



CR 90-152

State of Wisconsin | DEPARTMENT OF NATURAL RESOURCES

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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-54-90 was duly approved and adopted by this Department on March 28, 1991. 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 10th
day of June, 1991.

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

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R-1-91

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

.....
IN THE MATTER OF repealing ss. NR 25.02(12m) and .
(28m), 25.03(2)(b)2., 25.055, 25.06(2)(c)2. and .
3. and 25.07(2)(b)5. and (c); renumbering ss. .
NR 25.03(2)(b)4. and 25.07(2)(d) to (g); .
renumbering and amending s. NR 25.03(2)(b)3.; .
amending ss. NR 25.03(3), 25.04(7)(b), 25.05 . FM-54-90
(title), (1)(g) and (gn) and (3), 25.06(2)(c)
(title), (intro.) and 1., 25.07(3)(a) and (b), .
25.09(2)(b)2.e. and (d)1.a., b. and d. and 2.b. .
and 25.13(3)(intro.) and (b); repealing and .
recreating s. NR 25.09(2)(d)2.c.; and creating .
s. NR 25.03(4) of the Wisconsin Administrative .
Code pertaining to commercial fishing on Lake .
Michigan and Green Bay .
.....

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 23.09(2)(intro), 23.11(1), 29.085, 29.174(3), 29.33(1) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 29.085, 29.174(1) and (2) and 29.33(1), (2)(d) and (5), Stats.

By repealing "sunset" provisions which take effect May 1, 1991, SECTIONS 11 and 17 allow commercial fishers to continue to use trawls in Lake Michigan and Green Bay, but only under the limitations listed below.

Commercial harvest of alewives in Lake Michigan (including Green Bay) is eliminated by:

SECTION 1, which repeals the definition of "forage fish" (It included alewife, smelt and, when taken by trawl, chubs which are not sorted for human consumption and other rough fish except carp.);

SECTION 7, which deletes alewife from the list of commercial species with an open season;

SECTION 11, which eliminates the annual harvest limit for forage fish and the forage fish quota criteria and allocation formula (the "racehorse" fishery).

The commercial harvest of smelt, including their harvest by trawls, will be retained in modified form by:

SECTION 7, which modifies the Lake Michigan year-round open smelt season by limiting trawling to a season of November 15 to April 20 and limits trawling in Green Bay to night time hours - from one hour after sunset to one hour before sunrise;

SECTION 10, which revises the forage fish harvest limits to deal only with smelt and establishes a total allowable annual commercial harvest of smelt of 2,358,000 pounds (337,665 pounds for the period beginning with the effective date of the emergency order to June 30, 1991), of which only 830,000 pounds (137,665 pounds for the period beginning with the adoption of the emergency order to June 30, 1991) may be harvested from Green Bay;

SECTION 15, which amends the Green Bay forage fish trawl gear requirement for the use of diverters into a Green Bay smelt trawl gear requirement;

SECTION 16, which authorizes trawl gear to be used for smelt instead of forage fish; and

SECTION 17, which requires that diverters also be used on Lake Michigan when trawling for smelt.

The incidental harvest of legal size whitefish by trawls while harvesting smelt is eliminated by SECTION 16, which deletes the rule that formerly allowed it, and by SECTION 17, which will require trawlers to use diverters in Lake Michigan beginning July 1, 1991. (Existing rules require trawlers to use diverters in Green Bay only.) Properly functioning diverters will exclude legal size whitefish from capture in trawls nets.

Chubs may still be harvested by trawls as incidental catch during the smelt harvest, but will remain subject to existing chub quota rules.

SECTION 1 repeals the requirement that a fisher spend at least 30 days lifting nets on Lake Michigan each year in order to be relicensed. SECTION 1 also repeals the definition of "supervisor", and SECTION 9 repeals the requirements that supervisors be present during certain fishing operations on Lake Michigan. Recent rulemaking has made these requirements obsolete.

To be relicensed, a Lake Michigan fisher must report a minimum annual catch. SECTION 3 allows a mid-year license transferee to receive credit for the catch reported by the transferor for purposes of relicensing. SECTION 2 adds language allowing the

department to relicense a fisher who failed to report the minimum annual catch if it finds that the fisher was prevented from doing so by unavoidable circumstances. SECTION 2 also adds a new minimum relicensing standard. Smelt harvest will now be usable to qualify for relicensing if a fisher reports a minimum annual catch for zone 1 of 147,870 pounds or for zone 3 of 76,770 pounds.

SECTION 3 further clarifies the department's current practice of rejecting late license renewal applications. Applications received after the deadline cannot be acted upon by the department and will be returned to the applicant along with any license fee. Similarly, SECTION 13 clarifies the department's current practice of rejecting late applications for individual catch quotas. Late applications cannot be acted upon by the department and will be returned to the applicant.

SECTION 5 relaxes criteria for transfer of a Lake Michigan commercial fishing license by replacing the requirement that non-family member transferors held a crew license prior to 1985 with a requirement that they have held a crew license during the 2 license years prior to applying for the license transfer.

SECTIONS 6 and 8 clarify that individual harvest limits (quotas) apply to commercial fishers along with possession limits. No person may exceed his or her harvest limit; possess fish species for which there is no open season; or, while on the water, possess fish for which the season is closed.

SECTION 11 repeals the requirement for the department to notify fishers when they reach 75% of their zone 1 yellow perch individual catch quotas.

SECTION 14 clarifies the time period during which trap nets are allowed in southern Lake Michigan.

SECTION 4 relocates the current exemption from the general commercial licensing criteria for applicants for rough fish licenses.

SECTIONS 7 and 15 relocate the rule that sets a minimum depth restriction for trawls used in Green Bay. Trawls will continue to be limited to water 65 feet deep or deeper when taking smelt in Green Bay.

SECTIONS 2 and 12 renumber portions of the code to correct format problems created by SECTIONS 1 and 11. SECTION 18 relaxes the reporting deadline for submittal of Lake Michigan biweekly catch reports from Monday to Tuesday following the biweekly reporting period. SECTION 18 also corrects spelling and style errors.

SECTION 1. NR 25.02(12m) and (28m) and 25.03(2)(b)2. are repealed.

SECTION 2. NR 25.03(2)(b)3. and 4. are renumbered to be NR 25.03(2)(b)2. and 3., respectively, and 25.03(2)(b)3., as renumbered, is amended to read:

NR 25.03(2)(b)3. Beginning with the 1990-1991 license year, the applicant or, where the applicant obtained the license by transfer, the transferor and applicant jointly shall have reported a minimum commercial harvest during the previous license year of yellow perch, menominees, whitefish, chubs or any combination of these species of at least 3,570 total pounds from zone 1, 13,656 total pounds from zone 2 or 19,638 total pounds from zone 3; or shall have reported a minimum commercial harvest of smelt during the previous license year of at least 147,870 total pounds from zone 1 or 76,770 total pounds from zone 3, unless the department determines that unavoidable circumstances prevented the applicant or the transferor from complying with this subdivision.

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

NR 25.03(3) APPLICATION. Application for licenses authorizing commercial fishing in the outlying waters shall be made on forms provided by available from the department and shall be returned to the department no later than April 30 preceding the license year for which application is being made.

~~Applications~~ To be timely, applications, if mailed, shall ~~shall~~ must be postmarked no later than April 30 preceding the license year for which application is being made. ~~If applications are and if~~ submitted to the department other than by mail, ~~they shall~~ must be received and stamped with a date stamp of the department indicating receipt no later than April 30 preceding the license year for which application is being made. ~~This section does not apply to licenses for fishing only for the harvest of rough fish from outlying waters under permit or contract issued under s. 29.62 or 29.625, Stats.~~ Late applications for licenses may not be acted upon by the department but shall be returned to the applicant along with the applicant's license fee.

SECTION 4. NR 25.03(4) is created to read:

NR 25.03(4) ROUGH FISH LICENSES. This section does not apply to licenses for fishing only for the harvest of rough fish from outlying waters under permit or contract issued under s. 29.62 or 29.625, Stats.

SECTION 5. NR 25.04(7)(b) is amended to read:

NR 25.04(7)(b) The person is a member of the licensed commercial fisher's immediate family or the person held a non-temporary crew license issued pursuant to s. 29.33(4)(a), Stats., prior to July 1, 1985 throughout the previous 2 license years.

SECTION 6. NR 25.05(title) is amended to read:

NR 25.05(title) OPEN SEASONS; SIZE LIMITS; POSSESSION AND HARVEST LIMITS.

SECTION 7. NR 25.05(1)(g) and (gn) are amended to read:

Species	A Green Bay	B Lake Michigan	C Lake Superior
(g) Alewives, menominees <u>Menominees</u> (round whitefish)	At all times	At all times	At all times
(gn) Smelt	At all times except trawls may be used only from June 15 to September 30 and only in waters greater than 65 feet in depth and only from one hour after sunset to one hour before sunrise	At all times except trawls may be used only from <u>Nov. 15 to April 20</u>	At all times

SECTION 8. NR 25.05(3) is amended to read:

NR 25.05(3)(title) POSSESSION AND HARVEST LIMITS. Except as otherwise provided, no person may possess species of fish for which there is no open season. No person, while on the water, may possess species of fish outside of the open season for that species. The possession harvest limit for species of fish for which an open season is provided and a quota has been established shall be the individual quota established by commercial fishing boards for the person possessing harvesting such fish. No person

may take, catch or kill more fish than authorized by his or her harvest limit. No person may fish for a species of fish in a zone for which the person has no harvest limit.

SECTION 9. NR 25.055 is repealed.

SECTION 10. NR 25.06(2)(c)(title), (intro.) and 1. are amended to read:

NR 25.06(2)(c)(title) Smelt. The total allowable annual commercial harvest of ~~forage fish~~ smelt in Wisconsin waters of Lake Michigan and Green Bay shall be determined by the natural resources board based on recommendations from the department.

1. During April 1 through June 30, 1991, the total allowable commercial harvest of smelt may not exceed 337,665 pounds in Lake Michigan and Green Bay, of which no more than 137,665 pounds may be taken from Green Bay. ~~The~~ Thereafter, the total allowable commercial harvest of ~~forage fish~~ smelt ~~by trawls~~ in any license year may not exceed ~~18,000,000~~ 2,358,000 pounds in Lake Michigan and Green Bay, of which no more than ~~2,500,000~~ 830,000 pounds may be taken from Green Bay. ~~Of the 2,500,000 pounds which may be taken by trawls from Green Bay, no more than 1,000,000 pounds may be smelt.~~

SECTION 11. NR 25.06(2)(c)2. and 3. and 25.07(2)(b)5. and (c) are repealed.

SECTION 12. NR 25.07(2)(d) to (g) are renumbered to be NR 25.07(2)(c) to (f), respectively.

SECTION 13. NR 25.07(3)(a) and (b) are amended to read:

NR 25.07(3)(a) Applications for individual licensee catch quotas and fishing permits under this section shall be made annually on forms ~~provided by~~ available from the department and shall be returned to the department no later than April 30 preceding the license year for which application is being made.

(b) ~~Applications~~ To be timely, applications, if mailed, shall ~~must~~ be postmarked no later than April 30 preceding the license year for which application is being made.—~~If applications are and if~~ submitted to the department other than by mail, ~~they shall~~ must be received ~~as indicated by~~ and stamped with a date stamp of the department, indicating receipt no later than April 30 preceding the license year for which application is being made. Late applications for individual licensee catch quotas and fishing permits may not be acted upon by the department but shall be returned to the applicant.

SECTION 14. NR 25.09(2)(b)2.e. is amended to read:

NR 25.09(2)(b)2.e. May be used to take fish in the waters of Lake Michigan lying south of a line extending from the Lake Michigan shoreline along 44°45'50'' north latitude only during the period including the day after Labor Day to June 14. Beginning June 15, the fish holding or pot portion shall be

rendered inoperable. The webbing shall be removed from the water by June 28 and may not be reinstalled until the day after Labor Day.

SECTION 15. NR 25.09(2)(d)1.a., b. and d. are amended to read:

NR 25.09(2)(d)1.a. Only for taking ~~fish species for which there is no minimum size limit, and which are legal in other commercial fishing gear~~ smelt under s. NR 25.06(2)(c).

b. Only in water more than ~~24 feet (4 fathoms)~~ 65 feet deep.

d. When used to harvest ~~forage fish~~ smelt in Green Bay, diverters with openings no larger than 7/8 inch wide shall be used.

SECTION 16. NR 25.09(2)(d)2.b. is amended to read:

NR 25.09(2)(d)2.b. Only for taking ~~forage fish~~ smelt as provided in s. NR 25.06(2)(c) ~~except: 1) Whitefish which exceed the size limit described in s. NR 25.05(2) may be taken during the open season for whitefish described in s. NR 25.05(1) provided they amount to no more than 1.5% by weight of the boats's total daily catch. 2) Section NR 25.07(2)(a) applies to all chubs sorted for sale for human consumption~~ chubs may be harvested during the trawling season for smelt, subject to s. NR 25.07(2)(a).

SECTION 17. NR 25.09(2)(d)2.c. is repealed and recreated to read:

NR 25.09(2)(d)2.c. Beginning July 1, 1991, when used to harvest smelt in Lake Michigan, diverters with openings no larger than 1 1/2 inch wide shall be used.

SECTION 18. NR 25.13(3)(intro.) and (b) are amended to read:

NR 25.13(3)(intro.) Each person licensed pursuant to s. 29.33, Stats., to conduct commercial fishing operations on Lake Michigan and Green Bay shall report for the preceding biweekly calendar period to the department in writing on forms provided for this purpose by the department such information relative to their fishing activities as may be deemed necessary by the department for management of the fishery, and to prevent depletion of the fish supply. The biweekly report shall be ~~post~~ mailed or delivered to the department at the address provided on the form no later than the ~~Monday~~ Tuesday following the biweekly reporting period.

(b) The ~~beweekly~~ biweekly fishing reports shall be carried while fishing by the licensee or by a member of the licensee's crew if the licensee is not present. The information pertaining to the licensee's name, address and license number, date, name and number of the boat fished from, fishing location and depth, fishing effort, gear used and estimated pounds of each fish species caught for each fishing trip shall be recorded on the biweekly fishing reports immediately after completing all net

lifts for each trip and before starting to bring the catch to dock or shore. The report shall accompany the fish caught to dock or shore. ~~The report shall accompany the fish caught to dock or shore.~~ After a trip's information has been recorded, the report may not be transported for the rest of the day in such a way that it can be altered except to record information pertaining to additional fishing trips taken that day. Biweekly fishing reports shall be filed by each licensee regardless of whether the licensee fished during the period of time covered by the report.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on March 28, 1991.

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 June 10, 1991.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary
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June 11, 1991

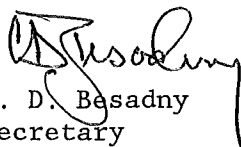
Mr. Gary L. Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr., Blvd.

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. FM-54-90. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Urban Affairs, Environmental Resources and Elections 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.