

110TH CONGRESS
1ST SESSION

S. 1609

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 SENATE OF THE UNITED STATES

JUNE 13, 2007

Mr. INOUE (for himself and Mr. STEVENS) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) It is the policy of the United States—

2 (A) to support an offshore aquaculture in-
3 dustry that will produce food and other valuable
4 products, protect wild stocks and the quality of
5 marine ecosystems, and be compatible with
6 other uses of the Exclusive Economic Zone;

7 (B) to encourage the development of envi-
8 ronmentally responsible offshore aquaculture by
9 authorizing offshore aquaculture operations and
10 research;

11 (C) to establish a permitting process for
12 offshore aquaculture that encourages private in-
13 vestment in aquaculture operations and re-
14 search, provides opportunity for public com-
15 ment, and addresses the potential risks to and
16 impacts (including cumulative impacts) on ma-
17 rine ecosystems, human health and safety, other
18 ocean uses, and coastal communities from off-
19 shore aquaculture; and

20 (D) to promote, through public-private
21 partnerships, research and development in ma-
22 rine aquaculture science, technology, and re-
23 lated social, economic, legal, and environmental
24 management disciplines that will enable marine
25 aquaculture operations to achieve operational

1 objectives while protecting marine ecosystem
2 quality.

3 (2) Offshore aquaculture activities within the
4 Exclusive Economic Zone of the United States con-
5 stitute activities with respect to which the United
6 States has proclaimed sovereign rights and jurisdic-
7 tion under Presidential Proclamation 5030 of March
8 10, 1983.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) COASTAL STATE.—The term “coastal
12 State” means—

13 (A) a State in, or bordering on, the Atlan-
14 tic, Pacific, or Arctic Ocean, the Gulf of Mex-
15 ico, or Long Island Sound; and

16 (B) Puerto Rico, the Virgin Islands,
17 Guam, the Commonwealth of the Northern
18 Mariana Islands, the Trust Territories of the
19 Pacific Islands, and American Samoa.

20 (2) COASTLINE.—The term “coastline” means
21 the line of ordinary low water along that portion of
22 the coast that is in direct contact with the open sea
23 and the line marking the seaward limit of inland wa-
24 ters.

1 (3) EXCLUSIVE ECONOMIC ZONE.—The term
2 “Exclusive Economic Zone” means, unless otherwise
3 specified by the President in the public interest in
4 a writing published in the Federal Register, a zone,
5 the outer boundary of which is 200 nautical miles
6 from the baseline from which the breadth of the ter-
7 ritorial sea is measured, except as established by a
8 maritime boundary treaty in force, or being provi-
9 sionally applied by the United States or, in the ab-
10 sence of such a treaty where the distance between
11 the United States and another nation is less than
12 400 nautical miles, a line equidistant between the
13 United States and the other nation. Without affect-
14 ing any Presidential Proclamation with regard to the
15 establishment of the United States territorial sea or
16 Exclusive Economic Zone, the inner boundary of
17 that zone is—

18 (A) a line coterminous with the seaward
19 boundary (as defined in section 4 of the Outer
20 Continental Shelf Lands Act (43 U.S.C. 1312))
21 of each of the several coastal States;

22 (B) a line 3 marine leagues from the coast-
23 line of the Commonwealth of Puerto Rico;

1 (C) a line 3 geographical miles from the
2 coastlines of American Samoa, the United
3 States Virgin Islands, and Guam;

4 (D) for the Commonwealth of the North-
5 ern Mariana Islands—

6 (i) its coastline, until such time as the
7 Commonwealth of the Northern Mariana
8 Islands is granted authority by the United
9 States to regulate all fishing to a line sea-
10 ward of its coastline, and

11 (ii) upon the United States' grant of
12 such authority, the line established by such
13 grant of authority; and

14 (E) for any possession of the United
15 States not described in subparagraph (B), (C),
16 or (D), the coastline of such possession.

17 Nothing in this paragraph shall be construed as di-
18 minishing the authority of the Department of De-
19 fense, the Department of the Interior, or any other
20 Federal department or agency.

21 (4) LESSEE.—The term “lessee” means any
22 party to a lease, right-of-use and easement, or right-
23 of-way, or an approved assignment thereof, issued
24 pursuant to the Outer Continental Shelf Lands Act
25 (43 U.S.C. 1331 et seq.).

1 (5) MARINE SPECIES.—The term “marine spe-
2 cies” means finfish, mollusks, crustaceans, marine
3 algae, and all other forms of marine life other than
4 marine mammals and birds.

5 (6) OFFSHORE AQUACULTURE.—The term “off-
6 shore aquaculture” means all activities, including
7 the operation of offshore aquaculture facilities, in-
8 volved in the propagation and rearing, or attempted
9 propagation and rearing, of marine species in the
10 United States Exclusive Economic Zone.

