

LOCAL MEAT PROCESSING: BUSINESS STRATEGIES AND POLICY ANGLES

Lauren Gwin* & Arion Thiboumery**

INTRODUCTION

Consumer demand for local, sustainably-raised food continues to rise, and meat and poultry are part of this trend.¹ Farmers and others view processing infrastructure as a critical bottleneck in local meat and poultry supply chains, limiting their ability to meet demand.

In this Article, we suggest specific business strategies and policy angles related to processing that can help increase the flow of sustainably-raised meat and poultry into local and regional markets. Part I of this Article provides a general overview of the meat processing industry and the varied needs of farmers. Part II examines the common view that a lack of small processing plants is the primary problem in meeting demand for local meat, to be solved by building more plants. Part III explains that the more fundamental problem is a lack of steady throughput of livestock. To be profitable, let alone expand capacity and services, small processors need more livestock to process on a regular, consistent basis. That requires committed business relationships between farmers and processors.² Finally, Part IV discusses the role of “policy work”—that is, efforts to change public policy—in supporting local meat processing. This part of the Article offers observations and lessons learned from a decade of working on this issue as researchers, advocates, technical assistance providers, and practitioners.³ The Article concludes with recommendations for future work.

* Lauren Gwin, Associate Director at the Agricultural and Resource Economics Department at Oregon State University, Co-Coordinator of the Niche Meat Processor Assistance Network, and Assistant Director of the OSU Center for Small Farms and Community Food Systems.

** Arion Thiboumery, Extension Associate at Iowa State University, Vice President of Lorentz Meats in Minnesota, and Co-Coordinator of the Niche Meat Processor Assistance Network.

1. STEVE MARTINEZ ET AL., USDA, ECON. RESEARCH REPORT NO. 97, SERVICE, LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS, AND ISSUES III, 12 (2010), *available at* <http://www.ers.usda.gov/publications/err-economic-research-report/err97.aspx>.

2. This portion of the paper is addressed in greater detail, with case studies of successful processors and collaborative support efforts, in LAUREN GWIN & ARION THIBOUMERY, NICHE MEAT PROCESSOR ASSISTANCE NETWORK, FROM CONVENIENCE TO COMMITMENT: SECURING THE LONG-TERM VIABILITY OF LOCAL MEAT AND POULTRY PROCESSING (2013), *available at* <http://ir.library.oregonstate.edu/xmlui/handle/1957/38213>.

3. Both authors addressed small-scale processing for local markets as part of their doctoral research and post-doctoral work through university cooperative extension; in 2005, they co-founded the Niche Meat Processor Assistance Network (NMPAN), a national network and information hub for small meat and poultry processors, farmers, small meat brands and marketing entities, universities, public agencies, and non-profits. NMPAN combines targeted policy work with technical assistance for processing businesses and an active forum for peer learning.

I. LOCAL MEATS AND LOCAL MEAT PROCESSING: BACKGROUND ON THE ISSUE

As noted above, consumer demand for locally-sourced, sustainably-raised food—including meat and poultry—continues to rise. Farmers who want to sell meat and poultry into local and regional markets need access to processing facilities that are the appropriate scale and inspection status for the farmers’ target markets. Farmers may also want their processors to provide certain value-added services (e.g., grinding, patty-making, exact-weight-portion cutting, sausage- and jerky-making) or have specific third-party audits and certifications (e.g., organic, animal welfare, Good Manufacturing Practices).

The type of processor needed to handle local meat and poultry varies because there is not one kind of “local.” Recent research defines local not by geographic scale but by market channel: direct to consumer and intermediated direct-to-restaurant/grocer.⁴ Local also varies by product format, market channel, inspection requirements,⁵ and the roles of different participants in the supply chain.⁶

On one end of the spectrum, a local beef farmer may sell quarters and halves to neighbors and other local residents; if sold live, “on the hoof,” a custom-exempt butcher can slaughter and process the cattle because the service is performed for (and paid for by) the new owner(s). The meat is wrapped in paper and frozen, stamped “Not for Sale,” and received in bulk by the end user.⁷

On the other end of the spectrum, multiple local farmers may sell finished livestock to a regional “aggregator” that manages the rest of the supply chain from farmgate to marketing, under a collective brand identity, with the majority of the meat sold wholesale (e.g., to retailers). In that case,

4. SARAH A. LOW & STEPHEN VOGEL, USDA, ECON. RESEARCH REPORT NO. 128, DIRECT AND INTERMEDIATED MARKETING OF LOCAL FOODS IN THE UNITED STATES 2 (2011), available at <http://www.ers.usda.gov/Publications/ERR128/ERR128.pdf>.

5. Inspection requirements are complex. For a detailed discussion see RACHEL J. JOHNSON ET AL., USDA, ECON. RESEARCH SERV., LDP-M-216-01, SLAUGHTER AND PROCESSING OPTIONS AND ISSUES FOR LOCALLY-SOURCED MEAT 4 (2012), available at <http://www.ers.usda.gov/media/820188/ldpm216-01.pdf>; GWIN ET AL., *supra* note 2 (manuscript at 9). In very general terms, by-the-cut sales of red meat require that slaughter and processing are done under Federal or “equal to” State inspection; “custom-exempt” processing is allowed for “on the hoof” sales of livestock purchased by the end consumer by the whole, half, quarter, or bundle. For poultry, farmers in most states can sell poultry processed under exemption. Exempt meat and poultry cannot be sold interstate. Inspection regulations are based on the Federal Meat Inspection Act, 21 U.S.C. § 601 (2006) and 9 C.F.R. § 301.1–301.2 (2012), and the Poultry Products Inspection Act, 21 U.S.C. § 451 (2006) and 9 C.F.R. § 301.1–301.2. The relevant agency is the Food Safety Inspection Service of the U.S. Department of Agriculture.

