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NOAA Fisheries
Office of Aquaculture
1315 East-West Highway, Room 14461
Silver Spring, MD 20910-3282
Email: Aqua.RegPlan@NOAA.gov

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

Dear Ms. Cherry,

On behalf of the East Coast Shellfish Growers Association, thank you for providing an opportunity to comment on the Draft Strategic Plan to Enhance Regulatory Efficiency in Aquaculture, a Report issued by the Regulatory Efficiency Task Force of the Subcommittee on Aquaculture, National Science & Technology Council as set forth in Federal Register Volume 86, Number 42776, Document Number 2021-16711. We commend the efforts of the federal agencies on the Task Force to reduce our reliance on imported seafood and to streamline and facilitate aquaculture permitting.

The ECSGA represents some 1500 shellfish farms from Maine to Texas that collectively harvest \$170 million worth of sustainably farmed oysters, clams and mussels while supporting thousands of jobs in rural coastal communities. Since shellfish farming is primarily regulated through the state agencies, the vast majority of our regulatory and permitting issues lie with the state agencies. However, there is a nexus for federal comment on farming activities that might have Protected Resources impacts, Clean Water Act issues and activities that might interfere with navigation. We also anticipate that eventually we may see shellfish farms in the EEZ, outside of state waters, and those activities will require federal oversight and regulation.

-We have specific concerns about the lawsuit brought against the Army Corps in Washington State pertaining to permitting of shellfish farms under NWP48. We are dismayed that the Corps failed to aggressively defend itself against the litigation despite the plethora of scientific evidence demonstrating ecosystem benefits from shellfish farming. Even more concerning was the sluggish pace of re-permitting these farms in the wake of the adverse decision. It is clear we can expect other Corps Districts to face similar legal challenges and we hope that the Corps will be better prepared to rebut such litigation. Should the Corps fail, we request that the Corps find a way to re-permit impacted farms more expeditiously. Hopefully the Corps will learn from this experience and be better prepared should similar situations arise in other districts moving forward.

-Many of our farms are in areas where interactions with Protected Resources may arise. We would encourage NOAA's Protected Resources Division (PRD) to develop a methodology that recognizes the

ecological services that many of our farms provide and to weigh these benefits against potential negative impacts. This is especially true when it comes to how the PRD considers applications in areas that may overlap with Essential Fish Habitat and Submerged Aquatic Vegetation (SAV). It is well documented that shellfish farms can provide many of the same ecosystem services that are attributed to SAV, and that the structures associated with shellfish farming can stimulate ecosystem productivity and biodiversity in ways that are often similar to potentially impacted SAV. Research is also accumulating documenting that the negative interaction of shellfish farms and sea grasses may not be as significant as some have feared.

If the PRD is unable to devise a means to factor in the ecosystem services and ecological benefits of shellfish farming into their permitting recommendations and Biological Opinions, then the Protected Resources Division should work with OAR to develop technical memoranda on the various areas where there are both potential negative and positive impacts weighing all of the available scientific evidence to help permitting agencies make informed decisions and avoid blanket prohibitions.

- We encourage the agencies to develop programmatic consultations to avoid and minimize impacts to critical habitats and protected resources to reduce overlap and duplication of effort, and to ensure consistency among application review procedures. Properly crafted programmatic consultations should improve the timeliness, predictability, transparency, and accountability of federal project reviews.

- We encourage the agencies to examine their authorities for potential overlap and redundancy to determine if there are opportunities to delineate permitting responsibilities and minimize redundancy.

- We encourage agencies to review their authorities under the enabling legislation to determine if there are activities that they are currently permitting that may not fall under the purview of the enabling legislation. For example, the Corps regulates structures in federal waters under Section 10 of the Rivers and Harbors Act. The Corps has extended that authority so that they also require permits for shellfish farms that do not involve structures, and do not involve placement of fill or pollutants under the Clean Water Act. It would appear that this requirement oversteps the authority granted to the Corps under the RHA.

- As we begin to develop shellfish farms in federal waters outside of state jurisdiction there will be significant federal regulatory issues that will require careful consideration. Meeting the requirements of the National Shellfish Sanitation Program will require a significant investment of time, effort and resources for Harmful Algal Bloom monitoring and toxin evaluation. These efforts are underway and we hope that a workable outcome will be developed that doesn't place undue burdens on the farmer.

Potential mussel farm interactions with marine mammals are a significant concern for NOAA's PRD, despite the global lack of evidence for significant interactions. Our nation has the technology and desire to develop mussel farms offshore to meet the growing demand for this product. Mussel imports are valued at nearly \$50M. We would encourage NOAA to develop an experimental permit for a farm of significant scale so we can properly understand the risk of marine mammal interactions with mussel farms.

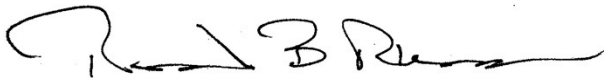
Wind farms are being proposed in many regions for the U.S. We encourage the federal agencies involved to develop permit requirements that force project applicants to meet with shellfish farming proponents to discuss potential co-location opportunities. These discussions must occur early in the process as it will be impossible to retrofit shellfish (or finfish) farms into windfarms once construction has begun.

We are also aware that the towers themselves will recruit significant populations of mussels, and wind farm operators should be encouraged to enter into discussions with harvesters who could develop mechanisms to safely harvest this substantial sustainable resource. To date these conversations have been rebuffed.

The ECSGA strongly supports Goal 2: To Implement a National Approach to Aquatic Animal Health Management of Aquaculture and Goal 3: Refine and Disseminate Tools for Aquaculture Regulatory Management.

We encourage the Agencies to engage with the various states to encourage alignment of state permitting requirements with federal goals, to minimize overlapping requirements and to eliminate state regulations that may conflict or obstruct federal goals and objectives regarding the development of aquaculture. While we acknowledge that the states have their own priorities and regulatory authorities, it is notable that there is a vast disparity in how the individual states regulates aquaculture in waters under their jurisdiction. A compendium of such regulations is an attempt to capture what is invariably a moving target. Regular updates of such a compendium will be needed. Such compendia allow states to compare their own regulations with other states, and hopefully will allow the states to adopt approaches that have proved successful in other states.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert B. Rheault". The signature is fluid and cursive, with a large initial "R" and "B".

Robert B. Rheault, Ph.D.
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