



660 PENNSYLVANIA AVE., SE, SUITE 302, WASHINGTON, DC 20003
(202) 547-9359 • FAX (202) 547-9429
2601 MISSION ST., SUITE 803, SAN FRANCISCO, CA 94110
(415) 826-2770 • FAX (415) 826-0570
WWW.CENTERFORFOODSAFETY.ORG

September 4, 2008

National Organic Standards Board
United States Department of Agriculture
Room 4008 - South Building
1400 Independence Avenue, SW
Washington, DC 20250-0001

RE: Fish Meal and Fish Feed in Aquaculture Standards

Comments on Development of Organic Feed Standards for Organic Aquaculture

Efforts by the National Organic Standards Board (“Board”) to develop comprehensive aquaculture regulations have confronted the difficult question of the availability of 100% organic feed to serve as the source for carnivorous farm-raised fish. There have been suggestions that utilizing the authority found at 7 U.S.C. §6506(c) allowing wild seafood to be certified or labeled as organic may provide a solution. CFS does not believe such an approach is warranted. The use of fish meal and fish oil as aquaculture feed has significant impacts on biodiversity that are incompatible with the definition of organic production, and the legislative history of §6506 (c) does not support the use of the provision to develop a feed-specific “wild caught” organic fish designation.

I. Consumers and the Environmental Impacts of Fish Meal and Fish Oil

The issue of allowing the use of wild caught fish meal and fish oil is of critical concern to consumer and environmental groups. Consumers equate the organic label as an identifier of food produced in a more environmentally benign manner. The most thorough polling data on consumer attitudes toward organic seafood have found that nearly 60% of consumers will purchase organic seafood with the understanding that the organic seafood product is better for the environment.¹ Underlying this expectation is a recognition that organic systems are designed to avoid ecologically damaging production methods. Efforts to allow fish meal and fish oil derived from wild caught fish directly undermine this consumer

¹ New Jersey Department of Agriculture, Fish & Seafood Program, “Identification and Evaluation of Viable Market Opportunities for Organically-Grown Aquatic Products.” (Feb. 2006) available at <http://www.state.nj.us/seafood/Organicsumm.pdf>

expectation.

Fish meal and fish oil are used for carnivorous species such as salmon and shrimp. The fish meal and fish oil comes from wild caught fish such as mackerel, herring, menhaden and anchovies. Scientists estimate that producing a pound of farmed-raised shrimp, stripped bass or salmon requires more than twice the amount of wild caught fish.² The use wild caught forage fish to support any farmed fish, whether it is designated organic or not, does not conserve biodiversity and directly affects the health and sustainability of marine ecosystems.³ As the U.S. Ocean Commission stated, “obtaining fishmeal from traditional wild harvest practices may increase the pressure on fisheries that are fully exploited.”⁴ Protecting forage species is a key starting point for the ecosystem management of fisheries including protection of biodiversity. Forage fish play a significant role for ocean predators and form the fundamental base of the food web for aquatic and non-aquatic predators. A number of studies suggest that depletions in forage fisheries harm the availability of food for numerous predators from wild stripped bass to migratory seabirds.⁵ A regulatory standard that allows organic systems to support the depletion of wild forage fish for use as fish meal and fish oil will harm ecosystems and negatively affect biodiversity in contravention of the existing organic regulations. Even attempts to limit what types of fisheries may be use to derive “organic” wild caught fish meal are not likely to live up to the mandates to “promote ecological diversity and conserve biodiversity” found at 7 C.F.R. §205.2.⁶ For example, the use of currently “under exploited” fisheries as wild caught sources may still lead to significant impacts on biodiversity.⁷

² See Pew Oceans Commission, *America’s Living Oceans: Charting A Course for Sea Change* (2003) at 73-79 (discussing marine aquaculture) *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Protecting_ocean_life/env_pew_oceans_final_report.pdf

³ See Pew Oceans Commission, *Marine Aquaculture in the United States* (citing Naylor, et al, *Effect of Aquaculture on World Fish Supplies*, *NATURE* 405:1017-1024 (2000))

⁴ U.S. Commission on Ocean Policy, *An Ocean Blueprint for the 21st Century* (2004) Commission, at 331, *available at* http://www.oceancommission.gov/documents/full_color_rpt/welcome.html

⁵ See National Coalition for Marine Conservation, *Taking the Bait - Are America’s Fisheries Out-Competing Predators for Their Prey?* (August 2006)(highlighting a number of studies examining the effects of diminished forage fish availability on various predators).

⁶ The USDA has stated that the intention of this definition is to require the use of the preservation biodiversity and reflects a dynamic, interactive relationship with such conservation efforts. 65 Fed. Reg. 80550 (Dec. 21, 2000); See also USDA, *Report and Recommendations on Organic Farming* (1980)(USDA recognizing that organic agriculture seeks “to establish ecologically harmonious, resource efficient, and nutritionally sound agricultural methods.”)

⁷ See e.g. BirdLife International, “Hold the anchovies - Magellanic Penguins need them,” (Aug. 1, 2007)(describing how a paper in *Science* reveals that attempts to develop an “under

II. Legislative History of the “Stevens Amendment”

The language concerning the eligibility of wild seafood for organic certification found at 7 U.S.C. §6506 (c) has a long legislative history. In the FY 2000 Appropriations Senator Stevens (R-AK) directed USDA to hold two national hearings with respect to the development of organic standards for seafood and argued for the inclusion of “ocean-harvested seafood” in the USDA’s final organic regulations.⁸ Subsequently, the Alaskan delegation made numerous unsuccessful attempts to insert language similar to the current statutory provision in legislation from 1999 to 2002, including in the 2002 Farm Bill.⁹ The delegation was motivated by the prospect of using the organic label to create new marketing opportunities for Alaskan seafood, particularly salmon, because between the mid-1980's and 2002 the value of the Alaskan salmon harvest fell by 62%.¹⁰

Despite the numerous legislative failures, the current statutory provision became law through passage of the FY 2003 Emergency Wartime Supplemental Appropriations (“Stevens Amendment”).¹¹ The provision was included in the bill as a *quid pro quo* for the repealing of §771 of the Consolidated Appropriations Resolution, 2003. Section 771 would have suspended the Organic Foods Production Act’s (“OFPA”) organic livestock feed requirement if the price of such feed was found by USDA to be more than double conventional feed (“Deal Chicken Feed Rider”).¹² While the organic community strongly supported the repeal of the livestock feed provision, the community, including the Organic

exploited” anchovy fisheries for fish meal lacks oversight for addressing impacts on wildlife) available at http://www.birdlife.org/news/news/2007/01/anchovy_overfishing.htm; see also World Birdwatch, “Peru’s marine life losing out to fishfarms” (Sept. 2006)(describing decrease in bird and mammals populations because of exploitation of the Peruvian anchovy fishery) available at http://www.birdlife.org/news/news/2007/01/peru_wbw.pdf

⁸ 145 CONG. REC. S12474-02 (Oct. 13, 1999)(statement Sen. Stevens).

⁹ See H. Conf. Rep. 107-424 (May 1, 2002)(deleting provision in Farm Security and Rural Investment Act of 2002); see also 147 CONG. REC. S11116-01 (Oct. 25, 2001)(Sen. Stevens’ amendment tabled that provided authority to Secretary of Commerce to implement issue via appropriations bill H.R. 2330); 147 CONG. REC. S12870-2 (Dec. 11, 2001)(Sen. Murkowski’s attempted amendment to S.1731); 148 CONG. REC. S747-01 (Feb. 13, 2002); 148 CON. REC. S1006-03 (Feb. 25, 2002)(proposed amendment to H.R. 2646); 148 CONG. REC. S4629-01 (May 21, 2002)(Sen. Murkowski’s attempted amendment to H.R. 3009).

¹⁰ ADFG, “Trends in World Salmon Markets and their implications for the Alaska Salmon Industry” (Nov. 15, 2006) avail. at http://www.iser.uaa.alaska.edu/iser/people/knapp/Knapp_World_Salmon_Market_Trends_Nov_15_2006.pdf

¹¹ Pub. L. 108-11, Title II, §2105, 108th Cong., 1st Sess. (Apr. 16, 2003).

¹² See Pub. L. 108-7, § 771, 108th Cong., 1st Sess. (Feb. 20, 2003)

Trade Association, denounced the passage of the Stevens Amendment.¹³

A. Interpreting the Stevens Amendment

The tortured legislative history of the Stevens Amendment can be used to glean several things. First, the passage of the amendment was the result of a Congressional response to the uniform outrage over the Deal Chicken Feed Rider - a piece of legislation that would have diluted the requirement that organic livestock be fed 100% organic feed. Indeed, it was the strenuous objection from the organic community to any dilution of the feed standards that led to the begrudging acceptance of Senator Stevens' legislative maneuvering. And in the case of Harvey v. Johanns, the federal courts have recognized this continued Congressional interest in maintaining a standard that all organic livestock (including fish) be fed a feed ration that is a 100% organic.¹⁴ As such, the NOSB's Livestock Committee should not ignore the irony that it now seeks to use the Stevens Amendment, as codified at §6506(c), to circumvent the existing feed requirements of the OFPA. Indeed, using the provision to escape the strict feeding requirements of the Act can be said fly in the very face of why Congress and the community actually agreed to enact §6506(c).

