



Mr. Samuel Rauch, III
NOAA Fisheries Service
1315 East West Highway
Silver Spring, MD 20910

Dear Mr. Rauch:

The Marine Fisheries Advisory Committee (MAFAC) offers the enclosed report recommending that the NOAA Fisheries Service develop a seafood sustainability registration program.

In May 2012 MAFAC agreed to develop a framework for a NOAA certification mark or other acknowledgment of the sustainability and origin of domestic fishery products meeting U.S. national standards and regulations. In August 2012 a MAFAC workgroup was formed to carry out the following objectives associated with this goal:

1. Identify a US seafood certification framework including program costs, options and a recommendation for how to pay for it;
2. Identify certification criteria/standards; and
3. Develop a report by the October 2013 MAFAC meeting.

The members of MAFAC, the federal advisory committee responsible for advising the U.S. Secretary of Commerce on living marine resources policy matters, represent a wide range of interests, opinions and expertise from all over the United States and its territories. MAFAC offers these recommendations after engaging in a year-long review, during which MAFAC solicited public input from producers, buyers and non-governmental organizations (NGOs); engaged in personal interviews; conducted surveys; and engaged in extensive internal deliberations. Although a unanimous endorsement was not achieved, this report is supported by a majority of our members.

Our recommendations also recognize the value of the substantial policy process already created by U.S. laws and regulations. As a federal agency with an \$800+ million budget, NOAA Fisheries exercises substantial scientific, regulatory, and enforcement authority to manage sustainable fisheries. NOAA's FishWatch.gov website provides a worthwhile starting point for sustainability information, and NOAA Fisheries should consider additional ways to educate

seafood buyers, sellers, and consumers about the Magnuson Stevens Fishery Conservation and Management Act (MSA) and the resulting framework of fishery management that protects and ensures the sustainability of domestic seafood.

MAFAC is well aware of the various national and international efforts to develop standards for, and consumer awareness of, seafood sustainability, such as the Food and Agriculture Organization of the United Nations' Code of Conduct for Responsible Fisheries; the Marine Stewardship Council (MSC) certified sustainable seafood ecolabel; and the Seafood Watch Program from the Monterey Bay Aquarium. These seafood certifications fill a necessary purpose - especially for fish coming from poorly regulated foreign markets and for U.S. fishery products seeking access to foreign markets.

Rather than endorsing an entirely new seafood certification program, MAFAC recommends a simple framework that offers value to the seafood industry consistent with the agency's legal authorities and minimizes conflicts with existing third-party ecolabels. The envisioned approach would initially focus on wild-caught seafood from federally managed waters, and phase in a process for seafood derived from state-managed commercial fisheries or aquaculture products.

We are pleased to submit these recommendations and look forward to discussing them with you and your staff at your convenience. MAFAC remains grateful for the opportunity to provide advice on these important matters of living marine resource stewardship and sustainability.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Rizzardi". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping underline.

Keith Rizzardi
Chairman
Marine Fisheries Advisory Committee

Enclosure

MARINE FISHERIES ADVISORY COMMITTEE (MAFAC)
RECOMMENDATIONS ON SUSTAINABLE SEAFOOD CERTIFICATION

December 2013

During MAFAC's investigation, sellers of sustainably-caught U.S. fish, who already comply with the regulatory scheme required by U.S. law expressed concern with the need for certifications or labels from a third-party to demonstrate compliance with the principles of a sustainable fishery. Notably, the principles embodied in the Magnuson Stevens Fishery Conservation and Management Act (MSA) often form the basis for third-party certification efforts, which focus on the statute's ten national standards, such as preventing overfishing, targeting maximum sustainable yield, adopting conservation and management measures, conserving habitat, and using the best available scientific information. In addition, third-party organizations granting certifications to U.S. fish producers frequently rely upon NOAA Fisheries data, research, and analysis when assessing a U.S. fishery's status.

The emergence of multiple third-party certification programs reflects a growing awareness about the importance of sustainable fishing practices. Four of the nation's fishery management councils have called on NOAA Fisheries to develop a certification program. Alaska has developed its own certification program. But consumer-oriented programs are expensive, especially considering the economics of an agency trying to reach millions of seafood consumers. More importantly, according to many seafood sellers interviewed by MAFAC members, consumer-directed sustainability campaigns provide questionable value to consumers, because consumers tend to trust their sellers to make decisions on sustainability and then base their own purchase decisions on price. MAFAC does not recommend the creation of a new certification program to directly compete with other certification programs. Instead, MAFAC recommends creating a less expensive registration program focused primarily on business-to-business transactions.

Certification programs are often composed of three parts: 1) a standards-setting process to define criteria for sustainability; 2) an independent auditing and certification component to determine who meets the standard; and 3) a marketing component to raise public awareness of the brand. When designing its recommendations, MAFAC concluded that NOAA Fisheries should capitalize on existing and available resources, including the:

- Sustainability standards already provided by U.S. laws, especially the MSA;
- Established data collection and fisheries management tools that NOAA Fisheries employs;
- Investigative and auditing skills of the NOAA Seafood Inspection Program; and
- Web-based public information provided on NOAA's FishWatch pages.

RECOMMENDATIONS

Overall Framework: a Domestically-Focused Business-to-Business Registration Program

MAFAC recommends that NOAA Fisheries improve awareness of the MSA and other laws and regulations governing U.S. fisheries and domestic aquaculture, particularly in the domestic business-to-business environment. MAFAC commends the educational efforts undertaken by NOAA Fisheries thus far on FishWatch.gov and encourages more work in this direction. MAFAC recommends that NOAA Fisheries utilize the standards and requirements of the MSA as the reference points to create a business-to-business based approach, recognizing the sustainability of wild harvest seafood products from U.S. Exclusive Economic Zone (EEZ) fisheries in compliance with the MSA. Furthermore, MAFAC also recommends adoption of traceability measures, implemented by buyers to enable subsequent purchasers to track sustainable fishery products in the marketplace.

MAFAC recommends that domestic producers be offered an opportunity, on a fee-for-service basis, to obtain a unique registration number identifying their product as sustainable domestic seafood. With this registration number, sellers of domestic seafood products would be authorized to market their product as “sustainable U.S.A. seafood.” Participation in the program would also require the seller of a registered product to be audited on a fee-for service basis by the NOAA Seafood Inspection Program to periodically verify documentation, police fraudulent marketing practices of misidentification and/or product substitution, and to ensure compliance with applicable laws. MAFAC notes, this approach parallels the concepts advocated in the Agricultural Marketing Act, which established a national policy to promote both wild and farmed U.S. seafood.

Criteria: Compliance with U.S. Fishery Laws Accompanied by Traceability Mechanisms

To qualify as “sustainable U.S.A. seafood” the product would need to be registered as sustainable based on the following criteria which are centered on U.S. laws:

1. Wild-caught fishery products must be legally caught by U.S. fishermen and landed in U.S. ports in accordance with federal (and state – see discussion below) fishery management regulations and environmental laws, including that:
 - a. The particular fishery stock status is known, the fishery is not overfished, and no overfishing occurs.
 - b. NOAA will need to develop additional criteria for fishery stocks where overfishing is occurring, the fishery is overfished, or rebuilding plans are in place, after receiving feedback from stakeholders.
 - c. Rebuilding plans, as discussed above, must be executed and complied with in accordance with regulations promulgated through a fishery management plan or Secretarial action under the MSA.

2. Fishery products must be traceable through a credible, audited chain-of-custody (traceability) program that allows buyers and regulators to trace the source of certified products to its sustainable, legal, domestic source.

FishWatch as a Resource: Confirming Registered Fishery Products

MAFAC also recommends that NOAA Fisheries should establish a process allowing buyers of seafood to confirm that a seller is, in fact, offering sustainable seafood. Buyers should be able to visit and interact with the FishWatch.gov webpage, where the buyer can enter a registration number and confirm that a harvester (or subsequent processors or dealers) has been approved and meets the criteria for producing and/or engaging in the commerce of traceable sustainable U.S. seafood.

In addition, MAFAC notes that NOAA's FishWatch website has generated broad support from the seafood stakeholder community. MAFAC encourages NOAA Fisheries to engage in additional outreach with the industry and NGO community to understand ways that the website could be enhanced by including additional information, such as allowing sellers of registered sustainable seafood products to be searched or listed on the FishWatch webpages.

Traceability: Allowing Industry Participants to Adopt Their Own Measures

MAFAC concluded that the designation of a fishery product as sustainable requires sufficient confidence that the product origin is traceable to the well-managed fishery. Seafood sellers should be allowed the flexibility to choose their method of documenting product traceability, which could include use of third-party products like Trace Register, or other chain of custody procedures. MAFAC does not recommend any singular approach; rather, MAFAC envisions that the NOAA Seafood Inspection Program would evaluate the adequacy of the traceability documentation as part of its audit. NOAA Fisheries may, however, choose to develop policies or rules with criteria for traceability.

Revoking Registration Numbers: Comply with U.S. Law

MAFAC recommends, to the extent allowed by law, that NOAA Fisheries should revoke or suspend registration for harvesters, processors, or buyers who have been convicted of criminal violations of, or multiple civil violations of, the federal Magnuson-Stevens Conservation and Management Act, Clean Water Act, Lacey Act, Marine Mammal Protection Act, Endangered Species Act, or other U.S. laws designed to protect fisheries, ocean habitats, and oceanic species. Convictions for product substitution or fraudulent misrepresentation of species under the MSA, Lacey Act, or other laws should also be grounds for suspension or revocation of registration. In addition, NOAA will need to evaluate whether products from fisheries that become overfished should still be considered sustainable. In some instances, a fishery may be identified as overfished and a rebuilding plan with accountability mechanisms may not yet be in place. During that gap period, NOAA Fisheries may consider temporarily revoking registration numbers.

Independent Audits: the Role of the NOAA Seafood Inspection Program

MAFAC recommends that the necessary registration documentation review and audits should be conducted by the NOAA Seafood Inspection Program, which is skilled in auditing company practices, on a fee-for- service basis. This division of labor is critical since the Seafood Inspection Program's personnel are not paid by NOAA appropriated funds and are supervised independently from the regulators who develop and enforce fishery regulations. MAFAC recommends that the certification scheme preserve the reputation of the Seafood Inspection Program (SIP). As NOAA Fisheries explores the possibility of relying on the SIP, careful consideration should be given to the reputational risk that the SIP may incur.

Economics: Start-up Costs, Recurring Costs, and Fees-for-Service

Taxpayers should not shoulder the costs of implementing business-to-business services that are not currently part of NOAA's budget authorization. Instead, participating companies wanting to obtain a registration number should pay a fee-for-service to NOAA Fisheries to offset these costs. MAFAC recognizes that the initial development and implementation of this recommendation will require some appropriated funding. Initial review by MAFAC suggested some start-up costs. The highest estimate received was \$500,000; other estimates suggest that this limited business-to-business registration number approach could cost as little as \$100,000. Once the program is in place, NOAA Fisheries will also incur costs related to the audit and registration web services; program-related communication expenses, including education, outreach and promotion; program enforcement; and defense of the program from abuses and legal challenges. Estimates for annual operations reached as high as \$1.2 million annually, but if implemented on a fee-for-service basis, some federal staff have estimated annual expenses for seafood sellers who participate in the program could be less than \$1,000 per year. MAFAC encourages NOAA Fisheries to perform the more detailed cost-analysis that was beyond the capacity of the Committee to perform to project the costs of administering such a program.

Legal Authority: Implications for MSA and Beyond

Implementation of this recommendation will take time and may necessitate new authorities. Legislation may be needed to empower NOAA Fisheries to establish a program to create a fee-for-service registration number program and could be considered during as part of the MSA reauthorization process. In addition, rulemaking may be needed to clarify the procedures by which sellers request certification for their products, or what types of traceability programs are acceptable.

Eventually, additional rules may be needed to address the methods for evaluating whether state-managed fisheries have adequate standards in place to achieve sustainability in a manner roughly equivalent to the MSA framework in place for federally-managed waters. Similar rulemaking would be needed for aquaculture operations. If the aquaculture products from state-managed fisheries or aquaculture operations reach those standards, including traceability mechanisms, then they too should be eligible for participation in the registration number program.

Phased Implementation

MAFAC proposes a phased implementation of this recommendation; first for federally-managed fisheries, then later for state managed fisheries and aquaculture, and finally for aquaculture operations in federal waters. NOAA Fisheries might also consider a pilot program, launching a registration process in some states. MAFAC also encourages NOAA Fisheries to engage the stakeholder community in a dialogue, seeking feedback from the business community to ensure the economic viability of this recommended approach, and seeking to better understand the concerns of the NGO community.

Bottom Line: Compliance with the MSA in the U.S.

The underlying premise of the MSA is to ensure the sustainability of U.S. fisheries. NOAA Fisheries should proudly promote and defend the decades of fishery management accomplishments that have made U.S. fisheries some of the most well-managed and sustainable in the world. MAFAC is encouraging NOAA Fisheries to adopt a tool that enables sellers of U.S. wild-caught seafood to show their domestic buyers that they are offering product from a sustainable fishery' as defined by the principles and standards of federal law.

FREQUENTLY ASKED QUESTIONS

During MAFAC's investigation of this subject over the last year, many fisheries stakeholders raised questions about MAFAC's recommendations. Some of these questions are addressed below.

Who can be certified as a seller of registered sustainable seafood? MAFAC's recommendation is to register the product from a sustainably-managed fishery as sustainable. A registration number would be issued for the product, and would be able to be verified on NOAA's FishWatch website. Importantly, MAFAC does not suggest that NOAA certify a dealer or seller. Seafood businesses may source products from a variety of domestic and international sources. Therefore it is up to the seller to choose if some or all of the products sold by their company can or should be registered as sustainable.

What does this mean for existing certification programs? MAFAC offers no specific opinion of any other third-party certification program. In some instances, particular seafood buyers may decide that they want to hold their seafood sources to different economic, environmental, or moral standards that are reflected by other programs. U.S.-based fisheries that are already certified by third-parties can continue to promote their certifications if they so choose.

What about certifying aquaculture programs as sustainable? Although MAFAC makes no specific recommendation regarding the certification of sustainable aquaculture at this time, a program for aquaculture should eventually be considered. Aquaculture operations in the Exclusive Economic Zone are considered fisheries for purposes of NOAA management under the MSA, and therefore must be compliant with the national standards and other MSA requirements. To date, there have been no aquaculture operations in the EEZ under NOAA

management and thus no MSA implementing regulations for aquaculture promulgated, but any future action will need to ensure a sustainable “fishery.” In addition, aquaculture operations in state and federal waters have additional permitting requirements under at least two other federal agency statutes and regulations regarding placement: the Army Corps of Engineers process through its Section 10 permit for structures in navigable waters (that also requires various consultations including Coastal Zone Management Act consistency), and the EPA through its National Pollutant Discharge Elimination System permitting for point source discharges. NOAA Fisheries’ sustainable certification of seafood from aquaculture activities requires interagency coordination to ensure the activity is in compliance with other federal requirements.

Can state-managed fisheries participate? MAFAC recognizes that most state-managed fisheries in the U.S. adhere to fishery management standards parallel to those in the MSA. Once a registration number program is successfully established for federally-managed fisheries, MAFAC recommends that NOAA Fisheries develop appropriate rules or policies to determine whether a state’s standards are sufficiently comparable to the federal MSA standards, should a state wish to participate in the program. The criteria for state-managed fisheries or aquaculture in state waters will need to be developed and additional statutory authority may be needed depending on the final program design. The NOAA Seafood Inspection Program could still audit compliance to whatever criteria might be adopted. In the near-term, the federal government should first focus on federally-managed fisheries followed by state-managed fisheries. Additional consideration should then be given to aquaculture.

If a fishery is overfished, or if overfishing is occurring, is it still sustainable? In some fisheries where stocks are overfished or where overfishing has occurred, MSA implementation and sound fishery management requires a rebuilding plan to be created and in place by a date certain. That plan is designed to rebuild a fishery to maximum sustainable yield. When the fishery is rebuilding, the reduced rate of fishing and managed growth rate of fish populations means that the fishery is sustainable although the annual yield may temporarily be at a level that is less than the optimum yield. The fishery is still being managed in accordance with a data-driven, scientific process managed by a federal agency in compliance with national standards and the MSA requirements. Fish products that come from a fishery managed under a fishery management plan, where stock status data does exist, can still be certified as sustainable, even if the stock is sub-optimal but under a MSA-regulated rebuilding schedule. However, for overfished fisheries that do not yet have a rebuilding plan, and for fisheries where overfishing is occurring, NOAA should obtain additional stakeholder feedback and determine whether these fishery products can be registered as sustainable.

How can NOAA Fisheries declare the fisheries it manages to be sustainable? Some critics of this recommendation have questioned NOAA’s ability to be independent. MAFAC notes that NOAA Fisheries is a credible, science-based agency, with an \$800+ million budget and a history of MSA implementation. But MAFAC also proposes that annual audits be conducted by the NOAA Seafood Inspection Program, an independent auditing office distinct from the regulators at NOAA Fisheries, to ensure that registered seafood products comply with the requirements above.

But what about...?

MAFAC did not achieve consensus on this proposal, and recognizes that this proposal does not solve every problem. NOAA should be aware of the following points that have been emphasized by MAFAC members:

- ***Costs and benefits.*** NOAA Fisheries should only undertake a registration process if it is reasonably priced and beneficial to U.S. fisheries, and should engage in a more robust cost estimate process on the expense of this proposed initiative to ensure that it does not detract from other core agency functions. This program should not create an economic burden for small businesses, and should strive to achieve demonstrable, identifiable, or quantifiable added value to the fishery products in the marketplace.
- ***Global perspectives.*** European and other non-U.S. buyers of fishery products may not accept a NOAA registration number as adequate demonstration of sustainability. They may require third-party verification. However, other MAFAC members note that this proposal focuses on providing a tool for domestic fishery products sold in the domestic marketplace.
- ***The meaning of sustainability.*** There is no explicit definition of “sustainable” or its derivatives in the MSA. The FAO definition is:

The 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 of continued satisfaction of human needs for present and future generations. Such sustainable development conserves (land,) water, plants and (animal) genetic resources, is environmentally non-degrading, technologically appropriate, economically viable and socially acceptable.

According to the MSC:

A sustainable fishery is defined, for the purposes of MSC certification, as one that is conducted in such a way that: it can be continued indefinitely at a reasonable level; it maintains and seeks to maximize ecological health and abundance; it maintains the diversity, structure and function of the ecosystems on which it depends as well as the quality of its habitat, minimizing the adverse effects that it causes; it is managed and operated in a responsible manner, in conformity with local, national and international laws and regulations; it maintains present and future economic and social options and benefits; and it is conducted in a socially and economically fair and responsible manner.

Ultimately the definition is up to NOAA Fisheries as a policy choice unless or until Congress specifies a definition in the MSA. In the meantime, MAFAC’S proposal limits the concept of sustainability to the context of fishery management and science, and does not address other political, social, economic, or environmental issues.

- ***The need for sufficient participation.*** Some commercial fishermen disagree with the need for this program, oppose the government’s role in a certification program, and

questions were raised whether this constituted a national mandate for industry. Some MAFAC members thought that those critiques reflected a misunderstanding of this particular proposal. The success of this program, or any other, depends on reaching a critical mass of buyers and sellers who participate in the process, and the program must be affordable for the registrants and worth the investment of time and money for NOAA Fisheries. Neither the informal surveys conducted by MAFAC, nor the letters opposing this initiative, ensure or disprove the potential for program participation.

- ***State fishery and aquaculture issues remain unresolved.*** Some MAFAC members note that the creation of a sustainability registration program for federal waters could put fishermen in state waters at a competitive disadvantage; similar concerns exist that some fishermen who do not participate in this “voluntary” program might be at a disadvantage compared to others who do. On the other hand, other MAFAC members note that similar dynamics already exist, because some fishermen participate in private certification programs, while others cannot or do not. The availability of an alternative option from NOAA Fisheries might enhance the market access of some fishery products.
- ***The dissonance between rebuilding and sustainability.*** While the proposal above suggests that stocks that are harvested as part of a lawful rebuilding plan can be considered sustainable, some MAFAC members disagree that a fishery in rebuilding status can be considered sustainable. Others suggest that a fishery is sustainable only if its stock status is known, applicable conditions or limits for the fishery are being met, the stock is not overfished, and no overfishing is occurring. Still others suggest that NOAA Fisheries should develop separate science-based metrics for evaluating the performance of a fishery, instead of merely relying upon the implementation of a rebuilding plan. NOAA should consider obtaining additional feedback from NGO and industry stakeholders on this point.

