which fingerlings or other juvenile organisms are obtained indicating broodstock have been individually marked or tagged (e.g., via a Passive Integrated Transponder, coded wire, dart, or internal anchor tag) to allow for identification of those individuals used in spawning. The permittee must also obtain and submit to NMFS a 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. These certifications must be provided by the permittee each time broodstock are acquired by the hatchery or used for spawning.
3. Prior to stocking cultured animals in an allowable aquaculture system in the Gulf EEZ, the permittee must provide NMFS a copy of a health certificate (suggested form is USDA/APHIS VS 17-141, OMB 0579-0278) signed by an aquatic animal health expert (as defined in (a)(2)(xiv)) certifying cultured animals were inspected and determined to be free of World Organization of Animal Health (OIE) reportable pathogens (or additional pathogens identified as reportable pathogens in the National Aquatic Animal Health Plan (NAAHP) as implemented by the USDA [U.S. Department of Agriculture], Commerce, and Interior).
4. 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, i.e., net pen or cage, placed in the water at the aquaculture facility.

5. The permittee must conduct feed monitoring and management practices in compliance with EPA regulations at 40 CFR 451.21.
6. Permittee must comply with all applicable monitoring and reporting requirements specified in their valid ACOE Section 10 permit and valid EPA NPDES permit.
7. A permittee must inspect allowable aquaculture systems, including mooring and anchor lines, for entanglements or interactions with marine mammals, protected species, and migratory birds. If entanglements or interactions are observed, they must be reported as specified in Action 8, Preferred Alternative 2(c)(2).
8. Use of drugs, pesticides, and biologics must comply with all applicable Food and Drug Administration (FDA), EPA, and USDA regulations (e.g., Food, Drug and Cosmetic Act, 21 USC 321; Clean Water Act, 40 CFR 122; 9 CFR 101-124; 21 CFR 500-599; and 40 CFR 150-189).
9. Cultured finfish must be maintained whole with heads and fins intact until landed on shore. Until landed on shore, spiny lobster must be maintained whole with the tail intact.
10. Except for authorized broodstock associated with a hatchery in the Gulf EEZ, possession of wild fish or invertebrates at or within the boundaries of an aquaculture facility's restricted access zone is prohibited (Action 7 and Alternative 2(n) in Action 8).
11. Possession and transport of any wild fish or invertebrates aboard an aquaculture operation's transport or service vessels, vehicles, or aircraft is prohibited, except when harvesting broodstock as authorized by NMFS.
12. A permittee must provide NMFS employees and authorized officers access to the aquaculture facility to conduct inspections or sampling necessary to determine compliance with the applicable regulations (e.g., sample cultured organism to determine genetic lineage) relating to aquaculture in the Gulf EEZ. The NMFS shall conduct **at least annual inspections** of each permitted aquaculture facility.
13. A permittee may only obtain juvenile organisms for grow-out at an aquaculture facility from a hatchery located in the U.S.
14. Species cultured at an aquaculture facility in the Gulf EEZ can only be landed ashore between 6 a.m. and 6 p.m., local time.
15. Any vessel transporting cultured organisms 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.

Rejected Alternatives

Alternative 1: Do not specify application requirements, operational requirements, or restrictions for aquaculture in the Gulf EEZ.

Alternative 2: Status quo. Require the EFP application and issuance requirements as specified at 50 CFR 600.745(b).

Discussion

Three alternatives were considered by the Council for establishing application and operational requirements and restrictions. Alternative 1 would not have specified any conditions when issuing a permit to an aquaculture facility, while Alternative 2 would have maintained the conditions set forth in an EFP. The Council chose Preferred Alternative 3 which requires each aquaculture operation to adhere to a number of application and operational requirements and restrictions for the initial issuance, as well as for the continued operation of the facility.

4.3 Action 3. Permit Duration

Preferred Alternative 2: Gulf Aquaculture Permits are effective for:

- a) 5 years
- b) 10 years and may be renewed in 5 year increments (Preferred).
- c) 20 years
- d) Indefinitely.

A Gulf Aquaculture Permit remains valid for the period indicated on the permit unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 for non-compliance with applicable aquaculture regulatory requirements or the aquaculture facility is sold and the permit has not been transferred.

Rejected Alternatives

Alternative 1: No Action, EFPs are effective for no longer than one year unless otherwise specified in the EFP or a superseding notice or regulation (50 CFR 600.745(b)(4)).

Discussion

Two alternatives were considered by the Council for this action. Alternative 1 (no action) would have continued to allow an EFP to be effective for one year. Preferred Alternative 2 provided four options for the duration of a Gulf Aquaculture Permit, including 5 years, 10 years (with 5 year renewal increments), 20 years, or indefinitely. The Council chose the Preferred Alternative 2 option which allows permits to be effective for a 10 year period with 5 year renewal increments.

4.4 Action 4. Species Allowed for Aquaculture and included in the Aquaculture Fishery Management Unit.

Preferred Alternative 4: Allow the aquaculture of all species native to the Gulf that are managed by the Council and included in a Council FMP management unit, except those species in the shrimp and coral FMP management units, and include these species in the Aquaculture Fishery Management Unit (FMU). The Council will send a letter to NMFS requesting development of concurrent rulemaking to allow aquaculture of highly migratory species (HMS).

Rejected Alternatives

Alternative 1: No Action, do not specify species allowed for aquaculture and do not develop an Aquaculture FMU.

Alternative 2: Allow the aquaculture of all finfish species native to the Gulf in the reef fish, red drum, and coastal migratory pelagics FMPs and include these species in the Aquaculture FMU.

Alternative 3: Allow the aquaculture of all species native to the Gulf that are managed by the Council and included in a FMP management unit, except goliath grouper, Nassau grouper, and those species in the shrimp and coral fishery management units, and include these species in the Aquaculture FMU.

Discussion

The Council considered four alternatives for Action 4. Alternative 1 (no action) would not have specified which species could be used for aquaculture and would not have allowed for development of an Aquaculture FMU. Alternative 2 would have allowed the culture of red drum

and all species in the reef fish and coastal migratory pelagic FMPs. Alternative 3 would have allowed the aquaculture of all marine species managed by the Council, with the exception of shrimp, corals, and goliath and Nassau grouper. The Council chose Preferred Alternative 4 which allows for the culture of all species native to the Gulf managed by the Council (except shrimp and corals), and includes the ability to send a letter to NMFS' Atlantic HMS Management Division to request development of concurrent rulemaking to allow for the culture of HMS (tunas, billfish, sharks, and swordfish).

In regards to the DWH blowout, information regarding the health and size of populations of allowable species for aquaculture under the Aquaculture FMP/FPEIS will be taken into consideration by NMFS when evaluating individual permit applications. Since the Aquaculture FMP/FPEIS entered into effect in 2009, two species (slipper lobster, stone crab) originally listed in the Aquaculture FMU are no longer managed by the Council. In the future, the Council may choose to remove other species from the Aquaculture FMU via an amendment to the Aquaculture FMP/FPEIS.

4.5 Action 5. Allowable Marine Aquaculture Systems

Preferred Alternative 3: The NMFS 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. To assist the RA in evaluating the structural integrity of a proposed aquaculture system, an applicant would be required to submit to the RA documentation (e.g., engineering analyses, computer and physical oceanographic model results) sufficient to evaluate 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 will also evaluate the proposed aquaculture system and its operations based on potential risks to EFH, endangered or threatened marine species, marine mammals, wild fish or invertebrate 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 NMFS and other NOAA offices/programs. If the RA denies use of a proposed aquaculture system or specifies conditions for its use, the RA shall provide the determination and the basis for it, in writing to the applicant.

Rejected Alternatives

Alternative 1: No Action, do not specify allowable systems for offshore marine aquaculture in the Gulf EEZ.

Alternative 2: Allow only cages and net pens for offshore marine aquaculture in the Gulf EEZ.

Discussion

Three alternatives were considered by the Council for allowable marine aquaculture systems. Alternative 1 (no action) would not have specified the types of marine aquaculture systems (e.g., cages, net pens) allowed in the Gulf. Alternative 2 would have only allowed cages and net pens for offshore aquaculture. The Council chose Preferred Alternative 3 which does not authorize or prohibit specific allowable aquaculture systems; rather, it specifies that NMFS (will) evaluate the marine aquaculture system proposed in each permit application on a case-by-case basis.

Information submitted by the permittee will be used by NMFS to evaluate the proposed system(s) to ensure maximum environmental safeguards while still allowing operations to use the most recent technology developed for aquaculture systems.

4.6 Action 6. Marine Aquaculture Siting Requirements and Conditions

Preferred Alternative 3: Establish the following criteria for siting marine aquaculture facilities:

- (a) Prohibit marine aquaculture in Gulf EEZ marine protected areas and marine reserves, Habitat Areas of Particular Concern (HAPCs), Special Management Zones (SMZs), and permitted artificial reef areas as specified in 50 CFR 622, and coral reef areas as defined in 50 CFR 622.2.
- (b) No offshore aquaculture facility may be sited within 1.6 nautical miles (3 km) of another offshore aquaculture facility.
- (c) To allow fallowing and rotation of allowable aquaculture systems within a site permitted by the ACOE and approved by NMFS, the permitted site must be at least twice as large as the combined area encompassed by the allowable aquaculture systems (e.g., cages and net pens).
- (d) Applicants for a Gulf Aquaculture Permit must conduct and submit a baseline environmental assessment of the proposed aquaculture site to NMFS with their application packet. Data, results, and analyses from the baseline environmental assessment must be provided to NMFS for consideration during review of a permit application. The baseline environmental assessment must be conducted, and analyses, data, and results must be summarized, based on guidance and procedures specified by NMFS. If a permit is approved, applicants must also monitor the site in accordance with NMFS guidance and procedures. Baseline environmental assessment and monitoring guidance and procedures will be developed in

- consultation with the ACOE, EPA, and other federal agencies having authority to regulate offshore aquaculture. Guidance will include, but will not be limited to, procedures and methods for: 1) conducting diver and video surveys, 2) measuring hydrographic conditions, 3) collecting and analyzing benthic sediments and infauna, and 4) measuring water quality characteristics. The guidance and procedures will be available from the RA and on the NMFS aquaculture website.
- (e) The NMFS RA will evaluate siting criteria in addition to those preferred criteria selected by the Council in Alternative 3(a-d) on a case-by-case basis. Criteria considered by the NMFS RA during case-by-case review would include, but would not be limited to, depth of the site, current speeds, substrate type, the frequency of harmful algal blooms (HABs) or hypoxia at the proposed site, marine mammal migratory pathways, and the location of the site relative to commercial and recreational fishing grounds and important natural fishery habitats (e.g., seagrasses). The NMFS RA may deny use of a proposed aquaculture site based on a determination that such a site poses significant risks to EFH, endangered species, or threatened marine species, will 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(s), substrate and currents at the site will inhibit the dispersal of wastes and effluents, the site poses significant risks of mortality to the cultured species due to low dissolved oxygen or HAB, or other grounds inconsistent with FMP objectives or applicable federal laws. The information used by NMFS for siting a facility with regard to proximity to commercial and recreational fishing grounds would include, but is not limited to, 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. Such a determination by the RA shall be based on consultations with NMFS offices and programs and siting and other information submitted by the permit applicant. If a proposed site is denied, the RA shall provide the determination and the basis for it, in writing to the permit applicant.

Rejected Alternatives

Alternative 1: No Action, do not designate areas in the Gulf EEZ where aquaculture would be allowed. The ACOE would permit sites for aquaculture. The NMFS and the Council would continue to review and comment on ACOE siting permits.

Alternative 2: Establish marine aquaculture zones within which individual sites would be permitted. Marine aquaculture facilities may only be sited in the zones specified (see

Figure 4.6.1 of the Aquaculture FMP/FPEIS). Coordinates for these areas are specified in Table 4.6.1 of the Aquaculture FMP/FPEIS.

Discussion

Action 6 includes three alternatives. Alternative 1 (no action) would not have designated areas in the Gulf EEZ where aquaculture would be allowed. Alternative 2 would have created aquaculture zones where facilities could operate. The Council chose Preferred Alternative 3 which establishes specific siting criteria, but does not establish predefined zones.

The NMFS will evaluate each proposed site on a case-by-case basis and therefore could deny the use of a proposed site if it were determined that the site is unsuitable for aquaculture due to impacts from the DWH blowout and/or does not fall within the criteria outlined in Preferred Alternative 3.

4.7 Action 7. Establish Restricted Access Zones for Marine Aquaculture Facilities

Preferred Alternative 2: Create a restricted access zone for each aquaculture facility. The boundaries of an aquaculture facility's restricted access zone shall correspond with the coordinates on the approved ACOE Section 10 permit. No recreational and no commercial fishing other than offshore aquaculture may occur in the restricted access zone. No fishing vessels may operate in or transit through the restricted access zone unless the vessel has on board a signed copy (i.e., a permit with an original signature and not a copy of the signature) of the facilities' Gulf Aquaculture Permit onboard. 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 letters at least 6 inches in height and in a color that contrasts with the color of the floating device.

Rejected Alternatives

Alternative 1: No Action, Do not establish restricted access zones around marine aquaculture facilities.

Alternative 3: Prohibit recreational and commercial fishing and the operation or transit of federally permitted fishing vessels within:

- (a) 100 feet (30 meters) of allowable marine aquaculture systems.
- (b) 500 feet (152 meters) of allowable marine aquacultures systems.
- (c) 1,640 feet (500 meters) of allowable marine aquaculture systems.

Discussion

Three alternatives were considered for Action 7. Alternative 1 (no action) would not have restricted access around marine aquaculture facilities. For Alternative 3, fishermen and vessels would have been prohibited within either 100, 500, or 1,640 feet of allowable aquaculture systems. The Council chose Preferred Alternative 2, which specifies that restricted access zones will correspond to the coordinates on the ACOE Section 10 siting permit. This area should be at least twice as large as the total area encompassed by the allowable aquaculture systems (e.g., cages and net pens) as required in the siting criteria for Preferred Alternative 3 in Action 6.

4.8 Action 8. Recordkeeping and Reporting

Preferred Alternative 2: Establish the following reporting and recordkeeping requirements for aquaculture permittees:

- (a) On a continuing basis, provide NMFS currently valid copies of all state and federal permits (e.g., ACOE Section 10 permit, EPA NPDES permit) required for conducting offshore aquaculture. Maintain and make available upon request monitoring reports required by each of these permits for the most recent three years.
- (b) Notify NMFS via phone or an electronic web-based form within 24 hours of discovery of any of the following events:
 1. Major escapement. Major escapement is defined as the escape of 10 percent of the cultured organisms from a single allowable aquaculture system (e.g., one cage or one net pen) within a 24 hour period or the cumulative escape within a 24 hour period from all allowable aquaculture systems (e.g., all cages or net pens) at an aquaculture facility representing 5 percent or more of the total cultured organisms or the cumulative escape of 10 percent or more of the cultured organisms from all allowable aquaculture systems at an aquaculture facility in any 30-day consecutive period. A permittee shall provide NMFS with the following information if major escapement occurs or is suspected of having occurred: Gulf Aquaculture Permit number, contact person name and phone number, specific location of escapement, cause(s) for escapement and the number, type of species, size, and percent of cultured organisms that escaped, and actions being taken to address the escapement. If no major escapement occurs during a given year, then the permittee shall provide the NMFS RA with an annual report via an electronic web-based form on or before January 31 each year indicating no major escapement occurred.
 2. Entanglements or interactions with marine mammals, endangered species, and migratory birds. A permittee shall provide the NMFS RA with the following information if entanglements or interactions with marine mammals, endangered species, or migratory birds occur: 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. If no entanglement or interaction occurs during a given year, then the permittee shall provide the NMFS RA with an annual report via an electronic web-based form on or before January 31 each year indicating no entanglement or interaction occurred.

- (c) Report via phone or an electronic web-based form all findings or suspected findings of any OIE-reportable pathogen episodes or additional pathogens identified as reportable pathogens in the NAAHP as implemented by the USDA, or U.S. Departments of Commerce or Interior that are known to infect the cultured species within 24 hours of diagnosis to NMFS. Information reported must include: OIE-reportable pathogen, percent of cultured organisms infected, findings of the aquatic animal health expert, plans for submission of specimens for confirmatory testing (as required by the USDA), testing results (when available), and actions being taken to address the reportable pathogen episode. The NMFS, in cooperation with USDA/APHIS (U.S. Department of Agriculture/Animal and Plant Health Inspection Service) , may order the removal of all cultured organisms from an allowable aquaculture system upon confirmation by an USDA/APHIS-approved reference laboratory that an OIE-reportable pathogen exists and USDA/APHIS and NMFS find that the event poses a significant risk to the health of wild or farmed aquatic organisms (Note: the Animal Health Protection Act of 2002 provides the Secretary of Agriculture authority to carry out operations and measures to detect, control, or eradicate any pest or disease of livestock, including animals at a slaughterhouse, stockyard, or other point of concentration. The NMFS would coordinate with the USDA in ordering the removal of cultured organisms). If no finding or suspected finding of an OIE suspected pathogen episode occurs during a given year, then the permittee shall provide the NMFS RA with an annual report via an electronic web-based form on or before January 31 each year indicating no finding or suspected finding of an OIE suspected pathogen episode.
- (d) Notify NMFS within 30 days of any changes in hatcheries used for providing fingerlings or other juvenile organisms and provide updated names and addresses/locations for the applicable hatcheries.
- (e) Keep original purchase invoices or copies of purchase invoices for feed on file for three years from the date of purchase and make available to NMFS or authorized officers during inspection or upon request.
- (f) Submit sale records electronically using a web-based form and maintain and make available to NMFS personnel or authorized officers during inspection(s) or upon request, sale records for the most recent three years. Sale records must include the

- species and quantity of cultured organisms sold in pounds whole weight, the estimated average weight of cultured organisms sold to the nearest tenth of a pound, the date of sale, and the names of companies or individuals to whom fish were sold.
- (g) Notify NMFS via phone or electronically using a web-based form of the intended time, date, species and number of fingerlings or other juvenile organisms that will be transported from a hatchery, other than a hatchery that is integrated within the aquaculture facility, to an aquaculture facility at least 72 hours prior to transport.
 - (h) Notify NMFS via phone or electronically using a web-based form of the intended time, date and estimated amount in pounds whole weight by species of fish to be harvested from the aquaculture facility at least 72 hours prior to harvest.
 - (i) Notify NMFS via phone or electronically using a web-based form of the intended time, date, and port of landing for any vessel landing cultured organisms harvested from an aquaculture facility at least 72 hours prior to landing.
 - (j) Any cultured organisms harvested from an offshore aquaculture facility and being transported for landing ashore or sale must be accompanied by the applicable bill of lading through the first point of sale. The bill of lading must include species name, quantity in numbers or pounds, Gulf Aquaculture Permit number of the aquaculture facility from which the fish were harvested, and name and address of purchaser.
 - (k) Maintain and make available to NMFS personnel or authorized officers upon request a written or electronic daily record of the number of cultured animals introduced into and number or pounds and average weight of fish removed from each allowable aquaculture system, including mortalities, for the most recent three years.
 - (l) Permittee must provide NMFS current information (i.e. updates if changed since application) regarding names, addresses, and phone numbers of captains, pilots, aircraft owners, and vessel owners, along with documentation or identification numbers for project vessels and aircraft.
 - (m) Permit applicants must provide NMFS copies of valid state and federal aquaculture permits for each hatchery they obtain fingerlings from.
 - (n) 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 electronically via a web-based form to the NMFS 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. Allowable methods or gears used for broodstock capture include those identified for each respective fishery in 50 CFR 600.725, except red drum, which may be harvested only with handline or rod and reel. The NMFS RA may deny or modify a request for broodstock collection if allowable methods or gears are not proposed for use, the number of fish harvested for

- broodstock is more than necessary for purposes of spawning and rearing activities, or other grounds inconsistent with FMP objectives or other federal laws. If a broodstock collection request is denied or modified, the RA shall provide the determination and the basis for it, in writing to the permittee. If a broodstock collection request is approved, the permittee shall submit a report to the RA 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 on a web-based form to the NMFS RA no later than 15 days after the date of harvest.
- (o) 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* 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 Gulf Aquaculture Permit holder the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available upon request 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 Customer Service Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.
- (p) Any other appropriate recordkeeping and reporting requirements necessary for evaluating and assessing the environmental impacts of an aquaculture operation.

Rejected Alternatives

Alternative 1: No Action, the RA has authority to specify recordkeeping and reporting requirements in an EFP (50 CFR 600.745).

Discussion

The Council considered two alternatives for Action 8. Alternative 1 (no action) would have provided NMFS authority to specify EFP recordkeeping and reporting requirements, but only if Action 1, Alternative 1 (EFP option) had been selected as the preferred alternative. Since Alternative 2 was selected by the Council as the Preferred Alternative for Action 1, only Alternative 2 could have been selected for this particular Action (Action 8). Thus, the Council chose Preferred Alternative 2 which establishes 17 recordkeeping and reporting requirements.

4.9 Action 9. Biological Reference Points and Status Determination Criteria

Preferred Alternative 2: Establish the following new biological reference points and status determination criteria for aquaculture in the Gulf EEZ:

The proxy for maximum sustainable yield (MSY) is:

- (a) the total yield harvested by all aquaculture operations in a given year within the management regime established in this FMP.
- (b) 16 million pounds whole weight (mp ww).
- (c) 32 mp ww.
- (d) 36 mp ww.
- (e) 64 mp ww (Preferred).
- (f) 190 mp ww.

The proxy for optimum yield (OY) is the total yield harvested by all permitted aquaculture operations annually, but not to exceed:

- (a) 16 mp ww.
- (b) 32 mp ww.
- (c) 36 mp ww.
- (d) 64 mp ww; Equal to MSY (Preferred).
- (e) 190 mp ww.

No individual, corporation, or other entity can be permitted to produce more than:

- (a) 5 percent of the maximum level of OY.
- (b) 10 percent of the maximum level of OY.
- (c) 20 percent of the maximum level of OY (Preferred).

Production of juvenile fish by a hatchery in the Gulf EEZ will not be counted toward optimum yield or the 20-percent production restriction because those fish would be accounted for subsequently via reported harvest at the aquaculture facility where grow-out occurs.

If planned aquaculture production exceeds the preferred OY specified in Alternative 2 than the Council would initiate review of the OY proxy and aquaculture program, and NMFS would publish a control date, after which entry into the aquaculture industry may be limited or restricted.

Overfished (i.e., minimum stock size threshold; MSST) and overfishing (i.e., maximum fishing mortality threshold; MFMT) definitions contained in the various FMPs to manage

wild stocks will be used as proxies for assessing the status of those wild stocks potentially affected by excessive production in aquaculture operations.

Rejected Alternatives

Alternative 1: No Action. Do not establish biological reference points (MSY, OY) or status determination criteria (MFMT, MSST) specific to aquaculture in the Gulf EEZ.

Discussion

Two alternatives were considered for Action 9. Alternative 1 (no action) would not have specified biological reference points or status determination criteria for aquaculture in the Gulf. The Council chose Preferred Alternative 2, which: establishes biological reference points and status determination criteria for aquaculture in the Gulf, specifies MSY and OY for the entire aquaculture fishery, sets a cap on planned production for any individual, corporation, or other entity equal to 20 percent of OY, requires NMFS to publish a control rule if planned aquaculture exceeds OY, and also limits production of cultured species in the Gulf until more is known about the impacts of offshore aquaculture.

4.10 Action 10. Framework Procedures

Preferred Alternative 3: Specify the following framework procedures for modifying biological reference points (MSY, OY), and management measures for offshore marine aquaculture in the Gulf EEZ.

- A. The Council will appoint an Aquaculture Advisory Panel (AP) to meet at least bi-annually to evaluate the aquaculture management program proposed in this FMP (and as amended by subsequent Council actions). The group shall be composed of Council staff, NMFS biologists and social scientists, Scientific and Statistical Committee (SSC) members, Socioeconomic Panel (SEP) members, and other state, university, or private scientists with expertise related to aquaculture. The AP will address and review the following:
1. Annual planned aquaculture production levels relative to MSY and OY.
 2. Whether or not the condition and status of wild stocks, marine mammals, protected resources, EFH, and other resources managed by the Council and NMFS are adversely affected by aquaculture through:
 - a. OIE reportable pathogens;
 - b. organic and benthic loading and changes in water quality;
 - c. entanglements and interactions;
 - d. escapement of cultured fish;
 - e. other factors.

3. Economic and social considerations of aquaculture in the EEZ as they relate to Gulf fishing communities.
 4. Management measures for regulating aquaculture, including:
 - a. permit application requirements (Action 2);
 - b. aquaculture operational requirements and restrictions, including monitoring (Action 2);
 - c. allowable aquaculture system requirements (Action 5);
 - d. siting requirements (Action 6); and,
 - e. recordkeeping and reporting requirements (Action 8).
- B. The AP will prepare a written report with its recommendations for submission to the Council. The report will provide the scientific basis for their recommendations, and may include, but is not limited to:
- a. a summary of annual aquaculture landings and planned production;
 - b. a summary of whether or not Council and NMFS managed resources have been adversely affected by aquaculture;
 - c. recommended changes to permit application requirements, operational requirements and restrictions, allowable aquaculture system requirements, siting requirements, and recordkeeping and reporting requirements; and
 - d. a summary of ongoing research activities related to aquaculture in the Gulf EEZ, including important findings and results; and,
 - e. recommendations for revising MSY or OY.
- C. If the AP determines aquaculture is adversely affecting wild stocks, stock complexes, marine mammals, protected resources, essential and critical habitat, fishing communities, or other resources managed by the Council or NMFS, they may recommend MSY and OY be reduced. Any decrease in MSY or OY shall include the scientific basis for the recommendation.
- D. If the AP determines aquaculture is not adversely affecting wild stocks, stock complexes, marine mammals, protected resources, essential and critical habitat, fishing communities, or other resources managed by the Council or NMFS, they may recommend to the Council that MSY and OY be increased. Any increase in MSY or OY shall include the scientific basis for the recommendation.
- E. If the AP determines changes to permit application requirements, operational requirements and restrictions, allowable aquaculture system requirements, siting requirements, and recordkeeping and reporting requirements are warranted, they shall provide the Council with recommended changes, including rationale for such changes.
- F. The Council will review and consider the AP's recommendations and hold a public hearing to obtain comments on the AP's report. After public input, the Council will determine if changes to aquaculture management measures or MSY/OY are warranted. If changes are warranted, then the Council will develop a regulatory

amendment. The Council may convene the SEP or SSC to provide additional advice prior to taking final action on the regulatory amendment. The Council will provide an opportunity for public input when taking final action.

- G. If changes are needed to MSY, OY, or management measures listed above, the Council will submit to the RA a regulatory amendment, accompanied by the AP's report and any relevant public comments.
- H. The RA will review the Council's regulatory amendment for consistency with the goals and objectives of the Aquaculture FMP, national standards, the MSFCMA, and other applicable law. If the RA concurs with the recommendations, regulations will be drafted and implemented through regulatory amendment in the *Federal Register*. If the RA rejects the recommendations, the RA shall notify the Council in writing of the reasons for rejection and existing regulations would remain in effect. Regulatory changes that may be established or modified by the RA through regulatory amendment in the *Federal Register* include:
 - a. adjustments to MSY;
 - b. adjustments to OY;
 - c. permit application requirements;
 - d. aquaculture operational requirements and restrictions, including monitoring requirements;
 - e. allowable aquaculture system requirements;
 - f. siting requirements for aquaculture facilities; and,
 - g. recordkeeping and reporting requirements.

Rejected Alternatives

Alternative 1: No action (status quo), do not specify framework procedures for modifying aquaculture management measures or biological reference points.

Alternative 2: Specify the following framework procedures for modifying biological reference points (MSY, OY) for offshore marine aquaculture in the Gulf EEZ.

- A. The Council will appoint an Aquaculture Advisory Panel to meet at least bi-annually to evaluate the aquaculture management program proposed in this FMP (and as amended by subsequent Council actions). The group shall be composed of Council staff, NMFS biologists and social scientists, Scientific and Statistical Committee (SSC) members, Socioeconomic Panel (SEP) members, and other state, university, or private scientists with expertise related to aquaculture. The AP will address and review the following:
 - 1. Annual planned aquaculture production levels relative to MSY and OY.

2. Whether or not the condition and status of wild stocks, marine mammals, protected resources, EFH, and other resources managed by the Council and NMFS are adversely affected by aquaculture through:
 - a. OIE reportable pathogens;
 - b. organic and benthic loading and changes in water quality;
 - c. entanglements and interactions;
 - d. escapement of cultured fish;
 - e. other factors.
 3. Economic and social considerations of aquaculture in the EEZ as they relate to Gulf fishing communities.
- B. The AP will prepare a written report with its recommendations for submission to the Council. The report will provide the scientific basis for their recommendations, and may include, but is not limited to:
- a. a summary of annual aquaculture landings and planned production;
 - b. a summary of whether or not Council and NMFS managed resources have been adversely affected by aquaculture;
 - c. a summary of ongoing research activities related to aquaculture in the Gulf EEZ, including important findings and results; and,
 - d. recommendations for revising MSY or OY.
- C. If the AP determines aquaculture is adversely affecting wild stocks, stock complexes, marine mammals, protected resources, essential and critical habitat, fishing communities, or other resources managed by the Council or NMFS, they may recommend MSY and OY be reduced. Any decrease in MSY or OY shall include the scientific basis for the recommendation.
- D. If the AP determines aquaculture is not adversely affecting wild stocks, stock complexes, marine mammals, protected resources, essential and critical habitat, fishing communities, or other resources managed by the Council and NMFS, they may recommend to the Council that MSY and OY be increased. Any increase in MSY or OY shall include the scientific basis for the recommendation.
- E. The Council will review and consider the AP's recommendations and hold a public hearing to obtain comments on the AP's report. The Council may convene the SEP or SSC to provide additional advice prior to taking final action. After public input, the Council will make findings on the need for changes.
- F. If changes are needed to MSY or OY, the Council will advise the RA in writing of their recommendations, accompanied by the AP's report, relevant background material, and public comments.
- G. The RA will review the Council's recommendations for consistency with the goals and objectives of the Aquaculture FMP, national standards, the MSFCMA, and other applicable laws. If the RA concurs with the recommendations, regulations will be drafted and implemented through notice in the *Federal Register*. If the RA rejects the

recommendations, the RA shall notify the Council in writing of the reasons for rejection and existing regulations would remain in effect.

Regulatory changes that may be established or modified by the RA by notice in the *Federal Register* include:

- a. adjustments to MSY; and,
- b. adjustments to OY.

Discussion

Three alternatives were considered for Action 10. Alternative 1 (no action) would not have specified framework procedures for aquaculture. Alternative 2 would have specified framework procedures for modifying biological reference points. The Council chose Preferred Alternative 3, which specifies framework procedures for modifying various biological reference points (e.g., adjustments to MSY and OY) and management measures (e.g., siting requirements) for offshore marine aquaculture in the Gulf EEZ.

5. AFFECTED ENVIRONMENT

Section 1502.15 of the Council on Environmental Quality (CEQ) regulations states “environmental impact statements shall succinctly describe the area(s) to be affected or created by the alternatives under consideration.” Although a comprehensive description of the affected physical, biological, economic and social, and administrative environment in the Gulf was included in Section 5.0 of the Aquaculture FMP/FPEIS, this changed on April 20, 2010, when the DWH MC252 deep-sea drilling rig exploded, sank off the coast of Louisiana, and triggered the Macondo 252 well blow out. The following section provides additional information as it relates to the DWH blowout.

5.1 Physical Environment

The DWH blowout affected more than one-third of the Gulf area from western Louisiana east to the panhandle of Florida and south to the Campeche Bank in Mexico. The impacts of the DWH blowout on the physical environment are expected to be significant and long-term.

Oil and gas released from the wellhead was transported at depth or rose from the wellhead to the surface of the water and was volatilized to the atmosphere or moved with surface waters (Camilli et al. 2010). Some of the oil and gas dissolved into the water, some oil was dispersed into tiny oil droplets by chemical dispersants or by wind and wave action, and some adsorbed onto

particles in the water. Floating and suspended oil and tar balls washed onto shore in several areas of the Gulf.

According to the National Research Council (2003), the Gulf seeps oil at an amount of about 40×10^6 million gallons (151×10^6 liters) per year and these seeps help to support a community of microbes which aid in oil biodegradation. In the case of the DWH blowout, millions of barrels of oil were released into the Gulf over a period of 85 days. Redmond and Valentine (2011) found evidence that the microbial community response to the oil released from the DWH blowout was distinct from that observed in previous spills or mesocosm studies. Microbial communities consume oxygen when breaking down oil hydrocarbons, leading to a decrease in the available oxygen in the marine environment. A reduction in dissolved oxygen levels were detected in the deep water layer (3,300 – 4,300 feet) up to 80km away from the wellhead during the summer of 2010 (JAG, 2010). While not reaching hypoxic conditions (1.4 mL/L), the low oxygen concentrations (as low as 2.56 mL/L) were most likely due to biochemical oxygen demand of MC252 hydrocarbons in the deep-water layer.

Changes in the physical environment such as low oxygen could impact the ability of larvae and post-larvae to survive, even if they never encounter oil. While oil exposure may not always be lethal, it can have sub-lethal effects on the early life stages (eggs, larvae). For instance, oil exposure in combination with other stressors (e.g., low oxygen) could result in additive effects which could lead to mortality. However, the actual impact(s) of the oil on Gulf species (e.g., reduced spawning potential, decreased fishing success) may not be evident to fishery managers until those individuals that were affected enter the fishery, and this would need to be taken into consideration during stock assessment processes.

Data and analyses available to date have documented a large footprint of oil around the wellhead and extending to the Southwest (Chanton et al., 2015). This includes areas of soft bottom sediment in which diversity of sediment-dwelling animals has been reduced (Montagna et al. 2013) and deep sea coral habitats which have been degraded (White et al. 2012, Hsing et al. 2013, Fisher et al. 2014). Injuries to mesophotic coral reef habitats include reduced numbers of planktivorous fish species and increased prevalence of injured corals in the affected area compared to reference reefs that were outside the influence of the Spill.

5.2 Biological Environment

Preliminary analysis of injury from the spill suggests that tens of thousands of square miles of surface waters were affected by oiling and that hundreds of cubic miles of surface water may have contained petroleum compounds at concentrations associated with mortality to sensitive aquatic organisms. This indicates that injuries to water column organisms (including eggs and

larvae of fish species) were widespread, both spatially and in terms of the diversity of organisms and life stages that were affected.

Results of toxicity tests conducted by Hamdan et al. (2011) found that the dispersant used during the DWH blowout (Corexit 9500A) did not pose a significant threat to invertebrate and adult fish populations; however, microbial populations were found to be susceptible to toxicity from the use of this dispersant when applied at prescribed concentrations.

Oil from the spill has also clearly affected the benthic community. In addition to injured coral colonies, Bik et al. (2012) also demonstrated significant changes in community structure, with pre-spill assemblages of diverse Metazoa giving way to dominant fungal communities in post-spill sediments. In that study, comparative taxonomic data from nematodes suggested that while pre-spill samples exhibited high richness and evenness of genera, post-spill communities contained mainly predatory and scavenger taxa alongside an abundance of juveniles. The presence of residual oil components in the benthic environment will pose an ongoing threat to this habitat.

Evidence also suggests that contact with oil and dispersants initially resulted in the loss of Sargassum mats in the Gulf, although aerial surveys from 2011 and 2012 indicated a four-fold increase in Sargassum abundance in the years since the DWH blowout (Powers et al. 2013).

Oil entered areas considered important spawning grounds during the spawning season for many Gulf species. For example, the Gulf serves as the sole breeding ground for western Atlantic bluefin tuna from April through June (Abbriano et al. 2011). However, the possibility exists that some species would be able to detect environmental cues when moving toward the oiled area that would prevent them from entering the area. These fish might then remain outside the area where oil was in high concentrations, but still continue to spawn. The highest concern is that the oil may have impacted spawning success of species that spawn in the summer months, either by reducing spawning activity or by reducing survival of the eggs and larvae. Still, many species managed by the Council have a protracted spawning period that extends beyond the months of when oil was released, and thus may not have been as impacted as initially thought.

To date, there have been no reports of fish kills from the DWH blowout in federal waters. If eggs and larvae were affected, impacts on harvestable-size species would become evident when the 2010 year class becomes large enough to enter the fishery and be retained. The impacts would be felt as reduced fishing success and reduced spawning potential, and would need to be taken into consideration in the next Southeast Data Assessment Review (SEDAR) assessment.

Evidence from Fodrie and Heck (2011) indicated that for coastal fish species, immediate, catastrophic losses of 2010 cohorts were largely avoided, and that no shifts in species

composition occurred following the DWH blowout; however, potential long-term impacts still require attention. Similarly, Szedlmayer and Mudrak (2014) found that abundances of age-0 and age-1 Red Snapper in 2010 and 2011 provided evidence that the DWH blowout did not result in a year-class failure. In contrast, Rooker et al. (2013) found that abundance and percent occurrence of fish larvae for selected pelagic fishes (sailfish, blue marlin) declined in 2010 relative to the three years prior to the DH blowout, although this may have been due in part to shifts in biological or oceanographic conditions unrelated to the DWH blowout.

In a study conducted during the summer of 2011, University of South Florida researchers found more unhealthy fish in the area of the DWH blowout compared to other areas. While some scientists have suggested that these incidences of sick fish may be related to the spill, others have pointed out that there is no baseline from which to judge the prevalence of sick fish. Studies are continuing in order to determine whether or not these fish suffer from immune system and fertility problems (Tampa Bay Times 2012) and some studies have indicated that this is the case. For example, Ali et al. (2014) found evidence that that certain Gulf fish species (sea trout, killifish) that had been exposed to crude oil from the DWH blowout were in a lymphopenic or immuno-compromised state. Block et al. (2014) also demonstrated that exposure to 4 types of crude oils collected during the DWH blowout prolonged myocyte action potential duration in fish, potentially resulting in life threatening cardiac arrhythmias.

Changes in the population size structure as a result of shifting fishing effort to specific geographic segments of fish populations, combined with any anthropogenically-induced natural mortality that may occur from the impacts of the DWH blowout, could lead to changes in the distribution and abundance of populations throughout the Gulf. Impacts to federally managed species in the Gulf as a result of the DWH blowout will similarly impact other species that may be preyed upon by those species, or that might benefit from a reduced stock.

The DWH blowout may have resulted in adverse effects to protected species populations (e.g., cetaceans, manatees, and sea turtles) both externally (via swimming in oil or dispersants) or internally (via eating or swallowing oil, consuming prey that has also come in to contact with oil, or breathing volatile compounds). Sea turtles could be at additional risk from oil washing ashore onto nesting beaches, thereby exposing nesting females and/or their nests to chemicals and possibly resulting in decreased survival and/or developmental defects.

A study using multi-year acoustic data to study the impact of the DWH blowout on endangered sperm whales found that some sperm whales may have relocated farther away from the spill, although follow-up experiments are necessary in order to understand potential long-term impacts (Ackley et al. 2012). Schwacke et al. (2012) observed disease conditions in Barataria Bay (Louisiana) bottlenose dolphins which were consistent with petroleum hydrocarbon exposure and toxicity. These disease conditions were significantly greater in prevalence and severity

compared Sarasota Bay dolphins as well as other wild dolphin populations. Additionally, Antonio et al. (2011) concluded (using NOAA and U.S. Fish and Wildlife Service data) that mortality rates exponentially increased post-DWH blowout for certain species of birds.

5.3 Economic and Social Environment

In response to the expanding area of the Gulf surface waters covered by the spill, NMFS issued an emergency rule to temporarily close a portion of the Gulf EEZ to all fishing [75 FR 24822] to ensure seafood safety. The initial closed area (May 2, 2010) extended from approximately the mouth of the Mississippi River to south of Pensacola, Florida and covered an area of 6,817 square statute miles. The coordinates of the closed area were then periodically modified in response to changes in the size and location of the area affected by the spill. At its largest size on June 2, 2010, the closed area covered 88,522 square statute miles, or approximately 37% of the Gulf EEZ. On April 19, 2011, the last area closed to fishing was reopened. The economic impacts of the DWH blowout are still being examined.

On May 24, 2010, then Secretary of Commerce, Gary Locke, declared a fishery disaster in the Gulf due to the economic impact on commercial and recreational fisheries. This determination was made under Section 312(a) of the MSFCMA, and included the states of Louisiana, Mississippi and Alabama under the affected area. The declaration was made in response to requests from the Governors of Louisiana and Mississippi based on the loss of access to many commercial fisheries and the existing and anticipated environmental damage.

According to the 2010 Fisheries of the U.S. (NMFS 2011), U.S. domestic landings for commercial fisheries in the Gulf decreased from 1,583,117 thousand pounds in 2009 to 1,282,848 thousand pounds in 2010. However, revenue slightly increased from \$693 million (\$693,393,000) to \$635 million (\$635,096,000) from 2009 to 2010. In 2010, 2.7 million residents of Gulf coast states participated in marine recreational fishing. All participants, including visitors, took nearly 22 million trips and caught 147 million fish. This was slightly lower than in 2009 where 2.8 million residents of Gulf Coast states participated in marine recreational fishing; and over 23 million trips were taken and more than 173 million fish were caught by all participants (visitors included) (NMFS 2010). Additionally, huge losses to the Gulf region's \$20 billion tourism industry (EPA 2011) were also expected as a result of the DWH blowout.

Information on the full range of social and economic impacts to the Gulf as a result of the DWH blowout is not available at this time. Short and long term effects are still being examined and this process could take years or even decades. Pursuant to the Oil Pollution Act of 1990 (OPA), British Petroleum (BP) as a responsible party was required to establish a procedure for the

payment or settlement of claims for costs and damages incurred as a result of the DWH blowout. Although BP established such a procedure, on June 16, 2010, the White House issued a press release announcing that BP would replace its claims facility with the Gulf Coast Claims Facility (GCCF). The GCCF program operated from May 2010 to August 22, 2010. Starting June 4, 2012, the BP Claims Program began accepting claims under the Oil Pollution Act of 1990. The BP Claims Program is open to claimants that wish to file a claim for economic and property damages related to the Deepwater Horizon incident. As of June 8th, 2015, BP had paid out more than \$14 billion in DWH blowout related claims, advances and settlements (<http://www.bp.com/sectiongenericarticle.do?categoryId=9036580&contentId=7067577>). A separate process has been established to manage claims and funding requests for government and other entities.

5.4 Administrative Environment

As a result of the DWH blowout, on May 19, 2010, Secretary of the Interior, Ken Salazar, issued Order No. 3299 which established BOEMRE. The BOEMRE was charged with taking over all of the responsibilities of the Minerals Management Service (MMS) until the full implementation of BOEMRE's reorganization. The purpose of the order was to 'separate and reassign the responsibilities that had been assigned to the MMS into new management structures that will improve the management, oversight, and accountability of activities on the outer continental shelf (OCS); ensure a fair return to the taxpayer from royalty and revenue collection and disbursement activities; and provide independent safety and environmental oversight and enforcement of offshore activities.'

On October 1, 2011, it was announced that BOEMRE would be separated into two new organizations: Bureau of Ocean Energy Management (BOEM), and Bureau of Safety and Environmental Enforcement (BSEE). The purpose of BOEM is to exercise the conventional (e.g., oil and gas) and renewable energy-related management functions of MMS not otherwise transferred pursuant to Secretary Salazar's Order 3299 including, but not limited to, activities involving resource evaluation, planning and leasing. The purpose of the BSEE is to oversee the safety and environmental enforcement functions of MMS including, but not limited to, the authority to inspect, investigate, summon witnesses and produce evidence, levy penalties, cancel or suspend activities, and oversee safety, response, and removal preparedness. Additionally, the royalty and revenue management functions of MMS including, but not limited to, royalty and revenue collection, distribution, auditing and compliance, investigation and enforcement, and asset management for both onshore and offshore activities are being transferred to the Office of Natural Resources Revenue (ONRR). More information on the reorganization can be found at <http://www.boemre.gov/>.

The DWH blowout also resulted in the development of major monitoring programs by NMFS and other agencies, as well as by numerous research institutions. Of particular concern was the potential health hazard to humans from consumption of contaminated fish and shellfish. The NOAA, FDA, EPA, and Gulf States implemented a comprehensive, coordinated, multi-agency program to ensure that seafood from the Gulf is safe for consumption. Prior to reopening an area, protocol required NOAA to demonstrate the area was oil-free and had little risk of being re-exposed to oil. Seafood tissue samples were also taken and had to successfully pass both a sensory examination and chemical analysis in an approved laboratory. The protocol involved sensory testing for polycyclic aromatic hydrocarbon (PAH) components of the oil and dispersant, and chemical-based testing for PAH as a confirmatory measure. The duration of elevated PAH levels in seafood after previous oil spills has varied from several weeks to several years (Gohlke et al. 2011). In the case of the DWH blowout, testing was performed on finfish, shrimp, crabs, and mollusks (e.g. oysters/mussels) from areas that were closed but reopened as well as from nearby areas that were never closed. More information about the testing protocol and the response of NMFS can be found at: http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.

As mentioned previously, NOAA's Aquaculture Policy (Appendix A) was released in June 2011 and includes an appendix with detailed guidance for aquaculture in federal waters (Appendix B). In February 2013, the Council approved additional language to the implementing regulations by a vote of 13-4. These changes are highlighted in Tab F of the briefing book (<https://public.gulfcouncil.org:5001/webman/index.cgi>). On August 28, 2014, NMFS published a Notice in the Federal Register (79 FR 51424) announcing a 60-day public comment period for the draft regulations for the Aquaculture FMP/FPEIS (comment period ended October 27, 2014). The comment period was reopened on November 13, 2014 for an additional 15 days and ended on Nov 28, 2014.

6. ENVIRONMENTAL CONSEQUENCES

Detailed discussion on the direct and indirect impacts on the physical, biological, ecological, economic and social, and administrative environment for the ten actions and their associated alternatives can be found in Sections 6.2 through 6.11 of the Aquaculture FMP/FPEIS. The following section provides a summary of those impacts and includes additional details related to the DWH blowout.

6.1 General Description of the Marine Aquaculture Environment

Section 6.1 of the Aquaculture FMP/FPEIS discussed a range of issues surrounding marine aquaculture including: impacts on local stocks (escapement, genetic diversity, competition), aquatic animal health (transmission between wild and farmed fish, therapies/vaccines, preventative measures), effluent effects (benthos, water column), interactions with marine wildlife (entanglement, attraction, predator control), competing uses (fishing grounds, navigation), economic and social impacts on domestic fisheries, and harvest of prey species for feed.

6.2 Action 1: Aquaculture Permit Requirements, Eligibility, and Transferability

Action 1 contains alternatives that would (or would not) establish a permitting system for offshore marine aquaculture in the Gulf EEZ. The Council chose Preferred Alternative 2, which creates a NMFS permit to operate an offshore aquaculture facility, requires that permittees be U.S. citizens or permanent resident aliens, and establishes transferability requirements. Other alternatives considered, but not chosen, are Alternative 1 which would have maintained the previous practice of issuing EFPs for aquaculture facilities, and Alternative 3 which would have required both a siting and operational permit.

Of the three alternatives considered, Alternative 1 would have resulted in the least effect on the **physical, biological, and ecological environment** since it would have maintained the status quo of requiring an EFP for the operation of aquaculture facilities and continued the lack of development of the offshore aquaculture industry. The two-tier permit process in Alternative 3 would have required separate siting and operational permits, but provided no additional safeguards to the physical, biological, and ecological environment. The chosen alternative, Preferred Alternative 2, creates a NMFS permit to operate an offshore aquaculture facility and also includes operating requirements and restrictions, as well as recordkeeping and reporting

requirements (Actions 2 and 8) which are tied to the continued operation of the facility under the permit. This information will help to provide managers with the necessary tools for monitoring and maintaining the integrity of the physical, biological, and ecological environment.

Under Alternative 1, any entity seeking to engage in activities associated with commercial offshore aquaculture operations that involve species managed under an FMP or activities in violation of fishery regulations in the Gulf EEZ would have had to apply for an EFP, which would not have resulted in additional impacts to the **economic and social environment**. The economic and social costs of Alternative 3 would have been expected to be the same as those of Preferred Alternative 2, with the exception that Alternative 3 would have potentially created compatibility issues due to the dual permit process. Preferred Alternative 2 allows development of the aquaculture industry in the Gulf EEZ and this may result in both positive (e.g., job creation due to new jobs in aquaculture sector) and negative (e.g., potential competition with wild capture fisheries) economic and social impacts.

All three alternatives considered would have a direct negative effect on the **administrative environment** since issuance of a permit is primarily administrative in nature. Alternative 1 would have required that the EFP process and application requirements be followed for issuance of permits. Alternative 3 would have created a dual permit process, leading to redundancy and unnecessary burden on potential applicants. Preferred Alternative 2 creates a single permit for regulating aquaculture in the Gulf EEZ, and thus does not place undue burden on potential applicants by creating a redundant permitting process. It should also be noted that facilities must adhere to recordkeeping and reporting requirements (Actions 2 and 8) in order to continue operating under the permit.

The impacts from the DWH blowout are not expected to change the direct and indirect effects of the alternatives considered in Action 1 that were identified in Aquaculture FMP/FPEIS. The alternatives evaluated in Action 1 address the mechanism to permit offshore aquaculture facilities and are primarily administrative in nature. As summarized above, the Aquaculture FMP/FPEIS recognized that Alternative 1 would have resulted in the least effect on the physical, biological, and ecological environment. Thus, although the affected environment changed as a result of the DWH blowout, the direct and indirect effects of these alternatives are anticipated to remain the same as those previously identified.

6.3 Action 2: Application Requirements, Operational Requirements and Restrictions

Action 2 considered alternatives that would (or would not) establish application and operational requirements and restrictions. The Council chose Preferred Alternative 3 which requires that

aquaculture operations adhere to a number of application and operational requirements and restrictions for both the initial issuance of a permit and the continued operation of the facility under the permit. The Council considered two other alternatives: Alternative 1 which would not have specified any conditions when issuing a permit to an aquaculture facility, and Alternative 2 which would have required that a facility meet the conditions set forth in an EFP.

Alternative 1 would not have specified application or operational requirements other restrictions, and thus could have had negative impacts on the **physical, biological and ecological environment**. Alternative 2 would have required that those applying for a Gulf Aquaculture Permit meet the conditions specified in an EFP; however, those conditions are less comprehensive than that which is required in Preferred Alternative 3. The chosen alternative, Preferred Alternative 3, specifies numerous application and operational requirements for permit issuance and facility operation and thus would have the least negative impact of the three alternatives.

While Alternative 1 could have produced negative externalities on the **economic and social environment** since it would not have specified application or operational requirements, or restrictions for aquaculture in the Gulf EEZ, it could have also resulted in economic benefits to offshore aquaculture operations due to reduced costs and restrictions. Alternative 2 would have imposed the same restrictions as those required by the application and issuance requirements of an EFP, and may have had the same or slightly reduced economic and social costs as Alternative 1. Preferred Alternative 3 establishes specific application and operational requirements and restrictions which are expected to reduce the magnitude of negative externalities that would be produced by an unrestricted aquaculture industry.

Preferred Alternative 3 is the most burdensome alternative in terms of the **administrative environment** since it requires that those applying for and operating an aquaculture facility in the Gulf EEZ fulfill numerous application and operational requirements and restrictions. Alternative 1 would have been the least burdensome from an administrative standpoint since it does not specify requirements or restrictions. Alternative 2 would have required that one abide by the EFP guidelines and thus would have represented a significant administrative burden, although less so compared to Preferred Alternative 3.

The impacts from the DWH blowout are not expected to change the direct and indirect effects of the alternatives considered in Action 2 that were identified in the Aquaculture FMP/FPEIS. As discussed in Chapter 5, while the DWH blowout resulted in changes to the affected environment, the short- and long-term effects of the blowout are still being examined. The effects of the alternatives considered in Action 2 are not directly related to the current status of the affected environment as they speak to application and operational requirements necessary to acquire and

maintain a permit. Thus, these effects, as previously described, are not expected to change regardless of the ultimate impacts of the DWH blowout.

6.4 Action 3: Duration of the Permit

Action 3 considered two alternatives in regards to the length of time that a Gulf Aquaculture Permit would remain effective. The Council chose Preferred Alternative 2b which specifies that a permit is effective for 10 years, with 5-year renewal increments. Other alternatives considered under Alternative 2 included: permits effective for 5 years (a), 20 years (c), or indefinitely (d). Alternative 1 (no action) would have continued to allow an EFP to remain effective for no longer than 1 year unless specified in the permit or superseding notice or regulation.

With the recordkeeping and reporting requirements specified in Action 8 and conditions attached to a permit in Action 2, it is not expected that a facility would be able to operate for any extended period of time while engaging in activities which may be detrimental to the **physical, biological, or ecological environment**. Still, Alternative 1 would have had the potential for the least negative consequences since it would have resulted in permit duration of only a year, while the opposite would have been true for Alternative 2d (indefinite permit duration). Alternative 2a, Preferred Alternative 2b and Alternative 2c represent permit durations which fall between 1 year and indefinitely.

Impacts on the **economic and social environment** as they pertain to permit duration would be expected as a result of all of the alternatives considered. The potential for negative impacts on fishermen would depend on the magnitude and duration of loss of traditional fishing grounds, landings, revenues, and employment opportunities as a result of aquaculture operations. Impacts on the aquaculture industry would also be felt if the permit duration was not long enough to allow time to become profitable.

The two alternatives considered would also have impacts on the **administrative environment**. The administrative environment would have been the most affected by the continued use of EFPs (Alternative 1) and the least affected if an indefinite permit duration (Alternative 2d) had been chosen. All of the other options (Alternative 2a, c; Preferred Alternative 2b) would result in less impact on the administrative environment compared to Alternative 1.

The impacts from the DWH blowout are not expected to change the direct and indirect effects of the alternatives considered in Action 3 that were identified in the Aquaculture FMP/FPEIS. As discussed in Chapter 5, while the DWH blowout resulted in changes to the affected environment, the short- and long-term effects of the blowout are still being examined. However, as summarized above, the Aquaculture FMP/FPEIS recognized that Alternative 1 would have the

least negative physical, biological, and ecological consequences, while Alternative 2(d) would potentially have the most negative consequences because it allows the longest duration. Further, as also explained in the Aquaculture FMP/FPEIS, recordkeeping and reporting requirements (Action 8) and permit conditions (Action 2), will be in place to prevent a facility from operating for any extended period of time while engaging in activities which resulted in detrimental effects to the **physical, biological, or ecological environment**. Thus, the effects of this Action are expected to remain the same as previously discussed in the Aquaculture FMP/FPEIS regardless of the ultimate impacts of the DWH blowout.

6.5 Action 4: Species Allowed for Aquaculture and Included in the Aquaculture Fishery Management Unit

Action 4 considered which species would be allowed for culture under a Gulf Aquaculture Permit. The Council chose Preferred Alternative 4 which allows the aquaculture of all marine species native to the Gulf and managed by the Council, with the exception of shrimp and corals, and includes these species in the Aquaculture FMU. Preferred Alternative 4 would also allow the Council to send a request to the Atlantic HMS Management Division to allow the culture of species managed under their authority (tunas, billfish, swordfish, sharks. Alternative 1 would not have specified those species allowed for aquaculture or develop an Aquaculture FMU. Alternative 2 would have allowed aquaculture of all finfish native to the Gulf in the reef fish, red drum, and coastal migratory pelagic FMPs and included those species in the Aquaculture FMU. Alternative 3 would have allowed aquaculture of all species native to the Gulf that are managed by Council, except goliath and Nassau grouper, shrimp and corals, and included those species in the Aquaculture FMU.

The effects on the **physical, biological, and ecological environment** were expected to be similar for alternatives 2-4 since these alternatives differed in the number of species allowed, but prohibited the culture of non-native species. Conversely, Alternative 1 is the only alternative that would have allowed non-native species to be used in aquaculture operations and the negative impacts of this particular alternative was expected to be greatest as it would have posed the highest risk for detrimental effects to wild populations if escapement occurred. The impact of broodstock collection on wild stocks was also considered; however, allowing the culture of only those species native to the Gulf and managed by the Council will ensure that species being cultured are under an FMP and managed according to National Standards.

Alternative 1 could have had the greatest adverse impacts to the **economic and social environment** since it allowed culture of any species, whether it was native to the Gulf or not. Under Alternative 1, all Gulf fishermen as well as on-land aquaculture producers could be impacted by direct competition with Gulf offshore operations. Alternatives 2 and 3 would have

restricted the allowable species to be cultured, while Preferred Alternative 4 set the number of allowable species greater than Alternatives 2 and 3, but less than that which would have been allowed by Alternative 1. While restrictions on the number of allowable species could be beneficial for Gulf fishermen, it would also reduce the potential benefits to offshore aquaculture operators and associated businesses.

The costs associated with the **administrative environment** would be expected to be greatest for Alternatives 1, 2, and Preferred Alternative 4 due to the fact that these options would allow for culture of goliath and Nassau grouper and this could result in increased expenses associated with enforcement. Alternative 3 would have prohibited culture of these species of grouper, thereby reducing such expenses.

The Aquaculture FMP/FPEIS describes how each of the alternatives in Action could directly or indirectly impact wild stocks through escapement of cultured species or the collection of wild stocks for broodstock. Wild stocks may have been impacted by the DWH blowout, however, until information on the short- and long-term impacts of the DWH blowout on the population structure and reproductive potential of wild stocks becomes available it is not possible to determine which stocks may have experienced detrimental effects and the magnitude of those effects. As more information becomes available, the Council can react accordingly by adding or removing species from the Aquaculture FMU (via a future amendment). In addition, preferred Alternative 2 in Action 8 requires the permit holder to submit a request to harvest broodstock for culture purposes. This request may be denied if future information indicates that certain stocks have been negatively affected by the DWH blowout to the extent that allowing culture of these species would compromise FMP or management objectives.

As noted in Section 5.2 of this document, several studies have produced preliminary information on the impacts of the DWH blowout on marine organisms and ecosystems in the Gulf; however information on the short- and long-term effects of the blowout is incomplete or unavailable as these effects are still being examined. While there may be incomplete or unavailable information related to the short- and long-term effects of the DWH blowout, based on the information known at this time, there is no indication that the conclusions related to the impacts of implementing the actions in the Aquaculture FMP/FPEIS have been changed due to the DWH blowout.

Ongoing research into the impact of the DWH blowout is being conducted and information from these studies will be used to inform the permitting process and operating procedures of aquaculture operations in the Gulf EEZ. In the future, if significant new information on the short- or long-term effects of the DWH blowout becomes available and bears on the actions or their impacts a new supplement to the Aquaculture FMP/FPEIS will be prepared.

6.6 Action 5: Allowable Marine Aquaculture Systems

Action 5 considered allowable aquaculture systems for offshore aquaculture operations in the Gulf EEZ. Alternative 1 would not have specified allowable systems for growing cultured organisms, while Alternative 2 would have only allowed cages and net pens for use in offshore aquaculture operations. The Council chose Preferred Alternative 3, which would not authorize (or prohibit) specific allowable aquaculture systems, thereby allowing the RA to consider proposed systems on a case-by-case basis.

Alternative 1 does not specify allowable aquaculture systems, nor does it provide guidance for evaluating systems proposed by aquaculture operations and this could lead to negative effects on the **physical, biological, and ecological environment**. Alternative 2 would have only allowed net pens or cages; however, it did not contain requirements for evaluation of these systems. In contrast, Preferred Alternative 3 will base approval not on the type of system proposed, but on a case-by-case evaluation by the RA, who will consider the soundness of the preferred design, and this is expected to be the best alternative with the least effects on the physical, biological, and ecological environment.

Since Alternative 1 did not specify types of allowable systems or requirements for review criteria, it is possible that adverse **economic and social environmental effects** could have occurred. Alternative 2 would have restricted the types of systems used to cages and net pens (the most restrictive) and this alternative would have offered the greatest benefit in terms of reducing the negative externalities of inadequate or inappropriate systems and economic and social costs associated with these externalities. Preferred Alternative 3 does not specify allowable systems, rather it specifies a process and criteria for system approval and thus has the potential flexibility to allow the use of a system that best meets the operation's production goals, while addressing the need to reduce potential negative externalities and associated economic and social costs associated with those externalities.

Alternatives 1 and 2 would have had the least effects on the **administrative environment** since it would not have required any additional NMFS review of the proposed aquaculture system before it was deployed. On the other hand, Preferred Alternative 3 will require case-by-case review of each system proposed and would therefore directly affect the administrative environment more than the other alternatives.

The impacts from the DWH blowout are not expected to change the direct and indirect effects of the alternatives considered in Action 5 that were identified in Aquaculture FMP/FPEIS. As discussed in Chapter 5, while the DWH blowout resulted in changes to the affected environment, the effects associated with the alternatives considered in Action 5 are not related to the current

status of the affected environment as they address allowable aquaculture systems. Thus, these effects are expected to remain the same as previously discussed in the Aquaculture FMP/FPEIS regardless of the ultimate impacts of the DWH blowout.

Further, as noted above, Preferred Alternative 3 allows the RA to consider each system on a case-by-case basis. Thus, the Preferred Alternative 3 would provide greater protection to physical, biological, and ecological environment than alternatives 1 or 2, by requiring the RA to consider proposed systems on a case-by-case basis and providing guidance on evaluating whether use of the proposed system is appropriate. The RA will consider any changes to the affected environment that resulted from the DWH blowout when evaluating potential risks to EFH, endangered or threatened marine species, marine mammals, wild fish stocks, public health, or safety.

6.7 Action 6: Marine Aquaculture Siting Requirements and Conditions

Action 6 considered 3 alternatives for siting marine aquaculture operations. Alternative 1 (no action) would not have designated areas in the Gulf EEZ for aquaculture. Alternative 2 would have created marine aquaculture zones (and limited operations to these zones). The Council ultimately chose Preferred Alternative 3 which establishes criteria and includes specific prohibitions for siting a proposed aquaculture facility.

If Alternative 1 had been chosen, NMFS would have evaluated each proposal as part of the Section 10 process of the ACOE, although the ACOE's evaluation may not have addressed critical factors related to the **physical, biological and ecological environment** which may have been important to NMFS. Alternatives 2 and 3 would have allowed NMFS to evaluate the suitability of a proposed site and its potential impacts to the physical, biological, and ecological environment. However, Alternative 2 would not have allowed NMFS to evaluate the characteristics of a potential site on a localized scale. Preferred Alternative 3 will prohibit aquaculture operations from being sited in certain areas and will allow NMFS to review proposed aquaculture sites on a case-by-case basis. Preferred Alternative 3 will also allow some flexibility in the siting review process without compromising environmental safeguards for the protection of EFH and other marine resources, and therefore would provide the greatest net benefits to the physical and biological environments.

Alternative 1 would have lead to the most negative impact on the **economic and social environment** as it would not have designated areas where aquaculture would have been allowed, thus allowing operating to be sited anywhere in the Gulf EEZ subject to ACOE siting permits. Alternative 2 would have restricted the areas where aquaculture could occur by establishing 13 marine aquaculture zones, whereas Preferred Alternative 3 not only restricts the areas where

offshore aquaculture can occur but also the distance between sites and total area of each site. Restricting the areas where aquaculture operations could be located, would be expected to reduce the likelihood of site placement in traditional fishing areas, thereby reducing potential economic and social impacts. While any restrictions would result in higher set-up and operating costs to the aquaculture industry, Preferred Alternative 3 allows greater flexibility than Alternative 2 (but less than Alternative 1).

Preferred Alternative 3 results in the greatest impact to the **administrative environment** due to estimated costs and time spent reviewing sites. Alternative 2 would have streamlined the permitting process and reduced the burden on the administrative environment since operations would have only been allowed in 13 predetermined zones. Alternative 1 would have required the least direct effects on the administrative environment since NMFS would have only been commenting on the application for an ACOE permit, however indirect effects would have resulted if the ACOE had sited a facility in areas that NMFS would have recommended against.

As discussed in Chapter 5, while the DWH blowout resulted in changes to the affected environment, the short- and long-term effects of the blowout are still being examined. The alternatives in Action 6 consider different methods to determine where it is appropriate to site aquaculture facilities. The impacts from the DWH blowout are not expected to change the direct and indirect effects of the alternatives considered in Action 6 that were identified in the Aquaculture FMP/FPEIS. However, the DWH blowout raises questions about whether these facilities should be permitted in close proximity to the DWH wellhead, or more generally whether there should be zones around active oil rigs where siting is prohibited. These questions can be addressed under Preferred Alternative 3, which will allow NMFS to evaluate the proposed site on a case-by-case basis, including the characteristics of a potential site on a localized scale. This would provide NMFS with the most flexibility in evaluating facility siting decisions and determine whether a proposed site is unsuitable for aquaculture operations as a result of DWH blowout-related effects or proximity to an active oil rig.

