

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES**

The Wisconsin Natural Resources Board adopts an order to create s. NR 25.09(2)(b)2.f. relating to commercial fishing in Lake Michigan

FH-35-03

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 29.014(1), 29.041, 29.519(1)(b) and 227.11(2)(a), Stats. Section 29.014(1), Stats., requires the department to establish rules that set 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., authorizes the department to regulate fishing on and in all outlying waters, which includes Lake Michigan. Section 29.519(1)(b), Stats., states that the department may designate the kind of gear to be used in the harvest by commercial fishers in outlying waters. Section 227.11(2)(a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Statutes interpreted: ss. 29.041, 29.014(1), 29.516(2)(d) and 29.519(1)(b), Stats.

Federal Regulation: The department knows of no current or pending federal regulations on this matter.

Summary of the Proposed Rule: The order sets net marking requirements (gear restrictions) for commercial entrapment gear used in Lake Michigan and supplements minimum statutory marking requirements in s. 29.516(2)(d), Stats., for licensed nets in all state waters.

Similar Rules in Adjacent States: The only adjacent states that have Lake Michigan waters are Illinois and Michigan. Illinois does not allow commercial fishing with trap nets, and Michigan's trap net marking requirements compare with the proposed rule as follows: Lead: Both states require two flags on staffs. Pot: Both states require one flag on a staff. King line: Wisconsin will require one flag, Michigan requires only a float. Wings: Wisconsin will require floats, Michigan requires nothing.

Summary of Factual Data and Analytical Methodologies Used in Support of the Rule: The rule is based on public comments and input from the Lake Michigan Fisheries Forum, a mixed group of sport and commercial fishers, scientists and others established by the department to seek consensus among interested parties on issues of shared concern.

Analysis and Documentation Used in Support of the Agency's Determination Under s. 227.114, Stats., (Small Business Impact): The department relied on comment from commercial fishers and on its own experience administering existing statutory net marking requirements when it determined the rule's effects on small businesses.

SECTION 1. NR 25.09(2)(b)2.f. is created to read:

NR 25.09(2)(b)2.f. Shall each be marked and maintained with 2 flags, one above the other, on a single staff attached to the inside or shallow lead end of the net, one flag on a staff attached to the pot or lifting buoy, one flag on a staff attached to the anchor at the outward end of the king line, and one float measuring a minimum of 5" in diameter attached to the anchor at the outward end of each net wing. All flags shall measure not less than 9" high by 18" wide and shall be displayed so that the top edge of the flag is not less than 5'

above the water, except that the lower of 2 flags on one staff shall be displayed so that the bottom edge is not less than 3' above the water. Two flags displayed on one staff shall be separated by not less than 6". All floats and all flags except the flag attached to the king line anchor shall be of a highly visible color commonly referred to as hunter orange or blaze orange with a color range between 595 nm and 605 nm. The flag attached to the king line anchor shall be a dark color other than orange. The license number of the commercial fishing license holder to whom each net belongs shall be displayed and maintained in legible, block figures at least 1" high on the bowl of the pot or lifting buoy. Flags are not required October 16 through April 14.

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 February 25, 2004.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)