

# Addressing Regulatory Constraints to Off-Bottom Oyster Aquaculture in the U.S. Gulf of Mexico Region

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Presentation to  
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# Objectives

- Identify regulatory constraints on growth and expansion of Off-Bottom Oyster Aquaculture (“OBOA”) in the Gulf states
- Identify potential regulatory changes to eliminate or reduce constraints
- Research efforts in the Gulf (and beyond) to streamline regulatory processes
- Recommend regulatory changes to more efficiently implement OBOA in the Gulf states

# Summary of Work

- Research

- Reviewed existing state and federal laws, regulations, procedures, and programs
  - Gulf of Mexico region
  - East and West Coast regions

- Stakeholder Interviews

- Regulators, aquaculture participants, researchers, and extension agents
- Approximately 60 interviews
- What is and is not working

# Introduction to OBQA

- Farming techniques
  - Adjustable (or Australian) longline system
  - Floating bag systems
  - Floating cage systems
  - Bottom cages
- New industry and evolving techniques
  - Requires regulatory flexibility to evolve

# Regulatory Framework

- State
  - Grant of property right for OBOA (lease of state-owned submerged lands)
    - Or authorization to exercise riparian rights on state-owned submerged lands
  - Issuance of permit authorizing OBOA operation
  - Issuance of Water Quality Certification (if Section 404 permit is required – usually not required for OBOA)
  - Operational regulation – sanitation and health
  - Specifics vary by state

# Regulatory Framework continued

- Federal

- Section 10 of the Rivers and Harbors Act – obstructions to navigation. 33 USC 403 for
  - May be General Permit NWP 48, Programmatic Permit, or full-blown Individual Permit
- Section 404 of the Clean Water Act (CWA) – commercial discharge of dredged or fill material not required for OBOA). 33 USC 1344 for (usually
- Endangered Species Act (ESA), 16 USC 1531 et seq, Magnuson-Stevens Fishery Conservation & Management Act (MSA), 16 USC 1801 et seq – and for endangered species and essential fish habitat review
- U.S. Coast Guard Private Aid to Navigation (PATON) – maritime equipment marking and lighting for

# Alabama

- What works well:
  - Vibrant OBOA participation and expansion
  - Clear authorization for OBOA (“Shellfish Aquaculture”)
  - Relevant agencies are supportive of OBOA and provide assistance in the process
  - Strong academic and outreach support (Auburn Shellfish Lab and SeaGrant)
  - Pre-permitted OBOA parks

# Alabama continued

- Recommendations:
  - Aquaculture coordinator to push applications through the various stops – complex permit process
  - Eliminate or reduce marine archeological survey requirement
  - Replace pre-permit requirement for health permit with permit condition to comply with sanitation standards
  - Continue developing more hatcheries and nurseries
  - Increase pre-permitted OBOA parks
  - Implement process to lease state-owned riparian rights

# Florida

- What works well:
  - Vibrant OBOA participation and expansion
  - Favorable laws and policies supporting aquaculture
  - One-stop-shop permitting – even with respect to federal permits
  - Aquaculture use zones
  - Centralized online resources

# Florida continued

- Recommendations:
  - Establish new Aquaculture Use Zones in high demand areas
    - Raise threshold for use conflicts that prevent new AUZs or leases
    - Ease requirements for creating new AUZs
  - Increase seed supply to address seed shortages and “geographic bias”
    - Promote increased tetraploid hatchery production in Florida
    - Increase remote setting and nursery capacity
    - Develop public tetraploid oyster broodstock line
  - Work with growers other regions to modify or develop insurance programs better suited to OBOA (mitigate storm impacts)
  - Create industry association specific to OBOA

# Louisiana

- What works well:
  - Clear authority for OBOA (“Alternative Oyster Culture”)
  - Relevant agencies are supportive of OBOA and provide assistance in the process
  - Simple permitting process
  - Pre-permitted OBOA park
  - Quasi-public Oyster Task Force represents shellfish grower interests
    - Implemented Aquaculture Committee

# Louisiana continued

- Recommendations:
  - Expand and clarify OBOA procedures (instructions to applicants)
  - Update OBOA regulations to address permitting on private water bottoms
  - Authorize OBOA on unleased state water bottoms
  - Exclude OBOA from local permitting (on state water bottoms)
  - Authorize additional pre-permitted OBOA parks
  - Develop more hatcheries and nurseries
  - Increase penalties for theft to level of similar non-OBOA theft

# Mississippi

- Status:
  - OBOA is getting off the ground
  - State is actively encouraging OBOA
  - Governor's Oyster Council – driving force for OBOA effort
  - Deer Island OBOA park provides training and experience, and will enable pre-permitted OBOA farms
  - Streamlining state reviews, including combining lease and permit approvals
- Constraints:
  - Lack of known, suitable areas for OBOA – low water quality and freshwater inputs
  - Regulatory and industry uncertainties

# Mississippi continued

- Recommendations:
  - Identify suitable areas
    - For parks, as well as individual farms
  - Provide comprehensive one-stop shop for information for applicants
  - Improve federal permitting efficiencies
    - Grant concurrence for NWP 48 (denied for all NWPs)
    - Complete a programmatic ESA consultation for OBOA (or at least interagency/industry meetings to narrow the issues)
  - Allow permit flexibility
    - Enable minor variations in gear type and methods that do not cause use conflict changes

# Texas

- Status:
  - No OBOA farming
  - Suitable areas for development of OBOA
  - Historical lack of interest – though that is changing
  - Legislation introduced to authorize OBOA (2019) (“Oyster Mariculture”)
- Constraints:
  - Lack of authorizing legislation
  - Lack of knowledge and infrastructure

# Texas continued

- Recommendations:
  - Pass authorizing legislation
  - Adopt implementing regulations
  - Authorize pre-permitted OBOA parks
  - Develop education and training, and requirements for them
  - Provide comprehensive one-stop-shop for information for applicants

# Gulf-Wide

- Favorable legislative intent and agency regulatory policy statements (FL, WA)
  - Examples:
    - Aquaculture is agriculture
    - Aquaculture is an activity of statewide interest
    - Aquaculture should be fostered and promoted
    - Economic benefits of aquaculture
    - Benefits of aquaculture for food production
    - Environmental benefits of aquaculture
    - Flexibility for an emerging industry, with many small business participants

# Gulf-Wide continued

- Streamlining and Agency Coordination
  - Aquaculture Coordinator/single point of contact
  - Federal/state alignment – one-stop shop for permitting
    - State lead (FL – SAJ-99)
    - Federal lead (AL)
    - Compliance with one set of permit conditions satisfies multiple programs (FL – BMPs)
  - Programmatic permitting – standard permit suitable for most OBOA operations
    - Nationwide Permit 48 (AL)
    - Programmatic ESA consultation (WA)
  - Develop “safe harbor” standards applicants can accept without detailed review, recognized as providing adequate protection

# Gulf-Wide continued

- Pre-permitted OBOA parks or use zones
- Provide regulatory flexibility allowing gear modifications, innovation, and experimentation
  - Changes to gear type, not wholesale change of technique causing use conflict changes
- Centralized information for applicants
  - “One-stop shop” for regulatory information and requirements (FL, WA)
  - Annotated permit forms and guidance (FL, WA, AL)

# Gulf-Wide continued

- Promote shellfish initiatives (WA, AK, NC, National)
  - Partnership among government, industry, and NGOs to promote shellfish (and OBOA)
  - Improve the regulatory landscape
  - Further key research priorities
  - Can take regional approach and address regional challenges (GoMexSI)
- Ensure industry associations/trade groups have designated representatives to address OBOA-specific regulatory and research needs
  - Or form new associations focused on OBOA

# Gulf-Wide continued

- Quasi-governmental bodies to advise state regarding industry input in regulatory processes
  - Ensure voice in regulatory matters specifically for OBOA
  - Aquaculture Review Council (FL)
  - Oyster Task Force – Aquaculture Committee (LA)
- Develop consistent and reliable sources of seed through Gulf of Mexico region
  - Diversify hatchery production (number and geography)
  - Increase remote setting and nurseries
  - Develop public tetraploid oyster-broodstock line

# Questions?

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