

Report From Agency

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

The Wisconsin Natural Resources Board proposes a rule to amend-repeal and recreate ss. NR 25.06 (2) (e) 2., relating to commercial fishing for lake whitefish in outlying waters and affecting small business

FH-23-09

Analysis Prepared by Department of Natural Resources

- 1. Statutes interpreted.** Sections 23.09, 29.011 (1) and (2), 29.014 (1), 29.041, and 29.519, Stats.
- 2. Statutory authority.** Sections 23.11 (1), 29.014 (1), 29.041, 29.519 (1m) (b), 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 29.519 (1m) (b), Stats., authorizes the department to promulgate rules to establish species harvest limits and formulas for the allocation of the species harvest limits among commercial fishing licensees or for the allotment of individual licensee catch quotas.

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.

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

5. Plain language analysis of the proposed rule. The Order revises annual harvest limits for lake whitefish from Wisconsin waters of Lake Michigan and Green Bay. Separate harvest limits exist for each of three commercial fishing zones. The annual total allowable commercial harvest (TACH) of whitefish in Lake Michigan and Green Bay is increased from 2,470,000 to 2,880,001 pounds. The increase of 410,001 pounds is allocated equally among the three commercial fishing

zones. This is a departure from the current allocation formula, in which zone 1 receives 9.1%, zone 2 receives 82.2%, and zone 3 receives 8.7% of the annual TACH. The Order also specifies a general formula for future allocation of annual TACHs among zones: Harvests limits less than 2,470,000 pounds will be allocated among zones according to current proportions, any increment between 2,470,000 and 2,880,001 pounds will be allocated equally among zones, and any additional increment above 2,880,001 pounds will be allocated among zones according to current proportions.

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.

Federal regulations do not apply; the State of Wisconsin has exclusive authority to regulate commercial fishing in Wisconsin waters of the Great Lakes.

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

Of these states the only meaningful comparison is harvest limits established for lake whitefish from Michigan waters of Lake Michigan. The department adopted the methods employed by the State of Michigan and the Chippewa/Ottawa Resource Authority under terms of a negotiated Consent Decree issued by a United States District Court in Michigan. Iowa has no Great Lakes waters. The harvest of lake whitefish from Minnesota waters of Lake Superior is not regulated by harvest limits. There is no commercial harvest of lake whitefish from Illinois waters of Lake Michigan.

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 based on modern conventional methods for assessing fish populations and for setting harvest limits. Fish stocks were assessed using standard data from commercial harvests employing statistical-catch-at-age modeling. Harvest limits were set based on the estimated population using standards and methods also used for state and tribal whitefish fisheries in the State of Michigan.

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 owned by licensed individuals engaged in commercial fishing and wholesale fish dealersing may be affected by the rule. However, the department currently has no basis for quantifying the economic impacts of the rule.

10. Effects on small business, including how the rule will be enforced. This rule is of interest to commercial fishers and was initiated in response to their expressed concerns. The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers and follow up investigations of citizen complaints.

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

William Horns
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921
Telephone: (608) 266-8732
E-mail: William.Horns@wisconsin.gov

~~12. Place where comments are to be submitted and deadline for submission. Comments may be electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the rule may be submitted via U.S. mail to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707-7921. Comments may be submitted until October 31, 2009.~~

SECTION 1. NR 25.06 (2) (e) 2. is repealed and recreated to read:

NR 25.06 (2) (e) 2. a. If the total allowable commercial harvest of whitefish in Lake Michigan and Green Bay set in subdivision paragraph b. is less than or equal to 2,470,000 pounds, no more than 9.13028 % may be taken from zone 1, no more than 82.17255 % may be taken from zone 2, and no more than 8.69716 % may be taken from zone 3. If the total allowable commercial harvest of whitefish in Lake Michigan and Green Bay set in subdivision paragraph b. is greater than 2,470,000 pounds and less than or equal to 2,880,001 pounds, no more than 225,518 plus one-third X may be taken from zone 1, no more than 2,029,662 plus one-third X may be taken from zone 2, and no more than 214,820 plus one-third X may be taken from zone 3, where X equals the difference between the total allowable commercial harvest and 2,470,000 pounds. If the total allowable commercial harvest of whitefish in Lake Michigan and Green Bay set in subdivision paragraph b. exceeds 2,880,001 pounds, no more than 362,185 plus 0.0913028 times Y may be taken from zone 1, no more than 2,166,329 plus 0.8217255 times Y may be taken from zone 2, and no more than 351,487 plus 0.0869716 times Y may be taken from zone 3, where Y equals the difference between the total allowable commercial harvest and 2,880,001 pounds.

b. The total allowable commercial harvest of whitefish in Lake Michigan and Green Bay may not exceed 2,880,001 pounds in any license year.

SECTION ~~32~~. 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 ~~43~~. BOARD ADOPTION. The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 14, 2009.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____

Matthew J. Frank, Secretary

(SEAL)