



**House  
Legislative  
Analysis  
Section**

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**CREATE AQUATIC SPECIES  
PROTECTION ACT**

**House Bill 4150 (Substitute H-4)  
House Bill 4151 (Substitute H-2)  
House Bill 4737 (Substitute H-2)  
First Analysis (6-12-01)**

**Sponsor: Rep. Sue Tabor  
Committee: Conservation and Outdoor  
Recreation**

***THE APPARENT PROBLEM:***

The laws of the state relating to its aquatic resources, including fish, reptiles, mollusks, amphibians and crustaceans, are fragmented and, in some instances, archaic. In response to this problem, the Department of Natural Resources (DNR), in conjunction with constituent groups, has worked for some time to compile a more cohesive code to bring before the legislature. The department reports that many discussions have been held to ensure that the new act meets the intentions of the department and of constituents, and that it reflects new public sentiment as a result of the passing of Proposal G in 1996 [Proposal G provided that the Natural Resources Commission (NRC) would have exclusive authority to regulate the taking of game].

The proposed act is a recodification of some 22 existing laws. At the beginning of the process, constituents were promised that the recodification would not change any regulation currently in place, and that any changes in the department's authority under each law would only be changed through the public review process. According to the department, the proposed act meets that commitment. In addition, the proposed act would be similar to Proposal G, in that it would allow the commission to exercise authority over natural resources policies and regulations. Rather than require legislation, the commission would be the decision-making body for the regulation of game, and would determine proposed changes.

***THE CONTENT OF THE BILLS:***

House Bill 4150 would recodify current laws concerning aquatic species. The bill would add a new part, Part 481, to the Natural Resources and Environmental Protection Act and amend several other sections of the act (MCL 324.43555 et al.). In addition, the bill would repeal and reenact many

existing laws concerning the regulation of aquatic species. House Bill 4737 would amend the Aquaculture Development Act to specify that the Department of Agriculture (DOA) would have to consult with the Department of Natural Resources (DNR) on the DOA's procedures and policies pertaining to aquatic species. House Bills 4150 and 4737 are tie-barred to each other. House Bill 4151 would amend the Administrative Procedures Act to replace references to other parts of the NREPA with a reference to orders issued under the provisions of House Bill 4150. House Bill 4151 is tie-barred to House Bill 4150.

The following is a summary of House Bill 4150:

Department Powers and Authority. The bill would specify that the taking and possession of aquatic species for sales purposes is a privilege that could only be exercised in compliance with the bill and other state law, and that the Department of Natural Resources (DNR) would regulate the taking and possession of aquatic species, which would be defined under the bill to mean any fish, reptile, amphibian, mollusk, aquatic insect, or crustacean. All aquatic species found in the state, whether native or introduced, resident or migratory, would be held in trust as the property of the people of the state. Notwithstanding this provision, aquatic species that were lawfully taken, produced, purchased, or acquired from within the state or lawfully imported into the state would be the property of the person lawfully possessing them. The bill would also specify that nothing in its provisions would prevent a state department or other agency from performing its duties under a state or federal statute, or its duties as public trustee under the common law.

Aquaculture Species. The bill would specify that the provisions of the act would not apply to aquaculture

House Bills 4150, 4151 and 4737 (6-12-01)

species. Instead, the bill would specify that aquaculture species would be taken, imported, exported, transported, bought, sold, possessed, reared, cultured, and disposed of in compliance with the provisions of the Animal Industry Act (MCL 287.701 et al.) and the Aquaculture Development Act (MCL 286.871 et al.).

Section 3 of the Michigan Aquaculture Development Act specifies that the provisions of that act are to be administered by the Department of Agriculture (DOA). House Bill 4150 would require that the Department of Natural Resources (DNR) enter into a memorandum of understanding with the Department of Agriculture (DNR) concerning aquatic species regulatory issues, as provided under the Michigan Aquaculture Development Act (MCL 286.873). Further, an aquaculture facility could not take aquatic species from, or release them into, any state waters, except in compliance with the provisions of the bill.

