112TH CONGRESS  
1ST SESSION  

H. R. 2373

To establish a regulatory system and research program for sustainable offshore aquaculture in the United States exclusive economic zone, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2011

Mrs. CAPPS introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To establish a regulatory system and research program for sustainable offshore aquaculture in the United States exclusive economic zone, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “National Sustainable Offshore Aquaculture Act of 2011”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
1 SEC. 2. PURPOSES.

The purposes of this Act are the following:

(1) To establish a regulatory system for sustainable offshore aquaculture in the United States exclusive economic zone.

(2) To authorize the Secretary of Commerce to determine appropriate locations for, permit, regulate, monitor, and enforce offshore aquaculture in the exclusive economic zone.

(3) To require the Secretary of Commerce to issue regulations for permitting of offshore aquaculture in the exclusive economic zone that prevent impacts on the marine ecosystem and fisheries or minimize such impacts to the extent they cannot be avoided.

(4) To establish a research program to guide the precautionary development of offshore aquaculture in the exclusive economic zone that ensures
ecological sustainability and compatibility with healthy, functional ecosystems.

SEC. 3. NOAA OFFICE; ADVISORY BOARD.

(a) NOAA Office.—

(1) In general.—The Secretary shall establish an Office of Sustainable Offshore Aquaculture within the National Marine Fisheries Service at National Oceanic and Atmospheric Administration headquarters, and satellite offices of such office in each of the National Oceanic and Atmospheric Administration’s regional fisheries offices.

(2) Duties.—The Office shall be responsible for implementing this Act, and shall—

(A) conduct the regional programmatic environmental impact studies under section 4;

(B) implement the permitting and regulatory program under section 5;

(C) administer the research program established under section 7;

(D) coordinate aquaculture and related issues within the National Oceanic and Atmospheric Administration;

(E) perform outreach, education, and training;
(F) provide opportunities for consultation among owners and operators of offshore aquaculture facilities, Regional Fishery Management Councils, nonprofit conservation organizations, and other interested stakeholders;

(G) organize through each regional office a network of regional experts, in coordination with relevant organizations such as the National Sea Grant College program and other academic institutions, to provide technical expertise on aquaculture;

(H) maintain the database required by paragraph (3); and

(I) perform such other functions as are necessary to carry out this Act.

(3) DATABASE.—The Secretary shall establish and maintain within the Office an aquaculture database, which shall include information on research, technologies, monitoring techniques, best management practices, and recommendations of the Sustainable Offshore Aquaculture Advisory Board established under subsection (b). The Secretary shall make the database available to the general public in a manner that protects proprietary information of
owners and operators of offshore aquaculture facilities.

(b) ADVISORY BOARD.—

(1) IN GENERAL.—The Office shall establish a Sustainable Offshore Aquaculture Advisory Board, the members of which shall be appointed by the Secretary.

(2) STRUCTURE.—The membership of the Advisory Board shall include, at a minimum, representatives from the National Marine Fisheries Service, the commercial and recreational fishing industries, State or local governments, the Coast Guard, non-profit conservation organizations, members of academia with scientific or technical expertise in ocean and coastal matters, and representatives of the aquaculture industry.

(3) APPOINTMENT AND TERMS.—

(A) IN GENERAL.—Members of the Advisory Board shall be appointed by the Secretary for a term of 2 years.

(B) VACANCIES.—Whenever a vacancy occurs, the Secretary shall appoint an individual representing the same interests or affiliation represented by the individual’s predecessor to
fill that vacancy for the remainder of the applicable term.

(4) CHAIRPERSON.—The Advisory Board shall have a chairperson, who shall be elected by the Advisory Board from among its members. The chairperson shall serve for a 2-year term.

(5) DUTIES.—The Advisory Board shall—

(A) meet at least once every six months; and

(B) provide advice to the Secretary on all aspects of offshore aquaculture, including developing technologies, emerging risks, issues unique to each region, and priorities for research authorized under section 7.

(6) CONTINUING EXISTENCE.—Section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Board.

SEC. 4. REGIONAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENTS.

(a) IN GENERAL.—The Secretary shall issue for each region described in subsection (b) a regional programmatic environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) regarding permitting of offshore aquaculture under this Act.
(b) Regions Described.—The regions referred to in subsection (a) are each of the geographic regions for which a Regional Fishery Management Council is established under section 302(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)).

(c) Identification of Areas.—The Secretary shall include in the statement under subsection (a) for a region identification of—

(1) areas of the region that are not appropriate locations for the conduct of offshore aquaculture; and

(2) areas of the region that may be appropriate locations for the conduct of offshore aquaculture.

(d) Matters To Be Considered.—Each regional programmatic environmental impact statement shall include consideration of the following:

(1) Appropriate areas for siting offshore aquaculture facilities and operations to avoid adverse impacts, and to minimize any unavoidable impacts on user groups, public trust values, and the marine environment, including effects on commercial and recreational fishing and other important ocean uses.
(2) Impacts on marine ecosystems, sensitive ocean and coastal habitats, and other plant and animal species, including—

(A) the impacts of escaped fish on wild fish populations;

(B) the impacts of interactions with marine mammals, marine wildlife, and birds;

(C) the impacts of the use of chemical and biological products, pollutants, and nutrient wastes on the marine environment; and

(D) effects of removal of forage fish for feed, fishmeal, and fish oil on marine ecosystems.

(3) Cumulative effects of a number of offshore aquaculture facilities on the ability of the marine environment to maintain preexisting flora and fauna.

(4) Design of offshore aquaculture facilities and operations to avoid adverse environmental impacts, and to minimize any unavoidable impacts.

(e) REVIEW AND REVISION.—The Administrator shall review, revise, and publish in the Federal Register each regional programmatic environmental impact statement under this section every 10 years, including by—

(1) reviewing and revising, as appropriate, identifications of areas under subsection (c); and
(2) reassessing the analysis of each such identification, taking into account changes in environmental conditions and information that has become available since the date of such identification.

(f) PROGRAMMATIC EIS REQUIRED.—No permit may be issued under section 5 for an offshore aquaculture facility before the date of the issuance of all programmatic environmental impact statements under this section.

(g) ENVIRONMENTAL REVIEW.—In addition to the requirement to issue regional programmatic environmental impact statements under this section, a separate environmental review under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) shall be conducted for issuing permits under this Act.

SEC. 5. OFFSHORE AQUACULTURE PERMITTING.

(a) PERMITTING REQUIREMENT.—

(1) IN GENERAL.—No person may engage in offshore aquaculture except as authorized by a permit issued under this Act.

(2) PERMITTING AUTHORITY.—The Secretary may issue permits in accordance with this Act authorizing a person to engage in offshore aquaculture.

(3) EXISTING AUTHORIZATIONS NOT EFFECTIVE.—No permit or other authorization issued under any other Federal law before the date of the
enactment of this Act shall be construed as author-
izing activity for which a permit is required by this
Act.

(b) Regulations.—

(1) IN GENERAL.—The Secretary shall issue
regulations that govern the issuance of permits
under this Act and the conduct of activities under
such permits by not later than 180 days after the
regional programmatic environmental impact state-
ments required under section 4 are completed.

(2) PRIORITY OF METHOD.—The regulations
shall—

(A) to the extent feasible, establish numer-
ical standards for environmental performance
under such permits;

(B) to the extent such numerical standards
are not feasible, establish narrative standards
for such performance; and

(C) to the extent such numerical standards
and narrative standards are not feasible, re-
quire management practices, including imple-
mentation of best management practices for
such performance.
(3) **Best scientific information available.**—The regulations shall be based on the best scientific information available.

(4) **Review of regulations.**—The Secretary shall review and revise the regulations under this section at the same time the Secretary conducts reviews of regional programmatic environmental impact statements under section 4(e).

(e) **Application.**—The applicant for a permit under this section shall submit to the Secretary an application—

(1) specifying—

(A) the proposed location to be developed under the permit, including—

(i) size;

(ii) depth;

(iii) water conditions, including currents;

(iv) substrate;

(v) preliminary habitat and ecological community assessment data;

(vi) distribution and composition of species;

(vii) proximity to other offshore aquaculture facilities; and

(viii) proximity to other uses;
(B) the proposed operation to be developed under the permit;

(C) the marine species to be propagated or reared, or both; and

(D) design, construction, and operational information as may be specified in the regulations under this section;

(2) demonstrating that the location is sufficient to avoid or minimize adverse effects on resources and other resource users; and

(3) containing such other information as may be required by the Secretary.

(d) ELIGIBILITY.—A person shall not be eligible to apply for a permit under this section unless the person is an individual who is a resident of the United States or a corporation, partnership, or other entity organized and existing under the laws of a State or the United States.

(e) PUBLIC NOTICE AND COMMENT.—The Secretary shall—

(1) promptly publish public notice of each application received by the Secretary for a permit under this section;

(2) determine whether a permit application is complete within 30 days of receipt; and
(3) provide a period of at least 90 days after determining that the application is complete for the submission of public comment on the application.

(f) Consideration by Secretary.—

(1) IN GENERAL.—Within 180 days after determining that a permit application under this section is complete and the applicant has satisfied all applicable statutory and regulatory requirements, the Secretary shall issue or deny the permit. If the Secretary is unable to issue or deny a permit 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 issuing or denying the permit.

(2) Consultation Not Affected.—Paragraph (1) shall not be construed to affect the application of any requirement under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) or any other Federal law.

(g) Permit Terms.—

(1) Effective Period; Renewal.—A permit under this section—

(A) shall be effective for an initial period of 10 years; and
(B) may be renewed by the Secretary for subsequent 10-year periods.

