

Report From Agency

REPORT TO LEGISLATURE
NR 20, 21, 22 and 24, Wis. Adm. Code
Board Order No. FH-17-09
Clearinghouse Rule No. 10-053

Basis and Purpose of the Proposed Rule

The primary purposes of the proposed rule is to create descriptions/definitions of several types of commercial fishing nets currently referred to in Chapters NR 21 and 22, Wis. Adm. Code and Ch. 29, Stats., but which are not defined in either statute or code. These traditional types of nets have been in operation for many years and the department would like to define them specifically in code while there are still wardens working for the department and active commercial fishers who know what they are. This way there can be no question about what is and is not a legal fishing net. Without clear specifications for each of these nets and how they may be used, it is feasible that a person could construct and use just about any type or design of net or trap they desire and claim it is a bait net, buffalo net, frame or fyke net, slat net or basket trap.

Commercial fishers and DNR fisheries and law enforcement staff have also had to deal with inconsistent commercial fishing regulations on the Mississippi river. The same commercial fishers may be fishing on both the Wisconsin-Iowa and the Wisconsin-Minnesota boundary waters, but might need to different rules depending on what portion of the river the person is fishing. In addition to defining certain currently legal commercial fishing gear, this rule provides clarification of several other existing definitions and provides more consistency and clarification of the commercial fishing rules within and between chs. NR 21 and 22, Wis. Adm. Code. The current rules found in ch. NR 21 were amended a number of years ago to closed numerous legal loopholes and have provided better protection of game fish. This order will adopt the same or similar rules in ch. NR 22 as those found in ch. NR 21. This order is also part of an effort to update and coordinate Wisconsin-Iowa commercial fishing rules with the Iowa DNR.

Summary of Public Comments

Most comments were supportive of most of this rule, however there were a few issues of concern raised by those who testified and submitted written comments. These concerns were as follows:

Comment: Most in attendance did not feel that there should be a requirement for commercial fisher to keep their own nets 1,000 ft. apart and that it would be difficult to know the location of another fisher's nets (which do not require flagging). Several testified that fishermen already respect each others nets, but advised that if a distance should be established, it should only apply to those nets that must be marked so that every other commercial fisher will know of their location. Gill nets need to be marked with flags, but other nets, such as trammel, buffalo or bait nets do not. They felt that this distance requirement should only apply to gill nets which are not placed by the same fisher. They also felt that the distance a fisher must keep their gill nets from another fisher's gill nets should be something less than 1,000 ft, but no suggestion of an alternate distance was offered. Written comments were received suggesting 500 ft. instead of 1,000 ft.

Response: The department has amended ss. NR 21.11(2) (d) 7 and NR 21.11 (3) (L) in Sections 15 and 16 and revised ss. NR 22.12(3) and (4) of Section 31 of this rule regarding the 1,000 foot minimum spacing requirements between nets to only apply to gill nets, frame nets and seines which are not placed or being operated by the same commercial fisher. This rule will not apply to other

types of commercial nets which do not require visible display of a net flag or to gill nets or seines that are operated by the same commercial fishing licensee.

Comment: Several in attendance at the hearing did not agree with shortening the check period for hoop nets or for gill nets set under the ice from 4 days to 3 days for hoop nets and from 4 days to 2 days for gill nets set under the ice. It was expressed that the extra time is often helpful in allowing the bait to work and for fish to find their way into the nets. Others felt that it would mean more trips on the water to check nets and increased costs associated with having to re-bait nets more often if they have to be raised more often. It was also felt that most fish in gill nets will be dead anyway and if under the ice it should not be a concern.

Response: The department has revised this rule so that there will not be any change in the net checking intervals.

Comment: Several felt that increasing the number of setline hooks that may be used from a maximum of 400 hooks on up to 8 lines, to a maximum of 600 hooks on up to 12 lines should also be applied to the Wisconsin-Minnesota boundary waters and not just the Wisconsin-Iowa boundary waters.

Response: The department does not feel increasing the number of setlines and hooks that may be used under one setline license on the Wisconsin-Minnesota boundary waters is necessary or appropriate. While it would make the setline rules consistent up and down the Wisconsin side of the river, the department does not feel that there is a need to increase harvest opportunity on catfish with setlines on the Wisconsin-Minnesota boundary waters. Unlike Iowa, Minnesota does restrict the harvest of catfish taken with seines to 100 pounds per day like Wisconsin and also limits setlines to 400 hooks, consistent with the current Wisconsin setline rules.

Comment: One person testified that he did not like having to provide the names of his helpers. This person also stated he would like to have the boundary waters commercial fishing rules apply to the entire river between the railroad tracks on each side and not just to the state line boundary.

Response: Though this person was not in favor of having to report who his fishing helpers were, the department and others testifying at the hearing felt this new requirement was a fair compromise to no longer requiring helpers to also hold a commercial fishing license to assist in commercial fishing activities. These changes will enable commercial fishers to now also enlist the help of non-resident helpers, which they could not previously do because licenses are only available to residents.

The department is also not proposing to expand the opportunity to commercial fish on the waters of the Mississippi River west of the Wisconsin state line. This would require both states to have identical rules and agree to this change. Doing so would also mean that commercial fishers from Illinois, who can currently have authority to fish in Illinois-Iowa boundary waters of the Mississippi River, would then also be able to fish on the Wisconsin side of the Wisconsin-Iowa boundary waters. This was not supported by others in attendance at the public hearing.

Comment: One fisherman felt that they should be able to use drive nets longer than 300 feet as allowed under current rule and which was not expanded under this rule.

Response: Increasing the maximum length for drive nets to some length longer than 300 feet was not part of this rule package and the department does not feel there is a need to change this rule. Only one person expressed an interest in expanding the length of drive nets.

Comment. One fisherman questioned the existing rule that limits harvests of catfish with seines to 100 pounds + 1 fish, when the adjacent state of Iowa does not limit the amount of catfish that may be harvested in that state's waters.

Response: The department does not support the repeal of the 100 pounds + 1 fish daily bag limit for catfish taken with seines. While this was not a rule change which was being proposed for Wisconsin-Iowa waters, another change which is part of this rule will allow the use of more setlines and setline hooks on these waters. While Iowa does not have a similar 100 pound daily bag limit for catfish taken with seines, there is also no bag limit for catfish taken by setlines in Wisconsin waters. This change will allow fishers to take more catfish by the setline method.

The change to the Wisconsin setline rules will be more liberal than the Iowa rules for setlines which limit commercial fisherman in that state to 200 hooks, and levels the playing field a bit more on harvest opportunities for catfish between the Wisconsin and Iowa. At the same time, this rule proposal maintains the 100 pound daily bag limit for catfish taken by seines on both the Wisconsin-Iowa and Wisconsin-Minnesota boundary waters. Like Wisconsin, Minnesota also has a 100 pound daily bag limit for commercial fishers taking catfish with seines. This keeps the daily bag limit for catfish taken with setlines consistent for all Wisconsin commercial fishers, whether fishing in Wisconsin-Iowa or Wisconsin-Minnesota boundary waters, as well as maintaining consistency with the rules in the State of Minnesota.

Comment. The suggestion was made to allow more than one licensee's net tag on the same net so that when 2 fishers share the same net and take turns checking it, they do not have to constantly be taking their tags on and off. Current law does not allow any person to operate or use a net that is tagged with another person's tag. The suggestion was made to limit multiple tagging to not more than 2 different licensee's tags.

Response: A change has been made to Sections 12 and 30 of this order to allow more than one licensee's net tag to be placed on the same net, but not more than 2 different fisher's tags may be placed on any one commercial fishing net.

Comment. Several fishermen had questions about the requirement to notify the department of who their helpers were in place of each helper also needing a license. Most were satisfied with the explanation of the proposed rule but questioned the need for 2 licensed commercial fishers who occasionally help each other tend the other nets, to also need to be reported as helpers.

Response: An additional change was made in this rule to not require commercial fishers to report the name of a helper if that helper also holds a commercial fishing license.

Comment. One person felt the cost of Buffalo and Bait net tags should be that same, 25 cents each.

Response: The department is without authority to change the fee charged for tags required to be attached commercial fishing nets. The cost of these tags is established statutorily under s. 29.563(7)(c)3., Stats. This is the reason the department is repealing unnecessary rule language under Section 14 and 28 of this order.

Modifications Made

Modifications made by the Department are detailed above in the response to comments.

Appearances at the Public Hearing

June 21, 2010 – Prairie du Chien

In support: 1

Luke LaRocque, Prairie du Chien, WI 53821

In opposition: 1

Jerry Boardman, 735 Main St., Desoto, WI

As interest may appear: 9

Roger Beck, N206 Highway 35, Genoa, WI 54632

Mike Valley (Valley Fish & Cheese), 304 S. Prairie St., Prairie du Chien, WI 53821

Gary Stram, 1910 E. Brunsov St., Prairie du Chien, WI 53821

Jeff Ritter, 30891 Hwy 27 N., Prairie du Chien, WI 53821

Bret A. Jenks, 63424 Cliffwood Dr., Prairie du Chien, WI 53821

Ron Check, 62701 Cty Road N, Prairie du Chien, 53821

Mike Stram, 524 S. Wacouta, Prairie du Chien, 53821

Two additional members of public in attendance did not complete appearance slips

Written Comments received: 2

June 22, 2010 – By E-mail

Brooks Niedziejko, clnbn@yahoo.com

Jeff Ritter, Prairie du Chien, WI ritter058@centurytel.net

Changes to Rule Analysis and Fiscal Estimate

Minor modifications were made to reflect the modifications made as a result of public comments. The fiscal effect remains the same.

Response to Legislative Council Rules Clearinghouse Report

All Clearinghouse comments that have not become moot have been accepted and the rule has been revised accordingly.

Final Regulatory Flexibility Analysis

Small businesses that may be affected by the proposed rule are commercial fishers who currently hold or who may in the future hold a license for commercial fishing on the Wisconsin waters of the Mississippi river. This rule will allow licensed commercial fisher to use resident or nonresident helps or crew members and not require the helpers or crew members to each hold an individual license. The ruled does require the licensed commercial fisher to notify the department of the name and address of their helpers and crew members before they engage in commercial fishing activities, but only if the helper or crew member does not also hold a current commercial fishing license. This notification may be made when applying for the license, along with the commercial fishers monthly report, or by calling the department and providing the information. No new professional skills are needed to comply with the proposed rule.