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. INOUYE (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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

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

4 SEC. 2. FINDINGS.

5 The Congress finds the following:
(1) It is the policy of the United States—

   (A) to support an offshore aquaculture in-
dustry 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;

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

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

   (D) to promote, through public-private
partnerships, research and development in ma-
rine aquaculture science, technology, and re-
lated social, economic, legal, and environmental
management disciplines that will enable marine
aquaculture operations to achieve operational
objectives while protecting marine ecosystem

guarantee.

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

SEC. 3. DEFINITIONS.

In this Act:

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

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

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

(2) COASTLINE.—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 wa-
ters.
(3) Exclusive Economic Zone.—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—

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

(B) a line 3 marine leagues from the coastline of the Commonwealth of Puerto Rico;
(C) a line 3 geographical miles from the
costlines of American Samoa, the United
States Virgin Islands, and Guam;

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

   (i) 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 sea-
ward of its coastline, and

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

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

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

(4) LESSEE.—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.).
(5) **MARINE SPECIES.**—The term “marine species” means finfish, mollusks, crustaceans, marine algae, and all other forms of marine life other than marine mammals and birds.

(6) **OFFSHORE AQUACULTURE.**—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.

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

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

(B) an area of the seabed or the subsoil used for offshore aquaculture of living organisms belonging to sedentary species.

(8) **OFFSHORE AQUACULTURE PERMIT.**—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.

(9) **PERSON.**—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.

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

SEC. 4. OFFSHORE AQUACULTURE PERMITS.

(a) IN GENERAL.—

(1) The Secretary shall establish, through rule-making, 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. The process 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 that—
(i) meets the eligibility criteria in subsection (b)(2)(A); and

(ii) satisfies the requirements for bonds or other guarantees prescribed under subsection (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 rule-making, 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, at a minimum—

(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 aqua-
culture 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 aqua-
culture on marine ecosystems and implement
such measures as may be necessary to protect
the environment, including temporary or perma-
nent relocation of offshore aquaculture sites, a
moratorium on additional sites within a pre-
scribed 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 shall 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) PROCEDURE FOR ISSUANCE OF PERMITS.—

(A) An 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 pro-
vide written notice to the applicant indicating
the reasons for the delay and establishing a rea-
sonable timeline for issuing or denying the per-
mit.

(2) PERMIT CONDITIONS.—

(A) An offshore aquaculture permit holder
shall—

(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 the holder does not meet the
requirements of clause (i) or (ii), to the ex-
tent required by the Secretary by regula-
tion 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 (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 (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) The Secretary may revoke a permit for failure to begin offshore aquaculture operations within a reasonable period of time, or prolonged interruption of offshore aquaculture operations.

(3) NATIONAL INTEREST DETERMINATION.—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.

(e) FEES AND OTHER PAYMENTS.—

(1) The Secretary may establish, through regulations, application fees and annual permit fees. Such fees shall be deposited as offsetting collections in the Operations, Research, and Facilities 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 paragraph does not apply to permit applications received by the Secretary prior to the date the

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notice is received from a coastal State. A coastal
State that transmits such a notice to the Secretary
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 provisions of the
Coastal Zone Management Act of 1972 (16 U.S.C.
1451 et seq.) and regulations promulgated there-
under.

(4) Notwithstanding the definition of the term
“fishing” in section 3(16) of the Magnuson-Stevens
Fishery Conservation and Management Act (16
U.S.C. 1802(16)), the conduct of offshore aqua-
culture in accordance with permits issued under this
Act shall not be considered “fishing” for purposes of
that Act. The Secretary shall ensure, to the extent
practicable, that offshore aquaculture does not inter-
fere 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 nec-
essary 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 subsection (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 subparagraph (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 per-
mit 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, to 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.

(c) ACTIONS AFFECTING THE OUTER CONTINENTAL SHELF.—

(1) CONCURRENCE OF SECRETARY OF INTERIOR REQUIRED.—The Secretary shall obtain the concurrence of the Secretary of the Interior for 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 (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 that Act.

(2) Prior Consent Required.—Offshore aquaculture may not be located on facilities described in paragraph (1)(A) without the prior consent of the lessee, its designated operator, and the owner of the facility.

(3) Review for Lease, etc., Compliance.—The Secretary of the Interior shall review and approve any agreement between a lessee, designated operator, and owner of a facility described in paragraph (1) 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 de-
scribed in paragraph (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 described in paragraph (1) 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, if 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. If the informa-
tion 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, a lessee is 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 that 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 Depart-
ment 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) **JOINT AND SEVERAL LIABILITY.**—For offshore aquaculture located on facilities described in paragraph (1), 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 paragraph does not affect obligations to decommission facilities under the Outer Continental Shelf Lands Act.

(6) **ADDITIONAL AUTHORITY.**—For aquaculture projects or operations described in paragraph (1), the Secretary of the Interior may—
(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 General.—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) Partnerships.—The Secretary may conduct research and development in partnership with offshore aquaculture permit holders.

(c) Reduction of Wild Fish as Food.—The Secretary, in collaboration with the Secretary of Agriculture, shall conduct research to reduce the use of wild fish in aquaculture feeds, including 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) In General.—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 this Act, regardless of the date of the issuance of such permit.
(b) CONTRACT, ETC., AUTHORITY.—The Secretary may 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) USE OF CONTRIBUTED GOVERNMENTAL RESOURCES.—For purposes related to the enforcement of this Act, the Secretary may 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 may 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) RESERVATION OF AUTHORITY.—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) APPLICATION OF LAWS TO FACILITIES IN THE EEZ.—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) Application of Certain State Laws.—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—

(1) 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;

(2) 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;

(3) 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;
(4) 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;

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

(6) 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;

(7) 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;

(8) upon the expiration or termination of any aquaculture permit for any reason, to 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;

(9) 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

(10) to attempt to commit any act described in paragraph (1), (2), (7), (8) or (9).
SEC. 9. ENFORCEMENT PROVISIONS.

(a) DUTIES OF SECRETARIES.—Subject to subparagraphs (B) and (D) of section 4(e)(6), 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 off-
shore aquaculture facility was used or em-
ployed in aid of, the violation of any provi-
sion of this Act or any regulation or permit
issued under this Act;

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

(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 (A)
an offense against the United States committed in
his presence, or (B) 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 con-
tinuing violation shall constitute a separate violation.

(2) Compromise or other action by the
Secretary.—The Secretary may compromise, mod-
ify, 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 per-
mit 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 viola-
tion. The Attorney General, upon the request of the Sec-
retary, may commence a civil action in an appropriate dis-
trict 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 prohib-
ited 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 viola-
tion of section 8 of this Act; or

(C) any amount in settlement of a civil for-
feiture imposed on an offshore aquaculture fa-
cility 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 re-
spect 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 sub-
section, 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 aqua-
culture facility, by sale or otherwise, shall not extin-
guish 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 aqua-
culture facility at the time of the transfer. The Sec-
retary 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 pen-
alty 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 conjunc-
tion with a civil penalty proceeding under this sec-
tion or otherwise.

(d) INJUNCTIVE RELIEF.—Upon the request of the
Secretary, the Attorney General of the United States may
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 Atmos-
pheric Administration which is determined on the record
in accordance with the procedures provided for under sec-
tion 554 of title 5, United States Code, 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 vio-
lation 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 as-
essment of a civil penalty after it has become a final and
unappealable order, or after the appropriate court has en-
tered 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 valid-
ity, amount and appropriateness of the final order impos-
ing 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 persons 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 Act, 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) **IN GENERAL.**—Any person (other than a foreign government or any entity of such government) who knowingly commits an act prohibited by subsection (c), (d), (e), or (f) of section 8, shall be imprisoned for not more than 5 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 Act, or places any such officer in fear of imminent bodily injury, the maximum term of imprisonment is not more than 10 years.

(b) **OTHER OFFENSES.**—Any person (other than a foreign government or any entity of such government) who
knowingly violates any provision of section 8 other than
subsection (c), (d), (e) or (f), any provision of any regula-
tion promulgated pursuant to this Act, or any permit
issued under this Act, shall be imprisoned for not more
than 5 years, or shall be fined not more than $500,000
for an individual or $1,000,000 for an organization, or
both.

(c) JURISDICTION OF DISTRICT COURTS.—The
United States district courts shall have original jurisdic-
tion of any action arising under this section out of or in
connection with the construction or operation of aqua-
culture 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 con-
victed of an offense under section 11 of this Act shall for-
fei 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 section 2461(c) of title 28, United States Code, the provisions of section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d), 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 section 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.

(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 chapter 46 of title 18, United States Code.

(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, United States Code, except that—

(A) review of any final agency action of the Secretary taken pursuant to subsection (a) or (c) of section 11 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.