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CHAPTER 18.

 AQUACULTURE

ARTICLE 2.

 THE AQUACULTURE ENABLING ACT

**SECTION 50‑18‑210.** Definitions.

When used in this chapter:

(1) “Aquaculture” means controlled cultivation of an aquatic species in confinement.

(2) “Aquaculture business” means being involved in aquaculture for a commercial purpose.

(3) “Aquacultured product” means any living or nonliving form, part, or portion of an aquatic species spawned, raised, or produced by means of aquaculture, including an egg or offspring thereof.

(4) “Aquaculturist” means a person or entity engaged in aquaculture.

(5) “Commercial purpose” means the culture, processing, purchase, sale, transfer, exchange, or the offer or exposure for sale, transfer, or exchange of a product, or engaging in aquaculture or aquaculture business in order to derive income or other consideration.

(6) “Nonindigenous species” means a species, strain, or variety not native to this State and not established in the wild in this State.

(7) “Person” means an individual, firm, corporation, association, partnership, club, private body, or other entity.

(8) “Processor” means a person who engages in cutting, dressing, or filleting a product for commercial purposes, other than when prepared and sold directly to the consumer.

**SECTION 50‑18‑215.** Authority of the Department of Natural Resources; permits and licenses; exclusion of saltwater species.

(A) The Department of Natural Resources has regulatory authority for permitting and licensing pertaining to aquaculture and aquaculture businesses, as provided in this chapter. The Department of Natural Resources has authority for enforcement as it affects the public waters of the State.

(B) This chapter does not apply to any saltwater species.

(C) Applicants for permits or licensure under this chapter may be required to obtain additional federal or state permits required pursuant to Chapter 39, Title 48 of the 1976 Code and Regulation 61‑9.122.25.

**SECTION 50‑18‑220.** Out‑of‑state aquaculturists and common carriers; permits, licenses, and proper documentation.

(A) Out‑of‑state aquaculturists who buy or sell in the State must acquire the permit and licenses required under this chapter unless selling to or buying from a permitted aquaculturist.

(B) Common carriers who carry aquaculture products in transit through the State are not subject to this chapter so long as the shipment does not originate or terminate in this State.

(C) Common carriers who deliver or receive for transport products in this State are required to have the documentation required by this chapter.

(D) Persons buying, receiving, or selling out‑of‑state aquaculture products must comply with the registration, permitting, licensing, and documentation requirements provided for in this chapter.

**SECTION 50‑18‑225.** Possession, sale, and purchase of freshwater game fish and aquaculture products.

Native or established freshwater game fish and regulated aquaculture products produced under permit as authorized by this chapter may be possessed, sold, offered for sale, bartered, trafficked, and purchased as provided in this chapter.

**SECTION 50‑18‑230.** Regulation of commercial aquaculture.

It is unlawful for a person to engage in aquaculture for a commercial purpose except as provided in this title.

**SECTION 50‑18‑235.** Application and issuance of aquaculture permits; permitted activities; factors considered for issuance; separate facilities; exemptions; penalties.

(A) Except as provided in subsections (F) and (G) a person must first apply for and obtain an annual aquaculture permit issued by the Department of Natural Resources:

(1) to engage in commercial aquaculture;

(2) to wholesale or retail a live aquaculture product;

(3) to engage in aquaculture of an aquatic species not indigenous to this State, subject to the provisions of this title;

(4) to engage in aquaculture, possess, or sell an aquatic species solely for the purposes of stocking;

(5) to engage in aquaculture of hybrid striped bass;

(6) to engage in aquaculture, or possess an aquatic species to provide sport fishing for a fee;

(7) to sell or offer for sale annually in excess of two thousand five hundred dollars worth of an aquatic species harvested from a private pond, unless selling to a permitted resident aquaculturist;

(8) to import an aquatic species taken and obtained lawfully in the jurisdiction of origin, for use as aquaculture brood stock;

(9) to import an aquatic species taken and obtained lawfully in the jurisdiction of origin, for sale for stocking only private waters.

(B) The Department of Natural Resources may grant an aquaculture permit and set conditions for aquaculture.

(C) In considering issuance of a permit and setting permit conditions, the department must consider scientific and other available information regarding:

(1) species to be cultured;

(2) protection of ecosystems from detrimental species;

(3) protection of critical habitat;

(4) protection of water resources;

(5) protection of plant and wildlife genetic integrity;

(6) disease potential and protection of plant and wildlife health;

(7) protection of natural resources from illegal harvesting and commercialization;

(8) protection of natural resources from nuisance species;

(9) security and welfare of the aquaculture industry of this State.

(D) Application for permits must be made on forms prescribed by the Department of Natural Resources, which may require information necessary to carry out the provisions of this chapter.

