

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

**SUBJECT:**

Request that the Board approve the statement of scope for Board Order FH-09-15 and Emergency Board Order FH-08-15(E) and conditionally approve the public hearing notice for Board Order FH-09-15 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse, proposed rules affecting ch. NR 23 related to lake sturgeon regulations on the Menominee River.

**FOR: June 2015 Board meeting**

**PRESENTER'S NAME AND TITLE:** Kate Strom Hiorns, Fisheries Policy Specialist

**SUMMARY:**

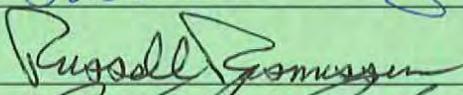
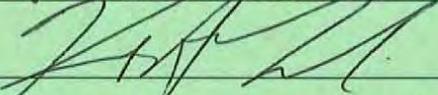
The emergency and permanent rules are necessary to allow catch and release fishing during the September angling season and prevent the harvest and consumption of lake sturgeon from the Menominee River downstream from Grand Rapids Dam.

Starting in spring 2015, adult lake sturgeon exceeding 60 inches will be transported upstream past the Menominee Dam (close to Green Bay) via a fish elevator located on the State of Michigan shores of the river. All sizes of sturgeon from Green Bay are on Wisconsin's "DO NOT EAT" list due to PCB contamination. The emergency rule is necessary to prevent harvest and consumption of lake sturgeon from the Menominee River downstream of the Grand Rapids Dam during the lake sturgeon harvest season.

**RECOMMENDATION:** That the Board approve the statement of scope and conditionally approve the public hearing notice for Board Order FH-09-15 and Emergency Board Order FH-08-15(E) and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

**LIST OF ATTACHED MATERIALS:**

- Statement of scope
- Governor approval of statement of scope

Approved by	Signature	Date
Justine Hasz, Bureau Director		5-19-15
Russ Rasmussen, Division Administrator		5/27/15
Cathy Stepp, Secretary		6/2/15

cc: Board Liaison - AD/8

Program attorney – LS/8

Department rule officer – LS/8

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** FH-08-15(E) and FH-09-15

**Relating to:** Lake Sturgeon Regulations on the Menominee River, NR 23

**Rule Type:** Both Permanent and Emergency

### 1. Finding/nature of emergency (Emergency Rule only):

The Department of Natural Resources (Department) finds that an emergency rule is needed to promote the preservation and protection of health, safety, and welfare for recreational anglers on the Menominee River, a border water with the State of Michigan. The emergency rule is necessary to prevent harvest and consumption of lake sturgeon from the Menominee River downstream of the Grand Rapids Dam during the 2015 lake sturgeon harvest season.

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

There are river-resident lake sturgeon populations upstream of the Menominee (Hattie Street) Dam on the Menominee River. The first river resident population is upstream of the Menominee Dam to the Grand Rapids Dam, and another exists upstream of Grand Rapids Dam. Both Wisconsin and Michigan allow a hook and line fishery each year in September that allows harvest of one sturgeon per season with a minimum size limit of 60 inches upstream of the Menominee Dam. Each sturgeon harvested must be registered with the Department or a Department-sponsored registration station. There are very few river-resident fish upstream of the Menominee Dam that exceed the 60-inch size limit and therefore few, if any, are harvested each year. Since Wisconsin and Michigan both adopted a 60-inch minimum size limit in 2006, only 10 sturgeon have been harvested above Menominee Dam.

The Menominee Dam is the furthest downstream dam on the Menominee River (closest to Green Bay) and has been a barrier to sturgeon and other fish passage. Beginning in spring of 2015, adult lake sturgeon exceeding 60 inches will be transported upstream past the dam via a fish elevator (located on the State of Michigan shores of the river) at the Menominee Dam. Those sturgeon will then have access to waters from the Menominee Dam to the Grand Rapids Dam, but there is no fish passage incorporated into the Grand Rapids Dam to allow fish to move any farther upstream. Although most of these adult lake sturgeon are expected to return downstream to Green Bay after spawning, some may stay in the river and be available for the fall harvest.

Under current plans, the sturgeon passed over the dam will have identification tags inserted under their skin, but will not have any external mark that tells an angler that the sturgeon came from Green Bay. The current consumption advisory for river-resident lake sturgeon upstream of the Menominee Dam recommends women of childbearing age not consume more than one meal per month. However, all sizes of sturgeon from Green Bay are on Wisconsin's "DO NOT EAT" list due to PCB contamination. Personnel at sturgeon registration stations will be able to identify that a sturgeon has an internal tag. Upon being told at the registration station that a harvested sturgeon came from Green Bay, it would be likely that anglers would discard dead lake sturgeon, resulting in waste of a natural resource.

The State of Michigan plans to have a permanent rule in place by September 2015 to allow only catch and release lake sturgeon fishing on the Menominee River downstream from the Grand Rapids Dam. Without Wisconsin's emergency rule, regulations will differ between the two states on the same body of water.

The emergency and permanent rules are necessary to allow catch and release fishing during the September angling season but prevent the harvest and consumption of lake sturgeon from the Menominee River downstream from Grand Rapids Dam. Anglers will still have the opportunity to harvest a sturgeon greater than 60 inches in length in the more than 40 river miles upstream from the Grand Rapids Dam. Additional rule changes may be pursued which are reasonably related to those discussed here.

### 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:

A catch-and-release only season is currently open on the Menominee River downstream from the Menominee (Hattie Street) Dam from the first Saturday in September to September 30 (area listed as "Current Habitat" in the map below). Anglers may currently harvest one sturgeon that is longer than 60 inches per open season from the first Saturday in September to September 30 upstream from the Menominee Dam on the Menominee River. There is no open season for lake sturgeon in Green Bay.

These emergency and permanent rules would extend the catch-and-release season approximately 20 miles on the Menominee River, from the Grand Rapids Dam downstream (area listed as "Passage at Lower Dams" in the map below). Anglers may harvest one sturgeon per season upstream from the Grand Rapids Dam (area listed as "Historical Corridor").



Fish passage in the lower Menominee River is important in helping to restore the lake sturgeon population in Lake Michigan. The U.S. Fish and Wildlife Service estimates the total adult population of lake sturgeon in Lake Michigan at 3,000 fish. Wisconsin and Michigan have determined the adult population below the Menominee Dam is approximately 1,200 lake sturgeon. Poor recruitment of lake sturgeon has been documented below the Menominee Dam due to industrial development, contamination, and limited habitat. Moving sturgeon above the Menominee Dam would provide them access to underutilized juvenile and spawning habitat in the 20 river miles between the Grand Rapids and Menominee dams. Allowing the adult sturgeon population below the Menominee Dam access to the waters above that dam will expedite the restoration of this species in Lake Michigan.

**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 29.053 (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.

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

Approximately 250 hours

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

The proposed rule will primarily affect recreational anglers who fish the approximate 20 miles of river from the Grand Rapids Dam tailwaters to the Menominee Dam. As with any change in regulations, there will be a requirement for anglers to learn the new rules. The Department 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:**

It is not expected that there will be any economic impact or change directly related to these rule changes. The proposed rule will primarily affect sport anglers. Anglers will still have the opportunity to harvest a legal-sized sturgeon in over 40 miles of waters upstream of the Grand Rapids Dam. It is not expected that this rule would affect businesses that register sturgeon. There are only two non-Department sturgeon registration stations in the area and only 10 sturgeon have been harvested above the Menominee Dam since 2006. The Peshtigo Department Service Center is an alternate registration station.

**9. Anticipated number, month and locations of public hearings:**

The Department anticipates holding one public hearing for the emergency and permanent rules in September or October 2015. The hearing will be held in Peshtigo.

**Contact Person:** Mike Donofrio, Fisheries Team Supervisor (715) 582-5050

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Department Head or Authorized Signature

\_\_\_\_\_  
Date Submitted



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

May 19, 2015

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

**RE: Scope Statement for Permanent Rule FH-09-15 modifying Chapter NR 23  
relating to Lake Sturgeon regulations on the Menominee River**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on April 27, 2015, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 23 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker  
Governor



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

May 19, 2015

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

**RE: Scope Statement for Emergency Rule FH-08-15 modifying Chapter NR 23  
relating to Lake Sturgeon regulations on the Menominee River**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on April 27, 2015, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying Chapter NR 23 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker".

Scott Walker  
Governor