The Challenges to a National Offshore Aquaculture Act Program

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Preface

- This presentation is intended to facilitate a discussion of the issues presented and does not constitute legal advice. Any questions regarding specific legal issues should be reviewed with a lawyer engaged by you for that purpose.
Business Objective: Produce marketable food fish species in federal waters in compliance with operating standards.

- Requirements:
  - Legal right to maintain an EEZ location;
  - Reasonably obtainable permits/authorizations;
  - Reasonable and predictable operating standards;
  - Reasonable expectation of continuity;
  - Authority to manage food fish as inventory; and,
  - Competitive operating and production costs
Offshore Aquaculture Act 2005

- Authority to issue site permits and operating permits
- Aquaculture exempted from “fishing” definition in MSA
- Directs consultation with states, fishery management councils and other agencies
- Requires consideration of risks and impacts to fish stocks, marine ecosystems, marine mammals, other environmental features
- Secure other required permits (USEPA, ACOE)
- Establish “other environmental requirements” needed to address any environmental risks and impacts associated with offshore facilities
Challenges to Potential Aquaculture Development

- **State Opt-out Provisions**
  - Concern: unpredictable in/out/in timing, and unlimited state control to close 200 n.m. Exclusive Economic Zone with opt-out
  - Consider: (Potential amendments to 2005 legislation)
    - Opt-out protection for future existing facilities
    - Opt-out protection for pending applications
    - Limit opt-out area to state waters and an area of federal waters with potential impacts to state waters
    - Require consistent position on state aquaculture (state shouldn’t shut down federal waters if they allow production in state waters)
Challenges to Potential Aquaculture Development cont.

- **Reasonable Fee Expectations**
  - Not oil/gas royalties model (consumptive public resource model)
  - Not waterfront cottage property values model
  - No “payback” for other disfavored programs (public grazing land)

- **Veto Authorities**
  - States should not “control” federal public trust waters (proposed opt-out provisions create a veto authority)
  - Management Councils should provide expert comments and insights—but only NOAA should hold authority to approve/disapprove projects
Challenges to Potential Aquaculture Development cont.

- **Proper socio-economic impacts considerations**
  - Coastal Zone Management Act: projects affecting land or water use, or natural resources must be consistent with state policies
  - Focus: resource and use conflicts; not fishing fleet mkt. protection

- **Avoid reinventing the wheel**
  - Recent Clean Water Act rulemaking and existing authority is a protective standard for offshore aquaculture discharge permitting (potential “minimize discharges” language invites litigation).
The Bottom Line

• Food Safety and Food Security are increasing concerns for U.S. consumers
  – We need to produce more fish in the U.S.
  – Chilean exports to U.S. in 2006 = $792MM (up 31%)!

• U.S. program uncertainty and litigation over rules or application decisions will mean producers look elsewhere to site facilities

• Success is not passage of offshore legislation – it’s creation of a program that will attract producers and investors

• A U.S. program no one chooses, or only few choose to pursue = failure to meet the Objective!
Looking Ahead

- **Industry needs to remain engaged in the drafting of offshore legislation**
  - An industry perspective is needed to balance the discussion
  - Without it, legislators will only hear from NGOs and opponents of offshore aquaculture-program will be made too onerous to use

- **Regulations will be the future focus for discussion**
  - Regulations will detail procedures and standards of review for approval of offshore projects (address “other environmental risks”)
  - Industry stakeholders need to engage in rulemaking process or run the risk of having others dictate the program requirements