

Report From Agency

REPORT TO LEGISLATURE

NR 25 , Wis. Adm. Code
Commercial Fishing in Outlying Waters and Affecting Small Business

Natural Resources Board Order No. FH-21-08
Clearinghouse Rule No. 09-016

Basis and Purpose of the Proposed Rule

The rule addresses three issues: the definition of the commercial fishing “license year”, licensing requirements for Great Lakes commercial fishers, and the number of available licenses.

License year. Currently the commercial fishing license year runs from July 1 through June 30 of the next calendar year, corresponding to the State’s fiscal year. For yellow perch commercial fishers on Green Bay, this definition of the license year breaks the normal summer fishing season, which opens on May 20, into 2 parts, complicating business decisions about when to harvest allocated quotas. Yellow perch fishers, supported by the Lake Michigan Commercial Fishing Board, have requested that the license year be changed to correspond with the calendar year.

Licensing requirements. The Department has for the past 30 years implemented a limited entry policy in which minimum harvest (catch) requirements for annual relicensing are used to identify inactive Lake Michigan commercial fishers. On Lake Michigan the minimum catch requirement involves meeting either a fixed minimum catch based on historic harvest records or an alternative computed minimum catch based on harvests by all fishers during a recent 12-month reference period. Some commercial fishers on Lake Michigan have repeatedly objected to these requirements, saying they impose unreasonable expectations on fishers in years of poor fishing. As discussed below, the identification of inactive licensees is needed to prevent Wisconsin from moving towards a property-rights based commercial fishery and to help DNR maintain an economically viable and stable commercial fishery -- minimum catch requirements must be retained unless they can be replaced with other, equally meaningful annual relicensing criteria.

Because commercial harvests generally have been declining, and because some commercial fishers continue to find the current minimum catch requirements to be objectionable we are proposing to modify the alternative computed minimum catch a) by reducing it by one-third and b) by changing the reference period used in the calculation. Because minimum catch requirements are not currently in place for Lake Superior commercial fishers, potentially allowing the relicensing of fishers who are not active, the proposed rule will establish minimum catch standards for relicensing on Lake Superior like those on Lake Michigan.

Number of licenses. Currently there are 10 commercial licenses on Lake Superior and 61 on Lake Michigan. The handling of vacant licenses differs between the 2 lakes. On Lake Superior the number remains constant, so vacant licenses remain available for issuance to new applicants. This offers the possibility that a license holder can drop out of the fishery during bad times, but still hope to re-enter when prospects improve. On Lake Michigan the number of licenses either remains constant or declines every year. Therefore a new applicant must obtain a license by transfer from an existing license holder, because if a license is not reissued or transferred before the end of a fishing year it is extinguished. In order to provide Lake Michigan fishers the same

opportunity that Lake Superior fishers have to re-enter the business after allowing a license to lapse, we are proposing to freeze the number of available Lake Michigan licenses at 65.

Summary of Public Comments

In general, commercial fishers do not support retaining a minimum catch requirement to help identify inactive fishers. Lake Michigan commercial fishers support changing the license year and freezing the number of licenses. The following comments were received in oral or written form:

- 1) The rule is not needed. Existing license holders are working as hard as they can.
Department response: The rationale behind the minimum catch requirement is explained above. The great majority of commercial fishers are active and will not be affected by this rule.
- 2) Lake Superior should be handled differently from Lake Michigan.
Department response: The lakes do differ in significant ways, but the need to have an objective basis for identifying inactive license holders applies equally to both lakes. It is fair to have the same general method and principles apply on both lakes.
- 3) Clarification is needed regarding lake trout harvest limits in Lake Superior during the 18-month transition year.
Department response: We agree, and note that our ability to modify lake trout harvest limits is also constrained by terms of the state/tribal Lake Superior Fishing Agreement 2005-2015. Under the rule as revised, annual lake trout tag allocations will not be changed and will continue to be issued prior to each lake trout open season.
- 4) Complications arising regarding lake trout in Lake Superior could be avoided by keeping the existing license year on Lake Superior, while changing it on Lake Michigan.
Department response: In the interest of consistency we believe the license years for the two lakes should correspond. The complications can be managed.
- 5) On Lake Superior separate minimum catch standards should be established for gill net fishing and trap net fishing.
Department response: The Department recognizes that commercial fishers relying on gill nets have, at least recently, reported lower harvests than those relying on trap nets. We have tried to address this concern in 2 ways. First, the fixed minimum catch requirement has been reduced from 20,000 pounds to 5,000 pounds. Second, the alternate minimum catch has been amended to provide separate standards for gill netter and trap netters, based on separate industry averages for the 2 types of fishing gear.
- 6) The minimum investment requirement is adequate to identify active fishers. One fisher suggested raising the minimum investment requirement to \$50,000 or \$100,000.
Department response: The application of the minimum investment standard has proven to be impractical. It is not possible for Department staff to objectively appraise the value of most depreciated commercial gear, and funds are not available to contract for expert appraisal services.
- 7) It is not right for the DNR to decide who is worthy of holding a license.
Department response: The question is not who is worthy of holding a license, but who is an active participant in the commercial fishery.
- 8) The increased fishing effort that sometimes might be needed to meet the minimum catch requirement could harm the fishery.
Department response: Department biologists do not believe that fishing effort needed to achieve the minimum catch standards proposed here would require enough fishing to harm fishery resources.
- 9) The lake has changed and the minimum catch requirement has outlived its purpose.

Department response: We agree the lakes and the fisheries have changed substantially, but the principles and legal requirements underlying the need for objective standards for identifying inactive fishers have not changed.

Modifications Made

Changes in response to hearing comments:

- The fixed minimum catch requirement for Lake Superior commercial fishers was reduced from 20,000 pounds to 5,000 pounds.
- The alternative minimum catch requirement for Lake Superior commercial fishers was changed from 20 times the average daily harvest by all fishers using any gear to the lesser of a) 20 times the average daily harvest taken by gill nets or b) 20 times the average daily harvest taken by trap nets.
- To clarify the issuance of lake trout tags, we have remove any language that would affect the timing or number of tags issued. Tags will continue to be issued at the start of each lake trout open season, and in the same numbers as before. Also, the proposal to temporarily double lake trout quotas during the 18-month transition license year (with other conditions applying) was removed from the rule. These changes assure continued compliance with the 2005 State-Tribal Lake Superior Agreement without penalizing or inconveniencing fishers during the transition license year.

Housekeeping changes:

- Harvest periods defined for the northern chub fishing zone in Lake Michigan are realigned to correspond to the new calendar-year-based fishing year.
- Provisions of Chapter NR 25 dealing with fleet reporting, that had been added recently by a separate rule, were modified to cite the minimum catch requirements established for Lake Superior by this rule.
- Other non-substantive editorial changes were also made.

Appearances at the Public Hearing

March 18, 2009 Ashland

In support: - none

In opposition:

Jeff Bodin, Box 687, Bayfield, WI 54814
David Johnson, 80750 Falls Spur Rd., Port Wing, WI 54865
Chris Johnson, Box 123, Port Wing, WI 54865
Dean Halvorson, 36240 CTY J, Bayfield, WI 54814
Maurine Halvorson, 36240 CTY J, Bayfield, WI 54814
Mark Halvorson, 88395 Huron St., Cornucopia, WI 54827
Cliff Halvorson, 31850 State Hwy 13, Bayfield, WI 54814
Eric E. Johnson, Box 35, Port Wing, WI 54865

As Interest May Appear: - none

March 20, 2009 Cleveland

In support:

Mark Nelson, N5067 Cty S, Plymouth, WI 53073
Richard Becker, 8633 Hwy 42, Two Rivers, WI 54241

In opposition: - none

As Interest May Appear:

Daniel Anderson, 5405 South 23rd, Milwaukee, WI 53221
Mark R. Maricque, 628 Floral Dr., Green Bay, WI 54301

Changes to Rule Analysis and Fiscal Estimate

Modifications were made to the Rule Analysis reflect the modifications made to the proposed rule as a result of public comments and housekeeping changes (see above), and to incorporate changes called for by Clearinghouse comments. The Fiscal Estimate remains the same.

Response to Legislative Council Rules Clearinghouse Report

Clearinghouse comments 5. a., b. and c. have been accepted by the Department and the rule has been revised accordingly. The Department also accepts Comment 5. d., relating to the use of 5 different terms to mean “harvest limit”, but will defer implementation to a future “housekeeping” rule because the 5 terms are all defined in ch. NR 25 already, and the comment potentially affects a number of provisions of ch. NR 25 that are not in Clearinghouse Rule 09-016. In Comment 5. e., the Clearinghouse asked whether the language of s. NR 25.03 (1) (b) 3., and (2) (b) 3. accurately reflects the Department’s intent or needs to be clarified. The cited language has been part of ch. NR 25 for 10 years, reflects the Department’s intent, and does not require clarification.

Final Regulatory Flexibility Analysis

The proposed rule will affected licensed commercial fishers operating on Wisconsin’s outlying waters (Lake Superior and Lake Michigan). The rule does not have a significant adverse economic impact on a substantial number of small businesses. Lake Michigan commercial fishing license holders will find re-licensing requirements to be less burdensome. Lake Superior commercial fishing license holders will have additional re-licensing requirements, although the intent is not to affect any license holders who are currently active.

- a. Describe the type of small business that will be affected by the rule.** Commercial fishing businesses will be affected.
- b. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule.** None.
- c. Describe the type of professional skills necessary for compliance with the rule.** None.