

Executive Summary

The discussion in the comments below will highlight the following points:

1. The US Congress is reserved all right to regulate Interstate Commerce and authorized specific and specified duties to the Secretary of Agriculture. Therefore, unauthorized federal, state, or private parties are not legitimate providers of services to certify animals moved in interstate commerce for reasons of disease prevention, control and eradication.
2. The Uruguay Round Agreement Act with the subsequent enactments of the Plant Health Act of 2000 and the Animal Health Protection Act of 2002 (AHPA) brought consolidation of our nation's plant and animal health laws. The consolidation provided the necessary transparency, uniformity and consistency needed to fulfill our trade agreement obligations under the Sanitary and Phytosanitary Agreement (SPS). Congress intended for one regulatory authority to provide a single system of livestock disease control, prevention, and eradication for the entire nation and for all animals which is in keeping with our trade agreements (treaties approved by Congress). Therefore, defacto regulators such as other federal agencies and State agencies were effectively relieved of their "assumed" duties that had been relied upon before enactment of the AHPA in 2002.
3. To further the understanding of SPS requirements one must notice that SPS requires a single contact for each nation that will both distribute animal health requirements to the nation and provide the World Organization for Animal Health (OIE) with current animal disease information from the respective nation.
4. The AHPA removed distinctions of livestock "classes" in previous animal health law terminology such as "livestock and poultry" from the federal laws applicable to animal disease control, prevention, and eradication. The current AHPA applies to all farm-raised animals and any wildlife movements that could affect livestock health in the United States. There is no distinction between terrestrial and aquatic animals. Therefore, any attempted distinction between types of animals is severely errant and does not agree with the findings and intent of Congress in either the National Aquaculture Act (NAA) or the AHPA. (See later discussion about how Congress currently defines "livestock".)
5. Secretary of Agriculture is sole regulator of interstate movement of animals for the purpose of disease prevention, control, and eradication. This is first required of our nation's trade treaties and follows along through provision in the Constitution into our national statutes, which support that requirement. Therefore, there are no provisions for each State to establish its own unique aquatic animal health requirements, except to exceed the national requirements for scientific reasons such as but not limited to preventing importation of disease(s) that is/are known not to occur in the State.
6. A Certificate of Veterinary Inspection signed by an accredited veterinarian is required to accompany the movement of animals across State boundaries. Therefore, certification by any other party than the Secretary of Agriculture's accredited veterinarians has been prohibited since at least 2002.

I. To begin specific comments, the stated MISSION in the proposed National Aquatic Animal Health Plan (NAAHP), page 4:

~~The mission of the National Aquatic Animal Health Task Force on Aquaculture is to develop and implement a National Aquatic Animal Health Plan (NAAHP) for aquaculture in partnership and in cooperation with industry; regional organizations; State, local, and Tribal governments; and other stakeholders. This plan will:~~

- ~~• Facilitate the legal movement of all aquatic animals, their eggs, and products in interstate and international commerce;~~
- ~~• Protect the health and thereby improve the quality and productivity of farmed and wild aquatic animals;~~
- ~~• Ensure the availability of diagnostic, inspection, and certification services; and~~
- ~~• Minimize the impacts of diseases when they occur in farmed or wild aquatic animals.~~

The mission stated is lined out to represent the comment that this effort is deemed outside the charge or authority of the Joint Subcommittee on Aquaculture (JSA). This mission states the Task Forces' intention to delve into applied science of animal health or the area of regulatory medicine. Advising the President of the United States on the application of scientific knowledge is entirely beyond the scope of the JSA or its hierarchy. Understanding the executive branch framework within which the JSA works will enlighten the reader to see what is and is not correct in this situation:

Reporting Authorities: The Joint Subcommittee on Aquaculture (JSA) is a statutory committee that operates under the aegis of the National Science and Technology Council (NSTC) of the Office of Science and Technology Policy in the Office of the Science Advisor to the President. The JSA reports to the NSTC's Committee on Science, which is one of five research and development (R&D) committees established by NSTC to prepare coordinated R&D strategies and budget recommendations for accomplishing national goals.¹

Reading up the "chain of command" there is further discrepancy or mismatch in the stated Task Forces' mission and the NSTC.² It is granted that there is clear intention in the mission and scope of NSTC for the JSA to make recommendations on coordinating aquatic animal diseases research within the federal research and development enterprise. However, the scope of the proposed NAAHP is clearly outside the realm of research and deeply mired in the practical or applied side of animal health.

Research per se is for defining the unknown or discovery of the new. The proposed NAAHP does nothing to contribute something new or define something unknown. This is NOT research coordination!

The problem also surfaces from reviewing the mission of the JSA:

Mission: To serve as a Federal interagency coordinating group to increase the overall effectiveness and productivity of Federal aquaculture research, technology transfer, and assistance programs.³

Another problem is also apparent in this Task Force's stated mission when public comments and information were not gathered in accordance with the requirements of the Federal Advisory Committee Act (FACA)⁴. The JSA is a subcommittee of the Committee on Science and did not conduct its public comment and information gathering in accordance with the FACA.⁵

The following example taken from the United States Animal Health Association (USAHA) resolution⁶ would not appear to comply with FACA:

During multiple stakeholder meetings throughout the country with various aquatic industry and natural resource agency groups as well as state, federal and university personnel, the National Aquatic Animal Health Task Force has been soliciting input and drafting chapters for the NAAHP.

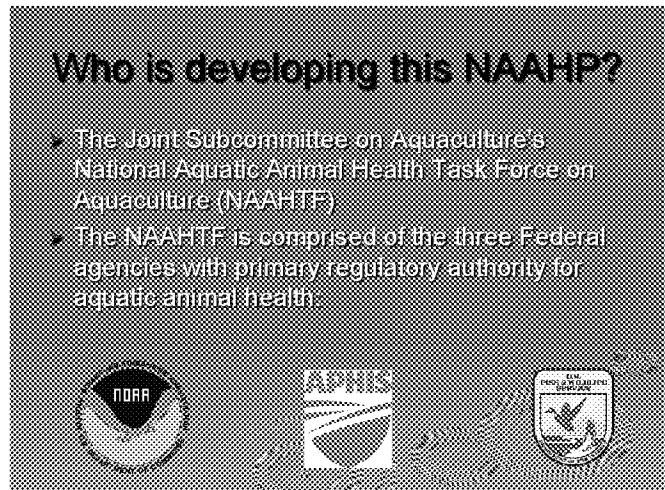
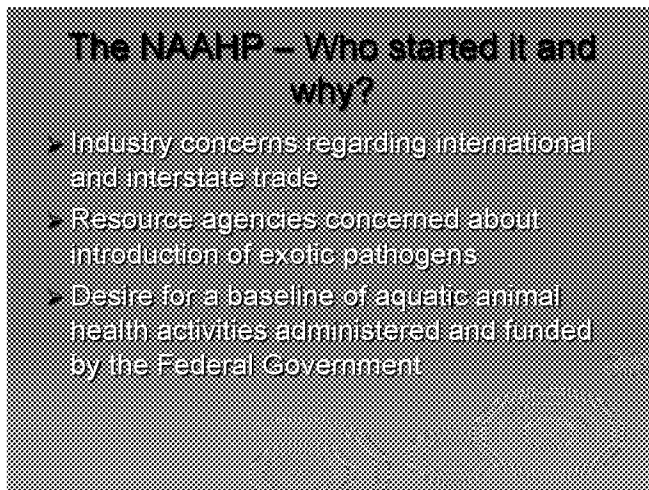
The JSA or its subunit of organization have never designated a federal advisory committee to this author's knowledge under which it might embrace public comments and concerns for this Task Force.

The following excerpt was taken from the National Aquatic Animal Health Task Force - Meeting Report of Work Group 1 "Roles and responsibilities of aquatic animal health professionals", SeaTac Holiday Inn, Seattle, WA. January 13-14, 2004:⁷

The Task Force decided to develop the various elements of the plan in a transparent and collaborative process with its many stakeholders. The Task Force will convene work groups, which represent a broad spectrum of experts, to provide input on the various topics/elements of NAAHP. The work groups are informal in structure and are not advisory groups nor are they operating under the rules of FACA. Discussions of the work groups will be captured in meeting reports such as this one. These reports will in turn be used to develop draft chapters of the plan. After approval by the Task Force, the draft chapters will be submitted to JSA and our stakeholders for comment. Eventually, the finalized chapters will be adopted by the Task Force as part of NAAHP.

