Message

From: Tyler, Kip [Tyler.Kip@epa.gov]
Sent: 5/19/2020 3:09:28 PM
To: Molloy, Jennifer [molloy.jennifer@epa.gov]
Subject: RE: Question on NOAA Lead Agency role under Executive Order on Promoting American Seafood Competitiveness and Economic Growth

Jess and I talk to Neil's assigned agent for this project. We let him know that our opinion is that the EO should not impact his project given that it is near the end of the issuance process.

We communicated to Neil's agent that our understanding is that the EO designates NMFS the lead for NEPA (EIS and EA). The EO is confusing on the lead agency for NEPA. Perhaps this should be an item of clarification for the taskforce meeting. I highlighted the confusing/contradictory statements in the below excerpts from the EO.

Sec. 3. Definitions. For purposes of this order:

(e) "Lead agency" has the meaning given that term in the regulations of the Council on Environmental Quality, contained in title 40, Code of Federal Regulations, that implement the procedural provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.);

Sec. 6. Removing Barriers to Aquaculture Permitting.

(a) For aquaculture projects that require environmental review or authorization by two or more agencies in order to proceed with the permitting of an aquaculture facility, when the lead agency has determined that it will prepare an environmental impact statement (EIS) under NEPA, the agencies shall undertake to complete all environmental reviews and authorization decisions within 2 years, measured from the date of the publication of a notice of intent to prepare an EIS to the date of issuance of the Record of Decision (ROD), and shall use the "One Federal Decision" process enhancements described in section 5(b) of Executive Order 13807 of August 15, 2017 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects), and in subsections (a)(ii) and (iii) of this section. For such projects:

(i) NOAA is designated as the lead agency for aquaculture projects located outside of the waters of any State or Territory and within the exclusive economic zone of the United States and shall be responsible for navigating the project through the Federal environmental review and authorization process, including the identification of a primary point of contact at each cooperating and participating agency;

(ii) Consistent with the "One Federal Decision" process enhancements, all cooperating and participating agencies shall cooperate with the lead agency and shall respond to requests for information from the lead agency in a timely manner;

(iii) Consistent with the "One Federal Decision" process enhancements, the lead agency and all cooperating and participating agencies shall record all individual agency decisions in one ROD, unless the project sponsor requests that agencies issue separate NEPA documents, the NEPA obligations of a cooperating or participating agency have already been satisfied, or the lead agency determines that a single ROD would not best promote completion of the project's environmental review and authorization process; and

(iv) The lead agency, in consultation with the project sponsor and all cooperating and participating agencies, shall prepare a permitting timetable for the project that includes the completion dates for all federally required

environmental reviews and authorizations and for issuance of a ROD, and shall make the permitting timetable publicly available on its website.

Kip Tyler
w 404.562.9294 | m 404.323.6094

From: Molloy, Jennifer <molloy.jennifer@epa.gov>
Sent: Monday, May 18, 2020 4:55 PM
To: Tyler, Kip <Tyler.Kip@epa.gov>
Subject: RE: Question on NOAA Lead Agency role under Executive Order on Promoting American Seafood Competitiveness and Economic Growth

Have you had a chance to talk to Neil, or someone with the project, since you saw this? Sounds like he needs some reassurance that NOAA has not been designated the lead for permitting – and not even for NEPA, but only for EISs. As such, it does not apply to Villella. Just had a call with NMFS and the Corps, and all are in agreement about that. Want to make sure that the operators of Villella know that. Danielle said there is a letter going back to him from NMFS, but since EPA is the permitting agency, he may be reassured to hear that from you too. I think a phone call or e-mail is fine.

Jenny Molloy
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From: Tyler, Kip
Sent: Thursday, May 14, 2020 2:49 PM
To: Molloy, Jennifer <molloy.jennifer@epa.gov>
Subject: FW: Question on NOAA Lead Agency role under Executive Order on Promoting American Seafood Competitiveness and Economic Growth

Hi Jenny.

See below email from our applicant – Ocean Era (formerly Kampachi Farms). It appears that the EO is already causing confusion for the industry. The EO is not "removing EPA's authority to lead the permitting process" – it only appoints NMFS as the lead for NEPA.

I got a call from Jess today about the NMFS Office of Aquaculture wanting to get EPA's perspective on how the EO should apply to applicants – specifically Kampachi Farms. This topic should be an item of discussion for your upcoming task force meeting. My position is that the EO should not apply to Kampachi because the permit is nearing issuance in several months. Similarly, the NEPA process for Kampachi is almost complete. Any application of the EO to Kampachi will likely cause delays. Jess was also of the opinion that NMFS should not meddle with the Kampachi permit.

We understand that the EO will directly impact our next permit application from USM/Manna. We look forward to applying the EO to this upcoming project. However, given the excellent federal interagency relationships in the gulf, the EO will likely only provide marginal benefits.

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From: Jess Beck - NOAA Federal <jess.beck@noaa.gov>
Sent: Wednesday, May 13, 2020 4:28 PM
To: Tyler, Kip <Tyler.Kip@epa.gov>
Cc: Andrew Richard - NOAA Federal <andrew.richard@noaa.gov>
Subject: Fwd: Question on NOAA Lead Agency role under Executive Order on Promoting American Seafood Competitiveness and Economic Growth

From: Neil Sims <neil@ocean-era.com>
Date: May 7, 2020 at 7:57:31 PM EDT
To: Chris Oliver - NOAA Federal <chris.w.oliver@noaa.gov>
Cc: Paul Doremus - NOAA Federal <paul.n.doremus@noaa.gov>
Subject: Question on NOAA Lead Agency role under Executive Order on Promoting American Seafood Competitiveness and Economic Growth

Dear Mr Oliver,

Thank you very much for the notification on the Executive Order. This is tremendously exciting for those of us who have been striving for years – decades – to develop offshore aquaculture in the U.S.

I have a question on the E.O.'s reach, please. Our company (formerly known as Kampachi Farms, LLC) is leading a National SeaGrant project (the "Velella Epsilon" project) to permit and operate a demonstration fish farm net pen in Federal waters, at a proposed site some 40 nautical miles offshore of Sarasota, FL. Ever since the Louisiana Court decision voiding NOAA jurisdiction over aquaculture in the Gulf of Mexico, the SE Region's EPA office has assumed Lead Agency role for this permit. They oversaw development of our EA, and held a public hearing on our permit in January. We are hopeful that our permit will issue sometime this summer.

We are deeply concerned that the E.O.'s designation of NOAA as the lead agency for permitting may now confound these efforts, by removing EPA's authority to lead the permitting process. Could your office please explore how this might be avoided, and how EPA could continue to shepherd our permits through to completion for this project?

We are also funded under the SeaGrant project to use the goodwill generated from the Velella Epsilon demonstration pen to pioneer the permitting process for a commercial offshore fish farm. We intend to begin the commercial permit application process as soon as we have the demonstration net pen permit in hand. We would be pleased to work with NOAA as lead agency on that commercial permit, but we simply do not want to see the progress that we have made to date on the demonstration pen permit (over the last three years) voided by the E.O.'s inadvertent implications.

Please let us know if you would like any further information.

Thank you, and aloha,

Neil

Neil Anthony Sims

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From: Chris Oliver - NOAA Federal <chris.w.oliver@noaa.gov>
Sent: Thursday, May 7, 2020 9:52 AM
To: Chris Oliver - NOAA Federal <chris.w.oliver@noaa.gov>
Subject: New Executive Order on Promoting American Seafood Competitiveness and Economic Growth

Good afternoon:

I am pleased to share that today, the President signed a new Executive Order Promoting American Seafood Competitiveness and Economic Growth. This new Executive Order will propel the United States forward as a seafood superpower by strengthening the American economy; improving the competitiveness of American industry; ensuring food security; providing environmentally safe and sustainable seafood; supporting American workers; and ensuring coordinated and transparent Federal actions.

Specifically, the Executive Order calls for the expansion of sustainable U.S. seafood production through more efficient and predictable aquaculture permitting, cutting-edge research and development, regulatory reform to maximize commercial fishing, and enforcement of common-sense restrictions on seafood imports that do not meet American standards.

As part of this effort, the Department of Commerce will co-chair a newly-established Seafood Trade

Task Force and will work closely with interagency partners to develop a comprehensive interagency seafood trade strategy that identifies opportunities to improve access to foreign markets through trade policy and negotiations; resolves technical barriers to U.S. seafood exports; and otherwise supports fair market access for U.S. seafood products.

In addition, the Secretary of Commerce will soon announce the allocation of $300 million in fisheries assistance funding provided by Sec. 12005 of the Coronavirus Aid, Relief, and Economic Security Act, also called the CARES Act, to states, Tribes, and territories with coastal and marine fishery participants who have been negatively affected by COVID–19.

As we all know, the 2020 COVID-19 crisis has created a turning point in the way the seafood industry does business and-- in addition to other efforts and financial support-- this Executive Order and the funding available through the CARES Act creates an exciting new opportunity to address long-term challenges to expanding the domestic seafood sector.

Thank you and stay well.
Chris Oliver

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Chris Oliver
Assistant Administrator for Fisheries
National Marine Fisheries Service/NOAA
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