

Report From Agency

REPORT TO LEGISLATURE

NR 25, Wis. Adm. Code

Board Order No. FH-01-23
Clearinghouse Rule No. 24-091

Basis and Purpose of the Proposed Rule

This rule removes the sunset on the current rule that allows trawling for whitefish so that the regulation would be in place indefinitely; allows for an exemption that would allow trawls to continue to fish for a limited period of time in the event that their surveillance system isn't working; clarifies previously ambiguous language to better define the size of the trawl and methods used to measure the net size.

Summary of Public Comments

Four written comments were received on this rule, and three individuals from the public attended the hearing. Of those attending the hearing, two provided verbal comments on the rule.

Comments received during the public hearing and in writing were all similar in nature. All comments expressed support for the majority of proposed rule FH-01-23, but shared concern with a provision that maintains a 4 ½ inch size requirement for the cod end of the net which has been in place since 2020. The comments acknowledged that licensed commercial fisher is utilizing a trawl with a cod end which does not comply with the existing size requirement; however, commenters felt that such use has not posed a significant problem and therefore should be accommodated.

Modifications Made

No modifications were made to the proposal as a result of the public comments and testimony received at the public hearing. After careful consideration of comments concerning the size requirement for the cod end of trawls, the rule retains a provision which maintains the size requirement of 4 ½ inch stretch or 9-inch bar (while also delaying implementation until January 1, 2027, to allow trawl users to bring their nets into compliance). Retention of this provision maintains a size requirement that has been in place since 2020 and does not represent a regulatory change. A size requirement of 4 ½ inch stretch or 9-inch bar ensures consistent regulations with large mesh gill nets, to which the same requirement applies, and supports the recovery of Lake Michigan whitefish populations by increasing the potential for undersize and illegal fish to escape from the net.

Based on feedback from the Natural Resources Board, the rule was modified to allow for two methods to measure the mesh of the cod end. This rule outlines the methods for using either a bar measurement or a dynamometer, in lieu of stretch measure, to produce a more reliable result.

Appearances at the Public Hearing

Dan Pawlitzke appeared and spoke at the hearing. He registered as interested in the rule.
Mike LeClaire appeared and spoke at the hearing. He did not register.

Changes to Rule Analysis and Fiscal Estimate

No modifications or changes were made to the rule analysis or fiscal estimate based on the changes made by incorporating comments regarding net tagging requirements.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style, grammar, placement, and punctuation.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except the department ultimately decided not to add any specific examples to Section 2 related to what factors the department will consider in determining whether to exercise the authority to grant an exemption from the video surveillance system following a malfunction.

Final Regulatory Flexibility Analysis

As is the case with the current regulations that allow trawling for whitefish in Lake Michigan, commercial fishers that choose to trawl instead of using other types of nets for harvesting whitefish will continue to be required to use a commercial trawl that differs slightly from gear requirements for other species and will also continue to be required to have a video surveillance system. Installation of the video system is estimated to cost \$7,000 per trawling vessel. Trawls are expected to cost up to \$10,000 per fishing vessel, if the commercial fisher does not already own appropriate trawling gear. However, since the use of trawling over other methods of harvesting lake whitefish is voluntary, only commercial fishers that choose to trawl may incur the costs associated with complying with the monitoring, reporting and gear requirements.

Sport anglers, fishing guides and related businesses may be indirectly affected due to the ongoing changes in the type of gear used in the area of Lake Michigan near Two Rivers. Reduction or elimination of trap nets due to increased trawling have reduced the potential for boat entanglement with nets, and because trawling does not overlap as much with the sport fishing season as the use of trap nets, the incidence of sport and commercial fishers encountering one another is also diminished. For example, trawling operations were completed for the season by August 30 in 2020, July 27 in 2021, August 2 in 2022, July 13 in 2023 and June 24, 2024.

The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish “alternative enforcement mechanisms” for “minor violations” of administrative rules made by small businesses. This rule will not require additional payments from public utility rate payers and local governmental units.

Response to Small Business Regulatory Review Board Report

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