

**NATURAL RESOURCES BOARD AGENDA ITEM**

**SUBJECT:** Request authorization to hold public hearings on Board Order FH-17-09, revisions to NR 21 and 22, Wis. Adm. Code, pertaining to Wis/Minn Boundary Waters Commercial Fishing Rules & Defintions.

**FOR:** APRIL 2010 BOARD MEETING

**TO BE PRESENTED BY:** Thomas Van Haren/Steve Dewald

**SUMMARY:**

This rule creates descriptions/definitions of several types of commercial fishing nets currently referred to in Chapters NR 21 and 22, Wis. Adm. Code and Ch. 29, Stats., but which are not defined in either statute or code. Without clear specifications for each of these nets and how they may be used, it is feasible that a person could construct and use just about any type or design of net or trap they desire and claim it is a bait net, buffalo net, frame or fyke net, slat net or basket trap. These traditional types of nets have been in operation for many years and the department would like to define them specifically in code while there are still wardens and commercial fishers that know what they are and how they are to be used. This way there can be no question about what is and is not a legal net.

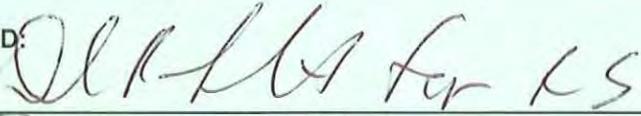
Commercial fisherman, fisheries and law enforcement staff have had to deal with inconsistent commercial fishing regulations on the Mississippi river for many years. The same commercial fishers may be fishing on both the Wisconsin-Iowa and the Wisconsin-Minnesota boundary waters, but must follow different rules depending on what portion of the river the person is fishing. In addition to defining certain currently used commercial fishing gear, this rule also provides clarification of several other existing definitions and provide more consistency and clarification of the commercial fishing rules within and between chapters NR 21 and 22, Wis. Adm. Code. The current rules found in NR21 regarding commercial fishing on the Wis/Minn. boundary waters were updated a number of years ago to provide better protection of game fish. This rule order will apply many of those rules to the Wisconsin-Iowa boundary waters under NR22. This effort will also provide additional consistency with the Iowa commercial fishing rules.

**RECOMMENDATION:** Authorize public hearings on Board Order FH-17-09, revisions to NR 21 and 22, Wis. Adm. Code, pertaining to Wis/MN Boundary Waters Commercial Fishing Rules & Defintions.

**LIST OF ATTACHED MATERIALS:**

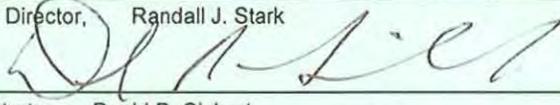
- |    |                                     |   |     |                                     |          |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/>            | Fiscal Estimate Required                              | 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:**

  
Bureau Director, Randall J. Stark

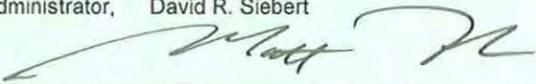
Date

3/23/10

  
Administrator, David R. Siebert

Date

3/23/10

  
Secretary, Matt Frank

Date

4-7-10

- cc: Laurie J. Ross - AD/8
- David Siebert - AD/8
- Mike Lutz - LS/8
- Pete Flaherty - LS/8
- Linda Haddix - LS/8

- Randy Stark - LE/8
- Karl Brooks - LE/8
- Steve Dewald - LE/LaCrosse Service Cntr
- Mike Staggs - FH/4
- Tom Van Haren - LE/8

Regional LE Supervisors - LE/8 (5)

## CORRESPONDENCE/MEMORANDUM

DATE: March 22, 2010

TO: Natural Resources Board

FROM: Matt Frank, Secretary 

SUBJECT: Request for authorization for public hearing on FH-17-09, to define and clarify certain aspects of the commercial fishing rules on the Wisconsin-Minnesota and Wisconsin-Iowa boundary waters.

**1. Purpose of the proposed rule**

The primary purposes of the proposed rule is to create descriptions/definitions of several types of commercial fishing nets currently referred to in Chapters NR 21 and 22, Wis. Adm. Code and Ch. 29, Stats., but which are not defined in either statute or code. Without clear specifications for each of these nets and how they may be used, it is feasible that a person could construct and use just about any type or design of net or trap they desire and claim it is a bait net, buffalo net, frame or fyke net, slat net or basket trap. These traditional types of nets have been in operation for many years and the department would like to define them specifically in code while there are still wardens and commercial fishers who know what they are. This way there can be no question about what is and is not a legal fishing net.

The importance of this issue will continue to increase as the commercialization of Mississippi River sturgeon for caviar continues to increase in Wisconsin waters of the Mississippi river. We expect heavy pressure on this resource in future years as sturgeon populations continue to collapse in states to the south that are heavily fished now.

Commercial fishers and DNR fisheries and law enforcement staff have also had to deal with inconsistent commercial fishing regulations on the Mississippi river. The same commercial fishers may be fishing on both the Wisconsin-Iowa and the Wisconsin-Minnesota boundary waters, but currently must follow different rules depending on what portion of the river the person is fishing. In addition to defining certain currently legal commercial fishing gear, this rule will also provide clarification of several other existing definitions and provide more consistency and clarification of the commercial fishing rules within and between chs. NR 21 and 22, Wis. Adm. Code. The current rules found in ch. NR 21 have closed numerous legal loopholes and have provided better protection of game fish. This order will adopt the same or similar rules in ch. NR 22 as those found in ch. NR 21. This order is also part of an effort to update and coordinate Wisconsin-Iowa commercial fishing rules with the Iowa DNR.

**2. Summary of the rule**

SECTIONS 1, 2, 3 and 30 of the order amend cross references found in ch. NR 20 to definitions that have been renumbered by this rule or which were incorrect.

SECTION 4 repeals and recreates the definition section in ch. NR 21. There are 8 new definitions added to this section, including bait net, buffalo net, frame net or fyke net, hoop net, lead, detrimental species, slat net or basket trap and trammel nets. Five existing definitions are revised and all others are retained but have been renumbered. Unnecessary statutory references placed in parenthesis after some definitions were removed.

SECTIONS 5 and 6 of the order correct cross references in ch. NR 21 to definitions that have been renumbered by this rule or which were incorrect.

SECTIONS 7 and 19 clarify in both ch. NR 21 and ch. NR 22 that live carp taken for use as bait may not be transported away from any waters of the state unless specifically authorized. Such movement of live fish has been prohibited under s. NR 19.05 effective November 2, 2007 as a result of new rules meant to reduce the risk of the spread of Viral Hemorrhagic Septicemia (VHS) in fish.

SECTION 8 and 20 clarify in both ch. NR 21 and ch. NR 22 that a licensed commercial fisher and their agents are restricted to commercial fishing only within the state boundaries of the state they are licensed under.

SECTIONS 9, 10, 11, 21, 22 and 26 clarify in both ch. NR 21 and ch. NR 22 that each person who is required to hold a commercial fishing license must be present at all times when any of his or her nets or setlines are set, placed, tended or operated, while still allowing the licensee to move commercial fish by boat or on the ice and to load commercial fish into trucks at a boat landing while the crew continues to load fish at the net. These sections also provide that a commercial fishing licensee's fish helpers or crew members do not need to also hold a commercial fishing license when only assisting a licensed commercial fisher, but that the commercial fisher must notify the department of the names of all such helpers or crew members.

SECTIONS 12 and 24 repeal unnecessary references to the cost for tags issued for commercial fishing nets. These fees are established under ss. 29.523 and 29.563 (7) (c), Stats. SECTION 12 also clarifies that it is not legal to remove roe from a commercial fish while on the water, ice or shore, and that commercial fish shall remain intact until the fish reaches the final processing facility or place of business of the commercial fisher. This new language created in ch. NR 21 is consistent with the current rule language found in s. NR 22.11(2m).

SECTIONS 13 and 28 clarify that either any small game or a fishing license is a valid approval for taking turtles. This change is consistent with a recent change made to s. NR 19.275 (3) (a) under clearinghouse rule CR 09-018 and which took effect March 1, 2010

SECTIONS 14 and 29 clarify that a person taking of turtles on the Wisconsin-Minnesota and Wisconsin-Iowa boundary waters shall comply with the regulations of the state in whose territorial waters they are taking the turtles.

SECTION 15 of the order repeals and recreates the definition section in ch. NR 22. There are 16 new definitions added to this section, including bait net, bank pole, buffalo net, detrimental fish, drive set, drift set, frame net or fyke net, gill net, hoop net, lead, seine, seine haul, setline, slat net or basket trap and trammel nets. Two existing definitions are revised and all others are retained but have been renumbered.

SECTION 16 makes the s. NR 22.05 (1) language consistent with the language found under ch. NR 21, regarding the ability to sell or barter rough fish under one's control or possession if lawfully taken during the open season by hook and line, spear or bow and arrow.

SECTION 17 clarifies in ch. NR 22 that fishing within 200 feet of any fishway, lock or dam by any means other than hook and line is not legal. This is consistent with the restrictions found in ss. NR 20.05 (3) and 21.065.

SECTION 18 clarifies that set or bank poles are not commercial gear on the Wisconsin-Iowa boundary waters and that the same rules apply to their use on the Wisconsin portion of this water as apply to their use on non-boundary inland waters.

SECTION 23 makes a number of revisions to ss. NR 22.11 and 22.12 so that the language in these sections is more consistent with current s. NR 21.11.

SECTION 25 removes reference to tortoises and simply refers to these animals as turtles.

For consistency, SECTION 26 creates several new restrictions in s. NR 22.11 that currently apply to commercial fishing on the Mississippi river in the Wisconsin-Minnesota boundary waters in s. NR 21.11, but not to commercial fishing on the Mississippi river in the Wisconsin/Iowa boundary waters under ch. NR 22.

SECTION 27 amends s. NR 22.12 commercial fishing gear restrictions to make them more consistent with the commercial gear restrictions found in ch. NR 21. These new restrictions will provide for more consistency in the commercial fishing rules up and down the Mississippi river, as well as provide additional opportunity to use commercial fishing nets on this water.

### **3. How does this proposal affect existing policy?**

The proposed rule is consistent with existing policy regarding commercial fishing on the Wisconsin portion of the Mississippi river where it forms a boundary with Minnesota.

The USFW Service is also considering closing commercial harvest of shovelnose sturgeon on all of the Missouri River and on the Mississippi River from St. Louis downstream to the Gulf of Mexico. This is being done because of the shovelnose sturgeon "similarity of appearance" to endangered pallid sturgeon. If and when this takes place we can expect to see a significant increase in pressure on our Wisconsin shovelnose sturgeon to replace the lost source of caviar downstream. Therefore, the updates and clarifications being considered to the chs. NR 21 and 22 commercial fishing rules are even more important now, so that we have enforceable rules in place before we see any increase in harvest pressure.

### **4. Has Board dealt with these issues before?**

A similar rule package was adopted in the mid-1990's for ch. NR 21.

### **5. Who will be impacted by the proposed rule? How?**

The proposed rules will have minimal impact, if any, on the general public. Commercial fishers who currently hold or who may in the future hold a commercial net license for commercial fishing on the Wisconsin waters of the Mississippi river are those who will be primarily affected by this rule.

The proposed revisions should improve the commercial fishers ability to understand and comply with chs. NR 21 and 22, Wis. Adm. Code, and those sections of ch. 29, Wis. Stats., dealing with commercial fishing net licenses. There will also be more consistency in the commercial fishing rules throughout the Wisconsin waters of the Mississippi river and clarification of what types of nets are authorized to be used under commercial fishing net licenses. Some of the proposed changes were requested by commercial fishers during informal meetings held with them during drafting of this language.

### **6. Information on environmental analysis, if needed.**

This is a Type III action under ch. NR 150, Wis. Adm. Code, therefore no Environmental Assessment is required.

**7. Small business analysis.**

The proposed rule is not expected to have a significant adverse effect on a substantial number of small businesses and may have favorable effects on a number of businesses by correcting and clarifying existing rules.

**A. 1. Describe the compliance and/or reporting requirements imposed on small business.**

The only new compliance or reporting requirement created by the proposed rule will only apply to a commercial fisher who uses fish helpers or crew members. This requirement is part of an exception created to clarify that commercial fish helpers or crew members working under the supervision of a licensed commercial fisher do not also need to hold a commercial fishing license. As part of this exception, this rule does require the licensed commercial fisher to notify the department of the name and address of their helpers and crew members before they engage in the commercial fishing activities.

**2. Can these compliance and/or reporting requirements be made less stringent for small business?**

No. The reporting only requires the licensee to provide the name and address of crew member and helpers and allows the licensee to submit this information in the manner most convenient to them, such as with their license application or at any time after they obtain their license, such as including names and addresses for any new crew members or helpers along with their already required monthly commercial fishing report.

**B. 1. Describe the schedules or deadlines for compliance or reporting imposed on small business.**

The only deadline prescribed is that the commercial fisher must report the names and addresses of any person that will be assisting them as a fish helper or crew member before they begin to provide such assistance. If the commercial fisher does not use have a crew or fish helpers, they are not required to provide this information.

**2. Can these schedules or deadlines be made less stringent for small business? No.**

**C. Can the compliance or reporting requirements for small business be consolidated or simplified?**

The requirement to report names and address of crew members or fish helpers allows the commercial fisher to simply provide the list of names and addresses, if any, along with the application they submit for their license, or along with any of their monthly catch reports.

**D. Can performance standards be established for small businesses in lieu of design or operational standards? Not applicable.**

**E. Can small business be exempted from any or all requirements of the rule? No.**

**F. Initial Regulatory Flexibility Analysis:**

**1. Describe the type of small business that will be affected by the rule.**

Small businesses that may be affected by the proposed rule are commercial fishers who currently hold or who may in the future hold a net license for commercial fishing on the Wisconsin waters of the Mississippi river.

**2. Explain the reporting, bookkeeping and other procedures required for compliance with the rule.**

Requires the licensed commercial fisher to notify the department of the name and address of their helpers and crew members before they engage in the commercial fishing activities.

**3. Describe the type of professional skills necessary for compliance with the rule.**

No new professional skills are needed to comply with the proposed rule.

### Fiscal Estimate — 2009 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated  <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number  Bill Number	Amendment Number if Applicable  Administrative Rule Number FH-17-09
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**Subject**

Revisions to chs. NR 21 and 22 , Commercial Fishing on Wisconsin/Iowa and Wisconsin/ Minnesota boundary 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**

**Rule Summary:** The proposed rule creates several new definitions to define nets that are authorized for use in commercial fishing in Ch. 29, Wis. Stats., and in chs. NR 21 and 22, Wis. Adm. Code. These are not new types of nets, but are nets that have been licensed and legal to use for many years but simply never defined like other commercial nets have been defined.

This proposal will also correct a number of inconsistencies between NR 21 and NR 22 so that the rules which apply to commercial fishers on the Wisconsin waters of the Mississippi river will be more consistent.

This rule would allow the use of up to 12 setlines instead of only 8 setlines on the Wisconsin-Iowa boundary waters. This change would require the department to issue 4 additional setline tags to commercial anglers operating set lines on this part of the river. These tags cost the person 25 cents per tag at the time the purchase their setline license. The tags cost the department about 18.5 cents each to purchase. The increased cost to commercial fisherman requesting the additional 4 tags would be a total of \$1 per license holder. There were 135 setline licenses issued for use on the waters of the Mississippi river in 2009. It is likely that not more than half of these licensees fish on the Wisconsin-Iowa boundary waters and that the other half fish on the Wisconsin-Minnesota boundary waters. However, since the license holders would all be allowed to fish on the Wisconsin-Iowa boundary waters, this would mean a potential of approximately 135 individuals who might request the 4 additional setline tags. The department would expect some additional cost to mail the additional 4 metal tags to the licensee. This cost can likely be absorbed by the additional 26 cents (6.5 cents per tag over the DNR cost to purchase the tags) generated by the issuance of the tags.