6. GWIN ET AL., *supra* note 2 (manuscript at 6).

7. The custom exemption is described at 9 C.F.R. § 303.1(a)(2) (2012).

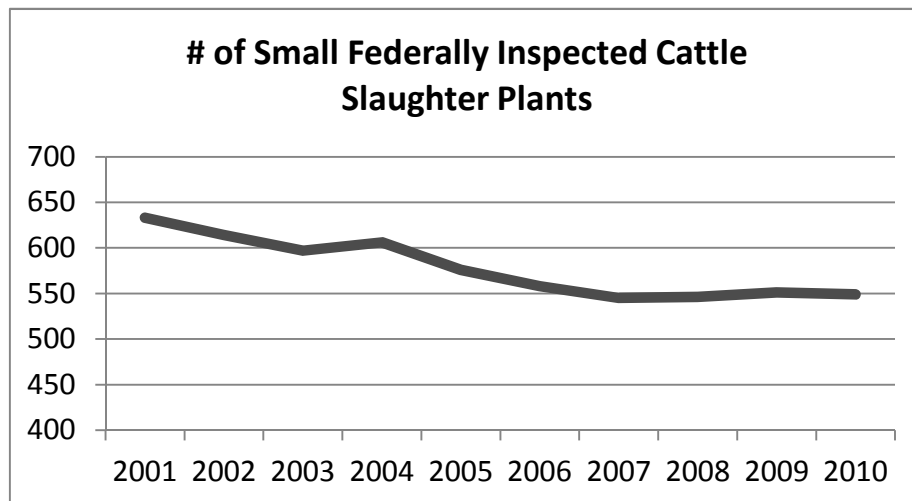
a federally-inspected facility large enough to have the equipment to produce retail-quality product and packaging will process the meat.

In the middle is the farmer who sells her own product independently, direct to individuals but also to local restaurants and retailers. Such a farmer needs an inspected processor small enough to work with small batches and provide customized services, but large enough to manage regulatory compliance and the other challenges of running a small, inspected plant.

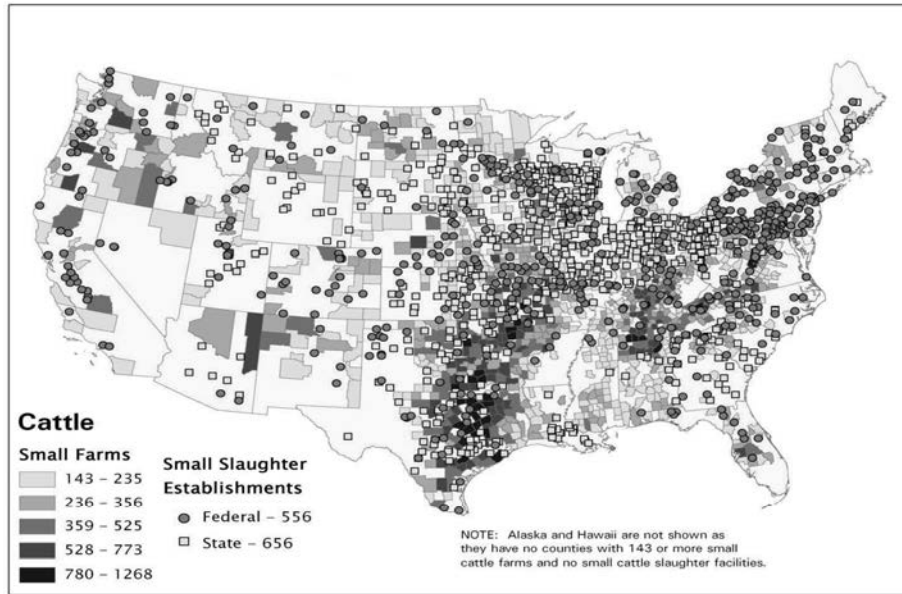
II. THE “PROCESSING PROBLEM”

Farmers and others often suggest that limited processing infrastructure—too few plants with desired services—significantly constrains farmers’ efforts to satisfy consumer demand for local meat and poultry. In this view, the livestock are there, the demand is there, and processing is the bottleneck. Indeed, national data are used as evidence: the number of small plants has declined nationally; Figure 1 shows the data for small, federally-inspected cattle slaughter plants. The trend is similar for pigs and poultry. Maps created by USDA Rural Development show many rural counties with plentiful livestock but no small plants; Figure 2 shows the map for cattle, and the trend is similar for pigs and poultry.

Figure 1⁸



8. JOHNSON ET AL., *supra* note 5, at 11.

Figure 2⁹

The declining number of plants and the apparent “processing deserts” shown on this and related maps for pigs and poultry are taken as evidence of unmet demand. Around the country, farmers claim that they need more processing options and have called for new plants to be built. In some cases, they have decided to do it themselves, often with the help of local agencies, nonprofit groups, universities, and others. A National Public Radio report on the subject typifies this conception of the problem and its solution:

[T]he dirty little secret is, while that steak those “locavores” just bought at the farmers’ market may have come from a cow that grazed in nearby pastures, it probably wasn’t processed anywhere nearby. In fact, many local meat products are sent to slaughterhouses hundreds of miles away, across state lines. So some small-scale cattle farmers are taking matters into their own hands in an effort to keep money, jobs and something “local” on dinner plates.¹⁰

9. *Id.* at 14.

10. Beth Hoffman, *Small-Scale Slaughterhouses Aim To Put the “Local” Back In Local Meat*, NPR (June 4, 2012, 11:11 AM), <http://www.npr.org/blogs/thesalt/2012/06/04/153511889/small-scale-slaughterhouses-aim-to-put-the-local-back-in-local-meat>.

In this case, as elsewhere in the United States, a group of farmers planned and started a capital campaign to build and operate a new, small, local plant, raising funds from each other and outside sources. Project boosters have sought grants for business planning and feasibility studies. Towns buoyed by the prospect of new jobs and economic development have offered cheap land, tax breaks, and other incentives to kick-start the plant.

Sometimes the result is a new processing facility that services previously underserved farmers and markets. Examples include the Taos County Economic Development Council's federally-inspected Mobile Matanza and cut-and-wrap in New Mexico, Westminster Meats in Vermont, and Alleghany Meats in Virginia. Yet the unfortunate truth is that, far too often, the proposed plant is never built or, once built, doesn't last.¹¹ Many feasibility studies (often funded by grants from government agencies) have been written to justify a new plant.¹² Even favorable results, however, are rarely followed by the appearance of new plants. What is going on?

The "gap analysis" approach—exemplified by the map above—is misleading, a "synoptic error." The presence of livestock is not indicative of demand for local, fee-for-service processing: most farmers sell livestock, not meat. That is, they sell raw materials to a company further down the supply chain (e.g., a feedlot, a processor, or a branded meat company). Unless farmers are finishing livestock and marketing the meat themselves, they do not need direct access to a processor.

In some parts of the country, access to processing may be very challenging for farmers who market their own meat and need it processed under inspection. Yet even in those places, there may not be enough real demand for processing services—that is, enough livestock, enough of the year, at a high enough price to cover the costs of providing those services—to support a new small plant. There are significant barriers to entry because meat processing is a high-risk, thin-margin business, and it is very difficult for a new plant to get started and survive.

11. *To Build or Not to Build: Lessons Learned from New Processing Ventures*, NICHE MEAT PROCESSOR ASSISTANCE NETWORK (Sept. 28, 2011), <http://www.extension.org/pages/59962/to-build-or-not-to-build-lessons-learned-from-new-processing-ventures>.

12. *See Meat Processing Feasibility Studies*, NICHE MEAT PROCESSOR ASSISTANCE NETWORK (Oct. 14, 2011), <http://www.extension.org/pages/27357/meat-processing-feasibility-studies> (listing links to feasibility studies conducted for various parts of the United States).

III. RETHINKING THE “PROCESSING PROBLEM”

“Everyone wants some graphic that shows here’s where the production is, here’s where the processors are, and here’s a gap, so let’s put a plant here. . . . We need to move away from that top down assessment and start from the bottom up.”¹³

Farmers have legitimate concerns about processing. However, processors have equally legitimate concerns, as shown in Table 1.

Table 1: Farmer and Processor Concerns¹⁴

What farmers say	What processors say
There are not enough processing facilities. ¹⁵	There aren’t enough farmers bringing me enough livestock.
Processors don’t have the right services or inspection status.	Farmers ask me to do new things, but they don’t have enough volume to cover my costs.
I have to schedule a processing date too far in advance.	Farmers don’t come when they say they will, or they bring fewer or different animals than they said they would bring.
I can’t get a processing date during the fall.	I have no business in the spring.
Processing costs too much.	Farmers don’t want to pay what processing really costs.
Processors make cutting, packaging, and labeling mistakes.	I don’t have enough year-round, steady business to hire skilled labor and pay them a good wage.
My order wasn’t ready on time, and my customers are unhappy.	Farmers don’t pick up their orders on time, using up valuable cooler space.

While farmers see limited processing as the problem, small processors see it differently: they can barely survive, much less expand capacity or services, because they often lack the steady, consistent business required for

13. Telephone Interview with Chelsea Bardot Lewis, Vermont Agency of Agriculture and VT Meat Processing Task Force (Nov. 16, 2011).

14. GWIN ET AL., *supra* note 2 (manuscript at 1).

15. This is particularly true for poultry: There are far fewer inspected poultry plants than red meat plants in part because profit margins are thinner and in part because many states allow the sale of poultry processed under one of the federal exemptions. In states that do not allow such sales, if there is no inspected small plant, producers must cross state lines for processing or be shut out of the market.

profitability. Livestock production can be highly seasonal, especially for processors drawing only from a local or regional area. Processors will often experience a yearly “boom and bust” cycle: intensely busy for six to ten months and slow the rest of the year. The lack of steady work, and therefore steady revenue, can make it very difficult to cover year-round costs, including keeping a skilled crew employed year-round. In this view, the problem is that farmers are not delivering enough animals enough of the time.

Taken together, farmer and processor concerns are symptoms of a larger problem: meat processing is a high-risk, capital-intensive business with thin profit margins. Processors need enough business—enough livestock to process—to generate sufficient revenue to cover both operational and fixed costs. A fundamental way that farmers can keep processors in business—and, potentially, help them expand their capacity and services so that they can meet farmers’ processing needs—is through making business commitments. Many farmers and processors currently have a “convenience” relationship: Farmers call when they want animals processed; processors fit them into the schedule if they have room. Too often, at least one party is left unsatisfied, as described above.

