

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:

Natural Resources Board Order No. FH-26-98

Legislative Council Rules Clearinghouse Number 98-041

Subject of Rules Commercial fishing for smelt on
Lake Michigan and Green Bay

Date of Transmittal to Presiding Officers January 13, 1999

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

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

REPORT TO LEGISLATURE

NR 25.06(2)(c)1., Wis. Adm. Code
Commercial fishing for smelt in Lake Michigan and Green Bay

Board Order No. FH-26-98
Clearinghouse Rule No. 98-041

Statement of Need

The proposed rule was initiated by citizens' petition. The rule reduces the annual total allowable commercial harvest of smelt from Lake Michigan and Green Bay. A combined total allowable commercial harvest of 713,340 pounds is established for Lake Michigan and Green Bay, of which no more than 251,091 pounds may be taken from Green Bay. Currently the annual total allowable commercial harvest for smelt from Lake Michigan and Green Bay is 2,358,000 pounds, of which no more than 830,000 pounds may be taken from Green Bay. 95% of the total allowable commercial harvest is allocated to the five commercial trawlers, with the balance set aside for the remaining 101 commercial fishers to share in a racehorse fishery. The current total allowable commercial harvest was adopted by the Natural Resources Board in 1991, following nine years of intensive study of the trawl fishery. It is approximately equal to the average annual smelt harvest by trawling during those years.

During the first year following adoption, the total allowable commercial harvest allowed a large commercial harvest which, apparently, did not threaten the smelt population. According to a study conducted by the University of Wisconsin - Stevens Point, the commercial harvest of smelt accounted for less than 10% of the instantaneous total mortality rate of smelt in the areas where trawling was taking place, so the total allowable commercial harvest appeared to be appropriate.

Since that time, the smelt population has declined dramatically throughout Lake Michigan. The Great Lakes Science Center of the U.S. Geological Survey has developed two independent indices of lakewide smelt abundance, one based on acoustic measures of fish abundance and one based on collections in standardized trawls. Both indices show a decline of about 80% in smelt abundance. Catch reports of commercial trawlers are consistent with this, showing a decline since 1992 of approximately 80% in the smelt catch per hour of trawling in Lake Michigan. The total smelt harvest by trawling has also declined, from 1,890,228 in the 1991-92 license year to approximately 416,000 pounds in the 1997-98 license year. Declines in harvest and in catch per hour of trawling have been greater in Lake Michigan than in Green Bay. Because the decline in smelt abundance has been observed throughout Lake Michigan, Department biologists do not believe that commercial harvests in Wisconsin were the cause.

With the present reduced lakewide smelt population, the sport fishery for smelt has been reduced to almost nothing. Although the Department is not recommending a quantitative allocation of smelt between sport and commercial fishers, we recognize that these are competing users for a resource in limited supply.

In order to bring the total allowable commercial harvest into line with the current lakewide smelt population, the Department recommends that it be adjusted in rough proportion to the apparent lakewide smelt decline. The Department is proposing that the total allowable commercial harvest be reduced to 713,340 pounds, 30% of its current level. This is the estimated ratio of lakewide smelt abundance during 1995-97 to lakewide smelt abundance during 1983-91, the years that provided the basis for the current total allowable commercial harvest.

Modifications as a Result of Public Hearings

The harvest limits contained in this rule are somewhat different from those proposed in the citizens' petition, which recommended a 750,000 pound combined harvest limit, with no more than 150,000 pounds to be taken from Green Bay. As originally drafted to reflect the citizens' petition, this rule also included provisions designed to:

- a. Redistribute trawling effort beyond the current geographic limits by setting smelt harvest limits for 7 defined "port areas" in Lake Michigan.
- b. Require the landing of all smelt, alewives and chubs caught in trawls.
- c. Close the smelt fishery when the alewife harvest in Green Bay or a port area reached 10% of the smelt harvest limit.

Appearances at the Public Hearing and Their Position

April 14, 1998 - Two Rivers

In support:

Roy Berres, President, Northeastern Wisconsin Great Lakes Sport Fishermen, 1439 North 8th St., Manitowoc, WI 54220
Austin Streblov, 3033 Bellair Lane, Oshkosh, WI
Syd Herman, 1012 Green Street, Manitowoc, WI 54220
Edward J. Stodola, 1810 North 12th Street, Manitowoc, WI 54220
Mike Rusch, 1332 South 26th Street, P.O. Box 355, Manitowoc, WI 54220
Raymond B. Monka, 3142 Memorial Drive, Two Rivers, WI 54241
Francis Lodol, 2608 Jackson Street, Two Rivers, WI 54241
Roger W. Puls, 1008 24th Street, Two Rivers, WI 54241
Ray Vesely, 1842 Rankin Street, Manitowoc, WI 54220
Mike Rathsack, 5616 CTH V, Two Rivers, WI 54241
William Ernst, 2223 13th Street, Two Rivers, WI 54241
John Gilbert, 859 Stiner Drive, Two Rivers, WI 54241
Allen Sprang, 12412 Lake Shore Road, Two Rivers, WI 54241
Richard Becker, 8633 Hwy. 42, Two Rivers, WI 54241

In opposition:

Allen Forst Geimer, 1426 Mahogany Run, Two Rivers, WI 54241
Wayne Petri, 2610 31st, Two Rivers, WI 54241
James Luisier, Colonial Inn Restaurant, 4403 Fleetwood Drive, Manitowoc, WI 54220
Jamie LeClair, Susie Q Fish Company, 7036 Tannery Road, Two Rivers, WI 54241
Dan Pawlitzke, Economic Development, City of Two Rivers, 1717 East Park Street, Two Rivers, WI
Howard G. Barner, 1012 Columbus Street, Two Rivers, WI 54241
Margaret M. Becker, 1723 Blue Heron Drive, Two Rivers, WI 54241
Robert J. Dumovich, 627 Huron Avenue, Sheboygan, WI 53081
Daniel LeClair, Jr., Susie Q Fish Company, 712 North 7th Street, Manitowoc, WI 54220
Michael J. LeClair, Susie Q Fish Company, 2130 CTH VV, Two Rivers, WI 54241
Steve Kulpa [no address given]
Paul LeClair, 110 Thiede Road, Two Rivers, WI 54241
Lester Koeppel, 3115 Tannery Road, Two Rivers, WI 54241
Nancian Davis Hall, 1911 27th Street, Two Rivers, WI 54241
Floyd Payer, E3714 CTY J, Kewaunee, WI 54216
Jennifer Clements, 3735 Parkway Blvd., Two Rivers, WI 54241

Gregory J. Erickson, 2507 41st Street, Two Rivers, WI 54241
Lee Haasch, President, Wis. Charter Association, Inc., 701 Washington Street, Algoma, WI 54201
Renee Ruether, 1428 Hamann Road, Manitowoc, WI 54220
Eric Svacina, 2716 32nd Street, Two Rivers, WI 54241
Michael S. Zimmer, 2116 Jackson Street, Two Rivers, WI 54241
Thomas Thiede, 3142 Memorial Drive, Two Rivers, WI 54241
Eunice LeClair, 3138 Memorial Drive, Two Rivers, WI 54241
Earl Basken, 1746 Town Road, Kewaunee, WI
Jim Christensen, 627 N. Woodland Drive, Two Rivers, WI 54241
Bernard Brennan, 1012 North 6th Street, Manitowoc, WI 54220
Jim Hippert, 1728 22nd Street, Two Rivers, WI 54241
Julie Hippert, 1728 22nd Street, Two Rivers, WI 54241
Richard H. Ertman, 2802 STH 310, Two Rivers, WI 54241
Paula M. Rohrer, 1730 Cross Street, Manitowoc, WI 54220
Jennifer Clements, 3735 Parkway Blvd., Two Rivers, WI 54241
Maryon Lohr, Two Rivers, WI 54241
Harold Lohr, 2401 Jefferson, Two Rivers, WI 54241
Cynthia A. Svacina, 2716 32nd Street, Two Rivers, WI 54241
Daniel Svacina, 2716 32nd Street, Two Rivers, WI 54241
Kathy LeClair, 2130 CTH VV, Two Rivers, WI 54241
Arthur Lange, 2929 Cottage Lane, Two Rivers, WI 54241
Kristina Trastek, 1813 31st Street, Two Rivers, WI 54241
Jeff Trastek, 1813 31st Street, Two Rivers, WI 54241
Kenneth F. Kulpa, 3023 CTH O, Two Rivers, WI 54241
Patricia L. Kulpa, 3023 CTH O, Two Rivers, WI 54241
Sandra Trastek, 1813 31st Street, Two Rivers, WI 54241
Catherine N. Becker, 2205 Pine Tree Drive, Two Rivers, WI 54241
Joe LeClair, 320 22nd Street, Two Rivers, WI 54241
Carol LeClair, 324 22nd Street, Two Rivers, WI 54241
Cheryl R. Gain, Small Business Ombudsman, WI Dept. of Commerce, P.O. Box 7970, Madison, WI

