

# Aquaculture and Food Fish Processing

This document will provide guidance for understanding regulatory requirements for food fish processing and sales methods. It will not replace a good working relationship with your food safety inspector nor applicable Wisconsin statutes, Agriculture, Trade and Consumer Protection administrative rules and U.S. Food and Drug Administration code of federal regulations.

Reminder: If you raise or hold fish for sale, you will need to register as a fish farm with DATCP-Animal Health.

## **Acronyms:**

**CFR:** Code of Federal Regulations

**DAH:** Division of Animal Health

**DATCP:** Department of Agriculture Trade and Consumer Protection

**DFS:** Division of Food Safety

**DHS:** Department of Health Services

**FDA:** United States Food and Drug Administration

## **Definitions:**

### **Approved Source:**

1. Food sold must come from a licensed facility or
2. Come from an unlicensed facility that is exempt from licensing by definition in Statute.  
(A fish farm registration from DATCP DAH does not provide an exemption from food processing licensing.)

**Food:** A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

**Food Processing:** Food (fish) intended for sale as human food and “Processed” in a way that includes canning, extracting, fermenting, distilling, pickling, freezing, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing or packaging.

### **Stocking:**

- Aquaculture is not food processing when fin fish are raised for stocking.

### **Bait:**

- Aquaculture is not food processing when fin fish are raised for bait.

**Fee Fishing:** (Operator sells the privilege to fish at the licensed fish farm for live fish.)

- Aquaculture is not food processing when fin fish are raised for fee fishing.
  1. Customer pays fee to catch fish.
  2. As a service to the paying customer the operator may head, eviscerate and fillet the fish ***caught by the customer. The fish must go home with the customer that caught the fish.***

**Food Processing Plant:** any place where food processing is conducted. “Food processing plant” does not include any establishment subject to the requirements of s.97.30, stats (Retail Food Establishment).

**Processed Fish:** By legal definition is fish that is processed or preserved for human consumption by means of smoking, curing, salting, drying, marinating, pickling, fermenting or related processes.

**Producer:** The person or farm enterprise that raises the fish.

**Restaurant:** “Restaurant” means any building, room or place where meals are prepared, served or sold to transients or the general public, and all places used in connection with the building, room or place and includes any public or private school lunchroom for which food service is provided by contract.

**Retail Food Establishment:** means a permanent or mobile food processing facility where food processing is conducted primarily for direct retail sale to consumers at the facility, a mobile facility from which potentially hazardous food is sold to consumers at retail or a permanent facility from which food is sold to consumers at retail, whether or not that facility sells potentially hazardous food or is engaged in food processing.

# Aquaculture and Food Fish Processing

## **Applicable Licenses:**

### **Retail Food Establishment license:**

- A. Regulated by DATCP or Local Health Department under ATCP 75 and the WI Food Code.
  - a. Licensed and inspected by DATCP 608-224-4700 or
  - b. Licensed and inspected by Local Health Department.
- B. Required when >50% of sales are non-meal retail sales.
- C. When properly coded for processing potentially hazardous food permits food processing. This would include simple fish processing e.g. cutting, grinding, filleting, etc.
- D. Permits the wholesale sale of fish and fishery products if all of the following apply:
  - a. Wholesale sale is  $\leq 25\%$  of total dollar volume of retail sales **and**
  - b. The operator complies with ATCP 70.18 which includes 21CFR123 and
  - c. The operator is not engaged in “processed fish” per the legal definition.
- E. A retail food establishment license is specific to both owner and location.
- F. A mobile retail food establishment is specific to owner and mobile unit with each mobile unit requiring a license.

### **Food Processing Plant License:**

- A. Regulated by DATCP- DFS and FDA.
- B. Allows wholesale sale of fish, fishery products and “processed fish” to an entity that will resell the food.
  - For example: restaurants, grocery stores, institutional commissary or in interstate or intrastate sales.
- C. Allows for unlimited retail sales directly to the consumer.
- D. Must operate in compliance with ATCP 70 which includes 21CFR123 Fish and Fishery Products and 21CFR110 Good Manufacturing Practices (GMP).
- E. Basic minimum construction requirements apply for all food processing facilities.
- F. A Food Processing Plant must register with the FDA under the Bioterrorism Act of 2003.
- G. Does not allow for meal type food sales without an additional restaurant license from DHS.

### **Food Warehouse License:**

- A. Regulated by DATCP and FDA.
- B. Is required when the producer has fish processed at a third party processing plant and holds them for more than 24 hours in a freezer or refrigerator at a separate location from the processor.

### **Restaurant License:**

- A. Regulated by DHS or Local Health Department.
- B. Permits sale of fish processed for human consumption to the ultimate consumer as part of a meal.
- C. Required when > 50% of sales is restaurant meal sales.
- D. Does not permit wholesale food sales.
- E. Fish must come from an approved source.

## Aquaculture and Food Fish Processing

<b>TYPE OF SALE/LICENSE</b>	<b>ADMINISTRATIVE CODE REFERENCE</b>	<b>LICENSE AUTHORITY</b>	<b>INSPECTION AUTHORITY</b>	<b>CONTACT FOR MORE INFORMATION</b>
<b>Wholesale sale/ Food Processing Plant</b>	ATCP 70 FDA Title 21 CFR 123	DATCP	DATCP and FDA	DATCP Food Safety 608-224-4700
<b>Food storage\Food Warehouse</b>	ATCP 71 FDA Title 21 CFR 123	DATCP	DATCP and FDA	DATCP Food Safety 608-224-4700
<b>Grocery Store/ Retail Food Establishment</b>	ATCP 75 ATCP 75 Appendix Wisconsin Food Code	DATCP or Local Health Department	DATCP or Local Health Department	DATCP Food Safety 608-224-4700
<b>Farmer’s Markets – Retail Food Establishment coded for “mobile”</b>	ATCP 75 ATCP 75 Appendix Wisconsin Food Code	DATCP or Local Health Department	DATCP or Local Health Department	DATCP Food Safety 608-224-4700
<b>Restaurant</b>	DHS 196 DHS 196 Appendix Wisconsin Food Code	DHS or Local Health Department	DHS or Local Health Department	DHS 608-266-2835

Administrative Code references:

ATCP 70 – Food Processing Plants: <http://www.legis.state.wi.us/rsb/code/atcp/atcp070.pdf>

ATCP 71 – Food Warehouses and Milk Distributors: <http://www.legis.state.wi.us/rsb/code/atcp/atcp071.pdf>

ATCP 75 – Retail Food Establishments: <http://www.legis.state.wi.us/rsb/code/atcp/atcp075.pdf>

Wisconsin Food Code - [http://www.legis.state.wi.us/rsb/code/atcp/atcp075\\_app.pdf](http://www.legis.state.wi.us/rsb/code/atcp/atcp075_app.pdf)

DHS 196 - Restaurants: <http://www.legis.state.wi.us/rsb/code/dhs/dhs196.pdf>

FDA Title 21CFR123 Fish and Fishery Products: <http://www.cfsan.fda.gov/~lrd/FCF123.html>

State Agency references:

Wisconsin Department of Agriculture Trade and Consumer Protection

Division of Food Safety

2811 Agriculture Dr.

P.O. Box 8911

Madison, WI 53708-8911

608-224-4700

Wisconsin Department of Health Services

Division of Food Safety and Recreational Licensing

1 West Wilson St.

P.O. Box 2659

Madison, WI 53710-2659

608-266-2835

Aquaculture information and technical assistance also provided by:

UW-Stevens Point Northern Aquaculture Demonstration Facility (NADF)

Aquaculture Extension Program

36445 State Highway 13

PO Box 165

Bayfield, WI 54814

<http://www.uwsp.edu/cls/aquaculture/contact.aspx>

(715)779-3189

# Aquaculture and Food Fish Processing

## **Special Scenarios:**

### **Farmer's Markets:**

- A. Live Fish: No DATCP DFS license requirement.  
Check with DATCP-DAH for live fish requirements.
- B. Fish processed and sold by the fish farmer:
  - Heading and eviscerating fish must be conducted in a separate area on designated equipment that is segregated from the final rinsing, freezing, other preservation methods and packaging.
  - The process must comply with ATCP 70 which includes 21CFR123 and would require a food processing plant license at the farm and a mobile retail license at the farmers market.
- C. Fish processed by a third-party processor and sold by the fish farmer:
  - The operator doing the filleting, freezing or preserving is processing as a wholesale processor and would be required to comply with ATCP 70 which includes 21CFR123.
  - The operator selling the finished product would need a mobile retail license.
- D. Fish and fishery products must be maintained at 41°f or below with the exception of “processed fish” including smoked fish which must be maintained at 38°f or below. Frozen fish must be maintained frozen.
- E. Packaged fish must meet all labeling requirements.

### **Fin Fish Tanks at Retail Food Establishments:**

(A Retail Establishment selling live fish from a tank or with the intent of further processing live fish from a tank)

1. The fish must be obtained from an approve source (e.g. registered fish farm);
2. Water from the fish tank shall not flow into a molluscan shellfish life support tank.
3. Fish that are held live in the tank of a license retail food establishment or restaurant for more than 30 days must register with DATCP DAH as a fish farm.
4. **Licensing Options:**
  - A. A person may sell live fish from a fish tank directly to the consumer without a DATCP DFS license, if this is their sole retail activity.
    - a. The establishment must register with DATCP DAH as a Fish Farm.
  - B. A licensed retail food establishment, with an approved variance may head and eviscerate live fish in a dedicated area that is not used for other purposes.
  - C. A retailer processing fish from a live fish tank will need a Food Processing Plant License if the retailer intends to:
    - a. Process fish for wholesale sales that are  $\geq 25\%$  of the total volume of retail sales.
    - b. Process for wholesale sale fish that is processed or preserved for human consumption by means of smoking, curing, salting, drying, marinating, pickling, fermenting or related processes (“processed fish”).
    - c. Engage in low acid or acidified canning of fish or fishery products.
    - d. Engage in reduced or modified oxygen packaging of fish or fishery products.

# Aquaculture and Food Fish Processing

## Farmer Direct Marketing Food Fish

### Fin Fish Requirements

Note: This does not include requirements for fish sold for stocking, bait or ornamentals.

FORM OF FISH IN SALE	PRODUCER SELLING FROM THE FARM	FEE FISHING	PRODUCER SELLING AT A FARMER'S MARKET OR DOOR TO DOOR	PRODUCER SELLING FROM FARM TO RETAIL, RESTAURANT OR INSTITUTION
Live Fish	No DATCP-DFS Requirements. Check with DATCP-DAH for live fish requirements.	No DATCP-DFS Requirements. Check with DATCP-DAH for live fish requirements.	No DATCP-DFS Requirements. Check with DATCP-DAH for live fish requirements.	No DATCP-DFS Requirements. (1) Check with DATCP-DAH for live fish requirements.
Fish – Processed by Producer Excluding smoking, curing, salting, drying, marinating, pickling, fermenting or any related process i.e. “processed fish”	Producer will need a Retail Food Establishment license. (2)	As a service to the paying customer the operator may head, eviscerate and fillet the fish <i>caught by the customer. The fish must go home with the customer that caught the fish.</i>	Producer will need a Food Processing Plant license where the fish is processed and a Mobile Retail Food Establishment license for the farm market stand.(2)	Producer will need a Food Processing Plant license where the fish is processed. Fish must be delivered according to temperature requirements. (2)
Fish – Processed by third party Processor	The third party processor will need a Food Processing Plant license and the Producer will need a Retail Food Establishment license at the farm. (2) (3)		The third party processor would need a Food Processing Plant license and the producer will need a Mobile Retail Food Establishment license for the farm market stand. (2) (3)	The third party processor will need a Food Processing Plant license and the producer will need a Food Warehouse license. (3)
“Processed Fish” smoking, curing, salting, drying, marinating, pickling, fermenting or any related process	Producer will need a Food Processing Plant license (2)		Producer will need a Food Processing Plant License and a Mobile Retail Food Establishment license for the farm market stand. (2)	Producer will need a Food Processing Plant License. Fish must be delivered according to temperature requirements. (2)
Prepared Meals	A Restaurant License is required when >50% of sales are restaurant meal sales or when any meal sales are conducted at a Food Processing Plant. Does not permit wholesale food sales. Regulated by DHS or Local Health Department. Fish must come from an approved source.			

(1) Retail Food Establishment, Restaurant or Institution may need to be a registered fish farm if live fish are held more than 30 days.

(2) Fish and fishery products must be maintained at 41°F or below with the exception of “processed fish” including smoked fish which must be maintained at 38°F or below. Frozen fish must be maintained frozen. This can be achieved by using any effective method (freezer, dry ice, cooler, etc.) Fish must be fully labeled.

(3) A Food Warehouse License is required if the producer stores fish and fishery products for more than 24 hours in a freezer or refrigerator at a separate location from the processor.