



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2005-06**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on Natural Resources and  
Transportation...**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

**NATURAL RESOURCES BOARD AGENDA ITEM**

**SUBJECT:** Adoption of FH-27-05, revisions to NR 20 and NR 25, pertaining to commercial and recreation harvest of yellow perch from Green Bay.

**FOR:** DECEMBER BOARD MEETING

**TO BE PRESENTED BY:** Michael Staggs

**SUMMARY:**

*only 5.0*

In 2001 the Natural Resources Board adopted NRB Order FH-12-01, reducing the recreational and commercial harvest of yellow perch from Green Bay. The sport fishing daily bag limit was lowered from 25 to 10 and the total allowable annual commercial harvest was reduced from 200,000 to 20,000 pounds. The rule provided that the changes would expire (sunset) on June 30, 2004. That expiration date was postponed until July 1, 2006, by NRB Order FH-36-03.

The proposed rule increases the sport fishing daily bag limit from 10 to 15 and increases the annual total allowable commercial harvest from 20,000 pounds to 60,000 pounds. It also eliminates the sunset clause.

**RECOMMENDATION:** Adopt Natural Resources Board Order FH-27-05.

**LIST OF ATTACHED MATERIALS:**

- No  Fiscal Estimate Required
- No  Environmental Assessment or Impact Statement Required
- No  Background Memo

- Yes  Attached
- Yes  Attached
- Yes  Attached

**APPROVED:**

*Michael Staggs*  
 Bureau Director, Michael D. Staggs

*Todd Ambs*  
 Administrator, Todd Ambs

*Scott Hassett*  
 Secretary, Scott Hassett

*11-11-2005*  
 Date

*11/11/05*  
 Date

*11/14/05*  
 Date

- cc: Amy J. Lemberger - AD/5
- Randall Stark - LE/5
- Todd Ambs - AD/5
- Mike Staggs - FH/3
- Dajle Maas - GLSC
- Louis Kowieski - WF/GLSFC
- Carol Turner - LC/5
- Charles Verhoeven - NER
- Chip Krohn - SER
- Larry Freitag - WWF
- Charlie Henriksen - WCF
- Rick Johnson - LMCFB
- Peter Flaherty - LS/5
- Bill Horns - FH/4 (25 copies)
- Mike Donofrio - NER (Peshtigo)

STAFF REVIEW - DNR BOARD AGENDA ITEM

REMINDER

Have the following questions been answered under the summary section of this form?

- Why is the rule needed?
- What are the significant changes?
- What are the key issues/controversies?
- What was the last action of the Board?

LIST OF ATTACHED REFERENCE MATERIAL REQUIRED FOR RULE PROPOSALS:

Hearing authorization:

Final adoption:

Background Memo (if needed)\*

Background Memo (if needed)\*

Fiscal Estimate

Response Summary

Environmental Assessment (if needed)

Fiscal Estimate

Rule

Environmental Assessment (if needed)

Rule

\* If all the questions listed in the REMINDER section above can be adequately summarized on the Green Sheet (and a second sheet if needed), the Background Memo may be omitted.

Unit	Reviewer	Date	Comments
Environmental Analysis and Review			
Management and Budget	JA	11-15-05	
Legal Services -Program Attorney -Carol Turner	PAF	11/11/05	
	CT	11/15/05	
Other (if applicable)			

DATE: November 11, 2005

FILE REF: 3600

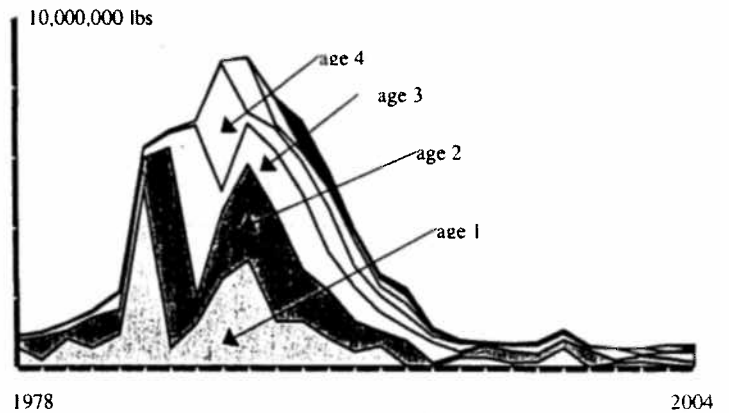
TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Adoption of Natural Resources Board Order FH-27-05 – Green Bay yellow perch sport fishing bag limits and commercial harvest limit

**BACKGROUND AND REASONS FOR RULE PROPOSAL**

Yellow perch abundance in Green Bay declined over 90% between 1988 and 2000 (see chart). In October, 2001, in order to protect the remaining adult yellow perch, the Natural Resources Board adopted NRB Order FH-12-01, reducing yellow perch harvest limits on Green Bay. The daily sport fishing bag limit was reduced from 25 to 10 and the total allowable annual commercial harvest limit was reduced from 200,000 pounds to 20,000 pounds. A sunset clause in the rule would revert the bag limit and commercial harvest limit to 25 and 200,000, respectively, on June 30, 2004.

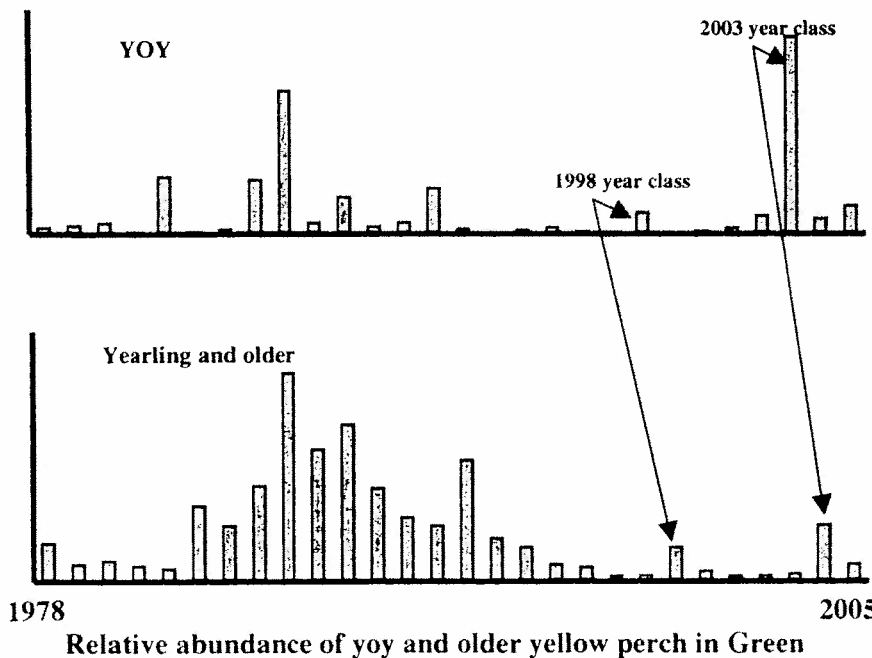


**Yellow perch biomass in Green Bay**

In the summer of 2003, Department surveys showed young-of-year yellow perch (referred to as the 2003 year-class) to be abundant (see chart below), offering hope for recovery of the perch population. However, because those small fish might not survive to adulthood, the Department recommended extension of the reduced limits. That recommendation was accepted by the NRB, and a new sunset date of July 1, 2006, was established.

Department surveys in 2004 suggested that, although survival rates over the first winter were not as high as had been hoped and growth rates of fish from the 2003 year class were slow, significant numbers of fish from the 2003 year class were still present. Also, the 2002 and 2004 year classes were not negligible (see chart). Based on those findings the NRB in August, 2005 authorized public hearings on a proposal to increase the commercial harvest limit to 60,000, increase the bag limit to 25, and remove the sunset clause.

After reviewing the results of assessment trawling conducted in August, 2005 and considering hearing comments, the Department now proposes adoption of the rule as originally drafted, but with a slightly lower daily sport fishing bag limit of 15 instead of 25 yellow perch.



**Relative abundance of yoyn and older yellow perch in Green**

In light of the modest 2002, 2004 and 2005 year classes and the very large 2003 year class, we are optimistic for the recovery of yellow perch in Green Bay. We note that sport and commercial fishers reported good fishing in 2005, suggesting that yellow perch hatched in 2002 and 2003 are beginning to support sport and commercial harvests. However, because our assessment surveys showed a drop in abundance of yearling and older yellow perch in 2005 after only a moderate increase in 2004, we recommend caution in increasing commercial and sport harvests. We are looking for unambiguous evidence that the young fish have survived and are capable of supporting larger harvests. Our biologists are currently completing an analysis of the ages of fish caught during 2005, and those data will be available for discussion when this rule proposal is presented to the NRB in December.

