

1999 DRAFTING REQUEST

Bill

Received: 10/11/1999

Received By: gibsom

Wanted: Soon

Identical to LRB:

For: Judy Robson (608) 266-2253

By/Representing: Ron Skalanski

This file may be shown to any legislator: NO

Drafter: gibsom

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Subject: Nat. Res. - fish and game

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Possession of barbed hooks

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	gibsom		10/12/99	10/12/99		JACKET	IMMEDIATELY

FE Sent For:

<END>

Office of Sen. Judith Robson
Office of Rep. Glenn Grothman
Phone 608-266-2253
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**Joint Committee for
Review of
Administrative Rules**

**Report to the Legislature
CR 99-023, NR 20.15
The Joint Committee for Review of Administrative Rules**

Produced pursuant to s. 227.26(2)(g)

The amendment to NR 20.15 as proposed in Clearinghouse Rule 99-023, established by the Department of Natural Resources, implements the requirements of s. 29.014(1), Stats., relating to fishing regulations for inland, outlying and boundary waters.

Description of the Problem

On June 10, 1999 CR 99-023 was referred to the Assembly Committee on Natural Resources. The rule in part prohibits the use or possession of barbed hooks during the early catch and release season for trout. One of the modifications requested by the committee on August 4 was to delete the words "or possessed" from the proposed amendment to NR 20.15. Although anglers are not allowed to use barbed hooks during the early catch and release season for trout, the requested modification would allow anglers to continue to have barbed hooks in their possession. The Department of Natural Resources chose not to make this change. Therefore, on September 1, 1999 the Assembly Committee on Natural Resources unanimously passed a motion that "or possessed" in the proposed amendment to s. NR 20.15 in Clearinghouse Rule 99-023 be recommended for objection. The Assembly Committee's belief was that it is unreasonable for anglers to be required to flatten all of their barbed hooks, especially given that the anglers often do not know what tackle they will be using on a given day. On September 7, 1999 the objection to the phrase "or possessed" was referred to the Joint Committee for Review of Administrative Rules.

Arguments in Favor of Suspension

- *It is unreasonable to expect anglers to smooth down all their hooks. Because of the wide variety of flies and lures, it is unlikely to know which one they would use on a given day.*
- *The statewide vote being used to justify the prohibition of the possession of barbed fish hooks during the early catch and release trout season has been mischaracterized. Voters were not given adequate options to deal with the use and possession of barbed hooks separately. Instead, the survey addressed both the use of barbed hooks and the possession of barbed hooks in a single question.*
- *The spring hearing questionnaire did not offer the option of voting for no change to the rule.*
- *Every legislative committee vote taken to object to or suspend "or possessed" from the amendment to NR 20.15 was unanimous.*
- *A summary of nation-wide studies has not shown that barbless hooks reduce hooking mortality.*
- *Deleting the proposed prohibition is consistent with other agency rules, since possession of bait hooks is legal on streams where it is not legal to fish with bait.*

Arguments Against Suspension

- *The Department of Natural Resources staff felt the barbed hook restriction is difficult to enforce as long as anglers could possess barbed hooks among the tackle they carried on the stream.*
- *The statewide vote taken was 2800 to 1493 against allowing the use and possession of barbed hooks.*

Joint Committee for Review of Administrative Rules Action

The Joint Committee for Review of Administrative Rules concurred with the Assembly Committee on Natural Resources objection with the following motion at their September 22, 1999 committee hearing:

1. The Joint Committee for the Review of Administrative Rule (JCRAR), pursuant to s. 227.19 (5) (b) 2., Stats., requests the Department of Natural Resources to modify Clearinghouse Rule 99-23 by deleting the phrase "or possessed" from the Department's amendment to s. NR 20.15.

2. If the Department of Natural Resources, prior to 5:00 p.m. on October 8, 1999, agrees in writing to make the modification requested in item 1., JCRAR nonconcurrs in the objection of the Assembly Committee on Natural Resources to Clearinghouse Rule 99-23.

3. If the Department of Natural Resources, prior to 5:00 p.m. on October 8, 1999, does not agree in writing to make the modification requested in item 1., JCRAR, pursuant to s. 227.19 (4) (d) 6., Stats., objects to the phrase "or possessed" in the Department's amendment to s. NR 20.15 on the grounds that the rule is arbitrary and capricious and imposes an undue hardship.

Since the Department of Natural Resources chose not honor JCRAR's request to modify this rule, the phrase "or possessed" was suspended at 5:00 PM on October 8, 1999.

Sections 41 and 42 establish a minimum length limit of 15 inches and a daily bag limit of 5 for walleye, sauger and hybrids on Lake Michigan waters south of U.S. Highway 10;

Section 43 designates additional reaches of tributaries to Lake Michigan as "Outlying Trout and Salmon Waters" for the purposes of establishing where the Great Lakes Trout and Salmon Stamp is required;

Section 44 establishes total allowable harvest levels for lake sturgeon and establishes a procedure for closing the sturgeon spearing season on Lake Winnebago system waters when 80% of the total allowable harvest is reached;

Section 45 establishes a 14 inch minimum length limit for largemouth and smallmouth bass on the St. Louis River and connected waters and on the St. Croix River upstream from the dam at St. Croix Falls and establishes a catch and release only season from the Monday following Labor Day to March 1 on the St. Croix River upstream from the dam at St. Croix Falls;

Section 46 establishes a 70 inch minimum length limit for lake sturgeon in even numbered years on the all Wisconsin-Michigan boundary waters; and

Section 47 establishes a fish refuge for spawning panfish on a portion of Cox Hollow Lake, Iowa County, from the third Monday in May for 19 consecutive days.

The following sections are modified as affected by Clearinghouse Rule 98-148.

SECTION 1. NR 20.06(3m) is created to read:

NR 20.06(3m) Possess or control any live bait or any other baits, hooks or lures other than artificial lures while on the waters, banks or shores where only the use of artificial lures is authorized in s. NR 20.20.

SECTION 1m. NR 20.15 is amended to read:

NR 20.15 Early catch and release season for trout. Except where specifically restricted in s. NR 20.20, there is an open season for trout in all streams from March 1 at 5:00 a.m. to the Friday immediately preceding the first Saturday in May at 6 p.m. ~~during 1997, 1998 and 1999~~ but the daily bag limit and possession limit for trout is 0 and only artificial lures with ~~barbless hooks~~ may be used or ~~possessed for any species of fish while fishing for any species of fish~~ on trout streams during this period.

Note: The early catch and release ~~seasons during 1997, 1998 and 1999~~ season does not apply to spring ponds, ponds or lakes.

SECTION 2. NR 20.20(1)(f), (6)(f), (9)(e), (11)(i), (18)(f), (29)(f), (37)(g), (47)(f), (50)(f), (56)(h) and (72)(f) are repealed.

SECTION 3. NR 20.20(2)(dm) is created to read:

(2) **ASHLAND** (for species and waters not listed, see sub. (73))

(dm) Panfish	1. Lake Galilee	a. Hook and line.	Continuous	10 in total	None
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SECTION 4. NR 20.20(4)(c) is amended to read:

(4) **BAYFIELD** (for species and waters not listed, see sub. (73))

(c) Largemouth and smallmouth bass	1. Cable and Wiley lakes, Crooked lake, Lund lake	a. Hook and line.	First Saturday in May to Friday preceding third Saturday in June	0	--
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Motion

1. The Joint Committee for the Review of Administrative Rule (JCRAR), pursuant to s. 227.19 (5) (b) 2., Stats., requests the Department of Natural Resources to modify Clearinghouse Rule 99-23 by deleting the phrase "or possessed" from the Department's amendment to s. NR 20.15.

2. If the Department of Natural Resources, prior to 5:00 p.m. on October 8, 1999, agrees in writing to make the modification requested in item 1., JCRAR nonconcur in the objection of the Assembly Committee on Natural Resources to Clearinghouse Rule 99-23.

3. If the Department of Natural Resources, prior to 5:00 p.m. on October 8, 1999, does not agree in writing to make the modification requested in item 1., JCRAR, pursuant to s. 227.19 (4) (d) 6., Stats., objects to the phrase "or possessed" in the Department's amendment to s. NR 20.15 on the grounds that the rule is arbitrary and capricious and imposes an undue hardship.

Today

1999 BILL

NOW

repeal cut

1 AN ACT *to renumber* 29.401 (1); *to renumber and amend* 29.401 (2) and 29.401
2 (3); and *to create* 29.401 (2m) of the statutes; **relating to:** the possession of
3 barbed hooks while fishing.

Analysis by the Legislative Reference Bureau

Under current law, the department of natural resources (DNR) may establish different fishing seasons for different types of fish and may limit the conditions under which fish may be caught. Under this statutory authority, DNR promulgated rules that authorized an early catch-and-release trout season during certain years that allowed only artificial lures with barbless hooks to be used.

This bill prohibits DNR from promulgating or enforcing any rule that prohibits persons who are fishing from possessing barbed hooks.

This bill is introduced as required by section 227.19 (5) (e), stats., in support of the objection of the assembly committee on natural resources on September 22, 1999, and the objection of the joint committee for review of administrative rules on October 8, 1999, to the issuance of a portion of clearinghouse rule 98-148 by DNR. The portion of the proposed rule objected to would expand the prohibition on using artificial lures to include just possessing such lures while fishing for trout.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

1

1 **SECTION 1.** 29.401 (1) of the statutes is renumbered 29.401(1) (a).

2 **SECTION 2.** 29.401 (2) of the statutes is renumbered 29.401 (1) (b) and amended
3 to read:

4 29.401 (1) (b) Nothing in this ~~section~~ subsection prohibits the department or
5 its agents from having in possession, using, or causing the use of, any kind of nets
6 as provided under other sections in the statutes, or prohibits the possession or use
7 of nets by contract fishers who are operating under the supervision of the
8 department.

9 **SECTION 3.** 29.401 (2m) of the statutes is created to read:

10 29.401 (2m) The department may not promulgate or enforce a rule that
11 prohibits persons who are fishing from possessing barbed hooks.

12 **SECTION 4.** 29.401 (3) of the statutes is renumbered 29.401 (1) (c) and amended
13 to read:

14 29.401 (1) (c) This ~~section~~ subsection does not apply to any net or trap used to
15 take, catch or kill farm-raised fish.

16 (END)

0538

Assembly Bill 561

Senate Bill 270

In the analysis the reference to the clearing -
house rule should be 99-023, not 98-148

MGW