ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 20.40(6)(d) and (f); and create NR 20.40(1)(am), (d), (6m). relating to live well standards for participants in the bass fishing tournament pilot program established in 2003 Wisconsin Act 249

FH-55-04

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: ss. 29.014(1), 29.403, and 29.4035, Stats.

Statutory authority: ss. 29.014(1), 29.403, 29.4035 and 227.11(2), Stats.

Explanation of agency authority: In promulgating this rule, s. 29.014(1), Stats., have been interpreted as allowing the department the authority to write fishing tournament rules that help to ensure good fishing opportunities. In promulgating this rule, ss. 29.403, and 29.4035 have been interpreted as allowing the department to promulgate rules that establish live well standards for the bass tournament pilot program.

Statutes that authorizes the promulgation of this rule order include ss. 29.014(1), 29.403, 29.4035, and 227.11(2), Stats. These sections grant rule making authority to the department to establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping; that the department may establish a program to authorize and regulate fishing tournaments; that the department shall establish a bass tournament pilot program; and that all rules promulgated under this authority are subject to review under ch. 227, Stats.

Related Rule or Statute: None.

Plain language rule analysis: In April 2004, 2003 Wisconsin Act 249 was signed into law and became effective. This new law has three major components. First, it grants the department the authority to establish a program to authorize and regulate fishing tournaments. Second, it requires the department to establish a bass fishing tournament pilot program under which the department must issue 4 permits per year that authorizes participants in those tournaments to fish for and cull bass (at least one of which would allow culling of both largemouth and smallmouth bass and all of which allow culling of largemouth bass). The department, in cooperation with the Wisconsin BASS Federation must evaluate the pilot program. The bass tournament pilot program sunsets on December 31, 2006 and the department is required to report to the legislature the findings of the pilot program evaluation. Third, Act 249 requires the department to appoint an advisory committee for the purpose of advising the department in promulgating fishing tournament rules and for the purpose of advising the department in determining to whom the department shall issue permits for the bass fishing tournament pilot program.

Given the sunset date of December 31, 2006, the bass fishing tournament pilot program is the first priority in fishing tournament regulation development. S. 29.4035 requires the department to establish by rule live well standards for boats that are part of the pilot program. Therefore, the first fishing tournament regulations developed will be the required live well standards.

A fishing tournament advisory committee (FTAC) was appointed by the department per Act 249. The FTAC consists of approximately 20 members, including tournament sponsors, the conservation congress, sport fishing organizations, the sport fishing industry, and the tourism industry. The meeting is facilitated by a UW-Extension facilitator. The committee met on August 28, 2004 to discuss and finalize recommendations for live well specifications to the department. Final recommendations forwarded to the department are included in this rule order. Boats that participate in the tournaments included in the pilot program must be equipped with live wells that:

1) are an original manufactured part of the boat and have a total capacity of at least 25 gallons;
2) are in working condition and their operation must be demonstrated prior to fishing in the tournament;
3) are capable of continuously pumping freshwater into them; and
4) are capable of holding, re-circulating, and aerating water already in them.

Federal regulatory analysis: Provided state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of Federal statutes and regulations. No federal regulations regarding fishing tournament regulations have been drafted or implemented.

State regulatory analysis: Fishing tournament regulation varies in the states surrounding Wisconsin.

Iowa. Iowa's fishing tournament rules are more stringent than Wisconsin's current regulations and similar to the type of rules that Act 249 authorizes the department to promulgate. In Iowa, a permit is required to conduct a fishing tournament on public waters under the jurisdiction of the state. Approval of any tournament application is at the discretion of the fisheries management biologist. The DNR may impose special conditions not specifically covered herein for any fishing tournament if deemed necessary to protect the resource or to assure public safety. Special conditions may include, but are not limited to:

- release of live fish
- fish measured to length and released from a boat
- multiple weigh-ins when water temperatures exceed 70 degrees Fahrenheit
- aerated live wells
- designated release areas
- designated release persons