Lawful Acts. A recreational angler could take and possess aquatic species in compliance with the bill and with other state law from any waters that were under the state's jurisdiction. However, the taking and possession for the purposes of sale would be a privilege that could only be exercised in compliance with the bill and other state law.

Commercial Fishing. The bill specifies that a nonresident who resides in a state or country that does not allow Michigan residents to act as commercial fishing guides within that state or country could not act in that manner in Michigan.

- A commercial fishing licensee would have the right to have his or her license renewed from year to year if the licensee continued to meet the required qualifications and conditions. However, a licensee that didn't take catch in two successive years would relinquish that right to have his or her license renewed. A commercial fishing license would not be transferable without the DNR's permission.

- Fees for commercial fishing licenses or permits would be based on a baseline formula for the year licensed or permitted, and a percentage of the dockside value of the catch. The formula for the gear would remain fixed. The percentage of the dockside value of the catch could not be more than one percent in the year that the bill took effect. Annually thereafter, the percentage of dockside value would be adjusted by the NRC no more than one percent up or down, based on the costs of administering the commercial fisheries program, but could not exceed ten percent.

Prohibited Acts. The bill would prohibit obstructing or interfering with another person's lawful taking of aquatic species. This would include the following:

\*\*Driving or disturbing aquatic species;

\*\*Blocking, impeding, or harassing another person;

\*\*Using natural, artificial, or physical stimulus to affect an aquatic species' behavior;

\*\*Erecting barriers with the intent to deny ingress or egress to areas where a lawful taking might occur. (However, this would not apply to a person who lawfully erected barriers to prevent trespassing; nor to the owner or operator of a facility who had erected barriers to protect the public from a facility's safety risks, if the facility was licensed or had a license pending before the federal Energy Regulatory Commission or a successor agency, the facility operated under a state certification under Title IV of the federal Water Pollution Contract Act (86 Stat. 877, 33 U.S.C. 1341), or the facility operated under a permit from the U.S. Army Corps of Engineers or a successor agency; nor by a person who lawfully erected the barriers under a permit issued by the department.

\*\*Interjecting oneself into the act of lawfully taking an aquatic species;

\*\*Affecting the condition or placement of private or public property intended for use in the lawful taking of an aquatic species in order to impair the usefulness or prevent the use of the property;

\*\*Entering or remaining upon private land without the permission of the owner, or his or her agent, with intent to prevent the lawful taking of aquatic species by obstructing or interfering with that taking;

\*\*Removing aquatic species from, or tampering with, or damaging any equipment, device, or other property, including, but not limited to, a net or fixture, placed in any waters over which the state has jurisdiction for the purpose of taking aquatic species. (This provision would not apply to the owner of the equipment, device, or other property, his or her agent, or the department).

The above prohibitions would not apply to a peace officer performing his or her lawful duties, nor to activities required by the federal Energy Regulatory Commission or a successor agency.

Prohibited conduct could be enjoined by a court, upon petition of an aggrieved person, or a person who reasonably might be aggrieved by a violation, upon a showing that a person threatened to continue to engage in illegal conduct.

Natural Resources Commission (NRC). The NRC and the DNR would be required to manage and protect the state's aquatic species from depletion, extirpation, and disease, and prevent the introduction and proliferation of nonindigenous species. The commission could issue orders for this purpose to do any of the following:

- Establish open seasons for the taking or possessing of aquatic species.
- Establish limits on the quantity of aquatic species that a person could take or possess in a period of time.
- Establish limits on the size of aquatic species that could be taken.
- Establish lawful methods and lawful devices for the taking of aquatic species.
- Establish geographic areas within the state where certain regulations could apply to the taking of aquatic species.

Orders issued by the NRC would be subject to final orders issued by the director of the DNR to take the place of acts and parts of the bill that would be repealed under the bill, and to orders issued by the director of the DNR to do the following:

- Exercise the authority of the commission in any area of the state that was subject to a consent decree between the DNR and a federally recognized Indian tribe, the United States, another nation, or a province, or subject to a reciprocal agreement, authorized by statute, between Michigan and another state, another nation, or a province, if the consent decree or reciprocal agreement pertained in whole or in part to managing and protecting the state's aquatic species.
- Close to the taking of aquatic species waters over which the state had jurisdiction.
- Prohibit the operation of vessels, or other actions that might cause molestation of spawning or migrating of fish.
- Establish conditions for the possession of aquatic species, including, but not limited to, possession in

ponds, pools, and aquaria and the importation and transportation of aquatic species into or within the state.

- Establish conditions under which an aquatic species could be disposed of.
- Regulate the buying and selling of aquatic species, and establish which species could be bought or sold.
- Establish conditions under which an aquatic species could be possessed, transported, bought, or sold by a taxidermist who has obtained a permit to take game.
- Establish conditions under which an aquatic species in a person's possession could be inspected by, or made available for inspection by, the DNR.
- Establish conditions for the release of aquatic species.
- Except to the extent of the NRC's authority to issue orders, establish any other regulations determined by the director to be necessary to manage or protect aquatic species.

Permits. The director could issue an order requiring that a permit or license be required for certain activities, including one or more of the following:

- The collection, transportation, possession, or disposition of aquatic species for scientific, educational, rehabilitation, or cultural purposes.
- The use of fixed untended equipment for the taking of aquatic species for personal use.
- The operation of a fish cleaning station.
- The release of aquatic species.
- The taking and sale or transfer of an aquatic species to protect state waters when the department determines that the species is overabundant, damaging, or deleterious to the ecological balance or to the state's aquatic resources.
- The disposition of accidentally or unlawfully taken or injured aquatic species, or aquatic species that were unlawfully owned.
- The importation or exportation of aquatic species or viable eggs of an aquatic species.
- The taking, possession, transportation, importation, or exportation of aquatic species for the purpose of buying or selling them.

- The taking of viable eggs from aquatic species.

In addition, the following provisions would apply to permits and licenses issued by the department:

- The director could, by order, establish conditions under which a permit or license could be issued by the DNR, including, but not limited to, the qualifications required for a person to be issued a permit or license, resident and nonresident permit or license fees, assessment methods and fees to provide financial remuneration by commercial operations, and the number of permits or licenses to be issued.
- A permit or license issued by the department could specify one or more of the following: the areas, locations, time, and conditions under which the permittee or licensee could transport, possess, import, export, sell, dispose of, or release aquatic species; the amount of aquatic species that could be taken, sold, etc.; the methods and equipment that could be used; the disposal methods for unlawful species accidentally taken; record-keeping and reporting requirements; and other conditions, terms, and restrictions that were considered necessary to carry out the purposes of the bill.
- A person issued a permit or license would be subject to department inspections considered necessary to carry out the bill's provisions, including inspections of a permittee's or licensee's operations in the waters, on board a vessel, or ashore; premises; records and documents; and vehicles or vessels.
- All fees received for permit or licenses and any financial restitution received from penalties would be forwarded to the state treasurer, and credited to the Game and Fish Protection Fund.
- Subject to other provisions regarding a commercial fishing license, a permit or license could be suspended, revoked, annulled, withdrawn, recalled, or amended under the provisions of the Administrative Procedures Act, and, if the permit holder was convicted of violating permit and license requirements, his or her permit or license could be revoked and any aquatic species taken, possessed, transported, imported, exported, or sold in violation of the permit or license would be disposed of in a manner approved by the DNR.

Public Notice. The following are some of the procedures the commission or the director would have to comply with, in a manner that ensured adequate public notice and opportunity for public comment, to issue an order:

- An order would have to be prepared by the department after comments had been solicited and considered.
- An order would have to be published on the commission agenda for at least thirty days before its consideration by the commission or director.
- The commission would have to provide an opportunity for public comment on the order.
- The department would be required to provide a copy of the order to members of the appropriate legislative committees at least 30 days before issuance.
- The commission or director, as appropriate, would be required to approve, reject, or modify the order.

