

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING AND RECREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal and recreate NR 20.20(53)(f) and (63)(c) relating to trout fishing in Richland and Vernon counties.

FH-54-04

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted: In promulgating this rule, ss. 29.014(1) and 29.041, Stats., have been interpreted as giving the department the authority to make changes to fishing regulations to inland and boundary waters of Wisconsin.

Statutory Authority: Statutes that authorize the promulgation of this rule order include ss. 29.014(1), 29.041 and 227.11(2)(a), Stats.

Explanation of Agency Authority to Promulgate the Proposed Rules Under the Statutory Authority: Sections 29.014(1), 29.041 and 227.11(2)(a), Stats., grant rule making authority to the department to establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping; and provide that the department may regulate hunting and fishing on and in all interstate boundary waters, and outlying waters. 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.

Related Rule or Statute: None

Plain Language Rule Analysis: This rule changes the trout fishing regulation on the Pine river (upper most STH 80 bridge upstream to CTH CH in village of Yuba) from catch and release to 3 trout bag limit and 9 inch size limit. It also changes the regulations on Melancthon creek from catch and release with artificial lures on the whole stream for all trout, to allow the harvest of 5 trout in total, only 3 of which can be brook trout. Brown or rainbow trout must be over 7 inches while brook trout must be between 6 and 9 inches. Anglers can use bait downstream of STH 80, but can only use artificial lures upstream from STH 80.

Summary of and Comparison with Existing or Proposed Federal Regulations: None known.

Comparison of Similar Rules in Adjacent States: Fisheries management is generally quite similar in the states surrounding Wisconsin. All the bordering states regulate fishing by the use of seasons, bag limits and size limits. Specific seasons, bag and size limits may differ for species across the surrounding states; however, the general principles are similar. Michigan, Minnesota, Iowa and Illinois all have statewide seasons, bag and size limits for fish species, along with special or experimental regulations on individual waters.

Summary of Factual Data and Analytical Methodologies Used in Support of the Rule: This rule change originated as a public request and petition. The rule on the Pine River is as suggested by the public and is supported by a September 2003 fish survey that shows a healthy brown trout population. The rule on Melancthon Creek was modified to allow some harvest of brook trout, as desired by the local public, but has restrictions on the size of fish that may be kept and the type of gear that may be used in order to protect an important population of native brook trout. A 1998 genetics study recommended that this population be used as a source of wild broodstock for southwest Wisconsin. A fish survey in June 2004 showed a decent class 1 brook trout population, with limited numbers of fish larger than 9 inches.

Analysis and Documentation Used in Support of the Agency's Determination Under s. 227.114, Stats. (Small Business impact): The proposed rules do not apply directly to business, but to sport anglers, therefore no analysis will be required.

Anticipated Costs Incurred by Private Sector: Costs incurred by the private sector are not anticipated.

Effect on Small Business, Including How the Rule Will Be Enforced: The proposed rule will not directly affect small business as the rules will not directly apply to them. The rules will be enforced by Conservation Wardens who have arrest powers and may use citations.

Agency Contact Person: Steve Hewett, FH/3, 101 South Webster Street, Madison, WI 53707-7921; email: Steve.Hewett@dnr.state.wi.us; phone: 608-267-7501.

SECTION 1. NR 20.20(53)(f) is repealed and recreated to read:

NR 20.20 (53) RICHLAND (for species or waters not listed, see sub. (73))

(f) Trout and salmon	1. Bear creek (STH 130 bridge in T9N, R2E, S14 upstream to county line), Little Willow creek (downstream from Spiral road), Pine river (uppermost STH 80 bridge downstream to CTH AA), Willow creek (STH 58 bridge 2.75 miles south of Ithaca upstream to Lost Hollow road, and STH 58 bridge ¼ mile north of Loyd upstream to county line)	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	2 in total	12
	2. Melancthon creek (upstream from STH 80 at north line of NE1/4, S22, T12N, R1E)	a. Hook and line, only artificial lures may be used	First Saturday in May at 5:00 a.m. to September 30	5 trout in total, only 3 may be brook trout	7 brown and rainbow trout, brook trout must be between 6-9
	3. Melancthon creek (downstream from STH 80 at north line of NE1/4, S22, T12N, R1E)	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	5 trout in total, only 3 may be brook trout	7 brown and rainbow trout, brook trout must be between 6-9
	4. Ash creek (upstream from STH 80), Gault Hollow creek (downstream from CTH H), Mill creek (USH 14 upstream to Quarry Hill road), Smith Hollow creek (downstream from Smyth Hollow road), west branch Pine river (Old County	a. Hook and line, only artificial lures may be used	First Saturday in May at 5:00 a.m. to September 30	All trout caught shall be immediately released	None

Farm drive upstream to Spangler Ridge road, Willow creek (Lost Hollow road upstream to STH 58 bridge ¼ mile north of Loyd)

5. All waters not listed	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	3 in total	9
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SECTION 2. NR 20.20(63)(c) is repealed and recreated to read:

NR 20.20 (63) VERNON (for species and waters not listed, see sub. (73))

(c) Trout and salmon	1. Esofea branch upstream of Run Hollow lake to Saxford road, Kickapoo river (west fork) from Hwy. 82 upstream to CTH S and Bloomingdale road (S6, T13N, R3W), Seas branch upstream from impoundment in T13N R4W S14, Creek 16-6 (T13N, R7W, S16), Creek 29-4 (T13N, R7W, S29)	a. Hook and line, only artificial lures may be used	First Saturday in May at 5:00 a.m. to September 30	All trout caught shall be immediately released	None
	2. Timber Coulee creek from CTH P upstream to Olstad road	a. Hook and line, only artificial lures may be used	First Saturday in May at 5:00 a.m. to September 30	All trout caught shall be immediately released	None
	3. Timber Coulee creek other than that portion from CTH P upstream to Olstad road, Bishop branch	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	5 in total but none may be longer than 12"	Maximum length limit 12"
	4. Melancthon creek	a. Hook and line, only artificial lures may be used	First Saturday in May at 5:00 a.m. to September 30	5 trout in total, only 3 may be brook trout	7 brown and rainbow trout, brook trout must be between 6-9
	5. All waters not listed	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	3 in total	9

SECTION 3 EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)