In contrast, commitments can provide mutual benefit for both sides. Farmers—individually or in coordination with each other—commit to bringing livestock for processing year-round. Processors commit to handling those animals and meat to the quality standards that farmers desire. Even when farmers are not formally organized (e.g., as suppliers of a niche meat company or as a cooperative) they can help their processors by working with each other to spread their collective demand for processing over more of the year. Case studies of successful processors reveal commitment in practice and important mechanisms, including active, collaborative scheduling for smooth flow; variable pricing by season; processors assisting farmers with marketing and distribution; farmers investing financially in processors; and ongoing communication.¹⁶

If business commitments between farmers and processors are fundamental to solving their mutual problems in order for more meat and poultry to flow into local and regional markets, what is the role of public policy and policy change? We turn to this in the next Part. First, public policy can support the shift from convenience to commitment in a variety of ways, including technical assistance and education. Second, some challenges related to local meat processing require more than individual actions by any one business or set of supply chain partners. People and

16. GWIN ET AL., *supra* note 2 (manuscript at 1).

organizations who are not farmers or processors have a role to play beyond being consumers.

IV. POLICY ANGLES FOR LOCAL MEATS PROCESSING

Next, we consider if and how efforts to change public policy related to local meats processing can be effective in achieving the larger goal: expanding opportunities for local meat production, marketing, and consumption.

Policy happens on multiple levels, from the broad scope of some federal laws to the minutiae of local zoning ordinances. Meat processors of all sizes and types are regulated at multiple jurisdictions and on multiple fronts, from federal and state laws and regulations around food safety, humane livestock handling, worker protections, and environmental quality to local laws and rules about facility construction and siting, waste disposal, and so forth.

The following observations and “lessons learned” come from a decade of working on this issue as researchers, advocates, technical assistance providers, and practitioners. We illustrate each with one or more examples.

A. *Successfully Changing Federal Law is Less Than Half the Battle*

Many layers of interpretation and people exist between a law and its everyday implementation. One can work very hard to change or create a law, but then gain little when regulations are actually written and implemented. In general, for almost any public law’s provisions related to food or agriculture to have any effect on the ground—whether a regulation, a subsidy, or a grant program—the policy must go through a *minimum* of five levels:

- 1) Passed as public law by Congress;
- 2) Regulations developed by responsible agency to fill in core details necessary for basic operation of the law, published in the Code of Federal Regulations (CFR);
- 3) Through directives, notices, requests for proposals, application forms, or some combination, additional details are created for legal and bureaucratic operationalization of the law;
- 4) State or regional agency offices decide on further details regarding how their offices and agents will fulfill the requirements of the CFR and pertinent directives, etc.; and
- 5) Individual agents make decisions about enforcement, application review, technical guidance, and application

assistance to everyday people and businesses based on their personal understandings of the above four levels.

Three significant factors often further complicate this situation:

- 1) Regulations are often initially published in draft form and then subject to public review and reconsideration by the drafting agency based on public comment or topic-specific external advisory boards. Furthermore, regulations can be modified at any time by a regulatory agency, with or without a public comment period, depending on circumstances;
- 2) State laws and regulations may modify or conflict with federal laws; and
- 3) Legal challenges and precedents (a.k.a. case law) can be brought to bear at any time on any of the above policy levels. These changes are often subtle, influencing how a few words are practically interpreted, but can have significant impact. Because case law is tedious, few agency personnel know the exact origins of common regulatory interpretations, only that “there was a court case that said”

Clearly, changing a law is the beginning, and implementation is critical. Ferd Hoefner, Policy Director for the National Sustainable Agriculture Coalition—an alliance of farm, rural development, and conservation groups that organized in 1988 to affect federal agriculture policy—explains it as follows:

Many well-intentioned legislative campaigns make the fatal mistake of believing that winning something in Congress means that change is automatic. The ultimate determination of whether legislative intentions succeed depends on the nitty-gritty of program rules, funding allocations, request for proposals, and agency implementation directives—all determined at the administrative level. . . . The legislative campaign is less than half the battle.¹⁷

The truth of Hoefner’s assessment is well illustrated by the 2008 Farm Bill. The Bill attempted to expand marketing options for state inspected meats,

17. Personal communication; ZACHARIAH BAKER ET AL., SUSTAINABLE AGRICULTURAL COALITION, GRASSROOTS GUIDE TO THE 2008 FARM BILL 7 (2008), *available at* <http://sustainableagriculture.net/wp-content/uploads/2008/11/sac-farm-bill-guide.pdf>.

but contained language that allowed the expansion to be significantly watered down during the regulatory process, much to the frustration of advocates.

The 2008 Farm Bill contained a provision that many in the local and regional foods movement hailed as a major win for small-scale processing: interstate shipment of state-inspected meats. The idea seemed straightforward. Meat processed in state-inspected facilities could only be sold in-state, not over state lines. Only federally-inspected meats could be sold interstate. Yet state meat inspection programs are required to be “equal to” federal meat inspection.¹⁸ Shouldn’t they, argued advocates, also be able to travel interstate? Congress agreed and directed USDA’s Food Safety Inspection Service (FSIS) to develop a program to allow state-inspected meat and poultry to be sold interstate.

During the rulemaking process, however, beginning with the release of the draft of the regulations for public comment, interstate shipment advocates saw their win take a turn for the complex and confusing. Consumer groups, led by the Consumer Federation of America, were wary of state inspection programs based on poor performance reported in the 1980s.¹⁹ During the legislative process, they strongly lobbied for extra safeguards, including restricting the program to plants with fewer than twenty-five employees and requiring that participating state inspection programs be the same as Federal inspection, rather than “equal to.” Without this added language, these groups likely would have blocked the provision from passing.

