

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 August 26, 2021.

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-08-21 (E)

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted: Sections 29.014 (1) 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) 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 29.053 (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:

Two emergency rules, FH-24-19 (E) / EmR 2004 and FH-17-20 (E) / EmR 2104, initially implemented the extension of the catch-and-release season for walleye on the Minocqua Chain of Lakes. A permanent rule, FH-25-19 / CR 20-066, is under the final stages of promulgation to address longer-term walleye harvest regulations on the Minocqua Chain, including continuation of the catch-and-release season until 2025 followed by sustainable size and bag limits for walleye.

5. Plain Language Analysis:

This emergency rule will extend the existing catch-and-release regulation on the Minocqua Chain of Lakes (consisting of Kawaguesaga, Minocqua, Mid, Little Tomahawk and Tomahawk lakes), as a continuation of policy established through emergency rules FH-24-19 (E) / EmR 2004 and FH-17-20 (E) / EmR 2104. The catch-and-release regulation had an original sunset date of April 2020. The permanent rule (FH-25-19 / CR 20-0660) has been adopted by the Natural Resources Board, and this emergency rule is only needed to maintain the catch-and-release regulation for approximately 2-3 months while the permanent rule is completing legislative review and the final steps of the promulgation process.

This rule extends the zero bag limit and defines the size limit as “none, catch and release only.” Once a permanent rule is promulgated, it would supersede the emergency rule, with the catch-and-release regulation extended through April 1, 2025, followed by a limited harvest regulation based on the most current walleye population data and angler preferences.

The Lac du Flambeau Tribe has also committed to maintaining a catch-and-release regulation for tribal fishers as long as the state has the same regulation in place. If this regulation lapses, the size and bag

limit will increase potentially unsustainably for state anglers, and tribal members will be able to harvest and spear walleye on the Minocqua Chain. Increased harvest from all parties could decimate the Minocqua Chain walleye population.

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. 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 the statement of scope for this rule.

However, during the permanent rule hearing and comment period, the department received spoken and written comments mostly in support of continuing the catch-and-release regulation. During the public hearing stage of this rule, the department received three spoken comments (2 in favor of the rule, 1 not stating a position) during the public hearing, 2 written comments in favor of the rule, 2 written comments opposed to the rule, and 1 written comment not stating a position on the rule. In addition, public questionnaires in 2019 and 2020 indicated support for extending the catch-and-release regulation, with about 90% support in 2019 (435 respondents) and 68% support in 2020 (323 respondents).

8. 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.

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

The Minocqua Chain is comprised of 6 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 natural reproduction benchmark of 10 – 15 young-of-year walleye captured per mile of shoreline on all lakes in the chain. 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 catch-and-release regulation was based on fall electrofishing data collected between 2014-2019, and walleye population estimates conducted in 2009, 2015, 2019, 2020 and 2021.

Stocking efforts and periodic monitoring of the fishery show that the chain is responding in a positive direction. 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, Walleyes For Tomorrow and three lake associations have met regularly to monitor progress on this project. By recommendation of this group, the catch-and release regulation was extended through 2021 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. The partner group also strongly favored continuation of the catch-and-release regulation until 2025 since the walleye population had not yet achieved natural reproduction by 2021.

10. 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 this rule. Catch-and-release fishing has been in place for the past six years, so this rule will not immediately change the types of fishing activities that anglers and local businesses can conduct. Because this rule will allow limited harvest after several years of catch-and-release-only fishing under previous rules, local anglers and businesses are not anticipated to experience any negative economic impacts, and may experience a slight economic benefit from the rehabilitated fishery.

11. 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. The proposed rule is expected to have a minimal economic impact, if any, since it is not changing the existing regulations. No expenses are imposed on businesses, business associations, public utility rate payers, or local governmental units as a result of this rule. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

12. Agency Contact Person: John Kubisiak, 107 Sutliff Ave, Rhinelander, WI 54501; (715) 360-0888; John.Kubisiak@wisconsin.gov and Todd Kalish, P.O. Box 7921, Madison, WI 53707; Todd.Kalish@wisconsin.gov; 608-225-5826

13. 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

Comments may be submitted to the department contact person listed above or to DNRAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department’s website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

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 <u>in total</u>	On April 1, 2020 the size limit becomes 18 <u>None, catch and release only</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 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 time to maintain regulatory consistency and walleye protection while the corresponding permanent rule is in its final stages of promulgation.

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 August 11, 2021.