

## Clearinghouse Rule 09-051

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

The Wisconsin Natural Resources Board proposes an order to repeal 20.20 (35) (g) (3); to amend NR 20.03 (31) (a), 20.05 (14), 20.09 (2), 20.18 (1), 20.20 (19) (b), 20.20 (64) (b) 1. b. and 2. b. and (73) (b) 3m.a., (c) 3. b., (g) 1m. and (L) 5. c., 20.36 (1) (intro.) and (2), 21.06 (1) (d), 22.03, 22.06 (1) (d), and 23.055 (1)(intro.) and (2); to renumber NR 23.02 (1); and to create NR 19.275 (3) (j) and (k), 21.13 (3) (i) and (j), 22.13 (3) (i) and (j), 23.02 (1), 23.05 (c) 1m. and 23.12, relating to fishing on the inland, outlying, and boundary waters of Wisconsin.

FH-18-09

#### Analysis Prepared by the Department of Natural Resources

**1. Statutes Interpreted:** In promulgating this rule, ss. 29.014(1), 29.039, 29.405 (3), 29.053, 29.531 and, 29.533, Stats., which authorize fishing, are interpreted as giving the department the authority to make changes to fishing regulations on inland and boundary waters of Wisconsin.

**2. Statutory Authority:** Sections 29.014 (1), 29.039, 29.041, 29.405 (3) and 227.11 (2) (a), Stats.

**3. Explanation of Agency Authority to Promulgate the Proposed Rules Under the Statutory Authority:** Sections 29.014(1), 29.039, 29.041 and 29.053, 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 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.

**4. Related Rule or Statute:** None.

#### **5. Plain Language Rule Analysis:**

Sections 1, 15, and 18 clarify that hoop nets may not be set within 200 feet of a fishway, lock, or dam, and that individuals may not use hook-and-line, setlines, or nets for taking turtles in a way or during any time when these methods are prohibited for fishing.

Section 2 clarifies that the possession limit for trout from inland waters is 10 fish, and is separate from the possession limit for Great Lakes trout and salmon.

Section 3 clarifies language governing the prohibition of tagging and releasing fish without a permit.

Sections 4, 14, and 17 resolve conflicts between state statute and administrative code regarding rules governing fishing with a bow and arrow. State statute provides that the department shall allow bowfishing at night wherever it is allowed during daylight hours in inland, outlying, and boundary waters.

Sections 5 and 9 correct administrative errors which occurred during the drafting of rules regarding harvest of catfish from Winnebago system waters. There is a total daily bag limit of one flathead catfish, rather than 2, allowed from Winnebago system waters, and there is no closed season for channel catfish in these waters.

Sections 6, 8, 10 and 12 clarify that dip netting and seining for cisco and whitefish are permissible at any time of day in Keyes lake (Florence county), Trout and Palette lakes (Vilas county), and in all other waters not specifically listed in the county and statewide table in s. NR 20.20. Section 11 also clarifies that seining for smelt is permissible any time of day in Lake Superior.

Section 7 repeals code related to walleye harvest regulations in Enterprise lake (Langlade county). The code being repealed was improperly placed in the section for rules related to lakes in Lincoln county. The proper code related to walleye regulations in Enterprise lake already exists under the section related to rules for lakes in Langlade county.

Section 11 corrects an omission which occurred in the implementation of rules which extended the open season for muskellunge in waters south of Highway 10 from November 30 to December 31. The later season-ending date applies to Winnebago system waters.

Sections 13 and 22 correct the effective end date for bag limit adjustments made in the Wisconsin Ceded territory in response to tribal declarations and harvest, and correct inconsistency in language which applies to readjustments of bag limits after spring tribal harvest.

Section 16 clarifies license requirements for anglers fishing Wisconsin- Iowa boundary waters, and corrects the name of the boundary on the Wisconsin side of the Mississippi river.

