



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
ANIMAL WELFARE PROGRAM
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

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The Department of Agriculture, Conservation and Forestry, Animal Welfare Program (AWP) is in receipt of the Citizen Petition for Rulemaking, signed by more than 150 registered voters of the State of Maine, seeking the implementation of rules governing the welfare of fish in aquaculture facilities (the "Petition"). Specifically, the Petition contains two broad and undefined requests: 1) that the AWP adopt a policy confirming its "statutory authority and commitment to ensuring fish confined to state aquaculture facilities are kept in optimal environments, receive proper care and treatment, and are free from cruelty and neglect" and that the AWP further state its "policy to enact appropriate training to implement this policy and to conduct proactive inspections of aquaculture facilities to enforce the policy"; and 2) that AWP rule Chapter 701 be amended to include best management practices for the welfare of fish kept in aquaculture facilities.

Under 5 M.R.S.A. § 8055, whenever a Maine state agency receives a rulemaking petition signed by 150 or more registered voters of the State, the agency is required to initiate appropriate rulemaking proceedings within 60 days after receipt of the petition. However, the agency is not required to accept an incomplete or defective petition. Here, the Petition is incomplete and defective in at least two respects.

Agency policies are not rules

First, the Petitioners' request for the adoption of policies is not appropriate rulemaking. Rules are defined under the Maine Administrative Procedure Act as "the whole or any part of every regulation, standard, code, statement of policy, or other agency guideline or statement of general applicability...*that is or intended to be judicially enforceable* and implements, interprets or makes specific the law administered by an agency, or describes the procedures or practices of the agency." 5 M.R.S.A. § 8002(9)(A). The definition of a rule specifically excludes any form, instruction or explanatory statement of policy that in itself is not judicially enforceable. See 5

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M.R.S.A. § 8002(9)(B)(4). The policies requested in the Petition are not judicially enforceable and are not, therefore, appropriate for adoption as rules.

The Petition did not provide proposed rule text

Second, the rulemaking petition form requires the inclusion of the text for the new or modified rule. Here, the Petition does not contain proposed rule text. It is impractical for AWP staff to draft rules presumptively satisfying the Petitioners' demands and then initiate rulemaking proceedings within the 60-day statutory period, especially where the inclusion of the desired rule language in the Petition would have informed the AWP of the specific rule changes being requested. Part 2 of the Petition, in particular, simply seeks the adoption of Best Management Practices (BMPs) – yet no rule language or proposed BMP's are provided. Included with the Petition as an Appendix is a copy of an "Aquaculture Best Management Practices Manual" from the Florida Department of Agriculture and Consumer Services. However, this document primarily addresses environmental and permitting concerns such as inspection protocols, water resource protection, site location, facility construction, species containment, and waste management. These are not regulatory matters for the AWP - instead, such regulation of on-shore and off-shore aquaculture facilities falls under the Maine Department of Marine Resources. There is one short one-page section dealing with animal welfare (the only regulatory matter within the purview of the AWP) – and that section provides no real guidance as to BMP rule language. It simply says, in relevant part, that euthanasia, slaughter, or depopulation shall be performed quickly and in a manner to limit the stress to the animal; references a Florida rule simply stating that only humane methods may be used for the euthanasia of livestock and suggesting methods of euthanasia not appropriate for fish; and directs compliance with Florida animal cruelty statutes. These limited provisions give no guidance to the AWP for the development of potentially detailed BMPs in an area (aquaculture) where it has no particular expertise. Moreover, AWP can deal with circumstances of animal cruelty in aquaculture facilities under its existing statutes and rules.

Accordingly, because the Petition is incomplete and defective, and because it does not provide for appropriate rulemaking by the AWP, it is denied.

Sincerely,



Ronda Steciuk, Director
Animal Welfare Program