

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board approve the Statement of Scope for Board Order WM-06-21 and conditionally approve the public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse, for proposed rules affecting chapter NR 19 related to wild rice harvesting.

FOR: August 2021 Board meeting

PRESENTER'S NAME AND TITLE: Scott Karel, Wildlife Policy Specialist

SUMMARY:

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, 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. This scope statement and the subsequent rule will explore removing waters where wild rice has been completely absent or significantly diminished. It will also explore adding waters that receive significant harvest pressure and have had observations of people harvesting rice prematurely.

No preliminary public hearing was required for this scope statement.

RECOMMENDATION: That the Board approve the statement of scope for Board Order WM-06-21 and conditionally approve the public hearing notice for Board Order WM-06-21 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

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

- Statement of Scope
Governor's Approval of Statement of Scope
Public Comments Summary
(insert document name)
(insert document name)
(insert document name)

Table with 3 columns: Approved by, Signature, Date. Rows include Eric Lobner, Keith Warnke, and Preston D. Cole with their respective signatures and dates.

cc: Board Liaison - AD/8
Department Tribal Liaison - AD/8
Program attorney - LS/8 by Todd Ambs
Department rule officer - LS/8

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STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WM-06-21

Relating to: Wild rice harvesting. Ch. NR 19

Rule Type: Permanent

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

These are permanent rules.

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

This rule will amend the list of date-regulated wild rice harvesting waters.

This rule may make additional updates such as correcting cross-reference citations, updating road names on maps, changes needed to update application forms, or revisions which are necessary for consistency with recently enacted legislation.

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:

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), 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. 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 s. 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.

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.

This rule will propose to repeal date-regulation of approximately 40 waters and add approximately 4 waters to the list of date regulated waters found in s. 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. 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. The proposed changes to this list of date-regulated waters have been vetted by the Joint State-Tribal Wild Rice Advisory Committee and the Department's Wild Rice Advisory Committee. These changes have also been vetted by Ojibwe tribal authorities, who are supportive of the changes and feel that alternatives will not adequately address resource concerns. GLIFWC plans to adopt parallel modifications to these rule changes in its Model Off-Reservation Conservation Code, which will be adopted by individual Ojibwe tribes.

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

Under s. 29.607, Wis. 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 regulation harvest, use, disposition and conservation of wild rice." Under s. 29.607(2)(a), Wis. Stats., the secretary may designate the opening date for harvesting wild rice in navigable lakes or streams by posting notice. This is in reference to the list of waters under s. NR 19.09(4). Under s. 29.607(2)(b), Wis. Stats., "the department shall obtain the advice and

recommendations of the tribal council before promulgating any rules governing the harvest, use and disposition of wild rice growing within the bounds of an Indian reservation.”

For several decades, the DNR has collaborated with the Ojibwe tribes to determine and post the opening dates (and closures) of lakes listed as date-regulated in s. NR 19.09(4). This collaboration is reiterated in Section C.7. (“Management”) of the Stipulation for Wild Rice Trial, which was approved by the federal court as part of the *Voigt* case: “The parties stipulate and agree to open waters for wild rice harvesting concurrently and with the consultation between the WDNR managers and the corresponding local Wild Rice Authorities listed pursuant to the Protocol.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

80 hours.

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

A rule change would primarily affect wild rice harvesters under the state’s licensing authority. A rule change will 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.

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:

There are no related or comparable federal laws regarding wild rice harvest. The two wild rice species that are documented in Wisconsin (*Zizania palustris* and *Zizania aquatica*) have no federal listing status (e.g. threatened or endangered).

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

We do not anticipate this rule change will have an economic impact. Wild rice harvesters primarily contribute to local economies through lodging, food, fuel and paying rice processors to process their rice. A rule change that alters the list of date-regulated waters may affect when harvesters harvest rice on certain waters,

but it is not expected to significantly affect how many times they harvest wild rice in a season or how much rice they harvest. It is anticipated the number of individuals who harvest wild rice in Wisconsin in a given year is somewhere around 1,000 people.

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

The DNR anticipates holding one public hearings in the summer of 2021. The hearing will be held virtually.

Contact Person: Jason Fleener, 101 South Webster St., Madison, WI 53707. (608) 220-9023, jason.fleener@wisconsin.gov

DocuSigned by:

Todd Ambros

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For Preston D. Cole, Secretary

5/18/2021 | 8:16 AM CDT

Date Submitted



Tony Evers

Office of the Governor | State of Wisconsin

June 10, 2021

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Department of Natural Resources, submitted May 27, 2021, relating to wild rice harvest (Wis. Admin. Code ch. NR 19); and
- Both an emergency and permanent statement of scope by the Department of Health Services, submitted June 10, 2021, relating to Medicaid eligibility requirements (Wis. Admin. Code chs. DHS 102, 103 and 109).

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185:

- A proposed rule by the Office of the Commissioner of Insurance, submitted May 3, 2021, relating to the Wisconsin Healthcare Stability Plan (Wis. Admin. Code ch. INS 145); and
- A proposed emergency rule by the Department of Workforce Development, submitted June 8, 2021, relating to employer contribution rates for 2022 (Wis. Admin. Code ch. DWD 102); and
- A proposed rule by the Department of Workforce Development, submitted May 19, 2021, relating to technical education equipment grants under the Wisconsin Fast Forward program (Wis. Admin. Code ch. DWD 802); and
- A proposed rule by the Department of Health Services, submitted April 15, 2021, relating to the Department's biennial review of rules (Wis. Admin. Code chs. DHS 12-199); and
- A proposed rule by the Department of Health Services, submitted April 15, 2021, relating to Medicaid-covered services (Wis. Admin. Code ch. DHS 107); and
- A proposed rule by the Department of Health Services, submitted April 15, 2021, relating to the use of inclusive language under 2019 Executive Order 15 (Wis. Admin. Code chs. DHS 5-152); and
- A proposed rule by the Department of Health Services, submitted April 21, 2021, relating to adult day care centers (Wis. Admin. Code ch. DHS 105); and

- A proposed rule by the Public Service Commission, submitted May 6, 2021, relating to the provisions and administration of the Universal Service Fund (Wis. Admin. Code ch. PSC 160).

Please direct any questions about this letter to my policy director, Jenni Dye.

Sincerely,

A handwritten signature in black ink that reads "Tony Evers". The signature is written in a cursive style with a large, prominent "T" and "E".

Tony Evers
Governor

cc: Ryan Nilsestuen, chief legal counsel (ryan.nilsestuen1@wisconsin.gov)
Jenni Dye, policy director (jenni.dye@wisconsin.gov)
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