Form 1100-001
(R 9/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.B.7

SUBJECT: Adoption of Natural Resources Board Order FH-07-08(E), related to proposed Prairie River trout regulation changes

FOR: APRIL, 2008 **BOARD MEETING**

TO BE PRESENTED BY: Michael Staggs

SUMMARY:

In January 2007 the Natural Resources Board approved a change in the trout harvest regulations on a five-mile reach of the Prairie River, in Lincoln Co. The rule change removed an existing rule which protected brook trout from harvest until they reached 12 inches and brown trout until they reached 18 inches, and required anglers to use artificial lures. It had been in force since the statewide trout rules were last addressed in 2003. At the 2007 spring rules hearing in Lincoln County, the DNR's question asking about the rule change was approved 47-29, and statewide the rule change was endorsed 909-563. In June 2007, the Natural Resources Board adopted the liberalized rules for implementation, effective April 1, 2008. However, when the board considered the change, it was not provided with survey information that suggested that the rule had resulted in an increase in the number of larger brook trout in the affected reach. Neither was that information provided in the question in the hearings pamphlet, nor at the hearings themselves, though this information had been thoroughly discussed with affected local parties prior to the public hearing. The Department presented the question at the 2007 spring hearing as a purely social decision regarding the management objective for the fishery. Biological data collected within the first four years after the special regulation was implemented were considered preliminary and peripheral to the primary question being asked, one which addressed long-term management objectives for the Prairie River. This item was introduced at the January 2008 Board meeting but tabled until the February 2008 meeting, where the Board rejected the emergency order. The question remained on the 2008 Spring rules hearing questionnaire. The proposal to re-implement restrictive regulations was rejected in Lincoln Co. (36-135) and in neighboring Marathon (43-122) and Taylor (3-49) Cos., but was received favorably in Langlade (46-19) and Oneida (90-43) Cos., and statewide 2024-1494.

RECOMMENDATION: Board review emergency order FH-07-08(E), regarding changes to trout regulations in the Prairie River, Lincoln County

LIST OF ATTACHED MATERIALS:

No	☐	Fiscal Estimate Required	Yes	☑	Attached
No	☑	Environmental Assessment or Impact Statement Required	Yes	☐	Attached
No	☐	Background Memo	Yes	☑	Attached

APPROVED:

Bureau Director, Mike Staggs — Date 04-22-2008

Administrator, Todd Ambs — Date 4/22/08

Secretary, Matt Frank — Date 4/22/08

cc: Laurie J. Ross - AD/5

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: April 22, 2008 FILE REF: 3600

TO: Natural Resources Board

FROM: Matthew Frank

SUBJECT: Natural Resources Board Order FH-07-08(E), related to proposed Prairie River trout regulation changes

BACKGROUND AND REASONS FOR RULE PROPOSAL

In January 2007 the Natural Resources Board approved a change in the trout harvest regulations on a five-mile reach of the Prairie River, in Lincoln County. The rule change removed an existing rule which protected brook trout from harvest until they reached 12 inches and brown trout until they reached 18 inches, and required anglers to use artificial lures. It had been in force since the statewide trout rules were last addressed in 2003. At the 2007 spring rules hearing in Lincoln County, the DNR's question asking about the rule change was approved 47-29, and statewide the rule change was endorsed 909-563. In June 2007, the Natural Resources Board adopted the liberalized rules for implementation, effective April 1, 2008. This item was introduced as an emergency rule request at the January, 2008 Board meeting, but tabled until the February, 2008 meeting.

However, when the board considered the change, it was not provided with survey information that suggested that the rule had resulted in more than 100% increase in the number of larger brook trout in the affected reach. Neither was that information provided in the question in the hearings pamphlet, nor at the hearings themselves, though this information had been thoroughly discussed with affected local parties prior to the public hearing. Copies of the question as asked at the 2007 spring rules hearings and the complete rule change proposal are attached to this memo.

It should be noted that of the 42 miles of the Prairie River's trout water, this rule affected only a five-mile stretch from the R&H Road to the Highway 17 Bridge. That stretch was selected for the protective regulation because it offered the most conducive habitat conditions for the growth of larger trout, particularly brook trout.

Public pressure to remove the restrictive regulations began almost immediately after their implementation in 2003 and culminated with a resolution at the 2004 Conservation Congress hearings, in which 69 of 75 respondents moved that the Department should take action to remove the regulations, regardless of any potential for providing larger fish for anglers. Another 200 signatures were gathered petitioning the Department to rescind the regulations. Public sentiment at the 2004 and 2007 hearings was that the fishery should be managed for consumptive opportunity, rather than for larger fish. Removing the restrictive size limits will not have any impact on the long-term viability of the brook or brown trout populations in the Prairie River.

The Department presented the question at the 2007 spring hearing as a purely social decision regarding the management objective for the fishery. Biological data collected within the first four years after the more restrictive regulations were implemented were considered preliminary and peripheral to the primary question being asked, one which addressed long-term management objectives for the Prairie River, and so were not included in the background information presented at public hearing.

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However, removing the more restrictive regulation at this time compromises any potential evaluation of its efficacy, because large brook trout are particularly vulnerable to harvest. If the Natural Resources Board is interested in completing the study of the more restrictive regulation's impacts, the rule must be in place uninterrupted for at least 7 years, and ideally for 10. To complete a thorough evaluation and allow time for public hearings on a more detailed proposal and for the Department's rule-making process, the Department proposes to stay the changes made in the 2006-07 rulemaking cycle, thereby reinstating the more restrictive regulations (12 inch minimum for brook trout, 18 inch minimum for brown trout, one fish allowed for harvest per day, artificial lures only) for the 2008 angling season. Because this is an emergency rule order, regulations in this five-mile segment of the Prairie River would allow harvest of 3 trout in total from the Prairie River, with a 12 inch minimum for brown and rainbow trout and an 8 inch minimum for brook trout, with no bait restrictions beginning in May, 2009, unless changes are made to the permanent rule.

The question was presented again at the 2008 Spring rules hearings, with additional biological data included. Again hearing attendees in Lincoln County and neighboring Taylor and Marathon Counties rejected the proposal to have restrictive trout regulations in place on this section of the Prairie River. Hearing attendees in neighboring Oneida and Langlade Counties favored the more restrictive regulation option, as did hearing attendees statewide.

SUMMARY OF THE RULE

The rule creates a protective regulation for brook trout and brown trout in the Prairie River, Lincoln County, between R & H Road and STH 17. Harvest of brown trout less than 18 inches and harvest of brook trout less than 12 inches would be prohibited by this rule, and anglers would only be allowed 1 trout in total from this section of river. This regulation is one that was in place between May, 2003 and the present, but is slated to be replaced April 1, 2008 with a regulation that would allow harvest of 3 trout in total from the Prairie River, with a 12 inch minimum for brown and rainbow trout and an 8 inch minimum for brook trout, with no bait restrictions.

POLICY IMPACTS

The proposed rule will not result in major changes to existing policy.

PREVIOUS ACTION

The Board approved the change to liberalize Prairie River trout regulations at its June, 2007 meeting, and rejected a emergency order to reinstate restrictive regulations at its February, 2008 meeting.

IMPACTS TO THE PUBLIC

The proposed rule will have minimal impact on members of the public. As with any change in regulation, there will be a requirement for anglers to learn the new rules. The FM Bureau works to notify the public of new regulations via press releases, the Internet, and fishing regulations pamphlets.

ENVIRONMENTAL ASSESSMENT

This is a Type III action under Chapter NR 150, Wis. Adm. Code, therefore no EA is required.

SMALL BUSINESS ANALYSIS

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.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

A.1. Describe the compliance and/or reporting requirements imposed on small business. No reporting requirements are imposed by this Order.

2. Can these compliance and/or reporting requirements be made less stringent for small business? Explain.

Not applicable.

B.1. Describe the schedules or deadlines for compliance or reporting imposed on small business.

Not applicable.

2. Can these schedules or deadlines be made less stringent for small business? Explain.

Not applicable.

C. Can the compliance or reporting requirements for small business be consolidated or simplified? Explain.

Not applicable.

D. Can performance standards be established for small businesses in lieu of design or operational standards? Explain.

Not applicable.

E. Can small business be exempted from any or all requirements of the rule? Explain.

Not applicable.

F. Initial Regulatory Flexibility Analysis

1. Describe the type of small business that will be affected by rule.

Changes to fishing regulations have no regulatory effect on small businesses.

2. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule.

Not applicable.

3. Describe the type of professional skills necessary for compliance with the rule.

Not applicable.

