December 21, 2004

Mr. William Sessions
USDA Associate Deputy Administrator
Country of Origin Labeling Program
Room 2092-S
Agricultural Marketing Service
USDA STOP 0249
1400 Independence Avenue SW
Washington DC 20250-0249

Re: Docket No. LS-03-04

Dear Mr. Sessions,

On behalf of shellfish farmers on the West Coast, I am writing this letter to address the issue of "farm raised" vs. "wild" as it pertains to shellfish under the interim Country of Origin Labeling rule. The Pacific Coast Shellfish Growers Association represents shellfish "farmers" from Alaska to California producing approximately 102 million pounds of Manila and geoduck clams, mussels and oysters annually worth approximately $89 million. It is very important to our members that the definitions used in the final rule do not exclude any of their production from the "farmed" category.

I appreciated the opportunity last month to participate in a conference call with you and other members of the shellfish industry from around the country. Several of us before the call felt we had a pretty good understanding of farmed vs wild. After the call it was clear that no one, including USDA, had a truly clear picture of what farmed or wild shellfish was.

The confusion in our opinion stemmed from the language in § 60.106 requiring the shellfish beds be subject to production enhancements, with the three non-exclusive examples (providing protection from predators, the addition of artificial structures, or providing nutrients). Unless a complete list of production enhancements is provided in the final rule along with guidance on time periods required to be subjected to the production enhancement to qualify as farmed, USDA will be plagued forever by on-going inquiries from confused farmers and retailers.

If this language specific to production enhancements were to be deleted from the final rule much of the confusion in our opinion would be eliminated. A common thread between all farmed shellfish (west, east and gulf coasts) is that it is produced in "controlled environments" from which the growers have exclusive rights to the farmed shellfish. The land the farming is occurring on qualifies as "controlled" in that it is generally either owned or leased. It further qualifies as "controlled environment" in our opinion by the fact that the growing waters must be certified as approved by a state

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shellfish control authority under the National Shellfish Sanitation Program. Shellfish can only be harvested from areas that are demarcated, monitored for water quality and identified clearly on tags that must accompany each lot of shellfish harvested. This could certainly be interpreted as a "controlled environment."

To address these above concerns we would recommend § 60.106 be amended as follows:

§ 60.106 Farm-raised fish. *Farm-raised fish* means fish or shellfish that have been harvested in controlled environments, including ocean-ranched (*e.g.*, penned) fish and including shellfish harvested from leased, owned, controlled or managed **beds** ~~that have been subjected to production enhancements such as providing protection from predators, the addition of artificial structures, or providing nutrients~~; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

We note this language is consistent with the National Aquaculture Act of 1980 which defined aquaculture as "…the propagation and rearing of aquatic species in *controlled or selected environments*, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law)."

To further reduce confusion over farmed vs wild shellfish we would recommend the following amendment to § 60.133.

§ 60.133 Wild fish and shellfish. Wild fish and shellfish means naturally-born or hatchery-originated fish or shellfish released in the wild, and caught, taken, or harvested from non-controlled waters or beds as mature animals for processing and/or sale for consumption; and fillets, steaks, nuggets, and any other flesh from a wild fish or shellfish.

This change would address a farming practice in the northwest and other parts of the country where seed oysters are collected from public beds and planted on leased, owned, controlled or managed beds to grow to maturity. As § 60.133 currently reads there could be confusion in that the seed collected from these public beds originated from larvae that were "released" by their parents into the wild before settling on the public beds from which they are **collected and planted on controlled beds. The proposed change clarifies** only mature animals (not seed) caught, taken or harvested from non-controlled waters would be considered wild.

Thank you for considering these comments.

Sincerely,

Robin Downey

Robin Downey
Executive Director