

Clearinghouse Rule 15-014

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING RULES

The statement of scope for this rule, SS094-14, was approved by the Governor on August 27, 2014, published in Register No. 705 on October 1, 2014, and approved by the Natural Resources Board on October 29, 2014. This permanent rule was approved by the Governor on ____.

The Wisconsin Natural Resources Board proposes an order to amend NR 20.10 (8) and (9); 20.20 (11) (c), (11) (k) 1., (16) (a), (16) (g) 1., (32) (f) 1., (37) (a), (37) (c) 1., (37) (e) 2., (37) (i) 1., (42) (e) 1., (44) (g) 1., (63) (c) 2. and 3., (64) (h) 2., (71) (a), (71) (c), (71) (cm), (71) (d), (71) (e), and (71) (g); relating to minor changes to fisheries administrative code.

FH-12-14

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted: Sections 29.014(1), 29.041, and 29.053(2), Stats., have been interpreted as giving the department the authority to make changes to Wisconsin fishing rules.

2. Statutory Authority: Sections 29.014(1), 29.041, and 29.053(2), Stats.

3. Explanation of Agency 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.

4. Related Statutes or Rules:

If approved by the Natural Resources Board at its December meeting, the department will be concurrently proposing a rule (FH-14-14) that will make changes to fish size limits, bag limits, seasons, and other fishing regulations. The rule is being pursued to help meet management goals and objectives for waters and their fish species, such as providing a trophy walleye fishery or a bass fishery that maximizes predation on smaller fishes. The proposed regulations in FH-14-14 will be available for public review and comments at the Fish and Wildlife Spring Hearings held on the second Monday of April 2015.

5. Plain Language Analysis:

The proposed rule addresses minor changes to administrative code relating to the regulation of fishing. The rule is being pursued to ensure the rule language that governs fishing in inland, outlying, and boundary waters is accurate and properly reflects the desired management of Wisconsin waters. The objectives are to:

- remove sections of code that are outdated or have been replaced by other statute or code changes,
- correct errors that occurred during the drafting of rules, and
- add or repeal language to clarify intent of original rules.

SECTION 1 clarifies the boundaries around the Lake Winnebago System in which a spearer can possess an unregistered lake sturgeon. Updates are needed due to roadway construction and naming changes over time.

SECTION 2 changes the Columbia Lake (Columbia County) 18" minimum length limit and 3 daily bag limit on hybrid striped bass to no minimum length, no bag limit. Hybrid striped bass are considered an invasive species under NR 40, Wis. Adm. Code, and are therefore no longer imported and stocked in any Wisconsin waters. The department would like to continue to allow catch and harvest of any existing striped bass in Columbia Lake under a no minimum length-no bag limit regulation. If striped bass were removed from listing in administrative code, there would be no open season and none could be harvested under NR 20.20 (73)(p), which states all species not listed in NR 20.20 have no open season.

SECTION 2 also removes the current harvest regulations (18-inch minimum length limit and 3 fish daily bag limit) for walleye on Silver Lake (Columbia County). The lake has not been stocked with walleye since 2000 and there is no longer a population of walleye in the lake. Therefore, the special regulation is no longer necessary and can be removed from the lake and from listing in the regulations booklet. The regulation will return to the general statewide walleye regulation of 15-inch minimum length limit and 5 fish daily bag limit.

SECTION 3 reinstates the allowance of night fishing on the Brule River downstream from Hwy 2 for all species during the regular trout open season (first Saturday in May - September 30). It prohibits night fishing during the early trout open season (last Saturday in March to May 4) and extended trout open season (October 1 to November 15). The current regulation is an error in code that occurred when the administrative code was revised in 1992, and subsequently re-formatted and further misinterpreted in 1999. Although the unintended error was codified in 1999, it was not published as such in the Trout Regulations Guide until the 2012-2013 fishing season, causing confusion among anglers and law enforcement. The current regulation prohibits anglers from fishing at night during the entire open season on the Brule, which reduces the overall number of harvest and catch-and-release opportunities, particularly for brown trout, which are most active during the night. Making this change will return the regulations to what is commonly understood and enforced.

SECTION 4, 6, and 8 amend trout stream names in code to accurately reflect common names and reduce angler confusion of where regulations begin and end. In La Crosse and Monroe counties, the code language is changed to say "Coon creek (Bohemian Valley Creek)" instead of Bohemian Valley Creek. In Vernon County, the code language is changed to specify naming and regulations on sections of Coon Creek, which crosses CTH P in more than one place, and Timber Coulee Creek.

SECTION 5 extends the boundary of Wisconsin River regulations (year-round open season on bass, pike, walleye) another 100 feet on the connecting Eau Claire River in Marathon County. The Wisconsin River regulations currently apply up to the first bridge on the Eau Claire River. This proposal extends the regulations another 100 feet to the Schofield Dam, which is a prominent boundary that boaters cannot travel past and is how it is currently listed in the regulations booklet. Law Enforcement also enforces Schofield Dam as the regulation boundary. This extension will provide additional fishing opportunity to that small area of the river without any biological concerns.

SECTION 7 and SECTION 9 change the regulations boundary between the Three Lakes Chain in Oneida County and the Eagle Chain in Vilas County from the county border to the Long Lake (Burnt Rollways) Dam in Oneida County. The dam has been used locally as a border and is a more obvious boundary to anglers rather than an invisible county line.

SECTION 10 changes all listing of the Neenah-Menasha dam to “dams” in 20.20(71). There are two waterways and two dams that should be clarified in code.

SECTION 10 also makes set pole/bank pole/setline fishing open seasons for catfish and rough fish the same throughout all Lake Winnebago System waters in Winnebago County. Currently all set pole/bank pole/setline regulations for rough fish and catfish in Lake Winnebago System waters are the same except for the stretch of water between Lake Butte des Morts and Eureka Dam, where a season is open for catfish and closed for rough fish. This was a result of inadvertent wording of code language and there is no biological or management reason for applying the differing regulations for these methods of fishing. This amendment will make regulations governing rough fish angling methods the same throughout all Lake Winnebago System waters of Winnebago County.

6. 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.

7. Comparison with Similar Rules in Adjacent States:

Fisheries management rules are generally similar in the states surrounding Wisconsin. Each bordering state regulates fishing by the use of seasons, bag limits and size limits. Specific seasons and bag and size limits may differ for species among the surrounding states, but the general principles are similar. Michigan, Minnesota, Iowa, and Illinois all have statewide seasons and bag and size limits for fish species, along with special or experimental regulations on individual waters.

8. Summary of Factual Data and Analytical Methodologies:

Fishing regulations, such as length and bag limits or season dates, are used as a tool to ensure good fishing exists into the future. The department has used different types of fishing regulations in order to: control angler impacts on fish populations; maintain numbers and sizes of fish in a lake or stream; provide different types of fishing experiences, such as fishing for dinner or for a trophy fish; and make access to fishing as fair as possible.

This rule includes minor changes to administrative code that support existing policies and fisheries management goals. The department took steps to insure the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The proposed rule will have minimal impact on sport anglers and is not expected to have an economic impact. As with any change in regulations, there will be a requirement for anglers to learn the new rules. However, a majority of this rule change clarifies code to reflect existing policies for which anglers must already comply. The department works to notify the public of new regulations via press releases, the internet, and fishing regulations pamphlets.

10. Effect on Small Business (initial regulatory flexibility analysis):

It is not expected that there will be any economic impact directly related to these rule changes. The department conducted an economic impact analysis (with a public comment period from December 4-18, 2014) and determined that no individuals, businesses, local governments, or other entities will be adversely affected economically. The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule.

11. Agency Contact Person:

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12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearing on March 16, 2015, and by regular mail, fax, or email to the contact person listed above. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>. The comment submission deadline is March 16, 2015.

SECTION 1. NR 20.10 (8) and (9) are amended to read:

NR 20.10 Special sturgeon spearing restrictions. No person may do any of the following:

(8) Possess a sturgeon speared from lake Butte des Morts, Poygan or Winneconne under s. NR 20.20 (73)

(e) 2. b. outside the following area unless the sturgeon has been registered pursuant to sub. (10): from the intersection of highways 45 and 21 in Oshkosh west on highway 21 to highway 116; north on highway 116 to county highway B; west on county highway B to county highway D; west on county highway D to highway 49; north on highway 49 to county highway H; ~~east on county highway H to highway 10; east on highway 10 to highway 110; south on highway 110 to county highway M; south on county highway M to highway 116; east on highway 116 to highway 110; south on highway 110 to highway 45; south on highway 45 to highway 21.~~ east on county highway H to highway 110; east on highway 110 to county highway II; south on county highway II to county highway M; south on county highway M to highway 116; east on highway 116 to highway 45; south on highway 45 to highway 21.

(9) Possess a sturgeon speared from Lake Winnebago under s. NR 20.20 (73) (e) 2. ~~e.~~ b. outside the following area unless the sturgeon has been registered pursuant to sub. (10): from the intersection of highways 10 and 114 in Menasha, east on highway 114 to highway 55; south on highway 55 to U.S. highway 151; ~~south on U.S. highway 151 to Scott street in Fond du Lac; west on Scott street to highway 45; north on highway 45 to Main street in Oshkosh; north on Main street to Waugoo avenue; east on Waugoo avenue to Bowen street; north on Bowen street to North Shore drive; north on North Shore drive~~

~~to county highway A; north on county highway A to highway 114 in Neenah; east on highway 114 to the intersection of highways 10 and 114 in Menasha.~~ south on U.S. highway 151 to Winnebago drive in Fond du Lac; west on Winnebago drive to Scott street; west on Scott street to highway 45; north on highway 45 to Main street in Oshkosh; north on Main street to Waugoo avenue; east on Waugoo avenue to Bowen street; north on Bowen street to county highway A; north on county highway A to highway 114 in Neenah; east on highway 114 to the intersection of highways 10 and 114 in Menasha.

SECTION 2. NR 20.20 (11) (c) and (k) 1. are amended to read:

NR 20.20 (11) COLUMBIA (for species and waters not listed, see **sub. (73)**)

(c) Hybrid striped bass	1. Columbia lake	a. Hook and line	Continuous	3 <u>None</u>	48 <u>None</u>
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(k) Walleye, sauger and hybrids	1. Fox river upstream from Park lake to the easterly crossing of highway 33, Park lake, Silver lake	a. Hook and line	First Saturday in May to the first Sunday in March	3 in total	18
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SECTION 3. NR 20.20 (16) (a) and (g) 1. are amended to read:

NR 20.20 (16) DOUGLAS (for species or waters not listed, including Lake Superior, see **sub. (73)**). **Note:** Allouez bay, Little Pokegama bay, Kimballs bay and Pokegama bay are considered part of the St. Louis river, a Wisconsin–Minnesota boundary water. See chapter NR 21. The Nemadji river is an inland water that is contiguous with these Wisconsin–Minnesota boundary waters but is regulated under this subsection.

(a) All species	2. Brule river downstream from U.S. hwy. 2	a. Hook and line fishing is only allowed from one-half hour before sunrise to one-half hour after sunset during the period from the last Sat- urday in March to November 15 is prohibited from one-half hour after sunset to one- half hour before sunrise from the last Saturday in March to the day before the first Saturday in May and from October 1 to November 15	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)
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(g) Trout and salmon	1. Brule river downstream from U.S. hwy. 2, Amnicon river downstream from Amnicon falls, Middle river downstream from U.S. hwy. 2, Nemadji river downstream from Great Northern railroad bridge, Black river downstream from Big Manitou falls, Poplar river downstream from U.S. hwy. 2, St.Louis river downstream from the Wisconsin-Minnesota state line	a. Hook and line. Fishing is prohibited from one-half hour after sunset to one-half hour before sunrise on the Brule river <u>from the last Saturday in March to the day before the first Saturday in May and from October 1 to November 15</u>	Last Saturday in March to November 15	5 in total but only 2 may be brown trout longer than 15" and only 1 may be a rainbow trout	Brook trout 8, brown trout 10, salmon 12, rainbow trout 26
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SECTION 4. NR 20.20 (32) (f) 1. is amended to read:

NR 20.20 (32) LA CROSSE (for species and waters not listed, see **sub. (73))**

(f) Trout and salmon	1. Bohemian Valley creek <u>Coon creek (Bohemian Valley creek)</u>	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	5 in total but none may be longer than 12"	maximum length limit 12"
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SECTION 5. NR 20.20 (37) (a), (c) 1., (e) 2., and (i) 1. are amended to read:

NR 20.20 (37) MARATHON (for species and waters not listed, see **sub. (73)**)

(a) All species	<p>1. Big Eau Pleine reservoir upstream to the first state hwy. 153 bridge, Wisconsin river including sloughs, bayous and flowages upstream to the first dam or highway bridge, except the eastern boundary of the Wisconsin River and Peplin and Johnson Creeks and the Little Eau Claire River, at Lake DuBay, is the south-bound lane of Interstate 39 <u>and the eastern boundary of the Wisconsin river and the Eau Claire river is the Schofield dam</u></p>	<p>a. Motor trolling is permitted</p>	<p>As specified in this subsection or sub. (73)</p>	<p>As specified in this subsection or sub. (73)</p>	<p>As specified in this subsection or sub. (73)</p>
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(c) Largemouth and smallmouth bass	1. Wisconsin river including all sloughs, bayous and flowages upstream to the first dam or highway bridge, except the eastern boundary of the Wisconsin River and Peplin and Johnson Creeks and the Little Eau Claire River, at Lake DuBay, is the south-bound lane of Interstate 39 <u>and the eastern boundary of the Wisconsin river and the Eau Claire river is the Schofield dam</u>	a. Hook and line	Continuous	5 in total	14
(e) Northern pike	2. Wisconsin river including all sloughs, bayous and flowages upstream to the first dam or highway bridge, except the eastern boundary of the Wisconsin River and Peplin and Johnson Creeks and the Little Eau Claire River, at Lake DuBay, is the south-bound lane of Interstate 39	a. Hook and line	Continuous	5 None	

and the eastern
boundary of the
Wisconsin river and
the Eau Claire river is
the Schofield dam

(i) Walleye,
sauger and
hybrids

1. Wisconsin river
including sloughs,
bayous and flowages
upstream to the first
dam or highway
bridge, except the
eastern boundary of
the Wisconsin River
and Peplin and
Johnson Creeks and
the Little Eau Claire
River, at Lake DuBay,
is the south-bound
lane of Interstate 39;
~~Eau Claire river
downstream from the
Schofield dam and the~~
eastern boundary of
the Wisconsin river
and the Eau Claire
river is the Schofield
dam

a. Hook and
line

Continuous

5 in total

15
minimum,
but the
possession
of fish
from 20 to
28 is
prohibited
and only 1
fish may
be longer
than 28

SECTION 6. NR 20.20 (42) (e) 1. is amended to read:

NR 20.20 (42) MONROE (for species and waters not listed see sub. (73))

(e) Trout and salmon	1. Rullands Coulee creek, Bohemian Valley creek <u>Coon creek (Bohemian Valley creek)</u>	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	5 in total but none <u>may be longer than 12</u>	Maximum length limit 12
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SECTION 7. NR 20.20 (44) (g) 1. is amended to read:

NR 20.20 (44) ONEIDA (for species or waters not listed, see **sub. (73))**

(g) Walleye, sauger and hybrids	1. Three lakes chain (includes Big, Big Fork, Big Stone, Crystal, Deer, Dog, Fourmile, Island, Laurel, Little Fork, Long, Medicine, Moccasin, Planting Ground, Rangeline, Round, Spirit, Townline, Virgin, and Whitefish lakes, all connecting waters and Eagle river downstream to Vilas county line the Long Lake (Burnt Rollways dam), Alva, Bearskin, Buckskin, Buffalo, Crescent, Diamond, George, Hasbrook, Katherine, Lost (T38N R9E S24), Mercer, Moen chain including Moen, Second, Third, Fourth, Fifth lakes and connecting waters, Muskellunge, Oneida, Pine (T37N R9E S4), Soo, Squash and Squirrel lakes and Sugar Camp chain including Dam, Sand, Echo, Chain and Stone (T39N R9E S32) lakes and connecting waters	a. Hook and line	First Saturday in May to the first Sunday in March	5 in total but only 1 may be longer than 14"	None
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SECTION 8. NR 20.20 (63) (c) 2. and 3. are amended to read:

NR 20.20 (63) VERNON (for species and waters not listed, see **sub. (73)**)

(c) Trout and salmon	2. Timber Coulee creek from CTH P upstream to Olstad road <u>Coon creek from CTH P upstream to the confluence with Timber Coulee creek and Timber Coulee creek from the confluence with Coon creek upstream to Olstad Road</u>	a. Hook and line, only artificial lures may be used	First Saturday in May at 5:00 a.m. to September 30	All trout caught shall be immediately released	None
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3. <u>Coon creek (Bohemian Valley creek) from confluence with Timber Coulee creek upstream to CTH P (at the Vernon-LaCrosse couny line), Timber Coulee creek other than that portion from its confluence with Coon creek from CTH P upstream to Olstad road, Bishop branch</u>	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	5 in total but none may be longer than 12"	Maximum length limit 12"
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SECTION 9. NR 20.20 (64) (h) 2. is amended to read:

NR 20.20 (64) VILAS (for species or waters not listed, see **sub. (73)**)

(h) Walleye, sauger and hybrids	2. Eagle chain (includes Catfish, Cranberry, Duck, Eagle, Lynx, Otter, Scattering Rice, Voyageur, Watersmeet including Wisconsin river from Otter Rapids dam to county highway G, Yellow birch lake, all connecting waters and Eagle river upstream to <u>Oneida county line the Long Lake (Burnt Rollways) dam in Oneida county)</u>	a. Hook and line	First Saturday in May 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 <u>None</u> <u>except the</u> <u>possession</u> <u>of fish</u> <u>from 14 to</u> <u>18 is</u> <u>prohibited</u> <u>and only 1</u> <u>fish may</u> <u>be longer</u> <u>than 18</u>
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SECTION 10. NR 20.20 (71) (a), (c), (cm), (d), (e) and (g) are amended to read:

NR 20.20 (71) WINNEBAGO (for species or waters not listed, see **sub. (73)**)

(a) All species	1. Fox river downstream from Neenah–Menasha dam <u>dams</u> including Little Butte des Morts lake, Rush lake	a. Motor trolling is permitted	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)
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(c) Largemouth and smallmouth bass	1. Fox river downstream from Neenah–Menasha dam <u>dams</u> including Little Butte des Morts lake	a. Hook and line	Continuous	5 in total	14
(cm) Muskellunge	1. Fox river downstream from Neenah–Menasha dam <u>dams</u> including Little Butte des Morts lake	a. Hook and line	Saturday nearest Memorial day to November 30	1	50
(d) Northern pike	1. Fox river downstream from Neenah–Menasha dam <u>dams</u> including Little Butte des Morts lake	a. Hook and line	Continuous	5	None
(e) Rough fish	2. Butte des Morts lake, Little Butte des Morts lake, Poygan lake, Winnebago lake, Winneconne lake, Fox river downstream from Butte des Morts lake, Fox river upstream from Eureka dam, Wolf river <u>Lake</u>	a. Hook and line, by hand, dip netting sunrise to sunset	Continuous	None	None

Winnebago system
waters

		b. Spearing	April 21 to February 1	None	None
		c. Set or bank pole and setline 500 feet or more from any dam	Saturday nearest May 20 to September 30	None	None
(g) Walleye, sauger and hybrids	1. Fox river downstream from Neenah–Menasha dam <u>dams</u> including Little Lake Butte des Morts	a. Hook and line	Continuous	5 in total	None, pursuant to s. NR 20.35

SECTION 11. EFFECTIVE DATE. This rule takes 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 12. 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)