

Report From Agency

REPORT TO LEGISLATURE

NR 13, 19, 20 to 23 and 25 , Wis. Adm. Code

Board Order No. FH-16-18
Clearinghouse Rule No. CR 19-009

Basis and Purpose of the Proposed Rule

Flathead and channel catfish are valued Wisconsin game fish, and closed seasons, bag limits, and size limits have been established for fishing with hook and line, setline and bank poles to ensure sustainable use. Under 2017 Act 297, taking catfish by hand, bow and arrow and crossbow is now allowed, and under emergency rule FH-15-18(E), seasons, size or bag limits for these methods of take are now in place. In certain situations, including spawning and overwintering seasons, catfish will be very vulnerable to harvest using these new methods without these harvest regulations.

The proposed rule creates bowfishing regulations for flathead and channel catfish that are similar to those currently in place for rough fish, but with specific bag and size limits. The rule also establishes a season for fishing by hand for flathead and channel catfish, subject to bag limits, size limits, gear restrictions and other regulations. Prior to Act 297, Wisconsin did not have any statewide rules allowing the harvest of game fish by bow, crossbow or by hand, but rough fish could be harvested by bow and crossbow in most of the state and by hand on some waters. Since the proposed hand fishing season overlaps with the spawning season for catfish that occurs from May to July, with most flatheads spawning in June and July, and since the bow and crossbow season is continuous on most waters, this rule creates opportunity for harvest with these methods.

This rule will apply on inland and boundary waters of the state. Where special size regulations and closed seasons or refuges exist, anglers will adhere to the regulations on those waters in addition to complying with the bag limits and equipment restrictions described in this rule.

This rule will also prohibit commercial harvest of catfish by bow, crossbow or by hand. While commercial harvest with bow or crossbow would likely be inefficient and not pursued, hand fishing for commercial purposes could quickly deplete local catfish populations during certain times of the year. This prohibition would apply to commercial fishers that sell their catch under the authority of a commercial fishing license.

This rule will also correct inconsistencies in rough fish and bullhead regulations between administrative code and the new statutes. Bullheads are a type of catfish, and thus under Act 297, they can be harvested by bow and arrow, crossbow or by hand. This rule adds these methods to administrative code with a season framework similar to the bowfishing season for rough fish and no size or bag limit on most waters.

Summary of Public Comments

The intent of Act 297 was to create the same regulations for bow/crossbow fishing for catfish as currently exist for hook and line fishing for catfish.

The intent of Act 297 was to open additional recreational opportunities for the harvest of catfish. The Act specifies that the department may not promulgate or enforce a rule that prohibits a person from taking rough fish or catfish by bow and arrow, crossbow, or by hand. Act 297 does not prohibit the department from promulgating or enforcing a rule that establishes bag limits or length limits, season dates, zones, or any other limitations applicable to rough fish or catfish if the rule is consistent with the purposes of Act 297. Other states

are also more conservative with their bow and arrow/hand grabbing bag restrictions compared to their hook and line bag restrictions.

Catfish in shallow waters are just as susceptible to hook and line fishing as bow and arrow or crossbow fishing.

Not necessarily; if fish are in a non-feeding pattern it is not easy to harvest them with hook and line. Catfish are susceptible to both methods of capture. However, solid arguments can be made that catfish harvest, especially the harvest of large specimens, occurs at higher rates using bow and arrow. In addition to harvesting larger fish, bow and arrow may also be a more efficient method of harvest for greater numbers compared to hook and line. It is difficult to differentiate between similar species of catfish while bow fishing leading to increased incidental harvest of flathead catfish which are present in lower numbers. Bow angling is 100% harvest with no catch and release.

The Mississippi River rule proposal indicates that the catfish population is abundant and healthy, and the number of bowfishers in the state is relatively low, so why is the DNR concerned about the overharvest of catfish with a bow/crossbow? Since the DNR is proposing a reduced hook and line bag limit for Mississippi catfish, would the DNR further reduce the bow/crossbow bag limit that is proposed in this rule?

We are proposing to decrease the daily bag from 25 catfish combined total to 10 combined total. In addition, we are proposing one-over 30 inches. This is a more conservative approach to managing catfish on the Mississippi River. Just like other parts of Wisconsin, flatheads are increasing in popularity among trophy hunters. There is great concern, even among bow fishermen, that trophy flatheads will be very susceptible to bow fishing. Large flatheads exhibit nighttime activity that makes them easy targets. Besides being a large target, they have also been found to be shallow and unwary – not a good combination. Since Act 297 was passed, during the summer of '18, a bow tournament was held that did not allow participants to register catfish. The organizer believed the results (many large catfish registered) would not look good in the eyes of other sportsmen. Channel catfish are also found in shallows at night, typically in great numbers (not a “schooling” fish, but found in close proximity to one another). At different times of the year catfish will be much more susceptible to bowfishing vs. hook and line depending on feeding, overwintering and reproduction needs during those times because of congregations. Regulations would help to prevent overharvest of catfish because of the potential of additional harvest via multiple methods (hook and line, bowfishing, commercial). Minnesota currently does not allow bowfishing for catfish and has a statewide reg of 10 fish bag (combined total).

The department does not plan to reduce the bow and crossbow bag limit in response to reducing the hook and line bag limit on the Mississippi River. As proposed in this rule, the bag limit would remain at 5 for channel catfish and 1 for flathead catfish.

This rule proposes a bag limit of one for flathead catfish if fishing with a bow, crossbow or by hand, but this restriction is not in place for hook and line fishing. Why is there not a concern about hook and line overharvest?

We do have a concern regarding the overharvest of flathead catfish, especially large specimens. Note the current Winnebago System regulations and the proposed MR WI/MN boundary waters regulation. There is also concern that catfish will be considered a rough fish by most bow anglers and disposed of with other fish harvested. In the future, the catfish species team will be proposing additional hook and line regulation options to prevent overharvest in areas of need. Bow angling is 100% harvest with no catch and release.

Channel catfish and flathead catfish are the topic of the rule, but bullheads are not considered. Will there be consistent rules on bullhead catfish? Also, current rules allow bullheads and certain panfish to be harvested by spearing while diving, while pursuing catfish with a bow/crossbow would occur at a greater distance.

Bullheads have different life history traits; they are extremely prolific spawners, become overabundant and have ability to reach harvestable sizes fairly quickly. Channel catfish and particularly flathead catfish are not as prolific as these other species. There are times of the year in which catfish populations may be concentrated

making them more susceptible. Catfish species are lie and wait predators which make them susceptible to spear fishing as well. Catfish are managed as a gamefish species while bullheads, yellow bass and rock bass are managed more as panfish. Catfish species, particularly flatheads, take longer to mature. Allowing much harvest prior to maturation could be detrimental to the flathead populations.

The department agrees that since catfish are not explicitly defined in Act 297, bullheads could be harvested under that legislation, but this is not clear in administrative code. Bullheads will be added to this rule so that the department's rules are not perceived as being in conflict with statutes. Bullheads are managed similar to rough fish in terms of open season, daily limit, and minimum length limit. The season will be continuous with no bag or size limit on most waters.

Commercial harvest of catfish is allowed with other methods – and yet bow and crossbow harvest is a concern.

From the Mississippi River standpoint, we do have concern regarding commercial harvest of catfish. This same point has been brought up by the public as we propose becoming more conservative with our hook and line regulations for catfish. These are separate issues that cannot be addressed at the same time.

Additionally, commercial harvest utilizes catch, whereas the use of fish harvested by bow/crossbow/hand may be more variable. We do plan to address commercial harvest of catfish on the Mississippi River, just not at this time.

Not many bow and crossbow anglers will be taking part in this – they want to harvest a catfish for food, or be able to keep an incidentally caught catfish. Regulations should be simpler.

We do not know how popular this is or may become, and it is imperative we take a conservative approach. The proposed regulations, with no size limits, standardized bag limits and a season that in most cases runs concurrent with the bowfishing season for rough fish, attempts to establish consistent regulations for bow, crossbow and hand anglers. The department believes that the proposed bag limits will allow bowfishers to harvest catfish if the opportunity arises while recognizing that catfish are a game fish recognized for their trophy potential.

The regulations for bow, crossbow and hand harvest of catfish should be more restrictive (i.e., one for channel catfish and one for flathead catfish). Hand fishing, which is not a tradition in Wisconsin, can cause disruption to spawning beds because anglers cannot differentiate between flathead and channel catfish when they initially grab the fish.

The department will continue to monitor catfish population status and reproductive success under the new rules. Because hand fishing does not have the same traditional roots in Wisconsin as in southern states, the degree of participation is unknown at this time. If participation is determined to be negatively impacting catfish populations, the department will consider further restrictions.

Considering that catfish are expanding their range, and gear plays less of a role in restricting harvest than seasons, bag and size limits, the bag limit seems reasonable. Management should also focus on habitat, watershed, and environmental protection.

We agree that habitat management and environmental conservation are important for maintaining a healthy catfish population. The department will continue to conduct research and habitat projects in waters harboring catfish.

Modifications Made

Based on public input, the department modified the rule to clarify the regulations for taking bullheads by hand or with a bow and arrow or crossbow. Bullheads are a type of catfish, but unlike flathead and channel catfish, they grow quickly, reproduce prolifically and can become overabundant. Due to these traits, bullhead bowfishing regulations can more closely follow rough fish regulations. This rule adds bullhead regulations of a continuous season and no size and bag limits for most waters for bowfishing, and a hand fishing season from June 1 to August 31 with no size and bag limits.

Appearances at the Public Hearing

Public appearances at the permanent rule hearings included:

Terry O'Connor, representing self

Brandon Cole, Jody Bigalke and Paul Wood, representing Wisconsin Bowfishing Association

Justen Urban, representing Wisconsin Bowfishing Association

Chad Hahn, representing self

Brad Marx, representing Bowfishing Association of America

Greg Seubert, Wisconsin Outdoor News

Changes to Rule Analysis and Fiscal Estimate

Changes to the plain language analysis of the rule included a description of how regulations were clarified for bullheads, as well as clarifying that fishing for catfish with bow, crossbow or by hand is not allowed for holders of a commercial fishing license and for commercial purposes.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code, conflict with or duplication of existing rules, and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

For section 2.d., the intent was to allow catfish to be taken with a bow and arrow or crossbow from sunset to sunrise (or any other time) during the open season for spearing rough fish.

For section 5.a., clarifications were made to the rule in sections that pertained to specific types of catfish (flathead, channel and bullheads). However, a broad definition was not added because it would likely have to encompass some catfish species that are not typically harvested or are protected, and this could lead to additional confusion.

For section 5.g., the rule was not modified in this way because anglers cannot take catfish with a bow and arrow, crossbow or by hand for commercial purposes on any waters of the state, not just outlying and boundary waters.

Final Regulatory Flexibility Analysis

Impacts on small businesses as a result of this rule will be minimal, as the proposed regulations will continue to allow catfish and rough fish to be harvested through the new methods and will not significantly impact current hook and line fishing. These rules are mainly applicable to individual anglers and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.