

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request approval of the statement of scope for Board Order FH-19-12, housekeeping corrections, clarifications, and updates to outdated code regarding fishing in inland, outlying, and boundary waters

FOR: SEPTEMBER 2012 BOARD MEETING

TO BE PRESENTED BY / TITLE: Kate Strom Hiorns, Fisheries Policy Specialist

SUMMARY:

The proposed rule would make non-substantive housekeeping changes to sections of NR 19, 20, 21, 22, 23, 25, and 26 relating to the regulation of fishing.

The rule is intended to ensure the code language that governs fishing in inland, outlying, and boundary waters is accurate and properly reflects the desired management of Wisconsin waters. The rule is in response to recent legislative changes and to the interests of the public and both Law Enforcement and Fisheries Management staff. The objectives are to:

- Add language to respond to newly created statutory language;
- Remove sections of code that are outdated or have been replaced by other statute or code changes;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.

RECOMMENDATION: Approve the statement of scope for Board Order FH-19-12

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:

Michael Stagg
Bureau Director,

7/30/2012
Date

Kate Hiorns
Administrator,

8/3/12
Date

W. Matt McPhee
Secretary, Cathy Stepp

8/23/12
Date

cc: NRB Liaison
DNR Rules Coordinator

Kate Strom Hiorns FH/4

DATE: May 18, 2012

TO: Natural Resources Board

FROM: Cathy Stepp, Secretary 

SUBJECT: Scope statement approval for Board Order relating to Fisheries administrative code housekeeping

Why is the rule being proposed?

The proposed rule would make non-substantive housekeeping changes to sections of NR 19, 20, 21, 22, 23, 25, and 26 relating to the regulation of fishing. The goal is 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 rule is in response to recent legislative changes and to the interests of the public and both Law Enforcement and Fisheries Management staff. The objectives are to:

- add language to respond to newly created statutory language,
- remove sections of code that are outdated or have been replaced by other statute or code changes,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.

Summary of the rule:

Changes to ch. NR 19

- Amending Subchapter III of NR 19, which regulates fish farms in natural waterbodies, in response to legislative changes in 2011 Wisconsin Act 207. Natural waterbody permits now do not expire unless the Department makes a finding that substantial public interest exists in the waterbody and that public or private rights in the waterbody will be damaged. A natural waterbody permit will not be required for someone wishing to use a natural waterbody for a fish farm if he or she was already issued a permit for changing the course of a stream, enlarging a waterway, or constructing a dam. In addition, the Department is not required to hold a hearing or provide notice that it will not hold a hearing before issuing a permit, but it must post a notice of every permit application on its website.

Changes to ch. NR 20

- Removing all notations of a 40-inch size limit for muskellunge in ss. NR 20.20(1) through (72) county regulations. A minimum size of 40 inches is now the general inland waters size limit for muskellunge and is indicated in s. NR 20.20(73).
- Removing expired language for regulations on Sparkling Lake in Vilas County and Twin Valley Lake in Iowa County.
- Clarifying in s. NR 20.06(1) that trolling may also be allowed as provided in s. 29.193, Stats., which authorizes approvals for disabled persons.
- Creating no possession limit in s. NR 20.03(31) for food distribution services, as defined in s. 29.001(28), Stats., that lawfully receive fish for purposes of redistribution. This clarifies in code the existing law enforcement policy on fish donations.
- Updating Wisconsin-Michigan boundary water regulations to be consistent with Michigan regulations. Department of Natural Resources staff from both states met in 2011 and agreed to make night angling, hook size, and spearing changes for consistency and clarity within code. A prior rule that was mistakenly modified will now restore night fishing and remove a hook gap

restriction on the Menominee River. Spearing for rough fish will also be closed on all WI-MI boundary waters to make regulations the same as in Michigan and to bring the rule back into compliance with how it had been enforced and understood in prior years.

- Adding sunset language in s. NR 20.20(64)(c) for bass regulations on Sparkling Lake in Vilas County that was mistakenly excluded from a rule in 2008.
- Removing perch in Vilas County from the list of detrimental fish under s. NR 20.38. There are and never were any contracts issued for removal of perch on those waters and abundant perch are no longer considered bad for the fishery.
- Correcting language in s. NR 20.20(44) for the Minocqua Chain in Oneida County. Bass season language was left out in error during rule changes in 2011.
- Clarifying boundaries of trout regulations in s. NR 20.20(54)(e) for the East Fork of Raccoon Creek in Rock County.
- Preventing currently overlapping dates of regulations for walleye, sauger, and hybrids on the Fox River downstream from the DePere Dam.
- Providing free fishing during the third weekend in January each year when no license is required to fish, in response to legislative changes in 2011 Wisconsin Act 168.
- Revising code to allow anyone to fish for rough fish with a crossbow under the same circumstances as with a bow and arrow and adding Asian carp to the definition of rough fish, in response to 2011 Wisconsin Act 180.

Changes to chs. NR 21, 22, and 23

- Making ice shelter labeling rules the same on boundary waters as on inland waters. Owners will not be required to post their names and addresses on fishing shelters that are occupied or otherwise in use.
- Providing free fishing during the third weekend in January each year when no license is required to fish, in response to legislative changes in 2011 Wisconsin Act 168.
- Revising code to allow anyone to fish for rough fish with a crossbow under the same circumstances as with a bow and arrow and adding Asian carp to the definition of rough fish, in response to 2011 Wisconsin Act 180.

Changes to ch. NR 25

- Deleting references to minimum harvesting requirements for commercial fishing in the Great Lakes, in response to legislative changes in 2011 Wisconsin Act 177.

Changes to ch. NR 26

- Removing expired language for a fish refuge on the Grand River in Green Lake County.
- Extending an existing fish refuge on Wingra Creek in Dane County. The refuge boundaries will be extended in response to a rebuilt and extended platform next to the refuge.

How does this proposal affect existing policy?

No new policy will be proposed in this housekeeping rule. It will include non-substantive changes to administrative code that support existing policies and goals. Fishing regulations in this rule, such as length and bag limits or season dates, are used as a tool to ensure good fishing exists into the future.

Public hearing

One public hearing will be held during winter 2012-13.

Who will be impacted by the proposed rule? How will they be impacted?

The proposed rule will have minimal impact on members of the public. 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 Fisheries Management Bureau works to notify the public of new regulations via press releases, the internet, and fishing regulations pamphlets.

Environmental assessment

This is a Type IV action under Chapter NR 150, Wis. Admin. Code. No environmental assessment is required.

Small business analysis; Initial regulatory flexibility analysis

It is not expected that there will be any economic impact directly related to these rule changes on anglers. (Level 3) The Department will conduct an economic impact analysis to determine if any individuals, businesses, local governments, or other entities expect to 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. During rule development, the proposed rule will be available for review and comment at <https://health.wisconsin.gov/admrules/public/Home>.

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-19-12

Relating to: Fisheries Administrative Code Housekeeping: corrections, clarifications, and updates to outdated language regarding fishing in inland, outlying, and boundary waters

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only): Not applicable

2. Detailed description of the objective of the proposed rule:

The proposed rule would make non-substantive housekeeping changes to sections of NR 19, 20, 21, 22, 23, 25, and 26 relating to the regulation of fishing. The goal is 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 rule is in response to recent legislative changes and to the interests of the public and both Law Enforcement and Fisheries Management staff. The objectives are to:

- add language to respond to newly created statutory language,
- 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.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The goal of fish management, as stated in s. NR 1.01(2), is "to provide opportunities for the optimum use and enjoyment of Wisconsin's aquatic resources, both sport and commercial. A healthy and diverse environment is essential to meet this goal and shall be promoted through management programs."

Fishing regulations in this rule, 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.

No new policy will be proposed in this housekeeping rule. It will include non-substantive changes to administrative code that support existing policies and goals, including:

Changes to ch. NR 19

- Amending Subchapter III of NR 19, which regulates fish farms in natural waterbodies, in response to legislative changes in 2011 Wisconsin Act 207. Natural waterbody permits now do not expire unless the Department makes a finding that substantial public interest exists in the waterbody and that public or private rights in the waterbody will be damaged. A natural waterbody permit will not be required for someone wishing to use a natural waterbody for a fish farm if he or she was already issued a permit for changing the course of a stream, enlarging a waterway, or constructing a dam. In addition, the Department is not required to hold a hearing or provide notice that it will not hold a hearing before issuing a permit, but it must post a notice of every permit application on its website.

Changes to ch. NR 20

- Removing all notations of a 40-inch size limit for muskellunge in ss. NR 20.20(1) through (72) county regulations. A minimum size of 40 inches is now the general inland waters size limit for muskellunge and is indicated in s. NR 20.20(73).
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- Clarifying in s. NR 20.06(1) that trolling may also be allowed as provided in s. 29.193, Stats., which authorizes approvals for disabled persons.
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Changes to ch. NR 26

- Removing expired language for a fish refuge on the Grand River in Green Lake County.
- Extending an existing fish refuge on Wingra Creek in Dane County. The refuge boundaries will be extended in response to a rebuilt and extended platform next to the refuge.

4. Detailed explanation of statutory authority for the rule:

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 29.519(1m)(b), Stats., provides that "after giving due consideration to the recommendations made by the commercial fishing boards under sub. (7), the department may establish species harvest limits and promulgate rules to establish formulas for the allocation of the species harvest limits among commercial fishing licensees or for the allotment of individual licensee catch quotas."

Section 29.733(2)(f) provides that the department shall promulgate rules to establish the fees, criteria and procedures to be used in issuing permits for natural waters used in fish farms.

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.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 120 hours

6. List with description of all entities that may be affected by the proposed rule:

The proposed rule will have minimal impact on members of the public. 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 Fisheries Management Bureau works to notify the public of new regulations via press releases, the internet, and fishing regulations pamphlets.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

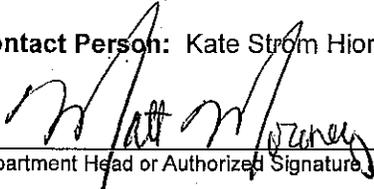
8. Anticipated economic impact of implementing the rule:

Minimal to no economic impact expected. (Level 3)

It is not expected that there will be any economic impact directly related to these rule changes on anglers. The Department will conduct an economic impact analysis to determine if any individuals, businesses, local governments, or other entities expect to 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.

The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses.

Contact Person: Kate Strom Hiorns, 608-266-0828 kathryn.stromhiorns@wisconsin.gov



Department Head or Authorized Signature

6/15/12

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

July 25, 2012

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Scope Statement for FH-19-12 relating to Fisheries Administrative Code housekeeping, including corrections, clarification, and updates to outdated language regarding fishing in inland, outlying and boundary waters

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on June 18, 2012, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule FH-19-12. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor