

**SUBJECT:** Request for authorization of public hearings on FH-50-10 to revise Ch. NR25 regarding the regulation of commercial trap netting in the Great Lakes.

**FOR:** JANUARY BOARD MEETING

**TO BE PRESENTED BY:** 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 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. Currently trap nets are prohibited from June 29 through Labor Day, except in two designated areas.

The Department has received two related citizen petitions for rule-making. One petition, with 306 signatures, requested that trap nets be banned during June 1 through August 31 in all waters of Lake Michigan in the entire southern part of Wisconsin's waters (i.e., our commercial fishing Zone 3). The second petition, with five signatures, requested that trap nets be banned in Zone 3 from May 31 to Labor Day 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 presented to the Natural Resources Board for consideration.

The proposed rule 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 would also allow discussion and consideration of the other option proposed by petitioners (prohibition of summer trap netting in all of commercial fishing Zone 3), modifications of the current summer trap netting areas, and other possible resolutions of the issue.

**RECOMMENDATION:** Authorize public hearings on NRB Order FH-50-10

**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,

1/6/2011  
Date

Dale Maas  
Administrator,

1/10/2011  
Date

Michelle Mowry  
Secretary, Cathy Stepp

1/10/11  
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    |                            |

DATE: January 6, 2011

TO: Natural Resources Board

FROM: Cathy Stepp

SUBJECT: Authorization for public hearings on NRB Order FH-50-10 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 have drafted a single specific proposal reflecting the less restrictive of the two petitioners' proposals. This rule proposal also includes new provisions regarding the marking of commercial nets. If public hearings on this proposal are authorized, it would be possible to modify the proposed rule in light of hearing comments.

#### 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 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

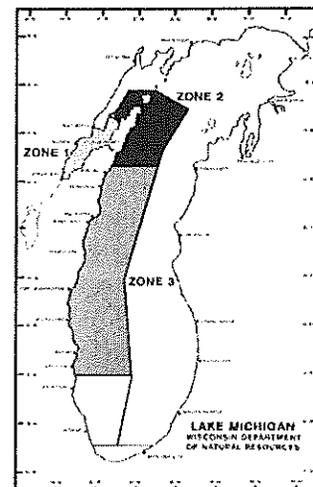
Available data do not allow us to quantify the added risk that can be attributed to the presence of commercial trap nets in areas of Lake Michigan where recreational trolling is popular, but the overall risk of accidents attributable to tangling in trap nets appears to be small compared with other hazards. 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)		
Totals	82	15	9

### 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 possible with gillnets or trawls, both of which cause significant mortality of non-target fish.





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 have discussed the issue 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 include 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. For your reference we have attached minutes of the LMFF, draft minutes of the Great Lakes Study Committee meeting, and a copy of the LMCFB recommendations.

The Department has received additional correspondence from interested parties. We have 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 limit trap netting in Zone 3. The rule drafted for NRB consideration would prohibit trap nets with five nautical miles of each of the three harbors. In presenting this rule we are selecting the less restrictive alternative presented by petitioners. Because there is general consensus that enhanced net marking can reduce the likelihood of boating accidents, the rule would also supplement net-marking requirements on Lake Michigan and would extend those requirements to Lake Superior. For both lakes the rule would require 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.

## **2. Summary of the rule.**

The proposed rule reflects the option proposed by petitioners to prohibit trap nets during summer within five nautical miles of the harbors of Two Rivers, Manitowoc, and Sheboygan. It also revises net-marking requirements on Lake Michigan and extends those to trap nets on Lake Superior.

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 5 of the Order.

SECTION 2. of the Order removes language made irrelevant by SECTION 3.

SECTION 3. of the Order adds the month of June to the summer period when no more than 3 entrapment nets may be used south of 44°52’30” by each licensed commercial fisher in Lake Michigan.

SECTION 4. of the Order changes the times and locations when and where commercial trap nets may be used during the summer. Commercial tarp nets may be used in areas within 5 nautical miles of harbors at Two Rivers, Manitowoc, or Sheboygan only from Labor Day to May 31.

SECTION 5. of the Order revises net-marking requirements for Lake Michigan by requiring that staffs be marked with reflective tape, that the staff marking the inside or shallow lead end of the net be marked with a flashing amber light and a 48” diameter float.

## **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. 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.

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

**7. 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.

attachments



# Northeastern Wisconsin Great Lakes Sport Fishermen

Manitowoc - Two Rivers, Wisconsin

To: Wisconsin Natural Resource Board  
Attention Sec. Mathew Frank  
Date: August 11<sup>th</sup>, 2010  
Re: Petition For Emergency Order, Rule Making and  
Amendment of Rules  
From: Mike Rusch – Petitioners Contact  
Chuck Weier- Petitioners Contact

Dear Sec. Mathew Frank,

In accordance with Section 29.174 (s) Wisconsin Statutes, regarding Rule Making found in Section 29.085, 29.174 (3), 29.33 (1) and 227.11 (2) (a) Wisconsin Statutes, and pursuant to section 227.12, Wisconsin Statutes and NR 2,03, Wisconsin Administrative Code for the Amendment of Rule: NR 25.09 (2), Wisconsin Administrative Code, regulating the placement of Trap Nets in Zone 3 of Lake Michigan.

We the following petitioners are requesting the Wisconsin Natural Resource Board consider our petition and signed post cards regarding "**Emergency Order**" to close the Whitefish Trap Nets in Zone 3 as set forth in the attached Resolution and to follow up that Emergency Order with "**Permanent Rules**" to keep that period of time in Zone 3 from June 1<sup>st</sup> – August 31<sup>st</sup> free of Whitefish Trap Nets, in order to avoid any other additional sport fishing fatalities involving the commercial whitefish trap nets.

When the Sheboygan Whitefish Trap Nets were pulled under the supervision of WNDR Wardens, it became very evident with the amount of sport fishing gear in these nets, that this was not an isolated incident, especially since 4 of the 9 nets lifted had downrigger cables in them.

We have collected 306 signatures on the attached petitions along with the ( \_\_\_\_\_ ) post cards from our fishermen that Mike Staggs has received in the last several days in the mail. At this time we would like to present these signatures and signed post cards to the Natural Resource Board. This is an extremely serious situation and your immediate attention is requested on this matter.

