

FISHERIES ORDER

Fish Disease Control Order 245.21

Under the authority of Sections 48730(1) and 48728 of 1994 PA 451, as amended, MCL 324.48730(1) and MCL 324.48728, the Director of the Department of Natural Resources on February 11, 2021, ordered that the following fish disease control regulations shall take effect April 1, 2021:

The goals of the Department's actions under this Fish Disease Control Order are to protect the aquatic resources of the State, minimize the spread of pathogens and aquatic invasive species of concern to uninfected waters, and protect the Department's fish hatchery system. The Department will address the control of diseases of fish and aquatic invasive species through the development of regulations that are designed to contain or slow the spread of these threats. This Order acts in conjunction with PA 451, Part 413, Section 41325 to protect our waters from pathogens and aquatic invasive species.

1) Definitions

As used in this order:

- a) Baitfish: live or dead species of any fish, or parts of fish excluding fish eggs, used to harvest or attract fish.
- b) Certification process: a process used by the Department to grant or deny applications from individuals who want to conduct certain activities that are regulated by this order.
- c) Fish: includes live and dead fish of any species or parts other than baitfish and fish eggs as defined by this order.
- d) Fish eggs: eggs of a fish, also known as roe.
- e) Fish Health Guidance Document: Michigan Department of Natural Resources (DNR) Fish Health Testing Guidelines for Moving Game and Bait Fish into the State of Michigan, Stocking of Fish into Public Waters of Michigan, and Baitfish Certification for the State of Michigan, March 2021. See (https://www.michigan.gov/documents/dnr/DNR-fish-hlth-test-requirements_678479_7.pdf) for the referenced document.
- f) Fish Stocking Permit: an official document issued by the Department giving an individual authorization to conduct fish stocking activities.
- g) Approved Fish Species List: fish species that are approved for stocking, importation, or use as baitfish in Michigan Public Waters (as listed in the Fish Health Guidance Document).
- h) Pathogen: viruses, bacteria, fungi, and parasites that cause disease in living organisms.
- i) Purchase: to acquire for a consideration.
- j) Michigan public waters: waters within the jurisdiction of the state having public access, waters with permanent inflow or outflow, or waters that have been stocked using public resources.
- k) Sale or sell: an exchange or attempt or offer to exchange money, barter, or anything of value.
- l) State-licensed baitfish retail, State-licensed baitfish wholesale operations, and State-licensed catchers: those that are required to be licensed by the state of Michigan for these activities.

2) Bait Fish Exclusion Zones

The Department has identified locations vital to the protection of hatchery operations in an effort to control or contain pathogen movement and reduce disease risks to these facilities. In these critical areas restrictions on the possession and subsequent use of baitfish must be implemented. Therefore, baitfish shall not be possessed or used on the following waters of the State:

- a) **Benzie County**
Brundage Creek and tributaries Kinney Creek and Stanley Creek, from its confluence with the Platte River (T26N, R13W, S7), to their headwaters, including Brundage Spring Pond.
 - b) **Chippewa County**
Pendills Lake (T47N, R4W, S25, 26) including tributary Pendills Creek downstream to its confluence with Lake Superior (T47N, R4W, S28).

Sullivan Creek from its headwaters (T46N, R4W, S32) downstream to its confluence with the North Branch of the Pine River (T45N, R4W, S23).

