

 **07hr_SC-ENR_CRule_06-111_pt01**



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Environment and Natural
Resources (SC-ENR)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR ... bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

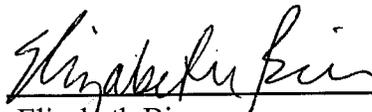
Committee on Environment and Natural Resources

Clearinghouse Rule 06-111

Relating to commercial fishing open seasons in Lake Michigan for chubs.
Submitted by Department of Natural Resources.

February 01, 2007 Referred to Committee on Environment and Natural Resources.

March 7, 2007 No action taken.



Elizabeth Bier
Committee Clerk



WISCONSIN STATE LEGISLATURE



**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-35-06

Legislative Council Rules Clearinghouse Number 06-111

Subject of Rules Commercial fishing open seasons
in Lake Michigan for chubs

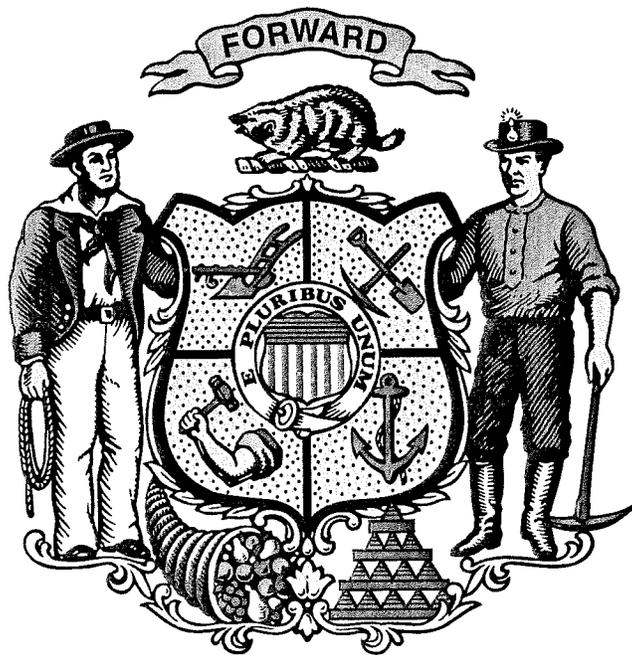
Date of Transmittal to Presiding Officers February 1, 2007

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

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

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

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



REPORT TO LEGISLATURE

NR 25.05(1)(d), Wis. Adm. Code
Commercial fishing open seasons in Lake Michigan for chubs

Board Order No. FH-35-06
Clearinghouse Rule No. 06-111

Basis and Purpose of the Proposed Rule

The proposed rule would repeal a sunset clause pertaining to commercial fishing for chubs in Lake Michigan. Natural Resources Board Order No. FH-34-01 (Clearinghouse Rule No. 01-145) revised commercial fishing depth limits, but included a sunset provision by which the changes would expire on July 1, 2007. That rule proposal was implemented in an attempt to address the concerns of commercial fishers to give them access to safer, more productive and convenient fishing areas during the winter while also reducing the incidental take of lake trout. The proposed rule would allow the present rules to continue indefinitely. Under those rules, the minimum depth for commercial chub nets is 45 fathoms from January 16 through April 25. If the proposed rule is not adopted and the sunset clause is allowed to take effect, minimum depths would vary by area and season; during January 16 through the end of February the minimum depth would be 55 fathoms in the northern chub fishing zone and 60 fathoms in the southern chub fishing zone and during March 1 through April 25 the minimum depth would be eliminated.

Summary of Public Comments

No comments were received.

Modifications Made

No modifications were made as a result of public comments.

Appearances at the Public Hearing

No one appeared at the public hearing.

Changes to Rule Analysis and Fiscal Estimate

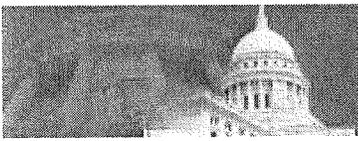
No changes were made.

Response to Legislative Council Rules Clearinghouse Report

No modifications were suggested by the Rules Clearinghouse.

Final Regulatory Flexibility Analysis

No additional compliance or reporting requirements will be imposed as a result of these rule changes. The rule that has been in effect since 2002 will remain in effect.



WISCONSIN STATE LEGISLATURE





**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant 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 06-111

AN ORDER to repeal and recreate NR 25.05 (1) (d), relating to commercial fishing open seasons in Lake Michigan for chubs.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

10-13-2006 RECEIVED BY LEGISLATIVE COUNCIL.

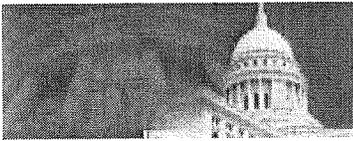
10-31-2006 REPORT SENT TO AGENCY.

RS:MCP

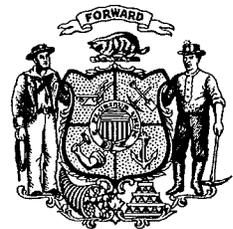
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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 STATE LEGISLATURE



NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT:

Adoption of Order No. FH-35-06, Commercial Fishing for Chubs in Lake Michigan

FOR: JANUARY **BOARD MEETING**

TO BE PRESENTED BY: Michael Staggs

SUMMARY:

The proposed rule would repeal a sunset clause pertaining to commercial fishing for chubs in Lake Michigan. NRB Order FH-34-01 revised commercial fishing depth limits, but included a sunset provision by which the changes would expire on July 1, 2007. The proposed rule would allow the present rules to continue indefinitely. Under those rules the minimum depth for commercial chub nets is 45 fathoms from January 16 through April 25. If the proposed rule is not adopted and the sunset clause is allowed to take effect, minimum depths would vary by area and season; during January 16 through the end of February the minimum depth would be 55 fathoms in the northern chub fishing zone and 60 fathoms in the southern chub fishing zone and during March 1 through April 25 the minimum depth would be eliminated.

RECOMMENDATION: Adopt NRB Order FH-35-06.

LIST OF ATTACHED MATERIALS:

- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

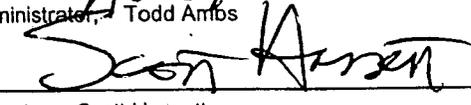
APPROVED:



Bureau Director, Michael D. Staggs



Administrator, Todd Ambs



Secretary, Scott Hassett

12/20/2006

Date

12/21/06

Date

12/21/06

Date

- cc: Amy J. Arthur - AD/5
- Randy Stark - LE/5
- Todd Ambs - AD/5
- Mike Staggs - FH/3
- Dale Maas - GLSC

- Chuck Weier - WF/GLSFC
- Carol Turner - LC/5
- Charles Verhoeven - NER
- Randy Schumacher - SER
- George Boronow - NER

- Charlie Henriksen - WCF
- Rick Johnson - LMCFB
- Peter Flaherty - LS/5
- Steve Hewett - FH/3
- Bill Horns - FH/3 (15 copies)

STAFF REVIEW - DNR BOARD AGENDA ITEM

REMINDER

Have the following questions been answered under the summary section of this form?

- Why is the rule needed?
- What are the significant changes?
- What are the key issues/controversies?
- What was the last action of the Board?

LIST OF ATTACHED REFERENCE MATERIAL REQUIRED FOR RULE PROPOSALS:

Hearing authorization:

Final adoption:

Background Memo (if needed)*
 Fiscal Estimate
 Environmental Assessment (if needed)
 Rule

Background Memo (if needed)*
 Response Summary
 Fiscal Estimate
 Environmental Assessment (if needed)
 Rule

* If all the questions listed in the REMINDER section above can be adequately summarized on the Green Sheet (and a second sheet if needed), the Background Memo may be omitted.

Unit	Reviewer	Date	Comments
Environmental Analysis and Review			
Management and Budget	PFTV	12/20/06	
Legal Services -Program Attorney -Carol Turner	PSP	10/20/06	
	PSP for et CT	" 11/4/07	
Other (if applicable)			

DATE: December 20, 2006

FILE REF: 3600

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Adoption of Natural Resources Board Order FH-35-06

BACKGROUND AND REASONS FOR RULE PROPOSAL

The incidental harvest of lake trout in the commercial chub fishery on Lake Michigan has been a concern of the Department for many years. Under rules in effect until 2001, commercial chub nets in the southern chub fishing zone (SCFZ) could not be set in water shallower than 60 fathoms during the winter period (January 16 through the end of February). In the northern chub fishing zone (NCFZ) the minimum depth during the winter period was 55 fathoms. Those restrictions were controversial; commercial fishers sought shallower depth limits to give them access to safer, more productive, and more convenient fishing areas during winter, but sport fishers argued that any changes to the depth limits would increase the incidental harvest and kill of lake trout.

In 2002 temporary changes were implemented (NRB Order FH-34-01) in an attempt to address the concerns of commercial fishers while also reducing the incidental catch of lake trout. They reflected a compromise by reducing the minimum depth in both chub fishing zones during the winter period, while establishing a minimum depth in both zones for an eight week spring period (March 1 through April 25). Department biologists believed that the net effect would be a reduction in the total incidental catch of lake trout; more would be killed during the winter period, but the increased kill would be offset by a reduction in mortality during the spring. That expectation was based on extensive monitoring of commercial chub fishing. The change was temporary, with the terms of FH-34-01 scheduled to expire on July 1, 2007. NRB Order FH-35-06 would allow current rules to remain in effect indefinitely.

The monitoring of commercial fishing conducted in 1998-2001 provided lake trout catch rates (number of lake trout per foot of net) in gill nets used to catch chubs, and was used to compare expected incidental lake trout catches under various rules. The table below compares expected catches under the current rules and under past rules (rules that would go into effect again if NRB Order FH-35-06 is not adopted). The projected catch rates under the two sets of rules were used to estimate the numbers of lake trout that would have been saved in the northern chub fishing zone (NCFZ) and the southern chub fishing zone (SCFZ) during 1998-2001 if the current (expiring) rules had been in effect.

Projected lake trout kill during 1998-2001 under current (expiring) and past rules. The net difference in each zone is the estimated number of lake trout that would have been saved if the current rules (which will be sustained by NRB Order FH-35-06) had been in effect during 1998-2001.

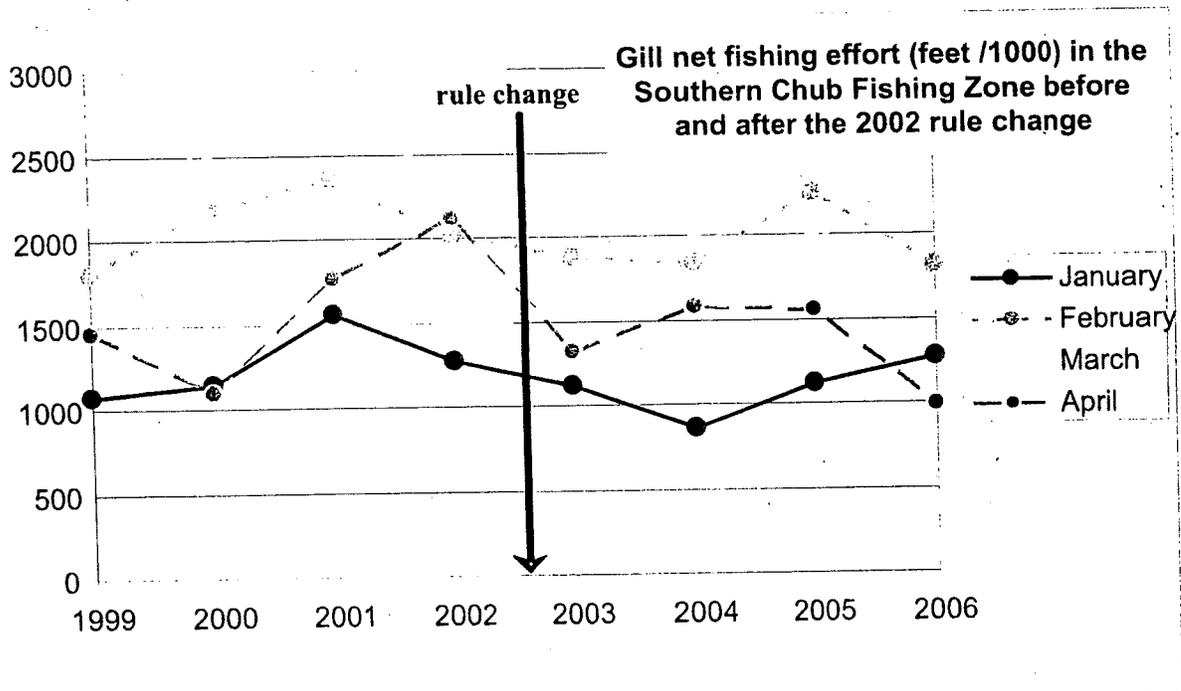
		1998	1999	2000	2001
NCFZ, winter period	past rules	216	141	338	49
	current rules	235	154	368	54
	difference	-19	-13	-30	-5
NCFZ, spring period	past rules	1675	967	1032	502
	current rules	565	326	348	169
	difference	+1110	+641	+684	+333
potential lake trout saving in NCFZ		1091	628	654	328

Projected lake trout kill during 1998-2001 under current (expiring) and past rules. The net difference in each zone is the estimated number of lake trout that would have been saved if the current rules (which will be sustained by NRB Order FH-35-06) had been in effect during 1998-2001.

SCFZ, winter period	past rules	743	690	806	407
	current rules	2338	2171	2534	1280
	difference	-1595	-1481	-1728	-873
SCFZ, spring period	past rules	7856	7470	7533	9433
	current rules	4185	3980	4013	5026
	difference	+3671	+3490	+3520	+4407
potential lake trout saving in SCFZ		2076	2009	1792	3534

Although the foregoing estimates of potential benefits of the current rules are based on data collected during 1998-2001, we have no reason to expect that the underlying processes have changed, so we believe that extending the current rules beyond July 1, 2007, will continue to benefit both commercial fishers and sport fishers.

One of the concerns raised during promulgation of the rule was that commercial fishers would respond by directing more fishing effort to the winter months (January and February) and less to the spring months (March and April). The chart below indicates that this concern did not materialize in the Southern Chub Fishing Zone. Total fishing effort varied from year to year, and month to month, but there was no clear increase in effort during January and February, the months when fishing opportunities were expanded to include depths between 45 and 55 fathoms.



SUMMARY

We are proposing to extend a rule adopted in 2002 and scheduled to expire in 2007. The rule changed the minimum depths of commercial fishing for chubs in Lake Michigan during certain times of the year. In

the northern chub fishing zone it reduced the minimum depth from 55 fathoms to 45 fathoms during January 16 through the end of February and established a minimum depth of 45 fathoms during March 1 through April 25. In the southern chub fishing zone, it reduced the minimum depth from 60 fathoms to 45 fathoms during January 16 through the end of February and established a minimum depth of 45 fathoms during March 1 through April 25 in that part of the zone that is open for chub fishing at that time (i.e., the area south of 44°32'). The rule will expire on June 30, 2007. We are proposing to extend it indefinitely.

HOW DO THE RULES AFFECT EXISTING POLICY?

No fundamental fisheries management policies are affected by this rule. This rule proposal may be controversial among some sport fishers because it is a permanent modification of the 60-fathom rule, which was vigorously defended for a number of years. Because the rule retains the Department's commitment to minimize the incidental mortality of lake trout, while also allowing commercial fishing opportunities, it does not represent a change in policy.

PAST BOARD ACTIONS AND DEVELOPMENT OF RULE PROPOSAL

In January of 1989 the NRB adopted FM-40-88, establishing the 60-fathom rule in the southern chub fishing zone. Under that rule, chub fishing in the southern chub fishing zone was limited to waters 60 fathoms deep or deeper during the winter period (January 16 through the end of February). The purpose of the 60-fathom rule was to minimize the incidental catch of lake trout in commercial nets. In the northern chub fishing zone, chub fishing remained closed during the winter period.

In December of 1996 the NRB adopted FM-48-96, closing the Green Bay portion of the northern chub fishing zone and opening waters of the Lake Michigan portion of the northern chub fishing zone to chub fishing during the winter period, subject to a 60-fathom minimum depth restriction. At that time commercial fishers expressed a desire for elimination or modification of the 60-fathom rule in both chub fishing zones. The NRB asked the Department to cooperate with commercial fishers in a study of the assumption behind the 60-fathom rule, namely that incidental catch rates of lake trout are greater in water shallower than 60-fathoms than in deeper water. The study was conducted during January and February of 1997, and summarized for the NRB in an informational item presented in August of 1997. That study supported the biological assumption behind the 60-fathom rule.

In August of 1998 the NRB adopted FH-44-98, temporarily reducing the minimum depth for chub fishing in the northern chub fishing zone during the winter period from 60 fathoms to 55 fathoms and temporarily expanding the boundaries of the southern chub fishing zone to provide an larger area for chub fishing in waters 60 fathoms deep or deeper during the winter period only.

In August of 2000 the NRB adopted FH-26-00, making permanent the temporary changes provided in FH-44-98. At that time the Department reported the completion of a second study of incidental catch rates in the chub fishery. That study reviewed and summarized all Department-monitored chub fishing (as well as gill net fishing for whitefish), and provided the additional information needed to develop the NRB Order FH-34-01.

In April of 2002 the Natural Resources Board adopted NRB Order FH-34-01 implementing the temporary changes outlined above.

HEARING SYNOPSIS

A public hearing was held in Manitowoc on November 13, 2006. Written notice of the hearing was provided to the Lake Michigan Commercial Fishing Board, all licensed commercial fishers, leaders of the Wisconsin Federation of Great Lakes Sport Fishing Clubs, the Great Lakes Study Committee of the Wisconsin Conservation Congress, and over other 1000 interested parties. No written comments were received and no one appeared at the public hearing.

RULES CLEARINGHOUSE COMMENTS

No comments were received, so no changes were made to the draft Order.

AFFECTED PARTIES

Commercial chub fishers will be affected by the rule. Because the rule modifies the "60-fathom rule", which has been the subject of contentious discussions in the past, this rule change may raise concerns among sport fishers, and it may be controversial.

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.

Fiscal Estimate — 2003 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-35-06

Subject
 Commercial fishing - outlying waters (Ch. NR 25)

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

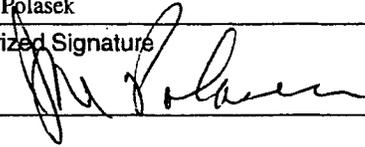
Assumptions Used in Arriving at Fiscal Estimate

Summary of Rule - This rule makes permanent temporary changes established by earlier NRB Order to the minimum depth limits for commercial chub fishing nets in Lake Michigan.

Fiscal Impact - These changes have no fiscal implications for state or local government

Long-Range Fiscal Implications

none

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 08-25-06

effect since 2002. However, compared to what would be in effect after June 30, 2007 if the sunset provisions are not repealed, the order makes the following changes: In the northern chub fishing zone it reduces the minimum depth from 55 fathoms to 45 fathoms during January 16 through the end of February and establishes a minimum depth of 45 fathoms during March 1 through April 25; and in the southern chub fishing zone it reduces the minimum depth from 60 fathoms to 45 fathoms during January 16 through the end of February and establishes a minimum depth of 45 fathoms during March 1 through April 25. The latter minimum depth applies only to waters south of 44°32' north latitude because only those waters are open to chub fishing during that period.

6. Summary of and preliminary comparison with existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

There are no existing or proposed federal regulations intended to address commercial fishing on the Great Lakes.

7. Comparison with similar rules in adjacent states (Minnesota, Iowa, Illinois, and Michigan).

Michigan and Illinois are the only adjacent states that allow the commercial harvest of bloater chubs from their waters of Lake Michigan. In Michigan, 5 state-licensed commercial fishers are currently permitted to fish for bloater chubs. They may not fish in water shallower than 40 fathoms. In Illinois there are 5 commercial fishing licenses, but none are currently active in fishing for bloater chubs. If commercial fishing for bloater chubs should resume in Illinois, the nets would be limited to areas farther than 1,000 yards from any pier, breakwater, or similar structure, or the low water mark on the shore during August; to depths greater than 5 fathoms during September through June; and to depths greater than 20 fathoms during July.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule.

The proposed rule is based on on-board monitoring of commercial fishing boats during 1998-2001 and on reported fishing effort since adoption of the present rules in 2002. Those data suggest that the incidental kill of lake trout will increase if the sunset provision takes effect and the rules revert to those in effect prior to 2002.

The monitoring provided lake trout catch rates (number of lake trout per foot of net) in gill nets used to catch chubs, and was used to compare incidental lake trout catches that would have occurred under the rules that are now in effect but scheduled to expire next year (current rules) and catches under rules then in effect and due to go into effect again if the proposed rule is not adopted (past rules). The comparison is summarized in the table below. The projected catch rates under the two sets of rules were used to estimate the numbers of lake trout that would have been saved in the northern chub fishing zone (NCFZ) and the southern chub fishing zone (SCFZ) during 1998-2001 if the current (expiring) rules had been in effect.

One of the concerns raised when the current rules were adopted in 2002 was that commercial fishers would adjust their fishing practices and fish more during winter months and less during the spring. A review of fishing effort reported by commercial fishers shows that such a shift did not occur.

Projected lake trout kill during 1998-2001 under current (expiring) and past rules. The net difference in each zone is the estimated number of lake trout that would have been saved if the current rules (which will be sustained by the proposed rule, NRB Order FH-35-06) had been in effect during 1998-2001.

		1998	1999	2000	2001
NCFZ, winter period	past rules	216	141	338	49
	current rules	235	154	368	54
	difference	-19	-13	-30	-5
NCFZ, spring period	past rules	1675	967	1032	502
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net difference in SCFZ		2076	2009	1792	3534

9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rules effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.

During the years 2003 through 2006 the number of commercial fishing license holders reporting bloater chub harvests each year ranged from 17 to 26. All license holders are also fish wholesalers. Commercial fishers and fish wholesalers are small businesses.

10. Effects on small business, including how the rule will be enforced.

The rules adopted in 2002 that will continue in place after June 30, 2007 if this rule is adopted, were sought and supported by commercial fishers, so the Department concludes that this rule will not adversely effect small businesses. The rule will be enforced by Department conservation wardens, county district attorneys and county circuit courts, through the use of citations and civil or criminal complaints under the provisions of ch. 29, Stats.

11. Agency contact person (including e-mail and telephone number).

William Horns – FH/4
 Bureau of Fisheries Management
 Department of Natural Resources
 PO Box 7921
 Madison, WI 53707-7921
 phone: (608) 266-8782
 email: william.horns@dnr.state.wi.us

SECTION 1. NR 25.05(1)(d) is repealed and recreated to read:

	Species	A Green Bay	B Lake Michigan	C Lake Superior
(d)	Chubs	No open season	1. In the northern chub fishing zone: <ul style="list-style-type: none"> a. From April 26 to January 15. b. From January 16 to April 25, only in water 45 fathoms deep or deeper. 2. In the southern chub fishing zone: <ul style="list-style-type: none"> a. From April 26 to January 15, only in water south of 44° 32' north latitude. b. From January 16 to the end of February, only in water 45 fathoms deep or deeper. c. From March 1 to April 25, only in water south of 44° 32' north latitude which is 45 fathoms deep or deeper. 	At all times

SECTION 2. EFFECTIVE DATE. 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.

SECTION 3. BOARD ADOPTION. The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)