

2001 DRAFTING REQUEST

Bill

Received: **06/19/2001**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Dale Schultz (608) 266-0703**

By/Representing: **John OBrien**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact:

Addl. Drafters:

Subject: **Agriculture - animals**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Prohibit the theft of farm raised fish

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 08/31/2001	gilfokm 09/04/2001	rschluet 09/05/2001	_____	lrb_docadmin 09/05/2001		
/2	traderc 09/25/2001	gilfokm 09/25/2001	jfrantze 09/26/2001	_____	lrb_docadmin 09/26/2001		
/3	traderc 12/04/2001	gilfokm 12/05/2001	pgreensl 12/06/2001	_____	lrb_docadmin 12/06/2001	lrb_docadminS&L 12/13/2001	lrb_docadmin 12/13/2001

FE Sent For:

Azintro,

<END>

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/2	traderc 09/25/2001	gilfokm 09/25/2001	jfrantze 09/26/2001	12/6 12/14/01	lrb_docadmin 09/26/2001		

FE Sent For:

13-12/4
Hmg

12/6
PS

<END>

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Subject: Agriculture - animals

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/1	traderc 08/31/2001	gilfokm 09/04/2001	rschluet 09/05/2001	_____	lrb_docadmin 09/05/2001		

FE Sent For:

11-9/25 King

8/9/26

[Signature]
<END>

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By/Representing: John OBrien

This file may be shown to any legislator: NO

Drafter: traderc

May Contact:

Addl. Drafters:

Subject: Agriculture - animals

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given


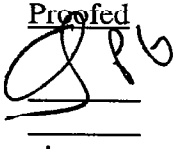
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1?	traderc	11-9/4 pmg		 9-5-1			

FE Sent For:

<END>

O'Brien, John

To: Tradewell, Becky
Subject: Bill Draft Request

Becky,

Another package is on it's way to you.

It includes a Leg Co Memo from Rachel Letzing on the issue of "Increasing Penalties for Theft of Fish From a Fish Farm."

Based on the content of the memo and our wish to accomplish this as simply as possible, we would like a draft to amend as follows; (addition in red, italic, underline.)

s. 943.20, Stats. Under s. 943.20 (3) (d) 1., Stats., whoever intentionally takes and carries away, uses, transfers, conceals or retains possession of a domestic animal [REDACTED] the value of which is less than \$2,500, without consent and with intent to permanently deprive the owner of possession, is guilty of a Class D felony. If the property value is greater than \$2,500, theft is punishable as a Class C felony. The penalty for a Class D felony is a maximum fine of \$10,000, maximum imprisonment of 10 years, or both. [s. 939.50 (3) (d), Stats.] For a Class C felony, the penalty is a maximum fine of \$10,000, maximum imprisonment of 15 years, or both. [s. 939.50 (3) (c), Stats.] The definition of "domestic animal" includes livestock; however, "livestock" as defined in current law does not include farm-raised fish.

John O'Brien
Staff to Senator Schultz
John.O'Brien@legis.state.wi.us
26 6-0703



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: SENATOR DALE SCHULTZ

FROM: Rachel E. Letzing, ^{RLS} Staff Attorney

RE: Increasing Penalties for Theft of Fish From a Fish Farm

DATE: June 18, 2001

This memorandum, prepared at the request of a member of your staff, discusses options to increase the penalty for the intentional removal of fish from a fish farm. You raise the concern that current penalties relating to theft may be inadequate in light of a recent theft of stock fish from a fish farm in your district, which resulted in a significant loss of revenue to the farm. In addition, you request information regarding what laws, if any, other states have adopted to address theft of fish from fish farms, or "fish rustling."

Legislation regarding the unauthorized removal of livestock has focused on the theft statute, s. 943.20, Stats. Under s. 943.20 (3) (d) 1., Stats., whoever intentionally takes and carries away, uses, transfers, conceals or retains possession of a domestic animal, the value of which is less than \$2,500, without consent and with intent to permanently deprive the owner of possession, is guilty of a Class D felony. If the property value is greater than \$2,500, theft is punishable as a Class C felony. The penalty for a Class D felony is a maximum fine of \$10,000, maximum imprisonment of 10 years, or both. [s. 939.50 (3) (d), Stats.] For a Class C felony, the penalty is a maximum fine of \$10,000, maximum imprisonment of 15 years, or both. [s. 939.50 (3) (c), Stats.] The definition of "domestic animal" includes livestock; however, "livestock" as defined in current law does not include farm-raised fish.

The theft statute could be amended to specifically address the unauthorized removal of farm-raised fish by amending s. 943.20 (3) (d) 1., Stats., to include "farm-raised fish," as defined under s. 29.001 (25), Stats. In the alternative, a paragraph could be added to s. 943.20 (1), Stats., to provide that intentionally taking fish from a fish farm is an act which is considered theft. The penalties for theft are provided based upon the monetary value of the stolen property. [s. 943.20 (3), Stats.] However, you have indicated that the theft of hatchlings from a particular fish brood can result in significant future revenue loss, which may be difficult to prove. A new section prohibiting theft of farm-raised fish could provide a penalty outright rather than tying the penalty to the value of the fish, which may make the theft of farm-raised fish easier to prosecute.

Statutes which specifically address theft of fish from fish farms have been enacted in Alabama, Arkansas and Louisiana. (See Attachment.) Alabama prohibits fishing at fish farms or taking farm-raised fish without consent of the owner and allows for the confiscation and seizure of a vehicle or fishing equipment used in illegal fishing. [Ala. Code s. 9-11-91.1 (2001).] The unlawful fishing or taking of fish from fish farms is punishable as a criminal misdemeanor regardless of the monetary value of the fish. Arkansas law also prohibits fishing or taking fish from a fish farm without consent regardless of the value of the fish, allows all fishing tackle and vehicles used in committing the violation to be confiscated and sold at public auction, and provides a criminal misdemeanor penalty. [Ark. Code Ann. s. 15-43-330 (2001).] Louisiana prohibits taking domesticated fish from a fish farm or private pond, but the penalty prescribed is based on the monetary value of the fish taken. [La. Rev. Stat. Ann. s. 14:67.4 (2000).]

If you have further questions or would like more information on this topic, please contact me at the Legislative Council Staff offices.

REL:wu:jal:rv;tlu

Attachment



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3441/1

RCT:.....

SOAN (m 8/31)

King

2001 BILL

1 AN ACT ^{Gen. Cat.} relating to: theft of farm-raised fish.

Analysis by the Legislative Reference Bureau

Generally, under current law, the theft of property with a value that does not exceed \$2,500 is a Class A misdemeanor, punishable by a fine of not more than \$10,000 or imprisonment for not more than 9 months or both. However, theft of certain kinds of property, including domestic animals, with a value that does not exceed \$2,500 is a Class D felony, punishable by a fine of not more than \$10,000 or imprisonment for not more than 10 years or both.

This bill provides that theft of farm-raised fish with a value that does not exceed \$2,500 is a Class D felony, punishable by a fine of not more than \$10,000 or imprisonment for not more than 10 years or both.

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

2 SECTION 1. 943.20 (3) (d) 1. of the statutes is amended to read:

3 943.20 (3) (d) 1. The property is a domestic animal or farm-raised fish, as
4 defined in s. 29.001 (25); or

5 History: 1977 c. 173, 255, 447; 1983 a. 189; 1987 a. 266; 1991 a. 39; 1993 a. 213, 445, 486.

(END)

September 20, 2001

TO: Becky Tradewell
FROM: John O'Brien

RE: LRB 3441/1 "Prohibit the theft of farm raised fish"

I asked our constituent for input on the draft.

They asked us to consider an additional provision which would allow for confiscation of any equipment used in the theft of "farm raised fish".

In addition, could we include a provision that would included over and above the fine, a provision that would require the perpetrator to repay the owner of the "farm raised fish" the actual cost or valuc of the fish?

Call me if you need to talk about this.

Thanks.

John O'Brien
Staff to Senator Dale Schultz

26 6-0703



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3441# 2
RCT:kmg:rs
rnr

SOON

2001 BILL

ONote

The bill also authorizes the seizure and forfeiture of property used in the theft of farm-raised fish.

Sen. Coit.

