



Federal Aquaculture Regulatory Fact Sheet Series
DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration (NOAA)



This document summarizes the major federal regulatory requirements that apply to aquaculture under the statutory authorities of the National Oceanic and Atmospheric Administration (NOAA). Other federal Departments/Agencies have additional requirements.

Authorities: NOAA has regulatory and stewardship authority for fisheries, marine sanctuaries, marine mammals, threatened and endangered species, and habitat conservation. NOAA also engages in consultations with other agencies that issue permits for aquaculture activities in state and federal waters.

Permits: NOAA may issue permits authorizing aquaculture activities under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the National Marine Sanctuaries Act (NMSA). NOAA may also issue permits authorizing an aquaculture operation's interactions with, or the incidental take by an aquaculture operation of, species protected under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

Fisheries management permits - Aquaculture activities may be regulated under regulations implementing fishery management plans for fisheries in the Exclusive Economic Zone (federal waters). Fishery management plans are developed by regional Fishery Management Councils and implemented by NOAA Fisheries, under the authority of the MSA.

- Culture of "live rock" in federal waters off the coast of Florida in the Gulf of Mexico and South Atlantic is authorized under Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic (1994). NOAA Fisheries' Southeast Regional Office issues these permits in conjunction with the U.S. Army Corps of Engineers via the Programmatic General Permit SAJ-71.

>>Application information and instructions ("live rock" permits):

http://sero.nmfs.noaa.gov/operations_management_information_services/constituency_services_branch/permits/permit_apps/index.html

- Culture of species managed by the Gulf of Mexico Fishery Management Council, with the exception of shrimp and coral, is authorized under the Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico (2009). NOAA Fisheries' Southeast Regional Office began accepting Gulf Aquaculture Permit applications in February 2016.

>>Application information and instructions ("Gulf Aquaculture Permits"):

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

- Aquaculture of species covered by other regional Fishery Management Plans may require an Exempted Fishing Permit or other authorization.

Marine sanctuaries permits - Aquaculture may or may not be allowed, with a permit, in a national marine sanctuary. The management plan for each sanctuary provides information on authorized and unauthorized uses.

>>Additional information (Sanctuaries permits): <http://sanctuaries.noaa.gov/management/permits/welcome.html>

Protected species permits - Permits or other authorizations may be required for aquaculture activities that interact with marine mammals or ESA-listed species.

- *Marine mammals* - Under the MMPA, NOAA Fisheries may issue Incidental Harassment Authorizations or Letters of Authorization for aquaculture activities that interact with marine mammals. Incidental Harassment Authorizations are for activities with no potential for mortality or serious injury of marine mammals while utilizing required mitigation measures. Letters of Authorization are for activities that may result in injury or mortality of marine mammals despite utilizing required mitigation measures. NOAA Fisheries also issues an 'Annual List of Fisheries' specifying requirements for certain aquaculture activities.
- *Threatened and endangered species* - NOAA Fisheries may issue a scientific research or enhancement permit for certain types of aquaculture activities involving ESA-listed species, or require an incidental take permit for activities that interact with ESA-listed species.

>>Additional information (MMPA and ESA permits): <http://www.nmfs.noaa.gov/pr/permits/>

Consultations: The most frequent types of consultations in which NOAA engages are with the U.S. Army Corps of Engineers because most finfish and shellfish aquaculture facilities in state or federal waters require a federal permit from this agency. Consultations focus on impacts of aquaculture on ESA-listed species, critical habitat for ESA-listed species, essential fish habitat for MSA-managed species, and national marine sanctuaries.

>>Additional information (ESA): <http://www.nmfs.noaa.gov/pr/consultation/>

>>Additional information (habitat): <http://www.habitat.noaa.gov/protection/efh/consultations.html>

>>Additional information (Sanctuaries): <http://sanctuaries.noaa.gov/management/consultations/welcome.html>

Other Permitting Considerations:

- *Environmental analyses* - If NOAA is the lead permitting agency for an aquaculture activity, NOAA may prepare an environmental assessment or an environmental impact statement where required under the National Environmental Policy Act (NEPA). NOAA may also participate as a “cooperating agency” with other federal regulatory agencies that issue permits for aquaculture.

>>Additional information (NEPA): <http://www.nepa.noaa.gov/>

- *Consistency certifications* - The Coastal Zone Management Act (CZMA) is administered by NOAA's Office for Coastal Management and implemented through state coastal zone management programs. The Act requires an applicant for a federal license or permit for an activity affecting the coastal zone to provide a certification to the authorizing agency that the proposed activity complies with the enforceable policies of approved state coastal zone management programs and that such activity will be conducted in a manner consistent with the program.

>>Additional information (CZMA): <https://www.coast.noaa.gov/czm/consistency/>

Summary of NOAA Regulatory Authorities		
Agency Action	Authority	CFR/USC citation
Permits		
Permit or other authorization under a fishery management plan	Magnuson-Stevens Fishery Conservation and Management Act	50 CFR Chapter VI <i>(implementation varies by plan)</i>
Scientific research or enhancement permit (typically 5 yrs.)	Endangered Species Act – Section 10(a)(1)(A)	50 CFR 222.308
Incidental take permit (typically 1 yr.)	Endangered Species Act – Section 10(a)(1)(B)	50 CFR 222.307
Incidental harassment authorization	Marine Mammal Protection Act – Section 101(a)(5)(D)	16 U.S.C. § 1371(a)(5)(D); 50 CFR 216.101 - 108
Letter of Authorization (up to 5 yrs., requires issuance of regulations)	Marine Mammal Protection Act – Section 101(a)(5)(A)	16 U.S.C. § 1371(a)(5)(A); 50 CFR 216.101 - 108
Special Use Permit	National Marine Sanctuaries Act – Section 310	16 U.S.C. § 1441 <i>(implementation varies by Sanctuary)</i>
Sanctuary Permit	National Marine Sanctuaries Act	15 CFR § 922.48
Consultations		
ESA	Endangered Species Act – Section 7	50 CFR §§ 402.10 - 402.16
Essential Fish Habitat (EFH)	Magnuson-Stevens Fishery Conservation and Management Act	50 CFR §§ 600.905 - 600.930
NMSA	National Marine Sanctuaries Act – Section 304(d)	16 U.S.C. § 1434(d)
Other permitting considerations		
Environmental Assessment or Environmental Impact Statement	National Environmental Policy Act	42 U.S.C. §§ 4321 - 4370e 40 CFR parts 1501 - 1506
Consistency certification	Coastal Zone Management Act	16 U.S.C. §§ 1451 - 1464

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