



To: Lauren Jescovitch, Michigan Sea Grant, Michigan State University Extension

From: Terra Bowling, Research Counsel II, National Sea Grant Law Center

Re: MI State Agency Response to Disease Reporting (NSGLC-23-04-05)¹

Date: October 20, 2023

Advisory Summary

A Michigan Sea Grant Extension Agent asked for information regarding the response of the Michigan Department of Natural Resources to a positive test for whirling disease at a private fish hatchery, specifically whether the Department uses the Great Lakes Fisheries Commission's Model Fish Health Code in its response. If so, what process outlines this use.

Several state agencies have roles in regulating aquaculture in Michigan; however, we were unable to find documentation in state laws, regulations, policies, or orders that any agency uses the Model Fish Health Code in responding to a positive whirling disease test. Rather, the agencies seem to have broad authority to address such disease threats and may use this authority to institute quarantines or take other measures as necessary.

Aquaculture Regulation in MI

The Michigan Department of Natural Resources (DNR) and the Michigan Department of Agriculture and Rural Development (MDARD) both have key roles in issuing permits, licenses, and registrations that may be applicable to a commercial aquaculture facility in Michigan. Aquaculture facilities in privately controlled waters for species on the "approved" species list require registration from MDARD, with annual renewal. An aquaculture research permit is required for species not on the approved species list.

A Prior Entry Permit from MDARD is required to import fish into the state for aquaculture operations. The import permit requires a Fish Health Certificate or Certificate of Veterinary Inspection issued in accordance with the MDNR's [Fisheries Health Guidance Document](#). That document contains guidelines developed under [Fisheries Disease Control Order 245.21](#) for importing baitfish and gamefish species, stocking fish in public waters, and baitfish certification. Fish imported for aquaculture operations conducted in private waters for non-commercial purposes, food markets, public aquariums, zoos, and retail ornamental fish facilities do not require a prior entry permit.

¹ This product was prepared by the National Sea Grant Law Center under award number NA18OAR4170079 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.



Pursuant to the Animal Industry Act, a person who discovers or suspects or has reason to believe that an animal is either affected by a reportable disease or contaminated with a toxic substance must immediately report this to MDARD. Mich. Comp. Laws Ann. § 287.709. However, the DNR and U.S. Fish and Wildlife Service (FWS) “retain authority over the wild bird, wild animal, game, protected animal, or state or federal fish hatchery.” Mich. Comp. Laws Ann. § 287.709. Whirling disease is on the [Michigan Reportable Animal Disease List](#). Regulated diseases must be reported to MDARD within 24 hours. According to [MDARD](#), “Regulated diseases generate a range of responses. Responses may include working with the veterinarian to ensure appropriate measures are taken, an on-farm visit, or possibly a quarantine—depending on the disease.”

The Director of MDARD is authorized to “prescribe procedures for the identification, inventory, separation, mode of handling, testing, treatment, feeding, and caring for both quarantined animals and animals within a quarantined area to prevent the exposure of nonquarantined or quarantined animals to infectious or toxicological diseases.” Mich. Comp. Laws Ann. § 287.712. The Act also identifies the state veterinarian as the chief animal health official of the state. Mich. Comp. Laws Ann. § 287.707. The state veterinarian, under the direction of the Director of MDARD, is required to “[d]evelop and enforce policy and supervise activities to carry out this act and other state and federal laws, rules, and regulations that pertain to the health and welfare of animals in this state on public or private premises. Mich. Comp. Laws Ann. § 287.707.

The DNR has broad authority to protect the state’s natural resources, including fish populations. See Mich. Comp. Laws Ann. §§ 324.503, 324.504, 324.1601, and 324.48702. The DNR exercises this authority, in part, by developing the import and stocking provisions for fish destined for public waters as set forth in regulations and the Guidance document. As mentioned above, importing fish for aquaculture requires an official interstate Certificate of Veterinary Inspection (CVI) filled out by a USDA-accredited veterinarian in the state of origin. A Fish Disease Inspection Report or a Fish Health Certificate (FHC) can be used in place of a CVI and can be filled out by a certified Fish Health Official.

DNR requires testing of baitfish and gamefish being imported for stocking in public waters. As noted above, MI DNR Fisheries Division has developed [Fish Health Testing Guidelines](#) (Fisheries Order 245.21). MDNR accepts testing done in compliance with the American Fisheries Society – Fish Health Section (AFS-FHS) Blue Book or Organization for Animal Health (OIE) Manual of Diagnostic Tests. Any other testing methodology requires consultation with DNR staff. F.O. 245.21. Tilapia, Lake Sturgeon, Common Shiners and aquaculture fish intended for food markets, and retail ornamental fish facilities do not require testing.



Conclusion

Generally, MDARD and DNR have key roles in regulating aquaculture, with both agencies having some oversight over aquaculture operations. Although MDARD issues permits for the facilities, DNR has developed Fish Health Testing Guidelines for importing game and bait fish, stocking public waters of Michigan, and baitfish certification. These guidelines do not mention the Model Fish Health Code, and we were unable to find documentation in laws, regulations, or agency orders that either agency uses the Model Fish Health Code in responding to a positive whirling disease test. Rather, the agencies have broad authority to address these threats and may exercise discretion in how to respond to a disease risk, including instituting quarantines or taking other measures as necessary, which could include application of the Model Fish Health Code.