

CHAPTER 97

GAME AND FISH

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97.48 COMMISSIONER, GENERAL POWERS.

[For text of subs 1 to 7, see M.S.1982]

Subd. 8. The commissioner shall do all things deemed by him desirable in the preservation, protection and propagation in their natural state, and artificially, of all desirable species of wild animals. The commissioner shall make special provisions for the management of fish and wildlife to insure recreational opportunities for anglers and hunters.

[For text of subs 9 to 21, see M.S.1982]

Subd. 22. The commissioner shall authorize the maintenance and operation of private fish hatcheries under such rules and regulations as the commissioner shall prescribe for the raising and disposition of any fish indigenous to Minnesota waters. No license shall be required of any person for taking fish by angling at a licensed private fish hatchery operated in accordance with the rules and regulations of the commissioner, or from an artificial pool containing only fish purchased from a private fish hatchery, provided the operator shall furnish to each person taking such fish a written certificate in such form as the commissioner shall prescribe, giving the number and description of the fish taken and such other information as the commissioner requires, whereupon such fish may be possessed, shipped, or transported within the state in like manner as fish taken by a resident under a license. Any person making a false statement in any such certificate shall be guilty of a misdemeanor and subject to the same penalties as prescribed for violations of section 97.55, subdivision 11.

[For text of subs 23 to 25, see M.S.1982]

Subd. 26. The commissioner may designate all or part of any lake or stream, but in aggregate not more than 100 lakes and 25 streams at any one time, as experimental waters and, notwithstanding any other provision of law, may establish by order the seasons, limits and methods for the taking of fish therefrom and such other regulations relating thereto as he deems desirable; provided the above may be done only on waters to which the public has free access after a public meeting has been held in the county where the lake or stream, or major portion thereof, is located. In the case of a named lake having a water area of more than 1,500 acres, a public meeting shall be held in the seven-county metropolitan area, as defined in section 473.121, subdivision 2. Notice of the public meeting shall be published once in a legal newspaper within the county or counties where the lake or stream is located not less than seven days prior to the meeting. The commissioner shall establish methods and criteria for citizen initiation of experimental waters designation and for citizen participation in the evaluation of waters designated as experimental waters.

Subd. 26a. The commissioner may develop a system of classification under which waters which have been designated as experimental waters pursuant to subdivision 26 and other waters intrinsically suitable therefor are classified as

primarily intended for use as trophy lakes, family fishing lakes, special species management lakes, or other categories of special use designated by the commissioner.

[For text of subds 27 and 28, see M.S.1982]

History: 1983 c 356 s 1-4

97.481 ACQUISITION OF WILDLIFE LANDS.

[For text of subd 1, see M.S.1982]

Subd. 2. **Procedure.** Before the commissioner acquires lands by purchase or lease pursuant to this section, he shall proceed in accordance with this subdivision.

(a) The commissioner shall notify the board of county commissioners in each county and the town officers in each town where land is to be acquired and shall furnish the board and the town officers a description of the land to be acquired. The county board shall approve or disapprove the proposed acquisition within 90 days after the commissioner has notified the county board and the town officers of the proposed acquisition and furnished the description of the land involved. An extension of time, not to exceed 30 days, may be given by the commissioner to a county board. In a county in which a soil and water conservation district is organized, the supervisors will act as counselors to the county board regarding the best utilization and capability of the land proposed for acquisition, including the questions of drainage and flood control.

(b) If the county board approves an acquisition within the 90-day period or extension thereof, the commissioner may proceed with the acquisition.

(c) If the county board disapproves an acquisition, it shall, at the time of its decision, set forth valid reasons for disapproval. The landowner or the commissioner may appeal the county board's disapproval to the district court in the county in which any of the lands are situated. If the district court, or an appellate court, finds that the county board's disapproval is arbitrary or capricious or that the reasons stated for disapproval are invalid, or if the county board fails to give any reasons or fails to act to approve or disapprove of the acquisition within the 90-day period or extension thereof, the commissioner or the owner of the land which the commissioner seeks to acquire may submit the proposed acquisition to the land exchange board which shall consider the interests of the county, the state, and the landowner and determine whether the acquisition will be in the public interest.

