

Clearinghouse Rule 13-082

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING RULES

The statement of scope for this rule, SS 003-12, was approved by the Governor on December 28, 2012, published in Register No. 685 on January 31, 2013, and approved by the Natural Resources Board on February 27, 2013.

Wisconsin Natural Resources Board proposes an order to amend s. NR 25.10 (1) (c), relating to the number, placement, and removal of commercial fishing trap nets in the Restricted Use Area of Lake Superior.

FH-25-12

Analysis Prepared by Department of Natural Resources

- 1. Statutes interpreted.** Sections 29.014(1), 29.041 and 29.519(1m)(b), Stats.
- 2. Statutory authority.** Sections 29.014(1), 29.041, 29.519(1m)(b), Stats.
- 3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.** Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

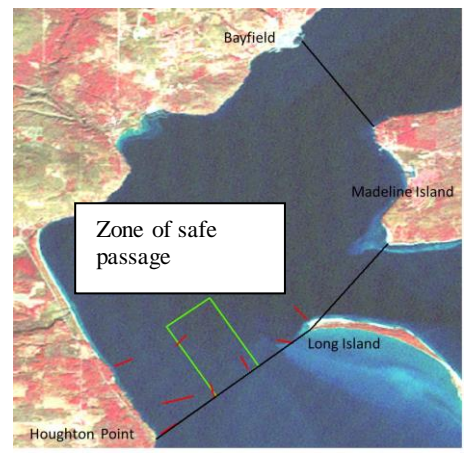
Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, establish species harvest limits, and designate the kind, size and amount of gear to be used in the harvest.

4. Related statutes or rules.

Section 30.74(2)(a), Stats., authorizes the department to establish by rule uniform marking of the water areas of this state through the placement of aids to navigation and regulatory markers, including but not limited to fishing buoys.

5. Plain language analysis.

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.





Houghton Point

SECTION 1 lists three changes. First, commercial fishers are limited 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. Second, trap nets are excluded from a “zone of safe passage” within the Restricted Use Area to address safety concerns with recreational boaters and anglers. Third, the Code is clarified to explicitly 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.

6. Summary of and comparison with existing or proposed federal statutes and regulations.

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

7. Comparison with rules in adjacent states.

Trap nets are not used in Minnesota waters of the Great Lakes. The Michigan Department of Natural Resources has the authority to limit trap netting by individual license holders if and when conflicts arise. Pursuant to that authority the MDNR prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron.

8. Summary of factual data and analytical methodologies.

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.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.

The rule addresses the number and placement of trap nets in the Restricted Use Area. There would be no implementation costs for the department.

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 received during the economic impact analysis comment period, there would be a positive economic benefit for some fishing related small businesses, such as charter fishing businesses.

10. Effect on small business.

The proposed rule change would impact state-licensed commercial fishers, charter fishers, and recreational anglers. Minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes. The department will conduct an economic impact analysis prior to rule implementation.

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

11. Rules proposed by the Department of Veterans Affairs. No information

12. Agency contact person.

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13. Place where comments are to be submitted and deadline for submission. Comments on this proposed rule may be submitted to the agency contact person listed above. The deadline for written comments is to be determined.

SECTION 1. NR 25.10 (1) (c) is amended to read:

NR 25.10 (1) (c) No commercial fishing gear of any kind except by permit issued under sub. (4) for the taking of whitefish and lake herring only from June 1 to August 15 may be used, set, placed or operated in the following waters: the area from the easterly most tip of Houghton Point, section 27, township 49 north, range 4 west, Bayfield county, northerly along the shoreline to the entry to the city of Bayfield marina, then easterly to Point Defroid on Madeline island, section 30, township 50 north, range 3 west, Ashland county, then southerly along the western end of the island to the tip of Grants Point, section 6, township 49 north, range 3 west, Ashland county, then southerly to Chequamegon Point on the western tip of Long island, section 13, township 49 north, range 4 west, Ashland county, thence southwesterly to the eastern tip of Houghton Point, except that float nets as described in s. NR 25.09 (1) (ah) 3. may be fished under the ice only, gill nets of not less than 4 7/16 inch minimum stretch measure may be fished under the ice and not from a boat north of latitude 46° 45' at a minimum depth of 19 fathoms, gill nets of not greater than 1 3/4 inch stretch measure may be fished for smelt and herring

under the ice, but must be at least 1/2 mile from the mouth of any trout stream, and entrapment gear for smelt may be allowed by permit from ice out to May 15. Commercial trap nets operated under permits issued under sub. (4) for the restricted area described in this paragraph, but not including the exception for floats nets as described in s. NR 25.09 (1) (ah) 3., shall be limited to a maximum of one (1) per commercial fishing license and shall not be set within the following waters: the area from N46° 44.22' W90° 50.22' then southeast to N46° 43.08' W90° 49.44' then southwest to N46° 42.6' W90° 50.10' then northwest to N46°43.74' W90° 50.94' then northeast to N46° 44.22' W90° 50.22'. All commercial fishing gear operated under permits issued under sub. (4) for the restricted area described in this paragraph, but not including the exception for floats nets as described in s. NR 25.09 (1) (ah) 3., shall have the fish holding pot portion rendered inoperable after August 15 and shall have the webbing removed from the water within 3 days after the close of the lake trout season.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)