

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

The Wisconsin Natural Resources Board proposes an order to amend NR 22.02 (2) and to create NR 22.02 (6g) and 22.11 (2m), relating to fishing on the boundary waters of Wisconsin and Iowa.

FH-32-06

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted: Sections 29.014 (1), 29.041 and 29.516, Stats.

2. Statutory Authority: Sections 29.014 (1), 29.041 and 227.11 (2) (a), Stats.

3. Explanation of Agency Authority to Promulgate the Proposed Rules Under the Statutory Authority: Sections 29.014 (1) and 29.041, Stats., grant rule making authority to the department to establish and maintain open and closed seasons for fish and any bag limits, size limits, rest days and conditions governing the taking of fish that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, and provide that the department may regulate fishing on and in all interstate boundary waters and outlying waters. Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

4. Related Rule or Statute: None.

5. Plain Language Rule Analysis: The proposed rule changes the legal size of commercially harvestable shovelnose sturgeon in Wisconsin-Iowa boundary waters from fish 25 inches or more in length, to fish 27 inches or more but less than 34 inches in “fork length”. This rule also defines “fork length” as the distance measured in a straight line from the tip of the snout to the innermost portion of the fork in the tail of a fish. Finally, the rule prohibits the removal of roe from commercial fish while on the water, bank or shore and prohibits cleaning or processing of fish until the fish reach the final processing facility or place of business of the commercial fisher.

6. Summary of and Comparison with Existing or Proposed Federal Regulations: None known.

7. Comparison of Similar Rules in Adjacent States: Iowa is in the process of promulgating similar rules for commercially harvested shovelnose sturgeon in Wisconsin-Iowa boundary waters. There is a 25 inch minimum length limit for shovelnose sturgeon on Wisconsin-Minnesota boundary waters, but shovelnose sturgeon may only be taken by setline in these waters. Illinois and Iowa are developing revised rules for their Mississippi River boundary waters. Illinois currently has no minimum length restriction; proposals for a 24 inch or 27 inch fork length minimum are being discussed for Illinois-Iowa boundary waters. Shovelnose sturgeon are not present in Michigan.

8. Summary of Factual Data and Analytical Methodologies Used in Support of the Rule: This proposal was developed by fisheries and law enforcement staff in Wisconsin and Iowa to address management and enforcement concerns, and is supported by the Directors of Fisheries in both Wisconsin and Iowa. Fishery Analysis Simulation Tools (FAST) modeling programs were used to evaluate the potential impact of the proposed rules on commercial harvest of shovelnose sturgeon in Wisconsin-Iowa boundary waters of the Mississippi River system. Yield per recruit models show that a 27-inch length limit does not appreciably reduce yield over the range of exploitation and the 22-inch fork-length limit is probably reducing the pounds of fish harvested. Spawning potential ratio (SPR) modeling showed that with a 22-inch minimum fork length

size limit SPR falls below the 20% critical level once exploitation exceeds 25% .. If exploitation is truly 40%, which is our best estimate to date, we have an SPR value below 10%. This is alarming and indicates that we are currently in a state of recruitment overfishing and are removing fish faster than they are able to replace themselves. A 24-inch minimum fork length limit would allow for 32% exploitation before falling below the critical level. As with no length limit, a 24-inch limit would have SPR values below 20% if exploitation is truly 40%. Implementing the proposed 27-inch fork length limit would not let the SPR fall below 30% at any level of exploitation. This is directly a function of the fact that the regulation would protect some mature females.

9. Analysis and Documentation Used in Support of the Agency's Determination Under s. 227.114, Stats., (Small Business Impact): In 2005, shovelnose sturgeon comprised less than 0.1% of the commercial fish market in the Mississippi River in Wisconsin, both in terms of total pounds caught and total dollar value. In 2005, shovelnose sturgeon accounted for more than 20% of the total catch of 3 commercial fishermen, but did not exceed more than 15% of the total dollar value of commercial catch for any individual Wisconsin commercial fisher.

10. Effect on Small Business, Including How the Rule Will Be Enforced: This rule is anticipated to cause an initial decline in commercial harvest of shovelnose sturgeon from Wisconsin-Iowa boundary waters, but is not anticipated to nor intended to cause a permanent reduction in total pounds of shovelnose sturgeon harvested from the system. The initial reduction in harvest will impact approximately 3 commercial fishermen whose sale of shovelnose sturgeon accounted for 10-15% of their income, and a fish wholesaler who sells smoked shovelnose sturgeon, accounting for less than 5% of his total business. Sport fishing bag limits and commercial harvest limits on the Wisconsin – Iowa boundary waters are enforced by the Department's conservation wardens, county district attorneys and county circuit courts, through the use of citations and civil or criminal complaints under the provisions of ch. 29, Stats.

11. Agency contact person: Joseph Hennessy – FH/4, Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921; email: Joseph.Hennessy@dnr.state.wi.us; phone: (608) 267-9427.

SECTION 1. NR 22.02 (2) is amended to read:

NR 22.02 (2) "Commercial fish" means species of rough and detrimental fish as defined in this chapter, shovelnose (hackleback) sturgeon ~~25~~ 27 inches and over but less than 34 inches in fork length, catfish 15 inches or over in length or 12 inches or over dressed and bullheads of any length when taken with commercial fishing gear under a commercial fishing license.

SECTION 2. NR 22.02 (6g) is created to read:

NR 22.02 (6g) "Fork length" means that distance measured in a straight line from the tip of the snout to the tip of the median caudal fin rays of a fish.

SECTION 3. NR 22.11 (2m) is created to read:

NR 22.11 (2m) No person may remove roe from a commercial fish while on the water, bank or shore. Commercial fish shall remain intact until the fish reaches the final processing facility or place of business of the commercial fisher.

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

SECTION 5. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2007.

Dated at Madison, Wisconsin, _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)