Second, as the Stevens Amendment was legislated as part of an appropriations bill questions remain as to whether the organic community really consented to the provision. The amendment was not debated and after passage there was consistent sentiment against the concept of certifying wild caught fish. Certainly, it can be said that the amendment was in no manner conceived of or passed as a basis for creating a new feeding standard for feed used in captive organic aquaculture. Congress was clearly interested in consumer labeling of wild caught seafood for direct marketing purposes and acting so as to not alter the OFPA's original livestock feed requirements.

Third, the Stevens Amendment language clearly directs the agency to develop regulations for the use of the organic label on wild caught seafood and not captive aquaculture. The amendment did not impose any deadline by which the USDA was required to implement the provision and to date both the NOSB and the NOP have not moved to implement it. This lengthy gap between passage of the amendment and its implementation is indicative of both the agency's and the community's ambivalence, and in many case opposition, to developing regulations to oversee wild caught fish. If the Livestock Committee seeks to use §6506(c) as basis for allowing fish meal and fish oil derived from wild caught trimmings before doing so it must actually provide substantive proposed regulations delineating the standards for all wild seafood certification. The Stevens Amendment clearly envisions such a rulemaking stating that the provisions of the amendment can only be utilized "through regulations promulgated after public notice and opportunity for comment."¹⁵ No other provision of the OFPA

¹³ Press Release, Organic Trade Association, Organic Trade Association Says: Congress Blunders Again (Apr. 12, 2003) avail. at <http://www.ota.com/news/press/4.html?printable=1>

¹⁴ 396 F.3d 28, 43 n.7 (1st Cir. 2005)(citing S. Rep No. 101-357 1990 USCCAN 4656,5222 and stating that livestock must be fed 100 percent organically grown feed).

¹⁵ See 7 U.S.C. § 6505(c).

includes such explicit language directing full regulatory development. As a result, simply declaring that wild fish are organic for the narrow purpose of creating organic fish feed and conditioning what wild caught fish can be used for feed via loose sustainability criteria would not be consistent with the mandates of the statutory provision. Such actions would be further complicated by the fact that certifiers would not have real substantive standards upon which to certify any feed producer.

III. Changes in the Market and Political Dynamic of Wild Caught Fish

The market conditions that gave rise to the Stevens Amendment have also fundamentally changed over the last six years. As previously noted, at the time of its passage, the Alaskan delegation wanted its fishermen to benefit from the premium of organic in the marketplace because of depressed prices and concerns over the expected competition from organically labeled farmed fish. Since that time Alaskan fishermen have successfully specialized their “wild caught” production in the market to the point of achieving the price premium it originally sought. At a recent hearing, the industry told the Alaskan legislature how marketing of Alaskan Wild Salmon is focused on a step above organic.¹⁶ And the Governor recently noted the successes the industry has had in marketing “wild” product.¹⁷ Market figures back up the claims of Alaska’s “wild” branding effort as the value of the State’s salmon harvest grew 87% between 2002 and 2006.¹⁸

Given the recent success of “wild caught” in the marketplace, it is unlikely that there is still the political support in place to push implementation of the Stevens Amendment. Quite to the contrary, the situation has flipped. The aquaculture industry is trying to compel changes to the integrity of the organic feed standards so as to get an “organic” label that can compete with the successes of “wild caught.” Moreover, the organic feed push is being made to accommodate a farmed salmon industry whose environmental impacts, as the NOSB has heard, threatens the very sustainability of Alaska’s successfully marketed wild salmon runs.¹⁹

IV. Problems with Using General Sustainability Criteria

¹⁶ Alaska State legislature, House Special Committee on Fisheries (Jan. 31, 2007)(Testimony of Ray Ruita, Executive Director, Alaska Seafood Marketing Institute) avail. at <http://www.legis.state.ak.us/pdf/25/M/HFSH2007-01-310804.PDF>

¹⁷ Press Release, Office of the Governor Sarah Palin, Governor Palin Asks for Changes to Federal Fish Farm Proposal (Apr. 4, 2007) avail. at http://govserv.state.ak.us/print_news.php?id=312.

¹⁸ ADGF Report, *supra* note 3.

¹⁹ See Organic Aquaculture Symposium Before the Nat’l Organic Standards Bd. (Nov. 27, 2007)(presentation of Martin Krkosek, Centre for Mathematical Biology, University of Alberta, Canada) avail. at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5064674&acct=nosb>

One proposed solution to the “slippery slope” of using the Stevens Amendment authority is to condition the designation of wild caught seafood for fish feed on criteria that seek to ensure use of only sustainably managed wild fisheries. Implementation of such a “solution” would cause significant oversight problems.

First, the regulatory definition of “organic production” already includes general criteria for managing production systems to foster cycling of resources, promote ecological balance and conserve biodiversity. 7 C.F.R. § 205.2. Any use of wild caught fisheries would have to meet these general criteria. As noted above, CFS does not believe that the action of using fisheries for aquaculture fish meal and fish oil production can be determined with any certainty to promote ecological balance or conserve biodiversity. To the contrary, the exploitation of such fisheries is actually harming the ecological balance of marine systems.

Second, it has been suggested that sustainability criteria could reference third party or foreign standards for marine conservation or organic production. Utilization of such standards would violate the directive of the Stevens Amendment. In no manner have these third party standards been subjected to the scrutiny of rulemaking called for in the Stevens Amendment and the U.S. public has had no role in developing the substance of these private standards. The only way this could be rectified would be for the Board to adopt the express language of private standards into its proposed regulations and allow public comment.

Third, general sustainable criteria will create uneven and impossible enforcement. Certifiers with little or no experience in marine conservation will be left to interpret vague criteria and then assess whether a fish meal or fish oil producer has operated in a manner consistent with the certifiers’ subjective interpretation. CFS realizes that the regulations cannot be wholly proscriptive but leaving accredited certifying agencies to broadly interpret general criteria, especially in an area with little known expertise, will create very uneven enforcement and simply will not work. The Livestock Committee should be acutely aware of this based upon the pasture issue where the requirement of “access to pasture” has been subjected to certifier interpretations of such varying magnitude that the USDA has embarked on a tortured multi-year process with the goal of clarifying the standard with more exacting language.

V. Preferred Alternative

The ability to adhere to the process of organic production should drive what products are available to consumers and the desire to market a certain product as “organic” should not compel a contortion or dilution of the existing standards. CFS recognizes that certain members of the aquaculture industry may have made great gains in lessening the environmental footprint of their industry but such achievement does not entitle the industry to obtain an organic label at all costs. Just as the wild caught fisherman utilized the marketplace without organic labels to gain a premium and reputation for quality, aquaculturists can use their purported environmental gains to develop markets through other eco-labels.

CFS believes that the Board should not allow wild caught fish to be used to obtain “organic fish meal” or “organic fish oil.” Aquaculture systems that do not deploy fish meal and fish oil and can meet the recommended standards should be the first products into the “organic” market. The byproducts of these systems can be used as the foundation for development of a domestic organic fish meal and fish

oil market. And, as the Board has heard, there are substantial gains being made in displacing fish meal and fish oil in the diets of some marine species. The desire to enter the organic market can serve to further stimulate this research.

Conclusion

Under the existing regulations “organic production” is defined to be a system that integrates practices that “promote ecological diversity and conserve biodiversity.”²⁰ 7 C.F.R. §205.2. The use of fish meal and fish oil derived from wild fisheries as feed for organic aquaculture contradicts such intent. Use of the Stevens Amendment embodied at 7 U.S.C. §6506(c) to redefine “organic” feed for purposes of the creating certain organic aquaculture sectors would contradict the legislative context in which the statutory language was enacted. And proposals for adopting sustainability criteria for use of wild caught fish trimmings in organic aquaculture feed will cause significant and potential protracted enforcement issues. Accordingly, CFS suggests that the NOSB’s aquaculture recommendations exclude the use of wild caught fish in “organic” fish meal and fish oil at this time.

Respectfully submitted,

Joseph Mendelson III
Legal Director

²⁰ The USDA has stated that the intention of this definition is to require the use of the preservation biodiversity and reflects a dynamic, interactive relationship with such conservation efforts. 65 Fed. Reg. 80550 (Dec. 21, 2000); See also USDA, Report and Recommendations on Organic Farming (1980)(USDA recognizing that organic agriculture seeks “to establish ecologically harmonious, resource efficient, and nutritionally sound agricultural methods.”)