6.8 Action 7: Restricted Access Zones for Marine Aquaculture Facilities

Three alternatives were considered for Action 7 which would have (or have not) established restricted access zones around aquaculture facilities. Alternative 1 would not have established restricted access zones, while Alternative 3 would have restricted access to fishermen and vessels within 100, 500, or 1,640 feet of aquaculture systems. The Council chose Preferred Alternative 2 which establishes restricted access zones which correspond to the coordinates on the ACOE siting permit for each operation.

Overall, Preferred Alternative 2 or Alternative 3 would have provided the greatest benefit to the **physical, biological, and ecological environment** as compared to Alternative 1. Restricting access around aquaculture systems will reduce the possibility of damage to the facility as a result of vessels transiting through an area or damages caused by gear from fishing vessels. Preferred Alternative 2 establishes restricted access zones which correspond to the coordinates on the ACOE permit for operations, and this area must be at least twice as large as the total area encompassed by the allowable aquaculture systems as required in Action 6.

Impacts on the **economic and social environment** vary across the three alternatives. For instance, Alternative 1 would not have prohibited transit or fishing near marine aquaculture facilities, however, this would have increased the likelihood of damage and associated costs to the facility. Alternative 3 considered buffer zones for fishing vessels of 100 feet, 500 feet, or 1,640 feet from a marine aquaculture system, yet this alternative did not include mandatory zone marking which would have made it difficult to determine the location of buffer zones. Preferred Alternative 2 establishes restricted zones (corresponding to ACOE permit coordinates) and requires that these zones be marked and maintained.

Preferred Alternative 2 results in the greatest effects on the **administrative environment** as compared to the other alternatives considered since it does not establish a size standard for restricted access. Administrative effects for Alternative 3 would have been similar to Preferred Alternative 2, although Alternative 3 may have been easier to enforce due to standardization in the size of restricted access zones. No administrative effects would have been expected for Alternative 1 since this alternative did not establish restricted access zones.

The impacts from the DWH blowout are not expected to change the direct and indirect effects of the alternatives considered in Action 7 that were identified in Aquaculture FMP/FPEIS. As discussed in Chapter 5, while the DWH blowout resulted in changes to the affected environment, the short- and long-term effects of the blowout are still being examined. The effects of the alternatives considered in Action 7 are not directly related to the current status of the affected environment as they consider restricted access zones around aquaculture facilities in order to reduce the possibility of damage to the facility. Thus, these effects, as previously described, are not expected to change regardless of the ultimate impacts of the DWH blowout.

6.9 Action 8: Recordkeeping and Reporting Requirements

Action 8 considered two alternatives: Alternative 1 (no action) which would have required recordkeeping and reporting requirements specified in an EFP, and Preferred Alternative 2 which establishes 17 recordkeeping and reporting requirements for offshore aquaculture operations in the Gulf EEZ. The Council chose Preferred Alternative 2 which specifies recordkeeping and

reporting requirements that are intended to mitigate impacts associated with marine aquaculture and alert managers to potential problems.

By establishing recordkeeping and reporting requirements (Preferred Alternative 2), information can be gathered to inform managers about the effects of aquaculture operations on the **physical, biological, and ecological environment**. The Council did not choose Alternative 1, which would have specified EFP recordkeeping and reporting requirements. The 17 recordkeeping and reporting requirements specified by Preferred Alternative 2 will provide NMFS with sufficient information to monitor and assess impacts of aquaculture facilities and provide information to aid in enforcing regulations.

Compared to Alternative 1, Preferred Alternative 2 is expected to reduce adverse effects on the **economic and social environment** since Preferred Alternative 2 specifies numerous recordkeeping and reporting requirements which could reduce the incidence and severity of events on the human environment. It should also be noted that these requirements may impose additional expense on the aquaculture operation.

Preferred Alternative 2 will have the greatest effect on the **administrative environment** since recordkeeping and reporting are administrative in nature. Although such requirements may be more burdensome to NMFS and the aquaculture industry compared to Alternative 1, such requirements are considered necessary to monitor potential impacts of aquaculture operations.

The impacts from the DWH blowout are not expected to change the direct and indirect effects of the alternatives considered in Action 8 that were identified in Aquaculture FMP/FPEIS. The alternatives evaluated in Action 8 address recordkeeping and reporting requirements which are primarily administrative in nature. Although the affected environment changed as a result of the DWH blowout, the direct and indirect effects of these alternatives are anticipated to remain the same. Furthermore, the Council can modify any of these requirements in the future if new information indicates that changes may be necessary.

6.10 Action 9: Biological Reference Points and Status Determination Criteria

Action 9 considers two alternatives. Alternative 1 (no action) would have specified biological reference points or status determination criteria for aquaculture in the Gulf. The Council chose Preferred Alternative 2 which establishes biological reference points and status determination criteria for aquaculture in the Gulf, including MSY and OY, cap production for any individual, corporation, or other entity, and require NMFS to publish a control rule if planned aquaculture production exceeds OY.

Alternative 1 would not have established status criteria or reference points, essentially allowing aquaculture production to go unregulated, and this could have led to negative impacts on the **physical, biological, and ecological environment**. Conversely, Preferred Alternative 2 establishes biological reference points and status determination criteria for aquaculture in the Gulf which allows for increased regulation of the industry and thus reduces the potential for negative impacts compared to Alternative 1.

Effects on the **economic and social environment** for Alternative 1 may have been negative for Gulf fishermen targeting wild species, but also positive for the aquaculture industry since there would have been no constraints on aquaculture production. Preferred Alternative 2 reduces the potential for competition of aquacultured product with Gulf fishermen, while still allowing growth of the aquaculture industry.

Both Alternative 1 and Preferred Alternative 2 would impact the **administrative environment**. However, Alternative 1 would have resulted in increased administrative burden and costs compared to Preferred Alternative 2, since Alternative 1 would have required an additional amendment to the FMP to satisfy MSFCMA requirements of establishing biological reference points and status criteria.

The DWH blowout may have additional direct or indirect effects relative to the alternatives considered in Action 9. The biological reference points and status determination criteria specified in this Action are based on estimations of what may be safely produced at aquaculture facilities in the Gulf, and on existing parameters established for wild stocks in the area. Until information on the short- and long-term impacts of the DWH blowout on the population structure and reproductive potential of Gulf species becomes available, it will not be possible to determine which stocks may have experienced detrimental effects and the magnitude of those effects. As additional information becomes available, it will be incorporated into decisions relative to the permitting of aquaculture facilities in the Gulf. In the future, the Council and NMFS may choose to modify the biological reference points or status determination criteria outlined in the Aquaculture FMP/FPEIS in order to account for additional factors relevant to the DWH blowout that may not already be considered.

As noted in Section 5.2 of this document, several studies have produced preliminary information on the impacts of the DWH blowout on marine organisms and ecosystems in the Gulf; however information on the short- and long-term effects of the blowout is incomplete or unavailable as these effects are still being examined. While there may be incomplete or unavailable information related to the short- and long-term effects of the DWH blowout, based on the information known at this time, there is no indication that the conclusions related to the impacts

of implementing the actions in the Aquaculture FMP/FPEIS have been changed due to the DWH blowout.

Ongoing research into the impact of the DWH blowout is being conducted and information from these studies will be used to inform any future adjustments to the selected biological reference points and status determination. Further, if significant new information on the short- or long-term effects of the DWH blowout becomes available and bears on the actions or impacts a new supplement to the Aquaculture FMP/FPEIS will be prepared.

6.11 Action 10: Framework Procedures

Action 10 considered three alternatives to establishing a framework procedure for implementing changes to various aquaculture regulatory measures in a timely fashion. Alternative 1 (no action) would not have specified framework procedures for modifying aquaculture management measures, status determination criteria, or biological reference points. Alternative 2 and Preferred Alternative 3 specified framework procedures for modifying biological reference points for offshore marine aquaculture in the Gulf EEZ. The Council chose Preferred Alternative 3 since it provides the Council with broader authority to make regulatory changes compared to Alternative 2.

Alternative 1 would not have specified framework procedures for aquaculture and thus considerable time could have passed before regulations would have been put in place that benefitted the **physical, biological and ecological environment** and the overall aquaculture program. Conversely both Alternative 2 and Preferred Alternative 3 provide oversight and review of the aquaculture program through the use of an Aquaculture AP and this could indirectly benefit the physical and biological environments by providing regular review. Preferred Alternative 3 will also provide for numerous modifications or additions to aquaculture regulations, as opposed to Alternative 2.

Under Alternative 1, the Council would have had to develop a full amendment to the FMP to make any changes and this could have resulted in negative effects to the **economic and social environment**. Preferred Alternative 3 will provide the Council with broader authority to make regulatory changes than Alternative 2, and Preferred Alternative 3 will establish a more flexible regulatory process that could adapt to ongoing changes in the offshore aquaculture industry, which could both support the developing industry and reduce negative externalities and associated economic and social costs caused by the industry. Preferred Alternative 3 is expected to result in greater economic costs to the Council and NMFS than Alternative 2, but less economic costs than Alternative 1.

Since Alternative 1 would not have established framework procedures, any changes to regulations or MSY/OY would have had to be made through a subsequent plan amendment and this could have resulted in additional effects to the **administrative environment** as compared to Alternative 2 and Preferred Alternative 3. While Preferred Alternative 3 would have had similar effects on the administrative environment as Alternative 2, one major difference is that Preferred Alternative 3 will require the Council to develop a regulatory amendment for changes recommended by the AP. Development of a regulatory amendment would have been more time consuming than simply submitting a recommendation to NMFS (as proposed in Alternative 2), but less time consuming than preparation of a full plan amendment.

The impacts from the DWH blowout are not expected to change the direct and indirect effects of the alternatives considered in Action 10 that were identified in Aquaculture FMP/FPEIS. The alternatives evaluated in Action 10 are primarily administrative in nature as they address the mechanism for modifying biological reference points and management measures established in the Aquaculture FMP/FPEIS. Thus, although the affected environment changed as a result of the DWH blowout, the direct and indirect effects of these alternatives are anticipated to remain the same.

6.12 Mitigation Measures

Regulations for implementing the National Environmental Policy Act (NEPA) require that environmental impact statements include appropriate mitigation measures not already included in the proposed action or alternatives (40 CFR 1502.14(f) and 1502.16(h)). The preferred alternatives in the Aquaculture FMP/FPEIS would establish a permit process for commercial aquaculture in the Gulf. The Aquaculture FMP/FPEIS discusses the mitigation measures for each of the ten actions and the impacts from the DWH blowout are not expected to alter the conclusions contained in the Aquaculture FMP/FPEIS. A summary of the Mitigation Measures for each of the ten actions outlined in the Aquaculture FMP/FPEIS is provided below (see Section 6.14 of the Aquaculture FMP/FPEIS for more information).

6.12.1 Action 1: Aquaculture permit requirements, eligibility, and transferability

Alternative 1 would have required an EFP and would have likely continued to constrain development of commercial aquaculture in the EEZ. **Preferred Alternative 2** and **Alternative 3** would have required either a single aquaculture permit (**Alternative 2**) or an operating and siting permit (**Alternative 3**) to conduct aquaculture, and the applicant must also meet various

application and operational requirements (Action 2). These additional requirements would require additional administrative costs compared to an EFP and would also likely cost the applicant more versus an EFP. Such administrative costs and costs to the applicant are mitigated by the positive effects on the, physical, and biological environments which would result from such a thorough evaluation of a permit before it was issued.

6.12.2 Action 2: Application requirements, operational requirements, and restrictions

Alternative 1 would not have specified application or operational requirements for aquaculture operations. **Alternative 2** would have maintained the same permit requirements as required by an EFP, whereas **Preferred Alternative 3** requirements are the most comprehensive (and require the most applicant preparation time and cost, as well as the most agency review) since they require that applicants obtain an assurance bond, prohibits genetically modified and transgenic species, requires collection of broodstock from U.S. waters of the Gulf, and identification of an aquatic animal health expert. Negative administrative and economic effects to the applicant and NMFS are mitigated by the positive effects on the administrative, physical, and biological environments resulting from completion of a permit with such conditions and the assurance that aquaculture structures will be removed in the event an operation terminates.

6.12.3 Action 3: Duration of the permit

Alternative 2(d) would have allowed for the longest permit duration (indefinite) and therefore be most beneficial to aquaculture operations seeking to obtain financial backing. **Alternative 1** would have provided the shortest permit duration (1 year with a possibility of renewal) and would likely continue to constrain commercial aquaculture production from developing in the Gulf. **Alternatives 2(a-c)** provide intermediate permit durations ranging from 5 to 20 years. Although the 10-year preferred permit duration would provide less financial benefits (more difficult to obtain financing and less desirable to investors) than longer permit durations, the negative effects of this alternative are believed to be mitigated by the benefits of more frequent permit review.

6.12.4 Action 4: Species allowed for aquaculture and included in the aquaculture fishery management unit

Alternative 1, would not have precluded culture of exotic species or the culture of genetically modified native species in the Gulf EEZ, and thus could have resulted in negative effects to the

administrative, biological, physical, and ecological environments. **Alternatives 2, 3, and 4** would not allow aquaculture of exotic species and differ from each other only in the particular native species which could be cultured. **Preferred Alternative 4** allows for the culture of all marine species in the Gulf managed by the Council with the exception of shrimp species and coral species (there currently is a separate permitting system for live rock) and would request that NMFS develop concurrent rulemaking to allow aquaculture of HMS. Any negative economic effects to the applicant from limiting the number of species that could be cultured would be mitigated by the positive effects of keeping non-native and/or genetically modified species out of the Gulf in the event of escapement. Impacts to non-target species, such as menhaden, will be mitigated by potential adjustments to management measures following periodic stock assessments.

6.12.5 Action 5: Allowable marine aquaculture systems

Alternative 1 would not have specified allowable aquaculture systems. **Alternative 2** would have only allowed applicants to use cages and net pens for aquaculture. In contrast, **Preferred Alternative 3**, allows for case-by-case review of each aquaculture system by NMFS to allow for technological innovations that may provide added protection to the physical and biological environments. The negative effect of limiting the type of system an applicant could use would be mitigated by the positive benefits to the administrative, biological, physical, and ecological environment of allowing only robust systems to be deployed in the Gulf EEZ. Additionally, **Preferred Alternative 3** would mitigate negative effects to applicants by allowing future designs of aquaculture systems that have greater structural integrity.

6.12.6 Action 6: Marine aquaculture siting requirements and conditions

Alternative 1 would have relied on NMFS' review of site permits issued by the ACOE to evaluate proposed aquaculture sites. **Alternatives 2 and 3** would provide NMFS with authority to use either pre-permitted aquaculture zones or to evaluate a proposed aquaculture site on a case-by-case basis. **Preferred Alternative 3** also requires permit applicants to conduct a baseline assessment at their proposed site as well as subsequent environmental monitoring. While **Preferred Alternative 3** may duplicate to an extent the ACOE's siting requirements, this duplication is expected to mitigate potential environmental impacts to the physical and biological environments since NMFS and the ACOE have different authorities and management objectives. The case-by-case review required by **Preferred Alternative 3** is expected to increase the amount of time needed to review a permit application relative to **Alternatives 1 or 2**; however, this inconvenience to the applicant and increased administrative costs to the government is mitigated by the detailed site-specific evaluation allowed.

6.12.7 Action 7: Restricted access zones for marine aquaculture facilities

Alternative 1 would not have established restricted access zones around offshore aquaculture facilities, while **Preferred Alternative 2** establishes restricted access zones around marine aquaculture facilities where fishing activities are prohibited. It is well known that many fish aggregate around structures, and the aquaculture systems could attract fish from outside such a zone and keep fishermen from catching them; however such negative economic effects are expected to be mitigated by proper siting of facilities.

6.12.8 Action 8: Recordkeeping and reporting

Keeping records and making reports to NMFS and other federal agencies, as described in **Preferred Alternative 2**, could be seen as an administrative burden to aquaculture companies. **Alternative 1**, would not have required such recordkeeping and reporting requirements and thus would not have incurred such a burden. However, if recordkeeping and reporting were not required, problems with an aquaculture facility could result in negative effects to the administrative, economic, biological, physical, and ecological environments could go undetected and unresolved. Therefore, the benefits of prevention and review of environmental impacts are expected to mitigate any administrative and economic burdens suffered by the aquaculture operations.

6.12.9 Action 9: Biological reference points and status determination criteria

Alternative 1 would not have established biological reference points and status criteria for the aquaculture fishery; however, **Preferred Alternative 2** does. Since the MSFCMA requires these criteria and reference points be estimated and established, **Preferred Alternative 2** will help mitigate the potential for legal challenges. The lower that the OY is set, the more environmental impacts could be prevented or mitigated. The Council's preferred OY (64 million pounds) provides a balance between environmental considerations and socio-economic considerations (i.e., allowing development of aquaculture industry in the Gulf EEZ). Procedures established in Action 10 can be used to adjust OY and minimize or mitigate environmental impacts in the future.

6.12.10 Action 10: Framework procedures

Alternative 1 would not have specified framework procedures. Therefore, the Council would have been required to implement changes to aquaculture management measures through a full plan amendment, resulting in lengthy processes and (the potential for) additional negative impacts to the environment until such changes were implemented. Under **Alternative 2** and **Preferred Alternative 3**, framework procedures were specified and the Aquaculture Advisory Panel (AP) would conduct annual reviews of the aquaculture program. Both of these alternatives contain measures which provide regular oversight of ongoing aquaculture activities and operations and help to mitigate environmental, social, and economic impacts if they are determined to occur.

6.13 Cumulative Effects Analysis

The CEQ regulations dictate that federal agencies assess not only the indirect and direct impacts associated with regulatory actions, but also the cumulative impacts associated with those actions. The CEQ regulations define a cumulative impact as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time” (40 CFR 1508.7) and can either be additive or synergistic. A synergistic effect is when the combined effects are greater than the sum of the individual effects.

The CEQ guidance (Council on Environmental Quality, 1997) outlines 11 items for consideration in drafting a Cumulative Effects Analysis (CEA) for a proposed action, including:

1. Identify the significant cumulative effects issues associated with the proposed action and define the assessment goals.
2. Establish the geographic scope of the analysis.
3. Establish the timeframe for the analysis.
4. Identify the other actions affecting the resources, ecosystems, and human communities of concern.
5. Characterize the resources, ecosystems, and human communities identified in scoping in terms of their response to change and capacity to withstand stress.
6. Characterize the stresses affecting these resources, ecosystems, and human communities and their relation to regulatory thresholds.
7. Define a baseline condition for the resources, ecosystems, and human communities.
8. Identify the important cause-and-effect relationships between human activities and resources, ecosystems, and human communities.
9. Determine the magnitude and significance of cumulative effects.

10. Modify or add alternatives to avoid, minimize, or mitigate significant cumulative effects.
11. Monitor the cumulative effects of the selected alternative and adapt management.

A detailed CEA can be found in Section 6.15 of the Aquaculture FMP/FPEIS⁹. This information is summarized below and includes additional information specific to this DSFPEIS.

1. Identify the significant cumulative effects issues associated with the proposed action and define the assessment goals.

The CEQ cumulative effects guidance states this step is accomplished through the following three activities:

- I. The direct and indirect effects of the proposed actions (see Sections 6.2-6.9 of the Aquaculture FMP/FPEIS).
- II. Which resources, ecosystems, and human communities are affected (see Section 5.0 of the Aquaculture FMP/FPEIS).
- III. Which effects are important from a cumulative effects perspective (see Section 6.15 of the Aquaculture FMP/FPEIS).

2. Establish the geographic scope of the analysis.

The immediate areas affecting managed resources, non-target fisheries, habitat, and protected resources are waters of the Gulf, including both state and federal waters. Additional information on the geographic scope for this analysis is summarized in Section 6.15 of the Aquaculture FMP/FPEIS.

3. Establish the timeframe for the analysis.

Sections 2.2 and 5.3 of the Aquaculture FMP/FPEIS describe the history of management for aquaculture nationally and in the Gulf. A national policy on aquaculture was first approved in 1980 through the passage of the National Aquaculture Act (NAA). The NAA was reauthorized in 1985 and in subsequent Farm Bills. Legislation specific to offshore aquaculture was proposed for Congressional consideration in 2005 and 2007. In 2011, NOAA released a new Marine Aquaculture Policy which includes guidance for aquaculture in federal waters.¹⁰

The timeframe for the CEA should take into account both historical efforts to establish regional and national aquaculture programs, as well as future considerations if the regulations for the Aquaculture FMP/FPEIS are approved and implemented by NMFS. The timeframe for the CEA begins in 1980, with the passage of the NAA, and extends for 10 years after the regulations for

⁹A copy of the Aquaculture FMP/FPEIS can be downloaded at:

http://www.gulfcouncil.org/fishery_management_plans/aquaculture_management.php

¹⁰ A copy of the NOAA Marine Aquaculture Policy can be found at:

http://www.nmfs.noaa.gov/aquaculture/docs/policy/noaa_aquaculture_policy_2011.pdf

the Aquaculture FMP/FPEIS would be implemented. The end of the CEA also corresponds to the preferred duration of aquaculture permits (i.e., 10 years) as described in Action 3 of the Aquaculture FMP/FPEIS.

4. Identify the other actions affecting the resources, ecosystems, and human communities of concern.

Actions affecting the Gulf are summarized in Section 6.15 of the Aquaculture FMP/FPEIS. The DWH blowout occurred in 2010, after the Aquaculture FMP/FPEIS entered into effect. Section 5.2 of this document provides information on initial impact(s) resulting from the DWH blowout.

5. Characterize the resources, ecosystems, and human communities identified in scoping in terms of their response to change and capacity to withstand stress.

This step should identify the trends, existing conditions, and the ability to withstand stresses of the environmental components. According to the CEQ guidance describing stress factors, there are two types of information needed. The first is the socioeconomic driving variables identifying the types, distribution, and intensity of key social and economic activities within the region. The second is the indicators of stress on specific resources, ecosystems, and communities.

The CEA factor 5 in Section 6.15 of the Aquaculture FMP/FPEIS describes the resources, ecosystems, and human communities to withstand stress. The capacity to withstand stress may have been impacted by the DWH blowout and as noted in Section 5.2 of this document, several studies have produced preliminary information on the impacts of the DWH blowout on marine organisms and ecosystems in the Gulf. Additional information on the short- and long-term effects of the DWH blowout is needed to assess the magnitude of any changes to the capacity of resources, ecosystems, and communities to withstand stress.

6. Characterize the stresses affecting these resources, ecosystems, and human communities and their relation to regulatory thresholds.

This section examines whether resources, ecosystems, and human communities are approaching conditions where additional stresses could have an important cumulative effect beyond any current plan, regulatory, or sustainability threshold (CEQ 1997). Sustainability thresholds can be identified for some resources, which are levels of impact beyond which the resources cannot be sustained in a stable state. Other thresholds are established through numerical standards, qualitative standards, or management goals.

Section 6.15 of the Aquaculture FMP/FPEIS addresses these stresses and their relation to regulatory thresholds. These stresses and regulatory thresholds remain the same. Additionally, the DWH blowout represents a source of stress to the Gulf. As noted in Section 5.2 of this document, several studies have produced preliminary information on the impacts of the DWH blowout to marine organisms and ecosystems in the Gulf. More information on the short- and

long-term impacts of the DWH blowout is needed to assess whether the additional stress caused by the DWH blowout has resulted in a cumulative effect beyond current thresholds.

7. Define a baseline condition for the resources, ecosystems, and human communities.

The purpose of defining a baseline condition for the resource and ecosystems in the area of the proposed action is to establish a point of reference for evaluating the extent and significance of expected cumulative effects.

The status of Council managed resources are summarized in the annual status report to Congress on the Status of U.S. Fisheries (http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/status_updates.html). The baseline status of Council managed species is also described in Section 5.0 of the Aquaculture FMP/FPEIS. Additionally, the status and health of EFH is extensively described in the Council's Generic Essential Fish Habitat Amendment of 2004 (<http://www.gulfcouncil.org/Beta/GMFMCWeb/downloads/Final%20EFH%20EIS.pdf>) and Generic Amendment Number 3 (http://www.gulfcouncil.org/Beta/GMFMCWeb/downloads/FINAL3_EFH_Amendment.pdf). Section 5.3.3 of the Aquaculture FMP/FPEIS describes baseline conditions for fishing communities throughout the Gulf and the Generic Essential Fish Habitat Amendment of 2004 (<http://www.gulfcouncil.org/Beta/GMFMCWeb/downloads/Final%20EFH%20EIS.pdf>) provides more extensive characterization of fishing-dependent communities throughout the Gulf.

Although the environmental baseline could have been altered by the DWH blowout, impacts to the physical, environmental, and socioeconomic resources are not expected to substantially change from that described in the Aquaculture FMP/FPEIS.

8. Identify the important cause-and-effect relationships between human activities and resources, ecosystems, and human communities.

Cause-and-effect relationships for various aspects of offshore marine aquaculture and measures proposed to address these potential effects are summarized in Table 6.12.1 of the Aquaculture FMP/FPEIS. These relationships remain the same.

9. Determine the magnitude and significance of cumulative effects.

Section 6.15 of the Aquaculture FMP/FPEIS discusses the magnitude and significance of cumulative effects relative to past, present, and reasonably foreseeable future actions. More information on the short- and long-term impacts of the DWH blowout is needed to assess whether the DWH blowout and response may increase the magnitude and significance of previous identified cumulative effects.

10. Modify or add alternatives to avoid, minimize, or mitigate significant cumulative effects.

As discussed in factor 10 of Section 6.15 in the Aquaculture FMP/FPEIS, the cumulative effects of developing a regional aquaculture permitting system on the socioeconomic environment are expected to be positive, although some negative social and biological impacts may result if aquaculture is not conducted in an environmentally sustainable manner. To prevent or minimize impacts associated with aquaculture, the actions and alternatives in the Aquaculture FMP/FPEIS include various measures to mitigate impacts.

11. Monitor the cumulative effects of the selected alternatives and adapt management.

The effects of the actions outlined in the Aquaculture FMP/FPEIS will be monitored through the submission of periodic reports to NMFS and other agencies, such as the EPA and ACOE. In addition, Action 2 requires aquaculture permit applicants to meet numerous operating requirements and restrictions, while Action 8 requires permit holders to maintain various records and submit various reports to NMFS regarding issues ranging from disease outbreaks to entanglement of protected resources. This information, as well as water quality data provided to the EPA, will allow NMFS and other federal agencies to monitor the cumulative effects of the preferred alternatives and make management adjustments, as necessary.

As noted in Section 5.2 of this document, several studies have produced preliminary information on the impacts of the DWH blowout on marine organisms and ecosystems in the Gulf; however information on the short- and long-term effects of the blowout is incomplete or unavailable as these effects are still being examined. Although there is incomplete or unavailable information related to the short- and long-term effects of the DWH blowout, based on the information known at this time, there is no indication that the conclusions related to the impacts of implementing the actions in the Aquaculture FMP/FPEIS have been changed due to the DWH blowout. In the future, if significant new information on the short- or long-term effects of the DWH blowout becomes available and bears on the actions or their impacts a new supplement to the Aquaculture FMP/FPEIS will be prepared.

Ongoing research into the impact of the DWH blowout is being conducted and information from these studies will be used to inform the permitting process and operating procedures of aquaculture operations in the Gulf EEZ. While there may be incomplete or unavailable information related to the short- and long-term effects of the DWH blowout, based on the information known at this time, there is no reason to believe that the conclusions reached in the Aquaculture FMP/FPEIS have been altered or changed due to the DWH blowout.

Climate Change

While it is likely that global climate change could have significant effects on Gulf aquaculture operations, the extent of these effects is not known at this time. Possible impacts of climate change include temperature changes which can influence organism metabolism and alter ecological processes such as productivity and species interactions; changes in precipitation patterns and a rise in sea level which could change the water balance of coastal ecosystems; altering patterns of wind and water circulation in the ocean environment; and influencing the productivity of critical coastal ecosystems such as wetlands, estuaries, and coral reefs (IPCC, 2007). Additionally, climate change may affect the severity of extreme weather (e.g., hurricanes), potentially generating more intense storms which could lead to increases in storm-induced damage to equipment and facilities (IPCC, 2007; IPCC 2013). Aquaculture is considered to make a minor, contribution to greenhouse gas emissions although the extent to which this occurs depends on the species, size and location of facilities (FAO 2009).

Global climate change can impact marine ecosystems through ocean warming by increased thermal stratification, reduced upwelling, sea level rise; and through increases in wave height and frequency, loss of sea ice, and increased risk of diseases in marine biota. Decreases in surface ocean pH due to absorption of anthropogenic CO₂ emissions may impact a wide range of organisms and ecosystems, particularly organism that absorb calcium from surface waters, such as corals and crustaceans (IPCC, 2007; and references therein). These influences could affect biological factors such as migration, range, larval and juvenile survival, prey availability, and susceptibility to predators. Furthermore, changes in temperature, wind and precipitation patterns can affect ocean circulation, thermal energy distribution, ecosystem productivity and structure, and subsequent habitat suitability for species (Osgood, 2008). At this time, the level of impacts cannot be quantified, nor is the time frame known in which these impacts will occur.

According to the Food and Agriculture Organization of the United Nations (FAO), adoption of multi-trophic aquaculture could present a form of adaptation in regards to climate change (FAO, 2008). Climate change may also affect the availability and price of ingredients used for fish feeds. The aquaculture industry has been gradually shifting away from dependence on feeds sourced from wild-capture fisheries (i.e., containing fish meal and fish oil) towards the use of alternative dietary ingredients (e.g., soy and other plants, fish processing trimmings, agricultural byproducts, animal renderings, algae, yeasts, insects, and worms). The use and development of alternative feeds has been the focus of projects such as the NOAA-USDA Alternative Feeds Initiative. While the use of alternative feeds may reduce fishing pressure on wild-capture fisheries, it may impact other resources such as freshwater if there is increased demand for terrestrial-based feeds (e.g., soybeans).

6.14 Unavoidable Adverse Effects

A summary of the unavoidable adverse effects of the aquaculture permitting program in the Gulf EEZ is provided below (see Section 6.16 of the Aquaculture FMP/FPEIS for more information).

Administrative Costs

Implementing and administering a permitting program for aquaculture will result in additional unavoidable costs to federal agencies, particularly NMFS. Costs to other federal agencies, such as the ACOE, EPA, MMS, USDA, and USCG may also increase because of additional review and administration to issue siting, lease, chemical (drug, pesticide, and biologics), pollution discharge, and navigational permits.

Loss of Fishing Grounds

The development of offshore aquaculture will require the production facility to have exclusive access to the portion of the ocean where they operate, and this could result in competition between offshore aquaculture firms and other activities (e.g., recreational and commercial fishing). As discussed in Action 6, information regarding important fishing grounds will be taken into consideration when approving or disapproving a particular location for offshore aquaculture. However, in some instances the loss of fishing areas may be unavoidable given the numerous other siting criteria that will be considered by NMFS and the ACOE.

Localized Water Quality and Benthic Changes

The effects of aquaculture operations in the offshore environment on water quality and the benthos may include an increase in organic loading and nutrient enrichment. Action 2 of the Aquaculture FMP/FPEIS requires that aquaculture applicants to abide by EPA feed management and water quality standards. Additionally, NMFS will use siting criteria to avoid or minimize any adverse effects of aquaculture facilities on areas of critical habitat and EFH. Since offshore aquaculture operations will involve feeding and maintaining fish in a contained area, localized small-scale impacts to water quality and benthos may be unavoidable, but will be mitigated to the extent possible by siting criteria and feed management practices.

Exclusive Use of a Public Resource

Siting and permitting requirements in the Aquaculture FMP/FPEIS will afford aquaculture operations the privilege to conduct aquaculture at a specified site in the Gulf EEZ. However, siting of each facility will be contingent upon ACOE and NMFS review. Although an aquaculture operation may occupy both the water column and benthos at a particular site within the Gulf EEZ, the operation would not be provided ownership of the site, nor would they be leasing the site. With regard to biological resources, the number or amount of wild fish used for broodstock purposes would be contingent on NMFS approval (as specified in Action 8).

Fishing Communities

It is not well-known whether aquaculture will positively or negatively benefit fishing communities. The severity and direction of the impact will to some extent depend on the species cultured, the degree of participation of the local fishing and seafood industry, and location of an aquaculture facility relative to a fishing community. Unavoidable adverse impacts to fishing communities may occur if aquaculture operations depress wild-caught fish prices and create competition for fishing-industry jobs.

6.15 Relationship Between Short-Term and Long-Term Productivity

(The following section is summarized from Section 6.17 of the Aquaculture FMP/FPEIS.)

Increasing the domestic supply of seafood will assist in alleviating the U.S. seafood deficit while providing a safer, sustainable supply of seafood. Potential long-term benefits of an offshore aquaculture industry in the U.S. could include decreased pressure on wild fish stocks and increased opportunities for employment in Gulf coast communities; short-term benefits will largely stem from the creation of profitable aquaculture operations. Since financial investments for offshore aquaculture operations are often substantial, it may be many years before an operation is profitable. Should operations succeed financially over the short-term, then the social and economic environments will benefit from the long-term productivity of sustainably-produced aquaculture products that comply with stringent federal environmental standards.

6.16 Irreversible and Irretrievable Commitments of Resources

(The following section is summarized from Section 6.18 of the Aquaculture FMP/FPEIS.)

Alternatives and actions in the Aquaculture FMP/FPEIS are largely intended to prevent irreversible commitments. Such measures include: preventing non-native, GMO, and transgenic species from being used for aquaculture; inspection of cultured species for disease prior to stocking; case-by-case review of aquaculture systems and siting criteria; and various recordkeeping and reporting requirements.

Irreversible commitments which could potentially result from offshore aquaculture include habitat damage or degradation (if aquaculture structures are damaged or destroyed during storm events). In the event of escapement, the requirement that only native, non-GMO cultured species

are allowed for culture is expected to prevent negative biological and ecological impacts to wild stocks. An irretrievable commitment resulting from aquaculture would be the temporary loss of fishing grounds where an aquaculture facility is sited; however, siting criteria will assist NMFS in identifying sites that minimize losses of important fishing grounds and other habitat.

6.17 Any Other Disclosures

The CEQ guidance on environmental consequences (40 CFR §1502.16) indicates the following elements should be considered for the scientific and analytic basis for comparisons of alternatives, including:

- a) Direct effects and their significance.
- b) Indirect effects and their significance.
- c) Possible conflicts between the proposed action and the objectives of federal, regional, state, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.
- d) The environmental effects of alternatives including the proposed action.
- e) Energy requirements and conservation potential of various alternatives and mitigation measures.
- f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
- g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
- h) Means to mitigate adverse environmental impacts.

Items a, b, d, e, f, and h are addressed in Sections 4.0, 5.0, and 6.0 of the Aquaculture FMP/FPEIS. Because the Aquaculture FMP/FPEIS concerns the management of captive marine fish and invertebrate stocks, it is not in conflict with the objectives of federal, regional, state, or local land use plans, policies, and controls (c). Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures (Item g) is not a factor in the Aquaculture FMP/FPEIS. The actions taken in the Aquaculture FMP/FPEIS will affect a marine stock and its fishery, and should not affect land-based, urban environments.

6.18 Evaluation of Significance Factors

NOAA's Administrative Order 216-6 (NAO 216-6) contains criteria for determining the significance of the impacts of a proposed action. In addition, the CEQ regulations at 40 CFR 1508.27 contain criteria for determining the significance of the impacts of a proposed action. CEQ regulations state that the significance of an action should be analyzed both in terms of "context" and "intensity." The significance of the Aquaculture FMP/FPEIS was analyzed based on criteria contained in both CEQ regulations and NOAA's Administrative Order 216-6. See Section 6.20 of the Aquaculture FMP/FPEIS for more information.

6.19 Environmental Justice (Executive Order [E.O.] 12898)

Federal agencies are required to conduct their programs, policies, and activities in a manner to ensure individuals or populations are not excluded from participation in, or denied the benefits of, or subjected to discrimination because of their race, color, national origin, or income level. In addition, and specifically with respect to subsistence consumption of fish and wildlife, federal agencies are required to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. The following information is summarized from Section 6.21 of the Aquaculture FMP/FPEIS.

Section 5.4.3 of the Aquaculture FMP/FPEIS provided a description of five fishing communities along the Gulf coast which were identified as key communities involved in the fishing industry based on fishing permit and employment data. Since the demographic information reported for these communities were derived from census data (and census data describes community-wide demographics and cannot be partitioned into just those populations that rely on federally managed Gulf fisheries), demographic information on fishing communities was not available for use in evaluating the effects of the proposed actions on low-income and minority populations. However, the actions outlined in the Aquaculture FMP/FPEIS would apply to all participants in the fishery, regardless of their race, color, national origin, or income level and, as were therefore not considered discriminatory. No environmental justice issues were anticipated and no modifications to any proposed actions were made to address environmental justice issues. Additionally, none of the proposed actions were expected to affect any existing subsistence consumption patterns or raise any issues.

7. REFERENCES

- Abbriano, R.M., M.M. Carranza, S.L. Hogle, R.A. Levin, A.N. Netburn, K.L. Seto, S.M. Snyder, SIO280, and P.J.S. Franks. 2011. Deepwater Horizon oil spill: A review of the planktonic response. *Oceanography* 24(3):294–301. <http://dx.doi.org/10.5670/oceanog.2011.80>
- Ali A.O., C. Hohn, P.J. Allen, L. Ford, M.B. Dail, S. Pruett, L. Petrie-Hanson. 2014. The effects of oil exposure on peripheral blood leukocytes and splenic melano-macrophage centers of Gulf of Mexico fishes. *Marine Pollution Bulletin* 79(1-2):87-93.
- Antonio F.J., R.S. Mendes, S.M. Thomaz. 2011. Identifying and modeling patterns of tetrapod vertebrate mortality rates in the Gulf of Mexico oil spill. *Aquatic Toxicology* 105(1-2):177-179.
- Bik H.M., K.M. Halanych, J. Sharma, W.K. Thomas. 2012. Dramatic shifts in benthic microbial eukaryote communities following the Deepwater Horizon oil spill. *PLoS ONE* 7(6):e38550.
- Block B., F. Brette, C. Cros, J. Incardona, N. Scholz. 2014. Crude oil impairs cardiac excitation-contraction coupling in fish. *The FASEB Journal* 28(1): Supplement 878.3.
- Camilli, R., C.M. Reddy, D.R. Yoerger, B.A.S. Van Mooy, M.V. Jakuba, J.C. Kinsey, C.P. McIntyre, S.P. Sylva, and J.V. Maloney. 2010. Tracking hydrocarbon plume transport and biodegradation at Deepwater Horizon. *Science* 33:201-204.
- Chanton, J., Z. Tingting, B.E. Rosenheim, S. Joye, S. Bosman, C. Brunner, K.M. Yeager, A.R. Diercks, and D. Hollander. 2015. Using Natural Abundance Radiocarbon to Trace the Flux of Petrocarbon to the Seafloor Following the Deepwater Horizon Oil Spill. DOI: 10.1021/es5046524 *Environ. Sci. Technol.* 2015, 49, 847–854
- Council on Environmental Quality. 1997. Considering cumulative effects under the National Environmental Policy Act. Council on Environmental Policy, Executive Office of the President. 64 pp. plus appendices. <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>
- EPA (Environmental Protection Agency). 2011. General facts about the Gulf of Mexico. Available online at: <http://www.epa.gov/gmpo/about/facts.html>.
- FAO. 2008. Climate change for fisheries and aquaculture. Technical Background Document from the Expert Consultation, April 7-9, 2008. 18 pp.

FAO. 2009. Climate change implications for fisheries and aquaculture: overview of current scientific knowledge. Technical Paper 530. 221 pp.

Fisher, C R., P.Y. Hsing, C.L. Kaiser, D.R. Yoerger, H.H. Roberts, W.W. Shedd, E.E. Cordes, T.M. Shank, S.P. Berlet, M.G. Saunders, E.A. Larcom, and J.M. Brooks. 2014. Footprint of Deepwater Horizon blowout impact to deep water coral communities. *Proceedings of the National Academy of Sciences of the United States of America* 111(32):11744-11749. Available online at: <http://www.pnas.org/content/111/32/11744>.

Fodrie, F.J., K.L. Heck, Jr. 2011. Response of coastal fishes to the Gulf of Mexico oil disaster. *PLoS ONE* 6(7): e21609. doi:10.1371/journal.pone.0021609

Gohlke, J.M., D. Dzigbodi, M. Tipre, M. Leader, and T. Fitzgerald. 2011. A review of seafood safety after the Deepwater Horizon blowout. *Environmental Health Perspectives* 119(8): 1062-1069.

Hamdan, L.J. and P.A. Fulmer. 2011. Effects of COREXIT® EC9500A on bacteria from a beach oiled by the Deepwater Horizon spill. *Aquatic Microbial Ecology* 63: 101–109. doi: 10.3354/ame01482

Hsing P-Y, B Fu, E.A. Larcom, S.P. Berlet, T.M. Shank, A.F. Govindarajan, A.J. Lukasiewicz, P.M. Dixon, and C.R. Fisher. 2013. Evidence of lasting impact of the Deepwater Horizon oil spill on a deep Gulf of Mexico coral community. *Elementa Science of the Anthropocene*. Available online at: <http://www.elementalscience.org/article/info%3Adoi%2F10.12952%2Fjournal.elementa.000012>.

IPCC. 2007. Climate change 2007: synthesis report. Contribution of working groups I, II and III to the fourth assessment report of the intergovernmental panel on climate change. R.K. Pachauri and A Reisinger (eds.). IPCC, Geneva, Switzerland, 104 pp.

IPCC. 2013. Climate change: the physical science basis. Working group 1 contribution to the fifth assessment report of the intergovernmental panel on climate change. T.F. Stoker et al. (eds.). Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 1535 pp.

Joint Analysis Group (JAG) Review of R/V Brooks McCall Data to Examine Subsurface Oil. June 2010. http://www.noaa.gov/scienceemissions/PDFs/JAG_Report_1_BrooksMcCall_Final_June20.pdf.

Joint Analysis Group (JAG) Review of Preliminary Data to Examine Subsurface Oil In the

Vicinity of MC252#1 May 19 to June 19, 2010.

<http://ecowatch.ncddc.noaa.gov/jag/files/JAG%20Data%20Report%202%20FINAL.pdf>

Montagna, P.A., J.G. Baguley, C. Cooksey, I. Hartwell, L.J. Hyde, J.L. Hyland, R.D. Kalke, L.M. Kracker, M. Reuscher, A.C.E. Rhodes. 2013. Deep-Sea Benthic Footprint of the Deepwater Horizon Blowout. PLOS One. Available online at:

<http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0070540>. August 7.

National Research Council. 2003. Oil in the sea: inputs, fates, and effects. National Academies Press, Washington, DC.

NMFS. 2010. Fisheries of the U.S. 2009. Silver Spring, Maryland.

NMFS. 2011. Fisheries of the U.S. 2010. Silver Spring, Maryland.

Osgood, K. E. (editor). 2008. Climate Impacts on U.S. Living Marine Resources: National Marine Fisheries Service Concerns, Activities and Needs. U.S. Dep. Commerce, NOAA Tech. Memo. NMFSF/ SPO-89, 118 p.

Powers S.P., F.J. Hernandez, R.H. Condon, J.M. Drymon, C.M. Free. 2013. Novel pathways for injury from offshore oil spills: direct, sublethal and indirect effects of the Deepwater Horizon oil spill on pelagic sargassum communities. PLoS ONE 8(9):e74802.

Redmond, M.C. and D.L. Valentine. 2011. Science applications in the Deepwater Horizon oil spill special feature: natural gas and temperature structured a microbial community response to the Deepwater Horizon oil. Proceedings of the National Academy of Sciences of the United States of America. doi:[10.1073/pnas.1108756108](https://doi.org/10.1073/pnas.1108756108)

Rooker J.R., L.L. Kitchens, M.A. Dance, R.J.D. Wells, B. Falterman, M. Cornic. 2013. Spatial, temporal, and habitat-related variation in abundance of pelagic fishes in the Gulf of Mexico: potential implications of the Deepwater Horizon oil spill. PLoS ONE 8(10):e76080.

Schwacke L.H., C.R. Smith, F.I. Townsend, R.S. Wells, L.B. Hart, B.C. Balmer, T.K. Collier, S. De Guise, M.M. Fry, L.J. Guillette, Jr. et al. 2014. Health of common bottlenose dolphins (*Tursiops truncatus*) in Barataria Bay, Louisiana, following the Deepwater Horizon oil spill. Environmental Science & Technology 48(1):93-103.

Szedlmayer S.T. and P.A. Mudrak. 2014. Influence of age-1 conspecifics, sediment type, dissolved oxygen, and the Deepwater Horizon oil spill on recruitment of age-0 red snapper in the

Northeast Gulf of Mexico during 2010 and 2011. *North American Journal of Fisheries Management* 34(2):443-452.

Tampa Bay Times article: USF study finds more sick fish in oil spill area than rest of Gulf of Mexico, January 14, 2012. Available at:

<http://www.tampabay.com/news/environment/wildlife/article1210495.ece>

White, H.K., P.Y. Hsing, W. Cho, T.M. Shank, E.E. Cordes, A.M. Quattrini, R.K. Nelson, R. Camilli, A.W. Demopoulos, C.R. German, J.M. Brooks, H.H. Roberts, W. Shedd, C.M. Reddy, and C.R. Fisher. 2012. Impact of the Deepwater Horizon oil spill on a deep-water coral community in the Gulf of Mexico *Proceedings of the National Academy of Sciences of the United States of America* 109(50):20303-8. Available

online at: <http://www.pnas.org/content/early/2012/03/23/1118029109.full.pdf>. March 27.

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9. LIST OF AGENCIES, ORGANIZATIONS, AND PERSONS TO WHOM COPIES OF STATEMENT ARE SENT

Texas Parks and Wildlife Department
Louisiana Department of Wildlife and Fisheries
Alabama Department of Conservation and Natural Resources/Marine Resources Division
Mississippi Department of Marine Resources
Florida Fish and Wildlife Conservation Commission
Georgia Department of Natural Resources/Coastal Resources Division
South Carolina Department of Natural Resources/Marine Resources Division
North Carolina Division of Marine Fisheries
Department of Commerce Office of General Counsel
NMFS Office of General Counsel
NMFS Office of General Counsel Southeast Region
NMFS Southeast Regional Office
NMFS Southeast Fisheries Science Center
NMFS Silver Spring Office
NMFS Office of Law Enforcement
Army Corps of Engineers
Environmental Protection Agency
United States Coast Guard
United States Fish and Wildlife Service

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11. Appendix A: NOAA MARINE AQUACULTURE POLICY

Purpose

The purpose of this policy is to enable the development of sustainable marine aquaculture¹¹ within the context of the National Oceanic and Atmospheric Administration's (NOAA) multiple stewardship missions and broader social and economic goals. Meeting this objective will require NOAA to integrate environmental, social, and economic considerations in management decisions concerning aquaculture. This policy reaffirms that aquaculture is an important component of NOAA's efforts to maintain healthy and productive marine and coastal ecosystems, protect special marine areas, rebuild overfished wild stocks, restore populations of endangered species, restore and conserve marine and coastal habitat, balance competing uses of the marine environment, create employment and business opportunities in coastal communities, and enable the production of safe and sustainable seafood.

Statement of Policy

For purposes of this policy, aquaculture is defined as the propagation and rearing of aquatic organisms for any commercial, recreational, or public purpose. This definition covers all production of finfish, shellfish, plants, algae, and other marine organisms¹² for 1) food and other commercial products; 2) wild stock replenishment for commercial and recreational fisheries; 3) rebuilding populations of threatened or endangered species under species recovery and conservation plans; and 4) restoration and conservation of marine and Great Lakes habitat.

It is the policy of NOAA, within the context of its marine stewardship missions and its strategic goals with respect to healthy oceans and resilient coastal communities and economies, to:

1. Encourage and foster sustainable aquaculture development that provides domestic jobs, products, and services and that is in harmony with healthy, productive, and resilient marine ecosystems, compatible with other uses of the marine environment, and consistent with the National Policy for the Stewardship of the Ocean, our Coasts, and the Great Lakes (National Ocean Policy).¹³
2. Ensure agency aquaculture decisions protect wild species and healthy, productive, and resilient coastal and ocean ecosystems, including the protecting of sensitive marine areas.
3. Advance scientific knowledge concerning sustainable aquaculture in cooperation with academic and federal partners.

¹¹ The term "marine aquaculture" is used because the majority of NOAA's aquaculture authorities and activities relate to marine species. However, this policy applies to all of NOAA's aquaculture authorities and activities, including those related to marine, freshwater, and anadromous species and includes the Great Lakes.

¹² This definition does not include marine mammals or birds.

¹³ E.O. 13547, which adopts the final recommendations of the Interagency Ocean Policy Task Force (July 19, 2010) is available online at <http://www.whitehouse.gov/oceans>.

4. Make timely and unbiased aquaculture management decisions based upon the best scientific information available.
5. Support aquaculture innovation and investments that benefit the Nation's coastal ecosystems, communities, seafood consumers, industry, and economy.
6. Advance public understanding of sustainable aquaculture practices; the associated environmental, social, and economic challenges and benefits; and the services NOAA has to offer in support of sustainable aquaculture.
7. Work with our federal partners, through the Joint Subcommittee on Aquaculture¹⁴ and other avenues, to provide the depth of resources and expertise needed to address the challenges facing expansion of aquaculture in the United States.
8. Work internationally to learn from aquaculture best practices around the world and encourage the adoption of science-based sustainable practices and systems.
9. Integrate federal, regional, state, local, and tribal priorities along with commercial priorities into marine aquaculture siting and management and ensure aquaculture development is considered within other existing and potential marine uses to reduce potential conflicts.

Basis for the Policy

NOAA has a long history of conducting regulatory, research, outreach, and international activities on marine aquaculture issues within the context of its missions of service, science, and environmental stewardship. The National Aquaculture Act of 1980, which applies to all federal agencies, states that it is “in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.” The statutory basis for NOAA’s aquaculture activities includes the Magnuson-Stevens Fishery Conservation and Management Act, the Marine Mammal Protection Act, the Endangered Species Act, the Coastal Zone Management Act, the National Marine Sanctuaries Act, and the Fish and Wildlife Coordination Act. Under these laws, in addition to the National Environmental Policy Act, NOAA is responsible for considering and preventing and/or mitigating the potential adverse environmental impacts of planned and existing marine aquaculture facilities through the development of fishery management plans, sanctuary management plans, permit actions, proper siting, and consultations with other regulatory agencies at the federal, state, and local levels. Other statutes, including the National Sea Grant College Program Act, the Saltonstall-Kennedy Act, the Anadromous Fish Conservation Act, the Interjurisdictional Fisheries Act, the Merchant Marine Act, and the Agricultural Marketing Act, authorize NOAA to enable and provide assistance for both public and private sector aquaculture. In addition, the Oceans and Human Health Act calls for research related to aquaculture.

¹⁴ The Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology was created in the National Aquaculture Act of 1980. The purpose of the coordinating group is to increase the overall effectiveness and productivity of federal aquaculture research, transfer, and assistance programs.

NOAA may engage in regulatory actions in the Exclusive Economic Zone under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through Fishery Management Plans for species in need of conservation and management. NOAA may also engage in regulatory action under National Marine Sanctuaries Act (NMSA) authority with respect to aquaculture activities within or potentially affecting Sanctuaries. NOAA has a direct regulatory role for aquaculture within the sanctuaries, in both state and federal waters, except in state waters when limited by formal written agreement with the Governor of that state. NOAA also engages in consultations with other federal permitting agencies under the authority of the Endangered Species Act, Marine Mammal Protection Act, the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, and other statutes. Through the Coastal Zone Management Act, NOAA also reviews and approves state coastal management programs, which identify permissible uses in the coastal zone, and oversees federal consistency with these programs.¹⁵

In developing this policy, NOAA evaluated the application of past NOAA and Department of Commerce aquaculture policies and planning documents and considered the specific challenges and opportunities of today and tomorrow, drawing on the agency's institutional knowledge of the state of science on aquaculture and its potential impacts. In addition, NOAA considered public input provided via an initial public comment period and a series of seven public listening sessions during April and May 2010, and a 60-day public comment period on a public draft of this policy released in February 2011.¹⁶ The policy also aligns with several objectives in NOAA's Next Generation Strategic Plan and is a primary component of NOAA's strategic objective for safe and sustainable seafood.¹⁷

This policy was also informed by the National Ocean Policy and the framework for effective coastal and marine spatial planning (CMSP).¹⁸ Many of the themes found in the National Ocean Policy – such as protecting, maintaining, and restoring healthy and diverse ecosystems; supporting sustainable uses of the ocean; and increasing scientific understanding and applying that knowledge to make better decisions – are echoed in this document. This policy also mirrors the National Goals for CMSP, setting the stage for aquaculture to be properly considered within the CMSP process. NOAA, as the primary bureau within the Department of Commerce with

¹⁵ Some federal permit actions are subject to state review under the consistency certification provisions of the Coastal Zone Management Act.

¹⁶ Summaries of the listening sessions and all comments submitted as public input to the development of the NOAA aquaculture policy are posted online at <http://aquaculture.noaa.gov>

¹⁷ Available at http://www.ppi.noaa.gov/strategic_planning.html

¹⁸ Final Recommendations of the Interagency Ocean Policy Task Force. Available online at <http://www.whitehouse.gov/administration/eop/ceq/oceans>

programmatic aquaculture responsibilities, developed this policy as a complement to the broader Department of Commerce aquaculture policy.

Background

Approximately 84 percent of the seafood consumed in the United States is imported¹⁹, about half of which is sourced from aquaculture. In 2009, aquaculture crossed the threshold of providing more than half of all seafood consumed worldwide.²⁰ However, domestic aquaculture provides only about 5 percent of the seafood consumed in the United States.²¹ Growing U.S. and worldwide demand for seafood is likely to continue as a result of increases in population and consumer awareness of seafood's health benefits. The most recent federal *Dietary Guidelines for Americans* (2010) recommend Americans more than double their current seafood consumption.²² Because wild stocks are not projected to meet increased demand even with rebuilding efforts, future increases in supply are likely to come either from foreign aquaculture or increased domestic aquaculture production, or some combination of both.

The existing domestic marine aquaculture community is mainly comprised of shellfish growing, but also includes finfish and algae production in coastal waters and hatchery production of fish and shellfish to replenish stocks of important commercial, recreational, and endangered species and to restore marine habitat (e.g., oyster reefs). Emerging technologies for marine aquaculture include land-based closed-recirculating systems, marine algae production technologies for biofuels and non-food products, systems that integrate different types of aquaculture or combine aquaculture with other uses, and systems in exposed open-ocean waters.

Federal support, engagement, and authorities related to aquaculture development span a number of agencies, in particular the Food and Drug Administration, Environmental Protection Agency, Army Corps of Engineers, Fish and Wildlife Service, and the U.S. Department of Agriculture. These agencies collaborate with each other, industry, states, and academia to address issues related to aquaculture facilities²³ and to promote the development of new technologies that improve the sustainability of the industry. This policy sets the stage for NOAA's continued involvement in these coordinated efforts.

¹⁹ Source: U.S. Department of Commerce, *Fisheries of the United States 2009*.

²⁰ United Nations Food and Agriculture Organization. (2009). FISHSTAT Plus: Universal Software for Fishery Statistical Time Series (Food and Agriculture Organization, Rome). Version 2.32. This figure includes both freshwater and marine production.

²¹ This figure includes both freshwater and marine production. Not included in this figure is the amount of salmon produced in Alaska by regional aquaculture associations and others in Alaska's salmon stock enhancement program. In 2009, Alaska's salmon aquaculture stock enhancement programs produced over 45 million salmon, mostly pink and chum salmon.

²² See www.mypyramid.gov

²³ A recent example is the National Aquatic Animal Health Plan (NAAHP), which was developed in response to the growing need for a coordinated government effort to ensure aquatic animal health. See http://www.nmfs.noaa.gov/aquaculture/supplemental_pages/naahp.html

Benefits and Challenges

As interest in commercial aquaculture production and wild species restoration in the marine environment has increased, so too has debate about the potential economic, environmental, and social effects of aquaculture – and the need for better public understanding with respect to these issues. Benefits of sustainable aquaculture may include species and habitat restoration and conservation; nutrient removal; provision of safe, local seafood that contributes to food security and human health and nutrition; increased production of low trophic-level seafood; and synergies with fishing (e.g., using fish processing trimmings in aquaculture feeds). Sustainable aquaculture can also contribute economic and social benefits by creating jobs in local communities and helping to maintain the cultural identity of working waterfronts.

Environmental challenges posed by aquaculture, depending upon the type, scope, and location of aquaculture activity, may include nutrient and chemical wastes, water use demands, aquatic animal diseases and invasive species, potential competitive and genetic effects on wild species, effects on endangered or protected species, effects on protected and sensitive marine areas, effects on habitat for other species, and the use of forage fish for aquaculture feeds. Economic and social challenges may include market competition affecting the viability of domestic aquaculture and/or the prices U.S. fishermen receive for their wild seafood products; competition with other uses of the marine environment; degraded habitats and ecosystem services; and impacts to diverse cultural traditions and values.

Growing consumer demand for safe, local, and sustainably produced seafood, increasing energy costs, increasing seafood demand in countries that currently export seafood to the United States, and growing interest in maintaining working waterfronts are emerging drivers that support sustainable domestic aquaculture production. U.S. aquaculture production – both small-scale and large-scale – has evolved and improved over time through regulations at the federal and state levels, scientific advancements, consumer demand, technological innovation, industry best management practices, and protocols for responsible stock replenishment and hatchery practices. This policy will allow NOAA to further advance these developments through the actions described below.

NOAA Aquaculture Priorities

To implement the Statement of Policy, NOAA has identified the following priorities:

Science and Research

- Expand NOAA’s research portfolio to (1) provide the necessary ecological, technological, economic, and social data and analysis to effectively and sustainably develop, support, manage, and regulate private and public sector marine aquaculture and

species restoration, including technologies deemed necessary under recovery and conservation plans for depleted, threatened, and endangered species and habitat; (2) monitor, assess, and address the environmental and socioeconomic effects of marine aquaculture, including cumulative impacts; and (3) complement the scientific work of our federal, state, and academic partners.

- Evaluate alternative protein and lipid sources to be used in lieu of wild fish and fish oil in aquaculture feeds and develop cost-effective alternative feeds that maintain the human health benefits of seafood and reduce reliance on the use of wild forage fish in the diets of farmed fish.
- Develop and evaluate the cost-effectiveness of methodologies to prevent, minimize, and mitigate potential adverse ecosystem and socioeconomic impacts of aquaculture.
- Monitor and assess the effects of ocean acidification and climate change on marine aquaculture and develop adaptation strategies.

Regulation

- Actively engage federal agencies, Fishery Management Councils, federal advisory councils or committees, coastal states, tribes, other stakeholders, and Congress to clarify NOAA's regulatory authority related to aquaculture in federal waters in the context of other federal, state, and tribal authorities and to establish a coordinated, comprehensive, science-based, transparent, and efficient regulatory program, taking into account relevant international standards, as appropriate, for aquaculture in federal waters consistent with the President's Executive Order on Improving Regulation and Regulatory Review.
- Work with federal, state, local, tribal, and regional agencies and organizations to clarify regulatory requirements and to establish coordinated, comprehensive, science-based, transparent, and efficient processes for permit reviews, permit consultations, and other regulatory and management actions for marine aquaculture in state waters – taking into account existing authorities, international standards, and regional, state, and local goals, policies, and objectives.
- Engage in coastal and marine spatial planning with other agencies and jurisdictions, including the Regional Planning Bodies being created under the National Ocean Council, to ensure siting of marine aquaculture that reduces conflicts among competing uses, minimize adverse impacts on the environment, and identify activities for potential collocation with aquaculture operations.

Innovation, Partnerships, and Outreach

- Collaborate with federal partners, coastal communities, states, tribes, the aquaculture industry, non-governmental organizations, and other stakeholders to transition innovative aquaculture technologies from laboratory studies to commercial and restoration projects and document and assess their environmental, ecosystem, and socioeconomic impacts.

Focus on projects that will create jobs in coastal communities, produce healthful local seafood, revitalize working waterfronts, support traditional fishing communities, avoid impacts to protected areas, and restore depleted species and habitat.

- Work with extension and outreach services to interpret technical and scientific data and provide informational products to transfer that knowledge to other stakeholders and the public.
- Support restoration and commercial shellfish aquaculture initiatives to restore shellfish populations that provide locally produced food and jobs, help improve water quality, and restore and conserve coastal habitat.
- Develop synergies among NOAA's fisheries management, enforcement, financial assistance, aquaculture, seafood inspection, Coastal Zone Management, National Marine Sanctuaries, and National Sea Grant programs to rebuild wild fish stocks and support alternative or supplemental economic options for fishermen.
- Engage within the Joint Subcommittee on Aquaculture and National Ocean Council to promote coordination among federal agencies on marine aquaculture regulatory and science issues and pursue opportunities for collaboration, such as integrating aquaculture with other ocean uses and using aquaculture facilities as a platform for more comprehensive environmental monitoring.

International Cooperation

- Work with other federal agencies to establish a coordinated, consistent, and comprehensive international strategy on sustainable marine aquaculture that supports and is consistent with U.S. policies and priorities regarding food security, international trade, healthy oceans, and economic well-being.
- Work with other nations, as appropriate, to adopt sustainable aquaculture and seafood safety approaches using the best practices.
- Exchange scientific insights with other nations and promote joint participation in cooperative research that is of potential multinational value, including addressing impacts of aquaculture that breach international boundaries.

Implementation and Periodic Review

NOAA will begin to implement this policy immediately upon release. This policy will henceforth guide all NOAA activities with respect to marine aquaculture, until such time as it is amended or rescinded by the NOAA Administrator.

Appendices

NOAA will take a tiered approach with respect to this policy and may publish more detailed policies related to specific authority to regulate aquaculture activities. These tiered documents will be included as appendices to the overarching policy.

12. Appendix B. NOAA GUIDANCE FOR AQUACULTURE IN FEDERAL WATERS

The purpose of this appendix is to establish a set of goals to guide NOAA's regulatory and programmatic actions with respect to aquaculture production in federal waters of the U.S. Exclusive Economic Zone and to provide a list of implementing actions that NOAA will take to achieve each goal. NOAA will take these actions to the extent of the agency's discretion and funding availability under relevant authorities and in coordination with our federal partners. These goals and implementing actions are an extension of the NOAA Aquaculture Policy, which applies broadly to all marine aquaculture-related activities at NOAA.

Goal 1. Ecosystem compatibility – Aquaculture development in federal waters is compatible with the functioning of healthy, productive, and resilient marine ecosystems.

NOAA will achieve this goal by:

- developing, implementing, and enforcing ecosystem-based conservation and management measures for aquaculture that fulfill the agency's marine stewardship responsibilities to protect and restore healthy coastal and ocean ecosystems and to conserve living marine resources, their habitats, and other protected areas
- developing, implementing, and enforcing conservation and management measures for aquaculture designed to maintain the health, genetics, habitats, and populations of wild species; maintain water quality; prevent escapes and accidental discharges into the environment; and avoid harmful interactions with wild fish stock, marine mammals, birds, and protected species
- pursuing efforts to restore wild stocks
- supporting 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
- employing science-based adaptive management
- taking into account the cumulative impacts of aquaculture throughout all trophic levels of the marine environment and in combination with the impacts of other activities
- encouraging the use of aquaculture feeds that either use fish from sustainably managed fisheries or alternative protein and lipid sources
- considering interactions with marine resources managed by other agencies and jurisdictions
- conducting programmatic or site-specific reviews of impacts related to proposed facilities in federal waters in compliance with National Environmental Policy Act requirements

Goal 2. Compatibility with other uses – Aquaculture facilities in federal waters are sited and operated in a manner that is compatible with other authorized uses of the marine environment.

NOAA will achieve this goal by:

- coordinating with other agencies to develop tools to properly site aquaculture in federal waters, including tools to reduce conflicts among competing uses and identify activities for potential co-location with aquaculture operations, in the context of regional and national coastal and marine spatial planning (CMSP) activities and ecosystem compatibility goals
- incorporating the preferences of states in decisions about aquaculture development in federal waters
- facilitating discussions among interested aquaculture developers, concerned state agencies, Fishery Management Councils, tribes, other federal agencies, federal advisory committees, and the public as early as possible in project planning and development
- promoting the safety of human life at sea and providing situational awareness for those working on offshore aquaculture operations, including coastal and marine forecasts and marine navigation weather

Goal 3. Best available science and information – Management decisions for aquaculture in Federal waters are based upon the best available science and information.

