

Report to  
Legislative Council Rules Clearinghouse  
NR 20, 21 and 22, Wis. Adm. Code  
Natural Resources Board Order FH-17-09

Wisconsin Statutory Authority

ss. 23.11 (1), 29.014 (1), 29.041, 29.523, 29.526, 29.529, 29.531, 29.533 and 227.11 (2) (a), Stats.,

Federal Authority

N/A

Court Decisions Directly Relevant

None.

Analysis of the Rule – Rule Effect – Reason for the Rule

This rule relates primarily to commercial fishing on waters of the Mississippi river and fishing with set or bank poles on the Wisconsin-Iowa boundary waters. The proposals contained in this rule primarily originate from the recommendations of department staff and from discussions with commercial fishers.

The primary purposes of the proposed rule changes are to create descriptions and definitions of several types of commercial fishing nets currently referred to in chs. NR 21 and 22, Wis. Adm. Code, and ch. 29, Stats., but which are not defined in either statute or code. The traditional types of nets being defined by this rule have been in use for many years, but without specifications for each of these nets and how they may be used, it is difficult to enforce laws on the use of other unauthorized types of nets.

Commercial fishers and the department's fisheries and law enforcement staff have also had to deal with inconsistent commercial fishing regulations on the Mississippi river for many years. The same commercial fishers may be fishing on both the Wisconsin-Iowa and the Wisconsin-Minnesota boundary waters under the same license, but must follow different rules depending on what portion of the river the person is fishing. This rule will also provide more consistency and clarification of the commercial fishing rules within and between chs. NR 21 and 22, Wis. Adm. Code. The proposed rule changes will:

1. Amend cross references found in chs. NR 20 and 21 to definitions that have been renumbered by this rule or which were incorrect.
2. Repeal and recreate the definition sections in chs. NR 21 and 22. There are new definitions added to these sections, including bait net, bank pole, buffalo net, detrimental fish, drive set, drift set, frame net or fyke net, gill net, hoop net, lead, seine, seine haul, setline, slat net or basket trap and trammel nets. Several existing definitions are revised and all others are retained but have been renumbered. Unnecessary statutory references placed in parenthesis after some definitions were removed.
3. Clarify in both ch. NR 21 and 22 that live carp taken for use as bait may not be transported away from any waters of the state unless specifically authorized. Such movement of live fish has been prohibited under s. NR 19.05 effective November 2, 2007 as a result of new rules meant to reduce the risk of the spread of Viral Hemorrhagic Septicemia (VHS) in fish.
4. Clarify in both chs. NR 21 and 22 that a licensed commercial fisher and the licensee's agents are restricted to commercial fishing only within the state boundaries of the state they are licensed under.
5. Clarify in both chs. NR 21 and 22 that each person who is required to hold a commercial fishing license must be present at all times when any of his or her nets or setlines are set, placed, tended or operated, while still allowing the licensee to move commercial fish by boat or on the ice and to load commercial fish into trucks at a boat landing while the crew continues to load fish at the net. These

sections also provide that a commercial fishing licensee's fish helpers or crew members do not need to also hold a commercial fishing license when only assisting a licensed commercial fisher, but that the commercial fisher must notify the department of the names of all such helpers or crew members.

6. Repeal unnecessary references to the cost for tags issued for commercial fishing nets. These fees are established under ss. 29.523 and 29.563 (7) (c), Stats. SECTION 12 of the Order also clarifies that it is not legal to remove roe from a commercial fish while on the water, ice or shore, and that commercial fish shall remain intact until the fish reaches the final processing facility or place of business of the commercial fisher. This new language created in ch. NR 21 is consistent with the current rule language found in s. NR 22.11(2m).

7. Clarify that either any small game or a fishing license is a valid approval for taking turtles. This change is consistent with a recent change made to s. NR 19.275 (3) (a) by Clearinghouse Rule 09-018, which took effect March 1, 2010

8. Clarify that a person taking turtles on the Wisconsin-Minnesota and Wisconsin-Iowa boundary waters shall comply with the regulations of the state in whose territorial waters they are taking the turtles.

9. Make s. NR 22.05 (1) language consistent with the language found under ch. NR 21, regarding the ability to sell or barter rough fish under one's control or possession if lawfully taken during the open season by hook and line, spear or bow and arrow.

10. Clarifies in ch. NR 22 that fishing within 200 feet of any fishway, lock or dam by any means other than hook and line is not legal. This is consistent with the restrictions found in ss. NR 20.05 (3) and 21.065. Also clarifies that set or bank poles are not commercial gear on the Wisconsin-Iowa boundary waters and that the same rules apply to their use on the Wisconsin portion of this water as apply to their use on non-boundary inland waters.

11. Make a number of revisions to ss. NR 22.11 and 22.12 so that the language in these sections is more consistent with current s. NR 21.11.

12. Remove reference to tortoises and simply refers to these animals as turtles.

13. Create several new restrictions in s. NR 22.11 that currently apply to commercial fishing on the Mississippi river in the Wisconsin-Minnesota boundary waters in s. NR 21.11, but not to commercial fishing on the Mississippi river in the Wisconsin-Iowa boundary waters under ch. NR 22.

14. Amend s. NR 22.12 commercial fishing gear restrictions to make them more consistent with the commercial gear restrictions found in ch. NR 21. These new restrictions will provide for more consistency in the commercial fishing rules up and down the Mississippi river, as well as provide additional opportunity to use commercial fishing gear on this water.

#### Agency Procedures for Promulgation

Public hearing, followed by Natural Resources Board adoption, followed by legislative review.

#### Description of any Forms (attach copies if available)

None

#### Name and Telephone Number of Agency Contacts

Thomas Van Haren, Natural Resources Policy Officer – (608) 266-3244  
Linda Haddix, Bureau of Legal Services – (608) 266-1959

Submitted on May 5, 2010