(E) A permit may be granted only after the Department of Natural Resources considers the information specified in this section and determines that the proposed operations would not reasonably be expected to adversely impact the natural resources of the State or security or welfare of the aquaculture industry of this State. A separate application and permit are required for each aquaculture facility. The Department of Natural Resources must consider each facility separately, unless a single state and federal income tax is filed for the operation. The Department of Natural Resources may amend, suspend, or revoke a permit if it determines some aspect of the permitted aquaculture activity adversely impacts the natural resources of the State or the security or welfare of the aquaculture industry of this State.

(F) An aquaculture permit is not required to engage in aquaculture of nongame fish, so long as the species cultured is indigenous to the State or already established in the waters of this State. To engage in commercial aquaculture of such fish, a person must first register the aquaculture facility with the department annually and provide the department any information necessary to carry out the provisions of this chapter.

(G) An aquaculture permit is not required to wholesale or retail:

(1) nongame, indigenous species aquacultured in this State for use as bait, or

(2) organisms legally sold in the pet or ornamental trade.

(H) A person who fails to acquire a permit or to register a facility as required under this section is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars and not more than two thousand dollars or imprisoned for not more than thirty days.

**SECTION 50‑18‑240.** Cost and validity of permit; fees, fines, and forfeitures placed in special account; penalties; appeal.

(A) The cost of an aquaculture permit is one hundred dollars for the year in which issued and twenty‑five dollars for each year, or portion thereof, that the permit is continued. There is no cost to register a nongame aquaculture facility. For purposes of this subsection, a permit year is July first through June thirtieth of the following year.

(B) Permits are valid during the period specified upon the permit. Application and payment for permits and application for registration for aquaculture activities continuing into a second or subsequent permit year must be made with the department by June fifteenth of the permit year.

(C) Permit fees, fines, and the value of forfeitures collected under this chapter must be placed in a special account to be used by the Department of Natural Resources to support the aquaculture inspection.

(D) The Department of Natural Resources may amend, suspend, or revoke a permit for any violation of a permit condition and impose a civil penalty of not greater than five thousand dollars. An appeal may be taken pursuant to the Administrative Procedures Act.

**SECTION 50‑18‑245.** Requirements to engage in aquaculture of nonindigenous species.

To engage in the aquaculture of a nonindigenous species a person must first obtain:

(1) a nonindigenous species permit as provided in this title, and

(2) an aquaculture permit.

**SECTION 50‑18‑250.** Inspection of facilities; hindering or failure to comply with request of agent; display or on‑site filing of permit.

(A) During business hours, or when an employee, owner, or owner’s agent is present, the department may inspect all premises and facilities.

(B) It is unlawful for a person to fail to comply with the lawful requests of a department agent, or hinder a department agent, in the performance of his duties under this chapter.

(C) Permits, registrations, and licenses issued under this chapter must be conspicuously displayed or be on file at the site of the aquaculture business.

**SECTION 50‑18‑255.** Wholesale aquaculture licenses; license year; cost; exemption for individuals holding current aquaculture permits; penalties.

(A) To engage in processing or the wholesale marketing of nonliving aquaculture products, regardless of where cultured, a person must first apply for and obtain an annual wholesale aquaculture license from the department. For purposes of this subsection, a license year is July first through June thirtieth of the following year.

(B) A person may acquire an annual wholesale aquaculture license at a cost of one hundred dollars for the year in which issued and twenty‑five dollars for each continuous year or part thereof that the license is renewed.

A person holding a current aquaculture permit is not required to obtain a wholesale aquaculture license to engage in processing or wholesale or retail marketing of aquaculture products produced under the aquaculture permit.

(C) It is unlawful to engage in activities requiring a license under this section without first acquiring a license. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not more than thirty days. Each product sold or offered for sale in violation of this section may constitute a separate offense.

**SECTION 50‑18‑260.** Aquacultured game fish retail license; application and issuance; display of license; penalties.

(A) A person who sells or offers to sell a nonliving aquacultured game fish or product thereof to consumers, regardless of where cultured, must first acquire an annual aquacultured game fish retail license at no cost issued by the Department of Natural Resources unless that person holds a current aquaculture permit.

(B) Application for such license must be made on forms provided by the department. The department or its authorized agent will issue an aquaculture game fish retail license at no cost upon proper application.

(C) A license is required for each location where aquacultured game fish or product thereof is offered for sale to consumers. Licenses issued under this section must be displayed conspicuously at the point of retail sale. For purposes of this section, a license year is July first through June thirtieth of the following year.

(D) A person who violates this section is guilty of a misdemeanor and, upon conviction, the person must be fined not less than twenty‑five dollars nor more than five hundred dollars or imprisoned for not more than thirty days.

**SECTION 50‑18‑265.** Invoices, receipts, and bills of lading; inspections; documentation and record retention; penalties.

(A) Except as provided in this section, when an aquacultured product is exchanged for a commercial purpose between persons, an invoice or receipt is required showing the date, producer, origin, destination, permit, registration, and license numbers as appropriate, species name, product, and quantity exchanged.

(B) When an aquacultured product is offered for sale, a corresponding invoice for that product must be available for inspection and maintained at the place of business where the product is offered for sale.

(C) When an aquacultured product is shipped, a bill of lading is required showing the date, producer, origin, shipper, destination, permit, registration, and license numbers as appropriate, species name, product, and quantity shipped. Shippers must have the bills of lading in their possession while transporting any product. In accepting a shipment of aquacultured product, a shipper agrees to inspection by the department.

(D) Persons involved in aquaculture commerce must maintain all invoices, receipts, and bills of lading required under this section for three years.

(E) A person permitted, registered, or licensed under this chapter must keep accurate records and may be required to provide accurate information and reports to the department.

(F) The documentation, recordkeeping, and reporting provisions of this section are not obligations on the consumer.

(G) A person who violates this section is guilty of a misdemeanor and, upon conviction, the person must be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned for not more than thirty days for each violation, and the department must suspend the permit, registration, or license under which the report or recordkeeping is required until accurate and complete reports are submitted to the department. Each delinquent or inaccurate report must be handled as a separate offense.

**SECTION 50‑18‑270.** Intentional release of imported species into public waterways; penalties.

(A) Except as provided in this subsection it is unlawful to place or release intentionally any species imported from another state or jurisdiction into public waters in this State without a permit issued by the department. This section does not apply to the use of live bait. The department may grant permits at no cost to allow permitted aquaculturists to release aquacultured products into the public waters of this State as a part of a stocking program conducted or approved by the department.

(B) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars and not more than five thousand dollars or imprisoned for not more than thirty days. In addition to any penalty the presiding magistrate may order restitution to the department.

(C) A person who violates this section for a second or subsequent offense within three years of a first offense must be fined five thousand dollars, no part of which may be suspended, or imprisoned for up to one year, or both. In addition to any penalty the presiding judge may order restitution to the department.

**SECTION 50‑18‑275.** Freshwater game fish acquired for brood stock.

Freshwater game fish may be acquired for brood stock for aquaculture from the freshwaters of this State only as allowed by this title.

**SECTION 50‑18‑280.** Transfer, alteration, use, and acquisition of permit, registration, license, or required instrument; penalties.

(A) It is unlawful to transfer, alter, damage, deface, tamper with, reuse, counterfeit, or use in a fraudulent manner a permit, registration, license, method of labeling, record, or other instrument required by this chapter; or to attempt to transfer, alter, damage, deface, tamper with, reuse, counterfeit, or use in a fraudulent manner a permit, registration, license, method of labeling, record, or other instrument required by this chapter.

(B) It is unlawful to acquire or to attempt to acquire fraudulently a permit, registration, or license provided in this chapter.

(C) It is unlawful to acquire or attempt to acquire a permit, registration, or license provided in this chapter if the privilege to hold the permit or license has been suspended.

(D) It is unlawful to misuse any instrument required by this chapter to defraud any person or the department.

(E) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than thirty days.

(F) A person who violates this section for a second or subsequent offense within three years of a first offense must be fined one thousand dollars, no part of which may be suspended, or imprisoned for up to thirty days, or both.

**SECTION 50‑18‑285.** Tampering, damaging, vandalizing, poisoning, or stealing of aquaculture products or facilities; penalties.

(A) No person may tamper with, damage, vandalize, poison, steal, or attempt to tamper with, damage, vandalize, poison, or steal the products or facilities utilized in aquaculture or aquaculture businesses of a person permitted, registered, or licensed under this chapter.

(B) No person may cast or cause to be cast poison, impurities, or other substances that are injurious to aquatic species into the waters or water supply of any permitted or registered aquaculture facility.

(C) Any person who violates this section is guilty of a misdemeanor and, upon conviction, for a first offense must be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned for not less than thirty days nor more than one year. For a second or subsequent offense and, upon conviction, must be fined five thousand dollars, no part of which may be suspended, or imprisoned for one year, or both. Equipment, vessels, and vehicles used in a second or subsequent violation must be seized and forfeited to the department.

(D) For any violation of this section in addition to other penalties, the person convicted must pay restitution to the victim as determined by the court.

**SECTION 50‑18‑290.** Jurisdiction of magistrates court; restitution; penalties.

(A) Notwithstanding any other provision of law, the magistrate’s court has jurisdiction to try any criminal case that arises under this chapter and to impose the penalties set forth herein up to a maximum fine of five thousand dollars or imprisonment for up to thirty days. In addition to any penalty imposed under this chapter, the presiding magistrate may order restitution for losses or damages to natural resources and order full compensation to the aquaculture business for losses sustained.

(B) Unless otherwise provided, any person who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be punished:

(1) for a first offense, by a fine of not more than five hundred dollars or imprisonment of not more than thirty days;

(2) for a second offense within three years of a first offense, by a fine of not less than three hundred dollars nor more than five hundred dollars or imprisonment for not more than thirty days;

(3) for a third or subsequent offense within three years of a second or subsequent offense, by a fine of not more than one thousand dollars or imprisonment for not more than thirty days.