

CHAPTER 102

COMMERCIAL FISHING

102.23 POSSESSION, SALE AND TRANSPORTATION.

HISTORY. 1945 c. 248 s. 6.

102.24 MUSSELLS AND CLAMS.

HISTORY. 1945 c. 248 s. 6.

102.25 INLAND, MISSISSIPPI AND MINNESOTA RIVER FISHING.

HISTORY. 1945 c. 248 s. 6.

102.26 LAKE OF THE WOODS AND RAINY LAKE FISHING.

HISTORY. 1945 c. 248 s. 6.

102.27 NAMEKAN LAKE FISHING.

HISTORY. 1945 c. 248 s. 6.

102.28 LAKE SUPERIOR FISHING.

HISTORY. 1945 c. 148 s. 6.

102.29 INTERFERENCE WITH COMMERCIAL FISHING.

HISTORY. 1945 c. 248 s. 6.

Sections 102.01 to 102.22 were repealed by Laws 1945, Chapter 248, Section 7, and superseded by Minnesota Statutes 1945, Sections 102.23 to 102.29 in accordance with the following table:

Number	Disposition
102.01	First sentence is covered by 102.42, sub. 3, (9) and (10). Provision relating to size limits omitted as unnecessary. Last sentence is covered by 102.23.
102.02, sub. 1	Omitted as superseded by orders of the commissioner under authority previously granted by 97.05 and now retained in 97.48, sub. 3.
102.02, sub. 2	98.46, sub. 1, (13), and sub. 5, (3). Provisions as to form of applications omitted as unnecessary in view of provisions of 98.49, sub. 2.
102.02, subs. 3 and 4	Omitted as superseded by orders of the commissioner under authority previously granted by 97.05 and now retained in 97.48, sub. 3.
102.02, sub. 5	Omitted as unnecessary in view of 98.52, but the period for denial of license is thereby automatically changed from five years to one year. Provision for bond omitted as unnecessary. Provisions that licenses shall not

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Number	Disposition
	be transferable are duplication of general provisions contained in 98.45, sub. 1. Provision that licensee give personal attention to fishing is omitted as a matter to be properly covered by regulation.
102.02, sub. 6	Covered by 101.42, sub. 3, (10).
102.03	Repealed by Laws 1943, Chapter 229, Section 8.
102.04, sub. 1	102.23 and 102.24, sub. 1.
102.04, sub. 2	Covered by 97.48, sub. 5.
102.04, sub. 3	98.46, sub. 4, (14). Provision for use of dredge omitted as undesirable. Provisions for expiration date of licenses and exhibition of licenses to game wardens are covered by the general provisions contained in 98.45, sub. 1 and sub. 2.
102.04, sub. 4	102.23, sub. 2.
102.04, sub. 5	Covered by general provisions relating to reports as contained in 98.51, sub. 2 and 3.
102.04, sub. 6	Omitted as inadvisable.
102.05, sub. 1	102.25 and 98.46, sub. 1, (17). Provision extending this fishing 1,000 feet below the St. Croix River junction omitted because it conflicts with authority heretofore granted commissioner to regulate on Wisconsin-Minnesota boundary waters. Authority to use pound and dip nets has been eliminated as undesirable. The number of hooks on a set line has been reduced from 300 to 100. A closed season has been eliminated as undesirable. Provisions as to form of application for license have been omitted as unnecessary administrative detail properly covered by the provisions of 98.49, sub. 1. Because of elimination of provision for use of pound or dip nets, license fees for the same have been eliminated.
102.05, sub. 2	102.25, sub. 2, and 98.46, sub. 1, (18).
102.05, sub. 3	Covered by provisions of 98.45, sub. 1; 98.46, sub. 1; and 98.52.
102.05, sub. 4	Omitted as unnecessary.
102.05, sub. 5	102.25, sub. 1, (6). Changes "One hour after sunset" to "sunset". Omits provision as to raising pound nets because the use of such nets is eliminated. Provision for temporary fish ponds is omitted. Provision as to shipping fish is covered by the general provisions contained in 102.23.
102.05, sub. 6	102.25, sub. 1, (7). Prohibition against placing a seine so as to obstruct passage of fish is omitted as meaningless.
102.06, sub. 1	102.26, sub. 1, (1). Open seasons omitted as properly a matter for regulation under 97.48, sub. 3. Provision relating to residents and citizens are covered by the definition of "resident" contained in 97.40, sub. 21, and 98.46.
102.06, sub. 2	98.46, sub. 1, (19) and (20). Provisions as to form of application for license omitted as unnecessary in view of 98.49, sub. 2. Ear-marking portion of fee for maintenance of a single hatchery is eliminated as unnecessary interference with administrative detail. Provisions as to fees for fyke nets slightly changed. License revocation provision is retained in 98.52, sub. 3.
102.06, sub. 3	102.26, sub. 1, (2). Slight changes made in size of fyke nets. Detailed instructions as to manner of netting

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Number	Disposition
	have been omitted as properly a matter for regulation by commissioner under authority contained in 97.48, sub. 3.
102.06, sub. 4	102.26, sub. 2, and sub. 3, (1), (2), (3). Certain detailed provisions as to pound net stations, etc., omitted as properly a field for regulation under commissioner's order by virtue of authority conferred in 97.48, sub. 3. Eliminates provision for commercial fishing on Namekan Lake, except as retained in 102.27.
102.06, sub. 5	102.26, sub. 2. Various detailed provisions omitted as a field for regulation.
102.06, sub. 6	98.45, sub. 1, and 98.47, sub. 9. Omits prohibition against selling fish caught by another licensee as unnecessary. Omits detailed instructions as to form of application and citizenship as covered by 98.46 and 98.49, sub. 2.
102.06, sub. 7	Covered by 101.42, sub. 3, (10).
102.06, sub. 8	Omitted as properly a field for commissioner's order.
102.06, sub. 9	Covered by general provisions of 102.23.
102.06, sub. 10	102.28. Omits prohibition against setting certain nets within 500 feet of other nets as a proper field for regulation.
102.06, sub. 11	Covered by general provisions of 98.51.
102.06, sub. 12	102.26, sub. 4.
102.06, sub. 13	Omitted as undesirable and special legislation.
102.06, sub. 14	Omitted as in conflict with the present provisions of 102.06, sub. 1, now retained in 102.26, sub. 1, (1).
102.06, sub. 15	98.46, sub. 3, (5), but with very substantially increased fees.
102.06, sub. 16	Covered by general provisions of 98.51, sub. 2.
102.06, sub. 17	Covered by general provisions of 98.51, sub. 2.
102.06, sub. 18	Omitted as a proper field for regulation by commissioner.
102.06, sub. 19	Omitted as unnecessary.
102.06, sub. 20	Covered by general provisions of 97.55, sub. 1, (2) and by 98.52, sub. 3.
102.06, sub. 21	102.26, sub. 5, and 97.50, sub. 2.
102.06, sub. 22	Covered by general provisions of 97.45, sub. 12.
102.07, sub. 1	102.28, sub. 1. All details omitted as a matter for regulation by the commissioner under authority conferred in present law and retained by 97.48, sub. 3.
102.07, sub. 2	102.28, sub. 2. Detailed provisions as to size of nets, and mesh omitted as properly a field for commissioner's regulation under authority contained in the present law and retained in 97.48, sub. 3.
102.07, sub. 3	98.46, sub. 1, (21). (Note change in license fees.) Detailed provisions as to form of applications omitted as unnecessary in view of 98.49, sub. 2. Omits provisions of subdivision 3, (a) and (b) as undesirable. Provisions of (c) are covered by 97.48, sub. 3.
102.07, sub. 4	Covered by 97.45, sub. 12.
102.07, sub. 5	Omitted as a proper field for regulation by commissioner.
102.07, sub. 6	Covered by general provisions of 102.29.
102.07, sub. 7	Covered by general provisions of 98.51, sub. 3.
102.07, sub. 8	Omitted as unnecessary.

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Number	Disposition
102.07, sub. 9	98.46, sub. 3, (4) and 98.51, sub. 2
102.07, sub. 10	Covered by general provisions of 97.55, sub. 1, (2).
102.08	97.48, sub. 2.
102.09	97.48, sub. 2.
102.10	Omitted as special legislation.
102.11	Covered by 102.29.
102.12	Omitted as proper field for commissioner's orders in boundary waters and unnecessary elsewhere.
102.13	Omitted as superseded by authority previously conferred on commissioner under 97.05, now retained in 97.48, sub. 3.
102.14 to 102.21	Repealed by Laws 1943, Chapter 229.
102.22	97.48, sub. 4. All provisions relating to form of contracts, applications therefor, and instructions as to method and manner of sale are omitted as matters of administrative detail to be properly handled by the commissioner.

NOTE: The following annotations apply to Sections 102.01 to 102.22, which were superseded by Sections 102.23 to 102.29.

102.01 NETS MAY BE USED ONLY WHEN PERMITTED.

HISTORY. 1919 c. 400 s. 97; G.S. 1923 s. 5593; M.S. 1927 s. 5593.

102.02 NETTING IN CERTAIN INTERSTATE WATERS.

HISTORY. 1919 c. 400 s. 99; 1921 c. 71 s. 2; G.S. 1923 s. 5595; M.S. 1927 s. 5595; 1931 c. 374 s. 2; 1931 c. 399 ss. 12 to 16; 1939 c. 158.

Comparative study of the commercial game and fish laws of various states. *Hendry v Moore*, 318 US 151.