135 Mississippi River Setline licenses X 4 additional Setline Tags X \$0.185/tag = \$99.90 additional cost to DNR for the tags.

135 Mississippi River Setline licenses X 4 additional Setline Tags X \$0.25/tag = \$135.00 additional revenue to DNR for the tags.

The increased potential revenue (\$135) minus cost for DNR to purchase the tags (\$99.90) = \$35.10 net increase in revenue

These would likely also be increased cost to the DNR to mail tags to the license applicants.

**Long-Range Fiscal Implications**

None anticipated.

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	00/12/010 3-22-10

### Fiscal Estimate Worksheet — 2009 Session

Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-17-09

**Subject**

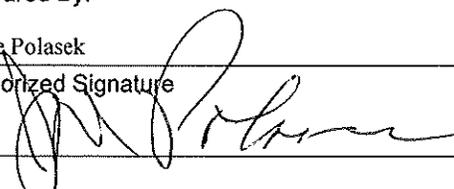
Revisions to chs. NR 21 and 22 , Commercial Fishing on Wisconsin/Iowa and Wisconsin/ Minnesota boundary waters.

**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:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( FTE )	( FTE )
State Operations — Other Costs	35	-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>Total State Costs by Category</b>	<b>\$</b>	<b>\$ -</b>
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S	100	-
State Revenues <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>Total State Revenues</b>	<b>\$ 135</b>	<b>\$ -</b>

**Net Annualized Fiscal Impact**

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ 135	\$
Net Change in Revenues	\$ 135	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 03/22/2010

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

The Wisconsin Natural Resources Board proposes to repeal NR 22.11 (13); to amend NR 20.08 (6) (b), 20.12 (2) (b), 20.40 (1), 21.03, 21.07, 21.09, 21.10, 21.11 (1) (intro.) and (b), 21.13 (3) (a), 21.17, 22.05 (1), 22.09, 22.10, 22.11 (1), (2), (2m), (6) to (10), (12) and (18), 22.12, 22.13 (3) (a), 22.16 and 24.02 (11) and (13); to repeal and recreate NR 21.02, 21.11 (1) (L) and 22.02; and to create NR 21.11 (1) (intro.) Note, 22.065, 22.066 and 22.11 (2) Note and (19) to (25), relating to commercial fishing on the Mississippi river boundary waters of Wisconsin and affecting small business.

**FH-17-09**

**Analysis Prepared by Department of Natural Resources**

**1. Statutes interpreted.** Sections 29.014, 29.024, 29.041, 29.523, 29.526, 29.529, 29.531 and 29.533 Stats.

**2. Statutory authority.** Sections 23.11 (1), 29.014 (1), 29.041, 29.523, 29.526, 29.529, 29.531, 29.533 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 29.041, Stats., authorizes the department to regulate hunting and fishing on and in all interstate boundary waters, and outlying waters.

Section 29.523, Stats., authorizes residents to use certain nets to take commercial fish on the Mississippi River.

Section 29.526, Stats., authorizes residents holding the appropriate license to take commercial fish with the use of slat nets in that part of the Mississippi River over which this state has jurisdiction.

Section 29.529, Stats., authorizes residents holding the appropriate license to take commercial fish with the use of trammel nets in that part of the Mississippi River over which this state has jurisdiction.

Section 29.531, Stats., authorizing residents holding the appropriate license to take rough fish, catfish and turtles with a set or bank pole on waters of the state where this type of gear is authorized.

Section 29.533, Stats., authorizing residents holding the appropriate license to take rough fish, catfish and turtles on certain inland waters, and to additionally take commercial fish on the Wisconsin/Iowa and Wisconsin/Minnesota boundary waters located in Wisconsin.

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.**

29.522	Descriptions of nets.	29.971	General penalty provisions.
29.535	Shovelnose sturgeon harvest permits	29.973	Commercial fish reporting system.
29.539	Sale of game or fish.	29.984	Commercial fish protection surcharge.
29.563	Fee schedule.	29.99	Great Lakes resource surcharge.
29.924	Investigations; searches.	29.991	Fishing net removal surcharge.
29.931	Seizures.		

**5. Plain language analysis of the proposed rule.**

SECTIONS 1, 2, 3 and 30 of the order amend cross references found in ch. NR 20 to definitions that have been renumbered by this rule or which were incorrect.

SECTION 4 repeals and recreates the definition section in ch. NR 21. There are 8 new definitions added to this section, including bait net, buffalo net, frame net or fyke net, hoop net, lead, detrimental species, slat net or basket trap and trammel nets. Five existing definitions are revised and all others are retained but have been renumbered. Unnecessary statutory references placed in parenthesis after some definitions were removed.

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SECTIONS 12 and 24 repeal unnecessary references to the cost for tags issued for commercial fishing nets. These fees are established under ss. 29.523 and 29.563 (7) (c), Stats. SECTION 12 also clarifies that it is not legal to remove roe from a commercial fish while on the water, ice or shore, and that commercial fish shall remain intact until the fish reaches the final processing facility or place of business of the commercial fisher. This new language created in ch. NR 21 is consistent with the current rule language found in s. NR 22.11(2m).

SECTIONS 13 and 28 clarify that either any small game or a fishing license is a valid approval for taking turtles. This change is consistent with a recent change made to s. NR 19.275 (3) (a) under clearinghouse rule CR 09-018 and which took effect March 1, 2010

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SECTION 25 removes reference to tortoises and simply refers to these animals as turtles.

For consistency, SECTION 26 creates several new restrictions in s. NR 22.11 that currently apply to commercial fishing on the Mississippi river in the Wisconsin-Minnesota boundary waters in s. NR 21.11, but not to commercial fishing on the Mississippi river in the Wisconsin/Iowa boundary waters under ch. NR 22.

SECTION 27 amends s. NR 22.12 commercial fishing gear restrictions to make them more consistent with the commercial gear restrictions found in ch. NR 21. These new restrictions will provide for more consistency in the commercial fishing rules up and down the Mississippi river, as well as provide additional opportunity to use commercial fishing nets on this water.

**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 fishing in Wisconsin's boundary waters with Minnesota or Iowa.

**7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan).**

Michigan does not border the Mississippi river and therefore the chs. NR 21 and 22 commercial fishing regulations are not applicable there. The central issues in this rule proposal relate to establishing definitions of existing net types authorized by statute and code, and create more consistency between the commercial fishing rules on the Mississippi river.

Iowa – Iowa laws do not allow commercial gear to block more than one-half of a channel if less than 3 feet of water is over the net, requires commercial turtle harvesters and fish helpers to be licensed and that the commercial fisher to be present any time a net is raised. Iowa prohibits commercial gear within 900 feet of a lock and dam or 300 feet of the mouth of a tributary stream. Iowa recently limited the number of setline hooks to 200.

Minnesota – Minnesota does not currently allow any hoop nets or trammel nets, prohibits shovelnose sturgeon harvest with any gear, prohibits sturgeon roe harvest, has net and setline marking similar to Wisconsin, limits the number of commercial licenses, limits the number of hooks on setlines to 400, and prohibits use of commercial gear within 900 feet of a lock and dam. Seine harvest of catfish is limited to 100 pounds per day consistent with Wisconsin-Minnesota boundary rules in Wisconsin. Minnesota requires a license for helpers.

**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.**

This rule was not based on a technical analysis of data. It was developed in consultation with commercial fishers to address concerns regarding the lack of legal descriptions of what the varieties of nets are and inconsistency between the rules that apply to the same Wisconsin commercial fisher depending on if he or she is fishing in the waters between Wisconsin and Iowa or the waters between Wisconsin and Minnesota.

**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.**

Small businesses engaged in commercial fishing 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 will benefit commercial fishers on the Mississippi river by providing clear descriptions of the nets that their licenses authorize them to use on this water and not leaving the types of nets open for a variety of interpretations. This rule will also benefit commercial fishers by creating more consistency in the rules regardless of which part of the river in Wisconsin they are fishing. The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, record audits of commercial fishers and follow up investigations of citizen complaints. Liberalization of some of the commercial fishing rules will also benefit commercial fishers such as the higher number of hooks on setlines allowed with these changes.

