

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board adopt Board Order WM-06-21 proposed rules affecting chapter NR 19 related to wild rice harvesting.

FOR: February 2022 Board meeting

PRESENTER'S NAME AND TITLE: Jason Fleener, Wetland Habitat Specialist, Bureau of Wildlife Management

SUMMARY:

This rule will propose to repeal date-regulation of approximately 38 waters and add approximately 4 waters to the list of date regulated waters found in NR 19.09(4). The rule change would substantially cut down on administrative time posting boat launches and notifying the public of lake openings through other means, as well as enforcement time.

RECOMMENDATION: That the Board adopt Board Order WM-06-21.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- Background Memo
- Fiscal estimate and economic impact analysis (EIA) form
- Response summary
- Attachments to background memo
- Board order/rule
- (insert document name)

Approved by	Signature	Date
Eric Lobner, Bureau Director		
Keith Warnke, Division Administrator	<i>Eric Lobner</i>	2/14/2022 8:39 AM CST
Preston D. Cole, Secretary	<i>Keith Warnke</i>	2/15/2022 8:45 AM CST

for

cc: Board Liaison - AD/8

Sarah Barry
Program attorney - LS/8
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by Sarah Barry

2/15/2022, 12:00 PM CST
Department rule officer - LS/8

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WJR

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CORRESPONDENCE/MEMORANDUM

DATE: January 12, 2022

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order WM-06-21, relating to

1. Subject of Proposed Rule:

The proposed rule updates the list of date regulated waters for wild rice harvest found in ch. NR 19.

2. Background:

Since 1964, certain prominent wild rice harvesting waters have been formally regulated by a date opening through administrative rule. However, the list of date-regulated wild rice harvesting waters within the portion of Wisconsin which was ceded through the Treaties of 1836 and 1842 between the United States and Wisconsin's Ojibwe Tribes (the Ceded Territory), found in NR 19.09(4), has not changed since 1985. The purpose of date regulation has been to protect the most critical and popular wild rice waters from premature harvest and damage to the beds of wild rice, and to inform harvesters of when the resource is mature and ready for harvest. The opening date varies by lake depending on when it is determined that rice is ripe enough for harvest. The boat landing associated with that body of water are posted at least twenty-four hours in advance of the harvest season opening. Within the Ceded Territory, wild rice is an important resource to both the state and the Ojibwe tribes, with both members and non-members participating in harvest. Representatives of the State and Ojibwe tribes participate in a Joint State-Tribal Wild Rice Committee which annually reviews wild rice management, including habitat and abundance, and makes recommendations regarding appropriate regulations. A separate Department Wild Rice Advisory Committee, which includes stakeholder representatives, also discusses wild rice management and regulations.

Over time, changes to long-term wild rice abundance and corresponding harvest activities have occurred on certain waters. Wild rice has been completely absent or significantly diminished on several waters that are currently date-regulated under portions of NR 19.09(4) for several years. The result has been mutual agreement between Ojibwe tribes and DNR officials to completely close these waters to wild rice harvest on an annual basis. By eliminating waters which no longer benefit from date-regulation from administrative code, administrative time will be saved for posting the waters and notifying the public through various communications.

Conversely, the state and Ojibwe tribes have recognized a few popular harvesting waters would be good candidates for being added to the list of date-regulated waters through the rule change. These waters receive significant harvest pressure and have had observations of people harvesting rice prematurely.

3. Summary of the rule.

This rule amends the list of date-regulated wild rice harvesting waters. Thirty-eight waters are removed from the list and four new waters are added. It also amends the spelling of two lakes in code.

4. Public Participation

A virtual public hearing on WM-06-21 was held on Wednesday January 14, 2022 at 3:00 p.m. Nine members of the public attended the hearing with three choosing to make an oral statement. The oral statements were as follows:

- A representative from the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) gave a brief history. He testified that these new rules will allow regulations to be focused on the most harvested waters while reducing the costs of regulations. He also provided clarification on the names for a few of the lakes listed in code.
- One person testified twice, once on behalf of the Wisconsin County Forest Association (WCFA) as again as an individual. First, the WCFA did not express any concerns but did want to raise the point that date regulated waters may have an impact on smaller boat landings for lakes. As an individual, this person did testify that he believes there is no scientific evidence that the rules protect unripe beds since some lakes take a long time to ripen due to characteristics of the water body. He also expressed concern about regulating the harvest on the Minong Flowage due to the fact that some rice beds are on private holdings.
- A member of the Lac du Flambeau tribe thanked everyone for coming up with the new list of lakes and was happy that some lakes were included. He also asked for clarification of waters that are on the reservation.

The department also received seven written comments during the public comment period. Four individuals wrote in support of this rules. The Lac Du Flambeau tribe also wrote in support of the rule changes. The tribe also commented that they conduct their own tribal wild rice management planning, regulation and restoration activities within their reservation and supported not including any of their reservation wild rice lakes within any proposed state regulations regarding wild rice. Two individuals commented against the rule changes. One person felt that the department was only proposing the rules to save on administrative costs rather than protecting the wild rice. The other individual felt that keeping the rules unchanged is necessary to protect the resource.

5. How does this proposal affect existing policy?

All of the policies in this proposed rule are consistent with past Board policies of regulating harvest of state resources for conservation purposes.

6. Has Board dealt with these issues before?

The statement of scope for this rule, SS 058-21, was approved by the Governor on June 10, 2021, published in Register No. 786A3 on June 14, 2021 and approved by the Natural Resources Board on August 11, 2021.

7. Who will be impacted by the proposed rule? How?

This proposal would primarily affect wild rice harvesters under the state's licensing authority. It will also be of interest to the Ojibwe tribes, which plan to adopt parallel regulatory changes for tribal wild rice harvesters and have a shared interest in wild rice management and regulatory consistency across user groups. The rule will affect the amount of work that tribal wild rice chiefs from four of the Wisconsin Ojibwe tribes and DNR experts do in inspecting wild rice maturity in the field. We anticipate this rule change will result in reduced workload and regulatory oversight of law enforcement officials from DNR and the Ojibwe tribes.

8. Soliciting public input on economic impact synopsis

The department has determined that these rules will have no economic impact locally or statewide. The department posted a notice soliciting comments on this analysis on its website from October 19th through November 2nd. No comments were received. A copy of the economic and fiscal impact analysis is attached as part of this agenda item.

9. Small Business Analysis

These rules, and the legislation which grants the department rule making authority, do not have a fiscal effect on the private sector or small businesses. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. These rules are not expected to significantly affect currently available outdoor opportunities and no impacts to the economic activities of hunters, trappers, or outdoor recreation enthusiasts are expected

Drafters: Scott Karel and Jason Fleener

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STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date September 14, 2021</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter NR 19</p>	
<p>4. Subject Amending the list of date-regulated wild rice harvesting waters in NR 19.09(4).</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected N/A</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule Since 1964, certain prominent wild rice harvesting waters have been formally regulated by a date opening through administrative rule. However, the list of date-regulated wild rice harvesting waters within the portion of Wisconsin which was ceded through the Treaties of 1836 and 1842 between the United States and Wisconsin's Ojibwe Tribes (the Ceded Territory), found in NR 19.09(4), has not changed since 1985. The purpose of date regulation has been to protect the most critical and popular wild rice waters from premature harvest and damage to the beds of wild rice, and to inform harvesters of when the resource is mature and ready for harvest. Within the Ceded Territory, wild rice is an important resource to both the state and the Ojibwe tribes, with both members and non-members participating in harvest.</p> <p>Over time, changes to long-term wild rice abundance and corresponding harvest activities have occurred on certain waters. Wild rice has been completely absent or significantly diminished on several waters that are currently date-regulated under portions of NR 19.09(4) for several years. The result has been mutual agreement between Ojibwe tribes and DNR officials to completely close these waters to wild rice harvest on an annual basis. Retaining these waters as date-regulated may give some harvesters the false impression that they contain stands of rice that are large enough to make harvest a worth-while effort. By eliminating waters which no longer benefit from date-regulation from administrative code, administrative time will be saved for posting the waters and notifying the public through various communications.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. A notice for solicitation of comments on this analysis was posted on the department's website in October 2021. No comments on this analysis were received. No fiscal effects on small businesses, their associations, or local governments are anticipated.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. A notice for solicitation of comments on this analysis posted on the department's website during a 14 day period in October 2021. No comments on this analysis were received.</p>	

