

AQUACULTURE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

AN ACT RELATING TO AQUACULTURE; CREATING THE FISH HEALTH POLICY BOARD WHICH SHALL HAVE AUTHORITY TO ESTABLISH POLICY AND RULES REGARDING THE PREVENTION AND CONTROL OF DISEASE AMONG AQUATIC ANIMALS; ALLOWING THE DIVISION OF WILDLIFE RESOURCES TO CERTIFY CERTAIN SOURCES OF AQUATIC ANIMALS AS HEALTH APPROVED; AND ELIMINATING THE FISH HEALTH BOARD AND AN ADVISORY COUNCIL ON AQUACULTURE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

4-37-103, as renumbered and amended by Chapter 153, Laws of Utah 1994

4-37-104, as renumbered and amended by Chapter 153, Laws of Utah 1994

4-37-105, as renumbered and amended by Chapter 153, Laws of Utah 1994

4-37-108, as enacted by Chapter 153, Laws of Utah 1994

4-37-109, as enacted by Chapter 153, Laws of Utah 1994

4-37-501, as enacted by Chapter 153, Laws of Utah 1994

4-37-502, as enacted by Chapter 153, Laws of Utah 1994

4-37-503, as last amended by Chapters 82 and 276, Laws of Utah 1997

REPEALS:

4-37-107, as last amended by Chapter 82, Laws of Utah 1997

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **4-37-103** is amended to read:

4-37-103. Definitions.

As used in this chapter:

(1) "Aquaculture" means the controlled cultivation of aquatic animals.

(2) (a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir,

or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility or fee fishing facility.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain to, different drainages, are considered separate aquaculture facilities regardless of ownership.

(3) (a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete of any species listed in Subsection (3)(a).

(4) "Fee fishing facility" means a body of water used for holding or rearing fish for the purpose of providing fishing for a fee or for pecuniary consideration or advantage.

(5) (a) "Private fish pond" means a body of water where privately owned fish are propagated or kept.

(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.

~~[(5)]~~ (6) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture by the Division of Wildlife Resources, U.S. Fish and Wildlife Service, ~~[a school,]~~ or an institution of higher education.

~~[(6)]~~ (7) "Public fishery resource" means fish produced in public aquaculture facilities and wild and free ranging populations of fish in the surface waters of the state.

Section 2. Section **4-37-104** is amended to read:

4-37-104. Department's responsibilities.

(1) The department is responsible for:

~~[(1)]~~ (a) the marketing and promotion of the state's aquaculture industry; and

~~[(2)]~~ (b) enforcing laws and rules made by the Wildlife Board governing species of aquatic animals which may be imported into the state or possessed or transported within the state that are applicable to aquaculture or fee fishing facilities[;].

(2) Subject to the policies and rules of the Fish Health Policy Board, the department shall:

~~[(3) preventing]~~ (a) act to prevent the outbreak and ~~[controlling]~~ act to control the spread of disease-causing pathogens among aquatic animals in aquaculture and fee fishing facilities; and

~~[(4) preventing]~~ (b) act to prevent the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from aquaculture or fee fishing facilities to aquatic wildlife, other animals, and humans.

Section 3. Section **4-37-105** is amended to read:

4-37-105. Responsibilities of Wildlife Board and Division of Wildlife Resources.

(1) The Wildlife Board and Division of Wildlife Resources are responsible for~~[(+)]~~ determining the species of aquatic animals which may be imported into, possessed, and transported within the state~~[;]~~.

(2) Subject to the policies and rules of the Fish Health Policy Board, the Wildlife Board and the Division of Wildlife Resources shall:

~~[(2) preventing]~~ (a) act to prevent the outbreak and ~~[controlling]~~ act to control the spread of disease-causing pathogens among aquatic animals in public aquaculture facilities; and

~~[(3) preventing]~~ (b) act to prevent the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from public aquaculture facilities and private ponds to aquatic wildlife, other animals, and humans.

Section 4. Section **4-37-108** is amended to read:

4-37-108. Prohibited activities.

(1) Except as provided in this chapter, in the rules of the department made pursuant to Section 4-37-109, rules of the Fish Health Policy Board made pursuant to Section 4-37-503, or in the rules of the Wildlife Board governing species of aquatic animals which may be imported into, possessed, or transported within the state, a person may not:

(a) acquire, import, or possess aquatic animals intended for use in an aquaculture or fee fishing facility;

(b) transport aquatic animals to or from an aquaculture or fee fishing facility;

(c) stock or propagate aquatic animals in an aquaculture or fee fishing facility; or

(d) harvest, transfer, or sell aquatic animals from an aquaculture or fee fishing facility.

(2) If a person commits an act in violation of Subsection (1) and that same act constitutes wanton destruction of protected wildlife as provided in Section 23-20-4, the person is guilty of a

violation of Section 23-20-4.

Section 5. Section **4-37-109** is amended to read:

4-37-109. Department to make rules.

(1) The department shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~[, after considering the recommendations of the advisory council]~~:

(a) specifying procedures for the application and renewal of certificates of registration for operating an aquaculture or fee fishing facility; and

(b) governing the disposal or removal of aquatic animals from an aquaculture or fee fishing facility for which the certificate of registration has lapsed or been revoked~~[, and]~~.

~~[(c) setting standards for health inspections, except as provided by Section 4-37-503.]~~

(2) The department may make other rules consistent with its responsibilities set forth in Section 4-37-104.

~~[(3) The provisions of the proclamation of the Wildlife Board for "Aquaculture and Fish Stocking" which pertain to aquaculture, public aquaculture, and fee fishing facilities and do not conflict with this chapter shall remain in effect until the department makes rules to replace those provisions of the proclamation.]~~

Section 6. Section **4-37-501** is amended to read:

4-37-501. Health approval -- Exceptions.

(1) (a) Except as provided in Subsections (2) and (3), live aquatic animals may be acquired, purchased, sold, or transferred only from sources which have been health approved by the department or the Division of Wildlife Resources in accordance with policy and rules of the Fish Health Policy Board and assigned a health approval number.

(b) (i) The department shall be responsible for certifying as health approved:

(A) aquaculture facilities;

(B) fee fishing facilities; and

(C) any out-of-state source.

(ii) The Division of Wildlife Resources shall be responsible for certifying as health approved:

- (A) public aquaculture facilities within the state;
- (B) private ponds within the state; and
- (C) wild populations of aquatic animals in waters of the state.

(2) (a) The [department] Division of Wildlife Resources shall waive the health approval requirement for wild populations of aquatic animals pursuant to guidelines of the Fish Health Policy Board.

(b) The Fish Health Policy Board shall develop guidelines for waiving the health approval requirement for wild populations of aquatic animals which:

- (i) are listed by the federal government as threatened or endangered;
- (ii) are listed by the Division of Wildlife Resources as species of special concern; or
- (iii) exist in such low numbers that lethal sampling for health approval could threaten the population.

(c) When wild populations of aquatic animals are exempted from the health approval requirement, precautions shall be taken to protect other wild populations and any other aquatic animals from undetected pathogens.

(3) Subsection (1) does not apply to the sale or transfer of live aquatic animals to an out-of-state destination approved by the receiving state.

Section 7. Section **4-37-502** is amended to read:

4-37-502. Inspections -- Qualifications of inspectors.

(1) Health approval shall be based upon inspections carried out in accordance with standards [~~specified by the department~~] and rules of the Fish Health Policy Board made pursuant to Section 4-37-503.

(2) (a) The inspections must be done by an individual who has received certification from the American Fisheries Society as a fish health inspector.

(b) An inspection of an aquaculture facility may not be done by an inspector who is employed by, or has pecuniary interest in, the facility being inspected.

(3) To receive a health approval number, inspection reports and other evidence of the disease status of a source facility must be submitted to the [department] agency responsible for certifying

the source as health approved pursuant to Section 4-37-501.

Section 8. Section **4-37-503** is amended to read:

4-37-503. Fish Health Policy Board.

(1) There is created within the department the Fish Health Policy Board which shall [be responsible for determining: (a) the pathogens for which inspection is required to receive health approval; and (b) the pathogens which may not be present to receive health approval.] establish policies designed to prevent the outbreak of, control the spread of, and eradicate pathogens that cause disease in aquatic animals.

(2) The Fish Health Policy Board shall:

(a) determine procedures and requirements for certifying a source of aquatic animals as health approved, including:

(i) the pathogens for which inspection is required to receive health approval;

(ii) the pathogens which may not be present to receive health approval; and

(iii) standards and procedures required for the inspection of aquatic animals;

(b) establish procedures for the timely reporting of the presence of pathogens and disease threats;

(c) create policies and procedures for, and appoint, an emergency response team to:

(i) investigate serious threats of disease;

(ii) develop and monitor a plan of action; and

(iii) report to:

(A) the commissioner of agriculture and food;

(B) the director of the Division of Wildlife Resources; and

(C) the chair of the Fish Health Policy Board; and

(d) develop unified statewide aquaculture disease control plans.

(3) The Fish Health Policy Board shall advise the commissioner of agriculture and food and the executive director of the Department of Natural Resources regarding:

(a) educational programs and information systems to educate and inform the public about practices that the public may employ to prevent the spread of disease; and

(b) communication and interaction between the department and the Division of Wildlife Resources regarding fish health policies and procedures.

~~[(2)]~~ (4) (a) (i) The Fish Health Policy Board shall consist of [six] seven members[~~, three~~ of whom shall be appointed by the commissioner of agriculture and food and three of whom shall be appointed by the executive director of the Department of Natural Resources from a list of candidates submitted by the Division of Wildlife Resources.] as follows:

(A) one member shall be jointly appointed by the commissioner of agriculture and food and the executive director of the Department of Natural Resources;

(B) two members shall be appointed by the commissioner of agriculture and food;

(C) two members shall be appointed by the executive director of the Department of Natural Resources;

(D) one member shall be the state veterinarian; and

(E) one member shall be the director of the Division of Wildlife Resources.

(ii) Each member appointed under Subsections (4)(a)(i)(A) through (C) shall be knowledgeable about the control of aquatic diseases.

(iii) The member appointed under Subsection (4)(a)(i)(A) may not be an employee of, or a member of a board within, the Department of Agriculture and Food or Department of Natural Resources.

(iv) Of the members appointed under Subsection (4)(a)(i)(B), one shall be an employee of the Division of Animal Industry and one shall be a representative of the aquaculture industry.

(v) Of the members appointed under Subsection (4)(a)(i)(C), one shall be an employee of the Division of Wildlife Resources and one shall represent sport fishermen.

~~[(b) The state veterinarian shall be among the members appointed by the commissioner of agriculture and food and shall serve as chair of the board.]~~

~~[(c) The chief fish pathologist of the Division of Wildlife Resources shall be among the members appointed by the executive director of the Department of Natural Resources.]~~

~~[(d)]~~ (b) Except as required by Subsection ~~[(e)]~~ (4)(c), the term of office of board members, other than the state veterinarian and the director of the Division of Wildlife Resources, shall be four

years.

~~[(e)]~~ (c) Notwithstanding the requirements of Subsection ~~[(d)]~~ (4)(b), the commissioner and the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

~~[(f)]~~ (d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(e) The member appointed under Subsection (4)(a)(i)(A) shall serve as chair of the board.

~~[(g)]~~ (f) The board shall meet upon the call of the chair or a majority of the board members.

~~[(h)]~~ (i) A majority of the board members constitutes a quorum. A quorum is necessary for the board to act.]

~~[(ii)]~~ Approval of a motion to list or delist a pathogen requires at least four votes.]

(g) (i) An action of the board shall be adopted upon approval of four or more voting members.

(ii) The chair may not vote.

~~[(3)]~~ (5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

~~[(4)]~~ (6) (a) The board shall make rules consistent with its responsibilities and duties specified in ~~[Subsection (1)]~~ this section.

(b) [~~The provisions of the proclamation of the Wildlife Board for "Aquaculture and Fish Stocking" that pertain to pathogens for which inspection is necessary and which may not be present]~~ Rules of the department and Fish Health Board pertaining to the control of disease shall remain in effect until the Fish Health Policy Board enacts rules to replace those provisions.

Section 9. Repealer.

This act repeals:

Section 4-37-107, Advisory council.

Section 10. Legislative intent.

It is the intent of the Legislature that:

(1) the Natural Resources, Agriculture, and Environment Interim Committee take comment from any interested parties during the 1998 interim meetings on progress made by the Fish Health Policy Board; and

(2) if it is the opinion of the committee, after taking comment from interested parties, that the performance of the Fish Health Policy Board is being hindered by the lack of a tie-breaking vote on the board, the chairmanship issue shall be revisited in the 1999 Legislative Session.