Viddian Creek from its headwaters (T47N, R4W, S32) downstream to its confluence with Pendills Creek (T47N, R4W, S28).
 - c) **Marquette County**
Cherry Creek from the location of the Cherry Creek Road (T47N, R24W, S18) to the headwaters at County Road 480 (T47N, R25W, S22).
 - d) **Wexford County**
Slagle Creek from M-37 upstream.
- 3) General statewide provisions:
- a) It shall be unlawful to place any live fish, live baitfish, or fish eggs into Michigan public waters without first obtaining a Fish Stocking Permit from the Department (https://www.michigan.gov/documents/dnr/Private_Fish_Stocking_Permit_Process_458281_7.pdf), except for fish reared within a facility registered under the Aquaculture Development Act (Public Act 199 of 1996) or otherwise allowed under this Fisheries Order. All fish stocked under a Fish Stocking Permit shall be certified disease-free as described within the Fish Health Guidance Document. Fish transported for stocking outside a facility registered under the Aquaculture Development Act require a Fish Stocking Permit from the Department. If an approved Fish Stocking Permit is issued by the Department, an applicant shall carry a copy of that Fish Stocking Permit when transporting or stocking those fish or eggs. This section does not include the practice of chumming with fish eggs by an angler in the act of recreational fishing.
 - b) Baitfish shall only be used on a hook and may not be disposed of or otherwise released into Michigan public waters.
 - c) It shall be unlawful to import into this State for use as baitfish any uncertified fish species as described within the Fish Health Guidance Document. This includes live, dead, preserved, frozen, and cut baitfish.
 - d) It shall be unlawful to import into this State for use as baitfish any frozen baitfish that are not identified to their scientific (i.e., genus and species) and common name using the official American Fisheries Society publication (citation provided below). Additionally, all imported baitfish will need to be labeled with their location of capture. The scientific and common names along with the point of capture must be clearly shown on all packaging along with testing status of the fish including the testing certification number. The testing status must be documented as one of the following: 1) VHSV-free as determined by testing; or 2) VHSV testing not required in accordance with DNR Fish Health Guidance Document and status approved by DNR.
 - e) All species of live fish maintained at a location by an owner of a State-licensed commercial fishing operation shall be considered uncertified if live fish have not been tested following the Fish Health Guidance Document.
 - f) It shall be unlawful to purchase and use baitfish, crayfish, or other live organism from any location not licensed under Part 487 of 1994 PA 451 including, but not limited to, pet shops and live fish markets.
- 4) Commercial Bait
- a) Importation from out of state
 - i) Status of Fish Health - all persons importing baitfish shall have those baitfish tested as described in the Fish Health Guidance Document and shall submit all tests results to the Department. The Department will review the results for each application and respond with a certification letter that contains a transaction number and indicates whether the application is approved or denied along with the supporting rationale for the decision.

b) Harvest of baitfish from Michigan waters:

- i) Status of Fish Health - From October 1 – May 31 of each year, all persons holding a minnow catcher's license, including an owner of an aquaculture facility regulated and permitted by the Michigan Department of Agriculture and Rural Development, who harvest and wish to offer for sale or sell baitfish listed in the Fish Health Guidance Document shall have the fish tested in accordance with the Fish Health Guidance Document and submit the results to the Department. Baitfish shall be tested from the following waters: 1) all Great Lakes waters to include all tributary streams to the first fish passage barrier; 2) Budd Lake (Clare County); and 3) Baseline Lake (Livingston and Washtenaw Counties). The Department will review the results for each application and respond with a certification letter containing a transaction number and indicates whether the application is approved or denied along with the supporting rationale for the decision.

State-licensed baitfish catchers shall coordinate and collect a single 150 fish sample during June, July, August, and September from each of the 8 testing zones, if fish are to be harvested from these zones, including 1) Saginaw Bay and connecting tributaries to the first fish passage barrier, 2) Black River downstream of the first fish passage barrier (St. Clair County), 3) Lake St. Clair and St. Clair River, 4) Detroit River, 5) Lake Erie, 6) Budd Lake (Clare County), 7) Baseline Lake (Livingston and Washtenaw Counties), and 8) all other Great Lakes waters (Figure 1). Samples from each of the 8 testing zones shall be tested for each pathogen of concern by a certified laboratory approved by the State of Michigan. Sampling plans for each respective zone shall be communicated to Department before samples are collected.

If any baitfish test positive for any pathogen of concern during the June - September testing period from the 8 testing zones, then the Department shall take immediate emergency action to temporarily amend this Order and require additional testing certification of baitfish harvested June – September 30. The Department will notify all licensed bait harvesters of the testing results and any subsequent emergency regulatory actions. If emergency action is taken, additional testing requirements shall take immediate effect and shall remain in place until the Department determines that the pathogen threat has sufficiently diminished to lift the emergency order and reinstate the seasonal monthly testing requirement outlined in this Order.

c) General Regulations for Commercial Bait

- i) All Michigan baitfish wholesalers are required to be licensed by the state of Michigan and must complete the following certification process for their facility or business:
- (1) Status of a Facility - If keeping and holding baitfish at a facility for prolonged distribution and sale, baitfish wholesalers shall have that facility reviewed by the Department to ensure that there is minimal risk to Michigan public waters and that appropriate biological security measures are effective for the facility. The Department will review the results for each application and respond with a certification letter for facility status that either grants or denies the application and includes the Department's rationale for the decision, as well as the actions necessary for achieving certification. Once certified and licensed, facility operators who wish to continue being licensed must inform the Department in writing by September 30th each year whether changes were made to the facility during the current license year. If the facility is unchanged, a new certification will be issued with the new license year. If changes were made to the facility, a new certification process must be initiated at that time. This part does not apply to an owner of an aquaculture facility regulated and permitted by the Michigan Department of Agriculture and Rural Development or an owner of a State-licensed baitfish retail operation.
 - (2) Statement of Direct Sale – If a wholesaler ships baitfish directly from the point of harvest or immediately after purchase from another licensed wholesale to licensed bait retailers in Michigan, that wholesaler shall notify the Department at the time of license application of their intent of direct sale only. The Department will respond with a letter of authorization for direct wholesale shipments to licensed retailers.
- ii) A person shall not offer for sale or sell any baitfish that are listed in the Fish Health Guidance Document that were imported from out-of-state or were harvested in Michigan without receiving a certification letter for fish health status from the Department permitting such activity.
- iii) If an approved certification for fish health status is issued by the Department, a copy shall be carried by the baitfish wholesaler or retailer when transporting, offering for sale, or selling baitfish that are listed in the Fish Health Guidance Document and harvested in Michigan waters. That certification letter shall be shown upon request to any law enforcement officer or Fisheries Division representative.

- iv) An owner of a State-licensed baitfish wholesale operation shall provide to each wholesale and retail purchaser at the point of sale a copy of a receipt for their purchase that will include the date of purchase, the quantity of each species sold, the official common name of the species sold (as listed in the Fish Health Guidance Document) or the official American Fisheries Society publication (citation provided below), and the applicable certification number for fish health status for species harvested in Michigan's public waters that are listed in the Fish Health Guidance Document. All wholesale frozen bait transactions must provide to each wholesale and retail purchaser at the point of sale a copy of a receipt for their purchase including the location of capture, the scientific and common names using the official American Fisheries Society publication (citation provided below), and the testing status of the fish including the DNR testing certification number and certification letter.
- v) A State-licensed baitfish wholesaler must have a copy of the Fish Health Certification Status letter at their facility, as well as a receipt of purchase to accompany any baitfish they possess that was either imported into Michigan or harvested in Michigan. The letter and receipt shall be made available upon request of any law enforcement officer or a Fisheries Division representative.
- vi) A wholesale baitfish dealer shall retain copies of receipts for purchases and all accompanying testing paperwork for at least one year after the date of purchase.

5) Literature Cited:

- a) Page, L. M., H. Espinosa-Pérez, L. T. Findley, C. R. Gilbert, R. N. Lea, N. E. Mandrak, R. L. Mayden, and J. S. Nelson. 2013. Common and scientific names of fishes from the United States, Canada, and Mexico, 7th edition. American Fisheries Society, Special Publication 34, Bethesda, Maryland.

This Order shall be assigned number FO-245.21 and is entitled "Fish Disease Control." If a discrepancy occurs between this Fish Disease Control Order, FO-245.21, and other orders and laws currently in existence, the more restrictive regulation shall take precedence.

This Order supersedes the Order entitled "Fish Disease Control," which became effective April 14, 2016, and was assigned number FO-245.16.

Fisheries Order 245.21 shall take effect on April 1, 2021. This Order shall remain in effect through March 31, 2026, or until this Order is amended or rescinded, whichever comes first. Although this Order may be reviewed and amended on an annual basis, a review of this Order shall occur no later than August 1, 2025.

Issued on this 11th day of February, 2021.

Approved as to matters over which the Director has authority.

A handwritten signature in blue ink, appearing to read "Daniel Eichinger".

Daniel Eichinger
Director

Figure 1: Michigan's Baitfish Testing Zones (June, July, August, and September)

