

2017 DRAFTING REQUEST

Bill

For: **Thomas Tiffany (608) 266-2509** Drafter: **zwyatt**
 By: **Mitchel** Secondary Drafters:
 Date: **1/12/2017** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Sen.Tiffany@legis.wi.gov**
 Carbon copy (CC) to: **zachary.wyatt@legis.wisconsin.gov**
elisabeth.shea@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Taking catfish by hand or bow

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|------------------------|-----------------------|-----------------|-----------------|
| /? | zwyatt 1/13/2017 | wjackson 1/18/2017 | | | |
| /P1 | zwyatt 11/2/2017 | kfollett 11/3/2017 | rmilford 1/18/2017 | | |
| /P2 | zwyatt 11/17/2017 | kfollett 11/17/2017 | dwalker 11/3/2017 | | |
| /P3 | | | dwalker 11/17/2017 | | |
| /1 | | | lparisi | lparisi | |

Vers. Drafted

Reviewed

Submitted
1/18/2018

Jacketed
1/18/2018

Required

FE Sent For:

<END>

↳ Not Needed

Wyatt, Zachary

From: Ohly, Mitchel
Sent: Wednesday, January 04, 2017 2:51 PM
To: Shea, Elisabeth; Wyatt, Zachary
Subject: Noodling Legislation

Hello,

Could we get a bill drafted that would allow catfish to be taken by hand (noodling) and by bow fishing. Currently, only rough fish may be taken through either of these two methods.

If you have any questions, feel free to give me a call.

Thanks,

Mitch

Mitchel Ohly

Office of Senator Tom Tiffany
12th Senate District
608-266-2509



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

GC

1 **AN ACT ...; relating to:** taking catfish by hand or with a bow and arrow or a
2 crossbow.

Analysis by the Legislative Reference Bureau

This bill prohibits the Department of Natural Resources from prohibiting the taking of catfish by hand or with a bow and arrow or crossbow. *a*

Current rules promulgated by DNR prohibit persons from fishing by any means other than hook and line, with exceptions. Under current rules, a person may take a rough fish, as defined in statute, by hand or with a bow and arrow or crossbow. *a*

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

3 **SECTION 1.** 29.314 (4) (b) 3. of the statutes is amended to read:

4 29.314 (4) (b) 3. To a person who possesses or uses a light while using a bow
5 and arrow or crossbow for taking rough fish or catfish.

History: 1979 c. 190; 1983 a. 27, 419, 538; 1987 a. 399; 1997 a. 1; 1997 a. 248 s. 438; Stats. 1997 s. 29.314; 1997 a. 249; 2001 a. 109; 2003 a. 75; 2005 a. 57, 291; 2011 a. 169, 180; 2015 a. 249.

6 **SECTION 2.** 29.314 (5) (b) 2m. of the statutes is amended to read:

1 29.314 (5) (b) 2m. To a person who possesses or uses a light while using a bow
2 and arrow or crossbow for taking rough fish or catfish.

History: 1979 c. 190; 1983 a. 27, 419, 538; 1987 a. 399; 1997 a. 1; 1997 a. 248 s. 438; Stats. 1997 s. 29.314; 1997 a. 249; 2001 a. 109; 2003 a. 75; 2005 a. 57, 291; 2011 a. 169, 180; 2015 a. 249.

3 **SECTION 3.** 29.405 (1) (a) of the statutes is amended to read:

4 29.405 (1) (a) Take rough fish or catfish with a bow and arrow or take rough
5 fish or catfish with a bolt from a crossbow unless the arrow or bolt is equipped with
6 a metal barbed tip and is attached to the bow or crossbow with a tethered line that
7 allows for the retrieval of the arrow or bolt and the fish.

History: 2005 a. 291; 2007 a. 97; 2011 a. 180.

8 **SECTION 4.** 29.405 (1) (b) of the statutes is amended to read:

9 29.405 (1) (b) Release or return any rough fish or catfish taken with a bow and
10 arrow or crossbow, whether dead or alive, to the waters of this state.

History: 2005 a. 291; 2007 a. 97; 2011 a. 180.

11 **SECTION 5.** 29.405 (1) (c) of the statutes is amended to read:

12 29.405 (1) (c) Leave any rough fish or catfish taken with a bow and arrow or
13 crossbow, whether dead or alive, on the ice or banks of any waters of this state.

History: 2005 a. 291; 2007 a. 97; 2011 a. 180.

14 **SECTION 6.** 29.405 (2) of the statutes is amended to read:

15 29.405 (2) Any person who takes rough fish or catfish with a bow and arrow
16 or crossbow in any waters of this state shall remove the fish from those waters and
17 use or dispose of the fish in an appropriate manner as determined by the department.

History: 2005 a. 291; 2007 a. 97; 2011 a. 180.

18 **SECTION 7.** 29.405 (3) of the statutes is amended to read:

19 29.405 (3) If the department establishes an open season for taking rough fish
20 or catfish with a bow and arrow or crossbow on a particular body of water, the
21 department shall allow the taking of rough fish or catfish with a bow and arrow or
22 crossbow on that body of water from sunset to sunrise during that open season.

History: 2005 a. 291; 2007 a. 97; 2011 a. 180.

23 **SECTION 8.** 29.405 (4) of the statutes is amended to read:

1 29.405 (4) If the department establishes an open season for taking rough fish
2 or catfish with a bow and arrow on a particular body of water, the department shall
3 also allow the use of a crossbow to take rough fish or catfish on that body of water
4 under the same conditions that apply to the use of a bow and arrow to take rough fish [^]
5 on that body of water. or catfish

6 History: 2005 a. 291; 2007 a. 97; 2011 a. 180.

6 **SECTION 9.** 29.405 (5) of the statutes is created to read:

7 29.405 (5) The department may not promulgate or enforce a rule that prohibits
8 a person from taking rough fish or catfish with a bow and arrow or a crossbow.

9 **SECTION 10.** 29.406 of the statutes is created to read:

10 **29.406 Fishing by hand.** The department may not promulgate or enforce a
11 rule that prohibits a person from taking rough fish or catfish by hand.

12

(END)

Wyatt, Zachary

From: Belmonte, Dominic
Sent: Thursday, November 02, 2017 4:38 PM
To: Wyatt, Zachary
Subject: RE: LRB 1597/P1

Thank you!

Dominic

From: Wyatt, Zachary
Sent: Thursday, November 02, 2017 4:29 PM
To: Belmonte, Dominic <Dominic.Belmonte@legis.wisconsin.gov>
Subject: RE: LRB 1597/P1

Sounds good. I'll get that worked up.

From: Belmonte, Dominic
Sent: Thursday, November 02, 2017 4:27 PM
To: Wyatt, Zachary <Zachary.Wyatt@legis.wisconsin.gov>
Subject: RE: LRB 1597/P1

Zack –

That is exactly what I would be looking for. I believe that modification reflects our intent still while easing the concerns DNR has.

Dominic

From: Wyatt, Zachary
Sent: Thursday, November 02, 2017 3:56 PM
To: Belmonte, Dominic <Dominic.Belmonte@legis.wisconsin.gov>
Subject: RE: LRB 1597/P1

The issue here is that current law is essentially silent on taking fish by hand or with bow and arrow. The prohibitions on those methods exist in DNR rules. This is why I drafted the bill to prohibit such rules.

To address DNR's concern about bag limits, we would modify sections 9 and 10 to say something like. "This subsection does not prohibit the department from promulgating a rule establishing a daily bag limit for rough fish or catfish."

From: Belmonte, Dominic
Sent: Thursday, November 02, 2017 9:43 AM
To: Wyatt, Zachary <Zachary.Wyatt@legis.wisconsin.gov>
Subject: RE: LRB 1597/P1

Zack –

I would concur with your statement. DNR's concerns stem from sections 9 and 10. I believe it would be more prudent for our bill to change the method at which you can fish, rather than create a separate class or rules (or rather no rules) for fishing catfish or rough fish by hand, bow and arrow, or cross bow.

Let me know your thoughts,

Dominic

From: Wyatt, Zachary
Sent: Thursday, November 02, 2017 9:04 AM
To: Belmonte, Dominic <Dominic.Belmonte@legis.wisconsin.gov>
Subject: RE: LRB 1597/P1

Dominic,

My read of the bill is that sections 9 and 10 are the problem. They currently provide that DNR may not promulgate any rule that prohibits taking a catfish, which would indeed preclude bag limits. Based on your discussion with DNR, do you think it would be sufficient to modify those sections to explicitly authorize a bag limit for catfish? Or are they concerned with other portions, too?

Zack

From: Belmonte, Dominic
Sent: Wednesday, November 01, 2017 3:08 PM
To: Wyatt, Zachary <Zachary.Wyatt@legis.wisconsin.gov>
Subject: LRB 1597/P1

Zach –

I wanted to touch base because a colleague in my office, Mitch Ohly, has shared LRB1597/P1 with me to begin getting it ready for introduction. This is the bill that would legalize noodling and bow hunting of catfish and rough fish.

After speaking with the DNR, I have some slight concerns with the current P1 version. We were going over the bag limit for catfish and the DNR believes that as currently drafted they will not be able to enforce the bag limit that is currently enforceable on hook and line fishing. For the sake of uniformity, I think it would be easier to permit the taking of rough fish or catfish by hand while maintaining currently enforced bag limits.

DNR's ultimate concern is that what we have done with the bill is create a regulated catfish and rough fish hook/line fishery and an unregulated catfish and rough fish bow and hand capture fishery.

Ultimately, we would like to maintain the bag limits as currently written in statute, while allowing for the use of the bow and hand.

I can gladly chat over the phone, in-person, or via email on this any time.

Thank you for your help! It is much appreciated.

Sincerely,

Dominic Belmonte
Communications Director
Office of State Senator Tom Tiffany



INSERT

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Region

1 **AN ACT to amend** 29.314 (4) (b) 3., 29.314 (5) (b) 2m., 29.405 (1) (a), 29.405 (1)
2 (b), 29.405 (1) (c), 29.405 (2), 29.405 (3) and 29.405 (4); and **to create** 29.405 (5)
3 and 29.406 of the statutes; **relating to:** taking catfish by hand or with a bow
4 and arrow or a crossbow.

Analysis by the Legislative Reference Bureau

This bill prohibits the Department of Natural Resources from prohibiting the taking of catfish by hand or with a bow and arrow or a crossbow.

WSA

Current rules promulgated by DNR prohibit persons from fishing by any means other than hook and line, with exceptions. Under current rules, a person may take a rough fish, as defined in statute, by hand or with a bow and arrow or a crossbow.

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

5 **SECTION 1.** 29.314 (4) (b) 3. of the statutes is amended to read:
6 29.314 (4) (b) 3. To a person who possesses or uses a light while using a bow
7 and arrow or crossbow for taking rough fish or catfish.
8 **SECTION 2.** 29.314 (5) (b) 2m. of the statutes is amended to read:

1 29.314 (5) (b) 2m. To a person who possesses or uses a light while using a bow
2 and arrow or crossbow for taking rough fish or catfish.

3 **SECTION 3.** 29.405 (1) (a) of the statutes is amended to read:

4 29.405 (1) (a) Take rough fish or catfish with a bow and arrow or take rough
5 fish or catfish with a bolt from a crossbow unless the arrow or bolt is equipped with
6 a metal barbed tip and is attached to the bow or crossbow with a tethered line that
7 allows for the retrieval of the arrow or bolt and the fish.

8 **SECTION 4.** 29.405 (1) (b) of the statutes is amended to read:

9 29.405 (1) (b) Release or return any rough fish or catfish taken with a bow and
10 arrow or crossbow, whether dead or alive, to the waters of this state.

11 **SECTION 5.** 29.405 (1) (c) of the statutes is amended to read:

12 29.405 (1) (c) Leave any rough fish or catfish taken with a bow and arrow or
13 crossbow, whether dead or alive, on the ice or banks of any waters of this state.

14 **SECTION 6.** 29.405 (2) of the statutes is amended to read:

15 29.405 (2) Any person who takes rough fish or catfish with a bow and arrow
16 or crossbow in any waters of this state shall remove the fish from those waters and
17 use or dispose of the fish in an appropriate manner as determined by the department.

18 **SECTION 7.** 29.405 (3) of the statutes is amended to read:

19 29.405 (3) If the department establishes an open season for taking rough fish
20 or catfish with a bow and arrow or crossbow on a particular body of water, the
21 department shall allow the taking of rough fish or catfish with a bow and arrow or
22 crossbow on that body of water from sunset to sunrise during that open season.

23 **SECTION 8.** 29.405 (4) of the statutes is amended to read:

24 29.405 (4) If the department establishes an open season for taking rough fish
25 or catfish with a bow and arrow on a particular body of water, the department shall

1 also allow the use of a crossbow to take rough fish or catfish on that body of water
2 under the same conditions that apply to the use of a bow and arrow to take rough fish
3 or catfish on that body of water.

4 SECTION 9. 29.405 (5) of the statutes is created to read:

5 29.405 (5) The department may not promulgate or enforce a rule that prohibits
6 a person from taking rough fish or catfish with a bow and arrow or a crossbow. R

INS 3-6

7 SECTION 10. 29.406 of the statutes is created to read:

8 **29.406 Fishing by hand.** The department may not promulgate or enforce a
9 rule that prohibits a person from taking rough fish or catfish by hand. R

NS 3-9

10

(END)

**2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1597/P2ins
ZDW:wlj

INS A

The bill also provides that DNR is not prohibited from establishing bag or possession limits for rough fish or catfish.

INS 3-6

This subsection ✓ does not prohibit the department from promulgating or enforcing a rule that establishes a bag or possession limit for rough fish or catfish.

INS 3-9 ✓

This section does not prohibit the department from promulgating or enforcing a rule that establishes a bag or possession limit for rough fish or catfish.

Wyatt, Zachary

From: Belmonte, Dominic
Sent: Tuesday, November 14, 2017 4:07 PM
To: Wyatt, Zachary
Subject: RE: Changes to 1597/2

Zack –

That looks good to me! Just to double check the chapter you are referring to at the end is 29?

Otherwise – looks good to me. Hopefully after this draft, DNR will be satisfied and we can introduce.

Dominic

From: Wyatt, Zachary
Sent: Tuesday, November 14, 2017 1:11 PM
To: Belmonte, Dominic <Dominic.Belmonte@legis.wisconsin.gov>
Subject: RE: Changes to 1597/2

Dominic,

All this bill does is expand what is currently allowed for rough fish to apply to catfish. It would not impact existing limitations, such as the prohibition on fishing in refuges or spear-fishing by tribes. The issue is that DNR is interpreting the added language as restricting their ability to do things it normally does, like establishing seasons and bag limits. So what if we change the second sentence of sections 9 and 10 to something like:

“This subsection does not prohibit the department from promulgating or enforcing a rule that establishes bag or length limits, season dates, zones, or any other limitation applicable to rough fish or catfish if the rule is consistent with the purposes of this chapter.”

I think this gets at the issue of there being an outright prohibition on taking catfish by hand, but makes it clear that DNR can still set limits, just as it does for other species. They would be able to point to existing statutory language, like s. 29.014 (1), as a way to limit taking of catfish without completely prohibiting it.

Thanks,
Zachary D. Wyatt
Legislative Attorney
Wisconsin Legislative Reference Bureau
zachary.wyatt@legis.wisconsin.gov
608.267.3362

The information contained in this communication may be confidential and protected by the attorney-client privilege.

From: Belmonte, Dominic
Sent: Tuesday, November 14, 2017 11:55 AM
To: Wyatt, Zachary <Zachary.Wyatt@legis.wisconsin.gov>
Subject: Changes to 1597/2

Zack –

I spoke with DNR yesterday and they had some "final" feedback on the bill I've been working on and I am hoping that these changes will get us to a final draft. I am not certain for drafting purposes how it could be better structured or if this method is best, but DNR likes the bag limit provision, but now has concerns about the inclusion of length limits and season dates.

Ultimately, with this bill, we are trying to change the method of legal fishing, not anything else. So I believe that the length limits and season dates are equally fitting to an exemption of the DNR's rule making authority like we did for bag limits. My concern is that in writing we are carving out a handful of exemptions when creating the new section allowing hand fishing and I want to make sure that it is common practice to do so.

Additionally, as the bill is currently written, Bow fishers and noodlers would be able to enter fish refuges and harvest which is currently not allowed for any other recreationalist. I believe that this point gets to my concern about carving out exemptions because I think that this would be another issue where we would be creating an uneven playing field for fishers.

Finally, and this is more of a question in general but ties into the bill. Currently, spear fishing is illegal in the nine northern counties where Tribal wall-eye spearing is legal. How would this bill affect those counties? We would really not like this bill to cause any concerns with tribal groups and want to ensure that we protect their water rights.

Sorry about the long-winded email, feel free to give me a ring (6-2509) if you have any questions or if you'd prefer to meet in person.

Thank you,

Dom

Dominic Belmonte
Communications Director
Office of State Senator Tom Tiffany
12th Senate District



WSEPT

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Region

1 **AN ACT to amend** 29.314 (4) (b) 3., 29.314 (5) (b) 2m., 29.405 (1) (a), 29.405 (1)
2 (b), 29.405 (1) (c), 29.405 (2), 29.405 (3) and 29.405 (4); and **to create** 29.405 (5)
3 and 29.406 of the statutes; **relating to:** taking *rough fish or* catfish by hand or with a bow
4 and arrow or a crossbow.

WSA

Analysis by the Legislative Reference Bureau

This bill prohibits the Department of Natural Resources from prohibiting the taking of catfish by hand or with a bow and arrow or a crossbow. The bill also provides that DNR is not prohibited from establishing bag or possession limits for rough fish or catfish.

Current rules promulgated by DNR prohibit persons from fishing by any means other than hook and line, with exceptions. Under current rules, a person may take a rough fish, as defined in statute, by hand or with a bow and arrow or a crossbow.

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

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3 and arrow or crossbow for taking rough fish or catfish.

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6 fish or catfish with a bolt from a crossbow unless the arrow or bolt is equipped with
7 a metal barbed tip and is attached to the bow or crossbow with a tethered line that
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11 arrow or crossbow, whether dead or alive, to the waters of this state.

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14 crossbow, whether dead or alive, on the ice or banks of any waters of this state.

15 **SECTION 6.** 29.405 (2) of the statutes is amended to read:

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17 or crossbow in any waters of this state shall remove the fish from those waters and
18 use or dispose of the fish in an appropriate manner as determined by the department.

19 **SECTION 7.** 29.405 (3) of the statutes is amended to read:

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21 or catfish with a bow and arrow or crossbow on a particular body of water, the
22 department shall allow the taking of rough fish or catfish with a bow and arrow or
23 crossbow on that body of water from sunset to sunrise during that open season.

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1 29.405 (4) If the department establishes an open season for taking rough fish
2 or catfish with a bow and arrow on a particular body of water, the department shall
3 also allow the use of a crossbow to take rough fish or catfish on that body of water
4 under the same conditions that apply to the use of a bow and arrow to take rough fish
5 or catfish on that body of water.

6 **SECTION 9.** 29.405 (5) of the statutes is created to read:

7 29.405 (5) The department may not promulgate or enforce a rule that prohibits
8 a person from taking rough fish or catfish with a bow and arrow or a crossbow. This
9 subsection does not prohibit the department from promulgating or enforcing a rule
10 that establishes a bag or possession limit for rough fish or catfish. ² NS 3-10

11 **SECTION 10.** 29.406 of the statutes is created to read:

12 **29.406 Fishing by hand.** The department may not promulgate or enforce a
13 rule that prohibits a person from taking rough fish or catfish by hand. This section
14 does not prohibit the department from promulgating or enforcing a rule that
15 establishes a bag or possession limit for rough fish or catfish. ² NS 3-15

16

(END)

**2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1597/P3ins
ZDW:wlj&kjf

INS A

This bill prohibits the Department of Natural Resources from prohibiting the taking of rough fish or catfish by hand or with a bow and arrow or a crossbow.

Current rules promulgated by DNR prohibit persons from fishing by any means other than hook and line, with exceptions. Under current rules, a person may take a rough fish, as defined in statute, by hand or with a bow and arrow or a crossbow. The bill expands the current requirements applicable to taking rough fish to apply to catfish and prohibits DNR from prohibiting the taking of rough fish or catfish by hand or with a bow and arrow or a crossbow. Under the bill, DNR is not prohibited from promulgating rules establishing bag or length limits, season dates, zones, or other limitations applicable to rough fish or catfish if the rules are consistent with current laws relating to the regulation of wild animals.

INS 3-10

bag or length limits, season dates, zones, or any other limitations applicable to rough fish or catfish if the rule is consistent with the purposes of this chapter.

INS 3-15

bag or length limits, season dates, zones, or any other limitations applicable to rough fish or catfish if the rule is consistent with the purposes of this chapter.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1597/P3
ZDW:wlj&kjf

11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No
Changes

1 AN ACT *to amend* 29.314 (4) (b) 3., 29.314 (5) (b) 2m., 29.405 (1) (a), 29.405 (1)
2 (b), 29.405 (1) (c), 29.405 (2), 29.405 (3) and 29.405 (4); and *to create* 29.405 (5)
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2 29.405 (4) If the department establishes an open season for taking rough fish
3 or catfish with a bow and arrow on a particular body of water, the department shall
4 also allow the use of a crossbow to take rough fish or catfish on that body of water
5 under the same conditions that apply to the use of a bow and arrow to take rough fish
6 or catfish on that body of water.

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9 a person from taking rough fish or catfish with a bow and arrow or a crossbow. This
10 subsection does not prohibit the department from promulgating or enforcing a rule
11 that establishes bag or length limits, season dates, zones, or any other limitations
12 applicable to rough fish or catfish if the rule is consistent with the purposes of this
13 chapter.

14 **SECTION 10.** 29.406 of the statutes is created to read:

15 **29.406 Fishing by hand.** The department may not promulgate or enforce a
16 rule that prohibits a person from taking rough fish or catfish by hand. This section
17 does not prohibit the department from promulgating or enforcing a rule that
18 establishes bag or length limits, season dates, zones, or any other limitations
19 applicable to rough fish or catfish if the rule is consistent with the purposes of this
20 chapter.

21

(END)