

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

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

3 **SEC. 2. FINDINGS.**

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

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

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

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

15 (4) Promote, through public-private partnerships, research and development in
16 marine aquaculture science, technology, and related social, economic, legal, and environmental
17 management disciplines that will enable marine aquaculture operations to achieve operational
18 objectives while protecting marine ecosystem quality.

1 (b) Offshore aquaculture activities within the Exclusive Economic Zone of the United
2 States constitute activities with respect to which the United States has proclaimed sovereign
3 rights and jurisdiction under Presidential Proclamation 5030 of March 10, 1983.

4 **SEC. 3. DEFINITIONS.**

5 As used in this Act –

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

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

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

22 (1) a line coterminous with the seaward boundary of each of the several coastal
23 States, as defined in 43 U.S.C. § 1312;

1 (2) a line three marine leagues from the coastline of the Commonwealth of Puerto
2 Rico;

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

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

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

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

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

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

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

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

20 (f) The term "offshore aquaculture" means all activities, including the operation of
21 offshore aquaculture facilities, involved in the propagation and rearing, or attempted propagation
22 and rearing, of marine species in the United States Exclusive Economic Zone.

23

1 (g) The term “offshore aquaculture facility” means: 1) an installation or structure used,
2 in whole or in part, for offshore aquaculture; or 2) an area of the seabed or the subsoil used for
3 offshore aquaculture of living organisms belonging to sedentary species.

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

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

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

14 **SEC. 4. OFFSHORE AQUACULTURE PERMITS.**

15 (a) GENERAL

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

22 (A) Procedures and criteria necessary to issue and modify permits under
23 this Act;

1 (B) Procedures to coordinate the offshore aquaculture permitting process,
2 and related siting, operations, environmental protection, monitoring, enforcement, research, and
3 economic and social activities, with similar activities administered by other federal agencies and
4 coastal States;

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

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

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

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

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

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

22 (4) The Secretary shall consult as appropriate with other federal agencies and
23 coastal States to identify the environmental requirements that apply to offshore aquaculture

1 under existing laws and regulations. The Secretary shall establish through rulemaking, in
2 consultation with appropriate federal agencies, coastal States, and regional fishery management
3 councils established under section 302 of the Magnuson-Stevens Fishery Conservation and
4 Management Act (16 U.S.C. § 1852), additional environmental requirements to address
5 environmental risks and impacts associated with offshore aquaculture, to the extent necessary.

6 The environmental requirements shall address, but are not limited to:

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

11 (B) risks to and impacts on marine ecosystems; biological, chemical and
12 physical features of water quality and habitat; marine species, marine mammals and birds;

13 (C) cumulative effects of the aquaculture operation and other aquaculture
14 operations in the vicinity of the proposed site;

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

17 (E) requirements that marine species propagated and reared through
18 offshore aquaculture be species native to the geographic region unless a scientific risk analysis
19 shows that the risk of harm to the marine environment from the offshore culture of non-

20 indigenous or genetically modified marine species is negligible or can be effectively mitigated;
21 and

22 (F) maintaining record systems to track inventory and movement of fish or
23 other marine species in the offshore aquaculture facility or harvested from such facility, and, if

1 necessary, tagging, marking, or otherwise identifying fish or other marine species in the offshore
2 aquaculture facility or harvested from such facility.

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

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

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

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

16 (1) PROCEDURES FOR ISSUANCE OF PERMITS

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

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

1 deny a permit within this time period, the Secretary shall provide written notice to the applicant
2 indicating the reasons for the delay and establishing a reasonable timeline for issuing or denying
3 the permit.

4 (2) PERMIT CONDITIONS

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

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

16 (C) Except for projects involving pilot-scale testing or farm-scale research
17 on aquaculture science and technologies and offshore aquaculture permits requiring concurrence
18 of the Secretary of the Interior under subsection 4(e)(1), the permit shall have a duration of
19 20 years, renewable thereafter at the discretion of the Secretary in up to 20-year increments. The
20 duration of permits requiring concurrence of the Secretary of the Interior under
21 subsection 4(e)(1) shall be developed in consultation as appropriate with the Secretary of the
22 Interior, except that any such permit shall expire no later than the date that the lessee, or the
23 lessee's operator, submits to the Secretary of the Interior a final application for the

1 decommissioning and removal of an existing facility upon which an offshore aquaculture facility
2 is located.

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

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

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

12 (c) FEES AND OTHER PAYMENTS

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

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

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

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1 (d) COMPATIBILITY WITH OTHER USES

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

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

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

17 (4) Offshore aquaculture conducted in accordance with permits issued pursuant to
18 this Act is excluded from the definition of “fishing” in the Magnuson-Stevens Fishery
19 Conservation and Management Act (16 U.S.C. § 1802(15)). The Secretary shall ensure, to the
20 extent practicable, that offshore aquaculture does not interfere with conservation and
21 management measures promulgated under the Magnuson-Stevens Fishery Conservation and
22 Management Act.

23

1 (5) The Secretary may promulgate regulations that the Secretary finds to be
2 reasonable and necessary to protect offshore aquaculture facilities, and, where appropriate, shall
3 request that the Secretary of the department in which the Coast Guard is operating establish
4 navigational safety zones around such facilities. In addition, in the case of any offshore
5 aquaculture facility described in section 4(e)(1), the Secretary of the department in which the
6 Coast Guard is operating shall consult with the Secretary of the Interior before designating such
7 a zone.

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

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

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

1 suspension or post-modification opportunity to be heard regarding the suspension, modification,
2 or revocation.

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

5 (e) ACTIONS AFFECTING THE OUTER CONTINENTAL SHELF –

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

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

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

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

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

1 (4) Coordinated Coastal Zone Management Act review

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

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

1 the Department of the Interior, shall be subject to coastal State review pursuant to the
2 requirements of section 307(c)(3)(B) of the Coastal Zone Management Act (16 U.S.C.
3 § 1456(c)(3)(B)), if a consistency certification for those modifications or changes is required
4 under applicable federal regulations.

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

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

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

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

20 (C) Issue orders to the offshore aquaculture permit holder to take any
21 action the Secretary of the Interior deems necessary to ensure safe operations on the facility to
22 protect the marine environment, property, or human life or health. Failure to comply with the
23

1 Secretary of the Interior's orders will be deemed to constitute a violation of the Outer
2 Continental Shelf Lands Act; and

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

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

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

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

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

16 **SEC. 6. ADMINISTRATION.**

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

22 (b) The Secretary shall have the authority to enter into and perform such contracts, leases,
23 grants, or cooperative agreements as may be necessary to carry out the purposes of this Act and

1 on such terms as the Administrator of the National Oceanic and Atmospheric Administration
2 deems appropriate.

3 (c) For purposes related to the enforcement of this Act, the Secretary is authorized to use,
4 with their consent and with or without reimbursement, the land, services, equipment, personnel,
5 and facilities of any department, agency or instrumentality of the United States, or of any state,
6 local government, Indian tribal government, Territory or possession, or of any political
7 subdivision thereof, or of any foreign government or international organization.

8 (d) Authority to Utilize Grant Funds

9 (1) Except as provided in paragraph (2), the Secretary is authorized to apply for,
10 accept, and obligate research grant funding from any federal source operating competitive grant
11 programs where such funding furthers the purpose of this Act.

12 (2) The Secretary may not apply for, accept, or obligate any grant funding under
13 paragraph (1) for which the granting agency lacks authority to grant funds to federal agencies, or
14 for any purpose or subject to conditions that are prohibited by law or regulation.

15 (3) Appropriated funds may be used to satisfy a requirement to match grant funds
16 with recipient agency funds, except that no grant may be accepted that requires a commitment in
17 advance of appropriations.

18 (4) Funds received from grants shall be deposited in the National Oceanic and
19 Atmospheric Administration account that serves to accomplish the purpose for which the grant
20 was awarded.

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

1 (f) The Constitution, laws, and treaties of the United States shall apply to an offshore
2 aquaculture facility located in the Exclusive Economic Zone for which a permit has been issued
3 or is required under this Act and to activities in the Exclusive Economic Zone connected,
4 associated, or potentially interfering with the use or operation of such facility, in the same
5 manner as if such facility were an area of exclusive federal jurisdiction located within a State.
6 Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other
7 requirement imposed by an applicable federal law, regulation, or treaty. Nothing in this Act shall
8 be construed to confer citizenship to a person by birth or through naturalization or to entitle a
9 person to avail himself of any law pertaining to immigration, naturalization, or nationality.

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

20 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

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

1 **SEC. 8. UNLAWFUL ACTIVITIES.**

2 It is unlawful for any person -

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

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

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

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

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

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

21 (g) to import, export, sell, receive, acquire or purchase in interstate or foreign commerce
22 any marine species in violation of this Act or any regulation or permit issued under this Act;

23

1 (h) upon the expiration or termination of any aquaculture permit for any reason, fail to
2 remove all structures, gear, and other property from the site, or take other measures, as
3 prescribed by the Secretary, to restore the site;

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

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

7 **SEC. 9. ENFORCEMENT PROVISIONS.**

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

11 (b) POWERS OF ENFORCEMENT

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

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

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

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

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

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

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

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

10 (C) exercise any other lawful authority.

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

21 (c) ISSUANCE OF CITATIONS – If any authorized officer finds that a person is
22 engaging in or has engaged in offshore aquaculture in violation of any provision of this Act, such
23 officer may issue a citation to that person.

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

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

5 (a) CIVIL ADMINISTRATIVE PENALTIES

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

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

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

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

3 (c) PERMIT SANCTIONS

4 (1) In any case in which -

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

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

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

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

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

20 (iii) deny such permit; or

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

22 (2) In imposing a sanction under this subsection, the Secretary shall take into
23 account -

1 (A) the nature, circumstances, extent, and gravity of the prohibited acts for
2 which the sanction is imposed; and

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

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

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

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

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

22 (e) HEARING – For the purposes of conducting any investigation or hearing under this
23 section or any other statute administered by the National Oceanic and Atmospheric

1 Administration which is determined on the record in accordance with the procedures provided
2 for under section 554 of Title 5, the Secretary may issue subpoenas for the attendance and
3 testimony of witnesses and the production of relevant papers, books, and documents, and may
4 administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to
5 witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena
6 served upon any person pursuant to this subsection, the district court of the United States for any
7 district in which such person is found, resides, or transacts business, upon application by the
8 United States and after notice to such person, shall have jurisdiction to issue an order requiring
9 such person to appear and give testimony before the Secretary or to appear and produce
10 documents before the Secretary, or both, and any failure to obey such order of the court may be
11 punished by such court as a contempt thereof. Nothing in this Act shall be construed to grant
12 jurisdiction to a district court to entertain an application for an order to enforce a subpoena issued
13 by the Secretary of Commerce to the Federal Government or any entity thereof.

14 (f) JURISDICTION – The United States district courts shall have original jurisdiction of
15 any action under this section arising out of or in connection with the construction or operation of
16 aquaculture facilities, and proceedings with respect to any such action may be instituted in the
17 judicial district in which any defendant resides or may be found, or in the judicial district of the
18 adjacent coastal State nearest the place where the cause of action arose. For the purpose of this
19 section, American Samoa shall be included within the judicial district of the District Court of the
20 United States for the District of Hawaii. Each violation shall be a separate offense and the
21 offense shall be deemed to have been committed not only in the district where the violation first
22 occurred, but also in any other district as authorized by law.

23

1 (g) COLLECTION – If any person fails to pay an assessment of a civil penalty after it
2 has become a final and unappealable order, or after the appropriate court has entered final
3 judgment in favor of the Secretary, the matter may be referred to the Attorney General, who may
4 recover the amount (plus interest at currently prevailing rates from the date of the final order). In
5 such action the validity, amount and appropriateness of the final order imposing the civil penalty
6 shall not be subject to review. Any person who fails to pay, on a timely basis, the amount of an
7 assessment of a civil penalty shall be required to pay, in addition to such amount and interest,
8 attorney’s fees and costs for collection proceedings and a quarterly nonpayment penalty for each
9 quarter during which such failure to pay persists. Such nonpayment penalty shall be in an
10 amount equal to 20 percent of the aggregate amount of such person’s penalties and nonpayment
11 penalties which are unpaid as of the beginning of such quarter.

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

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

18 (a) Any person (other than a foreign government or any entity of such government) who
19 knowingly commits an act prohibited by subsections 8(c), (d), (e), or (f) of the Act, shall be
20 imprisoned for not more than five years or shall be fined not more than \$500,000 for individuals
21 or \$1,000,000 for an organization, or both; except that if in the commission of any such offense
22 the individual uses a dangerous weapon, engages in conduct that causes bodily injury to any
23

1 officer authorized to enforce the provisions of this title, or places any such officer in fear of
2 imminent bodily injury, the maximum term of imprisonment is not more than ten years.

3 (b) Any person (other than a foreign government or any entity of such government) who
4 knowingly violates any other provision of section 8, except subsections 8(c), (d), (e) or (f), of the
5 Act, or any provision of any regulation promulgated pursuant to this title or any permit issued
6 under this title, shall be imprisoned for not more than five years, or shall be fined not more than
7 \$500,000 for an individual or \$1,000,000 for an organization, or both.

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

16 **SEC. 12. FORFEITURES**

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

19 (1) any property, real or personal, constituting or traceable to the gross proceeds
20 obtained, or retained, as a result of the offense including, without limitation, any marine species
21 (or the fair market value thereof) taken or retained in connection with or as a result of the
22 offense; and

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

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

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

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

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

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

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

1 **SEC. 13 – SEVERABILITY AND JUDICIAL REVIEW.**

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

5 (b) JUDICIAL REVIEW –

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

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

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

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

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