

NOV 07 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. FH-12-01

Legislative Council Rules Clearinghouse Number 01-037

Subject of Rules Sport fishing and commercial
fishing for yellow perch in Green Bay

Date of Transmittal to Presiding Officers November 6, 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 20 and 25, Wis. Adm. Code
Sport fishing and commercial fishing for yellow perch in Green Bay

Board Order No. FH-12-01
Clearinghouse Rule No. 01-37

Statement of Need

Estimates of yellow perch abundance and natural reproduction in Green Bay indicate a declining population and suggest that action is needed to protect the remaining yellow perch and maximize the likelihood of an early recovery. An emergency order effective on July 1, 2001 reduced the sport bag limit from 25 to 10 and reduced the annual commercial harvest limit from 200,000 pounds to 20,000 pounds. The proposed rule will keep these reduced limits in effect for 2 years.

Yellow perch abundance in Green Bay declined over 90% between 1988 and 2000. The estimated total weight of all yellow perch in Green Bay dropped from over 10,000,000 pounds in 1988 to under 500,000 pounds in 2000. Since 1990 the annual sport fishing harvest has declined similarly, from over 3,000,000 fish in 1990 and 1991 to fewer than 200,000 fish in 2000. Periodic reductions in total allowable commercial harvests, along with declining yellow perch abundance and interference from the abundance white perch, have caused commercial harvests to decline during this period also.

Modifications as a Result of Public Hearing

No modifications were made as a result of public hearing. A two year sunset was added to the proposed rule at the Natural Resources Board meeting.

Appearances at the Public Hearings and Their Position

May 21, 2001 – Peshtigo

In support:

Ronald H. Vanlerberghe, M.B.K. Sport Shop, W5971 Hwy. 180, Marinette, WI 54143
Philip C. Klumb, 1517 17th Avenue, Menominee, Michigan 49858
Glenn O. Yeazel, N3126 River Bend Drive, Peshtigo, WI 54157

In opposition:

Robert J. Kuntze, R.S. Fish LLP, N7360 Hwy. M35, Cedar River, MI 49813
Francis D. Erickson, 2920 Taylor Street, Marinette, WI 54143
Dick Doeren, 107 Smith Avenue, Oconto, WI 54153
John Kulpa, 2609 County O, Two Rivers, WI 54241
Jennifer Benson, N1068 Shore Drive, Marinette, WI 54143
Dean Swaer, 616 N. Fisk, Green Bay, WI 54303
Wesley R. LaFever, 609 Baxter Street, Marinette, WI 54143
Sherry & Jim Benson, N1068 Shore Drive, Marinette, WI 54143
Kent Kostecky, 112 Williams Street, Marinette, WI 54143

Ellis Mercier, Oconto Harbor Commission, 125 Washburn Avenue, Oconto, WI 54153
Ken Vieth, 828 Jackson Street, Marinette, WI 54143
John R. Ihde, 3822 N. River Road, Oconto, WI 54153
Thomas Heindel, 100 Brazeau Avenue, Oconto, WI 54153
Charles Nylund, 543 Dousman Street, Marinette, WI 54143

As interest may appear:

Norbert Swaer, 3050 Fish House Road, Oconto, WI 54153
James W. Kadlec, 226 4th Street, Oconto, WI 54153
David A. Swaer, 4109 Pen. Bayshore Road, Oconto, WI 54153
Joe Schroedle, President, Portfield Sportsman Club, W2340 Twin Pine Lane, Portfield, WI 54159
Russell E. Miller, N2001 Kutz Road, Marinette, WI 54143
Len Sadowski, W4059 Peters Road, Marinette, WI 54143
James Benson, N1068 Shore Drive, Marinette, WI 54143
David Thibodeau, Peshtigo Times, N1780 Dahl Road, Marinette, WI 54143
Walter Wood, N4636 West Townline Road, Marinette, WI 54143
Beaumia Robert, 219 S. Franklin, Oconto Falls, WI 54154
Roger Miller, 2313 14th Avenue, Menominee, MI 49858
Norbert Molior, 332 5th Avenue, Menominee, MI 49858
Robert Laabs, 2045 County J, Little Suamico, WI 54141
David Lee Polzin, N1952 County BB, Marinette, WI 54143
Terry Dooley, 3974 Airport Road, Oconto, WI 54153
Dan Rhode, 6120 Bayshore Road, Oconto, WI 54153

May 21, 2001 – Green Bay

In support:

Frank Herres, Wisconsin Wildlife Federation, 2230 Ledvina Circle, Green Bay, WI 54313
Billy R. Willis, 2405 Pecan Street, Green Bay, WI 54311
David Bottoni, 2516 Bittersweet, Green Bay, WI 54301
Tom Kores, 2291 Saint Kilian Road, New Franken, WI 54229
Todd Mahlik, 1331 Bellevue, Lot 103, Green Bay, WI 54302
Leland Marcelle, 2771 Sherry Lane, Green Bay, WI 54302
John Van Beek, 1263 Bayshore Road, Brussels, WI 54204
Jerry Rozell, 1129 Brosig Street, #B, Green Bay, WI 53204
Ron Roskoski, 212 S. Locust Street, Green Bay, WI 54303
Theresa Alexander, 1262 Bayshore Road, Brussels, WI 54204
Joseph Collin, 833 Harvey Street, Green Bay, WI 54302
Cyril E. Thyron, 2363 N. 9th Street, Green Bay, WI 54304
Ron Thyron, 2363 9th Street, Green Bay, WI 54304
Dennis L. Counard, 230 Lau Street, Green Bay, WI 54302
Allen Alexander, 1262 Bayshore Road, Brussels, WI 54204
Richard L. DeRoach, 2121 Bethany Place, Green Bay, WI 54304
Tom Jenquin, 1249 County Road C, Brussels, WI 54204
Jeff LaPlante, 1200 Desnoyers Street, Green Bay, WI 54303
Ben Englebert, 400 Newhall Street, Green Bay, WI 54302
Robert Lenz, 1659 Loretta Lane, Green Bay, WI 54302
Wayne Federspiel, P.O. Box 8032, Green Bay, WI 54308

In opposition:

Charlie Henriksen, Wis. Commercial Fishing Assn., 1597 Birch Road, Baileys Harbor, WI 54202
Gerald J. Renier, 3288 Peterson Road, Green Bay, WI 54311
Doug Tahlman, 1337 Rhode Island, Sturgeon Bay, WI 54235
Jack Schmitz, 3816 Cottage Row, Suamico, WI 54173
Robert E. Schmitz, 1736 Carroll Avenue, Green Bay, WI 54304
Bill Kust, N8859 Wellers Lane, Luxemburg, WI 54217
Robert J. Dumovich, 627 Hobon Avenue, Sheboygan, WI 53081
Don Deviley 1517 Leo Street, Green Bay, WI 54303
Tom Peters, 2684 Lakeview Drive, Suamico, WI 54173
Al Jaecks, 4613 Broadway Street, Manitowoc, WI 54220
Russ Hermsen, Chairman, Suamico Harbor Commission, 1075 Riverside Drive, Suamico, WI 54173
Joel McOlash, 825 Delaware Street, Sturgeon Bay, WI 54235
Mark R. Maricque, 628 Floral Drive, Green Bay, WI 54301
Michael M. Zettel, 140 Berber Street, Green Bay, WI 54302
Herm Frederick, P.O. Box 156, Denmark, WI 54208
Wayne DeGroot, N8849 Weller Lane, Luxemburg, WI 54217
John Josephs, 906 Eastman, Green Bay, WI 54935
Nanette E. Jameson, 2979 Sandia Drive, Green Bay, WI 54313
Peggy Beaumier, 1157 N. Taylor Street, Green Bay, WI 54303
Robert Appleton, 119 Service Road, Oneida, WI 54155
Duane M. Reha, 3743 Heron Lane, Green Bay, WI 54311
Tom Drzewiecki, 4120 BaySide Road, Suamico, WI 54173
Val Drzewiecki, 1355 Starview Lane, Green Bay, WI 54313
Eugene Marks, 1249 Crestwood Drive, Green Bay, WI 54313
Michael Hermes, 2780 Harbor Lights Lane, Suamico, WI 54173
Al DeBauche, 1706 Harold Street, Green Bay, WI 54302
Harold Rose, 101 S. Webster, DePere, WI 54115
Tom Herrera, 2034 Harold Street, Green Bay, WI 54302
Roger Mleziva, E373 JJ Road, Luxemburg, WI 54217
Patrick O'Donnell, 1130 Elizabeth Street, R7L3, Green Bay, WI 54302
Everett Marks, 2621 Shade Tree Lane, Green Bay, WI 54313
Tom Hermes, 1016 McDonald Street, Green Bay, WI 54303
Heather Hermes, 2008 Memorial Drive, #204, Green Bay, WI 54303
Carol Schmitz, 3816 Cottage Row, Suamico, WI 54173
Leon Maccaux, 1210 Sandstone Place, Green Bay, WI 54313
Paul M. Brunette, 310 N. Oakland Avenue, Oconto Falls, WI 54154
Charles Denk, 1807 Badger Street, Green Bay, WI 54303

As interest may appear:

Charles C. Weier, 358 22nd Street, Two Rivers, WI 54241
Ken Murray, 490 Stella Vista Drive, Green Bay, WI 54302
Pete Petrouske, 1498 Ponderosa Avenue, Green Bay, WI 54313
Tim Loritz, 341 Van Caster Drive, Green Bay, WI 54311
Larry Freitag, 1610 South 11th, Sheboygan, WI 53081
Don Stiller, 4919 Ball Park Road, Little Suamico, WI 54141
Ralph R. Zellner, 1771 Scray Hill Road, DePere, WI 54115
Bernie Skaletski, 1121 Grignon Street, Green Bay, WI 54301
Todd A. Teletzke, 3385 Wiggins Way, Green Bay, WI 54311
William Kreuser, 1695 Biemeret Street, Green Bay, WI 54304

Dan DeBauche, 1940 Farlon, Green Bay, WI 54302
James DeBrout, 2765 Glendale, Green Bay, WI 54303
Bob VanderLoop, 2121 Orrie Lane, Green Bay, WI 54304
Phil Moy, 705 Viebahn Street, Manitowoc, WI 54220
Alvin Gehrke, 1451 Liberty, Green Bay, WI 54304

Response to Legislative Council Rules Clearinghouse Report

The recommendation was accepted.

Final Regulatory Flexibility Analysis

No additional compliance or reporting requirements will be imposed on commercial fishers as a result of these rule changes. No additional skills are required.

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 20.20(73)(j)1.a. and 3.a. relating to sport fishing for yellow perch in Green Bay and its major tributaries and NR 25.06(2)(b)1. relating to commercial fishing for yellow perch in Green Bay.

FH-12-01

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.

SECTION 1 of the order reduces the sport fishing daily bag limit for yellow perch caught in Green Bay and its tributaries to 10. Currently the daily bag limit is 25 in total for panfish, including yellow perch. The reduced daily bag limit for yellow perch will expire June 30, 2004. The daily bag limit will then revert to the current daily bag limit.

SECTION 2 of the order reduces the annual total allowable commercial harvest of yellow perch from zone 1 (Green Bay) from 200,000 pounds to 20,000 pounds. The reduced annual total allowable commercial harvest will expire June 30, 2004. The annual total allowable commercial harvest will then return to the current 200,000 pounds.

SECTION 1. NR 20.20(73)(j)1.a., as affected by Clearinghouse Rule 01-12 (Natural Resources Board order number FM-08-01), and 3.a. are amended to read:

NR 20.20(73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OTHER SIZE RESTRICTIONS (INCHES)
(j) Panfish	1. Green Bay and major Green Bay tributaries	a. Hook and line	Continuous, but the open season for yellow perch is May 20 to March 15	25 in total <u>but from the effective date of this rule ... [Revisor insert date] to June 30, 2004, only 10 may be yellow perch</u>	None
	3. All other tributary streams, rivers and ditches to	a. Hook and Line	Continuous, but the open season for yellow perch is May 20 to March 15	25 in total <u>but from the effective date of this rule ... [Revisor insert</u>	None

Green Bay upstream to the first dam or lake	<u>date] to June 30, 2004, only 10 may be yellow perch</u>
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SECTION 2. NR 25.06(2)(b)1. is amended to read:

NR 25.06(2)(b)1. The total allowable commercial harvest in zone 1 for any license year may not exceed 200,000 pounds, except that from the effective date of this rule ... [Revisor insert date] to June 30, 2004, the total allowable commercial harvest in zone 1 for any license year may not exceed 20,000 pounds.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on October 24, 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

(SEAL)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 01-037

AN ORDER to amend NR 20.20 (73) (j) 1. and 2. and 25.06 (2) (b) 1., relating to sport fishing and commercial fishing for yellow perch in Green Bay.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-06-01 RECEIVED BY LEGISLATIVE COUNCIL.

04-30-01 REPORT SENT TO AGENCY.

RS:MCP:jal

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 RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

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Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 01-037

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

"Length" is misspelled in the column heading.

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 20.20(73)(j)1. and 2. relating to sport fishing for yellow perch in Green Bay and its tributaries and NR 25.06(2)(b)1. relating to commercial fishing for yellow perch in Green Bay.

FH-28-01(E)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 29.014(1), 29.041, 29.519(1), 227.11(2)(a) and 227.24, Stats.

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

SECTION 1 of the order reduces the sport fishing daily bag limit for yellow perch caught in Green Bay and its tributaries to 10. Currently the daily bag limit is 25 in total for panfish, including yellow perch.

SECTION 2 of the order reduces the total annual commercial harvest of yellow perch from zone 1 (Green Bay) from 200,000 pounds to 20,000 pounds.

SECTION 1. NR 20.20(73)(j)1. and 2. are amended to read:

NR 20.20(73)

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OTHER SIZE RESTRICTIONS (INCHES)
(j) Panfish	1. Green Bay	a. Hook and line	Continuous, but the open season for yellow perch is May 20 to March 15	25 in total <u>but only 10</u> <u>may be</u> <u>yellow perch</u>	None
	2. Major Green Bay tributaries	a. Hook and line	Continuous, but the open season for yellow perch is May 20 to March 15	25 in total <u>but only 10</u> <u>may be</u> <u>yellow perch</u>	None

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

NR 25.06(2)(b)1. The total allowable commercial harvest in zone 1 for any license year may not exceed ~~200,000~~ 20,000 pounds.

FINDING OF EMERGENCY

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Yellow perch contribute significantly to the welfare of Wisconsin citizens by supporting popular and economically valuable sport and commercial fisheries. The yellow perch population in Green Bay is rapidly declining. This decline reflects a number of years of very poor reproduction. The only recent year with reasonably good natural reproduction was 1998. The fish spawned that year contributed to the sport harvest in 2001 and will become vulnerable to commercial gear this summer. Sport and commercial harvests of adult yellow perch must be limited immediately in order to protect those fish and maximize the probability of good reproduction in the near future.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on June 27, 2001.

The rules contained herein shall take effect on July 1, 2001, as emergency rules, as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin

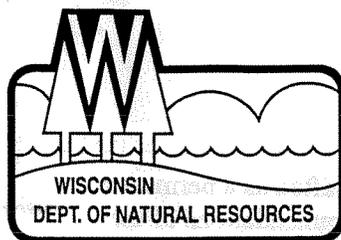
June 28, 2001

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By

Darrell Bazzell
Darrell Bazzell, Secretary

(SEAL)


State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

June 25, 2001

The Honorable James R. Baumgart
Chair, Senate Committee on Environmental Resources
State Capitol

The Honorable DuWayne G. Johnsrud
Chair, Assembly Committee on Natural Resources
State Capitol

Dear Senator Baumgart and Representative Johnsrud:

This week the Natural Resources Board will consider a Department of Natural Resources proposal to limit by emergency rule the harvest of yellow perch from Green Bay. The proposal, written to take effect July 1, would reduce the daily bag limit for sport fishers from 25 to 10, and it would reduce the total allowable commercial harvest from southern Green Bay from 200,000 to 20,000 pounds. The attached material explains the proposal in detail. At the heart of it is the fact that yellow perch have declined 90 to 95% over the past ten years, and the time has come to begin protecting the remaining adult yellow perch in order to maximize the chances of a recovery. The purpose of this letter is to highlight a few points related to the decline of yellow perch in Green Bay. For your information, I have also attached the background information that we are providing to the Board.

