

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 25, Commercial Fishing - Outlying Waters

3. Subject

This rule will revise ch. NR 25, Wis. Adm. Code, to define the number and placement of trap nets for commercial fishing activity in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeleine Island.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

Commercial fishers may currently place trap nets in the Restricted Use Area, described above, for the taking of whitefish or herring from June 1 to August 15. Currently, the only limit on how many nets an individual fisher or all fishers combined may place in this small area is the total number of trap nets allowed per commercial licensee, which is 10, and distance restrictions limiting the proximity of adjacent trap nets. Over the last two years, there have been complaints received from sport/recreational anglers about a proliferation of trap nets within this area.

The primary issues with current trap net placement are navigational safety and user conflict. Nets must be clearly marked according to regulations, but excessive use of this area creates confusion about the exact placement and orientation of individual nets and makes navigation through the area potentially hazardous. Given that the area is the only ingress or egress from Chequamegon Bay and a popular sport fishing and recreational boating corridor, the risks can be significant. Also, in each of the last two seasons, commercial fishers setting nets in this area have experienced acts of vandalism to their nets with repair costs ranging into the thousands of dollars. Out of concern for these issues, the department decided to seek a rule change.

The rule would: limit commercial fishers to using a single trap net per commercial license in the Restricted Use Area to address concerns about high trap net density in the Area; exclude trap nets from a "zone of safe passage" within the Restricted Use Area to address safety concerns with recreational boaters and anglers; and clarify a mandate that nets be rendered inoperable by the close of the special season in the Restricted Use Area and be physically removed within three days. This clarifies a recent point of confusion regarding timely removal of trap nets following the season closure in the Restricted Use Area.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

For comments on the economic impact of the rule, the department contacted the Wisconsin Conservation Congress, the

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Wisconsin Wildlife Federation, the Great Lakes Indian Fish and Wildlife Commission, Wisconsin Association of Lakes, WI Federation of Great Lakes Sport Fishing Clubs, WI Council of Sport Fishing Organizations, Musky Clubs Alliance of Wisconsin, Inc., Salmon Unlimited, Sturgeon for Tomorrow, Trout Unlimited - WI Council, Walleyes for Tomorrow, WI Bass Federation, Izaak Walton League-Wisconsin Division, Lake Michigan Fisheries Forum, WI Commercial Fisheries Association, American Fisheries Society-Wisconsin Chapter, Natural Resources Foundation of WI, Gathering Waters, River Alliance of Wisconsin, UW Sea Grant, League of WI Municipalities, WI Towns Association, WI Counties Association, NE WI Great Lakes Sport Fishermen, Great Lakes Sport Fishermen of Milwaukee, and the Lake Michigan and Lake Superior Commercial Fishing Boards.

11. Identify the local governmental units that participated in the development of this EIA.

The open comment period was conducted during August 2013. No local governments requested to participate in the development of the EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule change would have a minimal economic impact on state-licensed commercial fishers, charter fishers, and sport/recreational anglers. Minimal impact is expected for businesses or business associations. No additional reporting requirements will be imposed on small businesses as a result of these rule changes. This rule does not directly affect public utility rate payers or local governmental units.

The department received five comments during the economic impact analysis comment period (August 1-15):

1- Jeff Bodin, commercial fishing small business owner, stated that the rule will change nothing because tribal commercial fishing nets would move into the area instead.

(The department determined that although this is possible, tribal commercial fishing trap nets are not currently placed in this area, nor do any tribal fishers fish trap nets anywhere at this time. Therefore, they currently do not present impediments to navigational safety. Tribal fishers are subject to tribal regulations and therefore would not be required to follow the boundary changes in this rule proposal. However, Bad River and/or Red Cliff bands could agree to adopt the State's boundary changes pursuant to the State-Tribal Agreement.)

2- Darryl Fenner, D's Superior Fishing Charters (Washburn, WI), stated that he has a small charter fishing business located on the Chequamegon Bay of Lake Superior and the rule change would result in no compliance costs to his business, but it would have an economic and safety benefit. Mr. Fenner's letter also included: The high number and density of commercial trap nets in the Restricted Use Area (RUA) during June 1-August 15 does not allow him to charter fish in a significant portion of the RUA, and effectively separates fishing in Chequamegon Bay from other areas of Lake Superior. He said net density is high, with nets oriented in all directions, making it impossible to charter fish or sport fish through this area. Marker buoys, net flags, netting, and ropes criss-cross the area. One entanglement of charter fishing gear may result in significant loss of gear, costing hundreds to thousands of dollars and a ruined charter fishing experience for his clients. He said the number and density of trap nets require additional travel time and expense for each charter fishing trip. Due to location and density, each charter fishing trip must start outside the RUA or result in net entanglement. He said this doubles his daily fuel costs, and by raising charter fishing rates to cover those costs he has fewer trips booked. With few or no nets in the RUA, he said he could charter fish closer to the Washburn/Bayfield area, resulting in lower rates and more days booked as well as increased business for the local economy and improved income for his business. Limiting the number and placement of trap nets within the RUA would allow some charter fishing within the proposed "safe passage area" however it is likely trap nets will surround this area, again making it impossible to charter or sport fish there. Removal of all netting within the RUA would be a better choice for the area economy. ... Additional restrictions on the number, size, and location of trap and gill nets are necessary to allow the sport fisherman a fair chance at harvest of the fishing resource. Boater safety is a serious concern with the current number and density of trap nets within the RUA. He said the net markers are difficult to see during the day, and nearly impossible to see at

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night. The safe passage area may be a small improvement, but will likely result in trap nets placed around the perimeter of the area, again resulting in a safety hazard. He said the entire RUA should be a safe passage area.

3- Mark R. Johnson, on behalf of the Apostle Islands Sportfisherman's Association, (Ashland, WI) stated that the AISA supports the proposed rule as a first step in rebalancing sportfishing and commercial interests. He also listed a number of concerns regarding commercial netting including: 1) nets are placed in popular fishing areas creating a safety hazard, 2) sportfisherman are choosing not to fish the area over concerns about net entanglement, 3) each entanglement costs sportfisherman ~\$100 in equipment, 4) Apostle Islands and Chequamegon Bay provide a shelter from weather but not nets, 5) nets obstruct recreational boat traffic as well as fisherman, 6) all businesses benefit from sportfishing and many jobs are created; commercial fishing benefits a few and creates few jobs, 7) when sportfishing is poor the entire area suffers. Further, he expressed the AISA's displeasure at the limited 15 day comment period. He stated more groups would comment if the period were longer and that many groups do not meet in the summer.

4- Robert S. Gowdy, Washburn, WI, stated that he has lived in Washburn and fished Chequamegon Bay for 23 years. His comments were focused on navigational safety of the area rather than any economic impact. He said that the nets are poorly marked in the RUA and are placed directly in the path known locally as "salmon alley." He stated: "If safety is a top priority for the state, I believe nets should not be placed anywhere inside the boundaries shown on the map."

5- Cliff Halvorson, on behalf of Halvorson Fisheries (Cornucopia, WI), stated their opposition to the proposed rule. He stated that the rule was unfair as the "zone of safe passage" disproportionately impacted Halvorson Fisheries nets and would take "money out of his pocket." He stated that these nets had been in place for a number of years and had never been an issue before and that recreational traffic can travel right over the deeper nets with no risk of entanglement. He stated that the current half-mile required separation between commercial trap nets should be more than sufficient to ensure safe navigation. He repeatedly reiterated his strong opposition to this measure and intention to continue to actively oppose it.

(The department determined the proposed location and size of the "zone of safe passage" is necessary to minimize navigation hazards to recreational boaters and fisherman. It was determined that a route through the middle of the channel would provide the safest passage through deepest water with no other known navigational obstructions. Of the seven trap nets Halvorson Fisheries have permitted in the RUA, a maximum of two would be impacted by the proposed location of the "zone of safe passage.")

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule would increase navigational safety and likely expand safe fishing and boating opportunities for the charter fishers and recreational anglers. Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but the rule is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected. No significant economic impacts are expected for commercial fishers. The department is proposing a balanced approach that protects the navigational safety of the recreational fishing and boating public and the economic needs of commercial fishers. Based on public input, there would be a positive economic benefit for some fishing related small businesses, such as charter fishing businesses.

14. Long Range Implications of Implementing the Rule

As noted, this rule would increase navigational safety and likely expand safe fishing and boating opportunities for the charter fishers and recreational anglers.

15. Compare With Approaches Being Used by Federal Government

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There is no existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Superior.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Trap nets are not used in Minnesota waters of the Great Lakes. The State of Michigan has uniform trap net marking requirements for all of its Great Lakes Waters (parts of Lakes Superior, Michigan, Huron, and Erie). The Michigan Department of Natural Resources and Environment has the authority to limit trap netting by individual license holders if and when conflicts arise. Pursuant to that authority the MI DNRE prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron.

17. Contact Name

Peter Stevens, Lake Superior Fisheries Field Unit Supervisor

18. Contact Phone Number

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This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but the rule is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The department's main concern is to increase navigational safety and expand safe fishing and boating opportunities. The rule was written to ensure commercial fishers' economic needs were included.

5. Describe the Rule's Enforcement Provisions

The rule will be enforced by department conservation wardens under the authority of chapter 29, Stats., through routine patrols and investigations of citizen complaints.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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