(2) PERMITTEE'S RIGHT OF FIRST REFUSAL.—
The Secretary may not issue a permit under this section to a person for an area that is subject to another permit under this section held by another person, unless—

(A) the other person elects not to renew the other permit; or

(B) the other permit expires or is terminated by its terms.

(3) TRANSFERABILITY.—A permit under this section shall be transferable to any person who is otherwise eligible for the permit.

(h) PRIORITIZATION OF PERMITS.—The Secretary—

(1) shall give priority to issuance of permits for activities to be conducted in an area that has been identified in a statement under section 4(c)(2) as an area that may be an appropriate location for the conduct of offshore aquaculture;

(2) shall give priority to issuance of permits for activities to be conducted using technologies and practices that will substantially exceed compliance with the permit terms and conditions required under subsection (j); and
(3) may waive some or all of the requirements to pay a fee under section 6 with respect to a permit required to be given priority under paragraph (1) or (2).

(i) ANNUAL REVIEW AND REPORTING.—

(1) IN GENERAL.—The Secretary shall con-duct—

(A) an annual review of compliance with permits under this Act by each permittee; and

(B) announced and unannounced site inspec-tions at locations of offshore aquaculture facilities operated under such permits.

(2) REPORTING REQUIREMENTS.—With respect to activities under a permit under this section, the permittee shall report annually to the Secretary—

(A) comprehensive data regarding escape events, including estimates of stocked and har-vested fish and mortalities;

(B) nutrient-loading data and community structure data to assess the impact of offshore aquaculture on the water column and the benthos;

(C) prevalence and extent of disease and parasites;
(D) the use and amounts of antibiotics, pesticides, prescription drugs and nonprescrip-
tion drugs, and other chemical treatments;

(E) sources of fish feed, including invoices, receipts, or bills of lading showing source of
ewild fish stock; and

(F) other information, as required by the Secretary.

(3) AVAILABILITY OF INFORMATION.—The Sec-
retary shall make all data reported by permittees
publically available, subject to reasonable restrictions
to protect proprietary information of owners and op-
erators of offshore aquaculture facilities.

(4) ASSESSMENT OF REPORTED DATA.—The
Secretary shall conduct an independent assessment
of all data reported by permittees to ensure permit
compliance and identify potential cumulative impacts
of offshore aquaculture.

(j) PERMIT TERMS AND CONDITIONS.—The Sec-
retary shall include in the terms and conditions of each
permit under this Act the following:

(1) BROODSTOCK MANAGEMENT AND FISH ES-
CAPES.—

(A) Offshore aquaculture under such per-
mit shall be limited to species of a genotype na-
tive to the geographic region of the offshore aquaculture facility or operations authorized by the permit.

(B) Species of special concern or those of protected status under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be cultured for growout and harvest.

(C) Genetically modified species shall not be cultured.

(D) Native species shall be cultured in a manner that ensures fish escapes will not harm the genetics of local wild fish. Stocked fish shall be no further than two generations from the relevant wild stock, and shall not have been exposed to intentional selective breeding.

(E) All cultured fish shall be marked, tagged, or otherwise identified as belonging to the permittee in a manner determined appropriate by the Secretary, unless the Secretary determines that identifying cultured fish is unnecessary for protecting wild fish stocks, the marine environment, or other ocean uses.

(F) All facilities and operations shall be designed, operated, and shown to be effective at preventing the escape of cultured fish into the
marine environment and withstanding severe
weather conditions and marine accidents. The
permittee shall maintain records on all escapes.
In the event of escapement, the number of es-
caped fish and the circumstances surrounding
the incident shall be reported immediately to
the Secretary.

(G) Wild-caught fish shall not be contained
in any research project under section 7 or off-
shore aquaculture facility permitted under this
Act for the purposes of growing such fish to
market size or mass, or with the intention of
selling such fish.

(2) DISEASE AND PATHOGEN PREVENTION.—
The Secretary shall—

(A) require offshore aquaculture facilities
to be designed, located, and operated to prevent
the incubation and spread of disease and patho-
gens and ecosystem impacts from disease and
pathogen introduction;

(B) prohibit the use, including the prophy-
laetic use, of antibiotics, pesticides, prescription
and nonprescription drugs, or other chemical
treatments; except that—
(i) such use may be allowed as necessary to treat a diagnosed disease; and

(ii) the use of vaccines may be allowed;

(C) require that if use of antibiotics, pesticides, prescription or nonprescription drugs, or other chemical treatments is necessary to treat a diagnosed disease and multiple options for treatment of such disease exist—

(i) the option with the least environmental impact shall be used; and

(ii) such use shall be minimized to the maximum extent practicable;

(D) require that the use of antifouling paints on all offshore aquaculture facilities, vessels, and in-water structures be minimized to the maximum extent practicable; and

(E) prohibit the use of any antibiotic, pesticide, prescription or nonprescription drug, or other chemical treatment for marine aquaculture except after consultation with the Commissioner of the Food and Drug Administration.

(3) HABITAT AND ECOSYSTEM IMPACTS.—The Secretary—
(A) shall establish appropriate numerical
limitations of nutrient inputs into the marine
environment from offshore aquaculture facili-
ties—

   (i) in consultation with the Adminis-
trator of the Environmental Protection
Agency;

   (ii) at a local or regional level as nec-
essary to protect the environment; and

   (iii) taking into account cumulative
and secondary impacts of such inputs at
the local and regional level from the expan-
sion of offshore aquaculture; and

(B) shall require each permittee under this
Act to prevent discharges of pollutants into
ocean waters to the maximum extent prac-
ticable.

(4) INTERACTIONS WITH AND IMPACTS ON MA-
RINE WILDLIFE.—The Secretary shall—

   (A) require each permittee under this Act
to develop a comprehensive, integrated predator
management plan that—

   (i) employs nonlethal deterrents as a
primary course of action; and
(ii) contains measures to prevent entanglement, migration disruption, and change in predator behavior, so as to not unreasonably disrupt wildlife or their use of critical marine habitat; and

(B) prohibit permittees under this Act—

(i) from using underwater acoustic deterrent devices of any kind; and

(ii) from intentionally killing or seriously injuring marine mammals and other predators of cultured fish, except if human safety is immediately threatened.

(5) USE OF MARINE RESOURCES FOR FEEDS.—

The Secretary shall—

(A) prohibit the use under permits under this Act of wild fish as feed ingredients for offshore aquaculture unless—

(i) they are sourced from populations with ecosystem-based management measures in place; and

(ii) they are sourced from populations whose biomass is at or above maximum sustainable yield;
(B) require that use under such permits of fishmeal and fish oil derived from forage fisheries be minimized;

(C) require that alternatives to fishmeal and fish oil, or fishmeal and fish oil made from fish byproducts be utilized under such permits to the maximum extent practicable; and

(D) issue guidance that incorporates the results of the joint NOAA–USDA Alternative Feeds Initiative and other research efforts investigating alternative feed ingredients.

(6) INTERACTIONS WITH FISHERIES.—The Secretary shall minimize displacement of commercial and recreational fisherman and economic harm to fishing communities resulting from activities under permits under this Act.

(7) SITING.—The Secretary shall prohibit siting of an offshore aquaculture facility under a permit under this Act—

(A) in sensitive habitat, including any marine protected area, marine reserve, Habitat Area of Particular Concern, Special Management Zone, or National Marine Sanctuary;

(B) in an area that is identified in a regional programmatic environmental impact
statement under section 4(c)(1) as an area that
is not an appropriate location for the conduct
of offshore aquaculture; or

(C) on or attached to any portion of an oil
or gas platform, including one that is no longer
in service.

(k) LIMITED RIGHT.—The Secretary shall not issue
any permit under this Act that constitutes a property right
for which compensation could be required under the Fifth
Amendment to the Constitution.

(l) LIMITATION IN THE PUBLIC INTEREST.—The
Secretary shall not issue a permit under this Act for an
offshore aquaculture project if the Secretary determines
that denial of a permit for the project is in the public in-
terest.

SEC. 6. FEES.

(a) PERMIT FEES.—

(1) IN GENERAL.—The Secretary shall estab-
lish, assess, and collect application fees and annual
fees with respect to permits under this Act that are
sufficient to pay the costs of issuance, monitoring,
and enforcement of such permits.

(2) DEPOSIT AND USE.—Such fees shall be de-
posited as offsetting collections in the Operations,
Research, and Facilities account of the Department of Commerce.

(b) Resource Rental Fees.—

(1) In General.—The Secretary shall establish, assess, and collect resource rental fees to recover from permittees under this Act a reasonable portion of the value of the use under the permits of ocean resources held in public trust.

(2) Deposit and Use.—Amounts received by the United States as fees under this subsection—

(A) shall be deposited into a separate account in the Treasury, which shall be known as the Offshore Aquaculture Development and Resource Trust Fund; and

(B) shall be available to the Secretary, subject to the availability of appropriations and review by the Offshore Aquaculture Advisory Board established under section 3(b), to enhance the research program under section 7.

(e) Financial Guarantee.—The Secretary shall require each permittee under this Act to post a bond or other form of financial guarantee, in an amount to be determined by the Secretary to be sufficient to cover any unpaid fees, the cost of removing an offshore aquaculture facility at the expiration or termination of offshore aqua-
culture operations, and other financial risks as identified by the Secretary.

SEC. 7. SUSTAINABLE OFFSHORE AQUACULTURE RESEARCH PROGRAM.

(a) PURPOSE.—The purpose of this section is to establish a research program to—

(1) inform how offshore aquaculture permitting and regulation can adopt a precautionary approach to industry expansion to ensure ecological sustainability and compatibility with healthy, functional ecosystems and fisheries; and

(2) develop cost-effective solutions to environmental and socioeconomic impacts of offshore aquaculture.

(b) ESTABLISHMENT OF PROGRAM.—The Secretary, in consultation with other Federal agencies, coastal States, Regional Fishery Management Councils, academic institutions, and other interested stakeholders, shall establish and conduct a research program to guide the sustainable development of offshore aquaculture.

(c) TOPICS OF PROGRAM.—The Secretary, through the research program, shall—

(1) identify environmental factors, aquaculture technologies, and practices that address the permit terms and conditions required under section 5(j);
(2) assess and mitigate the cumulative impacts of multiple offshore aquaculture facilities;

(3) analyze potential socioeconomic impacts of offshore aquaculture on fisheries and communities that are dependent on such fisheries;

(4) evaluate financial, public policy, and market incentives for sustainable development of offshore aquaculture; and

(5) conduct or support research on other topics as considered appropriate by the Secretary to achieve the purpose of this section.

(d) Grant Program.—

(1) In general.—The Secretary, subject to the availability of appropriations, shall establish a competitive, peer-reviewed grant program to support research related to the topics of the program under subsection (c).

(2) Eligibility.—The Secretary, in consultation with the Offshore Aquaculture Advisory Board established under section 3, shall establish criteria for determining persons who are eligible for grants under this section.

(e) Transparency; Use of Results.—The Secretary, in consultation with the Advisory Board, shall—
(1) issue rules for the grant program under subsection (d) that enable the public to understand the administration of the grant program, including the process for application, submission of materials, and awarding of grants;

(2) utilize and regularly incorporate the information gathered from the research program to guide Federal permitting and rulemaking decisions relating to offshore aquaculture, with an adaptive management approach; and

(3) make the findings of the research and development program available to the public.

(f) COORDINATION WITH OTHER FEDERAL PROGRAMS.—The Secretary shall coordinate the research program with other Federal programs that provide grant funding for purposes similar to that described in this section, such as grants administered by the National Institute of Science and Technology and its Advanced Technology Program.

(g) PERMIT MODIFICATION.—The Secretary shall revise permits to accommodate research conducted on or near offshore aquaculture facilities permitted under section 5.
SEC. 8. COMPATIBILITY WITH OTHER USES; STATE INPUT.

(a) Consultation.—The Secretary shall consult, as appropriate, with other Federal agencies and coastal States to ensure that offshore aquaculture for which permits are issued under this Act is compatible with the use of the exclusive economic zone for navigation, resource protection, recreation, fisheries, national defense (including military readiness), mineral exploration and development, and other activities.

(b) Permits for Regulated Species and Areas.—

(1) In general.—The Secretary may not issue a permit under this Act authorizing a person to propagate or rear a species of a fishery for which there is in effect a fishery management plan under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), or to propagate or rear any species in an area that is within the jurisdiction of a Regional Fishery Management Council, unless all Regional Fishery Management Councils that have authority under such Act to issue such a plan for that fishery or that have jurisdiction over that area, respectively, have recommended approval of issuance of the permit.

(2) Ensuring fishing access.—The Secretary, in consultation with Regional Fishery Man-
agement Councils, shall ensure that offshore aquaculture permits under this Act do not interfere with access to commercial and recreational fish stocks.

(c) State Input.—

(1) Notice to State.—The Secretary—

(A) shall promptly provide to a coastal State notice of the receipt by the Secretary of any application for a permit under this Act for any new offshore aquaculture facility to be located within 12 miles of the coastline of that coastal State; and

(B) shall not issue such permit before the end of the 90-day period beginning on the date the Secretary provides such notice.

(2) State opt-out.—

(A) Submission of list.—A coastal State may submit to the Secretary a list of locations, species, or categories of species (such as finfish or shellfish) for which the coastal State opposes the conduct of offshore aquaculture, by no later than 180 days after the regional programmatic environmental impact statements under section 4 are published.

(B) Subsequent submission or revision.—A coastal State may submit a list under
subparagraph (A), or revise or revoke such a
list previously submitted, within 90 days after
the review of a regional environmental impact
statement under section 4(e) is published.

(C) PROHIBITION ON PERMITS.—The Sec-
retary may not issue or renew any permit under
this Act authorizing offshore aquaculture in any
location, or of any species, or category of spe-
cies, that is included in a list submitted under
subparagraph (A) by the nearest coastal State
with respect to that facility.

(d) INTEGRATION WITH OTHER FEDERAL PLAN-
NING.—The Secretary shall integrate the permitting of
offshore aquaculture under this Act with other Federal re-
gional marine spatial planning that has as its purpose eco-
system-based management of United States marine
waters.

SEC. 9. RELATIONSHIP TO OTHER LAWS.

(a) MAGNUSON-STEVENS FISHERY CONSERVATION
AND MANAGEMENT ACT.—Notwithstanding the definition
of “fishing” in section 3(16) of the Magnuson-Stevens
Fishery Conservation and Management Act (16 U.S.C.
1802(16)), the conduct of offshore aquaculture in accord-
ance with permits issued under this Act shall not be con-
sidered fishing for purposes of that Act, and no Regional
Fishery Management Council may issue any permit authorizing offshore aquaculture. The Secretary shall ensure that offshore aquaculture does not interfere with conservation and management measures promulgated under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(b) **Actions Affecting the Outer Continental Shelf.**—

(1) **Concurrence of Secretary of the Interior Required.**—The Secretary must obtain the concurrence of the Secretary of the Interior before issuing any permit under this Act for offshore aquaculture facilities located—

(A) on any lease, right-of-use and easements, or right-of-way authorized or permitted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

(B) within 1 mile of any other facility for which a permit has been issued, or for which a plan has been approved, under that Act.

(2) **Prior Consent Required.**—The Secretary may not issue any permit under this Act authorizing offshore aquaculture on any lease, right-of-use and easements, or right-of-way referred to in paragraph (1)(A) without the prior consent of the Secretary of the Interior.
lessee, its designated operator, and the owner of the facility concerned.

(3) Review of lease, etc., compliance.—

The Secretary of the Interior shall review and approve any agreement between a lessee, designated operator, and owner of a facility described in paragraph (1) and a prospective offshore aquaculture facility operator to ensure that it is consistent with the Federal 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 of 1972 review process described in paragraph (4) and shall not be subject to a separate review under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(4) Coordinated coastal zone management act of 1972 review.—

(A) Review if consistency determination required for permit applications.—

If the applicant for a permit under this Act for an offshore aquaculture facility that will utilize a facility described in paragraph (1) is required
to submit for its offshore aquaculture permit application under this Act a consistency certification under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(A)) to a coastal State, the coastal State’s review under such Act and corresponding Federal regulations shall also include any modification to a lessee’s approved plan or other 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 permit under this Act, if information related to such modifications or changes is received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant’s consistency certification. If the information related to such modifications or changes is received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant’s consistency certification, a lessee is not required to submit a separate consistency certification for any such modification or change under section
307(c)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)) and the coastal State’s concurrence or objection, or presumed concurrence, under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(A)) in a consistency determination for the offshore aquaculture permit, shall apply to both the offshore aquaculture permit and to any related modifications or changes to a lessee’s plan approved under the Outer Continental Shelf Lands Act.

(B) REVIEW IF STATE IS NOT AUTHORIZED TO REVIEW PERMIT APPLICATION.—If a coastal State is not authorized by section 307(c)(3)(A) of the Coastal Zone Management Act (16 U.S.C. 1456(c)(3)(A)) and corresponding Federal regulations to review an offshore aquaculture permit application submitted under this Act, then any modifications or changes to a lessee’s approved plan or other document requiring approval from the Department of the Interior, shall be subject to coastal State review pursuant to the requirements of section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)), if a
consistency certification for those modifications or changes is required under applicable Federal regulations.

(c) COASTAL ZONE MANAGEMENT ACT OF 1972.—

(1) IN GENERAL.—This Act shall not affect the application of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), and regulations promulgated thereunder, with respect to offshore aquaculture.

(2) ASSISTANCE TO STATES.—The Secretary shall provide technical and, subject to the availability of appropriations, financial assistance to States to review and, if necessary, revise their management plans under that Act to address offshore aquaculture in State and Federal marine waters.

(d) RESERVATION OF AUTHORITIES, ETC.—Nothing in this Act shall be construed to displace, supersede, or limit the jurisdiction, responsibilities, or authorities of any Federal or State agency, or Indian tribe or Alaska Native organization, under any Federal law or treaty.

SEC. 10. UNLAWFUL ACTIVITIES.

It is unlawful for any person—

(1) to engage in offshore aquaculture, except in accordance with this Act and valid permits issued under this Act;
(2) 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;

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

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

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

(6) 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;
(7) upon the expiration or termination of any offshore aquaculture permit under this Act for any reason, to fail to remove all structures, gear, and other property from the site, or take other measures, as prescribed by the Secretary, to restore the site;

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

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

SEC. 11. ENFORCEMENT.

(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.

(b) POWERS OF ENFORCEMENT.—

(1) IN GENERAL.—Any officer who is authorized pursuant to subsection (a) 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 per-
son has committed or is committing an act prohibited by section 10;

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

(iii) seize any offshore aquaculture facility (together with its equipment, records, furniture, appurtenances, stores, and cargo), and any vessel or vehicle, 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 marine species (wherever found) retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 10; and

(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) ARRESTS, SUBPOENAS, AND WARRANTS.—

(A) ARREST WITHOUT WARRANT.—Any of-
fer who is authorized pursuant to subsection
(a) of this section by the Secretary or the Sec-
retary 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 or her presence; or

(ii) a felony cognizable under the laws
of the United States, if he has reasonable
grounds to believe that the person to be ar-
rested has committed or is committing a
felony.

