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To provide the necessary authority to the Secretary of Commerce for the establishment and implementation of a regulatory system for offshore aquaculture in the United States Exclusive Economic Zone, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2007

Mr. RAHALL (for himself and Ms. BORDALLO) (both by request): introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Ways and Means and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide the necessary authority to the Secretary of Commerce for the establishment and implementation of a regulatory system for offshore aquaculture in the United States Exclusive Economic Zone, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Offshore
5 Aquaculture Act of 2007”.

1 **SEC. 2. FINDINGS.**

2 (a) It is the policy of the United States to:

3 (1) Support an offshore aquaculture industry
4 that will produce food and other valuable products,
5 protect wild stocks and the quality of marine eco-
6 systems, and be compatible with other uses of the
7 Exclusive Economic Zone;

8 (2) Encourage the development of environ-
9 mentally responsible offshore aquaculture by author-
10 izing offshore aquaculture operations and research;

11 (3) Establish a permitting process for offshore
12 aquaculture that encourages private investment in
13 aquaculture operations and research, provides oppor-
14 tunity for public comment, and addresses the poten-
15 tial risks to and impacts (including cumulative im-
16 pacts) on marine ecosystems, human health and
17 safety, other ocean uses, and coastal communities
18 from offshore aquaculture;

19 (4) Promote, through public-private partner-
20 ships, research and development in marine aqua-
21 culture science, technology, and related social, eco-
22 nomic, legal, and environmental management dis-
23 ciplines that will enable marine aquaculture oper-
24 ations to achieve operational objectives while pro-
25 tecting marine ecosystem quality.

1 (b) Offshore aquaculture activities within the Exclu-
2 sive Economic Zone of the United States constitute activi-
3 ties with respect to which the United States has pro-
4 claimed sovereign rights and jurisdiction under Presi-
5 dential Proclamation 5030 of March 10, 1983.

6 **SEC. 3. DEFINITIONS.**

7 As used in this Act—

8 (a) The term “coastal State” means a state of the
9 United States in, or bordering on, the Atlantic, Pacific,
10 or Arctic Ocean, the Gulf of Mexico, or Long Island
11 Sound. The term also includes Puerto Rico, the Virgin Is-
12 lands, Guam, the Commonwealth of the Northern Mariana
13 Islands, the Trust Territories of the Pacific Islands, and
14 American Samoa.

15 (b) The term “coastline” means the line of ordinary
16 low water along that portion of the coast that is in direct
17 contact with the open sea and the line marking the sea-
18 ward limit of inland waters.

19 (c) The term “Exclusive Economic Zone” means, un-
20 less otherwise specified by the President in the public in-
21 terest in a writing published in the Federal Register, a
22 zone, the outer boundary of which is 200 nautical miles
23 from the baseline from which the breadth of the territorial
24 sea is measured, except as established by a maritime
25 boundary treaty in force, or being provisionally applied by

1 the United States or, in the absence of such a treaty where
2 the distance between the United States and another nation
3 is less than 400 nautical miles, a line equidistant between
4 the United States and the other nation. Without affecting
5 any Presidential Proclamation with regard to the estab-
6 lishment of the United States territorial sea or Exclusive
7 Economic Zone, the inner boundary of that zone is—

8 (1) a line coterminous with the seaward bound-
9 ary of each of the several coastal States, as defined
10 in 43 U.S.C. 1312;

11 (2) a line three marine leagues from the coast-
12 line of the Commonwealth of Puerto Rico;

13 (3) a line three geographical miles from the
14 coastlines of American Samoa, the United States
15 Virgin Islands, and Guam;

16 (4) for the Commonwealth of the Northern
17 Mariana Islands—

18 (A) its coastline, until such time as the
19 Commonwealth of the Northern Mariana Is-
20 lands is granted authority by the United States
21 to regulate all fishing to a line seaward of its
22 coastline, and

23 (B) upon the United States' grant of such
24 authority, the line established by such grant of
25 authority; and

1 (5) for any possession of the United States not
2 referred to in subparagraph (2), (3), or (4), the
3 coastline of such possession.

4 Nothing in this definition shall be construed as dimin-
5 ishing the authority of the Department of Defense, the
6 Department of the Interior or any other Federal depart-
7 ment or agency.

8 (d) The term “lessee” means any party to a lease,
9 right-of-use and easement, or right-of-way, or an approved
10 assignment thereof, issued pursuant to the Outer Conti-
11 nental Shelf Lands Act, 43 U.S.C. 1331 et seq.

12 (e) The term “marine species” means finfish, mol-
13 lusks, crustaceans, marine algae, and all other forms of
14 marine life, excluding marine mammals and birds.

15 (f) The term “offshore aquaculture” means all activi-
16 ties, including the operation of offshore aquaculture facili-
17 ties, involved in the propagation and rearing, or attempted
18 propagation and rearing, of marine species in the United
19 States Exclusive Economic Zone.

20 (g) The term “offshore aquaculture facility” means:
21 1) an installation or structure used, in whole or in part,
22 for offshore aquaculture; or 2) an area of the seabed or
23 the subsoil used for offshore aquaculture of living orga-
24 nisms belonging to sedentary species.

1 (h) The term “offshore aquaculture permit” means
2 an authorization issued under section 4(b) to raise speci-
3 fied marine species in a specific offshore aquaculture facil-
4 ity within a specified area of the Exclusive Economic
5 Zone.

6 (i) The term “person” means any individual (whether
7 or not a citizen or national of the United States), any cor-
8 poration, partnership, association, or other non-govern-
9 mental entity (whether or not organized or existing under
10 the laws of any State), and State, local or tribal govern-
11 ment or entity thereof, and, except as otherwise specified
12 by the President in writing, the Federal Government or
13 an entity thereof, and, to the extent specified by the Presi-
14 dent in writing, a foreign government or an entity thereof.

15 (j) The term “Secretary” means the Secretary of
16 Commerce.

