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TO: Jess Beck
Southeast Regional Office
NOAA Fisheries Service
St. Petersburg, FL

FROM: John Williams, Executive Director

RE: Comments on Fishery Management Plan for Regulating Offshore Marine
Aquaculture in the Gulf of Mexico
NOAA-NMFS-2008-0233

The Southern Shrimp Alliance (SSA) is pleased to provide comments on the Fishery Management Plan (Plan) and Programmatic Environmental Impact Statement (PEIS) for Regulating Offshore Marine Aquaculture in the Gulf of Mexico. SSA has submitted written comments to the Gulf Council on several occasions and provided direct input during Council meetings throughout the development of this Plan. SSA sincerely appreciates the Council's consideration and the several important actions taken to address its concerns and recommendations during this process. Important progress was made but SSA continues to have both general and specific concerns as follow.

GENERAL COMMENTS

Of paramount interest to SSA is to prevent adverse impacts of offshore aquaculture on the domestic shrimp fishery. Historically, the shrimp fishery has been and continues to be the most valuable commercial fishery in the Gulf of Mexico and is a very important source of employment and economy in the region. For many years until recently it was also the most valuable fishery in the Nation. It is not without some irony and sensitivity for the domestic shrimp industry to be commenting on this Plan given that the primary reason it is no longer the most valuable fishery in the Nation is the severe price-depressing effects imported farm-raised shrimp have had in the US and global marketplace.

Southern Shrimp Alliance, Inc

As a matter of general philosophy and sound US policy, SSA's believes the development, management and operation of this new offshore aquaculture industry and any privileges granted to it to profit from the use of public resources should not be achieved on the backs of US shrimp fishermen. SSA is likewise concerned with the Plan's impacts on other traditional fisheries for wild stocks in the Gulf, and on American fishing communities that have supported and depended on shrimp and other fisheries along the coast for many decades. An offshore aquaculture industry is not a legitimate substitute for the heritage or economy of our fishing communities, or for the optimum utilization of our nation's wild fishery resources.

The Plan/PEIS document states that its general purpose is to "maximize the benefits to the nation" and that its specific goal is to increase US seafood production by supplementing the harvest of wild caught species with cultured product. The document also asserts that this Plan is needed to reduce the US trade deficit in seafood products by increasing US production to satisfy US market demand.

With these core purposes and goals in mind, one would expect that nothing in the Plan would have the effect of **reducing** any aspect of US seafood production such as limiting the ability of wild stock fisheries to achieve Optimum Yield (OY). Consider the following:

- A strategy to reduce the US seafood trade deficit that has the effect of reducing the production of wild caught seafood as a trade-off for increasing the production of cultured seafood is simply not rational. This Plan's goal cannot be to reduce the seafood trade deficit **at any cost**, if that cost is the reduction of wild shrimp production or any other wild stock fisheries. It is inconceivable that the Department of Commerce would issue permits that destroy American fishing jobs simply to address a trade statistic. Yet, that is what the Plan has the clear potential to do.
- Similarly, it would not be rational to issue federal permits for an activity under the Plan that causes a *reduction* in wild caught production when the stated goal of the Plan to "*supplement* wild caught production with cultured production" Certainly Congress never intended for National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to accommodate an interpretation under which the ability to achieve the optimum yield from a wild stock would be sacrificed simply to increase the production of cultured fish from an offshore aquaculture facility. Yet, that is what the Plan has the clear potential to do.
- Surely, the benefits to the Nation of this Plan could not possibly be maximized by substituting a new offshore aquaculture industry for historical fisheries and the coastal

Southern Shrimp Alliance, Inc

communities that have supported and depended on those fisheries for decades or even centuries. Yet, that is a very real possibility under this Plan.

Although it would certainly appear irrational when considered in this context, the Plan/PEIS document includes a number of statements confirming that the Plan leaves the door open to siting on traditional fishing grounds and that this may indeed have serious adverse impacts on wild caught production and fishery dependent communities. The fact that this document also openly acknowledges that these impacts are not well-known and will not be understood until after such impacts are felt is particularly disturbing.

For example:

- 6.1.5 Competing Uses

“In the Gulf, aquaculture firms may or may not compete with commercial and recreational Fishers.”

- 6.1.6 Unavoidable Impacts

“The exclusive use of an area means that the offshore aquaculture firms will compete for space in federal waters with other activities, such as recreational and commercial fishing.”

- 6.1.6 Unavoidable Impacts: p. 372

“Conflicts between aquaculture firms and commercial or recreational fishers could arise if the aquaculture site is a desirable fishing area or if the site attracts fish (Section 6.1.5.1).”

- 6.1.6 p. 373 Unavoidable Impacts on Fishing communities:”

“...negative impacts could include increased price competition with wild-caught fish and loss of domestic fishing jobs.”

“Unavoidable adverse impacts to fishing communities will therefore occur if in fact aquaculture operations depress wild-caught fish prices and create competition for fishing-industry jobs.”

- 6.1.6 p. 373 Fishing Communities

“It is not well-known whether aquaculture will positively or negatively benefit fishing communities.”

Southern Shrimp Alliance, Inc

SSA does not believe this Plan has taken adequate steps to protect the legitimate interests of traditional fisheries for shrimp and other wild stocks. Consequently, SSA does not believe it should be approved by the Secretary in its current form. As the following section of these comments discusses in detail, the Plan presents unacceptable adverse impacts on traditional fisheries in the contexts of displacement from fishing grounds, safety of life at sea, displacement from the marketplace, and anticompetitive government subsidies that are inconsistent with US law and the intent of Congress. SSA strongly recommends that the Agency review this document to determine if a proper balance of potential costs and benefits of this Plan has been achieved given what are likely to be irreversible consequences of being unable to measure, much less minimize, such impacts at this time.

SPECIFIC COMMENTS

The following represent four of SSA's greatest specific concerns regarding the impacts of the Plan on the shrimp and other traditional Gulf fisheries as well as the many fishery dependent communities.

1. Displacement from traditional fishing grounds

SSA appreciates the efforts of the Council to address this concern. Indeed, Action 6, Preferred Alternative 3, concerning siting criteria for offshore aquaculture facilities provides the Regional Administrator (RA) with discretionary authority to consider on a case-by-case basis the "location of the site relative to commercial and recreational fishing grounds..." and may deny the use of a proposed aquaculture site if such a site "will result in user conflicts with commercial or recreational fishermen...". Action 6, Preferred Alternative 3, also requires that in considering the proximity of a site to commercial fishing grounds, the RA will use information generated by electronic logbooks from the shrimp fishery and other information regarding how a proposed site would interact with other fisheries.

SSA not only hopes but expects the offshore aquaculture industry to act responsibly and refrain from submitting applications for permits to locate offshore aquaculture facilities directly on traditional shrimp fishing grounds. SSA would further expect the RA to deny such a permit if one is submitted.

Nevertheless, it is clear that the specific language adopted under Action 6, Preferred Alternative 3, does not definitively prohibit the RA from approving a permit to locate a facility on traditional shrimp fishing grounds. This cautious decision not to prohibit siting on traditional fishing grounds strongly suggests that it was the Council's intent that such siting decisions could occur to the direct and deliberate harm to the affected fisheries. Indeed, Section 6.0 of the Plan/PEIS document regarding Environmental Consequences includes the following which confirms this reality:

Southern Shrimp Alliance, Inc

6.1.5.1 Fishing Grounds

“Conflicts between aquaculture firms and commercial or recreational fishers could arise if the aquaculture site is a desirable fishing area or if the site attracts fish.”

Siting offshore facilities on productive shrimp fishing grounds could very well have the effect of reducing the ability of the shrimp fishery to achieve the OY for wild shrimp stocks which it is already struggling to do so. Creating more physical obstacles to the shrimp fishery's access to traditional fishing grounds is also likely to increase the cost and decrease the economic efficiency of shrimp production at a time when this fishery is enduring severe economic impacts from hurricanes, fuel prices, and most of all, the price depressing impacts of imported farm-raised shrimp. SSA continues to find this to be an unacceptable and unsupportable result of this Plan, especially in the context of certain provisions of the MSA.

To that point, the Council has predicated its authority to issue permits under this Plan on an interpretation that offshore aquaculture falls under the MSA section 3 definition of “fishing”. Therefore, the Plan is subject to the various requirements of the Act to the extent applicable. While the PEIS acknowledges that this is an incongruous application of the MSA, it is the applicable statute that must be considered in this context until the courts or Congress changes this interpretation. Therefore, as reflected in the Plan/PEIS document, the MSA National Standards and other required provisions of the Act apply.

