

The statement of scope for this rule, SS 015-23 was approved by the Governor on February 2, 2023, published in Register No. 806A1 on February 6, 2023, and approved by the Natural Resources Board on April 12, 2023. This rule was approved by the Governor on insert date.

Clearinghouse Rule 24-095

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 20.05 (2) relating to fishing while in possession of a firearm.

FH-20-24

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 29.014 (1), 29.041, and 29.053 (2), Stats.

2. Statutory Authority: Section 227.10 (2), and Section 227.16 (2) (b), Stats.

3. Explanation of Agency Authority: The department has the authority to regulate fishing on inland, outlying and boundary waters to secure continued opportunities for good fishing under ss. 29.014 (1), 29.041 and 29.053 (2), Stats. These authorities include the ability to determine lawful methods of harvest and establish other conditions for the taking of fish. The department's authority to regulate the possession and control of firearms must align with applicable state and federal laws and constitutional provisions.

Section 227.10 (2), Stats., provides that state agencies may not promulgate a rule that conflicts with state law. This provision is interpreted to mean that an existing rule which conflicts with a subsequently promulgated statute is no longer authorized.

Section 227.16 (2) (b), Stats., provides that the requirements to provide a notice and public hearing as required by ss. 227.17 and 227.18, Stats., do not apply when a proposed rule would bring an existing rule into conformity with a statute that has been changed or enacted.

4. Related Statutes or Rules: None

5. Plain Language Analysis: Section NR 20.05 (2), Wis. Adm. Code, prohibits a person from "Possess[ing] or control[ing] any firearm, gun or similar device at any time while on the waters, banks or shores that might be used for the purpose of fishing." This rule was written into its current form in 1999, but a prohibition on the possession or control of guns that might be used for fishing has existed in some capacity since the 1950s as a companion to the prohibition against shooting of fish.

In 2011, the legislature enacted Wisconsin's concealed carry law via 2011 Wis. Act 35 (Act 35). Act 35 created s. 175.60, Stats., which authorizes a licensed person to carry a concealed firearm in anywhere in the state including the waters, banks and shores of waters. As a result of the passage of Act 35, s. NR 20.05 (2), Wis. Adm. Code, conflicts with s. 175.60, Stats.

Although the department has not enforced s. NR 20.05 (2), Wis. Adm. Code, against persons carrying a firearm since the passage of Act 35, repeal of the provision will ensure that the administrative code conforms with Wisconsin's concealed carry law. If s. NR 20.05 (2), Wis. Adm. Code, is repealed, fish

would remain protected from firearm harvest under s. NR 20.05 (1), Wis. Adm. Code, which generally prohibits the take of fish by methods other than hook and line unless specifically regulated under ch. NR 20 and related chapters of administrative code.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: Both federal and state laws address the circumstances in which the possession of firearms may be regulated. States possess inherent authority to manage the fishery and wildlife resources within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope: The department was not directed to hold a preliminary public hearing on this scope statement.

8. Comparison with Similar Rules in Adjacent States: Fisheries management rules are generally similar in the states surrounding Wisconsin. A state's authority to regulate firearms is derived from the police powers each state has to protect the welfare, safety, and health of its citizens. In addition to being subject to constitutional limitations, state firearm regulations may also be circumscribed by federal law.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: This rule includes a minor change to administrative code that support existing policies and fisheries management goals.

10. 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 on small business. The department will conduct an economic impact analysis and comment period to determine if any individuals, businesses, local governments, or other entities will be affected economically.

11. Effect on Small Business (initial regulatory flexibility analysis): The department expects no economic impact directly related to this rule change. 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.

12. Agency Contact Person: Kari Lee-Zimmermann, 101 S. Webster Street, Madison, WI 53703; Kari.LeeZimmermann@Wisconsin.gov; 608-316-0080

13. Place where comments are to be submitted and deadline for submission: A public hearing is not required for this rule because "The proposed rule brings an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision," pursuant to s. 227.16 (2) (b), Stats., and as noted in section 5 of the analysis above.

Comments may be submitted to Kari Lee-Zimmermann, Policy & Regulation Specialist, Bureau of Fisheries Management, P.O. Box 7921, 101 S. Webster Street, Madison, WI 53707-7921, or by email to kari.leezimmermann@wisconsin.gov. Comments must be received on or before December 27, 2024, to be included in the record of rule-making proceedings.

RULE TEXT

SECTION 1. NR 20.05 (2) is repealed.

SECTION 2. 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 3. 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
DEPARTMENT OF NATURAL RESOURCES

BY _____

Steven Little, Deputy Secretary