

**BEFORE THE  
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES**

**NOTICE OF PUBLIC HEARING**  
Natural Resources Board Order FH-17-09

**NOTICE IS HEREBY GIVEN** that pursuant to 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., interpreting ss. 29.014, 29.024, 29.041, 29.523, 29.526, 29.529, 29.531 and 29.533 Stats., the Department of Natural Resources will hold a public hearing on proposed revisions to chs. NR 20, 21 and 22, Wis. Adm. Code, relating commercial fishing on the Mississippi river boundary waters.

**NOTICE IS HEREBY FURTHER GIVEN** that the public hearing will be held: **Monday, June 21, 2010 at 5:00 p.m. in the Upstairs Community Room, City Hall, 214 E. Blackhawk Avenue, Prairie de Chien, WI 53821.**

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Thomas Van Haren, in writing at Department of Natural Resources, LE/8, PO Box 7921, 101 S. Webster Street, Madison, WI 53707, by calling (608) 266-3244 or by email at: [Thomas.VanHaren@wi.gov](mailto:Thomas.VanHaren@wi.gov) or by calling (608) 266-3244. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

**Availability of the Proposed Rules and Fiscal Estimate**

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site at <http://adminruleswisconsin.gov>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting: Thomas Van Haren, Department of Natural Resources, LE/8, PO Box 7921, 101 S. Webster Street, Madison, WI 53707, by calling (608) 266-3244 or by email at: [Thomas.VanHaren@wi.gov](mailto:Thomas.VanHaren@wi.gov).

**Submitting Written Comments**

Comments on the proposed rule must be received on or before June 23, 2010. Written comments may be submitted by U.S. mail, fax, email, 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 rules should be submitted to: Thomas Van Haren, Department of Natural Resources, LE/8, PO Box 7921, 101 S. Webster Street, Madison, WI 53707, by calling (608) 266-3244 or by e-mail at: [Thomas.VanHaren@wi.gov](mailto:Thomas.VanHaren@wi.gov).

**Analysis Prepared by the Department of Natural Resources:**

SECTIONS 1, 2, 3, 5, 6 and 30 of the order amend cross references found in chs. NR 20 and NR 21 to definitions that have been renumbered by this rule or which were incorrect.

SECTIONS 4 and 15 repeal and recreate the definition sections in chs. NR 21 and NR 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.

SECTIONS 7 and 19 clarify in both ch. NR 21 and ch. NR 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.

SECTION 8 and 20 clarify in both ch. NR 21 and ch. NR 22 that a licensed commercial fisher and their agents are restricted to commercial fishing only within the state boundaries of the state they are licensed under.

SECTIONS 9, 10, 11, 21, 22 and 26 clarify in both ch. NR 21 and ch. NR 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.

SECTIONS 12 and 24 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 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).

SECTIONS 13 and 28 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) under clearinghouse rule CR 09-018 and which took effect March 1, 2010

SECTIONS 14 and 29 clarify that a person taking of 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.

SECTION 16 makes the 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.

SECTION 17 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.

SECTION 18 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.

SECTION 23 makes 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.

SECTION 25 removes reference to tortoises and simply refers to these animals as turtles.

For consistency, SECTION 26 creates 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.

SECTION 27 amends 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.

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

The department is not aware of any existing or proposed federal regulation that would govern fishing in Wisconsin's boundary waters with Minnesota or Iowa.

**Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule.**

This rule was not based on a technical analysis of data. It was developed in consultation with commercial fishers to address concerns regarding the lack of legal descriptions of what the varieties of nets are and inconsistency between the rules that apply to the same Wisconsin commercial fisher depending on if he or she is fishing in the waters between Wisconsin and Iowa or the waters between Wisconsin and Minnesota.

**Analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.**

Small businesses engaged in commercial fishing may be affected by the rule. However, we currently have no basis for quantifying the economic impacts of the rule.

**Effects on small business, including how the rule will be enforced.**

This rule will benefit commercial fishers on the Mississippi river by providing clear descriptions of the nets that their licenses authorize them to use on this water and not leaving the types of nets open for a variety of interpretations. This rule will also benefit commercial fishers by creating more consistency in the rules regardless of which part of the river in Wisconsin they are fishing. The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, record audits of commercial fishers and follow up investigations of citizen complaints. Liberalization of some of the commercial fishing rules will also benefit commercial fishers such as the higher number of hooks on setlines allowed with these changes.

The Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266-1959.

**Environmental Analysis:** This is a type III action under Chapter 150, Wis. Adm. Code, and neither an environmental impact statement nor an environmental assessment is required.

**Fiscal Estimate Summary**

The proposed rule would authorize commercial anglers fishing in the Wisconsin-Iowa boundary waters to use up to 12 setlines, instead of the current limit of 8. The cost for 4 additional setline tags which are set by statute at a cost of 25 cents each would be \$1 per license. In 2009, there were 135 setlines issued for use on the Mississippi River. The cost to the state to purchase setline tags is 18.5 cents per metal tag or 74 cents per license.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary