

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-09-22 (E) and FH-10-22

Relating to: Fish refuge establishment; Chs. NR 20 and 26

Rule Type: Both Permanent and Emergency

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

Through the creation of fish refuges, this emergency rule will protect the the public welfare by protecting fish populations in areas where fish are highly concentrated and vulnerable to angler harvest. Several fish passage and similar projects are planned or in the process of being implemented across the state, and while fish passages promote fish movement within their spawning range in order to maintain healthy fish populations, they also can cause fish to congregate in a very small area where anglers could more easily target them. Refuges created through this rule may also protect public safety through the prohibition of fishing access when the refuge encompasses areas around a dam where dam mechanics, water depths and velocities, and other factors present a hazard to the public.

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

These rules will create fish refuges around fish passages or similar structures or spawning areas that are expected to lead to increased concentrations of fish, resulting in increased vulnerability of these fish to angler harvest. The objective of these refuges is to protect fish populations from overharvest when they are concentrated, as well as to minimize fishing-related disturbances to spawning fish in these areas. The refuges may also protect public safety in areas where fishing near dams or related structures would present safety hazards.

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:

These rules may create fish refuges around certain fish passages at dams, and in similar areas where fish concentrations increase either seasonally or year-round, making them vulnerable to angler harvest. Fish passages promote the natural movement of fish, and are important for allowing species such as lake sturgeon, walleye, smallmouth bass, northern pike, and other game fish to reach their

spawning habitat. This rule may establish fish refuges that are in effect year-round or for only a certain time of the year on specific waterbodies. The emergency rule may establish fish refuges in response to new fish passage construction or similar projects so that the refuges will be in effect much sooner than possible under a permanent rule. The permanent rule may include additional fish refuges around future fish passages and other management areas.

Typically, the department establishes fish refuges through the biennial Spring Hearing rule. However, current fish passage project construction timelines and the potential for similar projects to arise in the near future due to increased infrastructure funding may require fish refuges to be implemented on a much quicker timeline than the Spring Hearing rule.

If these rules are not pursued, the department will not have an efficient way to proactively respond to upcoming situations in which fish may be concentrated near dams or other structures or in spawning areas. This could lead to disturbance to fish attempting to reach their spawning habitat as well as significant angler harvest pressure, which may have a detrimental impact on local fish population dynamics.

The permanent rule may also create a mechanism for the department to more quickly implement future fish refuges on a temporary basis when specified criteria are met that indicate that fish are likely to concentrate in a small area. If pursued, this mechanism may utilize a public notice and input process similar to procedures already established in statutes for establishing wildlife refuges on private lands (s. 29.621, Stats.) and for closing waterbodies to fishing in response to dam drawdowns or similar unusual conditions (water level reductions, ice conditions, fishery rehabilitation and presence of non-indigenous species) (s. NR 20.33, Wis. Admin. Code). The statutory procedures for designating a wildlife refuge under s. 29.621, Stats., involve publication of a legal notice, a secretary's order, and posting of the property as a wildlife refuge. The procedures for closing waters to fishing under unusual conditions require publication of a public notice, public meeting, and posting the notice near the waterbody. A new mechanism for creating a fish refuge under specific conditions may also include steps for public notice and meetings prior to establishment of the new refuge.

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

Section 23.09 (2) (c), Stats., provides that the department may designate fish refuges to secure the perpetuation and adequate supply of any species of fish and provide safe retreats in which fish may breed and replenish adjacent fishing waters.

Section 29.014, 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, 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 amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that 100 hours will be needed to develop these rules.

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

This rule will mainly affect individual anglers that currently fish the waters within the boundaries of any area proposed as a new fish refuge.

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 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.

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

These rules are not expected to have a direct economic impact, as they will only restrict fishing from a small area around fish passages and similar projects. These rules may have an indirect, positive economic impact since any fish refuges created through these rules will ensure the perpetuation of game fish species by allowing the fish to safely move across barriers and reach their spawning waters.

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

The department anticipates holding one public hearing for the emergency rule in the month of December 2022 and one public hearing for the permanent rule in the month of March 2023. Hearing cities will be: Milwaukee, WI or virtual by videoconference.

The department will hold these hearings in these locations to gain public input in the areas in which fish refuges are proposed.

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