

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

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

FH-23-09

Analysis Prepared by Department of Natural Resources

- 1. Statutes interpreted.** Sections 23.09, 29.011 (1) and (2), 29.014 (1), 29.041, and 29.519, Stats.
- 2. Statutory authority.** Sections 23.11 (1), 29.014 (1), 29.041, 29.519 (1m) (b), and 227.11 (2) (a), Stats.
- 3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.** Section 23.11 (1), Stats., grants the department such powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law.

Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing, and s. 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters, and outlying waters.

Section 29.519 (1m) (b), Stats., authorizes the department to promulgate rules to establish species harvest limits and formulas for the allocation of the species harvest limits among commercial fishing licensees or for the allotment of individual licensee catch quotas.

Finally, s. 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statutes.

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

5. Plain language analysis of the proposed rule. The Order revises annual harvest limits for lake whitefish from Wisconsin waters of Lake Michigan and Green Bay. Separate harvest limits exist for each of three zones. The total allowable commercial harvest of whitefish in Lake Michigan and Green Bay is increased from 2,470,000 to 2,880,000 pounds. The harvest limit for zone 1 is changed from 225,518 to 262,952 pounds. The harvest limit for zone 2 is changed from 2,029,662 to 2,366,569 pounds. The harvest limit for zone 3 is changed from 214,820 to 250,479 pounds. The increases for each zone are allocated according to the same proportions as the current zone allocations of the lake-wide harvest limit.

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 engaged in commercial fishing and wholesale fish dealing 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).

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12. Place where comments are to be submitted and deadline for submission. Comments may be electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>.

Written comments on the rule may be submitted via U.S. mail to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707-7921.

Comments may be submitted until October 31, 2009.

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

NR 25.06 (2) (e) 2. The total allowable commercial harvest of whitefish in Lake Michigan and Green Bay may not exceed ~~2,470,000~~ 2,880,000 pounds in any license year, with no more than ~~225,518~~ 262,952 pounds to be taken from zone 1, ~~2,029,662~~ 2,366,569 pounds to be taken from zone 2, and ~~214,820~~ 250,479 pounds to be take from zone 3.

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 _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)