

**Public Policy Conflicts and Deliberative Democracy Processes
in the National Organic Standards Board
of the
United States Department of Agriculture**

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Abstract:

This paper analyzes an existing public policy decision making process that is underway within the United States Department of Agriculture that will result in federal regulations for the certification and labeling of all organic aquaculture products sold in the US. This is an important policy decision that affects consumer food purchasing decisions, food production standards, and the quality of the maritime environment.

Analysis was done by examining public hearing transcripts and agency documents and viewing them through the lens of scholarly deliberative democracy models. Findings show that the current decision making process associated with the conflict falls short of a quality deliberative process.

The decision making process does not measure up because it does not meet the interests of all parties or stand up to standards of fairness of procedure or outcome for the impacted parties. The process is not collaborative or participatory. Parties whose expectations will be missed by the government agency decision may be concerned about the quality and the legitimacy of the decision which results in a lack of confidence in the process and a distrust of public agencies. The result may be a challenge to the final decision which causes extended conflict.

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Introduction

This paper is a case study that analyzes a complex multi-party value-based public policy conflict surrounding the creation of off-shore organic aquaculture standards and regulations within the United States Department of Agriculture. The dispute is important because it affects US consumers' health and welfare as well as the sustainability of the oceans. The focus of this case study is on the effectiveness of the decision making process used by the federal agency to resolve this conflict. Based on the study findings of a less than effective process, this paper recommends alternative ways to handle the conflict based on public policy and deliberative democracy “best practices”.

This public policy dispute is being played out in the United States Department of Agriculture (USDA) office of the National Organic Program (NOP). On the surface, the conflict is over aquaculture production systems and, whether fish from these systems qualify to be labeled USDA organic. Opponents claim that these fish cannot be considered organic because the waste and effluent by-products from the pens pollute the seas, the use of pesticides and antibiotics leave harmful residues that affect human health, and escaped animals to non-native environments harm the existing wild species and transmit disease to other species. Proponents of an off-shore organic aquaculture label disagree and claim that organic off-shore aquaculture farmers are responsible stewards of the environment, organic labeling will give consumers access to a safe, relatively inexpensive and reliable alternative to conventional farmed fish, and the standard will be an incentive for conventional farmers to improve their methods and therefore improve the environment. The resolution of this conflict is not only about reasoned arguments and policy regulation, as the parties may believe; it is also about shared beliefs and values and about the definition of the word “organic”.

This paper focuses not so much on the issues of this conflict just described but rather on the decision making process used by the federal agency to understand these issues and resolve them for the common good. The purpose of this case study is to explore ways that this conflict could be managed differently if there was greater citizen involvement in the decision making process. Government agencies are charged with making public policy decisions and how these decisions are made are very important because these decisions can affect all Americans. When a government decision making process includes citizens, important social goals are achieved (Beirerle & Konisky, 2000). The social goals include: incorporating public values in decision making, effective conflict resolution among competing interests, and restoration of a degree of trust in public agencies. This paper will explore how one federal agency manages public discourse on an important decision that affects the common good.

This paper will provide background about the particular conflict by summarizing the conflict, identifying stakeholders and their issues, describing the importance and challenges/risks faced in managing this dispute, and detailing the agency decision making process being used. In addition, this paper will provide information about what other scholars have said about conflict drivers, public policy decision making, and deliberative democracy approaches. A section of this paper will also describe the research and data gathering performed to substantiate my findings and final recommendations.

Background

The Aquaculture Conflict

The Federal Agency Mandate

In 1990, Congress passed the Organic Foods Production Act (OFPA). The OFPA required the U.S. Department of Agriculture (USDA) to develop national standards for organically produced agricultural products to assure consumers the agricultural products marketed as organic meet consistent, uniform standards. The OFPA and the National Organic Program (NOP) regulations require the agricultural products labeled as organic originate from farms or handling operations certified by a state or private entity that has been accredited by USDA. The NOP is a marketing program housed within the USDA Agricultural Marketing Service. Appendix A - Federal Agency Organization Chart

The National Organic Standards Board (NOSB) is established under the NOP to act as “fiduciaries for all members of the organic community and the public at large” (National Organic Standards Board Policy & Procedures Manual, August 22, 2005) As fiduciaries representing the consensus of the organic community, the board is charged with providing effective and constructive advice, clarification and guidance concerning the National Organic Program (NOP) to the USDA Secretary of Agriculture. Basing on the board's guidance, the USDA Secretary of Agriculture establishes laws related to organic product labeling and certification requirements for all purveyors of organic goods in the United States.

As fiduciaries of the public at large, the NOSB has the responsibility to engage the public in open hearings to understand their point of view on organic topics to arrive at recommendations for the Secretary of Agriculture. There is an existing process used by the board to receive public input

and there are certain rules of conduct associated with these meetings. There is no guidance to do more than receive public comment and determine public attitudes on a topic.

The Aquaculture Conflict

As the world population grows and dietary requirements are established that include seafood, consumer seafood demand soars. Despite increased demand for fish, levels of captures of fish in the wild have remained roughly stable since the mid-1980s and there is little chance of any significant increases in catches beyond these levels, according to the United Nations Food and Agriculture Organization (FAO) Fisheries Department Sub Committee on Aquaculture.

The FAO's global assessment of wild marine fish stocks found that out of the nearly 600 species groups it monitors, 52 percent are fully exploited while 25 percent are either overexploited (17%), depleted (7%) or recovering from depletion (1%). Twenty percent are moderately exploited, with just three percent ranked as underexploited. "Catches in the wild are still high, but they have leveled off, probably for good," explains Rohana Subasinghe of FAO's Fisheries Department and Secretary of the Sub Committee on Aquaculture. This leveling off, coupled with a growing world population and increasing per capita demand for fish, spells trouble for supply.

This is where off-shore aquaculture steps up to solve the problem. Off-shore aquaculture can be defined as the production of aquatic animals under controlled conditions for all or part of their lifecycle in coastal areas. In the US, all aquaculture is regulated at the state and federal level with many government agencies involved.

There are two types of off-shore aquaculture - conventional and organic. Each uses different methods in their production systems. Conventional off-shore aquaculture, while tightly regulated, raises a lot of issues with consumer and environmental groups related to food safety and

environmental concerns. Organic aquaculture is believed to be an improved alternative system because it uses organic methods with fewer impacts on the environment and fewer food safety issues. Certified organic off-shore aquaculture farms and regulations have existed in Europe for years and are recognized as better than conventional aquaculture farms.

However, both conventional and organic off-shore aquaculture farmers face some sorts of production issues related to handling of waste, disease, feed, and escapes. Existing organic aquaculture farmers address most of these issues according to the satisfaction of European governmental organic aquaculture standards. However, none of these issues have been completely solved by any one in the industry. There is still a need for innovative solutions to some of the basic problems.

The parties in this conflict include the governmental agency, the environmentalists and activist organizations, the aquaculture farmers and marketers, and the public at large.

Significance of Conflict

Understanding and resolving this dispute over organic off-shore aquaculture standards is important because there is a lot of international and national pressure to develop a standard that will:

- End the confusion US consumers face in shopping for fish and not having a clear and viable organic option
- Provide regulations to ensure a reliable, safe and bountiful supply of fish to consumers to meet their dietary needs
- Provide truly organic farmers the opportunity to label their product as organic

- Become an incentive for other conventional off-shore aquaculture farmers to improve their methods toward organic which would stop or slow the negative environmental impacts of conventional aquaculture

Conflict Drivers

Conflicts like this are played out throughout society every day. When individuals or groups have differing goals or objectives, conflict can arise. Sometimes conflict can be handled through simple dialogue because the conflict is due to miscommunications or misperceptions that become clarified with one on one conversation. Other times, the conflict is based on larger issues, such as precedents, cultural beliefs, personal values, access to resources, and affect many people or groups (Fisher, 2000). Resolving these conflicts of real differences becomes more difficult just because of the logistics of communicating with many people on complex issues.

With these more complex issues, many factors are involved in either the continuation or escalation of a conflict that become conflict drivers. There are a few in particular that I want to cover in this paper because I believe that they have a direct relationship to the aquaculture conflict. They are: the misidentification of disputants' interests, perceived unfairness by the disputants of the decision making process and perceived unfairness by the disputants of the decision or outcome based on inequality, inequity or unfulfilled need.

Disputant Interests

If a dispute is diffuse, involving ideologies, it is not a zero-sum game (one winner and one loser), but rather one where conciliation, minimization of differences, enhancement of mutual understanding and goodwill could lead to positive results (Deutsch, 1973). To understand the nature of the conflict, Deutsch writes about breaking the conflict down into small manageable pieces.

When attempting to understand a conflict, a mediator will ask the parties to tell their side of the story. Parties will often state what they want or their position on the conflict. Unfortunately, this step underscores the differences and distance between the parties which leads to standoffs and dead end conversations. It is often a time of further polarization, hostility, frustration and alienation (Fisher, 2000).

The solution to overcoming this standoff is to focus on the parties' interests. Interests are the motivating reasons behind an individual's position of what they are asking for in the conflict. Interests are not what the individual wants but the reasons the individual wants it. By identifying interests, dialogues broaden and options emerge that do not require winners and losers. Parties can jointly begin to brainstorm problems and solutions, identify common ground and agree on shared values. I will layout the positions and interests of the parties in this aquaculture dispute later in the paper.

Procedural Justice

Conflicts are often found in decision making bodies of government and other authoritative institutions where decisions have to be made and disputes resolved that affect the public at large and are for the common good. As fiduciaries of the public trust, these agencies use procedures that help them to make decisions and resolve conflicts related to the issue to be decided. It was found that different dispute resolution procedures engender quite different fairness judgments by the impacted parties, regardless of the outcome of the dispute (Thibaut & Walker, 1994). John Thibaut and Laurens Walker found that when disputing procedures granted disputants the opportunity to express their views and argue their case, these procedures are seen as fairer than procedures that deny disputants this opportunity, even when the procedure results in poorer outcomes. Later research showed procedural justice judgments are major determinants of the acceptance of authority, support

for social and political institutions, obedience to laws and acceptance of and obedience to negotiated and mediated agreements.

Examples of unfairness in the process may be:

- lack of full representation at the table,
- lack of communication or information,
- unfairness in discussions,
- one voice had an advantage,
- power imbalances,
- lack of agency commitment to the process, or
- lack of leadership

A procedure may be perceived as unfair if any one of these conditions are present because it means that parties' interests are not satisfactorily identified or considered, in an equal and fair way. These conditions all carry the same weight and the conflict might not be resolved if the procedure is not perceived to be fair by the disputants.

Distributive Justice

Besides the importance of identifying interests and ensuring the disputants have the perception of a fair decision making process, conflict can continue if the distributive outcome or the decision is perceived to be unfair. Deutsch defines this as distributive justice. Distributive justice is concerned with the distribution of conditions and goods which affect individual well-being.

(Deutsch, 1975) Distribution can be based on equity, equality, or need. "Well being" includes psychological, physiological, economic and social aspects of individuals or individuals as members of a group. If there is not a general sense of fairness in the allocation of a decision, a disputant can think that an injustice has occurred.

For example, a decision may benefit the income of only certain groups and not others or the decision may provide opportunities for one group and not another, etc. Another example could be that the decision may be made based on equity when it should have been made based on need.

It is impossible to identify which value of equity, equality or need weighs more. Deutsch points out that there is no “natural values justice” that provides a priority order in which distribution should apply. Just distribution depends on circumstances and whatever fosters social cooperation. If the allocation is not perceived as just, the conflict will continue.

Participatory Processes

These three conflict drivers can be addressed and resolved when there is a good participatory or decision making process. When there is a decision to be made by a governmental agency, like this NOSB aquaculture decision, government agencies often seek input from the public at large to understand different citizen perspectives. There are many ways that a government can obtain public input. They can ask for written comments, hold public hearings, run focus groups,