17 **SEC. 4. OFFSHORE AQUACULTURE PERMITS.**

18 (a) GENERAL.—

19 (1) The Secretary shall establish, through rule-
20 making, in consultation as appropriate with other
21 relevant Federal agencies, coastal States, and re-
22 gional fishery management councils established
23 under section 302 of the Magnuson-Stevens Fishery
24 Conservation and Management Act (16 U.S.C.
25 1852), a process to make areas of the Exclusive

1 Economic Zone available to eligible persons for the
2 development and operation of offshore aquaculture
3 facilities, which shall include:

4 (A) Procedures and criteria necessary to
5 issue and modify permits under this Act;

6 (B) Procedures to coordinate the offshore
7 aquaculture permitting process, and related
8 siting, operations, environmental protection,
9 monitoring, enforcement, research, and eco-
10 nomic and social activities, with similar activi-
11 ties administered by other Federal agencies and
12 coastal States;

13 (C) Consideration of the potential environ-
14 mental, social, economic, and cultural impacts
15 of offshore aquaculture and inclusion, where ap-
16 propriate, of permit conditions to address nega-
17 tive impacts;

18 (D) Public notice and opportunity for pub-
19 lic comment prior to issuance of offshore aqua-
20 culture permits;

21 (E) Procedures to monitor and evaluate
22 compliance with the provisions of offshore aqua-
23 culture permits, including the collection of bio-
24 logical, chemical and physical oceanographic

1 data, and social, production, and economic data;
2 and

3 (F) Procedures for transferring permits
4 from the original permit holder to a person
5 meeting the eligibility criteria in section
6 4(b)(2)(A) and able to satisfy the requirements
7 for bonds or other guarantees prescribed under
8 section 4(c)(3).

9 (2) The Secretary shall prepare an analysis
10 under the National Environmental Policy Act of
11 1969 (42 U.S.C. 4321 et seq.) with respect to the
12 process for issuing permits.

13 (3) The Secretary shall periodically review the
14 procedures and criteria for issuance of offshore
15 aquaculture permits and modify them as appro-
16 priate, in consultation as appropriate with other
17 Federal agencies, the coastal States, and regional
18 fishery management councils, based on the best
19 available science.

20 (4) The Secretary shall consult as appropriate
21 with other Federal agencies and coastal States to
22 identify the environmental requirements that apply
23 to offshore aquaculture under existing laws and reg-
24 ulations. The Secretary shall establish through rule-
25 making, in consultation with appropriate Federal

1 agencies, coastal States, and regional fishery man-
2 agement councils established under section 302 of
3 the Magnuson-Stevens Fishery Conservation and
4 Management Act (16 U.S.C. 1852), additional envi-
5 ronmental requirements to address environmental
6 risks and impacts associated with offshore aqua-
7 culture, to the extent necessary. The environmental
8 requirements shall address, but are not limited to:

9 (A) risks to and impacts on natural fish
10 stocks and fisheries, including safeguards need-
11 ed to conserve genetic resources, to prevent or
12 minimize the transmission of disease or
13 parasites to wild stocks, and to prevent the es-
14 cape of marine species that may cause signifi-
15 cant environmental harm;

16 (B) risks to and impacts on marine eco-
17 systems; biological, chemical and physical fea-
18 tures of water quality and habitat; marine spe-
19 cies, marine mammals and birds;

20 (C) cumulative effects of the aquaculture
21 operation and other aquaculture operations in
22 the vicinity of the proposed site;

23 (D) environmental monitoring, data
24 archiving, and reporting by the permit holder;

1 (E) requirements that marine species prop-
2 agated and reared through offshore aquaculture
3 be species native to the geographic region un-
4 less a scientific risk analysis shows that the risk
5 of harm to the marine environment from the
6 offshore culture of non-indigenous or genetically
7 modified marine species is negligible or can be
8 effectively mitigated; and

9 (F) maintaining record systems to track
10 inventory and movement of fish or other marine
11 species in the offshore aquaculture facility or
12 harvested from such facility, and, if necessary,
13 tagging, marking, or otherwise identifying fish
14 or other marine species in the offshore aqua-
15 culture facility or harvested from such facility.

16 (5) The Secretary, in cooperation with other
17 Federal agencies, shall:

18 (A) Collect information needed to evaluate
19 the suitability of sites for offshore aquaculture;
20 and

21 (B) Monitor the effects of offshore aqua-
22 culture on marine ecosystems and implement
23 such measures as may be necessary to protect
24 the environment. Measures may include, but are
25 not limited to, temporary or permanent reloca-

1 tion of offshore aquaculture sites, a moratorium
2 on additional sites within a prescribed area, and
3 other appropriate measures as determined by
4 the Secretary.

5 (b) PERMITS.—Subject to the provisions of sub-
6 section (e), the Secretary may issue offshore aquaculture
7 permits under such terms and conditions as the Secretary
8 shall prescribe. Permits issued under this Act authorize
9 the permit holder to conduct offshore aquaculture con-
10 sistent with the provisions of this Act, regulations issued
11 under this Act, any specific terms, conditions and restric-
12 tions applied to the permit by the Secretary, and other
13 applicable law.

14 (1) PROCEDURES FOR ISSUANCE OF PER-
15 MITS.—

16 (A) The applicant for an offshore aqua-
17 culture permit shall submit an application to
18 the Secretary specifying the proposed location
19 and type of operation, the marine species to be
20 propagated or reared, or both, at the offshore
21 aquaculture facility, and other design, construc-
22 tion, and operational information, as specified
23 by regulation.

24 (B) Within 120 days after determining
25 that a permit application is complete and has

1 satisfied all applicable statutory and regulatory
2 requirements, as specified by regulation, the
3 Secretary shall issue or deny the permit. If the
4 Secretary is unable to issue or deny a permit
5 within this time period, the Secretary shall pro-
6 vide written notice to the applicant indicating
7 the reasons for the delay and establishing a rea-
8 sonable timeline for issuing or denying the per-
9 mit.

10 (2) PERMIT CONDITIONS.—

11 (A) An offshore aquaculture permit holder
12 must (i) be a resident of the United States, (ii)
13 be a corporation, partnership or other entity or-
14 ganized and existing under the laws of a State
15 or the United States, or (iii) if neither (i) or (ii)
16 applies, to the extent required by the Secretary
17 by regulation after coordination with the Sec-
18 retary of State, waive any immunity, and con-
19 sent to the jurisdiction of the United States and
20 its courts, for matters arising in relation to
21 such permit, and appoint and maintain agents
22 within the United States who are authorized to
23 receive and respond to any legal process issued
24 in the United States with respect to such per-
25 mit holder.

1 (B) Subject to the provisions of subsection
2 (e), the Secretary shall establish the terms, con-
3 ditions, and restrictions that apply to offshore
4 aquaculture permits, and shall specify in the
5 permits the duration, size, and location of the
6 offshore aquaculture facility.

7 (C) Except for projects involving pilot-scale
8 testing or farm-scale research on aquaculture
9 science and technologies and offshore aqua-
10 culture permits requiring concurrence of the
11 Secretary of the Interior under subsection
12 4(e)(1), the permit shall have a duration of 20
13 years, renewable thereafter at the discretion of
14 the Secretary in up to 20-year increments. The
15 duration of permits requiring concurrence of
16 the Secretary of the Interior under subsection
17 4(e)(1) shall be developed in consultation as ap-
18 propriate with the Secretary of the Interior, ex-
19 cept that any such permit shall expire no later
20 than the date that the lessee, or the lessee's op-
21 erator, submits to the Secretary of the Interior
22 a final application for the decommissioning and
23 removal of an existing facility upon which an
24 offshore aquaculture facility is located.

1 (D) At the expiration or termination of an
2 offshore aquaculture permit for any reason, the
3 permit holder shall remove all structures, gear,
4 and other property from the site, and take
5 other measures to restore the site as may be
6 prescribed by the Secretary.

7 (E) Failure to begin offshore aquaculture
8 operations within a reasonable period of time,
9 or prolonged interruption of offshore aqua-
10 culture operations, may result in the revocation
11 of the permit.

12 (3) If the Secretary determines that issuance of
13 a permit is not in the national interest, the Sec-
14 retary may decline to issue such a permit or may
15 impose such conditions as necessary to address such
16 concerns.

17 (c) FEES AND OTHER PAYMENTS.—

18 (1) The Secretary is authorized to establish,
19 through regulations, application fees and annual per-
20 mit fees. Such fees shall be deposited as offsetting
21 collections in the Operations, Research, and Facili-
22 ties (ORF) account. Fees may be collected and made
23 available only to the extent provided in advance in
24 appropriation Acts.

1 (2) The Secretary may reduce or waive applica-
2 ble fees or other payments established under this
3 section for facilities used primarily for research.

4 (3) The Secretary shall require the permit hold-
5 er to post a bond or other form of financial guar-
6 antee, in an amount to be determined by the Sec-
7 retary as sufficient to cover any unpaid fees, the
8 cost of removing an offshore aquaculture facility at
9 the expiration or termination of an offshore aqua-
10 culture permit, and other financial risks as identified
11 by the Secretary.

12 (d) COMPATIBILITY WITH OTHER USES.—

13 (1) The Secretary shall consult as appropriate
14 with other Federal agencies, coastal States, and re-
15 gional fishery management councils to ensure that
16 offshore aquaculture for which a permit is issued
17 under this section is compatible with the use of the
18 Exclusive Economic Zone for navigation, fishing, re-
19 source protection, recreation, national defense (in-
20 cluding military readiness), mineral exploration and
21 development, and other activities.

22 (2) The Secretary shall not authorize permits
23 for new offshore aquaculture facilities within 12
24 miles of the coastline of a coastal State if that coast-
25 al State has submitted a written notice to the Sec-

1 retary that the coastal State opposes such activities.
2 This provision will not apply to permit applications
3 received by the Secretary prior to the date the notice
4 is received from a coastal State. A coastal State that
5 transmitted such notice to the Secretary under this
6 paragraph may revoke that notice in writing at any
7 time.

8 (3) Federal agencies implementing this Act,
9 persons subject to this Act, and coastal States seek-
10 ing to review permit applications under this Act
11 shall comply with the applicable section of the Coast-
12 al Zone Management Act (i.e., 16 U.S.C.
13 1456(c)(1), (c)(3)(A), (c)(3)(B) or (d)) and its cor-
14 responding Federal regulations.

15 (4) Offshore aquaculture conducted in accord-
16 ance with permits issued pursuant to this Act is ex-
17 cluded from the definition of “fishing” in the Mag-
18 nuson-Stevens Fishery Conservation and Manage-
19 ment Act (16 U.S.C. 1802(15)). The Secretary shall
20 ensure, to the extent practicable, that offshore aqua-
21 culture does not interfere with conservation and
22 management measures promulgated under the Mag-
23 nuson-Stevens Fishery Conservation and Manage-
24 ment Act.

1 (5) The Secretary may promulgate regulations
2 that the Secretary finds to be reasonable and nec-
3 essary to protect offshore aquaculture facilities, and,
4 where appropriate, shall request that the Secretary
5 of the department in which the Coast Guard is oper-
6 ating establish navigational safety zones around such
7 facilities. In addition, in the case of any offshore
8 aquaculture facility described in section 4(e)(1), the
9 Secretary of the department in which the Coast
10 Guard is operating shall consult with the Secretary
11 of the Interior before designating such a zone.

12 (6) After consultation with the Secretary, the
13 Secretary of State, and the Secretary of Defense,
14 the Secretary of the department in which the Coast
15 Guard is operating may designate a zone of appro-
16 priate size around and including any offshore aqua-
17 culture facility for the purpose of navigational safe-
18 ty. In such a zone, no installations, structures, or
19 uses will be allowed that are incompatible with the
20 operation of the offshore aquaculture facility. The
21 Secretary of the department in which the Coast
22 Guard is operating may define, by rulemaking, ac-
23 tivities that are allowed within such a zone.

