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(FORM UPDATED: 08/11/2010)

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

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

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(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
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- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

State of Wisconsin  
Department of Natural Resources

**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:

**Board Order Number:** FH-23-09

**Clearinghouse Number:** 09-083

**Subject of Rules:** Commercial Fishing in Outlying Waters and Affecting Small Business

**Date of Transmittal:** December 22, 2009

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

**Peter D. Flaherty,  
DNR Bureau of Legal Services  
LS/8, 101 South Webster Street  
Madison, WI  
at: [Peter.Flaherty@Wisconsin.gov](mailto:Peter.Flaherty@Wisconsin.gov)**

**An electronic copy of the proposed rule submittal may be obtained by contacting Peter D. Flaherty at: [Peter.Flaherty@Wisconsin.gov](mailto:Peter.Flaherty@Wisconsin.gov)**

## REPORT TO LEGISLATURE

NR 25 , Wis. Adm. Code  
Commercial Fishing in Outlying Waters and Affecting Small Business

Natural Resources Board Order No. FH-23-08  
Clearinghouse Rule No. 09-083

### Basis and Purpose of the Proposed Rule

The rule increases the total allowable annual commercial harvest of lake whitefish from Lake Michigan (including Green Bay) and the three commercial fishing zones that comprise Lake Michigan. The lake wide total allowable annual commercial harvest is increased by 410,001 pounds from 2,470,000 pounds to 2,880,001 pounds, with the increase being divided equally among the three zones. The per zone increase is 136,667 pounds: Zone 1 – 225,518 to 362,185 pounds, Zone 2 – 2,029,662 to 2,166,329 pounds, and Zone 3 – 214,820 to 351,487 pounds.

The rule also provides that if, in the future, the total allowable annual commercial harvest is reduced below 2,470,000 pounds, the reduction will be made from each zone in proportion to the current allocation formula rather than taken equally from the three zones, and that if the total allowable annual commercial harvest is increased above 2,880,001 pounds, the increment in excess of that value will also be allocated according to current proportions.

### Summary of Public Comments

A public hearing was held in Sturgeon Bay on October 26, 2009. It was attended by six members of the public, with five indicating opposition to the proposal and one indicating support. Nine additional individuals submitted written comments or commented by telephone. Of those ten additional individual written or telephone comments, six were in support and four were in opposition. Finally, comments were submitted on behalf of four organizations. The Wisconsin Federation of Great Lakes Sport Fishing Clubs and the Northeast Wisconsin Great Lakes Sport Fishermen support a quota increase in Zones 1 and 2, but not 3. The City of Two Rivers and the Wisconsin Commercial Fisheries Association support the proposed harvest increase, and also support the recommendation of the Lake Michigan Commercial Fishing Board that the increase be divided equally among the three fishing zones. The oral and written comments included the following specific ideas:

- 1) The increase in the TACH should be divided equally among the three fishing zones.  
Department response: This was the recommendation of the Lake Michigan Commercial Fishing Board. It has been incorporated into the proposed rule.
- 2) If the proposed increase in the harvest limit (410,001 pounds) is allocated equally among the three zones, the Department should provide assurances that a) if the TACH is later reduced, any reduction up to 410,001 pounds will also be equally allocated among the zones and b) if the TACH is later increased further, the increase should be divided among zones in proportion to the current allocation of harvest.  
Department response: This request reflects the intent of the Lake Michigan Commercial Fishing Board. It is not possible to limit the options available to future Natural Resources Board, so no absolute assurances are possible. However, the rule has been drafted to express the desired assurances.

- 3) Because of the increased interest in recreational fishing for whitefish in Zone 1, the economic value of that fishery, and the possibility that a substantial increase in harvest from Zone 3 could harm that recreational fishery, the increased allowable commercial harvest should be limited to Zones 2 and 3.

Department response: The development of a recreational fishery for whitefish in Green Bay is a welcomed addition to the opportunities available in Wisconsin. We cannot at this time accurately estimate the magnitude of the harvest or its economic value. Because we believe that whitefish from the larger North/Moonlight Bay stock move into and out of Green Bay, it is very difficult to estimate the impact of the commercial harvest on that local recreational fishery.

- 4) In light of the strong resistance of sport fishers when summer commercial trap netting for whitefish was introduced near Manitowoc and Two Rivers a few years ago, and in light of the possibility that an increased harvest limit in Zone 3 will lead to increased pressure for further relaxation of the trap netting rules in that area (more nets, larger allowed fishing area), the increased allowable harvest should be limited to Zones 1 and 2.

Department response: We know that many sport fishermen in the Manitowoc and Two Rivers area have a strong objection to the summer commercial harvest from that area, but because that commercial fishery is limited as to the number of nets, where they may be placed, and when they may be fished, we do not believe that the proposed change will materially affect the recreational fishery. We understand that this may be a continuing point of disagreement.

- 5) Because commercial fishers are not always able to harvest the entire TACH in all three zones, the rules should provide an opportunity for unfished quotas to be transferred between zones.

Department response: This interesting suggestion would be a significant departure from existing allocation policy. The Department would welcome advice from the Commercial Fishing Board on this idea.

- 6) Because revenues from the sale of commercial fishing licenses do not cover the full cost of managing the commercial fishery and part of the cost is paid using revenues from the sale of recreational fishing and hunting licenses, the whitefish harvest limit should not be increased unless reducing the whitefish population would serve other purposes.

Department response: Because the proposed rule change will not require the Department to increase its spending for management of the commercial fishery, we do not believe that this issue is relevant to this proposal.

- 7) Commercial fishers need the increased harvest limit to sustain their businesses and continue to provide the public benefit of supplying fish for local restaurants.

Department response: We understand the benefits of a stable and viable commercial fishery. We believe that the larger management framework, with limited entry and individual transferable quotas, along with vigilant regulation of the harvest, helps us to meet that goal.

### Modifications Made

The original proposed rule has been modified to change the allocation among zones of the proposed increase in the total allowable annual commercial harvest as recommended by the Lake Michigan Commercial Fishing Board. Under the final proposal the increase will be equally divided among the three zones. Language was also added to the rule to specify how future increases or decreases in the total allowable annual commercial harvest of Lake Michigan whitefish should be made relative to each zone.

### Appearances at the Public Hearing

**October 26, 2009 Sturgeon Bay**

In support:

Michael LeClair, 1810 East St., Two Rivers, Wis.

In opposition:

Scott Habermann, 4304 Custer St., Manitowoc, WI 54220

David Tupa, 6691 CO. A, Egg Harbor, WI 54209

Thom Gulash, 3702 Indian Bluff, Manitowoc, WI 54220

Charles Weier, 358 22<sup>nd</sup> St., Two Rivers, WI 54241

Larry Freitag, 1610 S. 11<sup>th</sup> St., Sheboygan, WI 53081

Changes to Rule Analysis and Fiscal Estimate

Modifications were made to the Rule Analysis to reflect the modifications made to the proposed rule as a result of public comments and recommendations from the Lake Michigan Commercial Fishing Board. The Fiscal Estimate remains the same.

Response to Legislative Council Rules Clearinghouse Report

The Clearinghouse had no comments.

Final Regulatory Flexibility Analysis

The proposed rule will affected licensed commercial fishers operating on Wisconsin's outlying waters (Lake Michigan). The rule does not have a significant adverse economic impact on a substantial number of small businesses. Lake Michigan commercial fishing license holders who are permitted to fish for whitefish will be allowed to harvest more fish.

**a. Describe the type of small business that will be affected by the rule.** Commercial fishing businesses will be affected.

**b. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule.** No new reporting, bookkeeping or other procedures are required to comply with the rule.

**c. Describe the type of professional skills necessary for compliance with the rule.** No new skills are required to comply with the rule.

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

The Wisconsin Natural Resources Board proposes a rule to repeal and recreate s. 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 dealers 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](mailto:William.Horns@wisconsin.gov)

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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 2. 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 3. 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

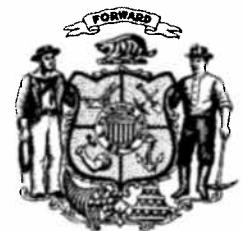
By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)





# WISCONSIN STATE LEGISLATURE





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Ferry 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 **09-083**

AN ORDER to amend s. NR 25.06 (2) (e) 2, relating to commercial fishing for lake whitefish in outlying waters and affecting small business.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

09-28-2009 RECEIVED BY LEGISLATIVE COUNCIL.

10-20-2009 REPORT SENT TO AGENCY.

RS:REL

**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