(d) The land exchange board shall conduct a hearing upon each acquisition submitted to it after giving notice to all interested parties, including, but not limited to, the board of county commissioners in the county where the land to be acquired is located, the commissioner, and the owner of the land. The land exchange board shall hold its hearing and make its decision within 60 days after submission of the proposed acquisition to it.

If a majority of the members of the land exchange board approves the acquisition, the commissioner may proceed with the acquisition. If a majority of the members of the land exchange board disapproves the acquisition, the commissioner shall not acquire the property.

History: 1983 c 247 s 41

97.4843 PHEASANT STAMPS.

Subdivision 1. **Definitions.** As used in this section, the following terms have the meanings given them:

- (a) "Pheasant" means the Phasianus colchicus.
- (b) "Stamp" means the state pheasant stamp issued by the commissioner.
- (c) "Development" means, but is not limited to, the establishment of nesting cover, winter cover, and reliable food sources.

Subd. 2. **Stamp required.** Except for residents under the age of 18 years or over the age of 65 years, no person who is otherwise required to possess a Minnesota small game license shall hunt or take pheasants within this state without first purchasing a stamp and having the stamp in possession while hunting or taking pheasants. Each stamp shall be validated by the signature of the licensee written across its face. The commissioner shall determine the form of the stamp and shall furnish and distribute stamps to county auditors for sale by them and their authorized subagents as prescribed by order of the commissioner. The commissioner shall encourage the purchase of stamps by any persons interested in the improvement of pheasant habitat.

Subd. 3. **Fee.** A stamp shall be issued to each small game hunting license applicant or other person interested in the improvement of pheasant habitat upon payment of a fee of \$5. Stamps shall be issued annually and shall be valid from March 1 through the last day of the following February.

Subd. 4. **Use of revenue.** The commissioner may approve projects only for the following purposes:

(a) Promotion and practice of development, restoration, maintenance and preservation of suitable habitat for pheasants on public and private lands and the reimbursement of landowners for setting aside lands for pheasant habitat and the expenditure of funds on public and private lands to provide pheasant habitat;

(b) Necessary related administrative and personnel costs in an amount not to exceed ten percent of the annual deposits into the game and fish fund attributable to the sale of stamps.

History: 1983 c 65 s 1

97.50 POLICE POWERS.

Subdivision 1. **Powers.** The commissioner, director, game refuge patrolmen, and conservation officers are authorized to:

(1) execute and serve all warrants and processes issued by any court having jurisdiction under any law relating to wild animals, wild rice, use of water, conservation, protection or control of public waters, state-owned dams or other works affecting public waters or water pollution, in the same manner as a constable or sheriff;

(2) arrest, without a warrant, any person detected in the actual violation of any provisions of chapters 84, 97 to 102, 105 and 106, and section 609.68; and

(3) take the person before any court in the county in which the offense was committed and make proper complaint.

When a person who is arrested for any violation of the provisions of law listed in clause (2), which is punishable as a misdemeanor, is not taken into custody and immediately taken before a court, the arresting officer shall prepare, in quadruplicate, written notice to appear before a court. The notice shall be in the form and has the effect of a summons and complaint. It shall contain the name and address of the person arrested, the offense charged, and the time and the place he is to

appear before the court. This place must be before a court which has jurisdiction within the county in which the offense is alleged to have been committed.

In order to secure release, without being taken into custody and immediately taken before the court, the arrested person must give his written promise to appear before the court by signing, in quadruplicate, the written notice prepared by the arresting officer. The officer shall retain the original of the notice and deliver the copy marked "SUMMONS" to the person arrested. The officer shall then release the person from custody.

On or before the return day, the officer shall return the notice or summons to the court before whom it is returnable. If the person summoned fails to appear on the return day, the court shall issue a warrant for his arrest. Upon his or her arrest, proceedings shall be had as in other cases.

[For text of subds 2 to 5, see M.S.1982]

Subd. 6. Violation; permits. The commissioner, director, game refuge patrolmen, and conservation officers shall seize all motor vehicles, trailers, and airplanes, used in violation of section 100.29, subdivisions 10 or 11, or section 97.45, subdivision 15, and all boats, motors and motor boats used or possessed in violation of section 98.45 with respect to the licenses, operations, or species of fish specified in section 98.46, subdivisions 10, 11, 12 and 13, or in violation of sections 102.26, 102.27, or 102.28, or in violation of any order or rule of the commissioner relating to those sections, and hold them, subject to the order of the district court of the county in which the offense was committed. The property held shall be confiscated after conviction of the person from whom it was seized, upon compliance with the following procedure:

The commissioner, director, or his agents, shall file with the court a separate complaint against the property, describing it and charging its use in the specified violation, and specifying substantially the time and place of the unlawful use. A copy of the complaint shall be served upon the defendant or person in charge of the property at the time of seizure, if any. If the person arrested is acquitted, the court shall dismiss the complaint against the property and order it returned to the persons legally entitled to it. Upon conviction of the person arrested, the court shall issue an order directed to any person known or believed to have any right or title or interest in, or lien upon, any of the property, and to persons unknown claiming any right, title, interest or lien, describing the property and stating that it was seized and that a complaint against it, charging the specified violation, has been filed with the court, and requiring those persons to file with the clerk of the court their answer to the complaint, setting forth any claim they may have to any right or title to, interest in, or lien upon the property, within ten days after the service of the order, and notifying them in substance that if they fail to file their answer within that time, the property will be ordered sold by the commissioner or his agents. The court shall cause the order to be served upon any person known or believed to have any right, title, interest or lien as in the case of a summons in a civil action, and upon unknown persons by publication, as provided for service of summons in a civil action. If no answer is filed within the time prescribed, the court shall, upon affidavit by the clerk of the court, setting forth that fact, order the property sold by the commissioner or his agents. The proceeds of the sale, after deducting the expense of keeping the property and fees and costs of sale, shall be paid into the state treasury, to be credited to the game and fish fund. If an answer is filed within the time provided, the court shall fix a time for hearing, which shall be not less than ten nor more than 30 days after the time for filing answer expires. At the time fixed for hearing, unless continued for cause, the

matter shall be heard and determined by the court, without a jury, as in other civil cases. If the court finds that the property, or any part of it, was used in any violation as specified in the complaint, he shall order the property unlawfully used, sold unless the owner shows to the satisfaction of the court that he had no notice, knowledge, or reason to believe that the property was used or intended to be used in the violation. The officer making the sale, after deducting the expense of keeping the property, the fee for seizure, and the costs of the sale, shall pay all liens according to their priority, which are established at the hearing as being bona fide and as existing without the lienor having any notice or knowledge that the property was being used or was intended to be used for or in connection with the violation as specified in the order of the court. He shall pay the balance of the proceeds into the state treasury, to be credited to the game and fish fund. Any sale under the provisions of this section shall operate to free the property sold from any liens on it. Appeal from the order of the district court will lie as in other civil cases. At any time after seizure of the articles specified in this subdivision, and before the hearing provided for, the property shall be returned to the owner or person having a legal right to possession of it, upon execution by him of a good and valid bond to the state of Minnesota, with corporate surety, in the sum of not less than \$100 and not more than double the value of the property seized, to be approved by the court in which the case is triable, or a judge thereof, conditioned to abide any order and the judgment of the court, and to pay the full value of the property at the time of seizure.

Subd. 7. **Search warrant.** Upon complaint made to any judge, who has authority to issue warrants in criminal cases, by any person that he knows or has good reason to believe that any wild animal taken, bought, sold, transported or possessed contrary to the provisions of chapters 97 to 102, or any article declared contraband therein, is concealed or illegally kept in any place, not otherwise authorized herein to be entered, inspected and searched, the judge shall issue a search warrant and cause a search to be made of the place. He may direct that the place be entered, broken open, and examined. Property seized under the warrant shall be safely kept under the direction of the court so long as necessary for the purpose of being used as evidence on any trial, and subsequently disposed of as otherwise provided.

[For text of subds 8 and 9, see M.S.1982]

History: 1983 c 247 s 42; 1983 c 359 s 4,5

97.53 PUBLICATION OF ORDERS AND LAWS.

[For text of subds 1 and 2, see M.S.1982]

Subd. 3. In addition to the publication requirements of this section, notice of opening of the netting season on whitefish, tulibee, and herring may be given by posting the date and time in the public places deemed most appropriate by the commissioner not less than 48 hours prior to the opening of the netting season.

History: 1983 c 356 s 5

97.55 VIOLATIONS, PENALTIES.

[For text of subds 1 to 8, see M.S.1982]

Subd. 9. Every person violating the provisions of section 100.29, subdivisions 10 or 11, relating to using an artificial light to locate wild animals while in possession of a firearm, bow or other implement capable of killing big game

animals; knowingly transporting a big game animal illegally taken; taking or illegally possessing a big game animal during the closed season; or provisions relating to buying or selling deer or buying fur bearing animals or raw furs is guilty of a gross misdemeanor.

[For text of subds 10 to 13, see M.S.1982]

Subd. 14. Every person who violates the provisions of section 101.42, subdivision 11, is guilty of a gross misdemeanor.

Subd. 15. Except as provided in section 102.23, every person who unlawfully buys or sells game fish or small game where the total amount of the sale or sales is \$50 or more, and where no penalty is provided in subdivision 8 or 9, is guilty of a gross misdemeanor.

Subd. 16. Every person who illegally buys or sells game fish, big game, or small game, when the total amount of the sale or sales is \$300 or more, is guilty of a gross misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000 or by imprisonment in the county jail for not less than 90 days or more than one year or by both such fine and imprisonment.

History: 1983 c 356 s 6-8; 1983 c 369 s 1

97.86 IMPROVEMENT OF FISHING RESOURCES.

Subdivision 1. **License surcharge.** A surcharge of \$2.50 shall be added to the annual license fee for each license issued pursuant to section 98.46, subdivision 2, clauses (4) and (5), subdivision 2a, subdivision 5, clauses (1), (2), and (3), and subdivision 15. The proceeds of the surcharge shall be credited to the game and fish fund.

The commissioner may spend the proceeds of the surcharge for the following purposes:

(a) Rehabilitation and improvement of marginal fish producing waters administered on a cost sharing basis under agreements between the commissioner and other parties interested in sport fishing.

(b) Expansion of fishing programs including, but not limited to, aeration, stocking of marginal fishing waters in urban areas, shore fishing areas, and fishing piers. In the expenditure of funds pursuant to this clause, preference shall be given to local units of government and other parties willing and able to share costs.

(c) Upgrading of fish propagation capabilities in order to improve the efficiency of fish production, expansion of walleyed pike production from waters subject to winter kill for stocking in more suitable waters, introduction of new species where deemed biologically appropriate by the commissioner, and purchase of fish from private hatcheries for stocking purposes.

(d) Financing the preservation and improvement of fish habitat. First priority shall be given to expansion of habitat improvement programs approved by the commissioner and implemented in cooperation with other interested parties.

(e) Increasing enforcement through use of covert operations, workteams, and added surveillance, communication, and navigational equipment.

(f) Purchase by the commissioner of the walleyed pike quota of commercial fishermen as prescribed in section 102.26, subdivision 3d.

(g) Not more than ten percent of the money available under this subdivision may be used for administrative or permanent personnel costs.

Subd. 2. **Interim study.** The house environment and natural resources committee and the senate agriculture and natural resources committee shall review issues and trends in the management and improvement of fishing resources, using information obtained by and presented to the committees by public and private agencies and organizations, and other parties interested in management and improvement of fishing resources. The committees may make recommendations to the commissioner on programs and projects for management and improvement of fishing resources.

The commissioner shall prepare an annual work plan for the expenditure of money under subdivision 1 and provide copies of the plan and any subsequent amendments to the committees and to other parties interested in management and improvement of fishing resources.

History: 1983 c 356 s 9