This author must confide to the reader that the above government behavior does not coincide with personal experience gained from participating in the federal advisory committee system. One must also require an explanation (before discussing the content or attributes of proposed NAAHP) of how such a Task Force group can increase the overall effectiveness and productivity of Federal aquaculture research, technology transfer, and assistance programs by dabbling in the national animal health regulations. One might also request explanation for how a research and development advisory committee stretches and morphs so distinctly into the applied and established science of regulatory medicine covering animal health.

To shift gears in thinking a moment to continue exposing the improper assumptions made in creating the Task Force, the following Power Point slides were excerpted from USTFA Sep 2005.ppt:⁸



The Task Force made an assumption sometime, somewhere, and by someone that the United States has “co-competent” authorities over animal health regulation. NOAA and FWS referenced in the slides above DO NOT have “primary regulatory authority for aquatic animal health” since enactment of the AHPA in 2002. Simple farmer-arithmetic suggests that in three years the AHPA enacted on Capitol Hill had not yet reached the APHIS, FWS or NOAA headquarters in the metro D.C. area. The Secretary of Agriculture through the Animal and Plant Inspection Services (APHIS) regulates animal diseases while other agencies can cooperate with the APHIS.

A review of the Scope, Mission, etc of the organizational hierarchy in which JSA belongs could lead one to believe that the Task Force could well be an attempt to hijack and subvert the JSA's contribution to improving

the effectiveness of federal research and technology programs into a political travesty to derail our nation's animal health regulation!

As will be discussed later, Congress did not intend the JSA to make recommendation on increasing the effectiveness and productivity of Federal interstate commerce by making recommendations on animal health regulations. This author cannot find authority given to JSA or its subunits to develop, let alone implement, any APPLIED science such as an animal health plan as could support the application or enforcement of interstate commerce regulations.

Such regulatory actions on interstate commerce of livestock are entirely reserved for the Secretary of Agriculture (United States Department of Agriculture or USDA-APHIS) in the AHPA⁹. Many other parties or stakeholders may cooperate with the USDA but USDA has Congress' authority to regulate interstate commerce in regard to the control, prevention, and eradication of animal diseases.

Sec. 8301. Findings

(5)(B) regulation by the Secretary and cooperation by the Secretary with foreign countries, States or other jurisdictions, or persons are necessary -

The reader needs to simply notice the regulating-part of animal disease control, prevention and eradication is by the Secretary of Agriculture not by a group of partners. Cooperation with other parties is necessary - whenever possible to fulfill the intent of Congress - but is not required. Again, the reader should pose another question of why the Task Force was incongruent in excluding representatives from other nations (foreign countries) in keeping with the philosophy of community and partners in regulating animal diseases. Though sounding ludicrous to ask, the answer is that Congress has established a boundary of delineation between regulation and cooperation in matters of interstate and international animal movements for the control, prevention, and eradication of animal diseases affecting this nation. This delineation was made for the timely and efficient response that disease control requires and appears to be in line with the remaining wording of the AHPA and the following US Supreme Court decision¹⁰ excerpt:

In the broad provisions of the legislation we have quoted, the authority of the Secretary of Agriculture to direct the employees of the Bureau of Animal Industry to engage in quarantine measures and the inspection of animals suspected of or known to have communicable diseases is not limited to cases in which there is cooperation between the United States and the state authorities in the suppression of the spread of disease..... In order to make the Action of both more effective, they may cooperate so that their respective purposes may be more effectively carried out,.....

Again, the reader is reminded that the vast majority of this proposed NAAHP does not contribute to research, technology transfer, and assistance programs by any definition found in organizational structure. Our trade treaties and national law with the supporting court decisions require animal health regulation be open, public, and transparent in its formulation. The JSA cannot achieve these requirements as noted below in the finding that JSA must conduct itself within the authority of the FACA. This relative restriction on information collection greatly reduces the breadth of public input customarily done through the stipulated regulation or policy promulgation process. The executive branch of our federal government generally communicates such intent from the earliest stages to the public and stakeholders via Federal Register announcement and comment collection on matters as large and important as the proposed NAAHP. Lastly, one must consider Congressional intent in the National Aquaculture Act to create a Federal interagency coordinating group not the federal, state, private and whatever other conglomeration of "coordinators" errantly boasted in the proposed NAAHP.

From yet another aspect, the Task Force should have acknowledged the "sun-setting" of its multi-party coordination after the enactment of the Animal Health Protection Act of 2002. Congress consolidated our entire national animal health laws under the authority of the Secretary of Agriculture. There are no "partners"