**11. Agency contact person (including e-mail and telephone number).**

Thomas Van Haren, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7971, (608) 266-3244, [Thomas.VanHaren@wi.gov](mailto:Thomas.VanHaren@wi.gov) or Steven Dewald (608) 267-2452, [Steven.Dewald@wi.gov](mailto:Steven.Dewald@wi.gov)

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

Comments can be submitted by U.S. mail to the contact and address above. In addition, comments can be submitted during the public comment period using the Internet at <http://adminrules.wisconsin.gov>. The comment period will begin upon publication of the public hearing notice and will continue until     [to be determined]    , 2010.

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**SECTION 1. NR 20.08 (6) (b) is amended to read:**

NR 20.08 (6) (b) Live fish or live fish eggs obtained in Minnesota or Iowa and used as bait in or on waters of the Mississippi River lying between the Chicago, Milwaukee, St. Paul and Pacific railroad tracks on the Iowa or Minnesota side of the river, and the Burlington Northern and Santa Fe railroad tracks lying on the Wisconsin side of the river, including all sloughs and backwaters, bays and newly extended water areas connected with the main channel of the Mississippi River by a channel which is navigable when the waters are approximately equal to the normal pool elevation as created by the U.S. army corps of engineers and in the waters of Lake St. Croix, and the St. Croix River and the St. Louis River as defined in ~~s. NR 21.02 (16)~~ s. NR 21.02 (39).

**SECTION 2. NR 20.12 (2) (b) is amended to read:**

NR 20.12 (2) (b) Use, set, lift, attend or possess more than one setline while on the waters of this state except as provided in ~~ss. NR 21.11 (1) (a)~~ ss. NR 21.11 (4) (d) and 22.12 (1).

**SECTION 3. NR 20.40 (1) is amended to read:**

NR 20.40 (1) APPLICABILITY. This section applies to fishing tournaments on lakes, rivers, the Great Lakes, Wisconsin-Minnesota boundary waters as defined in ~~s. NR 21.02 (16)~~ s. NR 21.02 (39), Wisconsin-Iowa boundary waters as defined in ~~s. NR 22.02 (14)~~ s. NR 22.02 (34) and Wisconsin-Michigan boundary waters as defined in s. NR 23.02 (10).

**SECTION 4. NR 21.02 is repealed and recreated to read:**

NR 21.02 Definitions. Except as otherwise specifically defined in the statutes, the following terms, for the purposes of this chapter, are defined as follows:

- (1) "Bait net" has the meaning given in s. NR 22.02 (1).
- (2) "Buffalo net" has the meaning given in s. NR 22.02 (2).
- (3) "Closed season" means that period of the year not included in the open season for each species of fish as provided in this chapter.

(4) "Commercial fish" means rough and detrimental fish as defined by this chapter, shovelnose (hackleback) sturgeon 25 inches long or longer only when taken on setlines, catfish 15 inches long or longer or 12 inches long or longer dressed and bullheads of any length when taken with commercial fishing gear and all taken while fishing under a commercial fishing license on the Mississippi river.

(5) "Commercial fishing gear" or "commercial gear" is that equipment specifically authorized for use in commercial fishing by this chapter.

(6) "Commercial fishing licenses" means those licenses issued pursuant to ss. 29.523 and 29.533, Stats.

(7) "Constant net attendance" means the continuous presence of a commercial fisher who remains on the water or ice within sight of his or her nets at all times without the aid of vision magnifying devices such as binoculars or spotting telescopes, except that after a net has been drawn, a licensed commercial fisher may temporarily leave the net to transport fish taken from the net to a landing.

(8) "Daily bag limit" has the meaning given in s. NR 20.03 (8) for fish and for turtles means the maximum number specified by rule of a turtle species which may be reduced to a person's possession in a single day.

(9) "Dead set gill net" means a gill net that is set and allowed to catch fish without being moved and without constant net attendance by the operator.

(10) "Detrimental fish" means all species of Asian carp, including but not limited to bighead, silver, grass and black carp.

(11) "Dressed fish" means a fish with the head and viscera removed but the tail on.

(12) "Drift net" means a net of any type that is not staked or anchored at one or both ends and is free to drift or move under the influence of wind or water current, whether or not the net has constant net attendance.

(13) "Drive netting" means a method of operating a net so that the operator is in constant net attendance and uses boats, motors, oars, plungers or other devices to create sound or vibrations in the water so as to chase, move or drive fish in the direction of the net.

(14) "Drive set gill net" means a gill net that is operated without being moved and has constant net attendance.

(15) "Frame net" or "fyke net" has the meaning given in s. NR 22.02 (15).

(16) "Fisher" means any person engaged in fishing.

(17) "Gill net" has the meaning found in s. 29.522, Stats.

(18) "Hooking" means, as used in s. NR 21.13, any activity which utilizes a dull-pointed, metal, barbless hook attached to a staff to remove a turtle from a body of water.

(19) "Hoop net" has the meaning given in s. NR 22.02 (18).

(20) "Lead" has the meaning given in s. NR 22.02 (19).

(21) "Length" for the purposes of measuring a fish, unless otherwise specified, means the distance measured in a straight line from the tip of the snout to the outermost end of the tail with the tail or caudal fin fully extended.

(22) "Lower pool 7" means that part of the Mississippi river bounded on the north by an imaginary line at a compass bearing of 65 1/2 degrees from river mile marker 709.5 to the north end of the Burlington Northern and Santa Fe main railroad track bridge that crosses the Black river; on the east by the Burlington Northern and Santa Fe main railroad tracks; on the south by the U.S. army corps of engineers lock and dam 7 dike; and on the west by the state line boundary between Wisconsin and Minnesota.

(23) "Lower pool 8" means that part of the Mississippi river bounded on the north by state highway 16; on the east by the Burlington Northern and Santa Fe main railroad tracks; on the south by the U.S. army corps of engineers lock and dam 8 dike; and on the west by the state line boundary between Wisconsin and Minnesota.

(24) "Minnows" are all species defined as such in s. 29.001, Stats., and bullheads not exceeding 4 inches in length.

(25) "Mississippi river" means all waters lying between the Chicago, Milwaukee, St. Paul and Pacific railroad tracks on the Minnesota side of the river, and the Burlington Northern and Santa Fe railroad tracks lying on the Wisconsin side of the river. Mississippi river includes Lake Onalaska and Lake Pepin.

(26) "Possession limit" has the meaning given in s. NR 20.03 (31) for fish, except in s. NR 21.13 where "possession limit" means the maximum number of a turtle species or group of turtle species set in s. NR 21.13 which may be possessed by a person at any time.

(27) Rough fish are all species defined as such in s. 29.001, Stats., and detrimental fish including amur carp which is also known as grass carp (*Ctenopharyngodon idella*).

(28) "Seine" has the meaning found in s. 29.522 (3), Stats.

(29) "Seine haul" means a single setting, retrieval and emptying of a seine, including placement of the net, driving fish in the direction of the net, drawing or lifting the net, or both, to entrap fish by retrieving one or both ends of the net, bagging the fish in the net, sorting and removal of the game fish in the net and removal of all fish from the net. A single seine haul may take more than one day to complete from the time the net is set until all fish have been removed from the net.

(30) "Setline" has the meaning given in s. NR 20.01 (36) and are also known as a trotline.

(31) "Slat net" or "basket trap" has the meaning given in s. NR 22.02 (28).

(32) "Sport fishing" or "angling" is any fishing, including the methods commonly known as hook and line fishing or angling, which is conducted without a commercial fishing license and with other than commercial fishing gear, but does not include the taking of turtles.

(33) "Stretch measure" is the extension measure of net mesh size whenever the size of mesh of a net is specified. Stretch measure shall mean the distance between the extreme angles of any single mesh with the mesh fully stretched.

