LEGISLATIVE MATTERS

The Legislative Committee (Committee) is scheduled to meet Monday, April 2 at 9:30 a.m. with a primary objective to review the *National Offshore Aquaculture Act of 2007*. The Committee will also review implementation of new provisions in the recently reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA).

On March 12, 2007, U.S. Commerce Secretary Carlos M. Gutierrez (Secretary) announced that the National Oceanic and Atmospheric Administration's *National Offshore Aquaculture Act of 2007* (Agenda Item C.6.a, Attachment 1) had been sent to Congress. The bill proposes a Federal regulatory framework for fish and shellfish aquaculture within the U.S. Exclusive Economic Zone (3-200 miles offshore). The Pacific Fishery Management Council (Council) and the Committee had reviewed previous versions of the bill as introduced in the 109th Congress and recommended provisions in the bill to allow coastal states to opt-out of offshore aquaculture and to strengthen environmental review requirements. Included in the current Administration bill are provisions which require the Secretary to establish environmental requirements for offshore aquaculture activities and to allow coastal states to opt-out of offshore aquaculture within 12 miles of their coastline. Committee comments on the *National Offshore Aquaculture Act of 2007* will be provided in a report to the Council under this agenda item on Friday, April 6.

The Committee will also review the issues and reference materials associated with implantation of new requirements of the MSA (Agenda Item C.2). Committee recommendations to the Council regarding Council participation and input during the process of developing new policies and procedures for compliance with the newly reauthorized MSA will be provided under Agenda Item C.2 on Tuesday, April 3.

The Council is tasked with considering its Legislative Committee recommendations on these and other legislative matters and responding, as appropriate.

**Council Action:**

Consider recommendations of the Legislative Committee.

**Reference Materials:**

Agenda Order:

a. Agenda Item Overview  
   Mike Burner
b. Legislative Committee Report  
   Dave Hanson
c. Reports and Comments of Advisory Bodies

d. Public Comment

e. **Council Action:** Consider Recommendations of the Legislative Committee

PFMC  
03/16/07
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.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That

1 SECTION 1. SHORT TITLE.

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

3 SEC. 2. FINDINGS.

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

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

6 (2) Encourage the development of environmentally responsible offshore aquaculture by authorizing offshore aquaculture operations and research;

7 (3) Establish a permitting process for offshore aquaculture that encourages private investment in aquaculture operations and research, provides opportunity for public comment, and addresses the potential risks to and impacts (including cumulative impacts) on marine ecosystems, human health and safety, other ocean uses, and coastal communities from offshore aquaculture;

8 (4) Promote, through public-private partnerships, research and development in marine aquaculture science, technology, and related social, economic, legal, and environmental management disciplines that will enable marine aquaculture operations to achieve operational objectives while protecting marine ecosystem quality.
(b) Offshore aquaculture activities within the Exclusive Economic Zone of the United States constitute activities with respect to which the United States has proclaimed sovereign rights and jurisdiction under Presidential Proclamation 5030 of March 10, 1983.

SEC. 3. DEFINITIONS.

As used in this Act –

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

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

(c) The term “Exclusive Economic Zone” means, unless otherwise specified by the President in the public interest in a writing published in the Federal Register, a zone, the outer boundary of which is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, except as established by a maritime boundary treaty in force, or being provisionally applied by the United States or, in the absence of such a treaty where the distance between the United States and another nation is less than 400 nautical miles, a line equidistant between the United States and the other nation. Without affecting any Presidential Proclamation with regard to the establishment of the United States territorial sea or Exclusive Economic Zone, the inner boundary of that zone is

(1) a line coterminous with the seaward boundary of each of the several coastal States, as defined in 43 U.S.C. § 1312;
(2) a line three marine leagues from the coastline of the Commonwealth of Puerto Rico;

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

(4) for the Commonwealth of the Northern Mariana Islands,

(A) its coastline, until such time as the Commonwealth of the Northern Mariana Islands is granted authority by the United States to regulate all fishing to a line seaward of its coastline, and

(B) upon the United States’ grant of such authority, the line established by such grant of authority; and

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

Nothing in this definition shall be construed as diminishing the authority of the Department of Defense, the Department of the Interior or any other federal department or agency.

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

(e) The term “marine species” means finfish, mollusks, crustaceans, marine algae, and all other forms of marine life, excluding marine mammals and birds.

(f) The term “offshore aquaculture” means all activities, including the operation of offshore aquaculture facilities, involved in the propagation and rearing, or attempted propagation and rearing, of marine species in the United States Exclusive Economic Zone.
(g) The term “offshore aquaculture facility” means: 1) an installation or structure used, in whole or in part, for offshore aquaculture; or 2) an area of the seabed or the subsoil used for offshore aquaculture of living organisms belonging to sedentary species.

(h) The term “offshore aquaculture permit” means an authorization issued under section 4(b) to raise specified marine species in a specific offshore aquaculture facility within a specified area of the Exclusive Economic Zone.

(i) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other non-governmental entity (whether or not organized or existing under the laws of any State), and State, local or tribal government or entity thereof, and, except as otherwise specified by the President in writing, the Federal Government or an entity thereof, and, to the extent specified by the President in writing, a foreign government or an entity thereof.

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

SEC. 4. OFFSHORE AQUACULTURE PERMITS.

(a) GENERAL

(1) The Secretary shall establish, through rulemaking, in consultation as appropriate with other relevant federal agencies, coastal States, and regional fishery management councils established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852), a process to make areas of the Exclusive Economic Zone available to eligible persons for the development and operation of offshore aquaculture facilities, which shall include:

(A) Procedures and criteria necessary to issue and modify permits under this Act;
(B) Procedures to coordinate the offshore aquaculture permitting process, and related siting, operations, environmental protection, monitoring, enforcement, research, and economic and social activities, with similar activities administered by other federal agencies and coastal States;

(C) Consideration of the potential environmental, social, economic, and cultural impacts of offshore aquaculture and inclusion, where appropriate, of permit conditions to address negative impacts;

(D) Public notice and opportunity for public comment prior to issuance of offshore aquaculture permits;

(E) Procedures to monitor and evaluate compliance with the provisions of offshore aquaculture permits, including the collection of biological, chemical and physical oceanographic data, and social, production, and economic data; and

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

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

(3) The Secretary shall periodically review the procedures and criteria for issuance of offshore aquaculture permits and modify them as appropriate, in consultation as appropriate with other federal agencies, the coastal States, and regional fishery management councils, based on the best available science.

(4) The Secretary shall consult as appropriate with other federal agencies and coastal States to identify the environmental requirements that apply to offshore aquaculture
under existing laws and regulations. The Secretary shall establish through rulemaking, in
consultation with appropriate federal agencies, coastal States, and regional fishery management
councils established under section 302 of the Magnuson-Stevens Fishery Conservation and
Management Act (16 U.S.C. § 1852), additional environmental requirements to address
environmental risks and impacts associated with offshore aquaculture, to the extent necessary.
The environmental requirements shall address, but are not limited to:

(A) risks to and impacts on natural fish stocks and fisheries, including
safeguards needed to conserve genetic resources, to prevent or minimize the transmission of
disease or parasites to wild stocks, and to prevent the escape of marine species that may cause
significant environmental harm;

(B) risks to and impacts on marine ecosystems; biological, chemical and
physical features of water quality and habitat; marine species, marine mammals and birds;
(C) cumulative effects of the aquaculture operation and other aquaculture
operations in the vicinity of the proposed site;

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

(E) requirements that marine species propagated and reared through
offshore aquaculture be species native to the geographic region unless a scientific risk analysis
shows that the risk of harm to the marine environment from the offshore culture of non-
indigenous or genetically modified marine species is negligible or can be effectively mitigated;

and

(F) maintaining record systems to track inventory and movement of fish or
other marine species in the offshore aquaculture facility or harvested from such facility, and, if
necessary, tagging, marking, or otherwise identifying fish or other marine species in the offshore
aquaculture facility or harvested from such facility.

(5) The Secretary, in cooperation with other federal agencies, shall:

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

(B) Monitor the effects of offshore aquaculture on marine ecosystems and
implement such measures as may be necessary to protect the environment. Measures may
include, but are not limited to, temporary or permanent relocation of offshore aquaculture sites, a
moratorium on additional sites within a prescribed area, and other appropriate measures as
determined by the Secretary.

(b) PERMITS – Subject to the provisions of subsection (e), the Secretary may issue
offshore aquaculture permits under such terms and conditions as the Secretary shall prescribe.
Permits issued under this Act authorize the permit holder to conduct offshore aquaculture
consistent with the provisions of this Act, regulations issued under this Act, any specific terms,
conditions and restrictions applied to the permit by the Secretary, and other applicable law.

(1) PROCEDURES FOR ISSUANCE OF PERMITS

(A) The applicant for an offshore aquaculture permit shall submit an
application to the Secretary specifying the proposed location and type of operation, the marine
species to be propagated or reared, or both, at the offshore aquaculture facility, and other design,
construction, and operational information, as specified by regulation.

(B) Within 120 days after determining that a permit application is
complete and has satisfied all applicable statutory and regulatory requirements, as specified by
regulation, the Secretary shall issue or deny the permit. If the Secretary is unable to issue or
deny a permit within this time period, the Secretary shall provide written notice to the applicant indicating the reasons for the delay and establishing a reasonable timeline for issuing or denying the permit.

(2) PERMIT CONDITIONS

(A) An offshore aquaculture permit holder must (i) be a resident of the United States, (ii) be a corporation, partnership or other entity organized and existing under the laws of a State or the United States, or (iii) if neither (i) or (ii) applies, to the extent required by the Secretary by regulation after coordination with the Secretary of State, waive any immunity, and consent to the jurisdiction of the United States and its courts, for matters arising in relation to such permit, and appoint and maintain agents within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such permit holder.

(B) Subject to the provisions of subsection (e), the Secretary shall establish the terms, conditions, and restrictions that apply to offshore aquaculture permits, and shall specify in the permits the duration, size, and location of the offshore aquaculture facility.

(C) Except for projects involving pilot-scale testing or farm-scale research on aquaculture science and technologies and offshore aquaculture permits requiring concurrence of the Secretary of the Interior under subsection 4(e)(1), the permit shall have a duration of 20 years, renewable thereafter at the discretion of the Secretary in up to 20-year increments. The duration of permits requiring concurrence of the Secretary of the Interior under subsection 4(e)(1) shall be developed in consultation as appropriate with the Secretary of the Interior, except that any such permit shall expire no later than the date that the lessee, or the lessee’s operator, submits to the Secretary of the Interior a final application for the
decommissioning and removal of an existing facility upon which an offshore aquaculture facility
is located.

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

(E) Failure to begin offshore aquaculture operations within a reasonable
period of time, or prolonged interruption of offshore aquaculture operations, may result in the
revocation of the permit.

(3) If the Secretary determines that issuance of a permit is not in the national
interest, the Secretary may decline to issue such a permit or may impose such conditions as
necessary to address such concerns.

(c) FEES AND OTHER PAYMENTS

(1) The Secretary is authorized to establish, through regulations, application fees
and annual permit fees. Such fees shall be deposited as offsetting collections in the Operations,
Research, and Facilities (ORF) account. Fees may be collected and made available only to the
extent provided in advance in appropriation Acts.

(2) The Secretary may reduce or waive applicable fees or other payments
established under this section for facilities used primarily for research.

(3) The Secretary shall require the permit holder to post a bond or other form of
financial guarantee, in an amount to be determined by the Secretary as sufficient to cover any
unpaid fees, the cost of removing an offshore aquaculture facility at the expiration or termination
of an offshore aquaculture permit, and other financial risks as identified by the Secretary.
(d) COMPATIBILITY WITH OTHER USES

(1) The Secretary shall consult as appropriate with other federal agencies, coastal States, and regional fishery management councils to ensure that offshore aquaculture for which a permit is issued under this section is compatible with the use of the Exclusive Economic Zone for navigation, fishing, resource protection, recreation, national defense (including military readiness), mineral exploration and development, and other activities.

(2) The Secretary shall not authorize permits for new offshore aquaculture facilities within 12 miles of the coastline of a coastal State if that coastal State has submitted a written notice to the Secretary that the coastal State opposes such activities. This provision will not apply to permit applications received by the Secretary prior to the date the notice is received from a coastal State. A coastal State that transmitted such notice to the Secretary under this paragraph may revoke that notice in writing at any time.

(3) Federal agencies implementing this Act, persons subject to this Act, and coastal States seeking to review permit applications under this Act shall comply with the applicable section of the Coastal Zone Management Act (i.e., 16 U.S.C. §§ 1456(c)(1), (c)(3)(A), (c)(3)(B) or (d)) and its corresponding federal regulations.

(4) Offshore aquaculture conducted in accordance with permits issued pursuant to this Act is excluded from the definition of “fishing” in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1802(15)). The Secretary shall ensure, to the extent practicable, that offshore aquaculture does not interfere with conservation and management measures promulgated under the Magnuson-Stevens Fishery Conservation and Management Act.
(5) The Secretary may promulgate regulations that the Secretary finds to be reasonable and necessary to protect offshore aquaculture facilities, and, where appropriate, shall request that the Secretary of the department in which the Coast Guard is operating establish navigational safety zones around such facilities. In addition, in the case of any offshore aquaculture facility described in section 4(e)(1), the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of the Interior before designating such a zone.

(6) After consultation with the Secretary, the Secretary of State, and the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating may designate a zone of appropriate size around and including any offshore aquaculture facility for the purpose of navigational safety. In such a zone, no installations, structures, or uses will be allowed that are incompatible with the operation of the offshore aquaculture facility. The Secretary of the department in which the Coast Guard is operating may define, by rulemaking, activities that are allowed within such a zone.

(7) (A) Subject to paragraph (B), if the Secretary, after consultation with federal agencies as appropriate and after affording the permit holder notice and an opportunity to be heard, determines that suspension, modification, or revocation of a permit is in the national interest, the Secretary may suspend, modify, or revoke such permit.

