

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

The Wisconsin Natural Resources Board proposes to adopt an order to amend s. NR 20.20(73)(j)1.a. and 3.a., relating to sport fishing for yellow perch in Green Bay and its major tributaries and all other tributary streams, rivers and ditches to Green Bay, and s. NR 25.06(2)(b)1., relating to commercial fishing for yellow perch in zone 1 (Green Bay).

FH-27-05

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

Sections 29.014(1), 29.041 and 29.519(1), 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 increases the sport fishing bag limit for yellow perch and the annual commercial fishing harvest limit for yellow perch on Green Bay, which is part of Lake Michigan and is an “outlying water”. Sport fishing bag limits and commercial fishing harvest limits are 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, while 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., grants discretion to the department to establish commercial fish species harvest limits after giving due consideration to the recommendations made by the commercial fishing boards. It also 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.

Section 29.014, Stats., “Rule-making for This Chapter”; s. 29.519, Stats. “Commercial fishing in outlying waters”; ch. NR 20, Wis. Adm. Code, “Fishing: Inland Waters; Outlying Waters”; and ch. NR 25, Wis. Adm. Code, “Commercial Fishing – Outlying Waters”.

5. Plain language analysis of the proposed rule.

SECTION 1 of the proposed rule changes the sport fishing daily bag limit for yellow perch caught in Green Bay, major Green Bay tributaries, and all other tributary streams, rivers and ditches to Green Bay from 10 yellow perch to 15 yellow perch and eliminates a sunset clause under which the bag limit would have reverted to 25 yellow perch on July 1, 2006.

SECTION 2 of the proposed rule changes the annual total allowable commercial harvest of yellow perch from zone 1 (Green Bay) from 20,000 pounds to 60,000 pounds and eliminates a sunset clause under which the harvest limit would have reverted to 200,000 pounds on July 1, 2006.

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.

There are no existing or proposed federal regulations intended to address the recreational or commercial harvest of yellow perch on the Great Lakes.

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

There is no commercial harvest of yellow perch elsewhere in Green Bay or Lake Michigan. Rules governing the recreational harvest of yellow perch vary widely. The sport fishing daily bag limit for Michigan waters of Green Bay and Lake Michigan north of 45° north latitude is 50 fish. Elsewhere in Michigan waters of Lake Michigan the limit is 35 fish. The limit in Indiana and Illinois waters is 15 fish. In Wisconsin waters of Lake Michigan other than Green Bay, the limit is 5 fish. Sport fishing daily bag limits for individual inland waters in the four states vary.

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 Department uses a long-term database to assess trends in the Green Bay yellow perch population and to develop recommendations for recreational and commercial harvest limits. The database includes an annual creel survey, regular monitoring of commercial catches, commercial catch reports, and an annual trawl survey of Green Bay. The data are incorporated into a statistical catch-at-age model to estimate the numbers of yearling and older yellow perch in Green Bay. The annual trawl survey also provides an index of natural reproduction. The data demonstrate a steady decline in Green Bay yellow perch abundance through the 1990's, but indicate that exceptionally good natural reproduction in 2003 may revive the population and justify some relaxation of current bag and harvest limits.

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.

Wisconsin now has 69 individuals licensed as commercial fishers on Lake Michigan (including Green Bay). All 69 are small businesses, or conduct fishing operations with other licensees as part of a small business – often a family business where commercial fishing licenses are held by 2 or more family members. Of these 69 licensees, 21 currently hold permits to harvest yellow perch from zone 1 (Green Bay). Existing rules allocate the total harvest among these 21 licensees by percentages, and each permittee's harvestable percentage is then expressed in pounds.

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

The only directly affected small business are the 21 commercial fishers with Green Bay yellow perch quotas. Any adjustment of commercial harvest limits will affect those businesses. The proposed rule triples the annual harvest commercial limit from 20,000 pounds to 60,000 pounds, so it is clear that as

many as 21 small businesses will be beneficially affected by the proposed rule, assuming that the increase is not offset by an equivalent decline in the market price of yellow perch. Indirectly affected small businesses include fish wholesalers, bait and tackle providers, restaurants, and other businesses that provide services to recreational anglers. The indirect effects are also expected to be beneficial. Sport fishing bag limits and commercial harvest limits on Green Bay are enforced by the Department's 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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SECTION 1. NR 20.20(73)(j)1.a. and 3.a. are amended to read:

NR 20.20(73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)

| COUNTY AND SPECIES | WATERS | AUTHORIZED METHODS | OPEN SEASON (both dates inclusive) | DAILY BAG LIMIT | MINIMUM LENGTH OTHER SIZE RESTRICTIONS (INCHES) |
|--------------------|---|--------------------|--|---|---|
| (j) Panfish | 1. Green Bay and major Green Bay tributaries | a. Hook and line. | Continuous, but the open season for yellow perch is May 20 to March 15 | 25 in total but from March 1, 2002 to June 30, 2006, only 10 15 may be yellow perch | None |
| | 3. All other tributary streams, rivers and ditches to Green Bay upstream to the first dam or lake | a. Hook and line. | First Saturday in May to the first Sunday in March, but the open season for yellow perch is May 20 to March 15 | 25 in total but from March 1, 2002 to June 30, 2006, only 10 15 may be yellow perch | None |

SECTION 2. NR 25.06(2)(b)1. is amended to read:

NR 25.06(2)(b)1. The total allowable commercial harvest in zone 1 for any license year may not exceed ~~200,000~~ 60,000 pounds, ~~except that from March 1, 2002 to June 30, 2006, the total allowable commercial harvest in zone 1 for any license year may not exceed 20,000 pounds.~~

SECTION 3. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 7, 2005.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)