

ARTICLE 63.

Aquaculture Development Act.

§ 106-758. Definitions.

In addition to the definitions in G.S. 113-129, the following definitions shall apply as used in this Article,

- (1) "Aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching;
- (2) "Aquaculture facility" means any land, structure or other appurtenance that is used for aquaculture, including, but

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not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture;

- (3) "Aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, "fish" and "fishes" as defined in G.S. 113-129(7);
- (4) "Commissioner" means Commissioner of Agriculture;
- (5) "Department" means the North Carolina Department of Agriculture and Consumer Services. (1989, c. 752, s. 147; 1993, c. 18, s. 1; 1997-261, s.71.)

Effect of Amendments. – The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and

Consumer Services" for "Department of Agriculture" in subdivision (5).

§ 106-759. Lead agency; powers and duties.

(a) For the purposes of this Article, aquaculture is considered to be form of agriculture and thus the Department of Agriculture and Consumer Services is designated as the lead State agency in matters pertaining to aquaculture.

(b) The Department shall have the following powers and duties:

- (1) To provide aquaculturalists with information and assistance in obtaining permits related to aquacultural activities;
- (2) To promote investment in aquaculture facilities in order to expand production and processing capacity; and
- (3) To work with appropriate State and federal agencies to review, develop and implement policies and procedures to facilitate aquacultural development. (1989 c.752, s.147; 1997-261, s.109.

Effect of Amendments. – The 1997 amendment, effective July 1, 1997, substituted “Department of Agriculture and

Consumer Services” for “Department of Agriculture”

§ 106-760. Advisory Board.

(a) There is created within Department of Agriculture and Consumer Services the Aquaculture Advisory Board, to consist of the following persons:

- (1) The Commissioner of Agriculture, or his designee;
- (2) The Secretary of Commerce, or his designee;
- (3) The Secretary of Environment and Natural Resources, or his designee;
- (4) The President of the North Carolina Biotechnology Center, or his designee;
- (5) The President of the University of North Carolina, or his designee;
- (6) One Senator designated by the President Pro Tempore of the Senate; and
- (7) One Representative designated by the Speaker of the House of Representatives.

(b) The Commissioner of Agriculture or his designee shall serve as Chairman of the Board. A majority of the Board shall constitute a quorum for the transaction of business. Clerical and other assis-

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tance shall be provided by the Department of Agriculture and Consumer Services. The Commissioner may appoint advisory committees, pursuant to G.S. 143B-10(d), to assist the Board in carrying out its duties.

(c) The Board shall review State and federal policies, laws and regulations affecting aquaculture and recommend changes which may be necessary or useful to carry out the purposes of this Article. The Board shall present its recommendations to the Governor and the General Assembly. The Board shall also assist in the coordination of aquaculture-related activities of the various State agencies and institutions, and shall coordinate research and technology transfer activities to respond to the emerging requirements of aquaculture. (1989, c.727, s.223(c); c.751, s.9(c); c.752, s.147; 1991 (Reg.Sess., 1992), c.959, s. 85; 1997-261, s. 72; 1997-443, s.11A.119(a).)

Editor’ Note-

Session Laws 1997-443, s. 1.1, provides: “This act shall be known as ‘The Current Operations and Capital Improvements Appropriations Act of 1997.’” Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. – Session Laws 1997-261, s.72 effective July 1, 1997, in subsection (a) inserted “and Consumer Services” preceding “the Aquaculture Advisory”; and in subsection (b) substituted “Department of Agriculture and Consumer Services” for “Department of Agriculture” preceding “The Commissioner may”.

Session Laws 1997-443, s. 11A.119(a) effective August 28, 1997, substituted “Environment and Natural Resources” for Environment, Health, and Natural Resources.”

§ 106-761. Aquaculture facility registration and licensing.

- (a) Authority. The North Carolina Department of Agriculture and Consumer Services shall regulate the production and sale of commercially raised freshwater fish and fresh crustacean species. The Board of Agriculture shall promulgate rules for the registration of facilities for the production and sale of freshwater aquaculturally raised species. The Board may prescribe standards under which commercially reared fish may be transported, possessed, bought, and sold. The Department and Board of Agriculture authority shall be limited to commercially reared fish and shall not include authority over the wild fishery resource which is managed under the authority of the North Carolina Wildlife Resources Commission. The authority granted herein to regulate facilities licensed pursuant to this section does not authorize the Department of Agriculture or the Board of Agriculture to promulgate rules that (i) are inconsistent with rules adopted by any other State agency ; or (ii) exempt such facilities from the rules adopted by any other State Agency.
- (b) Species subject to this section. The following species are exempt from special restrictions on introduction of exotic species promulgated by the Wildlife Resources Commission except to prevent disease. All other species are prohibited from propagation and production unless the applicant for the permit first obtains written permission from the Wildlife Resources Commission.

