



**House
Legislative
Analysis
Section**

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**CREATE AQUATIC SPECIES
PROTECTION ACT**

**House Bill 4150 (Substitute H-1)
House Bill 4151 as introduced**

**Sponsor: Rep. Sue Tabor
Committee: Conservation and Outdoor
Recreation**

Complete to 5-16-01

**A SUMMARY OF HOUSE BILL 4150 (SUBSTITUTE H-1) AND HOUSE BILL 4151 AS
INTRODUCED 2-7-01**

House Bill 4150 would add a new part, Part 481, to the Natural Resources and Environmental Protection Act (MCL 324.48101 et al.) to create the Aquatic Species Conservation Act. The bill would specify that the Department of Natural Resources (DNR) would regulate the taking and possession of aquatic species, which would be defined under the bill to mean any fish, reptile, amphibian, mollusk, aquatic insect, or crustacean. All aquatic species found in the state, whether native or introduced, resident or migratory, would be held in trust as the property of the people of the state. Notwithstanding this provision, aquatic species that were lawfully taken, produced, purchased, or acquired from within the state or lawfully imported into the state would be the property of the person lawfully possessing them. The bill would also specify that nothing in its provisions would prevent a state department or other agency from performing its duties under a state or federal statute, or its duties as public trustee under the common law. House Bill 4151 is tie-barred to House Bill 4150. House Bill 4150 is tie-barred to House Bill 4737, which would amend the Aquaculture Development Act to specify that the Department of Agriculture (DOA) would have to consult with the Department of Natural Resources (DNR) on the DOA's procedures and policies pertaining to aquatic species.

The following is a brief summary of the bill's provisions:

Aquaculture Species. The bill would specify that aquaculture species would not be the property of the people of the state, and would not be subject to its provisions. Instead, the bill would specify that aquaculture species would be taken, imported, exported, transported, bought, sold, possessed, reared, cultured, and disposed of in compliance with the provisions of the Animal Industry Act (MCL 287.701 et al.) and the Aquaculture Development Act (MCL 286.871 et al.).

The bill would also specify that the powers of the Natural Resources Commission (NRC) and the Department of Natural Resources (DNR) would not extend to aquaculture facilities. Further, an aquaculture facility could not take aquatic species from any state waters. Nor could it import aquatic species, except as authorized under the Animal Industry Act and the Aquaculture Development Act.

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Lawful Acts. A recreational angler could take and possess aquatic species in compliance with the bill and with other state law from any waters that were under the state's jurisdiction. However, the taking and possession for the purposes of sale would be a privilege that could only be exercised in compliance with the bill and other state law.

Prohibited Acts. The bill would prohibit obstructing or interfering with another person's lawful taking of aquatic species. This would include the following:

****Driving or disturbing aquatic species;**

****Blocking, impeding, or harassing another person;**

****Using natural, artificial, or physical stimulus to affect an aquatic species' behavior;**

****Erecting barriers with the intent to deny ingress or egress to areas where a lawful taking might occur. (However, this would not apply to a person who lawfully erected barriers to prevent trespassing, nor to the owner or operator of a facility licensed by the federal Energy Regulatory Commission or a successor agency who had erected barriers to protect the public from a facility's safety risks);**

****Interjecting oneself into the act of lawfully taking an aquatic species;**

****Affecting the condition or placement of private or public property intended for use in the lawful taking of an aquatic species in order to impair the usefulness or prevent the use of the property;**

****Entering or remaining upon private land without the permission of the owner, or his or her agent, with intent to violate this provision; and**

****Removing aquatic species from, or tampering with, or damaging any equipment, device, or other property, including, but not limited to, a net or fixture, placed in any waters over which the state has jurisdiction for the purpose of taking aquatic species (This provision would not apply to the owner of the equipment, device, or other property, his or her agent, or the department).**

The above prohibitions would not apply to a peace officer performing his or her lawful duties, nor to activities required by the federal Energy Regulatory Commission or a successor agency.

Prohibited conduct could be enjoined by a court, upon petition of an aggrieved person, or a person who reasonably might be aggrieved by a violation, upon a showing that a person threatened to continue to engage in illegal conduct.

Natural Resources Commission (NRC). The NRC and the DNR would be required to manage and protect the state's aquatic species -- other than aquaculture species -- from depletion,

extirpation, and disease, and prevent the introduction and proliferation of nonindigenous species. The commission could issue orders for this purpose to do any of the following:

- Establish open seasons for the taking or possessing of aquatic species.
- Establish limits on the quantity of aquatic species that a person could take or possess in a period of time.
- Establish limits on the size of aquatic species that could be taken.
- Establish lawful methods and lawful devices for the taking of aquatic species.
- Establish geographic areas within the state where certain regulations could apply to the taking of aquatic species.

Orders issued by the NRC would be subject to final orders issued by the director of the DNR to take the place of acts and parts of the bill that would be repealed under the bill, and to orders issued by the director of the DNR to do the following:

- Exercise the authority of the commission in any area of the state that was subject to a consent decree between the DNR and a federally recognized Indian tribe, the United States, another nation, or a province, or subject to a reciprocal agreement, authorized by statute, between Michigan and another state, another nation, or a province, if the consent decree or reciprocal agreement pertained in whole or in part to managing and protecting the state's aquatic species.
- Close waters over which the state had jurisdiction to the taking of aquatic species.
- Prohibit the operation of vessels, or other actions that might cause molestation of spawning or migrating of fish.
- Establish conditions for the possession of aquatic species, including, but not limited to, possession in ponds, pools, and aquaria and transportation of aquatic species into or within the state.
- Establish conditions under which an aquatic species could be disposed of.
- Regulate the buying and selling of aquatic species, and establish which species could be bought or sold.
- Establish conditions under which an aquatic species could be possessed, transported, bought, or sold by a taxidermist who has obtained a permit to take game.
- Establish conditions under which an aquatic species in a person's possession could be inspected by, or made available for inspection by, the DNR.
- Establish conditions for the release of aquatic species.
- Except to the extent of the NRC's authority to issue orders, establish any other regulations determined by the director to be necessary to manage or protect aquatic species.

Section 3 of the Michigan Aquaculture Development Act specifies that the provisions of that act are to be administered by the Department of Agriculture (DOA). House Bill 4150 would specify that the DNR would consult with the DOA as provided under the Aquaculture Development Act.

Permits. The director could issue an order requiring that a permit or license be required for certain activities, including the following:

- The collection, transportation, possession, or disposition of aquatic species for scientific, educational, rehabilitation, or cultural purposes.
- The use of fixed untended equipment for the taking of aquatic species for personal use.
- The application of chemicals in any waters for the taking of aquatic species from, or which impact aquatic species in, any waters over which the state has jurisdiction.
- The operation of a fish cleaning station.
- The release of aquatic species.
- The taking and sale or transfer of an aquatic species to protect state waters when the department determines that the species is overabundant, damaging, or deleterious to the ecological balance or to the state's aquatic resources.
- This disposition of accidentally or unlawfully taken or injured aquatic species, or aquatic species that were unlawfully owned. (This provision would not apply to aquatic species that were disposed of according to the conditions of a permit issued under the federal Water Pollution Control Act.)

The director could also issue orders for the following activities, with the understanding that these activities would not apply to an aquaculture species, nor to aquaculture facilities:

- The importation or exportation of aquatic species or viable eggs of an aquatic species.
- The taking, possession, transportation, importation, or exportation of aquatic species for the purpose of buying or selling them.
- The taking of viable eggs from aquatic species for the purpose of raising the species commercially.

In addition, the following provisions would apply to permits and licenses issued by the department:

- The director could, by order, establish conditions under which a permit or license could be issued by the DNR, including, but not limited to, the qualifications required for a person to be issued a permit or license, resident and nonresident permit or license fees, assessment methods and fees to provide financial remuneration by commercial operations, and the number of permits or licenses to be issued.

- A permit or license issued by the department could specify, among other things, the areas, locations, time, and conditions under which the permittee or licensee could transport, possess, import, export, sell, dispose of, or release aquatic species; the amount of aquatic species that could be taken, sold, etc.; the methods and equipment that could be used; the disposal methods for unlawful species accidentally taken; record-keeping and reporting requirements; and other conditions.

- A permit or license could be suspended, revoked, annulled, withdrawn, recalled, or amended under the provisions of the Administrative Procedures Act, and, if the permit holder was convicted of violating permit and license requirements, his or her permit or license could be revoked and any aquatic species taken, possessed, transported, imported, exported, or sold in violation of the permit or license would be disposed of in a manner approved by the DNR.

- A person issued a permit or license would be subject to department inspections considered necessary to carry out the bill's provisions, including inspections of a permittee's or licensee's operations in the waters, on board a vessel, or ashore; premises; records and documents; and vehicles or vessels.

- All fees received for permit or licenses and any financial restitution received from penalties would be forwarded to the state treasurer, and credited to the Game and Fish Protection Fund.

Public Notice. The following are some of the procedures the commission or the director would have to comply with, in a manner that ensured adequate public notice and opportunity for public comment, to issue an order:

- The order would have to be prepared by the department after comments had been solicited and considered.

- The order would have to be published on the commission agenda for at least thirty days before its consideration by the commission or director.

- The commission would have to provide an opportunity for public comment on the order.

- The department would be required to provide a copy of the order to members of the appropriate legislative committees at least 30 days before issuance.

- The commission or director, as appropriate, would be required to approve, reject, or modify the order.

In addition, the director would be required to issue orders by April 1, 2001 sufficient to replace other acts and parts of the NREPA that the bill would repeal, and administrative rules rescinded by the bill. The director could also revise an order after the orders had been filed with the secretary of state. A revised order would also have to comply with provisions for public notice and comment.

Interim Orders. The director could issue an interim order if he or she determined that a population of an aquatic species was at risk of being depleted, or extirpated, or becoming diseased; a species was damaging property or the public health; or when the taking of a species

was necessary in an area where excessive mortality was occurring or was threatened. In issuing an interim order, the director could exercise any of the authority of the director or the commission in managing and protecting the aquatic species of the state and in requiring licenses and permits for certain activities, and could also require quarantine, treatment, or destruction of captive aquatic species other than aquaculture species at an aquaculture facility.

The bill would require that an interim order be issued in a manner that ensured interested persons were provided notice of it, the reasons for the modifications, and its effective date. In addition the director would have to provide a copy of an interim order to each member of the Senate and the House standing committees that consider legislation pertaining to conservation, agriculture, environment, recreation, tourism, or natural resources, and to the director of the Department of Agriculture. An interim order would be in effect for not longer than six months.

Prohibited Actions. The following are some of the actions which would be prohibited under the bill:

- Possessing on state waters an aquatic species that is so mutilated that it is not readily identifiable or cannot be readily measured.
- Possessing on or along any state waters any equipment, device, or other property that is prohibited under the bill, and using it for the taking of aquatic species. (Such possession would be considered *prima facie* evidence that the equipment, device, or other property was owned or used for the purpose of violating the bill's provisions.)

Fishing Shanties. Using, setting, placing, erecting, or leaving a fishing shanty on the ice, except as provided in an order or interim order, would be prohibited under the bill. The DNR or a local unit of government could authorize one to be removed and stored or destroyed. Otherwise, a local unit could not regulate a fishing shanty's placement, use, marking, or removal on the ice of state waters.

Propagation of Aquatic Species. The propagation, raising, feeding, or growing of aquatic species on state waters would be prohibited, except when, on the DNR's authorization, a person temporarily held them in cages or pens to imprint them pending release, or for other purposes authorized by the DNR.

Commercial fishing guides. The bill specifies that a nonresident who resides in a state or country that does not allow Michigan residents to act as commercial fishing guides within that state or country could not act in that manner in Michigan.

Violations, penalties. In a prosecution for a violation of the bill, the possession of an aquatic species would be *prima facie* evidence that the person took the species.

Except as otherwise specifically listed in the bill (see below), a violation of the act would be a misdemeanor, punishable by a fine of \$50 to \$500 and the costs of prosecution, and could also be punished by imprisonment for up to 90 days.

A violation of a provision of the bill regarding the taking or possession of an aquatic species (other than threatened or endangered species) would be a misdemeanor, punishable by a

fine of \$100 to \$1,000 and the costs of prosecution, and could also be punished by imprisonment for up to 90 days.

Taking or possession of sturgeon in violation of the bill would be a misdemeanor, punishable by a fine of \$500 to \$2,000 and the costs of prosecution, and could also be punished by imprisonment for up to 180 days. A fine under this provision could not be suspended.

Buying or selling aquatic species in violation of the bill, other than a violation concerning a condition or provision of a permit or a license (see below), would be a misdemeanor, punishable by a fine of \$250 to \$1,000 and the costs of prosecution, and could also be punished by up to 90 days imprisonment. However, each subsequent offense would be a felony, punishable by up to four years imprisonment, a fine of up to \$2,000, or both, and the costs of prosecution.

A violation of the provision regulating the removal of fishing shanties from the water or ice would be a misdemeanor, punishable by a fine of \$100 to \$500 and the costs of prosecution, and could also be punished by up to 30 days imprisonment. In addition, the court would have to order the defendant to reimburse the appropriate governmental entity in an amount equal to three times the costs of removing the shanty.

A violation of a condition or provision of a permit or license would be a misdemeanor, punishable by a fine of \$500 to \$1,000 and the costs of prosecution, and could be punished by up to 90 days imprisonment.

Multiple violations. A third violation in a five-year period (excepting violations regarding buying or selling aquatic species, as specified above) would be a misdemeanor with a mandatory sentence of imprisonment for 10 to 180 days, and a fine of \$500 to \$2,000, and the costs of prosecution. Further, the court would have to order the person's fishing license revoked, and order the person not to seek or possess a fishing license for the next three succeeding calendar years.

Restitution. In addition to other penalties, a person convicted of taking or possessing an aquatic species during a closed season, taking or possessing a species in excess of lawful limits, taking or possessing an undersized species, unlawfully buying or selling an aquatic species, or taking a species by use of an unlawful device would have to make restitution to the state for the value of the species, as follows:

**for each aquatic species of an individual weight of one pound or more, \$10 for each pound or fraction of a pound;

**for each aquatic species of an individual weight of one pound or less, \$10 for each individual animal;

**for each aquatic species that is designated as "a species that shall not be taken", \$25 for each pound or fraction of a pound; and,

**for each threatened or endangered aquatic species, or sturgeon, \$1,500 for each individual animal.

The court would be required to order the defendant to forfeit to the state the listed amounts. If two or more defendants were convicted of the violation, the court would declare the forfeiture against them jointly. Further, if the defendant failed to pay the ordered amount upon conviction, the court would be required to impose a sentence, and, as a condition of the sentence, require the defendant to satisfy the forfeiture in the amount prescribed and fix the manner and time of payment, or to make a written order permitting the defendant to pay the amount in installments. If a defendant defaulted on a payment or installment, the court could require the defendant to show cause as to why the default should not be treated as a civil contempt, and could issue an appearance ticket. The burden would be on the defendant to show that the violation was not due to an intentional refusal to obey the court order or a failure to make a good faith effort to obtain the funds required for the payment.

A default in the payment of a forfeiture or an installment payment could be collected by any means authorized for the enforcement of a judgment under the Revised Judicature Act.

Money paid under these provisions would be transmitted to the state treasurer for deposit into the Game and Fish Protection Fund.

Effective dates. The bill specifies that most of its provisions (excepting the sections authorizing the commission and department to issue orders, and the prohibition on nonresident commercial fishing guides) would take effect when the orders necessary to replace the repealed acts and rules were filed with the secretary of state.

Actions and proceedings in process. The bill specifies that all suits, actions, or proceedings for the violation of any law in effect before the filing of the orders necessary to replace the repealed acts and rules, and instituted before the filing of those orders, would not be abated but could be prosecuted in the same manner and with the same effect as if the bill had not been enacted.

Repeals. The following acts and parts of acts would be repealed and the administrative rules promulgated under them rescinded when the orders required to replace them took effect:

**Part 411 of the NREPA, dealing with the protection and preservation of fish, game, and birds;

**Parts 451 to 479 of the NREPA, dealing with fishing from inland waters, fishing with hook and line, frogs, mussels, propagation of game fish in private waters, regulating fishing in Northport Harbor, fishing laws in the St. Joseph River, fishing shanties, commercial fishing, taking rainbow trout in certain rivers, fisheries maintenance, fish hatcheries for restocking the Great Lakes, fish restoration and management practices, and fisheries contamination;

**Parts 485 to 491 of the NREPA, dealing with spearing of fish, sport fishing, Whaiska Bay, and reciprocal agreements with adjoining states;

****Public Act 22 of 1929 dealing with the Harbor Beach Refuge in Huron County; and,**

****Public Act 179 of 1935, dealing with commercial fishing within three miles of Fort Gratiot Light in the waters of Lake Huron.**

House Bill 4151 would amend the Administrative Procedures Act (MCL 24.207). Currently, that act excludes from the definition of “rule” (and thus from the act’s rule making requirements) a rule or order pertaining to game and fish and promulgated under parts 401 (wildlife conservation), 411 (protection and preservation of fish, game, and birds, which would be repealed by House Bill 4150), and 487 of the Natural Resources and Environmental Protection Act (sport fishing, also to be repealed by House Bill 4150). The bill would replace this reference with a reference to orders issued under part 401 or 481 (the new part proposed in House Bill 4150).

Analyst: R. Young

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