National Standard 1

Notwithstanding the interesting and creative MSA discussions presented in section 6.1.2 and other sections of the Plan/PEIS document, SSA simply reiterates its understanding that Congress did not intend for National Standard 1 to be interpreted in a way that would support an Agency action to issue permits for offshore aquaculture that would have the result of reducing the ability of fisheries for wild stocks to achieve their OY. Such an interpretation is unlikely to be upheld by the courts.

Thus, the discretionary authority provided to the RA under the Action 6, Preferred Alternative 3 siting criteria which would allow the RA to issue a permit for a facility on traditional fishing grounds is simply insufficient to ensure that the Plan is in compliance with the National Standard 1 mandate to achieve the optimum yield from each wild stock fishery for the fishing industry. Fabricating the concept of a “proxy” OY for cultured production under Action 9 and blending that with the legitimate concept of OY for wild stocks in an effort to explain statutory consistency with this and other National Standards and MSA provisions is unlikely to be upheld in the courts.

National Standard 4

SSA submits that the siting of an offshore aquaculture facility on traditional shrimp fishing grounds and thereby displacing ongoing shrimp fishing effort is tantamount to an

Southern Shrimp Alliance, Inc

allocation or assignment of fishing privileges which must be fair and equitable under National Standard 4.

According to the PEIS analysis of National Standard 4 compliance at 6.12;

“Allocation is defined as direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals (50 CFR § 600.325(c)(1)). To be consistent with the “fairness and equity” criterion, an allocation should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective (50 CFR § 600.325(c)(3)(i)(A)). Otherwise, inherent advantage of one group to the detriment of another would be without cause. In addition, an allocation of fishing privileges may impose hardships on one group if they are outweighed by the total benefits received by another group (50 CFR § 600.325(c)(3)(i)(B)).” (emphasis added)

The approval by the RA of a permit to locate a facility on traditional shrimp fishing grounds that displaces shrimp fishing effort would not be “rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective”. In fact, such approval may undermine the achievement of the shrimp OY and may undermine achievement of the FMP objectives to prevent escapement and ensure safety. Thus, recalling that it is the most valuable fishery in the Gulf, an action by the RA to reduce the ability of the wild shrimp fishery to achieve the OY for shrimp by providing for the ability of an offshore aquaculture facility to achieve the OY of another species is not rational or connected to the furtherance of a legitimate FMP objective.

Further, it would not be rational to undermine the social and economic health of the historical shrimp fishery and fishing communities for the sole purpose of enhancing the cultured production of another species or the profitability of an offshore aquaculture facility operator.

Still further, it would not be rational to deliberately locate a facility in traditional fishing grounds which could pose a serious safety hazard contrary to the mandate of National Standard 10, simply to maximize the benefits to an offshore facility owner.

Nor would it be rational to deliberately locate a facility in traditional fishing grounds which would as a result of an accident increase the likelihood of the escapement of fish from damaged facilities contrary to the specific objectives of the Plan to prevent such escapement.

Perhaps the main reason it would not be rational is because it is simply not necessary to site an offshore aquaculture facility on traditional shrimp fishing grounds. Offshore aquaculture facilities do not need to be sited on active traditional fishing grounds in order to achieve the production goals (OY?) for the cultured species or other legitimate

Southern Shrimp Alliance, Inc

Plan objectives. It is simply not necessary to allocate space and fishing privileges under the Plan that would “impose hardships” on the shrimp fishery. The same manner and degree of benefits to the offshore aquaculture industry can be achieved under this Plan by siting facilities in other locations.

Furthermore, the best scientific information available provides a precise delineation of shrimp fishing grounds based on shrimp fishing effort data collected by electronic logbooks installed on about 500 offshore shrimp vessels operating in the Gulf. This data is readily available on an annual basis to the Council and NMFS, and is, in fact, central to the implementation of the Council’s red snapper FMP. The bottom line is that traditional shrimp fishing grounds are discrete and well known and can easily be avoided in the siting process and so the Plan should expressly prohibit siting facilities in those areas.

National Standard 8

There are some disturbing statements in the Plan/PEIS document concerning the impact of offshore aquaculture operations on fishing communities in the context of the National Standard 8 mandates to “provide for the sustained participation of” and to “minimize adverse impacts on” fishing communities:

At section 6.15 regarding Competing Uses:

“In the Gulf, aquaculture firms may or may not compete with commercial and recreational Fishers.”