When FSIS finalized the long-awaited program in 2011,²⁰ interstate shipment advocates were deeply disappointed, and some are urging Congress to revisit the issue.²¹ The Cooperative Inspection Program is cumbersome, requires the entire state to apply to participate before individual plants that meet certain conditions can apply, and contains other provisions that appear to have dissuaded both states and plants from signing

18. 9 C.F.R. § 321.1(a) (2012).

19. *See, e.g.*, KATHLEEN HUGHES, RETURN TO THE JUNGLE: HOW THE REAGAN ADMINISTRATION IS IMPERILING THE NATION’S MEAT AND POULTRY INSPECTION PROGRAM 5 (1983) (describing the widespread health and safety violations in slaughter houses, which resulted from lax inspection throughout the United States in the 1980s).

20. Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products, 76 Fed. Reg. 24,714, 24,714 (May 2, 2011) (to be codified at 9 C.F.R. pts. 321, 332, 381).

21. *E.g.*, STATE AGRICULTURAL AND RURAL LEADERS, RESOLUTION ON STATE INSPECTED MEAT (Jan. 8, 2012), available at http://www.agandruralleaders.org/LAC/2012/resolutions/2012_Resolution_on_State_Inspected_Meat.pdf. SARL, comprised of state legislative agricultural chairs in the United States and Canada, also urged Congress to allow states to regulate meat processing and sales within their own borders. *Id.*

up.²² To date, FSIS has approved only three states: Ohio, North Dakota, and Wisconsin; participating state-inspected plants in those states may now ship interstate. One other state is said to be in the process, though it remains to be seen whether it will follow through. Perhaps the program will provide at least some benefits to some plants, if only in those three states. However, in the end, it might well have been more cost-effective to invest the significant time and financial resources spent on establishing, implementing, and maintaining this program into helping state-inspected facilities transition to USDA inspection.

B. Even Highly Specific, Broadly Supported, Largely Uncontroversial Proposals Can Fall to “Politics,” Especially in Congress

In our experience, general policy proposals such as “make regulatory compliance easier for small plants” do not usually get very far. We encourage policy advocates to identify specific problems and design policy approaches that address those specific problems. Yet as the next example shows, specificity is far from enough. Even the best designed, clearly targeted policy proposals can be derailed.

Proposed policy fixes often focus on making regulatory compliance easier for small plants. Meat and poultry, as highly perishable foods, are governed by a complex web of federal regulations, based on the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). Inspected processors must operate under the Hazard Analysis Critical Control Point (HACCP) system, which is important to food safety but in practice requires a great deal of monitoring and paperwork. Complying with HACCP can be challenging for very small processors without a dedicated regulatory compliance staff.

In the run-up to the 2012 Farm Bill, a group of organizations involved in the National Sustainable Agriculture Coalition (NSAC) began collectively to brainstorm ideas for policy proposals to help small processors. Early proposals contained some ideas that were political dead-ends, including the demand to exempt small processors from basic inspection requirements of the FMIA and PPIA, allowing meat processed at custom-exempt, uninspected meat processors to be sold by the cut, like

22. See generally NICHE MEAT PROCESSING ASSISTANCE NETWORK, <http://www.nichemeatprocessing.org/> (last visited April 16, 2013) (providing webinars and links to state and federal processing and inspection information for small-scale meat processors); *Interstate Shipment of State-Inspected Meat*, NAT'L SUSTAINABLE AGRIC. COALITION, <http://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/interstate-shipment-of-state-inspected-meat/> (describing the structure, funding, and implementation of the new hybrid program) (last visited Apr. 16, 2013).

meat processed under inspection. However, the final package was quite targeted and politically feasible. The Niche Meat Processing Assistance Network was part of this collaborative process, and, for us, the most important piece was asking FSIS to develop more “safe harbor” strategies for processors to use to validate their HACCP plans.²³

NSAC, a very politically savvy sustainable agriculture NGO, did everything right. It worked diligently with FSIS, reviewing all pieces of the proposal and removing those that caused concern to assure Agency support of the final proposal. NSAC also won the support of the Consumer Federation of America, which has usually blocked any perceived effort to ease requirements for small processors. The proposal, which began as a “marker bill” and was by this point an amendment to the Farm Bill, looked unstoppable. Yet at the last minute the amendment died in committee. A conventional meat-industry trade association with more political clout decided, almost offhandedly, to object. No reason was given.

Congress never passed a Farm Bill in 2012, so had the amendment even stayed in the Bill, it would still not be law. Yet the point remains: the proposal was not only doable, but also had support from the relevant agency and the consumer lobby. It would hardly have harmed conventional meat processors; in fact, additional validation guidance documents might have been useful to them. But a last minute objection was enough to sink months of careful work.

C. *There is No Political Will to “Go Backwards” on Food Safety Regulations*

As noted above, many processors and farmers would like to sidestep current food safety regulations, arguing that they are over-burdensome, unfair, inappropriate, and driving them out of business. Admittedly, regulatory compliance is demanding. Very small processors—especially those without a dedicated compliance staff—may struggle to keep up with the monitoring and paperwork, especially if they were trained and began their businesses decades ago when the compliance burden was lighter. Even larger processors struggle with it, especially if they do not have a good relationship with their inspector.

