

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board adopt Board Order FH-25-12, proposed rules affecting NR 25 related to the number and placement of trap nets for commercial fishing activity in the Restricted Use Area of Lake Superior.

FOR: December 2013 Board meeting

PRESENTER'S NAME AND TITLE: Peter Stevens, Lake Superior Fish Team Supervisor

SUMMARY:

The proposed rule change will revise ch. NR 25, Wis. Adm. Code, to define trap net placement locations and commercial fishing activity in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeline Island. Commercial fishers may currently place trap nets in the Restricted Use Area for the taking of whitefish or herring from June 1 to August 15. Currently, the only limit on how many nets an individual fisher or all fishers combined may place in this small area is the total number of trap nets allowed per commercial licensee, which is 10, and distance restrictions limiting the proximity of adjacent trap nets.

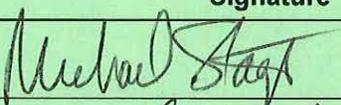
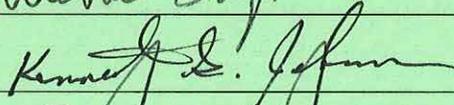
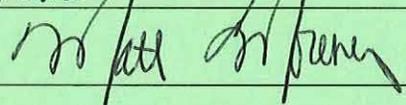
The rule addresses the primary issues with current trap net placement: navigational safety and user conflict. Over the last two years, the Department has received complaints from sport/recreational anglers about a heavy use of trap nets within this area and commercial fishers have experienced acts of vandalism to their nets resulting in repair costs. The rule will include provisions for creating a travel corridor and limiting the number of trap nets in the Restricted Use Area.

The proposed rule is expected to have a minimal economic impact on small businesses. (level 3)

RECOMMENDATION: That the Board adopt Board Order FH-25-12.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| <input checked="" type="checkbox"/> background memo | <input type="checkbox"/> Attachments to background memo |
| <input type="checkbox"/> Statement of scope | <input type="checkbox"/> Governor approval of statement of scope |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input checked="" type="checkbox"/> Response summary | <input checked="" type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Mike Staggs, Bureau Director		11/13/13
Ken Johnson, Administrator		11/15/13
Cathy Stepp, Secretary		11/16/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: November 11, 2013

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order FH-25-12, relating to the number, placement, and removal of commercial fishing trap nets in the Restricted Use Area of Lake Superior.

1. Subject of Proposed Rule:

The proposed rule addresses navigational safety and user conflicts between commercial fishers and recreational fishers in the Restricted Use Area of Lake Superior. The rule will restrict the number, placement, and removal of commercial fishing trap nets in that area.

2. Background:

Over the last two years, the Department has received complaints from recreational anglers about commercial fishing trap nets placed in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeline Island. Commercial fishers may currently place trap nets in the Restricted Use Area for the taking of whitefish or herring from June 1 to August 15.



3. Why is the rule being proposed?

The primary issues with current trap net placement are navigational safety and user conflict. Nets must be clearly marked according to regulations, but heavy use of this area creates confusion about the exact placement and orientation of individual nets and makes navigation through the area potentially hazardous. Given that the area is the only ingress or egress from Chequamegon Bay and a popular sport fishing and recreational boating corridor, the risks can be significant. Also, in each of the last two seasons, commercial fishers setting nets in this area have experienced acts of vandalism to their nets with expensive repair costs. Out of concern for these issues, the Department decided to seek a rule change to address the situation.

4. Summary of the rule.

This rule will revise ch. NR 25, Wis. Adm. Code, to define the number and placement of trap nets for commercial fishing activity in the Restricted Use Area of Lake Superior. It includes three changes. First, commercial fishers are limited to using a single trap net per commercial license in the Restricted Use Area to address concerns about high trap net density in the Area. Second, trap nets are excluded from a newly created “zone of safe passage” within the Restricted Use Area to address safety concerns with recreational boaters and anglers. Third, the Code is clarified to explicitly mandate that nets be rendered inoperable by the close of the special season (August 15) in the Restricted Use Area and be physically removed on or before August 18. This clarifies a recent point of confusion regarding timely removal of trap nets following the season closure in the Restricted Use Area.