(B) If the Secretary determines that an emergency exists that poses a risk to the safety of humans, to the marine environment or marine species, or to the security of the United States and that requires suspension, modification, or revocation of a permit, the Secretary may suspend, modify, or revoke the permit for such time as the Secretary may determine necessary to meet the emergency. The Secretary shall afford the permit holder a prompt post-
suspension or post-modification opportunity to be heard regarding the suspension, modification,
or revocation.

(8) Permits issued under this Act do not supersede or substitute for any other
authorization required under applicable federal or State law or regulation.

(e) ACTIONS AFFECTING THE OUTER CONTINENTAL SHELF –

(1) The Secretary shall obtain the concurrence of the Secretary of the Interior on
permits for offshore aquaculture facilities located:

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

(B) within 1 mile of any other facility permitted or for which a plan has
been approved under the Outer Continental Shelf Lands Act.

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

(3) The Secretary of the Interior shall review and approve any agreement between
a lessee, designated operator, and owner of a facility subject to this subsection and a prospective
aquaculture operator to ensure that it is consistent with the federal lease terms, Department of the
Interior regulations, and the Secretary of the Interior’s role in the protection of the marine
environment, property, or human life or health. An agreement under this subsection shall be part
of the information reviewed pursuant to the Coastal Zone Management Act review process
described in subsection 4(e)(4) and shall not be subject to a separate Coastal Zone Management
Act review.
(4) Coordinated Coastal Zone Management Act review

(A) If the applicant for an offshore aquaculture facility that will utilize a facility subject to this subsection is required to submit to a coastal State a consistency certification for its aquaculture application under section 307(c)(3)(A) of the Coastal Zone Management Act (16 U.S.C. § 1456(c)(3)(A)), the coastal State’s review under the Coastal Zone Management Act and corresponding federal regulations shall also include any modification to a lessee’s approved plan or other document for which a consistency certification would otherwise be required under applicable federal regulations, including changes to its plan for decommissioning any facilities, resulting from or necessary for the issuance of the offshore aquaculture permit, provided that information related to such modifications or changes is received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant’s consistency certification. In this case, lessees are not required to submit a separate consistency certification for any such modification or change under section 307(c)(3)(B) of the Coastal Zone Management Act (16 U.S.C. § 1456(c)(3)(B)) and the coastal State’s concurrence or objection, or presumed concurrence, under section 307(c)(3)(A) of the Coastal Zone Management Act (16 U.S.C. § 1456(c)(3)(A)) in a consistency determination for the offshore aquaculture permit, shall apply to both the offshore aquaculture permit and to any related modifications or changes to a lessee’s plan approved under the Outer Continental Shelf Lands Act.

(B) If a coastal State is not authorized by section 307(c)(3)(A) of the Coastal Zone Management Act (16 U.S.C. § 1456(c)(3)(A)) and corresponding federal regulations to review an offshore aquaculture application submitted under this Act, then any modifications or changes to a lessee’s approved plan or other document requiring approval from
the Department of the Interior, shall be subject to coastal State review pursuant to the
requirements of section 307(c)(3)(B) of the Coastal Zone Management Act (16 U.S.C.
§ 1456(c)(3)(B)), if a consistency certification for those modifications or changes is required
under applicable federal regulations.

    (5) For offshore aquaculture located on facilities subject to this subsection, the
aquaculture permit holder and all parties that are or were lessees of the lease on which the
facilities are located during the term of the offshore aquaculture permit shall be jointly and
severally liable for the removal of any construction or modifications related to aquaculture
operations if the aquaculture permit holder fails to do so and bonds established under this Act for
aquaculture operations prove insufficient to cover those obligations. This subsection does not
affect obligations to decommission facilities under the Outer Continental Shelf Lands Act.

    (6) For aquaculture projects or operations subject to this subsection, the Secretary
of the Interior is authorized to:

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

        (B) Require and enforce such additional terms or conditions as the
Secretary of the Interior deems necessary to protect the marine environment, property, or human
life or health to ensure the compatibility of aquaculture operations with all activities for which
permits have been issued under the Outer Continental Shelf Lands Act;

        (C) Issue orders to the offshore aquaculture permit holder to take any
action the Secretary of the Interior deems necessary to ensure safe operations on the facility to
protect the marine environment, property, or human life or health. Failure to comply with the
Secretary of the Interior’s orders will be deemed to constitute a violation of the Outer Continental Shelf Lands Act; and

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

SEC. 5. RESEARCH AND DEVELOPMENT.

(a) In consultation as appropriate with other federal agencies, the Secretary may establish and conduct an integrated, multidisciplinary, scientific research and development program to further marine aquaculture technologies that are compatible with the protection of marine ecosystems.

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

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

SEC. 6. ADMINISTRATION.

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

(b) The Secretary shall have the authority to enter into and perform such contracts, leases, grants, or cooperative agreements as may be necessary to carry out the purposes of this Act and
on such terms as the Administrator of the National Oceanic and Atmospheric Administration

deems appropriate.

(c) For purposes related to the enforcement of this Act, the Secretary is authorized to use,

with their consent and with or without reimbursement, the land, services, equipment, personnel,

and facilities of any department, agency or instrumentality of the United States, or of any state,

local government, Indian tribal government, Territory or possession, or of any political

subdivision thereof, or of any foreign government or international organization.

(d) Authority to Utilize Grant Funds

(1) Except as provided in paragraph (2), the Secretary is authorized to apply for,

accept, and obligate research grant funding from any federal source operating competitive grant

programs where such funding furthers the purpose of this Act.

(2) The Secretary may not apply for, accept, or obligate any grant funding under

paragraph (1) for which the granting agency lacks authority to grant funds to federal agencies, or

for any purpose or subject to conditions that are prohibited by law or regulation.

(3) Appropriated funds may be used to satisfy a requirement to match grant funds

with recipient agency funds, except that no grant may be accepted that requires a commitment in

advance of appropriations.

(4) Funds received from grants shall be deposited in the National Oceanic and

Atmospheric Administration account that serves to accomplish the purpose for which the grant

was awarded.

(e) Nothing in this Act shall be construed to displace, supersede, or limit the jurisdiction,

responsibilities or rights of any federal or State agency, or Indian Tribe or Alaska Native

organization, under any federal law or treaty.
(f) The Constitution, laws, and treaties of the United States shall apply to an offshore aquaculture facility located in the Exclusive Economic Zone for which a permit has been issued or is required under this Act and to activities in the Exclusive Economic Zone connected, associated, or potentially interfering with the use or operation of such facility, in the same manner as if such facility were an area of exclusive federal jurisdiction located within a State.

Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by an applicable federal law, regulation, or treaty. Nothing in this Act shall be construed to confer citizenship to a person by birth or through naturalization or to entitle a person to avail himself of any law pertaining to immigration, naturalization, or nationality.

(g) The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any offshore aquaculture facility for which a permit has been issued pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 nautical miles, would encompass the site of the offshore aquaculture facility. State taxation laws shall not apply to offshore aquaculture facilities in the Exclusive Economic Zone.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary $4,052,000 in fiscal year 2008 and thereafter such sums as may be necessary for purposes of carrying out the provisions of this Act.
SEC. 8. UNLAWFUL ACTIVITIES.