As interest may appear:

Don Hansen, Sr., 3310 Memorial Drive, Two Rivers, WI 54241
Pete LeClair, 3138 Memorial Drive, Two Rivers, WI 54241
Fred Copes, Bio Dept., UW-Stevens Point, Stevens Point, WI
Gregory Bockley, City Manager, City of Two Rivers, 1717 East Park Street, Two Rivers, WI 54241
Richard Kadow, 3817 Martin Lane, Two Rivers, WI 54241
Timothy Tomchek, President, Manitowoc Co. Tavern League, 1713 East Street, Two Rivers, WI
Paul Becker, 2535 37th Street, Two Rivers, WI 54241
Paul Schroeder, 1402 16th Street, Two Rivers, WI 54241
Dave Pflieger, 235 Park Road, Two Rivers, WI 54241
Gerald Wiesner, 1617 South 11th Street, Manitowoc, WI 54220
Gene Gates, 1505 Blue Heron Drive, Two Rivers, WI 54241

April 16, 1998 - Milwaukee

In support:

John Gilbert, 859 Stiener Drive, Two Rivers, WI 54241
William Ernst, 2223 13th Street, Two Rivers, WI 54241
Roy Berres, 1439 North 8th Street, Manitowoc, WI 54220
Ted Lind, President, Wis. Council of Sportfishing Organizations, 4434 N. 52nd St., Milwaukee, WI
Mike Rusch, 2920 Madson Road, Manitowoc, WI 54220

In opposition:

Ned L. Huwatschek, President, Smith Bros. Food Service, 815 Sunset Road, Port Washington, WI
Neil Schwarz, Schwarz Fish Co., 3028 South 9th Street, Sheboygan, WI 53081

As interest may appear:

Maxine Appleby, 712 East Wells, Milwaukee, WI 53202-3913

April 16, 1998 - Racine

In support:

Jim Butterbrodt, 4824 22nd Avenue, Kenosha, WI 53140
Donna R. Lester, Salmon Unlimited, 5927 Spring Street, Racine, WI 53406
Dale Lester, 5927 Spring Street, Racine, WI 53406
Jim Metz, 3010 5th Avenue, Apt. 10, South Milwaukee, WI 53172
Charles Lambert, 120 16th Avenue, South Milwaukee, WI 53172
John Gilbert, 859 Stiener Drive, Two Rivers, WI 54241
Roy Berres, President, Northeast Wisconsin Great Lakes Sport Fishermen, 1439 North 8th St.,
Manitowoc, WI
William Ernst, 2223 13th Street, Two Rivers, WI 54241

In opposition:

John H. Anderson, 4200 Wright Avenue, Racine, WI 53405
Angelo Trentadue, 151 Ohio Street, Racine, WI 53405

As interest may appear:

Robert M. Chojnowski, 3973 South 75th Street, Milwaukee, WI 53220

April 20, 1998 - Marinette

In support

Robert Melehoir, 2008 16th Avenue, Menominee, MI 49858
Michael L. Combes, W795 Eastman Road, Marinette, WI 54143
Roy Berres, 1439 North 8th Street, Manitowoc, WI 54220
John Gilbert, 859 Stiener Drive, Two Rivers, WI 54241
George F. Jansen, 412 Court Street East, Marinette, WI 54143
Fred Steppke, 1615 Perwin Street, Marinette, WI 54143
John Reinke, W1398 Little River Road, Marinette, WI 54143

In opposition:

Steve Ruleau, Jr., Ruleau Brothers, Inc., M-35, Menominee, MI 49858
Robert J. Kuntze IV, Ruleau Brothers, Inc., N7360 Hwy. M-35, Cedar River, MI 49813

As interest may appear - none

April 20, 1998 - Green Bay

In support:

Roy Berres, President, Northeast Wisconsin Great Lakes Sport Fishermen, 1439 North 8th Street,
Manitowoc, WI 54220
Ken Murray, 490 Stella Vista Drive, Green Bay, WI 54302
William Capelle, 2032 Deckner Avenue, Green Bay, WI 54302
John E. Durben, 4589 Stagecoach Road, Green Bay, WI 54311
John Gilbert, 859 Stiener Drive, Two Rivers, WI 54241
Al DeBauche, 1706 Harold Street, Green Bay, WI 54302
Billy R. Willis, President, Green Bay Area Great Lakes Sport Fishermen, 2405 Pecan Street,
Green Bay, WI 54311
Julian J. Thayse, 2546 Hillside, Green Bay, WI 54302

In opposition:

Daniel LeClair, 712 North 7th Street, Manitowoc, WI 54220
Carlton J. Steinfeldt, 703 N. Washington Street, DePere, WI 54114
Robert J. Kuntze IV, Ruleau Brothers, Inc., N7256 Hwy M-35, Cedar River, MI 49813
Robert Ruleau, Ruleau Brothers, Inc., N7256 M-35, Cedar River, MI 49813
Charles W. Henriksen, President, Wis. Commercial Fisheries Assoc., 1597 Birch Road,
Baileys Harbor, WI 54202
Pete LeClair, 3138 Memorial Drive, Two Rivers, WI 54241
Michael J. LeClair, 1810 East Street, Two Rivers, WI 54241
Steve Ruleau, Jr., Ruleau Brothers, Inc., N6344 M-35, Menominee, MI 49858

As interest may appear:

John Kennedy, 2773 Newberry Avenue, Green Bay, WI 54302
Dean Swaer, 835 Potts Avenue, Green Bay, WI 54304

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The proposed rule would directly affect commercial fishing businesses engaged in trawling. Reductions in the total allowable commercial harvests would not immediately affect commercial fishing businesses, because the proposed harvest limits exceed recently reported harvests. No new skills, forms or procedures are required in order to comply with the requirements contained in this rule.

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

.....
The Wisconsin Natural Resources Board .
adopts an order to amend NR 25.06(2)(c)1. . FH-26-98
relating to commercial fishing for .
smelt on Lake Michigan and Green Bay .
.....

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 29.041, 29.014(1), 29.519(1)(b) and 227.11 (2)(a), Stats.

Statutes interpreted: ss. 29.041, 29.014(1) and 29.519(1)(b), Stats.

SECTION 1. of the order reduces the total allowable annual commercial harvest of smelt from Lake Michigan and Green Bay. A combined harvest limit of 713,340 pounds is established, of which no more than 251,091 pounds may be taken from Green Bay. SECTION 1. also removes outdated language from the Administrative Code.

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

NR 25.06(2)(c)1. ~~During April 1 through June 30, 1991, the total allowable commercial harvest of smelt may not exceed 337,665 pounds in Lake Michigan and Green Bay, of which no than 137,665 pounds may be taken from Green Bay. Thereafter, the~~ The total allowable commercial harvest of smelt in any license year may not exceed ~~2,358,000~~ 713,340 pounds in Lake Michigan and Green Bay, of which no more than ~~830,000~~ 251,091 pounds may be taken from Green Bay.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on October 28, 1998.

The rules contained herein 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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)