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S. 1195

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

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2005

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

A BILL

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

1 SECTION 1. SHORT TITLE.

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

4 SEC. 2. FINDINGS.

5 The Congress finds the following:

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

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

6 (B) encourage the development of respon-
7 sible marine aquaculture in the Exclusive Eco-
8 nomic Zone by providing the necessary authori-
9 ties and procedures for offshore marine aqua-
10 culture operations, demonstrations, and re-
11 search, through public-private partnerships;

12 (C) establish a permitting process for
13 aquaculture in the Exclusive Economic Zone to
14 encourage private investment in aquaculture op-
15 erations, demonstrations, and research; and

16 (D) promote research and development in
17 marine aquaculture science, technology, and re-
18 lated social, economic, legal, and environmental
19 management disciplines that will enable marine
20 aquaculture operations and demonstrations to
21 achieve operational objectives while protecting
22 marine ecosystem quality.

23 (2) Offshore aquaculture activities within the
24 Exclusive Economic Zone of the United States con-
25 stitute activities with respect to which the United

1 States has proclaimed sovereign rights and jurisdic-
2 tion under Presidential Proclamation 5030 of March
3 10, 1983.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) **DEMONSTRATION.**—The term “demonstra-
7 tion” means pilot-scale testing of aquaculture
8 science and technologies, or farm-scale research.

9 (2) **EXCLUSIVE ECONOMIC ZONE.**—The term
10 “Exclusive Economic Zone” means, unless otherwise
11 specified by the President in the public interest in
12 a writing published in the Federal Register, a zone,
13 the outer boundary of which is 200 nautical miles
14 from the baseline from which the breadth of the ter-
15 ritorial sea is measured, except as established by a
16 maritime boundary treaty in force for the United
17 States, or in the absence of such a treaty where the
18 distance between the coastal State and another State
19 is less than 400 nautical miles, an equidistance line
20 between the 2 States. The inner boundary of that
21 zone is—

22 (A) a line coterminous with the seaward
23 boundary of each of the several coastal States,
24 as defined in sections 2(b) and 4 of the Sub-

1 merged Lands Act (43 U.S.C. 1301(b) and
2 1312);

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

5 (C) a line 3 geographical miles from the
6 coastlines of American Samoa, the Virgin Is-
7 lands, and Guam, respectively; and

8 (D) for any other Commonwealth (includ-
9 ing the Commonwealth of the Northern Mari-
10 anas), territory, or possession of the United
11 States not referred to in subparagraph (B) or
12 (C), the outer boundary of the 12-mile terri-
13 torial sea, and, for the purposes of applying this
14 Act to any such commonwealth, territory, or
15 possession, that zone shall also include the area
16 within the territorial sea.

17 (3) INDIAN TRIBE AND ALASKA NATIVE ORGA-
18 NIZATION.—The term “Indian Tribe and Alaska Na-
19 tive organization” has the meaning given the term
20 “Indian Tribe” in section 102 of the Federally Rec-
21 ognized Indian Tribe List Act of 1994 (25 U.S.C.
22 479a).

23 (4) LESSEE.—The term “lessee” means the
24 party authorized by a lease, or an approved assign-
25 ment thereof, to explore for and develop and produce

1 leased deposits of oil, gas, or sulphur pursuant to 43
2 U.S.C. 1441 et seq.

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

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

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

15 (A) an installation or structure used for
16 offshore aquaculture; or

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

20 (8) OPERATING PERMIT.—The term “operating
21 permit” means an authorization issued under section
22 4(c) to raise specified marine species in a specific
23 offshore aquaculture facility within the area de-
24 scribed in an offshore aquaculture site permit.

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

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

14 (11) SITE PERMIT.—The term “site permit”
15 means an authorization issued under section 4(b) to
16 use a specified area of the U.S. Exclusive Economic
17 Zone for a specified period of time for purposes of
18 offshore aquaculture.

19 (12) STATE.—The term “State” means each of
20 the several States, the District of Columbia, the
21 Commonwealth of Puerto Rico, American Samoa,
22 the United States Virgin Islands, Guam, the Com-
23 monwealth of the Northern Mariana Islands, and
24 any other Commonwealth, territory, or possession of
25 the United States.