Tournament size:

- on lakes less than 100 surface acres - a 15 boat maximum
- on lakes greater than 100 surface acres - a maximum of one boat per ten surface acres (Biologists may wave this rule for special events.)
- The number of tournaments at any one access area during a given day may be restricted if deemed necessary to avoid congestion with the public or competing tournaments

Culling of fish is currently allowed for all anglers. However, beginning on January 1, 2005 the new Iowa rules will read, "It is prohibited to sort, cull, highgrade, or replace any fish already in possession. Participants in permitted black bass tournaments are exempted. Any fish taken into possession by holding in a livewell, on a stringer or in other fish holding devices is part of the daily bag limit. Once the daily bag limit of a particular species is reached, fishing for that species is permitted as long as all fish of that species caught are immediately released." (Marion Conover, Iowa DNR Fisheries Chief)

Illinois. The Illinois DNR requires a fishing tournament permit if:

- Prizes are offered for tagged or marked fish where any of the states waters with special regulations are named as a tournament site; or
- The fishing event is conducted over a period of more than five days during any calendar year, and prizes with a total value in excess of $1,000 are offered, and where any of the waters listed have special regulations; or
- Special exemptions to the site specific regulations for daily creel and size limit is requested for:
  - catch, hold for weigh-in, and release tournaments for muskellunge on all waters;
  - black bass catch and release tournaments (Lake Michigan and streams, except that the Mississippi, Ohio, and Wabash Rivers are not eligible for permits which exempt participants from daily catch and size limits)'
  - special catch and release tournaments for which the proceeds go towards youth education and/or charity type projects;
  - National catch and release tournaments; and

- special fishing tournaments/events for children under 16, for disabled persons, or for adults over 65.

Issuance or denial of fishing tournament permits are based on the following criteria:

- The capability of the fishery resource to absorb the tournament with minimal impact to its well-being.
- The location of the tournament; catch and release management zones on streams are not eligible for permits.
- The evaluation of the adverse impacts resulting from the additional fishing pressure generated by the tournament on the fish population and the targeted fish species. The evaluation must demonstrate minimal and short-term impacts in order for the ILDNR to issue the permit. Specific items to be considered include:
  - biological status of the fish population including the species being sought'
  - length of the tournament;
  - number of boats and anglers participating in the tournament;
  - for tagged fish tournaments; provisions for obtaining and tagging targeted fish species; and
  - safety of anglers and potential boater-user conflicts.

- Demonstrates adequate provisions for holding, handling, and releasing caught fish. Specific criteria are:
  - Tournament officials must be able to certify that all boats possess a live well (except muskellunge fishing tournaments) measuring at least 18-in long, 12-in deep, and 12-in wide. and be fitted with a functioning aerator and water pump.
  - Following the weigh-in, fish must be released away from the weigh-in site and as near to the spot where the catch was made as possible by means of a common release boat, or by individual boats.
  - Common release boats must meet specifications set by the ILDNR and must be certified by the ILDNR as a common release boat. Individual boats can not carry more than the daily creel limit of fish.
  - For catch, weigh-in, and release muskellunge tournaments, all boats must have a fish cradle to temporarily hold fish in the water while an official determines the length or weight of the fish prior to release. Muskellunge may not be transported to a weigh-in site.

- Adequate identification of participants in fishing tournaments for law enforcement purposes. Specific criteria are:
  - Tournament officials must keep and have available on site a written record or log of daily participants (including names and boat registration numbers) for inspection by ILDNR officials.
  - Each participant and boat must be identified in an easily recognizable manner at a distance (patch on the hat or back).

Failure to acquire a permit will result in denial of future applications for a fishing tournament permit by that applicant, sponsor or group for up to 5 years.

Michigan. Fishing tournament permits are obtained through the Michigan Recreational Boating Information Center for the use of the waterbody access site.

Minnesota. MNDNR developed new tournament rules in 2000. Details follow.

Definitions:

- **Permitted fishing contest** means an open-water fishing or ice-fishing contest that requires a permit from the MNDNR.
- **Permitted fishing contest day** means a day on a water body where a permitted fishing contest is held. Two permitted fishing contests that are held on the same water body on the same day count as two permitted fishing contest days.
- **Large permitted fishing contest** means an open-water fishing contest with more than 50 boats or 100 participants that requires a permit from the MNDNR.

- **Established or traditional fishing contest** means a fishing contest that prior to the 2001 tournament season had been issued at least two consecutive permits in the previous two years, or four out of the previous five years, for the same lake and time period. Tournaments granted established status need thereafter to be conducted annually or at least four out of five years to remain established.
- **Off-site weigh-in** means a weigh-in of fish from a fishing contest at a location that is not adjacent to the waters listed on the fishing contest permit.
- **Pre-fishing** means fishing by participants of a permitted fishing contest prior to the scheduled dates of the contest on waters listed on the fishing contest permit.
- **Participant** means a person who is taking part in a fishing contest.

Permit Requirements:

A permit is required for any fishing contest that is limited to specifically named waters if one or more of the following apply:

- There are greater than 30 participants for open-water contests or 150 participants for ice-fishing contests;
- The entry fee is greater than $25 per person;
- The total prize value is greater than $25,000; or
- The contest is limited to trout species only.

Contests limited to youth age 18 and under will not need a permit. Fishing contests that are not limited to specifically named waters, that is, are statewide, will not need a permit, unless they are limited to trout species only.

If entry fees are over $25 per person, or total prizes are valued at more than $25,000, and if the applicant has either not previously conducted a fishing contest requiring a permit, or ever failed to make required prize awards in a fishing contest conducted by the applicant, the applicant may be required to furnish evidence of financial responsibility in the form of a surety bond or bank letter of credit in the amount of $25,000.

Permits are issued without a fee to Minnesota residents only.

Permit Application Process:

- Applications and permits for fishing contests are issued by the regional fisheries manager except for fishing contests that involve more than one region or are statewide, in which case permits are issued by the central office in Saint Paul.
- Permit applications are accepted starting September 1 for contests that will be held the following year.
- If permit applications received from September 1 through the last Friday in October (October 31) exceed the monthly limits for a given water body, the MNDNR notifies applicants that their application will be subject to a drawing. Applicants would then be given seven days to change their application, but could not change to a location and time period for which applications are already at or above the limit.
- The MNDNR conducts a drawing for all locations and time periods for which applications exceed limits. First preference in the drawings is given to applicants for established or traditional fishing contests, and second preference to contests that are not established as traditional fishing contests. Preference points are given to this second group based on the number of times they have been unsuccessful in previous drawings. Except for applicants of established contests, an applicant loses all accumulated preference points after being successfully drawn.
- Results of the drawing and any applications received by 4:30 p.m. on October 31 will be announced no later than December 7.
- Permit applications received after October 31 may be approved if the approval would not result in the limits on the number of permitted fishing contests being exceeded. These applications are considered on a first-come, first-serve basis.
- A person may not transfer a fishing contest permit to another person.

Monthly Limits on Number of Fishing Contests:

The monthly limits in the table are based on the size of the lake and the size of the tournament. Sizes for multiple-basin (lake or Mississippi River pools) tournaments will be based on individual lake acreage (Note: see definition for bolded items). The acres for border waters will be based on Minnesota area only.

Lake size (acres)	Maximum number of permitted fishing contests	Maximum number of large permitted fishing contests	Maximum number of permitted fishing contest days
less than 2,000	2	0	4
2,000-4,999	3	1	6
5,000-14,999	4	2	8
15,000-55,000	5	3	10
more than 55,000	no limit	no limit	no limit

Up to five additional permits beyond the monthly limits listed above may be issued for fishing tournaments on water bodies that are 5,000 acres or larger. No more than one additional permit may be permitted on one body of water per year. The tournament applicant must demonstrate that the contest will: provide economic benefits to the local area; promote public awareness of fishing and the state's resources; and conform to best management practices for the lake. These permits are issued from the office of the Director of Fisheries through the regional office where the water body is located.

Weekend Limitations:

- On any water body 55,000 acres or less, the MNDNR may require at least two weekends per month with no permitted fishing contests.
- The DNR may require that Permitted fishing contests conducted for more than one day may not include more than one weekend day from Memorial Day weekend through Labor Day weekend.
- Permitted fishing contests may not be held on the weekend of fishing season openers if the contest would target a species that the season is opening for.

Other Items:

The MNDNR may include the following restrictions as part of a fishing contest permit:

- Limits on pre-fishing and proof that such limits were communicated to contest participants and enforced;
- Restrictions on hours that a fishing contest is conducted including specified start and stop times;
- Restrictions on off-site weigh-ins, or denial of off-site weigh-ins to prevent undue loss of fish; and
- Limits on the use of parking spaces at state-owned public water access sites and proof that such limits were communicated to the participants and enforced.

Failure to comply with fishing contest permit restrictions may be considered grounds for denial of future permit applications.

Minnesota statute requires tournaments to obtain a permit from the sheriff of the county where the event is to originate.

Summary of factual data and analytical methodologies: The department relied on the advice of the Fishing Tournament Advisory Committee (FTAC) to draft the proposed live well standards. The FTAC includes members that have a great deal of experience both fishing in and organizing tournaments, along with members from the fishing industry that have expertise in the engineering and function of live wells. The department also used the scientific literature available on the subject of tournament fishing

associated mortality. This scientific information is summarized in a 2002 publication entitled, 'Keeping Fish Alive' by Gene Gilliland, Oklahoma Department of Wildlife Conservation, and Hal Schramm, Mississippi State University.

Specifically, 1) to maximize bass survival the live well should be designed by the boat manufacturer and hence be an original integrated part of the boat. Gilliland and Schramm (2002) recommend that there be at minimum 1 gallon of water for every pound of fish held in the live well and an estimated average 10 fish catch in typical Wisconsin bass tournaments of 25 pounds; 2) the live well must not only be in working condition, but its operation must be demonstrated prior to a participant being allowed to fish. This is a typical requirement of many bass tournament sponsors/organizers, but was also deemed important to be written into rule; 3) pumping fresh water into the live well is essential to ensuring that water temperature, and dissolved oxygen are maintained, and so that waste products can be removed from live well water; 4) the ability of a live well to hold, aerate, and re-circulate water is essential under conditions where lake/river water quality is poorer than where fish were originally caught (e.g. sloughs/backwaters that may have higher temperatures), where boats are moving and incapable of pumping water from the lake/river, or where boats are removed from the water with fish in the live well.

Summary of small business and economic impact: The bass fishing tournament pilot program has the potential to impact small business and the economy during 2005-06. One of the goals of the legislation that created the pilot program was to provide an opportunity for larger, national bass tournaments that previously do not fish in Wisconsin, purportedly due to our prohibition of culling, with the anticipation that these events would have significant positive economic impacts due to both the expenses of anglers and boaters, and expenses by spectators. In addition, potential national television exposure of some of Wisconsin's fisheries could have long term benefits to the tourism industry by attracting attention to the area at a national level. A recent study that examined the economic impact of Wal-Mart FLW events held provided an average of $2.28 million in local economic impact (information from FLW web site, no details were provided).

Anticipated costs incurred by private sector: Costs incurred by the private sector are not anticipated.

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SECTION 1. NR 20.40(1)(am) is created to read:

NR 20.04(1)(am) "Live well", for the purpose of s. 29.4035, Stats., means a container designed to hold live fish on a boat.

SECTION 2. NR 20.40(1)(d) is created to read:

NR 20.40(1)(d) "Cull or culling" means to release a fish which has been in a persons possession in a live well, back into the waters from which it was taken and replace that fish with a different fish of the same species.

SECTION 3. NR 20.40(6)(d) is amended to read:

NR 20.40(6)(d) Pursuant to s. NR 20.05(7), any fish taken into actual possession by an individual and not released immediately shall be included as part of the individual's daily bag limit. Until December 31, 2006, anglers catching bass in bass tournaments selected to participate in the bass fishing tournament pilot program established by s. 29.4035, Stats., and identified as such on the fishing tournament permit, may exceed the daily bag limit by culling as long as the bass held in their boat's live well or live wells at any one time does not exceed the daily bag limit.

SECTION 4. NR 20.40(6m) is created to read:

NR 20.40(6m) BASS FISHING TOURNAMENT PILOT PROGRAM. For the purpose of s. 29.4035, Stats., the department shall establish a bass fishing tournament pilot program in accordance with the following:

(a) No person may sponsor or conduct a bass fishing tournament as part of the bass fishing tournament pilot program established under this section and s. 29.4035, Stats., unless the boats used by all participants in the tournament are equipped with live wells that meet the following standards:

1. The live well shall be an original manufactured part of the boat.
2. The live well shall be capable of holding a minimum of 25 gallons of water by itself or in combination with other live wells on the same boat.
3. The live well shall be capable of providing a continuous supply of fresh water.
4. The live well shall be capable of holding, re-circulating and aerating water.
5. The live well shall be demonstrated to the tournament sponsor as functioning properly prior to an angler fishing as part of the fishing tournament.

(b) No person may sponsor or conduct a bass fishing tournament which allows the participants to exceed the daily bag by culling of fish except for the species of bass specifically authorized in a permit issued pursuant to this section and s. 29.4035, Stats.

(c) No person participating in a fishing tournament under this section and s. 29.4035, Stats., may do any of the following:

1. Fail to provide one or more live wells that meets the standards established in sub. (1)(am).
2. Keep any fish that is not immediately released unless the fish is kept in a live well onboard the boat that meets the standards established in sub. (1)(am) and which is operated as required by the permit.
3. Release or return any fish back into waters of the state that is dead or unable to swim away in a healthy condition.

a. Exceed the daily bag limit by culling except when all of the following apply:
b. The species of bass are specifically authorized in a permit issued pursuant to this section and s. 29.4035, Stats.
c. The waters are identified by the permit.
d. The effective period of the tournament permit is specified.

(d) The department may specify conditions in a fishing tournament permit issued under this subsection that describe requirements for operating the live wells.

(e) If a participant in a fishing tournament under this section and s. 29.4035, Stats., uses more than one live well, the total number of bass held in the live wells on one boat may not exceed the daily bag limit for each person on the boat.

Note: s. 29.4035(3) states: Notwithstanding s. 29.055, a permit issued under this section authorizes a person to conduct a bass fishing tournament in which participants may take bass in excess of the daily bag limit if all of the following apply:

(a) Each boat in the tournament is equipped with a live well.
(b) A participant either immediately releases the bass into the water from which it was taken or holds the bass in a live well.
(c) The bass held in a live well by a participant at any one time does not exceed the daily bag limit.
(d) Each bass when released by a participant into the water from which it was taken is able to swim away in a healthy condition.

SECTION 5. NR 20.40(6)(f) is amended to read:

NR 20.40(6)(f) Except for tournaments on the Great Lakes, the fishing portion of any tournament may not run for more than 10 consecutive hours each day or more than 3 consecutive days. <u>Until December 31, 2006, bass tournaments selected to participate in the bass fishing tournament pilot program established by s. 29.4035, Stats., and identified as such on the fishing tournament permit, may run for no more than 4 consecutive days.</u>

SECTION 6. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 7. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 22, 2005.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)