

The scope statement for this rule, SS 115-19, was published in Administrative Register 768A1 on December 2, 2019 and was adopted by the Natural Resources Board on January 21, 2020. The final rule was approved by the Governor on December 18, 2020.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 20.20 (44) (g) 3. relating to Minocqua Chain walleye harvest regulations.

FH-17-20 (E)

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 authorizing the department to make changes to Wisconsin fishing rules.

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

3. Explanation of Agency Authority:

Section 29.014, Stats., “rule-making for this chapter,” grants the department the authority to establish and maintain open and closed seasons, bag limits, size limits and other conditions that will conserve fish populations and provide good fishing opportunities for the citizens of the state.

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:

An emergency rule, FH-24-19 (E), initially implemented the extension of the catch-and-release season for walleye on the Minocqua Chain of Lakes. A permanent rule, FH-25-19, will also address walleye harvest regulations on the Minocqua Chain, with the intent of establishing long-term, sustainable size and bag limits for walleye.

5. Plain Language Analysis:

This emergency rule will extend the existing walleye harvest regulation on the Minocqua Chain of Lakes (consisting of Kawaguesaga, Minocqua, Mid, Little Tomahawk and Tomahawk lakes), as with emergency rule FH-24-19 (E). The catch-and-release regulation had an original sunset date of April 2020. Extending this regulation as a continuation of the first emergency rule will allow walleye stocked into these waters to continue to replenish populations on the Minocqua Chain. An extension of the catch-and-release regulation is necessary to cover the remaining months of the walleye season, which runs from the first Saturday in May to the first Sunday in March, and to allow time for the department to conduct surveys in 2021 to ensure that the walleye population has recovered sufficiently for limited harvest. The department planned to conduct these surveys in 2020, but this did not occur due to COVID-19. The department anticipates that by 2022, survey data will confirm that adult walleye numbers have reached established

goals and natural reproduction is occurring, allowing additional opportunities for limited harvest that will be codified in the permanent rule.

This rule extends the zero bag limit and defines the size limit as “none.” Once a permanent rule is promulgated, it would supersede the emergency rule with a limited harvest regulation based on the most current data and public input.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

No federal regulations apply. 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. 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 the same. 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.

Notably, Minnesota established a catch-and-release-only regulation for walleye on Mille Lacs to address walleye population decline and low walleye recruitment. The catch-and-release-only season was in effect for three years. The Minnesota DNR manages Mille Lacs jointly with the Ojibwe tribes, similar to the cooperative approach for managing the Minocqua Chain by the Wisconsin DNR and Ojibwe tribes.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

The Minocqua Chain is comprised of 5 lakes and encompasses just over 5,880 acres of water. Gamefish species include musky, walleye, largemouth and smallmouth bass, and northern pike. Panfish species include bluegill, black crappie, yellow perch, and pumpkinseed. The chain is centered on the Town of Minocqua and receives a great deal of pleasure boat traffic and fishing pressure, due to the area being a highly regarded tourist destination.

Historically, walleye reproduced naturally on Lakes Minocqua and Kawaguesaga (Tomahawk has a long history of walleye stocking); however, recruitment failures were documented in these lakes through the mid-2000s with a commensurate decline in adult walleye numbers. A comprehensive stocking plan was initiated for Lakes Minocqua and Kawaguesaga beginning in 2012 which included stocking large fingerling walleye in odd-numbered years. In even-numbered years, Lake Tomahawk receives large fingerling walleye.

A stakeholder group has been monitoring this fishery closely over the past 5 years. This group developed a management plan with specific goals to be met by 2025. The plan defined a goal of 3 adult walleye per acre in Lakes Minocqua and Kawaguesaga lakes by 2021 and 2 adult walleye per acre in Lake Tomahawk by 2021. Additionally, the plan identified a benchmark of 10 – 15 young-of-year walleye per mile on all lakes in the chain as well as natural reproduction as goals. A ‘catch and immediate release’ walleye regulation was established for the Minocqua Chain in 2015 to help achieve these goals. The department has conducted surveys of walleye populations frequently during the past several years, and the proposal to extend the catch and release season is based on fall electrofishing data collected between 2014-2019, and

walleye population estimates conducted in 2005, 2015, and 2019.

Monitoring efforts for the Minocqua Chain walleye population include comprehensive surveys of the entire chain every 10 years, annual fall electrofishing surveys, walleye population estimates on Lakes Minocqua and Kawaguesaga during spring 2019 and a walleye population estimate that was slated to be conducted on Lake Tomahawk in 2020. A comprehensive survey and creel survey of the entire Minocqua Chain will be conducted in 2021 to measure progress in natural reproduction and recruitment. Stocking efforts and periodic monitoring of the fishery show that the chain is responding in a positive direction – however, natural reproduction has not returned to date and two of the three lakes are still below population goals. A local stakeholder group with representatives from DNR Fisheries Management, Great Lakes Indian Fish and Wildlife Commission (GLIFWC), Wisconsin Valley Improvement Company, Lac du Flambeau Tribe, and Walleyes For Tomorrow have met regularly to monitor progress on this project. By recommendation of this group, the catch-and-release regulation was extended for one additional year to allow the department and partners time to discuss permanent regulation options that would be best suited to building a sustainable walleye fishery with sufficient natural reproduction and recruitment.

Additionally, stakeholder and partner feedback and GLIFWC involvement have demonstrated support for an extension of the no harvest regulation to allow natural reproduction and recruitment to more fully establish. As testament to this collaborative effort, the Lac du Flambeau Tribe also extended the catch-and-release regulation for one more year, contingent on the state doing the same, and will continue doing so alongside the state's catch-and-release regulation through 2021. These partners have expressed support for opening the fishery to limited harvest once data confirm that the walleye population can sustain it (likely in 2021). The fishery will be monitored closely following implementation of this rule change through creel surveys and fall electrofishing, followed by a chain-wide comprehensive survey in 2025, to ensure that harvest is not detrimental to walleye recovery efforts.

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

The department anticipates a minimal economic impact, if any, as a result of these rules. Because this rule will extend an existing regulation, local anglers and businesses are not anticipated to experience any new economic impacts. Local anglers and businesses are not anticipated to experience any negative economic impacts, and may experience a slight economic benefit from the rehabilitated fishery once a permanent rule is in effect. The department will solicit public input on potential economic impacts during development of the permanent rule.

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

This rule will mainly affect individual anglers and will not impose implementation or compliance costs on small businesses. This rule extends an existing regulation throughout the 2021 fishing season, so no new economic impacts are anticipated.

11. Agency Contact Person: Todd Kalish, P.O. Box 7921, Madison, WI 53707, Todd.Kalish@wisconsin.gov, 608-225-5826; Meredith Penthorn, P.O. Box 7921, Madison, WI 53707, Meredith.Penthorn@wisconsin.gov, 608-316-0080

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

Written comments may be submitted at the public hearings, by regular mail, or email to:

Meredith Penthorn
 Department of Natural Resources
 P.O. Box 7921
 Madison, WI 53707
 608-316-0080
 Meredith.Penthorn@wisconsin.gov

Written comments may also be submitted here: DNRAAdministrativeRulesComments@wisconsin.gov

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 20.20 (44) (g) 3. is amended to read:

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (BOTH DATES INCLUSIVE)	DAILY BAG LIMIT	MINIMUM LENGTH OR OTHER SIZE RESTRICTIONS (INCHES)
(44) ONEIDA (For species or waters not listed, see sub. (73)).					
(g) Walleye, sauger and hybrids	3. Minocqua chain (Jerome lake, Kawaguesaga lake, Mid lake, Minocqua lake, Mud lake, Minocqua thoroughfare, Tomahawk thoroughfare, Little Tomahawk lake, Tomahawk lake, and connecting waters combined)	a. Hook and line	First Saturday in May to the first Sunday in March	0, catch and release only; until April 1, 2020, when it becomes 2 in total	On April 1, 2020 the size limit becomes 18 <u>None</u>

SECTION 2. STATEMENT OF EMERGENCY. The department finds that an emergency rule is necessary to protect the welfare of state and tribal fishers by adequately protecting walleye from harvest through the establishment of appropriate harvest regulations. Pursuant to treaties signed between the six Wisconsin bands of Lake Superior Ojibwe and the United States and affirmed by *Lac Courte Oreilles v Voigt*, 700 F. 2d 341 (7th Cir. 1983), the bands have the right to harvest fish from off-reservation waters, including the Minocqua Chain of Lakes in Oneida County, using efficient methods such as spearing and netting. However, state and tribal fishers have agreed to several years of no-harvest walleye regulations for the Minocqua chain to help

rehabilitate the walleye population. In the absence of this rule, higher harvest pressure could destabilize the walleye population, compromising efforts to create and maintain a self-sustaining, fishable walleye population and good opportunities for recreational fishing. An emergency rule is necessary to extend the harvest prohibition for additional fishing seasons, giving the department time to meet with state and tribal fishers and arrive at a suitable set of walleye regulations for the Minocqua chain.

SECTION 3. EFFECTIVE DATE. This rule takes effect upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on Dec. 9, 2020.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary