

MINNESOTA STATUTES AND SITUATION REGARDING AQUATIC LIVESTOCK COMMERCE

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The following excerpt is quoted verbatim from the announcement for aquatic animal health inspection training offered to practicing veterinarians in MN on March 6, 2008. It is an **example** of similar efforts being undertaken by other State Authorities in the hopes the efforts will qualify animals (especially aquatic livestock) for entering into interstate commerce or trade. The following information and discussion could be useful in setting a standard for control of Viral Hemorrhagic Septicemia virus movement. However, VHSv is just one of many possible pathogen concerns of the aquatic livestock industry and the wild fisheries. American raised animals (most noticeably terrestrial livestock) can be moved throughout the world in trade without movement of pathogens due to regulations and certification that is becoming standardized under the World Trade Organization Trade Agreements and United States Code. Our aquatic livestock industry does not currently enjoy that same standard of fair trade between our States.

<http://www.cvm.umn.edu/outreach/events/fish.html>

Now this is where you (aba¹ - Veterinarians) come in...

Federal and state regulations specify who oversees the collection the fish for an inspection. These people include, fish health inspectors (American Fisheries Society certification) and state-approved veterinarians. Briefly, you would travel to the farm, be sure the appropriate fish are collected, and then bring/ship them to the VDL. Once the tests are complete, we will provide you with the results, which you pass on to the producer. The fees you charge for the farm visit will of course be up to you.

The above announcement is evaluated against the following information from existing Statutes and Regulations ranging from International to State levels.

Just as a teaser statement, “the Accredited Veterinarian Training in MN is possibly illegal by present MN Code”. See if the stated information below leaves you pondering in the same direction.

If one will explore outward from the State level of regulation thru the Federal Statutes to the International level of Commerce regulation, it becomes evident that some topics and issues are not adequately coupled amongst the levels of regulation to permit fair trade practices to exist amongst the States. To assemble the reasoning for assessing MN Statutes and Regulations as they affect interstate commerce and movement of animals between states and to other countries:

1. The Commerce Clause of the US Constitution solely reserves the regulation of interstate commerce for the Federal Government in the United States. Congress can enter into an international treaty because the control of commerce with other nations and/or between the States is reserved at the Federal level by the US Constitution². International trade agreements that the US Congress has adopted are binding to all domestic regulations within our nation. Congress has aligned federal requirements with various provisions of international trade agreements that have been entered into since the General Agreement on Tariffs and Trade (GATT) first signed in 1947. The GATT is codified in the US Code in Title 19³.

2. The 1994 Uruguay Round brought Agriculture under the GATT for the first time⁴. Hence, in 2002 the US Congress enacted the Animal Health Protection Act⁵ to align our nation's domestic animal commerce requirements with the GATT. The general principle of Fair Trade puts forth the premise that one country cannot restrict imported goods or services by higher standards and requirements than are applied or used domestically. Specifically, for livestock movements, if the United States requires a Certificate of Veterinary Inspection (CVI) as the standard to prevent pathogen movement with animals such as imported cattle or llamas or aquatic animals – then the US must be utilizing CVI's for domestic movements as well. The US wants to import only healthy animals; therefore, we must only ship healthy animals domestically within our nation's borders as in interstate commerce. The standard set for imported animals must not exceed the standard used in our domestic markets. Any other standard domestically will violate the US's treaty obligations.

States can individually have their own Statutes and Regulations for animal health relating to intrastate commerce or movement, etc., as long as the State does not conflict with Federal authority or impose unnecessary restrictions on free trade with other States. For more information on this concept the reader may wish to study the “Dormant Commerce Clause”⁶

