Clearinghouse Rule 15-066

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 23.05 (5) (c) relating to lake sturgeon regulations on the Menominee River.

The scope statement for this rule, SS 048-15, was approved by the Governor on May 19, 2015, published in Register No. 713B on May 27, 2015, and approved by the Natural Resources Board on June 24, 2015.

FH-09-15

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 29.014 (1), 29.041, and 29.053 (2), Stats.

2. Statutory Authority:
Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.053 (2), Stats., provides that the department may establish conditions governing the taking of fish for the State as a whole, for counties or parts of counties, or for waterbodies or parts of waterbodies.

3. Related Statutes or Rules: The department is concurrently proposed a matching emergency rule, FH-08-15(E).

4. Plain Language Analysis: The rule will implement catch and release fishing for lake sturgeon during the hook and line fishing season from the first Saturday in September to September 30 on the Menominee River downstream from Grand Rapids Dam, a Wisconsin-Michigan boundary water.

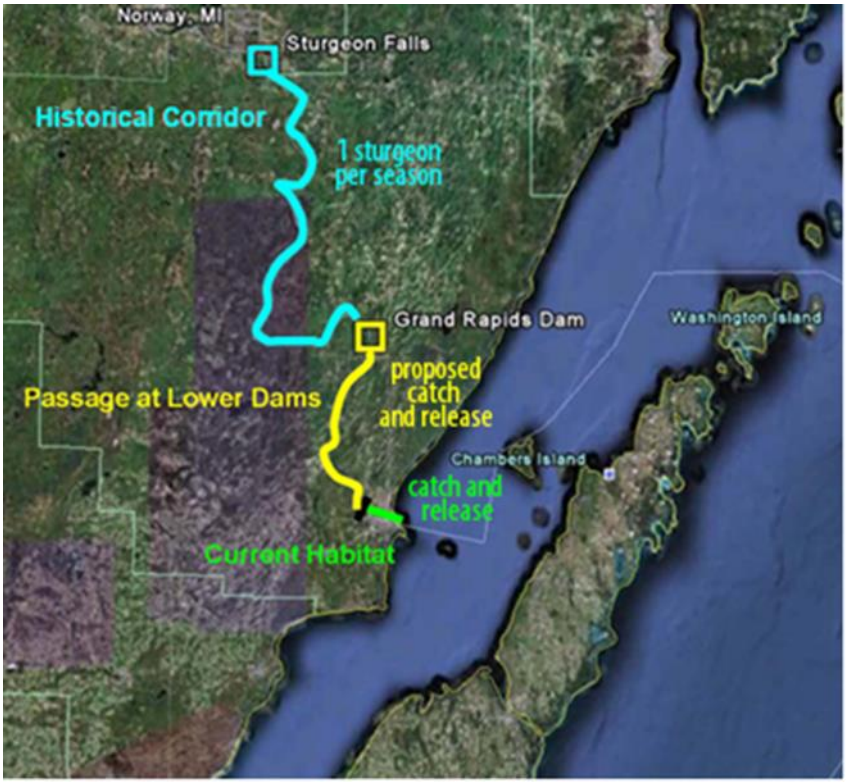
The Menominee Dam is the furthest downstream dam on the Menominee River (closest to Green Bay) and has been a barrier to sturgeon and other fish passage. Beginning in spring 2015, adult lake sturgeon exceeding 60 inches were transported upstream past the dam via a capture and sort facility located at the Menominee Dam. The active movement of sturgeon past the dam is being done to provide the sturgeon greater access to spawning habitat in the Menominee River, up to the Grand Rapids Dam, and improve population numbers.

Anglers are advised to not eat any lake sturgeon from Green Bay because of PCB contamination. The sturgeon passed over the Menominee Dam will have identification tags inserted under their skin, but will not have any external mark that tells an angler that the sturgeon came from Green Bay. If anglers catch and keep a lake sturgeon that was transported from Green Bay past the Menominee Dam, personnel at sturgeon registration stations would scan the identification tag and advise anglers not to eat it. The lake sturgeon would likely be discarded, resulting in waste of a natural resource.

