

79-020 NR 21 - COMMERCIAL FISHING - MINN.
BOUNDARY WATERS

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. LE-9-98

Legislative Council Rules Clearinghouse Number 98-020

Subject of Rules Commercial fishing in the Wisconsin -
Minnesota boundary waters

Date of Transmittal to Presiding Officers July 7, 1998

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

REPORT TO LEGISLATURE

NR 21, Wis. Adm. Code
Commercial fishing in the Wisconsin-Minnesota boundary waters

Board Order No. LE-9-98
Clearinghouse Rule No. 98-020

Statement of Need

The rule is being proposed to simplify enforcement and the adopt changes recommended by courts and prosecutors. Closed areas are proposed to use well recognized boundaries such as highway bridges rather than sloughs which change with water levels. Changes are also proposed to eliminate unnecessary restrictions which were implemented in the past for nonbiological reasons such as trespass. Current code uses definitions for many types of gear and were never defined. Definitions will be added. Currently, the many types of gear restrictions and uses are lumped together. The Department proposes to reorganize these uses into appropriate categories such as gillnets, seines, setlines, etc. Finally, the code, as proposed, will be much easier for all to understand.

Modifications as a Result of Public Hearing

Section NR 21.11(1)(a) was modified to allow fish to remain in a seine so long as neither game fish that are not commercial fish nor fish that are listed in ch. NR 27 as endangered or threatened species die while bagged in the net.

Constant net attendance was modified to allow a licensed commercial fisher to temporarily leave the net to transport fish taken from the net to a landing. This addressed the licensed commercial fishers safety concerns of having to allow inexperienced helpers to operate heavily loaded boats.

The proposal to restrict drive set gill nets in lower pool 7 from March 1 through April 30 and October 1 through November 30 was dropped so that carp can continue to be harvested.

Appearances at the Public Hearings and Their Position

March 30, 1998 - La Crosse

In support - none

In opposition:

James Lynch, 3537 Lakeshore Drive, La Crosse, WI 54603
Ernest Ortmeier, Route 2, Stoddard, WI 54656
Brian S. Campbell, 1716 Winnebago Street, La Crosse, WI 54603

As interest may appear:

Lloyd Campbell, W8307 N. Shore Drive, Onalaska, WI 54650
Robert Ortmeier, N2732 State Highway 35, Stoddard, WI 54658
Butch Monsoor, N3305 County Road M, West Salem, WI 54669
Tom Monsoor, 3126 Howry Street, La Crosse, WI

Steve J. Temp, 2249 South Avenue, La Crosse, WI 54601
Ralph Engh, Box 277, Genoa, WI 54632
Roger Beck, Route 1, Genoa, WI 54632

March 31, 1998 - Hudson

No appearances

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

This rule will directly affect licensed commercial fishers on the Wisconsin-Minnesota boundary waters. No new reporting, design or bookkeeping requirements were added in the proposed rule.

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

.....
The State of Wisconsin Natural Resources Board .
proposes an order to repeal NR 21.11(1) (f), .
(m), (n) and (o) and 21.12; to amend NR 21.02 .
(2) and (4m), 21.11(1) (a), (e), (g), (h), (i) .
and (k); to repeal and recreate NR 21.04(15), .
21.10, 21.11(1) (intro.) and (b); and to create .
NR 21.02(4g), (4p), (5e), (5m), (5t), (6g), .
(7m), (7r), (11f), (11m), (15p) and (15v), .
21.11(1) (cf) and (cm) and 21.11(2) to (7) .
relating to commercial fishing in the .
Wisconsin-Minnesota boundary waters .
.....

LE-9-98

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 23.11(1), 29.085, 29.174(2) and 227.11(2) (a), Stats.

Statute interpreted: ss. 29.174(1), 29.30, 29.34, 29.344, 29.36 and 29.37, Stats.

In this order, SECTIONS 1 and 3 make "housekeeping" changes to the definitions of "commercial fish" and "daily bag limit".

