



Advisor Notes to the Aquatic Livestock Industry

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Aquatic Livestock: Interstate Commerce, Testing Requirements and Protocol Standards

Let's stop and think a bit about what the founding members listed as the third biggest problem for aquatic livestock commerce at the Aquatic Livestock Commerce Forum in Des Moines last November.

Issues that the 37 Forum participants identified were in consensus on in ranked order were:

- 1. No uniformity in state regulations,**
- 2. Limited availability of fish health officials, and**
- 3. No uniformity of testing standards among states.**

<http://www.aquaticlivestock.org/2008%200131%20Des%20Moines%20Forum%20Summary.pdf>

At number 3 - ***Non-uniform testing standards***: For an aquatic livestock producer to comply with the various State's regulatory requirements, there are multiple and consistently unnecessary testing requirements because State Regulators have not taken the initiative to coordinate a consistent regulatory framework for the primordial sake of commerce and free trade – the lifeblood of the aquatic livestock industry. However, is it fair to criticize State Regulators when they are not in any position to regulate interstate commerce of animals? State Regulators, whether agriculture or natural resources, have the distinct duty and responsibility to protect what is inside the state boundaries. State import requirements can be higher, if there is sound and reasonable justification for each specific requirement.

The most relevant question that needs to be answered is: “Who is responsible for creating and establishing a single standard for aquatic livestock tests between States? By statutory definition, Congress instructed the Secretary of Agriculture to control, prevent and eradicate disease by regulating animals moved in interstate commerce. Historically, this responsibility for disease control was first used to keep our country free of many unwanted animal and plant diseases that threaten to come in from foreign countries. With the passage of the Animal Health Protection Act of 2002, the responsibility for interstate control of animal diseases was clearly given to USDA:

Congress instructed the US Secretary of Agriculture:

- **to prevent and eliminate burdens on interstate commerce and foreign commerce;**
- **to regulate effectively interstate commerce and foreign commerce;**

Non-uniform test standards/requirements are a burden on interstate commerce!
States and other Federal Agencies do not regulate interstate commerce!

We could use an analogy for those that haven't clearly understood this controversy. The analogy is easily taken from the game of Baseball. One team wants to use a baseball made of solid plastic in the game. Another team plays with a larger ball when it comes onto the field. Yet, another team comes with wide flat bats. Is there any enjoyment for the players or spectators as the differences get sorted out on the playing field? Who would want to be an umpire? Standardization of test requirements for aquatic livestock will put enjoyment back into the business of aquatic livestock commerce - just as a standard specification does for baseball size, construction type, or bat style has done for the game of Baseball. The teams, players and umpires all play by game rules – the aquatic livestock industry asks the regulators, at all levels of government, to follow the Commerce Clause of our United States Constitution. In turn, regulators would have an easier time declaring a shipment of aquatic livestock safe for interstate movement.

USDA is the designated lead agency to set the national standard requirements for testing aquatic livestock for any given pathogen. Congress did not enact a law to permit each State to choose a different standard(s) to exclude fair trade and commerce as some have set about to defend. In Commerce, amongst the States, Federal law (and intent) pre-empts State law. USDA has clearly stated in its Federal Order that OIE testing is recognized for certifying interstate movement of aquatic livestock. Which State would like the **infamous** experience and recognition created by saying they won't accept livestock certified with an OIE protocol when a Federal Standard (Emergency Order) is in place?

Oooops! Now the secret is out about WHO and more importantly WHERE to get help for cleaning up these inconsistencies amongst the States on which testing protocols are used. The Secretary of Agriculture can be asked to do what Congress instructed him and the US Department of Agriculture to do. **Free trade and interstate commerce was “American” long before anyone played baseball.** You may also recall, the USDA declined an invitation to attend the Forum, to learn about the aquatic livestock commerce concerns of State Veterinarians, State Natural Resources, Private Producers, Public Producers and Private Veterinarians – what a lost opportunity!