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§ 622.77 Adjustment of management measures.

In accordance with the framework procedures of the FMP for Coral and Coral Reefs of the Gulf of Mexico, the RA may establish or modify the following:

(a) *Gulf coral resources*. For a species or species group: reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, acceptable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested corals.

(b) [Reserved]

Subpart E—Red Drum Fishery of the Gulf of Mexico

SOURCE: 79 FR 19494, Apr. 9, 2014, unless otherwise noted.

§ 622.90 Permits.

(a) *Dealer permits and conditions*—(1) *Permits*. For a dealer to first receive Gulf red drum harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

(2) *State license and facility requirements*. To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Permit procedures*. See §622.4 for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

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§ 622.91 Recordkeeping and reporting.

(a) *Dealers*. A dealer who first receives Gulf red drum must maintain records and submit information as specified in §622.5(c).

(b) [Reserved]

§ 622.92 Prohibited species.

(a) *General*. The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Red drum*. Red drum may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

§ 622.93 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Red Drum Fishery of the Gulf of Mexico, the RA may establish or modify the following items:

(a) Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, ABC and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(b) [Reserved]

Subpart F—Offshore Marine Aquaculture in the Gulf of Mexico

SOURCE: 81 FR 1792, Jan. 13, 2016, unless otherwise noted.

§ 622.100 General.

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

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

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

(3) During catastrophic conditions only, the RA may authorize use of paper-based components for basic required functions as a backup to what would normally be reported electronically. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the FEDERAL REGISTER, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each aquaculture permittee the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms also will be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions may be limited under the paper-based system. Assistance in complying with the requirements of the paper-based system will be available via the Permits Office, Monday through Friday between 8 a.m. and 4:30 p.m., eastern time; telephone: 1 (877) 376-4877.

(b) [Reserved]

§ 622.101 Permits.

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

(1) *Eligibility requirement for a Gulf aquaculture permit.* Eligibility for a Gulf aquaculture permit is limited to U.S. citizens as defined in the Immigration and Nationality Act of 1952, as amended, and permanent resident

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aliens lawfully accorded the privilege of residing permanently in the U.S. in accordance with U.S. immigration laws.

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

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

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

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

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

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

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

(vii) Name and address or specific location of each hatchery that would provide juvenile animals for grow-out at the proposed aquaculture facility located within the Gulf EEZ and a copy

of all relevant, valid state or Federal aquaculture permits issued to the hatchery.

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

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

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

(xi) Documentation certifying that:

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

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

(C) the applicant agrees to immediately remove all components of the aquaculture system and cultured animals remaining in approved aquaculture systems from the Gulf EEZ as ordered by the RA if there are any

other violations of the permit conditions or regulations other than those listed in paragraphs (a)(2)(xi)(A) and (B) of this section which causes the RA to order such removal.

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

(xiii) Certification by the applicant that all broodstock, or progeny of such wild broodstock, used to provide juveniles to the aquaculture facility will be or were originally harvested from U.S. waters of the Gulf, and will be or were from the same population or sub-population (based on the best scientific information available) where the facility is located, and that each individual broodstock was marked or tagged at the hatchery to allow for identification of those individuals used in spawning.

(xiv) Certification by the applicant that no genetically engineered or

transgenic animals are used or possessed for culture purposes at the aquaculture facility.

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

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

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

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

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

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

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

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

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

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

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

(2) [Reserved]

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

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

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

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

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

request for renewal, transfer or replacement.

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

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

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

(B) Based on the best scientific information available, issuance of the permit would pose significant risk to wild fish stocks, marine mammals, threatened or endangered species, essential

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fish habitat, public health, or safety; or,

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

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

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

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

(iii) The RA will issue an initial permit to an applicant after the review and notification procedures set forth in paragraph (d)(2)(i) of this section are complete and the decision to grant the permit is made under paragraph (d)(2)(ii) of this section. The initial permit will be issued 30 days after the RA notifies the applicant of the decision to grant the permit, unless NMFS receives a written request from the applicant before the end of the 30 day period to defer issuance of the permit. If the applicant requests a deferral, NMFS will include this information in the notification of permit approval published in the FEDERAL REGISTER as specified in paragraph (d)(2)(ii) of this section and will publish a FEDERAL REGISTER notice upon permit issuance. Permit issuance will be deferred for two years from the date of the RA notification unless the applicant sends a written request to NMFS to issue the permit at an earlier date. This written request must be received by NMFS at least 30

days prior to the date the applicant desires the permit to be effective.

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

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

will occur only after the RA provides official notice to both parties that the transferee is eligible to receive the permit and that the transfer is otherwise valid.

(ii) An aquaculture dealer permit is not transferable.

(6) *Renewal.* An aquaculture facility owner or aquaculture dealer who has been issued a permit under this subpart must renew such permit consistent with the applicable duration of the permit specified in paragraph (d)(4) of this section. The RA will mail an aquaculture facility owner or aquaculture dealer whose permit is expiring an application for renewal at least 6 months prior to the expiration date of a Gulf aquaculture facility permit and approximately 2 months prior to the expiration date of an aquaculture dealer permit. An aquaculture facility owner or aquaculture dealer who does not receive a renewal application from the RA within the time frames indicated in this paragraph must contact the RA and request a renewal application. The applicant must submit a completed renewal application form and all required supporting documents to the RA at least 120 days prior to the date on which the applicant desires to have a Gulf aquaculture permit made effective and at least 30 days prior to the date on which the applicant desires to have an aquaculture dealer permit made effective. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 60 days of the date of the RA's letter of notification or request an extension of time by contacting the NMFS Southeast Regional Office before the end of the 60 day timeframe, the application will be considered abandoned.

(7) *Display.* A Gulf aquaculture permit issued under this section must be prominently displayed and available for inspection at the aquaculture facility. The permit number should also be included on the buoys or other floating devices used to mark the restricted access zone of the operation as specified in § 622.104(c). An aquaculture dealer permit issued under this section, or a copy thereof, must be prominently displayed and available on the dealer's

premises. In addition, a copy of the dealer's permit, or the aquaculture facility's permit (if the fish have not yet been purchased by a dealer), must accompany each vehicle that is used to receive fish harvested from an aquaculture facility in the Gulf EEZ. A vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer.

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

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

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

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

§ 622.102 Recordkeeping and reporting.

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

(1) *Aquaculture facility owners or operators.* An aquaculture facility owner or

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operator must comply with the following requirements:

(i) *Reporting requirements*—(A) *Transport of fingerlings/juvenile fish to an aquaculture facility*. Report the time, date, species and number of cultured fingerlings or other juvenile animals that will be transported from a hatchery to an aquaculture facility at least 72 hours prior to transport. This information may be submitted electronically via the Web site or via phone. In addition, permittees are to maintain and make available to NMFS or an authorized officer upon request a written or electronic daily record of the number of cultured animals introduced into and the total pounds and average weight of fish removed from each approved aquaculture system, including mortalities, for the most recent 3 years.

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

(1) Gulf aquaculture permit number;

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

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

(4) Cause(s) of escapement;

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

(6) Actions being taken to address the escapement.

(C) *Pathogens*. Report, within 24 hours of diagnosis, all findings or suspected findings of any OIE-reportable pathogen episodes or pathogens that

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

(1) OIE-reportable pathogen;

(2) Percent of cultured animals infected;

(3) Findings of the aquatic animal health expert;

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

(5) Testing results (when available); and

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

(D) *Harvest notification*. Report the time, date, and weight of fish to be harvested from an aquaculture facility at least 72 hours prior to harvest. This information may be submitted electronically via the Web site or via phone.

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

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

any such change occurs. This information may be submitted electronically via the Web site.

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

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

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

(3) Number of mortalities and acute injuries observed;

(4) Cause of entanglement or interaction; and

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

(H) *Feed invoices.* The permittee must keep the original purchase invoices for feed or copies of purchase invoices for feed, make them available to NMFS or an authorized officer upon request, and be maintained for a period of 3 years.

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

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

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

(B) Provide NMFS with current copies of all valid state and Federal aquaculture permits for each hatchery from which fingerlings or other juvenile animals are obtained and report any

changes applicable to those permits within 30 days.

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

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

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

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

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

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

(b) [Reserved]

§ 622.103 Aquaculture facilities.*(a) Siting requirements and conditions.*

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

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

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

(4) The RA will evaluate siting criteria for proposed offshore aquaculture operations on a case-by-case basis. Criteria considered by the RA during case-by-case review include data, analyses, and results of the required baseline environmental survey as specified in § 622.101(a)(2)(v); depth of the site; the frequency of harmful algal blooms or hypoxia at the proposed site; marine mammal migratory pathways; the location of the site relative to commercial and recreational fishing grounds and important natural fishery habitats (*e.g.*, seagrasses). The RA may deny use of a proposed aquaculture site based on a determination by the RA that such a site poses significant risks to wild fish stocks, essential fish habitat, endangered or threatened species, marine mammals, will result in user conflicts with commercial or recreational fishermen or other marine resource users, will result in user conflicts with the OCS energy program, the depth of the site is not sufficient for the approved aquaculture system, substrate and currents at the site will inhibit the dispersal of wastes and effluents, the site is prone to low dissolved oxygen or harmful algal blooms, or other grounds inconsistent with FMP objectives or applicable Federal laws. The information used for siting a facility with regard to proximity to commercial and recreational fishing grounds includes electronic logbooks from the shrimp

fishery, logbook reported fishing locations, siting information from previously proposed or permitted aquaculture facilities, and other data that would provide information regarding how the site would interact with other fisheries. The RA's determination will be based on consultations with appropriate NMFS and NOAA offices and programs, public comment, as well as siting and other information submitted by the permit applicant. If a proposed site is denied, the RA will deny the Gulf Aquaculture Permit and provide this determination as required by § 622.101(d)(2)(ii).

(b) [Reserved]

§ 622.104 Restricted access zones.

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

(b) *Prohibited activities within a restricted access zone.* No recreational fishing or commercial fishing, other than aquaculture, may occur in the restricted access zone. No fishing vessel may operate in or transit through the restricted access zone unless the vessel has on board a copy of the aquaculture facility's permit with an original signature, *i.e.*, not a copy of the signature, of the permittee.

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

§ 622.105 Allowable aquaculture systems and species.

(a) *Allowable aquaculture systems.* The RA will evaluate each proposed aquaculture system on a case-by-case basis and approve or deny use of the proposed system for offshore marine aquaculture in the Gulf EEZ. Proposed

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

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

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

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

(3) Red drum, *Sciaenops ocellatus*.

(4) Spiny lobster, *Panulirus argus*.

§ 622.106 Aquaculture operations.

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

(1) *Minimum start-up requirement.* At least 25 percent of aquaculture systems approved for use at a specific aquaculture facility at the time of permit

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

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

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

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

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

(iii) The certifications required in paragraphs (a)(4)(i) and (ii) of this section must be provided to NMFS by the

permittee each time broodstock are acquired by the hatchery or used for spawning.

(5) *Health certification.* Prior to stocking fish in an approved aquaculture system at an aquaculture facility in the Gulf EEZ, the permittee must provide NMFS a copy of a health certificate (suggested form is USDA/Animal and Plant Health Inspection Service (APHIS) VS 17-141, OMB 0579-0278) signed by an aquatic animal health expert, as defined in § 622.101(a)(2)(xv), certifying that the fish have been inspected and are visibly healthy and the source population is test negative for OIE pathogens specific to the cultured species and pathogens identified as reportable pathogens in the NAAHP as implemented by the USDA and U.S. Departments of Commerce and Interior.

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

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

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

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

they must be reported as specified in § 622.102(a)(1)(i)(G).

(10) *Fishing gear stowage requirement.* Any vessel transporting cultured animals to or from an aquaculture facility must stow fishing gear as follows:

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

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

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

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

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

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

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

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

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(14) *Restriction on offloading.* For the purpose of this paragraph, offload means to remove cultured animals from a vessel following harvest from an offshore aquaculture facility. Cultured animals may only be offloaded between 6 a.m. and 6 p.m., local time.

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

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

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

(iii) The RA may deny or modify a request for broodstock harvest if allowable methods or gear are not proposed for use, the number of fish harvested for broodstock is more than necessary for purposes of spawning and rearing activities, or the harvest will be inconsistent with FMP objectives or other Federal laws. If a broodstock collection request is denied or modified, the RA will provide the determination and the basis for it, in writing to the permittee. If a broodstock collection request is approved, the permittee must

submit a report to the RA including the number and species of broodstock harvested, their size (length and weight), and the geographic location where the broodstock were captured. The report must be submitted on a Web-based form available on the Web site no later than 15 days after the date of harvest.

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

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

(b) [Reserved]

§ 622.107 Limitation on aquaculture production.

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

§ 622.108 Remedial actions.

(a) *Potential remedial actions by NMFS.* In addition to potential permit sanctions and denials in accordance with subpart D of 15 CFR part 904, NMFS

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may take the following actions, as warranted, to avoid or mitigate adverse impacts associated with aquaculture in the Gulf EEZ.

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

(2) *Actions to address genetic issues.* NMFS may sample cultured animals to determine genetic lineage and, upon a determination that genetically engineered or transgenic animals were used or possessed at an aquaculture facility, will order the removal of all cultured animals of the species for which such determination was made. In conducting the genetic testing to determine that all broodstock or progeny of such broodstock will be or were originally harvested from U.S. waters of the Gulf, will be or were from the same population or sub-population that occurs where the facility is located, and that juveniles stocked in offshore aquaculture systems are the progeny of wild broodstock, or other genetic testing necessary to carry out the requirements of the FMP, NMFS may enter into cooperative agreements with States, may delegate the testing authority to any State, or may contract with any non-Federal Government entities. As a condition of the permit, NMFS may also require the permittee to contract a non-Federal Government third party approved by the RA if the RA agrees to accept the third party testing results. The non-Federal Government third party may not be the same entity as the permittee.

(b) [Reserved]

§ 622.109 Adjustment of management measures.

In accordance with the framework procedures of the FMP for Regulating Offshore Marine Aquaculture in the

Gulf of Mexico, the RA may establish or modify the items in paragraph (a) of this section for offshore marine aquaculture.

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

(b) [Reserved]

Subparts G–H [Reserved]

Subpart I—Snapper-Grouper Fishery of the South Atlantic Region

§ 622.170 Permits and endorsements.

(a) *Commercial vessel permits*—(1) *South Atlantic snapper-grouper.* For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to sell South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for golden tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ between 35°15.19' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), either a commercial vessel permit for South Atlantic Unlimited Snapper-Grouper Permit or a trip-limited permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with a trip-limited commercial permit is limited on any trip to 225 lb (102.1 kg) of snapper-grouper. See § 622.171 for limitations on the use, transfer, and renewal of a commercial vessel permit for South Atlantic snapper-grouper.

(2) *Wreckfish.* For a person aboard a vessel to be eligible for exemption from the bag limit for wreckfish in or from the South Atlantic EEZ, to fish under a quota for wreckfish in or from the South Atlantic EEZ, or to sell