1 **SEC. 4. OFFSHORE AQUACULTURE PERMITS.**

2 (a) IN GENERAL.—

3 (1) The Secretary is authorized to establish, in
4 consultation as appropriate with other relevant Fed-
5 eral agencies, a process to make areas of the Exclu-
6 sive Economic Zone available to eligible persons for
7 the development and operation of offshore aqua-
8 culture facilities, which shall include—

9 (A) the development of procedures nec-
10 essary to implement a permitting process under
11 this Act, the form and manner in which appli-
12 cations for permits may be made, and the inclu-
13 sion of any special conditions that may apply to
14 a permit; and

15 (B) the coordination of the offshore aqua-
16 culture permitting process, together with the
17 regulations for siting criteria, environmental
18 protection, monitoring and enforcement, re-
19 search, and economic and social development,
20 with similar activities administered by other
21 Federal agencies and States.

22 (2) Permits for offshore aquaculture located on
23 leases or easements authorized or for which a permit
24 has been issued under the Outer Continental Shelf
25 Lands Act (43 U.S.C. 1331 et seq.), or within 1
26 mile of any other facility for which a permit has

1 been issued under that Act, shall require the concur-
2 rence of the Secretary of the Interior.

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

7 (4) An offshore aquaculture permit holder
8 shall—

9 (A) be a resident of the United States;

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

13 (C) to the extent required by the Secretary
14 of Commerce by regulation after coordination
15 with the Secretary of State, waive any immu-
16 nity, and consent to the jurisdiction of the
17 United States and its courts, for matters aris-
18 ing in relation to such permit and appoint and
19 maintain agents within the United States who
20 are authorized to receive and respond to any
21 legal process issued in the United States with
22 respect to such permit holder.

23 (5) Applications for site permits and operating
24 permits may be submitted and reviewed concur-
25 rently.

1 (6) Within 120 days after determining that a
2 permit application is complete and has satisfied all
3 applicable statutory and regulatory requirements,
4 the Secretary shall render a permit decision. If the
5 Secretary is unable to render a permit decision with-
6 in this time period, the Secretary shall provide writ-
7 ten notice to the applicant indicating the reasons for
8 the delay and establishing a reasonable timeline for
9 a permit decision.

10 (7) Permits issued under this Act do not super-
11 sede or substitute for any other authorization re-
12 quired under applicable Federal or State law or reg-
13 ulation and shall authorize the permit holder to con-
14 duct activities consistent with the provisions of this
15 Act, regulations issued under this Act, and any spe-
16 cific terms, conditions, and restrictions applied to
17 the permit by the Secretary.

18 (8) Vessels owned or used by any offshore
19 aquaculture permit holder shall be exempt from the
20 requirement for documentation or a fishery endorse-
21 ment under sections 12102 and 12108 of title 46,
22 United States Code, for only so long as the vessel
23 is owned or used in support of activities under the
24 permit. All other sections of that title apply as if the
25 exempted vessel was documented.

1 (b) SITE PERMITS.—

2 (1) The Secretary is authorized to issue an off-
3 shore aquaculture site permit to any person meeting
4 the eligibility criteria in subsection (a)(4) under such
5 terms and conditions as the Secretary shall pre-
6 scribe.

7 (2) The Secretary shall establish the terms,
8 conditions, and restrictions applicable to such per-
9 mit, and shall specify in the site permit the dura-
10 tion, size, and location of the offshore aquaculture
11 facility.

12 (3) Except for demonstration projects and off-
13 shore aquaculture permits requiring concurrence of
14 the Secretary of the Interior under subsection
15 (a)(2), the site permit shall have a duration of 10
16 years, renewable thereafter at the discretion of the
17 Secretary in 5-year increments. The duration of per-
18 mits subject to the provisions of subsection (a)(2)
19 shall be developed in consultation as appropriate
20 with the Secretary of the Interior, except that each
21 such permit shall expire no later than the date that
22 the oil and gas lessee, or the lessee's operator, sub-
23 mits to the Secretary of the Interior a final applica-
24 tion for the removal of the facility upon which the
25 offshore aquaculture facility is located.

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

6 (5) For offshore aquaculture located on facili-
7 ties authorized or for which a permit has been
8 issued under the Outer Continental Shelf Lands Act
9 (43 U.S.C. 1331 et seq.), the aquaculture permit
10 holder and all parties that are or were lessees of the
11 lease on which the facilities are located during the
12 term of the site permit shall be jointly and severally
13 liable for the removal of any construction or modi-
14 fications related to aquaculture operations if the
15 aquaculture permit holder fails to do so and bonds
16 established under this Act for aquaculture oper-
17 ations prove insufficient to cover those obligations.
18 This subsection does not affect obligations to decom-
19 mission facilities under the Outer Continental Shelf
20 Lands Act (43 U.S.C. 1331 et seq.).

21 (c) OPERATING PERMITS.—

22 (1) The Secretary is authorized to issue oper-
23 ating permits, under such terms and conditions as
24 the Secretary shall prescribe, to site permit holders.

