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29.503 (7) EXEMPTION. This section does not apply to fish produced in a state or municipal fish hatchery or to farm-raised fish that are bought, bartered, sold, obtained, processed, solicited, or transported by a person who operates a fish farm registered under s. 95.60 (3m) or by that person's employees.

29.519 Commercial fishing in outlying waters.

(1) License authorized.

(a) No person may conduct commercial fishing operations on any of the outlying waters unless the person is issued a commercial fishing license by the department.

(b) The department may limit the number of licenses issued under this section and designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations shall be restricted. After giving due consideration to the recommendations made by the commercial fishing boards under sub. (7), the department may establish species harvest limits and promulgate rules to establish formulas for the allocation of the species harvest limits among commercial fishing licensees or for the allotment of individual licensee catch quotas. The department may allocate the harvest limits among commercial fishing licensees. The department may designate the kind, size and amount of gear to be used in the harvest. The limitations on licenses, restricted fishing areas, harvests and gear shall be based on the available harvestable population of fish and in the wise use and conservation of the fish so as to prevent overexploitation.

SECTION 27. 29.519 (1) (c) of the statutes is amended to read:

29.519 (1) (c) The department may promulgate rules defining the qualifications of licensees in the reasonable exercise of this authority, giving due consideration to residency, past record including compliance with the ~~reporting records~~ requirements of sub. (5), fishing and navigation ability and quantity and quality of equipment possessed. Rules relating to licensing commercial fishers shall be based on criteria provided by the commercial fishing boards under sub. (7).

(d) 1. In this paragraph, "overall length" means the minimum distance between the extreme outside end of the bow and the stern using the nearest whole number of feet.

2. The application for the license shall be made to the department, accompanied by the fee specified in s. 29.563 (7). The application shall state the name, birthdate, description and address of the residence of the applicant, the manner in which he or she proposes to fish, the name or number and overall length of his or her boats, the name of the hailing port from which the boats will operate, and the number and kind of nets or other gear he or she intends to use in connection with commercial fishing and any other information required by the department for statistical purposes. The applicant shall provide an itemized listing of commercial fishing gear and equipment with the current values of those items of commercial fishing equipment, sufficient to meet the investment requirements for licensing as established in rules promulgated under this section.

(e) No outlying waters commercial fishing license may be issued to a person under the age of 18 years.

(2) Residency; transfers; catch fees.

(a) Nonresident defined. In this subsection, "nonresident" includes any individual who is not a resident, any individual applying for a license for use of nets on a boat registered or of record at a port outside of the state, or any partnership, association, corporation or limited liability company any of whose stock, boats, nets and fishing equipment has been owned by a nonresident at any time during the 2 years immediately prior to the application for a license.

SECTION 28. 29.519 (2) (d) of the statutes is amended to read:

29.519 (2) (d) *Transfer of license.* ~~The department may, upon application, permit the transfer of a license to any similar boat during the time a licensed boat is disabled or undergoing repairs or upon the sale of a licensed boat.~~ The department shall promulgate rules governing the transfer of commercial fishing licenses between individuals equally qualified to hold the licenses and to members of a licensee's immediate family provided the rules assure the wise use and conservation of the fish resources being harvested under the license. The rules shall relate only to those waters in which the number of licenses is limited. The commercial fishing boards, under sub. (7), shall approve or deny transfers of commercial fishing licenses in accordance with the rules promulgated under this section. For purposes of s. 29.024 (2g) and (2r), a transfer of a license under this section shall be considered an issuance of a license to the transferee.

SECTION 29. 29.519 (2) (e) of the statutes is created to read:

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29.519 (2) (e) Transfer of replacement boats. The department may, upon application, permit the transfer of a replacement boat to a commercial fishing license.

****NOTE: I have drafted this language as requested but I do not understand what it means. How does the department transfer a boat to a license? Also, who may apply for this transfer? **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).

SECTION 30. 29.519 (2) (f) of the statutes is amended to read:

29.519 (2) (f) Licensed Commercial fishing boats. Any licensed boat used by a resident licensee shall be from a port of record in this state, its hailing port shall be a port in this state, and it shall be a registered or documented boat of this state. Any ~~licensed~~ boat used by a nonresident licensee shall be a registered or documented boat of the state of residency.

