

# Legislative Analysis

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## AQUACULTURE IN MICHIGAN

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5166 as introduced**  
**Sponsor: Rep. Edward McBroom**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bills 5167 and 5168 as introduced**  
**Sponsor: Rep. Triston Cole**

**Committee: Agriculture**  
**Complete to 2-3-16**

### SUMMARY:

Taken together, these bills would expand the types of aquaculture that may be conducted in this state. Up to 10 permits for water-based aquaculture facilities would be allowed under the bills.

House Bill 5166 would adding a new Section 7a and amending several existing sections of the Michigan Aquaculture Development Act (MADA); House Bill 5167 would add sections to, and amend and repeal existing sections of the Natural Resources and Environmental Protection Act (NREPA); and House Bill 5168 would amend Section 3 of the Animal Industry Act (AIA). Each of the bills would take effect 90 days after the enactment date. The bills are also tie-barred to each other, meaning that unless all are enacted into law, none can take effect. A more detailed summary of each bill follows.

### **House Bill 5166**

#### Definitions

The bill would amend or add the following key terms [Note: new language is underlined]:

"Aquaculture" presently means "the commercial husbandry of aquaculture species on the approved list of aquaculture species, including, but not limited to, the culturing, producing, growing, using, propagating, harvesting, transporting, importing, exporting, or marketing of aquacultural products under an appropriate permit or registration."

The bill would amend its definition to the "propagation and rearing of aquaculture species in controlled or selected environments. Aquaculture includes, but is not limited to, the culturing, producing, growing, using, propagating, harvesting, transporting, importing, exporting, or marketing of aquacultural products under an appropriate permit or registration."

"Aquaculture facility" presently means "a farm or farm operation engaged in any aspect of aquaculture in privately controlled waters capable of holding all life stages of aquaculture species with a barrier or enclosure to prevent their escape into waters of the state."

The term would be amended to mean "a farm or farm operation engaged in any aspect of aquaculture. Aquaculture facility includes both of the following:

- A land-based aquaculture facility.
- A water-based aquaculture facility.

"Aquaculture facility registration" presently means "a registration issued by the director allowing a facility to engage in aquaculture."

The term would be amended to also include "registration," and the definition for either version of the term would mean "a registration issued by the director authorizing the operation of an aquaculture facility."

"Aquaculture research permit" presently means "a permit issued by the director to researchers to study and culture aquaculture species not included on the approved list of aquaculture species for the evaluation of aquacultural potential and to provide a scientific basis for including the aquaculture species on the approved list."

The term would be amended to also include "permit" unless context implies otherwise, the definition for which would be changed to "a permit issued by the director authorizing the operation of a confinement research facility to study and culture aquaculture species not included on the approved list of aquaculture species for the evaluation of aquacultural potential and to provide a scientific basis for including the aquaculture species on the approved list."

"Confinement research facility" is presently defined in MADA as "a facility holding an aquaculture research permit, enclosed in a secure structure, and separated from other aquaculture facilities and in which aquaculture species are isolated and maintained in complete and continuous confinement to prevent their escape into the environment and to prevent the release of any possible pathogens into the environment." The bill would not amend this definition.

"Aquaculture species" presently means "aquatic animal organisms including, but not limited to, fish, crustaceans, mollusks, reptiles, or amphibians reared or cultured under controlled conditions in an aquaculture facility."

The term would be amended to mean "aquatic animal organisms, including, but not limited to, fish, crustaceans, mollusks, reptiles, or amphibians, that are reared or cultured under controlled conditions in an aquaculture facility and that are on the list of approved species as provided for in Section 5.

Presently, the term "director" means the director of the Department of Agriculture and Rural Development (MDARD) or a designee. The bill would amend "director" adding "from the department's Office of Aquaculture Development established under Section 3" to the end of the current definition.

The bill would add the new term "land-based aquaculture facility," and it would mean "a facility containing privately controlled waters capable of holding any life stages of aquaculture species."

The existing term "privately controlled waters" would be changed to mean "waters controlled within ponds, vats, raceways, tanks, and any other indoor or outdoor structure wholly within or on land owned or leased by an aquaculturist and used with by an aquaculture facility or a confinement research facility. Privately controlled waters includes those waters diverted for use in an aquaculture facility or a confinement research facility by an aquaculturist exercising his or her riparian rights."

The term "water-based aquaculture facility" would be added by the bill. It would mean "floating or submersible enclosures, including peripheral docks and mooring anchorage points used for aquaculture, within waters of the state and privately controlled waters capable of holding any life stages of aquaculture species."

### Section 3: Administration of MADA

HB 5166 would amend this section by, adding language directing MDARD to establish an Office of Aquaculture Development that includes a program manager. The program manager would be required to collaborate with the aquaculture industry and appropriate state agencies on growth opportunities and regulatory issues related to aquaculture.

The office of Aquaculture Development would be required to do all of the following:

- Oversee the registration and permit procedures for aquaculture facilities and confinement research facilities.
- If a pre-application meeting is requested by a person proposing to file an application for a registration or permit, meet with the person to review a proposed aquaculture facility or confinement research facility or the proposed application in its entirety.
- Develop a joint application for a registration or permit under Section 6 of MADA as well as all other relevant state permits that could apply to an aquaculture facility or confinement research facility, including, but not limited to, any permit required under Part 31, 301, 303, 305, 325, or 327 of NREPA.

Upon receipt of an application for registration or a permit under this act, if MDARD believes that the applicant may need additional permits or authorizations to operate the facility, the department would have to coordinate the application process for the applicant with the other relevant state agencies.

### Section 4: Statement of rights relating to aquaculture

This section presently states that aquaculture shall be treated in a manner comparable to other forms of agriculture and states the scope of rights relating to aquaculture. HB 5166 would amend this section by removing language stating that "it is intended that the Department of Natural Resources shall consider a registration issued under this act as the equivalent of a game fish breeders license issued under Part 459 of NREPA."

The bill also would add a provision stating that one year after the effective date, the Commission of Agriculture and Rural Development would be required to establish generally accepted agricultural and management practices (GAAMPs) related to siting of aquacultural facilities under the Michigan Right to Farm Act (PA 93 of 1981).

#### Section 5: Approved species

This section contains criteria for what aquaculture species can be approved for an aquaculture operation as well as houses a list of species presently approved. The bill would amend this section by adding Barramundi (Lates Calcarifer) to the list of approved freshwater species.

Section 5 presently contains, and the bill would retain, a provision stating that if possession of an aquaculture species is prohibited under NREPA, it is also prohibited for aquaculture or aquaculture research under MADA.

#### Section 6: Scope of act, exempt entities

Presently, this section states, in part, that a person shall not engage in aquaculture without obtaining a registration from MDARD as an aquaculture facility, obtaining an aquaculture research permit, or being otherwise exempt by rule or law. If the activity in which the aquaculture facility is engaged is required to be regulated under any act, registration under this act does not exempt the person or aquaculture facility from requirements imposed under any local, state, or federal regulation.

The bill would amend this provision by requiring a permit to operate an aquaculture facility or confinement research facility. Except as specifically provided in MADA, a registration or a permit does not exempt a person, aquaculture facility, or confinement research facility from any local, state, or federal law, including, but not limited to, the AIA.

The following are presently exempt from registration as an aquaculture facility:

- Retail bait outlets.
- Retail ornamental fish facilities.
- Persons using privately controlled waters for noncommercial purposes.
- Public aquariums or zoos.
- Portable retail fishing concessions.

A records keeping requirement that currently applies to a person "registered or permitted under this act" would be changed by the bill to apply to "the operator of an aquaculture facility or a confinement research facility."

#### Section 7: Registration and permit process and fees

The bill would amend the registration and permit process by creating standards for aquaculture facilities and confinement research facilities constructed before the effective date of HB 5166, as well as those that would be constructed after that date. The bill also would repeal a current requirement that a completed initial application for a registration be submitted at least 60 days before the proposed operation of the aquaculture facility.

For aquaculture facilities constructed before the effective date of HB 5166, a permit shall not be issued unless the facility has been inspected by the director, and the director has determined that the facility meets the standards and requirements prescribed by this act. This requirement currently applies to an aquaculture facility which has applied for initial registration.

For an aquaculture facility constructed on or after the effective date, the director has determined the following:

- Based on plans for the facility submitted with the application, the facility will meet the standards and requirements by this act.
- If the facility is a water-based aquaculture facility, the facility meets all of the following:
  - The location of the water-based aquaculture facility will not prevent reasonable navigation or recreational use of the water body.
  - The location of the water-based aquaculture facility will be restricted to a relatively low-use area of the water body and is located outside of harbors and channels.
  - The water-based aquaculture facility is otherwise in compliance with law.
  - For an aquaculture facility, the applicant demonstrates that aquaculture species to be contained in the aquaculture facility are on the list of approved aquaculture species.

The bill would remove current requirements:

- That the facility being inspected have "barriers in place to prevent the escape of aquaculture species into the public waters."
- The owner or his or her agent has received from the director a current copy of the "Great Lakes fish disease control policy and model program", published by the Great Lakes fishery commission.
- If the director determines that the facility to be utilized under a registration or permit conforms to standards prescribed by this act, verifies that unlisted aquaculture species are not in the facility, and reviews and approves research protocols in the case of a proposed aquaculture research permit, the director shall issue a registration or permit within 60 days of receipt of a registration or permit application.

The owner or operator of an aquaculture facility constructed after the effective date of the bill would be required to notify the MDARD upon completion of that facility. Within 30 days after the department receives this notification, the director must inspect the facility to determine whether the facility is in compliance with this act.

To obtain an aquaculture facility registration or an aquaculture research permit required under Section 6, a person is required to submit to MDARD an application developed under Section 3. The department would then be required to grant or deny an application for a registration within 60 business days and within 90 business days for a permit. The running of the 60- or 90-business-day period is tolled from the date the department so notifies the applicant until the applicant completes the application or answers the department's

questions, as applicable. Within 15 business days after the application is submitted, MDARD must notify the applicant if the application is incomplete or if the department has any questions about the application.

Presently, an application for registration or for a permit may be denied for a failure to comply with the requirements of this act. The bill would modify this so an application can only be denied for this reason, except that until five years after the effective date of the bill, MDARD would be prohibited from approving registrations for more than 10 water-based aquaculture facilities in the Great Lakes. A permit would be valid for 5 years.

Also modified in this section is a current provision requiring MDARD to notify an applicant within 60 days of receipt of an application of the reasons for denial. The bill would replace the 60 day limit with "promptly notify."

HB 5166 also would add language stating that requirements for an aquaculture facility registration or an aquaculture research permit must be modeled after GAAMPs developed by the Commission of Agriculture and Rural Development.

The fees for an initial or renewal application would remain unchanged: \$100 for an initial registration and \$75 for a registration renewal, and \$250 for an initial permit and \$100 for permit renewal. Additionally, the owner or operator of an aquaculture facility or confinement research facility would be required to pay MDARD an annual fee of \$75, except in a year where the application or renewal fee is paid. This annual fee may be prepaid for a 4-year period at the time when the registration or permit application is filed.

#### Section 7a: Single Permit authorization

HB 5166 would add Section 7a to MADA. This section would require that a registration or permit as detailed in Section 7 be combined, as a single authorization, with all other relevant state permits that apply to the aquaculture facility or research confinement research facility. This would include, but not be limited to, any permit required under Parts 31, 301, 303, 305, 325, or 327 of NREPA. Those other relevant permits would be subject to the following requirements [the ones modified by the bill are detailed under Section 7]:

- Director inspection of facility.
- Rejection of permit only on basis of failure to comply with requirements of MADA.
- Containing certain information regarding the facility and its owner or operator.
- The fee schedule detailed above.

#### **House Bill 5167**

HB 5167 adds, amends, and repeals sections of NREPA. Changes that impact the meaning of the act are detailed below:

#### Section 3101: Definitions

The term "livestock" would be added to NREPA, and would mirror the definition of the term as it is found in the AIA, where it is means "those species of animals used for human food and fiber or those species of animals used for service to humans. Livestock includes, but is not limited to, cattle, sheep, new world camelids, goats, bison, privately owned

cervids, ratites, swine, equine, poultry, aquaculture, and rabbits. Livestock does not include dogs and cats."

Section 3113B: Exemption from certain permits

The bill would add this section, which states that an aquaculture facility registered under MADA would be exempt from obtaining a permit under Part 31 (water resources protection) of NREPA unless it is a concentrated animal aquatic animal production facility as defined in federal law. For land-based aquaculture facilities subject to a permit under Part 31, MDARD would be required to develop a general permit to cover its operations.

Notwithstanding any other provisions of Part 31 or Part 13 (which covers the process for permits in NREPA), a permit issued under Part 31 for an aquaculture facility or confinement research facility is subject to Section 7a of MADA.

Section 30103: Permit exemptions

This section contains activities that are exempt from the requirement to obtain a permit under Part 301 (inland lakes and streams). The bill would add "removal of material within privately controlled waters that is carried by a river or stream into an aquaculture facility or a confinement research facility" to this list.

Section 30104: Fee schedule for certain activities under Part 301

This section contains a fee schedule that is in effect until October 1, 2019, based on administrative cost unless it also requires permits under other specified sections of law.

The bill would add a provision to this section stating that notwithstanding any other provisions of Part 301 or Part 13, a permit issued under Part 301 for an aquaculture facility or confinement research facility is subject to Section 7a of MADA.

Section 30306: Required information

This section sets the types of information required on an application submitted to the Department of Environmental Quality (DEQ). HB 5166 would add language stating that notwithstanding any other provisions of Part 301 or Part 13, a permit issued under Part 303 (wetland protection) for an aquaculture facility or confinement research facility is subject to Section 7a of MADA.

Section 32515B: Authorization of bottomlands

The bill would add this new section to NREPA which requires the DEQ to authorize the use of bottomlands for placement of a water-based aquaculture facility if that facility complies with Part 325 (Great Lakes submerged lands) and MADA.

Notwithstanding any other provisions of Part 325 or Part 13, a permit issued under Part 325 for an aquaculture facility or confinement research facility is subject to Section 7a of MADA.

Section 48735: Permit to take fish for fish culture or scientific investigation

This section requires a permit from the DNR to take fish from the inland waters of Michigan in any manner for the purpose of fish culture or scientific investigation, except that a person who is operating a private fish pond may take fish from his or her own pond for the purpose of propagation, scientific investigation, or sale under Part 459, or otherwise specified. (Part 459 would also be repealed by the bill.)

The bill would exempt a registered aquaculture facility or permitted confinement research facility from this permit.

Enacting Section 1

Enacting Section 1, Part 459 (propagation of game fish in private waters) of NREPA will be repealed.

**House Bill 5168**

HB 5168 would amend Section 3 of the AIA. This section contains definitions.

The term "aquaculture" would be amended so that the definition for the AIA mirrors its meaning for MADA.

The bill also would make other technical changes that do would not significantly impact the section's present meaning.

**FISCAL IMPACT:**

A fiscal review is in process.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.