

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> 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.

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## IN THE SENATE OF THE UNITED STATES

JUNE 13, 2007

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

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

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

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

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

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

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

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

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

1 objectives while protecting marine ecosystem  
2 quality.

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

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (a) IN GENERAL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10           (1) PROCEDURE FOR ISSUANCE OF PERMITS.—

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

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

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

5           (2) PERMIT CONDITIONS.—

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

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

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

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

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

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

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

7           (E) The Secretary may revoke a permit for  
8 failure to begin offshore aquaculture operations  
9 within a reasonable period of time, or prolonged  
10 interruption of offshore aquaculture operations.

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

16           (c) FEES AND OTHER PAYMENTS.—

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

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

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

9           (d) COMPATIBILITY WITH OTHER USES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **SEC. 6. ADMINISTRATION.**

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

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

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

16           (d) AUTHORITY TO UTILIZE GRANT FUNDS.—

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

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

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

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

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

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

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

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

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

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

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

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

7       It is unlawful for any person—

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

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

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

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

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

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

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

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

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

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

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

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

6 (b) POWERS OF ENFORCEMENT.—

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

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

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

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

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

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

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

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

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

17 (C) exercise any other lawful authority.

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

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

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

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

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

20 (a) CIVIL ADMINISTRATIVE PENALTIES.—

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

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

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

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

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

3 (c) PERMIT SANCTIONS.—

4 (1) In any case in which—

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

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

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

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

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

4                   (iii) deny such permit; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **SEC. 12. FORFEITURES.**

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) JUDICIAL REVIEW.—

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

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

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

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

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

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

○