(34) "Supervisor" means any department employee assigned or designated to oversee fishing activities conducted under this chapter.

(35) "Trammel net" has the meaning found in s. 29.522 (2) (a), Stats.

(36) "Turtle", as used in this chapter, means a reptile having horny, toothless jaws and a body enclosed in a bony or leathery shell into which the head, limbs and tail may be partially or fully withdrawn, and includes parts of turtles and turtle eggs.

(37) "Upper pool 7" means that part of the Mississippi river bounded on the north by the U.S. army corps of engineers lock and dam 6 dike; on the east by the Burlington Northern and Santa Fe main railroad tracks; on the south by an imaginary line at a compass bearing of 65 1/2 degrees from river mile marker 709.5 to the north end of the Burlington Northern and Santa Fe main railroad track bridge that crosses the Black river; and on the west by the state line boundary between Wisconsin and Minnesota.

(38) "Upper pool 8" means that part of the Mississippi river bounded on the north by the U.S. army corps of engineers lock and dam 7 dike, on the east by the Burlington Northern and Santa Fe main railroad tracks, on the south by state highway 16, and on the west by the state line boundary between Wisconsin and Minnesota.

(39) "Wisconsin-Minnesota boundary waters" for sport fishing purposes, means all waters of the Mississippi river, Lake St. Croix, the St. Croix river from the Burlington Northern and Santa Fe railroad bridge at Prescott, as far in a northerly direction as the St. Croix river forms and acts as boundary waters between the states of Wisconsin and Minnesota, and the St. Louis river from the north-south Wisconsin-Minnesota boundary line downstream to the Lake Superior beach line in the Superior entry including St. Louis bay, Superior bay, Little Pokegama bay, Pokegama bay upstream to highway 105, Kimballs bay, Howard bay, Allouez bay and all other bays connected to the St. Louis river. For the purpose of taking turtles and commercial fishing, "Wisconsin-Minnesota boundary waters" means all waters from the Burlington Northern and Sante Fe railroad tracks on the east side of the Mississippi river and from the east bank of the St. Croix river in Wisconsin, extending west to the state line between Wisconsin and Minnesota.

**SECTION 5. NR 21.03 is amended to read:**

NR 21.03 Reciprocity, sport fishing or spearing and dip netting. All residents of Wisconsin and Minnesota holding a resident fishing license from their respective states or residents other than Wisconsin and Minnesota holding an angling or sport fishing license issued by either state, may fish in any of the waters of the Mississippi river lying between the Burlington Northern and Santa Fe railroad tracks on the Wisconsin side of the river and the Chicago, Milwaukee, St. Paul and Pacific railroad tracks on the Minnesota side of the river, including all sloughs and backwaters, bays and newly-extended water areas connected with the main channel of the Mississippi river by a channel which is navigable at periods when the water is approximately equal to normal pool elevation as created by the U.S. department of the army, and in the waters of Lake St. Croix, and the St. Croix river and the St. Louis river as defined in ~~s. NR 21.02 (16)~~ s. NR 21.02 (39). This reciprocity applies only to sport fishing, spearing, dip netting, and the taking of minnows and crayfish for such fishing. ~~(29.041, 29.045)~~

**SECTION 6. NR 21.07 is amended to read:**

NR 21.07 Ice fishing shelters. Buildings, vehicles, tents, fish shanties or similar enclosures may be used on the ice for fishing purposes on the Mississippi river, Lake St. Croix, the St. Croix river and St. Louis river as defined in ~~s. NR 21.02 (16)~~ s. NR 21.02 (39) from the time the ice forms; provided, however, that all such enclosures or shelters shall be removed from the ice on or before March 1 of each year. The door of any such enclosure or shelter must be equipped with a latch which will permit the door to be readily opened from the outside at all times while the enclosure or shelter is occupied. The name and residential address of the person owning such shelter or enclosure must be painted or permanently affixed in the English language on the outside of the structure with lettering a minimum of one inch square. Residents of Wisconsin or Minnesota angling from a fish house shall comply with the law of their respective states relative to licensing and identification of fish houses. Residents of states other than Wisconsin and Minnesota who hold a nonresident fishing license from either state must comply with the law of the issuing state relative to the licensing and identification of fish houses. ~~(29.404, 29.041)~~

**SECTION 7. NR 21.09 is amended to read:**

NR 21.09 Carp as bait. Live carp taken and possessed for the purpose of bait shall only be transported live by boat or other floating conveyance while in possession on Wisconsin-Minnesota boundary waters and ~~by vehicle on and including state highway 35 and roads west from Victory, Vernon county to junction with federal highway 63 Pierce county.~~ ~~(23.11, 29.509).~~

**SECTION 8. NR 21.10 is amended to read:**

NR 21.10 Boundary water, commercial fishing restriction. For the purpose of fishing under a commercial fishing license or the taking of turtles, in the Wisconsin-Minnesota boundary waters, licensed ~~persons~~ commercial fishers and agents of the licensees are restricted to the state boundaries of the state they are licensed under. No person may operate ~~The operation of~~ any commercial fishing gear or turtle traps beyond the state line boundaries of the state in which the license was issued ~~is prohibited~~.

**SECTION 9. NR 21.11 (1) (intro.) is amended to read:**

NR 21.11 (1) GENERAL RESTRICTIONS. No person may conduct commercial fishing operations unless he or she has first obtained the appropriate license or licenses required under s. 29.523, ~~29.526~~ and 29.533, Stats. A commercial fisher shall carry each license with him or her at all times while engaged in any part of commercial fishing and shall exhibit the license to the department or its wardens on demand. Each commercial fishing licensee must be a resident of the Wisconsin. Commercial fish helpers and crew members are not required to hold a license, but a commercial fisher using helpers or crew members shall submit to the department a list of all helpers' or crew members' names and addresses along with the fisher's application for a license or before the helper or crew member begins to assist the licensee. Commercial fishers whose commercial fishing approvals or privileges have been revoked may not act as a helper or crew member for another licensee.

**SECTION 10. NR 21.11 (1) (intro.) Note is created to read:**

NR 21.11 (1) Note: Names and addresses of fish helpers and crew members may be submitted with the fisher's application for a license to the Department of Natural Resources, Mississippi River License application – CS/1, P.O. Box 7924, Madison, WI 53707-7924 or may be submitted along with a licensee's monthly catch report.

**SECTION 11. NR 21.11 (1) (b) is amended to read:**

NR 21.11 (1) (b) Each person required to hold a commercial fisher fishing license shall be present at all times when any of his or her nets or setlines are set, placed, tended or operated. The licensee does not need to be present when fish are removed from a bagged seine or crib while the licensee transports commercial fish on the water or ice or is tending to the loading of commercial fish at a boat landing.

**SECTION 12. NR 21.11 (1) (L) is repealed and recreated to read:**

NR 21.11 (1) (L) No person may remove roe from a commercial fish while on the water, ice, 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 13. NR 21.13 (3) (a) is amended to read:**

NR 21.13 (3) (a) Take, possess or control a turtle unless the person is in possession of a valid approval ~~issued under s. 29.624, 29.161, 29.204, 29.207, 29.231 or 29.235, Stats., which authorizes the hunting of small game, or an approval issued under s. 29.624, 29.228, 29.219, 29.231, 29.235, 29.523, 29.526, 29.529, Stats., which authorizes fishing~~ which authorizes the hunting of small game or which authorizes fishing, unless otherwise exempt under ch. 29, Stats., from the need to possess one of more of these approvals to hunt or fish.

**SECTION 14. NR 21.17 is amended to read:**

NR 21.17 Conflicting rules. Where there are differences in elements of the boundary waters regulations of Minnesota and Wisconsin, anglers, ~~and commercial fishers must~~ and persons taking turtles shall comply with the regulations of the state in whose territorial waters they are fishing in or taking turtles. (~~23.11, 29.041, 29.045~~)

**SECTION 15. NR 22.02 is repealed and recreated to read:**

NR 22.02 Definitions. Except as otherwise specifically defined in the statutes, the following terms, for the purpose of this chapter, are defined as follows:

- (1) "Bait net" means a hoop net that uses bait and does not include a lead or leads
- (2) "Bank Pole" means a set or bank pole as defined in s. 29.531, Stats.
- (3) "Buffalo net" means a baited or unbaited hoop net and does not include a lead or leads. The net may have one or more internal funnel-shaped throats whose tapered ends are directed inward from the mouth leading to a closed end of net that allows for accumulation of fish in the far end of the net. The closed end is tied off creating a holding place for fish.
- (4) "Closed season" means that period of the year not included in the open season for each species of fish as provided in this chapter.
- (5) "Commercial fish" means species of rough and detrimental fish as defined in this chapter, shovelnose (hackleback) sturgeon 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.
- (6) "Commercial fishing gear" or "commercial gear" means that equipment specifically authorized for use in commercial fishing by this chapter.

(7) "Commercial fishing licenses" means those licenses issued under ss. 29.523, 29.526, 29.529 and 29.533, Stats., authorizing commercial fish harvests.

(8) "Daily bag limit" has the meaning given in s. NR 20.03 (8) except as used in s. NR 22.13, where it means the maximum number of a turtle species or group of turtle species which may be reduced to a person's possession in a single day.

(9) "Detrimental fish" has the meaning given in s. NR 21.02 (10).

(10) "Dressed fish" means fish with the head and viscera removed but the tail on.

(11) "Drift set" has the meaning given in s. NR 21.02 (12).

(12) "Drive set" has the meaning given in s. NR 21.02 (13).

(13) "Fisher" means any person engaged in fishing.

(14) "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.

(15) "Frame net" or "fyke net" means a unbaited modified hoop net with no more than two leads of netting attached to the first hoop. The wings are staked out from the net providing a barrier that funnels fish into the hoop portion of the net. Internal funnels within the frame net are designed to lead fish to the fish holding area of the net. Any mesh size is allowed with a front not to exceed 4 x 8 feet if rectangular or 8 feet in diameter if round.

(16) "Gill net" has the meaning found in s. 29.522, Stats.

(17) "Hooking", as used in s. NR 22.13, means any activity which utilizes a dull-pointed, metal, barbless hook attached to a staff to remove a turtle from a body of water.

(18) "Hoop net" means a net constructed out of multiple round, rectangular or oval hoops covered with a nylon or other stretchable fabric mesh that is not wire. The hoops are made of wood, fiberglass, or steel. Maximum hoop diameter is 8 feet for round hoops and 4 feet by 8 feet for rectangular hoops. The netting is constructed with a funnel entrance at one or both ends which are tied off to the sides or the opposite ends. The opening in the funnel may be round, rectangular or oval in shape. Hoop nets include bait nets and buffalo nets.

(19) "Lead" means a length of net strung outward from a fish net or trap that is used to obstruct the path of a fish and cause the fish to follow the lead net toward the fish trap. Leads may have a maximum length of 300 feet and a maximum mesh size of 2 inches.

(20) "Length" for the purposes of measuring a fish, unless otherwise specified, means the distance measured in a straight line from the tip of the snout to the outermost end of the tail or caudal fin fully extended.

(21) "Minnows" mean all species defined as such in s. 29.001 (54), Stats., and bullheads not exceeding 4 inches in length.

(22) "Mississippi river" means all waters lying between the Chicago, Milwaukee, St. Paul and Pacific railroad tracks on the Iowa side of the river, and the Burlington Northern and Santa Fe railroad tracks lying on the Wisconsin side of the river.

(23) "Possession limit" has the meaning given in s. NR 20.03 (31), except in s. NR 22.13 where possession limit means the maximum number of a turtle species or group of turtle species set in s. NR 22.13 which may be possessed by a person at any time.

(24) "Rough fish" means all species defined as such in s. 29.001 (74), Stats., and detrimental fish including grass carp which is also known as amur carp (*Ctenopharyngodon idella*).

(25) "Seine" has the meaning found in s. 29.522 (3), Stats.

(26) "Seine haul" means a single setting, retrieval and emptying of a seine, including placement of the net, driving fish in the direction of the net, drawing or lifting the net, or both, to entrap fish by retrieving one or both ends of the net, bagging the fish in the net, sorting and removal of the game fish in the net and removal of all fish from the net. A single seine haul may take more than one day to complete from the time the net is set until all fish have been removed from the net.

(27) "Setline" has the meaning given in s. NR 20.01 (36) and is also known as a trotline.

(28) "Slat net" or "basket trap" means a fish trap made of wood slats. The slat net may not be more than 6 feet in length and not more than 72 inches in circumference. A slat net will have square or round ends with a funnel made of wood slats on one end, one or more wood slat funnels inside the trap leading to a fish accumulation area and cotton or nylon webbing at the closed end of the net to hold the fish in the net.

(29) "Sport fishing" or "angling" means any fishing, including the methods commonly known as hook and line fishing or angling conducted without a commercial fishing license and with other than commercial fishing gear.

(30) "Stretch measure" means the extension measure of net mesh size whenever the size of mesh of a net is specified and is the distance between the extreme angles of any single mesh with the mesh fully stretched. Such measurements shall apply to all nets except basket traps or slat nets.

(31) "Supervisor" means any department employee assigned or designated to oversee fishing activities conducted under this chapter.

(32) "Trammel net" has the meaning found in s. 29.522 (2) (a), Stats.

(33) "Turtle", as used in this chapter, means a reptile having horny, toothless jaws and a body enclosed in a bony or leathery shell into which the head, limbs and tail may be partially or fully withdrawn, and includes parts of turtles and turtle eggs.

(34) "Wisconsin-Iowa boundary waters" for sport fishing purposes, means all waters of the Mississippi river as defined under this section. For the purpose of taking turtles or commercial fishing, means all waters from the Burlington Northern and Sante Fe railroad tracks on the east side of the Mississippi river in Wisconsin extending west to the state line between Wisconsin and Iowa.

**SECTION 16. NR 22.05 (1) is amended to read:**

NR 22.05 (1) Only rough fish legally taken during the open season by hook and line, spear or bow and arrow may be sold, purchased, bartered or offered for sale, or under control or in possession for the purpose of sale or barter. (~~23.11, 29.503, 29.539~~).

**SECTION 17. NR 22.065 is created to read:**

NR 22.065 Fishing near dams. Except as otherwise provided by ss. NR 22.11 and 22.15, no person may fish within 200 feet of any fishway, lock or dam by any means other than hook and line.

**SECTION 18. NR 22.066 is created to read:**

NR 22.066 Bank poles. Bank poles may be used year round by persons holding a license issued under s. 29.531, Stats., for sport fishing purposes only and only for the taking rough fish, catfish and turtles in accordance with bag limits, size limits and seasons established under ss. NR 22.04 and 22.13 and in accordance with the rules regulating the use of bank poles under s. NR 20.12.

**SECTION 19. NR 22.09 is amended to read:**

NR 22.09 Carp as bait. Live carp taken and possessed for the purpose of bait shall only be transported live by boat or other floating conveyance while in possession on Wisconsin-Iowa boundary waters ~~and by vehicle on and including state highway 35 and roads west from Victory, Vernon county, south to the Wisconsin-Illinois state line.~~

**SECTION 20. NR 22.10 is amended to read:**

NR 22.10 Boundary water, commercial fishing restriction. For the purpose of fishing under a commercial fishing license, or the taking of turtles or tortoises, or clamming, the Wisconsin-Iowa boundary waters are as defined in ~~s. NR 22.02 (14)~~ s. NR 22.02 (34) and licensed commercial fishers and agents of the licensees are restricted to the state boundaries of the state they are licensed under. No person may operate any commercial fishing gear or turtle traps beyond the state line boundaries of the state in which the person's license was issued.

**SECTION 21. NR 22.11 (1) and (2) are amended to read:**

NR 22.11 (1) All game fish that are not commercial fish and all fish that are listed in ch. NR 27 as endangered or threatened species that are taken with any net, setline or other commercial gear shall be immediately returned to the water with as little injury as possible as soon as they appear in the operation. Seines may not be bagged in a manner that causes either game fish that are not commercial fish or fish that are listed in ch. NR 27 as endangered or threatened species to die while bagged in the net. The presence of dead game fish that are not commercial fish or dead fish that are listed in ch. NR 27 as endangered or threatened species in a seine bag shall be prima facie evidence of a violation of this paragraph.

(2) ~~All licensed commercial fishers shall obtain a license issued under s. 29.523, 29.526 or 29.533, Stats., before conducting commercial fishing operations. Agents of the licensee must be residents of Wisconsin~~ No person may conduct commercial fishing operations unless he or she has first obtained the appropriate license or licenses required under s. 29.523, 29.526, 29.529 and 29.533, Stats. A commercial fisher shall carry each license with him or her at all times while engaged in any part of commercial fishing and shall exhibit the license to the department or its wardens on demand. Each commercial fishing licensee must be a resident of Wisconsin. Commercial fish helpers and crew members are not required to hold a license but a commercial fisher using helpers or crew members shall submit to the department a list of all helpers' or crew members' names and addresses along with the fisher's application for a license or before the helper or crew member begins to assist the licensee. Commercial fishers whose commercial fishing approvals or privileges have been revoked may not act as a helper or crew member for another licensee.

**SECTION 22. NR 22.11 (2) Note is created to read:**

NR 22.11 (2) Note: Names and addresses of fish helpers and crew members may be submitted with the fisher's application for a license to the Department of Natural Resources, Mississippi River License application – CS/1, P.O. Box 7924, Madison, WI 53707-7924 or along with a licensee's monthly catch report.

**SECTION 23. NR 22.11 (2m), (6) to (10) and (12) are amended to read:**

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

(6) Improperly placed or tagged commercial fishing gear is considered ~~contraband~~ a public nuisance and will be seized and held by the department subject to order of the court.

(7) Nets of any kind; and setlines, ~~set or bank poles~~ may not be set, lifted, hauled or operated in any manner between one half hour after sunset and one hour before sunrise of the following day, except

for the purpose of completing a seine haul with prior permission from the department nor shall any net be used in drifting manner other than expressly provided in this chapter.

(8) A licensed commercial fisher or any member of the crew or any person in or on a the boat may not have in possession any game fish while operating licensed commercial gear or bank poles, or when traveling to or from the operation of such gear while on the waters or ice.

(9) Commercial fishing gear not authorized for use in the Wisconsin-Iowa boundary waters by this chapter may not be in possession or under control while on those waters or ice of those waters.

(10) All fishers licensed under the provisions of ss. 29.523, 29.526, 29.529 and 29.533, Stats., shall complete and submit monthly reports on forms available from the department. All reports shall be submitted by the 10th of the month following each month fished the commercial fisher is required to be licensed. Each monthly report shall be signed by the commercial fisher and shall include complete and accurate information on all fish sold or kept, whether these fish were legally or illegally taken or obtained.

(12) Commercial fish taken by commercial gear under this chapter may be sold only by the licensed commercial fisher whose gear was used to take the fish. A commercial fisher may not sell fish taken under the authority of another fisher's license, unless he or she sells the other fisher's fish under the authority of a wholesale fish dealer's license.

**SECTION 24. NR 22.11 (13) is repealed.**

**SECTION 25. NR 22.11 (18) is amended to read:**

NR 22.11 (18) Except where otherwise expressly provided, turtles ~~and tortoises~~ taken incidental to licensed commercial fishing operations may be possessed and sold.

**SECTION 26. NR 22.11 (19) to (25) are created to read:**

NR 22.11 (19) No person may mark or tag a net or setline with his or her license number or metal tag if the net or setline is already marked or tagged by another licensed commercial fisher.

(20) No person may set, place, tend or operate any net or setline that is marked or tagged with the license number or metal tag of another person, except for crew members acting under the direction of the commercial fishing licensee while the licensee is present, unless specifically authorized in advance by a conservation warden.

(21) Each person required to hold a commercial fishing license shall be present at all times when any of his or her nets, setlines or other commercial gear are set, placed, tended or operated. The licensee does not need to be present when fish are removed from a bagged seine or crib while the licensee transports commercial fish on the water or ice or is tending to the loading of commercial fish at a boat landing.

(22) All nets shall be equipped with a metal tag stamped to designate the number of the license issued to the commercial fisher using the net as described in s. 29.523, Stats. Gill nets, setlines, and

frame nets, that are left unattended shall have the metal tag attached next to a stake or buoy located on at least one end of the net so it will be visible above the surface of the water. If a stake is used, the stake shall extend at least 3 feet above the surface of the water and upon the upper end of the stake there shall be a white flag at least 10 inches square. The flag shall be numbered with legible figures at least 3 inches in height corresponding with the number of the license authorizing the use of such net. A buoy may be placed in lieu of a stake and flag, providing the buoy or bouys are numbered with legible figures at least 3 inches in height corresponding with the number of the license authorizing the use of such nets. On gill nets set through the ice there shall be maintained on each end of the gang a board or similar material which is readily identifiable and which shall bear the license number authorizing the use of the net.

(23) No person required to hold a license under s. 29.523, 29.526 or 29.529, Stats., may join his or her net to that of any other person.

(24) No person may use bait in any commercial net except bait nets, buffalo nets and slat nets.

(25) No person may hobble, double or overlay the webbing of any net upon itself, or make other net modifications that alter the functioning of a net that would otherwise be lawful.

**SECTION 27. NR 22.12 is amended to read:**

NR 22.12 Commercial fishing gear. Only commercial fishing gear as described and operated in the manner prescribed below may be used by commercial fishers in the Wisconsin-Iowa boundary waters.

Type of gear	Period of year may be used dates inclusive	Specifications	Restrictions
(1) Setline	(a) All year	<p><u>1.</u> Each licensee is limited to <del>8</del> <u>12</u> setlines with not to exceed a total of 50 hooks on each line or <del>4</del> <u>6</u> setlines with not to exceed 100 hooks on each line, either not to exceed a total of <del>400</del> <u>600</u> hooks in the aggregate.</p>	<p><u>a.</u> Frogs or game fish, or any part of, whether dead or alive, may not be used as bait in the Mississippi river</p> <p><u>b.</u> Lines shall be equipped with a metal tag stamped to <del>Additional restrictions are contained in s. NR 22.11.</del> designate the number of the license covering it attached to a buoy or stake at one end of the setline so it will be visible above the surface of the water.</p> <p><u>c.</u> At one end of every licensed setline there shall be placed and maintained a white flag, not less than <del>4</del> <u>6</u> <del>10</del> inches square, with the upper end of the <del>shaft</del> <u>stake</u> extending at least <del>2</del> <u>3</u> feet above the water and numbered with <u>legible</u> figures at least 3 inches in height corresponding with the number of the license authorizing the use of such setline. It shall be lawful to use buoys in lieu of flags providing that same are numbered with <u>legible</u> figures at least 3 inches in height corresponding with the</p>

			<p>number of the license authorizing the use of such setlines.</p> <p><u>d. Lines shall be lifted and fish removed at least once each day following the day set unless a longer period is granted by the department or its agents.</u></p> <p><u>e. Setlines may not be set in a manner which blocks off more than 1/2 the width of any slough, bay or channel to any type of boat traffic.</u></p> <p><u>f. Additional restrictions are contained in s. NR 22.11.</u></p>
<p><del>(2) Set or bank poles</del></p>	<p><del>All year</del></p>	<p><del>Not to exceed 5 set or bank poles</del></p>	<p><del><u>Frogs or game fish, or any part of, whether dead or alive, may not be used as bait in the Mississippi river.</u></del></p> <p><del><u>Each set or bank pole shall have securely attached a metal tag stamped with the number of the license covering the pole.</u></del></p>
<p>(3) Seine</p>	<p><u>(a) All year</u></p>	<p><u>1. No size restriction</u></p>	<p><u>a. Licensees may not take A commercial fisher and his or her crew members may not take more than 100 lbs. plus one fish of catfish per day with seines regardless of the number of seine hauls made in one day, 15 inches or over in length from the Saturday nearest October 1 to April 30.</u></p> <p><u>b. A commercial fisher and his or her crew members may only take 100 pounds plus one fish of catfish from any single seine haul even if the seine haul takes more than one day to complete.</u></p> <p><u>c. Seines may not be bagged in a manner that causes either game fish that are not commercial fish or fish that are listed in ch. NR 27 as endangered or threatened species to die while bagged in the net. The presence of dead game fish that are not commercial fish or dead fish that are listed in ch. NR 27 as endangered or threatened species in a seine bag shall be prima facie evidence of a violation of this subdivision paragraph. Rough fish that are not listed in ch. NR 27 as endangered or threatened species and commercial fish that are bagged as part of a seine haul may not be held in any bag, seine or other type of live box for more than 24 hours without prior permission from the department.</u></p>

			<p><u>d. Shovelnose (hackleback) sturgeon may not be taken in seines.</u></p> <p><u>e. Seines may not be drawn, lifted or operated in any manner between one-half hour after sunset and one-half hour before sunrise without permission of the department.</u></p> <p><u>f. Seines may not be used as a drift net or be attached to another net at any time.</u></p> <p><u>g. Seines may not be set or operated in a manner that will shut-off more than one-half the width of any channel, bay or slough.</u></p> <p><u>h. No seine may be set or operated within 1,000 feet of any other net.</u></p> <p><u>i. No licensee or crew member may join a net to that of any other licensee.</u></p> <p><u>j. Seines must be actively attended until the fish are bagged for removal within 24 hours.</u></p> <p><u>k. Additional restrictions are contained in s. NR 22.02 (2) s. NR 22.11.</u></p>
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<p>(4) Gill nets</p>	<p>(a) All year</p>	<p><u>1.</u> Only gill nets with a mesh of 7 inches stretch or larger used.</p>	<p><u>a.</u> Gill nets may not be used as a drag seine or drift net at any time.</p> <p><u>b.</u> All gill nets shall be lifted and emptied of fish at least once each day between May 1 and September 1, at least once each 2-day period when set during the remaining open water period and at least once each 4 days when set under ice, unless a longer period is granted by the department or its agents. <u>Each gill net set in open water shall be lifted and emptied of all fish at least once each day following the day set. Each gill net set under the ice shall be lifted and emptied of fish at least once every 2 days following the day set.</u></p> <p><u>c.</u> Gill nets may not be set in a manner that will shut-off more than one-half the width of any channel, bay or slough.</p> <p><u>d.</u> A gill net may not be set within 1,000 feet of any other net.</p> <p><u>e.</u> A gill net may not be hobbled, doubled or overlapped on itself or with another net to reduce the effective size of the mesh with a second layer of net.</p> <p><u>f.</u> Additional restrictions are contained in s. NR 22.11.</p>
<p>(5) Buffalo net and Bait nets</p>	<p>(a) All year</p>	<p><u>1.</u> No size restriction Any size mesh with a <u>maximum not over 4 x 8 foot rectangular front or 8 foot round hoop front.</u></p>	<p><u>a.</u> Shall be raised and emptied except for bait once each 4-day 3-day period unless a longer period is granted by the department or its agents.</p> <p><u>b.</u> May not be used with any lead or wings.</p> <p><u>c.</u> Only commercial species of fish, cheese, blood, soybeans or other nonfish materials may be used as bait.</p> <p><u>d.</u> Additional restrictions are contained in s. NR 22.11.</p>
<p>(6) Bait net</p>	<p>-All year</p>	<p>Any size mesh not over 4-foot hoop front.  Lead or leads not allowed.</p>	<p>Shall be raised and emptied except for bait once each 4-day period unless a longer period is granted by the department or its agents. Additional restrictions are contained in s. NR 22.11</p>

<p>(7) <u>(6)</u> Frame net or fyke net</p>	<p>(a) Sept. 1 thru June 1</p>	<p><u>1.</u> Any size mesh not to exceed 4 x 8 foot front <del>with a single lead</del> <u>if rectangular or 8 foot diameter front if round, with a one or two leads.</u></p>	<p><u>a.</u> Shall be raised and emptied once each 2-day period unless a longer period is authorized by the department or its agents.</p> <p><u>b.</u> <u>May not contain any bait.</u></p> <p><u>c.</u> Additional restrictions are contained in s. NR 22.11.</p>
<p>(8) <u>(7)</u> Basket traps (Slat nets) <u>Slat nets</u></p>	<p>(a) Saturday nearest May 1 thru Oct. 31</p>	<p><u>1.</u> Not more than 6 feet in length and not more than 72 inches in circumference, over-all dimensions and with one end closed with webbing of a mesh not less than one and one-fourth inches bar or square measure. Such webbing shall be attached in such a manner that the length, depth or width of each mesh is not decreased.</p>	<p><u>a.</u> Each net shall have attached a metal tag stamped to designate the kind of net and the number of the license.</p> <p><u>b.</u> <u>May contain bait.</u></p> <p><u>c.</u> Restricted to the use of 50 nets per licensee.</p> <p><u>d.</u> All traps shall be lifted at least once every 2-day period, unless a longer period is granted by the department or its agents. Nets may not be set within 100 feet of any muskrat or beaver house.</p> <p><u>e.</u> Any slat net found in the waters during the closed season and any slat net found on the Wisconsin banks or shores without a tag showing evidence of being used in the last 5 months shall be seized and held subject to the order of the court or judge under <del>ss. 29.05 and 29.343</del>, <u>Stats ss. 29.931 and 29.934, Stats.</u></p> <p><u>f.</u> Additional restrictions are contained in s. NR 22.11.</p>
<p>(9) <u>(8)</u> Trammel net (Drift set)</p>	<p>(a) All year</p>	<p><u>1.</u> Not more than 300 feet in length. No mesh size restriction</p>	<p><u>a.</u> May be used in a drifting manner only.</p> <p><u>b.</u> <u>Trammel nets may not be attached to other nets.</u></p> <p><u>c.</u> <u>Trammel nets may not be left unattended.</u></p> <p><u>d.</u> Additional restrictions are contained in s. NR 22.11.</p>
<p>(10) <u>(9)</u> Trammel net (Drive set)</p>	<p>(a) All year</p>	<p><u>1.</u> Not more than 300 feet in length with a mesh of 7 inches stretch or larger.</p>	<p><u>a.</u> Licensed commercial fisher or crew shall be in attendance when net is fished.</p> <p><u>b.</u> <u>The harvest of catfish with a dead set trammel net is illegal. No person may fish with a dead set trammel net.</u></p> <p><u>c.</u> Additional restrictions are contained in s. NR 22.11.</p>

**SECTION 28. NR 22.13 (3) (a) is amended to read**

NR 22.13 (3) (a) Take, possess or control a turtle unless the person is in possession of a valid approval issued under s. 29.161, 29.204, 29.207, 29.231, 29.235 or 29.624, Stats., which authorizes the hunting of small game, or an approval issued under s. 29.228, 29.219, 29.193, 29.231, 29.235, 29.523, 29.526, 29.529 or 29.624, Stats., which authorizes fishing which authorizes the hunting of small game or which authorizes fishing, unless otherwise exempt under ch. 29, Stats., from the need to possess one of more of these approvals to hunt or fish.

**SECTION 29. NR 22.16 is amended to read:**

NR 22.16 Conflicting rules. Where there are differences in elements of the boundary waters regulations of Iowa and Wisconsin, anglers, ~~and commercial fishers~~ and persons taking turtles shall comply with the regulations of the state in whose territorial waters they are fishing or taking turtles.

**SECTION 30. NR 24.02 (11) and (13) are amended to read:**

NR 24.02 (11) "Wisconsin-Iowa boundary waters" has the meaning given it in s. NR 22.02 (14) s. NR 22.02 (34).

(13) "Wisconsin-Minnesota boundary waters" has the meaning given it in s. NR 21.02 (16) s. NR 21.02 (39).

**SECTION 31. 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 32. BOARD ADOPTION.** The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)