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COMMITTEE ON  
ENERGY AND COMMERCE



# Congress of the United States

## House of Representatives

April 11, 2011

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Dr. Jane Lubchenco  
Administrator  
National Oceanic and Atmospheric Administration  
1401 Constitution Avenue, NW  
Washington, D.C. 20230

### Re: Comments on Draft National Marine Aquaculture Policy

Dear Dr. Lubchenco:

I commend you for drafting a new national policy for marine aquaculture that places a priority on the protection of healthy, productive, and resilient marine ecosystems, wild species, and sensitive marine areas. I am pleased that the Draft Policy addresses many of the same issues included in legislation that I drafted and introduced in the 111<sup>th</sup> Congress, H.R. 4363 – the Sustainable Offshore Aquaculture Act of 2009. I introduced this legislation because, in my view, the Magnuson-Stevens Fishery Conservation and Management Act (MSA) does not provide the National Oceanic and Atmospheric Administration (NOAA) with the authority to adequately manage ocean aquaculture. Therefore, I urge NOAA to review and refine its Draft Policy to be consistent with H.R. 4363 and to work with my Congressional colleagues and me to ensure NOAA has the authority it needs to protect the oceans from potential negative impacts of marine aquaculture.

Ensuring a sustainable path forward for U.S. marine aquaculture will require broad agreement between Congress, NOAA, the aquaculture industry, and the American people on the regulatory provisions needed to protect public resources from harm. The discussion to date has often pitted enhancing domestic seafood production against environmental protection. Both my bill and NOAA's Draft Policy strike a more appropriate balance by articulating the requirement for sustainable aquaculture to be in harmony with healthy oceans and compatible with other ocean uses, in accordance with the coastal and marine spatial planning framework that is prioritized in the President's National Ocean Policy. I am particularly pleased to see the following areas of alignment between the Draft Policy and H.R. 4363:

- Provide for a robust regulatory framework for sustainable aquaculture operations in U.S. waters on the federal, state and local levels;
- Safeguard wild fish stocks and the environment through use of best available science and comprehensive, science-based, and unbiased permitting decisions;

- Promote the use of alternative feeds for aquaculture to reduce the industry's reliance on wild caught forage fish for fish meal and fish oil;
- Establish a scientific research program to provide the ecological, economic, and social information needed to assess, monitor, and manage the environmental and socioeconomic impacts of marine aquaculture;
- Acknowledge the industry's need to be held accountable for protecting the environment and wild species, and providing reasonable liability for resource damages;
- Promote aquaculture that complements commercial and recreational fishing, creates opportunities for new employment, and revitalizes working waterfronts; and
- Integrate aquaculture planning and decision making with the President's call for comprehensive ocean governance, utilizing coastal and marine spatial planning to resolve potential conflicts with other ocean users.

While NOAA's Draft Policy is a step in the right direction toward environmentally responsible aquaculture production, there are a number of areas that are not sufficiently addressed in the policy. I would like to work with you, your staff, and other outside experts to address these concerns.

#### *Authority under the Magnuson-Stevens Act*

The fundamental question of whether NOAA has sufficient legal authority to regulate marine aquaculture under the MSA is not clarified in the Draft Policy and thus remains unresolved. This central issue must be adequately addressed if open ocean aquaculture is to be allowed to proceed. In fact, then-House Natural Resources Committee Chairman Nick Rahall, and 37 members of Congress, including me, wrote to you in 2008 and 2009 to attest that Congress did not intend for the authority granted under MSA to "catch, take, or harvest fish" to apply to the practice of farming fish. Additionally, acting Assistant Administrator Balsiger urged me and other members of the Committee on Natural Resources in September 2009 to "provide (NOAA) a broader aquaculture mandate than what already exists in the Magnuson-Stevens Act" when he acknowledged that "national legislation is needed to facilitate and ensure that aquaculture is truly sustainable."

However, the new Draft Policy maintains – with no explicit justification – that NOAA has the authority under the MSA, and five other federal statutes, to regulate aquaculture and that NOAA will address aquaculture development through fishery management plans and other regulatory plans. As you know, my colleagues and I have been critical of such a piecemeal, regional approach to regulating aquaculture – especially in the absence of overarching, legally binding national standards that can only be provided by new federal law. On the other hand, the policy does acknowledge that the

agency wants to work with Congress and others to “clarify” its regulatory authority, and that the agency will implement the policy to “the extent of the agency’s discretion” under relevant authorities, and that NOAA wants to “clarify federal agency roles.” All of these statements suggest that NOAA recognizes it has limited authority to adequately address aquaculture regulation and that only Congress can clarify how to address this limitation. I am pleased that the policy acknowledges that a regulatory program should be based on “criteria for sustainable marine aquaculture.” I hope the agency looks to H.R. 4363 for an articulation of those standards and the statutory authority to enforce them.

#### *Addressing concerns of the fishing industry*

One of the nation’s biggest seafood challenges is determining how to advance aquaculture in ways that increase the diversity of our domestic seafood supply without undermining our sustainable wild capture fisheries. NOAA must play a strong central role in ensuring that domestic aquaculture expansion does not undermine our nation’s fishermen and the hard work that they, Congress, and the American public have undertaken to restore and sustain our wild fish stocks.

I thus commend NOAA for drafting a policy that calls for aquaculture to complement commercial and recreational fishing, to work with stakeholders on projects that support traditional fishing communities, and to include support for “alternative or supplemental economic options for fishermen.” I am also pleased to see support for aquaculture that targets low trophic level seafood production and develops synergies with fishing, especially through the use of fish processing wastes for use as aquaculture feed.

However, the policy must go further if it is to relieve the concerns of fishermen and effectively chart a path where aquaculture complements, rather than competes with, and ultimately undermines, our nation’s proud fishing heritage. I recommend that several subsections be added to the policy specifically addressing the mechanisms by which these goals will be accomplished. In particular, additional operational detail is needed on the concept of “complementarity,” how decisions will be made that result in net benefits to coastal communities and working waterfronts, and how aquaculture can be used to recover troubled, but commercially important, wild fish stocks.

#### *Specific provisions for finfish aquaculture in federal waters*

If open ocean aquaculture, especially marine finfish aquaculture is to proceed in an environmentally responsible fashion, it must be governed by strong principles and provisions. I am pleased that the Draft Policy has acknowledged many of the same issues that were identified in H.R. 4363. If NOAA is to assume a strong regulatory role, however, the language in the Draft Policy must be more definitive.

In particular, I recommend that NOAA:

1. Require the development of methodologies that prevent potential adverse ecosystem and socioeconomic impacts whenever possible;

2. Recognize and respect a state's decision to opt-out or opt-in to aquaculture development in its offshore federal waters;
3. Base aquaculture management decisions on the best available scientific information in all cases;
4. Undertake regional programmatic Environmental Impact Statements and require operators to do site-specific reviews of proposed facilities;
5. Insist on comprehensive environmental monitoring and regular data reporting;
6. Mandate the stocking of only native species of local genotype and explicitly ban the farming of genetically engineered fish, including GE salmon, in ocean waters;
7. Oblige that any wild fish used in aquaculture feed be derived from sustainably managed fisheries, which, by definition, must include ecosystem-based fishery procedures that maintain sufficient forage for other marine species;
8. Address the use of antibiotics and chemical treatments in open systems, including prohibiting prophylactic use, using the treatment option with the least environmental risk, and minimizing drug use in all circumstances;
9. Require, in all cases, that environmental conditions of the site be fully restored after aquaculture use; and
10. Clearly address aquaculture practices in protected areas, like National Parks and Marine Sanctuaries, where specific aquaculture practices may be inconsistent with existing regulations and management policies.

Thank you for the opportunity to comment on NOAA's draft national policy for marine aquaculture. I am pleased that the Draft Policy addresses many of the same issues that are addressed in H.R. 4363, the Sustainable Offshore Aquaculture Act. If marine aquaculture, especially of ocean fish, is to be part of our country's sustainable seafood supply, many of my Congressional colleagues and I conclude that aquaculture should not be managed under the Magnuson Stevens Act. Our nation's fishing law was not designed to address the host of unique environmental and socioeconomic challenges posed by ocean aquaculture. I encourage you to work with Congress and me to ensure NOAA has the authority it needs to protect the oceans from potential impacts of marine aquaculture.

Sincerely,

A handwritten signature in black ink that reads "Lois Capps". The signature is written in a cursive, flowing style.

**LOIS CAPPS**

**Member of Congress**