The effect of section 101.08 is to permit the taking of hackleback or sand sturgeon in waters forming the boundary between this state and Wisconsin under set line licenses issued pursuant to section 102.02, or other statute providing for issuing of set line licenses for those waters, notwithstanding such statutes did not authorize the taking of sturgeon. OAG Aug. 3, 1931.

A licensee must comply with the provisions as to length of boat and kinds of nets. OAG May 13, 1935 (22b-5).

Every net licensed under this section, regardless of its length, must bear an individual tag, furnished at a fee of 25 cents. OAG Jan. 7, 1941.

See, Reciprocity and Retaliatory Legislation, 21 MLR 371.

NOTE: Most of the provisions of section 102.02 have been superseded by order of the commissioner, issued under authority of section 97.05. Any conflict between the provisions of the statute and the commissioner's orders must be resolved in favor of the commissioner's order.

102.04 MUSSELS; OPEN SEASON; SIZE; SALE.

HISTORY. 1919 c. 400 s. 100; G.S. 1923 s. 5596; M.S. 1927 s. 5596; 1937 c. 373 s. 1; 1939 c. 94.

102.05 NETTING IN MISSISSIPPI RIVER; LICENSE.

HISTORY. 1919 c. 400 s. 101; 1921 c. 71 s. 1; G.S. 1923 s. 5597; M.S. 1927 s. 5597; 1931 c. 399 s. 17; 1943 c. 575 s. 1.

102.06 OPEN SEASON FOR FISHING.

HISTORY. 1919 c. 400 s. 102; 1923 c. 349 s. 1; G.S. 1923 s. 5598; 1925 c. 195; M.S. 1927 s. 5598; 1929 c. 123 ss. 1, 2; 1931 c. 380 ss. 1 to 3; 1941 c. 303.

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The treaty of July 1, 1908, between the United States and Great Britain did not supersede state fish laws prior to promulgation of regulations by the International Fisheries Commission. Ex parte Dove, (USDC-Minn.) 49 F(2d) 816. See State v Dove, 183 M 272, 236 NW 322.

A licensed "fish peddler" may sell his fish to hotels and restaurants without a wholesaler's license. OAG April 10, 1935, (290j-2).

Commercial fishing licenses are not revocable by conservation department unless for cause. OAG June 27, 1935 (211b-5).

Where game warden received 5,000 feet of gill netting from one having a license for 4,000 feet, and fisherman was acquitted of charge of having excessive gill netting in his possession, it is the duty of the division of game and fish to ascertain the actual amount defendant has in his possession and return to him such additional netting as will keep him within the provisions of the statute. OAG July 22, 1936 (211a-8).

The possession by commercial fishermen on an island in Lake of the Woods of gill nets of less than four-inch stretch measure is a criminal offense and the net may be confiscated. OAG June 21, 1937 (211a-8).

Rock bass cannot be legally sold in the state of Minnesota. OAG June 23, 1939.

There is no authority for the sale of crappies or sturgeon in the state of Minnesota, whether taken from international waters, or transported from other jurisdictions which authorize their sale. OAG June 17, 1941.

Fish buyers purchasing fish caught in international waters by Canadian fishermen, need not procure the fish buyer's or peddler's license provided in section 102.06. OAG May 21, 1941.

There is authority to reserve, for the purposes of fish propagation, areas in Lake of the Woods and to prohibit therein all fishing, except angling by hook and line. OAG May 14, 1942.

The requirement that each individual licensed commercial fisherman on the Lake of the Woods own and operate his own pound net stations is statutory and not subject to modification or change by regulations. In cases of emergency the requirement may be relaxed. OAG March 21, 1942.

102.07 LAKE SUPERIOR FISHING; HERRING AND TROUT; OPEN SEASON.

HISTORY. 1919 c. 400 s. 103; G.S. 1923 s. 5599; M.S. 1927 s. 5599; 1929 c. 404; 1933 c. 263; 1935 c. 291 ss. 1 to 5; 1941 c. 379 ss. 1 to 4; 1943 c. 370 s. 1.

Nets of licensed Wisconsin fishermen may be seized if illegal under Minnesota law, though placed in state for purpose of drying and repair. OAG June 9, 1933.

A helper's license is not transferrable. OAG Sept. 13, 1933.

Assistants of persons who have procured nonresident commercial fishing licenses must have helper's licenses. OAG Sept. 14, 1933.

A duly licensed fisherman having a commercial fisherman's license must have an angling license before he can legally troll for lake trout. OAG Sept. 4, 1935 (12c-1).

Lake trout taken by angling or trolling cannot be sold. OAG Sept. 4, 1935 (12c-1).

A person licensed as a fisherman pursuant to section 102.07 is not a dealer at wholesale within the meaning of section 27.02. OAG March 31, 1937 (196g).

