

April 11, 2011

NOAA Aquaculture Program
Attn: Susan Bunsick
1315 East-West Highway, SSMC#3
Silver Spring, Maryland 20910

Dear Ms. Bunsick:

I am pleased to submit these comments on the National Oceanic and Atmospheric Administration's (NOAA) Draft Aquaculture Policy. I thank NOAA for moving forward with this policy and sincerely hope that this effort creates a pathway forward that results in the actual implementation of plans and regulations under the Magnuson Stevens Fishery Conservation and Management Act for aquaculture in Federal waters as well as encouraging policies that support the use of aquaculture for fisheries rebuilding and restoration. NOAA, its sister Federal agencies, and numerous industry, academic and constituency groups have analyzed and reanalyzed aquaculture for decades, and we have the technological capacity, scientific knowledge, and understanding to move forward with commercial open ocean aquaculture in Federal waters. One cannot have a sustainable fisheries policy and seafood industry without aquaculture, and in particular, aquaculture in Federal and state marine waters. Additionally, U.S. policies should encourage greater use of aquaculture for rebuilding and restoring our existing fisheries, whether they have been hurt by overfishing, natural disasters, other man-made disasters such as the Gulf oil spill, or a combination of a variety of factors.

The highest priority for NOAA should be to finalize and implement the draft policy in a manner that will provide a well-defined path to sustainable commercial aquaculture development consistent with the goals and objectives laid out in the draft Department of Commerce Policy which states that the goal should be "to support the development of sustainable marine aquaculture within the Department of Commerce's goals of encouraging economic growth and employment opportunities in the United States and of enhancing United States competitiveness in, and exports to, global markets." NOAA's draft policy is not infused with a sense of urgency to move forward with aquaculture, and the final policy must reflect a greater sense of urgency and commitment to moving forward with implementation plans and the implementing regulations for the Gulf of Mexico Fishery Management Plan for Aquaculture.

Supporters of ocean aquaculture desire three policy outcomes:

1. A regulatory framework that provides real opportunities to invest in ocean aquaculture in Federal waters
2. A clear and efficient process for Federal consultation with the states for aquaculture permits in state waters
3. The establishment and sustainable growth of a domestic ocean aquaculture sector that diversifies U.S. seafood sourcing and creates domestic jobs and opportunities across the aquaculture supply chain

My comments will focus on the overall tone & commitment; define and clarify key terms; implementation plan; and NOAA's authority for aquaculture.

I. Overall Tone and Commitment to Open Ocean Aquaculture:

As drafted, NOAA's draft policy lacks a sense of urgency with moving forward with open ocean aquaculture and therefore implies that NOAA is not committed to moving forward in a meaningful and expedient fashion.

I concur with NOAA's Marine Fisheries Advisory Council's (MAFAC) comment that the draft has a "discouraging tone" and share their concern that the "draft" policy comes across as enabling the growth of aquaculture as long as it doesn't impact or interfere with anything else."¹

A properly crafted National Aquaculture Policy that commits NOAA to open ocean aquaculture; implementing those steps necessary to enable ocean aquaculture to flourish and that provides a framework for Fishery Management Councils to adopt Fishery Management Plans and Amendments would be a welcome contribution to the private sector's interest in investing in and developing a domestic ocean aquaculture industry.

A properly crafted strategy would be helpful for advancing aquaculture, however, a policy that does not commit NOAA to action and that does not support a workable framework will fail to achieve jobs and economic goals espoused in the Commerce Department's complementary Aquaculture Policy and will simply continue to drive American innovation and investment abroad. Just as the Department of Commerce Policy opens with a clear and concise commitment to support the development of sustainable marine aquaculture in the context of encouraging economic growth, jobs, and innovation, so should NOAA's. For the NOAA policy to have any meaning, it must accept that the central tenet of aquaculture and of fisheries management in general is to provide seafood based protein to the American and global consumer, and NOAA's stewardship mission is an outgrowth of this central purpose.

II. Define and Clarify Key Terms:

The draft policy would benefit by incorporating definitions of key terms such as sustainability and clarifying what phrases such as "in harmony with..."² mean.

On "sustainable" and "sustainability" the policy cites these terms multiple times while offering no real guidance as to how NOAA defines these terms. NOAA should clearly define sustainability into the policy, and should look to the following definitions as guidance. In 1988, the Food and Agriculture Organization of the United Nations defined sustainability as:

[T]he management and conservation of the natural resource base and the orientation of technological and institutional change in such a manner as to ensure the attainment and continued satisfaction of human needs for present and future generations. Such development conserves land, water, plant genetic resources, is environmentally non-degrading, technologically appropriate, economically viable and socially acceptable³.

¹MAFAC Comments on NOAA Draft Aquaculture Policy, April 7, 2011, page 1.

² NOAA Draft Policy, Page 1, Statement of Policy #1

³ Food and Agriculture Organization of the United Nations Publication: FAO Council, 94th Session, 1988

DOC should also examine the Consensus Statement on Sustainability adopted by the United States Department of Agriculture in February, which states:

“The U.S. Department of Agriculture is committed to working with partners and stakeholders toward sustainability of diverse agricultural, forest and range systems. USDA seeks to balance the goals of: 1) satisfying human needs; 2) enhancing environmental quality, the resource base, and ecosystem services; 3) sustaining the economic viability of agriculture; and 4) enhancing the quality of life for farmers, ranchers, forest managers, workers and society as a whole. USDA integrates these goals into its policies and programs, particularly through interagency collaboration, partnership and outreach at both domestic and international levels.

USDA encourages the development and adoption of place- and scale- appropriate management, production, distribution, and information systems that advance continuous integrated progress toward all of these goals across landscapes, supply chains, markets and communities. USDA also supports the principles of “reduce, reuse, and recycle” in relation to efficient product handling, processing, transportation, packaging, trade, consumption and waste management.”⁴

The USDA statement is appropriate in that it recognizes that sustainability must be managed and adopted across supply chains, markets, and communities.

Given the vital role of fisheries and aquaculture as a source of healthy protein for populations around the world, any NOAA sustainability definition must recognize that the top priority of food production, including from our oceans, is to satisfy human needs and that stewardship and sustainability are outgrowths of this condition.

III. Implementation Plan:

I fully endorse the concept for an implementation plan put forward by the Coalition for Action on Open Ocean Aquaculture. Additionally, I echo the comment by MAFAC that NOAA should “redouble its efforts to implement this policy and the 10 year plan once it is adopted to make up for this lost time.”⁵

In October, 2007, NOAA published the 10-year plan for Marine Aquaculture. This plan built off of the National Aquaculture Act, the 1998 NOAA Aquaculture Policy; the 1999 Department of Commerce Aquaculture Policy; the 2003 Code of Conduct for Responsible Aquaculture Development in the United States, Exclusive Economic Zone; the U.S. Commission on Ocean Policy’s Final Report to Congress; the President’s 2004 Ocean Action Plan; NOAA’s 2005 Annual Guidance Memorandum for FY 2008-2012; and the National Offshore Aquaculture Act of 2007 (HR 2010 and S 1609). The 2007 plan was subject to public comment sessions.

⁴ United States Department of Agriculture, Council for Sustainable Development, February, 2011 (http://www.usda.gov/oce/sustainable/Files/Sustainability_Concensus.pdf)

⁵ MAFAC Comments on NOAA Draft Aquaculture Policy, April 7, 2011, page 1.

Additionally, in 2004 NOAA in conjunction with the Gulf of Mexico Fishery Management Council began a multi-year process to authorize aquaculture in the Gulf of Mexico. This process included a full Programmatic Environmental Impact Statement as required by the National Environmental Protection Act (NEPA) and a Regulatory Impact Review and a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act of 1980 and Executive Order 12866. These processes were completely open, transparent, and subject to multiple public comment periods.

It is time to move forward.

IV. NOAA's Authority for Aquaculture:

NOAA has long maintained authority under the Magnuson-Stevens Act (MSA) to regulate aquaculture in Federal waters. NOAA's longstanding position, dating as far back as 1993 is that the definition of "fishing" under MSA encompasses not only the catching or taking of fish, but also the "harvesting" of fish.⁶

While the NOAA policy suggests that NOAA should work with the Congress to "clarify" their authorities, NOAA should simply move forward with the Gulf of Mexico Plan. Should Congress wish to provide additional guidance to NOAA, they could then pass new legislation or amend the Magnuson-Stevens Act, but until this time, Congress has spoken and as has the President through the enactment of the NAA and of MSA.

V. Summary

In closing, NOAA should also commit to develop a regulatory process under MSA that not only "minimize[s] adverse impacts but that also enables the development of an offshore sector. Such a commitment would be consistent with President Obama's January 18, 2011 Executive Order, in particular, Section 1, General Principles of Regulation, which states:

"(a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements."

While I fully concur that the minimization of adverse impacts should be a goal of the regulatory process, one has nothing to minimize against if the regulatory structure is so tied to the precautionary principle that no aquaculture facility would ever be permitted in Federal waters. As the Executive Order states, the minimization of barriers to the permitting and establishment of marine aquaculture facilities must be an equal priority. An "efficient, coordinated, and transparent science-based permitting process" that both provides regulatory certainty to attract investment in marine aquaculture and at the same time seeks to minimize adverse impacts

⁶ 1993 legal opinion issued by NOAA's Office of General Counsel

would be fully consistent with the President's Executive Order as well as with President Clinton's Executive Order 12866. NOAA should commit to the spirit of the President's Executive Order and ensure that efforts to "minimize adverse impacts" do not stifle economic growth, innovation, and competitiveness of this fledgling domestic sector, and in fact that the final Commerce and NOAA policies encourage approaches that "maximize net benefits" and that promote economic growth, innovation, competitiveness, and job creation, while utilizing the least burdensome tools for achieving these critical ends.

Again, thank you for the opportunity to comment on this critically important policy. In addition to my own comments, I would like to reiterate my endorsement of the comments submitted by the Coalition for Action on Open Ocean Aquaculture. The highest priority for Commerce and NOAA now should be to finalize and implement the draft policies in a manner that will provide a well-defined path to sustainable commercial aquaculture development. While the Commerce policy recognizes this, NOAA's draft policy is not infused with a sense of urgency to move forward with aquaculture, and I sincerely hope that NOAA will move forward with a sense of urgency.

Sincerely,

Chris Scheve
Founder
AquaTerra Strategies