

Clearinghouse Rule 22-057

The statement of scope for this rule, SS 012-22 was approved by the Governor on February 3, 2022, published in Register No. 794A2 on February 14, 2022, and approved by the Natural Resources Board on April 13, 2022. This rule was approved by the Governor on insert date.

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

The Wisconsin Natural Resources Board proposes an order to **amend** NR 20.60 (1) and (2) and to **create** NR 20.60 (1) (a), (b), and (c) and (3) relating to reporting requirements for sport trolling licensees and affecting small business.

FH-16-21

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Section 29.514, Stats., is interpreted as requiring sport trolling licensees to keep records and report to the department in the manner specified.

2. Statutory Authority: Section 29.514, Stats., establishes the outlying water sport trolling license for charter captains. This section directs sport trolling licensees to keep records regarding activities conducted under the license. The department is authorized to specify the information required on the report and the manner of the report. This section further specifies that reports must be submitted on or before the 10th day of each month.

3. Explanation of Agency Authority: Section 29.514, Stats., grants the department the authority to specify the information required on the report form that sport trolling licensees are required to keep and submit, as well as the form of the report, and further specifies that reports must be submitted on or before the 10th day of each month.

4. Related Statutes or Rules:

Section NR 20.65, Wis. Admin. Code, establishes the electronic reporting requirements for fishing guides on the Great Lakes who are licensed under s. 29.512, Stats. Section NR 25.13 (2), Wis. Admin. Code, establishes the electronic reporting requirements for licensed commercial fishers on the Great Lakes.

5. Plain Language Analysis:

This rule requires sport trolling licensees (charter captains guiding anglers in trolling for trout and salmon on the outlying waters of Lake Michigan (including Green Bay) or Lake Superior) to submit their fishing trip reports electronically, provides for a method of reporting in the unlikely event that the electronic reporting system is not in operation, and includes updated details on the information required on the report form. In addition, this rule establishes reporting timelines that are compatible with reporting through electronic means while also providing a basis for enforcement.

SECTIONS 1 and 2 subdivide the existing language in s. NR 20.60 (1) into separate paragraphs to describe the method of reporting for sport trolling licensees, information required in the report, and procedures for reporting if the electronic reporting system designated by the department is not in operation. The information required on the report form is largely unchanged except for the additions of identifiers for the licensee's boat and more specific information for improved fisheries management

(number of fish of each species harvested and fin clip information). In the event that the electronic reporting system is not in operation, including situations in which the licensee's smartphone malfunctions to the extent that the licensee cannot enter information into the system, paper reporting would still be required, but the licensee would have to enter trips not entered during this malfunction and resume entering trip reports electronically as soon as the electronic reporting system is again operational.

SECTION 3 clarifies the language relating to submittal of monthly sport trolling reports so that it applies to electronic reporting. All individual sport trolling fishing reports entered into the electronic reporting system for the preceding month would need to be submitted by the 10th day of each month. However, many sport trolling licensees may find it quicker and easier to submit their fishing trip reports on the very days that they conduct chartered fishing trips rather than submitting all reports after the fact in a monthly batch.

SECTION 4 requires sport trolling licensees to report any months during which they did not conduct chartered fishing trips. In the absence of this provision, it would be more difficult to determine whether the licensee simply did not conduct any chartered fishing trips that month or whether the licensee had failed to comply with the reporting requirements.

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

While charter captains are required by state and federal law to possess a valid U.S. Coast Guard operator's license and follow those license requirements, no other federal regulations specifically relating to trip reporting 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 was not directed to hold a preliminary public hearing on the scope statement for this rule.

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 sportfish in Lake Michigan. 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, on forms and in the manner established by the managing DNR program. 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 day 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:

Charter captains are licensed under an outlying waters sport trolling license per s. 29.514, Stats., to guide anglers in trolling for salmon and trout on Lake Michigan and Lake Superior. Chartered fishing trips comprise a significant proportion of the fishing trips that target trout and salmon in the Great Lakes, so accurate reporting data are important for meaningful management of trout and salmon fisheries. Under current administrative rules and statutes, charter captains are required to submit reports of their activities to the department on monthly paper forms provided by the department. This rule updates the method of reporting in s. NR 20.60, Wis. Admin. Code, for sport trolling licensees so that licensees are required to report through an electronic reporting system, which is consistent with the overall electronic reporting methods for commercial fishers and Great Lakes fishing guides. Electronic reporting was first identified as a department priority more than 20 years ago, and is an important tool for timely, accurate reporting data that are directly utilized in Great Lakes fisheries management and fish population modeling. With all Lake Michigan and Lake Superior commercial fishers, fishing guides, and sport trolling licensees reporting electronically, input errors are expected to decrease, the department's reporting datasets will be greatly enhanced and the department will no longer need to manually enter information from monthly paper reports into an electronic format for analysis. The department has already developed a mobile electronic reporting application (which Great Lakes fishing guides use to report their guided fishing trips), and the sport trolling fishing report will be added to this application.

This rule also slightly modifies the associated timelines for reporting. While the full months' worth of fishing trip reports will continue to be due on or before the 10th of the following month, the rule requires the fishing trip information to be recorded into the electronic reporting system immediately after fishing activities are complete and before returning to the dock or shore. The electronic reporting system will also be available locally on the licensee's mobile device even when out of range of cellular service, allowing report entry on this timeline. This timeline modification will improve the accuracy of the data on fishing trips provided through the reports and would allow department representatives to verify the report information more quickly in contacts with licensees.

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

This rule may have a minimal economic impact for charter captains and sport trolling businesses that do

not already have a smartphone or similar device for entering the trip reports. In those cases, costs would include procurement of a smartphone and basic data plan. However, the number of licensees affected is likely to comprise a small proportion of all Lake Superior and Lake Michigan sport trolling licensees. According to Pew Research Center, as of 2022, an estimated 85 percent of Americans own a smartphone.⁵ Therefore, with 338 charter captains currently licensed to operate in Lake Michigan and Lake Superior, about 287 charter captains already have a smartphone, and 51 may need to purchase one to enter the reports. With the initial cost of a basic smartphone and prepaid data plan estimated at \$120 - \$240 per licensee, the total cost of implementation for all licensees without a smartphone is estimated to be \$6,120 to \$14,280.^{6,7}

This rule is not expected to result in any other costs or contain design or operational standards aside from the revised reporting requirements for charter captains.

Source:

5. Demographics of mobile device ownership and adoption in the United States. (2021, April 07). Retrieved June 21, 2022, from <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

6. *Prepaid no contract cell phones*. Prepaid No Contract Cell Phones & Smartphones - QVC.com. (n.d.). Retrieved June 27, 2022, from https://www.qvc.com/electronics/phones/prepaid-no-contract-cell-phones/_/N-oor0/c.html

7. Brooks, Onjeinika. *Best Prepaid Cell Phone Plans of 2022*. U.S. News and World Report. (2021, Jan. 27). Retrieved June 23, 2022, from <https://www.usnews.com/360-reviews/services/cell-phone-plans/best-prepaid-cell-phone-plans>.

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

Small charter fishing businesses in Lake Michigan and Lake Superior (those holding sport trolling licenses for outlying waters) may be minimally impacted only if they do not already possess an electronic device capable of entering and submitting the trip reports. In that case, these licensees may need to purchase a basic smartphone and data plan to submit the reports. With the initial cost of a basic smartphone and prepaid data plan estimated at \$120 to \$240 annually per licensee and 51 licensees or less currently without a smartphone, the total cost of compliance with this rule is not likely to exceed the range of \$6,120 to \$14,280.

This rule would also adjust the reporting timeline to improve the accuracy of reporting data, requiring trip information to be entered before returning to the dock or shore. This is only a minimal change from the existing reporting timeline, which requires most trip information to be recorded no later than ½ hour after returning to the dock or shore.

12. Agency Contact Person: Bradley Eggold, Bradley.Eggold@wisconsin.gov, 414-303-0138

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, FH/4

P.O. Box 7921

Madison, WI 53707

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

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 20.60 (1) is amended to read:

NR 20.60 (1) A monthly sport trolling fishing report form required by s. 29.514 (2), Stats., shall be completed by the sport trolling licensee guiding persons in sport trolling. ~~Copies of the report form shall be provided by the department. The licensee's name, license number, date, locations fished, number of anglers, number of lines fished, hours fished, total number of fish caught and other information required by the report form shall be accurately and legibly recorded on the form in the English language within 1/2 hour after completing each trip's fishing activities after returning to the dock or shore. The number of fish of each species caught and the tag numbers, if any, may be recorded on the form after returning to the dock or shore but shall be recorded on the form prior to midnight of the day of each trip. The report form shall be exhibited to a conservation warden upon request.~~

SECTION 2. NR 20.60 (1) (a), (b) and (c) are created to read:

NR 20.60 (1) (a) The licensee shall use the electronic reporting system designated by the department to report sport trolling guided fishing trips and other information by electronic means, except as provided in par. (c).

(b) For each fishing trip, the licensee shall accurately record the licensee's name, license number, date, documented boat name or 8-digit state registration number, locations fished, number of anglers, number of lines fished, hours fished, total number of fish harvested, the number of fish of each species harvested, fin clip information, and other information required by the department on the report form in the electronic reporting system in the English language before returning to the dock or shore. The electronic report form shall be immediately exhibited to a department representative upon request.

(c) 1. If the electronic reporting system is not in operation, the licensee shall complete and sign, in writing in the English language, a paper report on a form available from the department website containing the required information after completing each fishing trip and before returning to the dock or shore. The licensee shall retain any paper reports completed under this subdivision in accordance with subd. 3. On the day of a fishing trip, the paper report form shall be immediately exhibited to a department representative upon request.

2. When the electronic reporting system is again functional, the licensee shall resume entering fishing trip reports into the electronic reporting system as described in pars. (a) and (b) and submitting the reports electronically to the department. The licensee 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 licensee shall retain all paper copies of the trip report as part of the licensee'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 within 24 hours of the request.

SECTION 3. NR 20.60 (2) is amended to read:

NR 20.60 (2) The entire ~~monthly~~ months' worth of individual fishing trips recorded in the electronic sport trolling fishing report form provided by the department, including any voided and unused pages, for the preceding calendar month shall be signed and dated submitted by the sport trolling licensee and submitted to the department on or before the 10th day of each month for the preceding calendar month.

SECTION 4. NR 20.60 (3) is created to read:

(3) If the licensee has not conducted any fishing trips under the authority of his or her sport trolling license in any given month after purchasing the license, the licensee shall submit a report indicating that no fishing trips were conducted that month through the electronic reporting system no later than the 10th day of the following month.

SECTION 5. 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 6. 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
DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary