

REPORT TO LEGISLATURE

NR 25 , Wis. Adm. Code
Commercial Fishing in Outlying Waters and Affecting Small Business

Natural Resources Board Order No. FH-23-08
Clearinghouse Rule No. 09-083

Basis and Purpose of the Proposed Rule

The rule increases the total allowable annual commercial harvest of lake whitefish from Lake Michigan (including Green Bay) and the three commercial fishing zones that comprise Lake Michigan. The lake wide total allowable annual commercial harvest is increased by 410,001 pounds from 2,470,000 pounds to 2,880,001 pounds, with the increase being divided equally among the three zones. The per zone increase is 136,667 pounds: Zone 1 – 225,518 to 362,185 pounds, Zone 2 – 2,029,662 to 2,166,329 pounds, and Zone 3 – 214,820 to 351,487 pounds.

The rule also provides that if, in the future, the total allowable annual commercial harvest is reduced below 2,470,000 pounds, the reduction will be made from each zone in proportion to the current allocation formula rather than taken equally from the three zones, and that if the total allowable annual commercial harvest is increased above 2,880,001 pounds, the increment in excess of that value will also be allocated according to current proportions.

Summary of Public Comments

A public hearing was held in Sturgeon Bay on October 26, 2009. It was attended by six members of the public, with five indicating opposition to the proposal and one indicating support. Nine additional individuals submitted written comments or commented by telephone. Of those ten additional individual written or telephone comments, six were in support and four were in opposition. Finally, comments were submitted on behalf of four organizations. The Wisconsin Federation of Great Lakes Sport Fishing Clubs and the Northeast Wisconsin Great Lakes Sport Fishermen support a quota increase in Zones 1 and 2, but not 3. The City of Two Rivers and the Wisconsin Commercial Fisheries Association support the proposed harvest increase, and also support the recommendation of the Lake Michigan Commercial Fishing Board that the increase be divided equally among the three fishing zones. The oral and written comments included the following specific ideas:

- 1) The increase in the TACH should be divided equally among the three fishing zones.
Department response: This was the recommendation of the Lake Michigan Commercial Fishing Board. It has been incorporated into the proposed rule.
- 2) If the proposed increase in the harvest limit (410,001 pounds) is allocated equally among the three zones, the Department should provide assurances that a) if the TACH is later reduced, any reduction up to 410,001 pounds will also be equally allocated among the zones and b) if the TACH is later increased further, the increase should be divided among zones in proportion to the current allocation of harvest.
Department response: This request reflects the intent of the Lake Michigan Commercial Fishing Board. It is not possible to limit the options available to future Natural Resources Board, so no absolute assurances are possible. However, the rule has been drafted to express the desired assurances.

- 3) Because of the increased interest in recreational fishing for whitefish in Zone 1, the economic value of that fishery, and the possibility that a substantial increase in harvest from Zone 3 could harm that recreational fishery, the increased allowable commercial harvest should be limited to Zones 2 and 3.

Department response: The development of a recreational fishery for whitefish in Green Bay is a welcomed addition to the opportunities available in Wisconsin. We cannot at this time accurately estimate the magnitude of the harvest or its economic value. Because we believe that whitefish from the larger North/Moonlight Bay stock move into and out of Green Bay, it is very difficult to estimate the impact of the commercial harvest on that local recreational fishery.

- 4) In light of the strong resistance of sport fishers when summer commercial trap netting for whitefish was introduced near Manitowoc and Two Rivers a few years ago, and in light of the possibility that an increased harvest limit in Zone 3 will lead to increased pressure for further relaxation of the trap netting rules in that area (more nets, larger allowed fishing area), the increased allowable harvest should be limited to Zones 1 and 2.

Department response: We know that many sport fishermen in the Manitowoc and Two Rivers area have a strong objection to the summer commercial harvest from that area, but because that commercial fishery is limited as to the number of nets, where they may be placed, and when they may be fished, we do not believe that the proposed change will materially affect the recreational fishery. We understand that this may be a continuing point of disagreement.

- 5) Because commercial fishers are not always able to harvest the entire TACH in all three zones, the rules should provide an opportunity for unfished quotas to be transferred between zones.

Department response: This interesting suggestion would be a significant departure from existing allocation policy. The Department would welcome advice from the Commercial Fishing Board on this idea.

- 6) Because revenues from the sale of commercial fishing licenses do not cover the full cost of managing the commercial fishery and part of the cost is paid using revenues from the sale of recreational fishing and hunting licenses, the whitefish harvest limit should not be increased unless reducing the whitefish population would serve other purposes.

Department response: Because the proposed rule change will not require the Department to increase its spending for management of the commercial fishery, we do not believe that this issue is relevant to this proposal.

- 7) Commercial fishers need the increased harvest limit to sustain their businesses and continue to provide the public benefit of supplying fish for local restaurants.

Department response: We understand the benefits of a stable and viable commercial fishery. We believe that the larger management framework, with limited entry and individual transferable quotas, along with vigilant regulation of the harvest, helps us to meet that goal.

Modifications Made

The original proposed rule has been modified to change the allocation among zones of the proposed increase in the total allowable annual commercial harvest as recommended by the Lake Michigan Commercial Fishing Board. Under the final proposal the increase will be equally divided among the three zones. Language was also added to the rule to specify how future increases or decreases in the total allowable annual commercial harvest of Lake Michigan whitefish should be made relative to each zone.

Appearances at the Public Hearing

October 26, 2009 Sturgeon Bay

In support:

Michael LeClair, 1810 East St., Two Rivers, Wis.

In opposition:

Scott Habermann, 4304 Custer St., Manitowoc, WI 54220

David Tupa, 6691 CO. A, Egg Harbor, WI 54209

Thom Gulash, 3702 Indian Bluff, Manitowoc, WI 54220

Charles Weier, 358 22nd St., Two Rivers, WI 54241

Larry Freitag, 1610 S. 11th St., Sheboygan, WI 53081

Changes to Rule Analysis and Fiscal Estimate

Modifications were made to the Rule Analysis to reflect the modifications made to the proposed rule as a result of public comments and recommendations from the Lake Michigan Commercial Fishing Board. The Fiscal Estimate remains the same.

Response to Legislative Council Rules Clearinghouse Report

The Clearinghouse had no comments.

Final Regulatory Flexibility Analysis

The proposed rule will affected licensed commercial fishers operating on Wisconsin's outlying waters (Lake Michigan). The rule does not have a significant adverse economic impact on a substantial number of small businesses. Lake Michigan commercial fishing license holders who are permitted to fish for whitefish will be allowed to harvest more fish.

a. Describe the type of small business that will be affected by the rule. Commercial fishing businesses will be affected.

b. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule. No new reporting, bookkeeping or other procedures are required to comply with the rule.

c. Describe the type of professional skills necessary for compliance with the rule. No new skills are required to comply with the rule.