23. For example, Performance Standards for the Production of Certain Meat and Poultry Products, 64 Fed. Reg. 732, 746-749 apps. A, B. (Jan. 6, 1999) (to be codified at 9 C.F.R. pts. 301, 317, 318, 320, 381), *available at* <http://www.gpo.gov/fdsys/pkg/FR-1999-01-06/pdf/99-32.pdf>. To validate a HACCP plan means to provide scientific documentation that the proposed food safety intervention will work (i.e., will adequately reduce/remove the food safety hazard).

However, there is currently little political will in the United States to reduce the rigor of food safety laws and regulations. If anything, consumers are demanding more assurances that their food is safe to eat. Over the last five years, a number of regional and national non-profit organizations have asked for our assistance in crafting policy proposals that would reduce compliance requirements for or even exempt small processors from some food safety regulations, especially those related to the HACCP requirement.

The assumption motivating these proposals is, if small processors were less or differently regulated, they would be able to process more livestock, at a lower cost, for farmers who want to sell meat locally. Such proposals are unlikely to gain any political traction because of almost certain opposition from powerful consumer groups, large-scale meat packers who would object to small processors receiving special treatment, and USDA-FSIS itself. (Additionally, we are skeptical of the premise of this argument; as discussed earlier in this Article, we believe the primary obstacle is throughput of livestock, i.e., business commitments.)

D. The Solution Must Match the Problem

The next example, which played out at the state level, demonstrates what can happen when a clear link between the problem we want to solve and the policy tool we employ to solve it does not exist.

In the mid-2000s, interest in local meats was rapidly increasing among Oregon's farmers and consumers. At the same time, faced with a cyclic low in cattle market prices, Oregon's cattlemen were looking for new market opportunities with higher returns. They, along with other farmers selling locally, became concerned about processing as a bottleneck: at the time, Oregon had only nine federally-inspected slaughter plants that would process for farmers on a fee-for-service basis.

A coalition of livestock producers and other organizations became interested in the idea of reinstating Oregon's state meat inspection program. Under USDA's Cooperative State Inspection Program, twenty-seven states operate "equal to" inspection programs that are equivalent to federal inspection, which allows the meat to be sold anywhere federally-inspected meat is sold, except over state lines.²⁴ Oregon gave up its program in the early 1970s when USDA offered to take over and foot the bill for meat and poultry inspection, as did many other states.

The interest in state inspection stemmed from the belief that it would prompt existing custom-exempt plants to convert to state inspection and

24. Unless the state participates in the new Cooperative Interstate Shipment Program.

encourage new inspected plants to be built. The people that subscribed to this belief assumed that the requirements of federal inspection and the general unavailability of USDA inspectors were the main barriers keeping new plants from being built and existing plants from becoming inspected. The coalition convinced the state legislature to fund a study to gauge farmer and processor interest, and estimate costs and benefits, of reinstating the program.

Yet as the study and subsequent public discussion of the issue revealed, those assumptions had several flaws. First, federal law requires USDA-FSIS to provide an inspector to a processor that meets the requirements of inspection. Sometimes there are significant delays, which can be costly for plants that need to operate under inspection to generate revenue. Yet ultimately, an inspector must be assigned. Second, the requirements of “equal to” state inspection programs are just that—“equal to” the requirements of federal inspection. In Oregon, there appears to have been at least some confusion about the fact that state inspection, as “equal to” federal inspection, would go far beyond the annual building and sanitation inspections of custom-exempt plants conducted by the state agriculture department. The only potential benefit of state inspection over federal may be that, based on experiences in other states, state personnel can be less bureaucratic and thus easier to work with than federal inspectors. This is obviously valuable, yet unlikely on its own to inspire or prevent a new plant.

Third, as explained earlier in this Article, while regulatory compliance can indeed be challenging, it is very rarely the real barrier. If plants have enough livestock to process, they will have enough revenue to cover the cost of regulatory compliance. The number of livestock producers who favored a state meat inspection program might have indicated enough business to support a new processor. Yet most of them wanted to sell livestock, not meat, meaning that they did not actually represent demand for fee-for-service processing.

In the end, the state decided not to establish an inspection program. The proximate cause was cost: even with fifty percent cost-share from USDA and fees for participating processors, the state estimated its own share as \$350,000–\$500,000 per year. The recession left no room in the budget for a new, costly program, especially with uncertain demand for its services.

Ultimately, a state meat inspection program was not the right tool for the real problem. A program would not create new plants or help existing plants expand. Processors need a real demand for services, at a sufficient price, for enough of the year, to cover costs and make a profit. Indeed, a

custom-exempt plant in the heart of Oregon cattle country converted to USDA inspection in early 2012 after years of rancher requests to do so. Yet now it struggles to stay busy enough to survive.

E. Administrative Approaches, Often Neglected, Can Be Very Productive

Policy work often focuses on law and legislatures. Although working at the administrative level can be extremely valuable, it gets much less attention. This often means working with federal and state agencies, informally or through formal processes like public comment.

1. FSIS Guidance for HACCP Validation

Our first example, at the federal level, demonstrates the importance of paying close attention when agencies decide how they will interpret and enforce laws and rules. All inspected processors must operate under HACCP. HACCP includes four basic steps: identify potential food safety hazards, identify interventions to adequately control these hazards, validate (provide proof) that those interventions work, and verify that the interventions are being done as planned.

For many years, validation largely involved finding a research paper that showed the intervention worked. In 2009, concerned that processors did not adequately understand validation and that this was causing food safety problems, FSIS began work on a guidance document to explain how validation should be done.²⁵ Guidance documents are not required to go through a formal public comment process, but FSIS released a first draft in March 2010 and asked processors and processing trade associations for feedback.

