

No. 1998-94

AN ACT

SB 283

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, adding provisions relating to aquacultural development; imposing powers and duties on the Department of Agriculture; and making repeals.

The General Assembly finds and declares as follows:

(1) It is the policy of the Commonwealth to conserve, protect and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products.

(2) It is also the policy of the Commonwealth that aquaculture is an agricultural activity which adds to the diversity of our food and fiber production system and should be conserved, protected and encouraged to develop and grow within this Commonwealth.

(3) Aquacultural production is a vital sector of Pennsylvania's agriculture, supplying fresh foodfish, ornamental species and over 70% of the trout stocked in the northeastern United States.

(4) Aquaculture has grown globally from 6,600,000 metric tons in 1966 to 15,900,000 metric tons in 1993. Aquaculture will continue to grow to contribute further to the Commonwealth's economy insofar as Pennsylvania is an industry leader and aquaculturally friendly.

(5) It is the policy of the Commonwealth that all levels of government work together under the leadership of the Department of Agriculture to create an atmosphere conducive to the further development and expansion of our aquacultural industry.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Part VI heading of Title 3 of the Pennsylvania Consolidated Statutes is amended and the part is amended by adding a chapter to read:

PART VI
DEVELOPMENT, MARKETING AND PROMOTION
[(Reserved)]
CHAPTER 42
AQUACULTURAL DEVELOPMENT

Subchapter

- A. General Provisions
- B. Aquacultural Development

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

4201. Short title of chapter.

4202. Purpose.

4203. Definitions.

§ 4201. Short title of chapter.

This chapter shall be known and may be cited as the Aquacultural Development Law.

§ 4202. Purpose.

The purposes of this chapter are as follows:

(1) To encourage aquacultural operators to make a long-term commitment to aquaculture by offering them the same protections afforded other agricultural practices.

(2) To reduce the amount of governmental agencies with jurisdiction over aquaculture by transferring authority over commercial aquacultural operations to the Department of Agriculture.

(3) To encourage further development of the aquacultural industry by including aquaculture in any and all promotional and other economic developmental programs which are made available to other industry sectors.

§ 4203. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Account.” The Aquaculture Development Account.

“Advisory committee.” The Aquaculture Advisory Committee in the Department of Agriculture.

“Aquaculture.” A form of agriculture which is the controlled cultivation of aquatic plants, animals and microorganisms.

“Aquarium species.” Any aquatic species which may not be propagated in open air facilities within this Commonwealth under normal circumstances and are primarily kept indoors in glass aquariums for their aesthetic value.

“Aquatic organism.” Any plant or animal that grows or lives in or upon the water.

“Artificial propagation.” Rearing any species of fish during any stage of the species’ life cycle from inception by natural or artificial means to the adult stage of the species.

“Baitfish.” The following fish, unless otherwise provided by departmental regulation:

(1) All forms of the minnow family (Cyprinidae) except carp and goldfish.

(2) Suckers, chubs, fallfish, lampreys and eels measuring less than eight inches in length.

(3) All forms of darters, killifish and madtoms (otherwise known as stonecats).

“Commission.” The Pennsylvania Fish and Boat Commission.

“Department.” The Department of Agriculture of the Commonwealth.

“Finfish.” True fish which are any number of strictly aquatic craniate vertebrates that include the teleosts, elasmobranches and cyclostomes. These fish typically have an elongated, spindle-shaped body terminating in a caudal fin.

“Fish.” When used as a noun, the term includes all game fish, fish bait, baifish, amphibians, reptiles and aquatic organisms.

“Hobby breeder.” Any person who keeps and propagates aquatic animals on a small scale. A small scale is gross annual sales of less than \$1,000.

“Ornamental species.” Any aquatic organism kept primarily for its aesthetic value which can be propagated in open-air facilities within this Commonwealth under normal circumstances.

“Secretary.” The Secretary of Agriculture of the Commonwealth.

“Watershed.” One of the five major watersheds located within this Commonwealth:

- (1) Lake Erie.
- (2) Ohio.
- (3) Delaware.
- (4) Susquehanna.
- (5) Potomac.

Smaller watersheds not considered as part of these five shall be identified by the Pennsylvania Fish and Boat Commission as annexes to one of the five listed.

SUBCHAPTER B AQUACULTURAL DEVELOPMENT

Sec.

4211. Designation of aquaculture as agriculture.
4212. Wetlands.
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4221. Activities under registration for artificial propagation.
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4223. Prohibited propagation and penalties.

§ 4211. Designation of aquaculture as agriculture.

Aquaculture is hereby designated as a normal farming operation within this Commonwealth for all purposes. This designation shall be recognized by all agencies of State and local government.

§ 4212. Wetlands.

Aquacultural facilities licensed pursuant to this chapter are not wetlands under 25 Pa. Code Ch. 105 Subch. A (relating to general provisions) so long as such facilities were created and have been continuously operating for any purpose, including effluent mitigation, prior to September 23, 1985. Facilities created on or after September 23, 1985, are not wetlands under any statute or regulation of this Commonwealth so long as the facilities are or were not created nor are currently maintained on wetlands. Normal maintenance and improvements on facilities created prior to September 23, 1985, are permissible notwithstanding any statutory provision relating to wetlands. Permits issued by the Commonwealth for normal maintenance and improvements of facilities created prior to September 23, 1985, are not required.

§ 4213. Requirements for discharge of water.

(a) General permit.—Except as provided in subsection (b), aquacultural facilities, including those existing facilities which discharge into high quality or exceptional value waters, licensed under this chapter may be eligible for inclusion under a National Pollutant Discharge Elimination System (NPDES) general permit issued pursuant to regulations of the Department of Environmental Protection.

(b) Permitting system.—The Department of Environmental Protection is directed to develop an NPDES general permit for aquacultural facilities. Net effluent limitation, monitoring type and frequency of pollutants shall be determined in consultation with the Department of Agriculture and the advisory committee. The fee for an applicant seeking coverage to discharge pursuant to the terms and conditions of the general permit shall not exceed \$100 per facility during a period of five years.

(c) Consolidation of permitting.—All agencies of the Commonwealth are directed to work with the Department of Environmental Protection to develop a consolidated permitting process for aquacultural facilities. This consolidated permitting process shall result in one permit to replace potentially several permits necessary for an applicant to file. This consolidated permitting process shall be developed and implemented on or before January 1, 2000.

§ 4214. Aquacultural marketing programs.

The department may develop voluntary aquacultural marketing programs. The department may request nominal payment by participants to cover costs of these programs.

§ 4215. Aquacultural plan.

(a) Development of plan.—The department shall develop a plan to promote and develop aquacultural industry in this Commonwealth. Economic development and exportation of products from this Commonwealth shall be components of this plan. The advisory committee shall advise the department

in development of the plan. The department must obtain the consent of the advisory committee for the plan.

(b) Implementation of plan.—The department shall, in the manner provided by law, promulgate the plan as regulations of the department.

§ 4216. Aquaculture Advisory Committee.

(a) Establishment and composition.—The Aquaculture Advisory Committee is hereby established as a departmental advisory board within the department. The advisory committee shall consist of 21 members of whom the following 12 shall be members ex officio:

- (1) The secretary.
- (2) The Secretary of Environmental Protection.
- (3) The Secretary of Community and Economic Development.
- (4) The Executive Director of the Pennsylvania Fish and Boat Commission.
- (5) The chairman and minority chairman of the Agriculture and Rural Affairs Committee of the Senate.
- (6) The chairman and minority chairman of the Agriculture and Rural Affairs Committee of the House of Representatives.
- (7) The chairman and minority chairman of the Game and Fisheries Committee of the Senate.
- (8) The chairman and minority chairman of the Game and Fisheries Committee of the House of Representatives.

Ex officio members may designate a substitute for membership. Ex officio members cast votes at committee meetings.

(b) Appointments by secretary.—The remaining nine members shall be appointed by the secretary as follows:

- (1) Three appointees must be active, resident cold or cool water aquaculture producers.
- (2) One appointee must be an active, resident warm water aquaculture producer.
- (3) One appointee must be an active, resident indoor aquaculture producer.
- (4) One appointee must be an active, resident servicer or supplier to the aquaculture industry.
- (5) One appointee must be an active, resident aquacultural wholesaler, food broker or food merchant.
- (6) One appointee must be an active, resident aquarium or ornamental species aquacultural merchant.
- (7) One appointee must be a representative of recreational sport fishing.

(c) Tenure and convention.—All appointed members shall serve terms of three years. Ex officio members shall serve so long as the official continues to serve in an official position. The advisory committee shall convene at the discretion of the secretary or his designee, who shall serve as chairman of the committee.

(d) Responsibility of committee.—The advisory committee shall draft and submit an aquacultural plan to the secretary on or before December 31, 1999. The focus of the plan shall be economic development to include recommendations for regulations necessary to foster development of aquaculture. The advisory committee shall also advise the secretary on matters relating to aquacultural production and development.

§ 4217. Biennial survey of aquaculture.

The department shall cooperate with the Pennsylvania Agricultural Statistics Service to compile biennially a survey of this Commonwealth's aquacultural industry. Persons licensed under sections 4220 (relating to registration for artificial propagation) and 4222 (relating to registration for dealers of live aquatic animals) whose businesses involve the sale of fish shall submit annually at the conclusion of each calendar year a summary report of sales specifying the amount or weight of each species sold and gross receipts. The contents shall be used by the department solely for statistics. The individual summary reports are not public records and shall not be made public without written consent of the party submitting that report.

§ 4218. Aquaculture Development Account.

(a) Establishment of account.—There is hereby established a separate account in the State Treasury to be known as the Aquaculture Development Account. Moneys in this account shall be used to stimulate the growth of the aquacultural industry in this Commonwealth.

(b) Sources of funds.—Except for fees generated pursuant to section 4213 (relating to requirements for discharge of water), all fees and charges generated under this chapter shall be deposited in the account.

(c) Use of funds.—Moneys in the account shall be used for administration of aquaculture programs in the department, including the biennial survey of aquaculture in section 4217 (relating to biennial survey of aquaculture). Up to 10% of the moneys deposited in the account on a fiscal year basis may be available for aquaculture research. After administrative costs are covered, the remainder of the account may be used to provide low-interest loans to aquacultural producers for development, expansion and modernization of facilities.

§ 4219. Permissible propagation.

(a) Species.—The commission shall determine which species of fish are allowed to be propagated in each watershed. On or before January 31 of each year, the commission shall supply the department a current list of species approved for propagation and the conditions under which each species may be cultured. As the commission approves a new species for propagation throughout the year, it shall notify the department of the species and watersheds. Except triploid and other nonreproducing forms, species may be propagated in the same watersheds within which they are allowed to be stocked.

(b) Initial list of approved species.—Except for those species of fish allowed for stocking only in a triploid or other nonreproducing form, the initial list of approved species shall include all species approved for artificial

propagation or stocking by watershed as listed by the commission on January 1, 1995. Requirements for special conditions to culture certain species will be retained until modified. The initial list shall be submitted to the department within 60 days of the effective date of this chapter.

(c) Closed systems.—Special regulations shall be promulgated regarding the cultural methods for species of fish allowed to be propagated in systems which do not discharge water into waters of this Commonwealth. Systems whose discharge of water is rendered incapable of containing self-perpetuating living organisms may be registered for any species of fish with approval by the department.

§ 4220. Registration for artificial propagation.

(a) Application.—Application to register for artificial propagation shall be made on forms, prepared by the department, which relate to the size, character and purpose of the facility to be used for propagation. The species of fish to be propagated and each separate propagation facility as well as any other information required by the department shall also be indicated on the forms.

(b) Registration and fees.—The department may register applicants for artificial propagation upon receipt of a written application signed by the applicant after the applicant has paid a fee of \$150 to the department. Registration allows the registered operator to propagate all approved species of fish. The department shall establish a system to provide unique identification to a facility for the duration of that facility's continuous commercial existence. A registration shall expire five years after the initial date of registration. A registration may be renewed for an additional five-year period upon payment of the fee.

§ 4221. Activities under registration for artificial propagation.

(a) Sale of certain species.—

(1) Only species of fish approved for propagation and stocking under section 4219 (relating to permissible propagation) taken from waters wholly within this Commonwealth or legally taken in waters outside of this Commonwealth and received in interstate commerce are permitted to be purchased, sold or offered for sale.

(2) A registrant selling species of fish shall furnish to the consumer a receipt specifying the date of sale, identification of the registered facility and the amount of species sold by count or weight. The holder of the receipt must display it upon demand to anyone authorized to enforce laws of this Commonwealth. The receipt authorizes sale or possession of the purchased species for a period of 15 days after the date on the receipt. The period of 15 days, however, is inapplicable to species stocked in regulated fishing areas as well as ornamental, aquarium and baitfish species which may be held by dealers until disposed.

(b) Water obstruction.—A person registered under section 4220 (relating to registration for artificial propagation) must obtain prior written approval from the Department of Environmental Protection to erect or place a dam, pond or other device which will prevent the free migration of finfish. This

subsection permits dams, ponds and other devices erected prior to January 1, 1980, and used continuously since then to be maintained.

(c) Authorized activities by registrants.—Registration under section 4220 authorizes the registrant to:

(1) carry on the business of propagation and sale of species of fish and eggs thereof which are specified in the registration;

(2) catch and kill the specified species of fish in the specified facility or facilities in the registration by any means except explosives or poison; and

(3) sell, transport or dispose of species of fish and eggs thereof which are specified in the registration. Public transportation companies are authorized to receive and transport species and eggs.

(d) Unauthorized activities by registrants.—

(1) Registration under section 4220 does not authorize registrants to catch species of fish out of natural streams flowing over property of a registrant nor from other waters within this Commonwealth. Transportation of species of fish neither cultivated nor purchased by the registrant is not permitted.

(2) Species of fish or eggs thereof taken from waters within this Commonwealth unoccupied, unowned or uncontrolled by a registrant and uncovered by his registration shall neither be stocked nor maintained in any manner. This paragraph, however, allows the exchange of eggs or the fry of any species of fish with the department and the commission.

§ 4222. Registration for dealers of live aquatic animals.

(a) Registration for dealing.—A resident or nonresident who does not propagate live aquatic animal species but deals in those species shall register with the department. The department may register applicants upon receipt of a written application signed by the applicant and the payment of a \$50 registration fee. Registration shall expire five years after the initial date of registration and may be renewed upon payment of the fee.

(b) Records to be kept.—Registrants shall keep records of all transactions, buying and selling, and shall record the date, amount by count or weight of species of fish, source of species, registration identification and place of sale.

(c) Approval.—

(1) Distribution by dealers is limited to those species of fish approved by the department.

(2) Transportation of species of fish into this Commonwealth is limited to sources of species whose health inspection reports have already been approved by the department. Sources may be preapproved by the department for an entire calendar year. Denials shall be restricted to those sources where diseases are nonendemic to this Commonwealth and for any diseases designated by the department upon recommendation of the advisory committee.

(d) Exemption from registration.—Dealers who are registered under section 4220 (relating to registration for artificial propagation) are exempt

from licensure under this section for those species of fish. Compliance with subsection (c) is, however, required.

§ 4223. Prohibited propagation and penalties.

(a) Prohibited propagation.—Except for hobby breeders, artificial propagation of any species of fish is limited to those who have registered under section 4220 (relating to registration for artificial propagation). Artificial propagation by anyone, whether or not registered, is limited to those species of fish approved under this chapter, approved by law or approved by regulation of the department.

(b) Penalties.—Any person who sells, offers to sell or purchases fish with a market value or sale price of \$50 or more in violation of section 4221(a)(1) (relating to activities under registration for artificial propagation) commits a misdemeanor of the third degree. Any other violation of this subchapter as well as a violation of section 4221(a)(1) where the market value or sale price is not shown or is less than \$50 is a summary offense of the first degree as described in 30 Pa.C.S. § 923 (relating to classification of offenses and penalties).

Section 2. The Department of Agriculture is directed to analyze needs for aquacultural research to determine the desirability and feasibility of acquiring via a public or private consortium one or both of the Federal fish research stations located within this Commonwealth should either or both of the stations become available.

Section 3. (a) The provisions of 30 Pa.C.S. Ch. 33 are repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 4. This act shall take effect in 60 days.

APPROVED—The 16th day of October, A.D. 1998.

THOMAS J. RIDGE