It is unlawful for any person -

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

(b) to engage in offshore aquaculture within the Exclusive Economic Zone of the United States or operate an offshore aquaculture facility within the Exclusive Economic Zone of the United States, except pursuant to a valid permit issued under this Act;

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

(d) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an authorized officer in the conduct of any search or inspection in connection with the enforcement of this Act or any regulation or permit issued under this Act;

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

(f) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section;

(g) to import, export, sell, receive, acquire or purchase in interstate or foreign commerce any marine species in violation of this Act or any regulation or permit issued under this Act;
(h) upon the expiration or termination of any aquaculture permit for any reason, fail to
remove all structures, gear, and other property from the site, or take other measures, as
prescribed by the Secretary, to restore the site;

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

(j) to attempt to commit any act described in subsections (a), (b), (g), (h) or (i).

SEC. 9. ENFORCEMENT PROVISIONS.

(a) DUTIES OF SECRETARIES – Subject to sections 4(e)(6)(B) and (D), this Act shall
be enforced by the Secretary and the Secretary of the department in which the Coast Guard is
operating.

(b) POWERS OF ENFORCEMENT

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

(A) with or without a warrant or other process -

(i) arrest any person, if the officer has reasonable cause to believe

that such person has committed or is committing an act prohibited by section 8 of this Act;

(ii) search or inspect any offshore aquaculture facility and any

related land-based facility;

(iii) seize any offshore aquaculture facility (together with its
equipment, records, furniture, appurtenances, stores, and cargo), and any vessel or vehicle, used
or employed in aid of, or with respect to which it reasonably appears that such offshore
aquaculture facility was used or employed in aid of; the violation of any provision of this Act or any regulation or permit issued under this Act;

(iv) seize any marine species (wherever found) retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 8 of this Act;

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

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

(C) exercise any other lawful authority.

(2) Any officer who is authorized pursuant to subsection (a) of this section by the Secretary or the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this Act may make an arrest without a warrant for (i) an offense against the United States committed in his presence, or (ii) for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. Any such authorized person may execute and serve a subpoena, arrest warrant or search warrant issued in accordance with Rule 41 of the Federal Rules of Criminal Procedure, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of the Act, or any regulation or permit issued under this Act.

c) ISSUANCE OF CITATIONS – If any authorized officer finds that a person is engaging in or has engaged in offshore aquaculture in violation of any provision of this Act, such officer may issue a citation to that person.
(d) LIABILITY FOR COSTS – Any person who violates this Act, or a regulation or permit issued under this Act, shall be liable for the cost incurred in storage, care, and maintenance of any marine species or other property seized in connection with the violation.

SEC. 10. CIVIL ENFORCEMENT AND PERMIT SANCTIONS.

(a) CIVIL ADMINISTRATIVE PENALTIES

(1) Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of Title 5, United States Code, to have violated this Act, or a regulation or permit issued under this Act, shall be liable to the United States for a civil penalty. The amount of the civil penalty under this paragraph shall not exceed $200,000 for each violation. Each day of a continuing violation shall constitute a separate violation.

(2) Compromise or Other Action by the Secretary -- The Secretary may compromise, modify, or remit, with or without conditions, any civil administrative penalty which is or may be imposed under this section and that has not been referred to the Attorney General for further enforcement action.

(b) CIVIL JUDICIAL PENALTIES – Any person who violates any provision of this Act, or any regulation or permit issued thereunder, shall be subject to a civil penalty not to exceed $250,000 for each such violation. Each day of a continuing violation shall constitute a separate violation. The Attorney General, upon the request of the Secretary, may commence a civil action in an appropriate district court of the United States, and such court shall have jurisdiction to award civil penalties and such other relief as justice may require. In determining the amount of a civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations and such other matters as justice may require. In imposing such
penalty, the district court may also consider information related to the ability of the violator to pay.

(c) PERMIT SANCTIONS

(1) In any case in which -

(A) an offshore aquaculture facility has been used in the commission of an act prohibited under section 8 of this Act;

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

(C) any amount in settlement of a civil forfeiture imposed on an offshore aquaculture facility or other property, or any civil penalty or criminal fine imposed under this Act or imposed on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue, the Secretary may -

(i) revoke any permit issued with respect to such offshore aquaculture facility or applied for by such a person under this Act, with or without prejudice to the issuance of subsequent permits;

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

(iii) deny such permit; or

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

(2) In imposing a sanction under this subsection, the Secretary shall take into account -
(A) the nature, circumstances, extent, and gravity of the prohibited acts for
which the sanction is imposed; and
(B) with respect to the violator, the degree of culpability, any history of
prior violations, and such other matters as justice may require.

(3) Transfer of ownership of an offshore aquaculture facility, by sale or otherwise,
shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of
ownership. Before executing the transfer of ownership of an offshore aquaculture facility, by
sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence
of any permit sanction that will be in effect or pending with respect to the offshore aquaculture
facility at the time of the transfer. The Secretary may waive or compromise a sanction in the
case of a transfer pursuant to court order.

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

(5) No sanctions shall be imposed under this subsection unless there has been
prior opportunity for a hearing on the facts underlying the violation for which the sanction is
imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

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

(e) HEARING – For the purposes of conducting any investigation or hearing under this
section or any other statute administered by the National Oceanic and Atmospheric
Administration which is determined on the record in accordance with the procedures provided for under section 554 of Title 5, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. Nothing in this Act shall be construed to grant jurisdiction to a district court to entertain an application for an order to enforce a subpoena issued by the Secretary of Commerce to the Federal Government or any entity thereof.

(f) JURISDICTION – The United States district courts shall have original jurisdiction of any action under this section arising out of or in connection with the construction or operation of aquaculture facilities, and proceedings with respect to any such action may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent coastal State nearest the place where the cause of action arose. For the purpose of this section, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law.
(g) COLLECTION – If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the matter may be referred to the Attorney General, who may recover the amount (plus interest at currently prevailing rates from the date of the final order). In such action the validity, amount and appropriateness of the final order imposing the civil penalty shall not be subject to review. Any person who fails to pay, on a timely basis, the amount of an assessment of a civil penalty shall be required to pay, in addition to such amount and interest, attorney’s fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person’s penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(h) NATIONWIDE SERVICE OF PROCESS – In any action by the United States under this title, process may be served in any district where the defendant is found, resides, transacts business or has appointed an agent for the service of process, and for civil cases may also be served in a place not within the United States in accordance with Rule 4 of the Federal Rules of Civil Procedure.

SEC. 11. CRIMINAL OFFENSES.

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

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

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

SEC. 12. FORFEITURES

(a) CRIMINAL FORFEITURE – A person who is convicted of an offense in violation of
section 11 of this Act shall forfeit to the United States –

(1) any property, real or personal, constituting or traceable to the gross proceeds
obtained, or retained, as a result of the offense including, without limitation, any marine species
(or the fair market value thereof) taken or retained in connection with or as a result of the
offense; and
(2) any property, real or personal, used or intended to be used to commit or to facilitate the commission of the offense, including, without limitation, any offshore aquaculture facility or vessel, including its structure, equipment, furniture, appurtenances, stores, and cargo, and any vehicle or aircraft.

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

(b) CIVIL FORFEITURE – The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) any property, real or personal, constituting or traceable to the gross proceeds obtained, or retained, as a result of a violation of any provision of section 8 or subsection 4(b)(2)(D) of this Act, including, without limitation, any marine species (or the fair market value thereof) taken or retained in connection with or as a result of the violation; and

(2) any property, real or personal, used or intended to be used to commit or to facilitate the commission of any such violation, including, without limitation, any offshore aquaculture facility or vessel, including its structure, equipment, furniture, appurtenances, stores, and cargo, and any vehicle or aircraft.

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

(c) REBUTTABLE PRESUMPTION – In any criminal or civil forfeiture proceeding under this section, there is a rebuttable presumption that all marine species found within an offshore aquaculture facility and seized in connection with a violation of section 8 of this Act were taken or retained in violation of this Act.
SEC. 13  SEVERABILITY AND JUDICIAL REVIEW.

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

(b) JUDICIAL REVIEW –

(1) IN GENERAL – Judicial review of any action taken by the Secretary under this chapter shall be in accordance with sections 701 through 706 of Title 5, except that –

(A) review of any final agency action of the Secretary taken pursuant to section 11(a) or (c) of this title may be had only by the filing of a complaint by an interested person in the United States District Court for the appropriate district; any such complaint must be filed within 30 days of the date such final agency action is taken; and

(B) review of all other final agency actions of the Secretary under this chapter may be had only by the filing of a petition for review by an interested person in the Circuit Court of Appeals of the United States for the federal judicial district in which such person resides or transacts business which is directly affected by the action taken; such petition shall be filed within 120 days from the date such final action is taken.

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

(3) AWARDS OF LITIGATION COSTS – In any judicial proceeding under paragraph (1) of this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing party whenever it determines that such award is appropriate.
SECTION-BY-SECTION ANALYSIS

National Offshore Aquaculture Act of 2007

BACKGROUND
An earlier version of this bill, the National Offshore Aquaculture Act of 2005, was transmitted to the 109th Congress as part of the Administration's U.S. Ocean Action Plan. The bill was introduced by Senators Ted Stevens and Daniel K. Inouye in June 2005 as S. 1195, and the Ocean Policy Study Subcommittee of the Senate Committee on Commerce, Science and Transportation held two hearings on the bill in 2006. Although the 109th Congress did not complete action on S. 1195, national offshore aquaculture legislation remains a high priority for the Administration.

The National Offshore Aquaculture Act of 2007, a revised version of S. 1195:
• Strengthens the environmental provisions
• Clarifies the role for fishery management councils and coastal States
• Substitutes a single offshore aquaculture permit for separate site and operating permits
• Extends the duration of offshore aquaculture permits to 20 years rather than 10 years.

SUMMARY
The overall purpose of this Act is to provide the necessary authorities to the Secretary of Commerce to establish and implement a regulatory system for offshore aquaculture in the U.S. Exclusive Economic Zone (EEZ). Specifically, the Act:
• Authorizes the Secretary of Commerce to issue offshore aquaculture permits
• Requires the Secretary to establish environmental requirements
• Excludes permitted offshore aquaculture from the definition of “fishing” under the Magnuson-Stevens Fishery Conservation and Management Act
• Authorizes the establishment of a research and development program in support of marine aquaculture
• Requires the Secretary of Commerce to work with other federal agencies to develop and implement a coordinated permitting process for aquaculture in the EEZ
• Authorizes appropriations of $4,052,000 in fiscal year 2008 and thereafter for “such sums as may be necessary” to carry out this Act
• Provides for enforcement of the Act.

While the Act provides the Secretary of Commerce with the authority to permit and oversee offshore aquaculture, it also preserves the existing authorities of other federal agencies, States, Indian tribes and Alaska Native organizations, and requires concurrence from the Secretary of the Interior for aquaculture located on leases, right-of-use or easements, or rights of way authorized or permitted under the Outer Continental Shelf Lands Act (OCSLA), or within 1 mile of any facility permitted or for which a plan has been approved under OCSLA.
Implementation of this Act will provide the foundation for the development of an offshore aquaculture industry in the United States:

- It provides for the establishment of an efficient regulatory process.
- It provides for a research program specifically dedicated to the development of environmentally responsible marine aquaculture technologies.

SECTION 1. SHORT TITLE.
Section 1 designates this Act as the “National Offshore Aquaculture Act of 2007.”

SECTION 2. FINDINGS.
Section 2(a) proclaims that it is the policy of the United States to support an offshore aquaculture industry compatible with marine ecosystems and other uses of the EEZ, encourage the development of responsible marine aquaculture in the EEZ, establish a permitting process for aquaculture in the EEZ that provides opportunity for public comment and addresses potential risks and impacts, and promote research and development in marine aquaculture. Section 2(b) states that offshore aquaculture is an activity with respect to which the United States proclaimed sovereign rights and jurisdiction under Presidential Proclamation 5030 of March 10, 1983.

The National Aquaculture Act of 1980 declared aquaculture development to be in the national interest, and required federal agencies to address barriers to such development. Both the Department of Commerce (in 1999) and, within the Department, the National Oceanic and Atmospheric Administration (NOAA) (in 1998) have endorsed aquaculture policies in support of the National Aquaculture Act, but additional statutory authority is needed to establish an enabling regulatory environment for aquaculture in the EEZ. This Act would authorize the Secretary of Commerce to establish and implement a permitting system, in consultation with other federal agencies, coastal States, and fishery management councils, to create such an environment. Transmittal of this legislation to Congress continues the Administration’s commitment in the U.S. Ocean Action Plan and responds to the recommendations of the U.S. Commission on Ocean Policy.

SECTION 3. DEFINITIONS.
Section 3 defines key terms used in the Act. “Exclusive Economic Zone” is the area extending from the seaward boundary of states and territories out to 200 nautical miles from the baseline. The geographic extent of this area is consistent with the Exclusive Economic Zone as defined under the Administration’s 2005 bill to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act. “Offshore aquaculture” means all activities involved in the propagation and rearing (or attempted propagation and rearing) of marine species in the EEZ (i.e., beyond State or Territory jurisdiction). “Secretary” means the Secretary of Commerce.

Other terms defined include “coastal State”, “coastline”, “lessee”, “marine species”, “offshore aquaculture facility”, “offshore aquaculture permit”, and “person”. “Offshore aquaculture facility” includes areas of the sea-bed or subsoil used for growing sedentary species, in addition to installations and structures located in the water column or on the surface. “Marine species” excludes birds and mammals. “Person” includes non-U.S. individuals and corporations. “Coastal State” includes U.S. Territories and possessions.
SECTION 4. OFFSHORE AQUACULTURE PERMITS.
This section provides the basis for a new federal regulatory system for offshore aquaculture:

- Section 4(a) requires the Secretary of Commerce to establish a process to allow use of the EEZ for offshore aquaculture and specifies certain elements that need to be addressed in that process, including environmental impacts.
- Section 4(b) authorizes the Secretary to issue offshore aquaculture permits and provides details on permit applications, terms and conditions, etc.
- Section 4(c) authorizes the Secretary of Commerce to collect and use fees and requires the posting of bonds or other financial guarantees.
- Section 4(d) includes provisions to ensure compatibility of offshore aquaculture with other uses, and includes roles for coastal States and fishery management councils.
- Section 4(e) requires concurrence by the Secretary of the Interior with respect to offshore aquaculture located on or near facilities managed by the Department of the Interior under the Outer Continental Shelf Lands Act and authorizes the Secretary of the Interior to impose requirements and issue and enforce regulations for these facilities.

This section outlines the specific authorities granted to the Secretary of Commerce and to the Secretary of the Interior, and establishes specific requirements that must be met in implementing this new regulatory system. Many of the details of this system will be developed through rulemaking following enactment of this legislation. The rulemaking process, which will include stakeholder input, will provide a more appropriate forum for such fine-tuning adjustments than can be accommodated in legislation. The statutory language provides sufficient authority and flexibility to address the full range of anticipated issues through the rulemaking process, and also makes plain that permits issued under the Act do not supersede or substitute for any other required authorizations under other applicable federal or State law.

Coordination with other federal agencies, coastal States, and fishery management councils is an important element of the regulatory system established in this Act. Specific agencies are not listed so as to not inadvertently preclude coordination with an agency not listed, and to avoid the need to amend this Act in response to future reorganizations or new or amended statutes governing other agencies. One exception is the inclusion of specific provisions, in section 4(e), relating to the Secretary of the Interior's responsibilities under the OCSLA. These provisions are necessary to clarify the role of the Secretary of the Interior with respect to any offshore aquaculture occurring on or near facilities permitted under the OCSLA.

The Act establishes specific offshore aquaculture permitting authority for the Department of Commerce and makes the Secretary of Commerce responsible for coordinating offshore aquaculture permitting activities. This will not preempt the authority of other federal agencies.

Section 4(a) – General.
Section 4(a) provisions apply to the overall permitting system authorized in the Act.

Overall process – Section 4(a)(1) requires that the Secretary of Commerce develop, through rulemaking, in consultation with other federal agencies, coastal States, and fishery management councils, the process for making areas of the EEZ available for development and operation of offshore aquaculture. The process must include necessary procedures and criteria for issuing and
modifying permits, coordinating the permitting process with other federal agencies and coastal States, facilitating the monitoring and evaluation of compliance with permits (including the collection of biological, chemical, and physical oceanographic data as well as social, production, and economic data), and transferring permits from the original permit holder to another person meeting the eligibility requirements and able to satisfy the requirements for bonds or other guarantees. The process must also consider the impacts of offshore aquaculture and appropriate conditions to address negative impacts.

These provisions require that the permit process include opportunities for the public to comment prior to the issuance of offshore aquaculture permits under this Act.

Section 4(a)(2) requires the Secretary to prepare an analysis under the National Environmental Policy Act (NEPA) with respect to the process for issuing offshore aquaculture permits. NOAA applies NEPA in the EEZ as a matter of policy (NOAA Administrative Order 216-6).

Periodic Review of Procedures and Criteria — Section 4(a)(3) requires the Secretary to periodically review and modify the procedures and criteria for issuing offshore aquaculture permits, as appropriate. This must be done in consultation with other federal agencies, coastal States, and fishery management councils, and must be based on the best available science.

Environmental Requirements — Section 4(a)(4) provides for the establishment of environmental requirements. These provisions are important not only to environmental nongovernmental organizations (NGOs) and other stakeholders concerned about the potential negative impacts of offshore aquaculture, but also to the aquaculture industry, since these requirements will establish expectations for the offshore aquaculture operations and provide a scientific basis for measuring compliance.

Section 4(a)(4) requires the Secretary to consult as appropriate with other federal agencies and coastal States to identify environmental requirements that apply to offshore aquaculture under existing laws. Multiple federal agencies have regulatory authority over aspects of offshore aquaculture operations in the EEZ, and their roles and the extent of their authorities will need to be clarified as part of the implementation of this Act. The U.S. Army Corps of Engineers (Corps) has been the de facto lead federal permitting agency for aquaculture in state waters by virtue of its authority under the Rivers and Harbors Act of 1899 to require a section 10 permit certifying that any structures will not interfere with navigation. District Corps offices have coordinated interagency reviews and prepared environmental assessments, with NOAA, the Environmental Protection Agency (EPA), and other federal agency participation.

After the existing environmental requirements that apply to offshore aquaculture are documented, the Secretary of Commerce is required to consult with appropriate federal agencies, coastal States and regional fishery management councils and establish through rulemaking additional environmental requirements to address environmental risks and impacts associated with offshore aquaculture, to the extent necessary. The environmental requirements must address risks to and impacts on natural fish stocks and marine ecosystems; cumulative effects; environmental monitoring, data archiving, and reporting by permit holders; risk-based
restrictions on species raised in offshore aquaculture; and mechanisms for tracking inventory and movement of fish or other marine species in offshore aquaculture facilities.

This provision preserves the roles and responsibilities of other federal agencies in establishing environmental requirements under current law while requiring the Secretary of Commerce to impose additional requirements specifically relating to offshore aquaculture activities for which permits are issued under this Act. The intent is to avoid duplicative and conflicting requirements, allow the Secretary to fill in any gaps or deficiencies in such environmental requirements, and facilitate the identification of all requirements that apply to an offshore aquaculture operation regardless of which Federal agency has primary responsibility. Environmental considerations such as use of pesticides and drugs are not addressed in this Act because other agencies (EPA, and the Food and Drug Administration) have primary responsibilities for such concerns.

**Siting, Monitoring, and Evaluation** – Section 4(a)(5) requires the Secretary to collect information to evaluate the suitability of sites for offshore aquaculture. The Secretary also must monitor the effects of aquaculture on marine ecosystems, and implement measures to protect the environment. Measures may include the temporary or permanent relocation of offshore aquaculture sites or a moratorium on additional sites within an area. The intent of this provision is to ensure monitoring of the cumulative impacts of all offshore aquaculture as well as the impacts of individual operations in the EEZ according to a common set of monitoring and evaluation protocols.

**Section 4(b) – Permits.**
Section 4(b) authorizes the Secretary of Commerce to issue offshore aquaculture permits to eligible persons. This section also clarifies that these permits do not supersede or substitute for any other authorization required under applicable federal or State law or regulation.

**Procedures for issuance of permits** – Section 4(b)(1) sets the requirements relating to the submission of an application and Secretary of Commerce decisions on permit applications.

- **Applications** – Section 4(b)(1)(A) identifies information to be provided by a permit applicant, including the proposed location and type of operation and the marine species to be propagated or reared, or both. Requirements for the submission of design, construction, and operational information will be specified in the rulemaking process.

- **Timely Decisions** – To ensure timely decisions, Section 4(b)(1)(B) requires the Secretary of Commerce to issue or deny each permit application within 120 days after determining that a permit application is complete and has satisfied all applicable statutory and regulatory requirements, as specified by regulation. This provision is needed to ensure that permits are issued within a reasonable time. A prolonged application process is one of the chief criticisms of the current regulatory system for offshore aquaculture. The 120-day requirement will not jeopardize the ability of NOAA or other agencies to satisfy environmental and other review requirements, since the 120-day period would not begin until these requirements have been satisfied. In the event that the 120-day requirement cannot be met, the Secretary is required to provide written notice to the applicant.
indicating the reasons for the delay and a reasonable timeline for issuing or denying a permit.

**Permit Conditions** – Section 4(b)(2) sets the requirements for the permits themselves.

- **Eligibility for permits** – Section 4(b)(2)(A) specifies that offshore aquaculture permit holders must be residents of the United States (regardless of citizenship), or corporations, partnerships, or other entities that are organized and exist under the laws of a State or the United States. Others may receive permits if they waive immunity, consent to jurisdiction of the United States, and appoint and maintain agents within the United States who are authorized to receive and respond to any legal process issued in the United States.

- **Terms and Conditions** – Section 4(b)(2)(B) requires the Secretary to specify the duration, size, and location of the offshore aquaculture facility in the permit, and gives the Secretary broad latitude to establish specific terms, conditions, and restrictions that apply to a permit. The Secretary’s authority to include special conditions on individual permits ensures the ability of the Secretary to address potential negative impacts that are specific to particular aquaculture sites or operations.

- **Duration of permits** – Section 4(b)(2)(C) specifies that offshore aquaculture permits have a duration of 20 years, and are renewable at the Secretary’s discretion in up to 20-year increments. This provision is important to offshore aquaculture businesses, which require reasonable assurance of being able to occupy a particular site long enough to return a profit. It is also important to have a sufficiently long permit duration to satisfy financial institutions considering making loans to the aquaculture business. Many coastal States provide such security of tenure for aquaculture in State waters by offering leases.

Two exceptions to the 20-year permit duration are projects involving pilot-scale testing or farm-scale research on aquaculture science and technologies, and offshore aquaculture located on leases, right-of-use and easements or rights-of-way authorized or permitted by the Department of the Interior under the OCSLA. In the latter case, the duration of the permit will be developed in consultation with the Secretary of the Interior. For aquaculture located on platforms or other facilities permitted under the OCSLA, the permit cannot extend beyond the date on which a lessee, or the lessee’s operator, submits a final application to the Department of the Interior for decommissioning and removal of the facility upon which the offshore aquaculture facility is located. The OCSLA requires removal of all facilities once production ceases, and it is not anticipated that the aquaculture industry would assume liability for removing platforms, given the large costs associated with such an endeavor.

- **Expiration or termination of permit** – Section 4(b)(2)(D) requires the permit holders remove all structures, gear, and property from the site when a permit expires or is terminated. The Secretary may also require the permit holder to take other measures to restore the site.
• **Requirement to use permit** – Section 4(b)(2)(E) authorizes the Secretary of Commerce to revoke an offshore aquaculture permit if a permit holder fails to begin offshore aquaculture operations within a reasonable time, or if there is a prolonged interruption in offshore aquaculture activities under the permit. This provision is intended to prevent a speculative market for offshore aquaculture permits, by allowing the Secretary to revoke the permit of anyone who does not engage in offshore aquaculture at the approved site. It would also make previously approved sites available for other potential offshore aquaculture facilities.

**National interest provision** – Section 4(b)(3) gives the Secretary authority to decline to issue a permit, or to impose conditions on a permit, upon a determination that it is not in the national interest.

**Section 4(c) - Fees and Other Payments.**

*Fees* – Section 4(c)(1) authorizes the Secretary to establish application and annual permit fees and requires that fees be deposited in a NOAA appropriation account.

*Right to waive fees* – Section 4(c)(2) allows the Secretary to waive fees for research facilities. The fee structure may discourage innovative aquaculture operations or investments in research and development that are in the national interest.

*Bonds* – Section 4(c)(3) requires the applicant to post a bond or other form of financial guarantee in a sufficient amount to be determined by the Secretary to cover unpaid fees, the cost of removing a facility, and any other financial risks identified by the Secretary. This requirement reduces the financial risk to the Government of allowing aquaculture development in the EEZ, and provides a vehicle by which the Secretary can set bond requirements commensurate with the risk associated with specific aquaculture operations.

**Section 4(d) – Compatibility with Other Uses.**

This section provides mechanisms to ensure that the development of offshore aquaculture is compatible with other uses of ocean resources.

*Consultations* – Section 4(d)(1) requires the Secretary to consult with other federal agencies, coastal States, and fishery management councils to ensure compatibility with other uses of the EEZ – specifically, navigation, fishing, resource protection, recreation, national defense (including military readiness), and mineral exploration and development.

*State right to object* – Section 4(d)(2) allows coastal States to object to new offshore aquaculture development within 12 miles of their coastlines. The Secretary may not issue any new offshore aquaculture permits within 12 miles of any coastal State that objects by submitting a written notice; however, the coastal State's objection would not apply if permit applications received by the Secretary prior to the receipt of an objection. A coastal State could revoke its objection to offshore aquaculture at any time by submitting such revocation to the Secretary.
Whether or not a coastal State elects to opt out using this provision, a coastal State would also be able to object to the issuance or renewal of a permit through the consistency certification requirements of the Coastal Zone Management Act.

**Coastal Zone Management Act consistency** – Section 4(d)(3) requires compliance with applicable sections of the Coastal Zone Management Act, which requires federal activities, and any applicant for a required federal license or permit to conduct an activity, that affect any land or water use or natural resource of the coastal zone be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State coastal management programs.

**Exclusion from definition of “fishing” under the Magnuson-Stevens Act**– NOAA has for the past decade understood aquaculture to constitute “fishing” for both domestic and international law purposes. Section 4(d)(4) specifically excludes aquaculture conducted in the EEZ from the definition of “fishing” under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This is a very important provision for the offshore aquaculture industry, as MSA provisions that restrict the size, season, harvesting methods, and other aspects relating to the possession of species managed under fishery management plans would make everyday aspects of aquaculture operations illegal. Other provisions of MSA still would apply to aquaculture, such as taking of broodstock or juveniles from the wild. Also, to safeguard wild fisheries, the Secretary is required to ensure, to the extent practicable, that offshore aquaculture does not interfere with MSA conservation and management measures for wild stocks. In addition, Section 4(a)(4) requires the Secretary to consult with fishery management councils in establishing environmental requirements, including the establishment of mechanisms for tracking inventory and movement of fish or other marine species in offshore aquaculture facilities.

**Protection of offshore aquaculture facilities** – Sections 4(d)(5) authorizes the Secretary to promulgate regulations to protect offshore aquaculture facilities and, where appropriate, to request the Coast Guard to establish navigational safety zones. Section 4(d)(6) authorizes the Coast Guard to establish such zones.

**Modification, suspension, and revocation of permits** – Section 4(d)(7) grants the Secretary authority to modify, suspend, or revoke permits issued under the Act if the modification, suspension, or revocation is found to be in the national interest, after consulting with other agencies as appropriate and giving the permit holder notice and an opportunity to respond. However, if the Secretary determines an emergency exists that poses risks to human safety, the marine environment or marine species, or the security of the United States, the Secretary may immediately suspend, modify, or revoke the permit, and the permit holder would have an opportunity to be heard following the emergency modification, suspension, or revocation.

**Other permit requirements** –Section 4(d)(8) states that the issuance of permits under this Act does not obviate the requirement for authorization under other applicable authorities.

