

Report From Agency

REPORT TO LEGISLATURE

NR 25, Wis. Adm. Code
Use and marking of commercial fishing trap nets
in Lake Michigan and Lake Superior

Board Order No. FH-50-10
Clearinghouse Rule No. 11-008

Basis and Purpose of the Proposed Rule

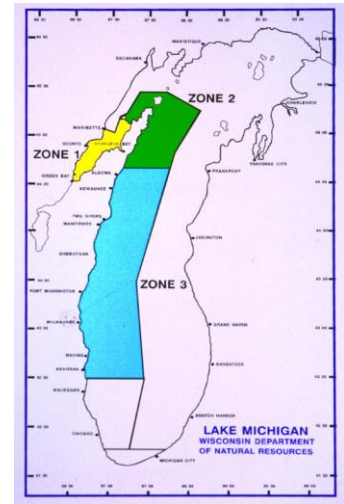
This proposed rule addresses the use of commercial fishing trap nets in Lake Michigan and Lake Superior. In June 2010, the fishing gear of a recreational fishing boat became entangled in a commercial trap net buoy line near Sheboygan. The boat capsized and one of the fishermen subsequently died of a heart attack. This incident reignited a long-standing controversy regarding where and when commercial trap nets should be allowed in southern Lake Michigan. Afterward, the Department received two citizen petitions with alternative proposals to change the regulations governing commercial trap netting. Section 227.12 (3), Wis. Stats., provides that the Department must either deny the petitions in writing or proceed with the requested rule making. This rule proposal presents the less restrictive of the two petitions and reflects comments received at public hearings and in writing, as described below. It also includes new provisions regarding the marking of commercial fishing nets.

Regulations and commercial harvests

Commercial fishing in Lake Michigan is authorized under state statutes and the Legislature has directed the Wisconsin Department of Natural Resources to manage for “an economically viable and stable commercial fishery.” We use a zone system (as shown at right) to set and allocate commercial harvest quotas. The zones do not define the geographic limits of specific regulations relevant here.

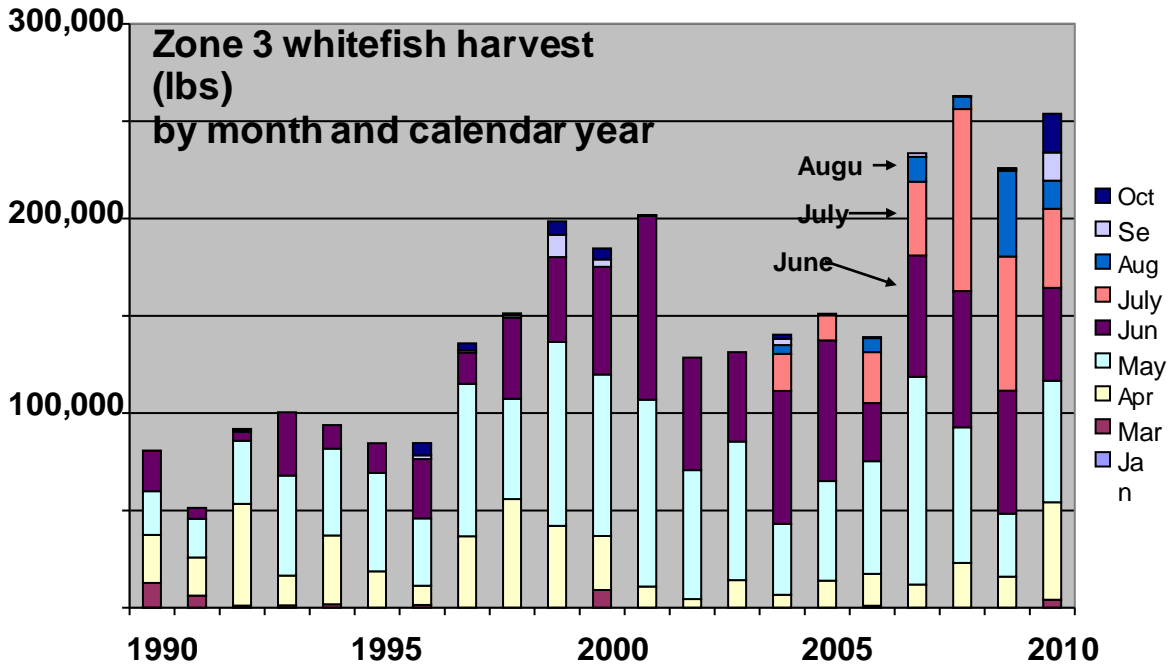
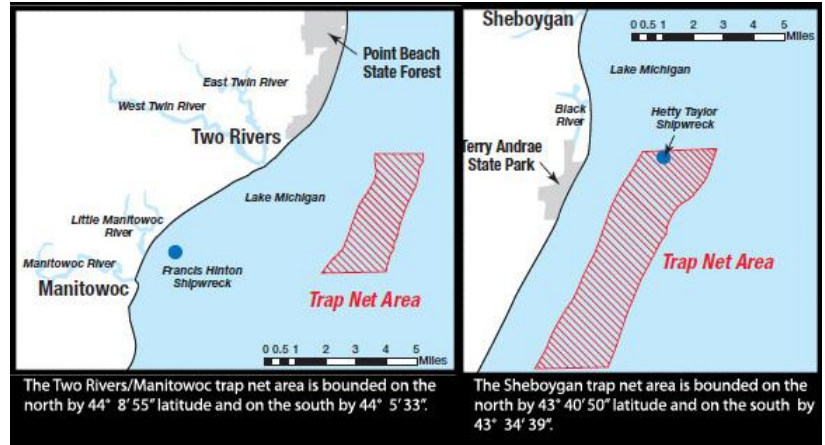
The Department has historically encouraged the use of commercial trap nets for the harvest of whitefish and chubs because undersized fish and incidentally caught game fish can be released alive. This is not usually possible with gillnets or trawls, both of which cause significant mortality of non-target fish.

However, the Department has also recognized the inherent conflict between recreational trolling and commercial trap netting. Trap netting is prohibited in the vicinity of the Sturgeon Bay Ship Canal (from Whitefish Point to Algoma, a distance of approximately eight nautical miles) and is allowed only by permit over a larger area of our northern waters. Commercial trap nets have been controversial in Zone 3 for decades, especially during summer.



It is important to note that the question of summer trap netting is more urgent for commercial fishers in Zone 3 than Zone 2 because lake whitefish migrate north for spawning in late summer, leaving diminished harvests in Zone 3 in the fall but producing some of the most productive fishing in Zone 2 at the same time.

Current regulations governing commercial netting are complex, but generally up to 12 nets are allowed for each license and must be marked with a standard array of buoys and flags. In 1989, to minimize conflicts with recreational trollers, trap nets were prohibited south of a point just north of Sturgeon Bay from June 29 through Labor Day. In 2004, following contentious public discussion, two small fishing zones near Manitowoc/Two Rivers and Sheboygan (illustrated at right) were opened to trap nets during that summer period, but with the stipulation that no more than three nets could be set per license. In 2010 a total of 25 trap nets were in use during July and August in the two summer trap netting areas. WDNR, UW Sea Grant, and local commercial and recreational fishing groups have conducted extensive outreach efforts to make boating users aware of trap net locations and markings.



The chart above illustrates the total annual whitefish harvest in Zone 3 from 1990 through 2009 (by calendar-year, not fishing-year). The total allowable commercial harvest limit for Zone 3 was (rounding to the nearest 1000 pounds) 100,000 pounds in 1990. It was increased to 113,000 pounds in 1994, 126,000 pounds in 1995, 154,000 pounds in 1996, 215,000 pounds in 1999, and 351,000 pounds in 2009. No commercial gear other than trap nets may be used to harvest whitefish in Zone 3.

The chart shows the additional harvest made possible when, starting in 2004, trap netting was allowed in July and August. We have not been able to document parallel changes in sport fishing effort in the vicinities of Manitowoc/Two Rivers and Sheboygan. Estimates of angling hours obtained from our annual creel survey show year-to-year fluctuations, but no marked increase or decrease in fishing after 2004 and no differences between June and July fishing activity that would indicate that expanded trap netting in July has deterred anglers since it took effect in 2004.

Summary of the rule

SECTION 1. of the Order establishes net-marking requirements for Lake Superior that are identical to the net-marking requirements for Lake Michigan, as amended by SECTION 3 of the Order.

SECTION 2. of the Order requires all parts of trap nets in Zone 3 of Lake Michigan during the period from June 29 to Labor Day to be placed deeper than 60 feet. Previously, the minimum depth was 75 feet and applied only to the pot of the net, not the lead.

SECTION 3. of the Order revises net-marking requirements for Lake Michigan by requiring that staffs be marked with reflective tape.

Summary of Public Comments

The following is a summary of observations and arguments offered orally or in writing. We do not reproduce all comments, but attempt to capture all distinct observations and arguments. Comments presented here in broad groups, but the order of presentation is not intended to reflect the importance of any comment or to reflect how many individuals shared that view. Inclusion of an argument or comment does not imply agreement by the Department. We use the terms "net inclusion area" and "net exclusion area" for simplicity. The former refers to areas, like those defined in current rules, that are the only places where trap nets may be placed. The latter refers to areas, like those proposed in FH-50-10 as drafted, from which trap nets would be prohibited.

Safety considerations

Comment: Trap nets are inherently dangerous in waters used by boaters for trolling.

Comment: Fishermen in smaller boats are most at risk and typically stay closer to port than larger boats.

Comment: It is easier for sport fishers and other boaters to keep track of trap nets when they are confined to trap net inclusion areas than when they are prohibited from trap net exclusion areas.

Comment: The recent tragedy was not caused by commercial nets, but by the actions and inactions of the recreational boat operators. Adequate information is already available to allow sport fishers to avoid danger.

Comment: There are other comparable hazards, including buoys and submerged objects of various kinds.

Comment: Public education and angler awareness are the appropriate remedies for any existing problem.

Comment: Boaters should be tested and licensed, like drivers.

Comment: Wire cutters and break-away systems for downrigger cables should be encouraged or required on all sport boats.

Comment: Lighted signage at boat landings could illustrate locations of nets for sport fishers.

Comment: Commercial fishers should be encouraged or required to provide GPS coordinates of nets for posting on DNR and Sea Grant web sites.

Comment: Posted GPS coordinates of nets could be misleading as locations change frequently, and postings may not be up to date.

Comment: Some sport fishers deliberately fish near trap nets, expecting better fishing.

Comment: Sport fishing should be prohibited in the net inclusion areas.

Comment: Establishing net exclusion areas in place of the net inclusion areas will spread the nets over a wider area and cause greater problems.

Comment: Require all parts of nets to be within net inclusion areas

Comment: Reduce the minimum depth of the net inclusion areas from 75 to 60 feet.

Comment: The Manitowoc/Two Rivers summer trap net inclusion area should be moved north or south of the ports.

Comment: The Manitowoc/Two Rivers net inclusion area should be expanded one mile north and one mile south.

Comment: Nets should be in net inclusion areas during June, as well as July and August. Because June is a time of active fishing, expansion of the summer trap net period to include June will enhance safety.

Comment: The number of allowed trap nets should be further limited in July and August; there are too many nets. Some increase in allowed trap netting during June might be appropriate to compensate for this.

Comment: Extend the Sheboygan net inclusion area a few miles to the south to expand commercial opportunities.

Comment: Do not move the Sheboygan area north.

Comment: Do not add any additional summer net inclusion areas.

Comment: The rule should be amended to add trap net exclusion areas around all other harbors in Zone 3.

Comment: Present rules allow too many nets, even when the number per license is limited to 3, because the number of licensed Zone 3 trap net fishers can increase, and has increased since the current trap net inclusion areas were created. Recent increases in the commercial harvest limits encourage this increase in fishing activity.

Comment: Consider prohibiting trap nets from five miles south of Sheboygan to five miles north of Two Rivers all year.

Comment: There are too many nets around Long Island in Lake Superior.

Net marking

Comment: The large ball is not feasible. It would require an unrealistically large anchor lead to net damage. Without an enormous anchor the ball will lift the anchor and create a slack net. Such a ball would be very expensive and subject to theft.

Comment: Because of the multiplicity of markers and lights on the water, the proposed lights on the leads might only confuse boaters. They could also cause trollers to pass too close to shore in Zone 1 and Zone 2 trap net areas.

Comment: Lights could create a legal liability for commercial fishers.

Comment: The proposal to require leads to be marked with lights and 48" floats will enhance safety.

Comment: Reflective tape and/or lights are not needed on Lake Superior where sport trollers rarely fish during darkness.

Comment: On Lake Superior, tribal nets markings are not subject to DNR rules.

Comment: In areas with many nets, the added marking would simply add confusion.

Comment: Currently radar can pick up buoys at night.

Social and biological issues

Comment: We should respect the commercial fishing heritage.

Comment: Commercial fishing provides nutritious food for the non-fishing public.

Comment: Commercial fishing preceded sport fishing on Lake Michigan.

Comment: Commercial fishing is a productive business while sport fishing is mere recreation.

Comment: Commercial overharvest can threaten fish populations.

Comment: The proposal is not based on science.

Economic impacts

Comment: Recreational fishing on Lake Michigan provides economic benefits to the area that far exceed the economic benefits of commercial fishing.

Comment: Sport fishermen do not employ people, but commercial fishers do.

Comment: Manitowoc/Two Rivers and Sheboygan are the second and third most active ports for sport fishing.

Comment: The proposed rule will damage or destroy the commercial fishing industry in Lakes Michigan and Superior.

Comment: Required and necessary economic impact assessments have not been completed.

Comment: Decline in commercial harvest will affect related businesses

Comment: The proposed rule would be costly to commercial fishers because of the added distance from port to net locations.

Comment: Fishing grounds available to commercial fishers under the proposal are harder to fish and/or not as productive as those presently used.

Comment: A significant fraction of the whitefish harvest in Zone 3 occurs during July and August.

Comment: Prohibiting nets during summer near harbors would require moving the nets in lake May, causing missed fishing opportunities.

Comment: The net exclusion areas would actually increase the area open to trap nets.

Modifications Made

Based upon written and oral testimony at the hearings, and the experience of our Marine Enforcement Unit with commercial fishing and boating on the Lake Michigan, the Department recommended the following changes to the initial NRB Order FH-50-10. Many written and oral comments highlighted the need for better education about the risks of trap nets. This could take various forms that are not best addressed by rule-making, but will be supported by the Department in the future in partnership with Sea Grant, recreational boaters, and commercial fishers. In order to have the new rules be in effect at the outset of the 2011 summer (June 29 – Labor Day) trap net period, the Department recommends adoption of emergency order FH-10-11(E).

In addition, an amendment by the Natural Resources Board clarified that the entire trap net, including the lead, is set, placed or operated in water not more than 150 feet (25 fathoms) or less than 60 feet (10 fathoms), rather than 75 feet as was proposed.

Lake Michigan net marking

- Eliminate requirement of the 48 inch spherical float

The float will have a buoyancy of approximately 1000 pounds, requiring a much larger anchor to set the net or have an 8 to 1 scope of line from the anchor to the float. An 8 to 1 scope in 75 feet of water would create an approximate 250 foot radius on the surface that the float would go around the anchor, giving a false impression of the location of the inside lead of the trap net. In addition there would be 600 feet of anchor line below the surface for down rigger gear to become entangled in.

- Eliminate requirement of the amber light

The amber lighting on the inside or shallow lead of the trap nets that are set on reefs in Lake Michigan and Lake Superior will cause a boating hazard if boater assume the water on the shallow side of the net is safe. Multiple trap nets concentrated in an area, with amber lights will probably add confusion to a boater at night as to the layout of the individual net.

- Retain the requirement of reflective tape on buoy staffs.

The reflective tape will help during the night time hours for a boater to determine the layout of the trap net. Currently the USCG uses reflective tape on some of their aids to navigation buoys to help boater determine location of those aids.

Lake Superior net marking

- Extend modified net marking requirement on Lake Michigan to Lake Superior trap nets.

The same safety principles apply on both lakes. Also, requiring Lake Superior trap nets to be marked as currently exists in Lake Michigan may encourage WI, MI and the tribes to develop uniform trap net markings on the Great Lakes. Currently there exists some consistency between trap net marking between Wisconsin and Michigan state commercial fisheries on Lake Michigan – 5 foot buoy staffs, double flagging on the shallow or inside lead, single flag on the pot or lifting buoy (MI - red or orange color) floats on wing anchors (MI - red or orange color). Chippewa Ottawa Resource Authority (CORA) tribal fisheries on Lake Michigan currently have trap net marking regulations similar to Wisconsin's current requirement on Lake Superior with a single buoy staff on the lifting buoy. (CORA also requires red or orange floats on lead and king line anchors).

Lake Michigan restricted trap net areas

- Retain the current trap net inclusion areas, rather than moving to the trap net exclusion areas proposed in the rule as drafted.

Restricting a user group's access to public waters should not be taken lightly. The DNR has a legislative mandate stating as such: *The intent of the legislature in revising commercial fishing laws is to provide for multi-use management of the Great Lakes fishery, including an economically viable and stable commercial fishery and an active recreational fishery.* (Ch. 418 SB 409 Laws of 1977). NR 1.01(2) also states: *The goal of fish management is to provide opportunities for the optimum use and enjoyment of Wisconsin's aquatic resources, both sport and commercial.*

Limiting the time for use or moving the summer trap net whitefish fishery may seriously impact the economic viability of that commercial fishery. That viability needs to be balanced against the "safety" of the recreational fishery. Dragging a down rigger ball behind a boat has inherent risk not only from entanglement in commercial fishing gear, but also from other underwater hazards, marked or unmarked, such as ship wrecks and race buoys. Moving or limiting the time for use of trap net gear is not likely to eliminate risk of entanglement for the sport fishermen. The risk can be reduced by installing break-away mechanisms, carrying wire cutters, or fishing high in the water in trap net areas, but those remedies should be advanced through education, not through rule-making.

- Require all parts of trap nets to be within the net inclusion areas.

Currently, only the pot of any trap net must be between the depths of 75 to 150 feet from June 29 to Labor Day. Other parts of the net can be outside of those depths. Most of the concern is with the lead extending into depths shallower than 75 feet. Accordingly, we proposed requiring that no part of a net may be placed shallower than 75 feet from June 29 to Labor Day. However, after public comment at the Natural Resources Board April meeting and an amendment by the Board, we propose requiring that no part of a net may be placed shallower than 60 feet from June 29 to Labor Day. This hard depth contour line would give boaters a clearer way to navigate clear of any trap nets between the latitude lines bounding the north and south ends of the two zones, and takes into account depth concerns of commercial fishers.

Appearances at the Public Hearing

Public hearings

Sheboygan – 47 individuals were present, not counting DNR staff. 38 submitted appearance slips, with 5 marked in support, 28 marked in opposition, 5 unmarked or “as interest may appear”. 16 individuals made oral comments.

Bayfield – 11 individuals were present, not counting DNR staff and Coast Guard officers. 8 submitted appearance slips, with 0 marked in support, 3 marked in opposition, and 5 unmarked or “as interest may appear”. 3 individuals made oral comments.

Written comments submitted by individuals

14 individuals in support, 65 individuals in opposition

Written comments on behalf of organizations

In support: Wisconsin Federation of Great Lakes Sport Fishing Clubs, NE Wisconsin Great Lakes Sport Fishermen.

In opposition: Shoto Conservation Club, Wisconsin Commercial Fisheries Association, Lake Michigan Commercial Fishing Board.

As interest may appear: Lake Michigan Fisheries Forum

Changes to Rule Analysis and Fiscal Estimate

Changes were made to reflect the modifications made as a result of public comments and amendments by the Natural Resources Board. The fiscal effect remains the same.

Response to Legislative Council Rules Clearinghouse Record

All Clearinghouse comments that have not become moot have been accepted and rule-making order has been revised accordingly.

Final Regulatory Flexibility Analysis

The proposed rule will affect licensed commercial fishers operating on Wisconsin's outlying waters (Lake Michigan and Lake Superior). Commercial fishers will be required to comply with additional net-marking specifications.