11 (7) OFFSHORE AQUACULTURE FACILITY.—The
12 term “offshore aquaculture facility” means—

13 (A) an installation or structure used, in
14 whole or in part, for offshore aquaculture; or

15 (B) an area of the seabed or the subsoil
16 used for offshore aquaculture of living orga-
17 nisms belonging to sedentary species.

18 (8) OFFSHORE AQUACULTURE PERMIT.—The
19 term “offshore aquaculture permit” means an au-
20 thorization issued under section 4(b) to raise speci-
21 fied marine species in a specific offshore aquaculture
22 facility within a specified area of the Exclusive Eco-
23 nomic Zone.

24 (9) PERSON.—The term “person” means any
25 individual (whether or not a citizen or national of

1 the United States), any corporation, partnership, as-
2 sociation, or other non-governmental entity (whether
3 or not organized or existing under the laws of any
4 State), and State, local or tribal government or enti-
5 ty thereof, and, except as otherwise specified by the
6 President in writing, the Federal Government or an
7 entity thereof, and, to the extent specified by the
8 President in writing, a foreign government, or an en-
9 tity thereof.

10 (10) SECRETARY.—The term “Secretary”
11 means the Secretary of Commerce.

12 **SEC. 4. OFFSHORE AQUACULTURE PERMITS.**

13 (a) IN GENERAL.—

14 (1) The Secretary shall establish, through rule-
15 making, in consultation as appropriate with other
16 relevant Federal agencies, coastal States, and re-
17 gional fishery management councils established
18 under section 302 of the Magnuson-Stevens Fishery
19 Conservation and Management Act (16 U.S.C.
20 1852), a process to make areas of the Exclusive
21 Economic Zone available to eligible persons for the
22 development and operation of offshore aquaculture
23 facilities. The process shall include—

24 (A) procedures and criteria necessary to
25 issue and modify permits under this Act;

1 (B) procedures to coordinate the offshore
2 aquaculture permitting process, and related
3 siting, operations, environmental protection,
4 monitoring, enforcement, research, and eco-
5 nomic and social activities, with similar activi-
6 ties administered by other Federal agencies and
7 coastal States;

8 (C) consideration of the potential environ-
9 mental, social, economic, and cultural impacts
10 of offshore aquaculture and inclusion, where ap-
11 propriate, of permit conditions to address nega-
12 tive impacts;

13 (D) public notice and opportunity for pub-
14 lic comment prior to issuance of offshore aqua-
15 culture permits;

16 (E) procedures to monitor and evaluate
17 compliance with the provisions of offshore aqua-
18 culture permits, including the collection of bio-
19 logical, chemical and physical oceanographic
20 data, and social, production, and economic data;
21 and

22 (F) procedures for transferring permits
23 from the original permit holder to a person
24 that—

1 (i) meets the eligibility criteria in sub-
2 section (b)(2)(A); and

3 (ii) satisfies the requirements for
4 bonds or other guarantees prescribed
5 under subsection (c)(3).

6 (2) The Secretary shall prepare an analysis
7 under the National Environmental Policy Act of
8 1969 (42 U.S.C. 4321 et seq.) with respect to the
9 process for issuing permits.

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

17 (4) The Secretary shall consult as appropriate
18 with other Federal agencies and coastal States to
19 identify the environmental requirements that apply
20 to offshore aquaculture under existing laws and reg-
21 ulations. The Secretary shall establish through rule-
22 making, in consultation with appropriate Federal
23 agencies, coastal States, and regional fishery man-
24 agement councils established under section 302 of
25 the Magnuson-Stevens Fishery Conservation and

1 Management Act (16 U.S.C. 1852), additional envi-
2 ronmental requirements to address environmental
3 risks and impacts associated with offshore aqua-
4 culture, to the extent necessary. The environmental
5 requirements shall address, at a minimum—

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

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

17 (C) cumulative effects of the aquaculture
18 operation and other aquaculture operations in
19 the vicinity of the proposed site;

20 (D) environmental monitoring, data
21 archiving, and reporting by the permit holder;

22 (E) requirements that marine species prop-
23 agated and reared through offshore aquaculture
24 be species native to the geographic region un-
25 less a scientific risk analysis shows that the risk

1 of harm to the marine environment from the
2 offshore culture of non-indigenous or genetically
3 modified marine species is negligible or can be
4 effectively mitigated; and

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

12 (5) The Secretary, in cooperation with other
13 Federal agencies, shall—

14 (A) collect information needed to evaluate
15 the suitability of sites for offshore aquaculture;
16 and

17 (B) monitor the effects of offshore aqua-
18 culture on marine ecosystems and implement
19 such measures as may be necessary to protect
20 the environment, including temporary or perma-
21 nent relocation of offshore aquaculture sites, a
22 moratorium on additional sites within a pre-
23 scribed area, and other appropriate measures as
24 determined by the Secretary.

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

10 (1) PROCEDURE FOR ISSUANCE OF PERMITS.—

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

19 (B) Within 120 days after determining
20 that a permit application is complete and has
21 satisfied all applicable statutory and regulatory
22 requirements, as specified by regulation, the
23 Secretary shall issue or deny the permit. If the
24 Secretary is unable to issue or deny a permit
25 within this time period, the Secretary shall pro-

1 vide written notice to the applicant indicating
2 the reasons for the delay and establishing a rea-
3 sonable timeline for issuing or denying the per-
4 mit.

5 (2) PERMIT CONDITIONS.—

6 (A) An offshore aquaculture permit holder
7 shall—

8 (i) be a resident of the United States;

9 (ii) be a corporation, partnership, or
10 other entity organized and existing under
11 the laws of a State or the United States;
12 or

13 (iii) if the holder does not meet the
14 requirements of clause (i) or (ii), to the ex-
15 tent required by the Secretary by regula-
16 tion after coordination with the Secretary
17 of State, waive any immunity, and consent
18 to the jurisdiction of the United States and
19 its courts, for matters arising in relation to
20 such permit, and appoint and maintain
21 agents within the United States who are
22 authorized to receive and respond to any
23 legal process issued in the United States
24 with respect to such permit 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 (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 (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) The Secretary may revoke a permit for
8 failure to begin offshore aquaculture operations
9 within a reasonable period of time, or prolonged
10 interruption of offshore aquaculture operations.

11 (3) NATIONAL INTEREST DETERMINATION.—If
12 the Secretary determines that issuance of a permit
13 is not in the national interest, the Secretary may de-
14 cline to issue such a permit or may impose such con-
15 ditions as necessary to address such concerns.

16 (c) FEES AND OTHER PAYMENTS.—

17 (1) The Secretary may establish, through regu-
18 lations, application fees and annual permit fees.
19 Such fees shall be deposited as offsetting collections
20 in the Operations, Research, and Facilities account.
21 Fees may be collected and made available only to the
22 extent provided in advance in appropriation Acts.

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

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

9 (d) COMPATIBILITY WITH OTHER USES.—

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

19 (2) The Secretary shall not authorize permits
20 for new offshore aquaculture facilities within 12
21 miles of the coastline of a coastal State if that coast-
22 al State has submitted a written notice to the Sec-
23 retary that the coastal State opposes such activities.
24 This paragraph does not apply to permit applica-
25 tions received by the Secretary prior to the date the

1 notice is received from a coastal State. A coastal
2 State that transmits such a notice to the Secretary
3 may revoke that notice in writing at any time.

4 (3) Federal agencies implementing this Act,
5 persons subject to this Act, and coastal States seek-
6 ing to review permit applications under this Act
7 shall comply with the applicable provisions of the
8 Coastal Zone Management Act of 1972 (16 U.S.C.
9 1451 et seq.) and regulations promulgated there-
10 under.

11 (4) Notwithstanding the definition of the term
12 “fishing” in section 3(16) of the Magnuson-Stevens
13 Fishery Conservation and Management Act (16
14 U.S.C. 1802(16)), the conduct of offshore aqua-
15 culture in accordance with permits issued under this
16 Act shall not be considered “fishing” for purposes of
17 that Act. The Secretary shall ensure, to the extent
18 practicable, that offshore aquaculture does not inter-
19 fere with conservation and management measures
20 promulgated under the Magnuson-Stevens Fishery
21 Conservation and Management Act.

22 (5) The Secretary may promulgate regulations
23 that the Secretary finds to be reasonable and nec-
24 essary to protect offshore aquaculture facilities, and,
25 where appropriate, shall request that the Secretary

1 of the department in which the Coast Guard is oper-
2 ating establish navigational safety zones around such
3 facilities. In addition, in the case of any offshore
4 aquaculture facility described in subsection (e)(1),
5 the Secretary of the department in which the Coast
6 Guard is operating shall consult with the Secretary
7 of the Interior before designating such a zone.

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

20 (7)(A) Subject to subparagraph (B), if the Sec-
21 retary, after consultation with Federal agencies as
22 appropriate and after affording the permit holder
23 notice and an opportunity to be heard, determines
24 that suspension, modification, or revocation of a per-

1 mit is in the national interest, the Secretary may
2 suspend, modify, or revoke such permit.

3 (B) If the Secretary determines that an emer-
4 gency exists that poses a risk to the safety of hu-
5 mans, to the marine environment, to marine species,
6 or to the security of the United States and that re-
7 quires suspension, modification, or revocation of a
8 permit, the Secretary may suspend, modify, or re-
9 voke the permit for such time as the Secretary may
10 determine necessary to meet the emergency. The
11 Secretary shall afford the permit holder a prompt
12 post-suspension or post-modification opportunity to
13 be heard regarding the suspension, modification, or
14 revocation.

15 (8) Permits issued under this Act do not super-
16 sede or substitute for any other authorization re-
17 quired under applicable Federal or State law or reg-
18 ulation.

