

CHAPTER 97

DIVISION OF GAME AND FISH
GENERAL PROVISIONS.

97.40 DEFINITIONS.

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97.50 POLICE POWERS.

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97.51 REWARDS.

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HISTORY. 1945 c. 248 s. 1.

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97.53 PUBLICATION OF ORDERS AND LAWS.

HISTORY. 1945 c. 248 s. 1.

97.54 PROSECUTIONS AND BURDEN OF PROOF.

HISTORY. 1945 c. 248 s. 1.

97.55 VIOLATIONS, PENALTIES.

HISTORY. 1945 c. 248 s. 1.

Sections 97.01 to 97.39 were repealed by Laws 1945, Chapter 248, Section 7, and superseded by Minnesota Statutes 1945, Sections 97.40 to 97.55, in accordance with the following comparative table.

Number	Disposition
97.01, sub. 1	97.40, sub. 1.
97.01, sub. 2	97.40, sub. 3.
97.01, sub. 3	97.40, sub. 4.
97.01, sub. 4	Omitted, but covered in part by 101.41, sub. 2, and 101.42, sub. 2.
97.01, sub. 5	97.40, sub. 24.
97.01, sub. 6	Omitted as unnecessary.
97.01, sub. 7	97.40, sub. 13.
97.01, sub. 8	97.40, sub. 14.
97.01, sub. 9	97.40, sub. 15, combined with provisions of 97.01, sub. 10.
97.01, sub. 10	97.40, sub. 15, and combined with provisions of 97.01, sub. 9.
97.01, sub. 11	Omitted as unnecessary and as covered by definitions of "small game" and "big game".
97.01, sub. 12	Omitted as unnecessary.
97.01, sub. 13	Omitted as unnecessary.
97.01, sub. 14	97.40, sub. 12, (definition changed).
97.01, sub. 15	97.40, sub. 7.
97.01, sub. 16	97.40, sub. 21, (combines concepts contained in 98.01 and 98.09).
97.01, sub. 17	97.40, sub. 20.
97.01, sub. 18	97.40, sub. 16.
97.01, sub. 19	97.40, sub. 18, (definition broadened).
97.01, sub. 20	97.40, sub. 10.
97.01, sub. 21	97.40, sub. 5, (definition clarified).
97.01, sub. 22	97.40, sub. 22.
97.01, sub. 23	97.40, sub. 8.
97.01, sub. 24	97.40, sub. 9.
97.01, sub. 25	97.40, sub. 23.
97.02	97.41, sub. 1.
97.03	97.42.
97.033	97.42.
97.04	97.43.
97.05	97.48, sub. 1, but omits the restriction that orders are applicable only to a single season. The provision requiring 30 days' published notice is modified by the provision of section 97.53, sub. 2, requiring 2 weeks' published notice. The penalty for violating commissioner's orders is covered by 97.55, sub. 1.

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Number	Disposition
97.0697.47.
97.0797.44, sub. 4.
97.0897.44, sub. 1 and sub. 3.
97.0997.44, sub. 2 and sub. 6.
97.10 .....	.97.44, sub. 2, sub. 3 and sub. 4, (changes date to which game may be retained, from April 30th to June 30th).
97.11 .....	.97.44, sub. 5.
97.12 .....	.97.45, sub. 1.
97.13, sub. 1 .....	.97.45, sub. 2.
97.13, sub. 2 .....	.97.45, sub. 3. Provision relating to a tag on baggage is believed covered by 97.45, sub. 12.
97.13, sub. 3 .....	.97.45, sub. 4. (Limit of birds in single shipments changed.)
97.13, sub. 4 .....	.97.40, sub. 25; 97.45, sub. 3 and sub. 9.
97.13, sub. 5 .....	.97.45, sub. 7.
97.13, sub. 6	Covered by 97.45, sub. 2.
97.13, sub. 7	Covered by 102.23.
97.13, sub. 8 .....	.97.45, sub. 6. (Changes amount of fish that may be transported by non-resident.)
97.13, sub. 9 .....	.97.45, sub. 5.
97.13, sub. 10 .....	.97.45, sub. 8. Omits requirement of attaching customs receipt as unnecessary and unworkable.
97.13, sub. 11 .....	.97.45, sub. 10.
97.14 .....	.97.45, sub. 11. Detailed provisions relating to form of coupons omitted as properly matters of administrative detail to be prescribed by commissioner under 98.49, sub. 1.
97.15 .....	.97.45, sub. 12 and sub. 14 (shortened and simplified).
97.16 .....	.97.54, sub. 1.
97.17 .....	.97.54, sub. 3.
97.18	Omitted as unnecessary and unused.
97.19	Superseded or repealed by Laws 1943, Chapter 60.
97.20	Superseded or repealed by Laws 1943, Chapter 60.
97.21	Superseded or repealed by Laws 1943, Chapter 60.
97.22 (preliminary statement) .....	.97.48, sub. 7.
97.22 (1) .....	.97.48, sub. 8, (1) and (2).
97.22 (2) .....	.97.48, sub. 8, (3).
97.22 (3) .....	.97.48, sub. 8, (3).
97.22 (4) .....	.97.48, sub. 8, (12). Provisions relating to self-sustaining magazine omitted as undesirable.
97.22 (5) .....	.97.48, sub. 8, (5).
97.22 (6) .....	.97.48, sub. 8, (4). Omits power to open seasons within 13 miles of zone line as zones have been eliminated from the proposed code. Reference to orders designating trout streams are covered by 101.42, sub. 3, (7).
97.22 (7)	Omitted as meaningless, with the general authority conferred by 97.48 sufficient to cover the probable purpose.
97.22 (8)97.48, sub. 8, (6). Omits power to select, set aside and reserve lands owned by the state as public hunting grounds as unworkable in view of the trust fund lands situation. Eliminates requirement of approval by Executive Council as cumbersome and unnecessary.

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Number	Disposition
	Eliminates provision that refuges established within public hunting grounds must be completely surrounded by state owned lands as unnecessary and unworkable.
97.23, sub. 1 to sub. 6, inclusive	Omitted because authority has never been exercised and is believed to be unnecessary.
97.23, sub. 7	Omitted as not properly a part of the game and fish laws. If commissioner's consent to establishment of drainage systems is desirable, that requirement should be inserted in the drainage laws.
97.23, sub. 8	97.48, sub. 8 (6).
97.235	97.48, sub. 7, (7). Disposition of funds covered by 97.49, sub. 1.
97.25	97.48, sub. 8,(9).
97.251	97.49, sub. 2.
97.26 (1)	97.50 (1). Omits authority to arrest without a warrant persons whom officer has "reasonable cause to believe guilty of a violation."
97.26 (2)	97.50 (2).
97.26 (3)	97.50 (3). Penal provisions covered by 97.55, sub. 2.
97.26 (4)	97.50 (5). Direction as to disposition of proceeds from sales of contraband articles is covered by general provisions of 97.49, sub. 1.
97.27	97.50, sub. 3. Direction of disposition of property seized omitted as unnecessary in view of authority to confiscate contained in 97.50, sub. 1 (5).
97.28	97.46.
97.29	97.52, sub. 1.
97.30	97.52, sub. 2 and sub. 3.
97.31	97.51.
97.32	97.48, sub. 8, (3).
97.33	97.53, sub. 2, but shortens the period of publication of some orders from 30 days to 14 days.
97.34	97.53, sub. 1.
97.35	Omitted as undesirable because of failure of neighboring states to adopt similar provisions or if they have done so, to enforce Minnesota restrictions.
97.36	97.50, sub. 4.
97.37	Omitted as unnecessary in view of general statutory provisions.
97.38	97.54, sub. 2.
97.39, sub. 1, (1)	97.55, sub. 1, (1).
97.39, sub. 1, (2)	97.55, sub. 1, (2).
97.39, sub. 1, (3) (a)	97.55, sub. 1, (3)
97.39, sub. 1, (3) (b)	Omitted because penalty is made a gross misdemeanor under 97.55, sub. 2, (2) (c).
97.39, sub. 1, (3) (c)	Omitted as inequitable and in conflict with penalty theory.
97.39, sub. 1, (3) (d)	Omitted as unnecessary and in conflict with the provisions of 100.055, now contained in 97.55, sub. 2, (2) (d).
97.39, sub. 1, (4)	Omitted as in conflict with provisions now contained in 97.55, sub. 2, (2) (c).
97.39, sub. 1, (5)	Omitted because offense to which it applies has been eliminated.
97.39, sub. 1, (6)	Covered by 97.39, sub. 1, (1).

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Number	Disposition
97.39, sub. 1, (7)	Omitted as unnecessary and as a duplication or conflict with other penalty provisions relating to the use of artificial lights.
97.39, sub. 2, (1)	97.55, sub. 2, (1) and (2).
97.39, sub. 2, (2)	Omitted because repealed by Laws 1943, Chapter 229, Sec. 8.
97.39, sub. 2, (3)	97.55, sub. 2, (2) (b).
97.39, sub. 2, (4)	Omitted because repealed by Laws 1943, Chapter 63.
97.39, sub. 2, (5)	97.55, sub. 2, (c).
97.39, sub. 2, (6)	97.55, sub. 2, (2) (b).

NOTE: The following annotations apply to Sections 97.01 to 97.39, which were superseded by Sections 97.40 to 97.55.

97.01 DEFINITIONS.

HISTORY. 1919 c. 400 s. 140; G.S. 1923 s. 5649; 1927 c. 438 s. 2; M.S. 1927 ss. 5536-2, 5649; 1929 c. 332 s. 2; 1933 c. 261 s. 2; 1933 c. 392 s. 5; 1937 c. 447 s. 2; 1939 c. 76 s. 1; 1939 c. 231 s. 5; M. Supp. ss. 5585-1, 6131-8; 1943 c. 63 s. 1.

Subd. 9. TAKING. Commissioner may authorize hunting of deer by bow and arrow, but cannot limit such taking to certain area and exclude use of rifle therein. OAG, July 28, 1933.

Subd. 18. POSSESSION. This section defining "possession" was not intended as fixing the venue in prosecutions for a violation of the statute, nor to change the place of trial as fixed by statute. *State v Giller*, 138 M 369, 165 NW 132.

Man and wife resided in Texas until the man entered federal employ and was sent to the Hawaiian Islands, and the wife removed to Minnesota. The wife's residence for more than six months may be deemed that of the husband, and on coming home on a leave of absence, a hunting license may be issued to him. 1942 OAG 2, Aug. 11, 1942 (209-N).

97.015 ADMINISTRATION.

HISTORY. 1937 c. 310 s. 3; M. Supp. s. 53-23½n.

97.02 CONSTRUCTION.

HISTORY. 1919 c. 400 s. 141; G.S. 1923 s. 5650; M.S. 1927 s. 5650.

97.03 STATE AS SOVEREIGN OWNS WILD ANIMALS.

HISTORY. 1919 c. 400 s. 2; G.S. 1923 s. 5496; M.S. 1927 s. 5496.

It is within the police power of the state to enact such laws as will preserve from extermination or undue depletion wild game adapted to useful purposes; and may adopt any reasonable regulations, not only as to the time and manner of taking or killing such game, but imposing such limitations or restrictions upon its use, or the right of property in it, after it is taken or killed, as will tend to prevent such extermination or depletion. *State v Rodman*, 58 M 393, 59 NW 1098. See *State ex rel v Chapel*, 64 M 130, 66 NW 205; *State v. Tower Lbr. Co.* 100 M 38, 110 NW 254; *Bohman v Gould*, 169 M 374, 211 NW 577; *Lacoste v Dept. of Conservation*, 263 US 545. See also *State Control of Its Natural Resources*, 11 MLR 129.

Where wild game has been caught or killed at a time or in a manner prohibited by statute it remains the property of the state and may be reclaimed by the state as the true owner. *Thomas v N. P. Exp. Co.* 73 M 185, 75 NW 1120.

A person, who in good faith, purchased deer and moose skins for tanning acquired a valid title thereto. In an action to recover the hides, or their value, from the game warden who took possession thereof, the owner is not required

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to prove that the animals from which such skins were taken were lawfully killed. There is a limit to the state's power in tracing the product of animals illegally killed and subjecting those who, in good faith, come into possession thereof to the results attending confiscation. *Linden v McCormick*, 90 M 337, 96 NW 785. See *Allbright v N. P. Ry. Co.* 96 M 135, 104 NW 827; *Hanson v Storey*, 114 M 463; 131 NW 481; *Cohen v Gould*, 177 M 398, 225 NW 435.

The title to all wild game is in the state, and the owner of the premises whereon it is located has only a qualified property interest therein, yet he has the right to exercise exclusive and absolute dominion over his property, and incidentally the unqualified right to control and protect the wild game thereon. *L. Realty Co. v Johnson*, 92 M 363, 365, 100 NW 94. See *Whittaker v Stangvick*, 100 M 386, 111 NW 295. See also *Pahl v Long Meadow Gun Club*, 182 M 118, 122, 233 NW 836; *Minnesota Valley Gun Club v Northline Corporation*, 207 M 126, 290 NW 222.

The statute relating to wild animals recognizes no property rights in such animals except as authorized by the act. *Waldo v Gould*, 165 M 128, 206 NW 46. See *Bohman v Gould*, 169 M 374, 211 NW 577; *Cohen v Gould*, 177 M 398, 225 NW 435.

The title to game and fish is vested in the state in its sovereign capacity for the benefit of the people. *Waldo v Gould*, 165 M 128; 206 NW 46; *Geer v Connecticut*, 161 US 519, 16 SC 600, 40 L. Ed. 793; *State v Shattuck*, 96 M 45, 104 NW 719. See *Bohman v Gould*, 169 M 374, 211 NW 577.

The burden of proof of lawful possession is on the party in possession and claiming it to be lawful. *Cohen v Kaupp*, 172 M 469, 215 NW 837. See *Cohen v Gould*, 177 M 398, 225 NW 435.

Where a full-blood Indian received a patent from the United States to a quarter-section of land on the White Earth Indian Reservation and, the trust period having expired thereon, sold the land and removed therefrom, the court had jurisdiction of a prosecution for a violation of the state game laws. *State v Bush*, 195 M 413, 263 NW 300.

The title to all wild animals on lands purchased by the federal government for Indian use remains in the state. 1940 OAG 12, July 7, 1939.

Any agreement between the commissioner of conservation and the Bureau of Indian Affairs to waive enforcement of game and fish laws on lands purchased by the federal government for the Indians is invalid. Jurisdiction over such lands can only be ceded by the legislature. OAG, July 24, 1939.

A deer shot upon property posted against hunting was killed in violation of the game and fish laws and neither the owner of the property nor the hunter obtained title thereto, although if the animal had been fatally shot off of the posted land merely ran upon such land before dying, the hunter shooting the animal was legally entitled thereto. OAG, Dec. 1, 1942.

97.033 WILD RICE; OWNERSHIP OF.

HISTORY. 1939 c. 231 s. 5; M. Supp. s. 6131-8; 1941 c. 217 s. 4.

97.04 TAKING OF WILD ANIMALS RESTRICTED.

HISTORY. 1921 c. 44 s. 1; G.S. 1923 s. 5497; M.S. 1927 s. 5497.

This statute is a proper exercise of the police power of the state to protect and preserve wild game, because reasonably tending to prevent the unlawful killing of such game during the closed season. *State v Rodman*, 58 M 393, 59 NW 1098.

Where the taking of fish is allowed by law, a game warden had neither legal nor apparent legal right to seize the fish. *Merriman v G. N. Exp. Co.* 63 M 543, 65 NW 1080.

The legislature has plenary power to control, restrict, and regulate the taking of water-fowl and they can be lawfully taken only at the times, in the places, and in the manner permitted by the statute. *State v Figge*, 177 M 483 (486), 225 NW 430.

Water-fowl may not be taken from an artificial blind constructed in the public waters of a lake upon an artificial embankment built for the purpose of erecting a blind thereon. *State v Figge*, 177 M 483, 225 NW 430.

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Owner or lessee of land within the state may buy or sell pheasants or other game birds (except Hungarian partridge) for stocking or breeding purposes, but cannot buy game birds without the state for food purposes. OAG May 24, 1933.

Frogs cannot be imported into Minnesota for breeding purposes but may be imported for food purposes. OAG June 8, 1933.

Sturgeon cannot be taken except in waters forming a common boundary between this state and the state of Wisconsin. OAG Sept. 12, 1934 (211c-12).

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

Wild animals lawfully taken in another state may be legally transported over highways of this state, provided possession of such animals would be lawful if taken within this state. OAG July 7, 1939.

Pheasants purchased from a licensed Wisconsin game farm and killed in connection with the holding of a retriever trial in Wisconsin cannot legally be sold in the state of Minnesota. OAG Aug. 20, 1940.

The public has no right to hunt in drainage ditches against the prohibition of the owner of the fee title of the land. OAG Oct. 24, 1940.

Licensed trappers have no right to trap upon state highways as against the objections of the abutting land owner, who owns the fee title to the land which the highway crosses. OAG Nov. 7, 1940.

Since the 1941 amendment to section 102.06 there is no authority for the sale of crappies or sturgeon in this state, whether taken from international waters or transported from other jurisdictions which authorize their sale. OAG June 7, 1941.

Harboring wolves in an enclosure is not an offense against the game laws so that they do not propagate. 1942 OAG 11, Aug. 15, 1941 (210-D-8).

97.05 ADDITIONAL PROTECTION; ORDERS OF COMMISSIONER.

HISTORY. 1919 c. 400 s. 134; G.S. 1923 s. 5640; M.S. 1927 s. 5640; 1939 c. 269.

The authority given to modify the statutory requirements is limited to authority to increase rather than decrease protection and section 101.08 cannot be modified so as to permit the taking of sturgeon in certain inland waters. OAG Oct. 26, 1931.

Governor has no power to open deer season at any time than that provided by statute but may shorten the season under certain conditions. OAG June 10, 1933.

There is no other law limiting the duration of the governor's order. OAG April 30, 1934 (211a).

It is possible to promulgate and publish an order which will set season on mourning doves, prairie chickens, and other upland birds to conform with the dates of the season for taking of Chinese ringneck or English pheasants, ruffed grouse, and quail. OAG July 23, 1934 (605b-26).

Sturgeon cannot be taken except in waters forming a common boundary between this state and the state of Wisconsin. OAG Sept. 12, 1934 (211c-12).

The governor has power to change, by amendment, the terms of an executive order issued under this section. OAG Nov. 14, 1934 (213E).

The conservation commission has no power to make regulations concerning the taking of migratory water-fowl. OAG Nov. 4, 1935 (983L).

The governor may order additional protection for migratory water-fowl. OAG Nov. 4, 1935 (983L).

Under section 97.05, the commissioner of conservation has authority to reduce the daily bag limit of any species of protected wild animals in any given or limited area. OAG June 23, 1939.

The commissioner of conservation has authority, when necessary for the proper protection or propagation of any protected wild animals, to prohibit by order the running of dogs at night, or at any other time when to do so would constitute a menace to the propagation of such animals. OAG July 31, 1939.

The commissioner of conservation has authority to close areas below dams for any current season, the order requiring renewal for a subsequent season,

and the director of game and fish has authority to close such areas by order establishing a fish reserve. OAG Nov. 27, 1939.

The boundary waters between Minnesota and Wisconsin, upon which the commissioner of conservation has the power to make any and all regulations for taking of fish, includes all waters, lagoons, back-waters, and sloughs, even though created by artificial construction works, connected with the main channel of the river by a channel navigable at periods when the water level is approximately equal to the normal pool elevation, created and established by the United States. OAG Dec. 11, 1939.

A commissioner's order closing the remainder of a season, for which licenses for the calendar year had been issued, operates to nullify the privilege conferred by the license and that licensees are not entitled to any refund. OAG Dec. 6, 1940.

The fact that licenses are issued for the calendar year does not interfere with the authority of the commissioner to close or shorten seasons when necessary to afford the protection authorized by the statute. OAG Dec. 20, 1940.

The commissioner of conservation has authority to afford additional protection under the statute, by reducing the daily and possession limits of protected species. OAG Jan. 14, 1941.

97.06 LIMITS OF GAME AND FISH; WANTON WASTE.

HISTORY. 1919 c. 400 s. 6; G.S. 1923 s. 5500; 1925 c. 380 s. 1; M.S. 1927 s. 5500; 1929 c. 417 s. 2.

Section 101.20 governs over section 97.06 as to limits on fish. OAG Aug. 22, 1933.

97.07 STORAGE OF WILD ANIMALS IN COMMERCIAL COLD STORAGE WAREHOUSES FORBIDDEN.

HISTORY. 1919 c. 400 s. 8; G.S. 1923 s. 5502; 1925 c. 380; M.S. 1927 s. 5502; 1939 c. 351.

A creamery may not build and rent out cold storage lockers for storage of pheasants, ducks, deer, or perishable game. OAG Dec. 8, 1936 (645b-25).