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

14. Summary of Rule’s Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State’s Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

These rules, and the legislation which grants the department rule making authority, do not have a fiscal effect on the private sector or small businesses. These rules are applicable to individual wild rice harvesters and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

These rules are not expected to significantly affect currently available outdoor opportunities and no impacts to the economic activities of hunters, trappers, or outdoor recreation enthusiasts are expected.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The rule change would substantially cut down on administrative time posting boat launches and notifying the public of lake openings through other means, as well as enforcement time. It will also focus regulations on the most critical and popular wild rice waters from premature harvest and damage to the beds of wild rice. An alternative related to the proposed addition of 4 waters to the list is voluntary compliance with suggested harvest dates for those waters. However, suggested harvest dates have been posted in the past on some lakes without success.

16. Long Range Implications of Implementing the Rule

The long range implications of this rule proposal will be the same as the short term impacts. These proposals will contribute to providing good opportunities for wild rice harvesting and maintenance of the economic activity generated by people who participate in those activities.

17. Compare With Approaches Being Used by Federal Government

States possess inherent authority to manage the wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The only other two neighboring states where northern wild rice (*Zizania paulustris*) is naturally found are Minnesota and Michigan.

Minnesota does not designate date-regulated lakes, but the open season for all waters is between August 15 – September 30. However, some Minnesota tribes regulate specific opening dates on reservation waters. Wild rice harvesting is lawful in Michigan, but no such harvest regulations exist.

Illinois and Iowa have populations of southern wild rice (*Zizania palustris*). However, this species is seldom harvested.

19. Contact Name

Scott Karel

20. Contact Phone Number

608-206-0222

This document can be made available in alternate formats to individuals with disabilities upon request.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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Rev. 12-14-2020

The statement of scope for this rule, SS 058-21, was approved by the Governor on June 10, 2021, published in Register No. 786A3 on June 14, 2021, and approved by the Natural Resources Board on August 11, 2021. This rule was approved by the Governor on insert date.

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 19.09 (4) (a) and (h); and to **amend** NR 19.09 (4) (aa), (b), (c), (d), (e), (g), (i), (j), and (k) relating to amending the list of date-regulated wild rice harvesting waters in NR 19.09(4).

WM-06-21

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted, Statutory Authority, and Explanation of Agency Authority:

Under Ch. 29.607, Stats., “the legal title to all wild rice growing in any lake of the state, whether meandered or not, is vested in the state for the purpose of regulating harvest, use, disposition and conservation of wild rice.” Under s. 29.607 (2)(a), Stats., the secretary may designate the opening date for harvesting wild rice in navigable lakes or streams by posting notice. This authorizes the department to date-regulate wild rice waters in which the waterbodies designated by rule are closed to harvest unless posted as open.

2. Related Statutes or Rules: There are no currently active related administrative rules.

3. Plain Language Analysis:

SECTIONS 1 TO 4 amend the list of date-regulated wild rice harvesting waters. Thirty-eight waters are removed from the list and four new waters are added. It also amends the spelling of two lakes in code.

4. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

States possess inherent authority to manage the wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

5. If Held, Summary of Comments Received During Preliminary Comment Period

and at Public Hearing on the Statement of Scope: No preliminary public comment period was requested for this statement of scope.

6. Comparison with Similar Rules in Adjacent States:

The only other two neighboring states where northern wild rice is naturally found are Minnesota and Michigan.

Minnesota does not designate date-regulated lakes, but the open season for all waters is between August 15 – September 30. However, some Minnesota tribes regulate specific opening dates on reservation waters. Wild rice harvesting is lawful in Michigan, but no such harvest regulations exist.

Illinois and Iowa have populations of southern wild rice. However, this species is seldom harvested.

Rev. 12-14-2020

7. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

Since 1964, certain prominent wild rice harvesting waters have been formally regulated by a date opening through administrative rule. However, the list of date-regulated wild rice harvesting waters within the portion of Wisconsin which was ceded through the Treaties of 1836 and 1842 between the United States and Wisconsin's Ojibwe Tribes (the Ceded Territory), found in s. NR 19.09(4), Wis. Adm. Code, has not changed since 1985. The purpose of date regulation has been to protect the most critical and popular wild rice waters from premature harvest and damage to the beds of wild rice, and to inform harvesters of when the resource is mature and ready for harvest. The opening date varies by lake depending on when it is determined that rice is ripe enough for harvest. The boat landing associated with that body of water are posted at least twenty-four hours in advance of the harvest season opening. Within the Ceded Territory, wild rice is an important resource to both the state and the Ojibwe tribes, with both members and non-members participating in harvest.

Over time, changes to long-term wild rice abundance and corresponding harvest activities have occurred on certain waters. Wild rice has been completely absent or significantly diminished on several waters that are currently date-regulated under portions of s. NR 19.09(4), Wis. Adm. Code, for several years. The result has been mutual agreement between Ojibwe tribes and department officials to completely close these waters to wild rice harvest on an annual basis. Retaining these waters as date-regulated may give some harvesters the false impression that they contain stands of rice that are large enough to make harvest a worth-while effort. By eliminating waters which no longer benefit from date-regulation from administrative code, administrative time will be saved for posting the waters and notifying the public through various communications.

8. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: These rules, and the legislation which grants the department rule-making authority, do not have fiscal effects on the private sector or small businesses. No costs to the private sector or small businesses are associated with compliance to these rules

9. Effect on Small Business (initial regulatory flexibility analysis): These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have an economic impact on a substantial number of small businesses under s. 227.24(3m), Stats.

10. Agency Contact Person: Jason Fleener, 101 South Webster Str., PO BOX 7921, Madison, WI 53707-7921. (608) 220-9023, Jason.Fleener@wisconsin.gov.

11. Place where comments are to be submitted and deadline for submission:
Written comments may be submitted at the public hearings, by regular mail, or email to:
Jason Fleener
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707
Jason.Fleener@wisconsin.gov
608-220-9023
608-267-7857 (fax)

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Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 19.09 (4) (a) is repealed.

SECTION 2. NR 19.09 (4) (aa) to (g) are amended to read:

(aa) *Barron county.* Bear lake, ~~Beaver Dam lake and Red Cedar lake.~~

(b) *Bayfield county.* Totogatic lake and Chippewa lake.

(c) *Burnett county.* ~~Bashaw lake, Big Clam lake, Big Sand lake, Briggs lake, Gaslyn lake, Long lake, Mud lake, and town of Oakland, Mud lake, town of Swiss, Mud Hen lake, Spencer lake and Trade lake.~~

(d) *Douglas county.* ~~In Allouez Bay in the city of Superior and Mulligan lake and the state and county owned beds of the Minong Flowage.~~

(e) *Forest county.* ~~Atkins lake, Riley lake, Big Riee lake and Wabigon lake~~ Wabikon lake.

(g) *Oneida county.* ~~Atkins lake, Big lake and Big lake thoroughfare, Gary lake, Little Rice lake, Riee lake and Spur lake.~~

SECTION 3. NR 19.09 (4) (h) is repealed.

~~**SECTION 4. NR 19.09 (4) (i) to (k) are amended to read:**~~

~~(i) *Sawyer county.* Musky Bay located in sections 10 and 11, T39N, R9W, on Big Lae Court Oreilles lake~~ Pacwawong lake.

~~(j) *Vilas county.* Allequash lake, Little Rice lake, Nixon lake, Irving lake, Aurora lake, West Plum lake~~ Devine lake, West Ellerson lake, Micheys Mud lake, Frost lake, Rice lake, Sand lake and Sugar Bush Chain and Island lake.

~~(k) *Washburn county.* Bear lake, Gilmore lake, Little Mud lake, Long lake, Mud lake, Nancy lake, Riee lake, Spring lake and Tranus lake.~~

Rev. 12-14-2020

SECTION 5. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 6. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary