

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

SUBJECT:

Request that the Board adopt Board Order FH-09-15, proposed rules affecting NR 23 related to lake sturgeon regulations on the Menominee River.

FOR: December 2015 Board meeting

PRESENTER'S NAME AND TITLE: Mike Donofrio, Fisheries Management Supervisor

SUMMARY:

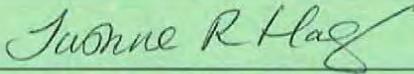
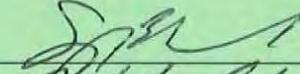
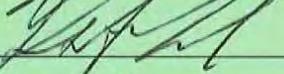
The proposed rule will implement catch and release fishing for lake sturgeon on the Menominee River downstream from Grand Rapids Dam, a Wisconsin-Michigan boundary water. The hook and line fishing season occurs the first Saturday in September to September 30 each year.

The rule is necessary to prevent the harvest and consumption of lake sturgeon that have been transported from Green Bay upstream past the Menominee Dam. It will prevent the harvest and waste of sturgeon that should not be eaten due to contaminants.

RECOMMENDATION: That the Board adopt Board Order FH-09-15.

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
- Environmental assessment or impact statement
- Board order/rule

Approved by	Signature	Date
Justine Hasz, Bureau Director		10-19-15
Sanjay Olson, Division Administrator		10/31/15
Cathy Stepp, Secretary		11/17/15

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: October 19, 2015

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order FH-09-15, relating to lake sturgeon regulations on the Menominee River

1. Subject and Summary of Proposed Rule:

The proposed rule will implement catch and release fishing for lake sturgeon on the Menominee River downstream from Grand Rapids Dam, a Wisconsin-Michigan boundary water. The hook and line fishing season occurs the first Saturday in September to September 30 each year, and the existing minimum length limit for lake sturgeon harvest is 60 inches.

2. Background:

The Menominee Dam is the furthest downstream dam on the Menominee River (closest to Green Bay) and has been a barrier to sturgeon and other fish passage. In spring of 2015, adult lake sturgeon exceeding 60 inches were transported upstream past the dam via a capture and sort facility located at the Menominee Dam. The active movement of sturgeon past the dam is being done to provide the sturgeon greater access to spawning habitat in the Menominee River, up to the Grand Rapids Dam, and improve population numbers.

Anglers are advised to not eat any lake sturgeon from Green Bay because of PCB contamination. The sturgeon passed over the Menominee Dam will have identification tags inserted under their skin, but will not have any external mark that tells an angler that the sturgeon came from Green Bay. If anglers catch and keep a lake sturgeon that was transported from Green Bay past the Menominee Dam, personnel at sturgeon registration stations would scan the identification tag and advise anglers not to eat it. The lake sturgeon would likely be discarded, resulting in waste of a natural resource.

Fish passage in the lower Menominee River is important in helping to restore the lake sturgeon population in Lake Michigan. The U.S. Fish and Wildlife Service estimates the total adult population of lake sturgeon in Lake Michigan at 3,000 fish. Wisconsin and Michigan have determined the adult population below the Menominee Dam is approximately 1,200 lake sturgeon. Poor recruitment of lake sturgeon has been documented below the Menominee Dam due to industrial development, contamination, and limited habitat. Moving sturgeon above the Menominee Dam would provide them access to underutilized juvenile and spawning habitat in the 20 river miles between the Grand Rapids and Menominee dams. Allowing the adult sturgeon population below the Menominee Dam access to the waters above that dam will expedite the restoration of this species in Lake Michigan.

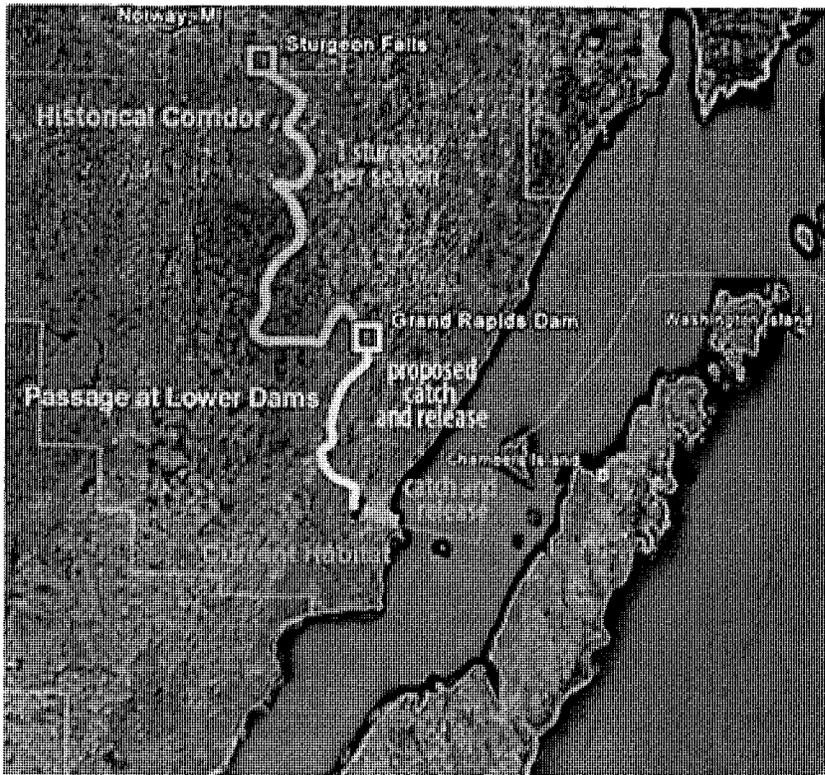
3. Why is the rule being proposed?

The rule is necessary to prevent the harvest and consumption of lake sturgeon that have been transported from Green Bay upstream past the Menominee Dam. In addition, it will prevent the harvest and waste of sturgeon that should not be eaten.

4. How does this proposal affect existing policy?

A catch-and-release only season is currently open on the Menominee River downstream from the Menominee (Hattie Street) Dam from the first Saturday in September to September 30 (area listed as “Current Habitat” in the map below). Anglers may currently harvest one sturgeon that is longer than 60 inches per open season from the first Saturday in September to September 30 upstream from the Menominee Dam on the Menominee River. There is no open season for lake sturgeon in Green Bay.

These emergency and permanent rules would extend the catch-and-release season approximately 20 miles on the Menominee River, from the Grand Rapids Dam downstream (area listed as “Passage at Lower Dams” in the map below). Anglers may harvest one sturgeon per season upstream from the Grand Rapids Dam (area listed as “Historical Corridor”).



5. Has Board dealt with these issues before?

The Board approved a matching emergency rule in August 2015 to implement the catch and release season during the September 2015 hook and line season on the Menominee River.

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

The proposed rule will primarily affect recreational anglers who fish the approximate 20 miles of river from the Grand Rapids Dam tailwaters to the Menominee Dam. Anglers will still have the opportunity to harvest a legal-sized sturgeon in over 40 miles of waters upstream of the Grand Rapids Dam. It is not expected that this rule would affect businesses that register sturgeon. There are only two non-Department sturgeon registration stations in the area and only 10 sturgeon have been harvested above the Menominee Dam since 2006.

As with any change in regulations, there will be a requirement for anglers to learn the new rules. The Department works to notify the public of new regulations via press releases, signs at the water, the internet, and fishing regulations pamphlets.

7. Soliciting public input on economic impact synopsis

No comments were received during the economic impact open comment period July 20 to August 3, 2015.

8. Environmental Analysis

The process for permanent administrative rules is an equivalent analysis action under NR 150.20 (2) (a) 20., and no additional environmental analysis is required.

9. Small Business Analysis

It is not expected that there will be any economic impact or change directly related to these rule changes. The proposed rule will primarily affect sport anglers. The proposed rule does not impose any reporting requirements on small businesses nor are any design or operational standards contained in the rule.

It is not expected that this rule would affect businesses that register sturgeon. There are only two non-department sturgeon registration stations in the area and only 10 lake sturgeon have been harvested above the Menominee Dam since 2006. The Peshtigo DNR Service Center is an alternate registration station.

10. Response Summary - Public Hearing Comments

A public hearing was held in Peshtigo, WI, on September 29, 2015. No one attended the hearing and no comments were submitted.

The Department posted signs and distributed a press release regarding the rule change before the season opener. The local fisheries supervisor mentioned that he heard a few complaints/questions, but also heard that angling effort has been greatly reduced since 2006 when the size limit was increased to a minimum of 60 inches.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

NR 23, Wisconsin-Michigan Boundary Waters

3. Subject

Lake sturgeon fishing regulations on the Menominee River

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The rule is necessary to prevent harvest and consumption of lake sturgeon from the Menominee River downstream of the Grand Rapids Dam.

10. 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.

The proposed rule will primarily affect recreational anglers. It is not expected that there will be any economic impact or change directly related to these rule changes.

It is not expected that this rule would affect businesses that register sturgeon. There are only two non-department sturgeon registration stations in the area and only 10 lake sturgeon have been harvested above the Menominee Dam since 2006.

No comments were received during the EIA open comment period July 20 to August 3, 2015.

11. Identify the local governmental units that participated in the development of this EIA.

No local governments requested to be consulted on development of the EIA.

12. 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)

It is not expected that this rule would affect businesses that register sturgeon. There are only two non-department sturgeon registration stations in the area and only 10 lake sturgeon have been harvested above the Menominee Dam since 2006.

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

The emergency rule is necessary to prevent the harvest and consumption of lake sturgeon that have been transported from Green Bay upstream past the Menominee Dam. In addition, it will prevent the harvest and waste of sturgeon that should not be eaten.

14. Long Range Implications of Implementing the Rule

In spring of 2015, adult lake sturgeon exceeding 60 inches were transported upstream past the dam via a capture and sort facility located at the Menominee Dam. The active movement of sturgeon past the dam is being done to provide the sturgeon greater access to spawning habitat in the Menominee River, up to the Grand Rapids Dam, and improve population numbers. The rule extends the

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

catch and release lake sturgeon fishing area to the Grand Rapids Dam, an additional 20-mile stretch of the Menominee River. Anglers will still have the opportunity to harvest a sturgeon greater than 60 inches in length in the more than 40 river miles upstream from the Grand Rapids Dam.

15. Compare With Approaches Being Used by Federal Government

N/A

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

The Menominee River is a Wisconsin-Michigan boundary water. The Michigan Department of Natural Resources is also pursuing a rule change to match the lake sturgeon regulations proposed in this rule. The change made by both states will ensure there are consistent lake sturgeon regulations on this shared waterbody.

17. Contact Name

Mike Donofrio, Fisheries Team Supervisor

18. Contact Phone Number

(715) 582-5050

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

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 23.05 (5) (c) relating to lake sturgeon regulations on the Menominee River.

The scope statement for this rule, SS 048-15, was approved by the Governor on May 19, 2015, published in Register No. 713B on May 27, 2015, and approved by the Natural Resources Board on June 24, 2015.

FH-09-15

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 29.014 (1), 29.041, and 29.053 (2), Stats.

2. Statutory Authority and Explanation of Agency Authority:

Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

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.

3. Related Statutes or Rules: The department is concurrently proposed a matching emergency rule, FH-08-15(E).

4. Plain Language Analysis: The rule will implement catch and release fishing for lake sturgeon during the hook and line fishing season from the first Saturday in September to September 30 on the Menominee River downstream from Grand Rapids Dam, a Wisconsin-Michigan boundary water.

The Menominee Dam is the furthest downstream dam on the Menominee River (closest to Green Bay) and has been a barrier to sturgeon and other fish passage. Beginning in spring 2015, adult lake sturgeon exceeding 60 inches were transported upstream past the dam via a capture and sort facility located at the Menominee Dam. The active movement of sturgeon past the dam is being done to provide the sturgeon greater access to spawning habitat in the Menominee River, up to the Grand Rapids Dam, and improve population numbers.

Anglers are advised to not eat any lake sturgeon from Green Bay because of PCB contamination. The sturgeon passed over the Menominee Dam will have identification tags inserted under their skin, but will not have any external mark that tells an angler that the sturgeon came from Green Bay. If anglers catch and keep a lake sturgeon that was transported from Green Bay past the Menominee Dam, personnel at sturgeon registration stations would scan the identification tag and advise anglers not to eat it. The lake sturgeon would likely be discarded, resulting in waste of a natural resource.

The rule is necessary to prevent the harvest and consumption of lake sturgeon that have been transported from Green Bay upstream past the Menominee Dam. In addition, it will prevent the harvest and waste of sturgeon that should not be eaten.

Current rules allow an angler to harvest by hook and line one lake sturgeon over 60 inches per season (the first Saturday in September to September 30) upstream from the Menominee Dam on the Menominee River. Only catch and release fishing is allowed downstream of the Menominee Dam on the Menominee River. SECTION 1 extends the catch and release lake sturgeon fishing area to the Grand Rapids Dam, an additional 20-mile stretch of the river. Anglers will still have the opportunity to harvest a sturgeon greater than 60 inches in length in the more than 40 river miles upstream from the Grand Rapids Dam.



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

Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

6. Comparison with Similar Rules in Adjacent States: The Menominee River is a Wisconsin-Michigan boundary water. The Michigan Department of Natural Resources is also pursuing a rule change to match the lake sturgeon regulations proposed in this rule. The change made by both states will ensure there are consistent lake sturgeon regulations on this shared waterbody.

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

Fish passage in the lower Menominee River is important in helping to restore the lake sturgeon population in Lake Michigan. The U.S. Fish and Wildlife Service estimates the total adult population of lake sturgeon in Lake Michigan at 3,000 fish. Wisconsin and Michigan have determined the adult population below the Menominee Dam is approximately 1,200 lake sturgeon. Poor recruitment of lake sturgeon has been documented below the Menominee Dam due to industrial development, contamination, and limited habitat. Moving sturgeon above the Menominee Dam would provide them access to underutilized juvenile and spawning habitat in the 20 river miles between the Grand Rapids and Menominee dams. Allowing the adult sturgeon population below the Menominee Dam access to the waters above that dam will expedite the restoration of this species in Lake Michigan. The department insured that accuracy, integrity, and consistency of data were used in preparing the

proposed rule and related analysis.

8. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: The proposed rule will primarily affect recreational anglers who fish the approximate 20 miles of river from the Grand Rapids Dam tailwaters to the Menominee Dam. It is not expected that there will be any economic impact or change directly related to these rule changes. Anglers will still have the opportunity to harvest a legal-sized sturgeon in over 40 miles of waters upstream of the Grand Rapids Dam.

It is not expected that this rule would affect businesses that register sturgeon. There are only two non-department sturgeon registration stations in the area and only 10 lake sturgeon have been harvested above the Menominee Dam since 2006. The Peshtigo DNR Service Center is an alternate registration station.

9. Effect on Small Business (initial regulatory flexibility analysis): It is not expected that there will be any economic impact or change directly related to these rule changes. The proposed rule will primarily affect sport anglers. The proposed rule does not impose any reporting requirements on small businesses nor are any design or operational standards contained in the rule.

10. Agency Contact Person:

Mike Donofrio
101 N. Ogden Rd., Suite A
Peshtigo, WI 54157-1734
(715) 582-5050
michael.donofrio@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, fax or email to the person listed above. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at <http://adminrules.wisconsin.gov>.

The hearing date was September 29, 2015, and the comment submission deadline was September 30. No one attended the hearings and no comments were submitted.

SECTION 1. NR 23.05 (5) (c) is amended to read:

NR 23.05 (5) (c) LAKE STURGEON

1. Menominee river, upstream from Hattie St. <u>Grand Rapids</u> dam	First Saturday in September to September 30	1 per season	60
1m. Menominee river, downstream from Hattie St. <u>Grand Rapids</u> dam	First Saturday in September to September 30	0 (catch-and-release only)	Harvest prohibited
2. All other boundary waters	No open season	--	--

SECTION 2. EFFECTIVE DATE. This rule shall take 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 3. 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 DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Cathy Stepp, Secretary

(SEAL)