1 (2) The holder of, or applicant for, a site per-
2 mit under subsection (b) shall submit an application
3 to the Secretary specifying the marine species to be
4 propagated or reared, or both, at the offshore aqua-
5 culture facility, and other design, construction, and
6 operational details and information, as specified by
7 regulation, to facilitate review.

8 (3) Failure to apply for and obtain an operating
9 permit within a reasonable period of time, as speci-
10 fied by the Secretary under the terms and conditions
11 of the offshore aquaculture site permit, may result
12 in the revocation of the site permit.

13 (d) CRITERIA FOR ISSUING PERMITS.—

14 (1) The Secretary shall consult as appropriate
15 with other Federal agencies to ensure that offshore
16 aquaculture for which a permit has been issued
17 under this section meets the environmental require-
18 ments established under section 5(a) and is compat-
19 ible with the use of the Exclusive Economic Zone for
20 navigation, fishing, resource protection, recreation,
21 national defense (including military readiness), min-
22 eral exploration and development, and other activi-
23 ties.

24 (2) The Secretary shall consider risks to and
25 impacts on natural fish stocks, marine ecosystems,

1 biological, chemical and physical features of water
2 quality, habitat, marine mammals, other forms of
3 marine life, birds, endangered species, and other fea-
4 tures of the environment, as identified by the Sec-
5 retary in consultation as appropriate with other Fed-
6 eral agencies.

7 (3) Federal agencies implementing this Act,
8 persons subject to this Act, and coastal States seek-
9 ing to review permit applications under this Act
10 shall comply with the applicable provisions of the
11 Coastal Zone Management Act of 1972 (including
12 subsections (c)(1), (c)(3)(A), (c)(3)(B), and (d) of
13 section 307 (16 U.S.C. 1456(c)(1), (c)(3)(A),
14 (c)(3)(B), and (d)) and the corresponding Federal
15 regulations.

16 (4) When an aquaculture facility is proposed to
17 be associated with an offshore oil and gas platform
18 licensed under the Outer Continental Shelf Lands
19 Act (43 U.S.C. 1331 et seq.), and if the offshore
20 aquaculture applicant is required to submit to a
21 coastal State a consistency certification for its aqua-
22 culture application under section 307(c)(3)(A) of the
23 Coastal Zone Management Act of 1972 (16 U.S.C.
24 1456(c)(3)(A)), the coastal State's review under that
25 Act and corresponding Federal regulations shall also

1 include any modification to an offshore oil or gas or
2 mineral lessee's development and production plan or
3 development operations coordination document for
4 which a consistency certification would otherwise be
5 required under applicable Federal regulations, in-
6 cluding changes to its plan for decommissioning any
7 facilities, resulting from or necessary for the
8 issuance of the offshore aquaculture permit, pro-
9 vided that information related to such modifications
10 or changes are received by the coastal State at the
11 time the coastal State receives the offshore aqua-
12 culture permit applicant's consistency certification.
13 In this case, offshore oil and gas or mineral lessees
14 are not required to submit a separate consistency
15 certification for any such modification or change
16 under section 307(c)(3)(B) of that Act (16 U.S.C.
17 1456(c)(3)(B)) and the coastal State's concurrence
18 or objection, or presumed concurrence, under section
19 307(c)(3)(A) of that Act (16 U.S.C. 1456(c)(3)(A))
20 shall apply to both the offshore aquaculture permit
21 and to any related modifications or changes to off-
22 shore oil and gas or mineral plans requiring ap-
23 proval by the Department of the Interior.

24 (5) If a coastal State is not authorized by sec-
25 tion 307(c)(3)(A) of the Coastal Zone Mangement

1 Act (16 U.S.C. 1456(c)(3)(A)) and corresponding
2 Federal regulations to review an offshore aqua-
3 culture project proposed under this Act, then any
4 modifications or changes to offshore oil and gas or
5 mineral development and production plans or devel-
6 opment operations coordination documents requiring
7 approval from the Department of the Interior, shall
8 be subject to coastal State review pursuant to the
9 requirements of section 307(c)(3)(B) of that Act (16
10 U.S.C. 1456(c)(3)(B)), if a consistency certification
11 for those modifications or changes is required under
12 applicable Federal regulations.

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

18 (e) EXCLUSION FROM PROVISIONS OF MAGNUSON-
19 STEVENS FISHERY CONSERVATION AND MANAGEMENT
20 ACT.—

21 (1) Offshore aquaculture conducted in accord-
22 ance with permits issued pursuant to this section 4
23 is excluded from the definition of “fishing” as that
24 term is defined in section 3(15) of the Magnuson-

1 Stevens Fishery Conservation and Management Act
2 (16 U.S.C. 1802(15)).

3 (2) The Secretary shall ensure, to the extent
4 practicable, that offshore aquaculture does not inter-
5 fere with conservation and management measures
6 promulgated under the Magnuson-Stevens Fishery
7 Conservation and Management Act (16 U.S.C. 1801
8 et seq.).

9 (3) The Secretary shall consult with the appro-
10 priate Regional Fishery Management Council under
11 that Act before issuing a permit.

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

16 (f) FEES AND OTHER PAYMENTS.—

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

20 (2) The Secretary shall require the site permit
21 holder to post a bond or other form of financial
22 guarantee, in an amount to be determined by the
23 Secretary as sufficient to cover any unpaid fees, the
24 cost of removing an offshore aquaculture facility at

1 the expiration or termination of a site permit, and
2 other financial risks as identified by the Secretary.

3 (3) The Secretary may reduce or waive applica-
4 ble fees or other payments established under this
5 section for facilities used primarily for research or
6 for raising cultured stock for the replenishment of
7 wild fisheries.

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

11 (g) AUTHORITY TO MODIFY OR SUSPEND PER-
12 MITS.—

13 (1) Subject to paragraph (2), if the Secretary,
14 after consultation with Federal agencies as appro-
15 priate and after affording the permit holder notice
16 and an opportunity to be heard, determines that sus-
17 pension of, or modification of, a permit is in the na-
18 tional interest, the Secretary may suspend or modify
19 such permit.

20 (2) If the Secretary determines that an emer-
21 gency exists that poses a risk to the safety of hu-
22 mans, to the marine environment or marine re-
23 sources, or to the security of the United States and
24 that requires suspension or modification of a permit,
25 the Secretary may suspend or modify the permit for

1 such time as the Secretary may determine necessary
2 to meet the emergency. The Secretary shall afford
3 the permit holder a prompt post-suspension or post-
4 modification opportunity to be heard regarding the
5 suspension or modification.

6 (h) ACTIONS AFFECTING THE OUTER CONTINENTAL
7 SHELF.—

8 (1) For aquaculture projects or operations lo-
9 cated on facilities subject to the Outer Continental
10 Shelf Lands Act (43 U.S.C. 1331 et seq.), the Sec-
11 retary of the Interior is authorized—

12 (A) to enforce all requirements contained
13 in Federal mineral leases and regulations issued
14 pursuant to the Outer Continental Shelf Lands
15 Act;

16 (B) to require and enforce such additional
17 terms or conditions as the Secretary of the In-
18 terior deems necessary to protect the marine
19 environment, property, or human life or health
20 to ensure the compatibility of aquaculture oper-
21 ations with all activities for which permits have
22 been issued under the Outer Continental Shelf
23 Lands Act; and

24 (C) to issue orders to any offshore aqua-
25 culture permit holder to take any action the

1 Secretary of the Interior deems necessary to en-
2 sure safe oil and gas or other mineral oper-
3 ations on any facility to protect the marine en-
4 vironment, property, or human life or health.

5 The failure to comply with the Secretary of the Inte-
6 rior's orders under this paragraph will be deemed to
7 constitute a violation of the Outer Continental Shelf
8 Lands Act.

9 (2) The Secretary of the Interior shall review
10 and approve any agreement between an operator of
11 a facility for which a permit has been issued under
12 the Outer Continental Shelf Lands Act and a pro-
13 spective aquaculture operator to ensure that it is
14 consistent with the Federal mineral lease terms, De-
15 partment of the Interior regulations, and the Sec-
16 retary of the Interior's role in the protection of the
17 marine environment, property, or human life or
18 health. An agreement under this subsection shall be
19 part of the information reviewed pursuant to the
20 Coastal Zone Management Act of 1972 review proc-
21 ess described in subsection (d)(4) of this section and
22 shall not be subject to a separate Coastal Zone Man-
23 agement Act of 1972 review.

24 (3) No offshore aquaculture may be located on
25 facilities authorized or for which a permit has been

1 issued under the Outer Continental Shelf Lands Act
2 without the prior consent of the owner of the facil-
3 ity.

4 (4) The Secretary of the Interior shall promul-
5 gate such rules and regulations as are necessary and
6 appropriate to carry out the provisions of this sub-
7 section.

8 (i) TRANSFERABILITY OF PERMITS.—The Secretary
9 is authorized to establish procedures for transferring per-
10 mits from the original permit holder to any person meet-
11 ing the eligibility criteria in subsection (a)(4) and able to
12 satisfy the requirements for bonds or other guarantees
13 prescribed under subsection (f)(2).

