



The Challenges to a National Offshore Aquaculture Act Program

**W. Richard Smith, Jr.
Robinson & Cole LLP
(860) 275-8218
wrsmith@rc.com**

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An underwater scene featuring a vibrant coral reef with various colorful fish, including yellow and orange ones, swimming in clear blue water. The scene is partially obscured by a white vertical gradient on the right side.

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

An underwater scene featuring several bright yellow fish swimming in clear blue water. The background shows a vibrant coral reef with various colors including red, orange, and blue. The lighting is bright, creating a clear view of the marine life.

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**

An underwater scene featuring a variety of colorful fish, including yellow and orange ones, swimming near a vibrant coral reef. The lighting is bright, creating a clear view of the marine life.

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)

An underwater photograph showing several bright yellow fish swimming in clear blue water above a vibrant coral reef. The scene is illuminated from above, creating a bright, sunlit effect.

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

An underwater scene featuring several bright yellow fish swimming over a vibrant coral reef. The water is clear and blue, with sunlight filtering through from above, creating a bright, shimmering effect. The coral is a mix of red and blue hues.

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 !**

An underwater scene featuring several bright yellow fish swimming over a vibrant coral reef. The lighting is bright, creating a clear view of the marine life. The background is a deep blue, suggesting an open ocean environment.

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