

# Aquatic Livestock Alliance Report

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## *US Aquatic Livestock Commerce: Trade Agreements, Interstate Trade Barriers, and Other Impacts*

### COMMERCE QUESTIONS

The **Aquatic Livestock Alliance** asks the following commerce questions:

- a. Why are so many and extraneous agencies imposing regulatory control over the interstate movement of aquatic livestock?
- b. National and International requirements are in agreement with each other - when will States align themselves with the trade agreements and defer to federal regulation over interstate commerce?
- c. What political process will we adopt to remove the regulatory burdens from aquatic livestock commerce in the United States?

### COMMERCE HISTORY

Human history has many recorded incidences of disputes and even wars when Authorities take Commerce lightly or try to impose unreasonable burdens on trade. In recent times, governments have had significant success working out differences between nations through Trade Agreements. Periodical revisions and updates avoid traditional Trade or even Military wars. The aquatic livestock industry strongly objects to needless, useless, and harmful trade barriers implemented in the name of regulation and disease control. The aquatic livestock industry can no longer endure such disguises for governmental regulatory mismanagement and inconsistencies. In the last several decades, regulatory agencies - at both State and National governmental levels - have crossed-over and even intruded on departmental responsibilities for the regulation of aquatic livestock. The effect of the non-sovereign intrusion is trade barriers on the aquatic livestock industry. The burden on commerce is devastating the aquatic livestock industry under the imposed regulatory burden. Much of the burden is inappropriate application of Statutes and Regulations that do not apply to a livestock industry. The US Congress has authority and control over interstate and international commerce. The Animal Health Protection Act clearly identifies aquatic livestock to be regulated as interstate commerce with complete authority given entirely to USDA.

### CURRENT INTERNATIONAL TRADE AGREEMENTS

The General Agreement of Tariffs and Trade (GATT) utilizes the Sanitary and Phytosanitary Agreement as the international standard for controlling animal diseases that may be introduced or moved with translocation of animals. [Uruguay Round 1986-1994 with the formation of the World Trade Organization (WTO)]

### PROTOCOL REQUIREMENTS (STANDARDS)

GATT utilizes OIE testing protocols. AFS guidelines, *Suggested Procedures for the Detection and Identification of Certain Finfish and Shellfish Pathogens* (Blue Book 2007 Edition), are not recognized in the OIE normative documents relating to rules that Member Countries can use to protect themselves from the introduction of diseases and pathogens, without setting up unjustified sanitary barriers.

## **OIE v. AFS**

Aquatic Livestock are over tested when using AFS testing protocols. According to popular interpretation of AFS protocols, an aquatic livestock farm can have hundreds if not thousands of lots to test and certify. This burden exists because of the “lot” definition for wild fish being inappropriately applied without discretion to aquatic livestock. Several States following AFS Guidelines for regulation of wildlife do not accept aquatic livestock certified by OIE protocols and standards, which is in apparent conflict with our federal laws and does not meet specifications within our international trade agreements. *For example, if a farm had 20 broodstock and wanted to sell 6 of them, under AFS protocols, all broodstock would have to be sacrificed for testing. Why is commerce being obstructed by that protocol?*

OIE is about livestock. AFS is about wildlife. Fish or other aquatic animals reared at State Hatcheries are livestock because husbandry practices must be applied to maintain their existence and survival. On the other hand, aquatic livestock that are released to wild resources can return to the wild stocks and wild stocks taken can become livestock when propagated in hatcheries. Wild fishery stocks that are monitored and/or have habitat enhancements would not be dependant on husbandry practices for existence and survival and therefore would not be aquatic livestock.

OIE is about epidemiological units (e-units). AFS is about lots, which are defined by the same species, same age, same broodstock, same water. Two or more generations in the same pond are two or more lots by AFS definitions. It is apparent from laboratory test costs that aquatic livestock production cannot be commercially viable while complying with wildlife regulations as defined in the AFS Guidelines. When an aquatic livestock production facility is certified for interstate movement according to the OIE methods, epidemiological considerations are given to the operation, activities, species, water source, equipment, and previous testing history and records before testing.

OIE protocol is about pathogen control. AFS protocol is about fish control. At first, that comparison is not so apparent; OIE is about determining the pathogen census on the farm or hatchery. AFS is about censusing the healthy fish by age, species, and water body as it relates to lots.

OIE protocol could accommodate fish movement on a farm as part of operations. AFS protocol prohibits fish movement within a farm to maintain certification.

Once again: OIE is about livestock. AFS is about wildlife. When farm-raised fish enter interstate commerce they are regulated under USDA authority as livestock.

## **COMPLIANCE OF INTERNATIONAL TREATY OBLIGATIONS**

Trade Agreements such as the General Agreement on Trade and Tariffs (GATT) have been adopted and implemented as US Law. State's can meet their obligations with International Trade Agreements by being in agreement with US Laws. Congress cannot revise US Law unless the revisions agree with the Trade Agreement entered into. If State Laws are in conflict and not in agreement with Federal law then State law yields to Federal law in order to fulfill treaty obligations.

In the spirit of our commerce requirements at federal and international levels, a State or location within a State may have higher standards of importation than required to move animals in interstate commerce between other States. Surveillance and monitoring evidence that the restricted disease has not existed in the restricted area must support and substantiate any restrictions.

Requirements and restrictions of importation must be publically known for exporting countries and certification officials within the country.