In addition, the director would be required to issue orders by April 1, 2002 sufficient to replace other acts and parts of the NREPA that the bill would repeal, and administrative rules rescinded by the bill. The director would have to designate the orders as being those that were intended to result in the repeal of certain acts. The commission or the director, as appropriate, could also revise or rescind an order after the orders had been filed with the secretary of state. A revised or rescinded order would remain in effect until revised or rescinded, and would also have to comply with provisions for public notice and comment.

Interim Orders. The director could issue an interim order if he or she determined that a population of an aquatic species was at risk of being depleted, or extirpated, or becoming diseased; a species was damaging property or the public health; or when the taking of a species was necessary in an area where excessive mortality was occurring or was threatened. In issuing an interim order, the director could exercise any of the authority of the director or the commission in managing and protecting the aquatic species of the state and in requiring licenses and permits for certain activities, and could also require quarantine, treatment, or destruction of captive aquatic species.

The bill would require that an interim order be issued in a manner that ensured interested persons were provided notice of it, the reasons for the modifications, and its effective date. In addition the director would have to provide a copy of an interim order to each member of the Senate and the House standing committees that consider legislation pertaining to conservation, agriculture, environment,

recreation, tourism, or natural resources, and to the director of the Department of Agriculture. An interim order would be in effect for not longer than six months.

Restrictions on Issuing Orders. The bill would specify that, notwithstanding any other provisions, the commission, director, or the department could not issue an order, initiate prosecution, or assess a fine relating to any action or activity subject to, or authorized by, a permit under one or more of the following:

- A permit issued under the provisions of the bill;
- A state certification under Title IV of the federal Water Pollution Control Act (86 Stat. 877, 33 U.S.C. 1341);
- A license issued by the federal Energy Regulatory Commission or a successor agency;
- A permit from the U.S. Army Corps of Engineers, a predecessor, or a successor agency;
- A contractual or settlement agreement to which the department was a signatory;
- An act of Congress; or
- Any other state or federal agency.

In addition, the bill would specify that provisions of the bill did not expand or diminish the authority of the commission, director, or department that existed elsewhere in law for actions or activities in issuing orders or permits, initiating prosecution, or assessing fines

Prohibited Actions. The following are some of the actions which would be prohibited under the bill:

- Possessing on state waters an aquatic species that was so mutilated that it wasn't readily identifiable or couldn't be readily measured.
- Possessing on or along any state waters any equipment, device, or other property that was prohibited under the bill, and using it for the taking of aquatic species. (Such possession would be considered *prima facie* evidence that the equipment, device, or other property was owned or used for the purpose of violating the bill's provisions.)

Fishing Shanties. Using, setting, placing, erecting, or leaving a fishing shanty on the ice, except as provided in an order or interim order, would be

prohibited under the bill. The DNR or a local unit of government could authorize one to be removed and stored or destroyed. Otherwise, a local unit could not regulate a fishing shanty's placement, use, marking, or removal on the ice of state waters.

Propagation of Aquatic Species. The propagation, raising, feeding, or growing of aquatic species on state waters would be prohibited, except when, on the DNR's authorization, a person temporarily held them in cages or pens to imprint them pending release, or for other purposes authorized by the DNR.

Violations, penalties. In a prosecution for a violation of the bill, the possession of an aquatic species would be *prima facie* evidence that the person took the species.

Except as otherwise specifically listed in the bill (see below), a violation of the act would be a misdemeanor, punishable by a fine of \$50 to \$500 and the costs of prosecution, and could also be punished by imprisonment for up to 90 days.

A violation of a provision of the bill regarding the taking or possession of an aquatic species (other than threatened or endangered species) would be a misdemeanor, punishable by a fine of \$100 to \$1,000 and the costs of prosecution, and could also be punished by imprisonment for up to 90 days.

Taking or possession of sturgeon in violation of the bill would be a misdemeanor, punishable by a fine of \$500 to \$2,000 and the costs of prosecution, and could also be punished by imprisonment for up to 180 days. A fine under this provision could not be suspended.

Buying or selling aquatic species in violation of the bill, other than a violation concerning a condition or provision of a permit or a license (see below), would be a misdemeanor, punishable by a fine of \$250 to \$1,000 and the costs of prosecution, and could also be punished by up to 90 days imprisonment. However, each subsequent offense would be a felony, punishable by up to four years imprisonment, a fine of up to \$2,000, or both, and the costs of prosecution.