As a Legislative Co-Chairs of Northeastern Wisconsin Great Lakes Sport Fishermen, we have been appointed by the organization, Northeastern Wisconsin Great Lakes Sport Fishermen, to act as your contacts regarding this matter and can be reached at the following:

Sincerely,

Mike Rusch  
2920 Madson Road  
Manitowoc, WI 54220  
920-683-5940

Charles Weier  
358 22<sup>nd</sup> Street  
Two Rivers, WI 54241  
920-793-2332

July 2010



Northeastern Wisconsin  
Great Lakes Sport Fishermen  
Manitowoc - Two Rivers, Wisconsin  
July, 2010

**RESOLUTION and PETITION**

Requesting a Wisconsin Department of Natural Resources Emergency Order for Total Closure of the Lake Michigan Whitefish Trap Net Fishing in Lake Michigan waters of Zone 3, during the period of: June 1 to August 31, with all gear being removed by June 1.

Please read and sign this Petition below and on the back of this sheet.

**Whereas:** In response to the tragedy that occurred on Friday, June 25 on Lake Michigan just three miles East of Sheboygan, Wisconsin, and which resulted in the untimely death of Charles Koenig of Cleveland, WI.

**Whereas:** Entanglement of sport fishing gear in commercial whitefish trap nets set in Lake Michigan on June 25 was directly responsible for this tragedy.

**Whereas:** In 1988, by WDNR order, commercial whitefish trap net fishing was banned in ALL of Zone 3 from June 1 to August 31 due to "User Conflict and Safety Issues", but in the rule making process at that time, the whitefish trap net season was lengthen and closed first on June 14th.

**Whereas:** After the turn of the century, and despite continuous objection and opposition of Great Lake Sport Fishermen, commercial trap net fishing was gradually reinstated in Zone 3 by order of the WDNR to June 28<sup>th</sup> and finally to include all of the months of June, July and August.

**Whereas:** The Salmon fishing season on Lake Michigan in Zone 3 has changed and a greater number of sport fishermen are now fishing for salmon in the month of June, as well as July and August.

**Whereas:** The Sport Fishermen have always been in favor of a Trap Net Fishery, over Gill Nets or the Trawls, but not at the risk of loss or damage due to entanglement of sport fishing equipment, or even death to sport fishermen or other boaters in fog, rough water, or darkness.

**Therefore Be It Resolved:** That the Wisconsin Department of Natural Resources immediately close the Summer Commercial Whitefish Trap Net Season in Zone 3 by Emergency Order, to avoid any possibility of another tragedy as we have just experienced. A similar loss of three lives of sport fishermen occurred in St. Ignace, Michigan and now we have another fatality in Sheboygan, WI, all as a result of entanglement in commercial nets.

Respectfully submitted this 21<sup>st</sup> day of July 2010 by the following individuals:

	Printed Name	Signature	Address	Telephone Number
1	CHARLES C. WEIER	<i>Charles C. Weier</i>	358 52ND ST TWO RIVERS, WI	920/793-2332
2	FRANCES WEIER	<i>Frances Weier</i>	358 2ND ST TWO RIVERS WI	920/793-2332
3	Jodi	<i>Jodi</i>	814 24th ST	

# Wisconsin Wildlife Federation

## Wisconsin Federation of Great Lakes Sportsfishing Clubs

### Northeastern Wisconsin Great Lakes Sports Fishermen

August 11, 2010

#### Petition for Amendment of Administrative Rule

To the Department of Natural Resources:

The undersigned hereby petition the Natural Resources Board pursuant to section 227.12, Wisconsin Statutes and NR 2.03, Wisconsin Administrative Code for the amendment of rule: NR 25.09 (2), Wisconsin Administrative Code, regulating the placement of trapnets in Zone 3 of Lake Michigan.

The modification requested is: to either:

- (1) restore the prohibition of the use of trap nets from June 28 to Labor Day of each year in Zone 3 of Lake Michigan and move the date of the closure back to May 31 of each year; or
- (2) restrict the placement of trap nets in Zone three during June, July and August to five or more miles from the Two Rivers, Manitowoc and Sheboygan harbors.

The grounds for this petition are: to protect the public safety of sports anglers who heavily fish the waters of Zone 3 off the harbors of Two Rivers, Manitowoc, and Sheboygan heavily in the months of June, July and August of each year. The fishing gear of sports anglers is easily entangled in the nets and leads of trap nets that can lead to the quick swamping of a sports fishing boat and the potential for severe injury or death of sports anglers. The heavy sports fishing off the listed harbors combined with commercial trap nets, even if properly marked, is an inherently dangerous situation. This is not a hypothetical situation. The undersigned groups and individuals have warned the Natural Resources Board, Department of Natural Resources staff and legislators of this inherent danger for years.

On June 25, 2010, three sports anglers, fishing off Sheboygan had two of their downriggers entangled in the lead lines of a trap net. The boat stopped dead, immediately took on substantial water over the resulting lowered stern in the three foot

seas and sank within approximately a minute. Two of the individuals were rescued alive and the third, tragically, died.

In 2003 when trap netting was first proposed to be open for use in the heavy sportsfishing months of July and August, the undersigned petitioners warned that it was inherently dangerous in these heavily fished waters. Our statements were not hypothetical since an identical sinking with three fatalities had occurred to sports anglers being entangled with nets in St Martin's Bay, Michigan. To further substantiate that these are not isolated incidents. In the last year, another Michigan sports angler drowned from a virtually identical incident involving a trap net off of Ludington, Michigan. Also please find attached, (Attachment 1), a formal incident report filed on July 1, 2010 by Wisconsin DNR Warden Michael Clutter, who investigated the trap nets at the location of the sinking, and documented extensive sports fishing gear entangled in the net in question (page 1) and in two other nets (pages 2 and 3). In total, nine nets were pulled at the location as a result of this incident, Four of the nine had heavy sports fishing gear such as downriggers and cables attached. Only three of the nine nets had no fishing tackle entangled at all.

The petitioners want to make it clear that this petition is not directed at the commercial fisherman whose nets were entangled. It appears that the nets in question were properly marked. However as the petitioners stated in 2003 the presence of trap nets in these particular waters is inherently dangerous for several reasons. First, there is a high concentration of sports anglers in these areas, often they are from other areas of the state and beyond, unfamiliar with the existence of trap nets. Secondly, the net markings may be difficult to see when there are significant waves or in predawn fishing which is becoming commonplace. Lastly, due to changes in water temperatures and other conditions, sports angling has substantially increased in the month of June, even prior to the former prohibition on trap netting in July and August.

The only solutions to this inherently dangerous situation in these locations and still allow safe sports and commercial fishing to coexist is to separate the two forms of fishing in these areas by either time or distance. The petitioners' requested change to the trap netting regulations in Zone 2 is to either "restore the prohibition of the use of trap nets from June 28 to Labor Day of each year in Zone 3 of Lake Michigan and move the date of the closure back to May 31 of each year" (separation by time) or "restrict the placement of trap nets in Zone 3 during June, July and August to five or more miles from the Two Rivers, Manitowoc, and Sheboygan harbors, (separation by distance).

#### The historical background of the rule:

1. In January 1989, the Natural Resources Board adopted FM-40-88 which prohibited summer trap netting south of 44 degree, 55' 50" north latitude.
2. In September 1994, the Board adopted FM-23-94 which allowed commercial trap nets to be fished until the June 29<sup>th</sup> of each year. Previously the code required that nets be tied off by June 14<sup>th</sup> and removed from the lake by June 28<sup>th</sup>.

3. In November 2001, the Board changed the southern limit of summer trap netting to 44 degrees 52' 30" north latitude, thus opening Whitefish Bay to trap netting.
4. In May 2003, at the request of a very few commercial fishermen, the Board adopted FH-46-02 which established two new areas in Zone 3 to be open to trap netting in July and August. These areas were off Two Rivers-Manitowoc and Sheboygan. The petitioners and others opposed opening up these heavily used sport fishing areas due to concerns over sports gear entanglement in the trap nets. A then recent Michigan sports fishing boat sinking and resulting fatalities were cited as evidence of the inherent danger of putting nets in heavily fished sports fishing waters. The change did not go into effect during the 2003 season.
5. In June, 2004, the Board adopted Emergency Rule Order FH-40-04 (E) which moved the new area that was to be open to trap netting off the Two Rivers-Manitowoc harbors further north away from the heaviest sports fishing areas. The petitioners and others had petitioned the legislature to review the earlier Board Order FH-46-02. As a result of that process, Senator Joe Leibham had brought the commercial and sports fishermen together and negotiated a compromise between the two groups that resulted in the move of the Two Rivers-Manitowoc area open to trap netting to be moved north as set forth in this emergency order. The 2004 trap netting season followed this emergency order.
6. In January 2005, DNR staff brought to the Board, FH-57-04 which was to establish the negotiated emergency order as a permanent rule. The Board voted down the emergency rule. The sports fishermen requested action of the appropriate legislative committees to object to the rule. The Assembly Natural Resources Committee objected to the rule and it was sent to the Joint Committee for Review of Administrative Rules. That Committee sent a letter to the Governor asking him to review the situation. Nothing further was ever heard from the Governor, the Natural Resources Board or the DNR Secretary.
7. In December 2009, the Board adopted Board Order FH-23-09 which raised the whitefish quota in Zone 3 from 214,820 to 351,487 pounds, an increase of 136,667 pounds, 63% increase. Two of the organizations signing this petition, the Wisconsin Federation of Great Lakes Sports Fishing Clubs and the Northeast Wisconsin Great Lakes Sports Fishermen objected to the increase in the whitefish quota in Zone 3 because it was likely that an increased harvest limit in zone 3 will lead to increased pressure for further relaxation of the trap netting rules, such as more nets and a larger summer trap netting area. The Department responded in the green sheet by indicating that they had "no intention of further relaxing trap netting rules. The commercial fishermen responded by going around the Board and the Department to seek legislators to support removing restrictions on the number of nets and location of trap netting areas in Zone 3 so that they can harvest this new increased quota.

The petitioners' interest in the rule:

1. The Wisconsin Federation of Great Lakes Sports Fishing Clubs is the state's largest conservation organization, comprised of 168 hunting, fishing, trapping and forestry-related groups. Part of our mission is the advancement of sound conservation policies

which would include policies to insure the safety of our members when they are sport fishing on Lake Michigan. Petitioners Wisconsin Federation of Great Lakes Sports Fishing Clubs and the Northeast Wisconsin Great Lakes Sports Fishermen are two of our club affiliates. In addition Great Lakes sports fishing clubs in Marinette, Green Bay, Sheboygan, Port Washington, Milwaukee, Racine and Kenosha are affiliate club members of the Federation. Hundreds if not thousands of our members sport fish on Lake Michigan. The Federation has been heavily involved in the trap netting issue during this whole rule making process

2. Wisconsin Federation of Great Lakes Sports Fishing Clubs is comprised of twelve sports fishing clubs from Kenosha to Marinette. It is dedicated to the protection of the Great Lakes sport fishery and the sports fishermen that use the Great Lakes. Virtually all of its members are avid sports anglers on Lake Michigan and fish the waters frequently including those portions off the shores of Two Rivers, Manitowoc, Cleveland and Sheboygan. The Federation has been heavily involved in this trap netting issue since its inception.
3. Northeast Wisconsin Great Lakes Sports Fishermen are comprised of eight hundred members mainly located in the Two Rivers and Manitowoc areas. They are avid and active anglers in Lake Michigan largely in the area that is trap netted of the Two Rivers and Manitowoc area. They have been very actively involved in trying to protect the lives and safety of their members by actively opposing the placement of trap nets in those portions of Lake Michigan that are heavily used by their members and many other anglers.
4. Charles Weier, Two Rivers, has sport fished off the shore of Manitowoc and Two Rivers for over sixty years. He belongs to the Northeast Wisconsin Great Lakes Sports Fishermen and has served as an officer and President of that organization. He also is a member of the Wisconsin Federation of Great Lakes Sports Fishing Club and has served as a member of the Board and President of that organization. He has been actively involved in the issue of sports angler safety and trap nets in Zone 3 of Lake Michigan since its inception.
5. Michael Rusch, Manitowoc, has fished off the shore of Manitowoc and Two Rivers for over fifty years. He belongs to the Northeast Wisconsin Great Lakes Sports Fishermen and has served as an officer of that organization. He also has served as a member of the Board of Directors of the Wisconsin Federation of Great Lakes Sports Fishing Clubs. He has been actively involved in the issue of sports angler safety and trap nets in Zone 3 of Lake Michigan since its inception.
6. Mark Hasenberg, Kenosha, has fished in the Great Lakes for over fifty years. He is a member and has served as President of the Kenosha Great Lakes Sports Fishing Club. He is a member and Past President of the Wisconsin Federation of Great Lakes Sports Fishing Clubs, is currently on the Board of Directors and serves as Treasurer of that organization. He has fished in Lake Michigan for over fifty years

and has been very active in the issue of sports angler safety and trap nets in Zone 3 of Lake Michigan since its inception.

7. Larry Freitag, Sheboygan, has fished off the shore of Sheboygan for over thirty-five years. He belongs to the Sheboygan Area Great Lakes Sports Fishermen, which are sports anglers largely living in the Sheboygan area. He is a Board member of the Wisconsin Federation of Great Lakes Sports Fishing Clubs. He is also a Board Director member of the Wisconsin Wildlife Federation and serves as Chair of the Wildlife Federation's Great Lakes Fishing Committee. . He has been actively involved in the issue of sports angler safety and trap nets in Zone 3 of Lake Michigan since its inception.
8. Jack Nissen, Dousman, is a member of the Board of Directors of the Wisconsin Wildlife Federation, has been an officer of that organization for over five years and is currently serving as President of the organization. During his tenure as a WWF Board member and officer, the Federation has been actively involved in the issue of sports angler safety and trap nets in Zone 3 of Lake Michigan since its inception. He is an occasional sports angler on Lake Michigan.

Date: August 9, 2010

Petitioners: Wisconsin Wildlife Federation  
Wisconsin Federation of Great Lakes Sports Fishing Clubs  
Northeast Wisconsin Great Lakes Sports Fishermen  
Charles Weier, Two Rivers  
Mike Rusch, Manitowoc  
Mark Hasenberg, Kenosha  
Larry Freitag, Sheboygan  
Jack Nissen, Dousmann

Please send communication regarding this petition to:

George Meyer  
Executive Director  
Wisconsin Wildlife Federation

201 Randolph Drive  
Madison, Wisconsin 53717-1615  
608-516-5545  
[georgemeyer@tds.net](mailto:georgemeyer@tds.net)

**Lake Michigan Fisheries Forum  
Sept 20 2010**

**Meeting Notes**

**Forum Members Present:** Phil Moy, Ted Eggebraaten, Mark Maricque, Dennis Hickey, Duane Nadolski, Scott Haberman, Henry Koltz, Kevin Naze, Dale Maas, Dan Peterson, Mark Hasenberg, Dennis Radloff, John Janssen

**Forum Members Absent:** Glenn Seger, Steve Bousley, Mark Holey

**Alternates:** Charlie Henriksen (Mark Maricque)

**Others Present:** Joe Jerich, Mike Clutter, Ryan Volenberg, Bill Horns, Paul Peeters, Scott Hansen, Steve Hogler, Mike Rusch, Mike Heinzen, Thom Gulash, Chuck Weier, tom Kocourek, Myron Haberman, Marcello Covelli, Paul Lohman, John Hanson, Charlie Mathews, Allan Geimer, Chris Groth, Pat Dewane Jr., Ben Geimer, Steve Kulpa, Jerry Thiede, Mike LeClair, George Meyer, Gerald Weismer, Jerry Nemecek, Ted Zigmunt, John Thiede, Paul LeClair, Wayne Utterstedt

**Incident Report – Mike Clutter**

The incident between the sport troller and the trap net occurred on June 25 at 9:18 AM. Mr. Koenig saw the flag marking the net and tried to avoid the net by going to the left of the flag. The flag was the most lakeward buoy; by going left of the flag the boat went towards the net. The starboard downrigger got tangled in the buoy rope. The boat was stopped and put into reverse; the boat started to take on water in three foot seas. As two of the passengers tried to free the tangled gear, more water came over the stern. Soon thereafter the boat capsized. Two of the occupants had their life vests on and were able to hang onto the boat. Mr. Koenig was trapped under the boat for a period of time but finally surfaced some distance away. The other two occupants were unable to reach Mr. Koenig.

What did the autopsy show? The autopsy showed Mr. Koenig died of a stress-induced heart attack.

How far out was the net? The net was three miles out from the harbor.

How many nets were out? There was a total of nine nets, five had gear tangled in them and three were closed off and not fishing. The one Mr. Koenig got tangled in was closed off.

Where was the pot? The pot was in 100 feet of water.

How did the boat break free? One of the cables broke and the other spooled out.

**DNR Incident Response – Chris Groth**

The DNR wanted to figure out how to better inform the public. In response, they developed a webpage on the DNR website. They send out weekly reminders via DNR email, they put a notice on the NOAA weather radio and developed a series of press releases and PSAs.

The web page received 388 hits in September.

The DNR has received some petitions. The Natural Resources Board will decide whether to move forward with a rule change.

When will this be considered? Don't know, it's not on the agenda for the next meeting.

#### Accident Statistics

Between 2000 and 2010 there were 82 reportable accidents on Wisconsin waters of Lake Michigan. Reportable accidents involve death, injury or damage over \$2000. Non-reportable accidents are not in the system. Two of these involved trolling, but it's hard to tell if nets were involved due to the data summary provided.

Were there any fatalities? We can find out.

The incident with the Linda E occurred in 1998; it was not included in the summary.

Timeline of Commercial Fishing Issues –Bill Horns provided a copy of Mike Staggs' testimony to the NRB.

What about all of Lake Michigan? Does Michigan operate similar to WI? Don't know yet.  
How have other states dealt with this?

On Lake Huron an angler got tangled in a gill net and drowned

In 1978 in Peshtigo a boat overturned

An angler got tangled in a DNR pound net on Superior and drowned when he tried to swim to shore.

On Lake Erie two jet skis collided trying to avoid a marker.

#### Commercial Fishing Issues – Bill Horns

In 1989 trap netting was closed south of Algoma in the summertime.

In 1994 the tie-off date changed – when commercial fishers had to prepare to remove their nets for the summer season.

In 2001 the DNR changed the southern limit of the net area.

Most whitefish netting occurs in the north. The quota for whitefish was increased to 350,000 pounds in Zone 3. Zone 2 quota is 2.1 million pounds.

24 nets could be fished in the Zone 3 areas this next summer.

## Discussion

Dennis Hickey: Wisconsin is a leader in the uniform marking system for nets on the Great Lakes for safety.

Are there tribal fishers? Yes but not in Wisconsin waters.

Naze: What about lights on the nets? There are amber lights on the Two Rivers nets.

How much variation is there in the wings? Usually the anchors vary; the lead length varies from about 900 to 1320 feet. Only 2 or 3 people make these nets on the Great Lakes so they tend to be similar.

What does tie off mean? Tying off the front part of the net to get ready to pull out or move the net. It stops the net from catching fish.

The lead goes towards the shore.

What about lighting, is more possible?

Scott Haberman – the lights are dim; they are not enough.

Dale Maas – Who fishes the two summer areas? Three Susie Q licenses, 3 Kulpa licenses and 3 Seger licenses; there are three nets per license.

How much effort is it to set the nets? At least 1-2 hours in perfect weather.

Duane Nadolski – The nets are a hazard and fog can be an issue. It's hard even to avoid boats in the fog. The tangled gear suggests there is a problem. The best fishing is in the early morning to just after first light – in the dark.

Dale Maas – When is the best catch? What is the CPUE? Summer catch is the most valuable – restaurants, tourists, fish boil and the fresh fish market.

What % of the quota is caught? It depends on marketing and algae. We could catch the quota but marketing is an issue.

Bill Horns – the catch differs between zones. It is highest in October in Zone 2 and falls off after August in Zone 3. This is partly due to fish migration and partly due to algae fouling the nets.

The nets are first set out in April. June and July catches are the best, August is less.

Do the Seger's fish outside the summer area a lot in the spring? Clutter – many of the nets were north of the summer zone.

Dennis Radloff – Don't want to see a knee-jerk reaction. People ignore the buoys, they just don't know what the flags are for. It's a shared responsibility of boaters and anglers.

#### Commercial Fisher Comments

Mike LeClair – Accidents happen. Fog, deer hunting accidents and the like. We need education. Moving the nets is not the answer. The nets provide structure for the fish and attract them. Mike has fished 25 years here; it's better now than in the past. The GPS coordinates are provided along with maps of the net locations. The DNR picked this area. North won't work, south won't work due to anchoring problems. Each season Susie Q processes 150,000 pounds of whitefish for restaurants and consumers.

We work with Sea Grant to provide the net GPS locations. We return gear to anglers; we return non-target fish to the water. We don't want the fishing gear in the nets, the downrigger balls sink the nets and cause them not to fish. We could restrict the net area to sport fishing. The charter boats go into the nets, this draws in other anglers. We proposed experimental trawling for whitefish which would avoid setting trap nets. It seems like there is a small number of people trying to get rid of the commercial fishermen. We need education for anglers.

Steve Kulpa – I have three licenses. The only feasible fishing is to use trap nets. The gill nets are not working for chubs due to lack of fish. Only whitefish is left. If I lose the summer whitefish catch I will have to quit.

We're fishing in the fall for the first time since 1984. Right now we're still catching fish but the total catch is less. We have challenges like smaller quotas, changing weather and algae.

Last year it took me three weeks to remove the nets due to algae and sand fouling the nets and collapsing them to the bottom.

Off Two Rivers education has worked. Sea Grant helps. Some people still get tangled but we give them back the equipment. Anglers have to understand they cannot retrieve the gear, the nets are too heavy.

Moving the nets will put us out of business; it's too rocky to anchor. Right now the anglers know where the nets are. Education is the key. Little boats are an issue; they are not adequately designed for big water. Backing into the sea is a problem. Sport fishing doesn't want the commercial fishery.

Al Geimer – Three suggestions: 1) maintain the net and remove fishing gear; 2) Require bolt cutters in sport boats. There are many sunken vessels near Two Rivers. 3) Change the accident report to include net tangling as an item. Monitor the reports for two years.

John Janssen – People lose downrigger balls on reefs. They need cutters for the cables.

Charlie H. – Son went to work on a charter boat. The first thing he was shown was the location of the bolt cutter. The net area should be delineated to keep anglers out and anglers need to be educated.

Pat Dewane – Being out in the fog is inherently dangerous. It is an assumption of risk. The anglers need to be educated. Restricting access to the net area is an option. It is unreasonable to close the area to trap nets.

There is no restriction in place on the duration of closed nets being in the water.

How frequently are the nets checked? At least every 5 days.

The pots have to be in the designated “box” but the leads can extend out of the box.

Dale Maas – If the area is to be closed to anglers, then the nets should be fully contained within the box.

Henry Koltz – Are the net coordinates available online? Yes, on the Sea Grant web site and there are links from other sites.

Tom Kocourek – There are lots of out of state anglers with small boats. They want to stay near the harbor. They purchase salmon and trout stamps or a three-day license. They could get a map with coordinates of the net zones. The safety of the small boat angler is the primary concern. Could lights be put on both ends of the nets to help anglers avoid the nets?

Dennis Radloff – We need to educate the anglers. He’s done a lot of research on the location of the commercial nets and what the markers meant. Maybe there could be a mailed information piece about buoys.

Duane Nadolski – What is the economic value of sport fishing? In all of WI it is \$2.5 billion. On Lake Michigan and Lake Superior it is about \$250 million.

Restricting sport fishing is draconian.

### **Sport Fisher Comments**

George Meyer – The Wisconsin Wildlife Federation is not anti-commercial fishing. Mr. Koenig’s death was not the fault of the commercial fishermen; it was the anglers fault. The government has a responsibility to address dangerous conditions. There are a high number of anglers in this area with small boats, inexperienced anglers. We will be back here again if we do not take action to prevent another tragedy. Regulations are used where there is no other option. Education cannot always work – it’s not the solution this time.

Suggest relocating the commercial nets. It will cause problems for the commercial fishermen, but the cost of a lost life is too high. The DOT changes roads based on deaths/100,000.

Paul Lohman – Other dangers to navigation are clearly marked. The situation is clear. Mark the nets properly for day and night visibility and for radar.

Chuck Weier – Sport anglers have a right to fish the lake. The Seger's voluntarily moved their nets to the south; don't blame the Seger's. The nets are out there due to a DNR rule. Sport fishing now occurs in June, July and August. At least 50% of the Two River-Manitowoc anglers are from out of town; half are from out of state. This is a DNR problem; the risk exists and will continue. The sport anglers warned the DNR of the risk of an accident and it happened. Move the nets 5 miles north or south of the harbor or eliminate the June, July and August fishery. There's been one death in only 5 years.

Mike Rusch – We are most interested in protecting the resource and the safety of anglers. About every 5 years the trap net rules change. Now we have salmon fishing in June. The trap net season should be closed from June through August. In 2004 we pointed out that there had been other deaths on the lake due to nets. We warned the DNR of the death potential. The DNR needs to take action.

The commercial fishers start fishing whitefish after the smelt trawl. There are three fishers in Zone 3 and the quota has been increased by 63%. The netting has extended into a summer fishery. The DNR owes the anglers a safe fishing environment. The boxes help but it's not enough.

#### Discussion

How many of the nets are close off in the summer? Is there another place capable of anchoring the nets?

Dale Maas – This is a difficult problem to solve. In the near term suggestions:

- Provide GPS coordinates for the nets on the Sea Grant and DNR websites
- Mandate cutters on the boat
- Contain the nets completely in the box
- Use larger, taller buoys
- Provide info on what to do if tangled

The out of state guys don't want to use GPS coordinates

Salmon fishing is shifting to a night fishery

Mike R. – There could be bell buoys for rough water and lights at night.

There could be transmitters for radio within the box – to indicate the location of the box.

Charlie H. – IN the past we adapted the stick buoys to fit the new marking system. Maybe we could alter the marking system.

Mike Rusch – The DOT has done flagging studies

Mike LeClair – WE currently have 2, 10 inch floats on the buoy. We could go to steel buoys.

Use reflective tape on the flags.

Dan Peterson – Prefers not to restrict sport fishing. Require nippers on the boats.

Steve Kulpa – The 5 mi zone is suggested for safety, but if there's no GPS you cannot judge 5 miles. You can't stop the anglers from going near the nets. Education is the key. We need help from the clubs.

Kevin Naze – How about LED signs at boat launches?

Dale Maas – How about USCG official marking with buoy for the box?

Charlie H. – There's a process to request markings from the USCG. Putting the nets in the box earlier might be affected by algae. The nets are almost anchor to anchor

### **Summary of Suggestions**

Use lights on the nets, Use brighter lights on the nets, Use lights at night

Angler education – suggested several times

Maintain the nets and remove fishing gear

Require bolt cutters on sport boats

Change accident reports to include net entanglement

Restrict access to the net area

If close box to anglers, nets should be contained completely in the box

Provide a map of the box with the three-day license and/or trout stamp

Relocate the nets

Mark the nets better

Provide GPS coordinates on DNR and Sea Grant website

Mandate cutters on the boat

Contain the nets completely in the box

Use bigger, taller buoys

Bell buoys for rough water

Use reflective tape on the flags

LED signs at boat landings

USCG official buoys for the box

DRAFT  
9/27/10

## Great Lakes Study Committee Meeting

September 25, 2010 at the Ramada Inn,  
Stevens Point, WI

10:03am- Meeting called to order:

**Attendance:** Committee members in attendance: Dale Mass, David Tupa, Ronald Vanderloop, Pete Petrouske, Donald Anderson, Tom Kleiman, Norman Blohm, Michel Witkiewicz, John Blumreich, and Richard Alvin. DNR fisheries: Bill Horns, DNR law enforcement: Ben Tremel, WCC Executive committee secretary: Rich Kirchmeyer, and resolution authors: Steven Alt and David Tupa.

Absent, date of notification, and reasons for absence: Richard Grabarski (in July – for hunting trip), Alvin Bochler (on Sept. 21 – for dislocated hip), Bruce Prentice (on Sept. 23 – for family health issue), Dan Lazzeroni (on September 23 – for working on Saturday), Richard Becker (on Sept. 24 – for doctor appointment), and Eugene Altvies (on Aug. 15 – for working on his MBA). It has been noted that both Dan Lazzeroni and Eugene Altvies missed the meeting last year and the chair asked that they be

Attendance Concerns: We need commitment to attend the annual meetings of our committee. We need to a simple majority. Dan and Eugene are absent again this year and were absent last year. The committee asked that unexcused and repeat absentees be removed after failure to attend our required meeting. Study committee meeting dates are established early enough to make arrangements to attend. Dale asked that the secretary write a letter to executive committee to dismiss Dan and Eugene with no replacements until after the annual convention in the spring of 2011. Motion to accept, second, all approved.

Mission statement read and reviewed. Motion to accept, second, all approved.

**Fisheries Report by Bill Horns:** issues with trap nets, perch, bloater chub population has declined, Lake Huron alwife population crashed and Chinook salmon followed, lake trout may not be recovering due to alwife that may be eating young lake trout plus the thymine deficiency. Reduced Chinook stocks are now healthier. Lake trout plan: Tribes want more, state DNR does not want to increase, USFWS wants to continue stocking. Agreement must be made to stocking numbers of lake trout with greater numbers on the mid lake reef area and less near shore. Consideration of a 15 perch bag limit: DNR is not comfortable with and is not intending to increase perch bag limits because data shows there is not a significant recovery of the population. The DNR feels that maintaining the limit at 5 would be the best management of the resource at this time. Discussion with Bill, Mike and Dale about the 15 perch bag limit in IL, asking why they are allowing a bag limit 3x higher than WI. Dave commented that there is a larger cormorant population in Wisconsin Waters and Paul Peeters presented data to this committee showing that the exponential growth of cormorants are having a significant impact on the perch population, especially in Green Bay. Dale requested to have data available to the public that explains the perch management plan and justifications for our bag limits. Bill said he would provide this data for distribution.

**Lake Superior report:** Good lake trout recovery in Lake Superior due to effort limit system, limiting the net size/length of commercial fishing nets. Increase in Gull Island Shoal lake trout spawning due to restoration efforts and a lake-wide increase of siscowet. Bill noted that there are far more siscowet than lake trout. Lake herring has been up but is now low. Brule River fish-way camera shows steady brown trout, slight coho decline (likely due to smelt decline with lake trout recovery), a decline in chinook, and an increase in steelhead over the past 20 years of data on the Brule. Coaster brook trout program is ongoing with restoration of stream spawning areas. Healthy smallmouth bass / northern pike population with good walleye stocking program.

DNR Warden Ben Tremel – Many marine unit issues. 2012 on-line, electronic reporting of commercial catch. Water Guard program to keep exotics out.

**Resolutions:** Bill Horns provided a hand out of DNR Fisheries comments on the resolutions. Move to change the order of resolutions to accommodate Steven Alt, second, all agreed.

**410110** - Motion and second to forward this resolution. All approved. There was a question (#81) from this committee placed on the 2010 spring questionnaire to separate sportsmen license funds (fish and wildlife account) from GPR funds to pay the cost of the management of commercial fishing. That question passed statewide with significant support and was forwarded. The sportsmen of Wisconsin have sent a message that they do not want to pay for the management costs of maintaining a commercial fishing industry. A sport and commercial task force endorsed that GPR funds and not sportsmen license funds be used to support commercial fishing.

**Background:** Although commercial fishing operations provide some funding to support the DNR management costs of the commercial fishing industry, it is not self supporting and has been largely subsidized by sporting license sales. On the 2010 spring questionnaire, the sportsmen and women of Wisconsin overwhelmingly supported that funds to maintain commercial fishing should be taken from GPR funds and that the management and enforcement costs should not be taken from the fish and wildlife account.

**Question:** Would you support that the state legislature either appropriates funds from a source other than the fish and wildlife account or close commercial fishing in Wisconsin until such a time that the commercial fishing industry is self funded? (Ref. #410110)

Motion and second to forward the above question as written, supported by all.

**410210:** Motion and second to forward this resolution. After discussion that the DNR has no biological data to support this resolution, the committee unanimously rejected the motion to support this resolution. Steven Alt agreed to accept a copy of the minutes as sufficient to explain the outcome of his resolutions.

**050110:** Motion and second to forward this resolution. Discussion: Current regulations provide sufficient protection for the species. Not enough biological data to support increased protection of northern pike. Public perception is that northern pike are desired at all size levels and is not considered a "trophy only" type fish. Fisheries management did not support a slot size and an increase in size was not supported by 4 of the 5 counties surrounding Green Bay. After discussion, the committee rejected the motion to support this resolution for the above reasons.

**150110:** Motion and second to forward this resolution. Discussion: The practice of taking northern pike through the ice with a spear in a dark-house ice shanty is legal in Minnesota and Michigan waters and was allowed in Wisconsin until a "house-cleaning" of fishing regulations removed this practice due to low interest. After discussion the motion was approved by all.

**Background:** Currently, the practice of taking northern pike through the ice by spearing in a dark-house ice shanty is legal in Michigan, Minnesota, and Wisconsin waters of Lake Superior and Michigan waters of Lake Michigan and Green Bay. This fishing method was allowed in the Wisconsin waters of Green Bay and Lake Michigan until a "house-cleaning" of fishing regulations removed it due to low interest. This selective type of fish harvest traditionally takes place only in very clear, shallow waters of protected bays within Lake Superior and Lake Michigan. Historically, this fishing opportunity has occurred among very few participants. However, low participation should not have justified the removal of this regulation. This opportunity should be available for the few individuals that wish to participate in this selective method of harvesting northern pike through the ice. To be consistent with spearing regulations on other Wisconsin waters, the daily bag limit should be 3 fish during the months of January and February.

**Question:** Would you support the reinstating of dark-house spearing regulations for the Wisconsin waters of Green Bay and Lake Michigan, with a daily bag limit of 3 fish during the months of January and February?  
(Ref. #150110)

Motion and second to forward this question as written: The committee unanimously agreed.

**150310:** Motion and second to forward this resolution. Discussion: The commercial quota is set at 2.9 million pounds with a size limit of 17". The sport fishing harvest of whitefish is insignificant compared to the commercial harvest of 2.9 million pounds. There is no biological data to support a size restriction on whitefish for sport fishermen. After discussion, the committee rejected the motion to support this resolution for the above reasons by a vote of 3 in favor to 4 against, with 2 abstaining.

**Trap Nets:** Bill Horns explained that no more than 3 trap nets per license are allowed during June and July, but the density of these nets is 16 off the harbors of Manitowoc and Two Rivers. Net markings are universal. Whitefish migrate from the southern end of the lake in summer to the north where they spawn during October, so when commercial fishermen asked the DNR to open areas in Zone 3 to summer trap netting, the DNR allowed this area to be open to trap nets, against the wishes and warnings of sport-fishing groups and the Great Lakes Committee. There needs to be publications and education presented to sport fishermen to make them aware of net placements in the lake. The DNR has public petitions to close trap net fishing in zone 3 during the summer months or confine the nets to at least 5 miles north or south of these harbors. The DNR listened to the request by commercial fishermen to allow nets in an area that is fished heavily by sportsmen. The DNR was warned by this committee and other concerned sportsmen that allowing trap nets in areas open to sport trolling could lead to loss of life. Now that a man has died due to the conflict between commercial and sports fishing, suggestions are to close this area during summer or move the trap net area.

#### **Committee Recommendations:**

It is the recommendation of this committee that the DNR ask the Coast Guard to conduct a risk analysis with input from the DNR, commercial fishermen, and sport fishermen to establish safe navigation regulations including boater safety certification, signs, and publications to educate sport-fishers about the location, identification, and risk of navigating and fishing in areas open to commercial fishing. Until such a time that this risk analysis is completed, it is further recommended that both of the summer fishing areas in zone 3 be closed to commercial trap nets. Motion and second to make the above recommendations to the DNR. Unanimously approved.

Bill Horns reported there are no plans to change current commercial fishing regulations. However, there was a 16% increase in the whitefish quota to 2.9 million pounds of whitefish lake-wide, effective as of this spring.

**Asian Carp:** Concern continues that Asian Carp may get into Lake Michigan. We wrote a letter to Chicago officials last year.

**NR 860:** Motion and second to endorse the NR board position on NR 860 Water Use Permitting for water withdraws within the Great Lakes Basin. Unanimously in favor.

#### **Member matters:**

Alliance for the Great Lakes, materials distributed on Adopt-A-Beach program.

Mass marking of salmon trailer- hopper feed, 8 optical reader stations, sized, sorted, micro wire coded tag, adipose clip, scan for wire and fin clip, rejects go back, 3500/hour with only 22 fatalities during Dale Maas

Strawberry Creek egg harvests scheduled for Oct. 4 and 11.

**Next meeting location:** Ashland Co?, Bayfield Co?, Douglas Co?, Hatchery tours, fish ladder tours, stream restoration tours...

Motion and second to adjourn at 3:50pm

Respectfully written and submitted by  
David Tupa, WCC Great Lakes Study Committee Secretary

**CORRESPONDENCE/MEMORANDUM**

DATE: Thursday, November 11, 2010  
TO: Natural Resources Board  
FROM: Al Blizel – Lake Michigan Commercial Fishing Board Liaison  
SUBJECT: Lake Michigan Commercial Fishing Board motion

The Lake Michigan Commercial Fishing Board passed the following motion at their November 10, 2010 meeting:

The Lake Michigan Commercial Fishing Board recommends implementing these items in reference to the boating accident off Sheboygan:

- Commercial fishermen should provide the GPS coordinates of their trap nets for posting on the DNR and Sea Grant websites
- Commercial fishermen should install reflective tape on their buoy staff
- Install LED signs at boat landings for use in the dark showing the placement of trap nets
- Enhance angler information by recommending that sport fishers:
  - a) have bolt cutters on-board
  - b) increase their use of the DNR and Sea Grant websites
  - c) become familiar with the lake and placement of the trap nets during the daylight
  - d) install some sort of break-away system on their downriggers

If you have any questions regarding this motion, please give me a call at 920-746-2866.

cc: Laurie Ross – AD/8  
Bill Horns – FH/4  
Mike Staggs – FH/4

**Fiscal Estimate — 2011 Session**

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-50-10

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.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 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

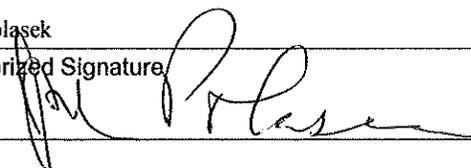
- Fund Sources Affected  
 GPR     FED     PRO     PRS     SEG     SEG-S

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: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 01-07-11

**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

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### Fiscal Estimate Worksheet — 2011 Session

Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-50-10

Subject  
 Chapter NR25 -- Commercial Fishing, Outlying Waters

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		( FTE )	( FTE )
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
<b>Total State Costs by Category</b>		\$	\$ -
<b>B. State Costs by Source of Funds</b>			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>Total State Revenues</b>		\$	\$ -

**Net Annualized Fiscal Impact**

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 01-07-11

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

The Wisconsin Natural Resources Board proposes to amend ss. NR 25.09(2)(b)2a, NR 25.09(2)(b)2b, and NR 25.09(2)(b)2e, relating to commercial fishing in outlying waters.

**FH-50-10**

**Analysis Prepared by Department of Natural Resources**

- 1. Statutes interpreted.** Sections 29.041, 29.014(1) and 29.519(1)(b), Stats.
- 2. Statutory authority.** Sections 29.041, 29.014(1), 29.519(1)(b) and 227.11(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 and to designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted.

Finally, s. 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.

**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 amended by SECTION 5 of the Order.

SECTION 2. of the Order removes language made irrelevant by SECTION 3.

SECTION 3. of the Order adds the month of June to the summer period when no more than 3 entrapment

nets may be used south of 44°52'30" by each licensed commercial fisher in Lake Michigan.

SECTION 4. of the Order changes the times and locations when and where commercial trap nets may be used during the summer. Commercial trap nets may be used in areas within 5 nautical miles of harbors at Two Rivers, Manitowoc, or Sheboygan only from Labor Day to May 31.

SECTION 5. of the Order revises net-marking requirements for Lake Michigan by requiring that staffs be marked with reflective tape and that the staff marking the inside or shallow lead end of the net be marked with a flashing amber light and a 48" diameter float.

**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 2-4 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 staffs 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. However, we currently have no basis for quantifying the economic impacts of 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 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).**

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**12. Place where comments are to be submitted and deadline for submission. To be determined.**

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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 a flashing amber light and 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. A spherical float, 48" in diameter, shall be attached to the staff that is attached to the inside or shallow lead end of the net. 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, amber light and spherical float, 48" in diameter 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 1 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 is set, placed or operated in water not less than 75 feet (12.5 fathoms).

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

NR 25.09(2)(b)2.b. No more than 12 pound nets and trap nets in aggregate may be used under each license, that being the maximum number of pots or cribs allowed, except that from June 29 1 to Labor Day no more than 3 pound nets and trap nets in aggregate may be used by each license in the waters of Lake Michigan lying south of a line extending from the Lake Michigan shoreline along 44°52'30" north latitude.

SECTION 4. NR 25.09(2)(b)2.e. is amended to read:

NR 25.09(2)(b)2.e. May be used to take fish in the waters of Lake Michigan lying between a line extending from the Lake Michigan shoreline along 44°52'30" 44°14' north latitude and a line extending from the Lake Michigan shoreline along 44°8'55" 44°1' north latitude; and between a line extending from the Lake Michigan shoreline along 44°5'33" 43°50' north latitude and a line extending from the Lake Michigan shoreline along 43°40'50" 43°40' north latitude, ~~and south of a line extending from the Lake Michigan shoreline along 43°34'39" north latitude~~ only during the period including the day after Labor Day to ~~June 28~~ May 31. Unless the department has granted an extension of time, the webbing shall be removed from the water by ~~June 28~~ May 31 and may not be reinstalled until the day after Labor Day. If adverse weather conditions or unanticipated equipment problems prevent removal of the webbing by ~~June 28~~ May 31, a licensee may request and the department may grant a brief extension of time sufficient to allow safe removal.

SECTION 5. NR 25.09(2)(b)2.f. is amended to read:

NR 25.09(2)(b)2.f. Shall each be marked and maintained with a flashing amber light and 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. A spherical float, 48" in diameter, shall be attached to the staff that is attached to the inside or

shallow lead end of the net. 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, amber light and spherical float, 48" in diameter are not required October 16 through April 14.

SECTION 6. 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 7. 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)