(B) SUBPOENAS AND WARRANTS.—Any
such authorized officer may execute and serve
a subpoena, arrest warrant, or search warrant
issued in accordance with rule 41 of the Fed-
eral Rules of Criminal Procedure, or other war-
rant 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.

(c) ISSUANCE OF CITATIONS.—If any officer referred to in subsection (b)(2)(A) finds that a person who is the holder of a permit under this Act 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 for purposes of subsection (d)(1).

(d) PERMIT SUSPENSION, MODIFICATION, OR REVOCATION.—

(1) REPEATED CITATION.—If the Secretary finds that a person is repeatedly cited under subsection (c) with respect to offshore aquaculture under a permit, the Secretary shall immediately suspend or revoke the permit for which the citations were issued.

(2) EMERGENCY.—If the Secretary determines that an emergency exists with respect to offshore aquaculture under a permit under this Act that poses a risk to the safety of humans, to the marine environment or marine species, or to the security of the United States, the Secretary shall immediately suspend, modify, or revoke the permit for such time
as the Secretary may determine necessary to address
the emergency.

(3) NEW INFORMATION.—The Secretary may
suspend, modify, or revoke a permit under this Act
at any time if the Secretary determines, based on in-
formation obtained after the issuance of the permit
(including information obtained under the research
program under section 7), that the permit terms and
conditions are no longer consistent with the terms of
this Act.

(4) OPPORTUNITY TO BE HEARD.—The Sec-
retary shall afford the permit holder a prompt
postsuspension, postmodification, or postrevocation
opportunity to be heard regarding the suspension,
modification, or revocation.

(e) ENFORCEMENT UNDER MAGNUSON-STEVENS
FISHERY CONSERVATION AND MANAGEMENT ACT.—For
purposes of sections 308, 309, and 310 of the Magnuson-
Stevens Fishery Conservation and Management Act (16
U.S.C. 1858, 1859, 1860), a violation of this Act shall
be treated as a violation of section 307(1) of that Act (16
U.S.C. 1857(1)).

(f) CITIZEN SUITS.—

(1) IN GENERAL.—
(A) ACTIONS AUTHORIZED.—Except as
provided in paragraph (2), any person may
commence a civil suit on his or her own be-
half—

(i) to enjoin any person, including the
United States and any other governmental
instrumentality or agency (to the extent
permitted by the Eleventh Amendment to
the Constitution), who is alleged to be in
violation of any provision of this Act, per-
mit, or regulation issued under the author-
ity thereof; or

(ii) against the Secretary where there
is alleged a failure of the Secretary to per-
form any act or duty under this Act that
is not discretionary with the Secretary.

(B) JURISDICTION.—The district courts
shall have jurisdiction, without regard to the
amount in controversy or the citizenship of the
parties, to enforce any such provision or regula-
tion or to order the Secretary to perform such
act or duty, as the case may be.

(2) LIMITATIONS.—

(A) ACTION TO ENJOIN.—No action may
be commenced under paragraph (1)(A)(i)—
(i) prior to 60 days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision, permit, or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to the other provisions of this Act; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision, permit, or regulation.

(B) ACTION AGAINST SECRETARY.—No action may be commenced under paragraph (1)(A)(ii) prior to 60 days after written notice has been given to the Secretary.

(3) VENUE.—Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(4) INTERVENTION BY ATTORNEY GENERAL.—In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.
(5) AWARD OF COSTS.—The court, in issuing any final order in any suit brought pursuant to paragraph (1), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(6) OTHER RIGHTS NOT AFFECTED.—The injunctive relief provided by this subsection shall not restrict any right that any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

SEC. 12. NATURAL RESOURCES DAMAGES ASSESSMENT AND LIABILITY.

(a) NATURAL RESOURCES DAMAGES ASSESSMENT.—

The Secretary shall—

(1) assess natural resource damages resulting from the conduct of offshore aquaculture other than as authorized under Federal or State law; and

(2) carry out remediation of destruction or loss of, or injury to, natural resources resulting from such conduct and determined in such an assessment.

(b) LIABILITY FOR DAMAGES.—
(1) In general.—Except as provided in para-
graph (2), any person who conducts offshore aqua-
culture other than as authorized under Federal or
State law shall be strictly liable to the United States
for natural resources damages resulting from such
offshore aquaculture that are assessed by the Sec-
retary under subsection (a).

(2) Limitation.—A person is not liable under
this section for natural resources damages if that
person establishes that—

(A) the destruction or loss of, or injury to,
natural resources from which such damages
arose was caused solely by an act of God, an
act of war, or an act of omission of a third
party, and the person acted with due care;

(B) such destruction, loss, or injury was
caused by an activity authorized by Federal or
State law; or

(C) such destruction, loss, or injury was
negligible.

SEC. 13. ENCOURAGING WORLDWIDE ADHERENCE TO THE
AQUACULTURE PROVISIONS OF THE CODE
OF CONDUCT FOR RESPONSIBLE FISHERIES.

The Secretary shall—
(1) urge United Nations Food and Agriculture Organization to adopt a protocol to the Code of Conduct for Responsible Fisheries elaborating the need for, and ways to achieve, net seafood production from aquaculture;

(2) work to ensure that international fisheries agreements recognize the importance of—

(A) forage fish in marine ecosystem dynamics; and

(B) fishery management that maintains the structure and function of marine food webs;

(3) use bilateral economic and scientific relationships to encourage countries to manage their domestic stocks of forage fish on an ecosystem basis; and

(4) lead an international effort for the development of a traceability system for distinguishing, identifying, and sourcing fishmeal and fish oil so that ecologically sustainable feeds are available and distinguishable to aquaculture.

SEC. 14. DEFINITIONS.

In this Act:

(1) ADVISORY BOARD.—The term “advisory board” means the Sustainable Offshore Aquaculture Advisory Board established under section 3(b).
(2) **Antifouling Paint.**—The term “antifouling paint” has the meaning that term has in section 3 of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2402).

(3) **Coastal State.**—The term “coastal State” means—

(A) a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, or Long Island Sound; and

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

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

(5) **Damages.**—The term “damages” includes—

(A) compensation for—

(i) the cost of replacing, restoring, or acquiring natural resources that are equiv-
alent to natural resources that are de-
stroyed, lost, or injured; or

(ii) the value of natural resources that
are destroyed, lost, or injured, if the nat-
ural resources cannot be restored or re-
placed or if the equivalent of such natural
resources cannot be acquired;

(B) the cost of a natural resource damage
assessment under subsection 12(a);

(C) the reasonable cost of monitoring ap-
propriate to injured, restored, or replaced nat-
ural resources; and

(D) the cost of enforcement actions under-
taken by the Secretary in response to the de-
struction or loss of, or injury to natural re-
sources, including storage, care, and mainte-
nance of any marine species or other seized
property.

(6) EXCLUSIVE ECONOMIC ZONE.—The term
“exclusive economic zone” has the meaning that
term has in the Magnuson-Stevens Fishery Con-
servation and Management Act (16 U.S.C. 1801 et
seq.).

(7) FISH BYPRODUCTS.—The term “fish by-
products”—
(A) except as provided in subparagraph (B), means fish parts, including skin, head, viscera, and bone that result from the processing of either fish produced by aquaculture or wild-caught fish; and

(B) does not include bycatch.

(8) **Genetically Modified Species.**—The term “genetically modified species” means an organism with genetic material that has been deliberately altered using genetic engineering technologies.

(9) **Habitat Areas of Particular Concern.**—The term “habitat area of particular concern” means a habitat area that is ecologically vulnerable based on one or more of the following considerations:

   (A) The importance of the ecological function provided by the habitat.

   (B) The extent to which the habitat is sensitive to human-induced environmental degradation.

   (C) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

   (D) The rarity of the habitat type.
(10) MARINE PROTECTED AREA.—The term “marine protected area” means any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.

(11) MARINE RESERVE.—The term “marine reserve” means a type of marine protected area where extractive uses are prohibited.

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

(13) NATIONAL MARINE SANCTUARY.—The term “national marine sanctuary” means any area designated as a national marine sanctuary for purposes of the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.).

(14) NATURAL RESOURCE.—The term “natural resource” means land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State or local government, or any Indian tribe.
(15) **Office.**—The term “Office” means the Office of Sustainable Offshore Aquaculture established under section 3(a).

(16) **Offshore Aquaculture.**—The term “offshore aquaculture” means all activities related to—

- (A) the placement of any installation, facility, or structure in the exclusive economic zone for the purposes of propagation and rearing, or attempted propagation and rearing, of marine species; and

- (B) the operation of any installation, facility, or structure in the exclusive economic zone for the purposes of propagation and rearing, or attempted propagation and rearing, of marine species.

(17) **Offshore Aquaculture Facility.**—The term “offshore aquaculture facility” means—

- (A) a structure, installation, or other complex placed, in whole or in part, for the purposes of propagation and rearing, or attempted propagation and rearing of marine species in the exclusive economic zone; and

- (B) an area of the seabed or the subsoil used for such placement.
(18) Overfishing and Overfished.—Each of
the terms “overfishing” and “overfished” has the
meaning that term has in the Magnuson-Stevens
Fishery Conservation and Management Act (16
U.S.C. 1801 et seq.).

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

(20) Special Management Zone.—The term
“special management zone” means an area managed
by a State under a special area management plan,
as that term is defined in section 304 of the Coastal