

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: Board Orders FH-07-18(E) and FH-08-18

Relating to: Aquaculture and fish farms, re: ch. NR 20

Rule Type: This will be a permanent rule with a companion emergency version

1. Finding/nature of emergency (Emergency Rule only):

Nonstatutory provisions of 2017 Act 21 establish that the department may enact these rules using the process for emergency rules without finding that the rule is necessary for preservation of public peace, health, safety, or welfare.

2. Detailed description of the objective of the proposed rule:

The department is required to promulgate these rules under provisions of 2017 Act 21.

These rules will define the role and extent that genetics is involved in the department's fish stocking strategies. The proposal will standardize the department's procedures for accepting donations of fish to be stocked in waters of the state.

This proposal may revise current regulations which have been established to control viral hemorrhagic septicaemia which is a disease that has been identified in a number of Wisconsin waters.

The department will evaluate the current classification of certain bait and forage fish under Ch. NR 40 Wis. Admin. Code. These rules may result in a reclassification of certain species.

Additional modifications will be made as necessary to assure that provisions of administrative code related to environmental protection and to fish, game, and enforcement, forestry and recreation are consistent with the provisions of 2017 Act 21. These rules may make any other changes which are identified following consultation with interested parties including fishing groups and the aquaculture industry.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The department's current strategy for stocking fish considers genetic factors of both fish being stocked and of fish already present in a waterbody. The strategy assures that a stock selected for transfer does not put unique genetic resources at risk or that fish are not placed in a geographic area to which they are not suited. Walleye, muskellunge, and lake sturgeon are species for which genetics are significant considerations. A challenge of these policies is that private aquaculture may not have fish with genetics that the department has determined are the most appropriate for a region. New policies will make it possible to work cooperatively with private aquaculture so that they have access to genetically appropriate fish as well as to establish predictable stocking policies.

It is the policy of the Department of Natural Resources Board to accept gifts and bequests for the promotion of activities beneficial to the preservation, wise use and scientific management of Wisconsin's natural resources. Gifts may be declined if they are designated for a purpose not consistent with program objectives or if they could appear to be offered in an attempt to influence the Department in its enforcement or regulatory functions. Significant donations are accepted at monthly meetings of the board and this process may not be responsive enough to utilize gifts of live fish or eggs for stocking into waters of the state. Surplus fish have been offered in the past. These rules will establish a more timely process for accepting donations of fish or eggs.

Viral Hemorrhagic Septicemia (VHS) is a deadly fish virus first discovered in Lake Winnebago in 2006. Current rules and guidance are designed to prevent the spread of VHS and help keep Wisconsin's waters healthy. Movement of live fish or eggs is the primary regulated activity. Wisconsin now has ten years of experience with VHS. Through this process the department will evaluate if there are alternatives to current regulations or guidance that would provide more flexibility in the movement of fish and eggs and still constitute a low risk of disease spread.

The Act requires the department to evaluate the current classification of certain bait and forage fish under Ch. NR 40 Wis. Admin. Code. For instance, mosquito fish are a restricted invasive fish and a concern to some in the aquaculture industry because the species may be possessed incidentally to possession of wild baitfish. These rules may result in a reclassification of certain species or may result in modifications or clarification of guidance for possession of those species.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The department is required to promulgate these rules under provisions of 2017 Act 21. In s. 29.707 the department is directed to establish rules related to the role of genetics in fish stocking policies and to standardize procedures for the donation of fish. This provision also establishes that the department may revise rules related to viral hemorrhagic septicemia, the hatchery classification system, and the status of bait and forage fish under rules related to invasives species management.

Under 29.014 (1), Stats. the department is directed to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

The department is authorized to regulate fishing on and in all interstate boundary waters and outlying waters by 29.041, Stats.

Provisions of 29.053 (2), Stats. provide that the department may establish conditions governing the taking of fish for the state as a whole, for counties or parts of counties, or for waterbodies or parts of waterbodies. It also allows the department to establish a fishing season on specified bodies of water in certain urban areas to allow fishing only by persons who are under 16 years old or who are disabled, as specified in s. 29.193 (3) (a), (b), or (c), Stats.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

Approximately 520 hours of department staff time will be needed to develop the proposal and to promulgate the rules.

6. List with description of all entities that may be affected by the proposed rule :

A primary group that would be affected by the proposed rule are people involved in the private aquaculture, fish farming industry. Policies on the stocking fish in waters of the state impacts private aquaculture when they are supplying fish to entities such as lake associations and clubs and organizations who purchase fish for stocking as authorized by department issued stocking permits. Department policies on the movement of fish out of areas affected by viral hemorrhagic septicemia can also impact private aquaculture.

The angling public is also impacted by these rules. Members of the public may be concerned about stocking genetically appropriate fish, the availability of fish, and fish health in general.

In promulgating these rules the department will consider economic factors, healthy fish populations, and fishing opportunities. The department has been in extensive consultation with interested parties, including fishing groups and the aquaculture industry.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

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

For activities involving movement of fish or eggs between the states, a violation of state law constitutes a violation of federal law under the Lacey Act. Violations would be enforceable by agents of the United States Fish & Wildlife Service.

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service lifted the Viral Hemorrhagic Septicemia Federal Order that was first issued in 2006. By removing the Federal Order, which had become duplicative with state regulations, the service still has a goal to protect the health of farmed and wild fish while also supporting the interstate movement needs of the aquaculture industry. Interstate movement of VHS-susceptible species of live fish from VHS-affected or at-risk states, including: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin is no longer federally restricted. Salmonid importation requirements under title 50 of the Code of Federal Regulations are still in effect.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

These revisions to regulations that impact the aquaculture industry are likely to result in economic benefits to the industry, and the state economy. The rule may have a moderate economic impact on the aquaculture industry, but an exact amount of impact is unknown at this time. Any impact should be beneficial. The department has met with the representatives of the aquaculture industry state-licensed commercial fishing representatives and held public meetings to consider policies and regulations on a variety of issues.

Beneficial impacts would be a result of additional opportunities for businesses in the aquaculture industry. For instance, unique wild genetics may be made available, public and private partnerships to produce fish may be created, and various regulations on the movement or possession of fish could be modified as a result of this rulemaking process.

The rule is not likely to impose new compliance or reporting requirements or operational standards. Requirements such as when to test fish for viral hemorrhagic septicemia will be considered as the

department and interested parties conduct the evaluations required by 2017 Act 21. However, the department can require testing under current rules and that is not likely to be a topic of the resulting rule proposal.

The department will develop a preliminary economic impact analysis and hold a comment period pursuant to Governor's Executive Order 50, Section IV, in summer 2018. Fiscal impacts on the department will also be summarized in this analysis.

9. Anticipated number, month and locations of public hearings:

The Department anticipates holding two public hearings in the month of September 2018. The Department will hold these hearings in the Madison and Wausau areas.

Contact Person:

Scott Loomans, Fisheries Program and Policy Analyst
scott.loomans@wisconsin.gov
(608) 266-5206