NOAA will achieve this goal by:

- basing management decisions on best available scientific information – including biological, technological, ecological, economic, and social data – in management decisions
- synthesizing and delivering information on the current state of scientific understanding about the observed and potential impacts and benefits of open ocean aquaculture
- identifying gaps and uncertainties associated with the current body of knowledge and taking these uncertainties into account in agency decisions
- conducting and supporting scientific studies to inform agency decision-makers on open ocean aquaculture technologies, practices, benefits, costs, and risks and to develop new and improve existing sustainable practices and products
- monitoring, evaluating, and maintaining databases on the impacts of aquaculture, including cumulative impacts, on biodiversity, predator-prey relationships, and other important characteristics of healthy and productive ecosystems
- working with state and federal agencies, academia, tribes, and other entities to improve scientific understanding of the effects of open ocean aquaculture and to develop cost effective open ocean aquaculture technologies and practices that prevent, minimize, or mitigate negative environmental or societal effects
- updating and adapting conservation and management measures to reflect the best available scientific information
- incorporating the insights gained by other countries that actively participate in open ocean aquaculture activities

Goal 4. Social and economic benefits – Investments in sustainable aquaculture in federal waters provide a net benefit to the Nation’s economy, coastal communities, and seafood

consumers while considering regional and state goals and objectives.

NOAA will achieve this goal by:

- creating opportunities for new aquaculture jobs and economic growth for U.S. communities that complement commercial and recreational fishing, maintain and revitalize working waterfronts, provide upstream and downstream economic opportunities throughout the U.S. economy and provide additional domestic seafood choices for U.S. consumers
- assessing the food safety and human health effects of consumption of aquaculture products (foreign and domestic) in coordination with other federal agencies
- making the agency's fee-for-service seafood inspection services available to aquaculture producers operating in federal waters
- assessing the likely positive and negative social, economic, and cultural impacts of management decisions, individually and cumulatively, over both the short and long term, on permit applicants, individual communities, the group of all affected communities identified, and the U.S. economy, including impacts on employment and the economic viability of working waterfronts
- identifying, developing, and supporting mitigation measures to address social, economic, and cultural impacts

Goal 5. Industry Accountability – To secure long-term access to operate aquaculture facilities in federal waters, operators are held accountable for protecting the environment, wild species, and human safety and for conducting and reporting ongoing monitoring.

NOAA will achieve this goal by working with federal agencies and other partners to develop an appropriate framework through which operators of aquaculture facilities will:

- conduct a baseline environmental analysis of the proposed site prior to permit review
- prepare and implement a broodstock management plan, an aquatic animal health plan, and a contingency plan for responding to emergencies
- prepare, obtain federal approval for, and comply with an operating plan that uses recognized best management practices to ensure good husbandry, biosecurity, predator control, and maintenance practices that minimize the number and frequency of escapes, disease outbreaks, noise impacts, and entanglements
- prepare, obtain federal approval for, and comply with a monitoring plan to meet all monitoring and reporting requirements, including reports of escapes, disease outbreaks, drug or chemical applications, nutrient discharges, and other environmental monitoring as required by NOAA or other federal agencies
- incorporate environmentally efficient and responsible management practices that limit inputs and waste discharges into the environment from drugs, chemicals, feeds, etc.
- allow regular inspection of facilities by authorized officers

- provide, upon request, evidence of compliance with applicable laws, including those governing use of drugs and feeds and other operational details that are under the jurisdiction of other agencies
- provide evidence of an assurance bond to address facility removal and site remediation
- safely remove facilities and organisms once operations end and, to the extent necessary and practicable, restore environmental conditions of the site
- ensure the safety of human life at sea

Goal 6. Approval process – Management decisions for aquaculture operations in federal waters are made in an efficient and transparent manner that produces timely, unbiased, and scientifically based decisions.

NOAA will achieve this goal by:

- implementing efficient, coordinated, transparent, and timely processes for science-based permit review and issuance and making easily understood information about the permitting process and requirements available on the agency’s website
- reducing regulatory uncertainty and minimizing unnecessary regulatory burden on individuals, private or public organizations, or federal, state, tribal, or local governments
- coordinating permit review, approval, and enforcement, both internally and with other federal agencies, to ensure compliance with existing regulatory requirements and to foster an efficient and timely regulatory process
- providing public notice and opportunities for Fishery Management Council, state, tribal, local government and stakeholder input on agency management decisions
- providing leadership in conducting periodic reviews of federal statutory and regulatory requirements to identify gaps or overlaps in federal authority, clarify federal agency roles and responsibilities, and develop streamlined processes for authorizing aquaculture and enforcing regulatory requirements in federal waters, in consultation with Congress, other federal agencies, Fishery Management Councils, and states

Goal 7. Public information – The public has an accurate understanding of sustainable aquaculture development in federal waters and the associated environmental, social, and economic challenges and benefits; monitoring information is readily available to the public.

NOAA will achieve this goal by:

- developing, widely disseminating, and effectively communicating regional and national informational materials on the merits, trade-offs, technologies, species, and practices used to conduct aquaculture in federal waters
- making publicly available – in a timely manner and in accordance with applicable standards for transparency and confidentiality – monitoring data, results, and information submitted by aquaculture facilities operating in federal waters, analyses of the data reported by aquaculture operators in federal waters, and the results of research conducted by NOAA and others

– communicating to the public, through extension or other outreach services, new research findings, particularly those from local research and demonstration projects

13. Appendix C. Response to Comments on the DSFPEIS

The DSFPEIS comment period extended from February 18 to April 4, 2014. During the comment period, 6 organizations or federal agencies submitted comments. The EPA classified the DSFPEIS “LO” (Lack of Objection).

In addition to comments on the DSFPEIS, several organizations also provided comments specific to the content of the Aquaculture FMP/FPEIS. Responses to comments on the Aquaculture FMP/FPEIS are included under a separate heading.

The following are responses to comments received. Comments 1, 2, and 3 are from the USEPA.

Comments on the DSFPEIS

Comment 1: NOAA should provide the EPA with relevant data and information relating to baseline condition changes in the Gulf (specifically studies generated by NOAA) which may impact the EPA's regulatory roles regarding permitting of marine aquaculture operations.

Response: The NOAA Central Library maintains a bibliography which attempts to list all of the published research and expert commentary that has resulted from the DWH blowout (<http://www.lib.noaa.gov/researchtools/subjectguides/dwh.html>). In addition to this bibliography, the Library has also compiled a more comprehensive bibliography on oil spills and oil spill remediation around the world entitled "Resources on Oil Spills, Response, and Restoration: A Selected Bibliography". The Library has also created the Deepwater Horizon Repository, a fully searchable public repository of data and information produced in response to the DWH blowout.

Comment 2: Additional discussion should be added to the final SFPEIS regarding the status of any NMFS Gulf Aquaculture Permits that have been issued in federal waters of the Gulf.

Response: The NMFS has not issued any Gulf Aquaculture Permits as regulations have not yet been finalized. It is anticipated that final regulations will be issued in 2015, after which time NMFS can begin accepting applications for Gulf Aquaculture Permits.

As explained in Chapter 2, the ACOE and EPA recently approved renewals for Section 10 and NPDES permits, respectively, for Bio Marine Technologies, Inc. To date, this company has not placed any aquaculture systems in federal waters.

Comment 3: The NMFS should include a summary table of all the actions and any changes proposed under the final SFPEIS.

Response: A summary table of all the actions and preferred alternatives has been added to Appendix D. No changes to the actions or preferred alternatives were proposed in the draft SFPEIS and no changes to the actions or preferred alternatives are being made in this final SFPEIS.

Comment 4: The DSFPEIS fails to analyze the effects of new language deemed by the Council in February 2013 which allow private companies to perform inspections of aquaculture facilities.

Response: The DSFPEIS considers new circumstances and information arising from the DWH blowout. The NMFS prepared and asked for comments on a draft SIR to evaluate the need for additional NEPA analysis on the FMP specific to the passage of time from when the Aquaculture FMP/FPEIS entered into effect (2009-present) (http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/aquaculture/index.html).

The draft SIR discusses the changes that were made to the proposed regulations and deemed by the Council in February 2013 and directly addresses the assertion that the ability to use a third party to conduct inspections will ‘dramatically change the program’ since the Aquaculture FMP/FPEIS states that these inspections will be conducted by NMFS employees and authorized officers. As stated in the draft SIR, NMFS must approve any third party that will conduct annual inspections to ensure that protocols and procedures are in line with what the agency feels is necessary and appropriate. Thus, NMFS considers this change, as well as the other changes to the proposed regulations to be minor and still within the scope and intent of the original Aquaculture FMP/FPEIS.

Comment 5: Council and the agency failed to perform the required consultation in preparing the Aquaculture FMP/FPEIS and thus have not complied with the legal requirements of the Endangered Species Act.

Response: The NMFS completed an Endangered Species Act (ESA) section 7 consultation on the Aquaculture FMP/FPEIS on May 5, 2009, and determined that implementation of the FMP is not likely to adversely affect any listed species under NMFS’ purview. NMFS is reviewing the need for additional ESA consultation on species listed or critical habitat designated after May 2009.

Comment 6: The SFPEIS states that the DWH blowout would not change the direct and indirect effects of the alternatives considered in Actions 1, 2 and 6 in the Aquaculture FMP/FPEIS either because the actions are primarily administrative in nature or are not related to the current status of the affected environment. These statements demonstrate a failure to take a hard look at the impacts of the DWH blowout on aquaculture as well as the aggravating impacts of aquaculture on the Gulf.

Response: NMFS disagrees. The alternatives evaluated for Action 1, which address permitting requirements, eligibility and transferability, are primarily administrative functions and thus the direct and indirect effects of these alternatives are anticipated to remain the same as those previously identified in the Aquaculture FMP/FPEIS, with the Alternative 1 resulting in the least effect on the physical, biological, and ecological environment. The impacts from the DWH blowout are also not expected to change the direct and indirect effects of the alternatives considered in Action 2, which establishes application and operational requirements and restrictions. These alternatives speak to requirements necessary to acquire and maintain a permit and are therefore not directly related to the current status of the affected environment. Similarly, the impacts from the DWH blowout are not expected to change the direct and indirect effects of the alternatives identified in the Aquaculture FMP/FPEIS for Action 6, which address siting requirements and conditions for offshore aquaculture operations. As mentioned in Section 6.7, while the DWH blowout does raise questions as to whether these facilities should be permitted in close proximity to the DWH wellhead (or if prohibited zones should be established around active oil rigs), Preferred Alternative 3 for this Action allows NMFS the ability to evaluate the suitability of each proposed site on a case-by-case basis.

Comment 7: The choice and reasoning for the Preferred Alternatives in the Aquaculture FMP/FPEIS are now inadequate because baseline situations have changed as a result of the DWH blowout.

Response: As explained in Chapter 6 of this document, while the environmental baseline may have been altered by the DWH blowout, impacts to the physical, environmental, and socioeconomic resources are not expected to substantially change from that described in the Aquaculture FMP/FPEIS.

The NMFS will utilize information from ongoing and future studies into the impact of the DWH blowout to make recommendations to the Council regarding any potential changes to the Aquaculture FMP/FPEIS and Gulf Aquaculture Permit process. In addition, if significant new information on the short- or long-term effects of the DWH blowout becomes available and bears

on the actions or their impacts NMFS will prepare a new supplement to the Aquaculture FMP/FPEIS.

Comment 8: The final SFPEIS should analyze potential impacts of the DWH blowout to cultured fish stocked in offshore cages.

Response: As explained in the final SFPEIS, there is incomplete or unavailable information related to the short- and long-term effects of the DWH blowout. Further, it is not possible to determine the potential impacts of the DWH blowout to cultured fish stocked in offshore cages until the sites of those locations are known.

The health of cultured animals placed in offshore systems will be considered as part of the Gulf Aquaculture Permit review process. The NMFS will review proposed sites for offshore aquaculture and could deny the use of a site for a number of reasons, including if the site would pose significant risks of mortality to the cultured animals (see Section 4.6). Permittees are also required to contract with an aquatic animal health expert to monitor the health of cultured animals and report any incidences of disease to NMFS within 24 hours of discovery. If pathogens are discovered and are determined to pose a threat to the health of wild aquatic organisms, NMFS (in coordination with the USDA) could order the removal of those cultured animal (Action 8, Preferred Alternative 2(d)).

Comment 9: Allowing the development of commercial offshore aquaculture in the Gulf before the impacts of the DWH blowout are quantified will further stress the ecosystem.

Response: The NMFS will utilize information from current and ongoing studies of effects of the DWH blowout to determine whether proposed sites are suitable for aquaculture operations. The NMFS may deny use of a proposed aquaculture site based on a determination that such a site poses significant risks to essential fish habitat, endangered species, or threatened marine species, will 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(s), substrate and currents at the site will inhibit the dispersal of wastes and effluents, the site poses significant risks of mortality to the cultured species due to low dissolved oxygen or HAB, or other grounds inconsistent with the objectives of the Aquaculture FMP/FPEIS or applicable federal law. In addition, if new information from these studies is significant and bears on the actions or their impacts, NMFS will prepare a new supplement to the Aquaculture FMP/FPEIS.

Comment 10: Aquaculture will harm wild-catch fishermen and increase the costs of doing business.

Response: Section 6.2.2 of the Aquaculture FMP/FPEIS contains an extensive analysis of the economic and social impacts of establishing the Gulf aquaculture permit. As recognized in that analysis and elsewhere in the of the Aquaculture FMP/FPEIS (e.g., section 6.12 on page 347; section 6.15 on page 371) competitive pressure of a particular offshore cultured product on the market price of a wild-harvested species will be influenced by the extent to which the product is a substitute for the wild-harvested species. Currently, few federally managed species (red drum, cobia) are commercially cultured and these are the species that the most likely candidates for offshore aquaculture. These species do not represent robust wild capture fisheries, therefore the socioeconomic impacts to wild-catch fishermen are expected to be minimal. In addition, the FMP provides the Council with mechanisms to monitor conditions and take corrective action should it be justified.

Comment 11: Further analysis is necessary to determine where offshore aquaculture sites should be located to minimize the effects of the DWH blowout on cultured fish, as well as to minimize the potential impacts of aquaculture operations on areas altered or harmed by the DWH blowout. This can only be done through modeling and analysis considered in Action 6 Alternative 2.

Response: The Council considered but rejected Alternative 2 (Action 6) which would have created pre-determined sites in the Gulf where aquaculture could occur. Under the Council's Preferred Alternative 3, NMFS will evaluate each proposed site on a case-by-case basis and will deny the use of a proposed site if it is determined that the site is unsuitable for aquaculture due to impacts from the DWH blowout.

Comment 12: Aquaculture facilities should not be sited in zones around oil facilities or in areas that could be impacted by future oil spills.

Response: The NMFS will review each proposed site according to the siting criteria and requirements outlined in Action 6. The NMFS may deny a proposed site if it is determined that the site poses significant risks to essential fish habitat, endangered species, or threatened marine species, will 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(s), substrate and currents at the site will inhibit the dispersal of wastes and effluents, the site poses significant risks of mortality to the cultured species due to low dissolved oxygen or HAB, or other grounds inconsistent with objectives of the Aquaculture FMP/FPEIS or applicable federal law.

Comment 13: Aquaculture operations should be prohibited in proximity to restoration projects undertaken with funding derived from the BP oil disaster. The final SFPEIS should also analyze the potential impacts of aquaculture operations on restoration activities that are underway, proposed, or may be proposed in the future.

Response: While there is currently no prohibition on aquaculture operations being located near restoration project areas, NMFS will consider the proximity of proposed aquaculture sites in relation to restoration activities as part of the application review process.

Comment 14: The final SFPEIS should include analysis of the potential impacts of aquaculture operations on areas that were adversely affected by hydrocarbons and dispersants.

Response: As explained in the final SFPEIS, there is incomplete or unavailable information related to the short- and long-term effects of the DWH blowout, and if significant new information on these effects becomes available and bears on the actions or their impacts, NMFS will prepare a new supplement to the Aquaculture FMP/FPEIS. Further, ongoing research into impacts of the DWH blowout is being conducted and information from these studies will be used to inform the permitting process and operating procedures of aquaculture operations in federal waters of the Gulf. The NMFS will evaluate each proposed site on a case-by-case basis and will deny the use of a proposed site if it is determined that the site is unsuitable for aquaculture due to impacts from the DWH blowout.

Comment 15: For the baseline environmental assessment requirement, applicants should have to compare several sites to determine which is best to avoid impacts to oil contaminated areas.

Response: As part of the baseline environmental assessment, applicants must provide water quality and benthic community information for each proposed site. The NMFS will deny the use of a proposed site if the site is deemed not suitable for aquaculture operations and if this occurs, applicants can submit a baseline environmental assessment for an alternate site.

Comments on the Aquaculture FMP/FPEIS

Comment 16: NMFS and NOAA should coordinate with the relevant agencies, permitting authorities and stakeholders during the permitting process.

Response: NMFS and NOAA continue to coordinate with other federal agencies as part of the Interagency Working Group on Aquaculture Regulatory Task Force (formerly JSA) in order to create an efficient and streamlined approach to permitting aquaculture operations in federal waters of the Gulf. Stakeholder input will be solicited during the public comment period for each Gulf Aquaculture Permit.

Comment 17: NOAA should support and engage in efforts to facilitate regional coastal and marine spatial planning efforts as called for in the President's 2010 Executive Order.

Response: In April 2013, the National Ocean Council released the National Ocean Policy Implementation Plan which focuses on improving coordination to expedite federal permitting decisions and better manage the ocean, coastal, and Great Lakes resources. The plan also seeks to develop and disseminate sound scientific information that local communities, industries, and decision-makers can use. Effective collaboration with state, tribal, and local partners, as well as marine industries and other stakeholders is essential for all of these goals and NOAA continues to work with other federal and state agency partners on this effort.

Comment 18: The Aquaculture FMP/FPEIS is not consistent with the 2011 NOAA Marine Aquaculture Policy.

Response: An internal analysis of the Aquaculture FMP/FPEIS completed in June 2011 found it to be consistent with the 2011 NOAA Marine Aquaculture Policy. The policy (together with the guidance for federal waters in Appendix 1) provides a framework that enables NOAA to evaluate aquaculture actions federal waters and associated requirements as well as provides guidance for NOAA activities relating to aquaculture plans, regulations, or legislation.

Comment 19: The Aquaculture FMP/FPEIS should be updated to include recent information about the environmental and socioeconomic impacts of aquaculture, including impacts to Gulf IFQ fisheries.

Response: A draft SIR was prepared in August 2014 which includes a synthesis of updated environmental and socio-economic information relative to offshore aquaculture in the Gulf as well as IFQ fisheries. The draft SIR can be downloaded at:

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/aquaculture/index.html.

Comment 20: Aquaculture can harm wild fish populations because of the increased risk of escapes and disease.

Response: The Aquaculture FMP/FPEIS contains requirements to reduce the likelihood of impacts of cultured animals on wild stocks. These include sourcing broodstock from the same location where the facility will be sited, prohibiting the use of genetically modified or transgenic animals, requiring certification that fish are disease free prior to stocking, and requiring that facilities contract with an aquatic animal health expert to monitor the health of cultured animals. More information on the potential impacts of escapees and disease can be found in sections 6.1.1.1 and 6.1.2.1, respectively, of the Aquaculture FMP/FPEIS.

Comment 21: Traditional means for preventing overfishing of forage fish are insufficient and additional measures are needed to protect forage fish populations (e.g., caps on fishmeal and fish-oil use in feeds).

Response: As mentioned in Section 6.1.7 of the Aquaculture FMP/FPEIS, efforts are being made on a global scale to reduce dependence on fishmeal and oil sourced from wild caught forage fisheries by replacing them with ingredients such as soybeans, barley, algae and seafood and farm animal processing trimmings. A 2011 NOAA Technical Memo²⁴ published as part of the NOAA-USDA Aquaculture Feeds Initiative also indicates that global production of fish meal and fish oil has been relatively constant for the past 20 years, even though aquaculture production has continued to rise. Feed manufacturers continue to reduce their reliance on fish meal and fish oil by increasingly using alternative ingredients such as those described above.

Comment 22: The EPA's NPDES permitting requirements do not apply to production systems such as long lines which are commonly used in shellfish production and to facilities that produce less than 100,000 pounds per year of aquatic animals. This potentially leaves significant gaps in the regulatory coverage.

Response: Currently, no shellfish species are managed by the Council and therefore they cannot be cultured under the Aquaculture FMP/FPEIS.

The EPA published a final rule on August 23, 2004 (69 F.R. 51892) which established Clean Water Act (CWA) effluent limitations, guidelines, and new point source pollution standards for concentrated aquatic animal production facilities, including facilities that produce 100,000

²⁴ The Future of Aquafeeds: A Report of the NOAA/USDA Alternative Feeds Initiative. NOAA Technical Memorandum NMFS F/SPO-124. Michael B. Rust, Fredric T. Barrows, Ronald W. Hardy, Andrew Lazur, Kate Naughten, and Jeffrey Silverstein. NOAA National Marine Fisheries Service. 2011.

pounds or more per year of aquatic animals in net pens or submerged cage systems. Because of the costs associated with conducting aquaculture operations in the Gulf of Mexico, these operations will likely meet the EPA's 100,000 pound annual production threshold.

Comment 23: The Aquaculture FMP/FPEIS requires permittees to conduct inspections of aquaculture systems and report interactions or entanglements with protected resources and migratory birds within 24 hours of discovery. These inspections, and the corresponding reporting requirements, should be expanded to include all birds, threatened species, and explicitly mention sea turtles.

Response: The reporting requirements in Action 8 uses the term “endangered species” while the inspection requirements in Action 2 uses the term “protected species,” which generally includes both endangered and threatened species. However, the response to comment 37 in the Aquaculture FMP/FPEIS uses “protected species” when referring to requirements of Actions 2 and 8. The proposed rule to implement the FMP (79 FR 51424) followed the language in Actions 2 and 8, and used these different terms in the reporting and inspection provisions. NMFS will review this issue and clarify in the final rule, if necessary, which species are required to be reported. Using a more precise term like “ESA-listed species” may be appropriate and would include all of the sea turtles found in the Gulf of Mexico. With respect to birds, the Council can consider changing the requirement to include all birds, as opposed to just migratory birds, via the framework procedures outlined in Action 10 if new information indicates that this change may be appropriate.

Comment 24: The Council's Aquaculture Advisory Panel (AP) should include marine mammal, sea turtle, and seabird specialists with experience of entanglement.

Response: Action 10 in the Aquaculture FMP/FPEIS specifies that the Aquaculture AP will meet on a bi-annual basis to evaluate the aquaculture management program. The group will be composed of Council staff, NMFS biologists and social scientists, Scientific and Statistical Committee members, Socioeconomic Panel members, and other state, university, or private scientists with expertise related to aquaculture issues. Interested applicants may apply for a seat on the Aquaculture AP when an announcement is made via the Federal Register.

Comment 25: Permits should be limited to a specific maximum biomass limit.

Response: The Aquaculture FMP/FPEIS limits annual production to 20% (12.8 million pounds) for each individual, business, or entity. The amount of allowable annual production will be specified on each permit.

Comment 26: A Wildlife Interaction Plan, Fish Containment Plan and an Aquatic Animal Health Management Plan should be required for offshore aquaculture operations.

Response: Although these plans are not currently required, Action 8 of the Aquaculture FMP/FPEIS includes several requirements that deal with entanglements/interactions, escapes, and animal health. For example, permit holders are required to inspect aquaculture systems, including mooring and anchor lines, for entanglements or interactions with marine mammals, protected species, and migratory birds, and report any entanglements or interactions to NMFS within 24 hours. Permittees must notify NMFS within 24 hours if a major escapement occurs or is suspected of having occurred. Permittees are also required to report all findings or suspected findings of any OIE or NAAHP reportable pathogens to NMFS within 24 hours of diagnosis. Additionally, Action 2 requires that: 1) prior to stocking cultured animals in offshore systems, permittees must provide NMFS with a copy of a health certificate signed by an aquatic animal health expert which certifies that cultured animals were inspected and determined to be free of OIE or NAAHP reportable pathogens, and 2) permittees enter into a contractual arrangement with an aquatic animal health expert to provide services to the aquaculture facility.

The Council has the ability to modify these requirements via the framework procedures outlined in Action 10.

Comment 27: Aquaculture operations that experience repeated escapes or are linked to poor practices should have their permit revoked.

Response: Actions 2 and 8 in the Aquaculture FMP/FPEIS require that offshore aquaculture operations comply with several operational, recordkeeping, and reporting requirements including notifying NMFS within 24 hours of major escape events, entanglements or interactions with marine mammals, protected species and migratory birds, and discovery of OIE and NAAHP reportable pathogens. These requirements will alert NMFS to potential violations that could provide a basis for modifying, suspending, or revoking a permit in accordance with subpart D of 15 CFR part 904. Additionally, Action 2 specifies that inspections will be conducted to review operations at aquaculture facilities. These inspections will allow NMFS an opportunity to determine compliance with applicable regulations.

Comment 28: The permit review process should consider important habitat, marine mammal migratory pathways and the presence of endangered and threatened species in the area. Sea turtle, seabird, and marine mammal entanglement experts should be consulted during this process and gear-tagging should be required.

Response: During the permit review process, NMFS will review siting criteria on a case-by-case basis for each proposed site. As part of this review, NMFS will consider the location of the proposed site relative to important natural habitats and marine mammal migratory pathways as well as whether the proposed site poses significant risks to ESA listed marine species. Regional NMFS staff with expertise in protected species and entanglement issues will be consulted during the permit review process and this information will be considered when determining whether to approve or deny a permit.

Action 2 requires that permittees 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). The USCG also requires structures to be marked to ensure compliance with private aids to navigation (33 C.F.R. 66.01). Title 33 C.F.R. 64 also requires the marking of structures, sunken vessels, and other obstructions for the protection of maritime navigation.

Comment 29: Permittees should be required to fallow sites for a specified period of time to allow the benthic environment to recover from impacts and reduce the risk of disease.

Response: Action 6 of the Aquaculture FMP/FPEIS requires that permitted sites be twice as large as the total area encompassed by allowable aquaculture systems to allow for fallowing and rotation of systems. The length and extent of the recommended fallowing period will depend on the results of ongoing water quality and benthic monitoring.

Comment 30: Permittees should be required to enter into Area Management Agreements (AMAs) with other aquaculture facilities within a defined hydrographic area to coordinate stocking, fallowing, and disease and parasite management.

Response: Although AMAs are not currently required under the Aquaculture FMP/FPEIS, several actions include specific requirements regarding stocking, fallowing and disease management. For example, Action 2 requires that juveniles be inspected and determined to be certified free of OIE and NAAHP reportable diseases prior to stocking into offshore systems. Action 6 also specifies that permitted sites be 2x as large as the area encompassed by aquaculture

systems to allow for fallowing, and that facilities be located at least 1.6 nm apart to reduce the possibility of disease transmission between farms.

Comment 31: All nets treated with copper or other toxic antifoulant compounds should be cleaned on land (unless already required by the EPA).

Response: Currently, the EPA NPDES regulations do not include specific requirements for cleaning of nets or cages; however, 40 CFR Part 451 requires the applicant to develop a best management practices (BMP) plan to document that personnel have been trained on the proper operation and cleaning of production systems. The type of aquaculture system(s) proposed for use will be reviewed during the permitting process, during which time additional permit conditions could be included related to the cleaning of offshore aquaculture systems.

Comment 32: Staff should be trained in biosecurity procedures as well as the prevention of and response to escapes, entanglement, and predator control.

Response: Currently, the Aquaculture FMP/FPEIS does not include specific training requirements. However, the Aquaculture FMP/FPEIS includes a number of requirements addressing escapes and entanglements, and the Council could include additional requirements, such as training in the future via the framework procedures outlined in Action 10.

Comment 33: In addition to OIE and NAAHP reportable diseases, permittees should be required to report diseases of regional importance to aquaculture production.

Response: Currently, the Aquaculture FMP/FPEIS requires that permittees report all findings or suspected findings of any OIE or NAAHP reportable pathogen episodes to NMFS within 24 hours of diagnosis. It is unclear what diseases that are not OIE and NAAHP reportable pathogens would be considered “of regional importance.” However, the Council has the ability to expand these reporting requirements via the framework procedures outlined in Action 10 if new information indicates that there are diseases or pathogens that are of regional importance but are not covered by the current requirement.

Comment 34: The use of specific pathogen resistant or vaccinated stocks should be promoted.

Response: The Aquaculture FMP/FPEIS does not require the use of specific pathogen resistant or vaccinated stocks. All vaccines for use on fish destined for human consumption must be approved by the USDA APHIS, which is the federal agency responsible for regulating animal biologics.

Comment 35: Permittees should be required to follow guidelines established by the FAO for the use of wild fish as feed in aquaculture, including prohibiting the use of trash fish and avoiding illegal, unreported, and unregulated marine ingredients in the diet.

Response: The Aquaculture FMP/FPEIS does not include any requirements regarding the type of feed to be used in offshore aquaculture operations. However, the Food and Drug Administration (FDA) regulates food for fish under the authority of the Federal Food, Drug, and Cosmetic Act. Although the Act does not give FDA the authority to require approval of animal feed, the FDA regulates the safety of feed ingredients. Animal feed manufacturers are responsible for ensuring that feed does not contain unsafe additives or contaminants and is truthfully labeled. If the feed contains drugs, the drugs need to be approved by FDA for use in animal feeds. The FDA monitors the safety and labeling of feed and ensures that feed manufacturers follow U.S. regulations through guidance, education, and regulatory actions. If new information indicates that additional control over feeds used in offshore aquaculture in the Gulf may be necessary, the Council can consider adding such requirements in the future via the framework procedures outlined in Action 10.

Comment 36: Detailed records ensuring the traceability of feed should be kept, including source of feed, feed lot numbers#, date of purchase, feed ingredients, and feed conversion ratio.

Response: Action 8 requires permittees to keep original purchase invoices or copies of purchase invoices for feed on file for three years from the date of purchase and make available to NMFS during inspection or upon request. The EPA's regulations at 40 CFR 451.21 also require that permittees employ efficient feed management and feeding strategies that limit feed input to the minimum amount reasonably necessary to achieve production goals and sustain targeted rates of aquatic animal growth. These strategies must minimize the accumulation of uneaten food beneath the pens through the use of active feed monitoring and management practices and may include one or more of the following: Use of real-time feed monitoring, including devices such as video cameras, digital scanning sonar, and upweller systems; monitoring of sediment quality beneath the pens; monitoring of benthic community quality beneath the pens; capture of waste feed and feces; or other good husbandry practices approved by the permitting authority.

Comment 37: Culture of native shrimp, shellfish, and seaweed species should be allowed to help further the goals of NOAA's Marine Aquaculture Policy.

Response: The Council concluded that shrimp would not be cultured in federal waters of the Gulf since they are normally raised in coastal ponds in jurisdiction of the states. Shellfish and seaweed species not managed by the Council and therefore cannot be authorized for culture under the Aquaculture FMP/FPEIS.

Comment 38: Specific management controls should be in place for broodstock collection to reduce impacts to genetic fitness of wild populations should escape occur.

Response: The Aquaculture FMP/FPEIS includes several important measures to reduce or eliminate the potential impacts of cultured escapees on wild populations. First, only species native to the Gulf (and managed by the Council) can be cultured under the plan (Action 5). Second, all broodstock used to produce juveniles for stocking in offshore systems must be sourced from the same population or subpopulation where the facility is located (Action 2). Third, the culture of genetically modified or transgenic animals is strictly prohibited (Action 2). These broodstock limitations require cultured fish to be genetically similar to local stocks, therefore reducing genetic differences between cultured and wild stocks.

Comment 39: Scientifically-based limits should be established for harvesting broodstock to ensure that the cumulative impacts of industry will not negatively affect wild populations. Appropriate gear types should also be identified to minimize stress and mortality during broodstock collection.

Response: As explained in Action 8, permittees must submit a broodstock collection request to NMFS at least 30 days in advance. This request must include the number of animals, species, and size, the methods, gears, and vessels 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. The NMFS may deny or modify a request for broodstock collection if allowable methods or gears are not proposed for use, the number of fish harvested for broodstock is more than necessary for purposes of spawning and rearing activities, or other grounds inconsistent with the objectives outlined in the Aquaculture FMP/FPEIS or other federal laws.