5. How does this proposal affect existing policy?

Currently, the only limit on how many nets an individual fisher or all fishers combined may place in the Restricted Use Area is the total number of trap nets allowed per commercial licensee, which is 10, and distance restrictions limiting the proximity of adjacent trap nets. The proposal will clarify where and how many trap nets are feasible for navigational safety and to reduce user conflict.

Section NR 1.01(2) states that: “the goal of fish management is to provide opportunities for the optimum use and enjoyment of Wisconsin's aquatic resources, both sport and commercial. A healthy and diverse environment is essential to meet this goal and shall be promoted through management programs.”

6. Has the Board dealt with these issues before?

The Natural Resources Board has dealt with similar commercial and sport fishing conflict issues in the Great Lakes. Most recently, the Board approved Order FH-50-10 that directed net marking and placement requirements and Order FH-21-11 that requires sport anglers on the Great Lakes to have access to wire cutters.

7. Who will be impacted by the proposed rule? How?

The proposed rule change would have a minimal impact on state-licensed commercial fishers, charter fishers, and sport/recreational anglers. In 2013, only one commercial fisher had trap nets placed in the proposed zone of safe passage. The rule would prohibit that fisher and all commercial fishers from

placing trap nets in that zone. Charter and recreational fishers would benefit from the rule because a passage way through the narrow area would be clear of trap nets, providing a safer route of navigation.

In addition, Rose Gurnoe-Soulier, the Tribal Chair of the Red Cliff Band of Lake Superior Chippewa, has expressed an interest in trap net issues. She stated in November 2012 that: "State trap nets are becoming increasingly prevalent and are pushing tribal gillnetters out of productive whitefish areas... We are very interested in being included in discussions on how the State trap net fishery can be more equitably managed, and expect progress over the course of the next year." Although this was not written in response to the economic impact analysis or public hearing, the Department thinks it should be provided with this information to the NRB.

8. Soliciting public input on economic impact synopsis

An economic impact analysis (EIA) comment period was held from August 1-15, 2013. The Department received five comments during the period. (see all comments in attached EIA form)

One EIA comment from a commercial fishing small business owner stated that the rule will change nothing because tribal commercial fishing nets would move into the area instead. Although this is possible, tribal commercial fishing trap nets are not currently placed in this area, nor do any tribal fishers fish trap nets anywhere at this time. Therefore, they currently do not present impediments to navigational safety. Tribal fishers are subject to tribal regulations and therefore would not be required to follow the boundary changes in this rule proposal. However, Bad River and/or Red Cliff bands could agree to adopt the State's boundary changes pursuant to the State-Tribal Agreement.

Another commercial fisher indicated that the rule would unfairly impact his business and that the current half-mile distances required between nets is sufficient. The department determined that the proposed location and size of the "zone of safe passage" is necessary to minimize navigation hazards to recreational boaters and fishers. A route through the middle of the channel would provide the safest passage through deepest water with no other known navigational obstructions. Of the seven trap nets the commercial fisher is permitted in the RUA, a maximum of two would be impacted by the proposed location of the "zone of safe passage."

Three other responses from an individual fisher, sport fishing association, and charter fishing business were in favor of the rule.

9. Environmental Analysis

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

10. Small Business Analysis

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected. The Department is proposing a balanced approach that protects the navigational safety of the recreational fishing and boating public and the economic needs of commercial fishers.

Final Regulatory Flexibility Analysis:

Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but the rule is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

Minimal economic impact is anticipated as a result of this rule change. Commercial fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected.

The Department's main concern is to increase navigational safety and expand safe fishing and boating opportunities. The rule was written to ensure commercial fishers' economic needs were included. In addition, based on one comment received during the economic impact comment period and two public hearing comments received, the rule may benefit charter fishing businesses in the Restricted Use Area of Lake Superior.

Minimal impact is expected for businesses or business associations. No additional reporting requirements will be imposed on small businesses as a result of these rule changes.

11. Public Hearing Response Summary

One public hearing was held in Bayfield, WI, on November 7, 2013. Eleven people attended the hearing, of which five registered in support of the rule, three registered in opposition, and three did not indicate their position. Two attendees and six additional people submitted comments in writing by mail or email.

All written comments received were from sport fishers or charter fishing business owners. All were in favor of the rule to limit the number of commercial trap nets in the Restricted Use Area, some pushed for additional limits on trap net placements.

Oral comments at the public hearing included those from two commercial fishers who stated that they were opposed to the rule because it presents an additional, undue burden on their businesses. They felt that the limited season (June 1 – August 15) in the Restricted Use Area was already an appropriate balance between recreational and commercial fishing interests. Further, they stated that the half mile distance between trap nets currently required by code should be more than sufficient for navigational purposes for a competent boat operator. They also disputed the characterization of the opening of the Area to commercial fishing as a recent change. They stated that the area had been a historic commercial fishing ground for many years and that limiting commercial fishing in the Area was, in fact, the recent change. They felt this rule unfairly targeted commercial fishers in general as well as targeted particular operators, and they questioned the rationale behind it and the need for it.

Additional comments at the public hearing from three sport anglers were in favor of the rule changes with most calling for even more restrictive measures.

Also, please refer to the EIA form for additional comments related to the rule.

The following changes were made based on public comments received:

One change was made to the rule language in order to clarify the intent of removing trap nets after the season ends on August 15 of each year. Originally, the rule stated that commercial fishers must remove their trap nets within three days after the close of the lake trout season. To clarify that the rule was intended for commercial fishers to remove their trap nets within three days after the close of the *special lake trout season in the Restricted Use Area*, the wording was changed so that all commercial fishing gear in the Restricted Use Area shall be removed from the water on or before August 18.

Full written comments that were submitted are included below:

- Greg Radke, Washburn, WI

I am strongly in favor of limiting commercial trap nets in the Houghton Pt. to Long Island zone. To my way of thinking they should be banned entirely from this area, but at least it's a start. Recreational anglers with small boats need this sheltered area to fish. I do not understand how a handful of commercial harvesters have had the political clout to wreak such havoc on the Lake Superior fishery. The thousands of licenses, boat registrations, marina slips, gas, launch fees, and bait and tackle purchased by private anglers doesn't seem to be considered when up against these commercial fishermen's interests. Everywhere you go in the islands the nets are preventing anglers from enjoying their traditional fishing spots.

- Alfred House, on behalf of The Apostle Islands Sport Fishermen's Association and the Superior Sport Fishing Alliance; AISA Board Member/Acting President Superior Sport Fishing Alliance

When approval was given in the late 1990's, with little public notice or fanfare, to allow commercial netting in this area, it came as a shock to sport fishermen that this popular and frequented area for sport fishing was now open to commercial fishing as well. After the initial shock, conversations were initiated by the Apostle Islands Sport Fishermen's Association with the WDNR, State Legislators, and the commercial fishermen about the sportsmen's concerns. Despite feeling that they were being shoved aside, the AISA made the decision to cooperate with the WDNR and the commercial fishermen to develop ways to coexist in this area, going so far as to develop notification posters and brochures in partnership with Wisconsin Sea Grant to alert fishermen to the location of the nets, and to educate sport fishermen to prevent possible entanglements with them.

This worked for a short time while the number of trap nets emplaced was at a manageable level. Two or three nets could be noted and avoided with relative ease. Unfortunately this cooperation succumbed to the greed and competition between the commercial fishing parties. Next came a trap net purposely placed just north of Long Island in the South Channel, placed in such shallow water on one end it was impossible to troll around it and closing off this favourite near shore area for sport fishermen throughout the summer. Meanwhile, from three nets the activities expanded quickly until the one and a half mile stretch between Houghton Point and the South Channel contained nine and sometimes ten nets. At this point recreational trolling became impossible in this area between June 1 and August 16 of every year. And this area became and continues to be the exclusive province of the commercial fishing industry during those months.

This has resulted in a marked reduction in the recreational fishing done in this area, with consequent reduction in sport fishing related economic activity. In addition this dense area of nets has become a safety hazard to any boaters transitioning the area, especially at night.

What all this has proven is that the Wisconsin Lake Superior commercial fishing interests cannot be relied on to police themselves in maintaining a proper balance between all the user groups in a specific area of water. If they are allowed an inch, they will take a mile. In order to restore a balance between all user groups in this very busy area, the Apostle Islands Sport Fishermen's Association, and it's Wisconsin Partner Clubs in The Superior Sport Fishing Alliance support the implementation of revisions to N. R. 25 in regards to permanent rule Order FH-25-12 regarding number, placement, and removal of commercial trap nets in the Restricted Use Area of Lake Superior, as published with no further addendums or changes.

Our members are not against commercial fishing. We are against the usurping of a particular area by commercial fishermen to an extent it effectively bars use of that area by sport fishermen. And that is what has happened to this area at the present.

- Captain Barry LeBlanc, WhiteWater Charter

I am writing to you on behalf of the Duluth Charter Fishing Captains. This past fishing season on Lake Superior out of Duluth was decidedly poorer in the catching of Lake Trout. If not for salmon in the first half of the season many of our customers would not have caught fish on our boats. If they do not catch

fish they may be lost as return customers. We know a lot of the Lake Trout we catch are from the South Shore area and feel that the over abundance of nets in the Apostle Island are affecting our catch rates. I am thankful I do not operate my business in the Bayfield area.

- Rob Kemkes, Board member of AISA, Washburn, WI

I agree with the proposal to limit trap nets to one per license in the Bayfield Chequamegon Bay area. However, I remain concerned about the nets being placed near Houghton Point and so close off the point of Long Island.

I also agree with the establishment of a "zone of safe passage" from the Bay to Bayfield. I'm amazed there have been no accidents during periods of low light and in choppy conditions. There should be a well marked and reasonably wide area for boaters to travel safely.

It would seem the commercial fishermen could remove their nets at seasons end as quickly as they set them in the spring rather than cheating for a few more days.

- Tom Wiedell, Hawghunter Charters

I applaud the Department's efforts to correct abuses by commercial netters in the Bayfield/Ashland area of Wisconsin on Lake Superior. As an active sport fishing charter captain on Lake Superior I am fully in favor of the changes as proposed by the WI DNR.

Thank you to the Department for taking this corrective action. Please feel free to contact me if I can be of assistance in any way.

- Christopher Bulovsky, Washburn WI

I'm not certain how much of an impact this will be but for the record I do not support any nets in the bay especially off the end of Long Island. I understand that the Dept. of Natural Resources must juggle the interests of all users but the placement of nets off the end of Long Island does hamper navigation and eliminates close shore trolling that I used to enjoy. It does seem wrong that commercial interests lay claim to public property or public water. Its not OK with me. Please place rules that allow anglers to fish and navigate net free in Chequamegon Bay.

As a side note I also think that The State of Wisconsin may want to revisit the DNR charter. As in change it. The total number of nets in the Bay and around the Apostle Islands is appalling. It really is just appalling.

- D. Lien

I live two and a half hours from Bayfield and was not able to attend the last nights meeting about nets in the Chequamegon Bay. I am sending you this email so I can voice my opinion on the subject.

I own a cabin near Cornucopia and fish out of there and in the Chequamegon Bay. I am not opposed to people making a living fishing the lake but over the last decade I have noticed a drop in the number of fish we have been catching, and an increase in the number of nets in the area from the Chequamegon Bay around to Port Wing which includes the Apostle Islands. Even though most of the nets are marked with flags, in some areas, like in the Bay and in the Islands, there are so many nets that it is almost impossible to determine which flags belong to which nets. This can create an unsafe situation if downrigger balls get tangled in a net when the seas are high.

In this last decade I have seen the number of commercial fishing boats in Cornucopia double and maybe even triple in numbers. It's not hard to figure out what is happening to the fishing with an increase in commercial fishing pressure and a decrease in stocking.

The Chequamegon Bay lures many sports fishermen throughout both the "soft" water and "hard" water seasons which, I would imagine, results in a boost to the local economy. The large numbers of nets set in that area are not only a safety hazard and a pain to fish around, but they prevent fish from entering the bay which is such a popular place for the sports fishermen to fish. Let's ease up a bit on the number of nets and give the sports fishermen a break at least in the Bay area. Maybe if the fishing starts to get back to

where it was a number of years ago we will see an increase in the number of sports fishermen the area attracts which would have to help the local business.

- Mark Johnson, Secretary – Apostle Islands Sport Fisherman's Association

I want to add to what I have already submitted that the majority of boaters in the area in question are amateurs like me. One can expect charter captains to identify and avoid nets, but recreational boaters are always learning. I'm getting better, but this spring there will be a new crop of first time boaters on Lake Superior (at least, we all hope so). They will struggle to navigate new waters and try to figure out what those little flags mean.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 25, Commercial Fishing - Outlying Waters

3. Subject

This rule will revise ch. NR 25, Wis. Adm. Code, to define the number and placement of trap nets for commercial fishing activity in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeline Island.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

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

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

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

Yes No

9. Policy Problem Addressed by the Rule

Commercial fishers may currently place trap nets in the Restricted Use Area, described above, for the taking of whitefish or herring from June 1 to August 15. Currently, the only limit on how many nets an individual fisher or all fishers combined may place in this small area is the total number of trap nets allowed per commercial licensee, which is 10, and distance restrictions limiting the proximity of adjacent trap nets. Over the last two years, there have been complaints received from sport/recreational anglers about a proliferation of trap nets within this area.

The primary issues with current trap net placement are navigational safety and user conflict. Nets must be clearly marked according to regulations, but excessive use of this area creates confusion about the exact placement and orientation of individual nets and makes navigation through the area potentially hazardous. Given that the area is the only ingress or egress from Chequamegon Bay and a popular sport fishing and recreational boating corridor, the risks can be significant. Also, in each of the last two seasons, commercial fishers setting nets in this area have experienced acts of vandalism to their nets with repair costs ranging into the thousands of dollars. Out of concern for these issues, the department decided to seek a rule change.

The rule would: limit commercial fishers to using a single trap net per commercial license in the Restricted Use Area to address concerns about high trap net density in the Area; exclude trap nets from a "zone of safe passage" within the Restricted Use Area to address safety concerns with recreational boaters and anglers; and clarify a mandate that nets be rendered inoperable by the close of the special season (August 15) in the Restricted Use Area and be physically removed on or before August 18. This clarifies a recent point of confusion regarding timely removal of trap nets following the season closure in the Restricted Use Area.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

For comments on the economic impact of the rule, the department contacted the Wisconsin Conservation Congress, the

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Wisconsin Wildlife Federation, the Great Lakes Indian Fish and Wildlife Commission, Wisconsin Association of Lakes, WI Federation of Great Lakes Sport Fishing Clubs, WI Council of Sport Fishing Organizations, Musky Clubs Alliance of Wisconsin, Inc., Salmon Unlimited, Sturgeon for Tomorrow, Trout Unlimited - WI Council, Walleyes for Tomorrow, WI Bass Federation, Izaak Walton League-Wisconsin Division, Lake Michigan Fisheries Forum, WI Commercial Fisheries Association, American Fisheries Society-Wisconsin Chapter, Natural Resources Foundation of WI, Gathering Waters, River Alliance of Wisconsin, UW Sea Grant, League of WI Municipalities, WI Towns Association, WI Counties Association, NE WI Great Lakes Sport Fishermen, Great Lakes Sport Fishermen of Milwaukee, and the Lake Michigan and Lake Superior Commercial Fishing Boards.

11. Identify the local governmental units that participated in the development of this EIA.

The open comment period was conducted during August 2013. No local governments requested to participate in the development of the EIA.

12. 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)

The proposed rule change would have a minimal economic impact on state-licensed commercial fishers, charter fishers, and sport/recreational anglers. Minimal impact is expected for businesses or business associations. No additional reporting requirements will be imposed on small businesses as a result of these rule changes. This rule does not directly affect public utility rate payers or local governmental units.

The department received five comments during the economic impact analysis comment period (August 1-15):

1- Jeff Bodin, commercial fishing small business owner, stated that the rule will change nothing because tribal commercial fishing nets would move into the area instead.

(The department determined that although this is possible, tribal commercial fishing trap nets are not currently placed in this area, nor do any tribal fishers fish trap nets anywhere at this time. Therefore, they currently do not present impediments to navigational safety. Tribal fishers are subject to tribal regulations and therefore would not be required to follow the boundary changes in this rule proposal. However, Bad River and/or Red Cliff bands could agree to adopt the State's boundary changes pursuant to the State-Tribal Agreement.)

2- Darryl Fenner, D's Superior Fishing Charters (Washburn, WI), stated that he has a small charter fishing business located on the Chequamegon Bay of Lake Superior and the rule change would result in no compliance costs to his business, but it would have an economic and safety benefit. Mr. Fenner's letter also included: The high number and density of commercial trap nets in the Restricted Use Area (RUA) during June 1-August 15 does not allow him to charter fish in a significant portion of the RUA, and effectively separates fishing in Chequamegon Bay from other areas of Lake Superior. He said net density is high, with nets oriented in all directions, making it impossible to charter fish or sport fish through this area. Marker buoys, net flags, netting, and ropes criss-cross the area. One entanglement of charter fishing gear may result in significant loss of gear, costing hundreds to thousands of dollars and a ruined charter fishing experience for his clients. He said the number and density of trap nets require additional travel time and expense for each charter fishing trip. Due to location and density, each charter fishing trip must start outside the RUA or result in net entanglement. He said this doubles his daily fuel costs, and by raising charter fishing rates to cover those costs he has fewer trips booked. With few or no nets in the RUA, he said he could charter fish closer to the Washburn/Bayfield area, resulting in lower rates and more days booked as well as increased business for the local economy and improved income for his business. Limiting the number and placement of trap nets within the RUA would allow some charter fishing within the proposed "safe passage area" however it is likely trap nets will surround this area, again making it impossible to charter or sport fish there. Removal of all netting within the RUA would be a better choice for the area economy. ... Additional restrictions on the number, size, and location of trap and gill nets are necessary to allow the sport fisherman a fair chance at harvest of the fishing resource. Boater safety is a serious concern with the current number and density of trap nets within the RUA. He said the net markers are difficult to see during the day, and nearly impossible to see at

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night. The safe passage area may be a small improvement, but will likely result in trap nets placed around the perimeter of the area, again resulting in a safety hazard. He said the entire RUA should be a safe passage area.

3- Mark R. Johnson, on behalf of the Apostle Islands Sportfisherman's Association, (Ashland, WI) stated that the AISA supports the proposed rule as a first step in rebalancing sportfishing and commercial interests. He also listed a number of concerns regarding commercial netting including: 1) nets are placed in popular fishing areas creating a safety hazard, 2) sportfisherman are choosing not to fish the area over concerns about net entanglement, 3) each entanglement costs sportfisherman ~\$100 in equipment, 4) Apostle Islands and Chequamegon Bay provide a shelter from weather but not nets, 5) nets obstruct recreational boat traffic as well as fisherman, 6) all businesses benefit from sportfishing and many jobs are created; commercial fishing benefits a few and creates few jobs, 7) when sportfishing is poor the entire area suffers. Further, he expressed the AISA's displeasure at the limited 15 day comment period. He stated more groups would comment if the period were longer and that many groups do not meet in the summer.

4- Robert S. Gowdy, Washburn, WI, stated that he has lived in Washburn and fished Chequamegon Bay for 23 years. His comments were focused on navigational safety of the area rather than any economic impact. He said that the nets are poorly marked in the RUA and are placed directly in the path known locally as "salmon alley." He stated: "If safety is a top priority for the state, I believe nets should not be placed anywhere inside the boundaries shown on the map."

5- Cliff Halvorson, on behalf of Halvorson Fisheries (Cornucopia, WI), stated their opposition to the proposed rule. He stated that the rule was unfair as the "zone of safe passage" disproportionately impacted Halvorson Fisheries nets and would take "money out of his pocket." He stated that these nets had been in place for a number of years and had never been an issue before and that recreational traffic can travel right over the deeper nets with no risk of entanglement. He stated that the current half-mile required separation between commercial trap nets should be more than sufficient to ensure safe navigation. He repeatedly reiterated his strong opposition to this measure and intention to continue to actively oppose it.

(The department determined the proposed location and size of the "zone of safe passage" is necessary to minimize navigation hazards to recreational boaters and fisherman. It was determined that a route through the middle of the channel would provide the safest passage through deepest water with no other known navigational obstructions. Of the seven trap nets Halvorson Fisheries have permitted in the RUA, a maximum of two would be impacted by the proposed location of the "zone of safe passage.")

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

This rule would increase navigational safety and likely expand safe fishing and boating opportunities for the charter fishers and recreational anglers. Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but the rule is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected. No significant economic impacts are expected for commercial fishers. The department is proposing a balanced approach that protects the navigational safety of the recreational fishing and boating public and the economic needs of commercial fishers. Based on public input, there would be a positive economic benefit for some fishing related small businesses, such as charter fishing businesses.

14. Long Range Implications of Implementing the Rule

As noted, this rule would increase navigational safety and likely expand safe fishing and boating opportunities for the charter fishers and recreational anglers.

15. Compare With Approaches Being Used by Federal Government

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There is no existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Superior.

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

Trap nets are not used in Minnesota waters of the Great Lakes. 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). 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 MI DNRE prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron.

17. Contact Name

Peter Stevens, Lake Superior Fisheries Field Unit Supervisor

18. Contact Phone Number

(715) 779-4035 Ext: 12

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but the rule is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The department's main concern is to increase navigational safety and expand safe fishing and boating opportunities. The rule was written to ensure commercial fishers' economic needs were included.

5. Describe the Rule's Enforcement Provisions

The rule will be enforced by department conservation wardens under the authority of chapter 29, Stats., through routine patrols and investigations of citizen complaints.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

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

The statement of scope for this rule, SS 003-12, was approved by the Governor on December 28, 2012, published in Register No. 685 on January 31, 2013, and approved by the Natural Resources Board on February 27, 2013. This rule was approved by the Governor on _____.

Wisconsin Natural Resources Board proposes an order to amend s. NR 25.10 (1) (c), relating to the number, placement, and removal of commercial fishing trap nets in the Restricted Use Area of Lake Superior.

FH-25-12

Analysis Prepared by Department of Natural Resources

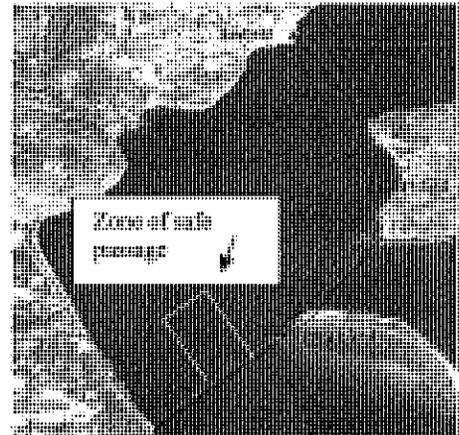
- 1. Statutes interpreted.** Sections 29.014(1), 29.041, and 29.519(1m)(b), Stats.
- 2. Statutory authority.** Sections 29.014(1), 29.041, and 29.519(1m)(b), Stats.
- 3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.** Section 29.014 (1), Stats., directs 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 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, establish species harvest limits, and designate the kind, size and amount of gear to be used in the harvest.

- 4. Related statutes or rules.** Section 30.74(2)(a), Stats., authorizes the department to establish by rule uniform marking of the water areas of this state through the placement of aids to navigation and regulatory markers, including but not limited to fishing buoys.

- 5. Plain language analysis.** This rule will revise ch. NR 25, Wis. Adm. Code, to define the number and placement of trap nets for commercial fishing activity in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeline Island.



SECTION 1 lists three changes. First, commercial fishers are limited to using a single trap net per commercial license in the Restricted Use Area to address concerns about high trap net density in the Area. Second, trap nets are excluded from a “zone of safe passage” within the Restricted Use Area to address safety concerns with recreational boaters and anglers. Third, the Code is clarified to explicitly mandate that nets be rendered inoperable by the close of the special season (August 15) in the Restricted Use Area and be physically removed by or on August 18. This clarifies a recent point of confusion regarding timely removal of trap nets following the season closure in the Restricted Use Area.

6. Summary of and comparison with existing or proposed federal statutes and regulations.

There is no existing or proposed federal regulation that would govern commercial fishing in Wisconsin’s waters of Lake Superior.

7. Comparison with rules in adjacent states.

Trap nets are not used in Minnesota waters of the Great Lakes. The Michigan Department of Natural Resources has the authority to limit trap netting by individual license holders if and when conflicts arise. Pursuant to that authority the MDNR prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron.

8. Summary of factual data and analytical methodologies.

Commercial fishers may currently place trap nets in the Restricted Use Area, described above, for the taking of whitefish or herring from June 1 to August 15. Currently, the only limit on how many nets an individual fisher or all fishers combined may place in this small area is the total number of trap nets allowed per commercial licensee, which is 10, and distance restrictions limiting the proximity of adjacent trap nets. Over the last two years, there have been complaints received from sport/recreational anglers about a proliferation of trap nets within this area.

The primary issues with current trap net placement are navigational safety and user conflict. Nets must be clearly marked according to regulations, but heavy use of this area creates confusion about the exact placement and orientation of individual nets and makes navigation through the area potentially hazardous. Given that the area is the only ingress or egress from Chequamegon Bay and a popular sport fishing and recreational boating corridor, the risks can be significant. Also, in each of the last two seasons, commercial fishers setting nets in this area have experienced acts of vandalism to their nets with repair costs ranging into the thousands of dollars. Out of concern for these issues, the department decided to seek a rule change.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.

The rule addresses the number and placement of trap nets in the Restricted Use Area. There would be no implementation costs for the department.

This rule would increase navigational safety and likely expand safe fishing and boating opportunities for the charter fishers and recreational anglers. Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but the rule is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected. No significant economic impacts are expected for commercial fishers. The department is proposing a balanced approach that protects the navigational safety of the recreational fishing and boating public and the economic needs of commercial fishers. Based on public input received during the

economic impact analysis comment period, there would be a positive economic benefit for some fishing related small businesses, such as charter fishing businesses.

10. Effect on small business.

The proposed rule change would impact state-licensed commercial fishers, charter fishers, and recreational anglers. Minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes. The department conducted an economic impact analysis in August 2013 that is included with the rule documents.

The rule will be enforced by department conservation wardens under the authority of chapter 29, Stats., through routine patrols and investigations of citizen complaints.

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

12. Agency contact person.

Peter Stevens
Department of Natural Resources
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Bayfield WI, 54814
Telephone: (715) 779-4035 Ext: 12
Email: peter.stevens@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission. Comments on this proposed rule were submitted to the agency contact person listed above. The deadline for written comments was November 8, 2013.

SECTION 1. NR 25.10 (1) (c) is amended to read:

NR 25.10 (1) (c) No commercial fishing gear of any kind except by permit issued under sub. (4) for the taking of whitefish and lake herring only from June 1 to August 15 may be used, set, placed or operated in the following waters: the area from the easterly most tip of Houghton Point, section 27, township 49 north, range 4 west, Bayfield county, northerly along the shoreline to the entry to the city of Bayfield marina, then easterly to Point Defroid on Madeline island, section 30, township 50 north, range 3 west, Ashland county, then southerly along the western end of the island to the tip of Grants Point, section 6, township 49 north, range 3 west, Ashland county, then southerly to Chequamegon Point on the western tip of Long island, section 13, township 49 north, range 4 west, Ashland county, thence southwesterly to the eastern tip of Houghton Point, except that float nets as described in s. NR 25.09 (1) (ah) 3. may be fished under the ice only, gill nets of not less than 4 7/16 inch minimum stretch measure may be fished under the ice and not from a boat north of latitude 46° 45' at a minimum depth of 19 fathoms, gill nets of not greater than 1 3/4 inch stretch measure may be fished for smelt and herring

under the ice, but must be at least 1/2 mile from the mouth of any trout stream, and entrapment gear for smelt may be allowed by permit from ice out to May 15. Commercial trap nets operated under permits issued under sub. (4) for the restricted area described in this paragraph, but not including the exception for float nets as described in s. NR 25.09 (1) (ah) 3., shall be limited to a maximum of one per commercial fishing license and may not be set within the following waters: the area from N46° 44.22' W90° 50.22' then southeast to N46° 43.08' W90° 49.44' then southwest to N46° 42.6' W90° 50.10' then northwest to N46°43.74' W90° 50.94' then northeast to N46° 44.22' W90° 50.22'. All commercial fishing gear operated under permits issued under sub. (4) for the restricted area described in this paragraph, but not including the exception for float nets as described in s. NR 25.09 (1) (ah) 3., shall have the fish holding pot portion rendered inoperable after August 15 and shall have the webbing removed from the water on or before August 18.

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)