

Report to
Legislative Council Rules Clearinghouse
NR 1, Wis. Adm. Code
Natural Resources Board Order No. FH-08-18

Wisconsin Statutory Authority

Section 23.09(2)(o), Wis. Stats. has been interpreted as authorizing the department to accept gifts of live fish or fish eggs for conservation purposes within the state.

Sections 29.014 (1), 29.041 and 29.053 (2) have been interpreted as allowing the department to conserve the fish supply on waters of the state while continuing to provide good opportunities for fishing.

Section 29.707, Stats. has been interpreted as requiring the department to define the role of genetics in the department's fish stocking strategy and to standardize fish donation procedures. This section has also been interpreted as authorizing the department to review rules regarding viral hemorrhagic septicemia and the classification of non-native forage fish.

Federal Authority

No federal regulations apply. States possess inherent authority to manage the fishery and wildlife resources within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

Comparison of Adjacent States

Minnesota statutes allow the Department of Natural Resources to sell or barter fish fry or eggs at the cost of production and allow the department to sell fish or fish eggs from the state hatchery at fair market value to private hatcheries. In Iowa, licensed aquaculturists may only obtain fish from public waters of the state as authorized by the director of the Department of Natural Resources. Rules in Michigan and Illinois do not currently provide for the state to supply fish to private aquaculturists.

Michigan statutes specify that genetically engineered fish may not be introduced, and the Michigan Department of Natural Resources internal policy on stocking describes the guidelines for maintaining genetic integrity in stocked waters. No other neighboring states have established rules or policy relating to the role of genetics in stocking.

Court Decisions Directly Relevant

No court decisions are relevant to this rule.

Analysis of the Rule - Rule Effect - Reason for the Rule

The department is required to promulgate these rules under provisions of 2017 Act 21. Act 21 revises the laws relating to aquaculture and fish farms in a variety of ways. It provides a pathway for private fish farms to enter into agreements with the DNR in order to stock fish into waters of the state. The Act also specifically requires the department to promulgate rules on the role of genetics in departmental fish stocking and standardization of fish donation procedures. The Act also provides that the department must review existing rules relating to viral hemorrhagic septicemia, a fatal fish disease affecting several Wisconsin waters, and promulgate new rules to update VHS policies as needed. Additionally, the Act

directs the department to evaluate the use of bait and forage fish, particularly non-native species classified under Ch. NR 40, Wis. Admin. Code, and allows the department to reclassify such species as necessary. Under the new laws, the department must continue to consult with interested parties including fishing groups and the aquaculture industry when creating these rules.

The department has undertaken a thorough review of rules pertaining to viral hemorrhagic septicemia and the use of non-native bait and forage fish. While the department has determined that no additional rules are necessary at this time, several guidance documents are in the final stages of development, including best management practices for transportation of baitfish and a fish donation policy document. The department has also initiated meetings with stakeholder input to review the status of non-native mosquitofish, which may be inadvertently transported among baitfish, and reclassify mosquitofish in ch. NR 40 as needed. Additionally, the department continues to work with the Department of Agriculture, Trade and Consumer Protection on their rules relating to health certificate requirements for transfer of fish between Type 3 registered fish farms and to waters without confirmed presence of viral hemorrhagic septicemia.

Agency Procedures for Promulgation

The department will hold a public hearing on March 18, 2019 at the Fitchburg DNR Service Center, 3611 Fish Hatchery Rd, Fitchburg, WI 53711. The hearings will be followed by board adoption in May 2018 followed by a request for the governor's signature and legislative review.

Description of any Forms (attach copies if available)

No forms are required as part of this rule.

Name and Telephone Number of Agency Contacts

Processing: Linda Haddix, (608) 266-1959
Technical: Meredith Penthorn, 608-316-0080