

**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

**Utah Code Sections Affected:**

AMENDS:

- 30           **4-37-109**, as last amended by Chapter 302, Laws of Utah 1998
- 31           **4-37-501**, as last amended by Chapter 302, Laws of Utah 1998
- 32           **4-37-502**, as last amended by Chapter 302, Laws of Utah 1998
- 33           **4-37-503**, as last amended by Chapter 9, Laws of Utah 2001
- 34           **4-37-602**, as enacted by Chapter 153, Laws of Utah 1994

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

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

38           **4-37-109. Department to make rules.**

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

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

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 44 fishing facility for which the certificate of registration has lapsed or been revoked.

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

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

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

51           **4-37-501. Health approval -- Exceptions.**

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

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

57           (A) aquaculture facilities;

58 (B) fee fishing facilities; and

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

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

62 (A) public aquaculture facilities within the state;

63 (B) private ponds within the state; and

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

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

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

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

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

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

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

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

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

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

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

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

85 **4-37-502. Inspections -- Health approval report -- Report for quarantine facility**

86 -- **Qualifications of inspectors -- Notification of department.**

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

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

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

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

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

99 (i) certified fish health inspectors; and

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

102 (d) (i) If the fish health inspector conducting the inspection is not an employee of the  
103 department, the owner or operator of the aquaculture facility shall notify the department of the  
104 date and time of the inspection at least five business days before the date on which the  
105 inspection will occur.

106 (ii) The department may be present for the inspection.

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

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

111 **4-37-503. Fish Health Policy Board.**

112 (1) There is created within the department the Fish Health Policy Board which shall  
113 establish policies designed to prevent the outbreak of, control the spread of, and eradicate

- 114 pathogens that cause disease in aquatic animals.
- 115 (2) The Fish Health Policy Board shall:
- 116 (a) in accordance with Subsection (6)(b), determine procedures and requirements for
- 117 certifying a source of aquatic animals as health approved, including:
- 118 (i) the pathogens for which inspection is required to receive health approval;
- 119 (ii) the pathogens which may not be present to receive health approval; and
- 120 (iii) standards and procedures required for the inspection of aquatic animals;
- 121 (b) establish procedures for the timely reporting of the presence of pathogens and
- 122 disease threats;
- 123 (c) create policies and procedures for, and appoint, an emergency response team to:
- 124 (i) investigate serious threats of disease;
- 125 (ii) develop and monitor a plan of action; and
- 126 (iii) report to:
- 127 (A) the commissioner of agriculture and food;
- 128 (B) the director of the Division of Wildlife Resources; and
- 129 (C) the chair of the Fish Health Policy Board; and
- 130 (d) develop unified statewide aquaculture disease control plans.
- 131 (3) The Fish Health Policy Board shall advise the commissioner of agriculture and
- 132 food and the executive director of the Department of Natural Resources regarding:
- 133 (a) educational programs and information systems to educate and inform the public
- 134 about practices that the public may employ to prevent the spread of disease; and
- 135 (b) communication and interaction between the department and the Division of
- 136 Wildlife Resources regarding fish health policies and procedures.
- 137 (4) (a) (i) The Fish Health Policy Board shall consist of seven members as follows:
- 138 (A) one member shall be jointly appointed by the commissioner of agriculture and food
- 139 and the executive director of the Department of Natural Resources;
- 140 (B) two members shall be appointed by the commissioner of agriculture and food;
- 141 (C) two members shall be appointed by the executive director of the Department of

142 Natural Resources;

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

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

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

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

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

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

155 (b) Except as required by Subsection (4)(c), the term of office of board members, other  
156 than the state veterinarian and the director of the Division of Wildlife Resources, shall be four  
157 years.

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

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

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

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

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

169 (ii) The chair may not vote.

170 (5) (a) (i) ~~[Members]~~ A member who ~~[are]~~ is not a government ~~[employees shall]~~  
171 employee may not receive ~~[no]~~ compensation or benefits for ~~[their services]~~ the member's  
172 service, but may receive per diem and expenses incurred in the performance of the member's  
173 official duties at the rates established by the Division of Finance under Sections 63A-3-106 and  
174 63A-3-107.

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

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

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

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

186 (b) Except as provided by this chapter, all rules adopted by the Fish Health Policy  
187 Board must be consistent with the suggested procedures for the detection and identification of  
188 pathogens published by the American Fisheries Society's Fish Health Section.

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

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

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

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

197 (ii) the waiver will not threaten other aquaculture facilities or wild aquatic animal

198 populations.

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

200 **4-37-602. Adjudicative proceedings -- Presiding officer.**

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

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

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

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

211 (i) the person representing sport fishermen, appointed under Subsection  
212 4-37-503(4)(a)(i)(C);

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

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

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

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

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

225 (f) The term for the members appointed under Subsections (3)(b)(ii) and (iii) shall be



226 four years.

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

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

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

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