

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FH-34-01

Legislative Council Rules Clearinghouse Number 01-145

Subject of Rules Commercial fishing for Chubs
in Lake Michigan

Date of Transmittal to Presiding Officers April 26, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 25.05(1)(d), Wis. Adm. Code
Commercial fishing for chubs in Lake Michigan

Board Order No. FH-34-01
Clearinghouse Rule No. 01-145

Statement of Need

The incidental harvest of lake trout in the commercial chub fishery on Lake Michigan has been a concern of the Department for many years. The so-called "60 fathom rule" has been one tool for minimizing that incidental harvest, while also allowing commercial chub fishing during winter. Under that rule, commercial chub nets in the southern chub fishing zone may not be set in water shallower than 60 fathoms during the winter period. In the northern chub fishing zone, the minimum depth during the winter period is now 55 fathoms. These restrictions have been controversial for many years. Proposed changes have always pitted concern about incidental lake trout mortality against the desire of commercial fishers for access to safer, more productive and more convenient fishing areas during winter.

The proposed rule was developed in order to address the concerns of commercial fishers while also not increasing the incidental catch of lake trout. It reflects a compromise by reducing the minimum depth in both chub fishing zones during the winter period, while establishing a minimum depth in both zones for an 8 week spring period. Department biologists believe that the net effect will be a reduction in the total incidental catch of lake trout; more will be killed during the winter period, but the increased kill will be offset by a reduction in mortality during the spring.

The proposed rule would change the minimum depth of commercial fishing for chubs in Lake Michigan. 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. 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 in that part of the zone that is open for chub fishing at that time (i.e., the area south of 44°32'). The proposed rule would expire on July 1, 2007.

Modifications as a Result of Public Hearing

The rule was redrafted to include a sunset date of June 30, 2007.

Appearances at the Public Hearings and Their Position

January 16, 2002 – Kewaunee

In support:

James Dula, 204 Terrace Avenue, Marinette, WI 54143
Phil Anderson, N1967 Rangeline Road, Kewaunee, WI 54216
Eric Anderson, 1327 Ellis Street, Kewaunee, WI 54216
Keith A. Olson, 223 Terrace Avenue, Marinette, WI 54143

In opposition – none
As interest may appear – none

January 16, 2002 – Milwaukee

In support:

Dell Rundle, 3217 Alvilda Court [no city given]
Troy Lundquist, 1412 West Road, Sturtevant, WI 53177
Tammy Johnson, 4115 29th Avenue, Kenosha, WI 53140
Kenneth G. Jeske, 10438 W. Herda Place, Franklin, WI 53132
Mel Both, Port of Racine Charter Captains, 4633 Ridgecrest Drive, Racine, WI 53403
Dan Anderson, Southern Wis. Commercial Fishing Assoc., 5405 South 23rd, Milwaukee, WI 53221
Ray Slupik, 4115 29th Avenue, Kenosha, WI 53140

In opposition:

Melvin Haessig, W265 S3750 Donald Drive, Waukesha, WI 53189
Richard Hanson, W279 S8855 Wagner Court, Mukwonago, WI 53149
Andy Fritsch, 8930 W. Hustis Street, Milwaukee, WI 53224
Heather LeMan-Best, 2111 W. Bridge Street, Milwaukee, WI 53221
John Resch, Great Lakes Sport Fishermen, 12560 W. Howard, New Berlin, WI 53151
Mike Pjevach, N68 W26777 Woodside Court, Sussex, WI 53089
Louis S. Kowieski, 719 South 97th Street, West Allis, WI 53214

As interest may appear:

Craig Best, 2111 W. Bridge Street, Milwaukee, WI 53221

Response to Legislative Council Rules Clearinghouse Report

The recommendation was no longer relevant because the rule was redrafted.

Final Regulatory Flexibility Analysis

No additional compliance or reporting requirements will be imposed as a result of these rule changes. No additional skills are required.

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-34-01

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 29.041, 29.014(1), 29.519(1)(b) and 227.11(2)(a), Stats.
Statutes interpreted: ss. 29.041, 29.014(1) and 29.519(1)(b), Stats.

The order affects Lake Michigan commercial fishing rules and changes the minimum depth for commercial chub fishing in the southern chub fishing zone and in the northern chub fishing zone of Lake Michigan during January 16 through April 25.

Subject to a "sunset" that will take place on July 1, 2007, 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.

On the "sunset" date, the chub fishing rules will revert to requirements that are identical to those now in effect.

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	<ol style="list-style-type: none"> 1. To June 30, 2007, in the northern chub fishing zone: <ol 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. After June 30, 2007 in the northern chub fishing zone: <ol style="list-style-type: none"> a. From March 1 to January 15. b. From January 16 to the end of February, only in water 55 fathoms deep or deeper. 3. To June 30, 2007, in the southern chub fishing zone: <ol style="list-style-type: none"> a. From April 26 to January 15, only in water south of 44°32' north latitude. 	At all times

			<p>b. From January 16 to the end of February, only in water 45 fathoms deep or deeper.</p> <p>c. From March 1 to April 25, only in water south of 44°32' north latitude which is 45 fathoms deep or deeper.</p>	
			<p>4. After June 30, 2007 in the southern chub fishing zone:</p> <p>a. From March 1 to January 15, only in water south of 44°32' north latitude.</p> <p>b. From January 16 to the end of February, only in water 60 fathoms deep or deeper.</p>	

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on April 24, 2002.

