Addressing Regulatory Constraints to Off-Bottom Oyster Aquaculture in the U.S. Gulf of Mexico Region

Presentation to Gulf States Marine Fisheries Commission

March 20, 2019

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Objectives

- Identify regulatory constraints on growth and expansion of Off-Bottom Oyster Aquaculture ("OBOA") in the Gulf states

- Identify potential regulatory changes to eliminate or reduce constraints

- Research efforts in the Gulf (and beyond) to streamline regulatory processes

- Recommend regulatory changes to more efficiently implement OBOA in the Gulf states
Summary of Work

• Research
  • Reviewed existing state and federal laws, regulations, procedures, and programs
    • Gulf of Mexico region
    • East and West Coast regions

• Stakeholder Interviews
  • Regulators, aquaculture participants, researchers, and extension agents
  • Approximately 60 interviews
  • What is and is not working
Introduction to OBOA

• Farming techniques
  • Adjustable (or Australian) longline system
  • Floating bag systems
  • Floating cage systems
  • Bottom cages

• New industry and evolving techniques
  • Requires regulatory flexibility to evolve
Regulatory Framework

• State
  • Grant of property right for OBOA (lease of state-owned submerged lands)
    • Or authorization to exercise riparian rights on state-owned submerged lands
  • Issuance of permit authorizing OBOA operation
  • Issuance of Water Quality Certification (if Section 404 permit is required – usually not required for OBOA)
  • Operational regulation – sanitation and health
  • Specifics vary by state
Regulatory Framework continued

• Federal

• Section 10 of the Rivers and Harbors Act – for obstructions to navigation. 33 USC 403
  • May be General Permit NWP 48, Programmatic Permit, or full-blown Individual Permit

• Section 404 of the Clean Water Act (CWA) – for commercial discharge of dredged or fill material (usually not required for OBOA). 33 USC 1344

• Endangered Species Act (ESA), 16 USC 1531 et seq, and Magnuson-Stevens Fishery Conservation & Management Act (MSA), 16 USC 1801 et seq – for endangered species and essential fish habitat review

• U.S. Coast Guard Private Aid to Navigation (PATON) – for maritime equipment marking and lighting
Alabama

• What works well:
  • Vibrant OBOA participation and expansion
  • Clear authorization for OBOA ("Shellfish Aquaculture")
  • Relevant agencies are supportive of OBOA and provide assistance in the process
  • Strong academic and outreach support (Auburn Shellfish Lab and SeaGrant)
  • Pre-permitted OBOA parks
Alabama continued

- **Recommendations:**
  - Aquaculture coordinator to push applications through the various stops – complex permit process
  - Eliminate or reduce marine archeological survey requirement
  - Replace pre-permit requirement for health permit with permit condition to comply with sanitation standards
  - Continue developing more hatcheries and nurseries
  - Increase pre-permitted OBOA parks
  - Implement process to lease state-owned riparian rights
Florida

• What works well:
  • Vibrant OBOA participation and expansion
  • Favorable laws and policies supporting aquaculture
  • One-stop-shop permitting – even with respect to federal permits
  • Aquaculture use zones
  • Centralized online resources
Recommendations:

- Establish new Aquaculture Use Zones in high demand areas
  - Raise threshold for use conflicts that prevent new AUZs or leases
  - Ease requirements for creating new AUZs
- Increase seed supply to address seed shortages and “geographic bias”
  - Promote increased tetraploid hatchery production in Florida
  - Increase remote setting and nursery capacity
  - Develop public tetraploid oyster broodstock line
- Work with growers other regions to modify or develop insurance programs better suited to OBOA (mitigate storm impacts)
- Create industry association specific to OBOA
Louisiana

• What works well:
  • Clear authority for OBOA (“Alternative Oyster Culture”)
  • Relevant agencies are supportive of OBOA and provide assistance in the process
  • Simple permitting process
  • Pre-permitted OBOA park
  • Quasi-public Oyster Task Force represents shellfish grower interests
    • Implemented Aquaculture Committee
Recommendations:

- Expand and clarify OBOA procedures (instructions to applicants)
- Update OBOA regulations to address permitting on private water bottoms
- Authorize OBOA on unleased state water bottoms
- Exclude OBOA from local permitting (on state water bottoms)
- Authorize additional pre-permitted OBOA parks
- Develop more hatcheries and nurseries
- Increase penalties for theft to level of similar non-OBOA theft
Mississippi

• Status:
  • OBOA is getting off the ground
  • State is actively encouraging OBOA
  • Governor’s Oyster Council – driving force for OBOA effort
  • Deer Island OBOA park provides training and experience, and will enable pre-permitted OBOA farms
  • Streamlining state reviews, including combining lease and permit approvals

• Constraints:
  • Lack of known, suitable areas for OBOA – low water quality and freshwater inputs
  • Regulatory and industry uncertainties
• Recommendations:
  • Identify suitable areas
    • For parks, as well as individual farms
  • Provide comprehensive one-stop shop for information for applicants
  • Improve federal permitting efficiencies
    • Grant concurrence for NWP 48 (denied for all NWPs)
    • Complete a programmatic ESA consultation for OBOA (or at least interagency/industry meetings to narrow the issues)
  • Allow permit flexibility
    • Enable minor variations in gear type and methods that do not cause use conflict changes
Texas

• **Status:**
  • No OBOA farming
  • Suitable areas for development of OBOA
  • Historical lack of interest – though that is changing
  • Legislation introduced to authorize OBOA (2019) (“Oyster Mariculture”)

• **Constraints:**
  • Lack of authorizing legislation
  • Lack of knowledge and infrastructure
• Recommendations:
  • Pass authorizing legislation
  • Adopt implementing regulations
  • Authorize pre-permitted OBOA parks
  • Develop education and training, and requirements for them
  • Provide comprehensive one-stop-shop for information for applicants
Gulf-Wide

• Favorable legislative intent and agency regulatory policy statements (FL, WA)

• Examples:
  • Aquaculture is agriculture
  • Aquaculture is an activity of statewide interest
  • Aquaculture should be fostered and promoted
  • Economic benefits of aquaculture
  • Benefits of aquaculture for food production
  • Environmental benefits of aquaculture
  • Flexibility for an emerging industry, with many small business participants
Streamlining and Agency Coordination

- Aquaculture Coordinator/single point of contact
- Federal/state alignment – one-stop shop for permitting
  - State lead (FL – SAJ-99)
  - Federal lead (AL)
  - Compliance with one set of permit conditions satisfies multiple programs (FL – BMPs)
- Programmatic permitting – standard permit suitable for most OBOA operations
  - Nationwide Permit 48 (AL)
  - Programmatic ESA consultation (WA)
- Develop “safe harbor” standards applicants can accept without detailed review, recognized as providing adequate protection
• Pre-permitted OBOA parks or use zones

• Provide regulatory flexibility allowing gear modifications, innovation, and experimentation
  • Changes to gear type, not wholesale change of technique causing use conflict changes

• Centralized information for applicants
  • “One-stop shop” for regulatory information and requirements (FL, WA)
  • Annotated permit forms and guidance (FL, WA, AL)
Gulf-Wide continued

- Promote shellfish initiatives (WA, AK, NC, National)
  - Partnership among government, industry, and NGOs to promote shellfish (and OBOA)
  - Improve the regulatory landscape
  - Further key research priorities
  - Can take regional approach and address regional challenges (GoMexSI)

- Ensure industry associations/trade groups have designated representatives to address OBOA-specific regulatory and research needs
  - Or form new associations focused on OBOA
• Quasi-governmental bodies to advise state regarding industry input in regulatory processes
  • Ensure voice in regulatory matters specifically for OBOA
  • Aquaculture Review Council (FL)
  • Oyster Task Force – Aquaculture Committee (LA)

• Develop consistent and reliable sources of seed through Gulf of Mexico region
  • Diversify hatchery production (number and geography)
  • Increase remote setting and nurseries
  • Develop public tetraploid oyster-broodstock line
Questions?

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