

CR 12-022

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING AND CREATING RULES

The statement of scope for this rule, SS 011-11, was approved by the Governor on August 15, 2011, published in Register No. 668 on August 31, 2011, and approved by the Natural Resources Board on September 28, 2011. This permanent rule was approved by the Governor on August 14, 2012.

Wisconsin Natural Resources Board proposes an order to create NR 19.058, relating to requiring access to wire cutters when trolling in outlying waters.

FH-21-11

Analysis Prepared by Department of Natural Resources

- 1. Statutes interpreted.** Sections 29.014(1), 29.041, and 30.62(1), Stats.
- 2. Statutory authority.** Sections 29.014(1), 29.041, 30.62(1), and 227.11(2)(a), Stats.
- 3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.** Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 30.62(1), Stats., provides that when equipment is required no person shall operate any boat on the waters of this state unless such boat is equipped as required by statute or rules of the department promulgated under 30.62(1), Stats.

Section 227.11 (2) (a), Stats., discusses the parameters of an agency's rule-making authority stating, an agency "may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation."

4. Related statutes or rules.

- 29.924 Investigations; searches.
- 29.931 Seizures.
- 29.971 General penalty provisions.
- 29.984 Commercial fish protection surcharge.
- 29.9905 Great Lakes resource surcharge.
- 29.991 Fishing net removal surcharge

5. Plain language analysis of the proposed rule. SECTION 1. of the Order prohibits persons from trolling with downriggers on outlying waters, as defined in s. 29.001(63), Stats., (Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from its mouth up to the dam at DePere) without direct and immediate access to a wire cutter or other device capable of severing any line pulled behind the boat.

The rule will require sport trollers on outlying waters to carry wire cutters for emergency release from entanglement with trap nets or other obstructions. This rule is pursuant to recommendations of the Natural Resources Board. Trap nets are fixed structures on the lake bottom that can pose a risk to sport trollers whose lures and downriggers can become entangled in the trap net ropes. This has been the subject of controversy and rule making over the past three decades. Current department policy reflects legislative intent to accommodate both sport and commercial fishing in the Great Lakes. In April 2011, the Natural Resources Board (NRB) approved permanent rule changes (FH-50-10, CR 11-008) related to the marking and placement of trap nets. The NRB also implemented these rules on an emergency basis so they would be in effect for the 2011 fishing season (FH-10-11E). As part of the emergency rule, there was also a requirement that sport anglers carry wire cutters sufficient to cut themselves free should a downrigger cable become snagged in a trap net or other obstruction. That requirement was not included in the permanent rules because it was outside of the scope of the original public hearings, but it is addressed by this rule proposal.

6. Summary of and comparison with existing or proposed federal statutes and regulations. The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Michigan and Green Bay or Lake Superior.

7. Comparison with rules in adjacent states. None of the adjacent states require wire-cutting equipment to be on board boats.

8. Summary of factual data and analytical methodologies. SECTION 1 of the rule reflects an effort by the department to take steps to minimize the risk of conflicts between sport trollers and commercial trap nets. This change reflects the judgment of Fisheries and Law Enforcement staff following examination of Great Lakes accident data, discussions with appropriate sport and commercial advisory groups and the Natural Resources Board, and internal discussions.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis. There would be no implementation costs for the department and no expected costs or impacts on small businesses. Compliance costs would be minimal for individual sport anglers who need to purchase wire cutters. A quick online search for the cost of wire cutters showed prices ranging from \$3 to \$56.

10. Effects on small business. The rule would directly affect sport anglers who engage in trolling with downriggers on the Great Lakes. It is not expected to have an effect on small business.

The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, with a total citation penalty of \$243.

11. Rules proposed by the Department of Veterans Affairs. No information

12. Agency contact person.

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13. Place where comments are to be submitted and deadline for submission. Comments on this proposed rule may be submitted to the agency contact person listed above. The deadline for written comments was April 12, 2012.

SECTION 1. NR 19.058 is created to read:

NR 19.058 **Sport trolling.** No operator of a boat may engage in trolling, as defined in s. NR 20.03(40), with the use of downriggers on outlying waters, as defined in s. 29.001(63), Stats., without direct and immediate access to a wire cutter or other hand-held device on board capable of immediately severing any fishing line or cable being used in the water behind the boat.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 27, 2012.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)