

SUBJECT: Request approval of the Statement of Scope for Board Order FH-01-12 regarding fishing tournament rules in NR 20.40, Wis. Admin. Code

FOR: MARCH 2012 BOARD MEETING

TO BE PRESENTED BY / TITLE: Jonathan Hansen, Fishing Tournament Program Coordinator

SUMMARY:

The Tournament Rule Review Task Force, which includes DNR Fisheries Management and Law Enforcement staff and public tournament organizers, developed rule change suggestions for more effective fishing tournament rules that should increase user satisfaction and address concerns about crowding, tournament associated fish mortality, and the spread of invasive species.

The Department anticipates that the proposed rule will have minimal or no economic impact locally or statewide. Rule elements include:

- Defining culling
- Creating a permit exception for season-long tournaments
- Adjusting lower bounds of prize values used to determine the permit application fee
- Removing a defined open application period from the permit application process
- Increasing the maximum daily number of participants allowed for permitted ice fishing events in small lakes
- Authorizing an automated, simplified permitting process for Great Lakes salmon and trout tournaments, ice fishing tournaments less than 450 participants, and open water tournaments less than 30 boats
- Excluding certain small permitted tournaments from the total number of tournaments allowed on individual waters
- Specifying that boat and live well requirements only apply to open water tournaments
- Explicitly stating the authority to recognize neighboring states' tournament permits on border waters

RECOMMENDATION: Approve the Statement of Scope for Board Order FH-01-12, regarding fishing tournament rules in NR 20.40, Wis. Admin. Code

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input checked="" type="checkbox"/> | Fiscal Estimate Required | Yes | <input type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

Michael Stagg
Bureau Director,

2-13-2012
Date

King Johnson
Administrator,

2/16/2012
Date

Cathy Stepp
Secretary, Cathy Stepp

2/20/12
Date

cc: NRB Liaison
DNR Rules Coordinator

CORRESPONDENCE/MEMORANDUM

DATE: January 27, 2011

TO: Natural Resources Board

FROM: Cathy Stepp 

SUBJECT: Board Order FH-01-12 relating to fishing tournaments

Why is the rule being proposed?

The current fishing tournament rule has been in effect for over two years and the Fisheries Bureau has taken a critical look at the rule to identify areas for improvement. This rule is being proposed to simplify and create more effective fishing tournament rules that should increase user satisfaction and address concerns about crowding, tournament associated fish mortality, and the spread of invasive species.

The Tournament Rule Review Task Force, which includes DNR Fisheries Management and Law Enforcement staff and public tournament organizers from Wisconsin BASS and the Midwest Walleye Series, developed suggestions for fishing tournament rule changes. Letters soliciting input on the suggested changes were sent to Wisconsin Federation of Great Lakes Sportfishing Clubs, the Wisconsin Conservation Congress, the Wisconsin Association of Lakes, the Wisconsin Wildlife Federation, and the Musky Clubs Alliance of Wisconsin.

Has the Natural Resources Board dealt with these issues before?

In January 2008, the Natural Resources Board passed order FH-22-06 pertaining to the regulation of fishing tournaments. There were four general components included in the proposed rules. First, the rules established a maximum amount of tournament fishing pressure that can occur on individual waterbodies. The determination of the maximum amount of fishing pressure was based on providing reasonable access to Wisconsin's fisheries and aquatic resources as outlined in NR 1.91 (5) (b). Second, the rules outlined a process for applying for tournament permits. This process included a provision to hold a lottery if tournament applications received during the open application period (April 1st-June 30th in the year prior to the event) exceed the maximum allowable amount of fishing pressure. "Traditional fishing tournaments" were given preference and are generally not subject to the lottery. Traditional fishing tournaments would receive their permit unless the number of traditional fishing tournaments exceeds the maximum. Third, the rules established fees, which range from \$25-\$200, to recover the costs associated with processing and issuing tournament permits with lower fees associated with tournaments that are likely to have a small impact on fisheries resources. Finally, the rules outlined conditions that may be added to the fishing tournament permit by the department to reduce unwanted mortality and prevent the spread of aquatic invasive species. These conditions are explicitly stated at the time of permit issuance.

On May 1, 2008, the Assembly Committee on Natural Resources took testimony from the DNR and the public related to the rules passed by the NRB. In response to the testimony and the concerns of Committee, the Committee voted unanimously to request that the Department of Natural Resources consider modification to Clearinghouse Rule 06-108, including but not limited to the issue of law enforcement probable cause. In addition, a number of people testified that the fees were still too high for smaller tournaments and were concerned that the rules would adversely affect youth participation. The Department addressed these concerns as well as some smaller issues of interest to the DNR.

Summary of the rule:

A) Current policy: 2011 Wisconsin Act 24 allows anglers to cull in department authorized bass tournaments, but did not provide a definition of “culling.”

Proposed change: Define “Cull” or “Culling” as the practice of releasing a live fish that was held in an angler’s possession and replacing it with another fish. Live fish that are released and capable of swimming away under their own power are not considered part of the angler's daily bag limit provided the total number of fish possessed at any one time does not exceed the angler's daily bag limit.

B) Current policy: A tournament permit is required if various criteria are met, including the identification of tournament participants and if the event is limited to certain waters. These criteria are meant to address crowding issues, however, they do not determine whether participants are fishing during a short period of time. Moreover, permitted tournaments may not last longer than four days.

Proposed change: Create permit exception for season-long tournaments. Many resorts and bars have season-long events for which participants must pay to enter, however, the associated fishing pressure is minimal because it is dispersed over many weeks. Creating a permit exception would allow Wisconsin resorts and bars to continue to hold season-long tournaments without applying for a permit and with little chance of adding to typical tournament related crowding or fish mortality.

C) Current policy: Tournament permit applicants must pay an application fee based on prize values.

Proposed change: Adjust lower bounds of prize values used to determine the permit application fee. Tournament permit applicants tend to estimate the maximum prize values on their application at a level that results in an unnecessarily high application fee. This change would add \$1 to the lower bounds of the prize value structure in order to reduce application fees for some applicants from \$50 to \$25 and from \$200 to \$50. The department would expect minor revenue losses (~\$1,600).

D) Current policy: The department accepts permit applications during an open period from April 1st through June 30th for fishing tournaments to be held in the following calendar year. If the number of tournament applications during that period exceeds the maximum number of tournaments allowed on a waterbody, applicants are subject to a drawing.

Proposed change: Remove the open period from the permit application process and allow applicants to apply starting on January 1st of the preceding year for traditional tournaments (a fishing tournament that was issued permits 4 out of 5 years from 2004 to 2008 for the same water and time period) and April 1st of the preceding year for non-traditional tournaments. The current permitting process has been in effect for two years and the department has received roughly 16% of the total annual applications during the open period in each year. A drawing was not necessary in either year and there have generally been few instances of multiple proposed tournaments collectively approaching the participation limits. Moreover, the complicated nature of the open period has been confusing for tournament organizers and logistically challenging for the department. Removing the open period and potential for a drawing will simplify the rule, streamline the permitting process, and reduce workload for department staff.

E) Current policy: In lakes less than 100 acres, ice fishing tournaments are limited to 50 participants per day. However, a tournament permit is not needed unless there are 100 or more participants. In lakes 100 to 449 acres, the maximum daily number of participants is 150.

Proposed change: Increase the maximum daily number of participants allowed for permitted ice fishing events in small lakes: 150 daily participants would be allowed on lakes less than 100 acres and 250 daily

participants would be allowed on lakes between 100-449 acres. Numerous community-oriented fundraising events with ice fishing tournaments are limited by the current participation limits. These events are more focused on the social aspects of the event rather than the competition of the tournament and organizers generally are unable to determine how many participants are actually fishing. An increase in participation limits will reduce the likelihood that these community-oriented events would potentially be in violation of the law. While increasing the participation limit does result in a potential increase in crowding, the department does not believe increases will be perceptible given the vague distinction between tournament participants and non-tournament participants.

F) Current policy: The department issues roughly 600 tournament permits every year, consuming a substantial amount of staff time. Approximately half of tournaments do not require an in depth permit review because of built in capacity limits, standard permit conditions, and the nature of the tournaments. For Great Lakes salmon and trout tournaments there are no participation limits and virtually all the fish are harvested. Small open-water tournaments are limited in capacity by NR 20.40, must abide by standard permit conditions, and are small enough to contribute little to delayed fish mortality. In addition, as a result of 2011 Wisconsin Act 24 that allowed culling in department-authorized bass tournaments, bass tournaments with fewer than 20 boats that formerly did not need permits are now applying for them in order to cull fish. Moreover, the majority of ice fishing tournaments require minimal permit review past the capacity limits because they tend to be catch and kill events.

Proposed change: Authorize an automated, simplified permitting process for Great Lakes salmon and trout tournaments, ice fishing tournaments less than 450 participants, and open water tournaments less than 30 boats. This permit option would allow qualified tournament organizers to register their tournament on-line for a given day and place provided space is available and thus have immediate approval. After on-line registration, the tournament organizer would print out the permit and all documentation that accompanies normally reviewed permits. Included in the documentation would be general provisions and permit conditions which would still include locally relevant tournament specific conditions, thus be the same as fully reviewed permit conditions. Approximately half (300) of all annual tournaments would be eligible for this permit resulting in reduced staff workload and simpler and faster permitting for tournament organizers. The three primary issues justifying the tournament regulatory system: crowding, fish mortality, and invasive species, would still be addressed with a simplified permit option.

G) Current policy: The size and number of permitted fishing tournaments allowed on a water body may not exceed limits in administrative code based on lake acreage and the numbers of boats, fishing days, and participants.

Proposed change: Exclude small permitted tournaments from calculations to determine the total number of tournaments allowed on individual waters. 2011 Wisconsin Act 24 allowed culling in department-authorized bass tournaments, and as a result bass tournaments with fewer than 20 boats that formerly did not need permits are now applying for them in order to cull fish. The increase in permit applications could create a shortage of permits on certain waterbodies, potentially preventing large tournaments in need of a permit from receiving one. Prior to Act 24, these tournaments would already occur without a permit and not be counted toward the tournament permit limit because the small number of participants would not cause crowding on the water. To avoid this unintended consequence of Act 24, small tournaments (<20 boats) that apply for a permit only so participants can cull fish would not be counted toward any participation limits (maximum daily number of boats, maximum monthly boat days, maximum daily concurrent tournaments).

H) Current policy: Catch-hold-release tournaments are subject to provisions intended to set standards for the care of fish meant to be released. Current language requires participants to have a boat with a

functioning live well however does not differentiate this requirement for open water versus ice fishing events.

Proposed change: Add language to specify that boat and live well requirements only apply to open water tournaments and that any fish transported to or from the weigh-in site in a catch-hold-release ice fishing tournament must be held in water if the fish will be released.

D) Current policy: The fishing tournament permitting program administered by the Minnesota DNR that authorizes tournament activity on WI-MN boundary waters of the Mississippi River is very similar to that of WDNR. Accordingly, the states have recognized tournament permits and allowed tournament activity in their waters under the other states' permit. The number of permits available per river pool was set to reflect this agreement. No administrative code language currently exists that explicitly states this agreement.

Proposed change: Add language to explicitly state the authority to recognize neighboring states' tournament permits on border waters.

How does this proposal affect existing policy?

See Summary of Rule section, above

Level of economic impact expected: Level 3, small to no economic impact

Public hearing

A public hearing is expected to be held in conjunction with this Board Order, likely in fall 2012.

Who will be impacted by the proposed rule? How will they be impacted?

The proposed rule change would impact fishing tournament organizers and sport anglers who participate in fishing tournaments. Changes are expected to make the tournament permitting process simpler and to clarify rules for anglers. No negative impact is expected for businesses, business associations, public utility rate payers, or local governmental units.

Environmental assessment

This is a Type IV action under Chapter NR 150, Wis. Admin. Code. No environmental assessment is required.

Small business analysis; Initial regulatory flexibility analysis

The proposed rule change would impact fishing tournament organizers and sport anglers who participate in fishing tournaments. No negative impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes. During rule development, the proposed rule language will be available for viewing and to make comments at <https://health.wisconsin.gov/admrules/public/Home>.

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-01-12

Relating to: Fishing Tournaments

1. Description of the objective of the rule:

To simplify and create more effective fishing tournament rules that increase user satisfaction and while still addressing concerns about crowding, tournament associated fish mortality, and the spread of invasive species.

The Department of Natural Resources (DNR) anticipates that the proposed rule will have minimal or no economic impact locally or statewide (Level 3).

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

The Tournament Rule Review Task Force, which includes DNR Fisheries Management and Law Enforcement staff and public tournament organizers from Wisconsin BASS and the Midwest Walleye Series, developed the following suggestions for fishing tournament rule changes. Letters soliciting input on the suggested changes were sent to Wisconsin Federation of Great Lakes Sportfishing Clubs, the Wisconsin Conservation Congress, the Wisconsin Association of Lakes, the Wisconsin Wildlife Federation, and the Musky Clubs Alliance of Wisconsin.

A) Current policy: 2011 Wisconsin Act 24 allows anglers to cull in department authorized bass tournaments, but did not provide a definition of "culling."

Proposed change: Define "Cull" or "Culling" as the practice of releasing a live fish that was held in an angler's possession and replacing it with another fish. Live fish that are released and capable of swimming away under their own power are not considered part of the angler's daily bag limit provided the total number of fish possessed at any one time does not exceed the angler's daily bag limit.

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D) Current policy: The department accepts permit applications during an open period from April 1st through June 30th for fishing tournaments to be held in the following calendar year. If the number of tournament applications during that period exceeds the maximum number of tournaments allowed on a waterbody, applicants are subject to a drawing.

Proposed change: Remove the open period from the permit application process and allow applicants to apply starting on January 1st of the preceding year for traditional tournaments (a fishing tournament that was issued permits 4 out of 5 years from 2004 to 2008 for the same water and time period) and April 1st of the preceding year for non-traditional tournaments. The current permitting process has been in effect for two years and the department has received roughly 16% of the total annual applications during the open period in each year. A drawing was not necessary in either year and there have generally been few instances of multiple proposed tournaments collectively approaching the participation limits. Moreover, the complicated nature of the open period has been confusing for tournament organizers and logistically challenging for the department. Removing the open period and potential for a drawing will simplify the rule, streamline the permitting process, and reduce workload for department staff.

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I) Current policy: The fishing tournament permitting program administered by the Minnesota DNR that authorizes tournament activity on WI-MN boundary waters of the Mississippi River is very similar to that of WDNR. Accordingly, the states have recognized tournament permits and allowed tournament activity in their waters under the other states' permit. The number of permits available per river pool was set to reflect this agreement. No administrative code language currently exists that explicitly states this agreement.

Proposed change: Add language to explicitly state the authority to recognize neighboring states' tournament permits on border waters.

3. Statutory authority for the rule (including the statutory citation and language):

Section 23.11 (1), Stats., grants the department such powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law.

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 29.403 (1g), Stats., authorizes the department to promulgate rules to establish a program to authorize and regulate fishing tournaments and establish the scope and applicability of the program.

Section 29.403 (2), Stats., provides that the department may require a permit to conduct a fishing tournament and may impose terms and conditions that apply to a specific permit.

Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

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

Approximately 120 hours

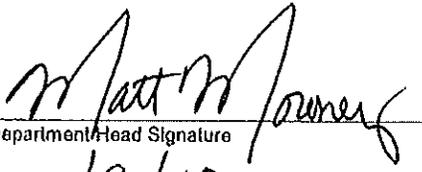
5. Description of all entities that may be impacted by the rule:

The proposed rule change would impact fishing tournament organizers and sport anglers who participate in fishing tournaments. No negative impact is expected for businesses, business associations, public utility rate payers, or local governmental units.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

The department is not aware of any existing or proposed federal regulation that would govern fishing tournaments in Wisconsin.

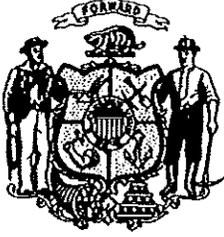
Contact Person: Jon Hansen, Fishing Tournament Program Coordinator, 608-266-6883
jonathan.hansen@wisconsin.gov



Department Head Signature

1/9/12

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

January 13, 2012

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Statement of Scope for Rule Number FH-01-12

Dear Secretary Stepp,

I hereby approve the Statement of Scope submitted on January 9, 2012, pursuant to Wisconsin Statutes § 227.135, in regards to rule number FH-01-12. You may send the Statement of Scope to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "S. Walker", written over a horizontal line.

Scott Walker
Governor