APHIS is to provide its accredited veterinarians with current state regulations and most importantly the contact info to assist verifying the latest requirements. *Please review OIE's Aquatic Animal Health Code, CHAPTER 1.3.1, GENERAL OBLIGATIONS.*

APHIS must have official procedures for the authorization of accredited veterinarians, defining their functions and duties as well as conditions covering possible suspension and termination of their appointment; ensure that the relevant instructions and training are provided to certifying officials; and, monitor the activities of the certifying officials to verify their integrity and impartiality. *See 9 CFR 161*

APHIS “approves” certifying officials by way of Accreditation. The US Congress has only authorized the Secretary of Agriculture to accredit veterinarians licensed by the States. State regulators do not have authority to approve the officials that certify translocation of aquatic livestock. The State’s role in accomplishing certification of animals moved in interstate commerce is accomplished through establishment of requirements for issuing State License to Practice Veterinary Medicine. Such a license is required for the accreditation of the private veterinary practitioner. The Practice of Veterinary Medicine includes determining the disease status of animals to be translocated. This federal standard contradicts the standards and requirements of many State Statutes and Regulations. An example of contradiction and confusion would be a State Law that authorizes the State Natural Resource agency to “approve” the certifying official. This approval authority rests with the US Secretary of Agriculture in conjunction with the issuance of a License to Practice Veterinary Medicine. Utilization of Accredited veterinarians is the only system authorized by Congress to certify animals being moved in interstate commerce within the United States.

## REFERENCE DEFINITIONS

**Accredited Veterinarians:** Recognized government agent(s) with United States Department of Agriculture (USDA) authority to attest the disease status of animals being moved in interstate commerce. *Definition and program is described in the Animal Health Protection Act – 2002 (AHPA-2002) and defined in the 9 CFR.*

**AFS:** Refers to the American Fisheries Society and their member subchapter “Fish Health Section”.

**AFS-Blue Book:** Suggested Procedures for the Detection and Identification of Certain Finfish and Shellfish Pathogens.

**Animal:** The term “animal” means any member of the animal kingdom (except human). *See AHPA-2002.*

**Aquatic Livestock:** Animals that rely on water husbandry practices for survival and/or reproduction. *See “Livestock” below.*

**Certificate of Veterinary Inspection (CVI):** A written document of record that contains, among other things, the required information about examination of the animals and interpretation of the testing conducted to determine the disease status of animal(s) in an epidemiological unit (e-unit).

**Disease:** A condition of animals that by microbial pathogen or other parasite can be transmitted by contagion or fluids or vectors or fomites to or from animals.

**Disease Status:** The status of disease in an e-unit can only be established by observation, examination and testing when and where necessary. *This activity in regards to interstate commerce is the venue of the USDA, Animal and Plant Health Inspection Services (APHIS). Determination of disease status for interstate movement of animals is a U.S. Government duty. See Accredited Veterinarians.*

**Epidemiological unit (e-unit):** A defined group of animals at a known and defined location for a known time frame that are kept separate and apart from other animals, vectors, or fomites that might introduce

pathogens or other unwanted living organisms. *The e-unit could range from one animal in one transport box to millions of eggs in dozens of shipping containers. The e-unit could be a single pond or an entire farm with several watersheds.*

**Examination:** Direct evaluation of animal condition(s) by a licensed veterinary practitioner. *This may include observation, palpation, sample taking, necropsy and any other methods and procedures of evaluating the patient(s) condition. This aspect of disease status determination would generally be suitable to fully establish a valid Veterinary-Client-Patient relationship as defined under various state codes.*

**Health Certification:** A layperson's term for determining the disease status of an epidemiological group of animals. *A Court decision in the early 1980's steered Regulators and the Veterinary Profession away from the terminology since there is no known way to certify the Health of animals. The term is still widely dispersed in Codes and Regulations where it has not been noticed and removed. Rather the concept is to certify the disease status of the animals. The actual terminology is to provide a Certificate of Veterinary Inspection.*

**Husbandry Practices:** The art, science, and skill of rearing animals in captivity. Such practices include but are not limited to environmental life-support, reproduction, propagation, protection, and translocation.

**Interstate commerce:** The term "interstate commerce" means to trade, traffic, or any other commerce between States, the District of Columbia, or within any Territories and other Possessions of the United States.

**Livestock:** The term "livestock" means all farm-raised animals. *See AHPA-2002.*

**OIE:** International Office of Epizootics (also known as the World Organization for Animal Health). *The OIE trade standard, Aquatic Animal Health Code, aims to assure the sanitary safety of international trade of aquatic animals (fish, mollusks and crustaceans), and their products.*

**Pathogenicity:** The ability of a pathogen to cause disease in the host. There are, in general terms, primary, secondary, and opportunistic pathogens ranked on ability to establish and create disease. Virulence, a term often used interchangeably with pathogenicity, refers to the degree of pathology caused by the organism.

**Sanitary Protocols:** Those procedures and processes used to prevent pathogens and other infectious agents or invasive species from becoming established in the e-unit. *This may be done through designation of equipment and personnel, defined and specified cleaning, use of disinfectants, and, management of time and/or temperature*

**Translocation:** Animals moved or being moved from one area to another.

**Tests or Testing:** Tests are defined as analytical procedures done for the detection of disease. *Test parameters range from observation to actual laboratory test protocols.*

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