

**NOAA OFFICE OF LAW ENFORCEMENT
PRECEPTS FOR DEVELOPING EFFICIENT, ENFORCEABLE
AQUACULTURE REGULATIONS**

In order to support the development of aquaculture in the EEZ, the NOAA Fisheries Service Office of Law Enforcement advocates the following guidance for the development of enforceable aquaculture regulations.

These precepts are supported by more than 25 years of experience successfully enforcing statutes and regulations that support the conservation and management of living marine resources and protection of the marine environment.

This is a sister-document to the publication, “Enforcement Considerations for Regional Fishery Management Councils”, released in October, 2007 by the NOAA OLE, General Counsel for Enforcement and Litigation and the US Coast Guard.

The enforceability of a regulatory scheme is critical to its’ success. While these principles have been developed primarily within the context of Magnuson Stevens Fisheries Conservation and Management Act and Lacey Act enforcement, they are equally applicable to the Offshore Aquaculture Act.

The OLE proposes a three-pronged approach to ensure compliance and facilitate successful monitoring of aquaculture products, consisting of inspection, auditing and investigation.

The OLE offers the following precepts as guidance in the development of efficient and enforceable offshore aquaculture regulations.

In general, regulations are enforceable if:

- **They are simple and easy to understand** - The more complicated the rule, the higher likelihood of creating loopholes and legal defenses. Straightforward black and white requirements, applied to without exceptions or exemptions make it difficult for intentional violators and conspirators to evade detection and enforcement. Rules should not change frequently, as frequent change makes rules difficult to follow and to enforce. As an example, fishers may successfully avoid prosecution even after admitting to breaking a rule, because the rule recently changed. Regulations should apply to all species and plans covered under the Act, as opposed to being specie or plan specific. Consideration should be given to adopt consistent management measures between federal and state plans.
- **Few as possible** - Adding too many control measures frustrates both the industry and enforcement. Too many regulations allow more possibility for mistakes to be made and reports to be forgotten and create diminimus work for enforcement. Reports should be consolidated when possible, and instructions made simple. Regulations sometimes have to be very restrictive, but compliance should be easy for the industry.

- **Products and their containers should be clearly marked** - Cultured seafood products should be marked in a manner distinctly different than wild counterparts. This may include marking or tagging all whole, cultured fish or shellfish with a distinctive mark or tag; clearly marking all boxes, crates, or other containers of product as “cultured”, with the originating aquaculture facility identified; and providing a bill of lading that accurately lists the weight, number and price of the product. An example of how this would assist enforceability of regulations is the allowance for possession of cultured fish that is marketed while it is smaller than the minimum size for a wild caught fish of the same species. Without individual tagging, it would be impossible to tell the legal, small cultured fish from illegal small wild fish.
- **Products must be accountable and traceable.** - Seafood must be identifiable and traceable from production to the retail level. Enforcement can then intercept unlawful seafood at funnel points such as interstate highways, airports and secondary dealers. Required documentation and labeling also protects markets, prevents downward price trends and protects consumers.

The OLE recommends required the permitting of aquaculture dealers to add accountability and to protect legitimate processors and harvesters. Facilities in land-based, high seas, state waters and foreign locations, far from the federal waters in which NOAA regulated wild counterparts are located could be problematic for enforcement. A permitting system would address some of these problems.

Technology, such as electronic reporting, can allow enforcement to monitor remotely, reducing manpower needs while facilitating the identification of anomalies warranting further investigation.

- **The regulatory scheme for aquaculture must be supported by appropriate penalties.** Available penalties should permit revocation, fines, sanctions and criminal charges. Egregious or habitual offender’s crimes should face criminal charges.

In general regulations are not enforceable when they include:

- **Staff intensive regulations** - Trip limits, catch percentages, fillet counts or regulations that require in-person monitoring make enforcement difficult. Staff-intensive regulations result in less effective, inconsistent enforcement coverage. Enforcement will never have enough manpower to monitor more than a fraction of the harvested, processed and sold product.
- **Complex or convoluted regulations** - Simple regulations reduce opportunities for spurious defenses. There should be few exceptions to regulatory requirements and those regulations must be applied without exception. Some regulations are nearly impossible to enforce, such as monitoring of harvest from at-sea facilities.
- **Lack of accountability** – Illegal marine resources can be laundered by falsifying records, commingling product or false labeling. Traceable products and assets enhance the OLE’s

ability to protect the resource, the market and consumers.

- **Law Enforcement resource intensive** – Any regulation must consider the enforcement resources of the OLE in terms of maximum capable enforcement contacts and investigative effort. Nationwide, enforcement is spread thin, so adding more regulations to enforce, can decreasing enforcement in other areas.