**Section 4(e) – Actions Affecting the Outer Continental Shelf.**
This section applies to offshore aquaculture facilities or operations located on areas managed by the Department of the Interior under the OCSLA. Facilities such as offshore oil and gas
platforms permitted under the OCSLA and other types of operations authorized under the Energy Policy Act of 2005 are potential sites for offshore aquaculture facilities, so the Secretary of the Interior may regulate offshore aquaculture located on such facilities. The Department of the Interior needs this authority in order to meet its health, safety, and other responsibilities on facilities that may be used for offshore aquaculture.

**Concurrence** – Section 4(e)(1) requires the concurrence of the Secretary of the Interior on permits for offshore aquaculture located on leases, right-of-use and easements, or rights-of-way authorized or permitted under the OCSLA or within 1 mile of facilities permitted or for which a plan has been approved under the OCSLA.

**Consent of facility owner** – Section 4(e)(2) requires the prior consent of the lessee, designated operator, and owner of the facility permitted under the OCSLA before a permit for offshore aquaculture on that facility may be issued under this Act.

**Review of agreements** – Section 4(e)(3) requires the Secretary of the Interior to review and approve any agreement between a lessee, designated operator, and owner of an OCSLA-permitted facility and a prospective aquaculture operator.

**Coastal Zone Management Act coordination** – Section 4(e)(4) provides for coordination of any additional consistency certifications required when offshore aquaculture takes place on facilities for which permits have been issued under the OCSLA.

**Liability** – Under Section 4(e)(5), the current and former OCSLA lessees, as well as the aquaculture permit holder, are jointly and severally liable for removal of any construction or modifications related to aquaculture operations if the aquaculture permit holder fails to do so and bonds posted for the aquaculture facility are insufficient to cover those obligations.

**Authority of the Secretary of the Interior** – Section 4(e)(6) authorizes the Secretary of the Interior to promulgate rules and regulations; require and enforce additional permit terms or conditions; issue orders to permit holders to protect the marine environment, property or human life or health; and enforce requirements contained in federal leases and OCSLA regulations.

**SECTION 5. RESEARCH AND DEVELOPMENT.**
This section acknowledges the need to cooperate with other federal agencies and industry for purposes of research and development.

**Research Program** – Section 5(a) authorizes the Secretary of Commerce, in consultation with other federal agencies, to establish and conduct an integrated, multidisciplinary, scientific research and development program to further marine aquaculture technologies compatible with the protection of marine ecosystems. Although not specified in the legislation, eligible areas of research would include scientific, social, legal, and environmental management issues.

**Research partnerships** – Section 5(b) authorizes the Secretary to conduct research and development in partnership with offshore aquaculture permit holders.
Research on aquaculture feeds – Section 5(c) requires the Secretary to collaborate with the Secretary of Agriculture to conduct research to reduce the use of wild fish in aquaculture feeds, including but not limited to the substitution of seafood processing wastes, cultured marine algae and microbial sources of nutrients important for human health and nutrition, agricultural crops, and other products. The goal of this research will be to reduce the use of fish oil and fish meal while maintaining the health and nutritional benefits these feed ingredients provide to humans who consume aquaculture products.

SECTION 6. ADMINISTRATION.
Rules and regulations – Section 6(a) requires the Secretary to promulgate, and amend as necessary, rules and regulations to carry out this Act.

Contracts, leases, grants, cooperative agreements – Section 6(b) provides authority to enter into contracts, leases, grants, and cooperative agreements.

Use and transfer of other resources – Section 6(c) authorizes the Secretary to enter into agreements with other federal agencies, State agencies, tribes, and other organizations, persons, and entities relating to the use or transfer of personnel, services, land, equipment, and facilities, with or without reimbursement, for purposes related to enforcement of this Act.

Acceptance of grants – Section 6(d) allows the Secretary to apply for and receive grants from federal sources.

Savings clause – Section 6(e) specifies that this Act is not intended to preempt the jurisdiction, responsibility or rights of other federal agencies, State agencies, Indian Tribes or Alaska Native organizations under any federal law or treaty.

Extraterritorial jurisdiction – Sections 6(f) extends the application of certain laws of the United States to offshore aquaculture facilities. Section 6(g) applies the law of the nearest adjacent coastal State to permitted offshore aquaculture facilities.

SECTION 7. AUTHORIZATION OF APPROPRIATIONS.
Section 7 authorizes appropriations to the Department of Commerce of $4,052,000 in fiscal year 2008 and thereafter such sums as may be necessary for purposes of carrying out the provisions of this Act. Implementation of the Act will require funding to cover the costs of developing and implementing a regulatory and administrative system for offshore aquaculture, supporting internal and external R&D, developing environmental requirements, and monitoring, compliance, and enforcement.

SECTION 8. UNLAWFUL ACTIVITIES.
Section 8 outlines activities that are unlawful under the Act. Unlawful activities include, but are not limited to, falsification of information; engaging in offshore aquaculture except pursuant to a valid permit issued under this Act; obstruction of lawful enforcement activities such as search or inspection; interference with lawful search or inspection by an enforcement officer; resisting or interfering with an arrest; interstate or foreign commerce of any marine species propagated or reared in violation of this Act or its regulations or permits; failing to remove all structures, gear,
and other property from the site, or to take other measures prescribed by the Secretary to restore the site, or violation of any provisions, regulations, or terms and conditions of permits issued under this Act.

SECTION 9. ENFORCEMENT PROVISIONS.
Section 9 grants enforcement authority under the Act to the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. It is not intended to extend arrest powers to additional personnel or components. Section 9 also specifies the powers of enforcement officers, provides for the issuance of citations (written warnings), and holds violators subject to certain costs associated with the storage, care, and maintenance of seized property.

SECTION 10. CIVIL ENFORCEMENT AND PERMIT SANCTIONS.
Section 10 provides for both civil administrative and civil judicial penalties. Section 10 also authorizes the Secretary to revoke, suspend, deny, and impose additional conditions or restrictions on a permit holder found to be committing or to have committed an unlawful activity under the Act. This section also contains provisions relating to injunctive relief, hearings, jurisdiction, the collection of civil penalties and nationwide service of process. Civil administrative penalties assessed by the Secretary may not exceed $200,000 per violation, with each day of a continuing violation considered a separate offense. Civil judicial penalties assessed by the Secretary may not exceed $250,000 per violation, with each day of a continuing violation considered a separate offense.

SECTION 11. CRIMINAL OFFENSES.
Section 11 identifies criminal offenses and associated maximum fines and prison terms, and establishes Federal jurisdiction over these offenses.

SECTION 12. FORFEITURES.
Section 12 provides for the forfeiture of property seized in the enforcement of this Act, and specifies the jurisdiction with respect to such forfeitures as any district court of the United States. The section includes provisions on judgments and procedures, and a rebuttable presumption that all marine species found within an offshore aquaculture facility, and which are seized in connection with an act prohibited by Section 8, are presumed to have been taken or retained in violation of the Act.

SECTION 13. SEVERABILITY AND JUDICIAL REVIEW.
Section 13 provides for severability, judicial review, and awards of litigation cost.