

Report From Agency

REPORT TO LEGISLATURE

NR 25, Wis. Adm. Code

Board Order No. FH-13-14
Clearinghouse Rule No. CR15-074

Basis and Purpose of the Proposed Rule

The proposed rule implements commercial fishing reporting procedures for a web-based electronic fish harvest reporting system that utilizes current technology and meets recommendations requested by many commercial fishers and by the commercial fishing industry in the June 2000 Commercial Fisheries Task Force.

The current administrative code directs Great Lakes commercial fishers to use a discontinued, obsolete fish harvest reporting system and is not applicable to the next reporting system under development. The revised rules will create the necessary procedures and will allow the Great Lakes commercial fishers to use the new system for recording and reporting all elements of their commercial catch. Recognizing that a small percentage of the commercial fishers may not own computers or may not be comfortable with electronically submitting their daily fishing activity reports, the department will allow these commercial fishers to continue reporting with the current biweekly paper system until they decide to retire from the industry or become comfortable with use of the new technology.

The new electronic reporting system will streamline the process and provide efficiencies for fishers as well as the Department by reducing the need to fill out and enter paper reports by hand. It should also provide greater accuracy of harvest reporting. Commercial fishers will be entering, proofing and certifying all of their own daily commercial fishing activity data.

The overall goal is to improve compliance with Wisconsin's commercial fishing regulations and enhance the management of the Great Lakes fisheries resources.

Summary of Public Comments

Two public hearings were held, one on October 13 in Green Bay at which three people attended and another on October 15 in Bayfield at which two people attended. No public comment was offered by those appearing at either of the public hearings; one person registered as "opposed" and the remaining 4 attendees registered "as interest may appear." At both public hearings, attendees primarily asked clarifying questions regarding the proposed rule changes.

In addition, three written comments were received by the department:

- A Zone 3 (southern) Lake Michigan commercial fisher wrote "*in favor of paper reporting and/or electronic reporting on a monthly basis,*" rather than either the current bi-weekly paper reporting or the proposed daily electronic reporting. This person also advocated for elimination of the existing estimated catch reporting requirement on Lake Michigan that is retained under the provisions of FH-13-14.

Department response: The Commercial Fish Task Force recommended the "daily reporting" requirement to facilitate DNR law enforcement monitoring of commercial fishers to ensure compliance with accurate reporting of fish harvest weights. Provisions are made within the existing and the proposed reporting rules to accommodate commercial fishers who are unable to meet the daily midnight deadline for filing the electronic daily fishing activity report. In regards to his second comment, the existing requirement of recording an estimate catch weight upon completing the last net lift and before starting for shore is retained as a critical component to DNR law enforcement's monitoring of commercial fish harvest at the dockside when the catch is landed. This rule does not address or change that existing reporting requirement.

- A Zone 2 (northern) Lake Michigan commercial fisher wrote in support of FH-13-14 and electronic reporting. However, this person objected to the requirement of having to periodically print, sign, and retain

a paper copy of the data they will submit electronically. He recommended that the records be maintained electronically on the department's electronic fish harvest reporting system.

Department response: DNR Bureau of Law Enforcement representative Thomas Hansen spoke with this person, acknowledging the merit of the person's recommendation and explaining the current legal need for the requirement to print and retain paper copies. The department is in the process of seeking a federal grant to further develop the electronic reporting system software/website in order to accommodate this person's recommendation (only maintain electronic records) and at the same time allow the electronic records to meet authentication legal requirements for use of those records in court actions.

- A Lake Superior commercial fisher's crew member wrote in opposition to FH-13-14, erroneously believing that it was imposing the Lake Michigan requirement of carrying a report on board, entering the estimated catch prior to heading for shore, and requiring the weighing of landed catch within 30 minutes of landing.

Department response; DNR Bureau of Law Enforcement representative Thomas Hansen spoke with both the crew member and the Lake Superior licensee for whom he worked. Hansen explained that the proposed rule changes did not require the estimated catch weight nor does it require the weighing of all fish harvest within 30 minutes of landing (this requirement only applies to individuals convicted of multiple violations within certain time frames – it is existing law that remains unchanged and was not addressed in FH-13-14). The person was satisfied with Hansen's explanation and acknowledged they had misread the rule proposal.

Modifications Made

No modifications were made to the rule because of public comments. This rule allows for a new electronic reporting system that is intended to streamline processes and provide efficiencies. Over time the department will evaluate how the system is working and make adjustments to guidance or rule language as needed.

Appearances at the Public Hearing

Two public hearings were held, one on October 13 in Green Bay at which three people attended and another on October 15 in Bayfield at which two people attended.

Changes to Rule Analysis and Fiscal Estimate

No changes were made to rule analysis or fiscal estimate.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form/style/placement and on clarity/use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except recommendation 2.b. and 5. a. Recommendation 2.b. suggested reviewing section NR 25.13(2)(f) for unnecessarily duplicative requirements. Upon review, this section should remain because the requirements apply only to licensed commercial fishers in Lake Michigan and Green Bay, not in Lake Superior. The phrase "that also includes" was added to signify that (f) contains provisions in addition to those listed in sections (a) through (e) that apply to Lake Superior, Lake Michigan, and Green Bay fishers.

Recommendation 5. a. said to use more simple language in sections NR 25.13(1)(c) and (f)2. After consulting with Department wardens who work with commercial fishers to check reporting requirements, this language should remain as is. The phrase "the report may not be transported for the rest of the day in such a way that it can be altered" is important to allow wardens to cite a person who is transporting the record where it can be easily accessed and altered. If wording is changed, wardens would have to catch the person in the act of altering a record.

In response to LCRC's recommendation to specify how a person could access a designated phone number or email address (5.b.), the following note was added to the rule: The department designated phone number and email address are provided to licensees each year in a letter given with their annual commercial fishing license.

Final Regulatory Flexibility Analysis

This rule is intended to be a benefit to small businesses active in commercial fishing on the Great Lakes. The proposed rule includes improved options for reporting requirements, as requested by many commercial fishers. However, the department will also allow commercial fishers to continue reporting with the current biweekly paper system. No design or operational standards are contained in the rule.

No adverse economic impact is anticipated as a result of this rule change. If commercial fishers do not own or have ready access to an Internet connected computer, they will be allowed to continue reporting via the existing biweekly paper reporting system.

The department conducted an economic impact analysis to determine if any individuals, businesses, local governments, or other entities expect to be affected economically. No comments were received during the EIA open comment period July 20 to August 3, 2015.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.