

FISH HEALTH AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Darin G. Peterson

House Sponsor: _____

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;
- ▶ changes the membership of the Fish Health Policy Board;
- ▶ requires the Department of Agriculture and Food to maintain a list of approved laboratories and fish health inspectors;
- ▶ 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:

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

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



28 4-37-503, as last amended by Chapter 9, Laws of Utah 2001

29 4-37-602, as enacted by Chapter 153, Laws of Utah 1994



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

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

33 **4-37-109. Department to make rules.**

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

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

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39 fishing facility for which the certificate of registration has lapsed or been revoked.

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

42 (b) The rules authorized by Subsection (2)(a) must be consistent with the suggested
43 procedures for the detection and identification of pathogens published by the American
44 Fisheries Society's Fish Health Section.

45 Section 2. Section 4-37-502 is amended to read:

46 **4-37-502. Inspections -- Report for quarantine facility -- Qualifications of**
47 **inspectors.**

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

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

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

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

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

60 (i) certified fish health inspectors; and

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

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

66 Section 3. Section **4-37-503** is amended to read:

67 **4-37-503. Fish Health Policy Board.**

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

71 (2) The Fish Health Policy Board shall:

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

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

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

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

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

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

80 (i) investigate serious threats of disease;

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

82 (iii) report to:

83 (A) the commissioner of agriculture and food;

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

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

86 (d) develop unified statewide aquaculture disease control plans.

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

89 (a) educational programs and information systems to educate and inform the public

90 about practices that the public may employ to prevent the spread of disease; and

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

93 (4) (a) (i) The Fish Health Policy Board shall consist of ~~[seven]~~ five members as
94 follows:

95 (A) one member shall be ~~[jointly] a sport fisherman,~~ appointed by the ~~[commissioner~~
96 ~~of agriculture and food and the executive director of the Department of Natural Resources]~~
97 governor from names submitted by a nonprofit corporation, as defined in Section 16-6a-102,
98 that conserves, protects, and restores natural fisheries and their watersheds;

99 (B) two members shall be ~~[appointed by the commissioner of agriculture and food]~~
100 representatives of the aquaculture industry, appointed by the governor from names submitted
101 by a nonprofit corporation, as defined in Section 16-6a-102, that promotes the efficient
102 production, distribution, and marketing of aquaculture products and the welfare of all persons
103 engaged in aquaculture;

104 ~~[(C) two members shall be appointed by the executive director of the Department of~~
105 ~~Natural Resources;]~~

106 ~~[(D)]~~ (C) one member shall be the state veterinarian; and

107 ~~[(E)]~~ (D) one member shall be the director of the Division of Wildlife Resources.

108 (ii) If the governor rejects all the names submitted under Subsections (4)(a)(i)(A) and
109 (B), the recommending nonprofit corporation shall submit additional names.

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

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

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

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

120 (b) Except as required by Subsection (4)(c), the term of office of board members, other

121 than the state veterinarian and the director of the Division of Wildlife Resources, shall be four
122 years.

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

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

129 (e) The [~~member appointed under Subsection (4)(a)(i)(A) shall serve as~~] board
130 members shall elect a chair of the board from the board's membership.

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

132 (g) [(†)] An action of the board shall be adopted upon approval of [~~four or more voting~~]
133 a majority of the board members.

134 [(ii) ~~The chair may not vote.~~]

135 (5) (a) (i) [~~Members~~] A member who [~~are~~] is not a government [~~employees shall~~
136 employee may not receive [~~no~~] compensation or benefits for [~~their services~~] the member's
137 service, but may receive per diem and expenses incurred in the performance of the member's
138 official duties at the rates established by the Division of Finance under Sections 63A-3-106 and
139 63A-3-107.

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

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

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

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

151 (b) All rules adopted by the Fish Health Policy Board must be consistent with the

152 suggested procedures for the detection and identification of pathogens published by the
153 American Fisheries Society's Fish Health Section.

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

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

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

160 **4-37-602. Adjudicative proceedings.**

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

163 (2) The revocation of a certificate of registration, the denial of a future certificate of
164 registration, and a denial or cancellation of a health approval number is a state agency action
165 governed by Title 63, Chapter 46b, Administrative Procedures Act.

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

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

170 (i) the person appointed by the governor under Subsection 4-37-503(4)(a)(i)(A);

171 (ii) the persons appointed by the governor under Subsection 4-37-503(4)(a)(i)(B); and

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

174 (c) The final decision of the presiding officer shall be adopted upon approval of at least
175 two of the members.

176 (d) The member's terms and compensation shall be the same as provided in Section
177 4-37-503.

Legislative Review Note
as of 1-26-07 11:31 AM

Office of Legislative Research and General Counsel