MICHIGAN AQUACULTURE DEVELOPMENT ACT
Act 199 of 1996

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.

History: 1996, Act 199, Eff. Aug. 16, 1996.

The People of the State of Michigan enact:

286.871 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan aquaculture development act".

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.872 Definitions.

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

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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.

History: 1996, Act 199, Eff. Aug. 16, 1996;—Am. 2003, Act 272, Eff. Mar. 30, 2004.

286.873 Administration of act; assistance by department.

Sec. 3. (1) The department shall administer this act.

(2) The department may conduct activities designed to develop and assist the aquaculture industry in the manner provided for by law.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.874 Aquaculture as agricultural enterprise; products as property of aquaculturist; riparian rights for water diversion; exemption from certain restrictions; limitations on authority of aquaculturist; genetically engineered variant.

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.

History: 1996, Act 199, Eff. Aug. 16, 1996;—Am. 2003, Act 272, Eff. Mar. 30, 2004.

Compiler's note: For transfer of powers and duties of department of natural resources to department of natural resources and environment, and abolishment of department of natural resources, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

For transfer of powers and duties of department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

286.875 Approved species for aquaculture production; list.

Sec. 5. (1) There is established a list of approved species for aquaculture production as further described in this section. Only the aquaculture species on the approved list are allowed for purposes of aquaculture

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production. The following types of aquaculture species are qualified for inclusion on the list of approved species:

(a) Aquaculture species that are naturally indigenous within the waters of the state.

(b) Aquaculture species that have been naturalized within the waters of the state.

(c) Aquaculture species that could not perpetuate in the waters of the state.

(d) Aquaculture species that are held in a confinement research facility for purposes of research that, on the basis of that research, may be recommended to be included on the list of approved aquaculture species.

(2) Approved freshwater species are as follows:

(a) Lake sturgeon	(Acipenser fulvescens)
(b) Paddlefish	(Polyodon spathula)
(c) Arctic grayling	(Thymallus arcticus)
(d) Atlantic salmon	(Salmo salar)
(e) Brown trout	(Salmo trutta)
(f) Brook trout	(Salvelinus fontinalis)
(g) Splake	(Salvelinus namaycush x Salvelinus fontinalis)
(h) Lake trout	(Salvelinus namaycush)
(i) Chinook salmon	(Oncorhynchus tshawytscha)
(j) Coho salmon	(Oncorhynchus kisutch)
(k) Pink salmon	(Oncorhynchus gorbuscha)
(l) Rainbow trout	(Oncorhynchus mykiss)
(m) Lake whitefish	(Coregonus clupeaformis)
(n) Lake herring	(Coregonus artedi)
(o) Muskellunge	(Esox masquinongy)
(p) Northern pike	(Esox lucius)
(q) Tiger muskie	(Esox masquinongy x Esox lucius)
(r) Common carp	(Cyprinus carpio)
(s) Goldfish	(Carassius auratus)
(t) Creek chub	(Semotilus atromaculatus)
(u) Bowfin	(Amia calva)
(v) Redbelly dace	(Phoxinus eos)
(w) Finescale dace	(Phoxinus neogaeus)
(x) Common shiner	(Luxilus cornutus)
(y) Golden shiner	(Notemigonus crysoleucas)
(z) Emerald shiner	(Notropis atherinoides)
(aa) Bluntnose minnow	(Pimephales notatus)
(bb) Fathead minnow	(Pimephales promelas)
(cc) Black bullhead	(Ameiurus melas)
(dd) Yellow bullhead	(Ameiurus natalis)
(ee) Brown bullhead	(Ameiurus nebulosus)
(ff) Channel catfish	(Ictalurus punctatus)
(gg) Flathead catfish	(Pylodictis olivaris)
(hh) Burbot	(Lota lota)
(ii) Smallmouth bass	(Micropterus dolmieu)
(jj) Largemouth bass	(Micropterus salmoides)
(kk) White crappie	(Pomoxis annularis)
(ll) Black crappie	(Pomoxis nigromaculatus)
(mm) Hybrid crappie	(Pomoxis annularis x Pomoxis nigromaculatus)
(nn) Warmouth	(Lepomis gulosus)
(oo) Rock bass	(Ambloplites rupestris)
(pp) Green sunfish	(Lepomis cyanellus)
(qq) Bluegill	(Lepomis macrochirus)
(rr) Hybrid bluegill	(Lepomis cyanellus x Lepomis macrochirus)
(ss) Pumpkinseed	(Lepomis gibbosus)
(tt) Redear sunfish	(Lepomis microlophus)
(uu) Sauger	(Stizostedion canadense)
(vv) Walleye	(Stizostedion vitreum vitreum)
(ww) Saugeye	(Stizostedion canadense x Stizostedion vitreum vitreum)

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(xx) Yellow perch (Perca flavescens)
(yy) Bigmouth buffalofish (Ictiobus cyprinellus)
(zz) Black buffalofish (Ictiobus niger)
(aaa) White perch (Morone americana)
(bbb) White bass (Morone chrysops)
(ccc) Tilapia (Genera of Tiliapia (except T. rondeliia), Oreochromis, Sarotheradom and hybrids thereof)

(3) Approved other aquatic organisms are as follows:

(a) Prawn (Macrobrachium rosenbergii)
(b) Crayfish (Orconectes immunus, O. propinquus, O. virilis, Cambarus bartonii, C. robustus)

(4) Approved salt or brackish waters species are as follows:

(a) Brine shrimp (Artemia sp.)
(b) Shrimp (All species of the genus Peneaus)
(c) Mahi-mahi (Coryphaena hippurus)
(d) Haddock (Melanogrammus aeglefinus)
(e) Cod (Gadus sp.)
(f) Halibut (Hippoglossus sp.)
(g) Snapper (Lutjanidae-Lutjanus sp. Ocyurus sp.)
(h) Grouper (Serranidae-Epinephelus sp. Mycteroperca sp.)
(i) Red drum (Sciaenops ocellatus)
(j) Tuna (Thunnus thynnus)
(k) Flounder (Paralichthys sp.)
(l) Pompano (Trachinoyus sp.)
(m) Snook (Centropomus sp.)
(n) Mackerel (Scomberomorus sp.)

(5) Aquaculture species, possession of which is prohibited under the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.101 to 324.90106 of the Michigan Compiled Laws, are prohibited for aquaculture or aquaculture research under this act.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.876 Registration required; exceptions; records; documentation.

Sec. 6. (1) A person shall not engage in aquaculture unless he or she obtains a registration from the department as an aquaculture facility, obtains an aquaculture research permit, or unless otherwise exempt by rule or law. If the activity in which the aquaculture facility is engaged is required to be regulated under any act, registration under this act does not exempt the person or aquaculture facility from requirements imposed under any local, state, or federal regulation.

(2) The following are exempt from registration as an aquaculture facility:

(a) Retail bait outlets.

(b) Retail ornamental fish facilities.

(c) Persons using privately controlled waters for noncommercial purposes.

(d) Public aquariums or zoos.

(e) Portable retail fishing concessions.

(3) A person registered or permitted under this act shall keep and maintain records of production, purchases, or imports in order to establish proof of ownership. A person transporting aquaculture species shall produce documentation that contains the origin of shipment, registration or permit copies or documentation, documentation demonstrating shipping destination, and any other proof that may be required under the animal industry act of 1987, Act No. 466 of the Public Acts of 1988, being sections 287.701 to 287.747 of the Michigan Compiled Laws, upon demand of the director or a law enforcement officer.

(4) An aquaculture facility in existence before January 1, 1997 is required to obtain a registration or permit, or both, if applicable, by January 1, 1999 in order to continue to engage in aquaculture. Any person engaging in aquaculture beginning on or after January 1, 1997 is required to obtain a registration or permit under this act, or both, if applicable, in order to engage in aquaculture.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.877 Initial application; submission; inspection; issuance of registration or permit; denial; notice; second inspection; hearing; return of registration or permit fee prohibited;

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contents of permit; renewal application; modification of permit.

Sec. 7. (1) A completed initial application for a registration shall be submitted to the department not less than 60 days before the proposed operation of the aquaculture facility.

(2) The department shall not issue an initial aquaculture facility registration or an aquaculture research permit unless an applicant demonstrates the following:

(a) The facility has been inspected by the director and the director has determined that the facility meets the standards and requirements prescribed by this act and that there are barriers in place to prevent the escape of aquaculture species into the public waters.

(b) The aquaculture species involved in the facility is on the list of approved aquaculture species.

(c) The owner or his or her agent has received from the director a current copy of the "Great Lakes fish disease control policy and model program", published by the Great Lakes fishery commission.

(3) Within 30 days after receipt of an initial registration or permit application, the director shall inspect the aquaculture facility. If the director determines that the facility to be utilized under a registration or permit conforms to standards prescribed by this act, verifies that unlisted aquaculture species are not in the facility, and reviews and approves research protocols in the case of a proposed aquaculture research permit, the director shall issue a registration or permit within 60 days of receipt of a registration or permit application.

(4) The application for a registration or permit may be denied for failure to comply with the requirements of this act. The department shall notify an applicant of the reasons for a registration or permit denial within 60 days after receipt of an application. The notice shall specify the deficiencies to be corrected in order for a registration or permit to be issued.

(5) Without filing a second application under this section, an applicant may request a second inspection after the specified deficiencies have been corrected. The department shall not make more than 2 preregistration or prepermitting inspections of the same facility per application.

(6) The applicant may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, on a denial of a registration or permit.

(7) The department shall not return a registration or permit fee or a portion of a registration or permit fee to an applicant if a registration or permit is denied.

(8) A registration and permit issued by the department shall contain the following information:

(a) The registration or permit number and expiration date.

(b) The complete name, business name, business address, and telephone number of the aquaculture facility registration holder or aquaculture research permit holder.

(c) The complete address of the aquaculture facility or confinement research facility location.

(d) The list of aquaculture species approved for the registered or permitted facility.

(e) The complete name, address, and telephone number of the department contact person regarding aquaculture.

(9) Applications for an aquaculture facility shall be accompanied by the following fees:

(a) Aquaculture facility registration - initial application, $100.00.

(b) Aquaculture facility registration - renewal application, $75.00.

(c) Aquaculture research permit - initial application, $250.00.

(d) Aquaculture research permit - renewal application, $100.00.

(10) Application for renewal of an aquaculture facility registration or aquaculture research permit shall be submitted not later than October 1 of each year. Each registration and permit issued shall be for a period of 1 year commencing October 1 and ending the following September 30.

(11) A renewal submitted later than October 31 shall require submission of an initial application and initial license fee.

(12) An aquaculturist may apply on a form provided by the department for a modification of the aquaculture facility registration or a confinement research permit to add or remove aquaculture species.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.878 Research of aquaculture species not on approved list; research permit; approval of protocol.

Sec. 8. (1) Research of an aquaculture species not on the approved list is allowed and shall be conducted pursuant to an aquaculture research permit in a confinement research facility.

(2) A person who holds an aquaculture research permit shall not import aquaculture species that are the subject of the research unless he or she complies with the animal industry act of 1987, Act No. 466 of the Public Acts of 1988, being sections 287.701 to 287.747 of the Michigan Compiled Laws.

(3) The director shall approve the protocol of the aquaculture species, including disposition, for the

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proposed research period. The applicant for the aquaculture research permit shall submit the protocol to the department with the initial or renewal aquaculture research permit application.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.879 Inspection of facilities by department; access; conduct; conditions.

Sec. 9. (1) The department or its duly authorized agent shall have free access at all reasonable hours to any aquaculture facility or confinement research facility to inspect and to determine if this act is being violated and to secure samples or specimens of any aquaculture species after paying or offering to pay fair market value for such sample or specimen. An inspection shall be conducted under generally recognized practices designed not to jeopardize the health of the aquaculture species.

(2) The director may periodically inspect a registered aquaculture facility and a permitted confinement research facility for the following:

(a) For registered and permitted facilities, confirmation that there are in place procedures or barriers designed to prevent the escape of aquaculture species into waters of the state and confirmation of compliance with other requirements as set forth in this act or as required by law.

(b) For registered facilities, confirmation that the aquaculture species are on the approved list.

(c) For permitted facilities, confirmation that the facility is following approved protocols and all specimens are accounted for.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.880 Prohibited conduct.

Sec. 10. A person shall not knowingly provide false information in a matter pertaining to this act and shall not resist, impede, or hinder the director in the discharge of his or her duties under this act.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.881 Failure to comply with act or rules; authority of department to deny, suspend, revoke, or limit registration or permit; conduct of proceeding.

Sec. 11. (1) The department may deny, suspend, revoke, or limit a registration or permit if an applicant, registrant, or permittee fails to comply with or violates this act or rules promulgated under this act.

(2) A proceeding relative to the suspension or revocation of a registration or permit shall be conducted pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.882 Rules.

Sec. 12. The director may promulgate rules he or she considers necessary to implement and enforce this act, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.883 Violation as misdemeanor; penalty; costs; attorney fees; authority of director; actions brought by attorney general or director.

Sec. 13. (1) A person who violates this act or a rule promulgated under this act is guilty of a misdemeanor punishable by a fine of not less than $300.00 or imprisonment for not less than 30 days, or both.

(2) The court may allow the department to recover reasonable costs and attorney fees incurred in a prosecution resulting in a conviction for a violation of subsection (1).

(3) The director, upon finding that a person has violated any provisions of this act or a rule promulgated under this act, may do any of the following:

(a) Issue a warning.

(b) Impose an administrative fine of not more than $1,000.00 for each violation after notice and an opportunity for a hearing. A person aggrieved by an administrative fine issued under this section may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(c) Issue an appearance ticket as described and authorized by sections 9a to 9g of chapter 4 of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(4) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring a civil action in a court of competent jurisdiction

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to recover the fine. Civil penalties collected shall be paid to the general fund.

(5) Notwithstanding any other provisions of this act, the director may bring an action to do either or both of the following:

(a) Obtain a declaratory judgment that a method, activity, or practice is a violation of this act.

(b) Obtain an injunction against a person who is engaging in a method, activity, or practice that violates this act.

History: 1996, Act 199, Eff. Aug. 16, 1996.

286.884 Effective date.

Sec. 14. This act shall take effect 90 days after the date of its enactment.

History: 1996, Act 199, Eff. Aug. 16, 1996.

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