The rule is necessary to prevent the harvest and consumption of lake sturgeon that have been transported

from Green Bay upstream past the Menominee Dam. In addition, it will prevent the harvest and waste of sturgeon that should not be eaten.

Current rules allow an angler to harvest by hook and line one lake sturgeon over 60 inches per season (the first Saturday in September to September 30) upstream from the Menominee Dam on the Menominee River. Only catch and release fishing is allowed downstream of the Menominee Dam on the Menominee River. SECTION 1 extends the catch and release lake sturgeon fishing area to the Grand Rapids Dam, an additional 20-mile stretch of the river. Anglers will still have the opportunity to harvest a sturgeon greater than 60 inches in length in the more than 40 river miles upstream from the Grand Rapids Dam.



5. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

6. Comparison with Similar Rules in Adjacent States: The Menominee River is a Wisconsin-Michigan boundary water. The Michigan Department of Natural Resources is also pursuing a rule change to match the lake sturgeon regulations proposed in this rule. The change made by both states will ensure there are consistent lake sturgeon regulations on this shared waterbody.

7. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: Fish passage in the lower Menominee River is important in helping to restore the lake sturgeon population in Lake Michigan. The U.S. Fish and Wildlife Service estimates the total adult population of lake sturgeon in Lake Michigan at 3,000 fish. Wisconsin and Michigan have determined the adult population below the Menominee Dam is approximately 1,200 lake sturgeon. Poor recruitment of lake sturgeon has been documented below the Menominee Dam due to industrial development, contamination, and limited habitat. Moving sturgeon above the Menominee Dam

would provide them access to underutilized juvenile and spawning habitat in the 20 river miles between the Grand Rapids and Menominee dams. Allowing the adult sturgeon population below the Menominee Dam access to the waters above that dam will expedite the restoration of this species in Lake Michigan. The department insured that accuracy, integrity, and consistency of data were used in preparing the proposed rule and related analysis.

8. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: The proposed rule will primarily affect recreational anglers who fish the approximate 20 miles of river from the Grand Rapids Dam tailwaters to the Menominee Dam. It is not expected that there will be any economic impact or change directly related to these rule changes. Anglers will still have the opportunity to harvest a legal-sized sturgeon in over 40 miles of waters upstream of the Grand Rapids Dam.

It is not expected that this rule would affect businesses that register sturgeon. There are only two non-department sturgeon registration stations in the area and only 10 lake sturgeon have been harvested above the Menominee Dam since 2006. The Peshtigo DNR Service Center is an alternate registration station.

9. Effect on Small Business (initial regulatory flexibility analysis): It is not expected that there will be any economic impact or change directly related to these rule changes. The proposed rule will primarily affect sport anglers. The proposed rule does not impose any reporting requirements on small businesses nor are any design or operational standards contained in the rule.

10. Agency Contact Person:
Mike Donofrio
101 N. Ogden Rd., Suite A
Peshtigo, WI 54157-1734
(715) 582-5050
michael.donofrio@wisconsin.gov

11. Place where comments are to be submitted and deadline for submission:
Written comments may be submitted at the public hearings, by regular mail, fax or email to the person listed above. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at http://adminrules.wisconsin.gov.

The hearing date is planned for September 29, 2015, and the comment submission deadline is September 30.

SECTION 1. NR 23.05 (5) (c) is amended to read:

NR 23.05 (5) (c) LAKE STURGEON

1. Menominee river, upstream from ~~Hattie St.~~ Grand Rapids dam	First Saturday in September to September 30	1 per season	60
1m. Menominee river, downstream from ~~Hattie St.~~ Grand Rapids dam	First Saturday in September to September 30	0 (catch-and-release only)	Harvest prohibited

2. All other boundary waters	No open season	--	--

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

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Cathy Stepp, Secretary

(SEAL)