

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 26.08(39)(a)1.; to amend NR 20.03(8), (31), (41), 20.07(1), 20.09(3), 20.11(1)(e), 20.12(4), 20.20(intro), (9)(a), (13)(g)1., (18)(a), (47)(a), 21.02(4m), (10), 21.04(16), 21.08(intro.), 22.02(4m), (9), 23.02(1), (7) and 26.05(51)(c); to repeal and recreate NR 20.03(31) and 20.20(49)(e); and to create NR 20.03(39m) and 20.18 relating to fishing on the inland, outlying and boundary waters of Wisconsin.

FH-04-04

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: ss. 29.014(1) and 29.041, Stats.

Statutory authority: ss. 29.014(1), 29.041, and 227.11(2), Stats.

Explanation of agency authority: In promulgating this rule, ss. 29.014(1) and 29.041, Stats., have been interpreted as allowing the department the authority to make non-controversial housekeeping changes to fishing regulations to inland and boundary waters of Wisconsin.

Statutes that authorizes the promulgation of this rule order include ss. 29.014(1) , 29.041 and 227.11(2), Stats. These sections 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; that the department may regulate hunting and fishing on and in all interstate boundary waters, and outlying waters; and that all rules promulgated under this authority are subject to review under ch. 227, Stats.

Plain language rule analysis: Section by section details of this rule order are outlined as follows:

Section 1 amends the definition of 'daily bag limit' to clarify that daily bag limits for fish species apply to individual waters or portions of waters.

Section 2 amends the definition of 'possession limit' to clarify it is twice the total daily bag limit specified in a newly created table.

Section 3 creates a definition for 'total daily bag limit' in order to clarify how possession limits apply for waters with restrictive daily bag limits.

Section 4 amends the definition of 'trout stream' to clarify it may apply to portions of waters and not the entire named water.

Section 5 clarifies that no person may have more than there possession limit at any time.

Section 6 establishes a prohibition of possession of fish in excess of the total daily bag limit each day.

Section 7 clarifies that a sturgeon that is caught and not immediately released must not only be immediately tagged, but that the tag must be validated.

Section 8 clarifies that underwater spearing of white bass, yellow bass, rock bass, panfish and bullheads by skin or scuba diving are subject to the same seasons, size limits and bag limits that apply to hook and line anglers.

Section 9 adds the word 'and', which was inadvertently omitted. Adding 'and' makes the language consistent with NR 20.11(1)(d).

Section 10 deletes reference to the sale of turtles from ch. NR 20 because it is now covered by captive wildlife rules and adds a note referring to ch. NR 19.

Section 11 establishes total daily bag limits for fish.

Section 12 clarifies that daily bag limits in s. NR 20.20 apply to individual waters or portions of waters and may be combined with other waters to obtain the total daily bag limit.

Section 13 clarifies the boundary up to which trolling is allowed on tributaries to Chippewa river flowages in Chippewa county by defining an easily observed marker (bridge).

Section 14 clarifies the downstream boundary for the catch and release only stretch of Black Earth creek, Dane county, by identifying the specific location of 'Park Street' as being immediately east of the village of Black Earth.

Section 15 clarifies the boundary up to which trolling is allowed on tributaries to Chippewa river flowages in Eau Claire county by defining an easily observed marker (bridge).

Section 16 eliminates unnecessary language referring to sloughs, bayous and flowages of the Chippewa river in Pepin county.

Section 17 extends the ending date for the trout fishing season on Clarey lake, Crescent lake, Ice House lake, and Lower Pine lake in Polk county from September 30 to the first Sunday in March. These trout lakes, which are managed to provide an ice fishery for trout as well as an open water fishery, were inadvertently put into the countywide regulation category for Polk county during the major trout regulation simplification in 2002.

Sections 18, 19, 22, 23, 24 and 25 amend the definitions of bag limit and possession limit on boundary waters, referring them to the amended definitions in s. NR 20.03.

Section 20 clarifies the possession restrictions for fish and turtles on Wisconsin-Minnesota boundary waters while not on the water, and eliminates unnecessary references to s. 29.041, Stats.

Section 21 updates the reference to ch. NR 20 on the use of nets for smelt on the St. Louis river. The current code refers to the section in NR 20 prior to a major rewrite, and eliminates unnecessary references to s, NR 23.11, ss. 29.041 and 29.509, Stats,

Section 26 corrects a misprint in the location of a refuge on Squaw creek, Price county.

Section 27 eliminates a refuge on the Fox river, Marquette county after removal of the dam at which the refuge was located.

Federal regulatory analysis: Provided state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of Federal statutes and regulations, regulation of fishing for native species has been delegated to state fish and wildlife agencies. No federal regulations regarding seasons, bag limits and size limits have been drafted or implemented. Additionally, none of the proposed rules exceed the authorities granted the states in 50 CFR 10.

State regulatory analysis: 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: Each year, minor mistakes are found in the administrative codes applying to fishing regulations, and in addition, instances where clarification is needed are identified when a rule is being enforced or interpreted. The FH program, along with LE and LS, strives to find and correct the mistakes and make existing rules more clear for interpretation and enforcement.

Summary of small business and economic impact: Impacts on small business and the economy will be minimal if any. These proposed rule changes are simply clarifications of existing rules.

Anticipated costs incurred by private sector: Costs incurred by the private sector are not anticipated.

SECTION 1. NR 20.03(8) is amended to read:

NR 20.03(8) "Daily bag limit" means the maximum number of fish that may be reduced to a person's possession from a specified waterbody or portion of a waterbody in one day.

SECTION 2. NR 20.03(31) is repealed and recreated to read:

NR 20.03(31) "Possession limit" means the maximum number of fish that a person may possess, which is twice the total daily bag limit specified in s. NR 20.18 except for the following:

(a) The possession limit for trout is 10 of which no more than 5 may be a combined total of brown and rainbow trout.

(b) The possession limit for minnows is specified in s. NR 20.14.

(c) The possession limit for flathead catfish from the Lake Winnebago system is 10 until March 31, 2012, when it reverts back to twice the daily bag limit.

(d) There is no possession limit for catfish caught on setlines, set or bank poles on the Fox river upstream from the DePere dam in Brown county.

(e) There is no possession limit for panfish on Twin Valley lake in Iowa county.

(f) There is no possession limit for any species on Nebish, Palette, Mystery, Spruce or Escanaba lakes in Vilas county unless specified in s. NR 20.20(64).

(g) There is no possession limit for white perch on Lake Michigan, Green Bay, Lake Michigan tributaries, major Green Bay tributaries, all other tributary streams, rivers and ditches to Green Bay upstream to the first dam or lake.

SECTION 3. NR 20.03(39m) is created to read:

NR 20.03(39m) "Total daily bag limit" specified in s. NR 20.18 means the maximum number of fish that may be reduced to a person's possession in one day from all waters or portions of waters fished that day.

SECTION 4. NR 20.03(41) is amended to read:

NR 20.03(41) "Trout stream" means those waters or portions of waters designated by the department pursuant to s. NR 1.02(7).

SECTION 5. NR 20.05(8) is amended to read:

NR 20.05(8) Possess or control any fish in excess of the possession limit at any time.

SECTION 6. NR 20.05(15) is created to read:

NR 20.05(15) Possess or control any fish in excess of the total daily bag limit each day.

SECTION 7. NR 20.07(1) is amended to read:

NR 20.07(1) Possess a lake sturgeon taken by hook and line and not immediately release it, unless a hook and line lake sturgeon tag is immediately validated as required by the department and attached to the lake sturgeon and the tagged lake sturgeon is registered at a department lake sturgeon registration station by 6:00 p.m. on the day after it was taken.

SECTION 8. NR 20.09(3) is amended to read:

NR 20.09(3) Spear any game fish except that white bass, yellow bass, rock bass, panfish and bullheads may be speared while skin diving or scuba diving during the open season for rough fish spearing on waters specified in s. NR 20.20, provided that the season for white bass, yellow bass, rock bass, panfish and bullheads is also open on the same water. Daily bag limits and size restrictions specified in s. NR 20.20 for white bass, yellow bass, rock bass, panfish and bullheads also apply.

SECTION 9. NR 20.11(1)(e) is amended to read:

NR 20.11(1)(e) The fishing shelter is removed from the ice daily and when not in use after March 15 on inland waters north of highway 64 and all other outlying waters.

SECTION 10. NR 20.12(4)(title) is amended to read:

NR 20.12(4)(title) ~~SALE OF FISH AND TURTLES.~~ No person may sell any fish ~~or other animal~~ taken on a set or bank pole or setline except the following:

- (a) Rough fish.
- ~~(b) Turtles during the open season specified in s. NR 19.275.~~
- ~~(c)~~ (b) Channel catfish taken from lakes Winnebago, Butte des Morts, Winneconne, Poygan, and the Wolf river from 500 feet below the Shawano dam downstream to its mouth.

Note: Refer to s. NR 19.275 for inland turtle regulations.

SECTION 11. NR 20.18 is created to read:

NR 20.18 Total daily bag limits. Daily bag limits identified in s. NR 20.20 are individual water limits that apply to the waters or portions of waters specified and may be combined with daily bag limits for other waters or portions of waters, but no person may exceed the total daily bag limit in this section unless authorized by s. NR 20.35 or for a specific water listed in s. NR 20.20, 21.04, 22.04 or 23.05(5).

SPECIES	TOTAL DAILY BAG LIMIT
(1) Catfish	25 in total, of which only 2 may be flathead catfish from the Lake Winnebago system
(2) Cisco (lake herring), whitefish and their hybrids	
(a) Inland waters	25 pounds and one fish in total
(b) Outlying waters	10 in total
(3) Lake sturgeon	1 per season as specified in ss. NR 20.07 and 20.20(73)(e)
(4) Largemouth and smallmouth bass	5 in total
(5) Muskellunge	1
(6) Northern pike	
(a) All waters north of U.S. hwy. 10.	5 in total
(b) All waters south of U.S. hwy. 10	2 in total
(7) Panfish	25 in total
(8) Rock bass, white bass, yellow bass and bullheads	None
(9) Rough fish	None
(10) Ruffe, white perch and gobies	0 but one of each may be killed and possessed for immediate delivery to a department service center or regional office
(11) Shovelnose sturgeon	3
(12) Trout and salmon	
(a) Inland waters	10 in total of which no more than 5 may be a combined total of brown and rainbow trout
(b) Outlying waters	5 in total but only 2 may be lake trout
(13) Walleye, sauger and hybrids	5 in total

SECTION 12. NR 20.20(intro) is amended to read:

NR 20.20 County and statewide table. In this section, subs. (1) through (72) list waters or portions of waters by county and specify authorized methods, open seasons, daily bag limits and size restrictions for the taking of fish that are exceptions to the general rules specified in sub. (73). Daily bag limits identified in this section are individual water limits that apply to the waters or portions of waters specified and may be combined with other waters or portions of waters, but no person may exceed the

total daily bag limit in s. NR 20.18 unless authorized by s. NR 20.35 or for a specific water listed in s. NR 20.20, 21.04, 22.04 or 23.05(5).

SECTION 13. NR 20.20(9)(a) is amended to read:

NR 20.20(9) CHIPPEWA (for species or waters not listed, see sub. (73))

(a) All species	1. Chippewa river including sloughs, bayous and flowages up to the flowing portion of first road bridge or railroad bridge on all tributary streams; Chain lake, Long lake (T32N R8W) including Herde lake	a. Motor trolling is permitted	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)
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SECTION 14. NR 20.20(13)(g)1. is amended to read:

NR 20.20 (13) DANE (for species or waters not listed, see sub. (73))

(g) Trout and salmon	1. Black Earth creek from Park street <u>immediately east of the village of Black Earth</u> upstream to South Valley road; Mount Vernon creek in posted area between CTH U and STH	a. Hook and line. Only artificial lures may be used	First Saturday in May to September 30	All trout caught shall be immediately released	None
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SECTION 15. NR 20.20(18)(a) is amended to read:

NR 20.20 (18) EAU CLAIRE (for species or waters not listed, see sub. (73))

(a) All species	1. Chippewa river including sloughs, bayous and flowages up to the flowing portion of first road bridge or railroad bridge on all tributary streams, Altoona lake, Eau Claire lake	a. Motor trolling is permitted	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)
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SECTION 16. NR 20.20(47)(a) is amended to read:

NR 20.20 (47) PEPIN (for species and waters not listed, see sub. (73))

(a) All species	1. Chippewa river including sloughs, bayous and flowages up to the flowing portion of all tributary streams	a. Motor trolling is permitted	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)	As specified in this subsection or sub. (73)
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SECTION 17. NR 20.20(49)(e) is repealed and recreated to read:

NR 20.20 (49) POLK (for species or waters not listed, see sub. (73))

(e) Trout and salmon	1. Apple river downstream from Black Brook dam	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	3 in total	Brown and rainbow trout 12, brook trout 8
	2. Ore creek, Sand creek, Spencer creek	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	5 in total	5 trout under 12, none over 12
	3. Clarey lake, Crescent lake, Ice House lake, Lower Pine lake	a. Hook and line	First Saturday in May at 5:00 a.m. to the first Sunday in March	5 in total	7
	4. All other waters not listed	a. Hook and line	First Saturday in May at 5:00 a.m. to September 30	5 in total	7

SECTION 18. NR 21.02(4m) is amended to read:

NR 21.02(4m) "Daily bag limit" has the meaning given in s. NR 20.03(8) for fish and for turtles means the maximum number specified by rule of a turtle ~~or fish~~ species which may be reduced to a person's possession in a single day.

SECTION 19. NR 21.02(10) is amended to read:

NR 21.02(10) "Possession limit" ~~means double the daily bag limit (29.041)~~ has the meaning given in s. NR 20.03(31) for fish, except in s. NR 21.13 where "possession limit" means the maximum number of a turtle species or group of turtle species set in s. NR 21.13 which may be possessed by a person at any time.

SECTION 20. NR 21.04(16) is amended to read:

NR 21.04(16) A person ~~shall~~ may not possess or have under control more than 2 times the daily bag limit of fish, or more than the possession limit of turtles when not on the waters or ice during the open season for each species. ~~(29.041)~~

SECTION 21. NR 21.08(intro.) is amended to read:

NR 21.08 **Minnow nets and traps.** (intro.) Except as provided in ss. NR ~~20.09(2)(g) and (3) 20.20 (73) (L) 5.~~ and 21.06 (1)(d), no person may take fish other than smelt with nets or traps in the St. Louis river. No person may take minnows or shiners from the St. Louis river. Only those minnow seines, minnow dip nets, cast nets, minnow traps or crayfish scoops described below as follows and operated in the manner specified may be used for the taking of minnows: ~~(23.11, 29.509, 29.041).~~

SECTION 22. NR 22.02(4m) is amended to read:

NR 22.02(4m) "Daily bag limit" has the meaning given in s. NR 20.03(8) except as used in s. NR 22.13, where it means the maximum number of a turtle species or group of turtle species which may be taken by a person each reduced to a person's possession in a single day.

SECTION 23. NR 22.02(9) is amended to read:

NR 22.02(9) "Possession limit" ~~means double the daily bag limit~~ has the meaning given in s. NR 20.03(31), except in s. NR 22.13 where possession limit means the maximum number of a turtle species or group of turtle species set in s. NR 22.13 which may be possessed by a person at any time.

SECTION 24. NR 23.02(1) is amended to read:

NR 23.02(1) "Bag limit" or "daily bag limit" ~~means the maximum number of a fish species which may be reduced to a person's possession in one day~~ has the meaning given in s. NR 20.03(8).

SECTION 25. NR 23.02(7) is amended to read:

NR 23.02(7) "Possession limit" ~~means the maximum number of a fish species which may be possessed by a person at any time~~ has the meaning given in s. NR 20.03(31).

SECTION 26. NR 26.05(51)(c) is amended to read:

NR 26.05(51)(c) *Squaw creek*. Beginning at the bridge in section 16, township 38 north, range 1 ~~west east~~, then extending 300 feet upstream and 300 feet downstream.

SECTION 27. NR 26.08(39)(a)1. is repealed.

SECTION 28 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 29. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2004.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)