

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Offshore Aquaculture Act of 2005”.

SEC. 2. FINDINGS

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

(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.

(2) Encourage the development of responsible marine aquaculture in the Exclusive Economic Zone by providing the necessary authorities and procedures for offshore marine aquaculture operations, demonstrations, and research, through public-private partnerships.

(3) Establish a permitting process for aquaculture in the Exclusive Economic Zone to encourage private investment in aquaculture operations, demonstrations, and research.

(4) Promote research and development in marine aquaculture science, technology, and related social, economic, legal, and environmental management disciplines that will enable marine aquaculture operations and demonstrations 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 “demonstration” means pilot-scale testing of aquaculture science and technologies, or farm-scale research.

(b) 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 for the United States, or in the absence of such a treaty where the distance between the coastal State and another State is less than 400 nautical miles, an equidistance line between the two States. 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 and 1301(b);

(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 Virgin Islands, and Guam, respectively; and

(4) for any other Commonwealth (including the Commonwealth of the Northern Marianas), territory, or possession of the United States not referred to in subparagraph (2) or (3), the outer boundary of the 12 mile territorial sea. For the purposes of applying this Act to any

such commonwealth, territory, or possession, that zone shall also include the area within the territorial sea.

(c) The term “Indian Tribe and Alaska Native organization” has the same meaning as the term “Indian Tribe” in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. § 479a).

(d) The term “lessee” means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce leased deposits of oil, gas, or sulphur pursuant to 43 U.S.C. § 1441 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 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 “operating permit” means an authorization issued under section 4(c) to raise specified marine species in a specific offshore aquaculture facility within the area described in an offshore aquaculture site permit.

(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.

(k) The term “site permit” means an authorization issued under section 4(b) to use a specified area of the U.S. Exclusive Economic Zone for a specified period of time for purposes of offshore aquaculture.

(l) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

SEC. 4. OFFSHORE AQUACULTURE PERMITS

(a) GENERAL

(1) The Secretary is authorized to establish, in consultation as appropriate with other relevant Federal agencies, 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) The development of procedures necessary to implement a permitting process under this Act, the form and manner in which applications for permits may be made, and the inclusion of any special conditions that may apply to a permit and

(B) The coordination of the offshore aquaculture permitting process, together with the regulations for siting criteria, environmental protection, monitoring and

enforcement, research, and economic and social development, with similar activities administered by other Federal agencies and States.

(2) Permits for offshore aquaculture located on leases or easements authorized or for which a permit has been issued under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. § 1331, et seq.), or within 1 mile of any other facility for which a permit has been issued under the Outer Continental Shelf Lands Act, shall require the concurrence of the Secretary of the Interior.

(3) It shall be unlawful to engage in offshore aquaculture except in accordance with the terms of a valid site permit and a valid operating permit issued by the Secretary under this Act.

(4) 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) to the extent required by the Secretary of Commerce 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.

(5) Applications for site permits and operating permits may be submitted and reviewed concurrently.

(6) Within 120 days after determining that a permit application is complete and has satisfied all applicable statutory and regulatory requirements, the Secretary shall render a permit decision. If the Secretary is unable to render a permit decision 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 a permit decision.

(7) Permits issued under this Act do not supersede or substitute for any other authorization required under applicable federal or State law or regulation and shall authorize the permit holder to conduct activities consistent with the provisions of this Act, regulations issued under this Act, and any specific terms, conditions and restrictions applied to the permit by the Secretary.

(8) Vessels owned or used by any offshore aquaculture permit holder shall be exempt from the requirement for documentation or a fishery endorsement under sections 12102 and 12108 of Title 46, United States Code, for only so long as the vessel is owned or used in support of activities under the permit. All other sections of that Title will apply as if the exempted vessel was documented.

(b) SITE PERMITS – The Secretary is authorized to issue an offshore aquaculture site permit to any person meeting the eligibility criteria in subsection 4(a)(4) under such terms and conditions as the Secretary shall prescribe.

(1) The Secretary shall establish the terms, conditions, and restrictions applicable to such permit, and shall specify in the site permit the duration, size, and location of the offshore aquaculture facility.

(2) Except for demonstration projects and offshore aquaculture permits requiring concurrence of the Secretary of the Interior under subsection 4(a)(2), the site permit shall have a duration of 10 years, renewable thereafter at the discretion of the Secretary in 5-year increments. The duration of permits subject to the provisions of subsection 4(a)(2) shall be developed in consultation as appropriate with the Secretary of the Interior, except that each such permit shall

expire no later than the date that the oil and gas lessee, or the lessee's operator, submits to the Secretary of the Interior a final application for the removal of the facility upon which the offshore aquaculture facility is located.

(3) At the expiration or termination of a site permit for any reason, the site 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.

(4) For offshore aquaculture located on facilities authorized or for which a permit has been issued under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. § 1331, et seq.), 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 site 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.

(c) OPERATING PERMITS – The Secretary is authorized to issue operating permits, under terms and conditions as the Secretary shall prescribe, to site permit holders.

(1) The holder of, or applicant for, a site permit under section 4(b) shall submit an application to the Secretary specifying the marine species to be propagated or reared, or both, at the offshore aquaculture facility, and other design, construction, and operational details and information, as specified by regulation, to facilitate review.

(2) Failure to apply for and obtain an operating permit within a reasonable period of time, as specified by the Secretary under the terms and conditions of the offshore aquaculture site permit, may result in the revocation of the site permit.

(d) CRITERIA FOR ISSUING PERMITS

(1) The Secretary shall consult as appropriate with other federal agencies to ensure that offshore aquaculture for which a permit has been issued under this section meets the environmental requirements established under section 5(a) and 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 consider risks to and impacts on natural fish stocks, marine ecosystems, biological, chemical and physical features of water quality, habitat, marine mammals, other forms of marine life, birds, endangered species, and other features of the environment, as identified by the Secretary in consultation as appropriate with other Federal agencies.

(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 the corresponding federal regulations.

(4) When an aquaculture facility is proposed to be associated with an offshore oil and gas platform licensed under the Outer Continental Shelf Lands Act, and if the offshore aquaculture applicant is required to submit to a coastal State a consistency certification for its aquaculture application under subsection 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 an offshore oil or gas or mineral lessee's development and production plan or development operations coordination 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 are received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant's consistency certification. In this case, offshore oil and gas or mineral lessees are not required to submit a separate consistency certification for any such modification or change under 16 U.S.C. § 1456(c)(3)(B) and the coastal State's concurrence or objection, or presumed concurrence, under 16 U.S.C. § 1456(c)(3)(A) shall apply to both the offshore aquaculture permit and to any related modifications or changes to offshore oil and gas or mineral plans requiring approval by the Department of the Interior.

(5) If a coastal State is not authorized by 16 U.S.C. § 1456(c)(3)(A) and corresponding federal regulations to review an offshore aquaculture project proposed under this Act, then any modifications or changes to offshore oil and gas or mineral development and production plans or development operations coordination documents requiring approval from the Department of the Interior, shall be subject to coastal State review pursuant to the requirements of 16 U.S.C. § 1456(c)(3)(B), if a consistency certification for those modifications or changes is required under applicable federal regulations.

(6) The Secretary shall periodically review the criteria for issuance of site and operating permits for offshore aquaculture and modify them as appropriate, in consultation as appropriate with other Federal agencies, based on the best available science.

(e) EXCLUSION FROM PROVISIONS OF MAGNUSON-STEVEN'S FISHERY
CONSERVATION AND MANAGEMENT ACT –

(1) Offshore aquaculture conducted in accordance with permits issued pursuant to section 4 of this Act is excluded from the definition of “fishing” in the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1802(15).

(2) 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.

(3) The Secretary shall consult with the appropriate Regional Fishery Management Council(s) before issuing a permit.

(4) The Secretary may require permit holders to track, mark, or otherwise identify fish or other marine species in the offshore aquaculture facility or harvested from such facility.

(f) FEES AND OTHER PAYMENTS

(1) The Secretary is authorized to establish, through regulation, a schedule of application fees and annual permit fees.

(2) The Secretary shall require the site 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 a site permit, and other financial risks as identified by the Secretary.

(3) The Secretary may reduce or waive applicable fees or other payments established under this section for facilities used primarily for research or for raising cultured stock for the replenishment of wild fisheries.

(4) The Secretary shall deposit all fees collected under this Act in accordance with section 3302(b) of Title 31, United States Code.

(g) AUTHORITY TO MODIFY OR SUSPEND PERMITS

(1) Subject to paragraph (2), 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 of, or modification of, a permit is in the national interest, the Secretary may suspend or modify such permit.

(2) If the Secretary determines that an emergency exists that poses a risk to the safety of humans, to the marine environment or marine resources, or to the security of the United States and that requires suspension or modification of a permit, the Secretary may suspend or modify 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 or modification.

(h) ACTIONS AFFECTING THE OUTER CONTINENTAL SHELF –

(1) For aquaculture projects or operations located on facilities subject to the Outer Continental Shelf Lands Act, the Secretary of the Interior is authorized to:

(A) Enforce all requirements contained in federal mineral leases and regulations issued pursuant to the Outer Continental Shelf Lands Act;

(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; and

(C) Issue orders to any offshore aquaculture permit holder to take any action the Secretary of the Interior deems necessary to ensure safe oil and gas or other mineral operations on any 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.

(2) The Secretary of the Interior shall review and approve any agreement between an operator of a facility for which a permit has been issued under the Outer Continental Shelf Lands Act and a prospective aquaculture operator to ensure that it is consistent with the federal mineral 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(d)(4) of this Act and shall not be subject to a separate CZMA review.

(3) No offshore aquaculture may be located on facilities authorized or for which a permit has been issued under the Outer Continental Shelf Lands Act without the prior consent of the owner of the facility.

(4) The Secretary of the Interior shall promulgate such rules and regulations as are necessary and appropriate to carry out the provisions of this subsection.

(i) TRANSFERABILITY OF PERMITS – The Secretary is authorized to establish procedures for transferring permits from the original permit holder to any person meeting the eligibility criteria in subsection 4(a)(4) and able to satisfy the requirements for bonds or other guarantees prescribed under subsection 4(f)(2) hereof.

SEC. 5. ENVIRONMENTAL REQUIREMENTS

(a) ENVIRONMENTAL REQUIREMENTS – The Secretary shall consult as appropriate with other Federal agencies to identify the environmental requirements applicable to offshore aquaculture under existing laws and regulations. The Secretary may establish additional environmental requirements for offshore aquaculture facilities, if deemed necessary, in consultation with appropriate Federal agencies, coastal States, and the public. Environmental requirements may include, but are not limited to, environmental monitoring, data archiving, and reporting by the permit holder, as deemed necessary or prudent by the Secretary. The environmental requirements shall consider risks to and impacts on:

- (1) natural fish stocks,
- (2) marine ecosystems
- (3) biological, chemical and physical features of water quality and habitat,
- (4) marine mammals, other forms of marine life, birds, and endangered species,

and

- (5) other features of the environment

as identified by the Secretary, in consultation as appropriate with other Federal agencies.

(b) SITING, MONITORING AND EVALUATION

(1) The Secretary is authorized to collect information needed to evaluate the suitability of sites for offshore aquaculture.

(2) The Secretary is authorized to promulgate regulations regarding monitoring and evaluation of compliance with the provisions of site and operating permits, including the collection of biological, chemical and physical oceanographic data, and social, production, and economic data.

(3) The Secretary is authorized to 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.

(4) The Secretary is authorized to establish monitoring and evaluation protocols.

SEC. 6. RESEARCH AND DEVELOPMENT

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

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

SEC. 7. ADMINISTRATION

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

(b) (1) The Secretary may promulgate rules 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.

(2) After consultation with the Secretary of Commerce, 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 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 by regulation define activities that are allowed within such zone.

(c) The Secretary shall consult as appropriate with Federal agencies that are authorized to issue permits within the Exclusive Economic Zone to develop a coordinated and streamlined permitting process for offshore aquaculture. This process shall factor in the needs, requirements, and authorities of each Agency, including the need to consult with State agencies and the requirement for public review and involvement.

(d) The Secretary may enter into memoranda of agreement, memoranda of understanding, or other agreements with heads of Federal agencies, as appropriate, to implement this Act, and the Secretary and the heads of such agencies may issue such regulations as may be necessary to ensure coordination of Federal activities to implement this Act.

(e) The Secretary may, with or without reimbursement, utilize in the performance of functions under this Act the personnel, services, equipment (including aircraft and vessels), and facilities of –

(1) any Federal agency under a written agreement with the head of that agency;

and

(2) any agency of a State under a written agreement with the head of that agency, to the extent allowed by the law of that State.

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

(g) In addition to this Act and other statutes of the United States that apply in the Exclusive Economic Zone, the following shall apply with respect to offshore aquaculture facilities in the Exclusive Economic Zone for which a permit has been issued under this Act and to activities in the Exclusive Economic Zone connected, associated, or potentially interfering with the use or operation of such facilities: (1) Titles 18 and 28, United States Code, (2) provisions of any other statute of the United States, when the Secretary has determined that it is in the public interest that such provision so apply and has published that determination in the *Federal Register* and until the Secretary determines to the contrary and publishes a notice in the *Federal Register* to the contrary, and (3) jurisdiction of the Federal courts with respect to the foregoing. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by an applicable Federal law, treaty, or regulation. 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.

(h) 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 miles, would encompass the site of the offshore aquaculture facility. State taxation laws shall not apply in the Exclusive Economic Zone.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Secretary such sums as may be necessary for purposes of carrying out the provisions of this Act.