A violation of the provision regulating the removal of fishing shanties from the water or ice would be a misdemeanor, punishable by a fine of \$100 to \$500 and the costs of prosecution, and could also be punished by up to 30 days imprisonment. In addition, the court would have to order the defendant to reimburse the appropriate governmental entity in

an amount equal to three times the costs of removing the shanty.

A violation of a condition or provision of a permit or license would be a misdemeanor, punishable by a fine of \$500 to \$1,000 and the costs of prosecution, and could be punished by up to 90 days imprisonment.

Multiple violations. A third violation in a five-year period (excepting violations regarding buying or selling aquatic species, as specified above) would be a misdemeanor with a mandatory sentence of imprisonment for 10 to 180 days, and a fine of \$500 to \$2,000, and the costs of prosecution. Further, the court would have to order the person's fishing license revoked, and order the person not to seek or possess a fishing license for the next three succeeding calendar years.

Restitution. In addition to other penalties, a person convicted of taking or possessing an aquatic species during a closed season, taking or possessing a species in excess of lawful limits, taking or possessing an undersized species, unlawfully buying or selling an aquatic species, or taking a species by use of an unlawful device would have to make restitution to the state for the value of the species, as follows:

\*\*for each aquatic species of an individual weight of one pound or more, \$10 for each pound or fraction of a pound;

\*\*for each aquatic species of an individual weight of one pound or less, \$10 for each individual animal;

\*\*for each aquatic species that is designated as "a species that shall not be taken", \$25 for each pound or fraction of a pound; and,

\*\*for each threatened or endangered aquatic species, or sturgeon, \$1,500 for each individual animal.

The court would be required to order the defendant to forfeit to the state the listed amounts. If two or more defendants were convicted of the violation, the court would declare the forfeiture against them jointly. Further, if the defendant failed to pay the ordered amount upon conviction, the court would be required to impose a sentence, and, as a condition of the sentence, require the defendant to satisfy the forfeiture in the amount prescribed and fix the manner and time of payment, or to make a written order permitting the defendant to pay the amount in installments. If a defendant defaulted on a payment or installment, the court could require the defendant

to show cause as to why the default should not be treated as a civil contempt, and could issue an appearance ticket. The burden would be on the defendant to show that the violation was not due to an intentional refusal to obey the court order or a failure to make a good faith effort to obtain the funds required for the payment.

A default in the payment of a forfeiture or an installment payment could be collected by any means authorized for the enforcement of a judgment under the Revised Judicature Act.

Money paid under these provisions would be transmitted to the state treasurer for deposit into the Game and Fish Protection Fund.

Effective dates. The bill specifies that most of its provisions (excepting the sections authorizing the commission and department to issue orders and permits, and the prohibition on nonresident commercial fishing guides) would take effect when the orders necessary to replace the repealed acts and rules were filed with the secretary of state.

Actions and proceedings in process. The bill specifies that all suits, actions, or proceedings for the violation of any law in effect before the filing of the orders necessary to replace the repealed acts and rules, and instituted before the filing of those orders, would not be abated but could be prosecuted in the same manner and with the same effect as if the bill had not been enacted.

Repeals. The following acts and parts of acts would be repealed and the administrative rules promulgated under them rescinded when the orders required to replace them took effect:

\*\*Parts 451 to 479 of the NREPA, dealing with fishing from inland waters, fishing with hook and line, frogs, mussels, propagation of game fish in private waters, regulating fishing in Northport Harbor, fishing laws in the St. Joseph River, fishing shanties, commercial fishing, taking rainbow trout in certain rivers, fisheries maintenance, fish hatcheries for restocking the Great Lakes, fish restoration and management practices, and fisheries contamination;

\*\*Parts 485 to 491 of the NREPA, dealing with spearing of fish, sport fishing, Whaiska Bay, and reciprocal agreements with adjoining states;

\*\*Public Act 22 of 1929, dealing with the Harbor Beach Refuge in Huron County; and,

**\*\*Public Act 179 of 1935**, dealing with commercial fishing within three miles of Fort Gratiot Light in the waters of Lake Huron.

Other. The bill would amend Part 435 of the NREPA, regarding hunting and fishing licensing. Currently, Part 435 provides rewards for information leading to the arrest of persons who violate provisions regarding the taking of animals or aquatic species. The bill would modify this provision to make references to the new Part 481, rather than to Part 487 of the act, which regulates sport fishing (and which would be repealed under the bill).

The bill would amend Part 731 of the act, concerning recreational trespassing, to comport to the provisions of the bill, and to delete commercial fishing licenses from the provisions of Part 731.

The bill would also amend Part 801 of the NREPA, concerning marine safety, to clarify that provisions concerning fees for certain vessels applied to commercial fishing vessels licensed under the provisions of the bill, and to delete references to canoe and kayak fees.

House Bill 4151 would amend the Administrative Procedures Act (MCL 24.207). Currently, that act excludes from the definition of “rule” (and thus from the act’s rule making requirements) a rule or order pertaining to game and fish and promulgated under parts 401 (wildlife conservation), 411 (protection and preservation of fish, game, and birds), and 487 of the Natural Resources and Environmental Protection Act (sport fishing, also to be repealed by House Bill 4150). The bill would replace this reference with a reference to orders issued under part 401, 411, or 481 (the new part proposed in House Bill 4150). House Bill 4151 would take effect when Part 487 (sport fishing) is repealed.

House Bill 4737 would amend the Aquaculture Development Act (MCL 286.872 et al.) to specify that, within 180 days after the bill’s effective date, the Department of Agriculture (DOA) and the Department of Natural Resources (DNR) would have to enter a memorandum of understanding that set forth a process to identify and resolve regulatory issues concerning aquaculture species. The process would have to include, but would not have to be limited to, both of the following:

- At least one meeting each year between representatives of the DOA and representatives of the DNR.

- Consultation by the DOA with the DNR on the establishment of policies and procedures related to the importation and transportation of aquaculture species.

Not less than 45 days before entering a memorandum of understanding, the Department of Agriculture would submit the proposed memorandum to the Commission of Agriculture for review. In addition, the departments would have to jointly prepare an annual report to the legislature on the implementation of the process set forth in the memorandum. (Note. Under the bill, “aquatic species” would mean that term as defined in the Natural Resources and Environmental Protection Act [NREPA] under the provisions of House Bill 4150, which would codify provisions relating to aquatic species conservation [MCL 324.48101].)

Currently, the act specifies that an aquaculturist harvesting aquaculture species from a registered aquaculture facility or a permitted confinement research facility is exempt from restrictions imposed under Part 459 of the act, regulating the propagation of game fish in private waters, and Part 487, regulating sport fishing. The bill would specify, instead, that an aquaculturist would be exempt from the provisions of Part 481, regulating aquatic species, which would be established under House Bill 4150. The bill would also replace current provisions of the act concerning permits for aquaculturists, to specify that an aquaculturist could not take or import aquatic species that were not on the list of approved species for aquaculture production, as provided under the act, unless under a permit issued by the DNR under the provisions of House Bill 4150.

***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bills would have no fiscal impact. (6-8-01)

***ARGUMENTS:***

***For:***

It has been argued for some time that an attempt should be made to systematically revise the statutes pertaining to aquatic species, and to draw these statutes together into a coherent, uniform code. By doing so, the responsibilities for providing adequate protection of aquatic species can be clearly and rationally assigned. The bills would make few changes to existing laws. However, they do change the structure of the law by bringing together over 22 separate acts governing the management of aquatic species into an orderly framework, thus furthering the

recent work of the legislature in simplifying and consolidating the state's natural resources and environmental laws, which was begun under the recodification provisions of Public Act 451 of 1994.