In proposing a commercial harvest limit of 60,000 pounds and a bag limit of 15 yellow perch, we are guided by a yield-per-recruit analysis, as described by Deriso and Quinn<sup>1</sup>. This analysis sought to maximize the yield to the sport and commercial fisheries from fish spawned prior to 2002 if younger fish (those spawned in 2002-2005) do not survive to fishable size. The analysis suggested a total harvest (sport and commercial) in 2006 of 120,000 pounds. Respecting the accepted policy of attempting to split the harvest equally between sport and commercial fishers, the proposed total annual commercial harvest of 60,000 pounds was selected. We have no strong basis for predicting how sport fishing effort and harvest will respond to changing the bag limit, but some increase in parallel with the increased commercial harvest seems appropriate. Because of uncertainty about how much the sportfishing effort and harvest will increase, because our index of abundance of yearling and older yellow perch dropped in 2005, and because some hearing comments strongly recommended proceeding with caution, we now propose increasing the sport fishing daily bag limit to 15 fish, rather than to 25.

## SUMMARY

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

## HOW DO THE RULES AFFECT EXISTING POLICY?

The proposed rule does not represent a change in sport and commercial fishing management policy. This action is consistent with the following NRB policy:

**NR 1.04 (4)** The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are limited. The resources will be managed in accordance with sound management principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and quota limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas.

## PAST BOARD ACTIONS

Prior to 1982 the yellow perch fishery of southern Green Bay was characterized by occasional high levels of reproduction, producing large year classes that were heavily exploited when they reached the commercial minimum size of 7.5 inches. Increased protection through quota control of commercial harvests in the early 1980's brought

<sup>1</sup> Quinn, T.J. and R.B. Deriso. 1999. Quantitative Fish Dynamics. Oxford University Press.

the fishery under control and resulted in a more abundant and stable yellow perch population, with increasing numbers of larger and older fish. The recent history of yellow perch management on Green Bay begins in 1989 with the adoption of NRB Order FH-40-88. That rule addressed a broad range of issues related to commercial fishing management on Lake Michigan and Green Bay. Annual commercial harvest limits for yellow perch were set at 400,000 pounds from zone 1 (southern Green Bay), 13,300 pounds from zone 2 (northern Green Bay and a portion of Lake Michigan, and 306,700 pounds for zone 3 (the southern portion of Wisconsin's Lake Michigan waters). Changes in yellow perch harvest limits since then are summarized in the following table:

NRB Order	Year	sport fishing daily bag limit		commercial fishing annual harvest limit		
		Green Bay and tributaries	Lake Michigan and tributaries	Zone 1	Zone 2	Zone 3
FM-40-88	1988	(previously set at 50)	(previously set at 50)	established at 400,000 pounds	established at 13,300 pounds	established at 306,700 pounds
FM-32-89	1989			increased to 475,000 pounds		
FM-19-91(E) FM-59-90	1991	reduced to 25		reduced to 400,000 pounds		
FM-43-94(E) FM-44-94	1994			reduced to 300,000 pounds		
FM-21-95(E) FM-2-95	1995		reduced to 25 in Lake Michigan		reduced to 4,655 pounds	reduced to 107,345 pounds
FM-39-96(E)	1996		reduced to 5 in Lake Michigan		no change, but comm. fishing closed in L.Mich. portion	no change, but commercial fishing closed
FM-47-96(E) FM-40-96	1996		set permanently at 5 in Lake Michigan		no change, but comm. fishing closed in L. Mich. portion	no change, but commercial fishing closed
FM-3-97	1997	season shortened by spring closure		reduced to 200,000 pounds		
FH-48-98(E)	1998		reduced to 5 in Sauk Creek			
FH-50-98	1999		reduced to 5 in all other L.M. tributaries			
FH-28-01(E) FH-12-01	2001	reduced to 10 until 7/1/04		reduced to 20,000 pounds until 7/1/04		
FH-36-03	2004	sunset date extended to 7/1/06		sunset date extended to 7/1/06		

#### DEVELOPMENT OF THE RULE PROPOSAL

This rule proposal was developed based on available assessment data collected in through 2004 and has been reviewed by the Lake Michigan Fisheries Team in light of additional data collected in 2005.

**HEARING SYNOPSIS**

Public hearings were held in Peshtigo and Green Bay on Wednesday, October 12, 2005, with combined attendance of 35, not counting Department staff. Thirty-three individuals submitted appearance slips and 16 individuals testified. The Lake Michigan Commercial Fishing Board made its views known in oral testimony. Seven individuals marked their slips "As interest may appear", 8 marked them "In support", and 13 marked them "In opposition".

In addition, written comments were received from 7 individuals, including representatives of 3 sportfishing clubs, the Green Bay, Marinette/Menominee, and Northeast chapters of the Wisconsin Federation of Great Lakes Sport Fishing Clubs. Two of the written comments supported the Department's proposal, while 5 opposed it.

The Lake Michigan Commercial Fishing Board is charged by statute with advising the Department regarding commercial harvest limits. Charlie Henriksen, representing the LMCFB, recommended setting a commercial harvest limit of 60,000 pounds for the current fishing year (ending June 30, 2006) and 100,000 for subsequent fishing years. The LMCFB did not oppose the 25/day recreational daily bag limit. Among the sportfishing clubs represented at the hearings or submitting written comments, 2 supported the rule as written (Marinette/Menominee and Northeast) while one opposed it (Green Bay). The Green Bay club recommended no changes other than postponing or eliminating the current sunset date.

The following table summarizes the alternatives to the Department's proposal that were supported by one or more individuals:

	<b>sunset clause</b>	<b>daily sport fishing bag limit (number of fish)</b>	<b>annual commercial harvest limit (pounds)</b>
LMCFB		25	60,000 in 2006 100,000 > 2006
GB/GLSF and several individuals	eliminate or postpone	status quo	status quo
two individuals		25	200,000
one individual		15 in 2006	30,000 in 2006
		20 > 2006	40,000 > 2006
one individual		15	60,000
one individual		15	40,000
one individual			100,000
one individual	eliminate or postpone	increase	20,000

The following arguments were raised in oral testimony or written comments:

1. Data are insufficient to justify an increase in either the sport or commercial harvest.  
Department response: We believe that good natural reproduction in recent years justifies a modest increase in harvest. The increase should be limited until it is shown that the young fish have survived to fishable size.
2. It is unfair to restore the sport fishing daily bag limit that was in effect when the present rule was established (25/day) while only raising the commercial annual harvest limit to 30% of what it was at that time (60,000 pounds).  
Department response: This comment and comment #4 reflect different ways of looking at the fairness question. In any case, after reviewing the newest data along with hearing comments, the Department is now proposing to increase the daily bag limit only to 15 fish.
3. Without a sunset clause, the commercial harvest limit might never rise above 60,000 pounds.  
Department response: The Department will review the biological data annually and propose changes to the commercial harvest limit when appropriate.

4. If the recreational daily bag limit goes up 250%, as proposed in the rule, then the annual commercial harvest limit should also go up 250%, from 20,000 pounds to 50,000 pounds.

Department response: This comment and comment #2 reflect different ways of looking at the fairness question.

5. Because the rule proposal is based on maximizing the yield-per-recruit from the yellow perch that are already in the fishable population, it ignores the large 2003-2005 year classes that are coming up and will support the fishery. Therefore, a larger harvest is warranted than would be allowed by the rule. If the 2003-2005 year classes do not survive to support fishing, then an emergency order can be used to protect the spawning population.

Department response: Although the proposed changes are based on a yield-per-recruit analysis of yellow perch already in the fishable population, we are assuming that we will see some reasonable recruitment of the 2003-05 year classes into the fishable population, otherwise that approach would not be justifiable. We believe, however, that before strong assumptions are made about recruitment of those recent year classes, we should have solid assessment data justifying them.

6. The Department should look into controlling or capping the recreational ice-fishing harvest.

Department response: Ice fishing harvest will vary depending on the ice cover each winter. There is no realistic way to cap the harvest in the sense of suspending fishing when a pre-determined harvest is reached. It would be possible to limit the harvest by setting a low daily bag limit during winter or shortening the season. At this time we are not considering those options.

7. In 2005 commercial fishing was excellent, as measured by catch rates.

Department response: This supports our recommendation that the commercial harvest can be safely increased. Commercial fishers are skilled at finding and catching the available fish, however, so we must base the harvest limits on scientifically-based systematic sampling.

8. Recreational harvests were poor in 2005.

Department response: Some anglers reported this. See comment #9.

9. Recreational catch rates were very good in 2005.

Department response: Many anglers reported this. Department biologists are working to generate an estimate of the harvest in 2005, and we hope to be able to report it when the proposed rule is presented to the NRB.

10. It is best to err on the side of caution.

Department response: This is also the Department's philosophy. We believe that the recommended rule changes reflect a cautious approach.

11. The sunset clause should be eliminated, but the recreational bag limit and commercial harvest limit should not be changed.

Department response: Department biologists disagree with this, believing instead that some modest increases in sport and commercial harvests are appropriate.

12. Natural reproduction is primarily controlled by weather, not abundance of spawners.

Department response: This may be true, although it is essential to sustain a modest spawning population.

13. The policy of splitting the harvest 50/50 by number between sport and commercial fishers should be reviewed along with the assumptions used to translate that into a 60/40 split by weight (favoring commercial fishers).

Department response: We believe that the 50/50 policy is reasonable. The 60/40 split by weight is an approximation, and the true split by weight corresponding to the 50/50 split by number will vary from year to year.

14. Sport fishers generate more money for the economy of the state than commercial fishers.

Department response: This is correct.



15. Commercial fishing limits spawning by reducing the number of fish that are able to reach their full reproductive potential.

Department response: This is correct, but also applies to sport fishing.

16. If a bag limit of 25 perch and a 200,000 pound commercial harvest limit were fair and equitable 3 years ago, why isn't it now? Is a 70% cut fair and equitable?

Department response: The rule proposal has been changed to provide a 15 fish daily bag limit, not 25 as in the original rule proposal.

### **AFFECTED PARTIES**

This proposal will directly affect commercial fishers and indirectly affect sport fishers and businesses that provide services or products for commercial or sport fishing on Green Bay.

### **REGULATORY FLEXIBILITY ANALYSIS**

No additional compliance or reporting requirements will be imposed as a result of these rule changes. Commercial fishing businesses would be directly affected by the rule, but would not be subject to any new reporting, bookkeeping, or other procedures. No special skills would be required for compliance with the rule.

### **ENVIRONMENTAL ASSESSMENT**

This is a Type III action under Chapter NR 150, Wis. Admin. Code, therefore no EA is required.

Fiscal Estimate — 2003 Session

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-27-05

Subject

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

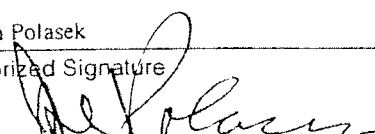
Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Rule summary: FH-27-05 establishes new harvest limitations pertaining to the recreational and commercial harvest of yellow perch from Green Bay. Existing rules allow harvests to increase on July 1, 2006, at which time the daily bag limit for recreational anglers would increase from 10 to 25 and the annual allowable commercial harvest would increase from 20,000 pounds to 200,000 pounds. Under this proposal new permanent recreational and commercial harvest limits are established and the existing sunset provision is eliminated.

Long-Range Fiscal Implications

None

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 08-05-05

**Fiscal Estimate Worksheet — 2003 Session**  
 Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-36-03

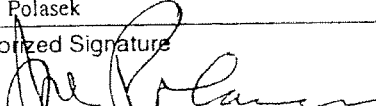
Subject  
 Commercial Fishing - Outlying Waters (Chapter NR25) and Fishing: Inland Waters; Outlying Waters (Chapter NR 20)

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):  
 none

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes	\$	\$ -	
(FTE Position Changes)	(	FTE )	(- FTE )
State Operations — Other Costs		-	
Local Assistance		-	
Aids to Individuals or Organizations		-	
<b>Total State Costs by Category</b>	<b>\$</b>	<b>\$ -</b>	
<b>B. State Costs by Source of Funds</b>			
GPR	\$	\$ -	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>Total State Revenues</b>	<b>\$</b>	<b>\$ -</b>	

**Net Annualized Fiscal Impact**

	State	Local
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 0	\$ 0

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 08-05-05

**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).**

William Horns – FH/4  
 Bureau of Fisheries Management  
 Department of Natural Resources  
 PO Box 7921  
 Madison, WI 53707-7921  
 phone: (608) 266-8782  
 email: [William.Horns@dnr.state.wi.us](mailto:William.Horns@dnr.state.wi.us)

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 <del>from March 1, 2002 to June 30, 2006</del> , only <u>15</u> 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 <del>from March 1, 2002 to June 30, 2006</del> , only <u>15</u> 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 \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

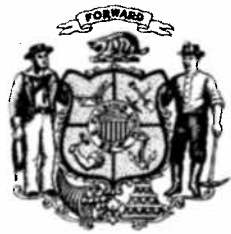
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)



# WISCONSIN STATE LEGISLATURE





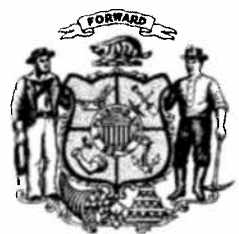
## **Comments on Clearinghouse Rule 05-085**

**Presented to the  
Committee on Natural Resources and Transportation  
January 5, 2006**

My name is William Horns. I am the Great Lakes Fisheries Specialist for the Wisconsin Department of Natural Resources and I am here today to answer any questions you may have regarding Clearinghouse Rule 05-085, pertaining to sport and commercial fishing for yellow perch on Green Bay, and to ask you to support this rule. First, allow me to give you some background information and summarize the rule.

During the 1990's natural reproduction of yellow perch in Green Bay was poor, leading to a 90% decline in yellow perch abundance. In order to protect the remaining fish and increase the chances of an early recovery of the yellow perch population, the recreational and commercial harvests of yellow perch from Green Bay were reduced. The sport fishing daily bag limit was lowered from 25 to 10 and the total allowable commercial harvest was reduced from 200,000 to 20,000 pounds. The rule provided a sunset clause by which the changes would expire on July 1, 2004. That expiration date was later postponed to July 1, 2006. On that date, if this clearinghouse rule is not approved, the sport fishing daily bag limit will revert to 25 fish and the commercial fishing annual harvest limit will revert to 200,000 pounds.

During the last four years natural reproduction by yellow perch in Green Bay has been fair to excellent. Department biologists believe that a modest increase in sport and commercial harvests is warranted, but that allowing the existing sunset clause to take effect would be imprudent. Instead, Clearinghouse Rule 05-085 would increase the sport bag limit from 10 to 15 and would increase the commercial harvest limit from 20,000 to 60,000 pounds. There would be no new sunset clause, but we hope that continued recovery of the yellow perch population in Green Bay will justify further increases in the near future.



Report to  
Legislative Council Rules Clearinghouse  
NR 20.20 and 25.06, Wis. Adm. Code  
Natural Resources Board Order No. FH-27-05

Wisconsin Statutory Authority

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

Federal Authority

N/A

Court Decisions Directly Relevant

None

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

In 2001, the Natural Resources Board adopted Natural Resources Board Order No. FH-12-01 reducing the recreational and commercial harvest of yellow perch from Green Bay. The sport fishing daily bag limit was lowered from 25 to 10 and the total allowable annual commercial harvest was reduced from 200,000 to 20,000 pounds. The rule provided that the changes would expire on June 30, 2004. That expiration date was postponed until July 1, 2006 by Natural Resources Board Order No. FH-36-03.

The proposed rule increases the sport fishing daily bag limit from 10 to 25 and increases the annual total allowable commercial harvest from 20,000 pounds to 60,000 pounds. It also eliminates the expiration date.

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 Contacts

Bill Horns, Bureau of Fisheries Management and Habitat Protection – 266-8782  
Pete Flaherty, Bureau of Legal Services – 266-8254  
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on September 1, 2005

## Clearinghouse Rule 05-085

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

The Wisconsin Natural Resources Board proposes to adopt an order to amend 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 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 25 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).**

William Horns – FH/4  
 Bureau of Fisheries Management  
 Department of Natural Resources  
 PO Box 7921  
 Madison, WI 53707-7921  
 phone: (608) 266-8782  
 email: [William.Horns@dnr.state.wi.us](mailto:William.Horns@dnr.state.wi.us)

**12. Place where comments are to be submitted and deadline for submission.**

The deadline for written comments is October 21, 2005. Written comments may be submitted to Mr. Horns or submitted to the Department using the Wisconsin Administrative Rules Internet Website at <http://adminrules.wisconsin.gov>.

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 <del>but from March 1, 2002 to June 30, 2006, only 10 may be yellow perch</del>	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 <del>but from March 1, 2002 to June 30, 2006, only 10 may be yellow perch</del>	None

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

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SECTION 4. BOARD ADOPTION. This rule was 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

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