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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-145

AN ORDER to amend NR 25.05 (1) (d), relating to commercial fishing in Lake Michigan.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-06-01 RECEIVED BY LEGISLATIVE COUNCIL.

01-07-02 REPORT SENT TO AGENCY.

RS:DLL:ksm;jal

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-145

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

The rule appears to be technically sufficient. However, we note that it consists entirely of modifications to a single section of another rule (CR 01-115) that has been reviewed by the Clearinghouse and not yet been submitted to the Legislature for review by the standing committees. Would it not be more expedient to combine this language change into that rule, rather than pursuing a separate rule-making order for that purpose?

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. NR 25.05 (1) (d) 3., a comma should be inserted following "April 25."



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. NR 25.05 (1) (d) 3., a comma should be inserted following “April 25.”

Report to
Legislative Council Rules Clearinghouse
NR 25.05(1)(d), Wis. Adm. Code
Natural Resources Board Order No. FH-34-01

Wisconsin Statutory Authority

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

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

The proposed rule would change the minimum depth of commercial fishing for chubs in Lake Michigan. 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. 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 (south of 44 degrees 32 minutes north latitude) establishes a minimum depth of 45 fathoms during March 1 through April 25.

The incidental harvest of lake trout in the commercial chub fishery on Lake Michigan has been a concern of the Department for many years. The so-called "60-fathom rule" has been one tool for minimizing that incidental harvest, while also allowing commercial chub fishing during winter. Under that rule, commercial chub nets in the southern chub fishing zone may not be set in water shallower than 60 fathoms during the winter period. In the northern chub fishing zone, the minimum depth during the winter period is now 55 fathoms. These restrictions have been controversial for many years. Proposed changes have always pitted concern about incidental lake trout mortality against the desire of commercial fishers for access to safer, more productive, and more convenient fishing areas during winter.

The proposed rule was developed in order to address the concerns of commercial fishers while also not increasing the incidental catch of lake trout. It reflects a compromise by reducing the minimum depth in both chub fishing zones during the winter period, while establishing a minimum depth in both zones for an 8-week spring period. Department biologists believe that the net effect will be a reduction in the total incidental catch of lake trout; more will be killed during the winter period, but the increased kill will be offset by a reduction in mortality during the spring.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Bill Horns, Bureau of Fisheries Management and Habitat Protection – 266-8782

Peter Flaherty, Bureau of Legal Services – 266-8254

Carol Turner, Bureau of Legal Services - 266-1959

Submitted on December 5, 2001

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 25 (FH-34-01)

Subject
 Commercial fishing - outlying waters (Ch. NR 25)

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

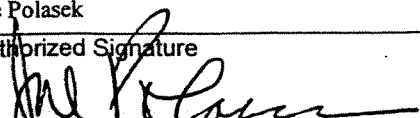
Assumptions Used in Arriving at Fiscal Estimate

Summary of Rule - This rule changes the minimum depth for setting commercial chub fishing nets in the Lake Michigan during the period from January 15 through April 25 each year.

Fiscal Impact - These changes have no state or local fiscal impact.

Long-Range Fiscal Implications

None

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 11/06/2001

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 25.05(1)(d) relating to commercial fishing in Lake Michigan

FH-34-01

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 29.041, 29.014(1), 29.519(1)(b) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 29.041, 29.014(1) and 29.519(1)(b), Stats.

The order affects Lake Michigan commercial fishing rules and changes the minimum depth for commercial chub fishing in the southern chub fishing zone and in the northern chub fishing zone of Lake Michigan during January 16 through April 25.

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.

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.

SECTION 1. NR 25.05(1)(d), as affected by Clearinghouse Rule 01-115 (Natural Resources Board Order FH-30-01), is amended to read:

Species	A Green Bay	B Lake Michigan	C Lake Superior
(d) Chubs	No open season	<p>1. From March 1 <u>April 26</u> to January 15, a) a. <u>a.</u> in the northern chub fishing zone and b) b. <u>b.</u> in the southern chub fishing zone south of 44°32' north latitude.</p> <p>2. From January 16 to the end of February, a) a. <u>a.</u> in the northern chub fishing zone in waters 55 <u>45</u> fathoms deep or deeper and b) b. <u>b.</u> in the southern chub fishing zone in water 60 <u>45</u> fathoms deep or deeper.</p> <p>3. From March 1 to April 25, <u>a.</u> in the northern chub fishing zone in waters 45 fathoms deep or deeper and <u>b.</u> in the southern chub fishing zone south of 44°32' north latitude in water 45 fathoms deep or deeper.</p>	At all times

x (B)

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on _____.

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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)