

State of Wisconsin



2017 Assembly Bill 160

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2017 WISCONSIN ACT 21

AN ACT *to renumber* 29.733 (1); *to renumber and amend* 29.733 (3); *to amend* 29.705 (2) (a), 29.733 (2) (a), 29.733 (2) (b), 29.733 (2) (e), 30.40 (1), 234.91 (1) (a), 234.91 (2) (b), 281.36 (3g) (a) 7., 281.36 (3n) (a) 1. b., 281.36 (4) (e) (intro.), 283.31 (3) (intro.), 283.31 (4) (intro.), 283.31 (5m) and 348.27 (18) (c); and *to create* 29.707, 29.733 (1d), 29.733 (1h) (c) 4., 29.733 (3) (b), 30.19 (1m) (bm), 31.34 (3) (am), 281.346 (2) (bm), 281.36 (4) (am), 283.15 (4m) and 348.27 (18) (a) 1. e. of the statutes; **relating to:** regulation of aquaculture and fish farms, providing an exemption from emergency rule procedures, and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 29.705 (2) (a) of the statutes is amended to read:

29.705 (2) (a) The department may not furnish fish or fish eggs from state hatcheries to private ponds, private clubs, corporations, or preserves unless the private pond, private club, corporation, or preserve is located in this state and has entered into an agreement with the department and the fish or the fish grown from the fish eggs will ultimately be stocked, into waters of the state where the general public is allowed, according to any applicable permits and certificates, and, if the private pond, private club, corporation, or preserve is a fish farm, the fish farm is registered with the department of agriculture, trade and consumer protection. If the private pond, private club, corporation, or preserve creates more fish from fish eggs provided under this paragraph than are required under its agreement with the department, the excess fish are not required to ultimately be stocked into waters of the state where the general public is allowed.

SECTION 2. 29.707 of the statutes is created to read:
29.707 Propagation of fish; department rules. (1)

The department shall promulgate rules that do all of the following:

(a) Define the role and extent that genetics is involved in the department's fish stocking strategies.

(b) Standardize the department's fish donation procedures.

(2) The department and the department of agriculture, trade and consumer protection shall review the departments' rules relating to viral hemorrhagic septicemia, and shall promulgate new rules as the departments determine are necessary.

(3) The department, with the department of agriculture, trade and consumer protection, shall assess the efficiency and utility of the fish hatchery classification system under rules promulgated by the department of agriculture, trade and consumer protection, and the department of agriculture, trade and consumer protection shall promulgate new rules as it determines are necessary.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(4) The department shall assess the viability and use of bait fish and forage fish and of the continued classification of bait fish and forage fish as established nonnative fish species, and shall promulgate new rules as it determines are necessary.

(5) The department shall consider economic factors, healthy fish populations, and fishing opportunities, and shall consult with interested parties, including fishing groups and the aquaculture industry, when promulgating rules under this section.

(6) The final draft of a proposed rule under this section shall be submitted under s. 227.19 (2) no later than June 28, 2019.

SECTION 3. 29.733 (1) of the statutes is renumbered 29.733 (1h).

SECTION 4. 29.733 (1d) of the statutes is created to read:

29.733 (1d) In this section:

(a) “Artificial water body” has the meaning given in s. 30.19 (1b) (a).

(b) “Natural body of water” means a spring, stream, pond, lake, or wetland that was historically present in a natural state but may have been physically altered over time.

SECTION 5. 29.733 (1h) (c) 4. of the statutes is created to read:

29.733 (1h) (c) 4. An artificial water body that is used as a fish farm that is registered with the department of agriculture, trade and consumer protection on the effective date of this subdivision [LRB inserts date], or as part of a fish farm that is registered with the department of agriculture, trade and consumer protection on the effective date of this subdivision [LRB inserts date], regardless of its water source, including an artificial water body that is fed by a spring.

SECTION 6. 29.733 (2) (a) of the statutes is amended to read:

29.733 (2) (a) The department, subject to s. 29.024 (2g) and (2r), shall issue a permit under this subsection for a natural body of water specified under sub. (1) (1h) (c) 1. if the department determines that no substantial public interest exists in the body of water and that no public or private rights in the body of water will be damaged.

SECTION 7. 29.733 (2) (b) of the statutes is amended to read:

29.733 (2) (b) Notwithstanding par. (a), for a freeze-out pond that is licensed as a private fish hatchery, or as part of a private fish hatchery, under s. 29.52, 1995 stats., on January 1, 1998, or for a natural body of water as described under sub. (1) (1h) (c) 2., the department shall issue an initial permit without making the determination under par. (a).

SECTION 8. 29.733 (2) (e) of the statutes is amended to read:

29.733 (2) (e) The department may suspend a permit for a body of water specified in sub. (1) (1h) (c) 2. for 90 days if the department finds that the permit holder has failed to adequately maintain the fish barriers and may revoke the permit if the department determines that the failure to adequately maintain the barriers has not been corrected within the 90-day period.

SECTION 9. 29.733 (3) of the statutes is renumbered 29.733 (3) (intro.) and amended to read:

29.733 (3) (intro.) This section does not apply to any of the following:

(a) A person who places a net pen in a natural body of water for the purpose of holding or rearing fish in accordance with a general permit issued under s. 30.12 (3) (b).

SECTION 10. 29.733 (3) (b) of the statutes is created to read:

29.733 (3) (b) A person who holds a permit under sub. (2) and who takes no action in the natural body of water other than maintaining the fish farm facility, including maintaining ponds, raceways, ditches, canals, berms, swales, drains, pipes, and other structures, drainage areas, and flowage controls within the facility.

SECTION 11. 30.19 (1m) (bm) of the statutes is created to read:

30.19 (1m) (bm) The maintenance or repair of an artificial water body or fish farm that is registered with the department of agriculture, trade and consumer protection, except that this exemption does not apply to the requirement under sub. (1g) (c).

SECTION 12. 30.40 (1) of the statutes is amended to read:

30.40 (1) “Agricultural use” means aquaculture; bee-keeping; dairying; egg production; feedlots; grazing; floriculture; raising of livestock; raising of poultry; raising of fruits, nuts and berries; raising of grains, grass, mint and seed crops; raising of vegetables; and sod farming.

SECTION 13. 31.34 (3) (am) of the statutes is created to read:

31.34 (3) (am) A dam, in existence on the effective date of this paragraph [LRB inserts date], in a commercial fish farm, in existence and registered with the department of agriculture, trade and consumer protection on the effective date of this paragraph [LRB inserts date], and located in Langlade County, where the water is returned to the navigable stream.

SECTION 14. 234.91 (1) (a) of the statutes is amended to read:

234.91 (1) (a) “Agricultural assets” means machinery, equipment, facilities, land or livestock used in agriculture or aquaculture.

SECTION 15. 234.91 (2) (b) of the statutes is amended to read:

234.91 (2) (b) The loan is made to finance the acquisition of agricultural assets or the cost of improvements to facilities or land. The agricultural assets must be acquired, and the improvements must be made, for agricultural or aquacultural purposes.

SECTION 16. 281.346 (2) (bm) of the statutes is created to read:

281.346 (2) (bm) *Subsequent withdrawals for aquacultural purposes.* If a fish farm withdraws water and places it in an aquacultural pond that is registered with the department of agriculture, trade and consumer protection, any subsequent use of that water from that pond is not a withdrawal for the purposes of this section, if the subsequent use is not, and does not result in, a diversion or an intrabasin transfer.

SECTION 17. 281.36 (3g) (a) 7. of the statutes is amended to read:

281.36 (3g) (a) 7. A discharge that is part of a development for agricultural or aquacultural purposes, if the discharge does not affect more than 10,000 square feet of wetland.

SECTION 18. 281.36 (3n) (a) 1. b. of the statutes is amended to read:

281.36 (3n) (a) 1. b. That the proposed project is necessary for the expansion of an existing industrial, commercial, or agricultural, or aquacultural facility that is in existence at the time the application is submitted.

SECTION 19. 281.36 (4) (am) of the statutes is created to read:

281.36 (4) (am) Normal aquaculture activities, if the discharge is to a wetland created for aquacultural purposes in an area without any prior wetland history. In this paragraph, "normal aquaculture activities" includes all of the following:

1. Construction, maintenance, or repair of ponds, raceways, or other similar retention structures used in fish farms.

2. The filling in or drawing down of ponds, raceways, or other similar retention structures used in fish farms.

3. Maintenance or improvement of swales or other drainage areas into or out of ponds used in fish farms.

4. Maintenance, repair, or replacement of drains, pipes, or other flowage controls used in fish farms.

SECTION 20. 281.36 (4) (e) (intro.) of the statutes is amended to read:

281.36 (4) (e) (intro.) Construction or maintenance of farm roads, roads used in fish farms, forest roads, or temporary mining roads that is performed in accordance with best management practices, as determined by the department, to ensure all of the following:

SECTION 21. 283.15 (4m) of the statutes is created to read:

283.15 (4m) **VARIANCES FOR FISH FARMS.** In deciding whether to grant an application for a variance for a fish farm, the secretary shall rely on the same guidance documents and other information that would be used by the

federal environmental protection agency to review and approve or disapprove the variance as required under [40 CFR 131.14](#).

SECTION 22. 283.31 (3) (intro.) of the statutes is amended to read:

283.31 (3) (intro.) The department may issue a permit under this section for the discharge of any pollutant, or combination of pollutants, other than those prohibited under sub. (2), upon condition that such discharges will meet all the following, whenever applicable, subject to sub. (5m):

SECTION 23. 283.31 (4) (intro.) of the statutes is amended to read:

283.31 (4) (intro.) The department shall prescribe conditions for permits issued under this section to assure compliance with the requirements of sub. (3). Such additional conditions shall include at least the following, subject to sub. (5m):

SECTION 24. 283.31 (5m) of the statutes is amended to read:

283.31 (5m) ~~PERMITS FOR CERTAIN CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES.~~ The department shall include the requirements of 40 CFR 451.11 in permits issued under this section for concentrated aquatic animal production facilities described in [40 CFR 451.10](#) ~~requirements that are based on, and are not more stringent than, the requirements in 40 CFR 451.14.~~ The department may not include additional conditions in a permit for a fish farm except as necessary for the farm to meet the applicable limitations, standards, and other provisions described in sub. (3) (a) to (f). Any conditions included in a permit issued under this section for a fish farm shall be limited to site-specific best management practices to the greatest extent allowed under federal law.

SECTION 25. 348.27 (18) (a) 1. e. of the statutes is created to read:

348.27 (18) (a) 1. e. Fish or minnows.

SECTION 26. 348.27 (18) (c) of the statutes is amended to read:

348.27 (18) (c) A permit under this subsection is valid only for the transportation of agricultural products to a farm or from a field or farm to a storage facility on the ~~grower's~~ farmer's owned or leased land, a facility for initial storage that is not on the ~~grower's~~ farmer's owned or leased land, or a facility for initial processing.

SECTION 27. Nonstatutory provisions.

(1) **EMERGENCY RULES CONCERNING FISH PROPAGATION.** The department of natural resources and the department of agriculture, trade and consumer protection may promulgate emergency rules under section 227.24 of the statutes implementing section 29.707 of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect until June 28, 2019, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the

statutes, those departments are not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of

the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.
