

Act No. 272
Public Acts of 2003
Approved by the Governor
January 8, 2004
Filed with the Secretary of State
January 8, 2004
EFFECTIVE DATE: March 30, 2004

STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003

Introduced by Senators Birkholz, Hammerstrom, Sanborn, Jacobs, Goschka, Cropsey and Sikkema

ENROLLED SENATE BILL No. 229

AN ACT to amend 1996 PA 199, entitled "An act to define, develop, and regulate aquaculture as an agricultural enterprise in this state; to provide powers and duties of certain state agencies and departments; and to provide for certain penalties and remedies," by amending sections 2 and 4 (MCL 286.872 and 286.874).

The People of the State of Michigan enact:

Sec. 2. As used in this act:

- (a) "Aquacultural products" means any products, coproducts, or by-products of aquaculture species.
- (b) "Aquaculture" means the commercial husbandry of aquaculture species on the approved list of aquaculture species, including, but not limited to, the culturing, producing, growing, using, propagating, harvesting, transporting, importing, exporting, or marketing of aquacultural products under an appropriate permit or registration.
- (c) "Aquaculture facility" means a farm or farm operation engaged in any aspect of aquaculture in privately controlled waters capable of holding all life stages of aquaculture species with a barrier or enclosure to prevent their escape into waters of the state.
- (d) "Aquaculture facility registration" means a registration issued by the director allowing a facility to engage in aquaculture.
- (e) "Aquaculture research permit" means a permit issued by the director to researchers to study and culture aquaculture species not included on the approved list of aquaculture species for the evaluation of aquacultural potential and to provide a scientific basis for including the aquaculture species on the approved list.
- (f) "Aquaculture species" means aquatic animal organisms including, but not limited to, fish, crustaceans, mollusks, reptiles, or amphibians reared or cultured under controlled conditions in an aquaculture facility.
- (g) "Aquaculturist" means a person involved in or engaged in any aspect of aquaculture.
- (h) "Aquarium" means any park, building, cage, enclosure, or other structure or premises in which aquaculture species are kept for public exhibition or viewing, regardless of whether compensation is received.

(i) "Confinement research facility" means a facility holding an aquaculture research permit, enclosed in a secure structure, and separated from other aquaculture facilities and in which aquaculture species are isolated and maintained in complete and continuous confinement to prevent their escape into the environment and to prevent the release of any possible pathogens into the environment.

(j) "Department" means the Michigan department of agriculture.

(k) "Director" means the director of the Michigan department of agriculture or his or her designee.

(l) "Farm" or "farm operation" means those terms as defined in the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(m) "Genetically engineered" refers to an organism whose genome, chromosomal or extrachromosomal, is modified permanently and heritably using recombinant nucleic acid techniques, or the progeny thereof.

(n) "Law enforcement officer" means a person appointed by the state or a local governmental unit who is responsible for the enforcement of the criminal laws of this state.

(o) "Person" means an individual, corporation, limited liability company, partnership, association, joint venture, or other legal entity.

(p) "Privately controlled waters" means waters controlled within ponds, vats, raceways, tanks, and any other indoor or outdoor structure wholly within or on land owned or leased by an aquaculturist and used with an aquaculture facility or confinement research facility. Privately controlled waters includes those waters diverted for use in an aquaculture facility by an aquaculturist exercising his or her riparian rights.

(q) "Recombinant nucleic acid techniques" means laboratory techniques through which genetic material is isolated and manipulated in vitro and then inserted into an organism.

(r) "Retail bait outlet" means a facility that sells directly to the consumer any live or dead organism, edible or digestible material, organic or processed food, or scented material each of which may be used to attract fish, including, but not limited to, worms, leeches, aquatic insects, crayfish, amphibians, fish eggs, minnows or other fish, marshmallows, cheese, pork rinds, or any part thereof.

(s) "Retail ornamental fish facility" means a facility in which a person sells, imports or exports at wholesale or retail, leases, or loans ornamental species of aquatic organisms that may live in fresh, brackish, or saltwater environments to the general public for home or public display purposes.

(t) "Waters of the state" means groundwaters, lakes, rivers, and streams and all other watercourses and waters within the jurisdiction of the state and also the Great Lakes bordering the state.

(u) "Zoo" means any park, building, cage, enclosure, or other structure or premises in which a live animal is kept for public exhibition or viewing, regardless of whether compensation is received.

Sec. 4. (1) Aquaculture is an agricultural enterprise and is part of the farming and agricultural industry of this state. The director shall assure that aquaculture is afforded all rights, privileges, opportunities, and responsibilities of other agricultural enterprises.

(2) Aquaculture is a form of agriculture. Aquaculture facilities and aquaculture uses are a form of agricultural facilities and uses.

(3) Aquacultural products lawfully taken, produced, purchased, possessed, or acquired from within this state or imported into this state are the exclusive and private property of the aquaculturist.

(4) This act does not prohibit an aquaculturist from exercising riparian rights for water diversion. If water is discharged back into the waters of the state, the discharge shall be pursuant to any appropriate permit issued by the department of environmental quality, if such a permit is required.

(5) An aquaculturist harvesting aquaculture species from a registered aquaculture facility or a permitted confinement research facility is exempt from size, catch, and possession limits, closed seasons, and any other restriction imposed in parts 459 and 487 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.45901 to 324.45908 and 324.48701 to 324.48740.

(6) This act does not give an aquaculturist authority to take wild species from the waters of the state and held in trust, in violation of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, unless under a permit issued by the department of natural resources.

(7) This act does not give an aquaculturist authority to release any aquaculture species into any waters of the state that are not an aquaculture facility unless the aquaculturist first obtains an appropriate permit from the director of the department of natural resources. It is intended that the department of natural resources shall consider a registration issued under this act as the equivalent of a game fish breeders license issued under part 459 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.45901 to 324.45908.

(8) Any movement, importing, or exporting of aquaculture species shall be in compliance with the animal industry act, 1988 PA 466, MCL 287.701 to 287.745, for purposes of obtaining a planting permit.

(9) For the purposes of this act, each genetically engineered variant of an aquaculture species shall be considered a distinct aquaculture species. A genetically engineered variant of an aquaculture species is not included on the list of approved aquaculture species under section 5 unless specifically identified on the list or specifically identified in a rule promulgated under section 12 as being included on the list. A genetically engineered organism that is a variant of an aquaculture species is not covered by an aquaculture research permit under section 8 unless specifically identified in the permit. An entry on the list of approved aquaculture species under section 5, a rule promulgated under section 12, or an aquaculture research permit under section 8 may be limited to a genetically engineered organism.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

.....
Governor