24 (7)(A) Subject to paragraph (B), if the Sec-
25 retary, after consultation with Federal agencies as

1 appropriate and after affording the permit holder
2 notice and an opportunity to be heard, determines
3 that suspension, modification, or revocation of a per-
4 mit is in the national interest, the Secretary may
5 suspend, modify, or revoke such permit.

6 (B) If the Secretary determines that
7 an emergency exists that poses a risk to
8 the safety of humans, to the marine envi-
9 ronment or marine species, or to the secu-
10 rity of the United States and that requires
11 suspension, modification, or revocation of a
12 permit, the Secretary may suspend, mod-
13 ify, or revoke the permit for such time as
14 the Secretary may determine necessary to
15 meet the emergency. The Secretary shall
16 afford the permit holder a prompt post-
17 suspension or post-modification oppor-
18 tunity to be heard regarding the suspen-
19 sion, modification, or revocation.

20 (8) Permits issued under this Act do not super-
21 sede or substitute for any other authorization re-
22 quired under applicable Federal or State law or reg-
23 ulation.

24 (e) ACTIONS AFFECTING THE OUTER CONTINENTAL

25 SHELF.—

1 (1) The Secretary shall obtain the concurrence
2 of the Secretary of the Interior on permits for off-
3 shore aquaculture facilities located:

4 (A) on leases, right-of-use and easements,
5 or rights of way authorized or permitted under
6 the Outer Continental Shelf Lands Act, as
7 amended (43 U.S.C. 1331, et seq.), or

8 (B) within 1 mile of any other facility per-
9 mitted or for which a plan has been approved
10 under the Outer Continental Shelf Lands Act.

11 (2) Offshore aquaculture may not be located on
12 facilities subject to section 4(e)(1)(A) without the
13 prior consent of the lessee, its designated operator,
14 and owner of the facility.

15 (3) The Secretary of the Interior shall review
16 and approve any agreement between a lessee, des-
17 ignated operator, and owner of a facility subject to
18 this subsection and a prospective aquaculture oper-
19 ator to ensure that it is consistent with the Federal
20 lease terms, Department of the Interior regulations,
21 and the Secretary of the Interior's role in the protec-
22 tion of the marine environment, property, or human
23 life or health. An agreement under this subsection
24 shall be part of the information reviewed pursuant
25 to the Coastal Zone Management Act review process

1 described in subsection 4(e)(4) and shall not be sub-
2 ject to a separate Coastal Zone Management Act re-
3 view.

4 (4) Coordinated Coastal Zone Management Act
5 review

6 (A) If the applicant for an offshore aqua-
7 culture facility that will utilize a facility subject
8 to this subsection is required to submit to a
9 coastal State a consistency certification for its
10 aquaculture application under section
11 307(c)(3)(A) of the Coastal Zone Management
12 Act (16 U.S.C. 1456(c)(3)(A)), the coastal
13 State's review under the Coastal Zone Manage-
14 ment Act and corresponding Federal regula-
15 tions shall also include any modification to a
16 lessee's approved plan or other document for
17 which a consistency certification would other-
18 wise be required under applicable Federal regu-
19 lations, including changes to its plan for decom-
20 missioning any facilities, resulting from or nec-
21 essary for the issuance of the offshore aqua-
22 culture permit, provided that information re-
23 lated to such modifications or changes is re-
24 ceived by the coastal State at the time the
25 coastal State receives the offshore aquaculture

1 permit applicant's consistency certification. In
2 this case, lessees are not required to submit a
3 separate consistency certification for any such
4 modification or change under section
5 307(c)(3)(B) of the Coastal Zone Management
6 Act (16 U.S.C. 1456(c)(3)(B)) and the coastal
7 State's concurrence or objection, or presumed
8 concurrence, under section 307(c)(3)(A) of the
9 Coastal Zone Management Act (16 U.S.C.
10 1456(c)(3)(A)) in a consistency determination
11 for the offshore aquaculture permit, shall apply
12 to both the offshore aquaculture permit and to
13 any related modifications or changes to a les-
14 see's plan approved under the Outer Conti-
15 nental Shelf Lands Act.

16 (B) If a coastal State is not authorized by
17 section 307(c)(3)(A) of the Coastal Zone Man-
18 agement Act (16 U.S.C. 1456(c)(3)(A)) and
19 corresponding Federal regulations to review an
20 offshore aquaculture application submitted
21 under this Act, then any modifications or
22 changes to a lessee's approved plan or other
23 document requiring approval from the Depart-
24 ment of the Interior, shall be subject to coastal
25 State review pursuant to the requirements of

1 section 307(e)(3)(B) of the Coastal Zone Man-
2 agement Act (16 U.S.C. 1456(e)(3)(B)), if a
3 consistency certification for those modifications
4 or changes is required under applicable Federal
5 regulations.

6 (5) For offshore aquaculture located on facili-
7 ties subject to this subsection, the aquaculture per-
8 mit holder and all parties that are or were lessees
9 of the lease on which the facilities are located during
10 the term of the offshore aquaculture permit shall be
11 jointly and severally liable for the removal of any
12 construction or modifications related to aquaculture
13 operations if the aquaculture permit holder fails to
14 do so and bonds established under this Act for aqua-
15 culture operations prove insufficient to cover those
16 obligations. This subsection does not affect obliga-
17 tions to decommission facilities under the Outer
18 Continental Shelf Lands Act.

19 (6) For aquaculture projects or operations sub-
20 ject to this subsection, the Secretary of the Interior
21 is authorized to:

22 (A) Promulgate such rules and regulations
23 as are necessary and appropriate to carry out
24 the provisions of this subsection;

1 (B) Require and enforce such additional
2 terms or conditions as the Secretary of the In-
3 terior deems necessary to protect the marine
4 environment, property, or human life or health
5 to ensure the compatibility of aquaculture oper-
6 ations with all activities for which permits have
7 been issued under the Outer Continental Shelf
8 Lands Act;

9 (C) Issue orders to the offshore aqua-
10 culture permit holder to take any action the
11 Secretary of the Interior deems necessary to en-
12 sure safe operations on the facility to protect
13 the marine environment, property, or human
14 life or health. Failure to comply with the Sec-
15 retary of the Interior's orders will be deemed to
16 constitute a violation of the Outer Continental
17 Shelf Lands Act; and

18 (D) Enforce all requirements contained in
19 such regulations, lease terms and conditions
20 and orders pursuant to the Outer Continental
21 Shelf Lands Act.

22 **SEC. 5. RESEARCH AND DEVELOPMENT.**

23 (a) In consultation as appropriate with other Federal
24 agencies, the Secretary may establish and conduct an inte-
25 grated, multidisciplinary, scientific research and develop-

1 ment program to further marine aquaculture technologies
2 that are compatible with the protection of marine eco-
3 systems.

4 (b) The Secretary is authorized to conduct research
5 and development in partnership with offshore aquaculture
6 permit holders.

7 (c) The Secretary, in collaboration with the Secretary
8 of Agriculture, shall conduct research to reduce the use
9 of wild fish in aquaculture feeds, including but not limited
10 to the substitution of seafood processing wastes, cultured
11 marine algae and microbial sources of nutrients important
12 for human health and nutrition, agricultural crops, and
13 other products.

14 **SEC. 6. ADMINISTRATION.**

15 (a) The Secretary shall promulgate such regulations
16 as are necessary and appropriate to carry out the provi-
17 sions of this Act. The Secretary may at any time amend
18 such regulations, and such regulations shall, as of their
19 effective date, apply to all operations conducted pursuant
20 to permits issued under the provisions of this Act, regard-
21 less of the date of the issuance of such permit.

22 (b) The Secretary shall have the authority to enter
23 into and perform such contracts, leases, grants, or cooper-
24 ative agreements as may be necessary to carry out the
25 purposes of this Act and on such terms as the Adminis-

1 trator of the National Oceanic and Atmospheric Adminis-
2 tration deems appropriate.

3 (c) For purposes related to the enforcement of this
4 Act, the Secretary is authorized to use, with their consent
5 and with or without reimbursement, the land, services,
6 equipment, personnel, and facilities of any department,
7 agency or instrumentality of the United States, or of any
8 state, local government, Indian tribal government, Terri-
9 tory or possession, or of any political subdivision thereof,
10 or of any foreign government or international organiza-
11 tion.

12 (d) Authority to Utilize Grant Funds

13 (1) Except as provided in paragraph (2), the
14 Secretary is authorized to apply for, accept, and ob-
15 ligate research grant funding from any Federal
16 source operating competitive grant programs where
17 such funding furthers the purpose of this Act.

18 (2) The Secretary may not apply for, accept, or
19 obligate any grant funding under paragraph (1) for
20 which the granting agency lacks authority to grant
21 funds to Federal agencies, or for any purpose or
22 subject to conditions that are prohibited by law or
23 regulation.

24 (3) Appropriated funds may be used to satisfy
25 a requirement to match grant funds with recipient

1 agency funds, except that no grant may be accepted
2 that requires a commitment in advance of appropria-
3 tions.

4 (4) Funds received from grants shall be depos-
5 ited in the National Oceanic and Atmospheric Ad-
6 ministration account that serves to accomplish the
7 purpose for which the grant was awarded.

8 (e) Nothing in this Act shall be construed to displace,
9 supersede, or limit the jurisdiction, responsibilities or
10 rights of any Federal or State agency, or Indian Tribe
11 or Alaska Native organization, under any Federal law or
12 treaty.

13 (f) The Constitution, laws, and treaties of the United
14 States shall apply to an offshore aquaculture facility lo-
15 cated in the Exclusive Economic Zone for which a permit
16 has been issued or is required under this Act and to activi-
17 ties in the Exclusive Economic Zone connected, associated,
18 or potentially interfering with the use or operation of such
19 facility, in the same manner as if such facility were an
20 area of exclusive Federal jurisdiction located within a
21 State. Nothing in this Act shall be construed to relieve,
22 exempt, or immunize any person from any other require-
23 ment imposed by an applicable Federal law, regulation,
24 or treaty. Nothing in this Act shall be construed to confer
25 citizenship to a person by birth or through naturalization

1 or to entitle a person to avail himself of any law pertaining
2 to immigration, naturalization, or nationality.

3 (g) The law of the nearest adjacent coastal State,
4 now in effect or hereafter adopted, amended, or repealed,
5 is declared to be the law of the United States, and shall
6 apply to any offshore aquaculture facility for which a per-
7 mit has been issued pursuant to this Act, to the extent
8 applicable and not inconsistent with any provision or regu-
9 lation under this Act or other Federal laws and regula-
10 tions now in effect or hereafter adopted, amended, or re-
11 pealed. All such applicable laws shall be administered and
12 enforced by the appropriate officers and courts of the
13 United States. For purposes of this subsection, the nearest
14 adjacent coastal State shall be that State whose seaward
15 boundaries, if extended beyond 3 nautical miles, would en-
16 compass the site of the offshore aquaculture facility. State
17 taxation laws shall not apply to offshore aquaculture facili-
18 ties in the Exclusive Economic Zone.

19 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated to the Sec-
21 retary \$4,052,000 in fiscal year 2008 and thereafter such
22 sums as may be necessary for purposes of carrying out
23 the provisions of this Act.

24 **SEC. 8. UNLAWFUL ACTIVITIES.**

25 It is unlawful for any person—

1 (a) to falsify any information required to be reported,
2 communicated, or recorded pursuant to this Act or any
3 regulation or permit issued under this Act, or to fail to
4 submit in a timely fashion any required information, or
5 to fail to report to the Secretary immediately any change
6 in circumstances that has the effect of rendering any such
7 information false, incomplete, or misleading;

8 (b) to engage in offshore aquaculture within the Ex-
9 clusive Economic Zone of the United States or operate an
10 offshore aquaculture facility within the Exclusive Eco-
11 nomic Zone of the United States, except pursuant to a
12 valid permit issued under this Act;

13 (c) to refuse to permit an authorized officer to con-
14 duct any lawful search or lawful inspection in connection
15 with the enforcement of this Act or any regulation or per-
16 mit issued under this Act;

17 (d) to forcibly assault, resist, oppose, impede, intimi-
18 date, or interfere with an authorized officer in the conduct
19 of any search or inspection in connection with the enforce-
20 ment of this Act or any regulation or permit issued under
21 this Act;

22 (e) to resist a lawful arrest or detention for any act
23 prohibited by this section;

24 (f) to interfere with, delay, or prevent, by any means,
25 the apprehension, arrest, or detection of another person,

1 knowing that such person has committed any act prohib-
2 ited by this section;

3 (g) to import, export, sell, receive, acquire or pur-
4 chase in interstate or foreign commerce any marine spe-
5 cies in violation of this Act or any regulation or permit
6 issued under this Act;

7 (h) upon the expiration or termination of any aqua-
8 culture permit for any reason, fail to remove all structures,
9 gear, and other property from the site, or take other meas-
10 ures, as prescribed by the Secretary, to restore the site;

11 (i) to violate any provision of this Act, any regulation
12 promulgated under this Act, or any term or condition of
13 any permit issued under this Act; or

14 (j) to attempt to commit any act described in sub-
15 sections (a), (b), (g), (h) or (i).

16 **SEC. 9. ENFORCEMENT PROVISIONS.**

17 (a) DUTIES OF SECRETARIES.—Subject to sections
18 4(e)(6)(B) and (D), this Act shall be enforced by the Sec-
19 retary and the Secretary of the department in which the
20 Coast Guard is operating.

21 (b) POWERS OF ENFORCEMENT.—

22 (1) Any officer who is authorized pursuant to
23 subsection (a) of this section by the Secretary or the
24 Secretary of the department in which the Coast

1 Guard is operating to enforce the provisions of this
2 Act may—

3 (A) with or without a warrant or other
4 process—

5 (i) arrest any person, if the officer has
6 reasonable cause to believe that such per-
7 son has committed or is committing an act
8 prohibited by section 8 of this Act;

9 (ii) search or inspect any offshore
10 aquaculture facility and any related land-
11 based facility;

12 (iii) seize any offshore aquaculture fa-
13 cility (together with its equipment, records,
14 furniture, appurtenances, stores, and
15 cargo), and any vessel or vehicle, used or
16 employed in aid of, or with respect to
17 which it reasonably appears that such off-
18 shore aquaculture facility was used or em-
19 ployed in aid of, the violation of any provi-
20 sion of this Act or any regulation or permit
21 issued under this Act;

22 (iv) seize any marine species (wher-
23 ever found) retained, in any manner, in
24 connection with or as a result of the com-

1 mission of any act prohibited by section 8
2 of this Act;

3 (v) seize any evidence related to any
4 violation of any provision of this Act or
5 any regulation or permit issued under this
6 Act;

7 (B) execute any warrant or other process
8 issued by any court of competent jurisdiction;
9 and

10 (C) exercise any other lawful authority.

11 (2) Any officer who is authorized pursuant to
12 subsection (a) of this section by the Secretary or the
13 Secretary of the department in which the Coast
14 Guard is operating to enforce the provisions of this
15 Act may make an arrest without a warrant for (i)
16 an offense against the United States committed in
17 his presence, or (ii) for a felony cognizable under the
18 laws of the United States, if he has reasonable
19 grounds to believe that the person to be arrested has
20 committed or is committing a felony. Any such au-
21 thorized person may execute and serve a subpoena,
22 arrest warrant or search warrant issued in accord-
23 ance with Rule 41 of the Federal Rules of Criminal
24 Procedure, or other warrant of civil or criminal proc-
25 ess issued by any officer or court of competent juris-

1 diction for enforcement of the Act, or any regulation
2 or permit issued under this Act.

3 (c) ISSUANCE OF CITATIONS.—If any authorized offi-
4 cer finds that a person is engaging in or has engaged in
5 offshore aquaculture in violation of any provision of this
6 Act, such officer may issue a citation to that person.

7 (d) LIABILITY FOR COSTS.—Any person who violates
8 this Act, or a regulation or permit issued under this Act,
9 shall be liable for the cost incurred in storage, care, and
10 maintenance of any marine species or other property
11 seized in connection with the violation.

12 **SEC. 10. CIVIL ENFORCEMENT AND PERMIT SANCTIONS.**

13 (a) CIVIL ADMINISTRATIVE PENALTIES.—

14 (1) Any person who is found by the Secretary,
15 after notice and opportunity for a hearing in accord-
16 ance with section 554 of Title 5, United States
17 Code, to have violated this Act, or a regulation or
18 permit issued under this Act, shall be liable to the
19 United States for a civil penalty. The amount of the
20 civil penalty under this paragraph shall not exceed
21 \$200,000 for each violation. Each day of a con-
22 tinuing violation shall constitute a separate violation.

23 (2) COMPROMISE OR OTHER ACTION BY THE
24 SECRETARY.—The Secretary may compromise, mod-
25 ify, or remit, with or without conditions, any civil

1 administrative penalty which is or may be imposed
2 under this section and that has not been referred to
3 the Attorney General for further enforcement action.

4 (b) CIVIL JUDICIAL PENALTIES.—Any person who
5 violates any provision of this Act, or any regulation or per-
6 mit issued thereunder, shall be subject to a civil penalty
7 not to exceed \$250,000 for each such violation. Each day
8 of a continuing violation shall constitute a separate viola-
9 tion. The Attorney General, upon the request of the Sec-
10 retary, may commence a civil action in an appropriate dis-
11 trict court of the United States, and such court shall have
12 jurisdiction to award civil penalties and such other relief
13 as justice may require. In determining the amount of a
14 civil penalty, the court shall take into account the nature,
15 circumstances, extent, and gravity of the prohibited acts
16 committed and, with respect to the violator, the degree
17 of culpability, any history of prior violations and such
18 other matters as justice may require. In imposing such
19 penalty, the district court may also consider information
20 related to the ability of the violator to pay.

21 (c) PERMIT SANCTIONS.—

22 (1) In any case in which—

23 (A) an offshore aquaculture facility has
24 been used in the commission of an act prohib-
25 ited under section 8 of this Act;

1 (B) the owner or operator of an offshore
2 aquaculture facility or any other person who
3 has been issued or has applied for a permit
4 under section 4 of this Act has acted in viola-
5 tion of section 8 of this Act; or

6 (C) any amount in settlement of a civil for-
7 feiture imposed on an offshore aquaculture fa-
8 cility or other property, or any civil penalty or
9 criminal fine imposed under this Act or imposed
10 on any other person who has been issued or has
11 applied for a permit under any fishery resource
12 statute enforced by the Secretary, has not been
13 paid and is overdue, the Secretary may—

14 (i) revoke any permit issued with re-
15 spect to such offshore aquaculture facility
16 or applied for by such a person under this
17 Act, with or without prejudice to the
18 issuance of subsequent permits;

19 (ii) suspend such permit for a period
20 of time considered by the Secretary to be
21 appropriate;

22 (iii) deny such permit; or

23 (iv) impose additional conditions and
24 restrictions on such permit.

1 (2) In imposing a sanction under this sub-
2 section, the Secretary shall take into account—

3 (A) the nature, circumstances, extent, and
4 gravity of the prohibited acts for which the
5 sanction is imposed; and

6 (B) with respect to the violator, the degree
7 of culpability, any history of prior violations,
8 and such other matters as justice may require.

9 (3) Transfer of ownership of an offshore aqua-
10 culture facility, by sale or otherwise, shall not extin-
11 guish any permit sanction that is in effect or is
12 pending at the time of transfer of ownership. Before
13 executing the transfer of ownership of an offshore
14 aquaculture facility, by sale or otherwise, the owner
15 shall disclose in writing to the prospective transferee
16 the existence of any permit sanction that will be in
17 effect or pending with respect to the offshore aqua-
18 culture facility at the time of the transfer. The Sec-
19 retary may waive or compromise a sanction in the
20 case of a transfer pursuant to court order.

21 (4) In the case of any permit that is suspended
22 under this subsection for nonpayment of a civil pen-
23 alty or criminal fine, the Secretary shall reinstate
24 the permit upon payment of the penalty or fine and
25 interest thereon at the prevailing rate.

1 (5) No sanctions shall be imposed under this
2 subsection unless there has been prior opportunity
3 for a hearing on the facts underlying the violation
4 for which the sanction is imposed, either in conjunc-
5 tion with a civil penalty proceeding under this sec-
6 tion or otherwise.

7 (d) INJUNCTIVE RELIEF.—Upon the request of the
8 Secretary, the Attorney General of the United States is
9 authorized to commence a civil action for appropriate re-
10 lief, including a permanent or temporary injunction, for
11 any violation of any provision of this Act, or regulation
12 or permit issued under this Act.

13 (e) HEARING.—For the purposes of conducting any
14 investigation or hearing under this section or any other
15 statute administered by the National Oceanic and Atmos-
16 pheric Administration which is determined on the record
17 in accordance with the procedures provided for under sec-
18 tion 554 of Title 5, the Secretary may issue subpoenas
19 for the attendance and testimony of witnesses and the pro-
20 duction of relevant papers, books, and documents, and
21 may administer oaths. Witnesses summoned shall be paid
22 the same fees and mileage that are paid to witnesses in
23 the courts of the United States. In case of contempt or
24 refusal to obey a subpoena served upon any person pursu-
25 ant to this subsection, the district court of the United

1 States for any district in which such person is found, re-
2 sides, or transacts business, upon application by the
3 United States and after notice to such person, shall have
4 jurisdiction to issue an order requiring such person to ap-
5 pear and give testimony before the Secretary or to appear
6 and produce documents before the Secretary, or both, and
7 any failure to obey such order of the court may be pun-
8 ished by such court as a contempt thereof. Nothing in this
9 Act shall be construed to grant jurisdiction to a district
10 court to entertain an application for an order to enforce
11 a subpoena issued by the Secretary of Commerce to the
12 Federal Government or any entity thereof.

13 (f) JURISDICTION.—The United States district courts
14 shall have original jurisdiction of any action under this
15 section arising out of or in connection with the construc-
16 tion or operation of aquaculture facilities, and proceedings
17 with respect to any such action may be instituted in the
18 judicial district in which any defendant resides or may be
19 found, or in the judicial district of the adjacent coastal
20 State nearest the place where the cause of action arose.
21 For the purpose of this section, American Samoa shall be
22 included within the judicial district of the District Court
23 of the United States for the District of Hawaii. Each vio-
24 lation shall be a separate offense and the offense shall be
25 deemed to have been committed not only in the district

1 where the violation first occurred, but also in any other
2 district as authorized by law.

3 (g) COLLECTION.—If any person fails to pay an as-
4 sessment of a civil penalty after it has become a final and
5 unappealable order, or after the appropriate court has en-
6 tered final judgment in favor of the Secretary, the matter
7 may be referred to the Attorney General, who may recover
8 the amount (plus interest at currently prevailing rates
9 from the date of the final order). In such action the valid-
10 ity, amount and appropriateness of the final order impos-
11 ing the civil penalty shall not be subject to review. Any
12 person who fails to pay, on a timely basis, the amount
13 of an assessment of a civil penalty shall be required to
14 pay, in addition to such amount and interest, attorney's
15 fees and costs for collection proceedings and a quarterly
16 nonpayment penalty for each quarter during which such
17 failure to pay persists. Such nonpayment penalty shall be
18 in an amount equal to 20 percent of the aggregate amount
19 of such persons penalties and nonpayment penalties which
20 are unpaid as of the beginning of such quarter.

21 (h) NATIONWIDE SERVICE OF PROCESS.—In any ac-
22 tion by the United States under this title, process may
23 be served in any district where the defendant is found,
24 resides, transacts business or has appointed an agent for
25 the service of process, and for civil cases may also be

1 served in a place not within the United States in accord-
2 ance with Rule 4 of the Federal Rules of Civil Procedure.

3 **SEC. 11. CRIMINAL OFFENSES.**

4 (a) Any person (other than a foreign government or
5 any entity of such government) who knowingly commits
6 an act prohibited by subsections 8(c), (d), (e), or (f) of
7 the Act, shall be imprisoned for not more than five years
8 or shall be fined not more than \$500,000 for individuals
9 or \$1,000,000 for an organization, or both; except that
10 if in the commission of any such offense the individual
11 uses a dangerous weapon, engages in conduct that causes
12 bodily injury to any officer authorized to enforce the provi-
13 sions of this title, or places any such officer in fear of
14 imminent bodily injury, the maximum term of imprison-
15 ment is not more than ten years.

16 (b) Any person (other than a foreign government or
17 any entity of such government) who knowingly violates
18 any other provision of section 8, except subsections 8(c),
19 (d), (e) or (f), of the Act, or any provision of any regula-
20 tion promulgated pursuant to this title or any permit
21 issued under this title, shall be imprisoned for not more
22 than five years, or shall be fined not more than \$500,000
23 for an individual or \$1,000,000 for an organization, or
24 both.

1 (c) The United States district courts shall have origi-
2 nal jurisdiction of any action arising under this section
3 out of or in connection with the construction or operation
4 of aquaculture facilities, and proceedings with respect to
5 any such action may be instituted in the judicial district
6 in which any defendant resides or may be found. For the
7 purpose of this section, American Samoa shall be included
8 within the judicial district of the District Court of the
9 United States for the District of Hawaii. Each violation
10 shall be a separate offense and the offense shall be deemed
11 to have been committed not only in the district where the
12 violation first occurred, but also in any other district as
13 authorized under law.

14 **SEC. 12. FORFEITURES.**

15 (a) CRIMINAL FORFEITURE.—A person who is con-
16 victed of an offense in violation of section 11 of this Act
17 shall forfeit to the United States—

18 (1) any property, real or personal, constituting
19 or traceable to the gross proceeds obtained, or re-
20 tained, as a result of the offense including, without
21 limitation, any marine species (or the fair market
22 value thereof) taken or retained in connection with
23 or as a result of the offense; and

24 (2) any property, real or personal, used or in-
25 tended to be used to commit or to facilitate the com-

1 mission of the offense, including, without limitation,
2 any offshore aquaculture facility or vessel, including
3 its structure, equipment, furniture, appurtenances,
4 stores, and cargo, and any vehicle or aircraft.

5 Pursuant to title 28, United States Code, section 2461(c),
6 the provisions of section 413 of the Controlled Substances
7 Act (21 U.S.C. 853) with the exception of subsection (d)
8 of that section, shall apply to criminal forfeitures under
9 this section.

10 (b) CIVIL FORFEITURE.—The following shall be sub-
11 ject to forfeiture to the United States and no property
12 right shall exist in them:

13 (1) any property, real or personal, constituting
14 or traceable to the gross proceeds obtained, or re-
15 tained, as a result of a violation of any provision of
16 section 8 or subsection 4(b)(2)(D) of this Act, in-
17 cluding, without limitation, any marine species (or
18 the fair market value thereof) taken or retained in
19 connection with or as a result of the violation; and

20 (2) any property, real or personal, used or in-
21 tended to be used to commit or to facilitate the com-
22 mission of any such violation, including, without lim-
23 itation, any offshore aquaculture facility or vessel,
24 including its structure, equipment, furniture, appur-

1 tenances, stores, and cargo, and any vehicle or air-
2 craft.

3 Civil forfeitures under this section shall be governed by
4 the procedures set forth in title 18, United States Code,
5 Chapter 46.

6 (c) **REBUTTABLE PRESUMPTION.**—In any criminal or
7 civil forfeiture proceeding under this section, there is a
8 rebuttable presumption that all marine species found with-
9 in an offshore aquaculture facility and seized in connection
10 with a violation of section 8 of this Act were taken or re-
11 tained in violation of this Act.

12 **SEC. 13. SEVERABILITY AND JUDICIAL REVIEW.**

13 (a) **SEVERABILITY.**—If any provision of this chapter
14 or the application thereof to any person or circumstances
15 is held invalid, the validity of the remainder of this chapter
16 and of the application of such provision to other persons
17 and circumstances shall not be affected thereby.

18 (b) **JUDICIAL REVIEW.**—

19 (1) **IN GENERAL.**—Judicial review of any action
20 taken by the Secretary under this chapter shall be
21 in accordance with sections 701 through 706 of Title
22 5, except that—

23 (A) review of any final agency action of the
24 Secretary taken pursuant to section 11(a) or (c)
25 of this title may be had only by the filing of a

1 complaint by an interested person in the United
2 States District Court for the appropriate dis-
3 trict; any such complaint must be filed within
4 30 days of the date such final agency action is
5 taken; and

6 (B) review of all other final agency actions
7 of the Secretary under this chapter may be had
8 only by the filing of a petition for review by an
9 interested person in the Circuit Court of Ap-
10 peals of the United States for the Federal judi-
11 cial district in which such person resides or
12 transacts business which is directly affected by
13 the action taken; such petition shall be filed
14 within 120 days from the date such final action
15 is taken.

16 (2) LIMITATION OF JUDICIAL REVIEW.—Final
17 agency action with respect to which review could
18 have been obtained under paragraph (1)(B) of this
19 subsection shall not be subject to judicial review in
20 any civil or criminal proceeding for enforcement.

21 (3) AWARDS OF LITIGATION COSTS.—In any ju-
22 dicial proceeding under paragraph (1) of this sub-
23 section, the court may award costs of litigation (in-
24 cluding reasonable attorney and expert witness fees)

1 to any prevailing party whenever it determines that
2 such award is appropriate.

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