

Report From Agency

REPORT TO LEGISLATURE

NR 25, Wis. Adm. Code
Wholesale fish dealing and commercial fishing in outlying waters
and affecting small business

Board Order No. FH-13-08
Clearinghouse Rule No. 08-060

Basis and Purpose of the Proposed Rule

This proposed rule addresses the law enforcement concerns, completes implementation of the Great Lakes Commercial Fishing Task Force's recommendations and fulfills the statutory mandates of 2005 Wisconsin Act 288. The rule will aid the Department in monitoring the harvest of Great Lakes commercial fish and ensuring compliance with rules intended to protect these fish stocks from over harvest and excessive exploitation. In addition, provisions of the rule will increase efficiencies, generate savings in labor and effort and allow the streamlining of reporting procedures for commercial fishers, wholesale fish dealers and Department staff. The Task Force recommendations and resulting legislation and these proposed rules have broad support within the commercial fishing industry and among sport fishers.

Summary of the rule

The following provisions, changes and requirements are implemented through the proposed rules:

- 1) Electronic Fish Harvest Reporting System:** The cornerstone of the Task Force recommendations was the creation of an electronic fish harvest reporting system (EFHRS) allowing daily reporting of commercial fishing activity via the Internet, and thereby eliminating the requirement for commercial fishers to complete and mail separate paper reports to the Department every two weeks. This rule creates the EFHRS and related procedures to replace the current biweekly "paper" reporting system for recording and reporting all elements of the Great Lakes commercial catch. To facilitate the change over to the EFHRS, the Department will provide electronic reporting units (laptop computers) to each licensed commercial fisher. Under the rule, the commercial fisher must exercise reasonable care to prevent loss, destruction or damage to the portable electronic reporting unit and is responsible for replacement cost if it suffers preventable damage. The rule creates procedures for a commercial fisher to challenge a Department claim for reimbursement of the cost of the electronic reporting unit. To allow a smooth transition to the EFHRS under this rule, Great Lakes commercial fishers may continue reporting with the current biweekly "paper" system until July 1, 2010.
- 2) Fleet Reporting System:** A number of commercial fishing businesses are family owned small businesses with different family members holding individual commercial fishing licenses. The industry requested a system allowing the consolidation of licenses and quotas for reporting purposes to reduce the amount of paperwork while retaining the individuality of licenses and quotas for businesses purposes. The rule will allow an individual to hold multiple commercial fishing licenses in his or her own name, and creates a fleet reporting program whereby a person holding multiple commercial fishing licenses on Lake Superior or Lake Michigan can consolidate the quotas under these licenses and permits for reporting purposes. It establishes the individual species harvest limits for a commercial fisher with multiple licenses engaged in fleet reporting as being the sum total of that person's quotas held under the individual licenses. The rule requires the licensee to mark all buoys required on commercial fishing nets with a common "fleet reporting number" in place of the individual license numbers, and authorizes the licensee's crew members to operate all the commercial fishing gear and vessels included under the fleet reporting number without obtaining additional crew cards for each license included under the licensee's fleet reporting number. The rule clarifies the number of nets allowed and specifies that all

nets in the water bearing a license number or fleet reporting number shall count toward the maximum number of nets allowed whether or not the net is actively fishing. Also, the rule creates a procedure for a commercial fisher to withdraw from the fleet reporting program at the end of a license year.

- 3) **Records and reporting:** The rule implements the revised statutory reporting and record keeping requirements for Great Lakes commercial fishers required under ss. 29.503 (5), 29.519(5), Stats., as revised by 2005 Wisconsin Act 288. Commercial fishers will no longer be required to complete and submit biweekly catch and disposition (sales) records to the Department. The rule implements an annual inventory report for both commercial fishers and wholesale fish dealers. It creates a float plan requirement for fishing "high value" species (whitefish for commercial fishers holding quotas less than 13,656 pounds and yellow perch). This rule creates float plan and enhanced reporting requirements for individuals previously convicted of specific commercial fishing violations. The rule makes it illegal to possess, control, transport or cause to be transported any fish for which a record has not been created or submitted as required.
- 4) **Elimination of tagging of foreign (imported) lake trout:** 2005 Wisconsin Act 288 eliminated the labor intensive requirement for Conservation Wardens to inspect and tag foreign lake trout received by wholesale fish dealers, and specified that foreign lake trout shall be identified as required by the Department. This rule repeals the provisions associated with the foreign lake trout tagging program while continuing to require commercial fishers to tag domestic lake trout. The new procedures will increase efficiency for both the Department and the industry by allowing Conservation Wardens to monitor foreign lake trout shipments through access to mandatory reports created and maintained by wholesale fish dealers for other species. This allows wholesale fish dealers to expedite the flow of lake trout through their business with minimum paperwork and without the delays of mandatory inspections and tagging.
- 5) **Roe harvest:** To reduce potential killing of fish solely for their roe and to allow the Department to monitor and regulate the harvest of fish for roe, the rule requires commercial fishers to land and report all fish from which eggs are harvested, and limits the quantity of roe landed to a weight percentage of the fish landed.
- 6) **License transfers:** The rule eliminates certain license transfers criteria for transfers to immediate family members and persons holding non-temporary crew cards. This will provide commercial fishers with greater flexibility and opportunities to transfer Great Lakes commercial fishing licenses and make it easier for individuals to enter and leave the industry.
- 7) **Commercial fishing nets on Lake Superior; other net and boat use restrictions:** It has been a common practice for the Department to allow the placement of open water nets on Lake Superior during the winter months with unseasonably warm temperatures. However, there was no formal process for this practice. The rule creates a permit authorization by which the Department can allow the legal placement of open water nets during the winter months on Lake Superior.

The rule also creates a requirement for all Great Lakes commercial fishers to notify a Conservation Warden of any lost or recovered commercial fishing net. The rule requires a commercial fisher to tag all fish requiring tagging upon completing each net lift and before starting to transport the fish by any means. The rule prohibits anyone from lifting, tampering or disturbing commercial fishing gear without the permission of the owner. Also, state commercial fishing licensees and their crew members are prohibited from operating a boat used by the licensee in commercial fishing under ch. NR 25 if there are any lake trout tags on board that were not issued by the Department to a state licensed commercial fisher. Finally, the rule prohibits a state licensed commercial fisher from allowing his or her licensed boats to be used to tend nets that were not set by a state licensed commercial fisher, and from allowing his or her licensed nets to be used by a person who is not a state licensed commercial fisher or crew member.

- 8) **Ports of landing:** The rule designates primary and secondary ports of landing for commercial fishers on Lake Superior, Lake Michigan and Green Bay. To facilitate monitoring efforts and increase the efficiency

of Conservation Wardens, the rule requires commercial fishers to call in a daily float plan to the Department if they intend to land their catch at a secondary port.

- 9) **Vehicle identification:** To facilitate monitoring of harvested commercial fish and implement the provisions of s. 29.503(4)(e), Stats., the rule creates vehicle identification requirements for transportation of fish in vehicles belonging to commercial fishers and wholesale fish dealers.
- 10) **Housekeeping provisions:** The rule includes several housekeeping provisions updating language and terms, clarifying provisions on the use of gear, and identifying the specific locations of particular lines and boundaries.

Summary of Public Comments

Overall, there was strong support expressed during the public appearances for Order FH-13-08. The Department was complimented for following through and attempting to implement many of the Task Force recommendations. In addition to the oral testimony, written support for the rule was received from the Wisconsin Federation of Great Lakes Sport Fishing Clubs (/s/ Charles C. Weier, President) and the Northeastern Wisconsin Great Lakes Sport Fishermen (/s/ Thom Gulash, Secretary). Two additional written comments were received by the Department. One questioned the enhanced reporting provisions of the rule for individuals convicted of a certain number of violations. The other written comment supported the rule as being beneficial, but suggested a number of additional changes in the management of the Great Lakes commercial fishery which were beyond the scope of FH-13-08.

Significant comments made during the public testimony and the Department's responses are:

- **COMMENT:** Recommendation that the fish tagging provisions of SECTION 6 be changed to require tagging of fish upon completing each net lift and before transporting the fish, rather than upon completion of the last lift. This would increase the enforceability of fish tagging requirements.
RESPONSE: Change made to FH-13-08 as requested.
- **COMMENT:** That Lake Superior commercial fishers in the fleet reporting program be allowed to continue with the marking of the floats and leads on their gill nets with their commercial fishing license number rather than being required to remark all of the gear with the fleet reporting number.
RESPONSE: Change made to FH-13-08 to require only that the net buoys must display the fleet reporting number (thus allowing the continued use of the currently marked floats and leads).
- **COMMENT:** Concerns with the amount of money from sportsmen spent by DNR on management and enforcement of commercial fishing regulations. Recommendation that the state go to a contract fishery, that yellow perch and smelt should no longer be commercial species, implement shorter commercial fish seasons, redirect expenditure of restitution money and create additional rules to reduce incidental catch.
RESPONSE: Several of these issues were discussed by the Commercial Fish Task Force and subsequently not included in their recommendations. The suggestions go beyond the scope of FH-13-08 which is primarily completing implementation of the Task Force recommendations and provisions of 2005 Wisconsin Act 288.
- **COMMENT:** Objection to the daily the float plan requirement for fishing high value species (yellow perch and whitefish where the individual quota is less than 13,656 lbs.) as it puts the commercial fisher of high value species in the same category as a repeat offender. Testimony that the requirement should either be eliminated or be applicable to all commercial fishers regardless of the species fished.
RESPONSE: The float plan requirement was strongly supported by the Commercial Fish Task Force and was included in their recommendations to the Department. Filing of the float plan increases the ability of Conservation Wardens to efficiently monitor the industry for compliance with quota and reporting requirements.

- **COMMENT:** That sons-in-law and daughters-in-law should be included in the definition of “immediate family”.
RESPONSE: With the amendment of NR 25.04 (7) in SECTION 4 of the Order, eliminating the existing licensing criterion, the recommended change is no longer needed to address the desire of some commercial fishers to be able to transfer a license to their son-in-law or daughter-in-law.
- **COMMENT:** That the terms “reasonable care” and “unreasonable damage” relating to the portable electronic fish reporting units found in SECTION 21 of the Order were vague, and that there was no procedure for a commercial fisher to challenge a Department decision that the fisher had to reimburse the Department for a damaged or lost computer.
RESPONSE: Examples of unreasonable damage were added to the rule. Also procedures were added for a commercial fisher to challenge a Department claim for reimbursement of the cost of a lost or damaged electronic reporting unit.
- **COMMENT:** That GPS or latitude and longitude coordinates be added in the description of locations on Lake Michigan and Green Bay to allow commercial fishers to enter points, boundaries and locations into chart plotters and GPS units on board their vessels.
RESPONSE: The corresponding latitude and longitude were added to the rule for specific locations on Lake Michigan and Green Bay.

Modifications Made

Modifications made by the Department are detailed above in the response to comments.

An amendment by the Natural Resources Board clarifies that under certain circumstances a commercial fisher may continue fishing without a properly functioning portable electronic reporting unit until a replacement unit is received.

Appearances at the Public Hearing

July 16, 2008 - Ashland

In support:

Bruce Prentice, 604 3rd Street West, Ashland, WI 54806
Craig Hoopman, 32785 Star Route, Bayfield, WI 54814

In opposition – none

As interest may appear:

Alfred house, 77700 Houghton Point Road, Washburn, WI 54891
Jeff Bodin, Bodin Fisheries, 78910 Bodin Road, Washburn, WI 54891

July 17, 2008 – La Crosse – no appearances

July 30, 2008 – Milwaukee

In support – none

In opposition:

Steven Alt, 2342 W. Daphne Road, Glendale, WI 53209

As interest may appear – none

July 30, 2008 - Cleveland

In support:

Charles C. Weier, Wis. Federation of Great Lakes Sport Fishing Clubs, 358 22nd Street, Two Rivers, WI 54541

Thom Gulash, Northeast Wisconsin Great Lakes Sport Fishermen, 3702 Indian Bluff, Manitowoc, WI

Lawrence Freitag, S.A. Great lakes Sport Fishing, 1610 S. 11th, Sheboygan, WI 53081

Paul Becker, Riverside Foods, 9051 highway 42, Two Rivers, WI 54241

Allen Sprang, 124 Lake Shore Road, Two Rivers, WI 54241

John Begotka, 2301 Berringer road, Manitowoc, WI

Scott Habermann, Northeastern Wis. Great Lakes Sport Fishermen, 4304 Custer Street, Manitowoc, WI 54220

In opposition – none

As interest may appear:

Gene [last name illegible], P.O. Box 476, 194 N. Lake Street, Elkhart Lake, WI 53020

Gary Seger, N3900 CTH E, Waldo, WI

July 31, 2008 – Peshtigo – no appearances

July 31, 2008 – Green Bay

In support:

Ron VanderLoop, 2121 Orrie Lane, Green Bay, WI 54304

In opposition – none

As interest may appear:

Mark R. Maricque, 628 Floral Drive, Green Bay, WI 54301

Charles Henricksenn, Wis. Commercial Fishing Assn., 11214 N. Sand Bay lane, Sister Bay, WI 54234

Tom Drzewiecki, Suamico Fish, 4120 Bayside Road, Suamico, WI 54173

Pat Hermes, Hermes Fisheries, 806 Marshall Avenue, Green Bay, WI 54303

Pete Petrouske, 1498 Ponderosa Avenue, Green Bay, WI 54313

July 31, 2008 – Sturgeon Bay – no appearances

Changes to Rule Analysis and Fiscal Estimate

Minor modifications were made to reflect the modifications made as a result of public comments. The fiscal effect remains the same.

Response to Legislative Council Rules Clearinghouse Report

All Clearinghouse comments that have not become moot have been accepted and the rule has been revised accordingly, with the following exception. As it relates to Comment 2.c., the unused definitions have been removed from the rule. "Riley's Bay" will be retained because it is used in s. NR 25.10(2)(a)1. The definition of "Southern Green Bay" has been amended to use the term "Southern Green Bay – Lake Michigan line", so the latter term will be retained. "Standard fish box" will also be retained even though it is not used in ch. NR 25, because its definition by rule is called for by s. 29.519(6)(c), Stats., in order to implement that law.

Final Regulatory Flexibility Analysis

The proposed rule will affected licensed commercial fishers operating on Wisconsin's outlying waters (Lake Superior and Lake Michigan). The current bi-weekly "paper" reporting system for daily fishing activity is replaced with an Electronic Fish harvest Reporting System whereby commercial fishers submit electronic reports and data relating to fishing activity and reports on a daily basis via the Internet. The Department will provide the portable electronic reporting unit to the commercial fishers. A fleet reporting system is created to allow commercial fishing businesses involving more than one license to consolidate quota allocations, fish harvest weights and daily fishing activity information for reporting purposes, thereby significantly reducing record keeping requirements relating to individual licenses. The completion and submittal of a biweekly catch and disposition report to the Department is eliminated for commercial fishers. Commercial fishers and wholesale fish dealers will be required to submit a new annual inventory report documenting fish in possession, storage or under control on an annual date of their choosing to allow them to use the same inventory data as required for tax reporting or other business purposes. The required inspection and tagging of foreign lake trout imported by wholesale fish dealers is eliminated.