19 (e) ACTIONS AFFECTING THE OUTER CONTINENTAL
20 SHELF.—

21 (1) CONCURRENCE OF SECRETARY OF INTE-
22 RIOR REQUIRED.—The Secretary shall obtain the
23 concurrence of the Secretary of the Interior for per-
24 mits for offshore aquaculture facilities located—

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

5 (B) within 1 mile of any other facility per-
6 mitted or for which a plan has been approved
7 under that Act.

8 (2) PRIOR CONSENT REQUIRED.—Offshore
9 aquaculture may not be located on facilities de-
10 scribed in paragraph (1)(A) without the prior con-
11 sent of the lessee, its designated operator, and the
12 owner of the facility.

13 (3) REVIEW FOR LEASE, ETC., COMPLIANCE.—
14 The Secretary of the Interior shall review and ap-
15 prove any agreement between a lessee, designated
16 operator, and owner of a facility described in para-
17 graph (1) and a prospective aquaculture operator to
18 ensure that it is consistent with the Federal lease
19 terms, Department of the Interior regulations, and
20 the Secretary of the Interior’s role in the protection
21 of the marine environment, property, or human life
22 or health. An agreement under this subsection shall
23 be part of the information reviewed pursuant to the
24 Coastal Zone Management Act review process de-

1 scribed in paragraph (4) and shall not be subject to
2 a separate Coastal Zone Management Act review.

3 (4) COORDINATED COASTAL ZONE MANAGE-
4 MENT ACT REVIEW.—

5 (A) If the applicant for an offshore aqua-
6 culture facility that will utilize a facility de-
7 scribed in paragraph (1) is required to submit
8 to a coastal State a consistency certification for
9 its aquaculture application under section
10 307(c)(3)(A) of the Coastal Zone Management
11 Act (16 U.S.C. 1456(c)(3)(A)), the coastal
12 State's review under the Coastal Zone Manage-
13 ment Act and corresponding Federal regula-
14 tions shall also include any modification to a
15 lessee's approved plan or other document for
16 which a consistency certification would other-
17 wise be required under applicable Federal regu-
18 lations, including changes to its plan for decom-
19 missioning any facilities, resulting from or nec-
20 essary for the issuance of the offshore aqua-
21 culture permit, if information related to such
22 modifications or changes is received by the
23 coastal State at the time the coastal State re-
24 ceives the offshore aquaculture permit appli-
25 cant's consistency certification. If the informa-

1 tion related to such modifications or changes is
2 received by the coastal State at the time the
3 coastal State receives the offshore aquaculture
4 permit applicant's consistency certification, a
5 lessee is not required to submit a separate con-
6 sistency certification for any such modification
7 or change under section 307(c)(3)(B) of the
8 Coastal Zone Management Act (16 U.S.C.
9 1456(c)(3)(B)) and the coastal State's concur-
10 rence or objection, or presumed concurrence,
11 under section 307(c)(3)(A) of that Act (16
12 U.S.C. 1456(c)(3)(A)) in a consistency deter-
13 mination for the offshore aquaculture permit,
14 shall apply to both the offshore aquaculture
15 permit and to any related modifications or
16 changes to a lessee's plan approved under the
17 Outer Continental Shelf Lands Act.

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

1 ment of the Interior, shall be subject to coastal
2 State review pursuant to the requirements of
3 section 307(e)(3)(B) of the Coastal Zone Man-
4 agement Act (16 U.S.C. 1456(e)(3)(B)), if a
5 consistency certification for those modifications
6 or changes is required under applicable Federal
7 regulations.

8 (5) JOINT AND SEVERAL LIABILITY.—For off-
9 shore aquaculture located on facilities described in
10 paragraph (1), the aquaculture permit holder and all
11 parties that are or were lessees of the lease on which
12 the facilities are located during the term of the off-
13 shore aquaculture permit shall be jointly and sever-
14 ally liable for the removal of any construction or
15 modifications related to aquaculture operations if the
16 aquaculture permit holder fails to do so and bonds
17 established under this Act for aquaculture oper-
18 ations prove insufficient to cover those obligations.
19 This paragraph does not affect obligations to decom-
20 mission facilities under the Outer Continental Shelf
21 Lands Act.

22 (6) ADDITIONAL AUTHORITY.—For aquaculture
23 projects or operations described in paragraph (1),
24 the Secretary of the Interior may—

1 (A) promulgate such rules and regulations
2 as are necessary and appropriate to carry out
3 the provisions of this subsection;

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

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

21 (D) enforce all requirements contained in
22 such regulations, lease terms and conditions
23 and orders pursuant to the Outer Continental
24 Shelf Lands Act.

1 **SEC. 5. RESEARCH AND DEVELOPMENT.**

2 (a) IN GENERAL.—In consultation as appropriate
3 with other Federal agencies, the Secretary may establish
4 and conduct an integrated, multidisciplinary, scientific re-
5 search and development program to further marine aqua-
6 culture technologies that are compatible with the protec-
7 tion of marine ecosystems.

8 (b) PARTNERSHIPS.—The Secretary may conduct re-
9 search and development in partnership with offshore aqua-
10 culture permit holders.

11 (c) REDUCTION OF WILD FISH AS FOOD.—The Sec-
12 retary, in collaboration with the Secretary of Agriculture,
13 shall conduct research to reduce the use of wild fish in
14 aquaculture feeds, including the substitution of seafood
15 processing wastes, cultured marine algae, and microbial
16 sources of nutrients important for human health and nu-
17 trition, agricultural crops, and other products.

18 **SEC. 6. ADMINISTRATION.**

19 (a) IN GENERAL.—The Secretary shall promulgate
20 such regulations as are necessary and appropriate to carry
21 out the provisions of this Act. The Secretary may at any
22 time amend such regulations, and such regulations shall,
23 as of their effective date, apply to all operations conducted
24 pursuant to permits issued under this Act, regardless of
25 the date of the issuance of such permit.

1 (b) CONTRACT, ETC., AUTHORITY.—The Secretary
2 may enter into and perform such contracts, leases, grants,
3 or cooperative agreements as may be necessary to carry
4 out the purposes of this Act and on such terms as the
5 Administrator of the National Oceanic and Atmospheric
6 Administration deems appropriate.

7 (c) USE OF CONTRIBUTED GOVERNMENTAL RE-
8 SOURCES.—For purposes related to the enforcement of
9 this Act, the Secretary may use, with their consent and
10 with or without reimbursement, the land, services, equip-
11 ment, personnel, and facilities of any department, agency
12 or instrumentality of the United States, or of any State,
13 local government, Indian tribal government, Territory or
14 possession, or of any political subdivision thereof, or of
15 any foreign government or international organization.

16 (d) AUTHORITY TO UTILIZE GRANT FUNDS.—

17 (1) Except as provided in paragraph (2), the
18 Secretary may apply for, accept, and obligate re-
19 search grant funding from any Federal source oper-
20 ating competitive grant programs where such fund-
21 ing furthers the purpose of this Act.

22 (2) The Secretary may not apply for, accept, or
23 obligate any grant funding under paragraph (1) for
24 which the granting agency lacks authority to grant
25 funds to Federal agencies, or for any purpose or

1 subject to conditions that are prohibited by law or
2 regulation.

3 (3) Appropriated funds may be used to satisfy
4 a requirement to match grant funds with recipient
5 agency funds, except that no grant may be accepted
6 that requires a commitment in advance of appropria-
7 tions.

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

12 (e) RESERVATION OF AUTHORITY.—Nothing in this
13 Act shall be construed to displace, supersede, or limit the
14 jurisdiction, responsibilities, or rights of any Federal or
15 State agency, or Indian Tribe or Alaska Native organiza-
16 tion, under any Federal law or treaty.

17 (f) APPLICATION OF LAWS TO FACILITIES IN THE
18 EEZ.—The Constitution, laws, and treaties of the United
19 States shall apply to an offshore aquaculture facility lo-
20 cated in the Exclusive Economic Zone for which a permit
21 has been issued or is required under this Act and to activi-
22 ties in the Exclusive Economic Zone connected, associated,
23 or potentially interfering with the use or operation of such
24 facility, in the same manner as if such facility were an
25 area of exclusive Federal jurisdiction located within a

1 State. Nothing in this Act shall be construed to relieve,
2 exempt, or immunize any person from any other require-
3 ment imposed by an applicable Federal law, regulation,
4 or treaty. Nothing in this Act shall be construed to confer
5 citizenship to a person by birth or through naturalization
6 or to entitle a person to avail himself of any law pertaining
7 to immigration, naturalization, or nationality.

8 (g) APPLICATION OF CERTAIN STATE LAWS.—The
9 law of the nearest adjacent coastal State, now in effect
10 or hereafter adopted, amended, or repealed, is declared to
11 be the law of the United States, and shall apply to any
12 offshore aquaculture facility for which a permit has been
13 issued pursuant to this Act, to the extent applicable and
14 not inconsistent with any provision or regulation under
15 this Act or other Federal laws and regulations now in ef-
16 fect or hereafter adopted, amended, or repealed. All such
17 applicable laws shall be administered and enforced by the
18 appropriate officers and courts of the United States. For
19 purposes of this subsection, the nearest adjacent coastal
20 State shall be that State whose seaward boundaries, if ex-
21 tended beyond 3 nautical miles, would encompass the site
22 of the offshore aquaculture facility. State taxation laws
23 shall not apply to offshore aquaculture facilities in the Ex-
24 clusive Economic Zone.

