

Report From Agency

REPORT TO LEGISLATURE

NR 20, 21 and 26, Wis. Adm. Code

Board Order No. FH-01-22
Clearinghouse Rule No. CR 23-009

Basis and Purpose of the Proposed Rule

This rule will apply fishing regulations to waters of the state to accomplish management goals. Such management goals include improving size structure of game fish, increasing the density or abundance of certain fish species or increasing the survival of mature adults; establishing statewide regulations that provide harvest opportunity while protecting fish populations; and aligning regulations with public desires for certain waterbodies.

Summary of Public Comments

Muskies are stocked in tributaries to Green Bay and return to spawn, making them vulnerable to snagging/foul hooking.

Muskies occupying shallower waters around the spawn will lead to increased foul hooking when fishing and additional fishing for trophy fish.

Additional fishing pressure during a three-week period is not expected to result in population-level impacts on muskies due to the catch-and-release nature of the fishery. Also, the musky spawning period is highly variable and the open season can often overlap with spawning. During spawning, muskies are focused on spawning and little else. In addition, there is a lack of published research indicating that foul hooking leads to illegal capture of muskies, and department staff have not observed issues with foul hooking in southern Wisconsin where the musky season opens on the first Saturday in May.

Northern Wisconsin waters are experiencing increased fishing pressure, and this proposal would add more fishing pressure to small northern waterbodies.

Due to the high interest in catch-and-release fishing for muskies, harvest of muskies would continue to remain sustainable even under an earlier musky season opener in northern Wisconsin. In addition, many anglers would continue to target other fish species on the traditional opening weekend the first Saturday in May, so fishing pressure would not be directed solely at muskies. However, the musky season proposal has been removed from the rule.

Smaller bait used in the spring for muskies will likely cause more delayed hooking mortality.

Hooking mortality is not expected to cause population-level impacts for muskies as a result of opening the musky season the first Saturday in May instead of the Saturday nearest Memorial Day. Multiple studies have found that hooking mortality for muskellunge is ~5%. However, the musky season proposal has been removed from the rule.

What is the purpose of this change—is the trophy fishery overpopulated or currently being underutilized?

Due to the proportion of catch-and-release musky anglers in Wisconsin, and minimum length limits of 50 inches for musky in many waters in northern Wisconsin, opening the season on the first Saturday in May would provide additional fishing opportunity for muskies without imposing substantial levels of harvest. The average musky harvest is 237 muskies per year currently, whereas when the northern zone season opener on the Saturday nearest Memorial Day was implemented, over 66,000 muskies were harvested per year. This change to open the season on the first Saturday in May statewide would allow anglers to better utilize the

musky resource. The musky season has opened on the first Saturday in May for many years in southern Wisconsin with no biological impacts on musky populations. However, the department is not moving forward with the musky season structure proposal in this rule.

Tournament fishing for muskies during the early season would cause additional issues.

Existing rules and the ability for the department to apply conditions to tournament permits would continue to limit musky tournaments.

A closed period is needed on the St. Croix River to allow walleyes to spawn and replenish the population.

Many of the fish that spawn in the St. Croix River are migratory, moving up from the Mississippi River and then returning after spawning. Therefore, anglers would be fishing for both Mississippi and St. Croix walleyes during the spring spawning period. A continuous game fish season on the Mississippi River has not resulted in population-level impacts to walleyes, nor would that be expected for the St. Croix River. However, the department will not be pursuing a continuous game fish season for the St. Croix River at this time.

Opening the St. Croix River with a continuous season would put great fishing pressure from nearby cities on walleyes during the spring when inland waters are still closed, which would decrease the walleye population and damage/end the fishery in the future. Removal of spawning walleyes would leave fewer eggs to replenish the population.

Walleyes that migrate up the St. Croix River to spawn are not as likely to bite due to their focus on spawning, and accompanying size and bag limit changes would mitigate the increased fishing pressure during certain times of the year. Additionally, the size restrictions on walleye would provide further protection for walleyes of spawning size. However, the department will not be pursuing a continuous game fish season for the St. Croix River at this time.

Opening the St. Croix River to continuous fishing to make it consistent with the Mississippi River would make it inconsistent with inland waters.

As the St. Croix River is a tributary of the Mississippi River and a major river in Wisconsin, a continuous game fish season would be consistent with other major river systems. The game fish season dates on the St. Croix River are already inconsistent with those for inland waters, as boundary waters are managed separately from inland waters and management involves coordination with neighboring agencies to achieve consistent season dates and fishing regulations on both sides of the boundary waters.

This St. Croix River season proposal will kill thousands of undersized fish due to poor fish handling/release.

Although the continuous game fish season proposal was not expected to result in population-level effects on walleye, the department will not be pursuing a continuous game fish season for the St. Croix River at this time.

This St. Croix River season proposal would lead to additional boat traffic and associated pollution, and crowding.

The department will not be pursuing a continuous game fish season for the St. Croix River at this time after reviewing the results of public input.

Maintaining a closed season on the St. Croix River should allow the walleye population to increase, resulting in abundant fish, which is an easier situation to manage than trying to revitalize walleye populations that have declined.

In light of the removal of the continuous game fish season proposal from this rule package, the department and Minnesota Department of Natural Resources will still continue to monitor the St. Croix River walleye population under the new reduced bag and adjusted size limit regulations to identify walleye population trends and determine future management actions.

Maintaining a closed season on the St. Croix River would help walleye better adapt to other ongoing changes on the river, including invasive species, fishing technology use, changes in the forage fish community that walleye use as food, increasing fishing pressure due to larger human populations, and other factors.

The department will not be pursuing a continuous game fish season for the St. Croix River at this time, so the existing closed season will remain in place.

Other rivers with a continuous game fish season have a daily bag limit of one for walleye in recognition of the impacts of fishing pressure on the walleye, which is not part of the St. Croix River proposal.

The department is adjusting the regulations for walleye and sauger, including lowering the daily bag limits, as part of this rule, which was in part to balance the potential for year-round harvest. Combinations of season length, gear restrictions, and size and bag limits can manage angler fishing pressure in different ways. The walleye and sauger regulations would match those of the Mississippi River, which also has a continuous fishing season for game fish. However, the department is not including the continuous game fish season for the St. Croix River in this rule, so no further reductions in walleye bag limits are proposed at this time.

Has the department conducted a study on the effects of a continuous season on spawning walleye on the St. Croix River?

The department has long-term data on the walleye population for the Mississippi River, of which the St. Croix is a tributary, indicating that walleye populations remain stable in spite of the long-standing continuous game fish season on the Mississippi River. However, a study specific to the St. Croix River has not been conducted because the St. Croix River does not currently have a continuous fishing season, and the department is not including the continuous game fish season for the St. Croix River in this rule.

Year-round fishing in the St. Croix River would disturb walleye spawning habitat.

The majority of walleye spawn in Lake St. Croix and right near the St. Croix Falls Dam; the rest of the river between Prescott and the dam is less appropriate for spawning habitat for walleyes. The fish refuge also proposed in the Spring Hearings would protect fish near the dam from disturbances. However, the department is not including the continuous game fish season for the St. Croix River in this rule.

A continuous open season on the St. Croix River would not be implemented for musky and lake sturgeon, but the season would apply for other game fish despite concerns for walleye in particular.

For the continuous game fish season waters within Wisconsin, musky and lake sturgeon always have separate open and closed seasons due to the lower populations of these fish and slower reproduction compared to other game fish species. The department is not including the continuous game fish season for the St. Croix River in this rule.

The general fishing season opener in May should be consistent on all waters to better distribute angler fishing activity across waters.

Fishing regulations for boundary waters are adjusted whenever possible through joint discussions between the boundary water state agencies. Making the season opener dates consistent would require further discussion with the Minnesota Department of Natural Resources. The season dates for boundary waters and inland waters often differ as well; for example, waters in the northern bass zone open later for smallmouth bass harvested than waters in the southern bass zone for inland waters, while the boundary waters have a separate set of season dates.

Modifications Made

The draft rule contained multiple changes that would have extended the musky season structure in the northern part of the state by about three weeks and standardized the end date of the season to December 31 on open water statewide. The season then would have run from the first Saturday in May to December 31 on open water statewide, simplifying regulations and providing more fishing opportunity in northern Wisconsin. As

a result of the Wisconsin Conservation Congress's opposition to this proposal, the department removed all draft season structure changes from the rule.

The department also removed a proposal to create a continuous open game fish season on the St. Croix River up to the St. Croix Falls dam, which was opposed locally and through the public hearing and comment period.

Appearances at the Public Hearing

Dave Orf
Jerry Larson

Changes to Rule Analysis and Fiscal Estimate

The rule analysis was changed to reflect removal of the musky season structure changes and St. Croix River game fish season proposal. No changes were needed in the fiscal estimate.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code, 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.

The Legislative Council Rules Clearinghouse recommended updating the names of certain lakes to reflect recent department renaming efforts. However, the department determined that a more appropriate route for updating the names would be through the 2023 Fisheries Management housekeeping rule.

Final Regulatory Flexibility Analysis

This rule will not have a significant fiscal effect on the private sector or small businesses. This rule is applicable to individual sportspersons and no design or operational standards are contained in the rule. The proposed rule would not impose any reporting requirements on small businesses, nor are any design or operational standards contained in the rule. The rule would not allow for the potential to establish a reduced fine for small businesses, nor would it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses.

Response to Small Business Regulatory Review Board Report

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