



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE JOAN BALLWEG

Clearinghouse Rule 15-050

Report to the Legislature
Clearinghouse Rule 15-050
The Joint Committee for Review of Administrative Rules
Produced pursuant to 227.19(6)(a), Stats.

Clearinghouse Rule 15-050, promulgated by the Wisconsin Department of Natural Resources (DNR), creates rules that change the way the DNR sets and changes harvest limits for the commercial harvest of bloater chubs from Lake Michigan and affects small businesses.

Description of Problem

At the request of Senator Devin LeMahieu, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on Clearinghouse Rule 15-050, relating to the commercial harvest of bloater chubs from Lake Michigan and affecting small business, on March 3, 2016. Commercial fishermen active in the industry raised significant concerns that the rule, as proposed, would impose an undue hardship on the commercial fishing industry to the point of effectively putting them out of business, as the result of the significant reduction in the commercial harvest quota for bloater chubs in Lake Michigan. They also raised concerns with the DNR's proposed methodology and that the economic impact analysis was incomplete and inaccurately considered the impact on the commercial fishing industry.

Arguments In Favor of Objection

- *The proposed change in the commercial chub harvest limit from the existing 3.6 million pounds down to 350,000 pounds (a 90% reduction) is a drastic change that fishing industry representatives testified would drive them out of business.*
- *The DNR's economic impact analysis for CR 15-050 is inadequate and incomplete and dramatically underestimates the potential effect on commercial fishermen. No commercial chub fishermen were consulted directly in preparation of the economic impact analysis prepared by the Department.*
- *In total there are only an estimated 5-6 commercial boats that are currently fishing bloater chubs in Lake Michigan, mostly operating out of the Sheboygan, Two Rivers, and Kewaunee area. About 75 percent of Lake Michigan is not currently fished commercially for bloater chubs.*
- *Questions were raised about the accuracy of the proposed methods used by the DNR to estimate the bloater chub population, which would be the basis of the annual harvest limits set by the Department.*

Arguments Against Objection

- *The DNR believes the current chub harvest limit of 3.6 million pounds is too high, given their estimates of the total lake-wide chub population.*
- *The bloater chub population of Lake Michigan has fluctuated significantly over the past 50 years, according to the DNR. The proposed rule allows the Department to respond to fluctuations in the population by adjusting the harvest limit annually without having to go through the administrative rulemaking process, as they do under existing administrative code.*

Action by Joint Committee for Review of Administrative Rules

On March 3, 2016, the Joint Committee for Review of Administrative Rules held an executive session on Clearinghouse Rule 15-050. The committee passed the following motion on an 8-2 vote, objecting to the rule in full (YES: Nass, Ballweg, Lasee, LeMahieu, Knudson, J. Ott, Hebl, Spreitzer; NO: Miller, Harris Dodd):

Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.19 (5) (d), Stats., object to Clearinghouse Rule 15-050, a permanent rule proposed by the Department of Natural Resources, relating to commercial harvest of chubs from Lake Michigan and affecting small business, on the grounds that the rule imposes an undue hardship on Wisconsin's commercial fishing industry.

On March 31, 2016, the Joint Committee for Review of Administrative Rules voted 5-4 (YES: Nass, Ballweg, Lasee, LeMahieu, Knudson; NO: Miller, Ringhand, Hebl, Spreitzer) to introduce LRB 4847 and LRB 4857, which limits the DNR's ability to regulate and set commercial harvest limits for bloater chubs in Lake Michigan, as the Department proposed in CR 15-050, by prohibiting the DNR from establishing a limit on the commercial harvest of chubs from the waters of Lake Michigan that is less than 1,800,000 pounds in a license year. The bills were introduced as Senate Bill 798 and Assembly Bill 1025 in the 2015-16 legislative session.

On January 11, 2017, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Ballweg, LeMahieu, Stroebel, Neylon, Ott; NO: Larson, Wirch, Hebl, Anderson) to introduce LRB 1417 and LRB 1424, which limits the DNR's ability to regulate and set commercial harvest limits for bloater chubs in Lake Michigan, as the Department proposed in CR 15-050, by prohibiting the DNR from establishing a limit on the commercial harvest of chubs from the waters of Lake Michigan that is less than 1,800,000 pounds in a license year. The bills were introduced as Senate Bill 4 and Assembly Bill 31 in the 2017-18 legislative session.

Passage of one of these bill in support of the JCRAR objection would permanently remove the DNR's ability to promulgate Clearinghouse Rule 15-050, and limit their authority to set and alter quotas on the harvest of bloater chubs on Lake Michigan.