

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
FH-19-12

NOTICE IS HEARBY GIVEN THAT pursuant to and interpreting ss. 29.014(1), 29.041, 29.519(1m)(b), and 29.733(2)(f), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 19, 20, 21, 22, 23, 25, and 26, Wis. Adm. Code, in permanent rule Order FH-19-12 relating to housekeeping changes to Wisconsin fishing rules.

NOTICE IS HEREBY FURTHER GIVEN THAT the hearing will be held on:

January 31, 2013 Department of Natural Resources State Office Building, 101 S. Webster Street,
Rm. 413, Madison, WI 53707
2:00 p.m.

Availability of Rules and Submitting Comments:

The proposed rule supporting documents may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the proposed rules and supporting documents may also be obtained from Kate Strom Hiorns, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707 or kathryn.stromhiorns@wisconsin.gov.

Written comments on the proposed rule may be submitted via U.S. mail or email to Kate Strom Hiorns at the addresses noted above. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings. Comments may be submitted until January 31, 2013.

Analysis Prepared by the Department of Natural Resources:

This rule is being proposed to make non-substantive housekeeping changes to sections of NR 19, 20, 21, 22, 23, 25, and 26, Wis. Adm. Code, relating to the regulation of fishing and harvest of turtles. 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- remove sections of code that are outdated or have been replaced by other statute or code changes,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.

Section 1 clarifies that setlines and set or bank poles are authorized methods for taking turtles. Another section of code lists the use of setlines and bank poles for taking turtles and these are already commonly used, accepted methods.

Sections 2 to 6 amend Subchapter III of NR 19, which regulates fish farms in natural waterbodies, in response to statutory changes in 2011 Wisconsin Act 207. Under those changes, 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.

Section 7 creates no possession limit for food distribution services – as defined in statute as programs that provide food or serve meals directly to individuals with low incomes or to elderly individuals, or that collect and distribute food to persons who provide food or serve meals directly to these individuals – that lawfully receive fish for purposes of redistribution. This clarifies in code the existing law enforcement policy on fish donations.

Sections 8, 11, 15, 50, and 53 revise code to match statutory changes that 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.

Section 9 clarifies in code that trolling is allowed as provided in s. 29.193(1m), Stats., which authorizes trolling approvals for disabled persons.

Sections 10, 44, 45, and 56 update Wisconsin-Michigan boundary water regulations. Section NR 23.01, Wis. Adm. Code, was amended in 2009 to include the language “The provisions of this chapter, *along with other applicable rules and statutes*, regulate fishing in WI-MI boundary waters.” which had the unintended result of applying some regulations in s. NR 20.20 to boundary waters. This rule will restore night fishing and remove a hook gap restriction on the Menominee River. In addition, rough fish spearing will be closed again on all WI-MI boundary waters. Specific language has been absent in ch. NR 23 regarding spearing, and, before 2009, regulation books stated that rough fish spearing was closed year round. This rule will specify that rough fish spearing is again closed in all WI-MI boundary waters and return regulations to how administrative code was previously interpreted and enforced. Wisconsin’s regulations will match Michigan regulations and are intended to improve public understanding of rule enforcement on these shared waters. Department of Natural Resources staff from both states met in 2011 and agreed to make night angling, hook size, and spearing changes for consistency between state regulations and for clarity within code.

Section 12 revises code to match statutory changes that allow 12- and 13-year olds to apply for a sturgeon spearing license in response to 2011 Wisconsin Act 168. Previously the lower age limit was 14 years of age.

Sections 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 28, 29, 30, 33, 35, 36, 37, 38, 39, 41, 42, and 43 remove the unnecessary notations of a 40-inch size limit for muskellunge in ss. NR 20.20(1) through (72) county regulations. A minimum size limit of 40 inches is the general inland waters size limit for muskellunge and is indicated in existing s. NR 20.20(73)(g). This regulation was effective April 1, 2012.

Section 22 removes expired language for regulations on Twin Valley Lake in Iowa County.

Section 27 corrects mistakenly printed regulation language for largemouth and smallmouth bass in Langlade County. There is no change to the regulation.

Section 31 corrects language for bass regulations on the Minocqua Chain in Oneida County. The early catch and release season dates for largemouth and smallmouth bass were left out in error during rule changes in 2012.

Section 32 removes expired language for largemouth and smallmouth bass in Big Round Lake and Balsam Lake in Polk County.

Section 34 clarifies the boundaries for trout regulations on the East Fork of Raccoon Creek (also known as Paddock Creek) in Rock County. Original code language was unclear and resulted in enforcement issues. Trout have only been stocked in the East Fork of Raccoon Creek and the regulation applies only to that classified section of trout waters.

Section 40 adds sunset language for bass regulations on Sparkling Lake in Vilas County that was mistakenly excluded from rule printing in 2008.

Section 46 prevents overlapping start and end dates of differing regulations for walleye, sauger, and hybrids on the Fox River downstream from the DePere Dam. Currently, the early season regulation begins on March 2 while the alternate regulation ends on the first Sunday in March. These dates may overlap in certain years.

Sections 47, 49, 52, and 55 provide free fishing during the third weekend in January each year when no license is required to fish in inland, outlying, and boundary waters, in response to statutory changes in 2011 Wisconsin Act 168.

Section 48 removes 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.

Sections 51, 54, and 57 makes 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.

Sections 58, 59, 60, 63, 64, and 68 make corrections to code or remove expired language within NR 25, rules governing commercial fishing in outlying waters.
Sections 61, 62, 65, 66, 67, 69, 70, and 71 delete references to minimum harvesting requirements for commercial fishing in the Great Lakes, in response to statutory changes in 2011 Wisconsin Act 177.
Section 72 adds the Old Stone Quarry to the list of secondary ports where fish are landed by commercial fishers. Commercial fishers need to call in a plan to the local warden each day that fish are being landed at a secondary port and this location is already being used as such. Law enforcement staff support this addition to code language.

Sections 73, 74, 75, 76, and 78 remove notations of expired fish refuges in NR 26.

Section 77 extends the boundary of an existing fish refuge on Wingra Creek in Dane County. The extension is necessary because a rebuilt and extended platform next to the refuge reduces protection for fish populations in this refuge area.

Agency contact person:

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NOTICE IS HEREBY FURTHER GIVEN THAT pursuant to ss. 227.114 and 227.137, Wis. Stats., it is not anticipated that the proposed rules will have an economic impact on small businesses. The Department conducted an economic impact analysis in consultation with businesses, business associations, local governmental units, and individuals. The Department determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN THAT the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN THAT pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kate Strom Hiorns at (608) 266-0828 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin _____
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary