

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-04-20

Relating to: Sturgeon Spearing Harvest Regulations and Gear Use (Ch. NR 20)

Rule Type: Permanent

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

This will be a permanent rule.

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

The Winnebago System is home to one of the largest lake sturgeon (*Acipenser fulvescens*) populations in the world, which supports a very popular sturgeon spearfishery. The annual sturgeon spearing season on Lake Winnebago and the Upriver Lakes (including Lakes Butte de Morts, Winneconne and Poygan) is managed under a harvest cap system to protect the fishery from overharvest and maintain a healthy sturgeon population. The sturgeon spearing season occurs through the ice in February, and spearer harvest success is often correlated with water clarity rather than spearing methods. In the shallower waters of the Upriver Lakes, spearing success is often higher because spearers can clearly see to the bottom in most seasons. In the deeper waters of Lake Winnebago, murkier waters can obscure sturgeon. However, in recent years, social preferences for harvest regulations and allowable sturgeon spearing methods and gear use have prompted the department to review and potentially change the rules for the Winnebago system sturgeon spearing season.

This rule may establish restrictions on technology used for spearing sturgeon in order to maintain a traditional spearfishery in light of rapid technological modernization, and may remove the size limit for sturgeon taken during this season. The Wisconsin Conservation Congress and Spring Hearings participants supported both proposals.

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:

This rule may establish a prohibition on the use of underwater cameras, electronic fish finders, and other similar technology during the Winnebago system sturgeon spearing season only. While the use of cameras and fish finders does not currently contribute to overharvest of sturgeon due to the harvest limit of one sturgeon per licensed spearer and implementation of the harvest cap system, some spearkers have expressed concerns related to the use of underwater cameras and other forms of technology. These spearkers feel that the use of such technologies is unethical and improves the likelihood of spearing a sturgeon, especially during years when water clarity is low, compared to the traditional method of throwing the spear only when a sturgeon is observed with the naked eye as it passes through the hole cut in the ice. However, other people contend that the use of cameras, electronic fish finders and other technologies keeps spearkers engaged and potentially attracts new people to the sport by providing a glimpse of sturgeon and other fish moving around under the ice.

This rule may also remove the size limit for sturgeon taken during the spearing season. Under the existing 36-inch minimum length limit for sturgeon, undersized fish cannot be kept, and the sublegal-sized fish that are accidentally speared are released and likely exhibit high mortality. Removing the size limit would allow a spearer to legally keep a smaller sturgeon, whether speared accidentally or intentionally. This would potentially reduce waste of smaller fish while also potentially reducing the number of larger fish speared due to the one-fish sturgeon bag limit.

This rule may also address other minor changes reasonably relating to the Winnebago system sturgeon spearfishery, changes to facilitate enforcement of current law, and other changes to achieve congruence with statutory enactments.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 29.014, Wis. Stats., “rule-making for this chapter,” grants the department the authority to establish and maintain open and closed seasons, bag limits, size limits and other conditions that will conserve fish populations and provide good fishing opportunities for the citizens of the state.

Section 29.041, Wis. 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 a amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates spending 200 hours developing this rule, including holding public meetings and hearings.

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

This rule would mainly affect participants in the Lake Winnebago sturgeon spearfishery. Some businesses that sell underwater cameras and other fishing technology may be impacted, but exact impacts are unknown since people can purchase this equipment from a variety of online and in-person sources. Additionally, the department is uncertain of the number of spearers that may continue or discontinue purchasing electronic equipment for use during other fishing seasons if a technology prohibition is in place during the sturgeon spearing season.

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:

No federal regulations currently apply. States possess inherent authority to manage the fishery and wildlife resources within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register. The U.S. Fish and Wildlife Service is currently reviewing the conservation status of the lake sturgeon populations throughout the United States, but no action has been taken to further regulate lake sturgeon on a federal level.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

Economic impacts are expected to be minimal, if any. The rule is mainly applicable to individual anglers and imposes no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

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

The department anticipates holding 2 public hearings in the month of November 2021. Hearing cities will be: Appleton, WI and Fond du Lac, WI.

The department will hold these hearings in these locations to obtain public input from Winnebago sturgeon spearing season participants.

Contact Person: David Boyarski, 920-559-2341, David.Boyarski@wisconsin.gov; Meredith Penthorn, 608-316-0080, Meredith.Penthorn@wisconsin.gov

Preston D. Cole, Secretary

Date Submitted