



CR 90-133

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary
Box 7921
Madison, Wisconsin 53707
TELEFAX NO. 608-267-3579
TDD NO. 608-267-6897

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. FM-42-90 was duly approved and adopted by this Department on October 25, 1990. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 5th
day of December, 1990


Bruce B. Braun, Deputy Secretary

(SEAL)

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ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING, REPEALING AND RECREATING AND CREATING RULES

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FM-42-90

.....
IN THE MATTER of amending s. NR 24.09(1) .
(b); repealing and recreating s. NR 24.09 .
(1)(c); and creating s. NR 24.09(4) of .
the Wisconsin Administrative Code per- .
taining to commercial clam shelling .
.....

Analysis prepared by the Department of Natural Resources

Statutory authority: ss. 23.09(2)(intro.), 29.175(1), 29.38(8),
and 227.11(2)(a), Stats.

Statutes interpreted: ss. 23.09(2)(intro.), 29.175(1) and
29.38(8), Stats.

SECTIONS 1 and 2 of the order close all inland waters, all
Wisconsin-Michigan boundary waters and all Wisconsin-Minnesota
boundary waters except the Mississippi river to commercial clam
shelling. Wisconsin-Iowa boundary waters (the Mississippi river)
are not affected.

SECTION 3 establishes a procedure and policy under which the
department may temporarily open individual inland waters and
Wisconsin-Michigan boundary waters to department-monitored
commercial clam shelling if prior investigation shows that
several tests are met, including a general public interest test.

By publishing and posting notices or by removing notices along
the water, the department is authorized to open and close a
water, open and close individual clam species and set alternative
minimum size limits.

Waters that lack adequate public access, that have threatened or
endangered mussels present or that lack an adequate supply of
commercial clam species may not be opened. A pre-harvest
inventory must be conducted to identify safe harvest limits for
each commercial clam species and to determine if endangered or
threatened mussels are present.

Commercial clam shellers who operate in these waters must report
their harvests daily to the department by telephone. The
department must close the water or close a clam species when the
harvest reaches 85% of the safe harvest limit.

(90-133)

SECTION 1. NR 24.09(1)(b) is amended to read:

WATERS OPEN TO COMMERCIAL CLAM SHELLING	OPEN SEASON	OPEN SPECIES	MINIMUM SIZE
(b) Wisconsin-Michigan and Wisconsin-Minnesota boundary waters except <u>Lake</u> <u>St. Croix</u> , the <u>St. Croix</u> <u>river</u> , and the <u>St. Louis</u> <u>river</u>	Apr. 1- Sep. 30	mapleleaf (<i>Quadrula</i> <i>quadrula</i>)	2 3/4"
		pigtoe (<i>Fusconaia</i> <i>flava</i>)	2 3/4"
		pimpleback (<i>Quadrula</i> <i>pustulosa</i>)	2 3/4"
		threeridge (<i>Amblema</i> <i>plicata</i>)	2 5/8"

SECTION 2. NR 24.09(1)(c) is repealed and recreated to read:

WATERS OPEN TO COMMERCIAL CLAM SHELLING	OPEN SEASON	OPEN SPECIES	MINIMUM SIZE
(c) Inland waters and Wisconsin- Michigan boundary waters: none, except as provided in sub.(4)	No open season, except as provided in sub.(4)	None, ex- cept as provided in sub.(4)	12", ex- cept as provided in sub.(4)

SECTION 3. NR 24.09(4) is created to read:

NR 24.09(4)(a) Notwithstanding sub. (1)(c), the department may designate:

1. Waters or portions of a water which are temporarily open to commercial clam shelling,
2. Clam species which are open to commercial clam shelling in waters designated under subd. 1., and

3. Alternative minimum size limits for clam species which are designated under subd. 2., which are smaller than the minimum size limit of sub. (1)(c).

(b) Prior to opening any water to commercial clam shelling under this subsection, the department shall investigate and prepare a pre-harvest inventory for the water to determine whether any endangered or threatened mussels are present and to set safe harvest limits and alternative minimum size limits for each commercial clam species. The department may temporarily open a water or portion of a water if it determines that:

1. The water or portion of water has adequate public access to accommodate commercial clam shelling,

2. The water or portion of water contains enough clams to withstand commercial clam shelling,

3. The water or portion of water does not contain threatened or endangered mussels, and

4. Commercial clam shelling in the water or portion of water would not otherwise be contrary to the public interest.

(c) To open a water or portion of a water, the department shall issue an order based on its investigation. The order shall include specific findings, describing the water or portion of the water, the species open to harvest, the alternative minimum size limit for each open species, and a safe harvest limit for each open species. The order shall direct that a notice be published 10 days in advance of the opening in the official state paper and be prominently posted at public access points along the affected

water. The notice shall identify the water or portion of water temporarily open to commercial clam shelling, the open species, the alternative minimum size limit for each open species and the telephone number for daily reporting required under par. (e).

(d) The department shall monitor commercial clam shelling authorized under this subsection and shall close a water or a species to commercial clam shelling when the harvest total approaches 85% of the safe harvest limit. A water may be closed to commercial clam shelling by department removal of the notices posted along the affected water. Where a water contains more than one open species, a species may be closed by the department posting new notices along the affected water which omit the species from the list of species open to commercial clam shelling in the affected water.

(e) In addition to the records and reports required by s. NR 24.07, a commercial clam sheller who shells in a water temporarily opened to commercial clam shelling under this subsection shall report his or her daily harvest under his or her license number, in pounds and by clam species, by telephone using the telephone number listed on the notice posted along the open water. A commercial clam sheller shall call in his or her daily harvest reports within one calendar day after each day he or she engages in commercial clam shelling in the affected water.

(f) Any person who engages in commercial clam shelling in a closed water, who takes clams of a species not open to commercial

clam shelling, or who takes clams smaller than the alternative minimum size limit is in violation of sub. (1).

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on October 25, 1990.

The rules contained herein shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided by s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, December 4, 1990.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

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DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary

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December 4, 1990

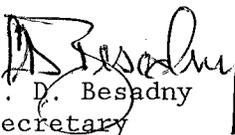
Mr. Gary L. Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr., Blvd.

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. FM-42-90. These rules were reviewed by the Assembly Committee on Tourism, Recreation and Government Operations and the Senate Committee on Transportation, Conservation and Mining pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.

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