

**SUBJECT:** Request for adoption of FH-50-10 and identical emergency order FH-10-11(E) to revise Ch. NR25 regarding the regulation of commercial trap netting in the Great Lakes.

**FOR:** APRIL BOARD MEETING

**TO BE PRESENTED BY / TITLE:** Michael Staggs

**SUMMARY:**

In June of 2010 the fishing gear of a recreational fishing boat became entangled in a commercial trap net marker buoy line near Sheboygan. The boat capsized and one of the fishermensubsequently died of a heart attack. This incident re-ignited a long-standing controversy regarding where and when commercial trap nets should be allowed in southern Lake Michigan. Currently trap nets are prohibited from June 29 through Labor Day, except in two designated areas. During that period the pots of trap nets must be within the designated areas but the leads may extend into shallower water.

The Department received two related citizen petitions for rule-making, both requesting significant new restrictions on the use of trap nets inLake Michgian. Legal counsel found minor legal deficiencies in both petitions, but recommended that both be presented to the Natural Resources Board for consideration. In January the NRB approved hearings on NRB Order FH-50-10. As originally drafted this would would prohibit trap nets within five nautical miles of each of the three harbors, would supplement net-marking requirements on Lake Michigan, and would extend those requirements to Lake Superior. Public hearings on this specific proposal were held in Sheboygan and Bayfield.

In light of hearing comments and written comments the Department recommends adoption of NRB Order FH-50-10 with substantial revisions and adoption of identical NRB Emergency Order FH-10-11(E). The revised rule would a) require all parts of trap nets to be within areas designated for those nets, b) require buoy staffs to be marked with reflective tape, and c) extend the net marking requirements to Lake Superior.

**RECOMMENDATION:** Adopt NRB Order FH-50-10 and identical NRB Emergency Order FH-10-11(E)

**LIST OF ATTACHED MATERIALS:**

- |    |                                     |   |     |                                     |          |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/>            | Fiscal Estimate Required                              | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/>            | Attached |
| No | <input type="checkbox"/>            | Background Memo                                       | Yes | <input checked="" type="checkbox"/> | Attached |

**APPROVED:**

Michael Staggs  
Bureau Director,

4-13-2011  
Date

Al Stagg Jr. Ross Rasmussen  
Administrator,

4/14/11  
Date

W. Pitt Mourning  
Secretary, Cathy Stepp

4/14/11  
Date

- |                               |                         |                            |
|-------------------------------|-------------------------|----------------------------|
| cc: NRB Liaison               | Randy Stark - LE/8      | Dale Maas - GLSC           |
| DNR Rules Coordinator         | Chris Groth - Green Bay | Kathleen Strasbaugh - LS/8 |
| Bruce Baker - AD/8            | George Meyer - WWF      |                            |
| Mike Staggs - FH/4            | Chuck Weier - WF/GLSLFC |                            |
| Bill Horns (10 copies) - FH/4 | Rick Johnson - LMCFB    |                            |

**CORRESPONDENCE/MEMORANDUM**

DATE: April 12, 2011

TO: Natural Resources Board

FROM: Cathy Stepp

SUBJECT: Adoption of NRB Order FH-50-10 and identical NRB Emergency Order FH-10-11(E) regarding commercial trap netting in the Great Lakes

**1. Why is the rule being proposed?**

In June of 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 re-ignited a long-standing controversy regarding where and when commercial trap nets should be allowed in southern Lake Michigan. The Department subsequently received two citizen petitions asking for changes in the regulations governing commercial trap netting. Section 227.12 (3), Stats., provides that the Department must either deny the petitions in writing or proceed with the requested rule making. The petitions presented two alternative proposals, as described below. To provide the Natural Resources Board the option of advancing the issue to public hearings, we drafted a single specific proposal reflecting the less restrictive of the two petitioners' proposals. This rule proposal also included new provisions regarding the marking of commercial nets. In January the NRB authorized public hearings on NRB Order FH-50-10. That rule, modified to reflect comments received at the hearing and in writing, is presented here for adoption.

The incident

On June 25, 2010, the downriggers on a small boat trolling near Sheboygan became entangled in a trap net buoy line. The boat eventually capsized and one person died of a heart attack while waiting for rescuers. The incident was immediately investigated by WDNR and local law enforcement authorities who found that:

- The party of three fishermen was trolling in a 19' boat with downriggers travelling in a northerly direction going with the wind and waves. They were about 3 miles off shore in about 100 feet of water. The water condition was choppy with waves reported at a height of 3 feet.
- The two survivors reported the two starboard downrigger cables became entangled in a trap net. Our investigation showed at least one cable was tangled in the rope leading from the black flagged (outer) trap net buoy down to the anchor; this stopped the boat allowing water to come over the stern, causing it to capsize.
- The fishermen were able to dial 911 from a cell phone to summon help and secured life jackets while waiting a short time for their rescue by the US Coast Guard. Two persons were rescued unharmed. One person was found unresponsive and could not be revived, and was later determined to have died of a heart attack.
- The trap net was legally set and marked with proper buoys.
- There were a total of nine trap nets set off Sheboygan and all were legal nets with proper marking.
- During follow up inspections of the nets in the area, some fishing gear lost from other boats was discovered on 5 of 9 nets.
- The law enforcement investigation report concluded that there were several contributing factors that led to the capsizing of the boat. The investigation revealed that the boat was relatively small for the water conditions that day. The net markers were clearly seen, however the boat was navigated in

close proximity to one of the buoys. Upon becoming entangled and in an effort free to the boat, the boaters backed directly into the oncoming waves. This allowed additional water to enter the boat through the stern. A full copy of the investigation report may be obtained by contacting WDNR Chief Warden Randy Stark.

Risk analysis

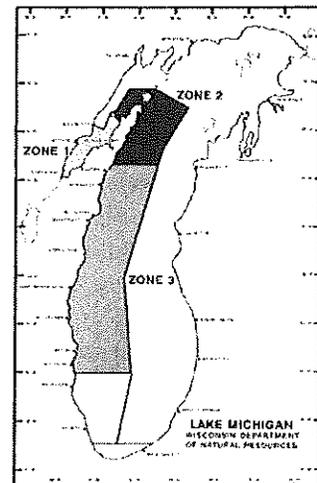
Available data do not allow us to quantify the added risk that can be attributed to the presence of commercial trap nets in areas of Lake Michigan where recreational trolling is popular, but the overall risk of accidents attributable to tangling in trap nets appears to be small compared with other hazards. Some perspective on the problem can be gained by reviewing the numbers and causes of past boating accidents. The following table summarizes reportable boating accidents on Lake Michigan, Green Bay, and Lake Superior during the years 2000 through 2010 recorded in the US Coast Guard’s Boating Accident Report Database (BARD). Reportable accidents are those causing death, injury requiring medical attention, or property damage in excess of \$2000. In four cases, indicated by numbers in parentheses, the boating activity was listed as “trolling”. The recent tragic incident near Sheboygan was one of the two accidents in this 11 year period in which the activity was trolling and the cause was “struck submerged object”.

Cause	Lake Michigan	Green Bay	Lake Superior
Unknown	19	5	1
Collison w/ Vessel	11 (1)	3	2
Flooding/Swamping	9	3	
Grounding	8		1
Struck Submerged Object	8 (2)	2	
Collison w/ Fix Object	6		2
Capsizing	5	2	2
Sinking	4		1
Falling Overboard	3		
Collison w/ Rec. Boat	2		
Collison w/ Floating Object	2		
Fire/Explosion	2		
Person Left Boat	1		
Other – Engine Failure	1 (1)		
<b>Totals</b>	<b>82</b>	<b>15</b>	<b>9</b>

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 (see figure 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





The chart on the preceding page 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 decline 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.

#### Trap net regulations in other Great Lakes states

The general concept of the rule presented here, that of net-free zones around important recreational trolling areas, is by no means universal in the Great Lakes, but is not unknown elsewhere. The Michigan Department of Natural Resources and Environment has the authority to limit trap netting by individual license holders if and when conflicts arise. Pursuant to that authority the MDNRE prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron. The Ohio Department of Natural Resources has permanently closed some areas of Lake Erie to commercial trap nets and prohibits trap nets within a four-nautical-mile radius of all major central basin ports from May 15 through October 15.

All jurisdictions have net-marking requirements of some kind, but the details vary. The State of Michigan has uniform trap net-marking requirements for all of its Great Lakes waters (parts of Lakes Superior, Michigan, Huron, and Erie) that are similar but not identical to those proposed here for Wisconsin waters of Lakes Michigan and Superior. Tribal commercial fishers exercising treaty fishing rights in Michigan waters are not subject to the Michigan marking requirements.

#### Petitions

At the August 11 meeting of the Natural Resources Board, the NRB heard representatives of the Wisconsin Wildlife Federation, the Wisconsin Federation of Great Lakes Sport Fishing Clubs, and the Northeast Wisconsin Great Lakes Sport Fishermen argue for the abolition of trap nets during summer in the vicinities of Manitowoc, Two Rivers, and Sheboygan. At the meeting the Department also received two related petitions (attached) for rule-making that had been submitted by those groups. One petition, with 306 signatures, requested that trap nets be banned during June 1 through August 31 in all of Zone 3. The second petition, with five signatures, requested that trap nets be banned in Zone 3 from May 31 to Labor Day (essentially identical to the first petition) or that they be banned during June through August within five miles of Two Rivers, Manitowoc, or Sheboygan. Legal counsel found minor legal deficiencies in both petitions, but recommended that both be accepted and acted on.

We discussed the issue prior to requesting hearing authorization at meetings of the Lake Michigan Fisheries Forum (LMFF), the Great Lakes Study Committee of the Conservation Congress, the Lake Michigan Commercial Fishing Board, and the Wisconsin Federation of Great Lakes Sport Fishing Clubs. The LMFF did not develop a recommendation, but their notes included a list of possible actions to address the problem. The GLSC developed a specific recommendation calling upon the Department to work with the Coast Guard to conduct a risk analysis and to establish safe navigation regulations, and

calling upon the Department to close summer trap netting until the completion of that risk analysis and regulation review. The Commercial Fishing Board provided some recommendations pertaining to net-marking and enhancing angler awareness of trap nets.

Prior to hearings the Department received additional correspondence from interested parties. We received over 600 post cards requesting closure of summer trap netting, 45 e-mails expressing support for the current rules, and several letters on each side of the issue.

Either of the rule changes proposed by the petitioners would have limited trap netting in Zone 3. The rule drafted for public hearings would have prohibited trap nets with five nautical miles of each of the three harbors. In presenting that rule we selected the less restrictive of the alternatives presented by petitioners.

Because there was general consensus that enhanced net marking can reduce the likelihood of boating accidents, the rule would also have supplemented net-marking requirements on Lake Michigan and would have extended those requirements to Lake Superior. For both lakes the rule would have required that all buoy staffs be marked with reflective tape, and that the shallow lead end of the net be marked with a flashing amber light and a 48" spherical float. These changes were recommended by Law Enforcement and the Lake Michigan Fisheries Team.

Following public hearings, the proposed rule was substantially revised based on hearing comments, as described below.

## **2. Summary of the rule as presented for adoption.**

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 75 feet.

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

## **3. How does this proposal affect existing policy?**

This proposal is consistent with existing policies regarding the management of Great Lakes commercial fisheries, which allow the adjustment of fishing seasons, fishing areas, allowable gear, and harvest limits from time to time as needed. NR 1.04 (Great Lakes fisheries management) states, "Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitations as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas."

## **4. Has the Natural Resources Board dealt with these issues before? If so, when and why?**

Commercial trap nets have been the subject of rule-making on several occasions over the past 25 years. While trap nets have sometimes been controversial because they are obstacles and safety hazards in areas where sport trolling is conducted, the Department has otherwise encouraged their use because they cause less mortality to non-target species than gill nets, the only viable alternative gear for harvesting lake whitefish.

The Natural Resources Board has expanded trap netting opportunities by increasing the maximum depth at which trap nets could be set. In 1999 the maximum depth was increased from 78 to 90 feet and in 2001 it was further increased to 150 feet. Also in 2001 trap nets were allowed in Whitefish Bay of Door County, an area where they had previously been prohibited except by permit.

Other rule-making has attempted to limit the times and locations of trap netting in order to reduce conflicts with sport trolling. The following is not an exhaustive summary of all rule-making related to trap nets, but includes the major changes related to the present issue. In 1989, after considerable debate, the Natural Resources Board prohibited trap netting south of a point north of Sturgeon Bay known as Cave Point (44°55'50" north latitude) from June 14 to Labor Day. Initially, only nets rendered inoperable could remain in the lake south of Cave Point from June 14 to June 30, but in 1994 that requirement was removed, extending the trap netting season to June 28. In 2001, the southern limit of summer trap netting was moved from Cave Point to a point known as Whitefish Point (44°52'50" north latitude), thus opening Whitefish Bay to trap netting. In 2003 and 2004 through an extended rule-making process the current limited trap netting areas near Manitowoc/Two Rivers and Sheboygan were opened, but with no more than three trap nets allowed for each commercial fishing license. Also at this time new net-marking requirements were adopted.

## 5. Hearing synopsis

### 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

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.

## **6. Changes in the rule in response to hearing comments and other information**

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 recommend the following changes to 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 identical emergency order FH-10-11(E).

#### 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 would 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. To say moving or limiting the time for use of trap net gear is going to eliminate risk of entanglement for the sport fishermen is a false assumption. The design of down riggers contains the risk. 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 are proposing requiring that no part of a net may be placed shallower than 75 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.

**7. Who will be impacted by the proposed rule? How will they be impacted?** This rule will affect several commercial fishing businesses by limiting the use of trap nets in commercial fishing Zone 3 of Lake Michigan during June 1 through Labor Day. The chart above indicates the amount of harvest during those months, but we cannot predict how much the proposed restrictions would reduce that. The rule will also require additional marking of commercial trap nets in Lake Michigan and impose new net-marking requirements in Lake Superior. We do not believe the cost of the additional net marking requirements would be substantial.

**8. Environmental assessment.** This is a Type III action under Chapter NR 150, Wis. Admin. Code. No environmental assessment is required.

**9. Small business analysis. Initial regulatory flexibility analysis.** No additional compliance or reporting requirements will be imposed as a result of these rule changes. A state fiscal estimate is attached.

### Fiscal Estimate — 2011 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated  <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number  Bill Number	Amendment Number if Applicable  Administrative Rule Number FH-50-10
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**Subject**  
 Chapter NR 25 -- Commercial Fishing - Outlying Waters

**Fiscal Effect**

State:  No State Fiscal Effect  
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- |  |   |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation        |   |

Increase Costs — May be possible to absorb within agency's budget.

Yes     No

Decrease Costs

Local:  No Local Government Costs  
 Indeterminate

1.  Increase Costs  
 Permissive     Mandatory
2.  Decrease Costs  
 Permissive     Mandatory

3.  Increase Revenues  
 Permissive     Mandatory
4.  Decrease Revenues  
 Permissive     Mandatory

5. Types of Local Governmental Units Affected:

- Towns     Villages     Cities  
 Counties     Others  
 School Districts     WTCS Districts

**Fund Sources Affected**

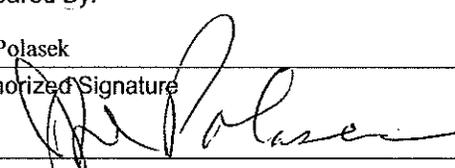
- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

The proposed rule changes the times and places where commercial trap nets may be used in Lake Michigan and changes net marking requirements for trap nets in both Lake Superior and Lake Michigan. The rule will have no fiscal impact at either the state or local level.

**Long-Range Fiscal Implications**

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	04-13-11

**Fiscal Estimate — 2011 Session**

**Page 2 Assumptions Narrative  
Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number

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Assumptions Used in Arriving at Fiscal Estimate – Continued

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

The Wisconsin Natural Resources Board proposes an order to amend NR 25.09(2)(b)2.a and f, and create NR 25.09(1)(b)11., relating to commercial fishing in outlying waters.

**FH-50-10**

**Analysis Prepared by Department of Natural Resources**

- 1. Statutes interpreted.** Sections 29.014(1), 29.041 and 29.519(1m)(b), Stats.
- 2. Statutory authority.** Sections 23.11(1), 29.014(1), 29.041, 29.519(1m)(b), 227.11(2)(a), and 30.74(2)(a) Stats.
- 3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.** Section 23.11 (1), Stats., grants the department such powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law.

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

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, and designate the kind, size and amount of gear to be used in the harvest.

Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Finally, s. 30.74(2)(a), Stats., authorizes the department to establish by rule uniform marking of the water areas of this state through the placement of aids to navigation and regulatory markers, including but not limited to fishing buoys.

**4. Related statutes.**

- 29.539 Sale of game or fish.
- 29.563 Fee schedule.
- 29.924 Investigations; searches.
- 29.931 Seizures.
- 29.971 General penalty provisions.
- 29.973 Commercial fish reporting system.
- 29.984 Commercial fish protection surcharge.
- 29.99 Great Lakes resource surcharge.
- 29.991 Fishing net removal surcharge

**5. Plain language analysis of the proposed 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 affected by SECTION 3 of the Order.

SECTION 2. of the Order specifies that from June 29 to Labor Day south of a line extending from the Lake Michigan shoreline along 44°52'30" north latitude all parts of trap nets must be in water 150 feet or shallower and 75 feet or deeper .

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

**6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.** 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 of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan).** Trap nets are not used in Illinois or Minnesota waters of the Great Lakes, and of course Iowa has no Great Lakes waters.

The State of Michigan has uniform trap net-marking requirements for all of its Great Lakes Waters (parts of Lakes Superior, Michigan, Huron, and Erie). Those net-marking requirements are similar but not identical to those proposed here for Wisconsin waters of Lakes Michigan and Superior.

The Michigan Department of Natural Resources and Environment has the authority to limit trap netting by individual license holders if and when conflicts arise. Pursuant to that authority the MDNRE prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron.

**8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule.** SECTIONS 2 through 4 of the rule reflect one option proposed by petitioners who are asking the department to take steps to minimize the risk of conflicts between sport trollers and commercial trap nets. SECTION 1 and SECTION 5 modify net-marking requirements for Lake Superior and Lake Michigan. Those changes reflect the judgment of Fisheries and Law Enforcement staff following examination of Great Lakes accident data, discussions with appropriate sport and commercial advisory groups, and internal discussions.

**9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.** We know that small businesses engaged in commercial fishing and wholesale fish dealing may be affected by the rule. We currently have no basis for quantifying the economic impacts of the rule. However, in testimony at public hearings on the rule, Lake Michigan commercial fishers indicated that the time and area restrictions set out in the original version of the rule might have an impact on their catch, and thus have a negative economic impact. These and other comments are reflected in the changes made to the rule.

**10. Effects on small business, including how the rule will be enforced.** This rule is of interest to commercial fishers and was initiated in response to the expressed concerns of recreational fishers. The impact on commercial fishers is discussed in paragraph 9, above.

The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers and follow up investigations of citizen complaints.

**11. Agency contact person (including e-mail and telephone number).**

William Horns  
Department of Natural Resources  
P.O. Box 7921  
Madison, WI 53707-7921  
Telephone: (608) 266-8732  
E-mail: [William.Horns@wisconsin.gov](mailto:William.Horns@wisconsin.gov)

**12. Place where comments are to be submitted and deadline for submission.** Comments may be submitted in writing or by e-mail to William Horns at the address shown above. The deadline for submittal of comments is March 18, 2011.

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SECTION 1. NR 25.09(1)(b)11 is created to read

SECTION 1. NR 25.09(1)(b)11. Shall each be marked and maintained with 2 flags, one above the other, on a single staff attached to the inside or shallow lead end of the net, one flag on a staff attached to the pot or lifting buoy, one flag on a staff attached to the anchor at the outward end of the king line, and one float measuring a minimum of 5" in diameter attached to the anchor at the outward end of each net wing. All staffs shall be marked with reflective tape. All flags shall measure not less than 9" high by 18" wide and shall be displayed so that the top edge of the flag is not less than 5' above the water, except that the lower of 2 flags on one staff shall be displayed so that the bottom edge is not less than 3' above the water. Two flags displayed on one staff shall be separated by not less than 6". All floats and all flags except the flag attached to the king line anchor shall be of a highly visible color commonly referred to as hunter orange or blaze orange with a color range between 595 nm and 605 nm. The flag attached to the king line anchor shall be a dark color other than orange. The license number or fleet reporting number of the commercial fishing license holder to whom each net belongs shall be displayed and maintained in legible, block figures at least 1" high on the bowl of the pot or lifting buoy. Flags are not required October 16 through April 14.

SECTION 2. NR 25.09(2)(b)2.a. is amended to read:

NR 25.09(2)(b)2.a. Only when the pot or crib is set, placed or operated in water not more than 150 feet (25 fathoms) deep and from June 29 to Labor Day south of a line extending from the Lake Michigan shoreline along 44°52'30" north latitude only when the pot or crib entire net, including the lead, is set, placed or operated in water not more than 150 feet (25 fathoms) or less

than 75 feet (12.5 fathoms).

SECTION 3. NR 25.09(2)(b)2.f. is amended to read:

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SECTION 4. 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 5. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)

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

The Wisconsin Natural Resources Board proposes an order to amend NR 25.09(2)(b)2.a and f, and create NR 25.09(1)(b)11., relating to commercial fishing in outlying waters.

**FH-10-11(E)**

**Analysis Prepared by Department of Natural Resources**

- 1. Statutes interpreted.** Sections 29.014(1), 29.041 and 29.519(1m)(b), Stats.
- 2. Statutory authority.** Sections 23.11(1), 29.014(1), 29.041, 29.519(1m)(b), 227.11(2)(a), and 30.74(2)(a) Stats.
- 3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.** Section 23.11 (1), Stats., grants the department such powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law.

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

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, and designate the kind, size and amount of gear to be used in the harvest.

Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Finally, s. 30.74(2)(a), Stats., authorizes the department to establish by rule uniform marking of the water areas of this state through the placement of aids to navigation and regulatory markers, including but not limited to fishing buoys.

**4. Related statutes.**

- 29.539 Sale of game or fish.
- 29.563 Fee schedule.
- 29.924 Investigations; searches.
- 29.931 Seizures.
- 29.971 General penalty provisions.
- 29.973 Commercial fish reporting system.
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SECTION 4. STATEMENT OF EMERGENCY. The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Commercial trap nets in Lake Michigan pose a hazard to the safety of recreational fishermen trolling submerged fishing lines. The preservation of public safety requires appropriate measures to assure that recreational boaters can know the location of trap nets. Accordingly, this NRB Order and identical permanent order FH-50-10 require that 1) the marking of trap nets in Lake Michigan be enhanced by the use of reflective tape on buoy staffs, 2) all parts of trap nets set in Zone 3 of Lake Michigan between June 29 and Labor Day be within designated areas, and 3) the enhanced net marking requirements on Lake Michigan be applied to trap nets on Lake Superior.

SECTION 5. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper.

SECTION 6. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)