Comment 40: Action 8 of the Aquaculture FMP/FPEIS requires that requests to “harvest broodstock from the EEZ or state waters” will go through NMFS, however, NMFS does not have jurisdiction in state waters.

Response: Submission of requests to collect broodstock is a requirement of the Gulf Aquaculture Permit. By applying for the permit, the applicant agrees to comply with this requirement regardless of whether that broodstock is harvested from the EEZ or state waters.

Comment 41: The exception for harvesting red drum via handline or rod and reel is confusing since commercial harvest is prohibited in federal and state waters (with the exception of Mississippi).

Response: Action 8, Preferred Alternative 2 specifies that red drum broodstock can be harvested for aquaculture purposes using handline or rod and reel. Harvest restrictions for any other recreational or commercial activities remain in force.

Comment 42: Broodstock collection permits should include requirements for quarantine, disease-testing, and biosecurity post-capture.

Response: The Aquaculture FMP/FPEIS does not contain specific requirements for the quarantine or testing of broodstock. However, Action 2 requires that juveniles must be certified to be free of OIE and NAAHP reportable diseases by an aquatic animal health expert prior to stocking in offshore aquaculture systems to reduce the possibility of disease transfer between cultured and wild stocks.

Comment 43: The NMFS should develop a technical standard for the design, installation, and operation of aquaculture systems, similar to the Norwegian technical requirements for fish farming installations and require that systems demonstrate compliance with the standard through assessment by an independent, accredited company. These standards should include infrastructure requirements to reduce the risk of marine mammal, sea turtle, and bird entanglements. Risks to sea turtles, birds, and seagrass should also be added to the list of potential risks that the NMFS RA must consider when evaluating proposed aquaculture systems.

Response: Action 5 requires that applicants submit to NMFS documentation (e.g., engineering analyses, computer and physical oceanographic model results) sufficient to evaluate the ability of the aquaculture system(s) (including moorings) to withstand physical stresses associated with major storm events, e.g. hurricanes, storm surge. The NMFS will evaluate the proposed

aquaculture system and its operations based on potential risks to essential fish habitat, endangered or threatened marine species, marine mammals, wild fish or invertebrate stocks, public health, or safety. The NMFS may deny use of a proposed aquaculture system or specify conditions for its use based on a determination of such significant risks.

Comment 44: More robust and stringent requirements should be developed to control the density and location of aquaculture facilities to ensure that cumulative impacts do not result in unacceptable adverse impacts to water quality and benthic environments. These requirements should also minimize the risk of disease and parasite transmission between facilities.

Response: Permittees must conduct ongoing monitoring of the water column and benthos as part of their EPA's NPDES permit to determine what, if any impacts the operation may be having on the surrounding environment.

Action 6 also specifies that aquaculture facilities must be sited at least 1.6 nautical miles (3 km) from each other to limit the transmission of pathogens between facilities.

Comment 45: The number and proximity of neighboring aquaculture sites and the hydrographic characteristics of the area should be evaluated during the siting process.

Response: The NMFS will consider the location of proposed sites in relation to established sites during the permit review process. A baseline environmental assessment of the proposed area is required as part of the NMFS application process and will be used to gauge the suitability of the site for aquaculture purposes.

Comment 46: Marine aquaculture operations should be prohibited in ESA critical habitat areas.

Response: Aquaculture operations are prohibited in Gulf EEZ marine protected areas and marine reserves, Habitat Areas of Particular Concern, Special Management Zones, and permitted artificial reef areas as specified in 50 CFR 622, and coral reef areas as defined in 50 CFR 622.2. Although these operations are not prohibited in ESA designated critical habitat, the NMFS will conduct an appropriate ESA Section 7 consultation if the NMFS determines that use of a proposed aquaculture site may affect critical habitat.

Comment 47: Permittees should be required to maintain and make available records of the type, amount and use of therapeutants as well as the application method(s), withdrawal time and harvest date.

Response: Permittees must abide by all FDA regulations when using drugs, including therapeutants. While there are currently no specific requirements for recordkeeping of drugs in the Aquaculture FMP/FPEIS, NMFS encourages all permittees to keep records of the amount and type of drugs used in aquaculture operations.

Comment 48: Permittees should be required to keep and make available records of the incidence of diagnosed and suspected diseases and parasitism.

Response: Under Action 8, permittees are required to report via phone or an electronic web form all findings or suspected findings of any OIE or NAAHP reportable pathogen to NMFS within 24 hours of discovery.

Comment 49: The NMFS should require inspections, repairs, and changes to all components of the aquaculture system infrastructure.

Response: Maintenance and management of aquaculture systems is addressed in EPA NPDES regulations under 40 CFR Part 451. For structural maintenance, permittees must: (1) Inspect the production system and the wastewater treatment system on a routine basis in order to identify and promptly repair any damage, and (2) conduct regular maintenance of the production system and the wastewater treatment system in order to ensure that they are properly functioning.

Comment 50: In regard to Action 10 (Preferred Alternative 3), the scope of adverse impacts from aquaculture in the Gulf addressed by the Aquaculture AP should be expanded to include adverse impacts to seabirds, benthic ecosystems, and water quality, and explicitly mention sea turtles.

Response: The Aquaculture AP will meet on a bi-annual basis to evaluate whether the condition and status of wild stocks, marine mammals, protected resources (including sea turtles and seabirds), EFH, and other resources managed by the Council and NMFS are adversely affected by aquaculture through OIE reportable pathogens, organic and benthic loading and changes in water quality, entanglements and interactions, escapement of cultured fish, and other factors.

Impacts to benthic ecosystems and water quality falls under the purview of the EPA NPDES permitting process as part of the CWA.

14. Appendix D. Actions and Preferred Alternatives

Action 1: Aquaculture Permits Requirements, Eligibility, and Transferability

Alternative 2 (Preferred)

Require an aquaculture permit for conducting offshore marine aquaculture. The permit would authorize: deployment and operation of an offshore aquaculture facility and sale of allowable aquaculture species. Persons issued an aquaculture permit would also be authorized to harvest or designate hatchery personnel or other entities to harvest broodstock, and possess or transport fish and invertebrates to and from an offshore aquaculture facility. Dealer permits are required to receive cultured organisms and are non-transferrable. Aquaculture permits are transferable (except under limited conditions) and eligibility is limited to U.S. citizens and permanent resident aliens. Landing of cultured species at non-U.S. ports would be prohibited, unless first landed at a U.S. port. Any vessel, aircraft, or vehicle authorized for use in aquaculture operations must have a copy of the facility's aquaculture permit onboard.

Action 2: Application Requirements, Operational Requirements, and Restrictions

Alternative 3 (Preferred)

Establish application requirements, operational requirements, and restrictions for aquaculture permits. Application requirements include submission of an application, providing general contact information, descriptions of allowable aquaculture systems and equipment, providing site location coordinates, documentation of an assurance bond, an emergency disaster plan, a contractual arrangement with an aquatic animal health expert, certification that broodstock used for juveniles were harvested from waters of the U.S. Gulf, and certification that no genetically modified or transgenic species will be used for culture. Operational requirements would include: a use it or lose it provision, documentation that broodstock are marked or tagged at the hatchery, certification that cultured animals are pathogen free prior to stocking, gear stowage requirements, and various monitoring requirements. Requirements also include the use of drugs, biologics, and pesticides in compliance with regulations of other federal agencies, and maintenance of one locating device on each allowable aquaculture system used for grow-out.

Action 3: Duration of the Permit

Alternative 2 (Preferred)

An aquaculture permit(s) is effective for: a) 5 years, b) 10 years and may be renewed in 5-year increments (Preferred), c) 20 years, or d) indefinitely.

Action 4: Species allowed for Aquaculture and Included in Fishery Management Unit (FMU)

Alternative 4 (Preferred)

Allow the aquaculture of all species native to the Gulf managed by the Council, except shrimp and corals, and include those species in the Aquaculture FMU. The Council will request NOAA Fisheries Service develop concurrent rulemaking to allow aquaculture of highly migratory species.

Action 5: Allowable Marine Aquaculture Systems

Alternative 3 (Preferred)

Evaluate each proposed aquaculture system used for culturing organisms on a case-by-case basis. Applicants must submit documentation sufficient to evaluate a system's ability to withstand physical stresses associated with storm events. NOAA Fisheries Service may deny use of a proposed system or specify conditions for its use if it poses potential risks to essential fish habitat, endangered and threatened species, marine mammals, wild fish and invertebrate stocks, public health, or safety.

Action 6: Marine Aquaculture Siting Requirements and Conditions

Alternative 3 (Preferred)

Prohibit marine aquaculture in Gulf EEZ marine protected areas and marine reserves, HAPCs, SMZs, permitted artificial reef areas, and coral reef areas. No aquaculture facility may be sited within 1.6 nm of another facility. Permitted sites must be 2X as large as the area encompassed by the allowable aquaculture systems used for growing organisms to allow for fallowing and rotation of growout systems. Applicants must conduct a baseline assessment and monitoring at the site in accordance with NOAA Fisheries Service guidance and procedures. Additionally, NOAA Fisheries Service will review other siting criteria on a case-by-case basis. These criteria include, but are not limited to: the depth of the site, current speeds and benthic sediments, the frequency of harmful algal blooms or hypoxia at the proposed site, marine mammal migratory pathways, and the location of the proposed site relative to important fishing grounds and habitats.

Action 7: Restricted Access Zones for Marine Aquaculture Facilities

Alternative 2 (Preferred)

Create a restricted access zone for each aquaculture facility. The size of the restricted access zone would correspond with the coordinates on the approved ACOE siting permit. No fishing may occur in the restricted access zone and no fishing vessels may operate in or transit through the zone unless they have a copy of the facilities' aquaculture permit onboard. The restricted access zone must be marked at each corner with a floating device, such as a buoy.

Action 8: Recordkeeping and Reporting Requirements

Alternative 2 (Preferred)

Establish 17 recordkeeping and reporting requirements that address escapement, entanglements and interactions with marine species and migratory birds, pathogens and disease, broodstock harvest, and numerous law enforcement requirements. An electronic reporting process would be used to collect and monitor most data and information submitted by permittees. See Section 4.8 for a detailed list of these recordkeeping and reporting requirements.

Action 9: Biological Reference Points and Status Determination Criteria

Alternative 2 (Preferred)

The proxy for maximum sustainable yield is: e) 64 mp ww (Preferred). The proxy for optimum yield is the total yield harvested by all permitted aquaculture operations annually, but not to exceed: e) 190 mp ww. No individual corporation or other entity can produce more than: c) 20 percent (Preferred) of optimum yield. If planned production exceeds optimum yield, NOAA Fisheries Service would publish a control date after which entry in to the aquaculture fishery may be limited or restricted. Production of juvenile fish by a hatchery in the Gulf EEZ will not be counted toward optimum yield or the 20 percent production restriction. Overfishing and overfished definitions contained in the various FMPs to manage wild stocks will be used as proxies for assessing the status of wild stocks potentially affected by excessive aquaculture production.

Action 10: Framework Procedures

Alternative 3 (Preferred)

Specify framework procedures for modifying biological reference points and management measures for offshore marine aquaculture in the Gulf EEZ. Measures that could be adjusted through framework procedures include: a) adjustments to maximum sustainable yield and optimum yield, b) permit application requirements, c) aquaculture operational requirements and restrictions, d) requirements for allowable aquaculture systems used for growing cultured organisms, e) siting requirements, and f) recordkeeping and reporting requirements.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

RECORD OF DECISION

FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

FOR THE

FISHERY MANAGEMENT PLAN FOR REGULATING OFFSHORE MARINE

AQUACULTURE IN THE GULF OF MEXICO

National Marine Fisheries Service
Southeast Region
St. Petersburg, Florida

Introduction

Background

This Record of Decision (ROD) documents the determination by NOAA's National Marine Fisheries Service (NMFS), on behalf of the Secretary of Commerce (Secretary), to promulgate regulations implementing the Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico (Aquaculture FMP), which entered into effect by operation of law on September 3, 2009. On June 4, 2009, NMFS published in the *Federal Register* a Notice of Availability of the Gulf of Mexico Fishery Management Council's (Council) proposed Aquaculture FMP. The public comment period on the Aquaculture FMP ended on August 3, 2009. Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary may approve, disapprove, or partially approve a Fishery Management Plan (FMP) within 30 days of the end of the comment period (in this case by September 2, 2009). If the Secretary does not notify the Council within 30 days that he has taken one of the specified actions, the statute provides that the FMP shall take effect as if approved. Because the statutory period passed without any action being taken, the Aquaculture FMP entered into effect by operation of law.

The Aquaculture FMP contains measures to establish: An aquaculture permitting system; operational conditions and restrictions for permit issuance and use; a list of species allowed for aquaculture; grow-out systems allowed for culture; siting requirements for aquaculture facilities; restricted access zones surrounding aquaculture facilities; recordkeeping and reporting requirements; biological reference points and status determination criteria; and a framework procedure for modifying aquaculture regulations. These measures are in accordance with the procedures prescribed in the Magnuson-Stevens Act. This ROD is issued pursuant to the

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations at 40 CFR Parts 1500-1508, and NOAA's Administrative Order NAO 216-6, Sections 6.03(a)(2) (Consolidated NEPA Documents, Management Plans and Plan Amendments), and 6.03(d)(2) (Fisheries Actions that Require an Environmental Impact Statement [EIS]). The decision to promulgate regulations implementing the Aquaculture FMP was based on analyses in the FMP, associated Final Programmatic Environmental Impact Statement (FPEIS), and Supplemental FPEIS (SFPEIS), prepared in accordance with NEPA.

The actions in the Aquaculture FMP/FPEIS establish a regionally based framework for permitting and regulating aquaculture activity in federal waters of the Gulf of Mexico (Gulf) under the authority of the Magnuson-Stevens Act. The Council developed and submitted the Aquaculture FMP for agency review under procedures of the Magnuson-Stevens Act. The measures in the Aquaculture FMP:

- Establish an aquaculture permitting process.
- Establish operational conditions and restrictions for permit issuance and use.
- Establish permit duration of 10 years and 5-year renewal periods.
- Allow the culture of native, non-genetically modified and non-transgenic species managed by the Council. Shrimp and corals are not allowed to be cultured under the Aquaculture FMP.
- Provide guidelines for approval of grow-out systems allowed for culture.
- Establish criteria for siting marine aquaculture facilities.
- Create a restricted access zone for each aquaculture facility.
- Establish numerous recordkeeping, reporting and operational requirements designed to minimize or mitigate potential environmental impacts.
- Establish biological reference points and status determination criteria.
- Specify framework procedures for modifying biological reference points and management measures.

Scoping Process and Public Involvement

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 the Gulf and a comprehensive framework for regulating such activities.

On September 2, 2004 (69 FR 53682), NMFS published a Notice of Intent (NOI) in the *Federal Register* to prepare a draft Programmatic Environmental Impact Statement (DPEIS) and to announce scoping meetings regarding the actions proposed in the Aquaculture FMP. A scoping document was presented at a series of scoping hearings conducted from February 17 through March 1, 2004, in Mobile, Alabama; Biloxi, Mississippi; Larose, Louisiana; Galveston, Texas; Madeira Beach, Florida; and Key West, Florida. Details of the hearings are presented in Appendix H of the FPEIS. These scoping hearings were conducted for the Generic Amendment for Management of Offshore Marine Aquaculture that was subsequently renamed the Aquaculture FMP. The range of actions and alternatives considered in the DPEIS for the Aquaculture FMP were based on information derived from these scoping meetings.

A public hearing draft of the Aquaculture FMP was reviewed and approved by the Council at its January 2008 meeting, and public hearings (number of hearings) were conducted in Florida (5), Alabama (3), Mississippi (2), Louisiana (2), and Texas (2) from July 9, 2007, through October 27, 2008 (See Section 14.0 in the FPEIS).

The NOA for the DPEIS was published in the *Federal Register* on September 12, 2008, with a 45-day comment period which was announced in the *Federal Register* on September 12, 2008 (73 FR 53001), and through a Fishery Bulletin sent by NMFS to stakeholders that same day. The comment period ended on October 27, 2008. NMFS received comments from 13 organizations or city governments, and the Chairman of the House of Representative's Committee on Natural Resources. Additionally, NMFS received 19 form letters and one petition with 5,773 signatures, as well as two additional comments from the general public. These comments were evaluated and used to improve the FPEIS. A summary of the comments received on the DPEIS and responses to those comments can be found in Appendix J of the final Aquaculture FMP/FPEIS. Over 3,000 comments generated from an email campaign and two letters from organizations were submitted outside of the comment period were in general opposition of the Aquaculture FMP but did not raise any issues that were not addressed elsewhere.

NMFS published a NOA for the FPEIS analyzing impacts on the human environment for the Aquaculture FMP in the *Federal Register* on June 26, 2009 (74 FR 30569). NMFS received over 1,000 comments on the NOA for the FPEIS. Approximately 975 of these comments were form letters. NMFS also received comments from environmental non-governmental organizations, industry groups, state and federal agencies as well as a letter signed by 37 members of Congress and another letter signed by a single member of Congress.

On September 3, 2009, the Aquaculture FMP entered into effect by operation of law. On the same day, Dr. Jane Lubchenco, NOAA Administrator, issued a press release announcing that NOAA would begin development of a new national aquaculture policy, which would provide context for the Aquaculture FMP. NOAA solicited public comments and conducted a series of seven public 'listening sessions' during April and May 2010, before releasing a draft of the policy in February 2011 for a 60-day public comment period. On June 9, 2011, NOAA released the final NOAA Marine Aquaculture Policy and announced its intention to move forward with implementing the Aquaculture FMP.

In January 2013, NMFS published a NOI (78 FR 5403) to prepare a draft SFPEIS in order to consider new circumstances and information arising from the Deepwater Horizon Macondo 252 blowout. NMFS received two comment letters on the NOI. The draft SFPEIS was made available for public comment on February 18, 2014 (79 FR 9199). On February 28, 2014, a second *Federal Register* notice was published announcing an extension of the comment period (79 FR 11428). NMFS received 15 distinct comments on the draft SFPEIS which were evaluated and used to improve the final SFPEIS. A summary of the comments received on the draft SFPEIS and responses to those comments can be found in Appendix C of the final SFPEIS. The NOA for the final SFPEIS published in the *Federal Register* on July 2, 2015 (80 FR 38199). NMFS received three comment letters on the final SFPEIS from environmental non-governmental organizations and federal agencies. NMFS reviewed these comments and determined that no changes to the final SFPEIS was necessary. One comment letter raised issues related to topics that NMFS has addressed in a Supplemental Information Report (SIR).

On February 8, 2013, the Council reviewed language NMFS added to the proposed implementing regulations and deemed these changes necessary and appropriate for implementing the Aquaculture FMP. These changes included addition of aquaculture gear types into section 50 CFR 600.725, definitions of key terms, and additional details pertaining to Aquaculture FMP requirements.

The proposed rule published in the *Federal Register* on August 28, 2014 (79 FR 51424). The public comment period ended on October 27, 2014. NMFS reopened the comment period on November 13, 2014 (79 FR 67411), for 15 days, with the comment period ending on November 28, 2014. NMFS received 98 comment letters. Comments were received from 15 industry groups, 9 non-governmental organizations, 6 state or federal agencies and 50 members of the general public. Comments also consisted of more than 100 journal articles, over 650 form letters and a petition with 1,875 signatures.

During the public comment period for the proposed rule, NMFS also requested comments on the draft SIR, which was prepared in order to evaluate the need for additional supplemental NEPA analysis specific to the passage of time. NMFS received several comments in support of as well as in opposition of the draft SIR. None of the comments opposing the draft SIR's conclusion identified any new circumstances, information or impacts that are uncertain or that differ from those described in the FMP/FPEIS and SFPEIS. NMFS determined that no new or additional supplemental NEPA analysis is necessary, and finalized the SIR on July 6, 2015.

Throughout the FPEIS and SFPEIS, as documented in this ROD, the Council and NMFS have analyzed the various alternatives, associated environmental impacts, and the extent to which the impacts could be mitigated, in relation to the objectives of the proposed action. As summarized below, NMFS and the Council have considered public and agency comments received during the various PEIS and SFPEIS review periods. Consequently, NMFS concludes that all practical means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted, and the public has had adequate opportunity for involvement, input, and comment during the deliberative phases of developing the Aquaculture FMP on which the final rule is based.

Current Regulations Pertaining to Offshore Aquaculture

Prior to the Aquaculture FMP, the only avenue for commercial-scale finfish aquaculture in federal waters of the exclusive economic zone (EEZ) was under an exempted fishing permit (EFP), as provided at 50 CFR 600.745. However, an EFP is intended to authorize the targeting or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Specifically, an EFP authorizes activities for limited testing, public display, data collection, exploration, health and safety, environmental cleanup, and/or hazard removal purposes. NMFS also has authority under the Fish and Wildlife Coordination Act, the essential fish habitat (EFH) provisions of the Magnuson-Stevens Act, the Endangered Species Act (ESA), and the Marine Mammal Protection Act to comment and provide conservation recommendations on projects permitted, licensed, or funded by other federal agencies. In the case of aquaculture, this may include permits required from the U.S. Army Corps of Engineers (ACOE), Environmental Protection Agency (EPA), or other federal agencies.

Gulf of Mexico Fishery Management Council's Aquaculture Policy

In November 2003, the Council adopted an open ocean aquaculture policy for the Gulf EEZ. The policy consists of a variety of guidelines intended to encourage environmentally responsible aquaculture. The Council provided recommendations for six key areas: 1) Allowable species, 2) habitat protection, 3) research, 4) location and design, 5) water quality, and 6) health management and disease control. These key areas were considered during the development of the Aquaculture FMP and the recommendations in the Council's policy are consistent with the proposed actions and preferred alternatives.

Federal Regulatory Management of Aquaculture in the Gulf of Mexico

The history of federal regulatory management of aquaculture in the Gulf EEZ is brief. In 1994 and 1995, the Gulf and South Atlantic Fishery Management Councils developed, and NMFS implemented, a regulatory regime for the culture of live rock in the Gulf of Mexico and South Atlantic EEZs. Wild live rock is coral-reef rubble that has been populated by attached organisms including anemones, sponges, tubeworms, sea squirts, bryozoans, algae, etc., as well as by mobile organisms. Because "wild" live rock is habitat and harvest of live rock reached levels exceeding 500,000 pounds annually in the early 1990s, NMFS phased out harvest of wild live rock and required persons in the industry to shift to aquaculture of live rock. Aquaculture of live rock consists of placing substrate, such as calcareous rock geologically or otherwise distinguishable from naturally occurring substrate, on permitted bottom sites for several years until attached organisms populate it. Live rock site selection is regulated by certain criteria, as are the operations, including notifying enforcement agents when harvesting or substrate placement are to occur. The state or ACOE requires permits for a site. NMFS requires an aquaculture permit and landings reports. As of June 2015, there were 14 annual live rock permits in the southeast. The Aquaculture FMP does not modify existing regulations pertaining to live rock aquaculture.

Offshore Aquaculture Facilities Currently Permitted in the U.S. EEZ

As of June 2015, there were two permitted offshore aquaculture farms in the Greater Atlantic Region U.S. EEZ. Both are suspended long line mussel farms, one 8.5 miles east of Rockport Massachusetts, the other 6.5 miles south of Cape Cod, Massachusetts. Neither is operational at this time, however, both are planning to deploy gear sometime in 2015. There is also one project currently planned in federal waters off Hawaii for kampachi (*Seriola rivoliana*).

In summer 2014, one offshore mussel farm was permitted in federal waters approximately 7 miles offshore San Pedro, California. To date, this operation has not begun in-water construction as they must submit a complete monitoring plan beginning work. In addition, Rose Canyon Fishery, an offshore finfish project, has proposed a site in federal waters approximately 6 miles offshore San Diego, California.

Controversy

Development of a regulatory framework for aquaculture has been controversial. Controversy has stemmed from several factors including:

- Whether the Magnuson-Stevens Act provides authority to regulate aquaculture;
- Concerns about potential impacts to the environment (e.g., water quality, habitat degradation, etc.) and wild fish stocks (e.g., genetic impacts, competition, entanglement, etc.);
- Potentially competing interests of fishermen, fishing communities, and aquaculture operations;
- Concerns about the exclusive use of public resources for private profit; and
- Concerns about multiple federal agencies having authority to regulate various aspects of offshore marine aquaculture.

There has been controversy regarding the Council's authority to regulate aquaculture under the Magnuson-Stevens Act as well as concerns that the Aquaculture FMP is counter to the development of national legislation. 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 FMP covering all aspects of aquaculture in the EEZ. In developing the Aquaculture FMP, the Council considered national legislation that was introduced (but not enacted) in 2007 (2007 National Offshore Aquaculture Bill) and designed many of the provisions included in the Aquaculture FMP to be consistent with that legislation.

Another source of controversy regarding the Aquaculture FMP involves potential environmental impacts. As a result of these concerns, the Council selected preferred alternatives that: 1) only allow culture of those species native to the Gulf and managed by the Council (except shrimp and corals) and require that broodstock be collected from the same population or subpopulation where the facility will be located; 2) prohibit culture of genetically modified or transgenic species; 3) prohibit aquaculture operations in all marine protected areas and marine reserves, habitat areas of particular concern (HAPCs), special management zones (SMZs), permitted artificial reef areas, and coral reef areas designated by the Council at 50 CFR 622, and further minimize siting impacts on a case-by-case basis through the permit review and approval process; 4) require permit applicants to conduct a baseline environmental assessment of the proposed site prior to permit review and conduct routine monitoring of a site according to NMFS protocols and procedures; 5) require regular monitoring at the site and report to NMFS within 24 hours of discovery: major escapement; entanglements or interactions with marine mammals, endangered species and migratory birds; and findings or suspected findings of World Organization of Animal Health (OIE) or National Aquatic Animal Health Plan (NAAHP) reportable pathogens; 6) require permittees maintain and make available feed invoices and daily records of cultured animals introduced or removed from allowable growing systems; 7) require certification from an aquatic animal health expert that fish being stocked are free of reportable pathogens; and, 8) require compliance with reporting and monitoring requirements as well as with all applicable federal regulations for using drugs, pesticides, and biologics.

There were concerns regarding competing interests, which generated controversy in regard to the Aquaculture FMP. NMFS will minimize user conflicts through a case-by-case review of each permit application. NMFS will announce the intent to issue a Gulf Aquaculture Permit (GAP)

via a notice in the *Federal Register*, giving the public an opportunity to comment on proposed applications, including proposed sites. NMFS will consider public comments when making final determinations about whether to issue individual GAPs. NMFS may deny use of a proposed aquaculture site based on a determination that the site will result in user conflicts with commercial or recreational fishermen, or other marine resource users.

Use of public resources for private profit was an issue raised by some members of the public. The Magnuson-Stevens Act provides the Council with authority to create zones that exclude fishing or the operation of fishing vessels. Section 303(b)(1) of the Magnuson-Stevens Act states that any FMP prepared by the Council may “designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear”. Examples are zones where fishing with certain gear is prohibited and marine reserves where fishing and possession of fish is prohibited. Restricting access around aquaculture facilities will afford some protection to an operation’s equipment and the product being cultured as well as increase safety by reducing encounters between vessels and aquaculture equipment (National Standard 10). While limiting usage near these sites could be seen as a user conflict by denying the public from accessing these areas, this measure will likely reduce user conflicts by not allowing competing uses in the same area. The most prudent way to overcome this issue is for an aquaculture facility to request, and for NMFS to approve, a large enough area to afford protection from potential user conflict problems (e.g. a vessel accidentally cutting a mooring line while passing the facility), while at the same time maximizing other user groups’ access to the open ocean.

There were also concerns regarding multiple federal agencies having authority to regulate various aspects of offshore marine aquaculture. During the development of the Aquaculture FMP, NMFS and the Council consulted with various state and federal agencies, including regional EPA staff and district ACOE staff. The DPEIS and draft SFPEIS were sent to numerous state and federal agencies for public comment. NMFS also continues to work with other federal agencies as part of the Interagency Working Group on Aquaculture’s Regulatory Task Force on a coordinated permitting process.

Decision and Reasons for the Decision

Decision

Following a review of the Aquaculture FMP and supporting analyses for compliance with the Magnuson-Stevens Act and other applicable law, including NEPA, the Coastal Zone Management Act (CZMA), and Information Quality Act (IQA), NMFS is promulgating a final rule to implement all proposed actions contained in the Aquaculture FMP. The rationale for this decision is supported by the FPEIS and the SFPEIS, and is summarized below. The actions in the Aquaculture FMP are those that achieve the purpose and need for action in a way that best addresses Magnuson-Stevens Act mandates and the multiple objectives outlined in the Aquaculture FMP. Additional alternatives considered by the Council and NMFS in developing the rule and the Aquaculture FMP, but eliminated from detailed study, are described in Appendix D of the FPEIS.

*Rationale for Decision*¹

Action 1. Aquaculture Permit Requirements, Eligibility, and Transferability

Preferred Alternative 2:

Require a NMFS GAP to authorize a person to:

- Deploy or operate an offshore aquaculture facility in the Gulf EEZ; and,
- Sell, only at the first point of sale, or attempt to sell an allowable aquaculture species cultured at an offshore aquaculture facility in the Gulf EEZ.

Persons issued a GAP for the activities authorized above will also be authorized to:

- Harvest or designate hatchery personnel or other entities to harvest and retain onboard a vessel wild live broodstock of an allowable aquaculture species native to the Gulf for offshore aquaculture, regardless of where broodstock were harvested or possessed in U.S. waters of the Gulf.
- Possess or transport fish or invertebrates in or from the Gulf EEZ to be cultured at an aquaculture facility (e.g., broodstock, fingerlings) or possess or transport fish or invertebrates from an aquaculture facility for landing ashore and sale.

Require a Gulf aquaculture dealer permit to receive cultured organisms from the Gulf EEZ.

However, an owner or operator of an aquaculture facility with a GAP may purchase juvenile fish from a hatchery located in the Gulf EEZ without obtaining a dealer permit. Requirements for obtaining a dealer permit are specified in 50 CFR 622.4(a)(4)(iii) and 50 CFR 622.4(b).

Landing of allowable aquaculture species cultured in the Gulf EEZ is prohibited at non-U.S. ports, unless first landed at a U.S. port.

In addition, require any vessel, aircraft, or vehicle authorized for use in aquaculture operations have a copy of the GAP onboard. Each copied permit must include an original signature of the GAP holder.

Eligibility for a GAP is limited to U.S. citizens or permanent resident aliens.

A GAP is:

- (a) transferable only if the geographic location of the aquaculture site remains unchanged.

The transferor and transferee must complete the application for permit transfer, have their signatures notarized, and mail the signed application to the NMFS Regional Administrator (RA) at least 30 days prior to the date on which the transferee desires to have the transfer effective. Approval of the transfer by the NMFS RA is contingent on all applicable permit requirements being completed, and, if necessary, updated.

(Preferred)

¹ The actions and alternatives discussed below are stated as specified in the Aquaculture FMP. The proposed rule implementing the FMP included provisions that used language identical to that used in the Aquaculture FMP. After considering public comments on the proposed rule, further internal review, and consultation with the Council, NMFS is modifying some of this language in the final rule. These changes are consistent with the requirements specified in the FMP and are fully explained in the preamble of the final rule.

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP.

Preferred Alternative 2 requires a NMFS permit which will authorize all activities associated with operating an aquaculture facility in the Gulf EEZ. The permit will authorize the deployment and operation of an offshore aquaculture facility and the sale of cultured species. Persons issued a GAP will also be authorized to harvest or designate hatchery personnel or other entities to harvest and retain onboard a vessel wild live broodstock, and to possess or transport fish or invertebrates in or from the Gulf EEZ to be cultured at an aquaculture facility (e.g., broodstock, fingerlings) or possess or transport fish or invertebrates from an aquaculture facility for landing ashore and sale.

Preferred Alternative 2 will also prohibit the landing of allowable aquaculture species cultured in the Gulf EEZ at non-U.S. ports, unless first landed at a U.S. port. In addition, any vessel, aircraft, or vehicle authorized for use in aquaculture operations will be required to have a copy of the GAP with an original signature of the permit holder onboard. A separate dealer permit will be required to receive cultured organisms from the Gulf EEZ.

Under **Preferred Alternative 2**, applicants will be required to satisfy application and operational requirements described in Action 2 before receiving a permit. Additionally, NMFS will ensure appropriate species and reliable grow-out systems were used for aquaculture (Actions 4 and 5), and evaluate if an aquaculture operation is sited in an appropriate location that will minimize or prevent environmental impacts (Action 6). If a proposed site is denied for use, NMFS will provide a determination and the basis for it, in writing to the applicant. Upon issuance of an aquaculture permit, operations will be required to maintain records and submit reports (Action 8). An aquaculture permit will remain valid for the period of time indicated on the permit unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 for non-compliance with applicable aquaculture regulatory requirements.

Preferred Alternative 2 will limit eligibility for permits to only U.S. citizens or permanent resident aliens. Additionally, under **Preferred Alternative 2(a)** permits will only be transferable (to U.S. citizens or permanent resident aliens) if the geographic location of the aquaculture facility remains unchanged. Approval of the transfer by the NMFS RA is contingent on all applicable permit requirements being completed and updated.

Preferred Alternative 2 was chosen because it allows for the development of an offshore aquaculture industry in the Gulf EEZ and does not require NMFS to issue separate siting and operating permits, which would have conflicted with ACOE's authority to issue siting permits. **Preferred Alternative 2(a)** was also chosen because it facilitates continuity of offshore aquaculture operations and the development of a viable future aquaculture industry, except if major modifications to the permit are made (e.g., geographic location of site changes).

Rejected alternatives to the proposed action.

Alternative 1: No Action, an EFP for conducting aquaculture would be required.

Alternative 2(b): A GAP permit is non-transferable.

Alternative 3: Require separate NMFS siting and operating permits for conducting offshore marine aquaculture in the Gulf EEZ. A siting permit would authorize use of a site for conducting aquaculture. An operating permit would authorize the activities specified in Preferred Alternative 2.

Other alternatives considered by the Council included maintaining the requirement for an EFP (**Alternative 1**) or requiring separate NMFS operational and siting permits (**Alternative 3**). The Council also considered prohibiting the transfer of permits (**Alternative 2(b)**).

Alternative 1 would have maintained the status quo requirement to authorize offshore aquaculture activities through an EFP, which effectively prohibits the development and implementation of commercial offshore aquaculture operations in the Gulf. Therefore, Alternative 1 would not have resulted in added impacts to the physical, biological, and ecological environments. Therefore, **Alternative 1** is the **environmentally preferred alternative**. However, the purpose and need for this FMP is to create a permitting process to foster the development of an environmentally sound and economically sustainable aquaculture industry. Therefore, the Council did not select **Alternative 1** as the preferred alternative.

Alternative 2(b) would have prohibited the transfer of permits. A transferable permit would have generated a direct economic benefit to owners of the permit because the permit would have become a marketable asset for the duration of the permit. Also, it is theorized that transferable permits encourage economically efficient producers to acquire existing and inefficient operations, which would have increased aquaculture production in the Gulf EEZ. Thus, **Alternative 2(b)** was rejected in lieu of **Preferred Alternative 2(a)**, which will allow transfer of the aquaculture permit as long as the geographic location of the aquaculture operation remains unchanged.

Alternative 3 would have created a permitting system with a siting permit specifying the duration, size, and location of an offshore aquaculture facility. This alternative would have also created a separate operating permit that would have authorized the same activities that will be authorized under **Preferred Alternative 2**. The two-tier permit process in **Alternative 3** presents no additional safeguards to the physical, biological, and ecological environment. Rather, it would have resulted in additional administrative costs and partial duplication of existing siting requirements required by the ACOE. Action 6 is intended to minimize the impacts of a facility on the physical, biological, and ecological environment by applying a number of criteria and conditions, which dictate where a facility may operate. The siting criteria selected under Action 6 are expected to accomplish what would otherwise be achieved by the dual permitting process analyzed in **Alternative 3**. Further, the ACOE will require a permit for siting aquaculture facilities in the EEZ under the authority of the Rivers and Harbors Act. Having a siting permit in addition to the required ACOE permit was determined to be unnecessarily duplicative. Because potential applicants would have been subjected to redundant applications and permits **Alternative 3** was not chosen.

Action 2. Application Requirements, Operational Requirements, and Restrictions

Preferred Alternative 3: Establish the following application requirements, operational requirements, and restrictions:

(a) Application Requirements

1. A completed application and all required supporting documents for a GAP must be submitted by an applicant (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) on a form available from the NMFS RA at least 180 days prior to the date the applicant desires the permit to be effective.
2. An applicant must provide all information indicated on the application form, including, but not limited to:
 - i Applicant's name, address, and telephone number.
 - ii Business name, address, telephone number, and date the business was formed.
 - iii Description of the exact location (i.e., GPS coordinates) and dimensions of the proposed aquaculture facility and proposed site, including a map of the site to scale.
 - iv 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.
 - v Name and address or specific location of each hatchery that would provide juvenile organisms for grow-out at the proposed aquaculture facility located within the Gulf EEZ and a copy of any relevant, valid state or federal aquaculture permits issued to the hatchery.
 - vi Prior to issuance of a GAP, a copy of all currently valid federal permits (e.g., ACOE Section 10 Permit and EPA National Pollutant Discharge Elimination System (NPDES) permit applicable to the proposed aquaculture site, facilities, or operations.
 - vii A description of the allowable aquaculture systems to be used, including, but not limited to the size and dimensions of allowable aquaculture systems, 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.
 - viii A description of the equipment and methods necessary for feeding, transporting, maintaining, and removing cultured species from allowable aquaculture systems.
 - ix A copy of the valid United States Coast Guard (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.
 - x Documentation certifying the applicant has posted an assurance bond sufficient to cover the costs of removal of all components of the aquaculture facility, including cultured organisms 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 NMFS RA will provide applicants a form and associated guidance for complying with the assurance bond requirement.
 - xi 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 were from the same population or subpopulation of fish or invertebrates (based on best available science) where the aquaculture facility is located, or progeny of such wild

broodstock, and that each individual broodstock was marked or tagged at the hatchery to allow for identification of those individuals used in spawning.

- xii Certification by the applicant that no genetically modified organisms (GMO) or transgenic organisms are used or possessed in the aquaculture facility. A GMO is an organism 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). A transgenic animal is an animal whose genome contains a nucleotide sequence that has been intentionally modified in vitro, and the progeny of such an animal. NMFS may sample cultured organisms to determine genetic lineage and will order the removal of all cultured organisms upon a determination that GMOs or transgenic organisms were used or possessed at an aquaculture facility.
- xiii Certification by the applicant that a contractual arrangement with an identified aquatic animal health expert to provide services to the aquaculture facility has been obtained. An aquatic animal health expert is defined as a licensed doctor of veterinary medicine or is certified by the American Fisheries Society, Fish Health Section, as a "Fish Pathologist" or "Fish Health Inspector". A copy of the license or certification must also be provided to NMFS.
- xiv A copy of an emergency disaster plan developed for and to be used by operator of the aquaculture facility, that includes, but is not limited to, procedures for preparing allowable aquaculture systems, offshore aquaculture equipment, and cultured organisms in the event of a disaster (e.g., hurricane, tsunami, harmful algal bloom, chemical or oil spill, etc).
- xv Information sufficient to document eligibility as a U.S. citizen or permanent resident alien. This information includes, but is not limited to, corporate structure and shareholder information.
- xvi Any other information concerning the aquaculture facility or its operations or equipment, as specified on the application form.
- xvii Any other information that may be necessary for the issuance or administration of the GAP, as specified on the application form.

(b) Operational Requirements and Restrictions

1. At least 25 percent of allowable aquaculture systems approved for use at an 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 aquaculture permit, and allowable species for aquaculture must be placed in the permitted 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 one-year extension to the above time schedules in the event of a catastrophe (e.g., hurricane). Requests must be made in writing and sent to the RA. The NMFS RA will approve or deny the request after determining if catastrophic conditions exist and whether or not the permittee was affected by the catastrophic conditions. The NMFS RA shall provide the determination and the basis for it, in writing to the permittee.
2. The permittee must obtain and submit to NMFS a signed certification from the owner(s) of the hatchery from which fingerlings or other juveniles are obtained indicating broodstock have been individually marked or tagged (e.g., via a Passive Integrated Transponder, coded wire, dart, or internal anchor tag) to allow for identification of those individuals used in spawning. The permittee must also 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. These certifications must be provided by the permittee each time broodstock are acquired by the hatchery or used for spawning.
3. Prior to stocking cultured animals in an allowable aquaculture system in the Gulf EEZ, the permittee must provide NMFS a copy of a health certificate (suggested form is U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Agency (APHIS) VS 17-141, OMB 0579-0278) signed by an aquatic animal health expert (as defined in (a)(2)(xiv)) certifying cultured animals were inspected and determined to be free of OIE reportable pathogens or additional pathogens identified as reportable pathogens in the NAAHP as implemented by the U.S. Department of Agriculture (USDA), Commerce, and Interior.
 4. 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, i.e., net pen or cage, placed in the water at the aquaculture facility.
 5. The permittee must conduct feed monitoring and management practices in compliance with EPA regulations at 40 CFR 451.21.
 6. Permittee must comply with all applicable monitoring and reporting requirements specified in their valid ACOE Section 10 permit and valid EPA NPDES permit.
 7. A permittee must inspect allowable aquaculture systems, including mooring and anchor lines, for entanglements or interactions with marine mammals, protected species, and migratory birds. If entanglements or interactions are observed, they must be reported as specified in Action 8, Preferred Alternative 2(c)(2).
 8. Use of drugs, pesticides, and biologics must comply with all applicable FDA, EPA, and USDA regulations (e.g., Food, Drug and Cosmetic Act, 21 USC 321; Clean Water Act, 40 CFR 122; 9 CFR 101-124; 21 CFR 500-599; and 40 CFR 150-189).
 9. Cultured finfish must be maintained whole with heads and fins intact until landed on shore. Until landed on shore, spiny lobster must be maintained whole with the tail intact.
 10. Except for authorized broodstock associated with a hatchery located in the Gulf EEZ, possession of wild fish or invertebrates at or within the boundaries of an aquaculture facility's restricted access zone is prohibited (Action 7 and Alternative 2(n) in Action 8).
 11. Possession and transport of any wild fish or invertebrates aboard an aquaculture operation's transport or service vessels, vehicles, or aircraft is prohibited, except when harvesting broodstock as authorized by NFMS.
 12. A permittee must provide NMFS employees and authorized officers access to the aquaculture facility to conduct inspections or sampling necessary to determine compliance with the applicable regulations (e.g., sample cultured organisms to determine genetic lineage) relating to aquaculture in the Gulf EEZ. NMFS shall conduct at least annual inspections of each permitted aquaculture facility
 13. A permittee may only obtain juveniles for grow-out at an aquaculture facility from a hatchery located in the U.S.
 14. Species cultured at an aquaculture facility in the Gulf EEZ can only be landed ashore between 6 a.m. and 6 p.m., local time.
 15. Any vessel transporting cultured organisms 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.

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP.

Preferred Alternative 3 will require the owner of an aquaculture firm to submit an application for a GAP at least 180 days prior to the date the applicant desires the permit to be effective.

Preferred Alternative 3 will also require applicants to submit information to NMFS when applying for a permit, including: contact information, description of the exact location of the proposed facility and site, a list of species to be cultured, estimated start up production level by species, estimated maximum total annual poundage of each species to be harvested, hatchery information, copies of other required federal permits, a description of proposed aquaculture systems and equipment, documentation for vessels and aircraft, an assurance bond to cover the costs of removal of all components of the facility, certification that broodstock used to provide juveniles are from the U.S. waters of the Gulf and from the same population where the aquaculture facility is located, certification that no GMOs or transgenic animals are used or possessed at the aquaculture facility, certification that a contractual arrangement with an aquatic animal health expert has been established, an emergency disaster plan, and other information necessary for issuance and administration of a permit.

Additionally, **Preferred Alternative 3** will specify a use it or lose it provision for permits; require documentation from hatcheries that broodstock are marked or tagged; require a health certificate of inspection prior to stocking of cultured animals in offshore aquaculture systems, require that locating devices be maintained on allowable aquaculture systems; require permittees to monitor feed usage; require permittees to report interactions/entanglements with protected resources and migratory birds; require permittees to comply with monitoring, drug, pesticide, and biologic regulations from other federal agencies; require that cultured finfish be maintained with head and fins intact and spiny lobster be landed whole; prohibit possession of wild fish, except when harvesting broodstock; and allow NMFS employees or authorized officers access to facilities. All of these conditions will have to be met in order to issue a GAP or operate an aquaculture facility in the Gulf EEZ.

Preferred Alternative 3 was chosen because it will result in the greatest benefits to the biological and physical environments by providing necessary safeguards for authorizing, monitoring, and enforcing marine aquaculture. These safeguards will assist the Council, NMFS, and other federal agencies in preventing, or minimizing to the extent practicable, impacts on water quality, benthic habitat, and wild fish stocks. Since **Preferred Alternative 3** sets forth specific application and operational requirements intended to prevent or minimize impacts on the

physical, biological, and ecological environments, this is the **environmentally preferred alternative**.

Rejected alternatives to the proposed action.

Alternative 1: Do not specify application requirements, operational requirements, or restrictions for aquaculture in the Gulf EEZ.

Alternative 2: Status quo. Require the EFP application and issuance requirements as specified at 50 CFR 600.745(b).

Alternative 1 does not specify any application or operational requirements and would therefore have had the most potential for causing negative effects on the physical, biological, and ecological environment. **Alternative 2** maintains the use of the requirements and conditions specified for an EFP. However, these requirements may vary from permit to permit because the NMFS RA can set terms and conditions for the permit and there is a general lack of specificity provided in the EFP regulations. For these reasons, **Alternative 2** may not afford adequate protection to the physical, biological, and ecological environments.

Action 3. Permit Duration

Preferred Alternative 2(b): Aquaculture permits are effective for 10 years and may be renewed in 5 year increments.

A GAP remains valid for the period indicated on the permit unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 for non-compliance with applicable aquaculture regulatory requirements or the aquaculture facility is sold and the permit has not been transferred.

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP.

Under **Preferred Alternative 2(b)**, a permit will remain valid for 10 years and will be subject for renewal in 5-year increments unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 for non-compliance with applicable aquaculture regulatory requirements or the aquaculture facility is sold and the permit is not transferred. An initial permit duration of ten years with 5 year renewal periods was chosen in order to strike the best balance between providing adequate time to establish operations and funding, while not granting excessively long permit duration that would make it difficult for NMFS to address any unexpected problems related to user conflicts or other issues.

Rejected alternatives to the proposed action.

Alternative 1: No Action, EFPs are effective for no longer than one year unless otherwise specified in the EFP or a superseding notice or regulation (50 CFR 600.745(b)(4)).

Alternative 2: Aquaculture permits are effective for:

- a) 5 years
- c) 20 years
- d) Indefinitely.

Alternative 1 would have provided the shortest permit duration time period (1 year unless specified otherwise) of any of the alternatives, and would have allowed NMFS to deny issuing a new permit after this relatively short period, if an operation was causing negative environmental impacts to the physical and biological environments. Thus, **Alternative 1** is the **environmentally preferred alternative**. **Alternatives 2(a) and 2(c)** would have allowed non-renewable permits to remain valid for 5 or 20 years, respectively, and **Alternative 2(d)** would have allowed such permits to remain valid indefinitely.

Shorter permit durations (less than ten years) would make it difficult to obtain financing for aquaculture operations and undesirable for investors to commit money to such operations. Offshore aquaculture entrepreneurs will, in many instances, need to finance their operations. Lenders will provide financing only if there is sufficient certainty that the aquaculture operation can pay principal and interest on any loans. Obtaining capital has been a problem for offshore aquaculture entrepreneurs. Longer permit durations (more than ten years) are expected to reduce cost risks associated with short-term output fluctuations and/or market fluctuations, which would increase the likelihood of entrepreneurs obtaining financing. However, shorter permit durations would be more beneficial to the physical and biological environments because it would give NMFS more frequent opportunities to evaluate the operation and impacts of a particular facility and adjust permit conditions as necessary.

All of the alternatives may displace Gulf fishermen from certain fishing areas, which may result in economic and social costs to fishermen, their families, and communities. While **Alternative 2(d)** may displace fishermen from particular areas indefinitely, **Alternatives 2(a) and 2(c)** would have limited displacement for 5 and 20 years, respectively, and do not provide for a renewal option. **Preferred Alternative 2(b)** will allow the permit to be renewed, which will explicitly allow the development of long-term commercial offshore aquaculture operations and the economic and social benefits that may be derived from those operations. **Alternative 2(d)** would have also allowed the long-term development of an offshore aquaculture industry, but a permit of this duration would have given the permit holder exclusive use of a particular site for an indefinite amount of time. While this alternative would be expected to be the most attractive and economically beneficial to aquaculture businesses, the opposite would be true for existing and alternative future users of the sites.

Action 4. Species Allowed for Aquaculture and included in the Aquaculture Fishery Management Unit (FMU).

Preferred Alternative 4: Allow the aquaculture of all species native to the Gulf that are managed by the Council and included in a Council FMP management unit, except those species in the shrimp and coral FMP management units, and include these species in the Aquaculture FMU. The FMP also states that Council will send a letter to NMFS requesting development of concurrent rulemaking to allow aquaculture of highly migratory species (HMS).

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP.

Preferred Alternative 4 will allow the aquaculture of all Council managed species, except corals and shrimp. Only species native to the Gulf will be allowed for culture. By allowing the culture of only native species the potential for negative impacts on the biological, physical, and ecological environments will be eliminated or significantly reduced in the event that escapement occurs.

Preferred Alternative 4 will allow for culture of species, which are overfished or undergoing overfishing. As such, culture of those species will increase OY for those stocks and may reduce fishing mortality consistent with National Standard 1, if demand for wild caught fish is reduced.

Preferred Alternative 4 was chosen because it will allow for the largest number of native Gulf species that can be cultured in offshore aquaculture and may yield the largest economic and social benefits. Among the non-status quo alternatives, **Preferred Alternative 4** may cause the largest economic and social costs to fishermen, their families, and communities by putting them in direct competition with offshore aquaculture operations. However, foreign imports represent a significant amount of the current U.S. seafood, therefore, it is not expected that domestically cultured species will have a significant economic impact on traditional fishing businesses or communities over the short term. Conversely, aquaculture operations could provide additional means of employment, thereby benefitting local communities.

Rejected alternatives to the proposed action.

Alternative 1: No Action, do not specify species allowed for aquaculture and do not develop an Aquaculture FMU.

Alternative 2: Allow the aquaculture of all finfish species native to the Gulf in the reef fish, red drum, and coastal migratory pelagics FMPs and include these species in the Aquaculture FMU.

Alternative 3: Allow the aquaculture of all species native to the Gulf that are managed by the Council and included in a FMP management unit, except goliath grouper, Nassau grouper, and those species in the shrimp and coral FMUs, and include these species in the Aquaculture FMU.

Alternative 1, the no action alternative, would not have specified which species would be allowed for aquaculture and would not have established an Aquaculture FMU. If **Alternative 1** were chosen, a permit applicant could request permission to culture any species, whether it was native to the Gulf or not, managed by the Council, vertebrate or invertebrate, or already protected from fishing in the Gulf EEZ. NMFS would then determine whether culture of a particular species was acceptable, rather than the Council making that determination through the Aquaculture FMP.

Alternatives 2 and 3 would have limited culture to species managed by the Council that are native to the Gulf and would have included allowable species in the FMU for the Aquaculture FMP. **Alternative 2** would have limited culture to only federally managed finfish, while **Alternative 3** would have allowed culture of Council managed finfish and invertebrates, but

would have prohibited the culture of shrimp, corals, and goliath grouper, and Nassau grouper. Because **Alternative 3** is the most restrictive, it is the **environmentally preferred alternative**.

Action 5. Allowable Marine Aquaculture Systems

Preferred Alternative 3: The NMFS 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. To assist the RA in evaluating the structural integrity of a proposed aquaculture system, an applicant would be required to submit to the RA documentation (e.g., engineering analyses, computer and physical oceanographic model results) sufficient to evaluate the ability of the aquaculture system(s) (including moorings) to withstand physical stresses associated with major storm events, e.g. hurricanes, storm surge. The NMFS RA will also evaluate the proposed aquaculture system and its operations based on potential risks to EFH, endangered or threatened marine species, marine mammals, wild fish or invertebrate 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 NMFS and NOAA offices/programs. If the RA denies use of a proposed aquaculture system or specifies conditions for its use, the RA shall provide the determination and the basis for it, in writing to the applicant.

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP.

Preferred Alternative 3 will provide NMFS the authority to evaluate each proposed aquaculture system on a case-by-case basis. NMFS will evaluate the proposed aquaculture system based on potential risks to EFH, endangered or threatened marine species, marine mammals, wild fish stocks, public health, or safety. Permit applicants will also be required to submit documentation, such as computer model results, sufficient to evaluate the ability of the aquaculture system to withstand physical stresses associated with major storm events. This information is considered necessary for NMFS to make a meaningful evaluation of the proposed system. NMFS could approve or deny a proposed system, or specify conditions for its use. **Preferred Alternative** was chosen because it will provide for the most rigorous review of proposed aquaculture systems by NMFS and will therefore provide the greatest benefits to the physical and biological environments. As a result, **Preferred Alternative 3** is the **environmentally preferred alternative**.

Rejected alternatives to the proposed action.

Alternative 1: No Action, do not specify allowable systems for offshore marine aquaculture in the Gulf EEZ.

Alternative 2: Allow only cages and net pens for offshore marine aquaculture in the Gulf EEZ.

Alternative 1 would not have specified allowable systems for marine aquaculture in the Gulf EEZ. Presumably, permittees could use any type of system regardless of whether it was capable

of withstanding the physical stresses of the marine environment. No standards or requirements would have been specified for NMFS to approve or disapprove a proposed system.

Alternative 2 would have allowed any type of cage or net pen proposed by an applicant, regardless of structural integrity. NMFS would not have had the authority to limit use of such systems, unless the system was not a cage or net pen. As a result, the risk of harm to habitat and marine resources could be increased if these systems are more easily damaged by storms and other weather events. Additionally, no standards or requirements would have been specified for NMFS to approve or disapprove systems proposed under **Alternative 2**.

Action 6. Marine Aquaculture Siting Requirements and Conditions

Preferred Alternative 3: Establish the following criteria for siting marine aquaculture facilities:

- (a) Prohibit marine aquaculture in Gulf EEZ marine protected areas and marine reserves, HAPCs, SMZs, and permitted artificial reef areas as specified in 50 CFR 622, and coral reef areas as defined in 50 CFR 622.2.
- (b) No offshore aquaculture facility may be sited within 1.6 nautical miles (3 km) of another offshore aquaculture facility.
- (c) To allow fallowing and rotation of allowable aquaculture systems within a site permitted by the ACOE and approved by NMFS, the permitted site must be at least twice as large as the combined area encompassed by the allowable aquaculture systems (e.g., cages and net pens).
- (d) Applicants for a GAP must conduct and submit a baseline environmental assessment of the proposed aquaculture site to NMFS with their application packet. Data, results, and analyses from the baseline environmental assessment must be provided to NMFS for consideration during review of a permit application. The baseline environmental assessment must be conducted, and analyses, data, and results must be summarized, based on guidance and procedures specified by NMFS. If a permit is approved, applicants must also monitor the site in accordance with NMFS guidance and procedures. Baseline environmental assessment and monitoring guidance and procedures will be developed in consultation with the ACOE, EPA, and other federal agencies having authority to regulate offshore aquaculture. Guidance will include, but will not be limited to, procedures and methods for: 1) conducting diver and video surveys, 2) measuring hydrographic conditions, 3) collecting and analyzing benthic sediments and infauna, and 4) measuring water quality characteristics. The guidance and procedures will be available from the RA and on the NMFS aquaculture website.
- (e) The NMFS RA will evaluate siting criteria in addition to those preferred criteria selected by the Council in Alternative 3(a-d) on a case-by-case basis. Criteria considered by the RA during case-by-case review would include, but would not be limited to, depth of the site, current speeds, substrate type, the frequency of harmful algal blooms (HABs) or hypoxia at the proposed site, marine mammal migratory pathways, and 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 that such a site poses significant risks to EFH, endangered species, or threatened marine species, will 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(s), substrate and currents at the site will inhibit the dispersal of wastes and effluents, the site poses significant risks of mortality to the cultured species due to low dissolved

oxygen or HABs, or other grounds inconsistent with FMP objectives or applicable federal laws. The information used by NMFS for siting a facility with regard to proximity to commercial and recreational fishing grounds would include, but is not limited to, 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. Such a determination by the RA shall be based on consultations with NMFS offices and programs and siting and other information submitted by the permit applicant. If a proposed site is denied, the RA shall provide the determination and the basis for it, in writing to the permit applicant.

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP.

Preferred Alternative 3 will establish specific criteria for siting, but will not establish predefined zones. Based on the criteria specified in **Preferred Alternative 3**, approximately 28,719 nm² will be suitable for offshore aquaculture in the Gulf. This area will represent approximately 13.7 percent of the entire Gulf EEZ. In order to protect unique areas that are more sensitive to adverse environmental effects, aquaculture will be prohibited in marine protected areas and marine reserves, HAPCs, SMZs, permitted artificial reef areas, and coral reef areas. Operations will also be required to be sited at least 1.6 nm from each other and the permitted site will need to be twice as large as the area encompassed by allowable aquaculture systems to allow fallowing and rotation of cages, net pens, and other allowable systems. Additionally, permit applicants will be required to conduct a baseline environmental assessment and subsequent environmental monitoring at the proposed site in accordance with NMFS guidance and procedures. NMFS will coordinate the development of guidance and procedures with the EPA, ACOE, and other federal agencies with regulatory authority over marine aquaculture. A baseline environmental assessment is necessary for NMFS to ensure siting will not unacceptably affect EFH, important benthic habitat, and marine resources. Follow-up environmental monitoring will allow NMFS and other federal agencies to assess changes at the site resulting from aquaculture operation. NMFS will also be provided authority to conduct case-by-case reviews of specific sites.

Preferred Alternative 3 was chosen because it includes the most thorough review of a proposed site and is therefore the **environmentally preferred alternative**.

Rejected alternatives to the proposed action.

Alternative 1: No Action, do not designate areas in the Gulf EEZ where aquaculture would be allowed. The ACOE would permit sites for aquaculture. NMFS and the Council would continue to review and comment on ACOE siting permits.

Alternative 2: Establish marine aquaculture zones within which individual sites would be permitted. Marine aquaculture facilities may only be sited in the zones specified (Figure 4.6.1). Coordinates for these areas are specified in Table 4.6.1 of the Aquaculture FMP.

Alternative 1 would not have provided NMFS with authority to regulate siting of aquaculture facilities. Rather, **Alternative 1** would have only allowed NMFS to comment on ACOE Section

10 siting permits to ensure proper siting of facilities. This alternative would have relegated NMFS' role to only commenting on permits under the authority of other federal agencies, potentially providing the least protection to the physical and biological environments. The ACOE could potentially approve a site despite NMFS' objection; however, the ACOE would have had to consider any comments and conservation measures provided by NMFS. Because criteria for approving a site likely will differ between these two agencies, there is potential for a site to be approved that results in adverse effects to the physical and biological environments, such as habitat degradation and diminished water quality.

Alternative 2 would have established 13 zones for conducting marine aquaculture which encompass 10,392 nm² of the Gulf, or approximately 5 percent of the entire Gulf EEZ (209,226 nm²). These zones are based on Geographic Information System maps developed by the Gulf States Marine Fisheries Commission, which identify suitable areas for aquaculture. The zones represent approximately 36 percent of the total area considered to be suitable for conducting offshore marine aquaculture in the Gulf EEZ. However, establishing broad zones may not include sufficient detail to prevent or minimize localized, small-scale impacts associated with a particular site, and under this alternative, additional authority would likely be needed to be provided to NMFS to evaluate specific sites within each of the predefined zones.

Action 7. Establish Restricted Access Zones for Marine Aquaculture Facilities

Preferred Alternative 2: Create a restricted access zone for each aquaculture facility. The boundaries of an aquaculture facility's restricted access zone shall correspond with the coordinates on the approved ACOE Section 10 permit. No recreational and no commercial fishing other than offshore aquaculture may occur in the restricted access zone. No fishing vessels may operate in or transit through the restricted access zone unless the vessel has on board a signed copy (i.e., a permit with an original signature and not a copy of the signature) of the facilities' aquaculture permit onboard. 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 letters at least 6 inches in height and in a color that contrasts with the color of the floating device.

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP.

Preferred Alternative 2 will establish a restricted access zone that corresponds to the coordinates on the ACOE siting permit, which should be an area at least twice as large as the total area encompassed by the allowable aquaculture systems (e.g., cages and net pens) as required in the siting criteria (Action 6). The restricted access zone will need to be marked with a floating device such as a buoy at each corner of the zone. Additionally, **Preferred Alternative 2** will require that a buoy or other floating device display the facility's permit number and the words "RESTRICTED ACCESS" in block letters at least 6 inches in height, in contrasting color to the float so that boaters and fishers are aware of the restricted access zone. These marking requirements are consistent with USCG marking requirements and are believed to provide adequate visibility. **Preferred Alternative 2** was chosen because of the large area encompassed

by the restricted access zone (at least twice the size of the area necessary for aquaculture systems). Therefore **Preferred Alternative 2** is the **environmentally preferred alternative**.

Rejected alternatives to the proposed action.

Alternative 1: No Action, Do not establish restricted access zones around marine aquaculture facilities.

Alternative 3: Prohibit recreational and commercial fishing and the operation or transit of federally permitted fishing vessels within:

- (a) 100 feet (30 meters) of allowable marine aquaculture systems.
- (b) 500 feet (152 meters) of allowable marine aquacultures systems.
- (c) 1,640 feet (500 meters) of allowable marine aquaculture systems.

Alternative 1 would not have restricted access around a marine aquaculture facility, thereby allowing fishing vessels to fish close to allowable aquaculture systems and transit in or through permitted aquaculture sites. This could result in encounters between vessels and aquaculture equipment, which may result in negative environmental consequences (e.g., escapement of cultured fish) or safety issues. **Alternative 3** considers buffer zones between fishing vessels and aquaculture systems of at least 100 feet (**Alternative 3a**), 500 feet (**Alternative 3b**) or 1,640 feet (**Alternative 3c**). These buffer zones are expected to be smaller than the zones established under **Preferred Alternative 2**, which will be based on ACOE siting coordinates. **Preferred Alternative 2** will require offshore aquaculture operations to mark their boundaries and maintain these markers. The absence of mandatory zone markings for **Alternatives 1** and **3** may reduce some of the protection afforded by buffer zones, especially if visual detection of a facility is severely impaired by existing weather conditions.

Action 8. Recordkeeping and Reporting

Preferred Alternative 2: Establish the following reporting and recordkeeping requirements for aquaculture permittees:

- (a) On a continuing basis, provide NMFS currently valid copies of all state and federal permits (e.g., ACOE Section 10 permit, EPA NPDES permit) required for conducting offshore aquaculture. Maintain and make available upon request monitoring reports required by each of these permits for the most recent three years.
- (b) Notify NMFS via phone or an electronic web-based form within 24 hours of discovery of any of the following events:
 - 1. Major escapement. Major escapement is defined as the escape of 10 percent of the cultured organisms from a single allowable aquaculture system (e.g., one cage or one net pen) within a 24 hour period or the cumulative escape within a 24 hour period from all allowable aquaculture systems (e.g., all cages or net pens) at an aquaculture facility representing 5 percent or more of the total cultured organisms or the cumulative escape of 10 percent or more of the cultured organisms from all allowable aquaculture systems at an aquaculture facility in any 30-day consecutive period. A permittee shall provide NMFS with the following information if major escapement

occurs or is suspected of having occurred: GAP number, contact person name and phone number, specific location of escapement, cause(s) for escapement and the number, type of species, size, and percent of cultured organisms that escaped, and actions being taken to address the escapement. If no major escapement occurs during a given year, then the permittee shall provide the NMFS RA with an annual report via an electronic web-based form on or before January 31 each year indicating no major escapement occurred.

2. Entanglements or interactions with marine mammals, endangered species, and migratory birds. A permittee shall provide the NMFS RA with the following information if entanglements or interactions with marine mammals, endangered species, or migratory birds occur: 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. If no entanglement or interaction occurs during a given year, then the permittee shall provide the RA with an annual report via an electronic web-based form on or before January 31 each year indicating no entanglement or interaction occurred.
- (c) Report via phone or an electronic web-based form all findings or suspected findings of any OIE-reportable pathogen episodes or additional pathogens that are subsequently identified as reportable pathogens in the NAAHP as implemented by the USDA, or U.S. Departments of Commerce or Interior that are known to infect the cultured species within 24 hours of diagnosis to NMFS. Information reported must include: OIE-reportable pathogen, percent of cultured organisms infected, findings of the aquatic animal health expert, plans for submission of specimens for confirmatory testing (as required by the USDA), testing results (when available), and actions being taken to address the reportable pathogen episode. NMFS, in cooperation with USDA's Animal and Plant Health Inspection Agency (APHIS), may order the removal of all cultured organisms from an allowable aquaculture system upon confirmation by an USDA/APHIS-approved reference laboratory that an OIE-reportable pathogen exists and USDA/APHIS and NMFS find that the event poses a significant risk to the health of wild or farmed aquatic organisms (Note: the Animal Health Protection Act of 2002 provides the Secretary of Agriculture authority to carry out operations and measures to detect, control, or eradicate any pest or disease of livestock, including animals at a slaughterhouse, stockyard, or other point of concentration. NMFS would coordinate with the USDA in ordering the removal of cultured organisms). If no finding or suspected finding of an OIE suspected pathogen episode occurs during a given year, then the permittee shall provide the NMFS RA with an annual report via an electronic web-based form on or before January 31 each year indicating no finding or suspected finding of an OIE suspected pathogen episode.
- (d) Notify NMFS within 30 days of any changes in hatcheries used for providing fingerlings or other juvenile organisms and provide updated names and addresses/locations for the applicable hatcheries.
- (e) Keep original purchase invoices or copies of purchase invoices for feed on file for three years from the date of purchase and make available to NMFS or authorized officers during inspection or upon request.
- (f) Submit sale records electronically using a web-based form and maintain and make available to NMFS personnel or authorized officers during inspection(s) or upon request, sale records

for the most recent three years. Sale records must include the species and quantity of cultured organisms sold in pounds whole weight, the estimated average weight of cultured organisms sold to the nearest tenth of a pound, the date of sale, and the names of companies or individuals to whom fish were sold.

- (g) Notify NMFS via phone or electronically using a Web-based form of the intended time, date, species and number of fingerlings or other juvenile organisms that will be transported from a hatchery, other than a hatchery that is integrated within the aquaculture facility, to an aquaculture facility at least 72 hours prior to transport.
- (h) Notify NMFS via phone or electronically using a web-based form of the intended time, date and estimated amount in pounds whole weight by species of fish to be harvested from the aquaculture facility at least 72 hours prior to harvest.
- (i) Notify NMFS via phone or electronically using a web-based form of the intended time, date, and port of landing for any vessel landing cultured organisms harvested from an aquaculture facility at least 72 hours prior to landing.
- (j) Any cultured organisms harvested from an offshore aquaculture facility and being transported for landing ashore or sale must be accompanied by the applicable bill of lading through the first point of sale. The bill of lading must include species name, quantity in numbers or pounds, GAP number of the aquaculture facility from which the fish were harvested, and name and address of purchaser.
- (k) Maintain and make available to NMFS personnel or authorized officers upon request a written or electronic daily record of the number of cultured animals introduced into and number or pounds and average weight of fish removed from each allowable aquaculture system, including mortalities, for the most recent three years.
- (l) Permittee must provide NMFS current information (i.e. updates if changed since application) regarding names, addresses, and phone numbers of captains, pilots, aircraft owners, and vessel owners, along with documentation or identification numbers for project vessels and aircraft.
- (m) Permit applicants must provide NMFS copies of valid state and federal aquaculture permits for each hatchery they obtain fingerlings from.
- (n) 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 electronically via a web-based form to the NMFS RA, including the following information: the number of animals, species, and size, the methods, gear, 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. Allowable methods or gear used for broodstock capture include those identified for each respective fishery in 50 CFR 600.725, except red drum, which may be harvested only with handline or rod and reel. The NMFS RA may deny or modify a request for broodstock collection 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 other grounds inconsistent with FMP objectives or other federal laws. If a broodstock collection request is denied or modified, the RA shall provide the determination and the basis for it, in writing to the permittee. If a broodstock collection request is approved, the permittee shall submit a report to the RA 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 on a Web-based form to the NMFS RA no later than 15 days after the date of harvest.

- (o) 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* 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 permit holder the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available upon request 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 Customer Service Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.
- (p) Any other appropriate recordkeeping and reporting requirements necessary for evaluating and assessing the environmental impacts of an aquaculture operation.

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP

Preferred Alternative 2 will require aquaculture facilities to meet multiple recordkeeping and reporting requirements. The intent of these requirements is to minimize or prevent impacts to wild stocks, habitat, and other biological resources.

Preferred Alternative 2 establishes recordkeeping and reporting requirements for permittees that are intended to assist law enforcement in determining compliance with applicable regulations. For example, feed invoices will assist NMFS and the EPA in the event that water quality problems arise as a result of the type of feed being used. Harvest and sale records will be used to ensure that production does not exceed the maximum annual production level allowed by Action 9. Harvest and sale records and daily records of the number of cultured animals introduced into and removed from (including mortalities) each allowable aquaculture system may also be used for auditing purposes.

Preferred Alternative 2 requires permittees to submit copies of valid state and federal aquaculture permits to NMFS on a continuing basis to determine if a permittee possesses other necessary permits for operation. Permittees will also be required to maintain and make available monitoring reports required by other federal agencies for a period of three years which will alert NMFS if monitoring requirements of other agencies identify impacts to the physical or biological environment. NMFS will work cooperatively with the ACOE, the EPA, and other federal agencies to correct or mitigate any problems caused by the operation, or if necessary, revoke the permit.

Preferred Alternative 2 requires permittees to report major escapement events or entanglements and interactions with marine mammals, endangered species, or migratory birds within 24 hours of discovery to NMFS, which will allow NMFS and other agencies to more quickly and efficiently respond to these events.

Preferred Alternative 2 requires cultured organisms to be inspected and certified as free of OIE reportable pathogens prior to stocking in offshore aquaculture systems. Stocking pathogen-free organisms will be in the best interest of the operation, in order to maintain healthy product, and not spread pathogens to wild stock. If OIE reportable pathogens are determined to exist, NMFS, in cooperation with the Secretary of Agriculture, may order the removal of all cultured organisms from an allowable aquaculture system if the OIE-reportable pathogens pose a significant threat to the health of other cultured organisms or wild aquatic organisms (7 U.S.C. 8301 et seq.).

Preferred Alternative 2 specifies notification requirements for permittees. Permittees will be required to notify NMFS 72 hours in advance of transport, harvest, or landing of cultured organisms which will allow enforcement and NMFS staff to be present at a facility or landing location when these events occur to determine compliance with regulations. Permittees will also be required to notify NMFS within 30 days of changes in hatcheries to help ensure compliance with operational restrictions contained (Action 2: e.g., marking and tagging requirements for hatchery fish, no genetically modified organisms or transgenic animals). These alternatives will all benefit the biological environment by improving enforcement and ensuring wild species are not harvested or landed and reported as cultured products.

Preferred Alternative 2 allows NMFS to better enforce aquaculture regulations by ensuring records are kept up to date and requiring current contact information for hatcheries used to provide fingerlings, captains, pilots, aircraft owners, and vessel owners used to support aquaculture activities and operations, along with documentation or identification numbers for project vessels and aircraft.

Preferred Alternative 2 specifies requirements for harvesting broodstock. Permittees must submit a broodstock harvest request to NMFS at least 30 days prior to the expected date of harvest. If broodstock harvest is approved, then the permittee will be required to report to NMFS once broodstock have been harvested. NMFS will be able to monitor and, if necessary, limit the amount of fish harvested for broodstock to avoid negative impacts on wild stocks. Additionally, restrictions on allowable gear and methods used for broodstock harvest will help minimize detrimental effects on the physical environment.

Preferred Alternative 2 will provide for modifications to recordkeeping and reporting requirements by the NMFS RA in the event of a catastrophic event (e.g., hurricane). The RA will determine when catastrophic conditions exist and which permittees or geographic areas are affected by these conditions. The RA will then provide timely notice to those affected by the catastrophic conditions and may modify or suspend time schedules and reporting methods for the duration of the catastrophic conditions. If records and reports cannot be submitted electronically, then the RA will provide necessary paper-based forms for submission of records and reports. This provision is intended to ensure NMFS continues to receive reports and records in the event of a catastrophe.

Preferred Alternative 2 also will allow other appropriate recordkeeping and reporting requirements to be established that are necessary for evaluating and assessing the environmental impacts of an aquaculture operation.

Preferred Alternative 2 was chosen because it will institute the most stringent recordkeeping and reporting requirements. Therefore, **Preferred Alternative 2** is the **environmentally preferred alternative**.

Rejected alternatives to the proposed action.

Alternative 1: No Action, the Regional Administrator has authority to specify recordkeeping and reporting requirements in an EFP (50 CFR 600.745).

Alternative 1 would not have provided a standardized set of requirements for monitoring environmental impacts. Rather, **Alternative 1** would have allowed the RA to specify recordkeeping and reporting requirements as specified in EFP regulations. If the RA does not specify an adequate range of recordkeeping and reporting requirements under the EFP, then environmental impacts to the physical and biological environments could occur over the short and long term resulting in increased potential for habitat degradation, escapement, and disease outbreaks.

Action 9. Biological Reference Points and Status Determination Criteria

Preferred Alternative 2: Establish the following new biological reference points and status determination criteria for aquaculture in the Gulf EEZ as follows:

The proxy for MSY is (e) 64 mp ww.

The proxy for OY is the total yield harvested by all permitted aquaculture operations annually, but not to exceed (d) 64 mp ww; Equal to MSY.

No individual, corporation, or other entity can be permitted to produce more than (c) 20 percent of the maximum level of OY.

Production of juvenile fish by a hatchery in the Gulf EEZ will not be counted toward OY or the 20-percent production restriction because those fish would be accounted for subsequently via reported harvest at the aquaculture facility where grow-out occurs.

If planned aquaculture production exceeds the preferred OY specified in Preferred Alternative 2 than the Council would initiate review of the OY proxy and aquaculture program, and NMFS would publish a control date, after which entry into the aquaculture industry may be limited or restricted.

Overfished (i.e., minimum stock size threshold [MSST]) and overfishing (i.e., maximum fishing mortality threshold [MFMT]) definitions contained in the various FMPs to manage wild stocks will be used as proxies for assessing the status of those wild stocks potentially affected by excessive production in aquaculture operations.

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP.

Preferred Alternative 2 specifies status criteria and biological reference points and establishes conservative levels of production until more is known about the impacts of aquaculture in the Gulf. The Council's **Preferred Alternative 2** will limit both the quantity of cultured fish and shellfish that can be produced by the offshore aquaculture operations. For these reasons, **Preferred Alternative 2** is the **environmentally preferred alternative**. In regard to specific MSY and OY proxies, MSY proxy (b) and OY proxy (b) would be the **environmentally preferred** options as this would result in the lowest amount of fish being cultured in (and removed from) the Gulf EEZ on an annual basis. Capping production levels at 20 percent for a single business, individual or entity would be the **environmentally preferred** option as it would result in fewer operations being created in the Gulf EEZ.

Preferred Alternative 2 will establish biological reference points and status determination criteria for aquaculture in the Gulf. MSY will be 64 mp ww (**Preferred 2(e)** for MSY), which represents the average landings of all marine species in the Gulf, except menhaden and shrimp, between 2000-2006. Setting MSY equal to a specific annual poundage allows the Council to take a more precautionary approach until more is known about the impacts of aquaculture in the Gulf. The MSY specification, as with other fisheries, may be modified based on new information developed as this component of the fishery proceeds.

The Council's **Preferred 2(d)** for OY sets OY at 64 mp ww. Since there is no need to leave cultured animals in offshore aquaculture grow-out systems to support future generations, OY can be set equal to MSY. Accordingly, there are currently no social, economic, or ecological factors supporting a reduction from MSY. The lower OY is set, the greater the benefit to the biological and physical environments. By establishing a precautionary OY level, the Council can assess the impacts of aquaculture as the industry grows to determine if the specified OY level is adequately protecting wild stocks and habitat. If impacts are not observed, or are considered to be minimized to the extent practicable and are not resulting in significant negative impacts, than the Council could consider increasing OY/MSY in the future.

Preferred Alternative 2 will also establish a production cap for individuals, corporations, or other entities issued a GAP. This provision is necessary to ensure entities do not obtain an excessive share of the allowable yield (National Standard 4: 50 CFR 600.325[a][3]). The level selected by the Council for capping production must ensure against possible anti-competitive effects resulting from a small number of entities accounting for most or all of the aquaculture production. The Council's preferred **2(c)** will cap production by individuals, corporations, or other entities at 20 percent of OY (i.e., 20 percent of 64 mp; Council preferred). Capping production at 20 percent (versus 5 or 10 percent) offers the greatest social and economic benefit to aquaculture facility owners and those who benefit from their production because it will allow aquaculture producers to increase their scale of production, produce larger quantities, and potentially experience greater economies of scale than the other two alternatives. Lower cap values will produce lower benefits of this nature.

Preferred Alternative 2 was chosen because it aims to reduce the risk and magnitude of adverse economic and social impacts to fishermen, their families, and fishing communities, which could be caused by direct competition and the competitive advantages of offshore aquaculture operations. Further, the MSY and OY proxies **Preferred (e)** and **Preferred (d)**, respectively,

were chosen to provide an opportunity for the aquaculture industry in the Gulf EEZ to develop, while still taking a precautionary approach in regard to production until more is known about the number and size of operations, potential environmental impacts resulting from aquaculture, economic sustainability of aquaculture, and the production capacity of various marine aquaculture systems. The 20 percent production cap for a single business, individual or entity (**Preferred (c)**) was also chosen to ensure against possible anti-competitive effects resulting from a small number of entities accounting for most or all of the aquaculture production.

Rejected alternatives to the proposed action.

Alternative 1: No Action. Do not establish biological reference points (MSY, OY) or status determination criteria (MFMT, MSST) specific to aquaculture in the Gulf EEZ.

Alternative 2: Establish the following new biological reference points and status determination criteria for aquaculture in the Gulf of Mexico EEZ:

The proxy for MSY is:

- (a) the total yield harvested by all aquaculture operations in a given year within the management regime established in this FMP.**
- (b) 16 million pounds whole weight (mp ww).**
- (c) 32 mp ww.**
- (d) 36 mp ww.**
- (f) 190 mp ww.**

The proxy for OY is the total yield harvested by all permitted aquaculture operations annually, but not to exceed:

- (a) 16 mp ww.**
- (b) 32 mp ww.**
- (c) 36 mp ww.**
- (e) 190 mp ww.**

No individual, corporation, or other entity can be permitted to produce more than:

- (a) 5 percent of the maximum level of OY.**
- (b) 10 percent of the maximum level of OY.**

Alternative 1 would not have established biological reference points or status determination criteria for aquaculture in the Gulf. Under this alternative, biological reference points and status criteria be specified for wild species managed by the Council, but similar criteria and reference points would not be established for aquaculture. This alternative would not have satisfied Magnuson-Stevens Act legal requirements and would have required the Council to specify reference points and criteria in a subsequent amendment to the Aquaculture FMP.

Preferred Alternative 2, unlike **Alternative 1**, establishes status criteria and reference points. MSY option 2(a) is similar to **Alternative 1** in that it sets MSY at the level aquaculture operations are capable of producing on an annual basis. MSY option 2(e) is considerably more precautionary than **Alternative 1** and sets MSY equal to 64 mp (**Preferred Alternative**).

For **Preferred Alternative 2**, the proxies for MSY are based on either the productivity of wild stocks (2(c) or 2(e) **Preferred**) or expected production capacity (2(a), 2(b), and 2(d)). Basing MSY on the harvest of wild stocks can be useful when assessing both environmental and socioeconomic risks to domestic fisheries. These MSY estimates are considered short-term proxies, i.e., over 10 years or until MSY/OY estimates are reviewed by the Council, until more is known about the number and size of operations, potential environmental impacts resulting from aquaculture, economic sustainability of aquaculture, and the production capacity of various marine aquaculture systems.

The OY proxies are likely substantially less than the yield that can be achieved by aquaculture operations over the long-term. The 2(a), 2(b), and **Preferred 2(d)** proxies are based on an estimated 5-20 operations starting business in the Gulf over the next ten years and are considered reasonable estimates for future demand of aquaculture permits. The OY proxies also assume the operations will use 6 to 12 cages approximately 3,000 to 6,000 m³ in size and that the production capacity of each cage is 22 to 44 pounds per m³. The OY proxies specified for 2(c) and 2(e) represent average commercial harvest levels of marine species from the Gulf during 2000-2006. The OY 2(c) proxy represents wild stock landings of all Council managed species proposed for culture in the Aquaculture FMP, whereas 2(e) represents the average landings of all marine species in the Gulf, except menhaden and shrimp, during 2000-2006 (if menhaden and shrimp are included, landings would total 1.53 billion pounds).

The Council also considered setting OY equal to or greater than MSY, but the preferred alternative sets OY equal to MSY because, unlike wild stock management, there is no need to leave cultured animals in offshore aquaculture grow-out systems to support future generations. The lower OY is set, the greater the benefit to the biological and physical environments. By establishing a precautionary OY level, the Council can assess the impacts of aquaculture as the industry grows to determine if the specified OY level is adequately protecting wild stocks and habitat. If impacts are not observed, or are considered to be minimized to the extent practicable and are not resulting in significant negative impacts, than the Council could consider increasing OY/MSY in the future. **Preferred Alternative 2** establishes a definition for OY. Optimum yield would either remain undefined for aquaculture in the Gulf EEZ (**Alternative 1**) or be set at 16, 32, 36, **64 (Preferred)**, or 190 mp whole weight. Guidance in 50 CFR 600.310 states OY should be based on MSY, or on MSY as it may be reduced by social, economic, and biological factors.

No individual, corporation, or other entity will be issued a permit authorizing the production of more than 20 percent of the maximum OY (**Preferred (c)**). The Council also considered capping planned production for a single operation at 5 percent of OY (**(a)**) or 10 percent of OY (**(b)**). The 20-percent individual, corporation, or other entity production cap of **Preferred (c)** offers the greatest social and economic benefit to aquaculture facility owners and those who benefit from their production because it would allow aquaculture producers to increase their scale of production, produce larger quantities, and potentially experience greater economies of scale than the other two alternatives. Lower cap values, i.e., 5 and 10 percent (**(a)** and **(b)**), would produce lower benefits of this nature. The higher the cap, however, the lower the number of potential operators, the lower the competition, increased risk of economic and social harm from anti-competitive behavior, and the greater the potential for spread of aquaculture activities, and associated costs and benefits, across the Gulf. In reviewing permit applications, NMFS will

determine if planned production amounts are consistent with the permit application. This provision is necessary to ensure entities do not obtain an excessive share of the allowable yield (National Standard 4: 50 CFR 600.325(a)(3)). The level selected by the Council for capping production must ensure against possible anti-competitive effects resulting from a small number of entities accounting for most or all of the aquaculture production.

Action 10. Framework Procedures

Preferred Alternative 3: Specify the following framework procedures for modifying biological reference points (MSY, OY), and management measures for offshore marine aquaculture in the Gulf of Mexico EEZ.

- A. The Council will appoint an Aquaculture Advisory Panel (AP) to meet at least bi-annually to evaluate the aquaculture management program proposed in this FMP (and as amended by subsequent Council actions). The group shall be composed of Council staff, NMFS biologists and social scientists, Scientific and Statistical Committee (SSC) members, Socioeconomic Panel (SEP) members, and other state, university, or private scientists with expertise related to aquaculture. The AP will address and review the following:
1. Annual planned aquaculture production levels relative to MSY and OY.
 2. Whether or not the condition and status of wild stocks, marine mammals, protected resources, EFH, and other resources managed by the Council and NMFS are adversely affected by aquaculture through:
 - a. OIE reportable pathogens;
 - b. organic and benthic loading and changes in water quality;
 - c. entanglements and interactions;
 - d. escapement of cultured fish;
 - e. other factors.
 3. Economic and social considerations of aquaculture in the EEZ as they relate to Gulf fishing communities.
 4. Management measures for regulating aquaculture, including:
 - a. permit application requirements (Action 2);
 - b. aquaculture operational requirements and restrictions, including monitoring (Action 2);
 - c. allowable aquaculture system requirements (Action 5);
 - d. siting requirements (Action 6); and,
 - e. recordkeeping and reporting requirements (Action 8).
- B. The AP will prepare a written report with its recommendations for submission to the Council. The report will provide the scientific basis for their recommendations, and may include, but is not limited to:
- a. a summary of annual aquaculture landings and planned production;
 - b. a summary of whether or not Council and NMFS managed resources have been adversely affected by aquaculture;
 - c. recommended changes to permit application requirements, operational requirements and restrictions, allowable aquaculture system requirements, siting requirements, and recordkeeping and reporting requirements; and
 - d. a summary of ongoing research activities related to aquaculture in the Gulf EEZ, including important findings and results; and,

- e. recommendations for revising MSY or OY.
- C. If the AP determines aquaculture is adversely affecting wild stocks, stock complexes, marine mammals, protected resources, essential and critical habitat, fishing communities, or other resources managed by the Council or NMFS, they may recommend MSY and OY be reduced. Any decrease in MSY or OY shall include the scientific basis for the recommendation.
- D. If the AP determines aquaculture is not adversely affecting wild stocks, stock complexes, marine mammals, protected resources, essential and critical habitat, fishing communities, or other resources managed by the Council or NMFS, they may recommend to the Council that MSY and OY be increased. Any increase in MSY or OY shall include the scientific basis for the recommendation.
- E. If the AP determines changes to permit application requirements, operational requirements and restrictions, allowable aquaculture system requirements, siting requirements, and recordkeeping and reporting requirements are warranted, they shall provide the Council with recommended changes, including rationale for such changes.
- F. The Council will review and consider the AP's recommendations and hold a public hearing to obtain comments on the AP's report. After public input, the Council will determine if changes to aquaculture management measures or MSY/OY are warranted. If changes are warranted, then the Council will develop a regulatory amendment. The Council may convene the SEP or SSC to provide additional advice prior to taking final action on the regulatory amendment. The Council will provide an opportunity for public input when taking final action.
- G. If changes are needed to MSY, OY, or management measures listed above, the Council will submit to the RA a regulatory amendment, accompanied by the AP's report and any relevant public comments.
- H. The RA will review the Council's regulatory amendment for consistency with the goals and objectives of the Aquaculture FMP, National Standards, the Magnuson-Stevens Act, and other applicable law. If the RA concurs with the recommendations, regulations will be drafted and implemented through regulatory amendment in the *Federal Register*. If the RA rejects the recommendations, the RA shall notify the Council in writing of the reasons for rejection and existing regulations would remain in effect. Regulatory changes that may be established or modified by the RA through regulatory amendment in the *Federal Register* include:
 - a. Adjustments to MSY;
 - b. Adjustments to OY;
 - c. permit application requirements;
 - d. aquaculture operational requirements and restrictions, including monitoring requirements;
 - e. allowable aquaculture system requirements;
 - f. siting requirements for aquaculture facilities; and,
 - g. recordkeeping and reporting requirements.

NMFS is promulgating a final rule to implement this action as specified in the Aquaculture FMP.

Preferred Alternative 3 will establish an organizational framework for the Council and NMFS to effectively manage the aquaculture fishery. **Preferred Alternative 3** will provide the Council with broad authority to make regulatory changes. **Preferred Alternative 3** will establish the most flexible regulatory process that could adapt to ongoing changes in the offshore aquaculture industry, which could both support the developing industry and reduce negative externalities and associated economic and social costs caused by the industry. **Preferred Alternative 3** was

chosen as it is expected to provide the best balance between timely review of the aquaculture program, timely implementation of regulatory measures, and public opportunities for proposed regulatory changes. For these reasons, **Preferred Alternative 3** is the **environmentally preferred alternative**.

Rejected alternatives to the proposed action.

Alternative 1: No action (status quo), do not specify framework procedures for modifying aquaculture management measures or biological reference points.

Alternative 2: Specify the following framework procedures for modifying biological reference points (MSY, OY) for offshore marine aquaculture in the Gulf EEZ.

- A. The Council will appoint an Aquaculture AP to meet at least bi-annually to evaluate the aquaculture management program proposed in this FMP (and as amended by subsequent Council actions). The group shall be composed of Council staff, NMFS biologists and social scientists, SSC members, SEP members, and other state, university, or private scientists with expertise related to aquaculture. The AP will address and review the following:
1. Annual planned aquaculture production levels relative to MSY and OY.
 2. Whether or not the condition and status of wild stocks, marine mammals, protected resources, EFH, and other resources managed by the Council and NMFS are adversely affected by aquaculture through:
 - a. OIE reportable pathogens;
 - b. organic and benthic loading and changes in water quality;
 - c. entanglements and interactions;
 - d. escapement of cultured fish;
 - e. other factors.
 3. Economic and social considerations of aquaculture in the EEZ as they relate to Gulf fishing communities.
- B. The AP will prepare a written report with its recommendations for submission to the Council. The report will provide the scientific basis for their recommendations, and may include, but is not limited to:
- a. a summary of annual aquaculture landings and planned production;
 - b. a summary of whether or not Council and NMFS managed resources have been adversely affected by aquaculture;
 - c. a summary of ongoing research activities related to aquaculture in the Gulf EEZ, including important findings and results; and,
 - d. recommendations for revising MSY or OY.
- C. If the AP determines aquaculture is adversely affecting wild stocks, stock complexes, marine mammals, protected resources, essential and critical habitat, fishing communities, or other resources managed by the Council or NMFS, they may recommend MSY and OY be reduced. Any decrease in MSY or OY shall include the scientific basis for the recommendation.
- D. If the AP determines aquaculture is not adversely affecting wild stocks, stock complexes, marine mammals, protected resources, essential and critical habitat, fishing communities, or other resources managed by the Council and NMFS, they may recommend to the Council that MSY and OY be increased. Any increase in MSY or OY shall include the scientific basis for the recommendation.

- E. The Council will review and consider the AP's recommendations and hold a public hearing to obtain comments on the AP's report. The Council may convene the SEP or SSC to provide additional advice prior to taking final action. After public input, the Council will make findings on the need for changes.
- F. If changes are needed to MSY or OY, the Council will advise the RA in writing of their recommendations, accompanied by the AP's report, relevant background material, and public comments.
- G. The RA will review the Council's recommendations for consistency with the goals and objectives of the Aquaculture FMP, national standards, the Magnuson-Stevens Act, and other applicable laws. If the RA concurs with the recommendations, regulations will be drafted and implemented through notice in the *Federal Register*. If the RA rejects the recommendations, the RA shall notify the Council in writing of the reasons for rejection and existing regulations would remain in effect. Regulatory changes that may be established or modified by the RA by notice in the *Federal Register* include:
 - a. adjustments to MSY; and,
 - b. adjustments to OY.

Alternative 1 would not have specified framework procedures for aquaculture. Should the Council need to modify aquaculture regulations, **Alternative 1** would have required that a plan amendment be developed which would have taken more time than development of a *Federal Register* notice or regulatory amendment. This could slow the implementation of various management measures in the event that negative impacts are occurring on the physical, biological, social, or economic environments.

Alternative 2 would have established an organizational framework for the Council and NMFS to effectively manage the aquaculture fishery; however, it provides only limited authority for the Council and NMFS to make regulatory changes. **Alternative 2** is similar to **Preferred Alternative 3** in that it relies on an Aquaculture AP that meets at least bi-annually to provide recommendations to the Council. However, under **Alternative 2**, the authority of the AP would have been much more limited. Changes in the offshore aquaculture industry, such as technological change, that may necessitate other regulatory changes, such as reporting and/or operational requirements, would not have been possible under **Alternative 2**.

Mitigation, Monitoring and Enforcement

CEQ regulations implementing NEPA direct agencies to identify in the ROD whether all practical means to avoid or minimize environmental harm from the proposed actions have been adopted, and if not, why they were not (40 CFR Part 1505.2(a)(b)(c)). Mitigation measures are the practical means to avoid, minimize, and reduce impacts, and compensate for unavoidable impacts. Additionally, the regulations require a monitoring and enforcement program be adopted and summarized where applicable for any mitigation.

In relation to the purpose and need for action, NMFS has thoroughly analyzed in the FPEIS, and described in this ROD, a range of reasonable alternatives and their associated environmental impacts. The actions and preferred alternatives in this FMP include various measures to mitigate

or prevent impacts to wild Gulf resources resulting from the permitting and implementation of marine aquaculture operations in the Gulf EEZ. Such measures include:

- Action 2: Requiring aquaculture permit holders to obtain an assurance bond for removal of structures if an operation terminates; contract with an aquatic animal health expert; prohibition on use of genetically modified organisms and transgenic animals; obtain documentation from the hatchery certifying broodstock are marked or tagged; submit emergency disaster plans; certify that broodstock harvested only from U.S. waters of the Gulf; submit broodstock fin clips, or other genetic material for future testing.
- Action 4: Use of only native Gulf species for aquaculture.
- Action 5: Evaluate proposed aquaculture system on a case-by-case basis to ensure reliable offshore growing system technology is used to provide environmental safeguards.
- Action 6: Prohibit siting facilities in marine reserves, artificial reef zones, coral reef areas, marine protected areas, SMZs and HAPCs as defined in 50 CFR 622.2; review proposed sites on a case-by-case basis; space facilities at minimum 3 km from one another; and require a baseline environmental assessment of the proposed site.
- Action 8: Require the following recordkeeping and reporting requirements:
 - Provide current valid copies of state and federal permits.
 - Require regular inspections of aquaculture systems for entanglements or interactions with marine mammals, protected species, and migratory birds and notify NMFS within 24 hours of discovering a major escapement, pathogen outbreak, or entanglement(s) or interaction(s) with marine mammals, endangered species, and migratory birds.
 - Notify NMFS within 30 days of any changes regarding hatcheries used for providing fingerlings or juveniles.
 - Maintain harvest and sale records and feed invoices.
 - Obtain prior approval for harvesting broodstock.
 - Submit an annual standardized report describing recordkeeping and reporting requirements.

Other recordkeeping and reporting requirements include notifying NMFS: when fingerlings or juveniles will be transported from a hatchery to an aquaculture facility; the estimated amount in pounds (whole weight) of species of fish to be harvested; the port of landing for any vessel with cultured organisms harvested from an aquaculture facility; as well as the applicable bill of lading through the first point of sale. Additionally, permittees will be required to first land cultured fish at a U.S. port to ensure landings are reported and accounted for when determining compliance with MSY/OY levels, abide by various gear stowage requirements, keep a copy of their aquaculture permit on any vessel, aircraft or vehicle authorized for use in aquaculture operations, and adhere to restricted landing times. The intent of these requirements is to aid enforcement.

If, at any time, permit conditions or recordkeeping and reporting requirements are not being met, NMFS could initiate an on-site inspection to determine the operations impact and, if needed, revoke the operation's permit prior to its expiration. Permittees must provide NMFS personnel and authorized officers (as defined in 50 CFR 600.10) access to their aquaculture facilities and records to conduct inspections and determine compliance with applicable regulations. A GAP or aquaculture dealer permit 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. NMFS will work cooperatively

with the ACOE, the EPA, and other federal agencies to correct or mitigate any problems caused by the operation, or if necessary, revoke the permit.

Findings Required by Other Laws and Regulations

This ROD reflects NMFS' decision to promulgating final regulations implementing the actions as identified and analyzed in the integrated final Aquaculture FMP/FPEIS and SFPEIS. NMFS has determined the proposed actions are in compliance with applicable law. These determinations are documented in other NMFS documents, including an initial regulatory flexibility analysis under the Regulatory Flexibility Act and determinations regarding the CZMA, EFH, ESA, and the IQA.

The proposed actions are intended to facility the development of offshore aquaculture and streamline the regulatory process for authorizing offshore aquaculture proposals by providing the Council and NMFS the information required to review, authorize, and monitor offshore aquaculture operations. The primary goal of the proposed aquaculture permitting program is to increase the maximum sustainable yield and optimum yield of federal fisheries in the Gulf by supplementing the harvest of wild caught species with cultured product. The proposed actions are expected to directly or indirectly benefit the overall health of the biological, physical, and human environment.

Implementation

Actions proposed, analyzed in the Aquaculture FMP will be implemented by promulgation of a final rule in the *Federal Register*.

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