

NOAA IDENTIFIES THE FIRST TWO AQUACULTURE OPPORTUNITY AREAS TO FACILITATE EXPANSION OF AQUACULTURE IN FEDERAL WATERS

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Policy and Regulatory Alert

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The National Oceanic and Atmospheric Administration (NOAA) announced that it has identified the first two regions where Aquaculture Opportunity Areas (AOAs) will be located in federal waters off Southern California and in the Gulf of Mexico.¹

The selection of these two regions is the first step towards establishing ten AOAs nationwide by 2025.² NOAA identified these two regions in response to the Executive Order on Promoting American Seafood Competitiveness and Economic Growth.³ The Executive Order mandated sweeping changes to the regulatory scheme for commercial aquaculture with the goal of removing barriers to the development of commercial aquaculture in the waters of the United States.

The AOA regions were selected based upon their high potential for expanded commercial aquaculture. Both regions already have a significant amount of data to inform aquaculture site selection and significant interest from companies seeking to develop sustainable aquaculture operations. While NOAA has described the AOAs as small and defined geographic areas, it has not specified a particular proposed size or boundaries for each AOA. The proposed AOAs are expected to support three to five aquaculture sites of varying types including finfish, shellfish, macroalgae, or some combination of thereof. NOAA plans to launch a significant public outreach process to engage with stakeholders and use a data-driven siting analysis to identify specific AOA sites in each region that are environmentally, socially, and economically appropriate for commercial aquaculture.

The Executive Order also directs NOAA to prepare a Programmatic Environmental Impact Statement (PEIS) for each AOA pursuant to the National Environmental Policy Act (NEPA) that considers the environmental effects of the proposed AOAs. The PEIS may identify suitable species for aquaculture in the region, suitable gear for aquaculture in such locations, and suitable reporting requirements for owners and operators of aquaculture facilities in such locations. The Executive Order directs that the PEIS for each AOA be completed within two years of site selection.

The AOAs represent a significant opportunity for companies seeking to develop an aquaculture farm in federal waters in Southern California or the Gulf of Mexico and who are willing to wait for NOAA to complete the lengthy public outreach, specific site selection, and PEIS process. If so, engaging the PEIS process may be an effective avenue to ensure that the environmental review process addresses the appropriate scope and range of potential activities and their impacts. Identification of suitable site locations for aquaculture and coordinated programmatic environmental review has the potential to remove significant obstacles to the expansion of domestic aquaculture projects. Aquaculture projects are currently required to go through extensive environmental

review and site selection analysis prior to permit approval, which has proven to be cost prohibitive for many potential applicants. NOAA will take the lead in the complicated and difficult process of identifying offshore aquaculture site locations that minimize user conflicts. Further, in preparing a PEIS, NOAA will perform the vast majority of the environmental review required under NEPA, which would represent significant cost savings to applicants, although such applicants would likely still need to conduct a specific environmental review tiered off of the more general PEIS analysis to evaluate the specific environmental impacts associated with their proposed project.

The establishment of AOAs, once completed, is likely to significantly reduce the time and cost associated with procuring regulatory approvals within the AOA areas, including the NEPA process for project-specific proposals; however, applicants still will need to obtain all required permits from other regulatory agencies. In Southern California, for example, depending on the site location, this could require obtaining permits or authorizations from the U.S. Army Corps of Engineers, the California Coastal Commission, the Regional Water Quality Control Board, the U.S. Environmental Protection Agency, the U.S. Food and Drug Administration, the California Department of Public Health, and/or the U.S. Coast Guard.

If this AOA process is successful, the Executive Order anticipates that the Secretary will designate two additional AOAs per year. Aquaculture companies seeking to establish farms in Southern California and the Gulf of Mexico that want to utilize the AOA process should be in close coordination with NOAA during the public outreach process. Coordination with NOAA will help ensure that the locations selected meet the operational and logistical requirements for their proposed project, that their proposed operation is considered during the AOA process, and that the terms and conditions associated with development within the AOA are reasonable and cost-effective. Aquaculture companies that are interested in developing elsewhere in federal waters should be in coordination with NOAA to advocate for their region to be selected in the next round of AOA designations. Even if a company does not want to utilize the AOA process, the regional data collection that will be part of the AOA process can be utilized by other aquaculture applicants that seek permitting outside of the NOAA AOA framework.

K&L Gates has an experienced aquaculture and policy team that can assist with these efforts. Please contact the authors of this alert with any questions.

FOOTNOTES

¹ Press Release, NOAA Announces Regions for First Two Aquaculture Opportunity Areas under Executive Order on Seafood (Aug. 20, 2020), available [here](#).

² For a more detailed discussion of the impacts of the Executive Order on Promoting American Seafood, see our alert [COVID-19: Trump Administration Takes Actions to Assist U.S. Aquaculture](#).

³ Exec. Order 13921, 85 Fed. Reg. 28,471 (May 12, 2020).

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