3. The statutory, regulatory, and procedural situation in MN may create a false pretense to aquatic livestock producers within MN of having their aquatic livestock certified for interstate movement. Such a provision may not be established for all trading states. The potential refusal by other states to receive aquatic livestock from MN is based on the following summarized list:
 - a. The Federal Government regulates all animals moved in interstate commerce.
 - b. The US Congress has delegated sole authority to the US Secretary of Agriculture for certifying animals for interstate movement and to regulate interstate movement of all animals.
 - c. Since certification of animals for interstate commerce is a federal responsibility, the US Congress has delegated the Secretary of Agriculture to establish an accreditation system to allow non-government employees to certify animals for interstate movement. This permits adequate numbers of authorized agents of or on-behalf-of the federal government to certify animals for interstate commerce.
 - d. Those accredited as government agents in this capacity must be Veterinarians that meet all the conditions spelled out in 9 CFR 161 as authorized by the Animal Health Protection Act.
 - e. Congress also recognized and respects State Rights to regulate Police Powers of its Citizens. Hence, the prerequisite of State Licensure for veterinarians to be Accredited by USDA. Congress was permitting States to police those that practice veterinary medicine in order to protect the State's citizens from unqualified or incompetent or unlicensed practitioners of veterinary medicine.
 - f. Hence, there is in effect a National Standard for certification of animals moved in interstate commerce that must utilize accredited veterinarians. No other certification qualifies for interstate commerce under Federal Code and International Agreements.

Author's Note #1: The American Fisheries Society (AFS) or its Fish Health Section has not been recognized by the US Congress in any way to develop requirements or participate in interstate movement of aquatic livestock. Certification by AFS is not meaningful in the context of certifying animals for interstate movement. The effort by AFS to “certify” and name their representatives “pathologists” can be misleading to an aquatic livestock producer seeking certification of livestock for interstate movement. By some State Veterinary Practice Acts such titles could be blatantly illegal - as will be discussed below.

4. At this juncture, State Statute and Federal law couple-up when a State-licensed veterinarian is given accreditation status by the USDA thru the Area Veterinarian in Charge (AVIC) to certify animals for interstate trade. Stating again, the obvious capitulation that from both Federal and State regulatory perspectives the certification of animal health is the practice of veterinary medicine.

- a. In MN the specifics of the State’s Police Powers come to focus in the following excerpts from the State Practice Act which includes “diagnosis” in regards to disease; use of a diagnostic “technique”:

156.12 PRACTICE OF VETERINARY MEDICINE.

Subdivision 1. Practice. The practice of veterinary medicine, as used in this chapter, shall mean the diagnosis, treatment, correction, relief, or prevention of animal disease, deformity, defect, injury, or other physical or mental conditions; the performance of obstetrical procedures for animals, including determination of pregnancy and correction of sterility or infertility; and the rendering of advice or recommendations with regard to any of the above. The practice of veterinary medicine shall include but not be limited to the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique. The practice shall not be construed to include dehorning of cattle and goats or the castration of cattle, swine, goats, and sheep or the docking of sheep.

- b. One can also find MN exercising its State’s Policing Powers in regulating what its citizens can call themselves while serving the animal owning public when such title usage may falsely convey some expertise not warranted by qualifications.

Subdivision 4. Titles. It is unlawful for a person who has not received a professional degree from an accredited or approved college of veterinary medicine, or ECFVG⁷ certification, to use any of the following titles or designations: Veterinary, veterinarian, animal doctor, animal surgeon, animal dentist, animal chiropractor, animal acupuncturist, or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is qualified to practice veterinary medicine.

The term ECFVG used in the above Code means *Educational Commission for Foreign Veterinary Graduate*⁷.

Author’s Note #2: It is strongly indicative, if not prima facie evidence, of a person’s intent to engage in the practice of veterinary medicine by using such terms as “fish pathologist”. “Pathology” and the subsequent derivation of “Pathologist” are, to a reasonable person, a highly qualified specialty only attained after or simultaneous to successfully receiving a professional degree from an approved college of veterinary medicine. Pathology is one of the recognized specialties of the American Veterinary Medical Association⁷ (AVMA) through its American Board of Veterinary Specialties and the Council on Education⁷.

- c. The MN Statute on Veterinary Practice does not provide an exemption from the State’s Veterinarian Licensure requirement to State employees in conducting their official duties as far as this author can tell. Hence, there is no provision for State employees to certify publicly or privately owned animals for interstate movement.

