

**Senator Darin G. Peterson** proposes the following substitute bill:

**FISH HEALTH AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Darin G. Peterson**

House Sponsor: Michael E. Noel

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**LONG TITLE**

**General Description:**

This bill amends the Aquaculture Act.

**Highlighted Provisions:**

This bill:

▶ requires the Fish Health Policy Board to adopt rules consistent with the American Fisheries Society's bluebook;

▶ allows an aquaculture facility to be retested for a health approval number;

**§→ ▶ requires an aquaculture facility to notify the Department of Agriculture and Food of an inspection; ←§**

▶ allows the Division of Wildlife to use more sensitive procedures when testing a public aquaculture facility;

▶ requires the Department of Agriculture and Food to maintain a list of approved laboratories and fish health inspectors;

▶ authorizes the Fish Health Policy Board to waive requirements established in rule;

▶ designates the presiding officer for a review of certain agency orders; and

▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **4-37-109**, as last amended by Chapter 302, Laws of Utah 1998

29 **4-37-501**, as last amended by Chapter 302, Laws of Utah 1998

30 **4-37-502**, as last amended by Chapter 302, Laws of Utah 1998

31 **4-37-503**, as last amended by Chapter 9, Laws of Utah 2001

32 **4-37-602**, as enacted by Chapter 153, Laws of Utah 1994



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

35 Section 1. Section **4-37-109** is amended to read:

36 **4-37-109. Department to make rules.**

37 (1) The department shall make rules in accordance with Title 63, Chapter 46a, Utah  
38 Administrative Rulemaking Act:

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

41 (b) governing the disposal or removal of aquatic animals from an aquaculture or fee  
42 fishing facility for which the certificate of registration has lapsed or been revoked.

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

45 (b) Except as provided by this chapter, the rules authorized by Subsection (2)(a) must  
46 be consistent with the suggested procedures for the detection and identification of pathogens  
47 published by the American Fisheries Society's Fish Health Section.

48 Section 2. Section **4-37-501** is amended to read:

49 **4-37-501. Health approval -- Exceptions.**

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

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

55 (A) aquaculture facilities;

56 (B) fee fishing facilities; and

57 (C) any out-of-state source.

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

60 (A) public aquaculture facilities within the state;

61 (B) private ponds within the state; and

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

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

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

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

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

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

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

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

76 (4) In certifying a public aquaculture facility as health approved, the Division of  
77 Wildlife Resources may use:

78 (a) employees or contractors to conduct the inspection required by Section 4-37-502;  
79 and

80 (b) sampling or testing procedures that are more thorough or sensitive in detecting  
81 prohibited pathogens than the procedures required by rule.

82 Section 3. Section **4-37-502** is amended to read:

83 **4-37-502. Inspections -- Report for quarantine facility -- Qualifications of**  
84 **inspectors.**

85 (1) [Health] (a) Except as provided by Subsection (1)(b), approval shall be based upon  
86 inspections carried out in accordance with standards and rules of the Fish Health Policy Board  
87 made pursuant to Section 4-37-503.

88 (b) An owner or operator of an aquaculture facility that is under quarantine or whose  
 89 health approval has been canceled or denied prior to July 1, 2007 may seek health approval  
 90 without submitting or complying with a biosecurity plan required by rule by submitting a new  
 91 health inspection report to the department.

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

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

96 (c) The department shall post on its website a current list of:

97 (i) certified fish health inspectors; and

98 (ii) approved laboratories to which a fish health inspector may send the samples  
 99 collected during the inspections required by this section.

99a **§→ (d) (i) If the fish health inspector conducting the inspection is not an employee of the**  
 99b **department, the owner or operator of the aquaculture facility shall notify the department of**  
 99c **the date and time of the inspection at least five business days before the day on which the**  
 99d **inspection will occur.**

99e **(ii) The department may be present for the inspection. ←§**

100 (3) To receive a health approval number, inspection reports and other evidence of the  
 101 disease status of a source facility must be submitted to the agency responsible for certifying the  
 102 source as health approved pursuant to Section 4-37-501.

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

104 **4-37-503. Fish Health Policy Board.**

105 (1) There is created within the department the Fish Health Policy Board which shall  
 106 establish policies designed to prevent the outbreak of, control the spread of, and eradicate  
 107 pathogens that cause disease in aquatic animals.

108 (2) The Fish Health Policy Board shall:

109 (a) in accordance with Subsection (6)(b), determine procedures and requirements for  
 110 certifying a source of aquatic animals as health approved, including:

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

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

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

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

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

117 (i) investigate serious threats of disease;

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

- 119 (iii) report to:
- 120 (A) the commissioner of agriculture and food;
- 121 (B) the director of the Division of Wildlife Resources; and
- 122 (C) the chair of the Fish Health Policy Board; and
- 123 (d) develop unified statewide aquaculture disease control plans.
- 124 (3) The Fish Health Policy Board shall advise the commissioner of agriculture and
- 125 food and the executive director of the Department of Natural Resources regarding:
- 126 (a) educational programs and information systems to educate and inform the public
- 127 about practices that the public may employ to prevent the spread of disease; and
- 128 (b) communication and interaction between the department and the Division of
- 129 Wildlife Resources regarding fish health policies and procedures.
- 130 (4) (a) (i) The Fish Health Policy Board shall consist of seven members as follows:
- 131 (A) one member shall be jointly appointed by the commissioner of agriculture and food
- 132 and the executive director of the Department of Natural Resources;
- 133 (B) two members shall be appointed by the commissioner of agriculture and food;
- 134 (C) two members shall be appointed by the executive director of the Department of
- 135 Natural Resources;
- 136 (D) one member shall be the state veterinarian; and
- 137 (E) one member shall be the director of the Division of Wildlife Resources.
- 138 (ii) Each member appointed under Subsections (4)(a)(i)(A) through (C) shall be
- 139 knowledgeable about the control of aquatic diseases.
- 140 (iii) The member appointed under Subsection (4)(a)(i)(A) may not be an employee of,
- 141 or a member of a board within, the Department of Agriculture and Food or Department of
- 142 Natural Resources.
- 143 (iv) Of the members appointed under Subsection (4)(a)(i)(B), one shall be an employee
- 144 of the Division of Animal Industry and one shall be a representative of the aquaculture
- 145 industry.
- 146 (v) Of the members appointed under Subsection (4)(a)(i)(C), one shall be an employee
- 147 of the Division of Wildlife Resources and one shall represent sport fishermen.
- 148 (b) Except as required by Subsection (4)(c), the term of office of board members, other
- 149 than the state veterinarian and the director of the Division of Wildlife Resources, shall be four

150 years.

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

155 (d) When a vacancy occurs in the membership for any reason, the replacement shall be  
156 appointed for the unexpired term.

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

159 (f) The board shall meet upon the call of the chair or a majority of the board members.

160 (g) (i) An action of the board shall be adopted upon approval of [~~four~~] five or more  
161 voting members.

162 (ii) The chair may not vote.

163 (5) (a) (i) [~~Members~~] A member who [~~are~~] is not a government [~~employees shall~~  
164 employee may not receive [~~no~~] compensation or benefits for [~~their services~~] the member's  
165 service, but may receive per diem and expenses incurred in the performance of the member's  
166 official duties at the rates established by the Division of Finance under Sections 63A-3-106 and  
167 63A-3-107.

168 (ii) [~~Members~~] A member may decline to receive per diem and expenses for [~~their~~] the  
169 member's service.

170 (b) (i) [~~State~~] A state government officer and employee [~~members~~] member who [~~do~~]  
171 does not receive salary, per diem, or expenses from [~~their~~] the agency the member represents  
172 for [~~their~~] the member's service may receive per diem and expenses incurred in the  
173 performance of [~~their~~] the member's official duties [~~from the board~~] at the rates established by  
174 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

175 (ii) [~~State~~] A state government officer and employee [~~members~~] member may decline  
176 to receive per diem and expenses for [~~their~~] the member's service.

177 (6) (a) The board shall make rules consistent with its responsibilities and duties  
178 specified in this section.

179 (b) Except as provided by this chapter, all rules adopted by the Fish Health Policy  
180 Board must be consistent with the suggested procedures for the detection and identification of

181 pathogens published by the American Fisheries Society's Fish Health Section.

182 ~~[(b)]~~ (c) (i) Rules of the department and Fish Health Policy Board pertaining to the  
183 control of disease shall remain in effect until the Fish Health Policy Board enacts rules to  
184 replace those provisions.

185 (ii) The Fish Health Policy Board shall promptly amend rules that are inconsistent with  
186 the current suggested procedures published by the American Fisheries Society.

187 (d) The Fish Health Policy Board may waive a requirement established by the Fish  
188 Health Policy Board's rules if:

189 (i) the rule specifies the waiver criteria and procedures; and

190 (ii) the waiver will not threaten other aquaculture facilities or wild aquatic animal  
191 populations.

192 Section 5. Section **4-37-602** is amended to read:

193 **4-37-602. Adjudicative proceedings.**

194 (1) Adjudicative proceedings under this chapter shall be conducted in accordance with  
195 Title 63, Chapter 46b, Administrative Procedures Act.

196 (2) The revocation of an aquaculture facility's certificate of registration, the denial of  
197 an aquaculture facility's future certificate of registration, and a denial or cancellation of an  
198 aquaculture facility's health approval number is a state agency action governed by Title 63,  
199 Chapter 46b, Administrative Procedures Act.

200 (3) (a) An owner or operator of an aquaculture facility may ask for an agency review,  
201 as provided by Section 63-46b-12, of an agency action specified in Subsection (2).

202 (b) The presiding officer, as defined in Section 63-46b-2, conducting the agency review  
203 shall consist of three members as follows:

204 (i) the person representing sport fishermen, appointed under Subsection  
205 4-37-503(4)(a)(i)(C);

206 (ii) one person representing the aquaculture industry, appointed by the governor from  
207 names submitted by a nonprofit corporation, as defined in Section 16-6a-102, that promotes the  
208 efficient production, distribution, and marketing of aquaculture products and the welfare of all  
209 persons engaged in aquaculture; and

210 (iii) one person, appointed by the governor, who is knowledgeable about aquatic  
211 diseases and is employed by an institution of higher education.

212 (c) If the governor rejects all the names submitted under Subsection (3)(b)(ii), the  
213 recommending nonprofit corporation shall submit additional names.

214 (d) The final decision of the presiding officer shall be adopted upon approval of at least  
215 two of the members.

216 (e) The term and compensation for the member listed in Subsection (3)(b)(i) shall be  
217 the same as provided in Section 4-37-503.

218 (f) The term for the members appointed under Subsections (3)(b)(ii) and (iii) shall be  
219 four years.

220 (g) (i) A higher education member who does not receive salary, per diem, or expenses  
221 from the entity that the member represents for the member's service may receive per diem and  
222 expenses incurred in the performance of the member's official duties at the rates established by  
223 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

224 (B) A higher education member may decline to receive per diem and expenses for the  
225 member's service.

226 (ii) (A) A member who is not a government employee may not receive compensation  
227 or benefits for the member's service, but may receive per diem and expenses incurred in  
228 performance of the member's official duties at rates established by the Division of Finance  
229 under Sections 63A-3-106 and 63A-3-107.

230 (B) A member may decline to receive per diem and expenses for the member's service.



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**S.B. 195 2nd Sub. (Salmon) - Fish Health Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Enactment of this bill may require additional testing for disease detection which would result in additional costs for individual producers.

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