

Report From Agency

REPORT TO LEGISLATURE

NR 1, Wis. Adm. Code

Board Order No. FH-08-18
Clearinghouse Rule No. CR 19-007

Basis and Purpose of the Proposed 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. To supplement the department's rule-making efforts, several 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 could be inadvertently transported among baitfish, and to potentially 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.

Summary of Public Comments

The department should provide documentation or the results of studies that indicate that genetic isolation (integrity) is of premium importance in maintaining populations of isolated species.

A draft genetics management report is in progress, and the final draft will be released for public comment.

The department should identify the staff geneticists and/or external experts that will be consulted for development of genetic policies.

The department is working with a fish genetics expert affiliated with the United States Geological Survey and the University of Wisconsin-Stevens Point to develop the genetics management report.

There is no language in the rule specifically exempting registered fish farms from these policies.

This rule applies to the DNR's strategies for stocking fish. The Department of Agriculture, Trade and Consumer Protection is working on rules pertaining to fish farms.

More lakes that are considered to be isolated need to be restocked, and the DNR and private aquaculturists likely do not have the funds or resources to match the genetics of these waters. How does the department determine whether a waterbody is isolated and whether a genetic strain is native to that waterbody, and how would the department or a private aquaculturist obtain genetically isolated fish for restocking?

While this rule does not specifically describe the level of detail for assessing or matching the genetic profile of a waterbody, the department is developing genetic guidance documents to address these issues. The guidance focuses on regional genetic strains rather than identifying the genetics of each unique waterbody. As a result of the Aquaculture Bill legislation, the department can now supply private aquaculturists with appropriate genetic strains through a bid process.

The rule does not advance policies to allow private partners to participate in the state's stocking program, and may still result in regional biologists making the stocking decisions. The genetic strain requirements set by the DNR are preventing private companies from stocking fish such as walleyes, bluegills, bass and crappies.

Recently enacted legislation (2017 Act 21) allows the department to furnish fish or fish eggs to private entities to raise and ultimately stock into Wisconsin waters open to public access. This rule expands on that provision by stating that the department may develop collaborative relationships with private and public entities to meet statewide stocking goals. This rule is not intended to preclude private aquaculturists from participating in state stocking efforts. This rule also does not make any changes to genetic strain considerations when issuing stocking permits.

Stocking lakes with fish is working regardless of genetic strain, and in cases where multiple genetic strains are present in a lake, because more fish are being caught.

Providing opportunities for good fishing through stocking efforts as well as regulation of naturally reproducing populations is one goal of the department's fisheries management program. Another goal of the program is conservation of the genetic identities of regional fish populations so that the state's fisheries remain diverse and healthy overall. This rule does not oppose stocking, but rather states that the department's stocking efforts should still maintain natural genetic boundaries while helping to reestablish naturally reproducing populations.

With the new rule, the DNR might regulate or charge additional fees for verifying the genetic strain of fish stocked into private lakes and ponds without public access that have been stocked for 100 years under a DNR stocking permit.

Fathead minnows and gamefish are often obtained from out of state, and if the fisheries biologist questions the source of the fish, this could incur additional expenses and delay stocking.

That is not the intent of this rule. This rule adds language to ch. NR 1 (Natural Resources Board policies) defining the role and extent that genetics is involved in the department's stocking strategies, and standardizing the department's process for accepting donations of fish or fish eggs. The rule does not make any changes to local approval of stocking permits.

This policy could favor larger, in-state fish hatcheries over smaller local companies that purchase fish from out of state.

In conjunction with 2017 Act 21, this rule expands the possibility of any company being able to procure fish of compatible genetic strains from the state. When accepting requests for proposals for procuring fish or eggs from the state, the department will not discriminate based on the size of the company.

Environment appears to influence the genetic makeup of fish populations, and limiting fish populations to one genetic strain would prevent genetic drift and variability of isolated populations in response to the environment.

The department will address this topic in the genetics management report rather than this rule.

If a fish is raised in Wisconsin, it should be able to be sold anywhere in Wisconsin.

This rule does not prohibit selling a Wisconsin-raised fish anywhere in the state, but rather expresses that the department's stocking strategy aims to maintain the natural genetic boundaries of native and non-native, stocked (i.e. salmon, brown trout, rainbow trout, etc.) fish populations.

Fish made available as a result of these rules should be offered only to Wisconsin residents since they are a product of the state.

Section 29.705 (2)(a), Stats. requires that the DNR may only furnish fish or fish eggs to private entities if they are located in Wisconsin and an agreed-upon amount of fish will be stocked into waters of the state open to public access.

With Type 3 transfers, all fish stocked into public waters will be VHS-susceptible. Down the road, will there be a change to testing such as PCR-type so that the whole farm does not need to be quarantined for extended periods until the DNR can provide fry or fingerlings that have already been tested? It would be helpful for the department to talk to DATCP about a process for in-state transfers.

While beyond the scope of this rule, the department acknowledges these concerns and will continue to discuss these issues with DATCP.

In Type 3 fish farms, since fish have to be held in ponds for quarantine, it would be very difficult to get musky or walleye eggs from a different region. Would be preferable to develop a way [with DATCP] to avoid having to hold the fish in quarantine, whether that be through egg disinfection or another protocol.

While beyond the scope of this rule, the department will relay these concerns to DATCP for their consideration as they promulgate rules relating to aquaculture.

Modifications Made

Aside from minor changes of a remedial nature suggested by the Legislative Council, the department made two changes to the proposed rule following input received during the public hearings. These changes further clarify the role of genetics in stocking both native and non-native game fish in the aquaculture industry (such as steelhead, salmon, and brown trout), stating that the department will seek to stock fish of genetic strains that are best adapted to the waters in which they will be stocked. This statement preserves the intent of maintaining natural genetic boundaries while allowing additional flexibility when stocking appropriate genetic strains of non-native fish species in the aquaculture industry. Preferred genetic strains of these species may change over time as population research and management goals evolve.

Appearances at the Public Hearing

Public appearances at the permanent rule hearings included:

Terry O'Connor, representing self

Brandon Cole, Jody Bigalke and Paul Wood, representing Wisconsin Bowfishing Association

Justen Urban, representing Wisconsin Bowfishing Association

Chad Hahn, representing self

Brad Marx, representing Bowfishing Association of America

Greg Seubert, Wisconsin Outdoor News

Changes to Rule Analysis and Fiscal Estimate

Changes to the plain language analysis of the rule included additional details and rewording of the directives in 2017 Act 21 as they relate to this rule.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

In section 5.e., capitalization was retained in the plain language analysis when referring to the proper names of agencies and universities.

Final Regulatory Flexibility Analysis

These rules may create additional opportunities for businesses in the aquaculture industry, which may generate beneficial economic impacts. For example, aquaculturists may gain access to unique wild genetics through cooperative agreements with the department, and public and private partnerships to produce fish may be created. The department has met with the representatives of the aquaculture industry and state-licensed commercial fishing representatives and has held public meetings to consider policies and regulations relating to these rules.

The rules will not have an economic impact on recreational angling, though recreational anglers may indirectly benefit from new partnerships for stocking fish into waters of the state.

The rule will not impose new compliance or reporting requirements or design or operational standards.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.