



Advisor Notes to the Aquatic Livestock Industry

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Picture in your mind, if you can, the Animal and Plant Health Inspection Services (APHIS) playing the role of an appeaser feeding the crocodiles under the bridge, hoping the critters will permit safe passage even though the bridge would take APHIS over the water without toll.

This notion of appeasing other Federal agencies and kowtowing to State natural resource agencies has delayed the task of opening the “bridge” of interstate trade for aquatic livestock among the States for twenty-eight years. Congress built the “bridge” in 1980 with the National Aquaculture Act (NAA). Congress further strengthened the “bridge” in amending the NAA in 1985 and clarified the “bridge’s” purpose in the National Animal Health Protection Act of 2002 to align our country with our international trade agreements. APHIS has yet to cut the ribbon permitting interstate commerce of aquatic livestock to pass over as bonafide livestock. APHIS has not set the standard requirement(s) for moving aquatic livestock amongst the States.

Natural resource agencies at all levels regulate animals to preserve and conserve them as natural resources. Aquatic livestock are not natural resources any more than cattle are, for example. Wildlife Agencies at all levels do not have authority to regulate the interstate commerce of livestock. State natural resource agencies must defer regulation of aquatic livestock to livestock health authorities if by none other process than Federal Preemption of State Laws regarding interstate commerce. Interstate commerce of livestock is the domain of the United States Department of Agriculture because Congress designated USDA the authority in the AHPA to protect American Agriculture. This writing takes the opportunity to remind USDA what it does better than anyone else does.

Congress enacted the Animal Health Protection Act of 2002 (AHPA) because:
(7 USC Sec. 8301)

Congress finds that—

(1) the prevention, detection, control, and eradication of diseases and pests of animals are essential to protect—

(A) animal health;

(B) the health and welfare of the people of the United States;

(C) the economic interests of the livestock and related industries of the United States;

(D) the environment of the United States; and

(E) interstate commerce and foreign commerce of the United States in animals and other articles;

(2) animal diseases and pests are primarily transmitted by animals and articles regulated under this chapter;

(3) the health of animals is affected by the methods by which animals and articles are transported in interstate commerce and foreign commerce;

(4) the Secretary must continue to conduct research on animal diseases and pests that constitute a threat to the livestock of the United States; and

(5)

(A) all animals and articles regulated under this chapter are in or affect interstate commerce or foreign commerce; and

(B) regulation by the Secretary and cooperation by the Secretary with foreign countries, States or other jurisdictions, or persons are necessary—

(i) to prevent and eliminate burdens on interstate commerce and foreign commerce;

(ii) to regulate effectively interstate commerce and foreign commerce; and

(iii) to protect the agriculture, environment, economy, and health and welfare of the people of the United States.

The Secretary (of Agriculture) prevents animal disease by regulating interstate commerce (interstate movement) of animals. Cooperation by the Secretary is preferred but is not mandatory as provided in the Extraordinary Emergency section of the AHPA (Sec. 8306. Seizure, quarantine, and disposal) and previous precedents in other animal disease instances. Court decisions up through the US Supreme Court in the early 1900’s have clearly established this concept. What is interesting in reading the AHPA definitions is that most natural resource agencies while operating hatcheries and conveyances are actually rearing livestock. The AHPA requires Natural resource agency livestock be regulated by the USDA when moved among the States. When husbandry practices support animal survival, the traditionally classified wildlife species are farm-raised in terms of the definitions of the AHPA and for the purpose of the authority of the AHPA. This is not saying livestock cannot survive without husbandry practices. Indeed, it will surprise one to see how well domesticated animals (livestock) will do if not hampered from getting feed or water or shelter or mates by fabricated obstructions.

There may be little to counter the movement of VHSV or other pathogens in and among wild animals. Many options exist to prevent pathogens from moving with farm-raised animals or other transported animals.