

LEGISLATIVE BILL 830

Approved by the Governor April 13, 1993

Introduced by Preister, 5; Abboud, 12; Beutler, 28; Bohlke, 33; Bromm, 23; Chambers, 11; Coordsen, 32; Crosby, 29; Cudaback, 36; Day, 19; Elmer, 38; Fisher, 35; Hall, 7; Hartnett, 45; Hillman, 48; Hohenstein, 17; Hudkins, 21; Janssen, 15; Jones, 43; Lindsay, 9; Lynch, 13; Pedersen, 39; Pirsch, 10; Robak, 22; Schellpeper, 18; Schimek, 27; Schmitt, 41; Warner, 25; Wehrbein, 2; Wesely, 26; Wickersham, 49; Will, 8

AN ACT relating to fish and game; to amend section 37-719, Reissue Revised Statutes of Nebraska, 1943, and sections 37-101, 37-102, and 37-702, Revised Statutes Supplement, 1992; to state intent; to define terms; to create the Nebraska Aquaculture Board; to provide powers and duties for the board; to change provisions relating to acting as a commercial fish culturist; to change penalty provisions relating to releasing certain animals to the wild; to prohibit the importation, exploitation, and exportation of certain animals; to provide exceptions; to provide a penalty; to provide powers and duties for the Game and Parks Commission; to harmonize provisions; to provide operative dates; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature finds that it is in the interest of the people of the state that the practice of aquaculture be encouraged in order to promote agricultural diversification, augment food supplies, expand employment opportunities, promote economic activity, increase stocks of fish and other aquatic life, protect and better use and manage the natural resources of the state, and provide other benefits to the state.

Sec. 2. For purposes of sections 2 to 5 of this act:

- (1) Aquaculture shall have the definition found in section 2-3804.01;
- (2) Aquaculture facility shall mean any facility, structure, lake, pond, tank, or tanker truck used for the purpose of propagating, selling, brokering, trading, or transporting live fish or viable gametes;
- (3) Aquaculturist shall mean any individual, partnership, or corporation, other than an employee of a state or federal hatchery, involved in producing, transporting, or marketing cultured aquatic stock or products thereof;
- (4) Aquatic disease shall mean any departure from a normal state of health of aquatic organisms caused by disease agents;

(5) Aquatic organism shall mean an individual member of any species of fish, mollusk, crustacean, aquatic reptile, aquatic amphibian, aquatic insect, or other aquatic invertebrate. Aquatic organism shall include the viable gametes, eggs or sperm, of an aquatic organism;

(6) Board shall mean the Nebraska Aquaculture Board;

(7) Commercial aquaculturist shall mean an aquaculturist engaged in the business of growing, selling, brokering, or processing live or viable aquatic organisms for commercial purposes;

(8) Commission shall mean the Game and Parks Commission;

(9) Cultured aquatic stock shall mean aquatic organisms raised from privately owned stocks and aquatic organisms lawfully acquired and held in private ownership until they become intermingled with wild aquatic organisms;

(10) Department shall mean the Department of Agriculture;
and

(11) Director shall mean the Director of Agriculture.

Sec. 3. There is hereby created the Nebraska Aquaculture Board. The board shall consist of (1) the aquaculturist employed by the Cooperative Extension Service pursuant to section 85-1,104.01, (2) two employees of the commission who are familiar with aquatic disease, appointed by the secretary of the commission, (3) two employees of the department who are familiar with the commercial marketing and processing of aquatic organisms and their products or with the financing of commercial aquaculture, appointed by the director, and (4) two aquaculturists, appointed by the Governor. The board shall elect from its members a chairperson. The aquaculturists shall serve three-year terms, serve until their successors are appointed, and serve without compensation.

Sec. 4. (1) The board shall make recommendations which will serve as Nebraska's State Aquaculture Plan to be presented to the Legislature by January 1, 1994, concerning the regulation of the aquaculture industry and its markets, including legislation which regulates, controls, or otherwise relates to fish health, to the spread of aquatic disease, or to the importation into the state or the distribution and management of aquatic species.

(2) The State Aquaculture Plan developed by the board shall include appropriate programs which may include, but are not limited to, programs to assist in the protection, growth, and promotion of the aquaculture industry of the state and shall also include policies and procedures for the accomplishment of such a plan.

Sec. 5. The board shall have authority to consider and recommend to the Legislature appropriate legislation, including, but not limited to, legislation concerning the following:

(1) Fees to fund all direct and indirect costs of the administration and enforcement of the legislation;

(2) Standards applicable to products of cultured aquatic

stock offered for sale;

(3) The establishment of standards for and certification of private aquaculture facilities which may include, but need not be limited to, standards for commercial aquaculturists with respect to sanitation, financial stability, disease control, and the movement of aquaculture products offered for sale;

(4) Procedures regarding granting, denying, suspending, or revoking an aquaculture facility permit and appeals processes relating thereto;

(5) Procedures and responsibilities for quarantine of aquaculture facilities upon the determination that a situation exists which threatens imminent danger to existing wild aquatic populations or to human health and safety and that no more reasonable means exist to control the situation including, but not limited to, controlling unwanted aquatic species and procedures for controlling aquatic infectious diseases that may affect wild aquatic or cultured aquatic stock;

(6) Procedures for contracting services of any specialist in this state or in any other state or with any other government agency, through intergovernmental agreement, contract, or memorandum of understanding, to implement and enforce the legislation;

(7) Penalties for violations of the aquaculture plan developed by the board;

(8) The evaluation and consideration of which terms of the industry need further definition as well as an evaluation of the impact of such legislation;

(9) Barriers to entry in the business of aquaculture and ways to reduce or eliminate such barriers which may include an evaluation of tax exemptions and education;

(10) The interrelationship between the department in promotion of and the commission in the regulation of aquatic stock; and

(11) Additional board responsibilities beyond the final report.

Sec. 6. That section 37-101, Revised Statutes Supplement, 1992, be amended to read as follows:

37-101. For purposes of the Game Law, unless the context otherwise requires:

(1) Captive propagation shall mean to hold live raptors in a controlled environment that is intensively manipulated by humans for the purpose of producing raptors of selected species and that has boundaries designed to prevent raptors, eggs, or gametes of the selected species from entering or leaving the controlled environment;

(2) Commercial exploitation shall mean buying, selling, or bartering for economic or financial gain by any person, partnership, association, or corporation;

~~(2)~~ (3) Commission shall mean the Game and Parks Commission;

(4) Ecologic harm shall mean significant loss, disadvantage, or injury to the relationships between organisms and their environment;

~~(5)~~ Economic harm shall mean significant loss, disadvantage, or injury to personal or material resources;

~~(3)~~ (6) Falconry shall mean the sport of taking quarry by means of a trained raptor;

~~(4)~~ (7) Fur harvesting shall mean taking or attempting to take any fur-bearing animal by any means as prescribed by rules and regulations of the commission;

~~(5)~~ (8) Fur-bearing animals shall mean all beaver, martens, minks, except mutation minks, muskrats, raccoons, opossums, and otters;

~~(6)~~ (9) Game shall mean all game fish, bullfrogs, snapping turtles, tiger salamanders, mussels, crows, game animals, fur-bearing animals, game birds, and all other birds and creatures protected by the Game Law;

~~(7)~~ (10) Game animals shall mean all antelope, cottontail rabbits, deer, elk, mountain sheep, and squirrels;

~~(8)~~ (11) Game birds shall mean coots, cranes, curlew, doves, ducks, geese, grouse, partridges, pheasants, plovers, prairie chickens, quail, rails, snipes, swans, woodcocks, wild turkeys, and all migratory waterfowl;

~~(9)~~ (12) Game fish shall mean all fish except buffalo, carp, gar, quillback, sucker, and gizzard shad;

~~(10)~~ (13) Hunt shall mean to take, pursue, shoot, kill, capture, collect, or attempt to take, pursue, shoot, capture, collect, or kill;

~~(11)~~ (14) Officer shall mean every person authorized to enforce the Game Law;

~~(12)~~ (15) Person, owner, proprietor, grantee, lessee, and licensee shall mean and include individuals, partnerships, associations, corporations, and municipalities;

~~(13)~~ (16) Raptor shall mean any bird of the Falconiformes or Strigiformes, except the golden and bald eagles;

~~(14)~~ (17) Raw fur shall mean the green pelts of any fur-bearing animal except commercially reared mutations;

~~(15)~~ (18) Trapping shall mean to take or attempt to take any fur-bearing animal by any snare, steel-jawed spring trap, or box trap; and

~~(16)~~ (19) Upland game birds shall mean all species and subspecies of quail, partridges, pheasants, wild turkeys, and grouse, including prairie chickens, on which an open season is in effect.

Sec. 7. That section 37-102, Revised Statutes Supplement, 1992, be amended to read as follows:

37-102. Sections 37-101 to 37-726 and 37-1401 to 37-1408 and sections 10 to 14 of this act shall be known and may be cited as the Game Law.

Sec. 8. That section 37-702, Revised Statutes Supplement, 1992, be amended to read as follows:

37-702. Any ~~citizen~~ resident of Nebraska who qualifies as a commercial fish culturist, after securing a permit as provided in

sections 37-703 and 37-704, may establish and maintain upon private lands, ponds for the culture and propagation of game fish or minnows, subject to the restrictions imposed by the Game Law.

Sec. 9. That section 37-719, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-719. It shall be unlawful for any person, partnership, association, or corporation to import into the state or possess the animal known as the San Juan rabbit or any other species of wild vertebrate animal declared by the ~~Game and Parks Commission~~ commission following public hearing to constitute a serious threat to economic or ecologic conditions, except ~~;~~ ~~PROVIDED~~; that the ~~Game and Parks Commission~~ commission may authorize by specific written permit the acquisition and possession of such species for educational or scientific purposes. It shall also be unlawful to release to the wild any nonnative bird; or ~~or~~ nonnative mammal, ~~reptile or amphibian or to release any nonnative fish to streams and other waters or to release in public waters in this state any fish not taken therefrom~~, without written authorization from the ~~Game and Parks Commission~~ commission. Any person, partnership, association, or corporation violating the provisions of this section shall be guilty of a Class IV misdemeanor.

Sec. 10. It is the intent of the Legislature to prevent the importation into the State of Nebraska of any live fish, mollusk, reptile, crustacean, or amphibian which may cause economic or ecologic harm or be injurious to human beings, agriculture, horticulture, forestry, or wildlife or wildlife resources of the state. It is further the intent of the Legislature to prevent the commercial exploitation of any dead or live fish, mollusk, reptile, crustacean, or amphibian taken from the wild.

Sec. 11. (1) It shall be unlawful for any person to import into the state or release to the wild any live fish, mollusk, reptile, crustacean, or amphibian including the viable gametes, eggs or sperm, except those which are approved by rules and regulations of the commission. It shall be unlawful to commercially exploit or export from the state any dead or live fish, mollusk, reptile, crustacean, or amphibian taken from the wild except those which are exempted by rules and regulations of the commission. Any person violating this subsection shall be guilty of a Class IV misdemeanor.

(2) The commission shall adopt and promulgate rules and regulations to carry out subsection (1) of this section. In adopting such rules and regulations, the commission shall be governed by the Administrative Procedure Act. Such rules and regulations shall include a listing of the species of fish, mollusks, reptiles, crustaceans, or amphibians which may be imported into the state and fish, mollusks, reptiles, crustaceans, or amphibians taken from the wild which may be commercially exploited or exported from the state. The rules and regulations may be amended, modified, or repealed from time to time, based upon investigation and available, reliable data.

(3) The commission may determine that a fish, mollusk, reptile, crustacean, or amphibian causes economic or ecologic harm by

utilizing available scientific, commercial, and other data after consultation, as appropriate, with federal agencies, other interested state and county agencies, and interested persons and organizations.

(4) The commission shall, upon its own recommendation or upon the petition of any person who presents to the commission substantial evidence that such additional species will not cause ecologic or economic harm, conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published pursuant to subsection (2) of this section.

Sec. 12. Subsection (1) of section 11 of this act shall not apply to:

(1) The importation by a person engaged in the business of buying for the purpose of selling, canning, preserving, processing, or handling for shipments or sale for immediate or future consumption fish, oysters, clams, crabs, shrimp, prawns, lobsters, or other commercial edible aquatic products;

(2) The importation and exportation of legally acquired game species;

(3) The buying, selling, bartering, importing, exporting, or otherwise disposing of any wildlife produced at any municipal, state, or federal museum, zoo, park, refuge, or wildlife area; and

(4) The importation of fish, mollusks, reptiles, crustaceans, and amphibians intended for exhibition, aquarium, or other totally contained purposes.

This section shall not be construed to allow the importation or possession of a species otherwise protected or regulated by the Game Law.

Sec. 13. Nothing in section 11 of this act shall be construed to prevent the continuous shipment in interstate commerce of live fish, mollusks, reptiles, crustaceans, and amphibians or eggs of such species for breeding or stocking purposes when such shipment originates outside of this state and terminates outside of this state.

Sec. 14. The commission shall adopt and promulgate rules and regulations which include (1) provisions for scientific or educational purposes as provided in section 37-209, (2) provisions for commercial seining vendors as provided in section 37-502, (3) provisions for bait vendors as provided in section 37-503, (4) provisions for commercial fish culturists as provided in section 37-702, and (5) recommendations developed by the Nebraska Aquaculture Board as provided in section 4 of this act.

Sec. 15. Sections 6 to 14 and 16 of this act shall become operative on January 1, 1994, except that necessary actions preparatory to their implementation may be taken prior to such date. The other sections of this act shall become operative on their effective date.

Sec. 16. That original section 37-719, Reissue Revised Statutes of Nebraska, 1943, and sections 37-101, 37-102, and 37-702, Revised Statutes Supplement, 1992, are repealed.