



September 17, 2021

Kristine Cherry, Chief  
Regulatory and Policy Branch  
NOAA Fisheries  
Office of Aquaculture  
1315 East-West Highway, Room 14461  
Silver Spring, MD 20910-3282  
Email: [Aqua.RegPlan@NOAA.gov](mailto:Aqua.RegPlan@NOAA.gov)

RE: Comments DRAFT A Strategic Plan to Enhance Regulatory Efficiency in Aquaculture

Dear Ms. Cherry:

Please accept the following comments from the National Aquaculture Association from the perspective of the farming community which highly values efforts by the Subcommittee on Aquaculture to improve federal regulatory processes.

General Comments:

1. We strongly recommend that a plan focuses on regulatory efficiency should include in its introduction recent research quantifying the regulatory costs imposed on the US aquaculture farming community. Peer-reviewed publications have been collected and posted here: [Regulatory cost analysis - Peer-Reviewed Papers | The NAA](#). In addition, the authors have produced impactful infographics that must be included in a plan focused on improving regulatory efficiency. The summaries and graphics are posted at [Regulatory costs on U.S. salmonid farms | Virginia Agricultural Research and Extension Centers | Virginia Tech \(vt.edu\)](#) and [Regulatory Costs for U.S. Baitfish and Sportfish | Virginia Agricultural Research and Extension Centers | Virginia Tech \(vt.edu\)](#).
2. We strongly recommend a new goal be created based upon this statement that appears on page 3, second paragraph: "Federal agencies have made significant progress working with States and industry to create a more efficient regulatory process for aquaculture." This may be true for a specific instance; however, the states of California, Idaho, North Carolina, Pennsylvania, Texas, Washington and Wyoming have proposed or imposed disproportionate regulatory constraints. We recommend that a new strategic goal be created focused on joint federal, state and stakeholder resolution of regulatory overreach relative to regulations: marine net pen, discharge, nonindigenous species, and aquatic animal health. This new goal could be achieved through the Subcommittee on Aquaculture creating a permanent subcommittee focused on this topic with quarterly federal-state quarterly meetings, goal oriented agendas, action items and publicly reported outcomes.

3. We recommend a new goal to be added to the plan to accomplish Executive Order 13921, Promoting American Seafood Competitiveness and Economic Growth, Section 8, Improving Regulatory Transparency for Aquaculture. The goal should be to complete Section 8(a)(i) by creating a public facing NOAA webpage(s) describing the Federal regulatory requirements and relevant Federal and State agencies involved in aquaculture permitting and operations.
4. We suggest that the plan title is misleading. The three components are distinctly different and only one promises benefit to US aquaculture as a whole. We recommend:
  - Amend the title to become: Strategically Improving Marine Aquaculture Regulation and National Aquatic Animal Health Management.
  - Rewrite and move the third component, regulatory management tools, to Action 1.2 of the *National Strategic Plan for Aquaculture Research*.
5. Given the Plan is described as being a companion to the *National Strategic Plan for Aquaculture Research* we recommend the same time frame of 2021-2025 be established for this regulatory efficiency plan. With an established timeframe, then for each strategic Goal and subgoal a date certain can be established for completion. As examples, instead of “continually refining,” “regularly updating,” “jointly developing,” or “will begin identifying,” the agencies should announce a deadline to achieve the subgoals. The public and Congress will then begin to truly believe the agencies and partners are truly serious about addressing the key drivers described in the introduction and achieving the strategic goals within the Plan.

Specific Comments:

Page 2, first paragraph: Only one of three components is described, i.e., marine aquaculture regulation, and we recommend describing the second which encompasses aquatic animal health management.

Pages 2 thru 7: The expansive language is misleading to a reader which would conclude all of US aquaculture, the regulators and the regulated, will benefit from proposed efficiencies. These sections should be rewritten to focus on 1) marine aquaculture as regulated and practiced in state and federal marine waters and 2) federal and state aquatic animal health management.

Page 4: We recommend amending the three goals to two, amending the first goal to become: Improve Efficiencies in Marine Aquaculture Permitting and Authorization Programs, and deleting the third goal by moving this goal to the draft national strategic research plan.

Page 13, Goal 1.1.2: We request that a date be identified when a finfish GP will be completed.

Page 13, Goal 1.1.3: The second part of this goal has been achieved. We recommend the Corps, across all of its jurisdictions, focus on organizational and communication improvements of its internal procedures to efficiently review and approve permits in a timely manner. We point to the slow approval

of permits in the Pacific Northwest as a case study for the Corps to complete to then identify and implement much needed improvements.

Page 14, Goal 1.2.1: We request the shellfish farming requirement information be updated biennially.

Page 14: The text presented concerning a 1993 memo interpreting the presence of the word “harvesting” in the Magnuson-Stevens Fishery Conservation and Management Act as Congressional authorization to regulate farming in federal waters should be updated. Please see:

“NOAA considers offshore aquaculture to be a form of fishing that is subject to the MSA because it ultimately involves the harvest of fish from the sea. This determination means that NOAA has the potential to regulate certain types of activities in offshore aquaculture operations. However, litigation has led to uncertainty that presents challenges for individuals considering development of aquaculture operation in the U.S. Exclusive Economic Zone (EEZ).”

As you are aware the District Court found that NOAA assumed too much and the authority claimed was not granted by Congress. This decision was upheld upon appeal. If the agency truly believed these rulings were incorrect, then an appeal to the Supreme Court would have ensued. That action was not taken. We strongly suggest the agency acknowledge successful litigation and act within the authority as granted by the legislative branch and affirmed by the judicial branch. We recommend this text be deleted.

We recommend new text be developed in its place to recognize and describe the purpose, scope and actions within Executive Order 13921 concerning Section 6, Removing Barriers to Aquaculture Permitting, Section 7, Aquaculture Opportunity Areas, and Section 8, Improving Regulatory Transparency for Aquaculture. This new text should include descriptions by the agencies since May 7, 2020 to achieve the EO goals and future actions to be completed by date certain by the agencies to continue the work. We request the EO be included as an appendix to the plan.

We also strongly recommend a new Action consisting of a request to the Administration to propose legislation creating a property right for farms in federal waters. The most crucial unaddressed aspect of the current federal framework affecting offshore marine aquaculture is lack of security of tenure; i.e., whether the legal rights to farm in a specified area an aquaculturist receives from the government provides sufficient property interest to support development of a viable business model, including the ability to secure insurance and adequate financing. The legal right to locate an aquaculture operation in the EEZ might be granted through a variety of legal mechanisms, including permits, licenses, easements, rights-of-way, or leases. However, there are key legal differences between these options that can impact exactly what rights an aquaculturist acquires. A license or permit does not transfer property rights, but provides an individual or entity permission to use real property for a specific purpose. A lease does create property rights and typically includes the elements of remuneration, duration, transferability,

renewability, insurability, exclusivity, restitution and revocability (only for failure to meet certain performance standards). Leases are legal constructs common to our nation's business laws and practices, and the security of tenure they afford results in bankable and marketable assets; attributes that are essential for private investment.

Page 16, Action 1.3.1: We suggest deleting this action and replacing it with a new action describing the development of MOUs similar to the Gulf of Mexico document for the North Pacific, Pacific, Western Pacific, Caribbean, South Atlantic, Mid-Atlantic and New England regions.

Page 16, Action 1.3.2: We suggest deleting this action and replacing it with the agencies developing programmatic NEPA documents for North Pacific, Pacific, Western Pacific, Gulf of Mexico, Caribbean, South Atlantic, Mid-Atlantic and New England regions.

Page 16, Action 1.3.4: We recommend deleting this action as it included in EO Section 7.

Page 17, Objective 1.4: We strongly support this objective which benefits all aquaculture facilities subject to the Clean Water Act and the National Aquaculture Association offers our assistance to achieve the several activities described.

Page 19, Goal 2: We strongly support this goal and associated objectives and appreciate its breadth and scope to include the development of a new national aquaculture health plan, efficient and effective diagnostics and inspection, drug approval, biologics licensing and food additive petitioning, interstate aquatic animal movement, health surveillance, emergency response, health certifications, import/export, and improved interagency communications.

Pages 19-25: We suggest rewriting and updating this goal given subsequent action by the US Department of Agriculture to achieve the actions described in EO 13921, Section 10, Promoting Aquatic Animal Health. The National Aquaculture Association strongly supports the National Aquaculture Health Plan and Standards 2021-23 and the related Comprehensive Aquaculture Health Program and Standards. We recommend these documents be included as appendices to the plan.

Pages 21-22: We recommend adding text that describes recent action by the FDA CVM to expand the application of the Indexing provisions of the Minor Use, Minor Species Act of 2004. This text should describe the meaning and benefits of Indexed drugs for aquatic animal health and welfare.

Page 22, Action 2.3.6: We suggest a new action for the Department of Homeland Security, Cybersecurity and Infrastructure Agency, to include fish in their livestock definition for the purposes of their Chemical Facility Anti-Terrorism Standards program. The regulatory burden imposed by the agency has resulted in reduced use of hydrogen peroxide (conc. of 35% or greater) and potassium permanganate, putting fish health and welfare at risk, much to the detriment of the fish farming

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community and to the concern of public and private veterinarians and fish health professionals advising farms and public facilities on fish health management.

Page 23: Relative to federal agency and state agency decision making to identify and propose regulations for the prevention, management, control, or eradication of nonindigenous species or endemic or foreign pathogens, we recommend the implementation of risk assessment process as described in *Science and Decisions: Advancing Risk Assessment* (<https://www.nap.edu/catalog/12209/science-and-decisions-advancing-risk-assessment>) with stated goals of determining relative risks to native and farmed aquatic animals, regional, ecotype and production system risk, risk management, risk communication and incorporates direct involvement by effected stakeholders throughout the risk assessment process.

Page 24, Objective 2.6: The National Aquaculture Association strongly supports this objective and recommends a new objective that focuses on strengthening preventative actions by the several agencies.

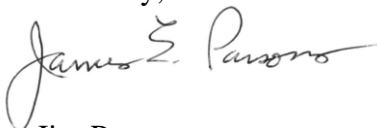
Pages 26-30: We recommend moving this goal and associated objectives to the *National Strategic Plan for Aquaculture Research 2021-25*. Integrating regulatory tool development research and science needs in that plan will leverage effectively available resources and provide a focus, i.e., goal, to the plan that will be an improvement over obscuring a science and research related goal in a regulatory efficiency document.

We also recommend creating an applicability for the tools to benefit the aquaculture community, particularly farmers that are evaluating sites and going through the complex permitting process. Ideally both the permit reviewer and the permit applicant will have the same quality, peer reviewed information and tested tools to use.

Page 28, Actions 3.1.2 and 3.1.3: We strongly recommend the relevant agencies obtain public comment for their science program or strategic planning.

Thank you again for the opportunity to review and comment upon a complex issue of significance interest and importance to the aquaculture community. Please do not hesitate to contact me or my staff with questions.

Sincerely,

A handwritten signature in black ink that reads "James E. Parsons". The signature is written in a cursive, flowing style.

Jim Parsons  
President