- d. To certify interstate movement of animals the Accredited Veterinarian must conduct an inspection in order to attest the disease status of the inspected animals. The following are some of the duties Accredited Veterinarians are required in order to perform an adequate inspection before animals are certified for movement per 9 CFR 161.3:
 - i. A farm visit
 - ii. Animal examination including required examination or diagnostic techniques
 - iii. Take or supervise the collection of samples
 - iv. Maintain sample chain of custody
 - v. Laboratory report on required laboratory testing
 - vi. Completion of official certificate
 - vii. Endorsement when required by AVIC or State Vet
 - viii. Original goes with livestock; copy to vet's file; copy to receiving State Veterinarian

Author's Note #3: It would appear that the Fish Health Report or Fish Health Assessment being described in the AFS Guidelines does not fulfill the requirements in the above list for certifying animals for interstate movement. Please notice that a Fish Health Report as used by AFS is a minimal laboratory test report. Some of the Fish Health Reports are so minimal as to lack supporting documentation for a Certificate of Veterinary Inspection. There is no endorsement by the originating State AVIC or State Veterinarian. There is no chain of custody required. There are other shortcomings in the MN system too numerous to mention further in this brief **Author's Note**. *The noted exceptions result in substandard methods for certifying animals in interstate commerce.*

5. Aquatic livestock in MN are agricultural animals as per MN Statute that coincides with the Animal Health Protection Act of Congress at the federal level of requirements⁸. The MN Bureau of Animal Health (MN BOAH) is responsible for animal health through the Executive Director or State Veterinarian, www.bah.state.mn.us. However, the MN BOAH statute has delegated aquatic animal authority to the Commissioner of Natural Resources in MN Statutes Chapter 17.4981⁹, and the MN BOAH has apparently not held adequate oversight to maintain the correct standards for interstate movement of animals in accordance with the federal requirements. For further elucidation of national level thinking, please reference the AVMA policy on **Aquatic Animal Health Programs** which reads in part:

That, as aquatic animal health programs develop, they are harmonized (made consistent, but not necessarily identical) at international, national, state and local levels, in approaches to wild, domesticated and exotic species, and with existing terrestrial programs and regulations;

Regulatory discretion is noted in the same Statute at the phrase, "Private aquatic life that is legally acquired and possessed is an article of interstate commerce and may be restricted only as necessary to protect state fish and water resources"⁹. Regulatory discretion could be permitted to allow livestock movement under OIE testing protocols but has not been given by the MN DNR personnel for importing aquatic livestock. The MN DNR has indicated that MN BOAH is welcome to participate in regulation of aquatic livestock¹⁰. Without delving into the OIE protocols and authority, this author hopes that the two MN agencies could begin to alleviate the trade barriers to importing/exporting fish by recognizing the national standard for certifying interstate movement of livestock.

Author's Note #4: The announcement for training veterinarians at the opening of this document may in fact be illegal if one refers to the MN Statutes covering fish health inspections for movement of aquatic livestock. The current Statute only recognizes AFS certified fish pathologists!¹¹

Authority for fish importation is delegated to the Department of Natural Resources in Chapter 97C.211¹²:

Subdivision 2a. Acquisition of fish. (a) A private fish hatchery may not obtain fish outside of the state unless the fish or the source of the fish are approved by the commissioner. The commissioner may apply more stringent requirements to fish or a source of fish from outside the state than are applied to fish and sources of fish from within the state. The commissioner must either approve or deny the acquisition within 30 days after receiving a written request for approval.....

Author's Note #5: This MN requirement could be in direct opposition to fair interstate trade requirements unless there is surveillance or other scientific information to support the more stringent requirements.¹³

Such delegation of authority to state conservation or natural resource agencies was foreseen to cause confusion in the aquatic livestock industry by the AVMA in stating the following in its Position Statement on Veterinarians in Aquatic Animal Medicine:

“The AVMA believes that conflicting regulatory, legal, and professional interests will be created if federal and state conservation agencies are given exclusive control over aquatic animal health issues, including those of the private aquaculture industries.”

The AVMA also encourages the USDA to take the lead role and to set standards for animal health amongst the States and Agencies in the AVMA Policy on Animal Health Partnerships:

“The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) is the lead agency for farmed animal health as authorized by the Animal Health Protection Act of 2003.”

In the context of the discussion, in this document, it might be concluded that American Aquaculture has lost sight and orientation with the trade standard of animal certification that enables fair trade of aquatic animals between States and Nations of the World as defined in GATT and supporting documents.

The US Congress enacted the National Aquaculture Act in 1980¹⁴ stating its findings to include:

*(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many scientific, economic, legal, and production factors, such as inadequate credit, **diffused legal jurisdiction**, the lack of management information, **the lack of supportive Government policies**, and lack of reliable supplies of seed stock.*

The US Congress boldly stated the Policy set forth by the National Aquaculture Act:

It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

It is in the spirit of the US Congress, that we must immediately correct and anneal our efforts to efficiently move aquatic livestock through interstate commerce by a single standard that is recognized by both national and international authorities – certification by accredited veterinarians.

Finally, it would seem a reasonable option to this author that while we can set about examining each State or even our own State's aquatic livestock certification requirements, it would be most helpful for anyone interested in this topic to put effort into creating a model Aquatic Livestock Commerce Act. Such a model act would help tremendously in making laws, regulations, and life consistent for aquatic livestock producers and regulators alike while fully coupling with the federal requirements and international standards.

In the mean time, wherever there is regulatory discretion, will the regulators please permit that discretion to be fully utilized to remove or minimize trade barriers.

Footnotes:

¹ added by author (aba).

² <http://caselaw.lp.findlaw.com/data/constitution/article01/28.html>

³ http://www.law.cornell.edu/uscode/19/usc_sec_19_00003501----000-.html

⁴ http://en.wikipedia.org/wiki/Uruguay_round

⁵ http://www.law.cornell.edu/uscode/7/usc_sup_01_7_10_109.html

⁶ http://en.wikipedia.org/wiki/Dormant_Commerce_Clause

⁷ See the following URL's for more info:

- American Veterinary Medical Association – <http://www.avma.org>
- American Board of Veterinary Specialties - http://www.avma.org/about_avma/governance/entity_descriptions/abvs_descrip.asp
- AVMA Council on Education – http://www.avma.org/about_avma/governance/entity_descriptions/coe_descrip.asp
- American College of Veterinary Pathologists - <http://www.acvp.org/>
- AVMA's Educational Commission for Foreign Veterinary Graduate http://www.avma.org/about_avma/governance/entity_descriptions/ecfvg_descrip.asp

⁸ The term "livestock" means all farm-raised animals." http://www.law.cornell.edu/uscode/7/usc_sec_07_00008302----000-.html

⁹ <https://www.revisor.leg.state.mn.us/statutes/?id=17.4981>

¹⁰ Personal communications with the MN DNR

¹¹ <https://www.revisor.leg.state.mn.us/statutes/?id=17.4982>

¹² <https://www.revisor.leg.state.mn.us/statutes/?id=97C.211>

¹³ <http://www.olemiss.edu/orgs/SGLC/National/Gunderson.pdf>

¹⁴ <http://www.csrees.usda.gov/about/offices/legis/pdfs/naa80.pdf>

The above content is created in the interest of exploring common market principles for aquatic livestock commerce. This document was composed to the best of the author's ability in regards to access of available documents. The AFS does not make its entire inspection documentation, reasoning, and philosophy available except to current members. If there is any substance that is considered false or outdated, please feel free to contact Dr. Starling at 515-268-3120 for correction or updating.

This information should not be taken or perceived or construed as legal advice or legal opinion as the author has no formal law degree or credentialing in legal expertise.

Furthermore, it is this author's impression of current state statutes and regulations on the topic of Aquatic Livestock Commerce in other States that this same or comparable type of analysis could be written for many States in the United States.

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Additional credit to Mr. Bob Baldwin
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