1 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

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

6 **SEC. 8. UNLAWFUL ACTIVITIES.**

7 It is unlawful for any person—

8 (1) to falsify any information required to be re-
9 ported, communicated, or recorded pursuant to this
10 Act or any regulation or permit issued under this
11 Act, or to fail to submit in a timely fashion any re-
12 quired information, or to fail to report to the Sec-
13 retary immediately any change in circumstances that
14 has the effect of rendering any such information
15 false, incomplete, or misleading;

16 (2) to engage in offshore aquaculture within the
17 Exclusive Economic Zone of the United States or
18 operate an offshore aquaculture facility within the
19 Exclusive Economic Zone of the United States, ex-
20 cept pursuant to a valid permit issued under this
21 Act;

22 (3) to refuse to permit an authorized officer to
23 conduct any lawful search or lawful inspection in
24 connection with the enforcement of this Act or any
25 regulation or permit issued under this Act;

1 (4) to forcibly assault, resist, oppose, impede,
2 intimidate, or interfere with an authorized officer in
3 the conduct of any search or inspection in connec-
4 tion with the enforcement of this Act or any regula-
5 tion or permit issued under this Act;

6 (5) to resist a lawful arrest or detention for any
7 act prohibited by this section;

8 (6) to interfere with, delay, or prevent, by any
9 means, the apprehension, arrest, or detection of an-
10 other person, knowing that such person has com-
11 mitted any act prohibited by this section;

12 (7) to import, export, sell, receive, acquire or
13 purchase in interstate or foreign commerce any ma-
14 rine species in violation of this Act or any regulation
15 or permit issued under this Act;

16 (8) upon the expiration or termination of any
17 aquaculture permit for any reason, to fail to remove
18 all structures, gear, and other property from the
19 site, or take other measures, as prescribed by the
20 Secretary, to restore the site;

21 (9) to violate any provision of this Act, any reg-
22 ulation promulgated under this Act, or any term or
23 condition of any permit issued under this Act; or

24 (10) to attempt to commit any act described in
25 paragraph (1), (2), (7), (8) or (9).

1 **SEC. 9. ENFORCEMENT PROVISIONS.**

2 (a) DUTIES OF SECRETARIES.—Subject to subpara-
3 graphs (B) and (D) of section 4(e)(6), this Act shall be
4 enforced by the Secretary and the Secretary of the depart-
5 ment in which the Coast Guard is operating.

6 (b) POWERS OF ENFORCEMENT.—

7 (1) Any officer who is authorized pursuant to
8 subsection (a) of this section by the Secretary or the
9 Secretary of the department in which the Coast
10 Guard is operating to enforce the provisions of this
11 Act may—

12 (A) with or without a warrant or other
13 process—

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

18 (ii) search or inspect any offshore
19 aquaculture facility and any related land-
20 based facility;

21 (iii) seize any offshore aquaculture fa-
22 cility (together with its equipment, records,
23 furniture, appurtenances, stores, and
24 cargo), and any vessel or vehicle, used or
25 employed in aid of, or with respect to
26 which it reasonably appears that such off-

1 shore aquaculture facility was used or em-
2 ployed in aid of, the violation of any provi-
3 sion of this Act or any regulation or permit
4 issued under this Act;

5 (iv) seize any marine species (wher-
6 ever found) retained, in any manner, in
7 connection with or as a result of the com-
8 mission of any act prohibited by section 8
9 of this Act; and

10 (v) seize any evidence related to any
11 violation of any provision of this Act or
12 any regulation or permit issued under this
13 Act;

14 (B) execute any warrant or other process
15 issued by any court of competent jurisdiction;
16 and

17 (C) exercise any other lawful authority.

18 (2) Any officer who is authorized pursuant to
19 subsection (a) of this section by the Secretary or the
20 Secretary of the department in which the Coast
21 Guard is operating to enforce the provisions of this
22 Act may make an arrest without a warrant for (A)
23 an offense against the United States committed in
24 his presence, or (B) for a felony cognizable under
25 the laws of the United States, if he has reasonable

1 grounds to believe that the person to be arrested has
2 committed or is committing a felony. Any such au-
3 thorized person may execute and serve a subpoena,
4 arrest warrant or search warrant issued in accord-
5 ance with Rule 41 of the Federal Rules of Criminal
6 Procedure, or other warrant of civil or criminal proc-
7 ess issued by any officer or court of competent juris-
8 diction for enforcement of the Act, or any regulation
9 or permit issued under this Act.

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

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

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

20 (a) CIVIL ADMINISTRATIVE PENALTIES.—

21 (1) Any person who is found by the Secretary,
22 after notice and opportunity for a hearing in accord-
23 ance with section 554 of title 5, United States Code,
24 to have violated this Act, or a regulation or permit
25 issued under this Act, shall be liable to the United

1 States for a civil penalty. The amount of the civil
2 penalty under this paragraph shall not exceed
3 \$200,000 for each violation. Each day of a con-
4 tinuing violation shall constitute a separate violation.

5 (2) COMPROMISE OR OTHER ACTION BY THE
6 SECRETARY.—The Secretary may compromise, mod-
7 ify, or remit, with or without conditions, any civil
8 administrative penalty which is or may be imposed
9 under this section and that has not been referred to
10 the Attorney General for further enforcement action.

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

1 penalty, the district court may also consider information
2 related to the ability of the violator to pay.

3 (c) PERMIT SANCTIONS.—

4 (1) In any case in which—

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

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

13 (C) any amount in settlement of a civil for-
14 feiture imposed on an offshore aquaculture fa-
15 cility or other property, or any civil penalty or
16 criminal fine imposed under this Act or imposed
17 on any other person who has been issued or has
18 applied for a permit under any fishery resource
19 statute enforced by the Secretary, has not been
20 paid and is overdue, the Secretary may—

21 (i) revoke any permit issued with re-
22 spect to such offshore aquaculture facility
23 or applied for by such a person under this
24 Act, with or without prejudice to the
25 issuance of subsequent permits;

1 (ii) suspend such permit for a period
2 of time considered by the Secretary to be
3 appropriate;

4 (iii) deny such permit; or

5 (iv) impose additional conditions and
6 restrictions on such permit.

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

9 (A) the nature, circumstances, extent, and
10 gravity of the prohibited acts for which the
11 sanction is imposed; and

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

15 (3) Transfer of ownership of an offshore aqua-
16 culture facility, by sale or otherwise, shall not extin-
17 guish any permit sanction that is in effect or is
18 pending at the time of transfer of ownership. Before
19 executing the transfer of ownership of an offshore
20 aquaculture facility, by sale or otherwise, the owner
21 shall disclose in writing to the prospective transferee
22 the existence of any permit sanction that will be in
23 effect or pending with respect to the offshore aqua-
24 culture facility at the time of the transfer. The Sec-

1 retary may waive or compromise a sanction in the
2 case of a transfer pursuant to court order.

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

8 (5) No sanctions shall be imposed under this
9 subsection unless there has been prior opportunity
10 for a hearing on the facts underlying the violation
11 for which the sanction is imposed, either in conjunc-
12 tion with a civil penalty proceeding under this sec-
13 tion or otherwise.

14 (d) INJUNCTIVE RELIEF.—Upon the request of the
15 Secretary, the Attorney General of the United States may
16 commence a civil action for appropriate relief, including
17 a permanent or temporary injunction, for any violation of
18 any provision of this Act, or regulation or permit issued
19 under this Act.

20 (e) HEARING.—For the purposes of conducting any
21 investigation or hearing under this section or any other
22 statute administered by the National Oceanic and Atmos-
23 pheric Administration which is determined on the record
24 in accordance with the procedures provided for under sec-
25 tion 554 of title 5, United States Code, the Secretary may

1 issue subpoenas for the attendance and testimony of wit-
2 nesses and the production of relevant papers, books, and
3 documents, and may administer oaths. Witnesses sum-
4 moned shall be paid the same fees and mileage that are
5 paid to witnesses in the courts of the United States. In
6 case of contempt or refusal to obey a subpoena served
7 upon any person pursuant to this subsection, the district
8 court of the United States for any district in which such
9 person is found, resides, or transacts business, upon appli-
10 cation by the United States and after notice to such per-
11 son, shall have jurisdiction to issue an order requiring
12 such person to appear and give testimony before the Sec-
13 retary or to appear and produce documents before the Sec-
14 retary, or both, and any failure to obey such order of the
15 court may be punished by such court as a contempt there-
16 of. Nothing in this Act shall be construed to grant juris-
17 diction to a district court to entertain an application for
18 an order to enforce a subpoena issued by the Secretary
19 of Commerce to the Federal Government or any entity
20 thereof.

21 (f) JURISDICTION.—The United States district courts
22 shall have original jurisdiction of any action under this
23 section arising out of or in connection with the construc-
24 tion or operation of aquaculture facilities, and proceedings
25 with respect to any such action may be instituted in the

1 judicial district in which any defendant resides or may be
2 found, or in the judicial district of the adjacent coastal
3 State nearest the place where the cause of action arose.
4 For the purpose of this section, American Samoa shall be
5 included within the judicial district of the District Court
6 of the United States for the District of Hawaii. Each vio-
7 lation shall be a separate offense and the offense shall be
8 deemed to have been committed not only in the district
9 where the violation first occurred, but also in any other
10 district as authorized by law.

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

1 in an amount equal to 20 percent of the aggregate amount
2 of such persons penalties and nonpayment penalties which
3 are unpaid as of the beginning of such quarter.

4 (h) NATIONWIDE SERVICE OF PROCESS.—In any ac-
5 tion by the United States under this Act, process may be
6 served in any district where the defendant is found, re-
7 sides, transacts business or has appointed an agent for
8 the service of process, and for civil cases may also be
9 served in a place not within the United States in accord-
10 ance with Rule 4 of the Federal Rules of Civil Procedure.

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

12 (a) IN GENERAL.—Any person (other than a foreign
13 government or any entity of such government) who know-
14 ingly commits an act prohibited by subsection (c), (d), (e),
15 or (f) of section 8, shall be imprisoned for not more than
16 5 years or shall be fined not more than \$500,000 for indi-
17 viduals or \$1,000,000 for an organization, or both; except
18 that if in the commission of any such offense the indi-
19 vidual uses a dangerous weapon, engages in conduct that
20 causes bodily injury to any officer authorized to enforce
21 the provisions of this Act, or places any such officer in
22 fear of imminent bodily injury, the maximum term of im-
23 prisonment is not more than 10 years.

24 (b) OTHER OFFENSES.—Any person (other than a
25 foreign government or any entity of such government) who

1 knowingly violates any provision of section 8 other than
2 subsection (c), (d), (e) or (f), any provision of any regula-
3 tion promulgated pursuant to this Act, or any permit
4 issued under this Act, shall be imprisoned for not more
5 than 5 years, or shall be fined not more than \$500,000
6 for an individual or \$1,000,000 for an organization, or
7 both.

8 (c) JURISDICTION OF DISTRICT COURTS.—The
9 United States district courts shall have original jurisdic-
10 tion of any action arising under this section out of or in
11 connection with the construction or operation of aqua-
12 culture facilities, and proceedings with respect to any such
13 action may be instituted in the judicial district in which
14 any defendant resides or may be found. For the purpose
15 of this section, American Samoa shall be included within
16 the judicial district of the District Court of the United
17 States for the District of Hawaii. Each violation shall be
18 a separate offense and the offense shall be deemed to have
19 been committed not only in the district where the violation
20 first occurred, but also in any other district as authorized
21 under law.

22 **SEC. 12. FORFEITURES.**

23 (a) CRIMINAL FORFEITURE.—A person who is con-
24 victed of an offense under section 11 of this Act shall for-
25 feit to the United States—

1 (1) any property, real or personal, constituting
2 or traceable to the gross proceeds obtained, or re-
3 tained, as a result of the offense including, without
4 limitation, any marine species (or the fair market
5 value thereof) taken or retained in connection with
6 or as a result of the offense; and

7 (2) any property, real or personal, used or in-
8 tended to be used to commit or to facilitate the com-
9 mission of the offense, including, without limitation,
10 any offshore aquaculture facility or vessel, including
11 its structure, equipment, furniture, appurtenances,
12 stores, and cargo, and any vehicle or aircraft.

13 Pursuant to section 2461(c) of title 28, United States
14 Code, the provisions of section 413 of the Controlled Sub-
15 stances Act (21 U.S.C. 853), other than subsection (d),
16 shall apply to criminal forfeitures under this section.

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

20 (1) Any property, real or personal, constituting
21 or traceable to the gross proceeds obtained, or re-
22 tained, as a result of a violation of any provision of
23 section 8 or section 4(b)(2)(D) of this Act, includ-
24 ing, without limitation, any marine species (or the

1 fair market value thereof) taken or retained in con-
2 nection with or as a result of the violation.

3 (2) Any property, real or personal, used or in-
4 tended to be used to commit or to facilitate the com-
5 mission of any such violation, including, without lim-
6 itation, any offshore aquaculture facility or vessel,
7 including its structure, equipment, furniture, appur-
8 tenances, stores, and cargo, and any vehicle or air-
9 craft.

10 Civil forfeitures under this section shall be governed by
11 the procedures set forth in chapter 46 of title 18, United
12 States Code.

13 (c) REBUTTABLE PRESUMPTION.—In any criminal or
14 civil forfeiture proceeding under this section, there is a
15 rebuttable presumption that all marine species found with-
16 in an offshore aquaculture facility and seized in connection
17 with a violation of section 8 of this Act were taken or re-
18 tained in violation of this Act.

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

20 (a) SEVERABILITY.—If any provision of this chapter
21 or the application thereof to any person or circumstances
22 is held invalid, the validity of the remainder of this chapter
23 and of the application of such provision to other persons
24 and circumstances shall not be affected thereby.

25 (b) JUDICIAL REVIEW.—

1 (1) IN GENERAL.—Judicial review of any action
2 taken by the Secretary under this chapter shall be
3 in accordance with sections 701 through 706 of title
4 5, United States Code, except that—

5 (A) review of any final agency action of the
6 Secretary taken pursuant to subsection (a) or
7 (c) of section 11 may be had only by the filing
8 of a complaint by an interested person in the
9 United States District Court for the appro-
10 priate district; any such complaint must be filed
11 within 30 days of the date such final agency ac-
12 tion is taken; and

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

23 (2) LIMITATION OF JUDICIAL REVIEW.—Final
24 agency action with respect to which review could
25 have been obtained under paragraph (1)(B) of this

1 subsection shall not be subject to judicial review in
2 any civil or criminal proceeding for enforcement.

3 (3) AWARDS OF LITIGATION COSTS.—In any ju-
4 dicial proceeding under paragraph (1) of this sub-
5 section, the court may award costs of litigation (in-
6 cluding reasonable attorney and expert witness fees)
7 to any prevailing party whenever it determines that
8 such award is appropriate.

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