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## Symposium On Open Ocean Aquaculture: Editor's Foreword

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## SYMPOSIUM ON OPEN OCEAN AQUACULTURE: EDITORS' FOREWORD

Marine aquaculture is generally defined as the farming of marine finfish, shellfish, crustaceans, seaweed, and the ocean ranching of anadromous fish.<sup>1</sup> In the United States, marine aquaculture is an expanding industry with great potential to provide a wide range of benefits on a national level, including the alleviation of unsustainable harvest rates of wild fish stocks, the enhancement of the U.S. trade balance by providing additional products for export, and the development of new and promising economic opportunities for coastal communities.<sup>2</sup> However, the development of marine aquaculture in the United States faces a number of impediments. These obstacles arise from technological challenges, use conflicts in the coastal zone, environmental issues concerning water quality, ecological concerns associated with the potential genetic alteration of wild fish populations through the escape of farmed species, and from the substantial barriers posed by a poorly coordinated and inefficient regulatory framework.<sup>3</sup> In an effort to resolve some of these issues, marine aquaculture ventures are now beginning to look to the open ocean as a viable alternative to farming in nearshore coastal waters. This Symposium issue of the *Ocean & Coastal Law Journal* focuses on the regulatory problems faced by marine aquaculture activities in the open ocean.

On May 8-10, 1996, in Portland, Maine, a wide array of public and private participants in the marine aquaculture industry gathered for the

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1. NATIONAL RESEARCH COUNCIL, MARINE AQUACULTURE: OPPORTUNITIES FOR GROWTH 1 (1992). Anadromous fish, such as salmon, are fish that ascend rivers from the sea on a seasonal basis for breeding purposes. *Id.* at 8, n.1.

2. *Id.* at 2.

3. *Id.* at 1-3. See also Tim Eichenberg & Barbara Vestal, *Improving the Legal Framework for Marine Aquaculture: The Role of Water Quality Laws and the Public Trust Doctrine*, 2 TERRITORIAL SEA J. 339, 339-41 (1992).

Open Ocean Aquaculture Conference.<sup>4</sup> Among the numerous topics discussed at the conference was the regulatory framework for open ocean aquaculture. The most important presentations on this topic have been assembled and adapted by the *Ocean & Coastal Law Journal* for publication in this Symposium issue.

This Symposium features two Articles. The first is written by Alison Rieser, who is the Director of the Marine Law Institute, and a professor at the University of Maine School of Law. Professor Rieser's Article, *Defining the Federal Role in Offshore Aquaculture: Should it Feature Delegation to the States?*, outlines the important attributes of an effective legal framework for open ocean aquaculture, discusses the ability of federal agencies to provide these attributes under current law, and, after examining the key provisions of proposed federal legislation for the management of aquaculture in the federal 200-mile Exclusive Economic Zone (EEZ), proposes an alternative system of state-based management with federal oversight.

The second Article, *An Environmental Critique of Government Regulations and Policies for Open Ocean Aquaculture*, is authored by D. Douglas Hopkins, Senior Attorney, Rebecca J. Goldberg, Senior Scientist, and Andrea Marston, Intern, of the Environmental Defense Fund. This Article reviews the most significant environmental concerns raised by open ocean aquaculture, describes the key elements and deficiencies of the current legal framework for aquaculture in federal EEZ waters, and suggests ways to improve this framework by making it more protective to the environment and less burdensome to open ocean aquaculture developers.

This Symposium also presents two Commentaries. The first Commentary, *To Be or Not to Be Involved: Aquaculture Management Options for the New England Fishery Management Council*, is written by William J. Brennan, a marine and environmental affairs consultant, and former Commissioner of the Maine Department of Marine Resources. This Commentary examines the legal authority of the New England Fishery Management Council to regulate aquaculture activities in EEZ waters, and then discusses the management options for open ocean aquaculture that should be pursued by the Council in the future. Bradley W. Barr,

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4. The conference was sponsored by the University of New Hampshire/University of Maine Sea Grant Program, the University of New Hampshire Cooperative Extension Service, the National Marine Fisheries Service, and the Massachusetts Institute of Technology Sea Grant Program.

Manager of the Stellwagen Bank National Marine Sanctuary, is the author of the second Commentary, *Mariculture in Offshore Critical Habitat Areas with Focus on the Stellwagen Bank National Marine Sanctuary*. This Commentary analyzes the present federal programs that allow for the identification and protection of essential habitats in EEZ waters, and then discusses issues concerning the federal regulation of open ocean aquaculture activities in essential habitat areas, with particular emphasis on the Stellwagen Bank National Marine Sanctuary.

Finally, this Symposium presents the transcript of the Agency Panel Discussion on the regulation of open ocean aquaculture that took place at the Open Ocean Aquaculture Conference. The Panelists in the discussion are D. Douglas Hopkins, Senior Attorney, of the Environmental Defense Fund, Kenneth L. Beal, of the National Marine Fisheries Service, Pat Fiorelli, of the New England Fishery Management Council, Grant Kelly, of the U.S. Army Corps of Engineers, and Phil Colarusso, of the Environmental Protection Agency. The Moderator of the Panel Discussion is William J. Brennan, who is the author of one of the two Symposium Commentaries described above. The content of the Panel discussion provides valuable insights into the present and future federal regulatory framework for open ocean aquaculture.

With this Symposium, the staff of the *Ocean & Coastal Law Journal* hopes to contribute to the development of an improved legal framework for open ocean aquaculture in the furtherance of the continuing domestic growth of this valuable industry.