At section 6.1.6 regarding Unavoidable Adverse Effects on Fishing Communities:

“It is not well-known whether aquaculture will positively or negatively benefit fishing communities.”

At section 6.12 regarding the analysis of National Standard 8 compliance:

“It is unknown at this time whether aquaculture will directly compete with landings from domestic fisheries. If aquaculture does compete with domestically landed wild fisheries, then there is potential for impacts on fishing communities to occur (loss of jobs, loss of revenue due to decreased prices).”

These statements clearly reveal that although there is a very real potential for adverse impacts on fishing communities, sufficient analyses have not been conducted to determine compliance with the National Standard 8 mandates. SSA finds this unacceptable. Once fishing communities are lost, they are permanently and irreversibly converted to other commercial and residential uses. It is clear that insufficient information and analyses have been provided to the Council and by the Agency to the

Southern Shrimp Alliance, Inc

public for a legitimate determination to be made on whether the Action 6, Preferred Alternative 3 and all other provisions of the Plan comply with National Standard 8.

Further, National Standard 8 clearly requires such determinations to be made “utilizing economic and social data that meet the requirements of” National Standard 2—ie. the “best scientific information available”. Simply acknowledging a lack of sufficient information and analyses and a complete lack of understanding of the consequences of this Plan does not meet this test or justify moving forward when adverse impacts are irreversible.

On the other hand, there is extensive information available on the precise location of shrimp fishing grounds (ELB data). Thus, consistent with National Standard 8, it is certainly practicable to minimize the adverse impacts on the shrimp fishery and those communities that support and depend on the shrimp fisheries simply by prohibiting the siting of offshore aquaculture facilities in the very precisely delineated shrimp fishing grounds. In other words, the Plan does not comply with National Standard 8 for the shrimp fishery in the context of the Action 6 siting criteria because those criteria allow for facilities to be sited on shrimp fishing grounds. This is unlikely to be upheld by the courts.

Finally, SSA notes that although the Agency has the ability to analyze Vessel Monitoring System (VMS) data for an increasing number of fisheries in the Gulf, a precise delineation of every fishery may not be possible at this very time. However, such information will likely become available in the near term.

Given the previous discussion, SSA continues to recommend that as a function of Secretarial review and approval, the Plan should be specifically revised to prohibit the siting of offshore aquaculture facilities on traditional shrimp fishing grounds as delineated by the RA using the best available scientific information including ELB data collected from shrimp boats.

2. Safety of Human Life At Sea

Because Action 6, Preferred Alternative 3, does not prohibit the deliberate siting of offshore aquaculture facilities on traditional fishing grounds the Plan has a real potential to degrade the safety of human life at sea. In general, the more fixed structures placed in active fishing grounds, the more marine accidents, injuries and loss of life will occur. If a facility is located in a productive shrimp ground, shrimp fishermen will be forced to try to fish closely around it. The absolute reality is that more accidents are likely to occur if such facilities are deliberately located on active traditional fishing grounds than if they are sited elsewhere.

Southern Shrimp Alliance, Inc

Therefore, Action 6, Preferred Alternative 3, of the Plan does not “promote the safety of human life at sea” as it must do in order to comply with MSA National Standard 10. In fact, it has the real potential to undermine safety.

Not surprisingly, the analysis of the Plan’s compliance with National Standard 10 in section 6.12 of the Plan/PEIS document is weak on this point and offers up little more than the requirement that facilities permitted under this Plan must comply with the Coast Guard private aids to navigation requirements under 33 C.F.R. 66. These regulations simply set forth the lighting requirements that would apply and, while very important to reducing the likelihood of collisions and other accidents at sea, they do not prevent them as the Coast Guard and any experienced mariner knows very well. The best way to prevent collisions and other such accidents involving fixed structures at sea is to deliberately locate such structures as far away as possible from –not in--areas of relatively high vessel traffic, including especially active fishing grounds involving mobile gear such as the shrimp fisheries.

Again, it is simply not necessary to site such facilities on shrimp fishing grounds in order to achieve the goals of the Plan for offshore aquaculture production. If the siting of a facility on fishing grounds resulted in just one more accident, injury or death than would have occurred if located elsewhere, then the deliberate failure to prohibit such siting is tantamount to a deliberate and careless decision to undermine safety of life at sea.

SSA reiterates its strong recommendation that Action 6, Preferred Alternative 3, be further revised to specifically prohibit the issuance of permits for facilities located in traditional fishing grounds, especially those such as the Gulf shrimp fisheries that can be clearly delineated by using the best scientific information available.

3. Displacement from the marketplace.

As all fishermen know, the US seafood market typically displays a classic response of a reduction in price to an increase in supply. Because there is already a supply of cultured imports of many species, US producers of cultured product will be forced to reduce their prices in order to enter and successfully compete in the market for these species. And, as we have experienced with shrimp, a decrease in the price of cultured product forces a decrease in the price for wild product—so much so that the most recent NMFS economic analyses show the Gulf shrimp fisheries to be at or well below the margin of profitability.

Southern Shrimp Alliance, Inc

US shrimp prices have fallen 40 percent or more in the past decade of very large farmed-shrimp imports and, consequently, a majority of the offshore shrimp fleet has disappeared. The reality of how aquaculture production can displace and otherwise inflict profound adverse impacts on wild stock production in the US marketplace is certainly well documented in the shrimp industry.

This may well be the fate of other US wild stock fisheries in the Gulf if forced to compete directly with US cultured production permitted under this Plan. SSA is also very concerned with the impacts on those fisheries and on the many communities that have for decades both supported and depended upon the shrimp fishery and other wild stock fisheries for their economy and society. It should be further noted that these impacts are exacerbated by the impacts of siting on production efficiency of wild fisheries discussed in a previous section of these comments, and by the impacts of anticompetitive subsidization discussed in the following section of these comments.

For these reasons, SSA certainly appreciates the Council's efforts to address our concerns with market impacts on the shrimp fishery by removing shrimp species from the list of allowable aquaculture species under Action 4, Preferred Alternative 4. This Action will clearly prevent this Plan from having the adverse effect of price competition from offshore cultured shrimp (if any) on the shrimp fishery. SSA urges the Council and NMFS to retain and approve this Action 4, to the extent it maintains the removal of shrimp from the list of allowable aquaculture species.

However, SSA remains concerned that other Gulf fisheries for wild stocks may be severely impacted or destroyed by competition in the marketplace, and this will further adversely impact those communities including shoreside enterprises that support both those fisheries and the shrimp fishery.

The various discussions presented in the Plan/PEIS document intended to diminish or dismiss such impacts are simply not compelling in the face of the real world experiences of the shrimp and other fisheries. The credibility of these arguments is particularly undermined given that the authors of the supporting literature cited are among the strongest proponents of offshore aquaculture development. This includes the Manager of the NOAA Aquaculture Program whose job it was to get this Plan approved by the Council and whose former job was the CEO of an aquaculture R&D company. SSA is not particularly surprised that such authors dismiss the impacts of cultured product on wild stock fisheries in the marketplace.

Southern Shrimp Alliance, Inc

SSA strongly recommends that the Secretary more carefully consider the impacts of cultured products on wild stock products in the marketplace and how that may adversely impact those fisheries and communities. Do the benefits of this Plan to the Nation sufficiently outweigh what are likely to be severe and irreversible economic and social impacts?

4. Anticompetitive subsidization by the Federal government.

SSA is generally aware that there are a number of programs administered by the US Department of Agriculture (USDA) that provide subsidies and other means of direct and indirect financial and marketing support for agricultural production that have been extended to include aquaculture production in the US. These extensive and well-funded programs are simply not available to US producers of wild stocks— US fishermen.

Nothing in the Plan would limit the manner or degree of subsidization provided by the USDA or other agencies to the offshore aquaculture industry. Indeed, it is unclear that there is any authority under the MSA or other statutes governing Council FMP development that could address this serious problem. National Standard 8 certainly addresses the need to ensure sustained participation of communities in the fisheries and to minimize adverse impacts on such communities, but the application of this mandate to this problem is uncertain.

Nevertheless, the subsidization of the offshore aquaculture industry would constitute a deliberate federal action to impose a highly anticompetitive and perhaps fatal blow to wild stock fisheries and the communities that support and depend on such fisheries. As noted above, cultured product already has a history of displacing wild stock production from the market place through price competition. Those effects could be substantially exacerbated by the competitive advantages provided to cultured production through USDA subsidies and other financial and market support programs.

SSA strongly recommends that the Secretarial review of this Plan fully consider these anticompetitive impacts of USDA and other Federal subsidies to the offshore aquaculture industry on the wild stock fisheries and explore means to protect such fisheries.