14 **SEC. 5. ENVIRONMENTAL REQUIREMENTS.**

15 (a) ENVIRONMENTAL REQUIREMENTS.—The Sec-
16 retary shall consult as appropriate with other Federal
17 agencies to identify the environmental requirements appli-
18 cable to offshore aquaculture under existing laws and reg-
19 ulations. The Secretary may establish additional environ-
20 mental requirements for offshore aquaculture facilities, if
21 deemed necessary, in consultation with appropriate Fed-
22 eral agencies, coastal States, and the public. Environ-
23 mental requirements may include, but are not limited to,
24 environmental monitoring, data archiving, and reporting
25 by the permit holder, as deemed necessary or prudent by

1 the Secretary. The environmental requirements shall con-
2 sider risks to and impacts on—

3 (1) natural fish stocks,

4 (2) marine ecosystems,

5 (3) biological, chemical and physical features of
6 water quality and habitat,

7 (4) marine mammals, other forms of marine
8 life, birds, and endangered species, and

9 (5) other features of the environment,

10 as identified by the Secretary, in consultation as appro-
11 priate with other Federal agencies.

12 (b) SITING, MONITORING, AND EVALUATION.—

13 (1) The Secretary is authorized to collect infor-
14 mation needed to evaluate the suitability of sites for
15 offshore aquaculture.

16 (2) The Secretary is authorized to promulgate
17 regulations regarding monitoring and evaluation of
18 compliance with the provisions of site and operating
19 permits, including the collection of biological, chem-
20 ical and physical oceanographic data, and social,
21 production, and economic data.

22 (3) The Secretary is authorized to monitor the
23 effects of offshore aquaculture on marine ecosystems
24 and implement such measures as may be necessary
25 to protect the environment, including temporary or

1 permanent relocation of offshore aquaculture sites, a
2 moratorium on additional sites within a prescribed
3 area, and other appropriate measures as determined
4 by the Secretary.

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

7 **SEC. 6. RESEARCH AND DEVELOPMENT.**

8 (a) IN GENERAL.—In consultation as appropriate
9 with other Federal agencies, the Secretary is authorized
10 to establish an integrated, multidisciplinary, scientific re-
11 search and development program to further offshore aqua-
12 culture technologies that are compatible with the protec-
13 tion of marine ecosystems.

14 (b) RESEARCH PARTNERSHIPS.—The Secretary is
15 authorized to conduct research and development in part-
16 nership with site permit holders.

17 **SEC. 7. ADMINISTRATION.**

18 (a) IN GENERAL.—The Secretary shall promulgate
19 such rules and regulations as are necessary and appro-
20 priate to carry out the provisions of this Act. The Sec-
21 retary may at any time prescribe and amend such rules
22 and regulations as the Secretary determines to be nec-
23 essary and proper, and such rules and regulations shall,
24 as of their effective date, apply to all operations conducted
25 under permits issued under the provisions of this Act.

1 (b) NAVIGATIONAL SAFETY ZONES.—

2 (1) The Secretary may promulgate rules that
3 the Secretary finds to be reasonable and necessary
4 to protect offshore aquaculture facilities, and, where
5 appropriate, shall request that the Secretary of the
6 department in which the Coast Guard is operating
7 establish navigational safety zones around such fa-
8 cilities.

9 (2) After consultation with the Secretary of
10 Commerce, the Secretary of State, and the Secretary
11 of Defense, the Secretary of the department in the
12 which the Coast Guard is operating may designate
13 a zone of appropriate size around and including any
14 offshore aquaculture facility for the purpose of navi-
15 gational safety. In such zone, no installations, struc-
16 tures, or uses will be allowed that are incompatible
17 with the operation of the offshore aquaculture facil-
18 ity. The Secretary of the department in which the
19 Coast Guard is operating may by regulation define
20 activities that are allowed within such zone.

21 (c) CONSULTATION WITH OTHER AGENCIES.—The
22 Secretary shall consult as appropriate with Federal agen-
23 cies that are authorized to issue permits within the Exclu-
24 sive Economic Zone to develop a coordinated and stream-
25 lined permitting process for offshore aquaculture. The

1 process shall factor in the needs, requirements, and au-
2 thorities of each Agency, including the need to consult
3 with State agencies and the requirement for public review
4 and involvement.

5 (d) MEMORANDA OF AGREEMENT.—The Secretary
6 may enter into memoranda of agreement, memoranda of
7 understanding, or other agreements with heads of Federal
8 agencies, as appropriate, to implement this Act, and the
9 Secretary and the heads of such agencies may issue such
10 regulations as may be necessary to ensure coordination of
11 Federal activities to implement this Act.

12 (e) UTILIZATION OF FEDERAL AND STATE PER-
13 SONNEL, SERVICES, AND EQUIPMENT.—The Secretary
14 may, with or without reimbursement, utilize in the per-
15 formance of functions under this Act the personnel, serv-
16 ices, equipment (including aircraft and vessels), and facili-
17 ties of—

18 (1) any Federal agency under a written agree-
19 ment with the head of that agency; and

20 (2) any agency of a State under a written
21 agreement with the head of that agency, to the ex-
22 tent allowed by the law of that State.

23 (f) EFFECT ON JURISDICTION, RESPONSIBILITIES,
24 AND RIGHTS OF OTHER ENTITIES.— Nothing in this Act
25 shall be construed to displace, supersede, limit, or modify

1 the jurisdiction, responsibilities, or rights of any Federal
2 or State agency, or Indian Tribe or Alaska Native organi-
3 zation, under any Federal law or treaty.

4 (g) APPLICATION OF CERTAIN LAWS.—

5 (1) In addition to this Act and other statutes
6 of the United States that apply in the Exclusive
7 Economic Zone, the following shall apply with re-
8 spect to offshore aquaculture facilities in the Exclu-
9 sive Economic Zone for which a permit has been
10 issued under this Act and to activities in the Exclu-
11 sive Economic Zone connected, associated, or poten-
12 tially interfering with the use or operation of such
13 facilities:

14 (A) Titles 18 and 28, United States Code.

15 (B) The provisions of any other statute of
16 the United States, when the Secretary has de-
17 termined that it is in the public interest that
18 such provision so apply and has published that
19 determination in the Federal Register and until
20 the Secretary determines to the contrary and
21 publishes a notice in the Federal Register to
22 the contrary.

23 (2) The jurisdiction of the Federal courts with
24 respect to the provisions of paragraph (1).

1 (3) Nothing in this Act shall be construed to re-
2 lieve, exempt, or immunize any person from any
3 other requirement imposed by an applicable Federal
4 law, treaty, or regulation.

5 (4) Nothing in this Act shall be construed to
6 confer citizenship to a person by birth or through
7 naturalization or to entitle a person to avail himself
8 of any law pertaining to immigration, naturalization,
9 or nationality.

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

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Sec-
3 retary such sums as may be necessary for purposes of car-
4 rying out the provisions of this Act.

5 **SEC. 9. UNLAWFUL ACTIVITIES.**

6 It is unlawful for any person—

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

15 (2) to engage in offshore aquaculture within the
16 Exclusive Economic Zone of the United States ex-
17 cept in full compliance with this Act, any regulations
18 promulgated under this Act, and the terms and con-
19 ditions of any permit issued by the Secretary under
20 this Act;

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

25 (4) to forcibly assault, resist, oppose, impede,
26 intimidate, or interfere with an authorized officer in

1 the conduct of any search or inspection in connec-
2 tion with the enforcement of this Act or any regula-
3 tion or permit issued under this Act;

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

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

10 (7) to violate any provision of this Act or any
11 regulation or permit issued under this Act; or

12 (8) to attempt to commit any act described in
13 paragraph (1), (2), (6) or (7).

14 **SEC. 10. ENFORCEMENT PROVISIONS.**

15 (a) DUTIES OF SECRETARIES.—This Act shall be en-
16 forced by the Secretary and the Secretary of the Depart-
17 ment in which the Coast Guard is operating. The Secre-
18 taries each may exercise for this purpose the same author-
19 ity as is granted to the Secretary by section 7(e) of this
20 Act.

21 (b) DISTRICT COURT JURISDICTION.—The several
22 district courts of the United States shall have jurisdiction
23 over any actions arising under this Act. The venue provi-
24 sions of title 18, United States Code, and title 28, United
25 States Code, shall apply to any actions arising under this

1 Act. The judges of the district courts of the United States
2 and the United States magistrate judges may, within their
3 respective jurisdictions, upon proper oath or affirmation
4 showing probable cause, issue such warrants or other proc-
5 ess as may be required for enforcement of this Act, or
6 any regulation or permit issued under this Act.

7 (c) POWERS OF ENFORCEMENT.—

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

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

15 (i) arrest any person, if the officer has
16 reasonable cause to believe that such per-
17 son has committed or is committing an act
18 prohibited by section 9 of this Act;

19 (ii) search or inspect any offshore
20 aquaculture facility;

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

1 offshore aquaculture facility was used or
2 employed in aid of, the violation of any
3 provision of this Act or any regulation or
4 permit issued under this Act;

5 (iv) seize any living marine resource
6 (wherever found) retained, in any manner,
7 in connection with or as a result of the
8 commission of any act prohibited by sec-
9 tion 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 the first sentence of subsection (a) of this section by
20 the Secretary or the Secretary of the department in
21 which the Coast Guard is operating to enforce the
22 provisions of this Act may make an arrest without
23 a warrant for (A) an offense against the United
24 States committed in his presence, or (B) for a felony
25 cognizable under the laws of the United States, if he

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

10 (d) 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 (e) 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 living marine resource or other prop-
18 erty seized in connection with the violation.

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

23 **SEC. 11. CIVIL ENFORCEMENT AND PERMIT SANCTIONS.**

24 (a) CIVIL PENALTIES.—

1 (1) Any person who is found by the Secretary,
2 after notice and opportunity for a hearing in accord-
3 ance with section 554 of title 5, United States Code,
4 to have violated this Act, or a regulation or permit
5 issued under this Act, shall be liable to the United
6 States for a civil penalty. The amount of the civil
7 penalty under this paragraph shall not exceed
8 \$120,000 for each violation. Each day of a con-
9 tinuing violation shall constitute a separate violation.
10 The amount of such civil penalty shall be assessed
11 by the Secretary by written notice. In determining
12 the amount of such penalty, the Secretary shall take
13 into account the nature, circumstances, extent, and
14 gravity of the prohibited acts committed and, with
15 respect to the violation, the degree of culpability,
16 any history of prior violations, and such other mat-
17 ters as justice may require.

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

22 (b) CIVIL JUDICIAL PENALTIES.—Any person who
23 violates any provision of this Act, or any regulation or per-
24 mit issued thereunder, shall be subject to a civil penalty
25 of not to exceed \$240,000 for each such violation. Each

1 day of a continuing violation shall constitute a separate
2 violation. The Attorney General, upon the request of the
3 Secretary, may commence a civil action in an appropriate
4 district court of the United States, and such court shall
5 have jurisdiction to award civil penalties and such other
6 relief as justice may require. In determining the amount
7 of a civil penalty, the court shall take into account the
8 nature, circumstances, extent, and gravity of the prohib-
9 ited acts committed and, with respect to the violation, the
10 degree of culpability, any history of prior violations and
11 such other matters as justice may require.

12 (c) PERMIT SANCTIONS.—

13 (1) In any case in which—

14 (A) an offshore aquaculture facility has
15 been used in the commission of an act prohib-
16 ited under section 9 of this Act;

17 (B) the owner or operator of an offshore
18 aquaculture facility or any other person who
19 has been issued or has applied for a permit
20 under section 4 of this Act has acted in viola-
21 tion of section 9 of this Act; or

22 (C) any amount in settlement of a civil for-
23 feiture imposed on an offshore aquaculture fa-
24 cility or other property, or any civil penalty or
25 criminal fine imposed under this Act or imposed

1 on any other person who has been issued or has
2 applied for a permit under any fishery resource
3 statute enforced by the Secretary, has not been
4 paid and is overdue, the Secretary may—

5 (i) revoke any permit issued with re-
6 spect to such offshore aquaculture facility
7 or applied for by such a person under this
8 Act, with or without prejudice to the
9 issuance of subsequent permits;

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

13 (iii) deny such permit; or

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

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

18 (A) the nature, circumstances, extent, and
19 gravity of the prohibited acts for which the
20 sanction is imposed; and

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

24 (3) Transfer of ownership of an offshore aqua-
25 culture facility, by sale or otherwise, shall not extin-

1 guish any permit sanction that is in effect or is
2 pending at the time of transfer of ownership. Before
3 executing the transfer of ownership of an offshore
4 aquaculture facility, by sale or otherwise, the owner
5 shall disclose in writing to the prospective transferee
6 the existence of any permit sanction that will be in
7 effect or pending with respect to the offshore aqua-
8 culture facility at the time of the transfer. The Sec-
9 retary may waive or compromise a sanction in the
10 case of a transfer pursuant to court order.

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

16 (5) No sanctions shall be imposed under this
17 subsection unless there has been prior opportunity
18 for a hearing on the facts underlying the violation
19 for which the sanction is imposed, either in conjunc-
20 tion with a civil penalty proceeding under this sec-
21 tion or otherwise.

22 (d) HEARING.—For the purposes of conducting any
23 hearing under this section, the Secretary may issue sub-
24 poenas for the attendance and testimony of witnesses and
25 the production of relevant papers, books, and documents,

1 and may administer oaths. Witnesses summoned shall be
2 paid the same fees and mileage that are paid to witnesses
3 in the courts of the United States. In case of contempt
4 or refusal to obey a subpoena served upon any person pur-
5 suant to this subsection, the district court of the United
6 States for any district in which such person is found, re-
7 sides, or transacts business, upon application by the
8 United States and after notice to such person, shall have
9 jurisdiction to issue an order requiring such person to ap-
10 pear and give testimony before the Secretary or to appear
11 and produce documents before the Secretary, or both, and
12 any failure to obey such order of the court may be pun-
13 ished by such court as a contempt thereof.

14 (e) JUDICIAL REVIEW.—Any person against whom a
15 civil penalty is assessed under subsection (a)(1) of this
16 section or against whose offshore aquaculture facility a
17 permit sanction is imposed under subsection (c) of this
18 section (other than a permit suspension for nonpayment
19 of penalty or fine) may obtain review thereof in the United
20 States district court for the appropriate district by filing
21 a complaint against the Secretary in such court within 30
22 days from the date of such penalty or sanction. The Sec-
23 retary shall promptly file in such court a certified copy
24 of the record upon which such penalty or sanction was
25 imposed, as provided in section 2112 of title 28, United

1 States Code. The findings and order of the Secretary shall
2 be set aside by such court if they are not found to be sup-
3 ported by substantial evidence, as provided in section
4 706(2) of title 5, United States Code.

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

23 **SEC. 12. CRIMINAL OFFENSES.**

24 Any person who knowingly violates subsection (a)(3)
25 or (b)(4) of section 4, or subsection (a), (b), or (g) of sec-

1 tion 9, upon conviction, shall be imprisoned for not more
2 than 5 years and shall be fined not more than \$500,000,
3 if that person is an individual, or \$1,000,000 if that per-
4 son is not an individual. Any person who knowingly vio-
5 lates any other provision of section 9 or a measure issued
6 pursuant to section 5(b)(3) commits a Class C felony sub-
7 ject to the penalties of title 18, United States Code. The
8 district courts of the United States shall have jurisdiction
9 over any actions arising under this Act. For the purpose
10 of this Act, American Samoa shall be included within the
11 judicial district of the District Court of the United States
12 for the District of Hawaii. Each violation shall be a sepa-
13 rate offense and the offense shall be deemed to have been
14 committed not only in the district where the violation first
15 occurred, but also in any other district as authorized by
16 law. Any offenses not committed in any district are subject
17 to the venue provisions of section 3238 of title 18, United
18 States Code.

19 **SEC. 13. FORFEITURES.**

20 (a) IN GENERAL.—Any offshore aquaculture facility
21 (including its structure, equipment, furniture, appur-
22 tenances, stores, and cargo) used in aid of and any living
23 marine resources (or the fair market value thereof) taken
24 or retained, in any manner, in connection with or as a
25 result of the violation of any provision of section 9 or sub-

1 section (a)(3) or (b)(4) of section 4 shall be subject to
2 forfeiture to the United States. All or part of such offshore
3 aquaculture facility may, and all such living marine re-
4 sources (or the fair market value thereof) shall, be for-
5 feited to the United States pursuant to a civil proceeding
6 under this section.

7 (b) JURISDICTION OF THE COURTS.—Any district
8 court of the United States shall have jurisdiction, upon
9 application of the Attorney General on behalf of the
10 United States, to order any forfeiture authorized under
11 subsection (a) of this section and any action provided for
12 under subsection (d) of this section.

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

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

22 (2) the disposition of such property or the pro-
23 ceeds from the sale thereof, and

24 (3) the remission or mitigation of any such for-
25 feiture,

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

5 (d) PROCEDURE.—

6 (1) Any officer authorized to serve any process
7 that is issued by a court under section 10(b) of this
8 Act shall—

9 (A) stay the execution of such process, or

10 (B) discharge any living marine resources
11 seized pursuant to such process,

12 upon receipt of a satisfactory bond or other security
13 from any person claiming such property. The bond
14 or other security shall be conditioned upon such per-
15 son delivering such property to the appropriate court
16 upon order thereof, without any impairment of its
17 value, or paying the monetary value of such property
18 pursuant to an order of such court. Judgment shall
19 be recoverable on such bond or other security
20 against both the principal and any sureties in the
21 event that any condition thereof is breached, as de-
22 termined by such court.

23 (2) Any living marine resources seized pursuant
24 to this Act may be sold, subject to the approval of
25 the appropriate court, for not less than the fair mar-

1 ket value thereof. The proceeds of any such sale
2 shall be deposited with such court pending the dis-
3 position of the matter involved.

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

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