1 AN ACT to amend 943.20 (3) (d) 1. of the statutes; relating to: theft of
2 farm-raised fish.

Analysis by the Legislative Reference Bureau

Generally, under current law, the theft of property with a value that does not exceed \$2,500 is a Class A misdemeanor, punishable by a fine of not more than \$10,000 or imprisonment for not more than nine months or both. However, theft of certain kinds of property, including domestic animals, with a value that does not exceed \$2,500 is a Class D felony, punishable by a fine of not more than \$10,000 or imprisonment for not more than ten years or both.

This bill provides that theft of farm-raised fish with a value that does not exceed \$2,500 is a Class D felony, punishable by a fine of not more than \$10,000 or imprisonment for not more than ten years or both.

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

3 SECTION 1. 943.20 (3) (d) 1. of the statutes is amended to read:
4 943.20 (3) (d) 1. The property is a domestic animal or farm-raised fish, as
5 defined in s. 29.001 (25); or

(END)

✓
Insert A

Section #. 973.075 (1) ^(bj) ~~(bg)~~ of the statutes is ^{created} ~~amended~~ to read:

^{bj}
(bj)

973.075 (1) ~~(bg)~~ Any property used or to be used in the commission of a crime under s. ~~943.75~~
~~(2) or (2m)~~ but if the property is encumbered by a bona fide perfected security interest that was per-
fected before the date of the commission of the current violation and the holder of the security inter-
est neither had knowledge of nor consented to the commission of that violation, the holder of the
security interest shall be paid from the proceeds of the forfeiture.

History: 1981 c. 267; 1985 a. 245, 258; 1987 a. 348; 1989 a. 263; 1993 a. 92, 169, 459, 491; 1995 a. 290, 448; 1997
a. 35, 285; 1999 a. 45, 51, 186.

943.20 (3) (d) 1. that involves Farm-raised fish, as
defined in s. 29.001 (25).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3441/2dn

RCT:.....

KMG

John O'Brien:

This is the redraft of the draft concerning theft of farm-raised fish. Section 973.20 currently provides for restitution, so it was unnecessary to add any language about restitution to the draft. I have added language authorizing the seizure and forfeiture of property used in the theft of farm-raised fish.

Please contact me if you have any questions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3441/2dn
RCT:kmg:jf

September 26, 2001

John O'Brien:

This is the redraft of the draft concerning theft of farm-raised fish. Section 973.20 currently provides for restitution, so it was unnecessary to add any language about restitution to the draft. I have added language authorizing the seizure and forfeiture of property used in the theft of farm-raised fish.

Please contact me if you have any questions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: OBrien, John
Sent: Tuesday, December 04, 2001 8:16 AM
To: Tradewell, Becky
Subject: LRB 3471/2 Revision Request



3 draft change
request 12 3 01...

John O'Brien
Staff to Senator Dale Schultz
John.O'Brien@legis.state.wi.us
26 6-0703

Ms. Rebecca Tradewell
Managing Attorney
Legislative Reference Bureau

RE: LRB 34⁴1/2
Theft of Farm Raised Fish

Dear Rebecca,

At the request of the Aquaculture Industry and the Wisconsin Department of Natural Resources, I would like the following modifications made to the draft of LRB 34⁴1/2

The definition of fish farm needs to be changed or modified so that it includes "State Owned and Municipal Fish Rearing Facilities" as well as "Private Fish Farms".

The Dept of Natural Resources Attorney (Tim Andryk) ask that we modify the penalty so that a first offence does not constitute a "Felony" although any subsequent offenses for the same crime offense could be prosecuted as a "Felony". The Aquaculture Industry has agreed to this change.

(I am open to your suggestions on how we might accomplish this.)

I would appreciate it if you could make these revisions as soon as possible.

Thank you,

John O'Brien
Staff to Senator Dale Schultz
6 0703

Tradewell, Becky

From: Dsida, Michael
Sent: Tuesday, December 04, 2001 8:59 AM
To: Tradewell, Becky
Subject: 2d offense; x-refs

1. Here is the typical 2d offense language:

Whoever violates sub. (1) after having been convicted of a violation of sub. (1) [or under this section] is guilty of a Class _ felony.

Obviously, you can modify the language depending on how you structure the provision. Section 943.207 (3m) (c) 3. provides an illustration.

2. The only x-refs that I think you need are to ss. 895.80 (1) and 939.32 (1) (Intro.), although you may want to check with the requester on the latter one. (If you don't include the x-ref there, an attempt to commit a first offense (like an attempt to commit just about any other misdemeanor) is not a crime.)

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3441/3

RCT:kmg:jf

SOON

rmr

2001 BILL

1 AN ACT to amend 943.20 (3) (d) 1.; and to create 973.075 (1) (bj) of the statutes;
2 relating to: theft of farm-raised fish *and providing penalties*

regenerate

Analysis by the Legislative Reference Bureau

Generally, under current law, the theft of property with a value that does not exceed \$2,500 is a Class A misdemeanor, punishable by a fine of not more than \$10,000 or imprisonment for not more than nine months or both. However, theft of certain kinds of property, including domestic animals, with a value that does not exceed \$2,500 is a Class D felony, punishable by a fine of not more than \$10,000 or imprisonment for not more than ten years or both.

Prohibits the

This bill provides that theft of farm-raised fish *Insert "KA-1"* with a value that does not exceed \$2,500 is a Class D felony, punishable by a fine of not more than \$10,000 or imprisonment for not more than ten years or both. The bill also authorizes the seizure and forfeiture of property used in the theft of farm-raised fish.

FE-S/L

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

Insert 1-3

- 3
- 4
- 5

SECTION 1. ~~943.20 (3) (d) 1.~~ of the statutes is amended to read:

~~943.20 (3) (d) 1. The property is a domestic animal or farm-raised fish, as defined in s. ~~29.001(25)~~; or~~

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3441/3ins
RCT::

the penalty for First-offense theft of farm-raised fish
no 9 **Analysis insert** "KA-1"
Keep comma
of any value, is a Class A misdemeanor, punishable by a fine of not more than \$10,000 or imprisonment for not more than nine months or both, and second-or-subsequent offense theft of farm-raised fish
Insert 1-3 ✓

SECTION 1. 895.80 (1) of the statutes, as affected by 2001 Wisconsin Act 16, is amended to read:

No B
895.80 (1) Any person who suffers damage or loss by reason of intentional conduct that occurs on or after November 1, 1995, and that is prohibited under s. 943.01, 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28, 1998, and that is prohibited under s. 943.201, has a cause of action against the person who caused the damage or loss.

History: 1995 a. 27; 1997 a. 101; 2001 a. 16.

SECTION 2. 939.32 (1) (intro.) of the statutes is amended to read:

939.32 (1) (intro.) Whoever attempts to commit a felony or a crime specified in s. 940.19, 940.195 or, 943.20^v or 943.74 may be fined or imprisoned or both not to exceed one-half the maximum penalty for the completed crime; except:

History: 1977 c. 173; 1981 c. 118; 1983 a. 438; 1987 a. 332; 1989 a. 336; 1991 a. 17; 1993 a. 98, 486; 1997 a. 295.

SECTION 3. 943.74 of the statutes is created to read:

943.74 Theft of farm-raised fish. (1) In this section, ^v“farm-raised fish” means a fish that is kept on a fish farm for propagation purposes or reared on a fish farm and that has not been introduced, stocked, or planted into waters outside a fish farm and that has not escaped from a fish farm.

(b) “Fish farm” means a facility at which a person, including this state or a local governmental unit, hatches fish eggs or rears fish for the purpose of introduction into

the waters of the state, human or animal consumption, permitting fishing, or use as bait or fertilizer or for sale to another person to rear for one of those purposes.

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of the political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(2) No person may intentionally take and carry away, transfer, conceal, or retain possession of farm-raised fish of another without the other's consent and with intent to deprive the owner permanently of possession of the farm-raised fish.

(3) (a) Except as provided in par. (b), whoever violates sub. (2) is guilty of a Class A misdemeanor.

(b) Whoever violates sub. (2) after having been convicted of a violation of sub. (2) is guilty of a Class D felony.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

December 6, 2001

MEMORANDUM

To: Senator Schultz

From: Rebecca C. Tradewell, Managing Attorney

Re: LRB-3441/3 Prohibit the theft of farm raised fish

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

_____ JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-7290 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.