(1) Bluegill	<u>Lepomis macrochirus</u>
(2) Redear Sunfish	<u>Lepomis microlophus</u>
(3) Redbreast Sunfish	<u>Lepomis auritus</u>
(4) Green Sunfish	<u>Lepomis cyanellus</u>

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| (5) Any hybrids using above species of the genus <u>Lepomis</u> | |
| (6) Black Crappie | <u>Pomoxis nigromaculatus</u> |
| (7) White Crappie | <u>Pomoxis annularis</u> |
| (8) Largemouth Bass | <u>Micropterus salmoides (northern strain</u> |
| (9) Smallmouth Bass | <u>Micropterus dolomieu</u> |
| (10) White Catfish | <u>Ictalurus catus</u> |
| (11) Channel Catfish | <u>Ictalurus punctatus</u> |
| (12) Golden Shiner | <u>Notemigonus cryoleucas</u> |
| (13) Fathead Minnow | <u>Pimephales promelas</u> |
| (14) Goldfish | <u>Carassius auratus</u> |
| (15) Rainbow Trout | <u>Oncorhynchus mykiss</u> |
| (16) Brown Trout | <u>Salmo trutta</u> |
| (17) Brook Trout | <u>Salvelinus fontinalis</u> |
| (18) Common Carp | <u>Cyprinus carpio</u> |
| (19) Crayfish | <u>Procambarus species</u> |

- (c) Exceptions for Species Not Listed. – The following fish species that are not listed in subsection (b) of this section may be produced and sold as if they were listed in that subsection with the following restrictions:
- (1) Hybrid striped bass. – Production, Propagation, and holding facilities in the Neuse, Roanoke, or Tar/Pamlico River basins for the hybrid striped bass shall comply with additional escapement prevention measures prescribed by the Wildlife Resources Commission.
 - (2) Yellow perch. – A letter of approval from the Wildlife Resources Commission is required before the yellow perch, *percaflavescens*, may be raised at a facility located west of Interstate Highway 77.
- (d) Aquaculture Propagation and Production Facility License. The Board of Agriculture may, by rule, authorize and license the operation of fish hatcheries and production facilities for species of fish listed in subsection (b) of this section. The Board may prescribe standards of operation, qualifications of operators, and the conditions under which fish may be commercially reared, transported, possessed, bought, and sold. Aquaculture Propagation and Production Licenses issued by the Department shall be valid for a period of five years.
- (e) Commercial Catchout Facility License.
- (1) Commercial catchout facilities must be stocked exclusively with hatchery reared fish obtained from hatcheries approved by the Department to prevent the introduction of diseases. The Board of Agriculture may, by rule, prescribe standards of operation and conditions, under which fish from such ponds may be taken, transported, possessed, bought, and sold.
 - (2) The Commercial Catchout Facility License shall be valid for a period of five years. A pond owner or operator licensed under this subsection shall be authorized to sell fish taken by fishermen from the pond to such fishermen. Fish sold at such facilities shall be limited to those fish covered under this section.
 - (3) The holder of the Catchout Facility License shall provide receipts to the purchasers of fish. The receipt shall describe the species, number, total weight, and the location of the catchout facility.
 - (4) No fish taken from a commercial catchout facility may be resold by the purchasing angler for any purpose.
 - (5) No fishing, special trout, or other license shall be required of anglers fishing in licensed commercial catchout facilities.
- (f) Holding Pond/Tank Permit. All Facilities holding live food or bait species for sale must obtain a Holding Pond/Tank Permit. Permits shall be valid for a period of two years and shall only authorize possession of fish specified in this section. All fish held live for sale shall be kept in accordance with the rules promulgated by the Board of Agriculture. Possession of an Aquaculture Propagation and Production Facility or Commercial Catchout Facility License shall serve in lieu of a Holding Pond/Tank Permit for possession both on and off their facilities premises. No permit shall be required for holding lobsters for sale.

- (g) Possession of species other than those listed in subsection (b) of this section or as authorized in writing by the Wildlife Resources Commission Shall be a violation which shall result in the revocation of the Aquaculture Propagation and Production Facility License or Commercial Catchout Facility License until such time that proper authorization is received from the Wildlife Resources Commission or the unauthorized species is removed from the facility. In the event of possession of unauthorized fish species, the Wildlife Resources Commission may take further regulatory action. The Department and the Wildlife Resources Commission shall have authority to enter the premises of such facilities to inspect for the possession of a species other than those authorized in subsection (b) of this section or authorized by written permission of the Wildlife Resources Commission.
- (h) Nothing in this act shall apply to the aquarium or ornamental trade in fish. The Wildlife Resources Commission may by rule identify species for which possession in the State is prohibited. (1993, c.18, s.2; 1997-198, s. 1; 1997-261, ss.73-76.)

Effect of Amendments. – Session Laws 1997-198, s.1, Effective June 19, 1997 rewrote subsection (c). Session Laws 1997-261, ss. 73 through 76 effective July 1, 1997, in subsection (a) inserted “and Consumer Services” preceding “shall regulate the”, And deleted “of Agriculture” preceding

“and Board of”; substituted “Department” for “North Carolina Department of Agriculture” in subsection (d); deleted “of Agriculture following “Department” in subdivision (e)(1); and deleted “of Agriculture” following “The Department” in the second sentence of subsection (g).

§ 106-762. Fish disease management.

- (a) The North Carolina Department of Agriculture and Consumer Services shall, with the assistance of the Wildlife Resources Commission, develop and impletement a fish disease management plan to prevent the introduction of fish diseases through aquaculture facilities subject to the provisions and duly adopted rules of this section into the State.
- (b) Release of fish. It shall be unlawful to willfully release domestically raised fish into the waters of the State, other that in private ponds as defined by G.S. 113-129, without written permission of the Wildlife Resources Commission, or the Division of Marine Fisheries of the Department of Environment and Natural Resources. (1993, c. 18, s. 2; 1997-261, s. 77; 1997-443, s. 11A.119(a).)

Editor's Note.-
Session Laws 1997-443, s. 1.1,pro-
vides: “This act shall be known as “The
Current Operations and Capital Improvements
Appropriations Act of 1997.”
Session Laws 1997-443, s.35.4, is a severability
clause.
Effect of Amendments. – Session Laws 1997-261,
s.77, effective July 1,

1997, added “and Consumer Services”
preceding “with the assistance” in sub-
section (a).
Session Laws 1997-443, s. 11A.119(a),
amendment, effective August 28, 1997,
Substituted “Environment and Natural
Resources” for “Environment, Health,
and Natural Resources.”

§ 106-763. Fish passage and residual stream flow.

- (a) Natural watercourses as designated by law or regulation shall not be blocked with a stand, dam, weir, hedge, or other water diversion structure to supply an aquaculture facility that in any way prevents or fails to maintain the free passage of anadromous or indigenous fish.
- (b) Residual flow in a natural watercourse below the point of water withdrawal supplying an aquaculture operation shall be sufficient to prevent destruction or serious diminution of downstream fishery habitat and shall be consistent with rules adopted by the Environmental Management Commission. (1993, c. 18, s. 2.)

Editor's Note. – Session Laws 1993,
c. 18, s. 5 makes this section effective January 1, 1994.

§ 106.763.1. Propagation and production of American alligators.

- (a) License Required. – A person who intends to raise American alligators commercially must first obtain an Aquaculture Propagation and Production Facility License from the Department. The Board of Agriculture may regulate a facility that raises American alligators to the same extent that it can regulate any other facility licensed under this Article.
- (b) Requirements.- A facility that raises American alligators commercially must comply with all of the following requirements:
 - (1) Before a facility begins operation, it must prepare and implement a confinement plan. After a facility begins operation, it must adhere to the confinement plan. A confinement plan must comply with guidelines developed and adopted by Wildlife Resources Commission. The Department may inspect a facility to determine if the facility is complying with the confinement plan. As used in this subdivision, “confinement” includes production within a building or similar structure and a perimeter fence.
 - (2) A facility can possess only hatchlings that have been permanently tagged and have an export permit from their state of origin. The facility must keep records of all hatchlings it receives and must make these records available for inspection by the Wildlife Resources Commission and the Department upon request.
 - (3) If the facility uses swine, poultry, or other livestock for feed, it must have a disease management plan that has been approved by the State Veterinarian, and it must comply with the plan.
 - (4) The activities of the facility must comply with the Endangered Species Act and the Convention on International Trade in Endangered Species. The Department is the State agency responsible for the administration of this program for farm-raised alligators.
- (c) Sanctions.- The operator of a facility that possesses an untagged or undocumented alligator commits a Class H felony if the operator knows the alligator is untagged or undocumented. Conviction of an operator of a

facility under this section revokes the license of the facility for five years beginning on the date of the conviction. An operator convicted under this may be the operator of any other facility required to be licensed under this Article for five years beginning on the date of the conviction. (1997-198, s.2.)

Editor's Note.- Session Laws 1997-198, s.3,
Made this section effective June 19,1997.

§ 106-764. Violation.

A person who violates this act or a rule of the Board of Agriculture adopted hereunder is guilty of a Class 3 misdemeanor. (1993, c. 18, s. 2; 1994, Ex. Sess., c. 14, s. 56.)

Editor's Note. – Session Laws 1993, c. 18, s. 5 makes this section effective January 1, 1994.

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."
Effects of Amendments.- The 1994

Extra Session amendment, effective on the same date that Chapter539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than 30 days, or both".