SECTIONS 2 and 4 add definitions of terms used in ch. NR 21, Wis. Adm. Code.

SECTION 5 updates the wording of the special possession limit that applies to persons while on the ice, waters, bank or shore of the Wisconsin-Minnesota boundary waters; changes the definition of reciprocity for commercial fishing and adopts the same policy that Minnesota now uses which limits commercial fishers from fishing beyond the state line; and requires commercial fishers to carry their licenses while fishing and to exhibit the license to the department or its wardens.

SECTION 6 requires all non-commercial game fish and all threatened or endangered fish to be returned to the water immediately with as little injury as possible as soon as they appear in the operation, but for seine hauls (which may take 2 or 3 days to empty), the rule requires that seines not be bagged in a manner that causes the death of non-commercial game fish or threatened or endangered fish and that the presence of such fish dead in a seine bag is prima facie evidence of a violation of the rule.

SECTION 7 requires commercial fishers to be present at all times when their nets or setlines are set, placed, tended or operated, except that once a net has been drawn, commercial fishers may temporarily leave the net to transport its catch to a landing.

SECTION 8 allows a net or setline to be marked or tagged with only one licensed commercial fisher's tag and bars commercial fishers from using another fisher's tagged or marked gear.

SECTION 9 declares that improperly placed or tagged commercial fishing gear is a public nuisance.

SECTION 10, 12 and 14 repeal requirements that are being relocated to other parts of the code.

SECTION 11 adds the terms open water and ice to current law for various fishing operations; requires monthly reports to be signed by the licensee and to show all fish sold; and prohibits one commercial fisher from selling fish

taken under the authority of another unless in possession of a wholesale fish dealers license.

SECTIONS 13 sets out reorganized commercial fishing gear restrictions by use.

SECTION 15 changes references in chs. NR 21 and 22 to the Burlington Northern railroad to "Burlington Northern and Sante Fe" to reflect the recent change in the railroad's name.

SECTION 1. NR 21.02(2) is amended to read:

NR 21.02(2) ~~Commercial fish includes species of~~ "Commercial fish" means rough and detrimental fish as defined by this chapter, shovelnose (hackleback) sturgeon 25 inches ~~and over in length~~ long or longer only when taken ~~only~~ on setlines, catfish 15 inches ~~or over in length~~ long or longer or 12 inches ~~and over~~ long or longer dressed and bullheads of any length when taken with commercial fishing gear and all taken while fishing under a commercial fishing license on the Mississippi river.

SECTION 2. NR 21.02(4g) is created to read:

NR 21.02(4g) "Constant net attendance" means the continuous presence of a commercial fisher who remains on the water or ice within sight of his or her nets at all times without the aid of vision magnifying devices such as binoculars or spotting telescopes, except that after a net has been drawn, a licensed commercial fisher may temporarily leave the net to transport fish taken from the net to a landing.

SECTION 3. NR 21.02(4m) is amended to read:

NR 21.02(4m) "Daily bag limit" ~~as used in s. NR 21.13, means the maximum number of a turtle species or group of turtle species which may be taken by a person each day~~ means the maximum number specified by rule of a turtle or fish species which may be reduced to a person's possession in a single day.

SECTION 4. NR 21.02(4p), (5e), (5m), (5t), (6g), (7m), (7r), (11f), (11m), (15p), and (15v) are created to read:

NR 21.02(4p) "Dead set gill net" means a gill net that is set and allowed to catch fish without being moved and without constant net attendance by the operator.

(5e) "Drift net" means a net of any type that is not staked or anchored at one or both ends and is free to drift or move under the influence of wind or water current, whether or not the net has constant net attendance.

(5m) "Drive netting" means a method of operating a net so that the operator is in constant net attendance and uses boats, motors, oars, plungers or other devices to create sound or vibrations in the water so as to chase, move or drive fish in the direction of the net.

(5t) "Drive set gill net" means a gill net that is operated without being moved and has constant net attendance.

(6g) "Gill net" has the meaning found in s. 29.336(2)(b), Stats.

(7m) "Lower pool 7" means that part of the Mississippi river bounded on the north by an imaginary line at a compass bearing of 65½ degrees from river mile marker 709.5 to the north end of the Burlington Northern and Sante Fe main railroad track bridge that crosses the Black river; on the east by the Burlington Northern and Sante Fe main railroad tracks; on the south by the U.S. army corps of engineers lock and dam 7 dike; and on the west by the state line boundary between Wisconsin and Minnesota.

(7r) "Lower pool 8" means that part of the Mississippi river bounded on the north by state highway 16; on the east by the Burlington Northern and Sante Fe main railroad tracks; on the south by the U.S. army corps of engineers lock and dam 8 dike; and on the west by the state line boundary between Wisconsin and Minnesota.

(11f) "Seine" has the meaning found in s. 29.336(3), Stats.

(11m) "Seine haul" means a single setting, retrieval and emptying of a seine, including placement of the net, driving fish in the direction of the net, drawing or lifting the net, or both, to entrap fish by retrieving one or both ends of the net, bagging the fish in the net, sorting and removal of the game fish in the net and removal of all fish from the net. A single seine

haul may take more than one day to complete from the time the net is set until all fish have been removed from the net.

(15p) "Upper pool 7" means that part of the Mississippi river bounded on the north by the U.S. army corps of engineers lock and dam 6 dike; on the east by the Burlington Northern and Sante Fe main railroad tracks; on the south by an imaginary line at a compass bearing of 65½ degrees from river mile marker 709.5 to the north end of the Burlington Northern and Sante Fe main railroad track bridge that crosses the Black river; and on the west by the state line boundary between Wisconsin and Minnesota.

(15v) "Upper pool 8" means that part of the Mississippi river bounded on the north by the U.S. army corps of engineers lock and dam 7 dike, on the east by the Burlington Northern and Sante Fe main railroad tracks, on the south by state highway 16, and on the west by the state line boundary between Wisconsin and Minnesota.

SECTION 5. NR 21.04(15), 21.10 and 21.11(1) (intro.) are repealed and recreated to read:

NR 21.04(15) No person may have in possession or under control more than the daily bag limit of fish or turtles while on the ice, waters, bank or shore of the Wisconsin-Minnesota boundary waters.

NR 21.10 BOUNDARY WATER RESTRICTION. For the purpose of fishing under a commercial fishing license or the taking of turtles, licensed persons are restricted to the state boundaries of the state they are licensed under. The operation of any commercial fishing gear or turtle traps beyond the state line boundaries of the state in which the license was issued is prohibited.

NR 21.11(1) GENERAL RESTRICTIONS. (intro.) No person may conduct commercial fishing operations unless he or she has first obtained the appropriate license or licenses required under ss. 29.34, 29.343 and 29.37, Stats. A commercial fisher shall carry each license with him or her at all times while engaged in any part of commercial fishing and shall exhibit the license to the department or its wardens on demand.

SECTION 6. NR 21.11(1)(a) is amended to read:

NR 21.11(1)(a) All game fish that are not commercial fish and all fish that are listed in ch. NR 27 as endangered or threatened species that are taken with any net or setline ~~must~~ shall be immediately returned to the water with as little injury as possible as soon as they appear in the operation. Seines may not be bagged in a manner that causes either game fish that are not commercial fish or fish that are listed in ch. NR 27 as endangered or threatened species to die while bagged in the net. The presence of dead game fish that are not commercial fish or dead fish that are listed in ch. NR 27 as endangered or threatened species in a seine bag shall be prima facie evidence of a violation of this paragraph. ~~(29.085, 29.30)~~

SECTION 7. NR 21.11(1)(b) is repealed and recreated to read:

NR 21.11(1)(b) Each commercial fisher shall be present at all times when any of his or her nets or setlines are set, placed, tended or operated.

