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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 698

[Docket No. 180328324-8464-01]

RIN 0648-BH87

Magnuson-Stevens Fishery Conservation and Management Act; Traceability Information Program for Seafood

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

ACTION: Proposed rule; request for comments.

SUMMARY: Pursuant to the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 and the Magnuson-Stevens Fishery Conservation and Management Act (MSA), NMFS is proposing a Traceability Information Program for Seafood to establish registration, reporting and recordkeeping requirements for U.S. aquaculture producers of shrimp and abalone, two species subject to the Seafood Traceability Program, also known as the Seafood Import Monitoring Program (SIMP). This proposed rule, if finalized, would provide traceability for these species from the point of production to entry into U.S. commerce. Collection of traceability information for U.S. aquacultured shrimp and abalone will be accomplished by electronic submission of data to NMFS. This rule would require owners or operators of U.S. inland, coastal and marine commercial aquaculture facilities (“producers”) to report information about

production and entry into U.S. commerce of shrimp and abalone products. In addition, this rule would require producers to register with NMFS and retain records pertaining to the production of shrimp and abalone and entry of those products into U.S. commerce. This proposed rule serves as a domestic counterpart to the shrimp and abalone import requirements under SIMP, and will help NMFS verify that U.S. aquacultured shrimp and abalone were lawfully produced by providing information to trace each production event(s) to entry of the fish or fish products into U.S. commerce. The rule will also decrease the incidence of seafood fraud by requiring the reporting of this information to the U.S. Government at the point of entry into U.S. commerce so that the information reported (*e.g.*, regarding species and harvest location) can be verified.

DATES: Written comments must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments on this action, identified by NOAA-NMFS-2018-0055, may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* Go to Docket Number NOAA-NMFS-2018-0055, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Celeste Leroux, Office of International Affairs and Seafood Inspection, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) voluntarily submitted by the

commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Enter N/A in the required fields if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (PDF) formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the NOAA Fisheries Office of International Affairs and Seafood Inspection (IASI) and by email to: *OIRA_Submission@omb.eop.gov* or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Celeste Leroux at (301) 427-8372 or *Celeste.Leroux@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2015, the Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of Commerce and State, published its action plan to implement Task Force recommendations for a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud. As part of implementing the Task Force plan, NMFS issued a final rule (81 FR 88975, December 9, 2016) for a risk-based traceability program to track seafood from production to entry into U.S. commerce known as the Seafood Traceability Program or Seafood Import Monitoring Program (SIMP) (*see* 50 CFR 300.320-300.325). For clarity, NMFS will refer to this program as SIMP throughout this preamble, while the

codified regulatory text at 50 CFR 300.320-300.325 uses the term “Seafood Traceability Program.” The final rule included, for designated priority fish species, permitting, reporting, and recordkeeping requirements relating to the importation of certain fish and fish products to provide for traceability from point of production to point of entry into U.S. commerce in order to prevent illegally harvested or produced and misrepresented seafood from entering into U.S. commerce. SIMP applies to thirteen species and species groups, including shrimp and abalone, identified as particularly vulnerable to IUU fishing and/or seafood fraud. However, in the final rule establishing SIMP, NMFS stayed program requirements for shrimp and abalone species indefinitely because there is commercial scale aquaculture of shrimp and abalone in the United States and gaps existed in the collection of traceability information for domestic aquaculture, which is largely regulated at the State level.

In the SIMP final rule, NMFS explained that when the domestic reporting and recordkeeping gaps have been closed, NMFS will then publish an action in the **Federal Register** to lift the stay of the effective date for § 300.324(a)(3) of the rule pertaining to shrimp and abalone. (81 FR at 88977-78, December 9, 2016).

On March 23, 2018, the President signed into law the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 (2018 Appropriations Act) (Pub. L. 115-141, Div. B). Section 539 of the Act directs the Secretary of Commerce to lift the stay on the effective date of the SIMP final rule for shrimp and abalone species and establish a compliance date not later than December 31, 2018. On April 24, 2018, NMFS published a final rule lifting that stay, and established a compliance date of December 31, 2018 for imports of shrimp and abalone (83 FR 17762).

In addition to the requirement to include shrimp and abalone species under SIMP, section 539 of the 2018 Appropriations Act directed the Secretary of Commerce to “...establish a traceability program for United States inland, coastal, and marine aquaculture of shrimp and abalone...” and by December 31, 2018 to “...promulgate such regulations as are necessary and appropriate to establish and implement the program.”

This proposed Traceability Information Program for Seafood (Program) would establish registration, reporting and recordkeeping requirements for domestic, commercial aquaculture producers of shrimp and abalone species and products containing those species from the point of production to entry into U.S. commerce. A producer, *i.e.*, the owner or operator of an aquaculture facility that produces shrimp or abalone for human consumption, is responsible for the registration, reporting and recordkeeping requirements of this Program. Section 698.2 defines producer and aquaculture facility. Consistent with the plain language of section 539 of the 2018 Appropriations Act, the scope of the Program will be limited to shrimp and abalone species unless and until otherwise authorized by Congress. The requirements under this proposed Program will fill the gaps identified during development of the SIMP with respect to the collection of traceability information for domestic aquaculture of shrimp and abalone species.

Section 539 further directs that information collected pursuant to a regulation promulgated under this section shall be confidential and shall not be disclosed except for the information disclosed under section 401(b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a(b)(1)). Section 1881a(b)(1) corresponds to MSA section 402(b)(1). Thus, NMFS believes that the reference to MSA section 401(b)(1) is a typographical error and the intent of Congress was to cite to MSA

section 402(b)(1). MSA section 401(b)(1) pertains to fishing vessel registration, whereas 402(b)(1) addresses data confidentiality which lends further support to the notion that Congress intended to cite to section 402(b)(1). Accordingly, NMFS will apply the data confidentiality provisions of MSA section 402(b)(1) to the data required to be submitted under this proposed Program.

The proposed Traceability Information Program for Seafood consists of three components: (1) registration; (2) monthly reporting of production events; and (3) recordkeeping requirements with respect to both production events and chain of custody information from production to the point of entry into U.S. commerce via sale or non-sale transaction (including transfers between components of a vertically-integrated enterprise). Application of the Program's reporting and recordkeeping requirements would enable NMFS to determine the origin of the domestic aquaculture shrimp and abalone products and confirm that they were lawfully produced and not misrepresented. Coextensive with the scope of SIMP, the Traceability Information Program for Seafood traces fish and fish products from production to entry into U.S. commerce. Fish or fish products regulated under the Traceability Information Program for Seafood are shrimp and abalone species produced by an aquaculture facility and products containing those aquacultured species. Section 698.2 defines fish or fish products regulated under this part, "produce/production," and "entry into U.S. commerce."

I. Registration

In § 698.4, NMFS proposes to identify aquaculture producers (*i.e.*, owners or operators of aquaculture facilities) through a registration process that will link each producer with a unique producer identifier. The purpose of registration is not to permit or

regulate production activities, but rather to identify the person responsible for reporting data to NMFS and recordkeeping for audit and inspection purposes. Use of a unique producer identifier will ensure that data reported is attributed to the correct producer. As proposed, all U.S. producers of species covered by this program that annually enter product for human consumption valued at \$1,000 or more into U.S. commerce must electronically register and submit their fee for registration via an electronic reporting system established by NMFS. The amount of the one-time registration fee, currently estimated to be \$30.00, will be calculated in accordance with procedures set forth in Chapter 9 of the NOAA Finance Handbook for determining the administrative costs for special products and services

(<http://www.corporateservices.noaa.gov/finance/Finance%20Handbook.html>); the registration fee will not exceed such costs. Because the electronic registration system has not yet been completed, NMFS has not made a final determination about total development costs and out-year costs for operations and maintenance. Additionally, the number of users may vary from NMFS estimates as the number of aquaculture operations expands or contracts. Consequently, the calculation of the administrative cost recovery fee may be higher or lower than the \$30 estimate. NMFS requests comment on the impact that registration fees may have on aquaculture operations that would be subject to this rule.

NMFS is proposing \$1,000 as the *de minimis* sales level for exemption from the Program because it matches the U.S. Department of Agriculture minimum sales threshold for reporting under the Census of Agriculture. As producers are familiar with the Census of Agriculture, adopting their threshold should allow producers to easily self-identify

their need to register and report under this Program. Additionally, it is presumed that foreign aquaculture operations producing under this annual value threshold would be serving local markets and not be exporting product to the United States, thus they would not have shipments subject to the documentation requirements of SIMP. NMFS requests public comment to assist in the identification of alternative thresholds for registration and reporting under this Program that would exempt aquaculture facilities where all production for human consumption is intended for direct sale to consumers, as this level of small-scale commerce is not comparable to the scale of commerce monitored under the Seafood Traceability Program.

A producer who is required to register only needs one registration identifier. If the producer provides a valid and unique registration identifier for its aquaculture facility that is currently in use by another State or federal agency, NMFS may approve the use of that alternative identifier, provided that NMFS can independently verify the identity of the producer. NOAA seeks public comment on whether identifiers assigned under other programs, such as the Data Universal Numbering System (DUNs), the U.S. Food and Drug Administration's Registration of Food Facilities, or a similar State or federal facility registration, could be used for this purpose, and whether such an approach would reduce the burden of registration on industry.

In addition to the requirements in this proposed rule, for some species or products, permits from other federal or State agencies may be required (*e.g.*, U.S. Fish and Wildlife Service permits for products of species listed under the Convention for International Trade in Endangered Species). The Traceability Information Program for Seafood does not supersede any other federal or State requirements.

The electronic reporting system to be established by NMFS will consist of two parts. The first will be a publicly accessible registration page where producers (an aquaculture facility owner or operator) will provide basic information to identify their business:

- Business name, Tax Identification Number, physical address, and phone number
- Farm physical address (if different than business physical address)
- Point of contact name, mailing address, email and phone number

Once a producer identifier has been designated via the NMFS system, the producer can obtain login credentials to access the second part – a data entry portal that will require a unique login for each user. After logging into this site, the user will be able to report the required data elements as described in section III below, Data for Reporting and Recordkeeping.

II. Registration Renewal

Section 698.4(c) sets out a registration renewal requirement. As explained below, this rule requires that the producer, or representative acting on its behalf, submit reports to NMFS via an electronic reporting system at monthly intervals. If a producer has no reportable production events for an entire 12-month period, the producer must so certify through the electronic registration and reporting system established by NMFS in order to renew the producer's registration. Producers that have submitted monthly reports would need to certify that all applicable entries have been reported. Annually, all producers would need to confirm their identifying business information in order to renew their registration. Once the producer has submitted all required certifications, registration

renewals would be automatic and at no additional cost to the producer. If the registration lapses, the producer would have to re-register and pay the cost-recovery fee.

III. Data for Reporting and Recordkeeping

The data reporting and recordkeeping requirements under this rule would be in addition to any reporting and recordkeeping required by States or other federal agencies. To align this proposed Program with the SIMP data reporting requirements, NMFS proposes, in § 698.5, that producers required to register under the Traceability Information Program for Seafood would be required to report information for each entry into U.S. commerce of fish or fish products regulated under the Traceability Information Program for Seafood that are intended for human consumption. As outlined in § 698.5(b), producers would submit reports through NMFS's electronic registration and reporting system and reports would include:

- Identifying the aquaculture facility producing the fish or fish products by providing a current, valid producer identifier.
- Information on the fish or fish products produced: 3-alpha Aquatic Sciences and Fisheries Information System (ASFIS) code; Product weight and form (whole, head removed, etc.) at point of production and at point of entry into U.S. commerce.
- Information on where and when the fish were produced: Location of aquaculture facility; Date of production (*i.e.*, removal from aquaculture facility)
- Name of entity(ies) (processor, dealer, retailer) to which fish was sold or delivered. For direct sales, the producer would need to report information under the first three bullets above. The producer would not need to report information

about the consumer, just describe where the fish was sold (*e.g.*, on premises of the aquaculture facility, roadside stand, or farmer's market). See proposed §§ 698.5(b) and 698.2 (defining "direct sale" and "entry into U.S. commerce").

NMFS proposes that at monthly intervals producers would be required to report information for each entry into U.S. commerce of fish or fish products intended for human consumption from the previous month. For example, a producer would be required to report each applicable entry occurring in the month of May on or before the last day of June. If no applicable entries occurred in a given month, no report to NMFS is required. However, if a producer has no reportable production events for an entire 12-month period, the producer must certify that through the electronic reporting system established by NMFS in order to renew its registration. See Registration Renewal section above.

In designing the reporting requirements for the Traceability Information Program for Seafood, NMFS reviewed the temporal span of harvests that contribute to an entry subject to SIMP requirements and found that the temporal span for most entries was a month or less. Thus, NMFS is proposing monthly reporting for the Traceability Information Program for Seafood which provides a similar reporting burden when compared to the SIMP and contributes to the objective of the rule. NMFS seeks comment on whether producers would have production to report every month and whether the monthly reporting frequency for domestic producers is, in fact, comparable to the temporal aggregation of harvests required under the SIMP.

Producers would also be required to keep supporting documentation for the reports that are sufficient to trace the fish or fish product from the point of production

(*i.e.*, removal from the aquaculture facility) to entry into U.S. commerce as described in § 698.6(a). NMFS expects that typical supply chain records that are kept in the normal course of business, including production logs, and transaction records which include such information as the identity of the custodian, the type of processing, and the weight of the product, would provide sufficient information for NMFS to conduct a trace of the supply chain. Such information must include records regarding each custodian of the fish and fish product, including, as applicable, processors, storage facilities, and distributors, sufficient to trace the fish or fish product from the point of entry into U.S. commerce back to the point of production and to verify the information reported about entry into U.S. commerce. Section 698.6(a) establishes that producers would be required to retain reports and supporting documentation, in either paper or electronic format, for two years from the date of the reports. Producers must make reports and supporting documentation available for inspection by NMFS and must provide them to NMFS upon request to support an audit as stated in § 698.6(b)-(c)). NMFS requests comment on the duration of the recordkeeping requirement and the extent to which the two-year period is consistent with other State and Federal recordkeeping requirements applicable to the business operations of aquaculture facilities that would be subject to this program.

NMFS proposes to mirror the requirements of this Program such that its requirements are equivalent to those that apply to imports of shrimp and abalone under SIMP. Thus, production of shrimp and abalone species not intended for human consumption (*e.g.*, fish produced for research, grow out of post-larvae, broodstock, or environmental management programs) would not be within the scope of this proposed domestic Traceability Information Program for Seafood as stated in § 698.1(d), because

SIMP is limited to imports of covered species for human consumption. In addition, any producer that enters shrimp and/or abalone valued at less than \$1,000 total per year into U.S. commerce is exempt from the registration, reporting, and recordkeeping requirements of this Program as stated in § 698.4(c).

IV. Audit and Inspection Mechanisms

To implement this regulation, business rules will be programmed into the electronic registration and reporting system established by NMFS to automatically validate that the producer has populated all data fields in conformance with format specifications. Absent this validation, the report submission would be rejected and the producer would be notified of the deficiencies that must be addressed in order for the report to be accepted.

Reports may also be subject to random or targeted audit by NMFS, as provided in § 698.6(b), in order to verify that the supplied data elements are true, can be corroborated (*e.g.*, production was authorized by the applicable authority, processor receipts correspond to outputs/deliveries), and are sufficient to demonstrate that products entering U.S. commerce were not produced in violation of domestic law and are not fraudulently represented. If a producer fails to provide requested records to NMFS in a timely manner, or fails to provide information to verify that covered products were lawfully produced and accurately represented, the matter will be referred to NOAA Fisheries Office of Law Enforcement for possible follow-up action.

Intersection with Other Applicable Requirements

In addition to the registration, reporting, and recordkeeping requirements of this proposed rule, several States have specific regulations applicable to aquaculture

operations, typically including requirements on permitting, certification, and registration.

Table 1 contains information, by State, on existing regulations relevant to traceability.

To the extent practicable, and subject to applicable data confidentiality laws, NMFS will work to minimize duplicative requirements. For example, proposed § 698.4(b) provides that NMFS may approve the use of an alternative producer identifier obtained through other Federal or State programs.

Table 1. Existing Aquaculture Registration and Reporting Requirements

State	Citation	Summary of Requirement
Alabama	Statute: Ala. Code section 9-2-150 (2015)	Oyster leases required.
California	Statute: California Fish & Game Code section 15400 (2006)	Aquaculture Registration is required for each facility devoted to the propagation, cultivation, maintenance, and harvesting of fish, shellfish and plants in marine, brackish, and fresh water.
Connecticut	Statutes: Conn. Gen. Stat. section 26-194 (2013); Conn. Gen. Stat. section 22-11i (2013)	Aquaculture-related permits are overseen by the Department of Agriculture, Bureau of Aquaculture and the Department of Energy and Environmental Protection. Permits are required.
Delaware	Statute: Del. Code tit. 3 section 4 (2013); Regulation: 7-3800 Del.Admin. Code	In addition to various permits needed dependent on species, all aquaculture

	(2014)	operations must register with Delaware Department of Agriculture-valid for 5 years
Northern Marianas Islands	Statute: 2006 N. Mar. I. Pub. L. 15-43	Site permit in coastal waters only.
Florida	Statute: Fla. Stat. section 597.004 (2017)	Aquaculture registration is required with the Florida Department of Agriculture and Consumer Affairs, annually
Georgia	Statute: Ga. Code Ann. section 27-4-255 (2017)	Aquaculture of some species requires permits and for other species, registration with the Georgia Department of Natural Resources.
Hawaii	Statute: Haw. Rev. Stat. section 187-3.5 (2012); Regulation: Haw. Code R. section 13-74-43 (1996)	Permit with record-keeping required for aquaculture, including fish ponds through the Hawaii Department of Land and Natural Resources.
Illinois	Regulation: Ill. Admin. Code tit. 17, pt. 870	Annual permit required, with a recordkeeping component and annual reporting to the Illinois Department of Natural Resources.

Indiana	Regulation: Aquaculture Permit, 312 Ind. Admin. Code 9-10-17 (2001)	A permit is needed from Indiana Department of Agriculture, which requires records retention and inspection of the facility at any time.
Iowa	Regulation: Iowa Admin. Code r. 571-89 (1992)	Annual License required through Iowa Department of Natural Resources, which includes an annual reporting requirement.
Louisiana	Regulation: La. Admin. Code tit. 76, section 901-907	Permit applications currently available for Catfish, Tilapia and Oysters. Other species must enter a separate approval process for permitting through the Louisiana Department of Fish and Wildlife.
Maine	Statutes: Me. Rev. Stat. Ann. tit. 12, section 6072 (2017); Me. Rev. Stat. Ann. tit. 7 section 1501 (2017); Regulation: 13 188 Me. Code R. 2 (2018)	Coastal aquaculture through 20 year leases from the Maine Department of Marine Resources with annual rent and record-keeping requirements. Land-based aquaculture is licensed through the Department of Agriculture, Conservation & Forestry.

Maryland	Regulation: Md. Code Regs. 08.02.14 (2016)	Must be permitted before operating a facility through the Maryland Department of Natural Resources.
Massachusetts	Statute: Mass. Gen. Laws ch. 130, section 80; Regulation: 322 Mass. Code Regs. 7.01-02 (2017); Guidance: Dept. of Food & Agriculture, <i>Mass. Aquaculture Permits Guidance Doc.</i> (April 1, 1998)	Facilities must be permitted and the permit has a record keeping component and requires a State Inspection prior to permitting. Both the Department of Environmental Protection and the Division of Fisheries and Wildlife are involved in permitting.
Michigan	Statute: Mich. Comp. Laws section 286.871-884 (1996)	Aquaculture facilities must be registered annually with the Michigan Department of Agriculture and Rural Development and are limited to approved species. Operations may be inspected by State Officials at any time.
Mississippi	Statute: Miss. Code Ann. section 79-22-13 (2013)	Some types of aquaculture require a permit from the Mississippi Department of Agriculture and Commerce. A requirement of the permit is record-keeping.
Nevada	Statutes: Nev. Rev. Stat. section 561.301;	Aquaculture registration (same as farm

	Nev. Rev. Stat. section 576.128	registration) is annual with the Nevada Department of Agriculture.
New Hampshire	Statute: N.H. Rev. Stat. Ann. section 211:62-e (2016)	Aquaculture must be permitted through the New Hampshire Department of Fish and Game.
New Jersey	Statute: N.J. Rev. Stat. section 4:27 (1997)	Aquaculture permit is required along with a license for operations through both the Department of Environmental Protection and the Department of Agriculture.
New York	Regulation: N.Y. Comp. Codes R. & Regs. tit. 6, section 48 (2018)	The New York Department of Environmental Conservation issues annual permits that require record-keeping.
North Carolina	Statutes: N.C. Gen. Stat. section 63-106; N.C. Gen. Stat. section 16A-113 (2017)	The North Carolina Department of Agriculture and Consumer Services administers permits for allowable freshwater species. North Carolina Division of Marine Fisheries authorizes marine aquaculture leases with annual fees.
Ohio	Regulation: Ohio Adm. Code 1501:31-39-	Annual Permit from the Ohio Division

	01	of Wildlife is required along with a recordkeeping requirement.
Oregon	Statutes: Or. Rev. Stat. Ann. section 215.213 (2018); Or. Rev. Stat. Ann. section 622.270	Annual permit for shellfish required through the Oregon Department of Agriculture with record-keeping and an annual report submission.
Rhode Island	Statute: 20 R.I. Gen. Laws section 20-10 (2013); Regulation: 250 R.I. Code R. section 40-00-1 (2017)	Permit through the Coastal Resources Management Council is required, and automatically renewed annually. Other permits may also be required.
South Carolina	Statute: S.C. Code Ann. section 50-18-2 (2003)	Permit required for freshwater game fish aquaculture through the South Carolina Department of Natural Resources, with a record keeping requirement. Annual permits also required for shellfish.
Texas	Statute: Tex. Agriculture Code sections 134.011 – 134.023 (1999)	A Texas Department of Agriculture license. Texas Natural Resource Conservation Commission permit to dispose of wastewater. The license is valid for two years and is renewable.

Washington	Statutes: Wash. Admin. Code section 220-370-060 (2017); Wash. Admin. Code section 220-370-090 (2017)	In addition to various permits for different types of aquaculture, all aquatic farms must register with the Washington Department of Fish and Wildlife. Finfish farms must also keep records.
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State and federal regulations applicable to aquaculture operations are not affected by this rule, thus proposed § 698.3 provides that the registration, reporting and recordkeeping requirements under the Traceability Information Program for Seafood do not supersede any requirements established under any other federal or State law.

NOAA seeks public comment on Table 1, including information on additional, existing registration and reporting requirements and mechanisms that might assign unique, alternate producer identifiers referenced in § 698.4(b)) that could be recognized by NMFS for purposes of the Traceability Information Program for Seafood.

Stakeholder Engagement

NMFS will hold public meetings to discuss implementation of the Traceability Information Program for Seafood and address questions from participants. Information on future Program implementation meetings and transcripts of prior meetings and webinars can be found at <https://www.fisheries.noaa.gov/about/office-international-affairs-seafood-inspection>.

NMFS encourages stakeholders who may be affected by this rule, if implemented as proposed, to participate in the public meetings and to submit written comments (*see*

ADDRESSES). In particular, NMFS seeks comment on:

the assumption that the proposed recordkeeping incurs a marginal cost given the background of Food and Drug Administration recordkeeping requirements and that the proposed NMFS online reporting system will minimize the reporting burden;

the assumption that the \$1000 annual value threshold as a *de minimis* level for exemption from the Program is, in fact, comparable to the minimum size of farms contributing to imports of these species under the SIMP;

the assumption that the registration/reporting system, if operated at cost of \$30 per registrant, is not a significant business cost and, if the cost varies depending on final system costs and number of users, what threshold fee would constitute a significant cost;

whether the proposed recordkeeping period of 2 years is inconsistent with other State or federal requirements applicable to businesses affected by the Program; and,

whether the Program overlaps with State recordkeeping and reporting programs, especially for abalone producers in California and Hawaii.

Classification

This proposed rule is published under the authority of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018, Pub. L. 115-141, and the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

The NMFS Assistant Administrator has determined that this proposed action is consistent with the provisions of these and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be significant for the purposes of Executive Order 12866. NMFS has prepared a regulatory impact review of this action, which is available from NMFS (*see* **ADDRESSES**).

Regulatory Flexibility Act

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for this proposed rule, as required by section 603 of the RFA, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the NMFS (*see ADDRESSES*). A summary of the IRFA follows.

For U.S. commercial aquaculture producers of shrimp and abalone for human consumption, this proposed rule would create a mandatory registration, reporting and recordkeeping program. NMFS anticipates that U.S. entities will not have any significant adverse economic effects as a result of this action, because it does not pose any significant new burdens with regard to existing reporting and recordkeeping requirements or business practices. NMFS believes the recordkeeping and reporting costs are accounted for in earlier U.S. Food and Drug Administration (FDA) regulatory actions, which contain more extensive recordkeeping requirements. See FDA Public Health Security and Bioterrorism Preparedness and Response Act (Bioterrorism Act) final rule, Table 23, 69 FR 71562 at 71646 and Table 26 at 71650 (Dec. 9, 2004); Food Safety Modernization Act regulations (21 CFR 1.361); and Seafood Hazard Analysis and Critical Control Point (HACCP) regulations (21 CFR part 123). NMFS seeks comment on whether there could be economic impacts that have not been evaluated in the supporting analyses of this proposed rule, or that could be difficult to anticipate.

NMFS proposes this action to comply with the 2018 Appropriations Act and to collect or have access to additional data on domestic aquaculture shrimp and abalone products to determine whether they have been lawfully produced and are accurately represented, to deter illegally-produced or misrepresented seafood from entering into U.S. commerce, and as a domestic counterpart to the shrimp and abalone species import requirements under the Seafood Import Monitoring Program. These data reporting and recordkeeping requirements affect producers of aquacultured shrimp and abalone products, many of which are small businesses that commercially produce for entry into U.S. commerce products valued at \$1,000 or more per year. The registration, electronic reporting and recordkeeping requirements proposed by this rulemaking would build on current business practices (*e.g.*, information systems to document business transactions, facilitate product recalls, maintain product quality, or reduce risks of food borne illnesses) and are not estimated to pose significant adverse or long-term economic impacts on small entities.

The proposed rule, if implemented, will directly affect entities engaged in aquaculture of shrimp and abalone within the scope of the Traceability Information Program for Seafood. The Small Business Administration has established size criteria for all major industry sectors in the United States including aquaculture operations. A business involved in aquaculture is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$0.75 million North American Industry Classification System (NAICS) code 112512 Shellfish Farming, 112519 Other

Aquaculture, and 112511 finfish farming and fish hatcheries) for all its affiliated operations worldwide.

Based on the United States Department of Agriculture Census of Agriculture, Census of Aquaculture 2013 and the Bureau of Labor and Statistics' 2017 mean hourly wage for bookkeeping, NMFS has estimated that this rule would potentially affect 66 producers, requiring each to make a maximum of 12 reports annually (\$19.76/hour at 0.5 hours per report) to NMFS on production of the species subject to the Traceability Information Program for Seafood. Total maximum costs for registration and renewal, data entry, recordkeeping and data storage per registrant are estimated by NMFS to amount to \$150.21 (includes \$30.00 registration fee and registration labor cost) in the first year, and \$118.56 annually thereafter.

This rule has been developed to avoid duplication or conflict with any other federal rules. To the extent that the requirements of the rule overlap with other reporting requirements applicable to the designated species, this has been taken into account to avoid collecting data more than once. Given the fact that traceability systems are being increasingly used within the seafood industry, it is not expected that this rule will significantly affect the overall volume of trade or alter trade flows in the U.S. market for fish and fish products that are legally produced and accurately represented.

Based on limited financial information available to NMFS about the affected entities, NMFS believes that most affected producers of shrimp are small entities as defined by the Regulatory Flexibility Act (RFA); that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$0.75 million. NMFS believes there are a few producers of abalone that would

be considered large entities. While there are a few large entities, the one-time registration fee and cost of reporting are low (maximum annual cost of \$150.21). Therefore, NMFS has determined that this proposed rule would affect a substantial number of small entities; however, the issue of disproportionate effects on small versus large entities does not arise in the present case.

With regard to the possible economic effects of this action, NMFS believes that small entities will not be significantly adversely affected by this action because it does not directly restrict production or trade in the designated species and does not pose entirely new burdens with regard to the collection and submission of information necessary to comply with the monitoring program. While this rule would establish new reporting requirements, it will not require any additional professional skill. Some of the data proposed to be collected at entry into U.S. commerce or to be subject to recordkeeping requirements is already collected by the seafood industry in order to comply with food safety and product labeling requirements or to document business transactions.

NMFS considered two regulatory action alternatives in this rulemaking as well as a no-action alternative: NMFS considered requiring registration for all shrimp and abalone aquaculture producers, including those who sell under \$1,000 per year of these species, but determined that producers of such small amounts of shrimp and abalone can be exempted from the Program without impacting its overall integrity. Also, there is no verifiable data on firms under the \$1000 threshold. The \$1,000 threshold was chosen because it matches the U.S. Department of Agriculture minimum sales threshold for reporting under the Census of Agriculture. NMFS also considered requiring reporting of

all shrimp and abalone production regardless of its intended use, but determined this was not necessary as the selection of certain Harmonized Tariff Schedule codes for inclusion under SIMP limits the scope of SIMP to just those seafood products intended for human consumption and excludes products not intended for human consumption. Recognizing that \$1,000 in sales per year may result in the inclusion of facilities not selling meaningful quantities of shrimp and abalone into U.S. commerce, NMFS may finalize a higher threshold. NMFS seeks comment on a threshold that both satisfies the requirements of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018, while also minimizing burden on the smallest producers.

In light of the information on total annual compliance cost described above, NMFS believes the rule, if implemented will not reduce profits for a substantial number of small entities. Therefore, NMFS believes the proposed rule will not have a significant economic impact on a substantial number of small entities, however, we seek public comment on this analysis. NMFS prepared an Initial Regulatory Flexibility Analysis to describe the economic impact this proposed rule would have on small entities. A copy of this analysis is available from NMFS (*see ADDRESSES*). NMFS requests comments, particularly focused on the costs of compliance with the proposed reporting and recordkeeping requirements.

Paperwork Reduction Act

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The information collection burden for the requirements proposed under this rule (*i.e.*, registration or renewal; monthly

reports; recordkeeping and data storage; and provision of records of supply chain information when selected for audit) as applicable to production of shrimp and abalone species is estimated by NMFS to be 0.5 hour. Compliance costs are estimated to total a maximum of \$1,980.00 (\$30.00 x 66) for the registration fees, no more than \$7,824.96 (\$118.56 x 66) for data entry, and \$0 for data storage as these records are already required for tax and business purposes.

Registration Requirement: With the requirement to register as a producer under this program, there would be approximately 66 respondents who would need approximately 5 minutes to fill out the online registration form resulting in a total annual burden of 5.5 hours and a cost of \$108.68.

Data Submission Requirement: Data to be submitted electronically are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and available for inspection under existing federal programs (e.g., Bioterrorism Act; Food, Drug and Cosmetic Act), or may be collected in support of third party certification schemes voluntarily adopted by the trade.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the appropriateness of monthly reporting for achieving stated objectives; the accuracy of the assumptions used in calculating the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection

of information to the NOAA Fisheries Office of International Affairs and Seafood Inspection at the **ADDRESSES** above, and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 698

Fisheries, Statistics, Aquaculture, Reporting and Recordkeeping.

Dated: October 4, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 698 is proposed to be added to read as follows:

PART 698— TRACEABILITY INFORMATION PROGRAM FOR SEAFOOD

Sec.

698.1 Purpose and scope.

698.2 Definitions.

698.3 Relation to other Federal and state laws.

698.4 Aquaculture facility registration.

698.5 Reporting.

698.6 Recordkeeping and audits.

698.7 Confidentiality and disclosure.

698.8 Prohibitions.

Authority: Pub. L. 115-141, Div. B, section 539; 16 U.S.C. 1801 *et seq.*

§ 698.1 Purpose and scope.

(a) This part implements a Traceability Information Program for Seafood from the point of production to entry into U.S. commerce pursuant to the Commerce, Justice, Science and Related Agencies Appropriations Act, 2018, section 539 (Pub. L. 115-141, Div. B) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

(b) This Program establishes registration, reporting and recordkeeping requirements for U.S. inland, coastal, and marine aquaculture facilities that produce shrimp and abalone and complements the Seafood Traceability Program established in § 300.324 of this title.

(c) The scope of the Program is limited to U.S. commercial aquaculture facilities that produce shrimp and abalone for human consumption for entry into U.S. commerce.

(d) Production of fish and fish products regulated under this part not intended for

human consumption, including production intended for research, broodstock, or post-larval grow out, is outside the scope of the Program.

§ 698.2 Definitions.

In addition to the terms defined in § 600.10 of this title, and in the MSA, the following definitions apply to this part. If a term is defined differently in § 600.10, or in the MSA, the definition in this section shall apply.

Aquaculture facility means any farm with ponds, tanks or pools in open air or in an enclosed structure, or a net pen or enclosure in open water that produces for human consumption fish or fish products regulated under this part.

Direct sale means the sale or offer for sale of fish or fish products regulated under this part from an aquaculture facility, whether on or off the premises of the facility, to an individual for personal use.

Entry into U.S. commerce means direct sale or the sale or transfer of custody of fish or fish products regulated under this part to a first receiver, either directly or through a third party. Entry into U.S. commerce includes changes in custody with no change in ownership, *e.g.*, the receiving or acquiring of fish or fish products from an aquaculture facility by a processor or distributor that is owned by the same person who owns the aquaculture facility.

First receiver means the person who first receives fish produced from an aquaculture facility for any commercial purpose (*e.g.*, processing, distribution or sale) other than a direct sale. The first receiver may be a person affiliated with the aquaculture facility that receives fish or fish products regulated under this part through a no-sale

transaction but does not include a person taking possession of fish for the sole purpose of transportation.

Fish or fish products regulated under this part means shrimp and abalone species produced by an aquaculture facility and products containing those species.

Person has the same meaning as under section 3 of the MSA, 16 U.S.C. 1802.

Producer means the owner or operator of an aquaculture facility.

Produce/Production means remove/removal of fish from an aquaculture facility for the purposes of entry into U.S. commerce.

Traceability Information Program for Seafood means the registration, data reporting and recordkeeping requirements established under this part.

§ 698.3 Relation to other Federal and state laws.

Registration, reporting and recordkeeping requirements under the Traceability Information Program for Seafood do not supersede any requirements established under any other federal or State law.

§ 698.4 Aquaculture facility registration.

(a) The producer of fish or fish products regulated under this part must register the aquaculture facility through the NMFS Traceability Information Program for Seafood electronic registration and reporting system. Such registration is valid for a period of one year and must be renewed annually. The electronic registration and reporting system will assign a unique producer identifier. Producers must notify NMFS within 30 days of any change in their information submitted to or used in the electronic registration and reporting system (*e.g.*, business name, addresses or contact information; if such changes

are not reported to NMFS within 30 days, the registration is invalid as of the 30th day after such change.

(b) *Alternative Producer Identifier.* NMFS may approve the use of an alternative producer identifier obtained through another Federal or State program.

(c) *Registration Renewal.* Annually, all producers must confirm their identifying business information in order to renew their registration. Producers that have submitted monthly reports under § 698.5 must certify that all applicable entries have been reported. Producers that have had no reportable production events for an entire 12-month period must so certify through the electronic registration and reporting system. If registration lapses, the producer must re-register.

(d) *De Minimis Exemption.* Any producer that produces for entry into U.S. commerce fish or fish products regulated under this part valued at less than \$1,000 per year is exempt from the registration requirement of this section.

§ 698.5 Reporting.

A producer that is required to be registered under § 698.4 must report information regarding all entries into U.S. commerce of fish or fish products regulated under this part.

(a) *Frequency*. The producer must submit monthly reports through the NMFS electronic registration and reporting system, including all entries into U.S. commerce of fish or fish products regulated under this part that occurred during that calendar month. The report for a monthly period is due on or before the last day of the next calendar month. Producers are not required to submit reports for any month in which there were no entries into U.S. commerce.

(b) *Content*. Reports must contain the details of each entry into U.S. commerce, including producer identifier, the species (3-alpha Aquatic Sciences and Fisheries Information System (ASFIS) code), the date of production, date of entry into U.S. commerce, the production volume, the unit of measure, the product form and weight at entry into U.S. commerce, and business name, address and email and/or phone number for the first receiver. For direct sales, the report need not contain the name, address and email and/or phone number of the individual who purchased the fish or fish products for personal use.

§ 698.6 Recordkeeping and audits.

(a) *Recordkeeping*. The producer must maintain a paper or electronic copy of any report required under § 698.5 and supporting documentation for the report sufficient to trace the fish or fish product from point of production to entry into U.S. commerce. Records may include widely used commercial documents (*e.g.*, records related to production, sale, processing, shipment, cold storage, and distribution). The supporting documentation must include records regarding each custodian of the fish and fish product, *e.g.*, including processors, storage facilities, and distributors, sufficient to trace

the fish or fish product from the point of entry into U.S. commerce back to the point of production and to verify the information reported about entry into U.S. commerce. The producer must retain such reports and supporting documentation in electronic or paper format for a period of two years from the date of the report.

(b) *Audit.* Reports and supporting documentation described under paragraph (a) of this section may be selected for audit in order to verify the information submitted in the reports. To support such audits, the producer must, upon request, make such reports and supporting documentation available for inspection by NMFS or otherwise provide them as requested by NMFS.

(c) *Inspection.* The producer must make all reports and records required under paragraph (a) of this section available for inspection by an authorized officer upon request.

§ 698.7 Confidentiality and disclosure.

All information and records required to be submitted under this part shall be subject to the Magnuson-Stevens Act confidentiality provisions and shall not be disclosed except as provided under section 402(b)(1) of the Magnuson-Stevens Act and part 600, subpart E of this title.

§ 698.8 Prohibitions.

In addition to the general prohibitions listed at § 600.725 of this title, it is unlawful for any person to do any of the following:

(a) Violate any of the registration, reporting or recordkeeping provisions of this part.

(b) Sell, offer for sale, or attempt to sell or offer for sale, fish or fish products regulated under this part that were produced by an aquaculture facility that has failed to register as required under § 698.4.

(c) Dispose of fish or fish products regulated under this part, or any reports or supporting documentation required to be retained under § 698.6(a), after any communication from an authorized officer that the aquaculture facility, or such reports or supporting documentation, are to be inspected.

(d) Make any false statement, oral or written, to an authorized officer concerning the production, purchase, sale, offer for sale, receipt, acquisition, possession, transport or transfer of any fish or fish products regulated under this part, or any attempt to do any of the above.

(e) Provide false, incomplete or inaccurate information in the registration required under § 698.4 or reports required under § 698.5 or falsify any reports or supporting documentation required to be retained under § 698.6.

(f) Fail to make reports or supporting documentation available for inspection, as required under § 698.6(c).

(g) Fail to make available, or otherwise produce, reports and supporting documentation to support an audit, as required under § 698.6(b).

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