State of Alaska

ANALYSIS OF "NATIONAL OFFSHORE AQUACULTURE ACT"

March 15, 2007

Background

The State of Alaska is opposed to finfish aquaculture in state waters. Alaska's legislature implemented a statutory prohibition for finfish in 1990, a position still widely supported by Alaskans today.

Alaska's wild capture fisheries generate between $1 and $2 billion (first wholesale) annually, and provide more than 50% of the basic private sector jobs in the dozens of communities on Alaska's vast coastline. Alaska's fisheries value is due, in large part, to successful market differentiation between wild and farmed seafood products. The continued successful marketing of Alaska's seafood is likely contingent upon a clear and unequivocal message that Alaska's seafood is wild and healthy, a message that will be confused should finfish aquaculture be allowed in waters off Alaska's shores.

A number of town meetings and forums were held in 2004 and 2005 following the U.S. Commission on Ocean Policy report supporting the development of offshore aquaculture (from 3 to 200 miles) and in response to S.1195, the Bush Administration's offshore aquaculture bill introduced by Senator Ted Stevens. Alaskans, then and now, remain opposed to finfish aquaculture in and off of Alaska's waters. Pervasive public concerns continue to exist over a number of issues related to offshore finfish aquaculture. These are:

- marketplace confusion about Alaska's healthy, wild seafood resulting in lost fisheries value;
- disease and parasite transmission;
- escapes/releases leading to potential colonization and genetic impacts; and
- environmental effects.

Because of their reliance on fisheries, Alaskans support:

- rigorous wild stock protection measures, including strict regulation of hatcheries;
- use of local brood stock;
- required marking/tagging of hatchery fish;
- studies on hatchery/wild stock interactions;
- protection of wild stock genetics;
- prevention of invasive species introductions; and
- wild stocks always having priority in fisheries management decisions.

Until equivalent measures are in place that assures protection of Alaska's wild stocks, Alaskans will not support offshore aquaculture development off of Alaska's shores.

Recommendations

Though the draft revised legislation is much improved over the previous bill, the State of Alaska believes that the following public policy issues must be addressed in any successful offshore aquaculture legislation.

A five year moratorium on new offshore aquaculture development until environmental and socio-economic impacts are adequately evaluated

Because the potential impacts of offshore aquaculture to the environment and to wild capture fisheries economies is so great, a moratorium that allows for adequate scientific research and socio-economic impact analysis is justified. During this time, the Department of Commerce should authorize only experimental aquaculture operations in support of such research and analysis. The moratorium and concurrent research will allow for important information to be acquired about offshore aquaculture and its potential impacts on the environment and on fishermen, processors, and fisheries-dependent communities. Such a moratorium will also give the public and the fishing industry the opportunity to adjust to changing markets, as well as to observe and comment on proposed permitting policies and processes.

A regulatory framework for evaluation of environmental and socio-economic impacts

Though the bill speaks of "consideration of the potential environmental, social, economic, and cultural impacts," the State of Alaska supports an explicit framework for such evaluation being mandated in statute and not developed simply through rulemaking. The potential impacts and effects of offshore aquaculture are of a magnitude that warrants a thoroughly defined process for the public and policymakers.

While this bill is much more comprehensive than the previous bill and does mention safeguarding genetic resources, prevention or minimization of disease or parasites to wild stocks and limits species produced to species native to a region, and fish marking, it is still not as rigorous a standard as Alaska requires of its own enhancement activities and needs to be.

Requirement for compliance with the National Environmental Policy Act (NEPA) and the Magnuson-Stevens Act (MSA)

The current draft legislation contains a number of undefined timelines and criterion such as "within a reasonable period," "periodically review," "to the extent necessary," "consideration of," "where appropriate," "may suspend," and "will consult." Therefore, policymakers and the affected public have no surety as to what the standards are. The development of offshore aquaculture is a major federal action, and as such, should be NEPA compliant at all levels to assure adequate public involvement and a thorough understanding of the activities to be undertaken and resultant impacts. Providing for NEPA compliance (or its equivalent) at all levels of this process is necessary to assure responsible decision-making through a known and defined public process with specific timelines and criterion.

Given that MSA is the federal statute governing fisheries management in the Exclusive Economic Zone (EEZ) and that offshore aquaculture will impact such management, it is

appropriate that offshore aquaculture be developed and coordinated under that same governance structure.

Meaningful roles for states and RFMCs

While the draft legislation provides for states to "opt out" of offshore aquaculture, it apparently doesn't provide for anything other than totally in or totally out. Some states may choose to engage in shellfish aquaculture, but not finfish. The bill needs to be modified accordingly. We further recommend that the language be changed so that states may "opt in" to offshore aquaculture development rather than be required to "opt out" of it.

In addition, providing for states to opt out only to twelve miles off their shores is completely unacceptable to the State of Alaska. The language must provide for states' ability to mitigate, to the maximum extent possible, undesirable impacts resulting from offshore aquaculture development. One tool for addressing overlapping state concerns is to use the Regional Fishery Management Councils (RFMCs) and/or Marine Fisheries Commissions as is currently done now for Fisheries Management Plans.

RFMC's should be tasked with evaluation of the potential risks and benefits of offshore aquaculture in their areas of jurisdiction and be empowered with lifting the moratorium as they determine appropriate. RFMCs have the expertise and judgment necessary for dealing with issues of biological, economic, and social importance to their regions' fisheries. Further, vesting RFMCs with approval and management authority for offshore aquaculture is the easiest way to "ensure, to the extent practicable, that offshore aquaculture does not interfere with conservation and management measures promulgated under the MSA," as suggested in the draft legislation.

Statutory prohibitions on production of specific major wild capture species

Alaska has been working diligently to establish wild Alaska salmon as a high-value brand. This branding is based, in part, on Alaska's reputation for natural, wild fish. The introduction of farmed fish into the Alaskan environment, whether through farming or escapements, puts this branding at risk. Prohibitions on farming of certain species, particularly salmon, halibut, and black cod, would prevent the tainting of the Alaska branding image and impacts to the consequent recent increases in commodity value. Moreover, the introduction of mass-produced, farmed fish has already severely impacted economies of rural Alaska communities. Species-specific prohibitions on aquaculture would allow these communities to survive and maintain traditional lifestyles.

Mitigation for impacts of global aquaculture on major wild capture species

Growth of aquaculture in the U.S. EEZ will have an impact on wild capture fisheries. As the federal government works to promote and build this competing industry, it should develop programs that maintain or increase the economic vitality of existing wild capture fisheries. The growth and development of the global salmon industry decreased the value of Alaska salmon substantially between the early 1990s and 2002. With average total harvest values of $500 million from 1990 – 1995, harvest values fell to $162 million in 2002. Without large fluctuations in volumes harvested, the primary reason for the

collapse was from the increased competition from farm salmon. The Alaska salmon industry is improving its competitive position through significant public assistance and marketing as wild and natural. To mitigate similar downfalls in the other Alaska fisheries, worth an estimated $805 million harvest value in 2005, programs should be implemented that focus on market and product diversification for wild capture fisheries, with an emphasis on highlighting the important characteristics of wild seafood. These types of programs may provide improvement to harvesting and processing infrastructure, quality improvement investments, value-added equipment, and marketing funds. Programs could also be put in place that limit the growth of farm fish production to a scale that does not flood the market with product in a manner that leads to excessive downward prices in both the aquaculture and wild capture fishery industries.

Inadequate permit requirements

Duration

The State of Alaska cannot support permit duration of 20 years given the unknown potential environmental and socio-economic impacts of offshore aquaculture. During the initial development of this program, permit duration should be limited to not more than 5-10 years in order to responsibly evaluate impacts and address them as they become known. In addition, permit duration of 20 years would likely create highly valued property rights that would likely be much more difficult to change in response to developing issues.

Renewals

The existing language also allows for indefinite permit renewals by the Secretary in a state that objects to offshore aquaculture in the EEZ off of that state for permits granted prior to receipt of the objection. Thus, if problems develop they cannot be addressed by an after-the-fact objection. Perhaps an alternative could provide for no more than one renewal period after an objection is received, or authority vested to suspend or modify a permit should be premised on either material non-compliance with the terms of a permit or a "national interests" finding. Given the potential fragility of the marine resources and coastal economies implicated by this legislation and the lengthy list of environmental factors to be addressed and minimized in a permit, ongoing activity should be premised on permit compliance, not an arbitrary time period.

Complete Application

The statute is unclear as to what a complete application is and what level of evaluation it will go through and how the public interacts with that process.

Enforcement and sanction issues

There are a number of problems with the draft bill's enforcement and sanctions sections. The bill should:

- Contain a provision for delegation of enforcement authority to states and/or cross-deputization so that states have the ability to take immediate action if/when problems occur;
- Contain a provision for restitution to states for expenses incurred by a state as a result of permit violations having negative impacts on that state's resources or economy;
- Contain an explicit provision for sale and/or destruction of seized living organisms;

- Contain a provision making it a violation of the Act to import or ship living and/or dead organisms through state waters where doing so is a violation of state law;
- Contain a provision for revenue sharing with states where penalties are imposed; and
- Contain a provision prohibiting sale of aquaculture products at prices less than a certain percentage of the market price of the same wild product.

Miscellaneous

Fees

The draft legislation does not require the Secretary to ensure that fees are sufficient to cover the costs of program administration. Provisions should be added requiring fees sufficient to cover all program administration costs, including reimbursement to states for time spent monitoring or commenting on permit applications. In addition, provisions could be added to provide for royalty payments for use of a public resource, including revenue sharing with adjacent states impacted by offshore aquaculture operations. While bonding is required, it does not cover any costs for liability for potential resultant damages and should.

Research

The legislation should define what "pilot-scale testing," "farm-scale research, and "facilities used primarily for research" are so that the intent is clearly understood and cannot be abused.

Reduction of the use of wild fish in aquaculture feeds

The legislation should require that the Secretary do more than "conduct research" to reduce the use of wild fish in aquaculture feeds. Pending the outcome of such research, the legislation should require the use of incentives or disincentives, if feasible, to implement such reductions.

USCG's "navigational safety zones"

The legislation should define what uses are allowed or disallowed in the USCG's "navigational safety zones" to provide clarification for the public.