The new approach to validation caused immediate concern, particularly among small-scale processors making a wide array of value-added products like sausages, jerky, and cured meats. It appeared that FSIS was suggesting that plants do their own validation studies for every single product, which would have been extremely costly. The American Association of Meat Processors (AAMP), the national trade group for small and very small processors, calculated the costs and concluded that small plants with diverse product lines would simply go out of business. AAMP crafted detailed, compelling comments and urged its members to write to FSIS. We at

25. See letter from Alfred V. Almanza, Adm'r, USDA, Food Safety and Inspection Serv., to Inspected Establishments (May 4, 2010) available at http://www.fsis.usda.gov/PDF/HACCP_Validation_Ltrs.pdf (addressing the concerns of various meat and poultry associations regarding proper validation procedure and including a copy of the draft validation guidance document).

NMPAN also commented and invited co-signatures from sustainable food and farming organizations who knew small processors were important but did not typically weigh in on or even know about such a specific aspect of processing regulations. The validation guidance document was not a law or even a regulation, yet its final form and recommendations would be critical to how thousands of individual inspectors from around the country would interpret and enforce HACCP validation.

FSIS got the message and significantly revised the validation guidance document, which it reissued in April 2012. The new guidance goes a long way to reducing the confusion and concern caused by the draft document. Small processors were relieved. Yet, as AAMP wisely reminds us, continued vigilance is needed to assure that the guidance is not interpreted beyond the agency's intent by plant-level inspectors.

2. Clarifying Regulations and Jurisdictions in Montana

A second example demonstrates the importance of deciphering and clarifying existing regulations and jurisdictions at the state level.²⁶ In Montana, there has been confusion and inconsistency about processing regulations across agencies and between state and local regulators. Food is regulated at the state and local level by the Montana Department of Health. The Department of Livestock regulates state-inspected livestock processing. The Department of Agriculture, which supports farmers in market development, has limited say in either realm. The three agencies do not always see eye-to-eye. In addition, food-related regulations are written at the state level but are interpreted at the local level by county "sanitarians." These county officials have many responsibilities but often very little training in food and food safety. Some are unwilling to allow local meat and poultry products into the market, even if state regulations allow it. Where exempt poultry can be sold and whether public schools may purchase state-inspected meat have been the main sticking points.

To address this problem, the Department of Agriculture partnered with the Montana Attorney General's office to identify all relevant state and federal laws and rules and write a manual for state and local regulatory agencies and regulated entities. The State Department of Health and Human Services (DHHS) has now made this a priority, and state-level managers across health, livestock, and agriculture are meeting regularly about it. DHHS has committed to a full review of its relevant rules and rulemaking to clarify and fill gaps. DHHS also plans to provide legal training for the

26. GWIN ET AL., *supra* note 2 (manuscript at 49).

enforcement agencies, not only in the content of laws and rules, but also in due process.

3. Expanding Markets for Exempt Poultry in Iowa

A third example, similar to the above, illustrates the value of working directly with agency personnel to clarify why regulatory barriers are in place in order to remove them. In Iowa, when politely pressed to review existing relevant law and regulations, regulators decided to recognize new markets for small-scale poultry producers.

The Poultry Products Inspection Act contains four exemptions for small-scale producers and processors allowing them to sell uninspected poultry into intrastate commerce: the Producer/Grower 1,000 Bird Exemption, the Producer/Grower 20,000 Bird Exemption, the Producer/Grower or Other Person 20,000 Bird Exemption, and the Small Enterprise Exemption.²⁷ Congress developed these exemptions so that FSIS would not have to hire an army of inspectors to oversee the slaughter of every chicken in every barnyard or backyard in the United States and also to prevent excessive regulatory burden for small-scale producers selling into local markets.²⁸

Iowa is one of twenty-five states that operate state poultry inspection programs. When the Poultry Products Inspection Act (PPIA) was passed, Iowa adopted the federal regulations for poultry inspection by reference nearly verbatim. The few changes included expanding several definitions from the CFR to make them state-specific. One of these definitions, for “commerce,” provides an example of the consequences that entail when federal administrative definitions are at odds with their state counterparts. In the federal PPIA, “commerce” means interstate commerce. To prevent uninspected poultry products from entering interstate commerce, the law and the CFR simply state that “none of such poultry moves in commerce.”²⁹ Yet Iowa changed the definition for the PPIA as a whole, without specific

27. USDA, FOOD SAFETY INSPECTION SERVICE, GUIDANCE FOR DETERMINING WHETHER A POULTRY SLAUGHTER OR PROCESSING OPERATION IS EXEMPT FROM INSPECTION REQUIREMENTS OF THE POULTRY PRODUCTS INSPECTION ACT 9–11, 13 (2006), *available at* http://www.fsis.usda.gov/oppde/rdad/fsisnotices/poultry_slaughter_exemption_0406.pdf.

There are seven poultry processing exemptions in total, but the other three are for personal use.

28. When the law was written in the late 1960s, most rural families, farmers or not, raised chickens and other poultry for their own consumption and sale to local markets. Rural women kept chickens for eggs and meat for pocket money. Rural youth raised and processed broilers during the summer months as entrepreneurial ventures, trying their hand at agriculture.

29. 21 U.S.C. § 464(c)(4) (2006); 9 C.F.R. 381.10(c)(3) (2012).

consideration of every instance of use within; in Iowa “commerce” was taken to mean *intrastate* commerce, thus nullifying some exemptions.

Although this definitional conflict did not nullify all poultry processing exemptions, regulators operated under the impression that it did. Until the fall of 2008, Iowa meat and poultry regulators believed that no exempt poultry could be sold to retail stores in Iowa. States certainly have the right to develop regulations more restrictive than the federal regulations. However, regulators often rely on regulatory interpretations that are a part of the general knowledge of their workplace “culture,” not specific regulatory text, which is used for reference as needed.

A co-author of this Article, then a graduate student writing an extension bulletin for farmers, asked the two relevant state agencies—the Meat and Poultry Inspection Bureau and the Department of Inspection and Appeals (which regulates health inspectors)—about this restriction. He referenced the USDA-FSIS regulatory guidance on the exemptions, which showed that federal rules were less restrictive and allowed the sale of exempt poultry to retail stores. His query led to several meetings, with both agencies present, to review actual federal and state statutory and regulatory text. It became apparent that not all exemptions were nullified by the state’s definition of “commerce,” but a key sticking point was whether the state’s food code³⁰ prevented the sale of uninspected poultry beyond direct, private sales, based on the actual definition of “approved source” in the Iowa Food Code.³¹

A full recounting of the inter-agency discussions and regulatory review is beyond the scope of this Article, but the final result was as follows. Both agencies decided that as long as an exempt poultry processing plant is operating in compliance with the Iowa Meat and Poultry Inspections Bureau, it is an “approved source” and can sell products per the limits of the PPIA, as adopted by the State of Iowa.³² That is, exempt poultry could now be sold to retail stores and distributors. The agencies also coordinated with each other in the not insignificant task of informing both agencies’ field inspectors about the revised regulatory interpretations.

30. Every state has a set of regulations that control how food is handled for food safety by all places where food is stored, sold, or prepared for consumption by the public. These regulations are known collectively as a “food code.” In 1993, in the interest of creating uniform standards and saving states time and legwork, the U.S. Food and Drug Administration, USDA-FSIS, and the Center for Disease Control created a model food code, which the FDA periodically updates. Though the FDA distributes these model food codes, states control if and how they adopt them.

31. The Iowa Food Code states that all food must come from an “approved” and lawful source. Iowa Admin. Code r. 481-31.12(2)(i) (2013).

32. See Iowa Food Code 1-201.10(B) (2008) (defining “approved”); Iowa Admin. Code r. 481-31.12(2)(i) (defining “approved food source”).

F. When Agency Personnel Are Specifically Tasked to Work on Your Issue, Good Things Can Happen

“Policy” also includes agency budgets and the actual job descriptions of agency personnel. We are impressed that the Vermont Agency of Agriculture, Food, and Markets has allocated staff time to develop and implement technical assistance and education programs for small meat processors and farmers. The legislature backs the Agency in prioritizing this work as a means to achieve the goals of Vermont’s Meat Processing Task Force.³³

G. Legislatures Like Economic Development

Some state and local governments—for example, Wisconsin, Vermont, Minnesota, and North Carolina—have provided public investment, through grant programs or tax credits, for processing plant and equipment upgrades. Other options include grants, tax incentives, and loan guarantees to back processors during start-up and expansion.

H. A Wide Variety of Policy Angles to Support Local Meats Processing and Local Meats Exist

This list is hardly exhaustive but provides examples we have seen or would like to see:

- Clarify Food Code variance requirements, implemented at the state level, for retail dry-cured meat products;
- Clarify federal poultry processing exemptions (e.g., regarding multiple users of the same equipment);
- Work with state and local agencies to allow innovative wastewater management systems;
- Work with state and local agencies to allow on-farm offal composting (e.g., Oregon’s Department of Environmental Quality’s effective program ranks proposed composting operations by risk level and keeps requirements minimal for low-risk operations, which include a small, custom-exempt slaughter and processing plant);
- Include local meats in state and local procurement orders and purchasing specifications.

33. GWIN ET AL., *supra* note 2 (manuscript at 44).

What do all these lessons tell us? First, policy work is, frankly, hard. It takes time, endurance, patience, and resources. To assure that a particular policy angle is worthwhile, it is extremely important to start—and revisit along the way—two key questions: First, what is the problem you are trying to solve? And second, how will this specific approach solve that problem?

V. CONCLUSION

In this Article, we have discussed business strategies and policy angles to support local meats processing with the goal of expanding opportunities in local meat production and consumption, thereby increasing the flow of sustainably raised meat and poultry into local and regional markets. In the first part of this Article, we questioned the idea that a lack of small processing plants is the primary problem, which can be solved by building more plants. We argued that business strategies—particularly the development and maintenance of business commitments between farmers and processors—are essential. No amount of policy change will help a business that doesn't have enough paying customers. Yet policy work is still valuable and warrants attention and energy.

In the second part of this Article, we discussed policy angles related to local meats processing, offering observations and lessons learned from our experiences on this topic. We also offered suggestions for future policy work. We hope we have made it clear throughout that we believe that policy work is important, especially if it can help educate about and support better business commitments. Both approaches matter.

The co-authors of this article, as colleagues and co-coordinators of a national extension effort focused on local, niche, small-scale processing, often have heated discussions about the proper role of policy. One is skeptical about the value of “policy work,” and the other thinks it is quite important. Rather than polarize us, this difference has been extremely valuable in analyzing problems and setting strategy and priorities. We combine business strategies and highly targeted, specific policy work. If we practiced only one of these, we would be less effective in the long run.