SECTION 8. NR 21.11(1)(cf) and (cm) are created to read:

NR 21.11(1)(cf) No person may mark or tag a net or setline with his or her license number or metal tag if the net or setline is already marked or tagged by another licensed commercial fisher.

(cm) No person may set, place, tend or operate any net or setline that is marked or tagged with the license number or metal tag of another person, except for crew members acting under the direction of the licensee while the licensee is present.

SECTION 9. NR 21.11(1)(e) is amended to read:

NR 21.11(1)(e) Improperly placed or tagged commercial fishing gear is ~~considered contraband~~ a public nuisance and will be seized and held by the department subject to order of the court. ~~(23.11, 29.03, 29.085, 29.34, 29.343, 29.37)~~

SECTION 10. NR 21.11(1)(f) is repealed.

SECTION 11. NR 21.11(1)(g), (h), (i), and (k) are amended to read:

NR 21.11(1)(g) ~~A licensed~~ No commercial fisher or any member of the his or her crew or any person in or on the boat shall not have in possession with the commercial fisher or crew may possess any game fish that are not commercial fish while operating licensed commercial gear on the ice or in the open waters of the state or when traveling to or from the operation of such the gear while on the waters. ~~(29.085, 29.30)~~

(h) ~~Commercial~~ No person may possess or control commercial fishing gear not authorized for use in the Wisconsin-Minnesota boundary waters by this chapter shall not be in possession or under control while on these the ice or the open waters of the state or while engaged in a fishing operation involving those waters. ~~(29.085)~~

(i) All fishers required to be licensed under the provisions of ss. 29.34 and 29.37, Stats., ~~must~~ shall complete and submit monthly reports on forms available from the department. All reports ~~must~~ shall be submitted to the department by the 10th of the month following each month ~~fished the commercial fisher is required to be licensed.~~ Each monthly report shall be signed by the commercial fisher. Each commercial fisher shall report all fish sold, whether these fish were legally or illegally taken or obtained. ~~(23.11, 29.34, 29.37)~~

(k) Commercial fish taken by commercial gear pursuant to this chapter may be sold only by the licensed commercial fisher whose gear was used to take the fish. A commercial fisher may not sell fish taken under the authority of another fisher's license, unless he or she sells the other fisher's fish under the authority of a wholesale fish dealers license. ~~(23.11, 29.135)~~

SECTION 12. NR 21.11(1)(m), (n) and (o) are repealed.

SECTION 13. NR 21.11(2) to (7) are created to read:

NR 21.11(2) GILL NETS; SEASONS, CLOSED AREAS, GILL NET RESTRICTIONS. In the Wisconsin-Minnesota boundary waters, no person may conduct commercial fishing operations with the use of gill nets, drive netting, deadset gill nets or drive set gill nets except in the manner prescribed as follows:

(a) Gill nets may be used year round on the Mississippi river, except for the areas listed in pars. (b) and (c). No person may engage in drive netting of fish from the closed areas listed in par. (b) or (c).

(b) No person may set or use gill nets in the following areas:

1. Within 900 feet below any U.S. corps of engineers lock or dam on the Mississippi river.

2. Goose lake lying in Pierce county.

3. All of upper pool 8.

4. Trempealeau lakes known as Second, Third and Round lakes lying in Trempealeau county.

5. In the Mississippi river within 300 feet of the mouth of any stream tributary to the Mississippi river.

6. In lower pool 8, Bluff Slough from 7th Street downstream to where Bluff Slough enters Running Slough.

(c) No person may set or use the types of gill nets listed in this paragraph in the following areas, during the periods indicated:

1. Open water gill net sets are prohibited in Lake St. Croix from the highway 64 bridge at Houlton, downstream to its confluence with the Mississippi river at all times.

2. Dead set gill nets and drive set gill nets may not be used in pool 4, between river mile 780 and 797 from March 1 through May 31.

3. Dead set gill nets may not be used in all of lower pool 7 at any time.

(d) Additional gill net restrictions. 1. Only gill nets with a mesh of 7 inches stretch measure or larger may be used.

2. Gill nets may not be used as a drift net and may not be used as or

in place of a seine.

3. At each end of every gill net set in open water there shall be a buoy on each end of the gang. The buoys shall have a staff extending at least 3 feet above the surface of the water. Upon the upper end of the staff there shall be a flag at least 10 inches square. Upon the bowl of the buoys there shall be maintained in plain figures the license number of the licensee. On gill nets set through the ice there shall be maintained on each end of the gang a board or similar material which shall bear the license number authorizing the use of the net.

4. Each gill net set in open water shall be lifted and emptied of all fish at least once each day following the day set. Each gill net set under the ice shall be lifted and emptied of fish at least once every 2 days following the day set.

5. Gill nets may not be set, drawn, lifted or operated in any manner between one-half hour after sunset and one hour before sunrise without prior permission of the department.

Note: Contact a local department conservation warden or fish manager to request prior permission.

6. Gill nets may not be set in a manner that will shut-off more than one-half the width of any channel, bay or slough.

7. A gill net may not be set within 1,000 feet of any other net.

8. Shovelnose (hackleback) sturgeon may not be taken in gill nets.

9. Game fish that are not commercial fish and other fish that are listed in ch. NR 27 as endangered or threatened species which are taken by gill nets shall be immediately returned, carefully and with as little injury as possible to the water from which they were taken.

10. No licensee may join his or her net to that of any other licensee.

(3) SEINES; SEASONS, CLOSED AREAS, SEINE RESTRICTIONS. In the Wisconsin-Minnesota boundary waters, no person may conduct commercial fishing operations with the use of seines except in the manner prescribed as follows:

(a) Seines of any size may be used year round in the waters of the Mississippi river, Lake St. Croix and the St. Croix river downstream from the

U.S. highway 8 bridge located in St. Croix Falls, except for the closed areas listed in pars. (b) and (c). No person may use drive netting techniques including the use of airboats, boats, plungers or other sound producing devices to drive fish from the closed areas listed in pars. (b) and (c).

(b) Permanently closed areas. 1. Within 900 feet below any U.S. corps of engineers lock and dam on the Mississippi river.

2. Goose lake lying in Pierce county.

3. Trempealeau lakes known as Second, Third and Round lakes lying in Trempealeau county.

4. Lagoon, which is located on Barron island within the corporate limits of the city of LaCrosse, as well as the connecting waterway south to state highway 16.

(c) Seasonally closed areas. 1. Pool 4, between river mile 780 and 797, closed from March 1 through May 31.

2. In upper pool 8, the Black river from the Onalaska 9-foot spillway dam downstream to the Soo Line railroad bridge, closed from April 15 through October 30.

3. In lower pool 8, Bluff Slough from 7th Street downstream to where Bluff Slough enters Running Slough, closed from April 15 through October 30.

(d) A commercial fisher and his or her crew members may not remove more than 100 pounds of catfish per seine haul from the Saturday nearest October 1 to April 30.

(e) A commercial fisher and his or her crew members may not take more than 100 pounds of catfish per day in seines regardless of the number of seine hauls done in one day, from the Saturday nearest October 1 through April 30.

(f) A commercial fisher and his or her crew members may only take 100 pounds of catfish from a seine haul even if the seine haul takes more than one day to complete.

(g) Shovelnose (hackleback) sturgeon may not be taken in seines.

(h) Seines may not be drawn, lifted or operated in any manner between one-half hour after sunset and one-half hour before sunrise without permission

of the department.

Note: Contact a local department conservation warden or fish manager to request prior permission.

(i) A seine may not be used as a drift net at any time.

(j) All game fish that are not commercial fish and all fish that are listed in ch. NR 27 as endangered or threatened species that are taken in seines shall be immediately returned to the water with as little injury as possible as soon as they appear in the operation. Seines may not be bagged in a manner that causes either game fish that are not commercial fish or fish that are listed in ch. NR 27 as endangered or threatened species to die while bagged in the net. The presence of dead game fish that are not commercial fish or dead fish that are listed in ch. NR 27 as endangered or threatened species in a seine bag shall be prima facie evidence of a violation of this paragraph. Rough fish that are not listed in ch. NR 27 as endangered or threatened species and commercial fish that are bagged as part of a seine haul may not be held in any bag, seine or other type of live box for more than 24 hours without prior permission from the department.

Note: Contact a local department conservation warden or fish manager to request prior permission.

(k) Seines may not be set or operated in a manner that will shut-off more than one-half the width of any channel, bay or slough.

(l) No seine may be set or operated within 1,000 feet of any other net.

(m) No licensee or crew member may join a net to that of any other licensee.

(4) SETLINES; SEASONS, CLOSED AREAS, SETLINE RESTRICTIONS. In the Wisconsin-Minnesota boundary waters, no person may conduct commercial fishing operations with the use of setlines except in the manner prescribed as follows:

(a) Setlines may be used in the waters of the Mississippi river from the Saturday nearest April 1 to October 31, except for the closed areas listed in pars. (b) and (c).

(b) Permanently closed areas. 1. Within 900 feet below any U.S. corps

of engineers lock or dam on the Mississippi river.

2. Goose lake lying in Pierce county.

3. Trempealeau lakes known as Second, Third and Round Lakes lying in Trempealeau county.

4. Lagoon, which is located on Barron island within the corporate city limits of the city of LaCrosse, as well as the connecting waterway south to state highway 16.

5. In upper pool 8, the Black river from the Onalaska 9-foot spillway dam downstream to the Soo Line railroad bridge.

(c) Seasonally closed areas. 1. Pool 4, between river mile 780 and 797, closed from March 1 through May 31.

2. In lower pool 8, Bluff Slough from 7th Street downstream to where Bluff Slough enters Running Slough, closed from April 15 through October 30.

(d) Each licensee is limited to 8 setlines with not to exceed a total of 50 hooks on each line or 4 setlines with not to exceed 100 hooks on each line.

(e) No person may use frogs or game fish, whether dead or alive, or any part of a frog or game fish as bait on a setline in the Mississippi river.

(f) There shall be a buoy at each end of every setline. The buoys shall have a staff extending at least 3 feet above the surface of the water. Upon the upper end of each staff there shall be a flag at least 10 inches square. Upon the bowl of each buoy there shall be maintained in plain figures the license number of the licensee.

(g) Setlines shall be marked by a metal tag which is stamped to designate the number of the license issued to the commercial fisher using the setline. The tag shall be attached to the buoy or staff at one end of the setline so that the tag will be visible above the surface of the water.

(h) Setlines set in open water shall be lifted and all fish removed at least once each day following the day set.

(i) Setlines may not be set, lifted, hauled or operated in any manner between one-half hour after sunset and one hour before sunrise without prior

permission of the department.

Note: Contact a local department conservation warden or fish manager to request prior permission.

(j) Setlines may not be set in a manner which blocks off more than $\frac{1}{4}$ the width of any slough, bay or channel to any type of boat traffic.

(k) Shovelnose (hackleback) sturgeon 25 inches and over in length may be taken.

(l) Game fish and other fish that are listed in ch. NR 27 as endangered or threatened species which are taken by setline shall be immediately returned, carefully and with as little injury as possible to the water from which they were taken.

(5) BUFFALO AND FRAME NETS. No person may use buffalo or frame nets.

(6) SLAT AND TRAMMEL NETS. No person may use slat or trammel nets.

(7) INCIDENTAL TURTLE CATCH. Turtles taken incidental to licensed commercial fishing operations may be possessed and sold.

SECTION 14. NR 21.12 is repealed.

SECTION 15. Terminology changes. Wherever the term "Burlington Northern", "Chicago, Burlington Northern" or "Burlington northern" appears in the following sections of chs. NR 21 and 22, the term "Burlington Northern and Sante Fe" is substituted: ss. NR 21.02 (9) and (16), 21.03, 22.02 (14) and 22.03.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The 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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)