

**Publication Date:** October 26, 2011  
**Effective Dates:** October 26, 2011 through March 23, 2012

This emergency rule was approved by the governor on October 19, 2011.

The statement of scope for this rule, SS 023-11, was approved by the governor on September 15, 2011, published in Register 669, on September 30, 2011, and approved by The Natural Resources Board on October 26, 2011.

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

The Wisconsin Natural Resources Board proposes an order to amend NR 25.05(1)(c), relating to commercial fishing in outlying waters.

**FH-22-11(E)**

Analysis Prepared by Department of Natural Resources

- 1. Statutes Interpreted:** Sections 29.014(1), 29.041 and 29.519(1m)(b), Stats.
- 2. Statutory Authority:** Sections 23.11(1), 29.014(1), 29.041, 29.519(1m)(b), 227.11(2)(a), and 227.24(1)(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 limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, and designate the kind, size and amount of gear to be used in the harvest.

Section 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.

Section 227.24(1)(a), Stats., expressly confers emergency rulemaking authority on the Department to preserve public peace, health, safety, or welfare.

**4. Related statutes:**

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

- 5. Plain Language Rule Analysis:** Section 1 of the Order adds six days to the 2011 commercial harvest season for whitefish from Lake Michigan and Green Bay.

**6. Summary of and Comparison with any Existing or Proposed Federal Regulations:** The Department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin’s waters of Lake Michigan and Green Bay or Lake Superior.

**7. Comparison of Similar Rules in Adjacent States:** There is no commercial whitefish harvest in Iowa or Illinois. In Michigan, the season for state-licensed commercial fishers closes on November 1, while for tribal fishers it lasts one week longer.

**8. Summary of Factual Data and Analytical Methodologies Used in Support of the Proposed Rule:** This rule change was requested by the Lake Michigan Commercial Fishing Board, which was established under s. 15.345, Stats., and advises the Department regarding commercial fishing issues on the Great Lakes. Department biologists have reviewed the proposal and believe the change would likely not threaten the whitefish population.

**9. Analysis and Documentation Used in Support of the Agency’s Determination of the Rule’s Effect on Small Businesses Under s. 227.114, Stats.:** The proposed rule change would expand opportunities for commercial fishing businesses. The rule change was requested by the Lake Michigan Commercial Fishing Board.

**10. Effects on Small Business, Including How the Rule Will Be Enforced:** This rule was initiated in response to the expressed concerns of commercial fishers. It does not impose any additional compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule.

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.**

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SECTION 1. NR 25.05 (1) (c) is amended to read:

NR 25.05 Open seasons; size limits; possession and harvest limits. (1)

Species	Green Bay	Lake Michigan	Lake Superior
	December 1 to October 25, <u>plus six consecutive days in 2011 that would start on October 26 or as soon as the rule is published and goes into effect</u>	December 1 to October 25, <u>plus six consecutive days in 2011 that would start on October 26 or as soon as the rule is published and goes into effect</u>	November 26 to September 30
(c) Whitefish			

SECTION 2. STATEMENT OF EMERGENCY. The Department of Natural Resources finds that an emergency exists and the rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The current commercial season for whitefish from Lake Michigan and Green Bay closes one week before the season closure for state-licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state-licensed commercial fishers in Wisconsin and makes these Wisconsin businesses less competitive with counterparts in Michigan. The additional business revenue, approximately \$161,300, and improved competitiveness of the commercial fishing industry, rises to the standard of preservation and improvement of the public welfare required for emergency rule

The number of commercial fishers has been declining over the last 20 years from 145 to 57. While some of this decline has been due to consolidation, some of the reduction is due to adverse economics of the industry. This rule requires emergency action to enhance public welfare as it applies to the economic health of the commercial fishing industry, which requested this rule change.

SECTION 3. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper.

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 \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)