

Clearinghouse Rule 06-111

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

The Wisconsin Natural Resources Board adopts an order to repeal and recreate NR 25.05(1)(d) relating to commercial fishing open seasons in Lake Michigan for chubs

FH-35-06

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

Sections 29.014(1), 29.041, 29.516(2) and 29.519(1)(b), Stats.

2. Statutory authority.

Sections 29.014(1), 29.041, 29.519(1)(b) and 227.11(2)(a), Stats.

3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.

The proposed rule defines areas and seasons for commercial fishing on Lake Michigan. This is authorized under s. 29.014(1), Stats., which directs the department 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. In addition, s. 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters, and outlying waters.

Section 29.519(1)(b), Stats., specifies that the limitations on harvests must be based on the available harvestable population of fish and in the wise use and conservation of the fish, so as to prevent over-exploitation. 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 statute or rule.

Chapter NR 25, Wis. Adm. Code, regulates commercial fishing on the Wisconsin waters of the Great Lakes.

5. Plain language analysis of the proposed rule.

The order affects Lake Michigan commercial fishing rules for bloater chubs. It removes “sunset” provisions by which, on July 1, 2007, depth restrictions for commercial chub fishing would revert to those in effect prior to 2002.

Thus, for the period following June 30, 2007, the order retains the depth restrictions that have been in effect since 2002. However, compared to what would be in effect after June 30, 2007 if the sunset provisions are not repealed, the order makes the following changes: In the northern chub fishing zone it reduces the minimum depth from 55 fathoms to 45 fathoms during January 16 through the end of February and establishes a minimum depth of 45 fathoms during March 1 through April 25; and in the southern chub fishing zone it reduces the minimum depth from 60 fathoms to 45 fathoms during January 16 through the end of February and establishes a minimum depth of 45 fathoms during March 1 through April 25. The latter minimum depth applies only to waters south of 44°32' north latitude because only those waters are open to chub fishing during that period.

6. Summary of and preliminary comparison with existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

There are no existing or proposed federal regulations intended to address commercial fishing on the Great Lakes.

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

Michigan and Illinois are the only adjacent states that allow the commercial harvest of bloater chubs from their waters of Lake Michigan. In Michigan, 5 state-licensed commercial fishers are currently permitted to fish for bloater chubs. They may not fish in water shallower than 40 fathoms. In Illinois there are 5 commercial fishing licenses, but none are currently active in fishing for bloater chubs. If commercial fishing for bloater chubs should resume in Illinois, the nets would be limited to areas farther than 1,000 yards from any pier, breakwater, or similar structure, or the low water mark on the shore during August; to depths greater than 5 fathoms during September through June; and to depths greater than 20 fathoms during July.

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.

The proposed rule is based on on-board monitoring of commercial fishing boats during 1998-2001 and on reported fishing effort since adoption of the present rules in 2002. Those data suggest that the incidental kill of lake trout will increase if the sunset provision takes effect and the rules revert to those in effect prior to 2002.

The monitoring provided lake trout catch rates (number of lake trout per foot of net) in gill nets used to catch chubs, and was used to compare incidental lake trout catches that would have occurred under the rules that are now in effect but scheduled to expire next year (current rules) and catches under rules then in effect and due to go into effect again if the proposed rule is not adopted (past rules). The comparison is summarized in the table below. The projected catch rates under the two sets of rules were used to estimate the numbers of lake trout that would have been saved in the northern chub fishing zone (NCFZ)

and the southern chub fishing zone (SCFZ) during 1998-2001 if the current (expiring) rules had been in effect.

One of the concerns raised when the current rules were adopted in 2002 was that commercial fishers would adjust their fishing practices and fish more during winter months and less during the spring. A review of fishing effort reported by commercial fishers shows that such a shift did not occur.

Projected lake trout kill during 1998-2001 under current (expiring) and past rules. The net difference in each zone is the estimated number of lake trout that would have been saved if the current rules (which will be sustained by the proposed rule, NRB Order FH-35-06) had been in effect during 1998-2001.

		1998	1999	2000	2001
NCFZ, winter period	past rules	216	141	338	49
	current rules	235	154	368	54
	difference	-19	-13	-30	-5
NCFZ, spring period	past rules	1675	967	1032	502
	current rules	565	326	348	169
	difference	+1110	+641	+684	+333
net difference in NCFZ		1091	628	654	328
SCFZ, winter period	past rules	743	690	806	407
	current rules	2338	2171	2534	1280
	difference	-1595	-1481	-1728	-873
SCFZ, spring period	past rules	7856	7470	7533	9433
	current rules	4185	3980	4013	5026
	difference	+3671	+3490	+3520	+4407
net difference in SCFZ		2076	2009	1792	3534

9. Analysis and supporting documentation that the agency used in support of the agency’s determination of the rules effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.

During the years 2003 through 2006 the number of commercial fishing license holders reporting bloater chub harvests each year ranged from 17 to 26. All license holders are also fish wholesalers. Commercial fishers and fish wholesalers are small businesses.

10. Effects on small business, including how the rule will be enforced.

The rules adopted in 2002 that will continue in place after June 30, 2007 if this rule is adopted, were sought and supported by commercial fishers, so the Department concludes that this rule will not adversely effect small businesses. The rule will be enforced by Department conservation wardens, county district attorneys and county circuit courts, through the use of citations and civil or criminal complaints under the provisions of ch. 29, Stats.

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

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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 November 25, 2006.

SECTION 1. NR 25.05(1)(d) is repealed and recreated to read:

	Species	A Green Bay	B Lake Michigan	C Lake Superior
(d)	Chubs	No open season	1. In the northern chub fishing zone: <ul style="list-style-type: none"> a. From April 26 to January 15. b. From January 16 to April 25, only in water 45 fathoms deep or deeper. 2. In the southern chub fishing zone: <ul style="list-style-type: none"> a. From April 26 to January 15, only in water south of 44° 32' north latitude. b. From January 16 to the end of February, only in water 45 fathoms deep or deeper. c. From March 1 to April 25, only in water south of 44° 32' north latitude which is 45 fathoms deep or deeper. 	At all times

SECTION 2. EFFECTIVE DATE. The rules contained herein 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 3. 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 _____
Scott Hassett, Secretary

(SEAL)