Results of Spring rules hearings regarding Prairie River trout regulations, April 14, 2008

County	Attendance	Question 36 (Yes)	Question 36 (No)	% Approving
ADAMS (01)	46	5	2	0.71
ASHLAND (02)	59	28	5	0.85
BARRON (03)	99	19	8	0.70
BAYFIELD (04)	46	26	4	0.87
BROWN (05)	189	113	22	0.84
BUFFALO (06)	61	1	5	0.17
BURNETT (07)	25	2	0	1.00
CALUMET (08)	54	2	4	0.33
CHIPPEWA (09)	100	8	80	0.09
CLARK (10)	76	22	32	0.41
COLUMBIA (11)	76	12	4	0.75
CRAWFORD (12)	36	21	1	0.95
DANE (13)	338	196	26	0.88
DODGE (14)	54	30	8	0.79
DOOR (15)	64	12	34	0.26
DOUGLAS (16)	60	20	26	0.43
DUNN (17)	116	16	10	0.62
EAU CLAIRE (18)	140	48	52	0.48
FLORENCE (19)	45	24	9	0.73
FOND DU LAC (20)	85	32	19	0.63
FOREST (21)	24	8	7	0.53
GRANT (22)	74	7	42	0.14
GREEN (23)	53	8	1	0.89
GREEN LAKE (24)	43	10	8	0.56
IOWA (25)	55	15	10	0.60
IRON (26)	31	7	3	0.70
JACKSON (27)	43	4	23	0.15
JEFFERSON (28)	84	60	9	0.87
JUNEAU (29)	59	7	3	0.70
KENOSHA (30)	70	49	5	0.91
KEWAUNEE (31)	44	1	28	0.03
LA CROSSE (32)	95	31	7	0.82
LAFAYETTE (33)	37	2	25	0.07
LANGLADE (34)	88	46	19	0.71
LINCOLN (35)	242	36	135	0.21
MANITOWOC (36)	89	18	7	0.72
MARATHON (37)	207	43	122	0.26
MARINETTE (38)	61	10	13	0.43
MARQUETTE (39)	45	9	13	0.41
MENOMINEE (40)	13	7	2	0.78
MILWAUKEE (41)	188	104	32	0.76
MONROE (42)	59	10	6	0.63
OCONTO (43)	57	32	9	0.78
ONEIDA (44)	159	90	43	0.68
OUTAGAMIE (45)	135	63	7	0.90
OZAUKEE (46)	65	41	9	0.82
PEPIN (47)	31	2	4	0.33
PIERCE (48)	55	9	4	0.69

Results of Spring rules hearings regarding Prairie River trout regulations, April 14, 2008

POLK (49)	73	17	4	0.81
PORTAGE (50)	233	89	24	0.79
PRICE (51)	163	30	14	0.68
RACINE (52)	67	10	6	0.63
RICHLAND (53)	48	4	7	0.36
ROCK (54)	82	60	11	0.85
RUSK (55)	59	7	13	0.35
SAINT CROIX (56)	69	5	6	0.45
SAUK (57)	110	7	2	0.78
SAWYER (58)	103	23	35	0.40
SHAWANO (59)	172	21	71	0.23
SHEBOYGAN (60)	146	63	37	0.63
TAYLOR (61)	60	3	49	0.06
TREMPEALEAU (62)	47	4	23	0.15
VERNON (63)	53	11	9	0.55
VILAS (64)	110	31	12	0.72
WALWORTH (65)	46	21	7	0.75
WASHBURN (66)	53	10	3	0.77
WASHINGTON (67)	122	22	84	0.21
WAUKESHA (68)	168	82	45	0.65
WAUPACA (69)	144	60	30	0.67
WAUSHARA (70)	61	13	25	0.34
WINNEBAGO (71)	118	31	12	0.72
WOOD (72)	125	34	18	0.65
Totals	**6407**	**2024**	**1494**	0.58
		YES	**NO**	

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2007 Session

☒ Original	☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number FH-07-08(E)

Subject

Adoption of Natural Resources Board Order FH-07-08(E), related to proposed Prairie River trout regulation changes

Fiscal Effect

State: ☒ No State Fiscal Effect
☐ Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs — May be possible to absorb within agency's budget.
☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No Local Government Costs
☐ Indeterminate

1. ☐ Increase Costs
☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues
☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
☐ Towns ☐ Villages ☐ Cities
☐ Counties ☐ Others _____
☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

In January 2007 the Natural Resources Board approved a change in the trout harvest regulations on a five-mile reach of the Prairie River, in Lincoln County. The rule change removed an existing rule which protected brook trout from harvest until they reached 12 inches and brown trout until they reached 18 inches, and required anglers to use artificial lures. It had been in force since the statewide trout rules were last addressed in 2003. At the 2007 spring rules hearing in Lincoln County, the DNR's question asking about the rule change was approved 47-29, and statewide the rule change was endorsed 909-563. In June 2007, the Natural Resources Board adopted the liberalized rules for implementation, effective April 1, 2008. However, when the board considered the change, it was not provided with survey information that suggested that the rule had resulted in more than 100% increase in the number of larger brook trout in the affected reach. Neither was that information provided in the question in the hearings pamphlet, nor at the hearings themselves, but this information had been thoroughly discussed with affected local parties prior to the public hearing.

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Long-Range Fiscal Implications

None

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2007 Session

Detailed Estimate of Annual Fiscal Effect

		LRB Number	Amendment Number if Applicable
☒ Original	☐ Updated		
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number FH-07-08(E)

Subject

Adoption of Natural Resources Board Order FH-07-08(E), related to proposed Prairie River trout regulation changes

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations — Salaries and Fringes	$	$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	$	$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$	$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues — Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	$	$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	$ 0	$ 0
Net Change in Revenues	$ 0	$ 0

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 20.20(35)(f), as affected by Clearinghouse Rule No.-07-014 relating to trout fishing in the Prairie River, Lincoln County.

FH-07-08(E)

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted: In promulgating this rule, ss. 29.014(1), 29.039, 29.041, 29.053, 29.531 and, 29.533, Stats., which authorize fishing, have been 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, 29.053, 227.11(2)(a), and 227.24(1)(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. Finally, s. 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

4. Related Rule or Statute: None.

5. Plain Language Rule Analysis: Section by section details of this rule order are outlined:

Section 1 creates a protective regulation for brook trout and brown trout in the Prairie River, Lincoln County, between R & H Road and STH 17. Harvest of brown trout less than 18 inches and harvest of brook trout less than 12 inches would be prohibited by this rule, and anglers would only be allowed 1 trout in total from this section of river.

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

7. Comparison of Similar Rules in Adjacent States: Fisheries management is 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 management and enforcement concerns. Proposals were reviewed for need and adequacy, and approved by a fish team or law enforcement team supervisor and forwarded to regional director for approval. Proposals approved by the regions were forwarded to the Fisheries Management Bureau Director, who conducted a review with the Fisheries Management Board, law enforcement, legal services, the Wisconsin Conservation Congress, and the Great Lakes Indian Fish and Wildlife Commission. Only proposals approved by the Fisheries Management Bureau Director are included.

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: [To be determined.]

SECTION 1. NR 20.20(35)(f), as published in CHR 07-014, is amended to read:

(35) LINCOLN (for species or waters not listed, see sub. (73))

COUNTY AND SPECIES	WATER	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OR OTHER SIZE RESTRICTIONS (INCHES)
(f) Trout and salmon	1. Big Rib river	a. Hook and line, only artificial lures may be used	First Saturday in May at 5:00 a.m. to September 30	0	-
	2. Prairie river downstream from R & H road to STH 17	a. Hook and line, only artificial lures may be used	First Saturday in May at 5:00 a.m. to September 30	1 in total	Brown trout 18, brook and rainbow trout 12
	~~2~~3. Henson lake, Horgen lake, Larson lake, Moraine lake	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	5 in total	None
	~~3~~4. King Spring, Pays (Alta) springs (S12 T33N R7E), Prairie river excluding R & H road downstream to STH 17, Prairie river (north branch), Spring lake (springs; S16 T32N R7E)	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	3 in total	Brown and rainbow trout 12, brook trout 8
	45. Big Hay Meadow creek, New Wood river upstream from Whisky Bill road (S19 T33N R5E), New Wood river (center fork), New Wood river (east fork)	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	3 in total	9
	~~5~~6. Ament lake	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30 in	5 in total	7

		even numbered years only		
~~6~~7. Tahoe lake	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30 in odd numbered years only	5 in total	7
~~7~~8. All other waters not listed	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	5 in total	7

SECTION 2. STATEMENT OF EMERGENCY. The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public welfare. This order is designed to protect an important angling resource in Lincoln County while allowing the Department to thoroughly evaluate its management objectives and program in the Prairie River. In the absence of the emergency order, the Department's potential for evaluation will be lost, as would the potential development of a unique high-quality trout fishery in Lincoln County.

SECTION 3.. EFFECTIVE DATE. The rule shall take effect on _____May 3, 2008_____

SECTION 4. BOARD ADOPTION. The 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)

PROPOSED LOCAL FISHERIES RULE CHANGES

LINCOLN COUNTY

QUESTION 21 – Prairie River trout regulations

Category 5 trout regulations on a short stretch of the Prairie River in Lincoln County have been the subject of considerable debate since they went into effect on April 1, 2003. The Department would like input on whether to keep these Category 5 regulations to allow for a full evaluation of whether they significantly increase the number of larger trout in that section of the river, or to eliminate these regulations and manage that section of the river as a Category 4 harvest fishery.

The questionnaire presented at the 2002 spring hearings included a proposal for a Category 5 regulation on five miles of the 44 mile long Prairie River among a package of statewide trout regulation revisions. The Category 5 regulation called for a 12-inch minimum size for brook trout, 18-inch minimum for brown trout, an aggregate daily bag limit of one trout, and use of artificial lures only on the stretch of river from R & H Road downstream to State Highway 17 in Lincoln County. The rest of the river retained a Category 4 designation with an 8-inch minimum size for brook trout and 12-inch minimum for brown trout, an aggregate daily bag limit of 3, and no gear restrictions.

The purpose of the Category 5 regulation was to increase opportunity to catch larger trout in a county with few special regulations. This reach of river was considered to be the most likely to be able to produce larger trout because of its forage base. More than 80% of the trout in this reach of the river are brook trout, with the remainder being brown trout. Artificial lures were required because hooking mortality with bait has been shown to be 10 times higher than with spinners or flies. The Category 5 proposal was approved at the 2002 spring hearings (64-18 in Lincoln Co. and 4,662-1,611 Statewide) and by the Natural Resources Board and went into effect for the 2003 season.

The Department routinely evaluates Category 5 trout regulations to determine if they are effective in producing larger trout fisheries. To be definitive, these evaluations must run for at least a generation of the fish species involved, and preferably longer. In the Prairie River that would be 5-7 years for brook trout and 6-8 years for brown trout. In the first 4 years of the regulation, preliminary population data have shown a 135% increase in the numbers of brook trout over 10 inches in the protected reach. There has not been an increase in brown trout, but for both species the regulation has not been in effect long enough to determine whether it is meeting its management objectives.

However, some local landowners and fishermen would prefer to see the fishery managed as a consumptive fishery rather than a fishery managed for larger trout, regardless of the potential positive effects of more restrictive regulations. A resolution requesting a return to Category 4 harvest regulations was approved by a vote of 69-6 at the 2004 Lincoln County spring hearing, and after a series of public meetings Department staff agreed to ask the Natural Resources Board to consider this resolution after allowing for a 5 year evaluation of the Category 5 regulations.

The Department recommends that the Category 5 regulations be retained through the 2010 season to allow for a 5 year evaluation of whether it will meet the management objective of developing a larger trout fishery. At that time the Natural Resources Board can determine whether to

permanently institute these Category 5 regulations based on results of the evaluation, or begin an evaluation of the Category 4 alternative.

Action of the Natural Resources Board is required before the 2009 season for the Category 5 regulations to be in effect. If the Category 5 regulations are not approved by the Natural Resources Board, then this stretch of the river will automatically revert to Category 4 regulations (aggregate daily bag limit of 3 trout, 12" minimum size limit on brown and rainbow trout; 8" minimum size limit on brook trout, no bait restriction) starting with the 2009 season.

- **Do you favor Category 5 trout regulations (aggregate daily bag limit of 1 trout; 18" minimum size limit on brown trout; 12" minimum size limit on brook and rainbow trout; artificial lures only) on the Prairie River in Lincoln County from R & H Road downstream to STH 17 (5 miles) through the 2010 season? At that time the Natural Resources Board can determine whether to permanently institute these Category 5 regulations based on results of the evaluation, or begin an evaluation of the Category 4 alternative. This will allow a full evaluation of the regulation and the capacity of this stretch of river to grow larger trout.**

21. Yes ___ No ___

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: July 7, 2006

TO: Mike Vogelsang

FROM: Dave Seibel

SUBJECT: Prairie River, Lincoln County – Trout Regulation Proposal

Problem Statement:
The problem described here is a social issue, not a biological issue. Both the existing and proposed regulations will allow for self-sustaining populations of brook and brown trout in this section of river. The issue is mostly about what type of bait should be allowed and what length the trout must be to harvest (high size limits and artificial lures only versus lower size limits and no bait restrictions).

Some local landowners and fishermen would like a change to more liberal trout regulations on approximately 5 miles of the Prairie River in Lincoln County. They would like regulations that allow bait fishing and harvest of brown trout less than 18" and brook trout less than 12". Currently, the Category 5 regulations on this 5-mile stretch from R & H Road downstream to STH 17 are as follows:

- Daily Bag Limit: 1 Trout
- 18" Minimum Size Limit on Brown Trout
- 12" Minimum Size Limit on Brook Trout
- Artificial Lures Only

The current regulations were passed as part of the state and countywide trout regulations package voted on at the 2002 Spring Hearings. Statewide the regulations package passed by a vote of 4,662 – 1,611 (almost 3:1 in favor). In Lincoln County, the regulations package passed by a vote of 65 – 18 (almost 4:1 in favor). A local fishing club, Friends of the Prairie River, supported this regulation package as did local DNR fisheries staff who are committed to evaluating the current regulations on the Prairie River for a minimum of 5 years after going into effect (2003-2007). If the regulations were changed prior to 2008, the fish would not have been given an adequate amount of time to live and grow under the protection of the regulation to fully evaluate its effectiveness (or non-effectiveness). DNR fisheries staff would like to learn whether this regulation was biologically appropriate for this section of the Prairie River. If this regulation does not work, we also would like to find out why so that we don't repeat this mistake again.

At the 2004 Conservation Congress Spring Hearings in Lincoln County, some fishermen proposed a resolution for more liberal trout regulations on this stretch of the Prairie River (the same regulations that are proposed here). The resolution passed on a vote of 69 to 6. They also submitted over 200 signatures of people in support of the resolution.

Background Information:
The following should aid in the understanding of the history and reasoning behind past and current special fishing regulations on this section of the Prairie River:

- This 5-mile section of the Prairie River was chosen for special regulations in part because of: 1) the quality trout populations already present, 2) the good water and habitat quality present, 3) survey data showed better quality trout populations in the old category 5 stretch from R & H Rd.

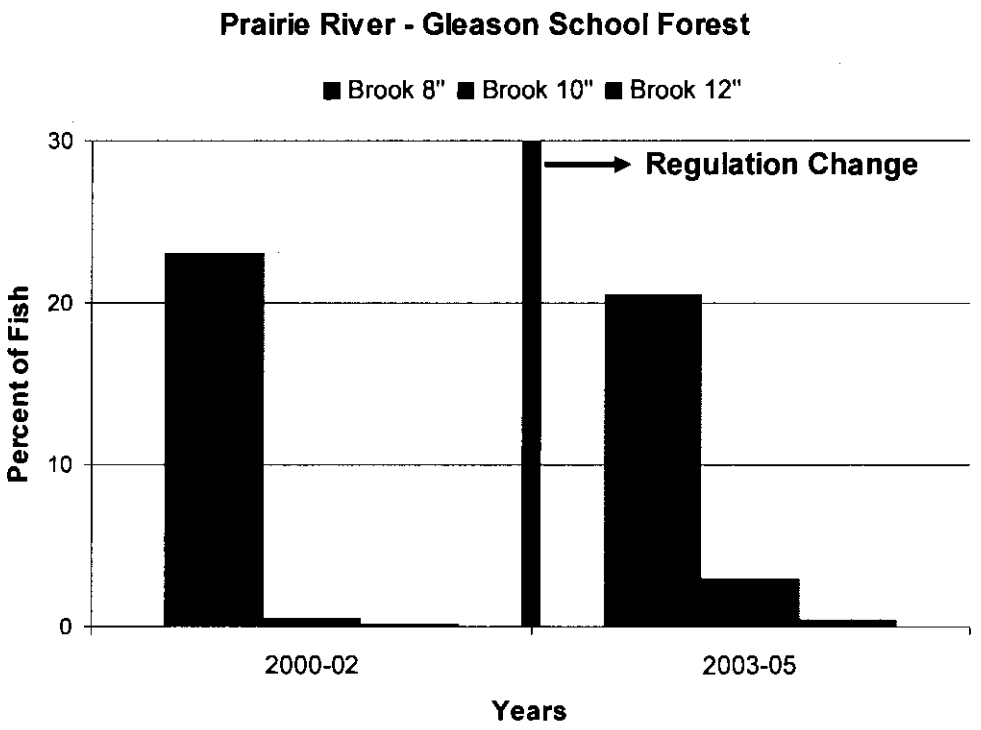
downstream to Hackbarths Dr. (these first 3 mean it makes good biological sense and that a similar regulation had a history of achieving the desired results in a part of this section of river), 4) a history of category 5 regulations in a part of this stretch of river, and 5) all the public frontage in this section. Approximately 7.3 miles of frontage on **both** sides of this 5-mile stretch of river (73% of the stream frontage) are either owned by the DNR, Town of Russell, or have permanent fishing easements purchased by the DNR.

- Reasons for going from 0.85 miles of category 5 water (1990-2002; R & H Rd. to Hackbarths Dr.) to 5 miles of category 5 water (R & H Rd. to STH 17) was to take into account the biology and movement of trout. We know from studies that brown trout especially are very mobile and can move large distances in seeking out their yearly habitat requirements. Enlarging the special regulation section by almost 6 times was our attempt to meet more of the yearly habitat requirements of trout so that the regulation would have a better chance of success. Also, our meetings and discussions with local fishing groups told us that there was widespread support for the new regulations (voting at the 2002 Spring Hearings proved this to be true).
- The 5.0 miles of category 5 water is 16% of the Prairie River mileage in Lincoln County (30.9 miles) and 11.6% of the total length of the Prairie River trout water (42.8 miles).

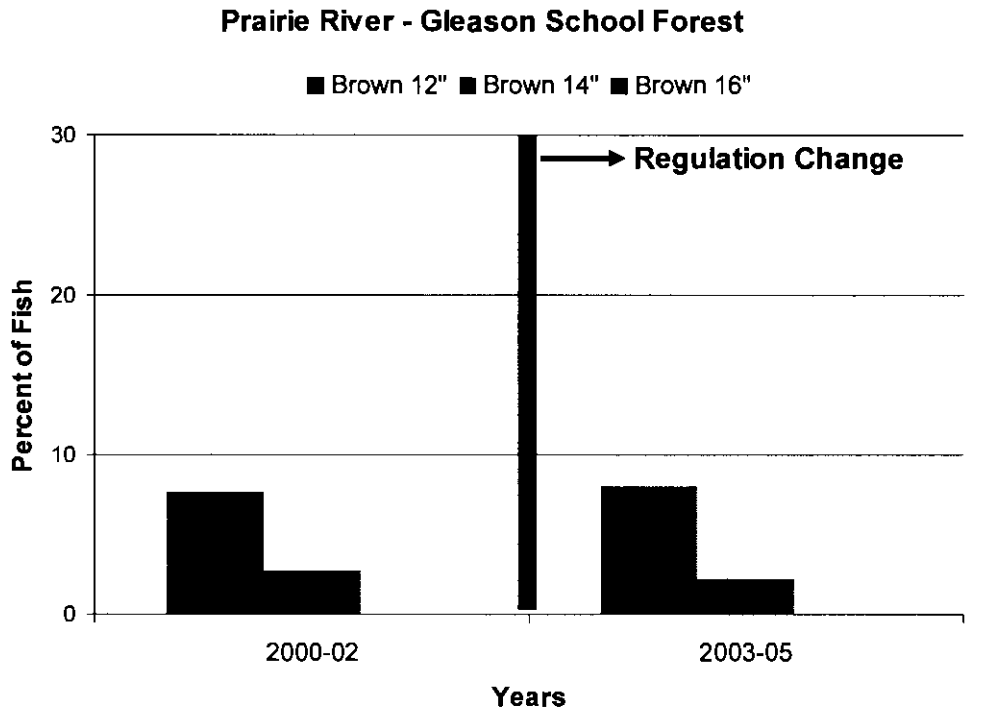
Preliminary data are shown in the graphs below. Caution should be taken in attempts to interpret these graphs in terms of success or failure of the current regulations. It takes brook trout 3-4 years to reach 8 inches in this section of the Prairie River and this is about the age of sexual maturity (and the former length limit on this section). It takes brook trout 5-7 years to reach the legal length of 12 inches. Ideally it would be best to only evaluate fish and their parents that have spent their entire lives under the protection of the regulation being evaluated. This means that the first trout that have lived their entire lives under a protective regulation are just reaching the new legal size limit in 2006 (hatched in 2001). There are no brook trout longer than about 12 inches that have spent their entire lives protected by this regulation. Therefore, judging the results of this regulation on brook trout longer than 12 inches is dangerous and highly speculative at this point in time. With that said, graph 1 indicates a slight increase in percent of brook trout over 10 and 12 inches in a section of the special regulations area after the first 3 years of implementation.

Even more caution should be used in attempting to interpret the brown trout graphs as it takes them longer to reach the legal size limit of 18" (6-8 years). The previous length limit on brown trout in this section of the Prairie River was 12 inches (3-4 year olds). Fish longer than this were not protected prior to 2003. Fast growing six year old fish that have been protected by length limits all of their lives would just now (at the end of 2006) be reaching the new size limit of 18 inches. Slower growing fish that have been protected by length limits all of their lives won't first reach 18 inches until the end of 2007 or 2008. Also, any potential increases in abundance of trout in response to protecting of more and larger spawning age fish would only start showing up in our surveys 2006 and beyond. With these cautions in mind, graph 2 shows little change in the brown trout size structure when comparing the first 3 years of the new regulation with the previous three years.

In summary, to ideally evaluate the effects of this regulation, it would take at least 10 years of fish growth that are protected from harvest. We can attempt to evaluate this regulation after only 5 years of implementation (2003-2007) and speculate as to how it might have performed given a longer time, but it would not be an ideal evaluation procedure and not as good of science as a longer time frame.



Graph 1. Percent of brook trout over 8, 10, and 12 inches in the Gleason School Forest section of the special regulations area of the Prairie River.



Graph 2. Percent of brown trout over 12, 14, and 16 inches in the Gleason School Forest section of the special regulations area of the Prairie River.

Recommended Solution:
Through a series of meetings with the landowners and The Friends of the Prairie River, we have collectively agreed to propose more liberal fishing regulations for this section of river. The landowners wanted the question to appear on the 2006 Spring Hearing ballot even though they agreed that if voted upon favorably, the new regulation would not go into effect until 2008. This would allow the DNR fisheries staff to evaluate the current regulations through 5 full years of fish protection, growth and angling. The Wisconsin Department of Natural Resources Fisheries Management Board decided to hold off submitting this proposal last year (2006) so that if voted upon favorably in 2007, it could be implemented in 2008 (the normal regulations cycle).

The groups have also agreed that if the new proposal receives favorable support, the new regulations would remain in effect for a minimum of 5 years (2008-2012) allowing DNR fisheries staff to evaluate the new regulation and compare the 2, 5-year periods of different regulations on the same stretch of water. This study will help guide future trout management decisions in this part of the state and allow anglers and landowners to make informed decisions on future regulation change proposals.

Impact Analysis:
This proposal has been approved by the local and regional Wardens and is not anticipated to have much of an enforcement impact. Some anglers prefer the existing regulations and some would prefer the proposed regulations. The majority will decide what regulations will be in effect on this stretch of the Prairie River.

The Prairie River is a popular trout fishing destination for anglers from all over the Midwest as it is one of the better trout streams in this part of the state. Many like the existing quality type regulations on this stretch. Anglers who are more interested in catching larger than average stream trout than they are in harvesting fish like the existing rules and drive long distances to fish places like this. Those that would like to harvest more fish are in support of the rule change. There may be some economic impact to local businesses if this proposal passes. Anglers willing to drive long distances to catch and release larger than average trout may go elsewhere, but anglers who want to harvest fish may offset them. Without a detailed economic impact study, it is impossible to say for sure what the impact could be. Since this regulation proposal has been in the works, I have heard from many anglers from outside of Lincoln County that would like to have their vote count. **I recommend that the statewide vote be considered since this is a large and popular trout stream, and is a very popular destination for anglers from all over the state and Midwest region.**

A summary of the public involvement was discussed in the previous 3 sections.

Consequences of No Action:
If we do not propose this regulation change the fishermen wanting it have said that they would go to any lengths to get the rules changed. It is likely they would submit more resolutions and work through the Conservation Congress and Natural Resources Board to get them changed. Doing nothing is not an option for them.

Consequences to the fishery were discussed in the problem statement section.

Draft Question:
Some anglers like the existing Category 5 trout regulations and some would like more liberal regulations. This proposal is to see what rules the majority of anglers want for this 5-mile section of the Prairie River. Do you favor changing the regulations on the Prairie River from R & H Road downstream to STH 17 (5 miles) from Category 5 (daily limit of 1 trout; 18" minimum size limit on brown trout; 12" minimum size limit on brook and rainbow trout; artificial lures only) to Category 4 (daily limit of 3 trout; 12" minimum size limit on brown and rainbow trout; 8" minimum size limit on brook trout; no bait restrictions)? If you support the new proposal it would go into effect for the 2008 fishing season.