Congress of the United States

Washington, DC 20515

September 8, 2008

James F. Bennett
Chief, Branch of Environmental Assessment
Minerals Management Service
Department of the Interior
381 Elden Street, MS–4042
Herndon, Virginia 20170

RE: Proposed Rule: Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf 1010-AD30, 73 Federal Register 39376 (July 9, 2008)

Dear Mr. Bennett:

We are writing to urge the Minerals Management Service (MMS) to discontinue developing a permit system for aquaculture in federal waters as part of its rulemaking pursuant to section 388 of the Energy Policy Act of 2005 (EPAct). Legally, MMS does not have the authority to permit aquaculture under the provisions of EPAct. Further, MMS lacks the requisite expertise to address environmental impacts associated with such facilities.

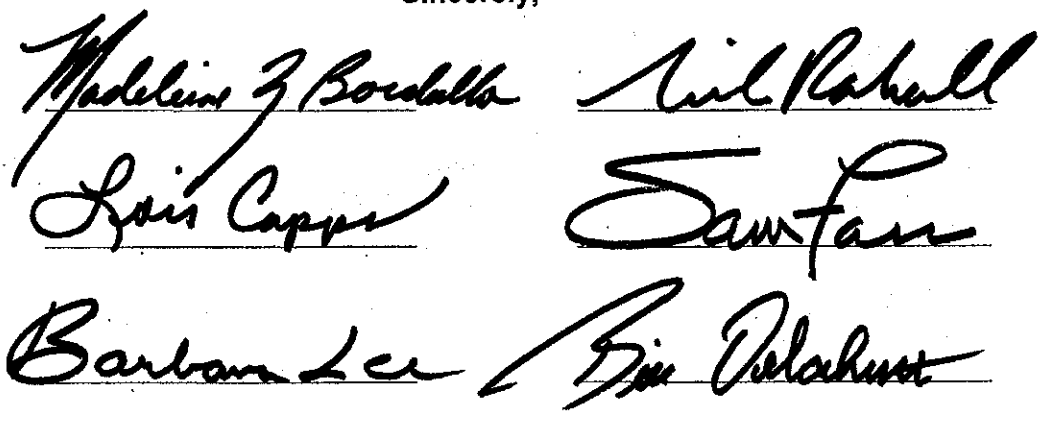
On July 9, 2008, MMS issued proposed rules to permit, among other activities, open ocean aquaculture on the Outer Continental Shelf (OCS) if those activities are associated with energy facilities currently or previously authorized under the Outer Continental Shelf Lands Act (OCSLA). Under the proposed rule, aquaculture facilities could be located on or around offshore energy facilities, such as oil and gas platforms in federal marine waters. Section 388 of EPAct provides MMS with the authority to permit use of facilities authorized by the OCSLA for energy-related and certain non-energy related activities. In the case of non-energy activities, Congress only gave the agency authority to grant permits for the use of OCS facilities for "*authorized* marine-related purposes" (emphasis added). However, offshore aquaculture has not been authorized by Congress. In its explanation of subpart J of the rule, the Agency acknowledges this fact in stating that "[o]ffshore aquaculture activities on the OCS are not currently authorized by any other statutory authority."

MMS would have to turn a plain reading of the statute on its head to provide MMS the authority to permit all otherwise *unauthorized* marine-related uses, including aquaculture. Furthermore, there is absolutely no evidence in the legislative history to lend support to such an interpretation. To the contrary, if offshore aquaculture were an authorized activity, there would be no need for the 2007 National Offshore Aquaculture Act that the Administration requested be introduced in Congress.

Further, MMS has no expertise in the management of living marine resources. The agency is simply not equipped to manage offshore aquaculture facilities and their associated environmental risks. Open ocean aquaculture brings the potential for water pollution from uneaten feed and waste products, use of antibiotics and other animal drugs, alteration of benthic habitat by settling wastes, and the spread of waterborne disease from cultured to wild fish. Of particular note in this context is the issue of escapement. In the late 1990s, storms destroyed an offshore aquaculture test cage placed adjacent to an energy platform in the Gulf of Mexico. In recent years, hurricanes have pulled entire oil rigs to shore. Had aquaculture pens been sited on those rigs, there would have been massive fish escapes.

Permitting marine aquaculture facilities does not fall within the authority granted to MMS by section 388. In addition, it would be inappropriate for MMS to permit aquaculture in that context when myriad and complex environmental issues remain. In sum, offshore aquaculture cannot be deemed to be an authorized use, and persistent questions render any such open ocean activity premature. We urge MMS to terminate its plans to permit aquaculture as part of its rulemaking pursuant to section 388 of EPAct.

Sincerely,



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