The provisions of the bills are similar to Proposal G of 1996, in that the Natural Resources Commission (NRC) would be granted the authority to regulate aquatic species. The voters in Michigan overwhelmingly supported Proposal G in 1996, calling for scientific management of the state's wildlife by the Department of Natural Resources (DNR), with the opportunity for public comment through the NRC. Many believe that the proposal successfully created a situation where public input and values were incorporated into wildlife management decisions through the authority and oversight of the commission. The bills would create an aquatic species act that would similarly apply this concept to the state's aquatic resources.

**For:**

Currently, the director of the Department of Natural Resources has the final decision-making authority pertaining to the regulation of aquatic species. The bills do represent a shift in that the Commission of Natural Resources would be the decision-making body for their regulation. This means that the commission would decide such issues as season and allowable limits and methods of the taking of aquatic species. However, orders issued by the commission would be subject to those issued by the DNR in certain circumstances, such as in areas of the state that were subject to a consent decree (for example, the consent decree between the DNR and a federally recognized Indian tribe).

The bill also would place in statute a requirement that a public body, which was required to receive input from citizens before issuing orders, and which also had access to the best science available and new and refined scientific knowledge, would be responsible for setting policy pertaining to the regulation of aquatic species. Changes in the aquatic environment, and in the values society places on these resources, are increasing rapidly. Consequently, many conservation groups agree that the regulation of aquatic species should be established based on scientific principles and sound, biological facts.

**Response:**

It should be noted that members of the NRC are gubernatorial appointees; thus, as different governors are elected, the political philosophies of the commissioners will also shift. Hunting policies set by a gubernatorial-appointed commission could,

therefore, be constantly changing based on political forces. It might be better to leave such decisions in the hands of the wildlife specialists of the DNR staff, who are civil servants.

**Against:**

In written testimony presented to the House committee, an association representing the state's licensed commercial fishermen voiced concerns with the bills. The association is concerned, first, with the issue of property rights, and points out that the right of licensed fishermen to fish has been upheld by both federal and state courts as a property right. In addition, past practices of buying out commercial licenses would seem to support this right. However, the provisions of House Bill 4150, which specify that the taking of aquatic species for the purpose of sale is a "privilege," would seem to nullify this right.

The association is also concerned over provisions in the bill that would give the director of the DNR the authority to establish conditions to authorize fees for commercial fishermen. In the past, realistic fees were established for commercial fishermen, through the combined efforts of the association, the DNR fisheries and law enforcement divisions, and the Michigan United Conservation Clubs (MUCC). However, the association fears that restrictive fees could be established under the bill, that could impose a hardship on the association's members.

The association's third concern is that the bill's provisions would give most of the legislative responsibility in management decisions to the Natural Resources Commission (NRC). There have been numerous examples in the past, according to the association, where NRC decisions were made for political purposes, and not according to biological reasons. As a result, licensed fishermen had to spend thousands of dollars in legal actions to have NRC decisions overturned.

In addition to these concerns, the association opposes amendments that were adopted by the House committee that would base license fees on a percentage of the dockside value of a catch. The association maintains that this would be difficult to administer, since each catch would have different prices, and suggests that fees be based, instead, on a "per net" basis.

**POSITIONS:**

The Department of Natural Resources (DNR) supports the bills. (6-11-01)



The Michigan United Conservation Clubs supports the bills. (6-7-01)

The Michigan B.A.S.S. Chapter Federation, Inc. supports the bills. However, in light of the current problems with exotic species in ballast water, the federation would prefer that the aquaculture industry be accountable to one -- rather than two -- state agencies. (6-7-01)

The Michigan Council of Trout Unlimited supports the bills. (6-7-01)

The Michigan Farm Bureau does not oppose the bills. (6-7-01)

The Wisconsin Electric Company does not oppose the bills. (6-11-01)

The Michigan Manufacturers Association (MMA) is neutral on the bills. (6-11-01)

The Michigan Steelheaders Association is neutral on the bills. (6-11-01)

The Michigan Municipal Electric Association is neutral on the bills. (6-11-01)

The Michigan Fish Producers' Association opposes the bills. (6-7-01)

The Michigan Sportsmen Congress opposes the bills. (6-12-01)

Analyst: R. Young

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.