

# NATURAL RESOURCES BOARD AGENDA ITEM

**SUBJECT:** Request approval to solicit comments on economic impact and authorization for public hearings on Board Order FH-21-11, requiring access to wire cutters when trolling in outlying waters

**FOR:** DECEMBER 2011 BOARD MEETING

**TO BE PRESENTED BY / TITLE:** William Horns, Great Lakes Coordinator

**SUMMARY:**

Trap nets are fixed structures on the lake bottom that can pose a risk to sport trollers whose lures and downriggers can become entangled in the trap net ropes. In April 2011, the Natural Resources Board approved permanent rule changes related to the marking and placement of trap nets. The NRB also implemented these rules on an emergency basis so they would be in effect for the 2011 fishing season. As part of the emergency rule, there was also a requirement that sport anglers on outlying waters carry wire cutters sufficient to cut themselves free should a downrigger cable become snagged in a trap net or other obstruction. That requirement was not included in the permanent rule because it was outside of the scope of the original public hearings, but it is addressed by this rule proposal.

The Order prohibits persons from trolling with downriggers on outlying waters (Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from its mouth up to the dam at DePere) without direct and immediate access to a wire cutter or other device capable of severing any line pulled behind the boat.

**RECOMMENDATION:** Approve public hearings and preparation of an economic impact analysis on Board Order FH-21-11

**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:**

Michael Steff  
Bureau Director,

10/28/2011  
Date

Russell Rasmussen for Don Johnson  
Administrator,

11/02/2011  
Date

Math Morning  
Secretary, Cathy Stepp

11/3/2011  
Date

cc: NRB Liaison  
DNR Rules Coordinator

## CORRESPONDENCE/MEMORANDUM

DATE: October 25, 2011

TO: Natural Resources Board

FROM: Cathy Stepp 

SUBJECT: Board Order FH-21-11, requiring sport trollers on outlying waters to carry wire cutters for emergency release from entanglement with trap nets or other obstructions

**Why is the rule being proposed? Has the Board dealt with these issues before?**

Trap nets are fixed structures on the lake bottom that can pose a risk to sport trollers whose lures and downriggers can become entangled in the trap net ropes. This has been the subject of controversy and rule making over the past three decades. Current department policy reflects legislative intent to accommodate both sport and commercial fishing in the Great Lakes.

In June 2010, the fishing gear of a recreational fishing boat became entangled in a commercial trap net buoy line near Sheboygan. The boat capsized and one of the fishermen subsequently died of a heart attack. This incident re-ignited a long-standing controversy regarding where and when commercial trap nets should be allowed in southern Lake Michigan. Subsequently in April 2011, the Natural Resources Board (NRB) approved permanent rule changes related to the marking and placement of trap nets (FH-50-10, CR 11-008). The NRB also implemented these rules on an emergency basis so they would be in effect for the 2011 fishing season (FH-10-11E). As part of the emergency rule, there was also a requirement that sport anglers on outlying waters carry wire cutters sufficient to cut themselves free should a downrigger cable become snagged in a trap net or other obstruction. That requirement was not included in the permanent rule because it was outside of the scope of the original public hearings, but it is addressed by this rule proposal.

**Summary of the rule:**

The Order prohibits persons from trolling with downriggers on outlying waters (Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from its mouth up to the dam at DePere, s. 29.001(63), Stats.) without direct and immediate access to a wire cutter or other device capable of severing any line pulled behind the boat.

**How does this proposal affect existing policy?**

This proposal is consistent with existing policies. Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters. Section 30.62(1), Stats., provides that when equipment is required, no person shall operate any boat on the waters of this state unless such boat is equipped as required by statute or rules of the department.

**Who will be impacted by the proposed rule? How?**

Sport anglers who fish by trolling in a boat on outlying waters will be required to have direct and immediate access to a wire cutter or other hand-held device on board capable of immediately severing any fishing line or cable being used in the water behind the boat. This may impact some anglers who need to purchase wire cutters or similar device, which is not a substantial cost. The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, with a total citation penalty of \$243.

Risk analysis

Data are not available to quantify the risk attributed to the presence of commercial trap nets in areas of Lake Michigan where recreational trolling is popular. Although the overall risk of accidents attributable to tangling in trap nets may be small compared with other hazards, the consequences for sport anglers can be serious. The following table summarizes reportable boating accidents on Lake Michigan, Green Bay, and Lake Superior during the years 2000 through 2010 in the U.S. Coast Guard's Boating Accident Report Database. Reportable accidents are those causing death, injury requiring medical attention, or property damage in excess of \$2,000. In four cases, indicated by numbers in parentheses, the boating activity was listed as "trolling." The tragic incident near Sheboygan was one of the two accidents in this 11-year period in which the activity was trolling and the cause was "struck submerged object."

<u>Cause</u>	<u>Lake Michigan</u>	<u>Green Bay</u>	<u>Lake Superior</u>
Unknown	19	5	1
Collison w/ Vessel	11 (1)	3	2
Flooding/Swamping	9	3	
Grounding	8		1
Struck Submerged Object	8 (2)	2	
Collison w/ Fix Object	6		2
Capsizing	5	2	2
Sinking	4		1
Falling Overboard	3		
Collison w/ Rec. Boat	2		
Collison w/ Floating Object	2		
Fire/Explosion	2		
Person Left Boat	1		
Other – Engine Failure	1 (1)		
Totals	82	15	9

**Information on environmental analysis:**

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

**Small business analysis:**

This rule does not impose any compliance or reporting requirements on small businesses. A state fiscal estimate is attached.

## ADMINISTRATIVE RULES – FISCAL ESTIMATE

**1. Fiscal Estimate Version**

Original     Updated     Corrected

**2. Administrative Rule Chapter Title and Number**

Chapter NR 19 Miscellaneous Fur, Fish, Game, and Outdoor Recreation; NR 19.058

**3. Subject**

Requires anglers to carry wire cutters on outlying waters

**4. State Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
		<input type="checkbox"/> Yes <input type="checkbox"/> No    May be possible to absorb within agency's budget.
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Decrease Costs

**5. Fund Sources Affected:**

GPR     FED     PRO     PRS     SEG     SEG-S

**6. Affected Ch. 20, Stats. Appropriations:**

**7. Local Government Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

**8. Local Government Units Affected:**

Towns     Villages     Cities     Counties     School Districts     WTCS Districts     Others:

**9. Private Sector Fiscal Effect (small businesses only):**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No    May have significant economic impact on a substantial number of small businesses
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Yes <input type="checkbox"/> No    May have significant economic impact on a substantial number of small businesses	<input type="checkbox"/> Decrease Costs

**10. Types of Small Businesses Affected:**

No small businesses will be affected. This rule affects boating equipment required by sport anglers.

**11. Fiscal Analysis Summary**

The rule will require sport trollers on outlying waters to carry wire cutters for emergency release from entanglement with trap nets or other obstructions. This rule is pursuant to recommendations of the Natural Resources Board. Little to no economic impact is expected. There would be no implementation costs for the department. Compliance costs would be minimal for individual sport anglers who need to purchase wire cutters. An online search for the cost of wire cutters showed prices ranging from \$3 to \$56.

**12. Long-Range Fiscal Implications**

same

13. Name - Prepared by William Horns	Telephone Number 6-8782	Date 10/25/11
14. Name – Analyst Reviewer Paul Neumann	Telephone Number 6-0818	Date 10/31/11
Signature – Secretary or Designee 	Telephone Number 6-2794	Date 10-31-11

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

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

Wisconsin Natural Resources Board proposes an order to create NR 19.058, relating to requiring access to wire cutters when trolling in outlying waters.

FH-21-11

Analysis Prepared by Department of Natural Resources

1. **Statutes interpreted.** Sections 29.014(1), 29.041, and 30.62(1), Stats.
2. **Statutory authority.** Sections 23.11(1), 29.014(1), 29.041, 30.62(1), 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.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 30.62(1), Stats., provides that when equipment is required no person shall operate any boat on the waters of this state unless such boat is equipped as required by statute or rules of the department promulgated under 30.62(1), Stats.

Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

**4. Related statutes.**

- 29.924 Investigations; searches.
- 29.931 Seizures.
- 29.971 General penalty provisions.
- 29.984 Commercial fish protection surcharge.
- 29.9905 Great Lakes resource surcharge.
- 29.991 Fishing net removal surcharge

**5. Plain language analysis of the proposed rule.** SECTION 1. of the Order prohibits persons from trolling with downriggers on outlying waters (Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from its mouth up to the dam at DePere, s. 29.001(63), Stats.) without direct and immediate access to a wire cutter or other device capable of severing any line pulled behind the boat.

The rule will require sport trollers on outlying waters to carry wire cutters for emergency release from entanglement with trap nets or other obstructions. This rule is pursuant to recommendations of the Natural

Resources Board. Trap nets are fixed structures on the lake bottom that can pose a risk to sport trollers whose lures and downriggers can become entangled in the trap net ropes. This has been the subject of controversy and rule making over the past three decades. Current department policy reflects legislative intent to accommodate both sport and commercial fishing in the Great Lakes. In April 2011, the Natural Resources Board (NRB) approved permanent rule changes (FH-50-10, CR 11-008) related to the marking and placement of trap nets. The NRB also implemented these rules on an emergency basis so they would be in effect for the 2011 fishing season (FH-10-11E). As part of the emergency rule, there was also a requirement that sport anglers carry wire cutters sufficient to cut themselves free should a downrigger cable become snagged in a trap net or other obstruction. That requirement was not included in the permanent rules because it was outside of the scope of the original public hearings, but it is addressed by this rule proposal.

**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 commercial fishing in Wisconsin's waters of Lake Michigan and Green Bay or Lake Superior.

**7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan).** None of the adjacent states require wire-cutting equipment to be on board boats.

**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.** SECTION 1 of the rule reflects an effort by the department to take steps to minimize the risk of conflicts between sport trollers and commercial trap nets. This change reflects the judgment of Fisheries and Law Enforcement staff following examination of Great Lakes accident data, discussions with appropriate sport and commercial advisory groups and the Natural Resources Board, and internal discussions.

**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.** There would be no implementation costs for the department and no expected costs or impacts on small businesses. Compliance costs would be minimal for individual sport anglers who need to purchase wire cutters. A quick online search for the cost of wire cutters showed prices ranging from \$3 to \$56.

**10. Effects on small business, including how the rule will be enforced.** The rule would directly affect sport anglers who engage in trolling with downriggers on the Great Lakes. It is not expected to have an effect on small business.

The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, with a total citation penalty of \$243.

**11. Agency contact person.**

William Horns  
Department of Natural Resources  
P.O. Box 7921  
Madison, WI 53707-7921  
Telephone: (608) 266-8782  
Email: William.Horns@wisconsin.gov

---

SECTION 1. NR 19.058 is created to read:

NR 19.058 **Sport trolling.** No operator of a boat may engage in trolling, as defined in s. NR 20.03(40), with the use of downriggers on outlying waters (Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from its mouth up to the dam at DePere) without direct and immediate access to a wire cutter or other hand-held device on board capable of immediately severing any fishing line or cable being used in the water behind the boat.

SECTION 2. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

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

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)