

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board adopt Board Order FH-08-20, proposed rules affecting chapter NR 20 related to fishing guide licenses and reporting requirements

FOR: June 2021 Board meeting

PRESENTER'S NAME AND TITLE: Tom Meronek, Northern Lake Michigan Fisheries Team Supervisor

SUMMARY:

This permanent rule addresses reporting requirements for licensed fishing guides in the Great Lakes and tributaries. The reporting requirements currently in place are very general. Revisions are needed to provide clarity to fishing guides and the public and to ensure that reported data will adequately aid fisheries management decision-making. The sport harvest component of some shared fisheries, such as the emerging Green Bay whitefish sport fishery, is not well understood. The reporting information under this rule would complement the reporting information from commercial fishers to better manage shared fisheries. This rule would also make guide reporting requirements more consistent with the reporting framework for charter captains that guide anglers in sport trolling for trout and salmon. This rule includes the following provisions:

- Clarification on who is considered a fishing guide and therefore is required to report.
- Waters and species for which reporting will be required, which the department will annually designate.
- Information required in the fishing trip reports, including fishing guide information, date and location, number of anglers, hours fished, description of fish caught, and other information required for sound management of the species.
- A mechanism for a group of guides to submit reports for a single fishing trip to reduce duplicative reports.
- An alternative form of reporting for employers of fishing guides, which enables employers licensed as fishing guides to complete fishing trip reports on behalf of their employees that are also fishing guides and are required to report. This would provide flexibility to some businesses that employ multiple fishing guides. This alternative would require the employer and employees to agree to file fishing trip reports in this manner to ensure that the department receives accurate reports in a timely manner.
- The method for reporting, which will be electronic except when a fishing guide is unable to connect to the electronic guide reporting system. Reports must be submitted within 1/2 hour of completion of the fishing trip. If the guide is unable to connect to the electronic guide reporting system, that guide is required to complete a paper version of the trip report and enter the information into the electronic reporting system when the guide can again connect. Paper forms must be retained for 5 years.

RECOMMENDATION: That the Board adopt Board Order FH-08-20.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input checked="" type="checkbox"/> Background Memo | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input checked="" type="checkbox"/> Board order/rule |
| <input checked="" type="checkbox"/> Response summary | <input type="checkbox"/> (insert document name) |

Approved by	DocuSigned by: Signature	Date
Justine Hasz, Fisheries Management bureau director	<i>Justine R Hasz</i> DocuSigned by: 059409...	6/9/2021 2:00 PM CDT
Keith Warnke, FWP division administrator	<i>Keith Warnke</i> DocuSigned by: 4CA...	6/10/2021 10:39 AM CDT
Preston D. Cole, Secretary	<i>Todd Ambs</i> 6793A7BA427C4CD...	6/11/2021 5:06 PM CDT

cc: Board Liaison - AD/8 Program attorney – LS/8 by Todd Ambs Department rule officer – LS/8

ds
WJR
6/10/2021 | 10:05 PM CDT

CORRESPONDENCE/MEMORANDUM

DATE: May 28, 2021

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order FH-08-20, relating to fishing guide licenses and reporting requirements

1. Subject of Proposed Rule:

The proposed rule addresses fishing guide reporting requirements for the Great Lakes.

2. Background:

All fishing guides are required under s. 29.512 (1), Stats., to be licensed. Section NR 20.65, Wis. Admin. Code, requires all Great Lakes fishing guides to report at the department's discretion. However, the reporting requirements established in rule are very general, resulting in confusion for the public and the provision of insufficient data to the department. Due to the importance of guide reporting data for increasing accuracy of harvest estimates, further specificity in reporting requirements is needed.

Harvest estimates are inputs for population models for lake whitefish, lake trout, and others. Reporting information can also supplement department tagging data and length and age data. Guided trip data is often difficult to capture in traditional creel surveys, so enhanced reporting can convey the contributions of guided fishing trips to overall sport harvest. Guided fishing trips may also result in a higher angler success rate due to guides' familiarity with fishing conditions on the Great Lakes.

One of the key areas for which enhanced guide reporting is needed is the Green Bay sport ice fishery. Over the past several years, the proportion of guide harvest has increased as a proportion of the total harvest. In 2017, the department held a meeting on guide reporting that revealed strong overall support from the guide community for better reporting, but by 2018, some decrease in guide reporting was evident. Due to the popularity of the Green Bay sport fishery, additional, more specific guide reporting data is needed to reflect the true scope of game fish harvest.

Guide reporting is also required in waters of Lake Superior and Lake Michigan, but reporting rates are uncertain, and more information is needed on sport harvest in tributaries to these lakes as well.

3. Why is the rule being proposed?

Section NR 20.65, Wis. Admin. Code, currently requires licensed fishing guides in the Great Lakes to report on fish harvest as directed by the department, but this rule does not describe the exact information requested and form of submission, which creates challenges for effective enforcement and uncertainty for the public. This has resulted in variable reporting compliance, with a potentially sizable proportion of fishing trips going unreported. Guide reporting, however, is an important source of data on sport fishing effort and harvest, and these data are used in game fish population models to help manage Great Lakes fisheries. Enhanced modeling with guide reporting data will help the department more sustainably manage popular fisheries for walleye, yellow perch, smallmouth bass, muskellunge, lake trout, and others. The additional contributions from the sport fishing community

to the overall dataset through better guide reporting will also strengthen models for the emerging Green Bay whitefish fishery, which is also shared with commercial fishers, to ensure that this resource is appropriately managed for the benefit of all.

4. Summary of the rule.

The rule will revise and expand upon existing reporting requirements to make them more clear, consistent, and useful.

The rule creates definitions to help clarify the terms used in statutes (assist, direct, and guide), which indicate activities that are considered to be guiding and require a license. These definitions are adapted from dictionary definitions and will improve understanding of the activities that are encompassed under the guide license for Great Lakes fishing guides. The rule also includes a definition of fishing guide, which is important for distinguishing those actually providing guide services from those merely renting out equipment or boats for an angler's independent use. For example, if a person takes a group of anglers out and provides direction on where to fish, that person would be considered a fishing guide for the purposes of reporting; but if a person merely rents out a boat to a group of anglers without providing any additional services or expertise, that person would not be considered a fishing guide required to report.

This rule also establishes definitions for the electronic guide reporting system and the Great Lakes waters for which reporting is required, and fishing trip, which encompasses the time spent fishing by either an individual or group of anglers, and starts and ends at the dock or shore.

To tailor the reports to the department's data collection and management needs, the rule allows the department to annually determine the specific waters and species for which reporting is required. Not only will this target reporting to areas of need, but it may also reduce the reporting requirement for some fishing guides on years when reporting may not be required for them. The department will notify all licensed fishing guides of the requirements for the following calendar year no later than December 1.

The required information to report in this rule is similar to the information required for charter captain reporting, and includes the name and DNR customer ID of the fishing guide(s) filing the report and involved in the trip, the date, location, total number of anglers, and total number of hours fished during the fishing trip, a description of fish caught during the fishing trip, and other information required for sound management of the species. In addition, if multiple guides are involved in the fishing trip, only one guide is required to submit the full report, both to streamline reporting for guides as well as to reduce duplicative information for better data.

This rule would also allow employers that are licensed as guides under s. 29.512 (1), Stats., to report on behalf of fishing guides under their employ. This voluntary option would provide flexibility to fishing guides while maintaining the level of accuracy and timeliness in fishing trip reports. The department would require employers and fishing guides to apply for advance authorization for the employer to report on behalf of the fishing guides.

5. How does this proposal affect existing policy?

This rule revises the existing Great Lakes fishing guide reporting requirements to improve clarity and compliance. Although reporting has been required for nearly 50 years, existing rules are general in nature, resulting in confusion about what is required. Rule revisions will clarify reporting requirements to reflect existing practices, provide flexibility regarding who must submit a report, and specify the manner in which reports must be submitted. Clarified requirements are expected to

improve reporting compliance, which will in turn improve the quality and completeness of information available to the department, which is needed to manage sport fisheries.

6. Has Board dealt with these issues before?

The Board authorized a preliminary public hearing for this rule at the September 2020 meeting, and approved the statement of scope for this rule at the October 2020 meeting.

7. Who will be impacted by the proposed rule? How?

Great Lakes fishing guides will be primarily impacted by this rule, because they will need to adjust to slightly different reporting methods, though the information required to report will be similar to information required under previous rules. Employers of Great Lakes fishing guides would also be impacted if they choose to obtain a guide license and submit fishing trip reports on behalf of their employees. The impacts to employers in this case would be similar to those for fishing guides, and would only impact employers if those employers voluntarily opt in to report on behalf of fishing guides in their employ.

It is important to note that charter captains that guide anglers in sport trolling for trout and salmon on the Great Lakes are required to report under a separate section of statutes and administrative code, and this rule does not make any changes to the reporting requirements for charter captains guiding in sport trolling for trout and salmon. However, if a person is also required to be licensed under s. 29.512 (1), Stats., as a fishing guide in addition to being licensed as a charter captain under s. 29.514 (1), Stats., when guiding for other species, that person would be required to report as required in this rule. The reporting requirements in this rule are similar to those for charter captains, so people that possess both licenses will likely already be familiar with the system.

8. Soliciting public input on economic impact synopsis

The department held a public comment period on the economic impact of the proposed rule in March 2021. The department received 8 public comments, with 7 in support of enhanced guide reporting, during this comment period. None of the comments related to economic impacts of the proposed rule, but comments on the rule itself included:

- Many guides do not report trips, including whether they gave their catch to a paying customer.
- All guides, commercial fishers, and charter captains who profit from public resources should report daily catches, and reporting at least weekly and with electronic methods would be publicly responsible.
- Failure to report should trigger a tiered system of reporting penalties, including fines or license suspensions.
- Ice guides and open water guides should be required to follow the same rules with limits on clients per guide, since safety issues have arisen with larger ice fishing groups.
- A reliable fishing guide reporting system will provide accurate data to help ensure the future welfare of fishing guides and anglers, and it will not take long for guides to submit the reports.
- Having the fishing guide reporting rules seems like it would result in better transparency and reporting accuracy for the number of fish and species of fish taken.
- The rule would just be one additional thing for fishing guides to have to do after putting in long days.
- The department should have been requiring guide reporting and data on guided fishing trip harvest prior to stopping stocking for domestic strain brown trout, as that fishery provided many opportunities to catch fish.

9. Small Business Analysis

This rule will have a minimal economic impact, if any, on licensed guides and guiding businesses. The types of information required to be reported under the proposed rule would not generate any costs. The method for reporting (electronic submission) may minimally impact some guides under mandatory electronic reporting if those guides do not already possess an electronic device such as a computer or cell phone to enter the reporting information.

This rule will not contain any design or operational standards, but will contain new reporting requirements that will apply to licensed fishing guides, including those who guide in trolling for species other than trout and salmon.

Responses to Public Hearing Comments

At the public hearing on May 10, one person provided spoken testimony, and one person provided written comments in support of the rule. The comments and department responses are below.

The department said that this rule doesn't impact reporting by charter captains. All Green Bay guides have to have a U.S. Coast Guard license, which makes them charter captains. So that would exclude everyone in Green Bay from this rule.

Federal and state laws classify charter captains differently. Under federal rules, all people carrying passengers for hire on the Great Lakes are considered to be charter captains. However, under state law, charter captains and guides are licensed under two separate sections of statutes, and likewise, the reporting requirements for charter captains vs. fishing guides are contained in two separate sections of administrative code.

U.S. Coast Guard operator license – required to operate a vessel carrying passengers for hire or guide in federally navigable waters (includes the Great Lakes).

State charter captain license (per s. 29.514 (1), Stats.) – required to guide for compensation in sport trolling for trout and salmon in the outlying waters.

State guide license (per s. 29.512 (1), Stats.) – required to guide for compensation for species other than trout and salmon, and to guide for trout and salmon other than by trolling in the outlying waters.

Any person that guides, directs or assists a person in fishing for compensation or reward is required to obtain a guide license, regardless of the other license types that person may already possess. This rule pertains to fishing guides licensed under s. 29.512 (1), Stats. This rule does not make any changes to the existing reporting requirements for charter captains licensed under s. 29.514 (1), Stats., but charter captains that are also licensed fishing guides do have to report in accordance with this rule when guiding for species and methods other than sport trolling for trout and salmon. Any charter captain that focuses solely on sport trolling for trout and salmon in outlying waters will see no changes to reporting under this rule.

So to rent out a shack but not provide any other fishing assistance, a fishing guide license is not required? If the person renting the shack assists the angler in some other way, they would need a fishing guide license?

Yes – if the person is not actively assisting the angler, only provides the shack, and the angler fishes in the shack completely independently, the person renting out the shack is not guiding. This rule will help clarify what is considered to be guiding to improve reporting consistency.

The rule would bring more clarity to what is considered a guide. However, there should be more restrictions on licensed fishing guides, similar to sport trolling charter captains having more stringent reporting requirements, proof of insurance, etc. Reporting should also be considered statewide.

While some changes to the guide license (license fee, requiring proof of insurance, etc.) would require legislation, the proposed rule would improve the information that the department receives in guide reports and will make fishing guide reporting requirements more similar to the system already in place for charter captains.

Drafter: Meredith Penthorn

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 05/13/2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 20, Fishing: Inland Waters; Outlying Waters	
4. Subject FH-08-20 - Guide licenses and reporting requirements	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). Approximately \$2160 or less	
<p>The only costs would be for guides that do not already possess an electronic device such as an internet-capable phone for reporting.</p>	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule Under existing rules, licensed guides are required to report fish harvests, but the exact data requested and form of submission are not clear and the current rules create challenges for effective enforcement. Revisions are needed to provide clarity to fishing guides and the public and to ensure that reported data will adequately aid fisheries management decision-making. Section NR 20.65, Wis. Admin. Code, requires all guides operating in the waters of Lake Superior, Lake Michigan and Green Bay to report the quantity and variety of fish taken and other information relating to fishing activities, as required by the department. This rule would outline who is required to report, the information required to be reported, and the methods for reporting, including through electronic means. This rule would improve the specificity and enforceability of guide reporting requirements, for clearer and more consistent reporting moving forward. The data gained through guide reporting is directly used to manage game fish populations, and is of special importance for managing emerging sport fisheries such as the Green Bay lake whitefish sport fishery.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The department will contact individuals, businesses, and others with an interest in this rule's economic impacts during rule development.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

This rule will have a minimal economic impact, if any, on licensed guides and guiding businesses. The types of information required to be reported under the proposed rule would not generate any costs. The method for reporting (electronic submission) may minimally impact some guides under mandatory electronic reporting if those guides do not already possess an electronic device such as a computer or cell phone to enter the reporting information. The department does not have an estimate of how many guides do not already own such a device. However, the department estimates that about 95 fishing guides (not including charter services that guide in sport trolling for trout and salmon) operate in the Great Lakes. According to the Pew Research Center (1), an estimated 81 percent of American adults owns a smartphone. Based on this estimate we assumed that about 18 fishing guides do not own a phone with internet access. Assuming that a cheap smartphone and plan would cost about \$120 a year, the total compliance cost for the group of fishing guides without phones would be approximately \$2160 per year.

This rule will not contain any design or operational standards but will contain new reporting requirements that will apply to licensed fishing guides, including those who guide in trolling for species other than trout and salmon.

1. Demographics of mobile device ownership and adoption in the United States. (2020, June 05). Retrieved February 23, 2021, from <https://www.pewresearch.org/internet/fact-sheet/mobile/>

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule will provide much-needed data on guided fishing trips and recreational fish harvest to complement data from commercial fishing operations in the Great Lakes. These data are used to manage Great Lakes fish populations at sustainable levels, including fish populations that both sport and commercial fishers utilize. Under current rules, not all guides report to the department as required, and the missing data from the guides that are not reporting may comprise a substantial proportion of the total Great Lakes fishing guide reporting dataset. The department has observed a decrease in the number of guides reporting in recent years, and without enhanced reporting requirements under this rule, the number of guides reporting could continue to decline, negatively impacting the department's datasets and fish population modeling.

16. Long Range Implications of Implementing the Rule

The main long-term benefit is larger and more accurate datasets to use when managing Great Lakes fish populations.

17. Compare With Approaches Being Used by Federal Government

No federal statutes or regulations apply. States possess inherent authority to manage the fishery and wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

In Michigan, charter captains (both sport trolling charter captains and those using other fishing methods) in the Great Lakes are required to submit monthly reports to the Michigan Department of Natural Resources using an electronic system. The reports contain information on lake fished, date, specific location and hours fished, total number of anglers, total catch of major species, targeted species, and sea lamprey presence on certain salmonids. The Michigan DNR collects this data by sending a notification of reporting requirements to charter captains either by email or by hard-copy mailing, and then follows up with an additional postcard or mail notification and law enforcement contacts for those charter captains that have not yet submitted reports. According to the Michigan DNR, this approach resulted in a 99 percent compliance rate in 2019-20.

Illinois also considers charter boats to include those taking anglers on paid fishing trips for any kind of sportfish. The Illinois DNR requires charter sportfishing boat operators to complete daily catch reports, all of which are due by the 15th of the following month. Those who do not comply may be subject to penalties and may not be able to obtain a charter boat permit in future years.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

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ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

Minnesota requires licensed Lake Superior fishing guides (including charters) to submit monthly fishing reports by the 10th of the following month during the fishing season. Those that do not submit reports three times in a 2-year period may not be eligible for a guide license for up to three years.

Iowa does not require guiding licenses or guide reporting.

19. Contact Name Meredith Penthorn, Fisheries Management policy specialist	20. Contact Phone Number 608-316-0080
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule’s Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This rule will have a minimal economic impact, if any, on licensed guides and guiding businesses. The types of information required to be reported under the proposed rule would not generate any costs. The method for reporting (electronic submission) may minimally impact some guides under mandatory electronic reporting if those guides do not already possess an electronic device such as a computer or cell phone to enter the reporting information. According to the Pew Research Center (1), an estimated 81 percent of American adults owns a smartphone, so using this estimate, we assumed about 18 fishing guides do not own a phone with internet access. Assuming that a cheap smartphone and plan would cost about \$120 a year, the total compliance cost for the group of fishing guides without phones would be approximately \$2160 per year.

This rule will not contain any design or operational standards, but will contain new reporting requirements that will apply to licensed fishing guides, including those who guide in trolling for species other than trout and salmon.

1. Demographics of mobile device ownership and adoption in the United States. (2020, June 05). Retrieved February 23, 2021, from <https://www.pewresearch.org/internet/fact-sheet/mobile/>

2. Summary of the data sources used to measure the Rule’s impact on Small Businesses

The department does not have adequate reporting data from the licensed guides that will be affected by this rule; therefore, there is not a standard for comparison of how this rule will impact guides compared to previous rules.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Specifying the annual reporting requirements rather than requiring guide reporting in all areas of the Great Lakes at all times of year and for all species will alleviate the reporting burden for some guides while allowing the department to collect data needed to manage fish populations. The department also will not impose a requirement for fishing guides to notify the department each time that they are unable to report electronically.

5. Describe the Rule’s Enforcement Provisions

The timeframes for reporting and more specific information required will assist law enforcement agents in verifying that guides are reporting their catch accurately and on time.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes
 - No
-

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Draft #2

The statement of scope for this rule, SS 110-20 was approved by the Governor on August 11, 2020, published in Register No. 776A3 on August 17, 2020, and approved by the Natural Resources Board on October 28, 2020. This rule was approved by the Governor on insert date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING AND RECREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal and recreate** NR 20.65 relating to guide licenses and reporting requirements and affecting small business.

FH-08-20

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 23.09 (2) (intro.) and 23.09 (2) (km), Stats., have been interpreted as authorizing the department to promulgate rules and conduct studies, investigations, and surveys for the protection and use of natural resources. Sections 29.014 (1) and 29.041, Stats., have been interpreted as authorizing the department to establish fishing conditions and regulate fishing on inland, outlying and boundary waters to provide continued opportunities for good fishing. Sections 29.411 and 29.512 (1), Stats., have been interpreted as authorizing the department to establish reporting requirements for licensed guides.

2. Statutory Authority: Sections 23.09 (2) (intro.), 23.09 (2) (km), 29.014 (1), 29.041, 29.411, and 29.512 (1), Stats., authorize this rule. All rules promulgated under this authority are subject to review under ch. 227, Stats.

3. Explanation of Agency Authority:

Section 23.09 (2) (intro.), Stats., authorizes the department to promulgate rules, conduct studies, investigations and surveys, and establish services to carry out the conservation purposes outlined in s. 23.09 (1), Stats., including the protection, development and use of natural resources. Section 23.09 (2) (km), Stats., further authorizes the department to “develop an information system to acquire, integrate and disseminate information” on aquatic resources. Guide reporting provides an important source of information on sport fish harvest, which can be incorporated into study models and quotas for the sustainable use of fishery resources. By developing a more effective information system to collect reporting data from guides, the department will develop a more robust foundation for future studies relating to Great Lakes game fish populations and harvest.

The department is directed under s. Section 29.014 (1), Stats., to establish and maintain any bag limits and 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 29.512 (1), Stats., requires any person guiding others in fishing in exchange for compensation or reward to obtain a guide license, and requires guide licensees to comply with the requirements of ch. 29, Stats. Subject to s. 29.411, Stats., guides must cooperate with a department employee conducting a fish census. These two provisions provide that the department may obtain fish census information from

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licensed guides. The department conducts fish censuses for individual anglers as well to gain information on fish harvest and fishing effort.

4. Related Statutes or Rules: Section 29.514 (2), Stats., requires records of the number of each type of fish taken under a Great Lakes sport trolling license for trout and salmon, and authorizes the department to specify other information that sport trolling licensees must report for guiding on outlying waters.

5. Plain Language Analysis:

Under existing rules, licensed guides in the Great Lakes are required to report fish harvests, but the exact data requested and form of submission are not clear, which creates challenges for effective enforcement. Section NR 20.65, Wis. Admin. Code, requires all guides operating in the outlying waters of Lake Superior, Lake Michigan, and Green Bay to report the quantity and variety of fish taken and other information relating to fishing activities, as required by the department. The rule requiring Great Lakes licensed fishing guides to report as required by the department has been in place since 1974, but has never included specific details on the types of information that the department requires, timelines for reporting, or methods for reporting.

Because the existing reporting requirements in s. NR 20.65, Wis. Admin. Code are very general, fishing guide reporting is not consistent and therefore does not provide useful data that can be used for fisheries modeling, management and law enforcement. Additionally, the existing rule does not provide a framework to encourage compliance, and therefore guide reporting compliance is very uncertain. Unreported trips may account for a substantial proportion of the total guided trips, resulting in underreporting of fish caught and thus limiting the data available for managing those species.

This permanent rule would clarify requirements for fishing guide reporting on Lake Michigan, Lake Superior, Green Bay, and tributaries, including specific waters for which guide reporting may be required each year and methods and timelines for submitting reports to the department, such as electronic submission. This rule will also include the types of information to report (when and where reporting is required), including the name of the person completing the report, the date and location of the guided fishing trip, the number of hours per fishing trip, details on fish caught by the clients, number of people fishing during a trip, and other similar information. This rule will also establish a streamlined procedure for making the list of species, waterbodies, and time of year for which the department is requiring reporting easily available to fishing guides. The additional reporting data collected under this rule will be invaluable for managing populations of popular game fish, including lake whitefish, yellow perch, lake trout, muskellunge, smallmouth bass, walleye, and other species in the sport fishery.

SECTION 1 repeals and recreates the Great Lakes guide reporting rules, encapsulated in s. NR 20.65, Wis. Admin. Code, in order to restructure the entire section with the updated, more specific guide reporting requirements. Many of these requirements are already in place for licensed charter captains that guide anglers in sport trolling for trout and salmon under s. 29.514, Stats., and were described in general terms under the previous format of s. NR 20.65, Wis. Admin. Code.

This section creates a definitions section that applies specifically to s. NR 20.65, Wis. Admin. Code, including definitions for guide, direct, assist, electronic guide reporting system, the Great Lakes, fishing guide, and fishing trip. The definitions of guide, direct and assist are derived from dictionary terms and applied to the relationship between fishing guides and clients. “Guide,” “direct,” and “assist” are terms used in s. 29.512 (1), Stats., so these definitions provide clarity regarding who must report. A definition of “fishing guide” is important for distinguishing fishing guides that provide guiding services for open water fishing or ice fishing from other guides licensed under ch. 29, Stats., and to clarify that people that

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provide certain services, such as renting out fishing gear or boats for an angler's independent use without providing any additional guiding, assisting or directing, are not considered to be fishing guides. This definition will help reduce the ambiguity for when a license and reporting is required.

This section also describes the types of information that must be reported, the frequency of reporting, and departmental procedures for notifying the public of the annual reporting requirements. After each guided fishing trip, fishing guides will be required to report their name and customer ID number and the names and customer ID numbers of any other fishing guides participating in the trip, the date of the guided trip, the location fished, the number of anglers guided during the trip, the total number of hours fished, information on fish caught as specified on the report form, such as the species, number kept, and how many were tagged fish, and other information required to soundly manage the species taken. In cases where multiple guides participate in a single fishing trip, this rule will allow just one of the guides to submit the full report, with the other guides submitting an abbreviated report, to ensure compliance and accuracy while avoiding duplicative reporting data. Furthermore, this rule will enable employers of fishing guides to fill out the reports on the guides' behalf, as long as the employer obtains a guide license and the employer and employed guides apply for and receive authorization from the department for the employer to report.

The department will annually specify the waters of the Great Lakes and tributaries, species, and time frame for which reporting is required, to tailor guide reporting to the species and areas for which data are needed. As a result, some fishing guides may not be required to report during certain years or certain times of the year. The department will make this information available to licensed guides on December 1, prior to the start of the ice fishing season each year, and the reporting requirements will go into effect on January 1 of the upcoming year.

Finally, this rule establishes the methods required for fishing guide reporting. The intent is to require electronic reporting, which provides more accurate data more quickly and easily than paper reports. Most licensed fishing guides in the Great Lakes already have a cell phone or other electronic device with which to enter the trip reports. The department may utilize an existing electronic reporting system to collect the reports. This rule would require guides to enter their reports into the electronic reporting system within half an hour of completion of the fishing trip. If the electronic system is down, or if the guide cannot access the system due to an electronic device malfunction, the guide would be required to report each trip on a paper form and complete an electronic submission when the system is again functional or the guide is within cell phone range. Fishing guides would be required to retain paper records and present them to a department representative upon request.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

No federal regulations apply. States possess inherent authority to manage the fishery and wildlife resources within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

The department received no comments during the preliminary public hearing, nor during the accompanying comment period.

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8. Comparison with Similar Rules in Adjacent States:

In Michigan, charter captains (both sport trolling charter captains and those using other fishing methods) in the Great Lakes are required to submit monthly reports to the Michigan Department of Natural Resources using an electronic system. The reports contain information on lake fished, date, specific location and hours fished, total number of anglers, total catch of major species, targeted species, and sea lamprey presence on certain salmonids. The Michigan DNR collects this data by sending a notification of reporting requirements to charter captains either by email or by hard-copy mailing, and then follows up with an additional postcard or mail notification and law enforcement contacts for those charter captains that have not yet submitted reports. This approach resulted in a 99 percent compliance rate in 2019-2020¹.

Illinois also considers charter boats to include those taking anglers on paid fishing trips for any kind of sportfish. The Illinois DNR requires charter sportfishing boat operators to complete daily catch reports, all of which are due by the 15th of the following month. Those who do not comply may be subject to penalties and may not be able to obtain a charter boat permit in future years^{2,3}.

Minnesota requires licensed Lake Superior fishing guides (including charters) to submit monthly fishing reports by the 10th of the following month during the fishing season. Those that do not submit reports three times in a 2-year period may not be eligible for a guide license for up to three years.⁴

Iowa does not require guide licenses or guide reporting.

Sources:

1. Wesander, D. L., & Clapp, D. F. (2020, September). Charter Boat Catch and Effort from the Michigan Waters of the Great Lakes, 2019. Retrieved from Michigan Department of Natural Resources: https://www.michigan.gov/documents/dnr/CharterFishRpt-2019_709759_7.pdf
2. Fish (515 ILCS 5/) Fish and Aquatic Life Code. (2021). Retrieved from Illinois General Assembly: <https://www.ilga.gov/legislation/>
3. Lake Michigan Sportfishing Charter Boat Operator Information. (2021). Retrieved from Illinois Department of Natural Resources: https://www.ifishillinois.org/lmich/L_Michigan_Charter_Operators.html
4. Minnesota Administrative Rules - 6262.3050 Required Record Keeping. (2008, June 11). Retrieved from Minnesota Legislature: https://www.revisor.mn.gov/rules/6262.3050/?keyword_type=all&keyword=fishing+guide

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

These rules are similar to the reporting requirements already in place for licensed charter captains, who guide anglers in sport trolling for trout and salmon in the Great Lakes. The reporting requirements for licensed charter captains are established in s. 29.514 (2), Stats., and s. NR 20.60, Wis. Admin. Code, and require the charter captain to record the licensee's name and license number, locations fished, number of anglers, number of lines fished, hours fished, the number of each species of fish taken, and other information within ½ hour of completion of the fishing trip. The charter captain must submit all such reports to the department by the 10th day of the following month. Those rules have not imposed any significant inconveniences or costs to the charter captains, but provide important data used in monitoring trout and salmon harvest. Compliance rates for charter captain reporting are estimated to be around 95 percent, while fishing guide reporting compliance rates are highly uncertain.

Lake trout and lake whitefish are significant fisheries for both anglers and commercial fishers, and yellow perch is a key fishery in Green Bay, popular among sport fishers and with a small commercial component. Lake trout and lake whitefish harvest from guided trips are currently estimated from the creel

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surveys conducted on Lake Superior and Lake Michigan and from limited guide reporting on Green Bay. These values are combined with harvest estimates from the general sport creel, charter reports and commercial harvest data (commercial harvest of lake trout is limited to Lake Superior only) to generate a total estimate of harvested lake trout and lake whitefish in Lake Superior, Lake Michigan and Green Bay. Green Bay yellow perch harvest is estimated similarly, through creel surveys and information from the limited commercial fishery. These harvest estimates are an input parameter to the statistical catch-at-age models used to generate the total lake trout, yellow perch, and lake whitefish abundance estimates for Lake Superior, Lake Michigan and Green Bay from which safe harvest levels are derived. Commercial harvest and charter harvest reporting compliance rates are estimated to be close to 100 percent, and improving accuracy of sport harvest by having guide harvest reporting will improve the statistical catch at age models as well as provide valuable population information for other species that do have significant commercial harvest or enough data to develop a statistical catch-at-age model.

Harvest for other key Great Lakes sport fisheries, such as the walleye, muskellunge, yellow perch, smallmouth bass and northern pike fisheries, is also of interest, and the department estimates it from creel surveys and limited guide reporting. However, additional guide reporting would help improve the accuracy of department data for these fisheries.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The department does not anticipate any significant costs to licensed fishing guides as a result of this rule. The majority of Great Lakes fishing guides already possess a cell phone or other electronic device on which reports can be entered, and no reporting costs, fees, or fines will be included in this rule. However, this rule would create new mechanisms to increase reporting compliance among fishing guides, which would require fishing guides to learn the new requirements and take action to submit timely reports.

11. Effect on Small Business (initial regulatory flexibility analysis):

This rule will have a minimal economic impact, if any, on licensed guide businesses. The types of information required to be reported under the proposed rule would not generate any costs. The method for reporting may minimally impact some guides under mandatory electronic reporting if those guides do not already possess an electronic device such as a computer or cell phone to enter the reporting information. These guides would have to purchase an electronic device to enter their reports, which is expected to be a minimal cost to each guide.

This rule will not contain any design or operational standards, but will contain new reporting requirements that will apply to licensed guides, including those who guide in sport trolling for species other than trout and salmon.

12. Agency Contact Person: Todd Kalish, Fisheries Management deputy bureau director, Todd.Kalish@wisconsin.gov, 608-266-5285; Meredith Penthorn, Fisheries Management policy specialist, Meredith.Penthorn@wisconsin.gov, 608-316-0080

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

Written comments may be submitted at the public hearings, by regular mail, or email to:
Meredith Penthorn
Department of Natural Resources
101 S. Webster St.
Madison, WI 53703

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608-316-0080, Meredith.Penthorn@wisconsin.gov

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 20.65 is repealed and recreated to read:

NR 20.65 Report of licensed guides.

(1) DEFINITIONS. In this section:

- (a) “Assist” or “assisting” means providing support or aid to a person with the activities associated with the act of fishing, including transporting anglers between the shore and an open water or on-ice fishing location.
- (b) “Direct” or “directing” means to manage, supervise, or oversee an angler’s or anglers’ fishing activities and fishing trip conditions to aid the angler or anglers in attempting to catch fish.
- (c) “Electronic guide reporting system” means a system established or authorized by the department for reporting guided fishing trips and other required information to the department by electronic means.
- (d)
 - 1. “Fishing guide” means any person required to be licensed under the provisions of s. 29.512 (1), Stats., that is actively engaged in guiding, directing, or assisting a person or persons for compensation or reward in fishing, as defined in s. NR 20.03 (12), in waters defined in pars. (f), (h), and (i).
 - 2. “Fishing guide” does not include a person that rents boats, fishing shelters, fishing gear, or related equipment to an angler for the angler’s independent

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use, provided that the person does not offer any additional services to guide, direct or assist the angler in attempting to catch fish.

Note: "Person," has the meaning specified in s. 196.795 (1) (k), Stats.

- (e) "Fishing trip" means the time period during which an individual fishes or a group of anglers fishes together, commencing upon leaving the dock or shore and ending upon return to the dock or shore after the conclusion of fishing.
- (f) "Green Bay" means those waters specified in s. NR 20.03 (15), (16), and (21).
- (g) "Guide," when used as a verb, or "guiding" means to advise, influence or superintend the conduct or instruction of an angler or anglers, including providing expertise to an angler or anglers on how to conduct fishing activities to improve the angler or anglers' ability to catch fish.
- (h) "Lake Michigan" means those waters specified in s. NR 20.03 (17) and (18).
- (i) "Lake Superior" means Wisconsin waters of Lake Superior and Chequamegon Bay, as well as all tributaries up to the first lake or barrier impassable to fish.

(2) GENERAL PROVISIONS. No person may fail to file a report as required under this subsection and sub. (3). No person may file an inaccurate report of the information required under this subsection.

- (a) Each fishing guide operating in the Wisconsin waters of Lake Superior, Lake Michigan, or Green Bay designated under par. (b) shall report to the department in the manner described in sub. (3) for each fishing trip, except as provided in pars. (d) and (e).
- (b) The department shall annually specify the waters of Lake Superior, Lake Michigan, and Green Bay and the time frame and the fish species for which reporting is required, which shall become effective on January 1 each year. The department shall notify fishing guides of this information no later than December 1 of the preceding year.

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(c) The report required under par. (a) for each guided fishing trip shall include all of the following accurate information:

1. Name and department customer identification number of the fishing guide filing the report.
2. Name and department customer identification number of other fishing guides who were involved in guiding, directing, or assisting with the fishing trip.
3. Date.
4. Location.
5. Total number of anglers.
6. Total number of hours fished during the fishing trip.
7. Description of fish caught during the fishing trip, including species, number caught, number kept, tag numbers, if any, and other related information.
8. Other information required on the report form that the department determines is relevant to the sound management of the species taken.

(d) If multiple fishing guides guide, direct, or assist with a fishing trip, in whole or in part, each fishing guide shall file a report per this subsection for that fishing trip, except that only one report may contain the information described in par. (c) 5. to 7., and all other reports filed for that fishing trip shall identify the name and department customer identification number of the fishing guide that completed the information in par. (c) 5. to 7. The fishing guides associated with the fishing trip may determine which fishing guide's report will contain the information in par. (c) 5. to 7., but all fishing guides remain responsible for ensuring that the information in the fishing trip report is provided and filed in accordance with this subsection and sub. (3).

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(e) Notwithstanding the requirements in pars. (a) and (d), as an alternative form of reporting, a person who employs one or more fishing guides and who obtains a guide license under s. 29.512 (1), Stats., may elect to complete the fishing trip reports required under this subsection in place of any licensed fishing guide or group of fishing guides under its employ, in accordance with all of the following conditions:

1. The employer and any employed fishing guides for whom the employer will file reports shall jointly apply, on application forms furnished by the department, for annual authorization to file the fishing reports under this subsection. Authorization shall remain in effect until the end of the license year. The application forms shall include all of the following information:
 - a. The name, business address, and department customer identification number of the employer that will report on behalf of the employed fishing guides.
 - b. The names and department customer identification numbers of all fishing guides for whom the employer will submit reports during the license year.
 - c. Fishing guide certification that each fishing guide shall provide true and accurate information required under this subsection to the employer for all fishing trips during the license year while under the employ of that employer, that the fishing guide shall provide this information within one-half hour after completion of the fishing trip, and that the fishing guide remains responsible for ensuring that the employer has received the fishing trip report information to fulfill the requirements in subs. (2) and (3).
 - d. Acknowledgement of the employer and each fishing guide listed under subd. 2. b. for which fishing trip reports will be filed that the employer shall submit all fishing trip reports for the calendar year with

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information provided by the fishing guide and in accordance with this section.

e. Any other information requested by the department.

2. The employer and each employed fishing guide for whom the employer will file reports shall each be responsible for the form, content, and submission of all fishing trip reports filed pursuant to this paragraph.

(3) REPORTING METHODS.

- (a) Each fishing guide required to report under sub. (2) shall submit a report of each fishing trip to the department by means of the electronic guide reporting system within one-half hour after completion of the fishing trip, except as provided in par. (c). The fishing guide shall submit the report in the English language on electronic forms provided for this purpose by the department.
- (b) Reports submitted by the fishing guide using the electronic guide reporting system are considered approved upon submittal.
- (c)
 1. If the electronic guide reporting system is not in operation, or if the fishing guide is unable to connect to the electronic guide reporting system, the fishing guide shall complete and sign, in writing in the English language, a paper report on a form furnished by the department containing the required information in sub. (2) (c) within one-half hour of completion of the fishing trip.
 2. When the electronic reporting system is again functional, or the fishing guide's electronic communication device can again connect to the electronic guide reporting system, the fishing guide shall resume entering trip reports required under sub. (2) into the electronic guide reporting system and submitting the reports electronically to the department. The fishing guide

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shall retroactively enter the information from any paper reports into the electronic reporting system within 48 hours of completion of the fishing trip unless the department has granted an extension.

- 3. The fishing guide shall retain all paper copies of the trip report as part of the fishing guide's records for a period of 5 years from the date on which the record or report was created, and shall make records available upon the request of a department representative.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on January 1, 2022.

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

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary