

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request adoption of Board Order FH-21-11, revisions to NR 19 relating to requiring access to wire cutters when trolling on outlying waters

FOR: JUNE 2012 BOARD MEETING

TO BE PRESENTED BY / TITLE: William Horns, Great Lakes Fisheries Specialist

SUMMARY:

The Order prohibits persons from trolling with downriggers on outlying waters (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.

In April 2011 the NRB approved permanent rule changes (FH-50-10) 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). The emergency rule included a requirement that sport anglers carry wire cutters when trolling in outlying waters. That requirement was not included in the permanent rules because it was outside of the scope of the original public hearings, but it is now added by this Order.

RECOMMENDATION: Adopt Board Order FH-21-11, revisions to NR 19 relating to requiring access to wire cutters when trolling on outlying waters

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 Stepp
Bureau Director,

4/25/2012
Date

Kenneth S. Johnson
Administrator,

5/1/2012
Date

Cathy Stepp
Secretary, Cathy Stepp

6/7/12
Date

cc: NRB Liaison
DNR Rules Coordinator

DATE: April 16, 2012

TO: Natural Resources Board

FROM: Cathy Stepp

SUBJECT: Adoption of Board Order FH-21-11, requiring sport trollers on outlying waters to carry wire cutters for emergency release from entanglement with trap nets or other obstructions

Why is the rule being proposed?

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 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 re-ignited a long-standing controversy regarding where and when commercial trap nets should be allowed in southern Lake Michigan. Subsequently in April 2011, the Natural Resources Board (NRB) approved permanent rule changes related to the marking and placement of trap nets (FH-50-10, CR 11-008). 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 on outlying waters 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 rule because it was outside of the scope of the original public hearings, but it is addressed by this rule proposal.

Sport anglers who fish by trolling in a boat on outlying waters will be required to have 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. This may impact some anglers who need to purchase wire cutters or similar device, which is not a substantial cost. 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.

Risk analysis

Data are not available to quantify the risk attributed to the presence of commercial trap nets in areas of Lake Michigan where recreational trolling is popular. Although the overall risk of accidents attributable to tangling in trap nets may be small compared with other hazards, the consequences for sport anglers can be serious. The following table summarizes reportable boating accidents on Lake Michigan, Green Bay, and Lake Superior during the years 2000 through 2010 in the U.S. Coast Guard's Boating Accident Report Database. Reportable accidents are those causing death, injury requiring medical attention, or property damage in excess of \$2,000. In four cases, indicated by numbers in parentheses, the boating activity was listed as "trolling." The 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)		
Totals	82	15	9

Summary of the rule:

The Order prohibits persons from trolling with downriggers on outlying waters (Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer’s Harbor, and the Fox River from its mouth up to the dam at DePere, s. 29.001(63), Stats.) without direct and immediate access to a wire cutter or other device capable of severing any line pulled behind the boat.

How does this proposal affect existing policy?

This proposal is consistent with existing policies. 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.

Hearing Synopsis

A single hearing was held at Lakeshore Technical College in Cleveland, WI, on Wednesday, April 11, 2012. No members of the public attended and no written comments have been received by the Department.

Information on environmental analysis:

This is a Type IV action under ch. NR 150, Wis. Admin. Code. No environmental assessment is required.

Final Regulatory Flexibility Analysis:

This rule does not impose any compliance or reporting requirements on businesses, business sectors, public utility rate payers, or local governmental units. The Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. 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. Through education, having wire cutters on board sport trolling boats will become a common and easy to comply with safety measure, similar to having life jackets on board all boats.



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Pam Shannon
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Assistant Directors

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15; STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 12-022

AN ORDER to create NR 19.058, relating to requiring access to wire cutters when trolling in outlying waters.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-06-2012 RECEIVED BY LEGISLATIVE COUNCIL.

03-29-2012 REPORT SENT TO AGENCY.

JKR:BL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227:15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



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CLEARINGHOUSE RULE 12-022

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

The agency should review the statutes that it cites for statutory authority. It appears that some of the statutes cited for statutory authority do not confer rule-making authority for the proposed rule. For example, s. 23.11 (1), Stats., describes the general powers of the agency. A statute describing an agency’s general powers or duties does not confer rule-making authority on the agency. [s. 1.02 (2m), Manual; s. 227.11 (2) (a) 2., Stats.]

4. Adequacy of References to Related Statutes, Rules and Forms

In the rule summary and proposed rule, references to statutes should be followed by “Stats.,” not “Wis. Stats.” [s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. NR 19.058, the use of parentheses should be avoided. [s. 1.01 (6), Manual.] Instead, the agency might consider replacing “(Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer’s Harbor, and the Fox River from its mouth up to the dam at DePere)” with “, as defined in s. 29.001 (63), Stats.,”. Alternatively, the agency could create a definition of “outlying waters” in s. NR 19.058. [s. 1.01 (7), Manual.]

**ADMINISTRATIVE RULES
FISCAL ESTIMATE AND
ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

Chapter NR 19 Miscellaneous Fur, Fish, Game, and Outdoor Recreation; NR 19.058

Subject

Requiring sport anglers trolling on outlying waters to carry wire cutters for emergency release from entanglement with trap nets or other obstructions

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20 , Stats. Appropriations Affected

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy
 Local Government Units

Specific Businesses/Sectors
 Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

Trap nets or other fixed structures on the lake bottom can pose a risk to sport trollers whose lures and downriggers can become entangled in the trap net ropes. This rule would address safety concerns and require trollers to have direct and immediate access to a wire cutter or other device capable of severing any line pulled behind a boat.

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.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Sport anglers who fish by trolling in a boat on outlying waters will be required to have 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. This may impact some anglers who need to purchase wire cutters or a similar device, which is not a substantial cost. A quick online search for the cost of wire cutters showed prices ranging from \$3 to \$56. The rule will be enforced by Department conservation wardens under the authority of chapters 23 and 29, Wis. Stats., through routine patrols and with a total citation penalty of \$243.

This rule does not impose any compliance or reporting requirements on businesses, business sectors, public utility rate payers, or local governmental units. The Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

Economic Impact - Request for Comments

Prior to the January 30-February 13 open period for economic impact comments, the Department requested comments from the Lake Michigan and Lake Superior Commercial Fishing Boards, 17 port city mayors offices and the same cities' chambers of commerce, the Wisconsin Wildlife Federation, Wisconsin Conservation Congress, Wisconsin Federation of Great Lakes Sport Fishing Clubs, UW Sea Grant, and the Great Lakes Indian Fish and Wildlife Commission, as well as posted the proposed rule documents to the Department website and the Wisconsin Administrative Rules website. The Department received the following two comments:

Tom Kocourek, President, Northeastern Wisconsin Great Lakes Sport Fishermen

As President of the Northeastern Wisconsin Great Lakes Sport Fishermen's organization I am speaking on behalf of our 650 members. I am aware of this proposal and do not see it as having a negative impact on our local community or the fishing community. The proposed rule adds an element of safety to fishermen using downrigger equipment and I am confident that the vast majority of fishermen currently using downrigger equipment already have such wire cutter equipment on board their boats.

Michael J. LeClair, President of Susie-Q Fish Company, Two Rivers, WI

I am a whitefish trap net fisherman out of Two Rivers, Wisconsin. The rule you have proposed, FH-21-11, would greatly **help** my business. When the sport fishers get their downrigger balls caught in our net, they become entangled. Then, the sport fishers try to pull them out and rip large holes in our nets. These holes make our nets inefficient at catching whitefish, which hurts our business. This rule would help stop these sport fishers from putting holes in our nets. This rule would also protect sport fishers and stop any possible lawsuits that might occur, if any sport fishers become entangled in our nets. A lawsuit would hurt our business. This rule would protect us.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Current Department policy reflects legislative intent to accommodate both sport and commercial fishing in the Great Lakes. 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 re-ignited a long-standing controversy regarding where and when commercial trap nets should be allowed in southern Lake Michigan. Subsequently in April 2011, the Natural Resources Board (NRB) approved permanent rule changes related to the marking and placement of trap nets (FH-50-10, CR 11-008). 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 on outlying waters 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 rule because it was outside of the scope of the original public hearings, but it is addressed by this rule proposal.

The alternative would be to not require wire cutters on board trolling boats on outlying waters, which is the current law. Although the overall risk of accidents attributable to tangling in trap nets may be small compared with other hazards such as collisions, the consequences for sport anglers can be serious. Four out of the 82 reportable boating accidents on Lake Michigan during the years 2000 through 2010 in the U.S. Coast Guard's Boating Accident Report Database were associated with trolling. Reportable accidents are those causing death, injury requiring medical attention, or property damage in excess of \$2,000. The tragic incident near Sheboygan was one of the accidents in this 11-year period in which the activity was trolling and the cause was "struck submerged object."

Long Range Implications of Implementing the Rule

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.

Through education, having wire cutters on board sport trolling boats will become a common and easy to comply with safety measure, similar to having life jackets on board all boats.

Compare With Approaches Being Used by Federal Government

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.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

None of the adjacent states require wire-cutting equipment to be on board boats.

Name and Phone Number of Contact Person

William Horns
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921
Telephone: (608) 266-8782
Email: William.Horns@wisconsin.gov

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

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.

William Horns
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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 is 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 _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)