

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board authorize a preliminary public hearing and comment period for the statement of scope for Board Order FH-04-20, proposed rules affecting chapter NR 20 related to sturgeon spearing harvest regulations and gear use.

FOR: June 2021 Board meeting

PRESENTER'S NAME AND TITLE: Meredith Penthorn, Fisheries Management policy specialist

SUMMARY:

The Joint Committee for Review of Administrative Rules (JCRAR) has requested a preliminary public hearing and comment period on the scope statement for FH-04-20. If the preliminary hearing notice for FH-04-20 is approved, the department will hold a preliminary public hearing and comment period on the scope statement. After the hearing is held and the public comment period closes, the department will bring the scope statement before the Board for approval. As required by statute, the department may not begin work on the content of the proposed rule until the scope statement is approved. The 30-month time frame for submission of a final rule to the legislature for approval expires on November 24, 2023.

The rule resulting from this scope statement would address the use of technology such as underwater cameras and electronic fish finders during the Winnebago sturgeon spearing season, and may also remove the size limit for sturgeon during this season.

RECOMMENDATION: That the Board authorize a preliminary public hearing and comment period for the statement of scope for Board Order FH-04-20.

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

- | | |
|--|--|
| <input type="checkbox"/> Background Memo | <input checked="" type="checkbox"/> Public hearing notice |
| <input type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Board order/rule |
| <input checked="" type="checkbox"/> JCRAR request for preliminary public hearing | <input checked="" type="checkbox"/> Statement of Scope and Governor's approval |

Approved by	Signature	Date
Justine Hasz, Fisheries Management bureau director	<small>DocuSigned by:</small> <i>Justine R Hasz</i>	6/8/2021 2:13 PM CDT
Keith Warnke, FWP division administrator	<small>DocuSigned by:</small> <i>Keith Warnke</i>	6/9/2021 9:19 AM CDT
Preston D. Cole, Secretary	<small>DocuSigned by:</small> <i>Todd Ambos</i>	6/9/2021 12:25 PM CDT

cc: Board Liaison - AD/8

Program attorney – LS/8 by Todd Ambos

Department rule officer – LS/8

DS
WR

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 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):

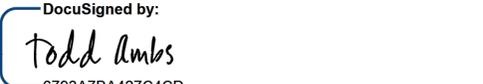
Economic impacts are expected to be minimal, if any. The rule is mainly applicable to individual anglers and imposes no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

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

For  DocuSigned by:
Todd Ambros
6793A7BA427C4CD...

Preston D. Cole, Secretary
3/29/2021 | 7:48 AM CDT

Date Submitted



Tony Evers

Office of the Governor | State of Wisconsin

May 13, 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 March 16, 2021, relating to site-specific phosphorus criteria for Lac Courte Oreilles (Wis. Admin. Code ch. NR 102); and
- A statement of scope by the Department of Natural Resources, submitted April 1, 2021, relating to regulations for the purpose of updating Wisconsin's water quality antidegradation policy and procedures (Wis. Admin. Code chs. NR 102, 106, 205, and 207); and
- A statement of scope by the Department of Safety and Professional Services, submitted March 16, 2021, relating to barbering licensure and practice outside of a licensed establishment (Wis. Admin. Code chs. SPS 50 and 60-65); and
- Both an emergency and permanent statement of scope by the Psychology Examining Board, submitted April 16, 2021, relating to a legislative update (Wis. Admin. Code chs. Psy 1-5); and
- A statement of scope by the Department of Workforce Development, submitted April 30, 2021, relating to worker's compensation treatment guidelines (Wis. Admin. Code ch. DWD 81); and
- A statement of scope by the Department of Workforce Development, submitted April 30, 2021, relating to worker's compensation minimum permanent partial disability ratings (Wis. Admin. Code ch. DWD 80); and
- A statement of scope by the Department of Workforce Development, submitted April 30, 2021, relating to minor and technical changes to the worker's compensation program (Wis. Admin. Code ch. DWD 80); and
- A statement of scope by the Department of Natural Resources, submitted March 29, 2021, relating to sturgeon spearing harvest regulations and gear use (Wis. Admin. Code ch. NR 20).

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

- A proposed rule by the Department of Workforce Development, submitted April 14, 2021, relating to replacing derogatory or offensive terminology with current, inclusive terminology (Wis. Admin. Code chs. DWD 80, 272 and 277); and
- A proposed rule by the Public Service Commission, submitted April 29, 2021, relating to renewable resource tracking (Wis. Admin. Code ch. PSC 118); and
- A proposed rule by the Medical Examining Board, submitted April 26, 2021, relating to unprofessional conduct (Wis. Admin. Code ch. Med 10); and
- A proposed rule by the Psychology Examining Board, submitted March 31, 2021, relating to renewal and reinstatement of licenses (Wis. Admin. Code ch. Psy 4); and
- A proposed rule by the Department of Public Instruction, submitted April 23, 2021, relating to age waivers for general educational development tests (Wis. Admin. Code ch. PI 5); and
- A proposed rule by the Department of Public Instruction, submitted May 6, 2021, relating to revisions to pupil nondiscrimination procedures (Wis. Admin. Code ch. PI 9); and
- A proposed rule by the Department of Natural Resources, submitted April 23, 2021, relating to fish harvest in Lake Superior (Wis. Admin. Code chs. NR 20 and 25); and
- A proposed rule by the Department of Natural Resources, submitted April 14, 2021, relating to Lake Michigan whitefish management (Wis. Admin. Code ch. NR 25); and
- A proposed rule by the Department of Natural Resources, submitted April 15, 2021, relating to the 2021 migratory bird season (Wis. Admin. Code ch. NR 10); and
- A proposed rule by the Department of Natural Resources, submitted April 14, 2021, relating to contaminated sediment sites, the implementation of 2015 Wisconsin Act 204 (Wis. Admin. Code chs. NR 756 and 758); and
- A proposed rule by the Department of Agriculture, Trade and Consumer Protection, submitted November 5, 2020, relating to residential rental practices (Wis. Admin. Code ch. ATPC 134).

Please direct any questions about this letter to my deputy policy director, Katie Domina.

Sincerely,



Tony Evers
Governor

cc: Ryan Nilsestuen, chief legal counsel (ryan.nilsestuen1@wisconsin.gov)
Katie Domina, deputy policy director (katherine.domina1@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
Emma Esch, DNR (emma.esch@wisconsin.gov)
DSPS (DSPSAdminRules@wisconsin.gov)
Mark Kunkel, DWD (markd.kunkel@dwd.wisconsin.gov)
Kara Koonce, PSC (kara.koonce@wisconsin.gov)
Carl Bryan, DPI (carl.bryan@dpi.wi.gov)
Bradford Steine, DATCP (bradford.steine1@wisconsin.gov)

Penthorn, Meredith C - DNR

From: Kennedy, Sean P - DNR
Sent: Thursday, June 03, 2021 3:37 PM
To: Penthorn, Meredith C - DNR; Harvey, Chandra - DNR
Subject: FW: JCRAR Directive to Hold Preliminary Hearing on Scope Statements SS 052-21 & SS 053-21

Hi Meredith and Chandra - Please see the below directive from JCRAR.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Sean Kennedy

Legislative Liaison
Wisconsin Department of Natural Resources
Cell Phone: (608) 400-2115
seanp.kennedy@wisconsin.gov



dnr.wi.gov



From: Sen.Nass - LEGIS <Sen.Nass@legis.wisconsin.gov>
Sent: Thursday, June 3, 2021 3:31 PM
To: Cole, Preston D - DNR <preston.cole@wisconsin.gov>
Cc: Kennedy, Sean P - DNR <seanp.kennedy@wisconsin.gov>; Sen.Nass - LEGIS <Sen.Nass@legis.wisconsin.gov>; Rep.Neylon - LEGIS <Rep.Neylon@legis.wisconsin.gov>; Grosz, Scott A - LEGIS <scott.grosz@legis.wisconsin.gov>; Kauffman, Jill - LEGIS <jill.kauffman@legis.wisconsin.gov>; Duchek, Mike - LEGIS <michael.duchek@legis.wisconsin.gov>
Subject: JCRAR Directive to Hold Preliminary Hearing on Scope Statements SS 052-21 & SS 053-21

June 3, 2021

Preston Cole, Secretary
Department of Natural Resources
101 S. Webster St. (GEF 2)
P.O. Box 7921
Madison, WI 53707-7921

**RE: SS 052-21 – Site-Specific Phosphorus Criteria for Lac Courte Oreilles
SS 053-21 – Sturgeon Spawning Harvest Regulations & Gear Use**

Dear Secretary Cole:

As co-chairperson of the Joint Committee for Review of Administrative Rules (JCRAR) and pursuant to s. 227.136 (1), Stats., I write to direct the Department of Natural Resources (DNR) to hold a preliminary public hearings and comment periods on Scope Statements SS 052-21 and SS 053-21, which were published in the Wisconsin Administrative Register on May 24, 2021.

Additionally, pursuant to s. 227.135 (2), Stats., please note that a scope statement may not be approved by the Secretary of the Department of Natural Resources (DNR) or other boards and individuals within the department until after the preliminary public hearing and comment period are held by the agency, and accordingly, no activity may be conducted in connection with the drafting of a proposed rule until after such hearing and approval have occurred.

Please confirm receipt of this letter directing a preliminary hearing and comment period on the above scope statement.

Sincerely,

Steve Nass

Senator Steve Nass
Co-Chair, JCRAR

– Sent via e-mail –

Notice of Preliminary Hearing on Statement of Scope

The Department of Natural Resources announces that it will hold a preliminary public hearing on Statement of Scope SS 053-21 relating to sturgeon spearing harvest regulations and gear use. In accordance with s. 227.136, Wis. Stats., the DNR is seeking public comment and feedback on Statement of Scope SS 053-21 at the time and virtual location shown below.

Hearing Information

Date: July 8, 2021

Time: 6 p.m.

Virtual Location Link: Zoom link and phone number to be determined

Rule Information: This is a statement of scope for a proposed emergency rule; no rules have yet been developed. The future rule may address the use of underwater cameras, electronic fish finders, and similar technology during the Winnebago sturgeon spearing season, and may remove the size limit for sturgeon during the spearing season.

Accessibility

For the hearing or visually impaired, non-English speakers, or those with other personal circumstances which might make communication at the meeting/hearing difficult, DNR will, to the maximum extent possible and with reasonable advance notice, provide aids including an interpreter, or a non-English, large-print, or recorded version of hearing documents. To access these resources, please contact the email address or phone number listed below as soon as possible.

Appearances at the Hearing and Submittal of Written Comments

The public has the opportunity to testify at the hearing. Registration will take place at the hearing by completing a Hearing Appearance form, which is available here

<https://dnr.wisconsin.gov/news/input/ProposedPermanent.html>. Pre-registration is strongly encouraged if you plan to provide spoken comments during the hearing. To pre-register, please download and complete the fillable [Hearing Appearance form](#) and send it to Meredith.Penthorn@wisconsin.gov.

Comments on the proposed scope statement must be received on or before July 8, 2021. Written comments may be submitted by U.S. mail, E-mail, or through the internet and will have the same weight and effect as oral statements presented at the public hearing. **Written comments and any questions on the proposed scope statement should be submitted to:**

Department of Natural Resources

Attn: Meredith Penthorn

P.O. Box 7921

Madison, WI 53707

Meredith.Penthorn@wisconsin.gov or DNRAAdministrativeRulesComments@wisconsin.gov

The Statement of Scope may be reviewed, and comments made at https://docs.legis.wisconsin.gov/code/scope_statements/comment.