The following additional comments were endorsed by some members of MAFAC, and should be considered by NOAA Fisheries:

- ***Lack of a national mandate from industry.*** Is there stakeholder (i.e., industry, fisherman) support for a NOAA certification program? There is significant objection to a certification program expressed by a substantial portion of the U.S. processing and harvesting sectors. By letter of November 2013, representatives of more than one half of the poundage of federally-managed fish landed in the U.S. submitted public comment to NOAA opposing such a program. These organizations represent both large and small boat fishermen and processors from Alaska, Washington, Oregon, and California.

While testimony was received in support of the program from some regions, it is uncertain what the support would be from industry when industry is told they will a) bear the cost of the program; and b) be at a competitive disadvantage in the marketplace, if they do not engage in a “voluntary” program.

- ***Costs.*** Fishermen who participate in federally managed fisheries already pay significant fees on landings of federally managed fish. Examples of costs deducted from gross landing value are state landing taxes, buyback program costs, observer fees, and cost

recovery programs. Additional fees, even for a “voluntary” program, further burden small businesses, without demonstrable, identifiable or quantifiable added value to the product in the marketplace.

The proposed certification program lacks sufficient detail for the agency to make more than a good faith guess as to costs, whether they be attributable to start up, renewal, appeals, enforcement, or audits.

- ***Status of fisheries affected.*** Concern was expressed by several committee members as to whether federally managed species that are in an ‘overfished’ status would be eligible for certification. The position of some of the members was that if a stock was overfished, even if under a rebuilding plan, it could not be certified as sustainable.
- ***Need for third party verification.*** Legitimate concerns were expressed by committee members as to the credibility, in U.S. and international seafood markets, of whether a federal management agency can independently certify its own work as sustainable. Given that a significant portion of U.S. seafood deliveries are for export to countries that require third party seafood verification, it was unclear what benefit, if any, would come from a NOAA sponsored program.

Information provided to the committee regarding costs of third party certification was anecdotal only, and was widely variable, based on the participant’s personal experience with a specific fishery.

- ***Budget constraints.*** Committee members heard reports from NOAA management regarding declining budgets in real dollars since 2007, the effects of past sequestration actions, as well as concerns for future reductions in the agency’s budget. Regardless of the budget outcome, the message is that NOAA is being asked to do more work with less funding. It is asserted by some committee members that NOAA lacks the financial resources and personnel to assume a new function: that of certifying potentially thousands of small and large businesses involved in harvesting, processing, wholesaling, and distribution of seafood.
- ***Conflict with state fisheries.*** Harvesters and processors in the seafood chain do not catch, process, add value to, sell, or distribute solely those species that are federally managed. Picture the distributor who sells to restaurants both federally managed species and state managed species. What is he to say to his customer, the restaurant? “I can certify these species as sustainable by the U.S. government, but I can’t do so for these other species in demand by your customers—even when those species are also sustainably managed.”

A federal certification process puts state managed fisheries at a disadvantage in the marketplace. To say that we will address the issue of state managed fisheries at another time simply kicks the issue down the road, to the detriment of those species.

- ***Existing programs.*** Members of the committee expressed support for the enhancement and continued support and funding of FishWatch, as a marketing tool for federally

managed species. It's free to all users, has current information, and is easily accessible. In addition, it is noted that a website FishChoice.com, in existence since 2010, currently recognizes over 3000 species, and lists as its partners multiple seafood certification groups and NOAA's FishWatch. The site is free, and allows businesses from very large processors to individual fishing boats to list their products, providing information to individual consumers, wholesalers, dealers, and restaurants.

- ***Lack of clear mission; measurement of outcomes.*** What is the intended outcome? Increased consumption of species that are federally managed? Is there an existing baseline? How many pounds per year does a U.S. citizen consume of federally managed fisheries? How, and by how much, would that percentage possibly increase by a federal certification program? What information are we lacking? What percentage of U.S. fisheries in landings and in value, are already certified by a third party process?