

Draft #2

The statement of scope for this rule, SS 110-20 was approved by the Governor on August 11, 2020, published in Register No. 776A3 on August 17, 2020, and approved by the Natural Resources Board on October 28, 2020. This rule was approved by the Governor on July 27, 2021.

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

The Wisconsin Natural Resources Board proposes an order to **repeal and recreate** NR 20.65 relating to guide licenses and reporting requirements and affecting small business.

FH-08-20

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 23.09 (2) (intro.) and 23.09 (2) (km), Stats., have been interpreted as authorizing the department to promulgate rules and conduct studies, investigations, and surveys for the protection and use of natural resources. Sections 29.014 (1) and 29.041, Stats., have been interpreted as authorizing the department to establish fishing conditions and regulate fishing on inland, outlying and boundary waters to provide continued opportunities for good fishing. Sections 29.411 and 29.512 (1), Stats., have been interpreted as authorizing the department to establish reporting requirements for licensed guides.

2. Statutory Authority: Sections 23.09 (2) (intro.), 23.09 (2) (km), 29.014 (1), 29.041, 29.411, and 29.512 (1), Stats., authorize this rule. All rules promulgated under this authority are subject to review under ch. 227, Stats.

3. Explanation of Agency Authority:

Section 23.09 (2) (intro.), Stats., authorizes the department to promulgate rules, conduct studies, investigations and surveys, and establish services to carry out the conservation purposes outlined in s. 23.09 (1), Stats., including the protection, development and use of natural resources. Section 23.09 (2) (km), Stats., further authorizes the department to “develop an information system to acquire, integrate and disseminate information” on aquatic resources. Guide reporting provides an important source of information on sport fish harvest, which can be incorporated into study models and quotas for the sustainable use of fishery resources. By developing a more effective information system to collect reporting data from guides, the department will develop a more robust foundation for future studies relating to Great Lakes game fish populations and harvest.

The department is directed under s. Section 29.014 (1), Stats., to establish and maintain any bag limits and 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 29.512 (1), Stats., requires any person guiding others in fishing in exchange for compensation or reward to obtain a guide license, and requires guide licensees to comply with the requirements of ch. 29, Stats. Subject to s. 29.411, Stats., guides must cooperate with a department employee conducting a fish census. These two provisions provide that the department may obtain fish census information from

licensed guides. The department conducts fish censuses for individual anglers as well to gain information on fish harvest and fishing effort.

4. Related Statutes or Rules: Section 29.514 (2), Stats., requires records of the number of each type of fish taken under a Great Lakes sport trolling license for trout and salmon, and authorizes the department to specify other information that sport trolling licensees must report for guiding on outlying waters.

5. Plain Language Analysis:

Under existing rules, licensed guides in the Great Lakes are required to report fish harvests, but the exact data requested and form of submission are not clear, which creates challenges for effective enforcement. Section NR 20.65, Wis. Admin. Code, requires all guides operating in the outlying waters of Lake Superior, Lake Michigan, and Green Bay to report the quantity and variety of fish taken and other information relating to fishing activities, as required by the department. The rule requiring Great Lakes licensed fishing guides to report as required by the department has been in place since 1974, but has never included specific details on the types of information that the department requires, timelines for reporting, or methods for reporting.

Because the existing reporting requirements in s. NR 20.65, Wis. Admin. Code are very general, fishing guide reporting is not consistent and therefore does not provide useful data that can be used for fisheries modeling, management and law enforcement. Additionally, the existing rule does not provide a framework to encourage compliance, and therefore guide reporting compliance is very uncertain. Unreported trips may account for a substantial proportion of the total guided trips, resulting in underreporting of fish caught and thus limiting the data available for managing those species.

