

APR 05 2001

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. FI-48-00

Legislative Council Rules Clearinghouse Number 00-178

Subject of Rules Licensing commercial fishers
on Lake Michigan

Date of Transmittal to Presiding Officers April 3, 2001

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

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

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 25.03(2)(b)3.b., Wis. Adm. Code
Licensing commercial fishers on Lake Michigan

Board Order No. FH-48-00
Clearinghouse Rule No. 00-178

Statement of Need

The proposed rule will make it easier for a commercial fisher to qualify for relicensing in years when fish stocks are declining. Yellow perch harvest rates in the commercial fishery on Green Bay were sharply lower in the summer of 2000 than during summers of preceding years and the abundance of bloater chubs continues to decline in Lake Michigan. These developments have prompted concern on the part of commercial fishers that some license holders might not meet the minimum catch requirement for relicensing at the end of the current fishing year, despite remaining active participants in the fishery.

One purpose of relicensing criteria is to assure that licenses are issued only to active fishers. It is essential to retain meaningful criteria for identifying active fishers, but flexibility is appropriate when fish populations decline. In order to identify inactive licensees, persons who apply for annual renewal of commercial fishing licenses for Lake Michigan must meet several criteria. Since 1989, one key criterion has been the minimum annual catch requirement. To qualify for relicensing, each licensee must have reported a minimum harvest of smelt or, in combination, yellow perch, whitefish, menominees and chubs.

To satisfy the minimum catch requirement using smelt, the licensee must have reported a minimum harvest from either zone 1 or zone 3. To satisfy the minimum catch requirement using the other species in combination, the licensee must, in at least one of the three commercial fishing zones, have reported a combined harvest that exceeds one of two numbers: a zone specific level set out in s. NR 25.03 or a computed level based on the harvests of all fishers during the year preceding the year during which the application for relicensing is submitted. Because the wording of s. NR 25.03 refers to the year for which licensing is requested as the current year, the year during which the application is made is referred to as the "previous" year. Under the revised rule, an alternate computed minimum catch would be established for smelt and the alternate minimum catch requirement for the four species in combination would be computed based on harvests by all fishers during the most recent 12-month period, i.e., June of the preceding year through May of the year of application.

Modifications as a Result of Public Hearing

The proposed rule has been modified to incorporate an alternate computed minimum catch level for smelt.

Appearances at the Public Hearing and Their Position

January 12, 2001 – Green Bay

In support:

- Val Drzewiecki, Suamico Fish Company, 1355 Starview Lane, Green Bay, WI 54313
- Frank Herres, Wisconsin Wildlife Federation, 2230 Ledvina Circle, Green Bay, WI 54313
- Pat Hermes, 2008 Memorial Drive, #204, Green Bay, WI 54303
- Jim Hermes, P.O. Box 254, Suamico, WI 54173
- Tom Drzewiecki, Suamico Fish Company, 4120 Bayside Road, Suamico, WI 54173
- Eugene Marks, Marks Brothers Fish, 1249 Crestwood Drive, Green Bay, WI 54313
- Ronald VanderLoop, 2121 Orrie Lane, Green Bay, WI 54304
- Cyril Thyrion, 2363 8th Street, Green Bay, WI 54304
- Mark R. Maricque, 628 Floral Drive, Green Bay, WI 54301

In opposition – none

As interest may appear - none

January 22, 2001 – Port Washington – no appearances

Response to Legislative Council Rules Clearinghouse Report

The recommendation was accepted.

Final Regulatory Flexibility Analysis

No additional compliance or reporting requirements will be imposed as a result of these rule changes. The proposed rule will make it easier for a commercial fisher to qualify for relicensing in years when fish stocks are declining.

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 25.03(2)(b)3.a. and b. relating to licensing commercial fishers on Lake Michigan

FH-48-00

Analysis Prepared by Department of Natural Resources

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

This order changes the requirements for annual relicensing of commercial fishers on Lake Michigan. In order to identify inactive licensees, persons who apply for annual renewal of commercial fishing licenses for Lake Michigan must meet several criteria. Since 1989, one key criterion has been the minimum annual catch requirement.

To qualify for relicensing, each licensee must have reported a minimum harvest of smelt or (in combination) yellow perch, whitefish, menominees and chubs during the previous license year. (Because the wording of s. NR 25.03 refers to the year for which licensing is requested as the current year, the year during which the renewal application is made is referred to as the "previous" year.) To satisfy the minimum catch requirement using smelt, a licensee must have reported a harvest of at least 147,870 from zone 1 or 76,770 from zone 3. To satisfy the minimum catch requirement using the other species in combination, a licensee must have reported, in at least one of the three commercial fishing zones, a combined harvest that exceeds either of two numbers: 1) a zone-specific poundage specified in the rule or 2) a computed poundage based on the harvests of all fishers during the year before the preceding year.

Under the revised rule, an alternate computed minimum catch is established for smelt and the alternate minimum catch requirement for the four species in combination would be computed based on harvests by all fishers during the most recent 12-month period, i.e., June of the preceding year through May of the year of the application. The revised rule will make it easier to meet the minimum catch requirement when commercial harvests decline.

SECTION 1. NR 25.03(2)(b)3.a. and b. are amended to read:

NR 25.03(2)(b)3.a. ~~Smelt of at least 147,870 total pounds from zone 1 or 76,770 total pounds from zone 3~~ or X1 total pounds, whichever is less, from zone 1, or 76,770 or X3 total pounds, whichever is less, from zone 3, where X1 and X3 = 30 times the average reported total daily harvest of smelt taken by trawls from zone 1 or 3, respectively, by all licensed commercial fishers during the 12 months preceding June 1 of the previous license year.

b. Yellow perch, menominees, whitefish, chubs or any combination of these species of at least 3,570 or X1 total pounds, whichever is less, from zone 1, 13,656 or X2 total pounds, whichever is less, from zone 2, or 19,638 or X3 total pounds, whichever is less, from zone 3, where X1, X2, and X3 = 30 times the average reported total daily harvest of yellow perch, menominees, whitefish and chubs from zone 1, 2 or 3, respectively, by all licensed commercial fishers during the ~~license year preceding 12~~ months preceding June 1 of the previous license year.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on March 28, 2001.

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 _____
Darrell Bazzell, Secretary

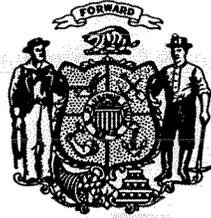
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WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

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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 00-178

AN ORDER to amend NR 25.03 (2) (b) 3. b., relating to licensing commercial fishers on Lake Michigan.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-08-00 RECEIVED BY LEGISLATIVE COUNCIL.

01-04-01 REPORT SENT TO AGENCY.

RNS:GAA:tlu;rv

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

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 00-178

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

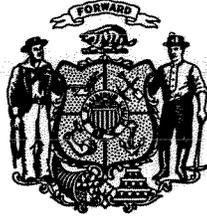
It is not clear that the language in the rule and the language in the analysis say the same thing. The analysis refers to "the most recent 12-month period, i.e., June of the preceding year through May of the year of the application." The rule refers to "the 12 months preceding June 1 of the *previous* license year." (Emphasis added.) The two should be reviewed for consistency. If the analysis is correct, "June 1 of the year preceding the year of application to May 31 of the year of application" could be used in the rule.

WISCONSIN LEGISLATIVE COUNCIL STAFF

JAN 04 2000
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FORM 2

RULES CLEARINGHOUSE

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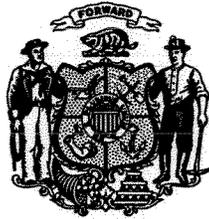
Comment Attached YES NO

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Report to
Legislative Council Rules Clearinghouse
NR 25.03, Wis. Adm. Code
Natural Resources Board Order No. FH-48-00

Wisconsin Statutory Authority

ss. 29.041, 29.014(1), 29.519(1) and 227.11(2)(a), Stats., interpreting ss. 29.041, 29.014(1) and 29.519(1), Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

The proposed rule changes the requirements for relicensing commercial fishers on Lake Michigan. In order to identify inactive licensees, persons who apply for annual renewal of commercial fishing licenses for Lake Michigan must meet several criteria. Since 1989, one key criterion has been the minimum annual catch requirement. To qualify for relicensing, each licensee must, for at least one of the three commercial fishing zones, have reported a combined harvest that exceeds one of two numbers: 1) a zone-specific level set out in s. NR 25.03 or 2) an alternate computed level based on the harvests of all fishers during the year preceding the year during which the application for relicensing is submitted. Under the proposed rule, the alternate minimum catch requirement would be computed based on harvest by all fishers during the most recent 12-month period, June of the preceding year through May of the year of application.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Bill Horns, Bureau of Fisheries Management and Habitat Protection - 266-8782
Pete Flaherty, Bureau of Legal Services - 266-8254
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on December 7, 2000

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 25.03(2)(b)3.b. relating to licensing commercial fishers on Lake Michigan

FH-48-00

Analysis Prepared by Department of Natural Resources

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

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

SECTION 1 of the order changes the requirements for annual relicensing of commercial fishers on Lake Michigan. In order to identify inactive licensees, persons who apply for annual renewal of commercial fishing licenses for Lake Michigan must meet several criteria. Since 1989, one key criterion has been the minimum annual catch requirement. To qualify for relicensing, each licensee must, in at least one of the three commercial fishing zones, have reported a combined harvest that exceeds one of two numbers: 1) a zone-specific level set out in NR 25.03 or 2) a computed level based on the harvests of all fishers during the year preceding the year during which the application for relicensing is submitted (because the wording of NR 25.03 refers to the year for which licensing is requested as the current year, the year during which the application is made is referred to as the "previous" year). Under the revised rule, the alternate minimum catch requirement would be computed based on harvests by all fishers during the most recent 12-month period, i.e., June of the preceding year through May of the year of the application.

SECTION 1. NR 25.03(2)(b)3.b. is amended to read:

NR 25.03(2)(b)3.b. Yellow perch, menominees, whitefish, chubs or any combination of these species of at least 3,570 or X1 total pounds, whichever is less, from zone 1, 13,656 or X2 total pounds, whichever is less, from zone 2, or 19,638 or X3 total pounds, whichever is less, from zone 3, where X1, X2, and X3 = 30 times the average reported total daily harvest of yellow perch, menominees, whitefish, and chubs from zone 1, 2 or 3, respectively, by all licensed commercial fishers during the license year preceding 12 months preceding June 1 of the previous license year.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on _____

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)

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