

Clearinghouse Rule 15-074

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The statement of scope for this rule, SS 093-14, was approved by the Governor on August 27, 2014, published in Register No. 705 on October 1, 2014, and approved by the Natural Resources Board on October 29, 2014. This rule was approved by the Governor on _____.

The Wisconsin Natural Resources Board proposes an order to repeal NR 25.02 (50); amend 25.09 (1) (am) f., and 25.13 (9) (b), (11) (c) and (11) (d); repeal and recreate 25.13 (1) through (5); and create 25.02 (18m) relating to implementing a web-based electronic fish reporting system for licensed commercial fishers of the Great Lakes and affecting small business.

FH-13-14

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 29.014(1), 29.041, 29.503(5)(br), and 29.519 (5) (b), Stats.

2. Statutory Authority: Sections 29.014(1), 29.041, 29.503(5)(br), and 29.519 (5) (b), Stats.

3. Explanation of Agency 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 29.503 (5) (br), Stats. requires each wholesale fish dealer to complete and submit an annual inventory of sturgeon and Great Lakes fish to the department.

Section 29.519 (5) (b), Stats., requires each commercial fisher to maintain and submit records to the department on their daily fishing activities in the form and manner required by the department.

4. Related Statutes or Rules: All of s. 29.519 (5), Stats.

5. Plain Language Analysis:

The proposed rule would implement commercial fishing reporting procedures for a web-based electronic fish harvest reporting system that utilizes current technology and meets recommendations requested by the commercial fishing industry in the June 2000 Commercial Fisheries Task Force.

SECTION 1 defines electronic communication device, which are devices such as computers, tablets, smart phones or other devices that commercial fishers may use to access and submit required fish harvest reports.

SECTION 2 repeals a definition of “portable electronic reporting units” that are no longer provided by the department or used by commercial fishers.

SECTION 3 updates references to sections in NR 25.13, which are repealed and recreated by this rule.

SECTION 4 removes redundant language involving identical rules for Lake Superior and Lake Michigan and removes directions for commercial fishers to use a discontinued, obsolete fish harvest reporting system. The new language creates a single section for reporting elements that are identical on Lake Michigan and Lake Superior; and it allows commercial fishers the option of continuing to report their daily fishing activity via a paper biweekly report or to use the new electronic fish harvest system to report daily. It also creates new directions for an updated electronic fish harvest reporting system that will allow commercial fishers to use their own electronic communication devices for accessing the system and submitting reports that are required under state statute.

SECTIONS 5, 6, and 7 remove outdated language from code.

Note: “Electronic fish reporting system” is already defined in NR 25.02(19) as “a system established or authorized by the department for reporting daily commercial fishing activity and other required information to the department by electronic means.”

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin’s waters.

7. Comparison with Similar Rules in Adjacent States:

Illinois has no active commercial fishing licenses on the Great Lakes; thus there are no Great Lakes reporting requirements at the current time.

Michigan commercial fishers are required to file a monthly report with the Michigan Department of Natural Resources documenting their daily fishing activity and data is similar to that required of Wisconsin Great Lakes commercial fishers. Michigan rules are similar to those proposed for Wisconsin. Michigan commercial fishes have the option of either electronically filing the report by completing and submitting a web-based form or reporting by means of a monthly paper report.

Similar to Wisconsin and Michigan, the Minnesota licensed Great Lakes commercial fishers file a monthly paper report documenting daily fishing activity. Minnesota does not have an electronic reporting system available for use by commercial fishers.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

The current s. NR 25.13(5), Wis. Adm. Code, directs Great Lakes commercial fishers to use a discontinued, obsolete fish harvest reporting system and is not applicable to the next reporting system under development. The revised rules will create the necessary procedures and will allow the Great Lakes commercial fishers to use the new system for recording and reporting all elements of their commercial catch. Recognizing that a small percentage of the commercial fishers may not own computers or may not be comfortable with electronically submitting their daily fishing activity reports, the department will allow these commercial fishers to continue reporting with the current biweekly paper system until they decide to retire from the industry or become comfortable with use of the new technology.

A U.S. Fish and Wildlife Service grant was obtained to develop a new web-based reporting system that will allow Great Lakes commercial fishers to electronically submit their daily fishing activity reports directly to the department via computers and eventually smart phones. The new web-based system was ready for testing in early 2015.

This rule includes changes to administrative code that support existing policies and fisheries management goals. The department took steps to ensure the accuracy, integrity, objectivity, and consistency of data were used in preparing the proposed rule and related analysis.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

No adverse economic impact is anticipated as a result of this rule change. If commercial fishers do not own or have ready access to an Internet connected computer, they will be allowed to continue reporting via the existing biweekly paper reporting system. The proposal will update rule language on how commercial fishing electronic harvest reports may be made. No harvest quota or fishing effort changes will be included in the rule.

The department conducted an economic impact analysis to determine if any individuals, businesses, local governments, or other entities expect to be affected economically. No comments were received during the EIA open comment period July 20 to August 3, 2015.

10. Effect on Small Business (initial regulatory flexibility analysis):

This rule is intended to be a benefit to small businesses active in commercial fishing on the Great Lakes. The proposed rule includes improved options for reporting requirements, as requested by many commercial fishers. However, the department will also allow commercial fishers to continue reporting with the current biweekly paper system. No design or operational standards are contained in the rule.

11. Agency Contact Person:

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12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to the people and addresses above. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>. Hearing dates are planned for the end of September 2015 and the comment submission deadline will be September 30, 2015.

SECTION 1. NR 25.02 (18m) is created to read:

NR 25.02 (18m) “Electronic communication device” means a device with access to the internet or local networks capable of storing or replicating data on a hard drive, transmitting data over a network, displaying data on a screen, or recording data via an input apparatus.

SECTION 2. NR 25.02 (50) is repealed.

SECTION 3. NR 25.09 (1) (am) f. is amended to read:

NR 25.09 (1) (am) f. Allowable gill net effort limitations for period 1 shall be made available by November 1 of each year. If a commercial fisher's allowable gill net effort has not been used by the end of period 1 or 2 and is reported by the commercial fisher according to s. NR 25.13-~~(4)~~, the remaining balance of allowable gill net effort in feet of net shall be carried over to succeeding periods within the lake trout open season but not carried over to the next lake trout open season. Allowable gill net effort limitations for periods 2 and 3 shall be determined by the department within 5 working days after the start of periods 2 and 3 using remaining allowable gill net effort reported according to s. NR 25.13-~~(2)~~ or ~~(5)~~.

SECTION 4. NR 25.13 (1) through (5) are repealed and recreated to read:

NR 25.13 (1) PAPER REPORTING. Except as provided under sub. (2), each person required to be licensed under s. 29.519 (1m), Stats., to conduct commercial fishing operations on Lake Michigan or Lake Superior or fishing as an eligible member of the Red Cliff or Bad River Bands of Lake Superior Chippewa shall submit a biweekly fishing report to the department that includes all records of pounds of fish harvest, harvest effort, and all other information called for on the report form. All fishing activities for the preceding biweekly calendar period shall be reported in writing in the English language on forms provided for this purpose by the department and include such information as may be deemed necessary by the department for management of the fishery and to prevent depletion of the fish supply.

(a) The biweekly report shall be mailed or delivered to the department at the address provided on the form no later than the Tuesday following the biweekly reporting period. All biweekly commercial fishing reports shall be signed by the commercial fishing licensee under whose license the fish were taken.

(b) Unless otherwise authorized in writing by the department, biweekly fishing reports shall be submitted regardless of whether the person fished during the period of time covered by the report. All department copies of biweekly report forms issued to a person for the license year and not previously submitted by the person shall be returned to the department by the final reporting deadline for that license year.

Note: Biweekly fishing report forms are provided by the department to each licensee at the beginning of the license year. Additional forms may be obtained by writing: DNR, 110 South Neenah Avenue, Sturgeon Bay, WI 54235.

(c) Each person required to be licensed under s. 29.519 (1m), Stats., to conduct commercial fishing operations on Lake Michigan or Green Bay, or a member of the licensee's crew if the licensee is not present, shall carry the biweekly fishing report forms while fishing. The information pertaining to the licensee's name, address, license number or fleet reporting number, date, name and number of the boat fished from, fishing location and depth, fishing effort, gear used, and estimated pounds of each fish species caught for each fishing trip shall be recorded on the biweekly fishing report forms immediately after completing all net lifts for each trip and before starting to bring the catch to dock or shore. The report shall accompany the fish caught to dock or shore. After a trip's information has been recorded, the report may not be transported for the rest of the day in such a way that it can be altered except to record information pertaining to additional fishing trips taken that day.

(2) ELECTRONIC REPORTING. A person required to be licensed under s. 29.519 (1m), Stats., to conduct commercial fishing operations on Lake Michigan, Green Bay, or Lake Superior may elect to submit a daily fishing report to the department that includes all records of pounds of fish harvest, harvest effort, and all other information called for on the report form by means of the electronic fish reporting system. All fishing activities for the day, including the estimated catch required pursuant to par. (f) and the weighed catch by species, shall be reported before 11:59 p.m. of each day during which the licensee engages in on-water fishing activity. Reports shall be submitted in the English language on electronic forms provided for this purpose by the department and include such information as may be deemed necessary by the department for management of the fishery and to prevent depletion of the fish supply. The daily report shall be submitted using an electronic communication device operated by the licensee or a licensee's crew member.

(a) At the request of the licensee, the department shall issue login credentials to the licensee and to any licensee crew member in order to access the electronic fish reporting system and submit reports. Unique login credentials shall be assigned to each person for whom login credentials are requested. A person may only enter or submit a record into the electronic fish reporting system using their own department issued login credentials.

Note: Pursuant to s. 29.519 (4) (d), Stats., the licensee is responsible for all acts of crew members conducting commercial fishing activities for the licensee.

(b) Reports submitted using the electronic fish reporting system are considered approved by the licensee upon submittal.

(c) If the electronic communication device malfunctions or is unable to connect to the electronic fish reporting system, the licensee or a licensee's crew member shall immediately notify the department by calling a designated phone number or by submitting an email message to a designated email address. The licensee or licensee's crew member shall complete a paper copy of the biweekly report for that day before 11:59 p.m. the same day. Upon reestablishing the functionality of the electronic communication device or reestablishing connection with the electronic fish reporting system, the licensee or licensee's crew member shall enter the daily fishing activity information and submit it electronically to the department. The paper copy of the biweekly report shall be retained as part of the licensee's records required under s. 29.519 (5) (dm), Stats.

Note: Pursuant to s. 29.519 (6), Stats., all records of commercial fishing activity are subject to inspection upon request of a duly authorized department representative. This includes electronic records on a portable electronic communication device.

(d) For each preceding biweekly calendar period, the licensee shall print and sign a biweekly report generated by the electronic fish reporting system and retain that report as part of the licensee's records required under s. 29.519 (5) (dm), Stats. Unless otherwise authorized in writing by the department, paper biweekly fishing reports shall be printed, signed, and retained by the licensee regardless of whether the person fished during the period of time covered by the report.

(e) Except for reporting trawl fish harvest pursuant to par. (g), when the landed catch cannot be weighed by the end of the day, the licensee or crew member shall call a department designated telephone number or submit an email message to a designated email address before 11:59 p.m. that day and notify the department of the licensee's name, commercial fishing license number or fleet reporting number, species of fish, and estimated weight of each species and that the landed catch cannot be weighed and reported until the next day. The licensee or crew member shall then weigh the landed catch the next day and report the weight by fish species and other information required by the department on the form of the electronic fish reporting system before 11:59 pm of that day.

(f) Each person required to be licensed under s. 29.519 (1m), Stats., to conduct commercial fishing operations on Lake Michigan or Green Bay, or a member of the licensee's crew, who elects to submit a daily fishing report by means of the electronic fish reporting system shall submit a report of the fishing activity and estimated pounds of fish caught during each fishing trip on Lake Michigan or Green Bay.

1. For each fishing trip on Lake Michigan or Green Bay, the licensee or crew member shall carry an electronic communication device and, after completing the last net lift but before starting for shore, shall login to the electronic fish reporting system and submit the date, licensee's name, commercial fishing license number or fleet reporting number, boat name, zone of fishing, the estimated weight in

pounds of the fish by species caught by zone, and any other information requested on the electronic fish reporting system for each fishing trip.

2. If the electronic communication device fails or is unable to connect to the electronic fish reporting system, the licensee or crew member shall complete a paper estimated catch report available from the department upon the completion of the last lift but before starting for shore for each fishing trip. The estimated catch report shall accompany the fish caught to dock or shore. After each trip's information has been recorded, the report may not be transported for the rest of the day in such a way that it can be altered except to record information pertaining to additional fishing trips taken that day.

3. The electronic communication device or paper copy of the estimated catch report shall accompany the fish to dock or shore and shall be immediately produced for inspection and verification of the entered record upon the request of a department representative. The paper copy of the estimated catch report shall be retained as part of the licensee's records required under s. 29.519 (5) (dm), Stats.

(g) When fishing with trawls in Lake Michigan or Green Bay, the following electronic reporting requirements also apply:

1. After the last lift of the trip and prior to returning to dock or port, a licensee or crew member fishing by trawl shall record the estimated weight in pounds of fish harvested by species and zone as provided under par. (f).

2. Before 11:59 p.m. each day, the licensee or a crew member fishing by trawl on the waters of Green Bay shall report to the department the landed pounds of smelt and pounds of incidental catch.

3. A licensee or crew member fishing by trawl on the waters of Lake Michigan other than Green Bay, within 24 hours of landing the catch on all days except non-work days and days immediately preceding non-work days, shall electronically report to the department the landed pounds of chubs and roe intended for human consumption, pounds of smelt, and pounds of incidental catch. When trawl caught fish are landed on days that immediately precede non-work days and on non-work days, the commercial fisher or crew member shall report the landed catch within 48 hours of the estimated catch entry.

(h) Unless otherwise authorized in writing by the department, no licensee, crew member, agent, wholesale fish dealer, or other person may transport, cause to be transported, deliver, receive, or offer to deliver or receive for transportation to a location outside of Wisconsin, any fish or fish parts taken from outlying waters unless the fish have been reported as part of a weighed catch as required under this section.

SECTION 5. NR 25.13 (9) (b) is amended to read:

NR 25.13 (9) ~~(b) No later than 30 days after July 1, 2009, each~~ Each commercial fisher shall complete the inventory required by par. (a) and submit the inventory report to the department. ~~At the time the initial inventory report is submitted to the department, the~~ The commercial fisher shall also designate and advise the department of the month and day in which ~~future~~ annual inventory reports will be submitted. The licensee shall thereafter complete the annual inventory within 10 working days preceding that designated month and day.

SECTION 6. NR 25.13 (11) (c) and (d) (intro.) are amended to read:

NR 25.13 (11) (c) For more than 5 violations of s. 29.503 or 29.519, Stats., or this chapter within a 36-month period or 3 or more violations of s. 29.503 or 29.519, Stats., or this chapter within a 12-month period, in addition to the requirements of par. (b), upon returning to the dock, the commercial fisher or crew member shall weigh the catch not more than 30 minutes after landing and prior to loading or moving the fish from the dock or landing site, and enter and save the species and weight in pounds of the fish in ~~the portable electronic reporting unit~~ a paper biweekly report form or the electronic fish reporting system. If the actual weight in pounds of the fish is ~~entered and saved in the portable electronic reporting unit~~ a paper biweekly report form or the electronic fish reporting system prior to returning to shore, the commercial fisher or crew member is exempt from this paragraph.

(d) In the event that the weight of the fish cannot be entered or saved due to mechanical failure or other problems associated with the ~~portable electronic reporting unit~~ electronic communication device:

Section 7. NR 25.17 (2) (b) is amended to read:

(b) ~~No later than 30 days after July 1, 2009, each~~ Each wholesale fish dealer shall complete the inventory required by par. (a) and submit the inventory report to the department. ~~At the time the initial inventory report is submitted, the~~ The wholesale fish dealer shall designate and advise the department of the month and day in which ~~future~~ annual inventory reports will be submitted. The wholesale fish dealer shall thereafter complete the inventory on an annual basis within 10 working days preceding that designated month and day.

SECTION 8. EFFECTIVE DATE. This rule takes 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 9. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Cathy Stepp, Secretary

(SEAL)