97.08 POSSESSION OF IMPORTED GAME DURING CLOSED SEASON.

HISTORY. 1919 c. 400 s. 9; 1921 c. 44 s. 2; G.S. 1923 s. 5503; M.S. 1927 s. 5503; 1929 c. 417 s. 3.

A fisherman with licenses from both Minnesota and Wisconsin violated no law in catching seven bass on the Wisconsin side of the Mississippi river and three more on the Minnesota side. OAG Aug. 18, 1930.

The sale of Canadian fish during the closed season is illegal. OAG June 2, 1933.

Pheasants legally taken in South Dakota in excess of the Minnesota possession limits may be stored and possessed in Minnesota upon complying with the statutes relating to tagging. OAG Oct. 3, 1941.

97.09 POSSESSION OF DEER, MOOSE, AND GAME BIRDS; WHEN LAWFUL.

HISTORY. 1919 c. 400 s. 39; G.S. 1923 s. 5533; M.S. 1927 s. 5533.

A statute prohibiting the having in possession, more than five days after the commencement of the closed season, certain kinds of game, although lawfully taken or killed during the open season, is a proper exercise of the police power of the state to protect and preserve wild game, because reasonably tending to prevent unlawful killing of such game during the closed season. *State v Rodman*, 58 M 393, 59 NW 1098. See also *State v Poole*, 93 M 148, 100 NW 647.

When game is once off the White Earth Reservation and in the possession of any person or corporation in violation of the law it may be seized and confiscated by the proper officers of the state without reference to where or by whom it was

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killed. *Selkirk v Stephens*, 72 M 335, 339, 75 NW 386. See *State v Cloud*, 179 M 180, 228 NW 611.

The possession of game during the closed season acquired from Indian allottee by gift is unlawful. OAG Jan. 6, 1936 (240d).

NOTE: The provisions of this section have been modified, and to that extent superseded, by the provisions of sections 97.07 and 97.10 with respect to the time in which such game may be kept, and the regulations with respect to tagging the same.

97.10 PERMITS TO KEEP GAME AFTER SEASON CLOSURES.

HISTORY. 1919 c. 400 s. 40; 1921 c. 44 s. 6; G.S. 1923 s. 5534; 1925 c. 380 s. 1; M.S. 1927 s. 5534; 1939 c. 360 s. 1; 1943 c. 58 s. 1.

A citizen of Wisconsin may shoot ducks in that state and bring them into Minnesota for the sole purpose of transporting them by automobile back into Wisconsin. OAG Oct. 3, 1933.

A Canadian license covers a fisherman leaving from a Minnesota camp to Canadian waters on the other side of the boundary and returning to Minnesota camp with his catch. OAG Aug. 19, 1934 (209h).

The prohibition relating to the transportation of undressed game birds does not apply to such birds while being stored in locker or refrigerator plants, but that the prohibition against the removal of heads and feet may be violated upon removal of the birds from such plants, if they are transported for any distance. OAG Oct. 14, 1941.

97.11 NOT TO BE SHIPPED OR SOLD.

HISTORY. 1919 c. 400 s. 41; G.S. 1923 s. 5504; M.S. 1927 s. 5504; 1929 c. 417 s. 4.

97.13 TRANSPORTATION AND EXPORTATION OF SALABLE FISH AND GAME.

HISTORY. 1919 c. 400 s. 11; G.S. 1923 s. 5505; 1925 c. 380 s. 1; M.S. 1927 s. 5505; 1929 c. 417 s. 5; 1933 c. 392 s. 1; 1939 c. 76 s. 2; 1939 c. 354 ss. 1, 2; 1941 c. 457; 1943 c. 110 s. 1; 1943 c. 284 s. 1.

Wall-eyed pike may not be shipped out of the state except, not to exceed 25 pounds, caught and shipped by a nonresident licensed to fish in this state. OAG March 22, 1933.

A nonresident may ship fish out of the state only in the "round". OAG June 17, 1933.

A license is required to legally ship fish by a nonresident, regardless of age. OAG Aug. 29, 1933.

A resident of Minnesota shooting ducks in Wisconsin under a non-resident license may bring them into Minnesota, though he does not hold a Minnesota license. OAG Oct. 3, 1933.

Each hunter must accompany his deer, except when shipped by common carrier. OAG Oct. 30, 1933.

Act must be torn off license and affixed to receptacle containing fish and not be kept on person. OAG June 12, 1935 (211a-10).

A nonresident may ship fish by common carrier, subject to the restriction that they must be consigned to himself, under the shipping coupon provisions, anywhere in the United States. OAG July 17, 1939.

The prohibition of the statute against shipment, transportation, or carriage of dressed fish, applies to nonresidents only and not to resident licensed fishermen. OAG June 4, 1941.

Nonresidents may ship only undressed bullheads. OAG June 4, 1941.

97.14 MANNER OF TRANSPORTATION, GAME BIRDS OR DEER.

HISTORY. 1919 c. 400 s. 12; G.S. 1923 s. 5506; 1925 c. 380 s. 1; M.S. 1927 s. 5506; 1939 c. 354 s. 3.

A resident of Minnesota receiving game birds as a gift is entitled to transport or carry them within the state without having procured a hunting license, but may not ship by common carrier because of the requirement that the shipping coupons attached to licenses must be used in such shipments. OAG Oct. 16, 1941.

97.15 PACKAGES FOR TRANSPORTATION TO BE LABELED.

HISTORY. 1919 c. 400 s. 13; G.S. 1923 s. 5507; 1925 c. 380; M.S. 1927 s. 5507.

97.16 LIMITATION ON PROSECUTIONS.

HISTORY. 1919 c. 400 s. 17; G.S. 1923 s. 5511; M.S. 1927 s. 5511.

97.17 PRESUMPTIVE EVIDENCE.

HISTORY. 1919 c. 400 s. 18; G.S. 1923 s. 5512; M.S. 1927 s. 5512.

Whether the burden of proof is upon the person having possession during the open season and claiming title to wild game alleged to have been caught and taken in violation of law, or upon the state, to show whether the law was violated, not decided. *Graham v N. P. Exp. Co.* 89 M 193, 94 NW 548.

Deer and moose skins, purchased in good faith from persons who had taken them from animals legally killed during the open season, may lawfully be shipped out of the state to be tanned and returned to the shipper for use in manufacturing gloves and mittens. *Allbright v N. P. Ry. Co.* 96 M 135, 104 NW 827.

The evidence as to whether or not the origin of the skins was legal was a question for the jury. *Hudson-Duluth Furriers, Inc. v McCullough*, 182 M 581, 235 NW 537.

97.18 WITNESSES.

HISTORY. 1919 c. 400 s. 19; G.S. 1923 s. 5513; M.S. 1927 s. 5513; 1929 c. 417 s. 7.

97.22 DIRECTOR; GENERAL POWERS AND DUTIES; STATISTICS; BULLETINS.

HISTORY. 1919 c. 400 s. 124; G.S. 1923 s. 5630; 1925 c. 340 s. 1; 1925 c. 419 s. 1; M.S. 1927 s. 5630; 1929 c. 319; 1931 c. 39; 1931 c. 376 s. 1; 1933 c. 376 ss. 1, 2; 1933 c. 392 s. 22.

(4) The director of game and fish has no authority to expend funds for publications or informational work except in so far as that is done by the commissioner of conservation under the appropriation to the information bureau. OAG Aug. 15, 1941.

The word "commissioner" does not refer to the head of the game and fish division, as the new magazine is to be the publication for the entire conservation department. OAG May 9, 1933.

The legislature intended that the publication was to be the journal for the entire department of conservation and be self-sustaining. OAG June 1, 1933.

Any department of the state is authorized to subscribe to the Minnesota Conservationist as a part of their educational work. OAG Aug. 5, 1933.

(6) The commissioner did not act arbitrarily in setting aside certain waters for fish propagation. *Schmidt v Gould*, 172 M 179, 215 NW 215.

The opening date 13 miles north of zone line must be as of the opening date of the southern zone and cannot be fixed at an intermediate date. OAG June 12, 1933.

It would not be legal to issue an order extending the southern zone to the limits fixed under this subdivision for a period longer than the season just beginning. OAG July 2, 1934 (211d-20).

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An order closing to commercial fishing waters lying entirely on Minnesota side of boundary would be valid, there being no reciprocal "arrangement" with Canadian province. OAG Jan. 15, 1935 (211b-2).

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

(8) Where game wardens perform work within the confines of hunting grounds, game farms, and game refuges, such as feeding game birds therein, their salaries and expenses can be charged to the public hunting ground and game refuge revolving fund. OAG Dec. 28, 1933.

The commissioner of conservation has power to cooperate with the United States Biological Survey in the acquisition of lands for the Mud Lake area by proceeding under Laws 1929, Chapter 391, amending this section, the expense of acquiring the lands to be paid from federal funds. OAG July 12, 1934 (817g).

The director of game and fish has authority to discontinue operation or maintenance of fish hatcheries, dismantle the buildings on the hatchery sites, and salvage the material for use at more suitable hatcheries. OAG Aug. 22, 1939.

The director of game and fish has authority to publish the bulletin entitled "Conservation Volunteer" in the form of its first two issues and pay for the same from game and fish funds. OAG Nov. 12, 1940.

There is authority to purchase eggs and fish for brood stock purposes from Lake of the Woods and to prohibit therein all fishing, except angling by hook and line. OAG May 14, 1942.

There is authority to purchase eggs and fish for brood stock purposes from private hatcheries, but probably no authority to purchase adult fish for planting purposes, and there is authority to negotiate for and purchase an entire private hatchery to be operated by the state. OAG Aug. 13, 1942.

97.23 DIRECTOR MAY ACQUIRE LANDS.

HISTORY. 1919 c. 400 s. 124; G.S. 1923 s. 5630; 1925 c. 340 s. 1; 1925 c. 419 s. 1; M.S. 1927 s. 5630; 1929 c. 319; 1931 c. 39; 1931 c. 376 s. 1; 1933 c. 376 ss. 1, 2; 1933 c. 392 s. 22.

The division of game and fish is authorized to furnish engineering and technical assistance to sportsmen's clubs and organizations in the construction of cooperative fish-rearing ponds. OAG Oct. 24, 1941.

97.235 SALE OR EXCHANGE OF PUBLIC HUNTING GROUNDS.

HISTORY. 1941 c. 404.

97.25 REMOVAL OF FISH FROM SHALLOW LAKES.

HISTORY. 1919 c. 400 s. 131; G.S. 1923 s. 5637; 1925 c. 380 s. 1; M.S. 1927 s. 5637; 1941 c. 32; 1943 c. 136 s. 1.

Any contracts made pursuant to this section anticipate that money will be placed in the fish fry fund and used accordingly. OAG Dec. 22, 1933.

97.251 STATE FISH PROPAGATION FUND.

HISTORY. 1941 c. 467 s. 2; 1943 c. 392 s. 1.

Both husband and wife must appear before the licensing agent to obtain a combination resident license. There is no strict necessity that they appear at the same time. 1942 OAG 1, May 19, 1941 (209).

97.26 POLICE POWERS OF DIRECTOR, PATROLMEN, AND WARDENS.

HISTORY. 1919 c. 400 s. 125; 1921 c. 44 s. 12; G.S. 1923 s. 5631; 1925 c. 380; M.S. 1927 s. 5631; 1933 c. 392 s. 19.

(1) A game warden has authority to arrest a camper refusing to put out a fire. OAG June 3, 1933.

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(2) Game warden has the right to require a settler to show his burning permit. OAG June 3, 1933.

(4) One who pleads guilty to shooting at ducks in open water and pays fine and costs has no right to the return of the gun seized. OAG May 25, 1933.

Where game warden seized rifle of one shooting deer out of season and he was convicted by the municipal court and conviction was set aside as void, the warden could keep possession of the rifle. OAG Feb. 20, 1931.

Confiscated stolen gun stands on no different ground than confiscated borrowed gun used in violation of game laws. OAG Nov. 20, 1933.

(5) 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).

Game, though it may have been illegally smuggled and therefore subject to seizure by the United States Customs Office, was properly confiscated by the state, and as such could not be surrendered, or the proceeds paid to the United States, under the rule that the sovereign which acts first, takes jurisdiction and cannot be divested by the sovereign which has failed to act. OAG Feb. 1, 1939.

The state has the right to tax warden's costs in prosecutions, notwithstanding the warden is entitled to a salary and mileage in his work for the state. OAG Feb. 27, 1939.

Game wardens may select any justice of the peace in the county where an offense is committed, or which has jurisdiction over the offense, except for offenses occurring within the limits of cities or villages having a municipal court, in which event that court is the only one having jurisdiction. The state may take a change of venue by filing an affidavit of prejudice in cases before justices of the peace. OAG Oct. 28, 1939.

There is no authority to confiscate loaded firearms being carried in an automobile, unless they are unlawfully used or had in possession with intent to unlawfully use the same in pursuing, taking, or attempting to take wild animals. OAG Sept. 13, 1939.

A plea of guilty with any circumstances showing the judgment of the court was acquiesced in, and that the plea was voluntarily made, constitutes a waiver of the right to appeal to the district court. OAG Nov. 29, 1939.

Under the statute wardens have a right to stop, enter, and search an automobile, without a warrant, whenever they have reasonable grounds for the belief that illegal wild animals are contained therein. Whether or not such reasonable grounds for the belief exist is a question of fact in each case. OAG Dec. 29, 1939.

While wardens' fees are taxable in criminal cases, such fees cannot be charged against the county in cases where the prosecution fails, the defendant escapes, or does not pay such costs. OAG Jan. 6, 1940.

Justices of the peace or judges before whom game law violations are tried have no jurisdiction or authority with reference to the disposition of contraband articles seized in connection with a violation brought before the court. OAG Oct. 24, 1940.

There is no authority for the taxation of a warden's mileage costs from the place where the violation occurred to court in a case where the arrest is not made at the time of the violation, but the violator is requested or ordered to appear in court at a subsequent date. OAG Dec. 6, 1940.

Game wardens, operating under cover and soliciting sales of protected wild animals from suspected violators, may legally testify regarding the circumstances of the transaction, and support a conviction of illegal sale, as against the objection that their acts constituted entrapment. OAG Dec. 9, 1940.

The authority of wardens to confiscate firearms carried on a game refuge, depends upon proof that such firearms were used or intended to be used for unlawfully taking wild animals on such refuge. OAG Feb. 8, 1941.

The duty and authority of seizing and confiscating equipment used in violation of the game and fish laws rests wholly in the enforcing officer, and is not contingent or dependent upon the judgment, direction, or discretion of the court before whom the owner was prosecuted. OAG May 19, 1941.

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Where a case has been fully tried in a justice court and the defendant found guilty and sentence imposed, the succeeding justice has full authority to enforce the terms of the sentence. OAG July 11, 1942.

Game wardens may enter and inspect locker plants where game and fish are customarily stored in individual lockers without a warrant or without having any grounds for believing illegal wild animals are stored therein. OAG Sept. 18, 1941.

A payment of the fine following conviction of an offense against the game laws, whether on a plea of guilty or not guilty, constitutes a waiver of the right to appeal from judgment on conviction in misdemeanor cases tried in justice or municipal courts. OAG Feb. 27, 1942.

97.27 SEARCH WARRANTS.

HISTORY. 1919 c. 400 s. 126; G.S. 1923 s. 5632; M.S. 1927 s. 5632.

97.28 POSSESSION OR SHIPMENT OF COMMINGLED GOODS.

HISTORY. 1919 c. 400 s. 127; G.S. 1923 s. 5633; M.S. 1927 s. 5633.

In a replevin case the evidence as to the legal taking in Wisconsin of muskrat skins seized by the Minnesota game and fish department was held not sufficient to take the question to the jury. *Cohen v Gould*, 181 M 585, 233 NW 585.

97.29 LOCAL AUTHORITIES TO ASSIST.

HISTORY. 1919 c. 400 s. 128; G.S. 1923 s. 5634; 1925 c. 380; M.S. 1927 s. 5634.

Except in certain specified cases, the law does not impose upon the county attorney the duty to search out and prosecute persons until an officer or private person presents sufficient evidence to furnish reasonable ground for conviction and offers to sign a complaint to initiate criminal prosecution. 1942 OAG 189, Nov. 10, 1942 (121-B-7).

97.30 OBSTRUCTING DIRECTOR PROHIBITED.

HISTORY. 1919 c. 400 s. 129; G.S. 1923 ss. 5635; M.S. 1927 s. 5635.

The fines paid under this section are payable 50 per cent to the county treasurer and 50 per cent to the game and fish fund, but if prosecution is under the general laws relating to resisting an officer, the fines are not so allocable. OAG March 20, 1942.

97.31 REWARDS.

HISTORY. 1919 c. 400 s. 132; G.S. 1923 s. 5638; M.S. 1927 s. 5638.

97.32 DESTRUCTION OF PREDATORY ANIMALS.

HISTORY. 1919 c. 400 s. 133; G.S. 1923 s. 5639; 1925 c. 380; M.S. 1927 s. 5639.

A hunting or trapping license is not required of permittees authorized under this section to shoot or trap rabbits which are doing damage. OAG Jan. 3, 1940.

97.33 PUBLICATION OF ORDERS AND RULES.

HISTORY. 1919 c. 400 s. 135; G.S. 1923 s. 5643; M.S. 1927 s. 5643.

97.34 PUBLICATION OF LAWS RELATING TO WILD ANIMALS.

HISTORY. 1919 c. 400 s. 136; G.S. 1923 s. 5644; M.S. 1927 s. 5644.

97.35 COMMON BOUNDARY WATERS.

HISTORY. 1919 c. 400 s. 137; G.S. 1923 s. 5645; M.S. 1927 s. 5645; 1931 c. 298 s. 1.

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The taking of muskrats in the waters of a lake forming the boundary between Minnesota and South Dakota within the closed season established by the laws of Minnesota is an offense against the laws of Minnesota irrespective of the location of the boundary line. OAG Jan. 6, 1930.

Minnesota and South Dakota have concurrent jurisdiction over the entire boundary waters, and a Minnesota hunter can hunt on the South Dakota side, but not on the South Dakota shore. OAG Nov. 4, 1935 (983L).

The reciprocal provisions contained in section 97.35 were superseded as to the taking of migratory game birds by section 100.09 on the Minnesota side of the boundary waters, notwithstanding the season might not be open in the adjoining state. OAG Aug. 22, 1939.

97.36 RECIPROCAL JURISDICTION; COURTS AND WARDENS.

HISTORY. 1919 c. 400 s. 138; G.S. 1923 s. 5646; M.S. 1927 s. 5646.
See, Reciprocal and Retaliatory Legislation, 21 MLR 371.

97.37 SALARIES; EXPENSES.

HISTORY. 1919 c. 370 s. 2; G.S. 1923 s. 5654; M.S. 1927 s. 5654.

97.38 PROSECUTIONS; BURDEN OF PROOF.

HISTORY. 1919 c. 400 s. 119; G.S. 1923 s. 5625; M.S. 1927 s. 5625.

97.39 VIOLATIONS; PENALTIES.

HISTORY. 1919 c. 400 ss. 16, 45, 47, 49; 1921 c. 44 s. 3; 1921 c. 263 s. 2; 1921 c. 450 s. 2; 1923 c. 342; 1923 c. 426 s. 1; G.S. 1923 ss. 5510, 5539, 5541, 5543, 5642; 1925 c. 380; 1927 c. 333; M.S. 1927 ss. 5510, 5539, 5541, 5543, 5642; 1929 c. 84 ss. 3, 7; 1929 c. 417 s. 6; 1929 c. 418 s. 2; 1931 c. 399 s. 2; 1933 c. 49 s. 5; 1933 c. 369 s. 2; 1933 c. 392 ss. 3, 7; 1937 c. 236 s. 3; 1939 c. 121; 1939 c. 424 ss. 1, 3; M. Supp. ss. 5537-1, 5574-4, 5592-3, 5592-7, 5592-14; 1941 c. 60 s. 2; 1941 c. 366; 1941 c. 482; 1943 c. 229 s. 8.

The law requiring fur dealers to keep complete book records of all transactions in buying and selling raw furs is a penal statute and its provisions are mandatory. The statute in no way conflicts with Minnesota Constitution, Article 1, Sections 7 or 10, nor with Article 4, Section 27. *State v Stein*, 215 M 308, 9 NW(2d) 763.

Wild animals, raised by one not having a fur breeder's license, may be seized, but it is a more expeditious procedure to cause the arrest of the offenders for not having a license. OAG March 16, 1934.

Each animal unlawfully sold constitutes a separate offense and supports a separate charge, even though all the animals concerned were handled in one transaction, and the result of the trial upon the first charge is not controlling as to the others. OAG Oct. 15, 1942.

A gun is either a rifle or a shotgun, depending upon the character of the ammunition used therein. OAG Nov. 26, 1941.