SECTION 31. 29.519 (2) (fm) of the statutes is amended to read:

29.519 (2) (fm) Attending boats. Each licensed boat in excess of 25 feet in overall length used by a commercial fisher may be accompanied by and work with one attending boat without an additional license fee for the attending boat. Any attending boat that is a motorboat under s. 30.50 (2) shall be a registered ~~boat~~ under s. 30.51. An attending boat shall bear the name, if any, of the licensed boat listed on the commercial fishing license issued under sub. (1) and may be used only for attending ~~the licensed~~ that boat.

Sections "29.519(2)(g) Reciprocity", "29.519(4) Crew Licenses" and "29.519(4g) Prohibition against operating fish farms" remain unchanged.

29.519(4m) Fishing for certain species of fish in Lake Michigan and Green Bay.

(a) In this subsection, "incidental catch" means species of fish inadvertently caught while a commercial fisher licensed under sub. (1) is fishing by trawl for other species of fish.

(b) An incidental catch of smelt, chub or alewife from the waters of Green Bay or Lake Michigan may be brought to shore for the purpose of sorting or sale.

SECTION 32. 29.519 (4m) (c) (intro.) of the statutes is amended to read:

29.519 (4m) (c) (intro.) A commercial fisher licensed under sub. (1) may fish by trawl for the total allowable commercial harvest of smelt, as set by rule by the department, on the waters of Green Bay at any time ~~during the period beginning one hour after sunset and ending 3 hours after sunrise~~ nighttime if all of the following apply:

1. The smelt will be used or sold for human consumption.
2. The fishing occurs in the areas and during the seasons established by the department for the fishing of smelt.

SECTION 33. 29.519 (4m) (e) of the statutes is repealed.

~~(d) The department shall establish by rule a harvest limit for alewife on the waters of Green Bay and Lake Michigan.~~

SECTION 34. 29.519 (5) (a) of the statutes is amended to read:

29.519 (5) (a) *Records and reports requirements.* Each commercial fishing licensee fisher shall maintain and submit records ~~and provide reports as to the department in the form and manner~~ required by the department ~~by rule.~~

SECTION 35. 29.519 (5) (b) of the statutes is amended to read:

29.519 (5) (b) *Fishing records.* The licensee commercial fisher shall keep and submit a complete, legible and accurate record of the licensee's daily fishing activities, in the form and manner required ~~and on forms provided~~ by the department. The record shall include the complete name, address and commercial fishing license number of the licensee; the name and number of the boat fished from; the location fished; the month and year for which the record is being kept for; the date of each day's fishing activity; the kind and amount of commercial fishing gear used; the kind of fish caught and the number of pounds of each kind of fish caught; and the signature of the licensee.

SECTION 36. 29.519 (5) (c) of the statutes is amended to read:

29.519 (5) (c) *Catch Fish disposition records.* The licensee commercial fisher shall keep a complete, legible and accurate record of the disposition of landed catch, in the form and manner required ~~and on forms provided~~ by the department. The record shall include the complete name, address and commercial fishing license number of the licensee; for each wholesale sale, the complete name, address and wholesale fish dealer license number, if any, of the buyer and the kinds of fish sold, the number of pounds of each kind and the description of the fish sold and the date of the transaction; for direct retail sales, the kinds of fish sold and the total pounds of each kind; and the signature of the licensee. In this paragraph, "landed catch"

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means those fish or fish parts caught in commercial fishing operations and brought to shore to utilize or to sell or otherwise utilize dispose of.

SECTION 37. 29.519 (5) (d) of the statutes is repealed.

~~(d) Reports. On or before the 10th day of each month, each commercial fishing licensee shall submit the reports required under this subsection for the preceding month to the department. If the reports are mailed to the department, the date of the postmark constitutes the date of filing.~~

SECTION 38. 29.519 (5) (dm) of the statutes is created to read:

29.519 (5) (dm) Record retention and confidentiality. 1. Each commercial

fisher shall maintain and retain all records required under this subsection for a period of at least 5 years from the date on which the record was created. Each commercial fisher shall notify the department annually, on forms provided by available from the department, of the location of the commercial fisher's records.

2. 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, 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, , 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 commercial fisher by name or license number and does not disclose any investigation or enforcement action concerning the commercial fisher.

****NOTE: The language provided for subd. 1., above, specified that all records required to be maintained by commercial fishers 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.

29.519 (5). Is this consistent with your intent? If not, please identify the other records

that you want the commercial fishers to retain for 5 years. **Response to note:** Yes, drafter's language is consistent with intent.

SECTION 39. 29.519 (6) (intro.) of the statutes is amended to read:

29.519 (6) INSPECTION. (intro.) For purposes of enforcement of this section, wardens or department employees duly authorized and designated by the secretary, upon presenting appropriate credentials to the licensee commercial fisher, crew member, or agent in charge, are authorized:

SECTION 40. 29.519 (6) (a) of the statutes is amended to read:

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29.519 (6) (a) To enter any building or structure, excluding a dwelling place, in which records, nets, or fish are stored, or held, in which fish are processed or packed ~~or held or in which fish or nets are packed~~, or to enter any boat or vehicle being used to transport nets or fish when the owner or agent in charge is present or upon 8 hours' notice at other times.

****NOTE: I have assumed for purposes of this provision that nets are not "processed." Is my assumption correct? Yes.

SECTION 41. 29.519 (6) (b) of the statutes is amended to read:

29.519 (6) (b) To inspect buildings, structures, boats or vehicles, to inspect all pertinent equipment including nets used or stored in the places to be inspected, to inspect or copy all records of commercial fishing activity, of fish storage, and of fish disposition, and to inspect any fish stored, processed, packed or held in the places to be inspected.

SECTION 42. 29.519 (6) (c) of the statutes is created to read:

29.519 (6) (c) To direct a commercial fisher, a crew member, or an agent in charge to empty any fish box that is larger than a standard fish box. If so directed, the commercial fisher, crew member, or agent shall empty such fish box.

****NOTE: Are the terms "fish box" and "standard fish box" commonly understood terms in the commercial fishing industry? If not, definitions may be advisable. **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).

SECTION 43. 29.519 (6g) of the statutes is created to read:

29.519 (6g) RECORD PRODUCTION. If the department requests that a commercial fisher produce any record relating to the production, acquisition, sale, trade, barter, storage, or disposition of fish, and that record is kept by the commercial fisher at a residence or at a location other than the commercial fisher's place of business, the commercial fisher shall provide that record, within 24 hours of the request, to the department for inspection or copying.

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SECTION 44. 29.519 (6m) of the statutes is amended to read:

29.519 **(6m)** INTERFERENCE WITH INSPECTIONS. No ~~licensee~~ commercial fisher, licensed crew member, operator of a vehicle or boat for the ~~licensee~~ commercial fisher, or an employee acting on behalf of the ~~licensee~~ commercial fisher may prohibit entry or, prohibit an inspection to be conducted, fail or refuse to produce any record, or fail or refuse to immediately empty a fish box or container as authorized provided under sub. (6) unless a court restrains or enjoins the entry or inspection. The department may not conduct an inspection or examine a person's records under sub. (6) if such action has been enjoined by court order.

SECTION 45. 29.539 (2) of the statutes is amended to read:

29.539 **(2)** ~~No~~ Except as provided in subs. (3) and (3m), no fish taken by hook and line from outlying waters, except rough fish, may be sold, bartered or traded in any manner.

SECTION 46. 29.539 (3) of the statutes is amended to read:

29.539 **(3)** The eggs from trout and salmon that are not farm-raised fish and that are lawfully taken and possessed under this chapter are exempted from this section if removed from the fish. ~~The whole fish shall be taken to the buyer of the eggs and the eggs removed in the presence of the buyer. The fish carcass shall be legally disposed of as provided under sub. (3m).~~

SECTION 47. 29.539 (3m) of the statutes is created to read:

29.539 **(3m)** The eggs from trout and salmon that are not farm-raised fish may not be sold or purchased unless the eggs are first removed from the whole fish in the presence of the buyer. The fish carcass shall be legally disposed of. Eggs that are removed in accordance with this subsection may subsequently be sold or purchased pursuant to s. 29.503 without the fish.

SECTION 48. 29.563 (7) (a) 1. of the statutes is amended to read:
29.563 (7) (a) 1. Outlying waters: \$899.25 for the first ~~licensed~~ boat and \$899.25 for each additional ~~licensed~~ boat that is listed on a license issued under s. 29.519 (1).

SECTION 49. 29.563 (7) (b) 1. of the statutes is amended to read:
29.563 (7) (b) 1. Outlying waters: \$6,499.25 for the first ~~licensed-boat~~ and \$6,499.25 for each additional ~~licensed~~ boat that is listed on a license issued under s. 29.519 (1).

SECTION 50. 29.563 (7) (c) 1. of the statutes is amended to read:
29.563 (7) (c) 1. Outlying waters license transfers under s. 29.519 (2) (d): ~~\$25~~ \$50.

****NOTE: I did not include the word "boat" as indicated in the submitted language because the cross-reference to s. 29.519 (2) (d) is sufficient to describe the type of license to which this provision applies.

SECTION 51. 29.924 (4) of the statutes is amended to read:
29.924 (4) ACCESS TO STORAGE PLACES. The owner or occupant of any cold-storage warehouse or building used for the storage or retention of wild animals, or their carcasses, that are subject to regulation under this chapter shall permit the department and its wardens to enter and examine the premises subject to s. 66.0119. The owner or occupant, or the agent or employee of the owner or occupant, shall deliver to the officer any such wild animal or carcass, ~~in his or her possession during the closed season~~ the warehouse or building, that the officer has reasonable cause to believe is possessed or was taken in violation of the law, whether taken within or without the state. The owner or occupant, or the agent or employee of the owner or occupant, shall permit the department to examine and copy any record pertaining

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to the storage or retention of any wild animal either when the owner, occupant, agent, or employee is present or upon 24 hours' notice.

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. All reimbursement costs collected under this paragraph shall be deposited in the conservation fund.

****NOTE: The language that was provided for this draft stated that the reimbursement obligation applies to the costs associated with the seizure, destruction, or sale of a fishing net that is a public nuisance. Current law only authorizes the seizure of such objects under s. 29.931 (2). It does not specifically authorize sale or destruction. Accordingly, I have drafted this provision to refer only to seizure.

29.971 General penalty provisions. Any person who, for himself or herself, or by his or her agent or employee, or who, as agent or employee for another, violates this chapter shall be punished as follows:

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 except commercial fishing and wholesale fish dealing violations provided under pars.(b), (c), (d), (e), (f) and (e) and sub. (5m).

SECTION 53. 29.971 (1) (b) of the statutes is amended to read:

29.971 (1) (b) For having taking, transporting, acquiring, selling, purchasing, or possessing, or attempting to take, acquire, transport, sell, purchase, or possess, any fish, including unreported fish, in his or her possession in violation of this chapter ~~and the~~ that has a value of the fish under par. (d) ~~exceeds~~-exceeding \$300 but ~~does not exceed~~-exceeding \$1,000, by a fine of not less than \$1,000 nor more than \$5,000 or imprisonment for not more than 30 days or both.

or failing to report fish -

SECTION 54. 29.971 (1) (c) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

29.971 (1) (c) A person having taking, transporting, acquiring, selling, purchasing, or possessing, or attempting to take, acquire, transport, sell, purchase,

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same language
or possess, any fish, including unreported fish, in his or her possession in violation of this chapter is guilty of a Class I felony if the value of the fish under par. (d) exceeds \$1,000.

SECTION 55. 29.971 (1) (d) of the statutes is renumbered 29.971 (1) (d) 2. and amended to read:

29.971 (1) (d) 2. Salmon, trout, and noncommercial game fish shall be valued for the purposes of pars. (b) and (c) on a ~~per fish~~ per-fish basis according to the dollar amounts specified under s. 29.977 (1) (a) and (i) to (L).

3. Other species of commercial fish shall be valued on a per fish basis according to the current average wholesale value. In this paragraph, "average wholesale value" means the average price received by producers on the date of the violation for fish in the form of the violative fish-per-pound basis according to the average retail value of the fish on the date of the violation.

****NOTE: How is valuing a fish on a "per-pound basis" different than valuing a fish on a "per-fish" basis? **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.

SECTION 56. 29.971 (1) (d) 1. and 4. of the statutes are created to read:

29.971 (1) (d) 1. In this paragraph, "average retail value" means the average purchase price paid by consumers to retailers on the date of a violation of this chapter as determined by the department after obtaining price information from 3 retailers in this state.

4. For purposes of making charging and penalty determinations under pars. (b) and (c), the value of fish from multiple violations committed by the same person in any 12-month period may be aggregated.

SECTION 57. 29.971 (1) (e) of the statutes is amended to read:

29.971 (1) (e) ~~Any person holding an approval issued under this chapter, upon his or her 2nd conviction within a 3 year period for violations of this chapter relating~~

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to possessing illegal fish, fishing with illegal gear, fishing in closed areas or refuges, fishing during a closed season, violation of quota fisheries or false reporting shall have all of his or her fishing and fish dealing licenses revoked and no fishing or fish dealing license may be issued to the person for at least one year after the date of conviction. During the period of revocation for 2 convictions under pars. (b) or (c) or a combination of 2 convictions under pars. (b) and (c) time that a person's commercial fishing license is revoked under sub. (12), the person may not engage in fishing on the water or ice in any manner, operate or assist in the operation of fishing gear or engage in the sale or transportation of fish. Any person holding a license under s. 29.519 (1) who has that license revoked under ~~this paragraph, sub. (12)~~ may apply for that license for that part of the license year following the period of revocation ~~which is at least one year after the date of conviction~~ and the department shall issue that license if all licensing criteria are met. The revoked license may not be issued to another person during the period of revocation.

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), 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.

SECTION 58. 29.972 of the statutes is created to read:

29.972 Commercial fish reporting system. The department shall establish and maintain a commercial fish reporting system under which the department shall establish specific reporting or record-keeping requirements that apply to all of the following:

- (1) Any person who has committed a certain number of violations of subch. VI, as determined by the department.
- (2) Any person who holds a license issued under s. 29.519 (1), and who is convicted of harvesting more than 1,000 pounds of fish above their annual quota, failing to report over 2,000 pounds of catch during a 12-month period, fishing during the closed season, or possessing 200 or more pounds of fish in violation of this chapter.

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****NOTE: I did not call the commercial fish reporting system a "repeat offenders monitoring system" as provided in the submitted draft language because, under sub. (2), a person need not be a repeat offender to be subject to the system.

SECTION 59. 29.984 of the statutes is created to read:

29.984 Commercial fish protection assessments. (1) LEVY OF COMMERCIAL FISH PROTECTION ASSESSMENT. (a) If a court imposes a fine or forfeiture for the unlawful killing, catching, taking, transporting, sale, or possession of Great Lakes fish in violation of s. 29.503, or of fish in violation of s. 29.514 or 29.519, the court may impose a commercial fish protection assessment that equals the amount specified for the fish under par. (b).

(b) The amount of the commercial fish protection assessment shall be as follows:

- 1. For any commercial fish, as determined by the department, an amount equal to the average retail value of the fish on the date of the violation. The department shall determine the average retail value of the fish by determining the retail value of such fish sold by 3 different retailers in this state on the date of the violation.**
- 2. For salmon, trout, and noncommercial game fish, an amount equal to the amount specified in s. 29.983 (1) (b) 9. to 12.**

****NOTE: This provision needs considerable revision. With regard to subd. 1., the language provided was unclear. The language said that the amount of the assessment was to be determined on a "per-pound" basis for commercial fish but did not indicate what the amount of the assessment should be. And I do not know what it means to value fish for this purpose on a per-pound basis. I have, therefore, made certain assumptions in drafting this language so please look at it very closely to see if it is consistent with your intent. With regard to subd. 2., there are several problems. The language provided said that the amount of the assessment is the amount under s. 29.978 (1) (b) 9. to 12. This cross-reference does not exist in current law. I have cross-referenced s. 29.983 (1) (b) instead. Is this consistent with your intent? Also, the use of this cross-reference is confusing. For example, where does salmon fall within that cross-reference? It would be much clearer to specify the assessment amount within the newly created language rather than by cross-reference. Finally, subd. 1. refers to commercial fish and subd. 2. refers to noncommercial game fish. Should there also be a penalty for noncommercial fish that aren't game fish? **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.

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.

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(c) If a fine or forfeiture is suspended in whole or in part, the commercial fish protection assessment shall be reduced in proportion to the suspension unless the court directs otherwise.

(e) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the commercial fish protection assessment required under this section. If the deposit is forfeited, the amount of the commercial fish protection assessment shall be transmitted to the state treasurer under par. (f). If the deposit is returned, the commercial fish protection assessment shall also be returned.

(f) The clerk of court shall collect and transmit to the county treasurer the commercial fish protection assessment and other amounts required under s. 59.40

(2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2. The state treasurer shall deposit the amount of the commercial fish protection assessment in the conservation fund.

(2) USE OF COMMERCIAL FISH PROTECTION ASSESSMENT FUNDS. All moneys collected from commercial fish protection assessments shall be credited to the appropriation under s. 20.370 (4) (kr).

SECTION 60. 29.987 (1) (a) of the statutes is amended to read:

29.987 (1) (a) If a court imposes a fine or forfeiture for a violation of a provision of this chapter or an order issued under this chapter, other than for a violation specified under s. 29.99 (1) (a), the court shall impose a natural resources assessment equal to 75% of the amount of the fine or forfeiture.

SECTION 61. 29.99 of the statutes is created to read:

29.99 Great Lakes resource assessment. (1) LEVY OF GREAT LAKES

RESOURCE ASSESSMENT. (a) If a court imposes a fine or forfeiture for a violation of a

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s. 29.503 involving Great Lakes fish or for a violation of s. 29.514 or 29.519, the court shall impose a Great Lakes resource assessment equal to 75 percent of the amount of the fine or forfeiture.

(b) If a fine or forfeiture is suspended in whole or in part, the Great Lakes resource assessment shall be reduced in proportion to the suspension.

(c) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the Great Lakes resource assessment prescribed in this section. If the deposit is forfeited, the amount of the Great Lakes resource assessment shall be transmitted to the state treasurer under par. (d). If the deposit is returned, the Great Lakes resource assessment shall also be returned.

(d) The clerk of the court shall collect and transmit to the county treasurer the Great Lakes resource assessment and other amounts required under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2. The state treasurer shall deposit the amount of the Great Lakes resource assessment in the conservation fund.

(2) USE OF GREAT LAKES RESOURCE ASSESSMENT FUNDS. All moneys collected from Great Lakes resource assessments shall be credited to the appropriation under s. 20.370 (4) (kr).

SECTION 62. 29.991 of the statutes is created to read:

29.991 Fishing net removal assessment. (1) LEVY OF FISHING NET REMOVAL ASSESSMENT. (a) If a court imposes a forfeiture under s. 29.931 (2) (am) for failure to reimburse the department for costs associated with a seizure under s. 29.931 (2) (a), the court shall impose a fishing net removal assessment equal to 75 percent of the amount of the forfeiture plus the costs that should have been reimbursed under s. 29.931(2)(am).

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(b) If the forfeiture is suspended in whole or in part, the fishing net removal assessment shall be reduced in proportion to the suspension.

(c) The clerk of the court shall collect and transmit to the county treasurer the fishing net removal assessment and other amounts required under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2.

(2) DEPOSIT OF FISHING NET REMOVAL ASSESSMENT FUNDS. All moneys collected from fishing net removal assessments shall be deposited in the conservation fund.

SECTION 63. 30.51 (2) (c) 2. of the statutes is amended to read:

30.51 (2) (c) 2. A federally documented vessel which is a commercial fishing boat ~~licensed~~ operated under a license issued under s. 29.519.

SECTION 64. 59.25 (3) (f) 2. of the statutes, as affected by 2003 Wisconsin Act 33, is amended to read:

59.25 (3) (f) 2. For all court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for the crime laboratories and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 938.34 (8d) for the delinquency victim and witness assistance surcharge, the amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts required by s. 100.261 for the consumer protection assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 (1) for the domestic abuse assessment, the amounts required by s. 253.06 (4) (c) for the enforcement assessment

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under the supplemental food program for women, infants and children, the amounts required by s. 349.04 for the truck driver education assessment, the amounts required by ss. 346.177, 346.495 and 346.65 (4r) for the railroad crossing improvement assessment, the amounts required by s. 346.655 (2) (a) and (b) for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 299.93 for the environmental assessment, the amounts required by s. 29.983 for the wild animal protection assessment, the amounts required under s. 29.984 for the commercial fish protection assessment, the amounts required by ss. 29.987 and 169.46 (1) for the natural resources assessment surcharge, the amounts required by s. 29.985 for the fishing shelter removal assessment, the amounts required under s. 29.99 for the Great Lakes resource assessment, the amounts required under s. 29.991 for the fishing net removal assessment, the amounts required by s. 350.115 for the snowmobile registration restitution payment, and the amounts required by ss. 29.989 and 169.46 (2) for natural resources restitution payments, transmit to the secretary of administration a statement of all moneys required by law to be paid on the actions entered during the preceding month on or before the first day of the next succeeding month, certified by the county treasurer's personal signature affixed or attached thereto, and at the same time pay to the secretary of administration the amount thereof.

SECTION 65. 59.40 (2) (m) of the statutes, as affected by 2003 Wisconsin Act 33, is amended to read:

59.40 (2) (m) Pay monthly to the ~~secretary of administration~~ state treasurer for the use of the state the state's percentage of the fees required to be paid on each civil action, criminal action, and special proceeding filed during the preceding month

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and pay monthly to the ~~secretary of administration~~ state treasurer for the use of the state the percentage of court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for the crime laboratories and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 938.34 (8d) for the delinquency victim and witness assistance surcharge, the amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts required by s. 100.261 for the consumer protection assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 for the domestic abuse assessment surcharge, the amounts required by s. 253.06 (4) (c) for the enforcement assessment under the supplemental food program for women, infants, and children, the amounts required by s. 349.04 for the truck driver education assessment, the amounts required by ss. 346.177, 346.495, and 346.65 (4r) for the railroad crossing improvement assessment, the amounts required by s. 346.655 for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 299.93 for the environmental assessment, the amounts required under s. 29.983 for the wild animal protection assessment, the amounts required under s. 29.984 for the commercial fish protection assessment, the amounts required under ss. 29.987 (1) (d) and 169.46 (1) (d) for the natural resources assessment surcharge, the amounts required by s. 29.985 for the fishing shelter removal assessment, the amounts required under s. 29.99 for the Great Lakes resource assessment, the amounts required under s. 29.991 for the

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fishing net removal assessment, the amounts required by s. 350.115 for the snowmobile registration restitution payment, and the amounts required under ss. 29.989 (1) (d) and 169.46 (2) (d) for the natural resources restitution payments. The payments shall be made by the 15th day of the month following receipt thereof.

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.

SECTION 66 67. Effective date.

(1) This act takes effect on July 1, 2004 2005, or on the day after publication, whichever is later.

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3653/P1dn
RNK:kmg:rs

January 30, 2004

I have prepared this draft in preliminary form because there are numerous notes embedded in the draft that raise issues or problems that must be addressed before the draft can be finalized. In addition to those notes, please note the following:

1. Throughout the draft, there are references to transactions characterized as a sale, trade, barter, purchase, etc. These references are not used consistently in current law or in the draft language provided with this request. I think that it would be advisable in the next version of this draft to attempt to describe these transactions uniformly, if possible. That is, the draft should use the same terms in all of the relevant statutes where the intention is that those terms have the same meaning.
2. I did not include a definition for "unreported fish" as requested in the submitted draft language because that term is not used in the draft.
3. I did not make the cross-reference changes in s. 29.971 (1) (a) as requested because the existing cross-references are accurate. Please let me know if I have misunderstood your intent.
4. I have not added the cross-reference requested in s. 29.971 (5) because I think that adding the cross-reference is unnecessary. Again, please let me know if I have misunderstood your intent.
5. The assessments created in this draft will have to be revised in the next version of the draft because under 2003 Assembly Bill 421, which has passed both houses of the legislature, all assessments are changed to surcharges and placed in ch. 814, stats.
6. Your drafting instructions also requested that the draft "allow export marked in metric measurements." It does not appear that current law prohibits export marked in metric measurements. Can you provide more explanation for this part of your drafting request?

Feel free to contact me if you have any questions concerning this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Kite, Robin

From: Hansen, Thomas R
Sent: Friday, December 10, 2004 9:43 AM
To: Kite, Robin
Cc: Flaherty, Peter D.
Subject: Commercial Fish Rewrite - draft of LRB-3653/P 1 dn(RNJK:kmg:rs)

Robin: Per the voice mail message that I just left, here are the suggested changes/additions dealing with the issue of retail vs. wholesale prices for determining the value of seized/illegal fish. I did discover that we had missed a change in one other section - I have added that as a "new section". Please give me a call if you have any questions.



A - Value
determination of ill...

 **Thomas R. Hansen**

Warden Supervisor

Department of Natural Resources

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Commercial Fish Rewrite
Excerpts from draft of LRB-3653/P 1 dn(RNJK:kmg:rs)
for Representative Garey Bies

Robin: Suggested changes to Sections 55, 56 and 59 as it relates to “retail value” of fish. As we researched the issue of determining the value of the fish, it was found that using “retail value” created major legal problems. Our recommendation to avoid these problems and concerns is to return to using “wholesale value” and creating law defining “wholesale value” Editorial comments in red font. Suggested changes/additions lined through and in blue underlined font. – Tom Hansen (ph. 920-492-5949 or cellular ph. 920-366-8259)

SECTION 55. 29.971 (1) (d) of the statutes is renumbered 29.971 (1) (d) 2. and amended to read:

29.971 (1) (d) 2. Salmon, trout, and noncommercial game fish shall be valued for the purposes of pars. (b) and (c) on a ~~per fish~~ per-fish basis according to the dollar amounts specified under s. 29.977 (1) (a) and (i) to (L).

3. Other species of commercial fish shall be valued on a ~~per fish basis according to the current average wholesale value.~~ In this paragraph, “average wholesale value” means the average price received by producers on the date of the violation for fish in the form of the violative fish per-pound basis according to the average retail wholesale value of the fish on the date of the violation.

SECTION 56. 29.971 (1) (d) 1. and 4. of the statutes are created to read:

29.971 (1) (d) 1. In this paragraph, ~~“average retail value”~~ average wholesale value means the average purchase price paid by ~~consumers~~ wholesale fish dealers for fish in the form of the violative fish on the date of a violation of this chapter as determined by the department after obtaining price information from ~~3 retailers~~ wholesale fish dealers in this state.

4. For purposes of making charging and penalty determinations under pars. (b) and (c), the value of fish from multiple violations committed by the same person in any 12-month period may be aggregated.

“NEW” SECTION ____. 29.977(1)(n) is created to read:

(n) Any commercial fish as determined by the department, the per-pound value equal to the average wholesale value of the fish on the date of the violation. The department shall determine the average wholesale value of the fish by determining the wholesale value of such fish purchased by 3 different wholesale fish dealers in this state for fish in the form of the violative fish on the date of the violation. (editorial comment: This addition is necessary to address those situations where Wardens assess restitution value for illegally caught or possessed fish without additional enforcement action, such as when a commercial fisher unintentionally exceed their quota on the last lift. – TRH)

Per Tom Hansen do not include this provision

SECTION 59. 29.984 of the statutes is created to read:

29.984 Commercial fish protection assessments. (1) LEVY OF COMMERCIAL

FISH PROTECTION ASSESSMENT. (a) If a court imposes a fine or forfeiture for the unlawful killing, catching, taking, transporting, sale, or possession of Great Lakes fish in violation of s. 29.503, or of fish in violation of s. 29.514 or 29.519, the court may impose a commercial fish protection assessment that equals the amount specified for the fish under par. (b).

(b) The amount of the commercial fish protection assessment shall be as follows:

1. For any commercial fish, as determined by the department, an amount equal to the average ~~retail~~ wholesale value of the fish in the form of the violative fish on the date of the violation. The department shall determine the average ~~retail~~ wholesale value of the fish by determining the ~~retail-wholesale~~ value of such fish ~~sold~~ purchased by 3 different ~~retailers~~ wholesale fish dealers in this state on the date of the violation.

2. For any conviction under s. 29.971(1)(b) or (c), ~~For any the commercial fish protection assessment shall be commercial fish in as determined by the department,~~ an amount equal to three times the average ~~retail~~ wholesale value of the fish in the form of the violative fish on the date of the violation. The department shall determine the average ~~retail~~ wholesale value of the fish by determining the ~~retail-wholesale~~ value of such fish ~~sold~~ purchased by 3 different ~~retailers~~ wholesale fish dealers in this state on the date of the violation. (editorial comment – since we see problems with using “retail” value, I suggest that for criminal convictions the courts assess the value at 3 times the wholesale value. This meets the intention of the Task Force for enhancing penalties and assessments for the serious criminal violations while allowing more reasonable penalties for the less serious/civil violations. – TRH)

2 3. For salmon, trout, and noncommercial game fish, an amount equal to the amount specified in s. 29.983 (1) (b) 9. to 12.

✓
D-Note

Kite, Robin

From: Kite, Robin
Sent: Friday, December 10, 2004 4:18 PM
To: Hansen, Thomas R
Subject: RE: Commercial Fish Rewrite - draft of LRB-3653/P 1 dn(RNJK:kmg:rs)

Tom:

I am having difficulty understanding your instructions relating to the "new" section (proposed s.29.977 (1)). Section 29.977 concerns civil actions for taking certain named protected wild animals. Because your proposed language doesn't concern specific protected animals, and because it doesn't impose a specified sum, I don't think it belongs in s. 29.977. Is there any reason why we can't put this language in s. 29.971?

Robin

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

From: Hansen, Thomas R
Sent: Friday, December 10, 2004 9:43 AM
To: Kite, Robin
Cc: Flaherty, Peter D.
Subject: Commercial Fish Rewrite - draft of LRB-3653/P 1 dn(RNJK:kmg:rs)

Robin: Per the voice mail message that I just left, here are the suggested changes/additions dealing with the issue of retail vs. wholesale prices for determining the value of seized/illegal fish. I did discover that we had missed a change in one other section - I have added that as a "new section". Please give me a call if you have any questions.

<< File: A - Value determination of illegal fish.doc >>

 **Thomas R. Hansen**

Warden Supervisor

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