Sections 19, 20, 21 and 23 correct omissions made during the implementation of rules governing harvest of lake sturgeon from Wisconsin-Michigan boundary waters. Rules which were adopted for inland waters also applied to these boundary waters, but the appropriate changes in code were not made.

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

**7. Comparison of Similar Rules in Adjacent States:** Fisheries management rules are generally quite similar in the states surrounding Wisconsin. Each bordering state regulates 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.

**8. 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 known errors and inconsistencies in Administrative Code, and are limited to minor “housekeeping” changes.

**9. 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.

**10. Effect on Small Business, Including How the Rule Will Be Enforced:** The proposed rules do not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rules will be enforced by Conservation Wardens who have arrest powers and may use citations.

**11. Agency contact person:** Joseph Hennessy, FM/4 , 101 South Webster Street, Madison, WI 53707-7921; email: Joseph.Hennessy@wisconsin.gov; phone: 608.267.9427.

**12. Place where comments are to be submitted and deadline for submission:** The deadline for written comments is August 1, 2009. Comments may also be submitted electronically at the following internet site: <http://adminrules.wisconsin.gov>

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SECTION 1. NR 19.275 (3) (j) and (k) are created to read:

NR 19.275 (3) (j) Place, set, or use a hoop net turtle trap within 200 feet of any fishway, lock, or dam.

(k) Place, set or use any hook and line, setline or bank pole for taking turtles in a manner or at any time during which these methods are not allowed for taking fish under ss. NR 20.06 and 20.12.

SECTION 2. NR 20.03 (31) (a) is amended to read:

NR 20.03 (31) (a) The possession limit for trout from inland waters is 10 of which no more than 5 may be a combined total of brown and rainbow trout.

SECTION 3. NR 20.05 (14) is amended to read:

NR 20.05 (14) Capture, tag, mark or attach any object and release wild fish unless issued a permit by the department pursuant to s. NR 19.11.

SECTION 4. NR 20.09 (2) is amended to read:

NR 20.09 (2) Use, possess or control any bow, spear or similar device from sunset to sunrise while on the waters or on the banks or shores of any waters except that a bow and arrow may be possessed and used for spearing rough fish from sunset to sunrise during the open season for spearing rough fish ~~on the following inland lakes at any time during the open season for spearing as specified in s. NR 20.20: Castle Rock and Petenwell flowages, Adams and Juneau counties; Round and Trade lakes, Burnett county; Lake Winnebago, Calumet county; Arbutus and Mead lakes, Clark county; Lake Wisconsin, Mud lake and Park lake, Columbia county; Lakes Monona, Mendota, Kegonsa, Koshkonong and Waubesa, Dane county; Beaver Dam lake, Chub lake, Fox lake, Mud lake, Horicon Marsh and Lake Sinnissippi, Dodge county; Eau Galle lake, Lake Menomin and Tainter lake, Dunn county; Lake Winnebago, Fond du Lac county; Big Green lake, Lake Puckaway and Little Green lake, Green Lake county; Ludden lake, Iowa county; Lake Koshkonong, Jefferson county; Lake Neshonoc, La Crosse county; Yellowstone lake, Lafayette county; Big Eau Pleine flowage, Lake DuBay and McMillan reservoir, Marathon county; Buffalo lake and Grand River Marsh, Marquette county; Cedar and Wappogasset lakes, Polk county; Wisconsin River flowage and Lake DuBay, Portage county; Tichigan and Wind lakes, Racine county; Lake Koshkonong, Rock county; Potato lake, Rusk county; Cedar lake, St. Croix county; Lake Wisconsin, Sauk county; Shawano lake, Shawano county; Delavan, Como and Geneva lakes,~~

~~Walworth county; Big Muskego lake and Lac LaBelle, Waukesha county; Lake Poygan, Waushara county; Lakes Butte des Morts, Poygan, Winnebago, Winneconne and Rush lake, Winnebago county.~~

SECTION 5. NR 20.18 (1) is amended to read:

(1) Catfish 25 in total, of which only ~~2~~ 1 may be flathead catfish from the Lake Winnebago system

SECTION 6. NR 20.20 (19) (b) is amended to read:

**(19) FLORENCE** (for species or waters not listed, see sub. (73))

|   |               |                                   |   |                                 |      |
|---|---------------|-----------------------------------|---|---------------------------------|------|
| (b) Cisco <u>(lake herring), and whitefish, and their hybrids</u> | 1. Keyes lake | a. Hook and line                  | Continuous                                | 25 pounds and one fish in total | None |
|   |               | b. Dip netting <u>at any time</u> | Saturday nearest October 10 to January 15 | 3 in total                      | None |

SECTION 7. NR 20.20 (35) (g) (3) is repealed.

SECTION 8. NR 20.20 (64) (b) 1. b. and 2. b. are amended to read:

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

|   |                  |   |   |                               |      |
|---|------------------|---|---|-------------------------------|------|
| (b) Cisco <u>(lake herring), and whitefish, and their hybrids</u> | 1. Trout lake    | b. Dip netting <u>at any time</u> , seining with a seine not more than 75 feet in length, 6 feet in depth with mesh not to exceed 2 inch stretch measure. | Saturday nearest October 10 to February 1 | 10 in total                   | None |
|   | 2. Pallette lake | b. Dip netting <u>at any time</u> . Daily permit required (see s. NR 20.41)   | Saturday nearest October 10 to February 1 | 25 pounds and 1 fish in total | None |

SECTION 9. NR 20.20 (73) (b) 3m.a. is amended to read:

|             |                                   |                   |   |  |  |
|-------------|-----------------------------------|-------------------|---|--|--|
| (b) Catfish | 3ma. Lake Winnebago system waters | a. Hook and line. | <u>Continuous for channel catfish</u> ; First Saturday in May to September 30 <u>for flathead catfish</u> | 25 in total but only 1 may be a flathead catfish regardless of whether caught on hook and line, set or bank pole, or setline | None except for flathead catfish, which is 30 but the possession of flathead catfish from 36 to 42 is prohibited |
|-------------|-----------------------------------|-------------------|---|--|--|

SECTION 10. NR 20.20 (73) (c) 3. b. is amended to read:

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

|   |                                |                                    |   |                                 |      |
|---|--------------------------------|------------------------------------|---|---------------------------------|------|
| (c) Cisco (lake herring), whitefish and their hybrids | 3. All other waters not listed | b. Dip netting <u>at any time.</u> | Saturday nearest October 10 to February 1 | 25 pounds and one fish in total | None |
|---|--------------------------------|------------------------------------|---|---------------------------------|------|

SECTION 11. NR 20.20 (73) (g) 1m. is amended to read:

|                 |                                  |                  |  |   |    |
|-----------------|----------------------------------|------------------|--|---|----|
| (g) Muskellunge | 1m. Lake Winnebago system waters | a. Hook and line | First Saturday in May to <del>November 30</del> <u>December 31</u> | 1 | 50 |
|-----------------|----------------------------------|------------------|--|---|----|

SECTION 12. NR 20.20 (73) (L) 5. c. is amended to read:

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

|                |                  |   |                   |      |      |
|----------------|------------------|---|-------------------|------|------|
| (L) Rough fish | 5. Lake Superior | c. Seining <u>at any time</u> for smelt only with seines not more than 75 feet in length and 6 feet in depth. | April 1 to May 25 | None | None |
|----------------|------------------|---|-------------------|------|------|

SECTION 13. NR 20.36 (1) (intro.) and (2) are amended to read:

NR 20.36 (1) ADJUSTMENT. (intro.) In order to prevent a total harvest of more than 35% of the adult walleye population or 27% of the adult muskellunge population, the secretary may lower the daily bag limit on walleye and increase the minimum size limit for muskellunge in specific waters in response to the harvest goals of the Chippewa bands for their spear, net or trap fisheries. The adjusted daily bag and size limits shall be in effect until ~~March 1~~ the first Sunday in March of the year following the tribal harvest. The safe harvest levels on individual waters shall be determined by the department.

(2) READJUSTMENT. ~~After May 30 of each year~~ After the third Monday in May, the secretary may raise the daily bag limit or reduce the minimum size limit to the limit specified as appropriate using the percent of the safe harvest level expected to be harvested through ~~March 1~~ the first Sunday in March of the next year as indicated in sub. (1). If actual harvest subsequently exceeds the expected harvest level, the daily bag limit for walleye may be reduced or the minimum size limit for muskellunge may be increased the following year to reflect actual harvest for that year and harvest goals of the Chippewa bands for the next year. If a new population estimate is made, the safe harvest level shall be changed accordingly and the secretary may adjust the daily bag limit or minimum size limit according to the percentage of the new safe harvest level that is expected to be harvested as indicated in sub. (1), where deemed necessary to remain consistent with the safety factors established under *Lac Courte Oreilles v. State of Wis.*, 707 F. Supp. 1034 (W. D. Wis. 1989). The readjusted daily bag and size limits shall be in effect until March 1 of the year following the tribal harvest.

SECTION 14. NR 21.06 (1) (d) is amended to read:

NR 21.06 (1) (d) Except in Lake Superior, its bays and tributaries, may take rough fish by means of spear, bow and arrow or dip nets and landing nets not to exceed 24 inches in diameter or square only from

sunrise to sunset from the Saturday nearest April 21 to March 1, except that the use of dip nets and landing nets not to exceed 24 inches in diameter or square for the taking of rough fish in the St. Croix river downstream to the St. Croix Falls dam is permitted from the Saturday nearest May 15 to June 30 each year, and bow and arrow may be possessed and used for spearing rough fish from sunset to sunrise during the open season for spearing rough fish.

SECTION 15. NR 21.13 (3) (i) and (j) are created to read:

NR 21.13 (3) (i). Place, set or use a hoop net turtle trap within 200 feet of any fishway, lock or dam.

(j) Place, set or use any hook and line, setline or bank pole for taking turtles in a manner or at any time during which these methods are not allowed for taking fish under ss. NR 20.06 and 20.12.

SECTION 16. NR 22.03 is amended to read:

NR 22.03 ~~Any person holding a hook and line fishing license issued by either Iowa or Wisconsin~~ All residents of Wisconsin and Iowa holding a resident fishing license from their respective states or residents other than Wisconsin and Iowa holding an angling license or sport fishing license issued by either state may fish in waters of the Mississippi river lying between the Chicago, Milwaukee, ~~and~~ St. Paul and Pacific railroad tracks on the Iowa side of the river, and the Burlington Northern and Sante Fe railroad tracks lying on the Wisconsin side of the river, including all sloughs and backwaters, bays and newly extended water areas connected with the main channel of the Mississippi river by a channel which is navigable when the waters are approximately equal to the normal pool elevation as created by the U.S. army corps of engineers. This reciprocity applies only to hook and line fishing, spearing, dipnetting, and the taking of minnows and crayfish for such fishing. Spearing and dip netting are prohibited within 200 feet of any U.S. army corps of engineers locks and dams. Residents of either Wisconsin or Iowa may not fish in these boundary waters when the angler's state of residency license has been revoked.

SECTION 17. NR 22.06 (1) (d) is amended to read:

NR 22.06 **(1)** (d) Take rough fish by means of a spear, bow and arrow or landing net or dip nets not to exceed 24 inches in diameter or square from sunrise to sunset only, and bow and arrow may be possessed and used for spearing rough fish from sunset to sunrise during the open season for spearing rough fish.

SECTION 18. NR 22.13 (3) (i) and (j) are created to read:

NR 22.13 **(3)** (i) Place, set or use a hoop net turtle trap within 200 feet of any fishway, lock or dam.

(j) Place, set or use any hook and line, setline or bank pole for taking turtles in a manner or at any time during which these methods are not allowed for taking fish under ss. NR 20.06 and 20.12.

SECTION 19. NR 23.02 (1) is renumbered to be NR 23.02 (1m).

SECTION 20. NR 23.02 (1) is created to read:

NR 23.02 (1) "Attached" means, for the purpose of s. NR 23.12, affixed to the sturgeon immediately in front of the tail.

SECTION 21. NR 23.05 (5) (c) 1m. is created to read:

(c) Lake Sturgeon

|  |  |                               |                       |
|--|--|-------------------------------|-----------------------|
| 1m. Menominee river, downstream from<br>Hattie St. dam | First Saturday in September to<br>September 30 | 0 (catch-and-release<br>only) | Harvest<br>prohibited |
|--|--|-------------------------------|-----------------------|

SECTION 22. NR 23.055 (1) (intro.) and (2) are amended to read:

NR 23.055 (1) ADJUSTMENT. (intro.) In order to prevent a total harvest of more than 35% of the adult walleye population or 27% of the adult muskellunge population, the secretary may lower the daily bag limit on walleye and increase the minimum size limit for muskellunge in specific waters in response to the harvest goals of the Chippewa bands for their spear, net or trap fisheries. The adjusted daily bag and size limits shall be in effect until ~~March 1~~ the first Sunday in March of the year following the tribal harvest. The safe harvest levels on individual waters shall be determined by the department.

(2) READJUSTMENT. ~~If the Chippewa bands inform the department that they have completed harvesting and their goal has not been reached~~ After the third Monday in May, the secretary may raise the daily bag limit or reduce the minimum size limit to the limit specified as appropriate using the percent of the safe harvest level expected to be harvested as indicated in sub. (1). If a new population estimate is made, the safe harvest level shall be changed accordingly and the daily bag limit or minimum size limit shall be adjusted according to the percentage of the new safe harvest level that is expected to be harvested as indicated in sub. (1). The readjusted daily bag and size limits shall be in effect until ~~March 1~~ the first Sunday in March of the year following the tribal harvest.

SECTION 23. NR 23.12. is created to read:

NR 23.12 **Special sturgeon hook and line fishing restrictions.** No person who catches a lake sturgeon may do any of the following:

(1) Possess a lake sturgeon taken by hook and line and not immediately release it, unless a hook and line lake sturgeon tag belonging to the person who caught the lake sturgeon is immediately validated as required by the department and attached to the lake sturgeon by immediately affixing the tag to the sturgeon in front of the fish's tail, and the tagged lake sturgeon is registered at a department lake sturgeon registration station by 6:00 p.m. on the day after it was taken.

Note: Hook and line lake sturgeon tags will be available at department service centers and regional offices each year prior to the open season. Department service centers may be located by viewing <http://www.dnr.wisconsin.gov>

(2) Remove the registration tag attached to the fish by the department until the carcass is prepared for final consumption. The hook and line lake sturgeon registration tag shall be retained by the person taking the lake sturgeon until the fish is consumed.

(3) Transport any lake sturgeon in or on any motor-driven vehicle from the time the lake sturgeon is taken to the time it is lawfully registered pursuant to sub. (1) unless the lake sturgeon is carried openly exposed and in a manner so that the lake sturgeon tag attached to the lake sturgeon cannot be handled or manipulated by any occupant of the vehicle.

(4) Transport any lake sturgeon in or on any boat from the time the lake sturgeon is taken to the time it is lawfully registered pursuant to sub. (1) unless the lake sturgeon is tagged and carried openly exposed.

(5) Obtain more than one hook and line lake sturgeon tag except that one additional hook and line lake sturgeon tag may be obtained for Wisconsin-Michigan boundary waters.

SECTION 24. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

SECTION 25. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin, \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)