This permanent rule would clarify requirements for fishing guide reporting on Lake Michigan, Lake Superior, Green Bay, and tributaries, including specific waters for which guide reporting may be required each year and methods and timelines for submitting reports to the department, such as electronic submission. This rule will also include the types of information to report (when and where reporting is required), including the name of the person completing the report, the date and location of the guided fishing trip, the number of hours per fishing trip, details on fish caught by the clients, number of people fishing during a trip, and other similar information. This rule will also establish a streamlined procedure for making the list of species, waterbodies, and time of year for which the department is requiring reporting easily available to fishing guides. The additional reporting data collected under this rule will be invaluable for managing populations of popular game fish, including lake whitefish, yellow perch, lake trout, muskellunge, smallmouth bass, walleye, and other species in the sport fishery.

SECTION 1 repeals and recreates the Great Lakes guide reporting rules, encapsulated in s. NR 20.65, Wis. Admin. Code, in order to restructure the entire section with the updated, more specific guide reporting requirements. Many of these requirements are already in place for licensed charter captains that guide anglers in sport trolling for trout and salmon under s. 29.514, Stats., and were described in general terms under the previous format of s. NR 20.65, Wis. Admin. Code.

This section creates a definitions section that applies specifically to s. NR 20.65, Wis. Admin. Code, including definitions for guide, direct, assist, electronic guide reporting system, the Great Lakes, fishing guide, and fishing trip. The definitions of guide, direct and assist are derived from dictionary terms and applied to the relationship between fishing guides and clients. “Guide,” “direct,” and “assist” are terms used in s. 29.512 (1), Stats., so these definitions provide clarity regarding who must report. A definition of “fishing guide” is important for distinguishing fishing guides that provide guiding services for open water fishing or ice fishing from other guides licensed under ch. 29, Stats., and to clarify that people that

provide certain services, such as renting out fishing gear or boats for an angler's independent use without providing any additional guiding, assisting or directing, are not considered to be fishing guides. This definition will help reduce the ambiguity for when a license and reporting is required.

This section also describes the types of information that must be reported, the frequency of reporting, and departmental procedures for notifying the public of the annual reporting requirements. After each guided fishing trip, fishing guides will be required to report their name and customer ID number and the names and customer ID numbers of any other fishing guides participating in the trip, the date of the guided trip, the location fished, the number of anglers guided during the trip, the total number of hours fished, information on fish caught as specified on the report form, such as the species, number kept, and how many were tagged fish, and other information required to soundly manage the species taken. In cases where multiple guides participate in a single fishing trip, this rule will allow just one of the guides to submit the full report, with the other guides submitting an abbreviated report, to ensure compliance and accuracy while avoiding duplicative reporting data. Furthermore, this rule will enable employers of fishing guides to fill out the reports on the guides' behalf, as long as the employer obtains a guide license and the employer and employed guides apply for and receive authorization from the department for the employer to report.

The department will annually specify the waters of the Great Lakes and tributaries, species, and time frame for which reporting is required, to tailor guide reporting to the species and areas for which data are needed. As a result, some fishing guides may not be required to report during certain years or certain times of the year. The department will make this information available to licensed guides on December 1, prior to the start of the ice fishing season each year, and the reporting requirements will go into effect on January 1 of the upcoming year.

Finally, this rule establishes the methods required for fishing guide reporting. The intent is to require electronic reporting, which provides more accurate data more quickly and easily than paper reports. Most licensed fishing guides in the Great Lakes already have a cell phone or other electronic device with which to enter the trip reports. The department may utilize an existing electronic reporting system to collect the reports. This rule would require guides to enter their reports into the electronic reporting system within 24 hours of completion of the fishing trip. If the electronic system is down, or if the guide cannot access the system due to an electronic device malfunction, the guide would be required to report each trip on a paper form and complete an electronic submission when the system is again functional or the guide is within cell phone range. Fishing guides would be required to retain paper records and present them to a department representative upon request.

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

No federal regulations apply. States possess inherent authority to manage the fishery and wildlife resources within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

The department received no comments during the preliminary public hearing, nor during the accompanying comment period.

8. Comparison with Similar Rules in Adjacent States:

In Michigan, charter captains (both sport trolling charter captains and those using other fishing methods) in the Great Lakes are required to submit monthly reports to the Michigan Department of Natural Resources using an electronic system. The reports contain information on lake fished, date, specific location and hours fished, total number of anglers, total catch of major species, targeted species, and sea lamprey presence on certain salmonids. The Michigan DNR collects this data by sending a notification of reporting requirements to charter captains either by email or by hard-copy mailing, and then follows up with an additional postcard or mail notification and law enforcement contacts for those charter captains that have not yet submitted reports. This approach resulted in a 99 percent compliance rate in 2019-2020¹.

Illinois also considers charter boats to include those taking anglers on paid fishing trips for any kind of sportfish. The Illinois DNR requires charter sportfishing boat operators to complete daily catch reports, all of which are due by the 15th of the following month. Those who do not comply may be subject to penalties and may not be able to obtain a charter boat permit in future years^{2,3}.

Minnesota requires licensed Lake Superior fishing guides (including charters) to submit monthly fishing reports by the 10th of the following month during the fishing season. Those that do not submit reports three times in a 2-year period may not be eligible for a guide license for up to three years.⁴

Iowa does not require guide licenses or guide reporting.

Sources:

1. Wesander, D. L., & Clapp, D. F. (2020, September). Charter Boat Catch and Effort from the Michigan Waters of the Great Lakes, 2019. Retrieved from Michigan Department of Natural Resources: https://www.michigan.gov/documents/dnr/CharterFishRpt-2019_709759_7.pdf
2. Fish (515 ILCS 5/) Fish and Aquatic Life Code. (2021). Retrieved from Illinois General Assembly: <https://www.ilga.gov/legislation/>
3. Lake Michigan Sportfishing Charter Boat Operator Information. (2021). Retrieved from Illinois Department of Natural Resources: https://www.ifishillinois.org/lmich/L_Michigan_Charter_Operators.html
4. Minnesota Administrative Rules - 6262.3050 Required Record Keeping. (2008, June 11). Retrieved from Minnesota Legislature: https://www.revisor.mn.gov/rules/6262.3050/?keyword_type=all&keyword=fishing+guide

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

These rules are similar to the reporting requirements already in place for licensed charter captains, who guide anglers in sport trolling for trout and salmon in the Great Lakes. The reporting requirements for licensed charter captains are established in s. 29.514 (2), Stats., and s. NR 20.60, Wis. Admin. Code, and require the charter captain to record the licensee's name and license number, locations fished, number of anglers, number of lines fished, hours fished, the number of each species of fish taken, and other information within ½ hour of completion of the fishing trip. The charter captain must submit all such reports to the department by the 10th day of the following month. Those rules have not imposed any significant inconveniences or costs to the charter captains, but provide important data used in monitoring trout and salmon harvest. Compliance rates for charter captain reporting are estimated to be around 95 percent, while fishing guide reporting compliance rates are highly uncertain.

Lake trout and lake whitefish are significant fisheries for both anglers and commercial fishers, and yellow perch is a key fishery in Green Bay, popular among sport fishers and with a small commercial component. Lake trout and lake whitefish harvest from guided trips are currently estimated from the creel

surveys conducted on Lake Superior and Lake Michigan and from limited guide reporting on Green Bay. These values are combined with harvest estimates from the general sport creel, charter reports and commercial harvest data (commercial harvest of lake trout is limited to Lake Superior only) to generate a total estimate of harvested lake trout and lake whitefish in Lake Superior, Lake Michigan and Green Bay. Green Bay yellow perch harvest is estimated similarly, through creel surveys and information from the limited commercial fishery. These harvest estimates are an input parameter to the statistical catch-at-age models used to generate the total lake trout, yellow perch, and lake whitefish abundance estimates for Lake Superior, Lake Michigan and Green Bay from which safe harvest levels are derived. Commercial harvest and charter harvest reporting compliance rates are estimated to be close to 100 percent, and improving accuracy of sport harvest by having guide harvest reporting will improve the statistical catch at age models as well as provide valuable population information for other species that do have significant commercial harvest or enough data to develop a statistical catch-at-age model.

Harvest for other key Great Lakes sport fisheries, such as the walleye, muskellunge, yellow perch, smallmouth bass and northern pike fisheries, is also of interest, and the department estimates it from creel surveys and limited guide reporting. However, additional guide reporting would help improve the accuracy of department data for these fisheries.

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

The department does not anticipate any significant costs to licensed fishing guides as a result of this rule. The majority of Great Lakes fishing guides already possess a cell phone or other electronic device on which reports can be entered, and no reporting costs, fees, or fines will be included in this rule. However, this rule would create new mechanisms to increase reporting compliance among fishing guides, which would require fishing guides to learn the new requirements and take action to submit timely reports.

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

This rule will have a minimal economic impact, if any, on licensed guide businesses. The types of information required to be reported under the proposed rule would not generate any costs. The method for reporting may minimally impact some guides under mandatory electronic reporting if those guides do not already possess an electronic device such as a computer or cell phone to enter the reporting information. These guides would have to purchase an electronic device to enter their reports, which is expected to be a minimal cost to each guide.

This rule will not contain any design or operational standards, but will contain new reporting requirements that will apply to licensed guides, including those who guide in sport trolling for species other than trout and salmon.

12. Agency Contact Person: Todd Kalish, Fisheries Management deputy bureau director, Todd.Kalish@wisconsin.gov, 608-266-5285; Meredith Penthorn, Fisheries Management policy specialist, Meredith.Penthorn@wisconsin.gov, 608-316-0080

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

Written comments may be submitted at the public hearings, by regular mail, or email to:
Meredith Penthorn
Department of Natural Resources
101 S. Webster St.
Madison, WI 53703

608-316-0080, Meredith.Penthorn@wisconsin.gov

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 20.65 is repealed and recreated to read:

NR 20.65 Report of licensed guides.

(1) DEFINITIONS. In this section:

- (a) "Assist" or "assisting" means providing support or aid to a person with the activities associated with the act of fishing, including transporting anglers between the shore and an open water or on-ice fishing location.
- (b) "Direct" or "directing" means to manage, supervise, or oversee an angler's or anglers' fishing activities and fishing trip conditions to aid the angler or anglers in attempting to catch fish.
- (c) "Electronic guide reporting system" means a system established or authorized by the department for reporting guided fishing trips and other required information to the department by electronic means.
- (d)
 - 1. "Fishing guide" means any person required to be licensed under the provisions of s. 29.512 (1), Stats., that is actively engaged in guiding, directing, or assisting a person or persons for compensation or reward in fishing, as defined in s. NR 20.03 (12), in waters defined in pars. (f), (h), and (i).
 - 2. "Fishing guide" does not include a person that rents boats, fishing shelters, fishing gear, or related equipment to an angler for the angler's independent

use, provided that the person does not offer any additional services to guide, direct or assist the angler in attempting to catch fish.

Note: "Person," has the meaning specified in s. 196.795 (1) (k), Stats.

- (e) "Fishing trip" means the time period during which an individual fishes or a group of anglers fishes together, commencing upon leaving the dock or shore and ending upon return to the dock or shore after the conclusion of fishing.
- (f) "Green Bay" means those waters specified in s. NR 20.03 (15), (16), and (21).
- (g) "Guide," when used as a verb, or "guiding" means to advise, influence or superintend the conduct or instruction of an angler or anglers, including providing expertise to an angler or anglers on how to conduct fishing activities to improve the angler or anglers' ability to catch fish.
- (h) "Lake Michigan" means those waters specified in s. NR 20.03 (17) and (18).
- (i) "Lake Superior" means Wisconsin waters of Lake Superior and Chequamegon Bay, as well as all tributaries up to the first lake or barrier impassable to fish.

(2) GENERAL PROVISIONS. No person may fail to file a report as required under this subsection and sub. (3). No person may file an inaccurate report of the information required under this subsection.

- (a) Each fishing guide operating in the Wisconsin waters of Lake Superior, Lake Michigan, or Green Bay designated under par. (b) shall report to the department in the manner described in sub. (3) for each fishing trip, except as provided in pars. (d) and (e).
- (b) The department shall annually specify the waters of Lake Superior, Lake Michigan, and Green Bay and the time frame and the fish species for which reporting is required, which shall become effective on January 1 each year. The department shall notify fishing guides of this information no later than December 1 of the preceding year.

(c) The report required under par. (a) for each guided fishing trip shall include all of the following accurate information:

1. Name and department customer identification number of the fishing guide filing the report.
2. Name and department customer identification number of other fishing guides who were involved in guiding, directing, or assisting with the fishing trip.
3. Date.
4. Location.
5. Total number of anglers.
6. Total number of hours fished during the fishing trip.
7. Description of fish caught during the fishing trip, including species, number caught, number kept, tag numbers, if any, and other related information.
8. Other information required on the report form that the department determines is relevant to the sound management of the species taken.

(d) If multiple fishing guides guide, direct, or assist with a fishing trip, in whole or in part, each fishing guide shall file a report per this subsection for that fishing trip, except that only one report may contain the information described in par. (c) 5. to 7., and all other reports filed for that fishing trip shall identify the name and department customer identification number of the fishing guide that completed the information in par. (c) 5. to 7. The fishing guides associated with the fishing trip may determine which fishing guide's report will contain the information in par. (c) 5. to 7., but all fishing guides remain responsible for ensuring that the information in the fishing trip report is provided and filed in accordance with this subsection and sub. (3).

(e) Notwithstanding the requirements in pars. (a) and (d), as an alternative form of reporting, a person who employs one or more fishing guides and who obtains a guide license under s. 29.512 (1), Stats., may elect to complete the fishing trip reports required under this subsection in place of any licensed fishing guide or group of fishing guides under its employ, in accordance with all of the following conditions:

1. The employer and any employed fishing guides for whom the employer will file reports shall jointly apply, on application forms furnished by the department, for annual authorization to file the fishing reports under this subsection. Authorization shall remain in effect until the end of the license year. The application forms shall include all of the following information:
 - a. The name, business address, and department customer identification number of the employer that will report on behalf of the employed fishing guides.
 - b. The names and department customer identification numbers of all fishing guides for whom the employer will submit reports during the license year.
 - c. Fishing guide certification that each fishing guide shall provide true and accurate information required under this subsection to the employer for all fishing trips during the license year while under the employ of that employer, that the fishing guide shall provide this information within 24 hours after completion of the fishing trip, and that the fishing guide remains responsible for ensuring that the employer has received the fishing trip report information to fulfill the requirements in subs. (2) and (3).
 - d. Acknowledgement of the employer and each fishing guide listed under subd. 2. b. for which fishing trip reports will be filed that the employer shall submit all fishing trip reports for the calendar year with

information provided by the fishing guide and in accordance with this section.

e. Any other information requested by the department.

2. The employer and each employed fishing guide for whom the employer will file reports shall each be responsible for the form, content, and submission of all fishing trip reports filed pursuant to this paragraph.

(3) REPORTING METHODS.

(a) Each fishing guide required to report under sub. (2) shall submit a report of each fishing trip to the department by means of the electronic guide reporting system within 24 hours after completion of the fishing trip, except as provided in par. (c). The fishing guide shall submit the report in the English language on electronic forms provided for this purpose by the department.

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

(c)

1. If the electronic guide reporting system is not in operation, or if the fishing guide is unable to connect to the electronic guide reporting system, the fishing guide shall complete and sign, in writing in the English language, a paper report on a form furnished by the department containing the required information in sub. (2) (c) within 24 hours of completion of the fishing trip.

2. When the electronic reporting system is again functional, or the fishing guide's electronic communication device can again connect to the electronic guide reporting system, the fishing guide shall resume entering trip reports required under sub. (2) into the electronic guide reporting system and submitting the reports electronically to the department. The fishing guide shall retroactively enter the information from any paper reports into the

electronic reporting system within 48 hours of completion of the fishing trip unless the department has granted an extension.

3. The fishing guide shall retain all paper copies of the trip report as part of the fishing guide's records for a period of 5 years from the date on which the record or report was created, and shall make records available upon the request of a department representative.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on January 1, 2022.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 23, 2021.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary