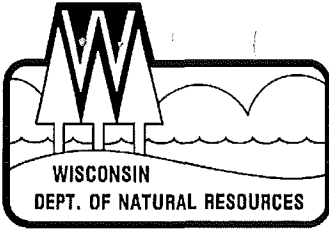


CR 94-71



George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. FM-18-94 was duly approved and adopted by this Department on June 29, 1995. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



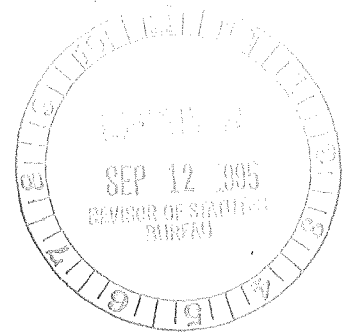
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 1st day of September, 1995.

George E. Meyer
George E. Meyer, Secretary

(SEAL)



ORDER OF THE STATE OF WISCONSIN
LAKE MICHIGAN COMMERCIAL FISHING BOARD
AMENDING AND CREATING RULES



.....
The Lake Michigan Commercial Fishing Board adopts .
an order to amend NR 25.07(7) and 25.08 (intro.) .
and (2) and create NR 25.07 (2)(g) and 25.08(2t) .
relating to quota allocation, quota transfers and .
commercial fishing for smelt on Lake Michigan and .
Green Bay .
.....

FM-18-94

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 29.085, 29.174(3), 29.33(1) and (7) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 29.085 and 29.174(2)(a), Stats.

By SECTION 1 of the order, the Lake Michigan commercial fishing board establishes formulas for "racehorse" smelt fisheries in Green Bay and in Lake Michigan, using portions of the total annual smelt harvest limits set by the department, and a formula for individual allocation of the remaining portions of the total annual smelt harvest limits for Lake Michigan and Green Bay. Beginning during the 1995-1996 license year, this dual allocation system will replace the "racehorse" or un-allocated smelt harvest system that is now in place by default.

Under these rules, commercial fishers will have to obtain a department permit in order to participate in the "racehorse" smelt fishery, and a different department permit that shows the fisher's individual licensee catch quota in order to participate in the allocated quota smelt fishery.

All Lake Michigan licensees may annually apply for and receive a permit to participate in the "racehorse" smelt fishery. Initially, the rule's formula makes a total of 113,000 pounds of smelt available for the "racehorse" smelt fishery (based on 1,000 pounds of smelt per licensee, except for 5 licensees who trawled in Green Bay or Lake Michigan for smelt during the 1991-1992 license year). Rather than set specific poundages, the formulas incorporate, as a constant, $E = .0004241$, which is the ratio of 1,000 pounds to 2,358,000 pounds (the total annual smelt harvest limit) so that the total "racehorse" poundages will fluctuate with and remain proportional to the total annual smelt harvest limit, if the total annual smelt harvest limit is increased or decreased in the future.

The rule sets out formulas for calculating the poundages of 2 "racehorse" smelt fisheries. The Green Bay "racehorse" poundage is set at 35.19932% of the total Lake Michigan and Green Bay "racehorse" poundage, while the Lake Michigan "racehorse" poundage is set at 64.80067%. These "racehorse" percentages are the same percentages as the Green Bay total annual smelt harvest limit and the total Lake Michigan and Green Bay annual smelt harvest limit minus the Green Bay total annual smelt harvest limit.

The 5 licensees who reported trawling for smelt during the 1991-1992 base year may apply for and receive quota smelt fishery permits and individual licensee catch quotas that are percentages of the remaining portion of the annual harvest limits. The percentages are proportional to each of the 5 fisher's reported smelt harvests during the base year as compared to the total reported smelt harvest during that year. Although the quota smelt fishery permits are based on smelt trawling catch history, nothing in this order prohibits quota smelt fishery permittees from using other lawful gear, such as trap nets, to fill their individual licensee catch quotas.

In any license year, if the individual licensee catch quota fishers all catch their entire smelt quotas, they may then join in the "racehorse" smelt fishery if it is still open. Except for the individual licensee catch quota fishers, no one may use trawl gear in the "racehorse" smelt fishery.

The "racehorse" smelt fisheries in Green Bay and in Lake Michigan will be closed by the department when it determines that 85% of the poundage set aside for the "racehorse" in Green Bay or in Lake Michigan, respectively, has been harvested.

Because these rules cannot be promulgated in time for the start of the next license year (July 1, 1995), the order provides for an effective date of November 15, 1995. The current default "racehorse" smelt fishery will remain in effect until then. In SECTION 1, to prevent potential over-harvest, in calculating the individual licensee catch quotas to be issued effective November 15, 1995, the rule calls for the department to deduct from each individual quota the pounds of smelt harvested by the quota recipient in the default "racehorse" smelt fishery between the July 1, 1995 and November 15, 1995.

SECTION 2 provides for redistribution of the individual licensee catch quotas among the remaining quota smelt fishery permittees if the number of quota smelt fishery permittees becomes inadequate to utilize the entire remaining portions of the harvest limits, as is done in the case of other quota fisheries. SECTION 2 also corrects a cross-reference error that arose from prior rule revisions.

SECTION 3 corrects cross reference errors.

Under SECTION 4 of this order, individual licensee catch quotas for smelt will be fully transferrable only between licensees who have quota smelt fishery permits. Transfers of individual licensee catch quotas for smelt to other people may occur only in conjunction with a transfer of the individual licensee catch quota holder's commercial fishing license.

SECTION 1. NR 25.07(2)(g) is created to read:

NR 25.07(2)(g) Smelt. 1. No person may fish for smelt with commercial gear in Lake Michigan or Green Bay unless the person is authorized to do so by a permit issued by the department under subd. 2 or 5., and the person complies with the terms and conditions of the permit, this chapter and s. 29.33, Stats.

2. A "racehorse" smelt fishery permit for Lake Michigan and Green Bay shall be issued to each applicant who holds a valid commercial fishing license issued under s. 29.33, Stats. Licensees who hold a permit under both this subdivision and subd. 5. may not fish in the "racehorse" smelt fishery until all individual licensee catch quotas issued under subd. 5. have been reported caught. Trawl gear may not be used to harvest smelt in the "racehorse" smelt fishery except by licensees who hold a permit under both this subdivision and subd. 5.

3. Permittees under subd 2. may harvest smelt from either Green Bay or Lake Michigan, or both, but shall cease fishing for smelt in Green Bay and in Lake Michigan, respectively, when notified by the department. Notwithstanding s. NR 25.06(2)(c)1., the department shall notify all "racehorse" smelt fishery permittees to cease fishing in Green Bay or Lake Michigan upon

receipt of information that 85% of the smelt allocated under subd. 4. for the "racehorse" fishery for Green Bay or Lake Michigan, respectively, has been caught, except that all nets in the water shall be lifted under s. NR 25.09(2)(a)10., and the legal fish harvested.

4. The portion of the total annual Green Bay smelt harvest limit set in s. NR 25.06(2)(c)1., allocated to the Green Bay "racehorse" smelt fishery for licensees holding permits issued under subd. 2. is X pounds, where $X = (A)(B)(D)(E)$, and the portion of the total annual Lake Michigan and Green Bay smelt harvest limit set in s. NR 25.06(2)(c)1., allocated to the Lake Michigan "racehorse" smelt fishery, excluding Green Bay, by licensees holding permits issued under subd. 2. is Y pounds, where $Y = (A)(C)(D)(E)$. In these equations,

A = the total annual Lake Michigan and Green Bay smelt harvest limit, in pounds, set in s. NR 25.06(2)(c)1.;

B = 35.19932%;

C = 64.80067%;

D = in any license year, the total number of Lake Michigan commercial fishing licensees minus the number of licensees issued quota smelt fishery permits under subd. 5; and

E = .0004241

5. A quota smelt fishery permit and individual licensee catch quota for Lake Michigan and Green Bay shall be issued to each applicant who holds a valid commercial fishing license issued under s. 29.33, Stats., and reported a commercial harvest by trawls of smelt legally taken from the Wisconsin waters of

Green Bay or Lake Michigan between July 1, 1991 and June 30, 1992:

a. Individual licensee catch quotas issued under this subdivision shall comprise the remaining portion of the total allowable annual commercial harvest limits set for Green Bay and for Lake Michigan and Green Bay in s. NR 25.06(2)(c)1., after subtraction of the pounds of smelt required for the Green Bay and Lake Michigan "racehorse" smelt fisheries established under subd. 2.

b. Two separate individual licensee catch quotas, expressed as percentages of the poudages calculated under subpar. a., shall be calculated for each permittee subject to this subdivision. The first percentage shall be calculated by dividing the total commercial harvest of smelt reported lawfully harvested from the Wisconsin waters of Green Bay under each license during the period of July 1, 1991 through June 30, 1992 by the overall total reported commercial harvest of smelt from Green Bay during that period, and multiplying the result by 100. The second percentage shall be calculated by dividing the total commercial harvest of smelt reported lawfully harvested from the Wisconsin waters of Lake Michigan, excluding Green Bay, under each license during the period of July 1, 1991 through June 30, 1992 by the overall total reported commercial harvest of smelt from Lake Michigan during that period, and multiplying the result by 100. The resulting percentages shall be rounded off to 2 decimal places or to hundredths of a percent. The individual licensee catch quotas

shall be allocated in whole pound increments.

c. A quota smelt fishery permittee who receives an individual licensee catch quota for Green Bay may take all or part of the Green Bay quota from either Green Bay or Lake Michigan, but no quota smelt fishery permittee who receives an individual licensee catch quota for Lake Michigan may take any portion of the Lake Michigan quota from Green Bay.

d. Notwithstanding subpars. a. and b., for the 1995-1996 license year, before allocating the individual licensee catch quotas under this subdivision, the department shall deduct from each individual licensee catch quota the number of pounds of smelt harvested by the permittee during July 1, 1995 to November 15, 1995.

SECTION 2. NR 25.07(7) is amended to read:

NR 25.07(7) REALLOCATION OF SURPLUS TOTAL ALLOWABLE COMMERCIAL HARVEST. If the number of eligible permittees is inadequate to utilize a total allowable commercial harvest established by s. NR 25.06(2)(a)3., (b), (c), (d) or (e) and allocated under sub. (2)(a)3.a., (b), (bg), (br), (c), (d), (e), (f) or ~~(g)~~ (g)5., the surplus shall be divided permanently among the remaining eligible permittees based on the percentage calculated for each permittee under sub. (2)(a)3.a., (b), (bg), (br), (c), (d), (e), (f) or ~~(g)~~ (g)5., respectively.

SECTION 3. NR 25.08(intro.) and (2) are amended to read:

NR 25.08 TRANSFER OF INDIVIDUAL LICENSEE CATCH QUOTAS.
(intro.) Individual licensee catch quotas allotted under s. NR 25.07 (1)(a) or (2)(a)3.a., (b), (bg), (br), (c), (d), (e), or (f) ~~or (g)~~ may be transferred by the licensee receiving the quota allocation to another valid licensee authorized to engage in commercial fishing in the waters to which the quota applies, who meets all criteria for receiving such a quota other than previous fishing history, subject to the conditions stated in this section.

(2) All or part of an individual licensee catch quota allotted under s. NR 25.07(1)(a) or (2)(a)3.a., (b), (bg), (br), (c), (d), (e), or (f), ~~(g) or (h)3.~~ may be permanently or temporarily transferred by the quota holder.

SECTION 4. NR 25.08(2t) is created to read:

NR 25.08(2t)1. All or part of an individual licensee catch quota allotted under s. NR 25.07(2)(g)5., may be temporarily or permanently transferred by the licensee receiving the quota allocation to another licensee who also holds a valid quota smelt fishery permit and individual licensee catch quota issued under s. NR 25.07(2)(g)5.

2. A quota smelt fishery permit and individual licensee catch quota allotted under s. NR 25.07(2)(g)5., may be transferred by the licensee receiving the permit and catch quota to a person who does not also hold a valid quota smelt fishery

permit and individual licensee catch quota issued under s. NR 25.07(2)(g)5., only in conjunction with the transfer of the permit holder's valid license authorizing commercial fishing in the outlying waters under s. NR 25.04.

The foregoing rules were approved and adopted by the State of Wisconsin Lake Michigan Commercial Fishing Board on February 10, 1995.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on June 29, 1995.

The rules contained herein shall take effect November 15, 1995 as provided in s. 227.22(2)(b), Stats.

Dated at Madison, Wisconsin September 1, 1995.

STATE OF WISCONSIN
LAKE MICHIGAN COMMERCIAL FISHING BOARD
and
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary
Department of Natural Resources

(SEAL)

