

2005 DRAFTING REQUEST

Bill

Received: **11/09/2004**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Garey Bies (608) 266-5350**

By/Representing: **Andrew Nowlan**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - fish and game**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Bies@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Commercial fishing regulation

Instructions:

Redraft 2003 LRB-3653/P1 with changes attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite	wjackson		_____			
	11/30/2004	12/10/2004		_____			
	rkite	kfollett		_____			
	12/14/2004	01/07/2005		_____			
/P1			chaugen	_____			
			01/07/2005	_____		Inorthro	01/07/2005
/P2	rkite	kfollett	rschluet	_____			
	02/09/2005	02/09/2005	02/09/2005	_____		Inorthro	02/09/2005

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/P3	rkite 03/11/2005	kfollett 03/11/2005	jfrantze 03/11/2005	_____	sbasford 03/11/2005		S&L
/1	rkite 04/22/2005	kfollett 04/28/2005	rschluet 04/29/2005	_____	lemery 04/29/2005	lnorthro 06/24/2005	

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Handwritten notes and signatures:

1/11/05
4/28

Handwritten signature: *[Signature]*

Handwritten initials: *[Initials]*

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1P3 kfg
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/?	rkite	1/1/04 1/7	chr	chr 1/5			

FE Sent For:

<END>

Kite, Robin

From: Nowlan, Andrew
Sent: Wednesday, November 10, 2004 2:47 PM
To: Kite, Robin
Subject: RE: Commercial fishing draft

Sounds Great Robin! I would not be of any help in such discussions anyway!

Andy

-----Original Message-----

From: Kite, Robin
Sent: Wednesday, November 10, 2004 11:06 AM
To: Nowlan, Andrew
Subject: RE: Commercial fishing draft

I think that the most efficient thing for me to do is to talk to Tom Hansen directly. For example, Tom wants me to move the definition of "record" to the beginning of ch. 29 but I'm not sure that he realizes that the term "record" appears many times in ch. 29 and the definition in the draft is not appropriate throughout the chapter. Additionally, there are some drafting conventions we use at the LRB that conflict with Tom's suggested language changes. So, I think it would be best for me to explain some of these problems to Tom Hansen, either in person or by phone. If you would like us to have a meeting, I am happy to meet with you and Tom. In the interest of getting the draft done expeditiously, however, I think a phone call to Tom is the best way to go. Is this O.K. with you?

Robin

-----Original Message-----

From: Nowlan, Andrew
Sent: Wednesday, November 10, 2004 10:05 AM
To: Kite, Robin
Subject: RE: Commercial fishing draft

Well, it is probably best to talk to Tom Hansen, but I guess we would like to have an idea of what is going on. How would you like to proceed? Talk to Tom as questions arise or would you like to go through the draft, compile a list of questions and then have Tom come down in person? Either way is fine with us so whichever is preferable to you is how we should go about this.

Thanks,

Andrew

-----Original Message-----

From: Kite, Robin
Sent: Tuesday, November 09, 2004 4:25 PM
To: Nowlan, Andrew
Subject: Commercial fishing draft

Andrew:

As I review the redraft instructions from Tom Hansen at DNR for the commercial fishing draft, I know that I will have questions about those instructions. Do you want me to talk to Tom Hansen about my questions or do you want me to direct my questions to you first?

Thanks,

Robin

Robin N. Kite, Senior Legislative Attorney
Wisconsin Legislative Reference Bureau

1 East Main St.
Suite 200
Madison, WI 53703
(608) 266-7291

Kite, Robin

From: Nowlan, Andrew
Sent: Tuesday, November 09, 2004 9:42 AM
To: Kite, Robin
Subject: FW: DNR Review of preliminary draft of LRB-3653/P 1 dn (RNJK:kmg:rs)

Robin,

Here are the materials we talked about on the phone. Please call me with any questions. Garey is very interested in getting this bill moving early this session but we understand that this is a large and complicated draft. Thanks!

Andrew

-----Original Message-----

From: Hansen, Thomas R
Sent: Thursday, November 04, 2004 4:03 PM
To: Nowlan, Andrew
Cc: Flaherty, Peter D.; Heinen, Paul H
Subject: DNR Review of preliminary draft of LRB-3653/P 1 dn (RNJK:kmg:rs)

Andrew: The below two documents outline our suggested changes to the draft of LRB-3653/P 1 dn(RNJK:kmg:rs). I have put the changes into two different formats. The first document outlines our suggested changes and related comments by reference to page #, line # and the Section # in the Legislator's Draft Document. In the second document, I imported the suggested changes from my first document into the Legislator's Draft document for easy of reading.

I have ran both of my documents with the suggested DNR changes past Commercial Fishers Dennis Hickey and Charlie Henriksen. Neither one had any problems or concerns with the suggested DNR changes.



A - DNR Review of A - Legislative Draft
preliminary ... of Statu...

As this is one of my priorities with the start of the next legislative session, please be advised that I am available to meet with Representative Bies, you and/or the legislative drafter to answer any questions and work with you on this important piece of legislation. As we discussed on the phone, I will also make contact with some of the sport fishers in southeast Wisconsin to review our proposal and seek their support. As always, please feel free to call me with any questions or concern.

I am looking forward to continuing working with you and Rep. Bies on this issue.

Tom

 **Thomas R. Hansen**

Warden Supervisor

Department of Natural Resources

P.O. Box 10448, Green Bay, WI 54307

(☎) phone: (920) 492-5949

(✉) e-mail: Thomas.Hansen@dnr.state.wi.us

(920) 662-5449

Kite, Robin

From: Hansen, Thomas R
Sent: Tuesday, November 23, 2004 12:46 PM
To: Kite, Robin
Cc: Flaherty, Peter D.
Subject: Section 52 of the Preliminary draft of LRB-3653/P 1 dn (RNJK:kmg:rs) - Commercial Fish Rewrite for Representative Bies

Robin: As Pete Flaherty and I further looked at Section 52 of the draft, we became concerned that it did not clearly state that if the person failed to reimburse the Department for our seizure costs, the courts could assess both the \$1,000 forfeiture and order reimbursement. While that was clearly the intent, there was some ambiguity in the statute. We suggest some additional wording as follows (underlined blue font)

SECTION 52. 29.931 (2) (am) of the statutes is created to read:

29.931 (2) (am) If the department or its wardens seize any net or similar fishing device under par. (a), the owner shall reimburse the department for all costs associated with the seizure within 20 days after the department gives written notice to the owner of the owner's obligation to reimburse the department. The notice shall include the amount of the costs required to be reimbursed by the owner. If the owner does not reimburse the department as required under this paragraph, the owner shall forfeit not more than \$1,000, in addition to being required to reimburse the department for costs associated with removing the net or similar fishing device from the water. ~~All reimbursement costs collected under this paragraph shall be deposited in the conservation fund.~~

Also, to save you some time if you have not already looked up the statute, here is the language from s. 20.370(3)(mi)." referenced below.

(mi) *General program operations - private and public sources.* From the general fund, all moneys not otherwise appropriated that are received from private or public sources, **other than state agencies** and the federal government, for facilities, materials or services provided by the department relating to enforcement of laws administered by it to pay for expenses associated with those facilities, materials or services.

-----Original Message-----

From: Hansen, Thomas R
Sent: Friday, November 19, 2004 3:08 PM
To: Kite, Robin
Cc: Krull, Cheryl K.; Flaherty, Peter D.; Brooks, Karl R.
Subject: Meeting on Preliminary draft of LRB-3653/P 1 dn (RNJK:kmg:rs) - Commercial Fish Rewrite for Representative Bies

Robin: First I would like to say "thank you" for your time last Wednesday and the opportunity to review your draft of LRB-3653/P 1 dn (RNJK:km:rs).

I had promised to research the budget issue on page 17, Line 10 - 11 of the draft, which read: *".....shall forfeit not more than \$1,000. All reimbursement costs collected under this paragraph shall be deposited in the conservaiton fund."* My concern was that this language would not allow the return of funds spent from our station budgets for removal/seizure of illegal commercial fishing gear.

I discussed this with DNR Deputy Chief Warden Karl Brook and our LE Finance advisor Cheryl Krull. From those conversations, we would recommend that this provision be changed to read: *".....shall forfeit not more than \$1,000. All reimbursement costs collected under this paragraph shall be deposited in the conservaiton fund credited*

to the appropriation under s. 20.370(3)(mi)."

This will address my concerns with recovery of the costs to the state for seizure of illegal commercial fishing gear without directly impacting the field Warden's operating budgets.

 **Thomas R. Hansen**

Warden Supervisor

Department of Natural Resources

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**DNR Review of preliminary draft of LRB-3653/P 1 dn (RNJK:kmg:rs)
For Rep. Garey Bies**

**By DNR Staff
Thomas R. Hansen (Law Enforcement) & Pete Flaherty (Legal)**

Overall, Robin Kite has done a good drafting job of capturing the essence and spirit of the commercial fish rewrite and the recommendations of the citizen Commercial Fish Law Rewrite Task Force and the Department of Natural Resources. The below table addresses specific concerns and questions as identified by "page" and "line number" in the Preliminary Draft. Drafters language is in black font. Suggest deletions to the drafter's language are lined-through. DNR staff comment and recommendations are in blue font.

LINE	DNR Staff recommendations and comments
Cover memo – Item 2	<p>“...did not include a definition for “unreported fish”....</p> <p>Response to comment: - The Department and the Task Force recommended use of the term “unreported fish” with specific penalties for possession of unreported fish. Under current law, Conservation Wardens can not seize fish and the courts can not assess restitution for the fish where the only violation is that they were not reported (e.g. the poundage is still below the authorized quota for the particular commercial fisher). Intent and desire of Task Force is that “unreported fish” are illegal fish, which subject the violator to appropriate penalties including seizure of the fish and giving courts the ability to assess restitution for the value of the “unreported fish”.</p>
Cover memo – Item 6	<p>....”allow export marked in metric measurements”....</p> <p>Response to comment: Current and proposed regulations require fish weights to be reported in pounds, thereby complicating the reporting for the industry if they are packaging fish products using the metric system. However, as our commercial fishers and wholesale fish dealers have entered the “world market”, they are increasingly exporting fish (especially roe) overseas to countries using the metric system. The Department has no objections to allowing weights to be reported in either pounds or kilograms. We have gone through the draft and included language changing from “pounds” to “pounds or kilograms” to allow commercial fishers and wholesale fish dealers the latitude to package fish appropriate for their buyers and report those weights without having to convert from metric to pounds.</p>
Page 2 Lines 10 - 11	<p>Recommendation: (change to read) ...under s. 29.99 to improve and promote commercial fishing in the for research relating to Great Lakes fish.</p> <p>Explanation: The Task Force specifically asked that the assessment be used for research. The drafter's language is too broad and goes beyond the scope and mission of the DNR to promote and protect the natural resources - not to “promote” any particular commercial interests. Also, it was intended that the proposed assessment apply to sport fishing violations under s. 29.514 – For sport fishers to support this proposal, the assessment money will need to be dedicated to research that benefits the resource (and thus both the commercial and sport fishing interests). Many sport fishers would not support this section as written to “improve and promote commercial fishing”.</p>
Page 2 Between Lines 14 & 15	<p>Recommendation: (Add definition)</p> <p>Section 2a. 29.001(86) of the statutes is created to read: <u>29.001(86) “Unreported fish” means fish or parts of fish which are subject to a record requirement under s. 29.503 or 29.519 or rules of the department relating to commercial fishing or wholesale fish dealing.</u></p>

