

**FISH HEALTH BOARD AND AQUACULTURE**

**AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Dave Hogue**

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

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

AMENDS:

**4-37-102**, 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

**4-37-109**, 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 **4-37-102** is amended to read:

**4-37-102. Purpose statement -- Aquaculture considered a branch of agriculture.**

[(†)] The Legislature declares that:

(1) fish and wildlife related recreation constitutes an important part of Utah's economy and contributes significantly to the quality of life in Utah;

(2) it is in the interest of the people of the state to encourage the enhancement of fish and wildlife related recreation;

(3) it is in the interest of the people of the state to encourage the practice of aquaculture, while protecting the public fishery resource, in order to augment food production, expand employment, promote economic development, and protect and better utilize the land and water resources of the state[-]; and

~~[(2)] (4) [The Legislature further declares that]~~ aquaculture should be considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agricultural industry within 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 Board, the department shall:

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

~~[(4) preventing]~~ (b) 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.**

(1) The Wildlife Board and Division of Wildlife Resources are responsible for~~[-(1)]~~ 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 Board, the Wildlife Board and Division of Wildlife Resources shall:

1           ~~[(2) preventing]~~ (a) prevent the outbreak and ~~[controlling]~~ control the spread of  
2 disease-causing pathogens among aquatic animals in public aquaculture facilities; and  
3           ~~[(3) preventing]~~ (b) prevent the spread of disease-causing pathogens from aquatic animals  
4 in, to be deposited in, or harvested from public aquaculture facilities and private ponds to aquatic  
5 wildlife, other animals, and humans.

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

7           **4-37-109. Department to make rules.**

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

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

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

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

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

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

21           Section 5. Section **4-37-501** is amended to read:

22           **4-37-501. Health approval -- Exceptions.**

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

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

28           (A) aquaculture facilities;

29           (B) fee fishing facilities;

30           (C) public aquaculture facilities other than those used by the Division of Wildlife  
31 Resources or U.S. Fish and Wildlife Service; and

1        (D) any out-of-state source.

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

4        (A) public aquaculture facilities used by the Division of Wildlife Resources or U.S. Fish  
5 and Wildlife Service;

6        (B) private ponds; and

7        (C) wild populations of aquatic animals in waters of the state.

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

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

13        (i) are listed by the federal government as threatened or endangered;

14        (ii) are listed by the Division of Wildlife Resources as species of special concern; or

15        (iii) exist in such low numbers that lethal sampling for health approval could threaten the  
16 population.

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

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

22        Section 6. Section **4-37-502** is amended to read:

23        **4-37-502. Inspections -- Qualifications of inspectors.**

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

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

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

31        (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 or Division of Wildlife Resources.

Section 7. Section **4-37-503** is amended to read:

**4-37-503. Fish Health Board.**

(1) There is created within the department the Fish Health Board which shall [be responsible for determining:] 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 Board shall determine:

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

[(a)] (i) the pathogens for which inspection is required to receive health approval; [and]

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

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

(b) procedures for the treatment, transportation, and disposition of aquatic animals affected by the pathogens referred to in Subsections (2)(a)(i) and (2)(a)(ii) or which were raised in aquaculture, public aquaculture, or fee fishing facilities, or private ponds or waters of the state in which affected aquatic animals have been found.

~~[(2)] (3) (a) The Fish Health 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].~~

~~[(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.]~~

(b) The commissioner of agriculture and food shall appoint three members as follows:

(i) one member shall be the chief fish pathologist of the Division of Animal Industry;

(ii) one member shall represent the aquaculture industry; and

(iii) another member shall be a person with experience or expertise in aquatic biology, aquatic pathology, aquatic toxicology, or aquatic ecology.

(c) The executive director of the Department of Natural Resources shall appoint three

1 members as follows:

2 (i) one member shall be the chief fish pathologist of the Division of Wildlife Resources;

3 (ii) one member shall represent sport fishing; and

4 (iii) another member shall be a person with experience or expertise in aquatic biology,  
5 aquatic pathology, aquatic toxicology, or aquatic ecology.

6 (d) The governor shall appoint one member to represent the public-at-large. The member  
7 appointed by the governor shall:

8 (i) be independent of any interest group specified in Subsection (3)(b)(ii) or (3)(c)(ii);

9 (ii) have experience or expertise in aquatic biology, aquatic pathology, aquatic toxicology,  
10 or aquatic ecology; and

11 (iii) serve as chair of the board.

12 (e) The state veterinarian and the director of the Division of Wildlife Resources may not  
13 be appointed to the Fish Health Board but shall serve as consultants to the board.

14 ~~[(d)]~~ (f) Except as required by Subsection ~~[(e)]~~ (3)(g), the term of office of board members,  
15 other than the ex officio members, shall be four years.

16 ~~[(e)]~~ (g) Notwithstanding the requirements of Subsection ~~[(d)]~~ (3)(f), the commissioner  
17 [and], the executive director, and the governor shall, at the time of appointment or reappointment,  
18 adjust the length of terms to ensure that the terms of board members are staggered so that  
19 approximately half of the board is appointed every two years.

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

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

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

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

27 ~~[(3)]~~ (4) (a) (i) Members who are not government employees shall receive no  
28 compensation or benefits for their services, but may receive per diem and expenses incurred in the  
29 performance of the member's official duties at the rates established by the Division of Finance  
30 under Sections 63A-3-106 and 63A-3-107.

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

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

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

7 [(4)-(a)] (5) The board shall make rules consistent with its responsibilities specified in  
8 [Subsection (1)] this section.

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

12 Section 8. **Repealer.**

13 This act repeals:

14 Section **4-37-107, Advisory council.**

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**Legislative Review Note**  
**as of 2-13-98 1:49 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**