SEC. 9. 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 except in full compliance with this Act, any regulations promulgated under this Act, and the terms and conditions of any permit issued by the Secretary 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 violate any provision of this Act or any regulation or permit issued under this Act;
or

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

SEC. 10. ENFORCEMENT PROVISIONS

(a) **DUTIES OF SECRETARIES** – This Act shall be enforced by the Secretary and the Secretary of the Department in which the Coast Guard is operating. The Secretaries each may exercise for this purpose the same authority as is granted to the Secretary by section 7(e) of this Act.

(b) **DISTRICT COURT JURISDICTION** – The several district courts of the United States shall have jurisdiction over any actions arising under this Act. The venue provisions of Title 18 and Title 28 shall apply to any actions arising under this Act. The judges of the district courts of the United States and the United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act, or any regulation or permit issued under this Act.

(c) POWERS OF ENFORCEMENT

(1) Any officer who is authorized pursuant to the first sentence of 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 9 of this Act;

(ii) search or inspect any offshore aquaculture facility;

(iii) seize any offshore aquaculture facility (together with its equipment, furniture, appurtenances, stores, and cargo) 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 living marine resource (wherever found) retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 9 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 the first sentence of 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.

(d) **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.

(e) **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 living marine resource or other property seized in connection with the violation.

(f) Upon the request of the Secretary, the Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this Act, or regulation or permit issued under this Act.

SEC. 11. CIVIL ENFORCEMENT AND PERMIT SANCTIONS

(a) CIVIL 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 \$120,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior violations, and such other matters as justice may require.

(2) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty under paragraph 1 that is subject to imposition or that has been imposed under this section.

(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 \$240,000 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 violation, the degree of culpability, any history of prior violations and such other matters as justice may require.

(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 9 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 9 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) HEARING - For the purposes of conducting any hearing under this section, 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.

(e) JUDICIAL REVIEW - Any person against whom a civil penalty is assessed under subsection (a)(1) of this section or against whose offshore aquaculture facility a permit sanction is imposed under subsection (c) of this section (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such penalty or sanction. The Secretary shall promptly file in such court a certified copy of the record upon which such penalty or sanction was imposed, as provided in section 2112 of Title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of Title 5, United States Code.

(f) 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.

SEC. 12. CRIMINAL OFFENSES

Any person who knowingly violates subsections 4(a)(3), 4(b)(3), or 9(a), (b) or (g) of the Act, upon conviction, shall be imprisoned for not more than five years and shall be fined not more than \$500,000 for individuals or \$1,000,000 for an organization. Any person who knowingly violates any other provision of section 9 or a measure issued pursuant to subsection 5(b)(3) commits a Class C felony subject to the penalties of Title 18. The several district courts of the United States shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, 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. Any offenses not committed in any district are subject to the venue provisions of Title 18, section 3238.

SEC. 13. FORFEITURES

(a) **IN GENERAL** - Any offshore aquaculture facility (including its structure, equipment, furniture, appurtenances, stores, and cargo) used in aid of and any living marine resources (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the violation of any provision of section 9 or subsections 4(a)(3) or 4(b)(3) of this Act shall be subject to forfeiture to the United States. All or part of such offshore aquaculture facility may, and all such living marine resources (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) **JURISDICTION OF THE COURTS** - Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to

order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(c) JUDGMENT - If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained. The provisions of the customs laws relating to -

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

(3) the remission or mitigation of any such forfeiture;

- shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act.

(d) PROCEDURE

(1) Any officer authorized to serve any process that is issued by a court under subsection 10(b) of this Act shall -

(A) stay the execution of such process; or

(B) discharge any living marine resources seized pursuant to such process;

- upon receipt of a satisfactory bond or other security from any person claiming such property.

Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be

recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any living marine resources seized pursuant to this Act may be sold, subject to the approval of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION - For purposes of this section, all living marine resources found within an offshore aquaculture facility, and which are seized in connection with an act prohibited by section 9 of this Act, are presumed to have been taken or retained in violation of this Act, but the presumption can be rebutted by an appropriate showing of evidence to the contrary.

SECTION-BY-SECTION ANALYSIS

National Offshore Aquaculture Act of 2005

SUMMARY

The overall purpose of this Act is to provide the necessary authorities to the Secretary of Commerce for the establishment and implementation of 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 and to establish environmental requirements where existing requirements under current law are inadequate
- Exempts permitted offshore aquaculture from provisions of the Magnuson-Stevens Fishery Conservation and Management Act
- Authorizes the establishment of a research and development program in support of offshore aquaculture
- Requires the Secretary of Commerce to work with other federal agencies to develop and implement a streamlined and coordinated permitting process for aquaculture in the EEZ
- Authorizes to be appropriated “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, and Indian tribes and Alaska Native organizations, and requires concurrence from the Secretary of the Interior for aquaculture located on leases or easements authorized or for which a permit has been issued under the Outer Continental Shelf Lands Act (OCSLA), or within one mile of any facility for which a permit has been issued under the OCSLA.

Implementation of this Act will create an enabling environment for the offshore aquaculture industry in the United States in two ways:

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

SECTION 1. SHORT TITLE

Section 1 designates this Act as the “National Offshore Aquaculture Act of 2005.”

SECTION 2. FINDINGS

Section 2 proclaims that it is the policy of the United States to support an offshore aquaculture industry compatible with other uses of the EEZ, encourage the development of responsible marine aquaculture in the EEZ, establish a permitting process for aquaculture in the EEZ, and promote research and development in marine aquaculture. This section also states that U.S. jurisdiction over offshore aquaculture is established under Presidential Proclamation 5030 of March 10, 1983, which declared that the U.S. EEZ extends 200 nautical miles from the coast.

The National Aquaculture Act of 1980 declared aquaculture development to be in the national interest, and included requirements for 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 in order to establish an enabling regulatory environment for aquaculture in the EEZ. This Act would provide the Secretary of Commerce with the necessary regulatory authority to establish and implement a permitting system, in consultation with other federal agencies, to create such an environment.

SECTION 3. DEFINITIONS

Section 3 defines key terms used in the Act. “Exclusive Economic Zone” is the area extending from the seaward boundary of State/Territorial jurisdiction out to 200 nautical miles from the baseline. The geographic extent of this area is identical to the Exclusive Economic Zone as defined under 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.

Two types of permits for which the Secretary is given authority under this Act are defined. “Site permits” refer to a specified area of the EEZ that could be used for offshore aquaculture for a specified period of time, while “operating permits” refer to the specified marine species that would be permitted to be raised in a specific offshore aquaculture facility within the area described in the site permit.

Other terms defined include “demonstration”, “Indian tribe and Alaska Native organization”, “lessee”, “marine species”, “offshore aquaculture facility”, “person”, and “State.” “Offshore aquaculture facility” includes areas of the seabed 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. “State” includes U.S. Territories and possessions.

SECTION 4. OFFSHORE AQUACULTURE PERMITS

Section 4 authorizes the Secretary of Commerce to establish a process to allow use of the EEZ for offshore aquaculture, gives the Secretary authority to issue site permits and operating permits, establishes criteria for issuing permits under this section, excludes offshore aquaculture from certain provisions of the Magnuson-Stevens Fishery Conservation and Management Act, grants the Secretary of Commerce authority to set fees and to modify or suspend permits issued under this section, and provides certain authorities to the Secretary of the Interior with respect to actions affecting the Outer Continental Shelf.

This section provides the basis for a new federal regulatory system for the offshore aquaculture industry. Many of the details of this system will be developed through rulemaking following enactment of this legislation. The rulemaking process, which will be conducted with stakeholder input, will provide a more appropriate forum for such fine-tuning adjustments than can be accommodated in legislation.

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. The 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 (e.g., NPDES permits under the Clean Water Act).

Section 4(a) - General

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

Overall process - In establishing a process for making areas of the EEZ available for development and operation of offshore aquaculture, the Secretary of Commerce is authorized to develop necessary procedures and to coordinate the permitting process and associated regulations with other federal agencies and States. The Secretary's authority includes the authority to establish how applications for permits will be made and to include special conditions on individual permits. The latter provision ensures the ability of the Secretary to address whatever future concerns are identified with particular aquaculture sites or operations.

Coordination with other federal agencies and States 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 prevent having to amend this Act in response to future reorganizations or new or amended statutes governing other agencies. Multiple federal agencies have regulatory authority over aspects of offshore aquaculture operations in the EEZ. The U.S. Army Corps of Engineers has been the *de facto* lead permitting agency for offshore aquaculture permits, by virtue of its authority under the Rivers and Harbors Act of 1899 to require a section 10 permit certifying that an offshore aquaculture facility will not interfere with navigation. District Corps offices have coordinated interagency reviews of offshore aquaculture facility applications for section 10 permits and prepared environmental assessments for proposed facilities, with NOAA, EPA, and other federal agency participation in such reviews. 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, such as EPA's authority under the Clean Water Act to require offshore aquaculture facilities that engage in the discharge of pollutants to obtain a permit, meet ocean discharge criteria, and comply with effluent guidelines.

For offshore aquaculture located on leases or easements authorized or for which permits have been issued under the Outer Continental Shelf Lands Act (OCSLA), or within one mile of facilities for which a permit has been issued under the OCSLA, the concurrence of the Secretary of the Interior is required. Offshore oil and gas platforms are being investigated as potential sites for offshore aquaculture facilities, so the Secretary of the Interior is also given specific authority with respect to offshore aquaculture located on such facilities.

Permits required - Section 4(a) makes it unlawful to engage in offshore aquaculture in the EEZ without two valid permits issued by the Secretary of Commerce: a site permit and an operating permit. The reason for two permits is to establish a general right to use an area of the EEZ for offshore aquaculture (site permit) and a more specific right to locate and operate specific types of aquaculture facilities to grow specific marine species on that site (operating permit). The site permit would establish where the permit holder may operate an offshore aquaculture facility, but the holder would not be allowed to install and operate the facility without an accompanying operating permit. The requirement for permits under this Act does not obviate the requirement for permits under other applicable authorities, such as the Clean Water Act.

Eligibility for permits - Section 4(a) establishes who is eligible to apply for offshore aquaculture permits. Eligibility extends to individuals who are residents of the United States (regardless of citizenship) as well as to corporations, partnerships, and other entities that are organized and exist under the laws of a State or the United States. This does not preclude applications by foreign companies or investors, provided they appoint and maintain agents within the United States who are authorized to receive and respond to any legal process issued in the United States, and, in some cases, waive immunity so as to be subject to U.S. jurisdiction.

Timely decisions - Section 4(a) provides for timely decisions on permit applications in two ways—first, by allowing concurrent submission and review of applications for site and operating permits, and second, by requiring the Secretary of Commerce to render a decision on each permit application within 120 days after determining that a permit application is complete and has satisfied all applicable statutory and regulatory requirements. These provisions are needed to ensure an efficient permitting process in which applicants receive decisions on proposed operations within a reasonable time frame. 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 a permit decision.

Section 4(b) - Site Permits

Section 4(b) gives the Secretary of Commerce authority to issue site permits to eligible persons and requires the Secretary to specify the duration, size, and location of the marine aquaculture facility. The Secretary is given broad latitude to establish whatever specific terms and conditions are deemed necessary for any given site permit; however, the duration of the permit must be for a period of 10 years, renewable at the Secretary's discretion in 5-year increments. This provision is important to an offshore aquaculture business, which requires 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 10-year site permit duration are demonstration projects, and offshore aquaculture located on leases or easements authorized or for which a permit has been issued by

the Department of the Interior under the Outer Continental Shelf Lands Act (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 OCSLA, the permit cannot extend beyond the date on which an oil and gas lessee, or the lessee's operator, submits a final application to the Department of the Interior for removal of the facility upon which the offshore aquaculture facility is located. This is because the OCSLA requires removal of all facilities once production ceases, and it is not anticipated that the aquaculture industry would be interested in assuming liability for removing platforms, given the large costs associated with such an endeavor.

Upon termination of the site permit, the permit holders would be required to remove all structures, gear, and property from the site. The Secretary may also require the permit holder to take other measures to restore the site. For offshore aquaculture located on facilities authorized or for which a permit has been issued by the Department of the Interior under the OCSLA, the current and former OCSLA lessees, as well as the aquaculture permit holder, are 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.

Section 4(c) - Operating Permits

Section 4(c) authorizes the Secretary of Commerce to issue operating permits to site permit holders. The specific design, construction, and operational details and other information to be provided in the permit application will be determined in the rulemaking process; however, the site permit holder must specify the marine species to be propagated and/or reared at the site. Failure to apply for an operating permit within a reasonable time could result in revocation of a site permit. This requirement is intended to prevent a speculation market for site permits, and to allow the Secretary to revoke the site permit of anyone who for whatever reason is not yet ready, willing, or able to pursue the necessary operating permit for the installation and start-up of an offshore aquaculture facility at the site.

Section 4(d) - Criteria for Issuing Permits

Section 4(d) requires that the Secretary ensure that aquaculture permitted under the previous sections meets environmental requirements established under other federal and State law and is compatible with other uses of the EEZ, specifically navigation, fishing, resource protection, recreation, national defense (including military readiness), and mineral exploration and development. This section also requires the Secretary to consider risks to and impacts on natural fish stocks, marine ecosystems, water quality, habitat, marine mammals, other forms of marine life, birds and endangered species, and other features of the environment, as identified by the Secretary in consultation with other federal agencies. It also requires compliance with applicable sections of the Coastal Zone Management Act, which requires federal actions to be consistent with approved State coastal management programs, and includes a provision for coordination of any additional consistency certifications required when offshore aquaculture takes place on facilities for which permits have been issued under the OCSLA. The Secretary is required to periodically review and modify the criteria for site and operating permits, as appropriate. This must be done in consultation with other federal agencies and must be based on the best available science.

The intent of these provisions is to provide a degree of predictability as to the types of aquaculture that are more likely to be approved for the EEZ and to provide a way for the concerns of other federal agencies and States to be considered in the decision process.

Section 4(e) - Exclusion from Provisions of Magnuson-Stevens Fishery Conservation and Management Act

Section 4(e) specifically excludes aquaculture conducted in the EEZ from the definition of “fishing” under the Magnuson-Stevens 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 render everyday aspects of aquaculture operations illegal. 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 and to consult with the appropriate Fishery Management Councils before issuing a permit under this Act. To facilitate enforcement, the Secretary is also given authority to require permit holders to track, mark, or otherwise identify fish or other marine species from the marine aquaculture facility so as to distinguish them from wild stock.

It should be noted that NOAA has always understood aquaculture to constitute “fishing” for both domestic and international law purposes. It is, therefore, necessary specifically to exclude aquaculture from MSA coverage.

Section 4(f) - Fees and Other Payments

Fees – Section 4(f) authorizes the Secretary to establish a schedule of application and annual permit fees.

Bonds – Section 4(f) requires the applicant to post a bond or other form of financial guarantee in a sufficient amount (to be established 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.

Right to waive fees – Section 4(f) allows the Secretary to waive fees for research facilities, or for facilities raising stock for purposes of stock enhancement. This provision acknowledges that the fee structure may discourage certain aquaculture operations or investments that are in the national interest. Offshore aquaculture is a new industry with significant start-up costs and most new businesses in all types of industries require at least several years of operation before they realize a profit.

Deposit of fees – All fees collected under the authority of this section must be deposited in the Treasury in accordance with the existing miscellaneous receipts statute.

Section 4(g) – Authority to Modify or Suspend Permits

Section 4(g) grants the Secretary authority to modify or suspend permits issued under the Act if the modification or suspension 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 immediate suspension or modification is necessary, an emergency order may be issued if there are risks to human safety, the marine environment or marine resources, or the security of the United States. In the case of an emergency order, the permit holder would have an opportunity to be heard after the emergency modification or suspension.

Section 4(h) – Actions Affecting the Outer Continental Shelf

Section 4(h) gives the Secretary of the Interior authority with respect to aquaculture projects and operations located on facilities subject to the OCSLA. This includes the authority to enforce requirements contained in federal mineral leases and OCSLA regulations; require and enforce additional permit terms or conditions; issue emergency orders to permit holders; and promulgate any necessary rules and regulations to implement this section. The Department of the Interior needs this authority in order to meet its health, safety, and other responsibilities on facilities such as oil and gas platforms that may be used for offshore aquaculture. This section also includes provisions relating to agreements between aquaculture and OCSLA operators.

Section 4(i) – Transferability of Permits

The Secretary is authorized to establish a process for 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.

SECTION 5. ENVIRONMENTAL REQUIREMENTS

Section 5 contains provisions for the establishment of environmental requirements and the monitoring and evaluation of compliance with permit conditions.

These provisions are important not only to environmental nongovernmental organizations (NGOs) and other stakeholders concerned about the potential negative impacts of aquaculture, but also to the aquaculture industry, since they will establish expectations for the aquaculture operations and provide a scientific basis for measuring compliance.

Section 5(a) – Environmental Requirements

Section 5(a) requires the Secretary to consult as appropriate with other federal agencies to identify environmental requirements under existing laws that are applicable to offshore aquaculture. Although not specifically named, these agencies would include the Environmental Protection Agency, the U.S. Army Corps of Engineers, and others. If necessary, additional requirements may be established by the Secretary of Commerce in consultation with appropriate federal agencies, coastal States and the public. Environmental requirements may include environmental monitoring, data archiving, and reporting. In setting environmental requirements, the Secretary is required to consider risks to and impacts on a range of concerns to be identified in consultation with other federal agencies. These include natural fish stocks, marine ecosystems, biological, chemical, and physical features of water quality and habitat, marine

mammals, other forms of marine life, birds, endangered species, and other features of the environment.

This provision preserves the roles and responsibilities of other federal agencies in establishing environmental requirements under current law (e.g., the Clean Water Act), while giving the Secretary of Commerce authority 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/or 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.

Section 5(b) – Siting, Monitoring and Evaluation

Section 5(b) authorizes the Secretary to collect information to evaluate the suitability of sites for offshore aquaculture, and to promulgate regulations to facilitate 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). This section also authorizes the Secretary to monitor the effects of aquaculture on marine ecosystems, implement measures to ensure compliance with environmental requirements, and establish monitoring and evaluation protocols. Remedial measures may include the temporary or permanent relocation of 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 6. RESEARCH AND DEVELOPMENT

Section 6(a) authorizes the Secretary of Commerce, in consultation with other federal agencies, to establish an integrated, multidisciplinary, scientific research and development program to further offshore 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.

Section 6(b) authorizes the Secretary to conduct research and development in partnership with site permit holders.

This section preserves the roles and responsibilities of other federal agencies with respect to aquaculture, as well as acknowledging the need to cooperate with industry for purposes of data collection as well as research and development.

SECTION 7. ADMINISTRATION

Sections 7(a) and 7(b) require the Secretary to promulgate, prescribe, and amend rules and regulations to carry out this Act, including authorization to protect offshore aquaculture facilities and, where appropriate, to request the Coast Guard to establish navigational safety zones. Section 7(b) also includes language specifying the authority of the Coast Guard to establish such zones.

Section 7(c) requires the Secretary to consult as appropriate with other federal agencies that are authorized to issue permits within the EEZ to promulgate regulations to establish and implement a coordinated and streamlined permitting process. This section requires that the process factor in the needs, requirements, and authorities of other federal agencies, including the need for consultation with State agencies and for public review and involvement. Although not specifically named, relevant agencies would include the Environmental Protection Agency, Minerals Management Service, the Army Corps of Engineers, and others.

Section 7(d) specifically authorizes the Secretary to establish agreements with other agencies (i.e., memoranda of understanding, memoranda of agreement, etc.) to implement this Act. It also authorizes the Secretary and other agencies to issue regulations to ensure coordination of federal activities to implement this Act.

Section 7(e) authorizes the Secretary to enter into agreements with other federal agencies and with State agencies relating to the use of personnel, services, equipment, and facilities, with or without reimbursement, for purposes of this Act.

Section 7(f) specifies that this Act is not intended to preempt the jurisdiction, responsibility or rights of other federal agencies, State agencies, or Indian tribes or Alaska Native organizations under any federal law or treaty. The intent of this provision is to eliminate the need to reference each and every statute or treaty that applies in the EEZ by stating that this Act will not preempt any existing authorities.

Sections 7(g) and 7(h) provide extraterritorial jurisdiction to protect offshore aquaculture facilities under U.S. law. It is not intended to supersede this Act or any other federal laws and regulations that apply in the EEZ - e.g., the Clean Water Act. Specifically, this section does not extend States' Clean Water Act jurisdiction beyond their current boundaries.

SECTION 8. AUTHORIZATION OF APPROPRIATIONS

Section 8 authorizes to be appropriated to the Department of Commerce "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 9. UNLAWFUL ACTIVITIES

Section 9 outlines activities that are unlawful under the Act. Unlawful activities include, but are not limited to, falsification of information; engaging in offshore aquaculture except in full compliance with 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; or violation of any provisions, regulations, or permits under this Act.

SECTION 10. ENFORCEMENT PROVISIONS

Section 10 grants enforcement authority under the Act to the Secretary of Commerce and the Secretary of the Department in which the Coast Guard is operating, and authorizes agreements for the use of personnel, services, equipment and facilities of other federal and State agencies in

enforcing this Act. It is not intended to be used to extend arrest powers to additional personnel or components. Section 10 also grants exclusive jurisdiction over cases arising under the Act to U.S. district courts, specifies the powers of enforcement officers, provides for the issuance of citations (that is, written warnings), holds violators subject to certain costs associated with the storage, care, and maintenance of seized property, and includes an injunctive relief provision.

SECTION 11. CIVIL ENFORCEMENT AND PERMIT SANCTIONS

Section 11 provides for both civil administrative and civil judicial penalties. Section 11 also grants the Secretary the authority 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 hearings, judicial review, and the collection of civil penalties. Civil administrative penalties assessed by the Secretary may not exceed \$120,000 per violation, with each day of a continuing violation considered a separate offense. Civil judicial penalties may not exceed \$240,000 per violation, with each day of a continuing violation considered a separate offense.

SECTION 12. CRIMINAL OFFENSES

Section 12 identifies criminal offenses and associated maximum fines and prison terms, specifies violations that are Class C felonies, and establishes federal jurisdiction over these offenses.

SECTION 13. FORFEITURES

Section 13 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.