

Report From Agency

REPORT TO LEGISLATURE

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

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

Basis and Purpose of the Proposed Rule

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

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

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

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

Summary of Public Comments

Two commercial fishermen and one fish wholesaler spoke in opposition to the rule. All three contended that the proposed 27-inch minimum fork length is too severe and will seriously hurt their businesses. The consensus amongst the three individuals speaking was that current gear restrictions limit the number of

sturgeon that may be harvested from Wisconsin waters. The fishermen who spoke did not feel that there was evidence of overexploitation in Wisconsin.

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

Modifications Made

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

Appearances at the Public Hearing

In support – none

In opposition:

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

As interest may appear:

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

Changes to Rule Analysis and Fiscal Estimate

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

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

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

- A. Identify and discuss why the rule includes or fails to include any of the following methods for reducing the impact on small business.
 1. Less stringent compliance or reporting requirements. Adoption of inconsistent rules regulating harvest of shovelnose sturgeon for large and small businesses would fail to meet the purposes of fisheries management in the Mississippi River. Furthermore, in this case, all businesses affected are small.
 2. Less stringent schedules or deadlines for compliance or reporting requirements. Not applicable, no reporting requirements are stipulated.

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

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

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

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

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

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

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

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

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

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