	Explanation: See above explanation with the comments on Drafter's Notes.
Page 3 Lines 17 - 22	<p>Recommendation [move proposed s. 29.503(1)(cm) to s. 29.001(64m)]: Section 8, 29.503(1)(cm) 29.001 (64m) of the statutes is created to read: <u>29.503(1)(cm) 29.001 (64m) "Record" includes anyby commercial fishers or wholesale fish dealers.</u></p> <p>Explanation: The draft definition for "Record" is good, but we recommend locating definition in the general definitions section at the start of Chapter 29, as it is applicable to multiple sections of the Chapter rather than just to s. 29.503. In addition to its use in s. 29.503, the term "Record" is also used several times in s. 29.519 and in s. 29.924. Therefore the definition would be better placed at the beginning of Chapter. DNR legal staff have examined the rest of Chpt. 29 and find that the department's proposed definition is consistent with the definition and understanding of the meaning of "record" associated with other Statutes and will have no material impact on other sections/requirements of Chapter 29.</p>
Page 6 Line 11 - 12	<p>Recommendation: (add):or invoice. <u>The operator of the conveyance transporting the fish shall immediately produce the invoice or bill of lading for inspection upon the request of a conservation warden.</u></p> <p>Explanation: Other language in the current law and proposed law allow wardens to inspect wholesale fish dealer shipments. This language is needed to allow wardens to effectively and immediately inspect and collaborate supporting documentation on the origin, destination and contents of a fish shipment.</p>
Page 7 Lines 3 -4	<p>Recommendation (change to read): 29.503(5)(a) Records. Each wholesale fish dealer shall keep <u>legible, written records in the English language</u> of all fish purchased, sold, bartered, possessed or obtained.....</p> <p>Explanation: Records must be legible, written and in the English language to deal with the increasing multi-lingual population in Wisconsin and elsewhere in the country. The department does not have the resources to conduct audits and ensure compliance using wholesale fish dealer records kept in languages other than English. Records must be legible and written (this includes printed) format rather than just in an electronic format that can be easily altered without detection. If it is not specified that records must be written and legible, it leaves a loophole for violators and their attorneys to argue about the ambiguity of the law as to what is required as a record.</p>
Page 7 Lines 7 - 8	<p>Recommendation (change to read):.....as a result of spoilage or by donation. <u>The records shall be kept in the manner required and on forms provided by the department.</u> The record shall include.....</p> <p>Explanation: Wholesale fish dealer record keeping requirements are to be specified by statute. No need for the department to have rule making authority relating to wholesale fish dealer records. Therefore re recommend deleting the lined out sentence.</p>
Page 7 Line 12	<p>Recommendation (change to read):pounds <u>or kilograms</u> of each kind and the...</p> <p>Explanation: See above comment ref. cover memo on allowing metric measurements..</p>
Page 7 Lines 13 - 15	<p>Recommendation (change to read):<u>If the record relates to a retail sale by the wholesale fish dealer, the record shall also include only the date of the transaction, species, weight and condition of the fish sold.</u></p>

add record def. x-ref. 29.519

*in
Dy Note -
will have
very good
app. for
ch. 29*

✓

✓

✓

✓

✓

	<p>Explanation: There is no intention or expectation to require the recording of the names and addresses of purchasers with retail sales. This would be an unacceptable reporting burden for a wholesale fish dealer, especially one operating a retail outlet store with numerous small retail sales.</p>	✓
Page 7 Note between line 15 - 16	<p>Response to Note. Yes – we did intend for there to be different record keeping requirements on documenting wholesale v. retail sales. It would not be practical or acceptable for the industry to require names and addresses for retail sales.</p>	✓
Page 8 Line 13 - 14	<p>Recommendation (change to read): The inventory shall be recorded on a form furnished <u>by available from</u> the department and shall include the weight of the fish in pounds <u>or kilograms</u>, the species of the fish,.....</p> <p>Explanation: In the event of an enforcement action with a commercial fisher who does not file the required report, using the term “furnished by” could be interpreted that the department must prove that the forms were in fact received by the defendant. This would unreasonably require the department to hand-deliver or use registered mail for delivering the form. While the department would mail the form each year as part of the commercial fishing relicensing process, it is better to use the term “available from”. This would require the department to print and have the form available, but puts the requirement on the licensee to pick up the form if one is not received through the mail.</p>	✓
Page 8 Line 19 - 20	<p>Recommendation (change to read):for which there is no record of <u>and</u> inventory as required under this subsection.</p> <p><i>this is correct in draft</i></p> <p>Explanation: Use the word “and” as both the record and inventory is required (not just one or the other as implied when using the word “or”) <i>leave as is</i></p>	<p>✓</p> <p><i>explain in Note</i></p>
Page 8 Note between line 20 - 21	<p>Recommendation (change to read): Response to Note. It makes it clear violation to be in possession of fish for which no record exists. Paragraph (a) doesn't say anything about possession or transportation. Paragraph (b) only deals with keeping an inventory. So paragraph (c) is not redundant as it makes undocumented fish illegal to possess.</p>	✓
Page 9 Line 2	<p>Recommendation (change to read):the department annually, on forms provided by <u>available from</u> the department.....</p> <p>Explanation: See above explanation for Page 8, Lines 13 - 14</p>	✓
Page 9 Line 7 -9	<p>Recommendation (change to read): Upon the written request of a wholesale fish dealer to the department, the department shall maintain the confidentiality of the information contained on each record or inventory furnished by the dealer to the department <u>relating to the value or weight of the fish bought, sold or bartered by the person or relating to the identity of the person or business from whom the fish were purchased or otherwise obtained or to whom the fish were sold, bartered or traded,</u> , except that the information may be disclosed by the department in <u>any investigation or enforcement action and in a statistical summary or report if the summary or report does not identify the dealer by name or license number.</u> and does not disclose any investigation or enforcement action concerning the dealer.</p> <p>Explanation: Drafters wording would prohibit the records from being used in court or for enforcement action, which negates their value for ensuring compliance with regulations. The industry is very interested in protecting the disclosure of their sources, markets and prices being paid. The suggested changes to the drafters wording will protect the</p>	✓

3653

	<p>industry's interests while still allowing the records to be used in enforcement actions. The proposed department wording is consistent with similar confidentiality clauses in the existing claming law under s.29.537(9), Wis. Stats.</p>
<p>Page 9 Between lines 14 - 15</p>	<p>Recommendation (Add section to read): Section 24a. 29.503(6)(b)3 of the statutes is created to read: <u>29.503(6)(b)3. Records at a residence, dwelling or other place: A wholesale fish dealer shall produce all records relating to the purchase, acquisition, sale, trade, barter, storage or disposition of fish kept at a residence, dwelling or location in Wisconsin other than the wholesale fish dealer's place of business within 24 hours of a request by the department for inspection or copying by the department. Wholesale fish dealers whose records are located outside the state of Wisconsin shall deliver or mail the requested records to the department designated location for inspection or copying by the department within 24 hours of receipt of a request from the department or its agents.</u></p> <p>Explanation: The drafter did not include this language which needs to be included in the proposed legislation. This is an important section agreed upon by the citizen Commercial Fish Rewrite Task Force to allow the department reasonable access and inspection of wholesale fish dealer records kept at a location other than their business facility (such as in a residence) or kept out of state. The Task Force felt requiring the mailing of such records as being reasonable and the least intrusive of inspection methods.</p>
<p>Page 11 Note between Line 3 - 4</p>	<p>Response to Note. Proposal is an effort at law simplification." Current law" allows one boat per commercial fishing license for the initial fee of \$900. Any additional boat and changing the type of boat on a license (e.g. gill net tug to trap net boat or vise versa) requires an additional \$900 per boat, except that that in the event of a mechanical breakdown verified by a Warden, the commercial fisher may transfer the license to a similar boat (gill net tug to gill net tug, or trap net boat to trap net boat) for a \$25.00 fee. The "proposed change" will eliminate the complexity of the current law with a simple one license/one boat concept which allows a commercial fisher to change types of gear and the boat type for a flat \$50.00 feet (Additional boats will still require \$900 fee per boat because of resulting increased fishing effort).</p>
<p>Page 13 Line 8</p>	<p>Recommendation (change to read): ...fisher shall notify the department annually, on forms provided by <u>available from</u> the department.</p> <p>Explanation: In the event of an enforcement action with a commercial fisher who does not file the required report, using the term "furnished by" could be interpreted that the department must prove that the forms were in fact received by the defendant. This would unreasonably require the department to hand-deliver or use registered mail for delivering the form. While the department would mail the form each year as part of the commercial fishing relicensing process, it is better to use the term "available from". This would require the department to print and have the form available, but puts the requirement on the licensee to pick up the form if one is not received through the mail.</p>
<p>Page 13 Line 10 - 16</p>	<p>Recommendation (change to read): Upon the written request of a commercial fisher to the department, the department shall maintain the confidentiality of the information contained on each record furnished by the commercial fisher to the department, <u>relating to the value of the fish caught sold or bartered by the person or relating to the identity of the person or business to whom the fish were sold, bartered or traded,</u> , except that the information may be disclosed by the department in <u>any investigation or enforcement action and in a statistical summary or report if the summary or report does not identify the commercial fisher by name or license number and does not disclose any investigation or enforcement action concerning the commercial fisher.</u></p>

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	<p>Explanation: Drafters wording would prohibit the records from being used in court or for enforcement action, which negates their value for ensuring compliance with regulations. The industry is very interested in protecting the disclosure of their markets and prices being paid. The suggested changes to the drafters wording will protect the industry's interests while still allowing the records to be used in enforcement actions. The proposed department wording is consistent with similar confidentiality clauses in the existing claiming law under s.29.537(9), Wis. Stats.</p>
Page 13 Note between line 16 -17	<p>Response to note: Yes, drafter's language is consistent with intent.</p>
Page 14 Line 2 - 3 and Note between 5 - 6	<p>Recommendation (change to read):... .. or held, in which fish are processed <u>or packed</u> packed or held or in which fish or nets are packed, or to enter and boat.....</p> <p>Explanation: Nets are not packed or processed – original proposed language is correct as inserted above.</p>
Note between Line 15 - 16	<p>Response to Note: The term “standard fish box is understood as a box holding capable of holding approximately 100 lb. of fish. But we agree that there could be argument over this and it would be best to create a definition in the Administrative Code (NR 25).</p>
Page 15 Line 24 - 25	<p>Recommendation (change to read):.....may subsequently be sold or purchased <u>pursuant to s. 29.503</u> without the fish.</p> <p>Explanation: The additional reference to s. 29.503 clarifies that the purchaser of trout and salmon roe intended for resale to someone other than the final consumer must have a wholesale fisher license.</p>
Page 17 Line 10 - 11	<p>Recommendation (change to read):shall forfeit not more than \$1,000. All reimbursement costs collected under this paragraph shall be deposited in the conservation fund.</p> <p>Explanation: The drafter's language creates a real budgetary problem. The intent of the original proposed language was for reimbursement to the LE program station budget that contracts for the actual costs of removal. If the money goes into the general fund as proposed under the drafter's language, there is no significant benefit to cost recovery as LE still won't have funding to pay for the removal.</p>
Page 17 Between Line 10 - 11	<p>Recommendation (add section to read): Section 52a. 29.971(1)(a) is amended to read: 29.971(1)(a) For the violation of any requirement of this chapter relating to fishing or fish dealing, by a forfeiture of not more than \$1,000 <u>except commercial fishing and wholesale fish dealing violations provided under pars. (b), (c), (d), (e), (f) and (e) and sub. (5m).</u></p> <p>Explanation: Drafter left out this proposed change in the draft. The proposed change is needed to clarify that subsections 29.971(1) (b) through (f) apply only to commercial fishing and wholesale fish dealer violations.</p>
Page 17 Line 15	<p>Recommendation (change to read): <u>any fish, including unreported fish, in his or her possession</u> in violation of this chapter.....</p> <p>Explanation: The department and the citizen Commercial Fish Rewrite Task Fore want to make it very clear that applicable penalties apply to “unreported fish”. This addition</p>

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Look into
ways to get
money back
to LE
1070 operating
expenses

Conservation

no need
to
amend

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	clarifies this issue for the courts and the industry.
Page 18 Line 1	<p>Recommendation (change to read): <u>or possess any fish, including unreported fish, in his or her possession</u> in violation of this chapter.....</p> <p>Explanation: The department and the citizen Commercial Fish Rewrite Task Force want to make it very clear that applicable penalties apply to “unreported fish”. This addition clarifies this issue for the courts and the industry.</p>
Page 18. Note between lines 12 - 13	<p>Response to note: There is a major difference. Per-fish value is substantially higher than the per-pound traditionally used for commercial violations. Courts have not been receptive to per-fish valuation for commercial violations as the resulting monetary penalties can be come excessive. The courts find it more reasonable to assess restitution on a market value (per-pound). Example: 400 lb. of yellow perch at \$2.00/lb = \$800 value. However at a per-fish value (figure 4 fish to the lb.) of \$8.25 each = \$14,000 restitution.</p>
Page 19 Between line 14 – 15	<p>Recommendation (add/amend section to read): Section 57a. 29.971(5) is amended to read: 29.971(5) For violation of s. 29.539, except s. 29.539(3) ^(3m), by a fine of not less than \$1,000 nor more than \$2,000 or imprisonment for not more than 6 months or both. In addition, the court shall order the revocation of all hunting and sport fishing approvals issued to the person under this chapter and shall prohibit the issuance of any new hunting or sport fishing approvals under this chapter to the person for 5 years.</p> <p>Explanation: It is the recommendation of the department and the citizen Commercial Fish Rewrite Task Force to decriminalize violations of s. 29.539(3) to civil forfeitures. The proposed change/addition effects that recommendation.</p>
Page 20 Note between lines 15 - 16	<p>Response to note: DNR Attorney Pete Flaherty looked at the drafter’s language for s. 29.984 and advises that the language looks good. This is consistent with the way the Federal courts assess restitution in inter-state commercial fishing cases under the Lacey Act. In response to the drafter’s questions, an example would be the best way to explain the requirement of this section. If a commercial fisher or wholesale fish dealer is found in possession of 200 lb. of illegal chubs. The Warden would contact 3 retail outlets to inquire as to the retail sale price for smoked chubs. Say the 3 stores advise that they are charging \$4.75/lb., \$4.50/lb. and \$3.75/lb. respectively. The average retail value of the three retail outlets is \$4.33/lb. Therefore the commercial Fish protection assessment would be 200 lb. x \$4.33/lb = \$866.00 which would be included (added) onto the monetary penalty.</p> <p>On the drafter’s question ...“where does salmon fall within that cross-reference?... Salmon are valued at \$8.75 each under s. 29.983(1)(b)12. Because they are a sport game fish and not a designated commercial species that can be harvested from Wisconsin waters.</p>
Page 22 Lines 24 - 25	<p>Recommendation (change to read): a fishing net removal assessment equal to 75 percent of the amount of the forfeiture <u>plus the costs that should have been reimbursed under s. 29.931(2)(am)</u></p> <p>Explanation: It was the recommendation of the citizen Commercial Fish Rewrite Task Force that the department should be reimbursed for all of the actual costs associated with seizing an illegal net. In the event that the responsible party is convicted of failing to reimburse the department for the costs of removing the net, they should still be held responsible for paying those removal costs in addition to all other penalties for the associated violation (With some nets such as a deep water trap net, it could be cheaper for the responsible party to take the citation and associated penalties than to pay the removal costs unless the statutes provide the added “incentive” of having to reimburse the department for removal costs in addition to the violation penalties).</p>

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add this in

OK
need better explanation

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Recommendation (add/amend section to read):
Renumber **Section 66** to be **Section 67**.

Create a new **Section 66** as follows:

Section 66. Nonstatutory provisions: Notwithstanding section 227.24 (1) (a) of the statutes, the department of natural resources may promulgate rules authorized or required under this act by using the emergency rule-making procedures under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, such rules shall not expire until [Revisor inserts date 1 year after effective date], or until repealed, repealed and recreated or amended by the department of natural resources, whichever occurs first.

Explanation: The Statutory rewrite will create the need for new/revised Natural Resources Administrative Rules. This provision will allow the DNR to adopt Emergency Rules valid for one year to implement the legislative changes in a seamless fashion from rules under the current statutes to the new provisions while providing adequate time to go through the public hearing process for adoption of permanent rules implementing the statutory changes.

*What is
rule
making
required?*

*also re: (record-keeping and
reporting by commercial fishers -
words worded broadly enough to cover this*

DNR editorial comments are in red font. Drafter's language is in black font with DNR suggested deletions lined-through. Suggested changes from DNR (Warden Supervisor Thomas Hansen & DNR Attorney Pete Flaherty) to the draft text are in blue font and underlined. - TRH

LRB-3653/P1
RNK:kmg:rs

2003 - 2004 LEGISLATURE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT *to repeal* 29.407 (2) (c), 29.503 (5) (b), 29.519 (4m) (e) and 29.519 (5) (d); *to renumber and amend* 29.407 (2) (b), 29.503 (4) (d) and 29.971 (1) (d); *to amend* 29.407 (2) (a), 29.503 (1) (b), 29.503 (1) (e), 29.503 (4) (title), 29.503 (4) (a), 29.503 (4) (b), 29.503 (5) (title), 29.503 (5) (a), 29.503 (6) (b) 2., 29.503 (6) (c), 29.503 (7), 29.519 (1) (c), 29.519 (2) (d), 29.519 (2) (f), 29.519 (2) (fm), 29.519 (4m) (c) (intro.), 29.519 (5) (a), 29.519 (5) (b), 29.519 (5) (c), 29.519 (6) (intro.), 29.519 (6) (a), 29.519 (6) (b), 29.519 (6m), 29.539 (2), 29.539 (3), 29.563 (7) (a) 1., 29.563 (7) (b) 1., 29.563 (7) (c) 1., 29.924 (4), 29.971 (1) (b), 29.971 (1) (c), 29.971 (1) (e), 29.987 (1) (a), 30.51 (2) (c) 2., 59.25 (3) (f) 2. and 59.40 (2) (m); and *to create* 20.370 (4) (kr), 29.001 (41m), 29.407 (2) (b) 1., 29.503 (1) (cm), 29.503 (4) (d) 2., 29.503 (4) (d) 3., 29.503 (4) (e), 29.503 (5) (am), 29.503 (5) (br), 29.503 (5) (c), 29.503 (5) (d), 29.519 (2) (e), 29.519 (5) (dm), 29.519 (6) (c), 29.519 (6g), 29.539 (3m), 29.931 (2) (am), 29.971 (1) (d) 1. and 4., 29.972, 29.984, 29.99 and 29.991 of the statutes; **relating to:** licensing, vehicle identification, and record-keeping requirements for wholesale fish dealers and commercial

fishers, inspections of wholesale fish dealer records and premises, commercial fishing boats, periods when a commercial fisher may fish on the waters of Green Bay, the sale and purchase of eggs from certain trout and salmon, commercial fishing approval fees, seizure of certain fishing devices, establishing a commercial fish reporting system, imposing certain assessments, making an appropriation, and providing penalties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.370 (4) (kr) of the statutes is created to read:

20.370 (4) (kr) Commercial fish protection and Great Lakes resource assessments. All moneys received from commercial fish protection assessments under s. 29.984 and from Great Lakes resource assessments under s. 29.99 under s. 29.99 to improve and promote commercial fishing in the for research relating to Great Lakes fish.

****NOTE: I did not refer to the term "Great Lakes fishery" as your proposed language requested because that term is not used nor defined elsewhere in the statutes. Does the language above meet your intent?

SECTION 2. 29.001 (41m) of the statutes is created to read:

29.001 (41m) "Great Lakes fish" means lake trout, siscowet, whitefish, chubs, yellow perch, menominee, lake herring, smelt, alewife, and burbot.

Section 2a. 29.001(86) of the statutes is created to read:

29.001(86) "Unreported fish" means fish or parts of fish which are subject to a record requirement under s. 29.503 or 29.519 or rules of the department relating to commercial fishing or wholesale fish dealing.

Recommendation [move proposed s. 29.503(1)(cm) to s. 29.001(64m)]:

Section 8, 29.503 (1)(cm) 29.001 (64m) of the statutes is created to read:

29.503(1)(cm) 29.001 (64m) "Record" includes any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form, that relates to the production, storage, transportation, purchase, sale, trade, barter, or other acquisition or disposition of fish by commercial fishers or wholesale fish dealers.

SECTION 3. 29.407 (2) (a) of the statutes is amended to read:

29.407 (2) (a) No person may transport or cause to be transported, or deliver or receive or offer to deliver or receive for transportation, any game fish taken from

SECTION 3

outlying waters unless the person complies with all applicable requirements under pars. (b) ~~to~~ and (d).

SECTION 4. 29.407 (2) (b) of the statutes is renumbered 29.407 (2) (b) 2. and amended to read:

29.407 (2) (b) 2. No green fresh fish of any variety except lawfully taken suckers may be shipped from any port located on outlying waters during the closed season for the fish, except the first 3 days of the closed season.

SECTION 5. 29.407 (2) (b) 1. of the statutes is created to read:

29.407 (2) (b) 1. In this paragraph, "fresh fish" means any fish that has not been frozen or smoked.

SECTION 6. 29.407 (2) (c) of the statutes is repealed.

~~(c) Pike and pickerel lawfully taken from outlying waters may be transported to points within or without the state without limitation as to quantity; but all shipments may be billed only from a port on outlying waters directly to their destination, and may not be rebilled or reshipped from any other point within the state.~~

29.503 Wholesale fish dealer license.

(1) Definitions. In this section, unless the content otherwise requires:

(a) "Canned fish" means fish and seafood products prepared for human consumption commercially, sterilized by heat and preserved in hermetically sealed containers.

SECTION 7. 29.503 (1) (b) of the statutes is amended to read:

29.503 (1) (b) "Fish" means any processed or unprocessed fish of those species which are found in the waters of the state as defined in s. 281.01 (18), including parts of fish, fish eggs, or fish products. "Fish" does not include minnows produced and sold or purchased as bait.

Recommendation – move to definition above definition section:

~~**SECTION 8.** 29.503 (1) (cm) of the statutes is created to read:~~

~~29.503 (1) (cm) "Record" includes any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form, that relates to the production, storage, transportation, purchase, sale, trade, barter, or other acquisition or disposition of fish by commercial fishers or wholesale fish dealers.~~

(c) "Producer of fish" means any person who fishes with or without a crew.

(d) "Seafood" means food sold fresh or frozen and commonly known as oysters, shrimp, lobsters, lobster tails, crabs, scallops, clams and other types of shell fish which are or can be lawfully taken for commercial purposes, but not any canned fish or fish known as lutefisk.

SECTION 9. 29.503 (1) (e) of the statutes is amended to read:

29.503 (1) (e) "Wholesale fish dealer" means any person who buys, barter, obtains, sells or, solicits, or processes fish in any manner for himself or herself or any

SECTION 9

other person for sale to anyone other than a consumer; but no established retail store or locker plant is a "wholesale fish dealer" solely as the result of the sale of fish to a restaurant, hotel or tavern at no reduction in the retail price charged other retail customers. A producer of fish, except as otherwise hereinafter provided, who sells fish directly to retailers is a wholesale fish dealer. Hotels, meat markets, grocery stores, restaurants and taverns are retailers, except when they sell fish for resale, in which case they are wholesale fish dealers.

(2) License required; exemption.

(a) No person may engage in business as a wholesale fish dealer unless he or she is issued a wholesale fish dealer license by the department.

(b) No producer of fish who holds a commercial fishing license or contract under this chapter shall be required to obtain a license to sell the fish that he or she produces.

(3) Lake sturgeon. A wholesale fish dealer license does not authorize a person to sell, buy, barter, trade, possess, control or transport lake sturgeon.

SECTION 10. 29.503 (4) (title) of the statutes is amended to read:

29.503 (4) (title) TAGGING AND, LABELING, AND VEHICLE IDENTIFICATION REQUIREMENTS.

SECTION 11. 29.503 (4) (a) of the statutes is amended to read:

29.503 (4) (a) *Tag, label or receipt required.* No wholesale fish dealer may sell, buy, barter, trade, possess, control ~~or~~, transport, or cause to be transported any fish unless the fish are tagged and labeled in accordance with the law of the state or country where they were taken or, if no label or tag is required under the law of that state or country, unless the fish are accompanied by a receipt or invoice from the person from whom the fish were purchased or obtained.

SECTION 12. 29.503 (4) (b) of the statutes is amended to read:

29.503 (4) (b) *Special tagging requirements for lake trout.* No wholesale fish dealer or producer of fish may sell, buy, barter, trade, possess, control ~~or~~, transport, or cause to be transported any lake trout unless the lake trout is ~~tagged with a valid, current commercial fish tag issued or authorized~~ identified in the form and manner required by the department ~~or by a governmental agency of another state or country.~~ If a licensed wholesale fish dealer gives the department at least 12 hours' notice of ~~the date, time and location of arrival at the state line of lawfully possessed, untagged~~

SECTION 12

~~lake trout which are intended for importation into this state by the licensed wholesale fish dealer, the department or its representatives shall meet the shipment of lake trout and attach a "foreign lake trout tag" to each fish or seal the shipment with a department seal which may not be removed prior to delivery to the licensed wholesale fish dealer. The department or its representative shall tag the lake trout in a timely and orderly manner, and so as not to create any damage or spoilage to the fish. The tag shall be attached through the gills and mouth of whole lake trout, or in a manner which results in 2 complete fillets joined by the tag. For tagging of other forms of lake trout, the department shall promulgate rules to determine the manner in which the tag shall be attached to or accompany the trout, and the conditions, if any, under which the tag may be separated from the trout.~~

(c) Failure to tag or label. Fish which are not tagged, labeled or accompanied by a receipt showing the fish were taken in another state or country as required under par. (a) or (b) are presumed to have been taken from the waters of this state.

SECTION 13. 29.503 (4) (d) of the statutes is renumbered 29.503 (4) (d) 1. and amended to read:

29.503 (4) (d) 1. No wholesale fish dealer or producer of fish may transport or cause to be transported, or deliver or receive for transportation from the seller of fish to the buyer of fish, any container, package, or box containing any fish unless it is labeled legibly in a manner which discloses the name, address and license number of the consignor which shall be identical to that on the license; the name and address of the consignee; and each kind of fish contained in the package or box. If the shipment of fish is accompanied by an invoice containing the name, address and license number of the consignor, which shall be identical to that on the license; the name, address and license number, if any, of the consignee; the date of shipment from the consignor; the kinds of fish, the pounds of each kind and the description of the fish being shipped; and the signature of the person completing the invoice, the kinds of fish contained may be omitted from the package or box labels. Producers shall only

SECTION 13

~~be required to label or provide invoices for packages or boxes of fish being transported by vehicle or boat for purposes of sale. This paragraph does not apply to a producer of fish on the Mississippi River accompanied by a bill of lading or an invoice that contains the name, address, and license number of the seller and of the buyer.~~

SECTION 14. 29.503 (4) (d) 2. of the statutes is created to read:

29.503 (4) (d) 2. The bill of lading or invoice required under subd. 1. shall contain the name, address, and license number of the seller and the buyer of the fish covered by the bill of lading or invoice and shall specify the point of origin of the fish, the point of destination of the fish, the species of fish, the weight of each species of fish, and the number of containers, packages, or boxes covered by the bill of lading or invoice. The operator of the conveyance transporting the fish shall immediately produce the invoice or bill of lading for inspection upon the request of a conservation warden.

SECTION 15. 29.503 (4) (d) 3. of the statutes is created to read:

29.503 (4) (d) 3. This paragraph does not apply to a producer of fish if the producer is transporting fish from the producer's boat or landing to a processing facility in this state.

SECTION 16. 29.503 (4) (e) of the statutes is created to read:

29.503 (4) (e) *Vehicle identification requirements.* 1. No wholesale fish dealer or producer of fish may transport or cause to be transported any fish in a vehicle unless the ownership of the vehicle is marked in a manner prescribed by the department that identifies the vehicle's ownership and that confirms that the vehicle contains fish.

2. This paragraph does not apply to a producer of fish if the producer is transporting fish from the producer's boat or landing to a processing facility in this state.

SECTION 17. 29.503 (5) (title) of the statutes is amended to read:

SECTION 17

29.503 (5) (title) RECORDS AND REPORTS INVENTORIES.

SECTION 18. 29.503 (5) (a) of the statutes is amended to read:

29.503 (5) (a) *Records.* Each wholesale fish dealer shall keep legible, written records in the English language of all fish purchased, sold, bartered, possessed or obtained in his or her capacity as a wholesale fish dealer, by any means including by trade or barter and shall keep records of all fish disposed of in his or her capacity as a wholesale fish dealer for any reason, including as a result of spoilage or by donation. The records shall be kept in the manner required and on forms provided by the department. The record shall include the name, address and fish dealer license number of the purchaser; the name, address and wholesale fish dealer or commercial fishing license number of the person from whom the fish were purchased or obtained; the date of the transaction; the kinds of fish, the pounds or kilograms of each kind and the description of the fish purchased or obtained; and the signature of the person completing the record. If the record relates to a retail sale by the wholesale fish dealer, the record shall also include only the date of the transaction, species, weight and condition of the fish sold.

****NOTE: The draft language provided for this provision was unclear. Did you intend that there be entirely different record-keeping requirements for wholesale and retail sales? Please review this provision closely to determine if it accomplishes your intent. Yes – we did intend for there to be different record keeping requirements on documenting wholesale vs. retail sales. It would not be practical or acceptable for the industry to require names and addresses for retail sales.

SECTION 19. 29.503 (5) (am) of the statutes is created to read:

29.503 (5) (am) *Production of records.* 1. Upon the request of the department, a wholesale fish dealer licensed in this state shall produce all records relating to the purchase, acquisition, sale, trade, barter, storage, or disposition of fish that are kept at a residence, dwelling, or location other than the wholesale fish dealer's place of business, within 24 hours of such request, for inspection or copying. If the wholesale fish dealer's records are located outside of this state, the wholesale fish dealer may

SECTION 19

mail the records to the department for inspection or copying. The records shall be mailed within 24 hours of receipt of the department's request.

2. The department may not issue or renew a wholesale fish dealer license to any person who has been convicted of violating this paragraph for a period of one year following the conviction.

SECTION 20. 29.503 (5) (b) of the statutes is repealed.

~~(b) Reports. On or before the 10th day of each month, each wholesale fish dealer shall submit the records for the preceding month to the department. If the records are mailed to the department, the date of the postmark constitutes the date of submission.~~

SECTION 21. 29.503 (5) (br) of the statutes is created to read:

29.503 (5) (br) Inventory. Each wholesale fish dealer shall prepare an annual inventory of Great Lakes fish and all species of sturgeon owned by the wholesale fish dealer or in the dealer's possession or control at the time that the inventory is prepared, including such fish maintained in cold storage facilities. The inventory shall be furnished to the department within 15 days after the inventory is completed. The inventory shall be recorded on a form furnished by available from the department and shall include the weight of the fish in pounds or kilograms, the species of the fish, the condition of the fish, and the address of the location of the fish.

SECTION 22. 29.503 (5) (c) of the statutes is created to read:

29.503 (5) (c) Requirements. No wholesale fish dealer, or employee of a wholesale fish dealer, may possess, control, store, transport, or cause to be transported any fish for which there is no record or inventory as required under this subsection.

****NOTE: What is par. (c) intended to do that pars. (a) and (br) do not do? It seems that par. (c) is redundant. At the very least, par. (c) appears to overlap with the requirements of par. (a). It makes it clear violation to be in possession of fish for which no record exists. Paragraph (a) doesn't say anything about possession or transportation. Paragraph (b) only deals with keeping an inventory. So paragraph (c) is not redundant as it makes undocumented fish illegal to possess.

SECTION 23. 29.503 (5) (d) of the statutes is created to read:

29.503 (5) (d) Record retention and confidentiality. 1. Each wholesale fish dealer shall retain all records and inventories required under this section for a period

SECTION 23

of at least 5 years from the date on which the record or inventory was created. Each wholesale fish dealer shall notify the department annually, on forms ~~provided by~~ available from the department, of the location of the dealer's records and inventories.

2. Upon the written request of a wholesale fish dealer to the department, the department shall maintain the confidentiality of the information contained on each record or inventory furnished by the dealer to the department relating to the value or weight of the fish bought, sold or bartered by the person or relating to the identity of the person or business from whom the fish were purchased or otherwise obtained or to whom the fish were sold, bartered or traded, , except that the information may be disclosed by the department in any investigation or enforcement action and in a statistical summary or report if the summary or report does not identify the dealer by name or license number. ~~and does not disclose any investigation or enforcement action concerning the dealer.~~

****NOTE: The language provided for subd. 1., above, specified that all records required to be maintained by wholesale fish dealers under ch. 29 must be kept for 5 years. I have changed this language to refer only to the records required to be kept under s. 29.503. Is this consistent with your intent? If not, please identify the other records that you want the dealers to retain for 5 years.

(6) Inspections.

(a) Subjects of inspection. Fish stored or in the possession of a wholesale fish dealer, records and reports of a wholesale fish dealer and buildings, structures, vehicles, boats, equipment and materials related to a wholesale fish dealer's business are subject to inspection by the department as provided in this subsection.

SECTION 24. 29.503 (6) (b) 2. of the statutes is amended to read:

29.503 (6) (b) 2. To inspect fish stored or in the possession of a wholesale fish dealer, inspect or copy records or reports of a wholesale fish dealer, and to inspect buildings, structures, vehicles, boats, equipment and materials related to a wholesale fish dealer's business.

Section 24a. 29.503(6)(b)3 of the statutes is created to read:

29.503(6)(b)3. Records at a residence, dwelling or other place: A wholesale fish dealer shall produce all records relating to the purchase, acquisition, sale, trade, barter, storage or disposition of fish kept at a residence, dwelling or location in Wisconsin other than the wholesale fish dealer's place of business within 24 hours of a request by the department for inspection or copying by the department. Wholesale fish dealers whose records are located outside the state of Wisconsin shall deliver or mail the requested records to the department designated location for inspection or copying by the department within 24 hours of receipt of a request from the department or its agents.

SECTION 25. 29.503 (6) (c) of the statutes is amended to read:

29.503 (6) (c) Failure to produce records or to permit inspection. No wholesale fish dealer, operator of a vehicle or boat for a wholesale fish dealer or employee or person acting on behalf of a wholesale fish dealer may prohibit entry or prohibit an inspection to be conducted as authorized under this subsection, or refuse to produce records as required under this subsection, unless a court restrains or enjoins the entry or, inspection, or production.

SECTION 26. 29.503 (7) of the statutes is amended to read: