

Report From Agency

REPORT TO LEGISLATURE

NR 25, Wis. Adm. Code

Board Order No. FH-25-12
Clearinghouse Rule No. CR13-082

Basis and Purpose of the Proposed 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, 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. The rule 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 "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.

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.

Summary of Public Comments

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.

Modifications Made

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.

Appearances at the Public Hearing

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.

Changes to Rule Analysis and Fiscal Estimate

No change was made to the rule analysis or fiscal estimate during the rule development process. 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 EIA form)

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

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."

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on clarity, grammar, punctuation, and use of plain language. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

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.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.

