



Aquaculture and the Lacey Act

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Aquaculture includes the cultivation of aquatic species for human consumption as well as for recreational or ornamental purposes. The practice has a long history, tracing back through ancient Chinese records indicating that carp was raised more than 4,000 years ago and hieroglyphics in the tombs of the Pharaohs describing tilapia farming in ancient Egypt. However, aquaculture in the U.S. has a much more limited history, beginning in the mid 1800s when federal and state hatcheries were built to raise various sportfish species for stocking public and private waters. Attempts to commercialize aquaculture for food purposes did not begin until the 1950s, with channel catfish farming in the Mississippi Delta region. From those small beginnings it has become an extensive industry, bringing in \$1.4 billion a year nationwide, with \$12.5 million of that revenue in the state of Minnesota, according to the 2007 Census of Agriculture.

management, marketing or processing. Due mainly to environmental concerns, requirements for each type of operation are varied, with states administering permits based on its own specific rules. As a result, regulations can vary considerably between geographic locations. At the federal level, agencies responsible for different areas of regulation include the FDA, USDA, EPA, and FWS (Fish and Wildlife Service).

One major statute with the potential to severely affect aquaculture is the Lacey Act, 18 U.S.C. §§ 41-48, a federal statute passed in 1900 to protect wildlife. It was originally intended to combat hunting to supply commercial markets, the interstate shipment of unlawfully killed game, the killing of birds for the feather trade and the introduction of

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Contact Minnesota CLE to register. More information is available at www.minncle.org/index.aspx

The Agricultural and Rural Law Section Annual Meeting will be held on April 7 at 8:30 A.M. at the Verizon Wireless Center in Mankato.



The practice of aquaculture is regulated at several levels of government, with state and local authorities generally regulating activities and issuing permits dealing with zoning, building, water use, waste discharge, and species certification related to wildlife

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harmful invasive species. The Lacey Act applies to all “wild” animals, specifically including fish and amphibians, even when those animals have been “bred, hatched, or born in captivity.” It is unlawful to “import, export, transport, sell, receive, acquire or purchase” any fish or wildlife “taken, possessed, transported, or sold” in violation of laws or regulations (state, federal or foreign) that are fish or wildlife related. In 2008, plants were added to the scope of the Act.

Penalties for violating the Lacey Act are severe. If an individual “knew” or “was generally aware of” the illegal nature of the wildlife and the value of the wildlife was over \$350, he may be prosecuted and convicted under the Act’s felony provisions. If that happens, the penalty is up to 5 years in prison and/or a \$250,000 fine (\$500,000 in the case of an “organization,” including a business). Misdemeanor prosecution may occur in two situations. The first is if the defendant takes/possesses/transport/sells the prohibited wildlife “without exercising due care,” or negligently. The second is if the defendant knew about the illegal nature but the value of the wildlife was less than \$350. It’s important to note, however, that prosecutors may aggregate violations for charging purposes, potentially causing the offense to elevate from misdemeanor to felony status. Misdemeanor penalties are up to a year in prison and/or a \$100,000 fine (\$200,000 for organizations). Further, false labeling of wildlife transported in interstate commerce is also criminalized, regardless of intent. If the products have a market value of less than

\$350, false labeling is a 1 year/\$100,000 misdemeanor, but if the value is greater than \$350, the offender may be charged with another 5 year/\$250,000 felony.

Federal enforcement of the Lacey Act is triggered when a state law regarding fish or wildlife is violated. This is important, especially considering the disparity between the state and Lacey Act penalties. For example, in Minnesota it is illegal to transport “prohibited invasive species” on a public road, and violation subjects the offender to a \$250 civil penalty or a misdemeanor (up to 90 days and/or \$1,000). Each state has its own prohibited invasive species list, typically established by the state Department of Natural Resources (DNR), and the creatures on the list can vary widely from one state to the next.

How does this affect aquaculture? Imagine that a single fish (or even fish egg) - legal to possess in Wisconsin - is inadvertently loaded with a 2,000-pound truckload of other fish that had been sold to an aquaculture producer in Minnesota. This single fish is on the Minnesota prohibited list. Once the truck crosses the state line, it is stopped by the DNR, searched, and the prohibited fish is found. Both the seller and the buyer may be prosecuted under the Lacey Act, and what would have been a maximum penalty of 90 days and/or \$1,000 from the state of Minnesota has now turned into a potential year in federal prison and up to a \$100,000 fine. Moreover, the seller may also be charged with false labeling (for failing to include the prohibited fish in the list of the shipment’s contents), adding up to another 5 years and/or

\$250,000 to the sentence.

The risks associated with the Lacey Act can, of course, be minimized by only shipping products in-state. However, this is not a reasonable or feasible option for many producers. For those producers involved in interstate shipment of aquacultural products, the only advice that may be helpful is to check, double-check and document every step taken to ensure that prohibited species are not transported, because their freedom and livelihood might depend on convincing a judge or jury that they exercised due care in trying to prevent it.

For more information on the legal aspects involved in aquaculture operations, please visit the National Agricultural Law Center’s “Aquaculture” reading room, located at <http://www.nationalaglawcenter.org/readingrooms/aquaculture/>.

Elizabeth Springsteen is a staff attorney at the National Agricultural Law Center in Fayetteville, AR. At the Center, her primary research focus is on legal issues in animal agriculture, and she frequently lectures on those issues to audiences nationwide. Her article “A Proposal to Regulate Farm Animal Confinement in the United States and an Overview of Current and Proposed Laws on the Subject” recently appeared in the of the Drake Journal of Agricultural Law (14 Drake J. Agric. L. 437 (Fall, 2009)). She is licensed to practice law in Michigan and Ohio after earning her B.A. from Michigan State University, her J.D., cum laude, from the University of Toledo, and her L.L.M. in Agricultural Law from the University of Arkansas. She may be reached at esprings@uark.edu or (479) 387-2331.

National Agricultural Law Center Resources

Rusty Rumley, J.D., LL.M., *National Agricultural Law Center*

The National Agricultural Law Center, since its creation through federal appropriations in 1987, has been the nation's leading source of agricultural and food law research and information. It serves the nation's vast agricultural community, which includes attorneys, farmers, academics, consumers, extension personnel, and policy-makers, among others. It is the only such facility that is independent and non-partisan, national in scope, and directly connected to the national agricultural information network. It is also home to the Agricultural Law Community of Practice, the internet-based division of the Cooperative Extension Program. The Center's main format to disseminate this information is through its website, at <http://www.nationalaglawcenter.org>.

One of the most important services provided by the National Agricultural Law Center is the construction and maintenance of its 45 "Reading Rooms." Each reading room is essentially a list of electronic resources that assist readers in beginning research on a particular area of agricultural law. Each room contains a general overview on the room's topic as well as a listing of and links to the major statutes affecting the subject area, applicable regulations, and a comprehensive case law index on recent decisions on the topic, which includes summaries for many of the cases within the Index. Other subject-specific resources found in each room include Congressional Research Service reports and other reference resources including government sources, international resources, law reviews, and other publications as well as relevant research publications written by

the National Agricultural Law Center attorneys.

Other than the reading rooms, the Center also has many other tools for individuals interested in researching agricultural law. They are very wide-ranging, and include updates to the Federal Register Digest and decisions on cases heard by the Agricultural Judicial Officers from 2002 to the present. Further, the Farm Bills section contains a complete collection of digitized farm bills from the original in 1933 to the current 2008 law. Also included in this section are the legislative history, research articles, and links to outside sources concerning the farm bills, making it one of the most complete reference collections for U.S. Farm Bills in the world. Yet another unique aspect of the Center is the maintenance of an extensive list of Congressional Research Service reports on a variety of agricultural law topics. These reports are non-partisan objective analyses resulting from a question posed by a member of Congress. They range in length from 5 to around 60 pages in length, and are divided according to topic.

Other important information available on the Center site includes a glossary and agricultural law bibliography. Agricultural and food law contains many words and acronyms not commonly understood by the layperson - or many attorneys for that matter. Chuck Culver, Director for Development for the Division of Agriculture at the University of Arkansas, has compiled, and continues to update, the Glossary of Agricultural Production, Programs, and Policy, which is an extensive list of definitions and

terms commonly used in the food and agriculture industry. The Agricultural Law Bibliography was created by Professor Drew Kershen, Earl Sneed Centennial Professor of Law, at the University of Oklahoma College of Law. It is a comprehensive bibliography, updated quarterly, on published research in agricultural and food law, and includes journals and law reviews as well as legal periodicals that publish articles, comments, notes, and developments.

Center staff continuously updates the information on the website. However, if questions still persist, please feel free to contact the Center to see if further information is available. Inquires may be submitted to NatAgLaw@uark.edu.

Rusty Rumley is a staff attorney at the National Agricultural Law Center located in Fayetteville, AR. His primary areas of interest are forestry, estate planning, taxation, business organizations, landowner liability, and alternative dispute resolution, and he is a frequent lecturer on agricultural law topics to various groups. He is licensed to practice law in the state of Oklahoma after earning his B.S. in Agribusiness from Oklahoma State University, his J.D. from the University of Oklahoma, and his L.L.M. in Agricultural Law from the University of Arkansas. While at the University of Oklahoma, Rusty served on the Indian Law Review. He can be contacted at rrumley@uark.edu or (479) 575-2636.

Notes from the Chair

Gary L. Hansen, *Risk Management Officer, AgriBank, FCB*

Nearly two years have passed since I was honored to be elected to chair the Agricultural and Rural Law Section. In this, my final opportunity to share Notes from the Chair, it is a pleasure to reflect on another successful year of Section programs and activities.

We were pleased to co-sponsor with the Animal Law Section a complimentary one-hour CLE program in conjunction with our December Section Council Meeting. Elizabeth Springsteen, staff attorney, The National Agricultural Law Center, University of Arkansas School of Law, provided an informative overview of farm animal confinement laws in the US. Her presentation generated enlightened discussion regarding balancing humane treatment of farm animals with the need for reasonable animal husbandry practices in agricultural production.

We also coordinated with the Environmental, Natural Resources and Energy Law Section in sponsoring a one-hour CLE program following our March Section Council Meeting. Sue Steinwall, Fredrickson & Byron, Minneapolis; Andrea Moffatt, WSB Engineering, Minneapolis; and Joe Thompson, Stoel Rives, Minneapolis, one of our Section Council officers, addressed development of renewable energy projects on agricultural land. Their discussion provided valuable insights on strategies and obstacles associated with financing, acquisition of land

rights, and permitting processes.

We look forward to our premier educational event on April 7 in Mankato, the 19th Annual Agricultural and Rural Law Institute, in coordination with Minnesota CLE. This is the second consecutive year that we have tried to make attendance at this event more convenient for our members in greater Minnesota by scheduling it outside of the Twin Cities. We have planned a high-quality program filled with relevant and timely topics of interest. Please refer to information about the Institute elsewhere in this newsletter. Prior to the Institute, the Section will conduct its annual meeting, at which Council members and officers will be elected. We hope to see you there!

One of the gratifying aspects of our organization is the members' willingness to share our resources in support of worthwhile causes. This year, we supported the MSBA's public education programming through a modest financial contribution to the Mock Trial and Civic Education Programs. In addition, we contributed to the MSBA/ Minnesota Association of Black Lawyers Haiti Earthquake Relief Fund to support ongoing humanitarian relief efforts for earthquake victims. Thank you for providing this much-needed assistance.

As always, I encourage members to stay current on Section activities by visiting our Web

page at <http://www.mnbar.org/sections/agricultural-law/index.asp> and reviewing Council meeting minutes that are posted at <http://www.mnbar.org/sections/agricultural-law/minutes.asp>.

Finally, thank you to Andrea Gievers for her continued diligence and patience in producing and editing this newsletter. We encourage contributions of articles and ideas for newsletter topics, as well as suggestions for ways in which the Section may be of even greater service and value to our members.

Gary Hansen is Risk Management Officer at AgriBank, FCB where he is responsible for statutory and regulatory interpretation and formulation of lending policies, standards, and risk management strategies, including environmental risk management. He chairs the Minnesota State Bar Association's Agricultural and Rural Law Section, and is a past chair of the Environmental, Natural Resources and Energy Law Section. Mr. Hansen can be reached for questions or comments at (651) 282-8406.

The 2010 Annual Agricultural Law Symposium will be held in Omaha, NE at the downtown Hilton Hotel on October 8 & 9, 2010.

More information is available at www.aglaw-assn.org/aalaEvents.htm

AGRICULTURAL AND RURAL LAW SECTION FINANCIAL REPORT

Financial Activity Report for the Seven Months Ending January 31, 2010

Jill Krueger, Section Treasurer
Farmers' Legal Action Group, Inc., St. Paul, MN

	Month	YTD
	<u>Actual</u>	<u>Actual</u>
Beginning Balance 7-1-2009		\$6,312.59
REVENUES:		
Membership Dues	<u>15.00</u>	<u>1,738.00</u>
Total Revenue	\$15.00	\$1,738.00
EXPENSES:		
MSBA Internal Section Invoices	5.52	48.46
Catering	83.05	177.47
Reimbursements	48.77	101.89
In-House Charges		9.96
Administrative Fees		642.00
Miscellaneous/Other	<u>507.20</u>	<u>707.20</u>
Total Expenses	\$644.54	\$1686.98
Ending Balance	<u>(\$629.54)</u>	<u>\$6,363.61</u>
Ending Balance Including Investments	(\$629.54)	\$6,363.61

NEWSLETTER CONTACT INFORMATION

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