The problem. The yellow perch population in Green Bay has been declining for a number of years. In contrast with the 1980's, when the yellow perch population was rapidly growing and reproduction was strong every year or two, the 1990's have been a decade of poor reproduction. We had hoped that one year of modest reproduction, 1998, would buoy the population, but by late last fall it was clear that this was not to be the case. The extent of the problem was being reflected in both sport and commercial catches. The sport harvest had declined over 90% between 1991 and 2000. On the commercial side, the total harvest was only a fraction of the allowable catch. Even as late as June 9, after over 11 months of the 2000-2001 commercial fishing year, commercial fishers in Green Bay had only harvested 25,074 pounds of the total allowable harvest of 204,655 pounds.

Public participation. This issue has been discussed with the public for several months in a number of forums. In January an initial proposal to close both sport and commercial fishing for yellow perch in Green Bay was drafted into rule form. That proposal was made widely known to sport and commercial fishers through a direct mailing to over 1,000 interested sport and commercial fishers, news media outlets, and legislators. It was discussed at sport fishing club meetings, and reviewed by the Lake Michigan Fisheries Forum (a broadly-based advisory group) and the Lake Michigan Commercial Fishing Board. The Forum recommended dropping the initial proposal and replacing it with a proposal to reduce the sport fishing daily bag limit for yellow perch from 25 to 5 and reduce the commercial fishing annual harvest limit from 200,000 to 100,000 pounds. The Commercial Fishing Board met subsequently, and although it did not recommend a specific sport fishing daily bag limit, endorsed the Forum's proposal for a 100,000 pound commercial harvest limit. Proposed Natural Resources Board Order FH-12-01 (Clearinghouse Rule 01-037) which recommended a 10 daily bag limit for sport anglers and a 20,000 pound quota for

commercial fishing in zone 1 (4,655 pound quota in zone 2 is unaffected) was then drafted as a permanent rule by Department staff in light of all available data and in consideration of the recommendations of the Lake Michigan Fisheries Forum and the Lake Michigan Commercial Fishing Board. Public hearings were approved by the Natural Resources Board in March, and held in May. *At the NRB meeting and the public hearings the possibility of an emergency rule was discussed.* Because the present emergency rule is identical to FH-12-01, a synopsis of the hearings on FH-12-01 is included in the attachment. It should be noted that a number of people appearing at the public hearings favored a *total* closure of all sport and commercial harvest to provide maximum protection for the perch stocks.

Rationale for final recommendation Several factors were important in arriving at the Department recommendation. First and foremost the limits needed to adequately protect the remaining yellow perch adult populations. We estimate there were approximately 500,000 pounds of yellow perch remaining in Green Bay in 2000 perhaps a smaller amount now in 2001. Obviously the safest recommendation would be to completely close the fishery – but most of our advisory groups felt some harvest should be maintained. The Forum and Commercial Fishing Board recommended a 100,000 pound commercial harvest limit, but this would be at least 20% of the remaining perch in Green Bay and Department biologists feel this creates an unacceptably high risk to the perch population particularly if natural reproduction continues to be sporadic. The Department also tries to allocate harvest equally to sport and commercial. Under the 5 sport bag and 100,000 commercial quota Forum recommendation, 80% of the harvest could have been commercial. The recommended 10 sport bag and 20,000 (plus 4,655 for zone 2) pound commercial quota is expected to yield a total harvest of about 50,000 pounds split equally between commercial and sport. This is only 10% of the remaining biomass of perch in the Bay – a figure we feel represents an acceptable risk. We recommend advancing this as an emergency rule to ensure that perch are protected during the coming fishing season which would not happen if we wait 2-3 months for the rule to become effective. We also feel that this rule – including its possible adoption as an emergency rule - has been thoroughly discussed with the public and there is wide support for some kind of quick action to protect this valuable fishery for the long-term. The Department would like to postpone further action on the permanent rule until October 2001 to allow analysis of harvests and natural reproduction during spring and summer of 2001.

The minimum catch requirement for commercial fishers. Whether the proposed rule is adopted, or not, the yellow perch decline is having an impact on commercial fishers, as well as on businesses such as bait and tackle shops that depend on sport fishing. With the sharply reduced harvests, some licensed commercial fishers are struggling to meet the minimum catch requirement for annual re-licensing. Earlier this year, in order to make re-licensing easier in years of population decline, we modified the minimum catch requirement through adoption of Natural Resources Board Order FH-48-00. The effect of that rule is that the minimum catch requirement for re-licensing for the commercial fishing year starting July 1, 2001 will be 2,469 pounds, rather than 3,570 pounds, as it would have been under the old rule. In addition, we can renew licenses when “unavoidable circumstances” have prevented the applicant from meeting the minimum catch requirement. That provision has always been interpreted broadly, and our legal counsel has advised us that this year the decline in yellow perch abundance, in combination with other factors, constitutes unavoidable circumstances for purposes of the rule. This means that, although there may be some consolidation of commercial fishing businesses, any commercial fisher in southern Green Bay with a serious interest in being re-licensed, will be able to do so for the coming fishing year. Under current Department rules, commercial fishers have the opportunity to diversify, acquire quotas for other species, and fish in different areas, so the unavoidable circumstances clause will not allow indefinite continuation of fishing operations that fail to meet the minimum catch requirement.

Public workshops. Finally, I want to mention that we will be holding one or more public workshops later this summer to allow sport and commercial fishers to meet with experts from outside the area, as well as Department biologists, to discuss and evaluate other management options. We are working with the Lake Michigan Fisheries Forum to set these up. If you or your staff have an interest in participating in these workshops, please let me know. In any case, I will make sure you are kept informed about them.

Please call me (267-0796) if you have questions or comments about this situation. If you have questions about the biological data, you might want to contact Bill Horns, our Great Lakes Fisheries Specialist, at 266-8782.

Sincerely,



Michael D. Staggs, Director
Bureau of Fisheries Management and Habitat Protection.

attach.

cc: Senate Committee on Environmental Resources: David Hansen, Robert Wirch, Robert Cowles, and Dale Schultz

Assembly Committee on Natural Resources: Scott Gunderson, Neal Kedzie, Judy Krawczyk, Daniel Meyer, Alvin Ott, Mark Pettis, Michael Powers, Barbara Gronemus, John Lehman, John Steinbrink, Mark Miller, and Martin Reynolds.

Joint Committee on Review of Administrative Rules Co-chairs: Rep. Glenn Grothman, Sen. Judith Robson

Governor Scott McCallum

Natural Resources Board

Darrell Bazzell

Susan Sylvester

Ron Kazmierczak

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Adoption of Emergency Order FH-28-01(E) - amending s. NR 20.20 and s. NR 25.06, Wis. Adm. Code, pertaining to fishing for yellow perch in Green Bay.

FOR: JUNE 2001 BOARD MEETING

TO BE PRESENTED BY: Mike Staggs - Bureau of Fisheries Management and Habitat Protection

SUMMARY:

Estimates of yellow perch abundance and natural reproduction indicate a declining population and suggest that action is needed to protect the remaining yellow perch and maximize the likelihood of an early recovery. NRB Order FH-28-01(E) would limit the harvest of yellow perch from Green Bay and its tributaries, effective July 1, 2001.

Section 1 of the order reduces the sport fishing daily bag limit for yellow perch in Green Bay and its tributaries from 25 to 10. Section 2 of the order reduces the total annual commercial harvest limit for yellow perch from commercial fishing zone 1 (southern Green Bay) from 200,000 to 20,000 pounds.

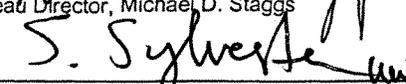
RECOMMENDATION: Adopt NRB Order FH-28-01(E)

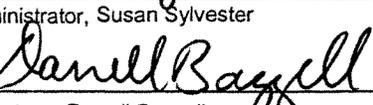
LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:


Bureau Director, Michael D. Staggs


Administrator, Susan Sylvester


Secretary, Darrell Bazzell

Date 6-18-01

Date 6/18/01

Date 6/18/01

Date _____

- cc: Linda Jahns - AD/5
- Thomas Harelson - LE/5
- Susan Sylvester - AD/5
- Mike Staggs - FH/3
- Dale Maas - GLSC

- Rob Bohman - WF/GLSFC
- Carol Turner - LC/5
- Charles Verhoeven - NER
- Chip Krohn - SER
- Frank Herres - WWF

- Charlie Henriksen - WCF
- Rick Johnson - LMCFB
- Peter Flaherty - LS/5
- Bill Horns - FH/3 (25 copies)
- Justine Hasz - NER/Peshtigo

DATE: June 8, 2001

FILE REF: 3600

TO: Natural Resources Board

FROM: Darrell Bazzell *DB*

SUBJECT: Adoption of Emergency Order FH-28-01(E)

BACKGROUND AND REASONS FOR RULE PROPOSAL

Estimates of yellow perch abundance and natural reproduction in Green Bay (see attachment for details) indicate a declining population and suggest that immediate action is needed to protect the remaining yellow perch and maximize the likelihood of an early recovery.

Yellow perch abundance in Green Bay declined over 90% between 1988 and 1998. The estimated total biomass of yellow perch in Green Bay dropped from over 10,000,000 pounds in 1988 to under 500,000 pounds in 2000. Since 1990 the annual sport fishing harvest has declined similarly, from over 3,000,000 fish in 1990 and 1991 to fewer than 200,000 fish in 2000. Periodic reductions in total allowable commercial harvests, along with declining yellow perch abundance and interference from the abundant white perch, have caused commercial harvests to decline during this period also. In the first ten months of the commercial fishing year beginning on July 1, 2000, the total commercial harvest of yellow perch from Green Bay was less than 20,000 pounds.

Trends in yellow perch abundance in Green Bay (see attachment) are described using a Virtual Population Analysis model¹ developed and implemented by Brian Belonger, Dr. Carl Walters, and others over the past 23 years. That model utilizes data collected annually from three sources: 1) Late each summer, trawl collections are taken by Department biologists at 78 sites in Green Bay. The yellow perch collected in the trawls are counted, measured, and aged, providing fishery-independent estimates of size-at-age, relative abundance of all year-classes, and total mortality rates. 2) The commercial fishery provides information on the total commercial harvest, and provides fish samples that allow us to estimate the age and size distributions of the harvested fish. 3) A creel survey provides an estimate of the number of yellow perch taken by anglers, as well as estimates of the age and size distributions of harvested fish. The model compiles these data and provides annual estimates, by age, of the number and biomass of yearling and older yellow perch during each year for which data are available.

In addition to providing data for the annual population estimates, the summer trawl surveys provide an estimate of the relative abundance of young-of-year yellow perch. Those data show that the growth of the yellow perch population from 1980 through 1988 was fueled by strong year classes in 1980, 1982, 1985, and 1986, and that good year classes in 1988 and 1991 helped sustain an abundant population into the early 1990's. But since 1991 only one year, 1998, has provided a reasonably high number of young-of-year fish. That 1998 year class helped sustain the sport harvest in 2000, and may support sport and commercial harvests in 2001, but unless additional protection is provided it can be quickly fished out.

The proposed rule will protect most of the remaining adult yellow perch, while allowing some limited

¹ Walters, C. and A. Punt. 1994. Placing odds on sustainable catch using virtual population analysis and survey data. *Can. J. Fish. Aquat. Sci.* 51:946-958.
Background Memo, NRB Order FH-28-01(E)

sport and commercial harvest. By reducing the commercial harvest limit from 200,000 pounds to 20,000 pounds in zone 1, the proposed rule will reduce the potential commercial harvest by 90%, from approximately 800,000 adult yellow perch to approximately 98,620 fish (the exact number of fish per pound harvested varies from year to year, but four fish to the pound in the commercial fishery is a good rough approximation). The proposed rule would not change the 4,655 pound commercial harvest limit in the portion of zone 2 lying in Green Bay. By reducing the sport fishing daily bag limit to ten yellow perch (effective in all parts of Green Bay), the proposed rule will also substantially reduce the sport harvest. The creel survey conducted in 2000 indicated that a sport fishing bag limit of ten, had it been in effect, would have reduced the sport harvest from 191,000 yellow perch to approximately 124,000 fish. In making that estimate, we assume that the reduced bag limit would not have discouraged people from fishing. With few young fish entering the fishable population, and declining interest resulting from the reduced bag limit, the harvest in 2001 is expected to be less, possibly close to the combined 24,655 pound (98,620 fish) commercial harvest limit for zone 1 and zone 2.

The Department has sought to allocate the yellow perch harvest approximately equally, in number of fish, between sport and commercial fishers. This proposal is consistent with that goal. The split between sport and commercial harvests varies from year to year, but in recent years, with the exception of 2000, the commercial harvest has exceeded the sport harvest significantly. For example the commercial harvest from July 1999 to June 2000 was 138,000 pounds, or approximately 552,000 fish, while the annual estimated sport harvests in 1999 and 2000 averaged 242,000 fish. Many uncertainties make predictions risky, but as indicated above the proposed rule should result in approximately equal sport and commercial harvests in 2001.

SUMMARY

The proposed emergency order is identical to NRB Order FH-12-01.

Section 1 reduces the sport fishing daily bag limit for yellow perch to 10. Currently the daily bag limit is 25 in total for panfish, including yellow perch.

Section 2 of the order reduces the zone 1 (southern Green Bay) total annual commercial harvest of yellow perch from 200,000 pounds to 20,000 pounds (the current 4,655 pound commercial harvest limit for the portion of zone 1 that lies in Green Bay will not be changed).

HOW DO THE RULES AFFECT EXISTING POLICY?

The proposed rule does not represent a change in sport or commercial fishing management policy. This action is proposed pursuant to the following policy statement:

NR 1.04 (4) The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are limited. The resources will be managed in accordance with sound management principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and quota limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas.

PAST BOARD ACTIONS

Prior to 1982 the yellow perch fishery of southern Green Bay was characterized by occasional high levels of reproduction, producing large year classes that were heavily exploited when they reached the commercial minimum size of 7.5 inches. Increased protection through quota control of commercial harvests in the early 1980's brought the fishery under control and resulted in a more abundant and stable yellow perch population (see figure), with increasing numbers of larger and older fish. The recent history of yellow perch management on Green Bay begins in 1989 with the adoption of NRB Order FH-40-88. That rule addressed a broad range of issues related to commercial fishing management on Lake Michigan and Green Bay. Total annual harvest limits for yellow perch were set at 400,000 from zone 1 (southern Green Bay), 13,300 pounds from zone 2 (northern Green Bay and a portion of Lake Michigan, and 306,700 pounds for zone 3 (the southern portion of Wisconsin's Lake Michigan waters). The sport fishing daily bag limit at that time was 50 fish in both Green Bay and Lake Michigan. Changes in yellow perch harvest limits since then are summarized in the following table:

NRB Order	Year	sport fishing daily bag limit		commercial fishing annual harvest limit		
		Green Bay and tributaries	Lake Michigan and tributaries	Zone 1	Zone 2	Zone 3
FH-32-89	1989			increased to 475,000 pounds		
FH-59-90 FH-19-91(E)	1991	reduced to 25		reduced to 400,000 pounds		
FH-43-94(E) FH-44-94	1994			reduced to 300,000 pounds		
FH-21-95(E) FH-2-95	1995		reduced to 25 in Lake Michigan		reduced to 4,655 pounds	reduced to 107,345 pounds
FH-39-96(E)	1996		reduced to 5 in Lake Michigan		no change, but comm. fishing closed in L.Mich. portion	no change, but commercial fishing closed
FH-47-96(E) FH-40-96	1996		set permanently at 5 in Lake Michigan		no change, but comm. fishing closed in L. Mich. portion	no change, but commercial fishing closed
FH-3-97	1997	season shortened by spring closure		reduced to 200,000 pounds		
FH-48-98(E)	1998		reduced to 5 in Sauk Creek			
FH-50-98	1999		reduced to 5 in all other L.M. tributaries			

DEVELOPMENT OF RULE PROPOSAL

In January an initial proposal to close both sport and commercial fishing for yellow perch in Green Bay was drafted into rule form. That proposal was made widely known to sport and commercial fishers, discussed at sport fishing club meetings, and reviewed by the Lake Michigan Fisheries Forum and the Lake Michigan Commercial Fishing Board. The Forum recommended dropping the initial proposal and replacing it with a proposal to reduce the sport fishing daily bag limit for yellow perch from 25 to 5 and reduce the commercial fishing annual harvest limit from 200,000 to 100,000 pounds. The Commercial Fishing Board met subsequently, and although it did not recommend a specific sport fishing daily bag limit, endorsed the Forum's proposal for a 100,000 pound commercial harvest limit.

NRB Order FH-12-01 was drafted by Department staff in light of all available data and in consideration of the recommendations of the Lake Michigan Fisheries Forum and the Lake Michigan Commercial Fishing Board. Hearings were approved by the Natural Resources Board in March, and held in May. Because the present emergency order is identical to NRB Order FH-12-01, a synopsis of the hearings on FH-12-01 is included below.

The Department would like to postpone further action on NRB Order FH-12-01 until October 2001 to allow analysis of commercial harvests and natural reproduction during spring and summer of 2001.

HEARING SYNOPSIS (FH-12-01)

Separate hearings will be required following adoption of the proposed emergency order. Because hearings have been held on identical NRB Order FH-12-01, a synopsis of those hearings follows.

Public hearings were held on May 21, 2001, in Peshtigo and Green Bay. 60 individuals were present in Peshtigo, with 51 submitting hearing appearance slips and 10 making oral comments. 120 individuals were present in Green Bay, with 73 submitting hearing appearance slips and 26 making oral comments

The hearing slips were marked as follows:

	Peshtigo	Green Bay
As interest may appear	5	7
In support	3	21 (plus one supporting Sec 1 only)
In opposition	14	34 (plus 2 opposing Sec 1 only and 1 opposing Sec 2 only)

Written comments were received from 30 individuals:

- Three of the 30 supported the proposed 10-fish sport fishing bag limit and one supported the proposed commercial fishing harvest limit.
- Among the 11 individuals opposing the proposed 10-fish sport fishing bag limit, four favored a bag limit lower than 10 and eight favored leaving the bag limit at 25.
- Among those opposing the proposed 20,000 pound commercial harvest limit, 16 said that it should be 100,000 pounds or more while 6 favored total closure.

Several organizations were represented at the hearings or in written comments:

- Wisconsin Commercial Fisheries Association – opposed rule as drafted, recommended revising the rule to set a total annual commercial harvest limit at 100,000 pounds.
- Wisconsin Federation of Great Lakes Sport Fishing Clubs – opposed rule as drafted, recommended total closure of sport and commercial fishing for 2 years.
- Northeastern Wisconsin Great Lakes Sport Fishermen – opposed rule as drafted, recommended total closure of sport and commercial fishing for 2 years.
- Wisconsin Wildlife Federation – supported rule as drafted.
- Sheboygan County Conservation Association – opposed rule as drafted, recommended a sport fishing daily bag limit of 5 and closure of the commercial fishery.
- Clean Water Action Council – opposed rule as drafted.
- Suamico Harbor Commission – opposed rule as drafted, recommended revising the rule to reduce the commercial catch no more than 50%.

Significant oral and written hearing comments are summarized below. These are paraphrased from the original. Some of these comments were made by several individuals, some by only one.

- Comment: The yellow perch problem may reflect the action of chemicals that disrupt endocrine function in yellow perch.
Department response: To our knowledge, this hypothesis has not been substantiated. This issue has been explored by the Department's aquatic toxicologist, Candy Schrank. Yellow perch are capable of producing viable offspring in the waters of Lake Michigan and Green Bay. As late as 1998, for example, young yellow perch were fairly abundant in Green Bay.
- Comment: The proposed 20,000 pound commercial harvest limit in zone 1 would make it impossible for some fishers to meet the minimum catch requirement for re-licensing.
Department response: It is correct that, with a 20,000 pound commercial harvest limit, the individual quotas held by some fishers would fall below the minimum catch requirement. It is possible that some fishers will not be able to adapt to the change. However, the rules provide that, through a showing that unavoidable circumstances precluded harvesting the minimum catch, a commercial fisher may be able to renew his/her license in a year when the minimum catch level is not reached. Moreover, all commercial fishers have the ability, through acquisition of quotas for other species, or through participation in race-horse fisheries for bloater chubs, to adapt their fishing businesses to harvest other species in other areas, and thereby meet the minimum catch requirement for re-licensing.
- Comment: The proposed harvest restrictions would have little effect because there are not enough yellow perch to allow sport and commercial fishers to catch their limits anyway.
Department response: To some degree sport and commercial fisheries are self-regulating because catches and participation decline with fish abundance. However, in other settings, fishers have demonstrated an ability to sustain harvests during periods when fish abundance is declining. The only way to assure that the actual harvest is within acceptable limits is to explicitly limit the harvest through regulations.
- Comment: The Department should find the real problem and solve it, instead of or in addition to limiting sport and commercial harvests. Speakers suggested a number of possible causes for the yellow perch decline, including white perch, cormorants, zebra mussels, and predation by other

valued game fish, including walleye, northern pike, muskies, brown trout, and salmon. Some of the suggested management actions were white perch removal, carp removal, cormorants control, restoring habitat for yellow perch, closing the spring smelt season, controlling pollution, termination of walleye and musky stocking, and stocking yellow perch.

Department response: The Department's tools are limited. One factor that we can control is the harvest of yellow perch by sport and commercial fishers, so the present rule addresses that factor. Department biologists are skeptical about some of the other proposed management actions, but we are open to suggestions. In the near future, the Department, guided by advice from the Lake Michigan Fisheries Forum, will hold public workshops to allow the interested public to propose yellow perch restoration strategies and to discuss those ideas with experts from inside and outside the Department.

- Comment: Money available from settlements with paper companies should be used to restore yellow perch.

Department response: If good ideas arise from the public workshops, settlements with paper companies are a potential source of funding.

- Comment: Cormorant predation on yellow perch explains all or part of the yellow perch decline, so cormorants should be controlled.

Department response: This suggestion can and will be discussed at the public workshops mentioned above. We know that cormorants do eat yellow perch, but we don't know whether that predation is a factor in the decline of yellow perch in Green Bay. Cormorants are currently protected by the Federal Government under the Migratory Bird Treaty Act. The U.S. Fish and Wildlife Service is reviewing concerns about the proliferation of cormorants, and is preparing an Environmental Impact Statement and accompanying national management plan aimed at addressing impacts caused by cormorants. The USFWS will shortly release a report on that subject. Last year, Secretary Meyer asked the USFWS, among other things, to include Wisconsin as a test site for any management strategies to control the cormorant population. Some misinformation about cormorants was presented in citizen testimony at the Green Bay hearing. It was stated that there are 1,000,000 cormorants in Green Bay, but the number is far lower. A 1997 survey showed an estimated 13,979 nesting pairs in Green Bay and nearby Lake Michigan. Also, it was incorrectly stated in public hearing comments that depredation permits (in effect, cormorant hunting licenses) could be readily obtained from the USFWS for \$25. In fact, depredation permits are only issued when cormorants are damaging an individual's private property, and only allow shooting of birds that are directly damaging that property.

- Comment: The Green Bay ecosystem is being disrupted by abundant white perch and carp. The yellow perch decline is part of that. A large-scale white perch and carp removal program should be launched.

Department response: This idea can and will be discussed in the public workshops. Department biologists have been skeptical about this idea because it has not been shown that white perch and/or carp have contributed to the yellow perch decline. Moreover, we don't know that either species can be effectively controlled without unacceptable damage to the remaining yellow perch population or to other valued species. Nevertheless, the public workshops offer an opportunity for a full discussion of this suggestion.

- Comment: Commercial fishing for white perch should be allowed as a way of helping commercial fishers and of potentially controlling white perch.

Department response: Limited commercial fishing for white perch is currently allowed. There is no commercial harvest, however, because the most recent data indicate that PCB levels in many white perch exceed 2 parts per million, the maximum level established by the Food and Drug Administration for sale in commercial markets. The Department will fund a new survey of contaminants in Green Bay white perch. If PCB levels have dropped below 2 parts-per-million (ppm) in all white perch, or in smaller white perch from certain areas, it may be possible for commercial fishers to begin marketing white perch. In that event, the Department would consider increasing the allowable white perch harvest.

- Comment: The harvesting of white perch by the commercial fishery would create an incidental catch of yellow perch, and defeat the purpose of yellow perch harvest limits.
Department response: The Department acknowledges this risk. In the event that the commercial harvest of white perch becomes economically viable or is subsidized as a control strategy, the incidental harvest of yellow perch would be monitored and controlled.
- Comment: Close all yellow perch fishing if needed to protect the remaining fish.
Department response: A total closure of all fishing would offer the best hope for a rapid recovery of yellow perch in Green Bay, but the proposed rule will protect most of the remaining yellow perch. It will protect most of the adult yellow perch, while still allowing limited opportunities for sport and commercial fishing.
- Comment: Enforcement of sport and commercial fishing rules will be difficult with low bag limits and quotas.
Department response: This is correct.
- Comment: An active commercial fishery can provide boats, manpower, knowledge, and data that are useful to fisheries management.
Department response: An active commercial fishery is useful, but not indispensable. The proposed rule will allow the continuation of some commercial fishing. The Department's population estimates do not require a commercial harvest, or data from the commercial fishery.
- Comment: The proposed harvest limit for commercial fishers could eliminate enough commercial fishers using the Suamico Harbor to jeopardize federal funding for dredging of Suamico Harbor.
Department response: We assume that this is correct.
- Comment: Commercial fishermen provide yellow perch to people who cannot fish for themselves.
Department response: This is correct.
- Comment: The loss of commercial fishing in Green Bay would be a loss of part of the local cultural heritage.
Department response: This is correct.
- Comment: The vast majority of yellow perch are caught by sport fishers, not commercial fishers.
Department response: This is not correct. There have been years when the sport harvest exceeded the commercial harvest, but in other years the commercial harvest has exceeded the sport harvest. Currently the annual commercial harvest limit in zones 1 and 2 (204,655 pounds, or approximately 819,000 fish) far exceeds what sport fishers are able to catch (190,923 fish in 2000).

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- Comment: Yellow perch are still plentiful in Little Sturgeon Bay and other areas in northeastern Green Bay.

Department response: It is apparently true that yellow perch remain in greater abundance in the northern portions of Wisconsin waters of Green Bay than in the south. The proposed rule will not change the small (4,655 pounds) total annual commercial harvest limit in the portion of Green Bay that is north of the Northport dock (i.e., the portion that is in Zone 2). It will reduce the sport bag limit for all of Green Bay.
- Comment: Fishing is self-regulating, in the sense that as fish populations decline, so will sport and commercial harvests.

Department response: This is well established for the sport fishery, but the reduced daily bag limit will, nevertheless, protect some yellow perch that would otherwise be harvested. Commercial fisheries are typically less self-regulating because they have greater ability and incentive to seek and harvest diminishing stocks of fish.
- Comment: The Department should consider the effects of walleye, northern pike, muskies, brown trout, and salmon as yellow perch predators.

Department response: We do not have good quantitative estimates of the impact on yellow perch of predation by game fish. This issue can be discussed at the public workshops to be held in the next few months. Department policy has always been to seek a balanced diverse fishery.
- Comment: The Department should consider stocking yellow perch.

Department response: This is not realistic. In other settings, the Department has stocked fish for one of two reasons: 1) to create a parental population that can reproduce and repopulate a body of water and 2) to supply a put-and-take fishery. In Green Bay the problem has not been the lack of a parental population, since poor reproduction has been observed during an extended period of high, but declining, adult abundance. Creating a put-and-take yellow perch fishery is not economically feasible. At its peak, the yellow perch population of Green Bay consisted of over 100,000,000 individuals aged 1 and over. Based on estimates provided to a 1998 Sea Grant-facilitated workshop on yellow perch stocking, it would cost tens of millions of dollars annually to sustain a similar population by stocking.
- Comment: Because Michigan is retaining its sport fishing bag limit of 50, Wisconsin fishers will go north to fish and a substantial sport harvest from the population we share continue.

Department response: Some sport fishers may travel north to fish, especially those living in or close to the border. We will discuss this issue with Michigan.
- Comment: The yellow perch population in Green Bay has risen and fallen repeatedly in the past, and will make a recovery on its own. In the early 1980's the population was at approximately its present level, but it recovered in the face of a commercial fishery with a 200,000 pound harvest limit.

Department response: This is true, but the Green Bay ecosystem has changed, and the ability of the remaining yellow perch to produce large numbers of offspring may not be what it was in the past. The past may no longer be a good guide to what will happen in the future.
- Comment: With increased water clarity, lower water levels, and other changes in the ecosystem, yellow perch may be distributed differently, and that may affect Department estimates of their abundance.

Department response: We must consider this possibility, but the evidence for declining yellow perch abundance is overwhelming. The declining sport harvest and reduced participation in the fishery are good barometers of the trend.

- Comment: Fishing license buyers should be given the opportunity to vote on rule proposals electronically via the internet.

Department response: This suggestion is noted.

- Comment: The Department should wave the minimum catch requirement for commercial fishers if the harvest limit is lowered.

Department response: The minimum catch requirement serves to define active fishers. The maintenance of meaningful criteria for identifying active commercial fishers was clearly the intent of the Legislature in establishing current commercial fishing laws. Unless alternative realistic criteria for defining active commercial fishers can be developed, the minimum catch requirement cannot be waived without risking creating a property right to fish commercially in Wisconsin waters.

- Comment: Commercial fishers and sport fishers are not the problem, so limiting them is not the solution. Or, as stated in a related comment, the current spring sport fishing closure (March 15 – May 20) has had no effect, why would a year-round reduced bag limit help?

Department response: The Department has not argued that sport or commercial fishing caused the decline in yellow perch abundance, and we know that the spawning season closure has not helped. Nevertheless, with the remaining adult yellow perch population can now be substantially affected by fishing. The proposed rule attempts to protect most of the remaining adults, and thereby increase the chances of good reproduction in the future.

- Comment: If commercial fishing is closed, sport fishing should be too – it's only fair.

Department response: The present rule does not propose a closure of commercial fishing.

- Comment: The Department's data are not adequate to demonstrate the need for rule changes.

Department response: The available data, from yellow perch population estimates developed by the Department, from sport fishing harvests estimated through creel surveys, and from commercial harvests, are conclusive in showing that the yellow perch population has declined substantially, probably over 90% over the last ten years in Green Bay.

- Comment: The Department should consider setting a 6" minimum size limit on yellow perch.

Department response: The commercial size limit is currently 8" in northern Green Bay and 7.5" in southern Green Bay. There is no size limit for sport-caught yellow perch. We do not have data to show that establishing a 6" size limit for the sport fishery would help significantly.

- Comment: Limitations on yellow perch sport fishing will increase fishing pressure on bass and other game fish.

Department response: This is possible, but we cannot quantify the effect.

- Comment: A reduced sport bag limit for yellow perch would hurt tourism.

Department response: This may be true, but the reduced population has already apparently caused sharp declines in the amount of sport fishing activity, and may already have hurt tourism. If we can find a way to restore the yellow perch population, tourism will be helped.

- Comment: The Department's Great Lakes fisheries program may be under-staffed or under-funded. Perhaps the Department does not devote enough of the available resources to Green Bay yellow perch.

Department response: The Department acknowledges these possibilities. However, until realistic solutions to the problem are identified, it is not clear that additional funding is a solution.
- Comment: The Department should obtain new data on PCB concentrations in white perch.

Department response: This will be accomplished during the summer and fall of 2001.
- Comment: White perch appear to have been adequately controlled in Lake Erie; perhaps the Department can learn from that experience.

Department response: Department staff have spoken with biologists working on Lake Erie. Those biologists do not believe that commercial fishing or management actions caused the decline in once-abundant white perch in Lake Erie. We hope to bring in biologists from Ohio and Ontario, who work with yellow perch in Lake Erie, to participate in the public workshops to be held in the next few months.

AFFECTED PARTIES

Sport fishers, commercial fishers, and affiliated businesses will be affected by the rule.

PRELIMINARY REGULATORY FLEXIBILITY ANALYSIS

No additional compliance or reporting requirements will be imposed as a result of these rule changes. No additional skills are required. A state fiscal estimate is attached.

ENVIRONMENTAL ASSESSMENT

This is a Type III action under Chapter NR 150, Wis. Admin. Code, therefore no EA is required.

attach.

Attachment (FH-28-01(E))

STATUS OF YELLOW PERCH STOCKS – SOUTHERN GREEN BAY

Yellow perch abundance in Green Bay increased steadily through the 1980's, and has declined since then. The population growth was fueled by the production of strong year classes in 1982, 1985, 1986, 1988 and 1991 (Figure 1). Since 1991 the only moderately strong year class appeared in 1998. The estimated total biomass of yearling and older yellow perch rose from under 1,000,000 pounds in 1980 to over 10 million pounds in 1988, only to decline during the 1990's to an estimated biomass for the year 2000 of less than 500,000 pounds (Figure 3).

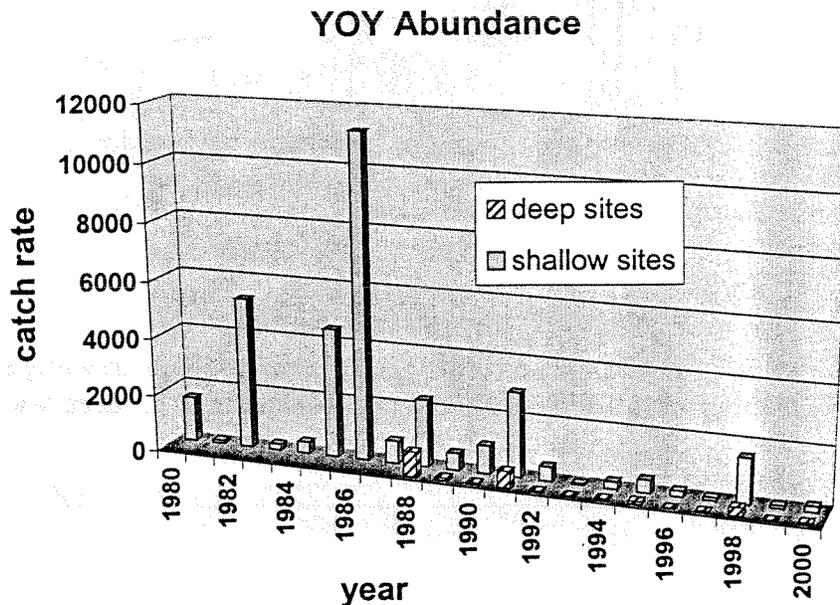


Figure 1. Catch rates of young-of-year yellow perch at index trawling stations. 78 trawling stations have been sampled since 1988, when 32 deep-water sites were added. Trawling occurs during August.

Population assessment

The Green Bay yellow perch population has been monitored for over 20 years. Annual late-summer trawl surveys at designated index sampling locations are used to monitor trends abundance and to estimate mortality rates of individual year classes. There are presently 78 index trawling stations, the number having been expanded in 1988 with the addition of 32 deep-water stations. The annual sport harvest is estimated using a creel survey, and fish obtained through the survey are used to describe the age and size composition of the catch. The annual commercial harvest is reported by fishers, and fish sampled at the dock from commercial landings are used to describe the age and size composition of the catch. Data from all these

sources are combined using virtual population analysis (Megrey 1989, Walters and Punt 1994) to provide annual estimates of the biomass of each year class in the population (Figure 2).

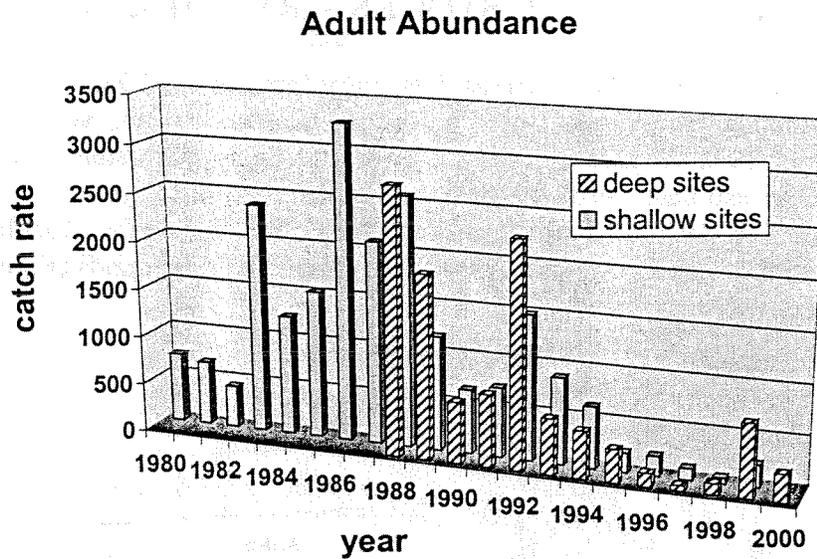


Figure 2. Catch rates of yearling and older yellow perch at index trawling stations. 78 trawling stations have been sampled since 1988, when 32 deep-water sites were added. Trawling occurs during August.

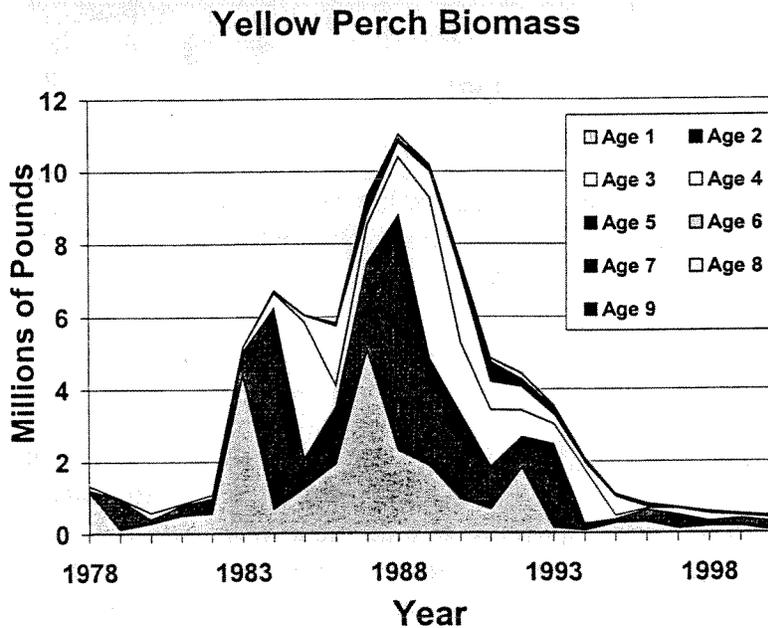


Figure 3. Estimated total biomass of yearling and older yellow perch in Green Bay.

The decline in the population during the 1990's can be attributed to poor reproduction of young-of-year fish, as assessed in late summer of each year (Figure 1). Following over a decade of good production of young fish, we have seen only one reasonably strong year-class (1998) since 1991. The hopeful 1998 year class was abundant as one-year-old fish in 1999, but did not appear as abundant in 2000 as had been hoped (Figure 2).

Harvests

Wisconsin sets an annual commercial harvest limit for yellow perch from Green Bay. Over the past 20 years, that limit has ranged from 200,000 pounds to 500,000 pounds, tracking the trend in abundance shown in Figure 3. During the last complete commercial fishing year, commercial fishers were not able to reach the annual harvest limit of 200,000 pounds, and during the present commercial fishing year, which began July 1, 2000, the harvest has been particularly poor, with less than 20,000 pounds harvested during July through December.

Sport fishing harvests have also risen and fallen with as yellow perch abundance has changed. Sport harvests peaked at over 3,000,000 pounds in both 1990 and 1991, when unusual ice conditions and large numbers of fish allowed the harvest of approximately 2,000,000 yellow perch through the ice each year. By 2000 the sport harvest had declined to 191,000 yellow perch in total, with only 27,318 being taken through the ice.

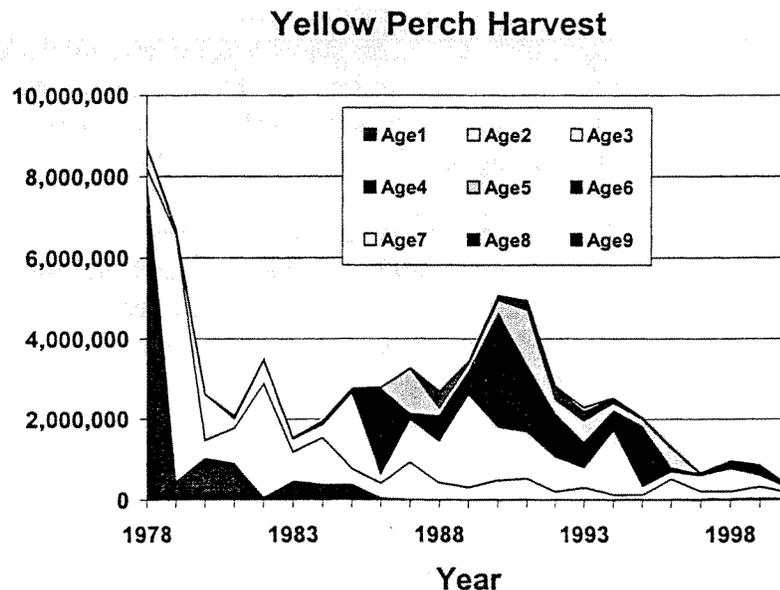


Figure 4. Estimated sport and commercial harvest (combined) of yearling and older yellow perch in Green Bay.

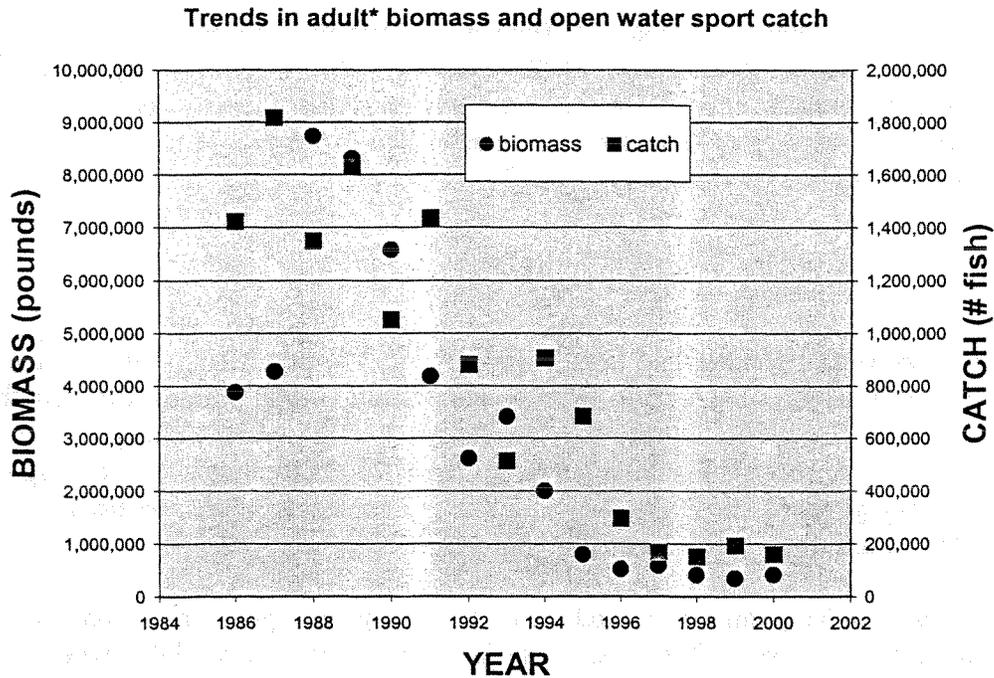


Figure 5. Estimated biomass of adult (age 2 and older) yellow perch and open-water sport harvest.

Figure 4 illustrates estimated total annual harvests, commercial and sport combined, since 1978. The large harvests in the late 1970's reflect fishing practices prior to implementation of present management system. In those years commercial fishers harvested large numbers of young fish arising from occasional years of good natural reproduction. With the implementation of harvest limits, limited entry, and individual transferable quotas, the yellow perch population in Green Bay was able to mature, with older fish making up a larger share of the total harvest.

As the yellow perch population has declined in the past decade, the open water sport harvest has closely tracked the decline in abundance of age-2 and older yellow perch in Green Bay (Figure 5). This reflects declining participation in the sport fishery as well as declining fishing success, and suggests that at least over this range of population abundance, the sport fishing harvest is a useful index of the abundance of adult fish.

References

- Megrey, B.A. 1989. Review and comparison of age-structured stock assessment models from theoretical and applied points of view. *American Fisheries Society Symposium* 6:92-101
- Walters, C., and A. Punt. 1994. Placing odds on sustainable catch using virtual population analysis and survey data. *Canadian Journal of Fisheries and Aquatic Sciences*. 51:946-958.

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 20.20(73)(j)1. and 2. relating to sport fishing for yellow perch in Green Bay and its tributaries and NR 25.06(2)(b)1. relating to commercial fishing for yellow perch in Green Bay.

FH-28-01(E)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 29.014(1), 29.041, 29.519(1), 227.11(2)(a) and 227.24, Stats.
Statutes interpreted: ss. 29.014(1), 29.041 and 29.519(1), Stats.

SECTION 1 of the order reduces the sport fishing daily bag limit for yellow perch caught in Green Bay and its tributaries to 10. Currently the daily bag limit is 25 in total for panfish, including yellow perch.

SECTION 2 of the order reduced the total annual commercial harvest of yellow perch from zone 1 (Green Bay) from 200,000 pounds to 20,000 pounds.

SECTION 1. NR 20.20(73)(j)1. and 2. are amended to read:

NR 20.20(73)

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OTHER SIZE RESTRICTIONS (INCHES)
(j) Panfish	1. Green Bay	a. Hook and line	Continuous, but the open season for yellow perch is May 20 to March 15	25 in total <u>but only 10 may be yellow perch</u>	None
	2. Major Green Bay tributaries	a. Hook and line	Continuous, but the open season for yellow perch is May 20 to March 15	25 in total <u>but only 10 may be yellow perch</u>	None

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

NR 25.06(2)(b)1. The total allowable commercial harvest in zone 1 for any license year may not exceed ~~200,000~~ 20,000 pounds.

FINDING OF EMERGENCY

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Yellow perch contribute significantly to the welfare of Wisconsin citizens by supporting popular and economically valuable sport and commercial fisheries. The yellow perch population in Green Bay is rapidly declining. This decline reflects a number of years of very poor reproduction. The only recent year with reasonably good natural reproduction was 1998. The fish spawned that year contributed to the sport harvest in 2001 and will become vulnerable to commercial gear this summer. Sport and commercial harvests of adult yellow perch must be limited immediately in order to protect those fish and maximize the probability of good reproduction in the near future.

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

The rules contained herein shall take effect on July 1, 2001, as emergency rules, as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 01-037

AN ORDER to amend NR 20.20 (73) (j) 1. and 2. and 25.06 (2) (b) 1., relating to sport fishing and commercial fishing for yellow perch in Green Bay.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-06-01 RECEIVED BY LEGISLATIVE COUNCIL.
04-30-01 REPORT SENT TO AGENCY.

RS:MCP:jal

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 RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-037

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

“Length” is misspelled in the column heading.

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 20.20(73)(j)1. and 2. relating to sport fishing for yellow perch in Green Bay and its major tributaries and NR 25.06(2)(b)1. relating to commercial fishing for yellow perch in Green Bay.

FH-12-01

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.

SECTION 1 of the order reduces the sport fishing daily bag limit for yellow perch caught in Green Bay and its major tributaries to 10. Currently the daily bag limit is 25 in total for panfish, including yellow perch.

SECTION 2 of the order reduces the annual total allowable commercial harvest of yellow perch from zone 1 (Green Bay) from 200,000 pounds to 20,000 pounds.

SECTION 1. NR 20.20(73)(j)1. and 2. are amended to read:

NR 20.20(73)					
COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OTHER SIZE RESTRICTIONS (INCHES)
(j) Panfish	1. Green Bay	a. Hook and line	Continuous, but the open season for yellow perch is May 20 to March 15	25 in total <u>but only 10 may be yellow perch</u>	None
	2. Major Green Bay tributaries	a. Hook and line	Continuous, but the open season for yellow perch is May 20 to March 15	25 in total <u>but only 10 may be yellow perch</u>	None

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

NR 25.06(2)(b)1. The total allowable commercial harvest in zone 1 for any license year may not exceed ~~200,000~~ 20,000 pounds.

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 _____
Darrell Bazzell, Secretary

(SEAL)

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