A resident of Wisconsin and a licensed commercial fisherman on Lake Superior, who also holds a government fishing license, and docks his fishing boat at a wharf in Duluth and brings his catch to a Minnesota dock where he cleans it and turns it over to a licensed Minnesota buyer for market, the catch being taken within the waters of Lake Superior in Wisconsin, or in waters over which states have concurrent jurisdiction, is not "taking" fish within the meaning of this section, and he need not have a Minnesota nonresident and commercial fishing license, though he is subject to Minnesota laws relating to inspection, sale, and disposition of fish. OAG April 29, 1937 (209b).

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The law is violated by the use of a net with mesh smaller than the statutory requirement by reason of shrinking from preservation or being placed in water, though of proper size when made. OAG June 3, 1933.

Inspectors have power to open boxes already packed for shipment and delivered to a common carrier for transportation in interstate commerce. OAG Feb. 15, 1937 (196g).

Inspecting officers cannot charge a fee for inspection. OAG Feb. 15, 1937 (196g).

Commercial fishermen fishing in Lake Superior cannot peddle from house to house without a license nor can commercial fish dealers purchasing from licensed fishermen in that lake peddle without license. OAG July 6, 1933.

Sections 102.06, Subd. 11, 102.07, Subd. 9, and 27.01 are not inconsistent. OAG Jan. 13, 1934.

Men who are transporting fish they have bought from north shore commercial fishermen and are selling direct to stores in wholesale lots are not required to secure a license under subdivision 9 of this section. OAG Jan. 28, 1935 (290j-2).

Persons who occasionally go into the business of buying fish must procure a license. OAG June 19, 1935 (211b-5).

Meat markets, butchers, hotels, restaurants, and others engaged in duly licensed commercial enterprises, but who buy fish for sale to the ultimate consumer as an incident of their business need not have a license under this section. OAG June 19, 1935 (211b-5).

A fish buyer's license, under section 102.07, is only required of those persons buying fish from the licensed commercial fishermen in Lake Superior waters, and is not required of subsequent dealers in the fish so purchased, thus modifying the implications of a former OAG dated June 19, 1935. OAG Feb. 21, 1940.

Nonresidents must secure the fish buyer's license required by section 102.07, if he purchase fish from the commercial fishermen licensed in Minnesota to fish in Lake Superior, even though his resale of such fish is outside of the state. OAG April 1, 1940.

Wholesale produce dealers bartering with licensed Lake Superior fishermen for fish which they dispose of to wholesale fish dealers having a fish peddler's license, must also be licensed, regardless of whether the medium of exchange is barter or money, and regardless of the fact that the purchaser from them is licensed. OAG April 29, 1940.

The method for computing the license fee of nonresidents of Wisconsin or Michigan applying for Minnesota commercial fishing licenses in Lake Superior is outlined. OAG Oct. 15, 1941.

Minnesota nonresident commercial fishing licenses for Lake Superior must be issued for the full calendar year and computed on that basis, notwithstanding that the license provisions of Michigan and Wisconsin may be for different periods. OAG Dec. 8, 1941.

Persons purchasing fish roe from Lake Superior commercial fishermen for processing and re-sale are required to obtain the fish buyer's license provided for in section 102.07. OAG Dec. 5, 1942.

102.08 COMMERCIAL FISHING IN BOUNDARY WATERS; NEGOTIATIONS.

HISTORY. 1925 c. 118 s. 1; M.S. 1927 s. 5599-1; 1941 c. 361 s. 1.

102.09 CONTRACTS BY DIRECTOR.

HISTORY. 1925 c. 118 s. 2; M.S. 1927 s. 5599-2; 1941 c. 361 s. 2.

102.10 SECTION 102.02 NOT TO APPLY TO LAKE TRAVERSE.

HISTORY. 1925 c. 118 s. 3; M.S. 1927 s. 5599-3.

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102.11 OBSTRUCTIONS TO COMMERCIAL FISHING FORBIDDEN; REMOVAL.

HISTORY. 1919 c. 400 s. 105; G.S. 1923 s. 5601; M.S. 1927 s. 5601.

102.12 OBSTRUCTING NAVIGATION.

HISTORY. 1919 c. 400 s. 106; G.S. 1923 s. 5602; M.S. 1927 s. 5602.

102.13 CERTAIN WATERS IN HOUSTON COUNTY CLOSED TO COMMERCIAL FISHING.

HISTORY. 1923 c. 186 s. 1; G.S. 1923 s. 5603; M.S. 1927 s. 5603.

102.22 ROUGH FISH REMOVAL.

HISTORY. 1943 c. 229 ss. 1 to 7.

The department of conservation may remove rough fish and sell them and need not issue contracts to private individuals. OAG June 13, 1933.

The commission is not authorized to buy fish for the purpose of reselling them. *Lipinski v Gould*, 173 M 559, 218 NW 123.