

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 20.20(73)(c); to amend NR 19.275(3), 20.11(1), 20.20(4)(c), 20.20(11)(k)1, 20.20(14)(f), 20.20(15), 20.20(29)(h)1, 20.20(35)(b), 20.20(35)(g)1m, 20.20(37)(i)1, 20.20(44)(b)2, 20.20(44)(c)1, 20.20(45)(cm)1, 20.20(49)(am), 20.20(50)(h)2, 20.20(56)(j)2, 20.20(57)(d), 20.20(57)(f)2, 20.20(64)(c), 20.20(70)(d), 20.20(70)(f), 20.20(72)(h)1, 20.20(73)(g), 20.20(73)(o), 21.04, 23.05(5)(c)1, 24.10; and to create NR 20.03(37t), 20.05(16), 20.20(5)(bm)1, 20.20(71)(cm)1, 20.20(44)(b)4, 20.20(57)(dm) relating to fishing on the inland, outlying, and boundary waters of Wisconsin.

FH-12-06

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted: In promulgating this rule, ss. 29.624, 29.161, 29.204, 29.207, 29.231 or 29.235, Stats., which authorize the hunting of small game, and 29.624, 29.228, 29.219, 29.231, 29.235, 29.531, 29.533, 29.014(1), 29.039 and 29.041, Stats., which authorize fishing, have been interpreted as giving the department the authority to make changes to fishing regulations on inland and boundary waters of Wisconsin. Section 29.537, Stats., has been interpreted as giving the department the authority to regulate clamming and commercial clamming in all waters of the state.

Statutory Authority: Sections 29.014(1), 29.039, 29.041, 29.537(8)(a) and (e) and 227.11(2)(a), Stats.

Explanation of Agency Authority to Promulgate the Proposed Rules Under the Statutory Authority: Sections 29.014(1), 29.039, 29.041 and 227.11(2)(a), Stats., 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; grant that the department may establish limitations relating to taking, possession, transportation, processing, and sale or offer for sale, of nongame species; and provide that the department may regulate hunting and fishing on and in all interstate boundary waters, and outlying waters. Section 29.537(8)(a) and (e), Stats., authorized the department to set open and closed seasons for clamming and to identify waters open to clamming. Section 227.11(2)(a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related Rule or Statute: None.

Plain Language Rule Analysis: Section by section details of this rule order are outlined:

Section 1 exempts residents younger than 16 years of age from the requirement to hold a fishing license or small game permit to take, possess, or control turtles.

Section 2 defines "sinker release devices" as any commercial or home made device designed to attach to a fishing line used for trolling for fish and release the weight or sinker.

Section 3 prohibits the use of "sinker release devices" as defined in Section 2 above.

Section 4 changes removal dates for ice fishing shelters placed on inland waters.

Sections 5, 8, 11, 13, 14, 20, 21, and 30 extend the sunset provision from March 31, 2007 to March 31, 2014 for the experimental 20-28" protected slot limit for walleye and sauger on the Wisconsin river in Adams, Columbia, Juneau, Lincoln, Marathon, Portage, Sauk, and Wood counties.

Section 6 replaces the current 14" minimum length and 5 fish daily bag limits for largemouth and smallmouth bass in Pigeon lake, Bayfield county, with a 14-18" protected slot and 3 fish daily bag limit, where only one harvested fish may be larger than 18".

Sections 7, 18, and 29 increase the minimum length limit for muskellunge from 34" to 50" in the Fox river in Brown, Outagamie, and Winnebago counties, and changes the season opening date from the first Saturday in May to the Saturday closest to Memorial day.

Section 9 extends the sunset date for the 18" minimum and 3 fish daily bag limits for Beaver Dam lake, Dodge county from March 31, 2007 to March 31, 2014, and adds Mill creek to the list of waters affected by this rule.

Section 10 increases the minimum length limit for walleye and sauger in Kangaroo Lake, Door Co., from 15" to 18", and reduces the daily bag limit from 5 fish to 3 fish.

Section 13 increases the minimum size limits for largemouth and smallmouth bass in Muskellunge lake, Lincoln county from 14" to 18" and reduces the daily bag limit from 5 fish to 1 fish.

Sections 15 and 16 replace the current 18" minimum length and 1 fish daily bag limits for largemouth and smallmouth bass in Oneida lake, Oneida county, with a 14-18" protected slot and 3 fish daily bag limit, where only one harvested fish may be larger than 18".

Section 17 increases the minimum size limit for muskellunge in Pelican lake, Oneida county, from 34" to 50".

Section 19 replaces the current 14" minimum size limits for largemouth and smallmouth bass in Big Butternut lake, Polk county, with no minimum size limit.

Section 22 replaces the current 14" minimum size limits for largemouth and smallmouth bass in Nelson lake, Sawyer county, with no minimum size limit.

Section 23 increases the minimum size limit for northern pike in Nelson lake, Sawyer county, from no minimum length to 32", and reduces the daily bag limit from 5 fish to 1 fish.

Section 24 reduces the daily bag limit for panfish in Smith lake, Sawyer county, from 25 fish to 10 fish.

Section 25 increases the minimum size limits for largemouth and smallmouth bass in Kentuck lake, Vilas county from 14" to 18" and reduces the daily bag limit from 5 fish to 1 fish, and increases the minimum size limits for largemouth and smallmouth bass in Palette lake, Vilas county from 16" to 22" and reduces the daily bag limit from 2 fish to 1 fish.

Sections 26 and 27 remove special regulations for muskellunge and northern pike in Long lake, Waushara county.

Section 28 extends the open season for trout in Gilbert, Pearl, and Pine lakes, Waushara county.

Section 31 increases the minimum length limit for muskellunge in lake Winnebago system waters from 34" to 50".

Section 32 simplifies walleye regulations in the Menominee river below the Hattie street dam and in waters of Green bay, to provide consistent regulations for anglers fishing either Wisconsin or Michigan waters.

Section 33 changes the season opening date for walleye, sauger, and northern pike in the St. Croix river from the first Saturday in May to the Saturday nearest May 1 to provide consistent regulations for anglers fishing either Wisconsin or Minnesota waters, and removes the 15" minimum for sauger in the St. Louis river, again to provide consistent regulations for anglers fishing either Wisconsin or Minnesota waters.

Section 34 establishes a catch-and-release only fishery for lake sturgeon in the Menominee river below the Hattie street dam, and replaces the current 50"/70" alternating minimum size limits for lake sturgeon in the Menominee river above Hattie street dam with an annual 60" minimum size limit.

Section 35 prohibits non-commercial harvest of freshwater mussels from inland waters of Wisconsin.

Summary of and Comparison with Existing or Proposed Federal Regulations: None known.

Comparison of Similar Rules in Adjacent States: Fisheries management is generally quite similar in the states surrounding Wisconsin. All the bordering states regulate fishing by the use of seasons, bag limits and size limits. Specific seasons, bag and size limits may differ for species across the surrounding states; however, the general principles are similar. Michigan, Minnesota, Iowa and Illinois all have statewide seasons, bag and size limits for fish species, along with special or experimental regulations on individual waters.

Summary of Factual Data and Analytical Methodologies Used in Support of the Rule: Rule proposals were developed by fisheries and law enforcement staff to address management and enforcement concerns. Proposals were reviewed for need and adequacy, and approved by a fish team or law enforcement team supervisor and forwarded to regional director for approval. Proposals approved by the regions were forwarded to the FH Bureau Director, who conducted a review with the Fisheries and Habitat Board, law enforcement, legal services, and the Great Lakes Indian Fish and Wildlife Commission. Proposals approved by the FH Bureau Director are included.

Analysis and Documentation Used in Support of the Agency's Determination Under s. 227.114, Stats., (Small Business Impact): The proposed rules do not apply directly to businesses, but to sport anglers, with the possible exception of rules clarifying the time for placement and removal of set or bank poles and setlines. Some setlines and set or bank poles may be used by licensees who sell the catfish, rough fish or turtles they catch. However, the decision to sell is at the discretion of the licensee and no reporting of sales is required. The department has no objective basis for quantifying the effect of the proposed rule on such small businesses, if they exist.

Effect on Small Business, Including How the Rule Will Be Enforced: The proposed rule will not directly affect small business as the rules will not directly apply to them, with the possible exception of some holders of setline or set or bank pole licenses who choose to sell the catfish, rough fish and turtles that they catch. However, such sales are discretionary and no reporting is required, so it is not known whether the proposed rule relating to the clarification of timing of placement of setlines and set or bank poles will affect any licensees who are small businesses. Any effects are likely to be insignificant. The rules will be enforced by Conservation Wardens who have arrest powers and may use citations.

Agency contact person: Joseph Hennessy, FH/4 101 South Webster Street, Madison, WI 53707-7921; email: Joseph.Hennessy@dnr.state.wi.us; phone: 608.267.9427.

SECTION 1. NR 19.275(3)(a) is amended to read:

NR 19.275(3)(a) Take, possess or control a turtle unless the person is in possession of a valid approval issued under s. 29.624, 29.161, 29.204, 29.207, 29.231 or 29.235, Stats., which authorizes the hunting of small game, or an approval issued under s. 29.624, 29.228, 29.219, 29.231, 29.235, 29.531, or 29.533, Stats., which authorize fishing, unless otherwise exempt from the need to possess one of more of these approvals to hunt or fish under ch. 29, Stats.

Note: The s. 29.228, Stats., fishing license exemption for nonresidents under age 16 only applies to taking fish by hook and line. Therefore, any nonresident under age 16 who takes turtles by hand, hooking or with hoop net turtle traps must possess a valid fishing or small game authorization.

SECTION 2. NR 20.03(37t) is created to read:

NR 20.03(37t) "Sinker release device" means any device that is designed to release a weight or sinker from a fishing line upon a strike from a fish while trolling.

SECTION 3. NR 20.05(16) is created to read:

NR 20.05 (16) Possess or use a sinker release device while fishing in waters of the state.

SECTION 4. NR 20.11(1)(d) and (e) are amended to read:

NR 20.11 (1)(d) The fishing shelter is removed from the ice daily and when not in use after ~~March 5~~ the first Sunday following March 1, on inland waters south of highway 64.

(e) The fishing shelter is removed from the ice daily and when not in use after ~~March 15~~ the first Sunday following March 12, on inland waters north of highway 64 and all other outlying waters.

SECTION 5. NR 20.20(1)(h)1. is amended to read:

(1) ADAMS (for species or waters not listed, see sub. (73))

(h) Walleye, sauger and hybrids	1. Wisconsin river including sloughs, bayous and flowages	a. Hook and line.	Continuous	5 in total but until March 31, 2007 <u>2014</u> none may be from 20" to 28" and only 1 may be > 28"	15
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SECTION 6. NR 20.20 (4)(c)2. is created to read:

(4) BAYFIELD (for species or waters not listed, including Lake Superior, see sub. (73))

(c) Largemouth and smallmouth bass	2. Pigeon lake	a. Hook and line	First Saturday in May to Friday preceding third Saturday in June	0	--
			Third Saturday in June to the first Sunday in March	3 in total but only 1 may be longer than 18"	None except the possession of fish from 14" through 18" is prohibited

SECTION 7. NR 20.20(5)(bm)1. is created to read:

(5) BROWN (for species or waters not listed, see sub. (73))

(bm) Muskellunge	1. Fox river upstream from DePere dam	a. Hook and line	Saturday nearest Memorial Day to November 30	1	50
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SECTION 8. NR 20.20(11)(k)3. is amended to read:

(11) COLUMBIA (for species or waters not listed, see sub. (73))

(k) Walleye, sauger and hybrids	3. Lower Wisconsin river upstream from Prairie du Sac dam	a. Hook and line	Continuous	5 in total but until March 31, 2007 <u>2014</u> none may be from 20" to 28" and only 1 may be > 28"	15
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SECTION 9. NR 20.20(14)(f)2. is amended to read:

(14) DODGE (for species or waters not listed, including Lake Superior, see sub. (73))

(f) Walleye, sauger and hybrids	2. Fox lake, Beaver Dam lake <u>and its tributaries until March 31, 2014, and Mill creek until the first Sunday in March 31, 2007 <u>2014</u></u>	a. Hook and line	First Saturday in May to the first Sunday in March	3 in total	18
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SECTION 10. NR 20.20(15)(d) is created to read:

(15) DOOR (for species or waters not listed, including Lake Superior, see sub. (73))

(d) Walleye, sauger and hybrids	1. Kangaroo lake	a. Hook and line	Continuous	3 in total	18
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SECTION 11. NR 20.20(29)(h)1. is amended to read:

(29) JUNEAU (for species or waters not listed, see sub. (73))

(h) Walleye, sauger and hybrids	1. Yellow river and its sloughs, bayous and flowages, Lemonweir river and its sloughs, bayous and flowages, Wisconsin river and its sloughs, bayous and flowages	a. Hook and line	Continuous	5 in total but until March 31, 2007 <u>2014</u> none may be from 20" to 28" and only 1 may be > 28"	15
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SECTION 12. NR 20.20(35)(b)2. is created to read:

(35) LINCOLN (for species or waters not listed, see sub. (73))

(b) Largemouth and smallmouth bass	2. Muskellunge lake	a. Hook and line	First Saturday in May to Friday preceding third Saturday in June	0	--
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Third Saturday in June to the first Sunday in March 1 18

SECTION 13. NR 20.20(35)(g)1m. is amended to read:

(35) LINCOLN (for species or waters not listed, see sub. (73))

(g) Walleye, sauger and hybrids	1m. Wisconsin river downstream from Grandfather dam including sloughs, bayous and flowages	a. Hook and line	Continuous	5 in total but until March 31, 2007 <u>2014</u> none may be from 20" to 28" and only 1 may be > 28"	15
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SECTION 14. NR 20.20(37)(i)1. is amended to read:

(37) MARATHON (for species or waters not listed, see sub. (73))

(i) Walleye, sauger and hybrids	1. Wisconsin river including sloughs, bayous and flowages	a. Hook and line	Continuous	5 in total but until March 31, 2007 <u>2014</u> none may be from 20" to 28" and only 1 may be > 28"	15
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SECTION 15. NR 20.20(44)(b)2. is amended to read:

(44) ONEIDA (for species or waters not listed, see sub. (73))

(b) Largemouth and smallmouth bass	2. Bearskin lake, Crescent lake, Oneida lake , Pelican lake, Stella lake	a. Hook and line	First Saturday in May to Friday preceding third Saturday in June	0	--
			Third Saturday in June to the first Sunday in March	1 in total	18

SECTION 16. NR 20.20(44)(b)4. is created to read:

(44) ONEIDA (for species or waters not listed, see sub. (73))

(b) Largemouth and smallmouth bass	4. Oneida lake	a. Hook and line	First Saturday in May to Friday preceding third Saturday in June	0	--
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Third Saturday in June to the first Sunday in March	3 in total but only 1 may be longer than 18"	None except the possession of fish from 14" through 18" is prohibited
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SECTION 17. NR 20.20(44)(c)1. is amended to read:

(44) ONEIDA (for species or waters not listed, see sub. (73))

(c) Muskellunge	1. Clear lake (T39N, R7E, S16), <u>Pelican lake</u>	a. Hook and line	Saturday nearest Memorial day to November 30	1	50
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SECTION 18. NR 20.20(45)(cm)1. is created to read:

(45) OUTAGAMIE (for species or waters not listed, see sub. (73))

(cm) Muskellunge	1. Fox river	a. Hook and line	Saturday nearest Memorial day to November 30	1	50
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SECTION 19. NR 20.20(49)(am)2. is created to read:

(49) POLK (for species or waters not listed, see sub. (73))

(am) Largemouth and smallmouth bass	2. Big Butternut lake	a. Hook and line	First Saturday in May to the first Sunday in March	5	None
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SECTION 20. NR 20.20(50)(h)2. is amended to read:

(50) PORTAGE (for species or waters not listed, see sub. (73))

(h) Walleye, sauger and hybrids	2. Wisconsin river including sloughs, bayous and flowages	a. Hook and line	Continuous	5 in total but until March 31, 2007 <u>2014</u> none may be from 20" to 28" and only 1 may be > 28"	15
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SECTION 21. NR 20.20(56)(j)2. is amended to read:

(56) SAUK (for species or waters not listed, see sub. (73))

(j) Walleye, sauger and hybrids	2. Lower Wisconsin river upstream from the Prairie du Sac dam	a. Hook and line	Continuous	5 in total but until March 31, 2007 <u>2014</u> none may be from 20" to	15
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28" and only
1 may be >
28"

SECTION 22. NR 20.20(57)(d)2. is created to read:

(57) SAWYER (for species or waters not listed, see sub. (73))

(d) Largemouth and smallmouth bass	2. Nelson lake	a. Hook and line	First Saturday in May to Friday preceding third Saturday in June	0	--
			Third Saturday in June to the first Sunday in March	5	None

SECTION 23. NR 20.20(57)(dm) is created to read:

(57) SAWYER (for species or waters not listed, see sub. (73))

(dm) Northern pike	1. Nelson lake	a. Hook and line	First Saturday in May to the first Sunday in March	1	32
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SECTION 24. NR 20.20(57)(f)2. is amended to read:

(57) SAWYER (for species or waters not listed, see sub. (73))

(f) Panfish	2. Christner lake, Moose lake, Nelson lake, Sand lake, Sissabagama lake, <u>Smith lake</u>	a. Hook and line	Continuous	10 in total	None
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SECTION 25. NR 20.20(64)(c)2. and 5. are amended to read:

(64) VILAS (for species or waters not listed, see sub. (73))

(c) Largemouth and smallmouth bass	2. Big Muskellunge lake, East Ellerson lake, Forest lake, Gunlock lake, Little Bass lake (T40N, R8E, S15), <u>Kentuck lake</u> , Middle Ellerson lake, Papoose lake, Plum lake, Salsich lake, Trout lake, Wabasso lake, West Plum lake, White Sand lake (T42N, R7E, S27), Whitney lake	a. Hook and line	First Saturday in May to Friday preceding third Saturday in June	0	--
			Third Saturday in June to the first Sunday in March	1 in total	18

5. Palette lake	a. Hook and line. Daily permit required (see s. NR 20.41)	Continuous	2 in total 1	46 22
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SECTION 26. NR 20.20(70)(c) is repealed

SECTION 27. NR 20.20(70)(d)2. is repealed.

SECTION 28. NR 20.20(70)(f)4. is amended to read:

(70) WAUSHARA (for species or waters not listed, see sub. (73))

(f) Trout and salmon	4. Gilbert lake, Johns lake, Pearl lake, Pine lake, Spring lake, White River pond (west branch), Wild Rose millpond	a. <u>Hook and line</u>	First Saturday in May at 5:00 a.m. to the first Sunday in March	5 in total	7
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SECTION 29. NR 20.20(71)(cm) is created to read:

(71) WINNEBAGO (for species or waters not listed, see sub. (73))

(cm) Muskellunge	1. Fox river downstream from Neenah-Menasha dam including Little Butte des Morts lake	a. Hook and line	Saturday nearest Memorial day to November 30	1	50
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SECTION 30. NR 20.20(72)(h)1. is amended to read:

(72) WOOD (for species or waters not listed, see sub. (73))

(h) Walleye, sauger and hybrids	1. Yellow river including sloughs, bayous and flowages from the highway 54 dam at Dexterville downstream, Wisconsin river including sloughs, bayous and flowages	a. Hook and line	Continuous	5 in total but until March 31, 2007 2014 none may be from 20" to 28" and only 1 may be > 28"	15
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SECTION 31. NR 20.20(73)(g)1m. is created to read:

(73) SPECIES OR WATERS NOT LISTED IN SUBS (1) TO (72)

(g) Muskellunge	1m. Lake Winnebago system waters	a. Hook and line	First Saturday in May to November 30	1	50
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SECTION 32. NR 20.20(73)(o)2. and 3. are amended to read:

(73) SPECIES OR WATERS NOT LISTED IN SUBS (1) TO (72)

(o) Walleye, sauger and hybrids	2. All other waters of Green Bay, major Green Bay tributaries, Lake Michigan waters north of a line running due east from the eastern terminus of Waldo boulevard in the city of Manitowoc; <u>Lake Michigan tributaries north of a line due east from the eastern terminus of Waldo boulevard in the city of Manitowoc</u>	a. Hook and line	Continuous <u>First Saturday in May to the first Sunday in March</u>	3 <u>5</u> in total	None <u>15"</u>
			<u>Monday after the first Sunday in March to the Friday before the first Saturday in May</u>	<u>1</u>	<u>15"</u>
	3. Lake Michigan tributaries <u>south of a line due east from the eastern terminus of Waldo boulevard in the city of Manitowoc</u> ; Lake Michigan waters south of a line due east from the eastern terminus of Waldo boulevard in the city of Manitowoc	a. Hook and line	Continuous	5 in total	15

SECTION 33. NR 21.04(2)(a) and (d) and (3)(a) are amended to read:

NR 21.04 Sport fishing; seasons and limits

(2) WALLEYE AND SAUGER

(a) St. Croix river downstream to Prescott	First Saturday in May <u>First Saturday in May to the first Saturday nearest May 1</u> to March 1	6 in aggregate	No size limit for sauger, 15 for walleye
(d) St. Louis river	Saturday 2 weeks prior to the Saturday nearest Memorial Day to March 1	2 in aggregate	45 <u>No size limit for sauger, 15 for walleye</u>

(3) NORTHERN PIKE

(a) St. Croix river downstream to Prescott ~~First Saturday in May~~ 5 No size limit
Saturday nearest May 1 to
March 1

SECTION 34. NR 23.05(5)(c)1. is amended to read:

(c) Lake Sturgeon

1. Menominee river, upstream from Hattie St. dam First Saturday in September ~~to November 1~~ September 30 1 per season ~~50 in odd numbered years, 70 in even numbered years~~ 60

SECTION 35. NR 24.10 is amended to read:

NR 24.10 Clamming: size limits; open seasons, species and waters. No person may engage in clamming except between sunrise and sunset during the open season in waters which are open to clamming, for clams of a species which is open to clamming and which are of the minimum size or larger, as shown in the following table:

Waters Open to Clamming	Open Season	Open Species	Minimum Size
All boundary, inland and outlying waters	all year	all except those listed in s. NR 27.03 (2) (g) or (3) (g)	None
<u>All inland waters</u>	<u>No open season</u>	<u>None, however, dead shells that are not from endangered or threatened clams may be collected</u>	<u>None</u>

SECTION 36. EFFECTIVE DATE. This rule shall take effect on April 1, 2007, except sections 32, 34 and 35 which 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 37. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 24, 2006.

Dated at Madison, Wisconsin, _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)