

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING RULES

Wisconsin Natural Resources Board proposes an order to amend NR 25.05(1)(c), relating to commercial fishing in outlying waters.

FH-25-11

Analysis Prepared by Department of Natural Resources

- 1. Statutes Interpreted:** Sections 29.014(1), 29.041 and 29.519(1m)(b), Stats.
- 2. Statutory Authority:** Sections 23.11(1), 29.014(1), 29.041, 29.519(1m)(b), and 227.11(2)(a), Stats.
- 3. Explanation of Agency Authority to Promulgate the Proposed Rules Under the Statutory Authority:** Section 23.11 (1), Stats., grants the department such powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law.

Section 29.014 (1), Stats., directs the department to establish and maintain open and closed seasons for fish and conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, and designate the kind, size and amount of gear to be used in the harvest.

Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statutes:

- 29.539 Sale of game or fish.
- 29.563 Fee schedule.
- 29.924 Investigations; searches.
- 29.931 Seizures.
- 29.971 General penalty provisions.
- 29.973 Commercial fish reporting system.
- 29.984 Commercial fish protection surcharge.
- 29.9905 Great Lakes resource surcharge.
- 29.991 Fishing net removal surcharge

- 5. Plain Language Rule Analysis:** Section 1 of the Order adds six days to the commercial harvest season for whitefish from Lake Michigan and Green Bay.

The Natural Resources Board approved an emergency rule (FH-22-11E) to extend the whitefish season for six days in October 2011. The extended season in October 2011 was for the benefit of Wisconsin

commercial fishing businesses. The proposed rule permanently changes the open season for whitefish on Lake Michigan and Green Bay by adding six days to the open season. The proposed rule changes the season end date to October 31. The rule change is intended for the benefit of Wisconsin commercial fishing businesses.

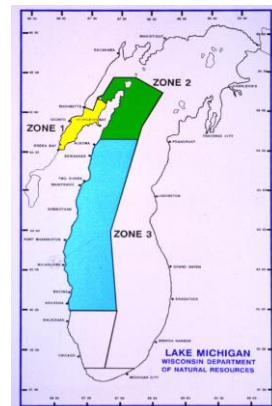
Commercial harvesting of yellow perch, rainbow smelt, and chubs has declined significantly since 1990. As a result, whitefish are now the mainstay of the commercial fishery in Lake Michigan. The Department estimates that the value to the commercial fishing industry of extending the whitefish season by 6 days is approximately \$161,300 annually. This is a wholesale value which would increase if some of the catch is marketed retail, however, there are no available numbers for retail sales or value. The Department received comments from commercial fishers indicating that the six day extension provided by the emergency rule was economically beneficial to their businesses.

The October 25 closure date for whitefish was established around 1970 and was implemented when whitefish populations were in a much more reduced state, but recovering. Current abundance and recruitment data indicate Wisconsin's population is healthy. This fishery is managed through a quota system that controls the total annual harvest. In addition, anecdotal information indicates that fish are spawning at a later date than they have historically, possibly as a result of increasing average water temperatures. Department biologists have considered the impact of the proposed rule change on the whitefish population and spawning season and believe that the additional six days will not threaten whitefish stocks in Wisconsin waters.

The total reported whitefish harvest (pounds dressed weight) for the past five years indicates that commercial fishers are catching significantly fewer pounds of whitefish than in past years. In addition, as shown in the table below, the whitefish harvest limit was not reached in the 2010-11 fishing year, which ran from July 2010 to June 2011, and it is expected that additional harvest will not harm the whitefish population.

2010-11* Whitefish Harvest - Lake Michigan					
Harvest Zone	Whitefish Quota Holders	Harvest Limit (pounds)	Reported Harvest (pounds)	Percentage of Limit	
1	23	362,185	263,633	73%	
2	31	2,166,329	1,025,648	47%	
3	12	351,487	270,395	77%	

*July 2010-June 2011



If the season is extended to October 31 on a permanent basis, the Department has projected an added harvest of 137,184 pounds each year, which is the average harvest during October 20-25 over the last five years. As of December 2, 2011, commercial fishers reported harvesting 78,416 pounds of whitefish and 3,642 pounds of whitefish eggs during October 26-31, 2011, but not all harvest data had been reported. It is not expected that harvest throughout an extended season would exceed the annual harvest quota.

6. Summary of and Comparison with any Existing or Proposed Federal Regulations: The Department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Michigan and Green Bay.

7. Comparison of Similar Rules in Adjacent States: There is no Lake Michigan commercial whitefish harvest in Illinois. In Michigan, the season for state-licensed commercial fishers closes on November 1, while for tribal fishers it lasts one week longer.

8. Summary of Factual Data and Analytical Methodologies Used in Support of the Proposed Rule: This rule change was requested by the Lake Michigan Commercial Fishing Board, which was established under s. 15.345, Stats., and advises the Department regarding commercial fishing issues on the Great Lakes. Department biologists have reviewed the proposal and believe the change will not threaten the whitefish population.

9. Analysis and Documentation Used in Support of the Agency’s Determination of the Rule’s Effect on Small Businesses Under s. 227.114, Stats.: The proposed rule change would expand harvest opportunities for commercial fishing businesses. The rule change was requested by the Lake Michigan Commercial Fishing Board.

10. Effects on Small Business, Including How the Rule Will Be Enforced: This rule was initiated in response to the expressed concerns of commercial fishers. It does not impose any additional compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule.

The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

11. Agency contact person.

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SECTION 1. NR 25.05 (1) (c) is amended to read:

NR 25.05 Open seasons; size limits; possession and harvest limits. (1)

Species	Green Bay	Lake Michigan	Lake Superior
(c) Whitefish	December 1 to October <u>25</u> <u>31</u>	December 1 to October <u>25</u> <u>31</u>	November 26 to September 30

SECTION 2. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)