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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Environment and Natural Resources (SC-ENR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

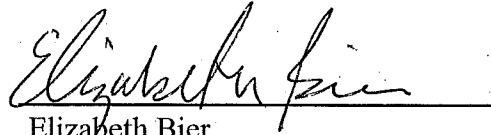
Committee on Environment and Natural Resources

Clearinghouse Rule 06-105

Relating to fishing on the boundary waters of Wisconsin and Iowa.
Submitted by Department of Natural Resources.

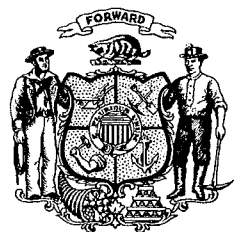
May 14, 2007 Referred to Committee on Environment and Natural Resources.

June 14, 2007 No action taken.


Elizabeth Bier
Committee Clerk



WISCONSIN STATE LEGISLATURE



REPORT TO LEGISLATURE

NR 22, Wis. Adm. Code
Fishing on the boundary waters of Wisconsin and Iowa

Board Order No. FH-32-06
Clearinghouse Rule No. 06-105

Basis and Purpose of the Proposed Rule

The shovelnose sturgeon is the smallest of the North American sturgeons and is indigenous to large rivers of the Mississippi, Missouri and Ohio River systems. Although the shovelnose sturgeon is not federally protected, its distribution and abundance have been reduced during the last 100 years due to habitat alterations, water pollution and overexploitation. The species is classified as extirpated or at risk of extirpation in 50% of the states within its native distribution, and in the remaining states shovelnose sturgeon populations have either declined during the past 65 years or the population status is unknown. Despite these concerns, shovelnose sturgeon is still one of the few sturgeons that can be commercially harvested in North America.

In the Upper Mississippi River, an increase in shovelnose sturgeon harvest has been partially realized. In Wisconsin, commercial harvest of shovelnose sturgeon roe has increased significantly since 2001 as catch-per-unit of effort has decreased over time. Sale of shovelnose roe in Wisconsin was nonexistent in 2000. Long-term tracking in Illinois shows that sale of shovelnose sturgeon roe has far outpaced the sale of shovelnose sturgeon flesh in recent years. The Illinois roe market alone now represents more than 10% of the total value of the entire Upper Mississippi River commercial fishery. Consequently, concerns by state and federal agencies regarding overexploitation have increased in the Upper Mississippi River basin, particularly given the sensitivity of shovelnose sturgeon and other sturgeon species to fish mortality. Sturgeon roe for caviar cannot be collected non-lethally, and the quality of roe is undetermined until after the ovaries have been fully removed from the fish. This can result in many more fish being killed than are actually used for roe collection.

Growth overfishing and recruitment overfishing are the primary concerns regarding harvest of shovelnose sturgeon. Growth overfishing occurs when exploitation is such that fish are harvested before they are able to reach their full growth potential and is a point where increased commercial fishing effort results in lowered yields. Recruitment overfishing is a much greater concern. Recruitment overfishing occurs when a population cannot adequately reproduce on a sustainable basis. Thus, recruitment overfishing prohibits population replacement, leading to population declines and potential extirpation.

The proposed rule will replace the current 25-inch minimum length restriction for commercial fishermen with a 27-inch minimum fork length restriction and a 34-inch maximum fork length restriction. The rule would result in a harvest slot of 27 to 34 inches, fork length. The rule also prohibits removal of roe from commercial fish while on the water, bank or shore and prohibits cleaning or processing of fish until the fish reach the final processing facility or place of business of the commercial fisher. This restriction will help ensure that roe is not illegally taken from lake or pallid sturgeon or paddlefish.

Summary of Public Comments

Two commercial fishermen and one fish wholesaler spoke in opposition to the rule. All three contended that the proposed 27-inch minimum fork length is too severe and will seriously hurt their businesses. The consensus amongst the three individuals speaking was that current gear restrictions limit the number of sturgeon that may be harvested from Wisconsin waters. The fishermen who spoke did not feel that there was evidence of overexploitation in Wisconsin.

Written comments in support of the proposed changes were provided by the U.S. Fish and Wildlife Service and the Friends of the Upper Mississippi River.

Modifications Made

The Department has retained the 27-inch minimum fork length limit, but has increased the upper boundary from 32 inches to 34 inches. This length limit is identical to rules adopted in the State of Iowa for the boundary waters. The 27-inch minimum fork length limit was retained because analyses of the population structure of shovelnose sturgeon suggest that this is the minimum length that will ensure at least one spawning event for female fish in the population. While the immediate impact on harvest will be substantial, the Department believes that commercial sturgeon harvest will rebound once fish grow past the 27-inch fork length minimum.

Appearances at the Public Hearing

In support – none

In opposition:

Jeff Ritter, Ritter's Fish Market, 30891 Highway 27 North, Prairie du Chien, WI 53821
Ronald Check, Ritter's Fish Market, 62701 County Road N, Prairie du Chien, WI 53821
Mike J. Valley, Valley Fish and Cheese, 304 S. Prairie Street, Prairie du Chien, WI 53821

As interest may appear:

Jamie Lenz, 8002 Ritz Drive, #208, Madison, WI 53719

Changes to Rule Analysis and Fiscal Estimate

The rule analysis was changed to reflect the change in the maximum fork length. No changes were required for the fiscal estimate.

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

This rule will affect 3 Wisconsin-licensed commercial fishers who currently actively pursue shovelnose sturgeon in Wisconsin-Iowa boundary waters. These fishers will likely see an initial decrease in pounds of fish harvested until the number of fish in the stock in the size range allowed by the proposed harvest slot increases.

A. Identify and discuss why the rule includes or fails to include any of the following methods for reducing the impact on small business.

1. Less stringent compliance or reporting requirements. Adoption of inconsistent rules regulating harvest of shovelnose sturgeon for large and small businesses would fail to meet the purposes of fisheries management in the Mississippi River. Furthermore, in this case, all businesses affected are small.

2. Less stringent schedules or deadlines for compliance or reporting requirements. Not applicable, no reporting requirements are stipulated.

3. Consolidation or simplification of compliance or reporting requirements. Not applicable, no reporting requirements are stipulated.

4. The establishment of performance standards in lieu of design or operational standards. The proposed change in operational measures – that fish harvested must remain intact until reaching the point of final processing – is necessary to law enforcement officials' ability to monitor a burgeoning roe-harvest industry in Wisconsin. This portion of the rule is a safeguard against illegal harvest of undersized shovelnose sturgeon and against harvest of roe from paddlefish or lake sturgeon.

5. The exemption from any or all requirements of the rule. Exempting any commercial fishing enterprises from rules regulating harvest of shovelnose sturgeon for large and small businesses would fail to meet the purposes of fisheries management in the Mississippi River. Furthermore, in this case, all businesses affected are small.

B. Summarize the issues raised by small business during the rule hearings, any changes made in the proposed rule as a result of alternatives suggested by small business and the reasons for rejecting any alternatives suggested by small business.

Small business owners (commercial fishermen) contended that the proposed 27-inch minimum fork length is too severe and will seriously hurt their businesses. The consensus amongst the three individuals speaking was that current gear restrictions limit the number of sturgeon that may be harvested from Wisconsin waters. A less stringent minimum size limit was suggested.

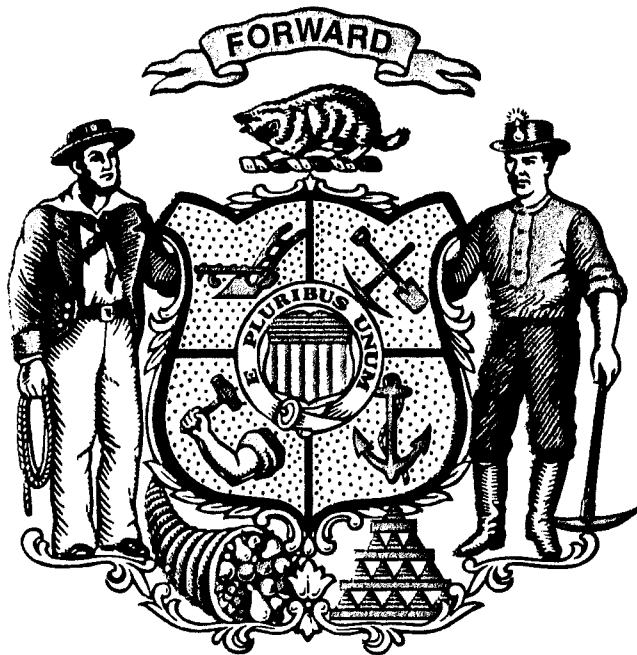
Department data suggests that a 27-inch minimum fork length limit is necessary to ensure continued viability of shovelnose sturgeon in the Upper Mississippi River, especially in the face of rising pressure on the fishery. Anything less than a 27-inch minimum fork length limit would be insufficient to ensure that female sturgeon will have the opportunity to spawn at least once before being harvested. The Department also strives for consistency in rules regulating fisheries in multi-jurisdictional waters. In the portion of the Mississippi River affected by this rule, Iowa shares management authority and recently adopted a 27-34 inch fork length harvest slot. Department biologists believe that the rule's effect on commercial harvest will be temporary, and that harvest will rebound once fish in the sturgeon population have a chance to grow to 27 inches fork length.

C. Identify and describe any reports required by the rule that must be submitted by small business and estimate the cost of their preparation. No reports are required.

D. Identify and describe any measures or investments that small business must take to comply with the rule and provide an estimate of the associated cost. No measures or investments are required.

E. Identify the additional cost, if any, to the state in administering or enforcing a rule which includes any of the methods listed in A. No additional cost.

F. Describe the impact on public health, safety and welfare, if any, caused by including in the rule any of the methods listed in A. None.



Fiscal Estimate — 2005 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-32-06

Subject
 Proposed changes to rules regulating commercial harvest of shovelnose sturgeon in Wisconsin-Iowa boundary waters.

Fiscal Effect
 State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs — May be possible to absorb within agency's budget. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local: No Local Government Costs
 Indeterminate

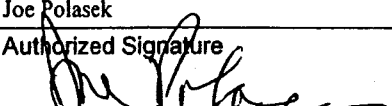
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

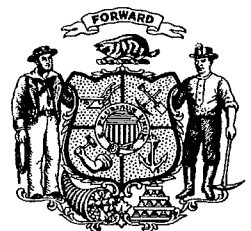
The proposed rule changes the minimum allowable harvest length for shovelnose sturgeon and imposes a maximum allowable harvest length. Commercial fishing for shovelnose sturgeon has increased in popularity throughout the Mississippi River basin in response to a burgeoning market for sturgeon roe. In response to increased harvest pressure, the Iowa and Illinois Departments of Natural Resources began reviewing commercial fishing regulations in their shared portion of the Mississippi River. The Wisconsin Department of Natural Resources was subsequently invited to review commercial fishing regulations for Wisconsin-Iowa boundary waters. Population modeling suggests that more stringent regulations are necessary to preserve the long-term viability of shovelnose sturgeon stocks in the Mississippi River and to continue to provide commercial fishing opportunities. There are fewer than five commercial fishermen in Wisconsin who primarily target shovelnose sturgeon. The proposed rule will not result in any addition fisheries staff nor law enforcement costs. Therefore, the changes have no fiscal effect.

Long-Range Fiscal Implications
 None.

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 04-12-07



WISCONSIN STATE LEGISLATURE



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

The Wisconsin Natural Resources Board proposes an order to amend NR 22.02 (2) and to create NR 22.02 (6g) and 22.11 (2m), relating to fishing on the boundary waters of Wisconsin and Iowa.

FH-32-06

Analysis Prepared by the Department of Natural Resources

- 1. Statutes Interpreted:** Sections 29.014 (1), 29.041 and 29.516, Stats.
- 2. Statutory Authority:** Sections 29.014 (1), 29.041 and 227.11 (2) (a), Stats.
- 3. Explanation of Agency Authority to Promulgate the Proposed Rules Under the Statutory Authority:** Sections 29.014 (1) and 29.041, Stats., grant rule making authority to the department to establish and maintain open and closed seasons for fish and any bag limits, size limits, rest days and conditions governing the taking of fish that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, and provide that the department may regulate fishing on and in all interstate boundary waters and 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.
- 4. Related Rule or Statute:** None.
- 5. Plain Language Rule Analysis:** The proposed rule changes the legal size of commercially harvestable shovelnose sturgeon in Wisconsin-Iowa boundary waters from fish 25 inches or more in length, to fish 27 inches or more but less than 34 inches in "fork length". This rule also defines "fork length" as the distance measured in a straight line from the tip of the snout to the innermost portion of the fork in the tail of a fish. Finally, the rule prohibits the removal of roe from commercial fish while on the water, bank or shore and prohibits cleaning or processing of fish until the fish reach the final processing facility or place of business of the commercial fisher.
- 6. Summary of and Comparison with Existing or Proposed Federal Regulations:** None known.
- 7. Comparison of Similar Rules in Adjacent States:** Iowa is in the process of promulgating similar rules for commercially harvested shovelnose sturgeon in Wisconsin-Iowa boundary waters. There is a 25 inch minimum length limit for shovelnose sturgeon on Wisconsin-Minnesota boundary waters, but shovelnose sturgeon may only be taken by setline in these waters. Illinois and Iowa are developing revised rules for their Mississippi River boundary waters. Illinois currently has no minimum length restriction; proposals for a 24 inch or 27 inch fork length minimum are being discussed for Illinois-Iowa boundary waters. Shovelnose sturgeon are not present in Michigan.
- 8. Summary of Factual Data and Analytical Methodologies Used in Support of the Rule:** This proposal was developed by fisheries and law enforcement staff in Wisconsin and Iowa to address management and enforcement concerns, and is supported by the Directors of Fisheries in both Wisconsin and Iowa. Fishery Analysis Simulation Tools (FAST) modeling programs were used to evaluate the potential impact of the proposed rules on commercial harvest of shovelnose sturgeon in Wisconsin-Iowa boundary waters of the Mississippi River system. Yield per recruit models show that a 27-inch length limit does not appreciably reduce yield over the range of exploitation and the 22-inch fork-length limit is probably reducing the pounds of fish harvested. Spawning potential ratio (SPR) modeling showed that with a 22-inch minimum fork length

size limit SPR falls below the 20% critical level once exploitation exceeds 25%. If exploitation is truly 40%, which is our best estimate to date, we have an SPR value below 10%. This is alarming and indicates that we are currently in a state of recruitment overfishing and are removing fish faster than they are able to replace themselves. A 24-inch minimum fork length limit would allow for 32% exploitation before falling below the critical level. As with no length limit, a 24-inch limit would have SPR values below 20% if exploitation is truly 40%. Implementing the proposed 27-inch fork length limit would not let the SPR fall below 30% at any level of exploitation. This is directly a function of the fact that the regulation would protect some mature females.

9. Analysis and Documentation Used in Support of the Agency's Determination Under s. 227.114, Stats., (Small Business Impact): In 2005, shovelnose sturgeon comprised less than 0.1% of the commercial fish market in the Mississippi River in Wisconsin, both in terms of total pounds caught and total dollar value. In 2005, shovelnose sturgeon accounted for more than 20% of the total catch of 3 commercial fishermen, but did not exceed more than 15% of the total dollar value of commercial catch for any individual Wisconsin commercial fisher.

10. Effect on Small Business, Including How the Rule Will Be Enforced: This rule is anticipated to cause an initial decline in commercial harvest of shovelnose sturgeon from Wisconsin-Iowa boundary waters, but is not anticipated to nor intended to cause a permanent reduction in total pounds of shovelnose sturgeon harvested from the system. The initial reduction in harvest will impact approximately 3 commercial fishermen whose sale of shovelnose sturgeon accounted for 10-15% of their income, and a fish wholesaler who sells smoked shovelnose sturgeon, accounting for less than 5% of his total business. Sport fishing bag limits and commercial harvest limits on the Wisconsin – Iowa boundary waters are enforced by the Department's conservation wardens, county district attorneys and county circuit courts, through the use of citations and civil or criminal complaints under the provisions of ch. 29, Stats.

11. Agency contact person: Joseph Hennessy – FH/4, Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921; email: Joseph.Hennessy@dnr.state.wi.us; phone: (608) 267-9427.

SECTION 1. NR 22.02 (2) is amended to read:

NR 22.02 (2) "Commercial fish" means species of rough and detrimental fish as defined in this chapter, shovelnose (hackleback) sturgeon ~~25~~ 27 inches and over but less than 34 inches in fork length, catfish 15 inches or over in length or 12 inches or over dressed and bullheads of any length when taken with commercial fishing gear under a commercial fishing license.

SECTION 2. NR 22.02 (6g) is created to read:

NR 22.02 (6g) "Fork length" means that distance measured in a straight line from the tip of the snout to the tip of the median caudal fin rays of a fish.

SECTION 3. NR 22.11 (2m) is created to read:

NR 22.11 (2m) No person may remove roe from a commercial fish while on the water, bank or shore. Commercial fish shall remain intact until the fish reaches the final processing facility or place of business of the commercial fisher.

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

SECTION 5. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2007.

Dated at Madison, Wisconsin, _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)