



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-009

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

- a. In the introductory clause and in the treatment clause in SECTION 32, the errant “(1)” should be removed from the reference to “21.11 (1) (4m)”.
- b. In the introductory clause and in the treatment clause in SECTION 37, “(intro.)” should be included in the reference to “23.05 (5)”. [s. 1.03 (3), Manual.]
- c. In the introductory clause, the department should reconsider whether to list the creation of “20.20 (24) (a) 1. b. and c. and 2. b. and c.” and “20.20 (39) (b) 1. b. and c. and 2. b. and c.”. These references are not listed in a treatment clause. Rather, each seems to be subsumed by a treatment clause for an amendment to the subdivision containing the newly created subdivision paragraphs. See the treatment clauses in SECTIONS 14 and 19 (“NR 20.20 (24) (a) 1. and 2. are amended to read:” and “NR 20.20 (39) (b) 1. and 2. are amended to read:”).
- d. In SECTION 2, the insertion of “and catfish” in s. 20.90 (2) would authorize spearing of both rough fish and catfish during the open season for spearing rough fish. Is that the intent? If not, language along the following lines could be added to the end of the sentence to tie each type of fish to its own season: “or during the open season for taking catfish by bow and arrow or crossbow, respectively”.
- e. In SECTION 2, the colon in s. NR 20.09 (3) (intro.) should be underscored.
- f. In SECTION 3, “NR 26” should not be underscored because it exists in the current rule text, and the “waters” that is stricken-through should not also be underscored.

g. In SECTION 7, it is not necessary to repeat the section number and title following the treatment clause (i.e., “20.20 County and statewide table.”).

h. In SECTION 11, note that subd. 1. of s. NR 20.20 (18) (a) is presently denoted “w.” in the current rule text. This section fixes that error, and thus this section should be revised from a creation to an amendment (with appropriate striking-through and underscoring), and the introductory and treatment clauses should be modified correspondingly.

i. In SECTION 28, it is not necessary to repeat the section number and title following the treatment clause (i.e., “21.04 Sport fishing; seasons and limits.”).

j. In SECTION 28, the designations for subs. (a) and (b) of s. NR 21.04 (5) should not be underscored because they exist in the current rule text, but the designations for both sets of subds. 1., 2., and 3. should be underscored.

k. In SECTION 35, the word “May” should not appear because it is included in the current rule text before the colon in s. NR 22.06 (1) (intro.).

l. SECTION 38 creates a new section with only one subsection. When creating rule subunits, at least two subunits must be created. [s. 1.03 (1), Manual.]

3. Conflict With or Duplication of Existing Rules

In SECTION 38, does proposed s. NR 23.065 conflict with existing s. NR 23.085? The former allows some forms of bow and arrow or crossbow fishing in Wisconsin-Michigan boundary waters. The latter prohibits all spearing in Wisconsin-Michigan boundary waters. “Spearing” is not defined in ch. NR 23. It is defined for purposes of ch. NR 20 to include a bow and arrow or similar device. See s. NR 20.03 (38). Depending on how “spearing” is understood in ch. NR 23, these two provisions may conflict. One option would be to forego creating s. NR 23.065 and instead amend s. NR 23.085 to provide a comprehensive address of taking fish by these methods. The department may also want to review the spearing authorized by s. NR 23.04 to see if it is in conflict with the spearing prohibited by s. NR 23.085.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Throughout the rule, is there a method for when to use “catfish” versus “flathead or channel catfish” (other than when specifying only one species in a bag limit)? For instance, is the reference to “catfish” for commercial fishing purposes in SECTION 36 meant to apply to more species of catfish than the reference to “flathead or channel catfish” for sport fishing purposes in SECTION 35?

b. In the rule analysis, “Federal Registrar” should be “Federal Register” in item 6.

c. In SECTIONS 14, 19, and 26, the department should reconsider the changes in the “daily bag limit” column to remove internal inconsistencies. As proposed, each subdivision paragraph establishes a unified bag limit for fish taken by multiple methods, but each subdivision paragraph uses a different numerical limit. For example, in SECTION 14, s. NR 20.20 (24) (a) 1. a. limits the bag to 25 total (of which only one may be a flathead) regardless of whether taken by hook and line, set or bank pole, setline, bow and arrow, crossbow, or hand. But s. NR 20.20 (24) (a) 1. b.

limits the bag to five channel and one flathead regardless of whether taken by any of those same six means. Thus, it is not clear whether the limit is 25 channel or five channel.

d. In SECTIONS 14, 19, and 26, the department may want to change “only 1 flathead” to “1 flathead” in s. NR 20.20 (24) (a) 1. b. and c. and 2. b. and c. in SECTION 14, in s. NR 20.20 (39) (b) 1. b. and c. and 2. b. and c. in SECTION 19, and in s. NR 20.20 (73) (b) 4. c. and d. in SECTION 26 to achieve consistency in usage throughout the s. NR 20.20 table. See, e.g., s. NR 20.20 (23) (a) 1. c. and d. (“5 channel, 1 flathead”). The word “only” does not appear to add meaning in these particular subdivision paragraphs and may even have unintended consequences for places it is not used.

e. In SECTION 29, is the comma after “season” stricken intentionally? Without the comma, s. NR 21.05 (1) would allow the sale of rough fish legally taken by five specified methods but prohibit the sale of all other fish, including rough fish taken by another method. With the comma, it would allow the sale of all rough fish legally taken by any method but prohibit the sale of all other fish taken by five specified methods. Based on the way this change is described in the plain language analysis, the comma should be stricken. For the sake of clarity and consistency, the department could consider repealing and recreating sub. (1) to match the form used in s. NR 22.05 (1) as amended by SECTION 33.

f. In SECTION 38, is taking “by hand” a subset of “method of spearing”? If not, it is potentially confusing to list taking by hand as an exception to a prohibition on spearing. For instance, what does this formulation mean for taking non-catfish by hand?

g. In SECTION 39, should language be added to limit the effect of this prohibition, such as to ch. NR 25 or to outlying waters? As written, might it be misconstrued as a prohibition on taking catfish by these three methods at all times and in all places? Perhaps adding to the end of the sentence “under the authority of a commercial fishing license in the outlying waters” or something similar would clarify this, as with s. NR 21.11 (4m) in SECTION 32 or s. NR 22.11 (26) in SECTION 36?