

## **A BILL**

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

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

### **SECTION 1. SHORT TITLE.**

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

### **SEC. 2. FINDINGS**

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

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

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

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

(4) Promote research and development in marine aquaculture science, technology, and related social, economic, legal, and environmental management disciplines that will enable marine aquaculture operations and demonstrations to achieve operational objectives while protecting marine ecosystem quality.

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

### **SEC. 3. DEFINITIONS**

As used in this Act –

(a) The term “demonstration” means pilot-scale testing of aquaculture science and technologies, or farm-scale research.

(b) The term “Exclusive Economic Zone” means, unless otherwise specified by the President in the public interest in a writing published in the *Federal Register*, a zone, the outer boundary of which is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, except as established by a maritime boundary treaty in force for the United States, or in the absence of such a treaty where the distance between the coastal State and another State is less than 400 nautical miles, an equidistance line between the two States. The inner boundary of that zone is

(1) a line coterminous with the seaward boundary of each of the several coastal States, as defined in 43 U.S.C. §§ 1312 and 1301(b);

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

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

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

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

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

(d) The term “lessee” means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce leased deposits of oil, gas, or sulphur pursuant to 43 U.S.C. § 1441 et seq.

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

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

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

(h) The term “operating permit” means an authorization issued under section 4(c) to raise specified marine species in a specific offshore aquaculture facility within the area described in an offshore aquaculture site permit.

(i) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other non-governmental entity (whether or not organized or existing under the laws of any State), and State, local or tribal

government or entity thereof, and, except as otherwise specified by the President in writing, the Federal Government or an entity thereof, and, to the extent specified by the President in writing, a foreign government or an entity thereof.

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

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

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

#### **SEC. 4. OFFSHORE AQUACULTURE PERMITS**

##### **(a) GENERAL**

(1) The Secretary is authorized to establish, in consultation as appropriate with other relevant Federal agencies, a process to make areas of the Exclusive Economic Zone available to eligible persons for the development and operation of offshore aquaculture facilities, which shall include:

(A) The development of procedures necessary to implement a permitting process under this Act, the form and manner in which applications for permits may be made, and the inclusion of any special conditions that may apply to a permit and

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

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

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

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

(4) An offshore aquaculture permit holder must (i) be a resident of the United States, (ii) be a corporation, partnership or other entity organized and existing under the laws of a State or the United States, or (iii) to the extent required by the Secretary of Commerce by regulation after coordination with the Secretary of State, waive any immunity, and consent to the jurisdiction of the United States and its courts, for matters arising in relation to such permit and appoint and maintain agents within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such permit holder.

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

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

Secretary shall provide written notice to the applicant indicating the reasons for the delay and establishing a reasonable timeline for a permit decision.

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

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

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

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

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

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

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

(4) For offshore aquaculture located on facilities authorized or for which a permit has been issued under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. § 1331, et seq.), the aquaculture permit holder and all parties that are or were lessees of the lease on which the facilities are located during the term of the site permit shall be jointly and severally liable for the removal of any construction or modifications related to aquaculture operations if the aquaculture permit holder fails to do so and bonds established under this Act for aquaculture operations prove insufficient to cover those obligations. This subsection does not affect obligations to decommission facilities under the Outer Continental Shelf Lands Act.

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

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

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

#### (d) CRITERIA FOR ISSUING PERMITS

(1) The Secretary shall consult as appropriate with other federal agencies to ensure that offshore aquaculture for which a permit has been issued under this section meets the environmental requirements established under section 5(a) and is compatible with the use of the Exclusive Economic Zone for navigation, fishing, resource protection, recreation, national defense (including military readiness), mineral exploration and development, and other activities.

(2) The Secretary shall consider risks to and impacts on natural fish stocks, marine ecosystems, biological, chemical and physical features of water quality, habitat, marine mammals, other forms of marine life, birds, endangered species, and other features of the environment, as identified by the Secretary in consultation as appropriate with other Federal agencies.

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

(4) When an aquaculture facility is proposed to be associated with an offshore oil and gas platform licensed under the Outer Continental Shelf Lands Act, and if the offshore aquaculture applicant is required to submit to a coastal State a consistency certification for its aquaculture application under subsection 307(c)(3)(A) of the Coastal Zone Management Act (16 U.S.C. § 1456(c)(3)(A)), the coastal State's review under the Coastal Zone Management Act and corresponding federal regulations shall also include any modification to an offshore oil or gas or mineral lessee's development and production plan or development operations coordination document for which a consistency certification would otherwise be required under applicable

federal regulations, including changes to its plan for decommissioning any facilities, resulting from or necessary for the issuance of the offshore aquaculture permit, provided that information related to such modifications or changes are received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant's consistency certification. In this case, offshore oil and gas or mineral lessees are not required to submit a separate consistency certification for any such modification or change under 16 U.S.C. § 1456(c)(3)(B) and the coastal State's concurrence or objection, or presumed concurrence, under 16 U.S.C. § 1456(c)(3)(A) shall apply to both the offshore aquaculture permit and to any related modifications or changes to offshore oil and gas or mineral plans requiring approval by the Department of the Interior.

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

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

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

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

(2) The Secretary shall ensure, to the extent practicable, that offshore aquaculture does not interfere with conservation and management measures promulgated under the Magnuson-Stevens Fishery Conservation and Management Act.

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

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

(f) FEES AND OTHER PAYMENTS

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

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

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

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

(g) AUTHORITY TO MODIFY OR SUSPEND PERMITS

(1) Subject to paragraph (2), if the Secretary, after consultation with Federal agencies as appropriate and after affording the permit holder notice and an opportunity to be heard, determines that suspension of, or modification of, a permit is in the national interest, the Secretary may suspend or modify such permit.

(2) If the Secretary determines that an emergency exists that poses a risk to the safety of humans, to the marine environment or marine resources, or to the security of the United States and that requires suspension or modification of a permit, the Secretary may suspend or modify the permit for such time as the Secretary may determine necessary to meet the emergency. The Secretary shall afford the permit holder a prompt post-suspension or post-modification opportunity to be heard regarding the suspension or modification.

(h) ACTIONS AFFECTING THE OUTER CONTINENTAL SHELF –

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

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

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

(C) Issue orders to any offshore aquaculture permit holder to take any action the Secretary of the Interior deems necessary to ensure safe oil and gas or other mineral operations on any facility to protect the marine environment, property, or human life or health. Failure to comply with the Secretary of the Interior's orders will be deemed to constitute a violation of the Outer Continental Shelf Lands Act.

(2) The Secretary of the Interior shall review and approve any agreement between an operator of a facility for which a permit has been issued under the Outer Continental Shelf Lands Act and a prospective aquaculture operator to ensure that it is consistent with the federal mineral lease terms, Department of the Interior regulations, and the Secretary of the Interior's role in the protection of the marine environment, property, or human life or health. An agreement under this subsection shall be part of the information reviewed pursuant to the Coastal Zone Management Act review process described in subsection 4(d)(4) of this Act and shall not be subject to a separate CZMA review.

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

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

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

## **SEC. 5. ENVIRONMENTAL REQUIREMENTS**

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

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

and

- (5) other features of the environment

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

### **(b) SITING, MONITORING AND EVALUATION**

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

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

(3) The Secretary is authorized to monitor the effects of offshore aquaculture on marine ecosystems and implement such measures as may be necessary to protect the environment. Measures may include, but are not limited to, temporary or permanent relocation of offshore aquaculture sites, a moratorium on additional sites within a prescribed area, and other appropriate measures as determined by the Secretary.

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

## **SEC. 6. RESEARCH AND DEVELOPMENT**

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

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

## **SEC. 7. ADMINISTRATION**

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

(b) (1) The Secretary may promulgate rules that the Secretary finds to be reasonable and necessary to protect offshore aquaculture facilities, and, where appropriate, shall request that the

Secretary of the department in which the Coast Guard is operating establish navigational safety zones around such facilities.

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

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

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

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

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

and

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

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

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

(h) The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any offshore aquaculture facility for which a permit has been issued pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other

Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the offshore aquaculture facility. State taxation laws shall not apply in the Exclusive Economic Zone.

#### **SEC. 8. AUTHORIZATION OF APPROPRIATIONS**

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

#### **SEC. 9. UNLAWFUL ACTIVITIES**

It is unlawful for any person-

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

(b) to engage in offshore aquaculture within the Exclusive Economic Zone of the United States except in full compliance with this Act, any regulations promulgated under this Act, and the terms and conditions of any permit issued by the Secretary under this Act;

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

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

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

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

(g) to violate any provision of this Act or any regulation or permit issued under this Act;  
or

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

## **SEC. 10. ENFORCEMENT PROVISIONS**

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

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

(c) POWERS OF ENFORCEMENT

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

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

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

(ii) search or inspect any offshore aquaculture facility;

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

(iv) seize any living marine resource (wherever found) retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 9 of this Act;

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

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

(C) exercise any other lawful authority.

(2) Any officer who is authorized pursuant to the first sentence of subsection (a) of this section by the Secretary or the Secretary of the department in which the Coast Guard is

operating to enforce the provisions of this Act may make an arrest without a warrant for (i) an offense against the United States committed in his presence, or (ii) for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. Any such authorized person may execute and serve a subpoena, arrest warrant or search warrant issued in accordance with Rule 41 of the Federal Rules of Criminal Procedure, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of the Act, or any regulation or permit issued under this Act.

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

(e) **LIABILITY FOR COSTS** - Any person who violates this Act, or a regulation or permit issued under this Act, shall be liable for the cost incurred in storage, care, and maintenance of any living marine resource or other property seized in connection with the violation.

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

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

### **(a) CIVIL PENALTIES**

(1) Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of Title 5, United States Code, to have violated this Act, or a regulation or permit issued under this Act, shall be liable to the United States for a civil

penalty. The amount of the civil penalty under this paragraph shall not exceed \$120,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior violations, and such other matters as justice may require.

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

(b) CIVIL JUDICIAL PENALTIES - Any person who violates any provision of this Act, or any regulation or permit issued thereunder, shall be subject to a civil penalty not to exceed \$240,000 for each such violation. Each day of a continuing violation shall constitute a separate violation. The Attorney General, upon the request of the Secretary, may commence a civil action in an appropriate district court of the United States, and such court shall have jurisdiction to award civil penalties and such other relief as justice may require. In determining the amount of a civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior violations and such other matters as justice may require.

(c) PERMIT SANCTIONS

(1) In any case in which -

(A) an offshore aquaculture facility has been used in the commission of an act prohibited under section 9 of this Act;

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

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

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

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

(iii) deny such permit; or

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

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

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

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

(3) Transfer of ownership of an offshore aquaculture facility, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of

ownership. Before executing the transfer of ownership of an offshore aquaculture facility, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the offshore aquaculture facility at the time of the transfer. The Secretary may waive or compromise a sanction in the case of a transfer pursuant to court order.

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

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

(d) HEARING - For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

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

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

## **SEC. 12. CRIMINAL OFFENSES**

Any person who knowingly violates subsections 4(a)(3), 4(b)(3), or 9(a), (b) or (g) of the Act, upon conviction, shall be imprisoned for not more than five years and shall be fined not more than \$500,000 for individuals or \$1,000,000 for an organization. Any person who knowingly violates any other provision of section 9 or a measure issued pursuant to subsection 5(b)(3) commits a Class C felony subject to the penalties of Title 18. The several district courts of the United States shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law. Any offenses not committed in any district are subject to the venue provisions of Title 18, section 3238.

## **SEC. 13. FORFEITURES**

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

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

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

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

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

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

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

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

(d) PROCEDURE

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

(A) stay the execution of such process; or

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

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

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

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

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

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