

b. Effective July 1, 1990, applied for and received a whitefish fishing permit for zone 3 for the license year preceding the license year for which the permit application is being made; and

c. Reported a commercial harvest of whitefish legally taken from zone 3 between January 1, 1984 and June 30, 1989.

3. Each permittee shall be allowed a total annual harvest or individual licensee catch quota of whitefish assigned as a percentage of the harvest limit established by s. NR 25.06 (2) (d) 2. Each individual licensee catch quota shall be determined by dividing the total whitefish commercial harvest from zone 3 during the period from January 1, 1984 to June 30, 1989 reported under that license by the total reported commercial harvest of whitefish from zone 3 during that period, and multiplying the result by 100.

4. In determining individual licensee catch quotas under subd. 3., the resulting percentages shall be rounded off to hundredths of a percent. The individual licensee catch quotas shall be allocated in whole pound increments.

(g) *Smelt*. 1. No person may fish for smelt with commercial gear in Lake Michigan or Green Bay unless the person is authorized to do so by a permit issued by the department under subd. 2 or 5., and the person complies with the terms and conditions of the permit, this chapter and s. 29.33, Stats.

2. A "racehorse" smelt fishery permit for Lake Michigan and Green Bay shall be issued to each applicant who holds a valid commercial fishing license issued under s. 29.33, Stats. Licensees who hold a permit under both this subdivision and subd. 5. may not fish in the "racehorse" smelt fishery until all individual licensee catch quotas issued under subd. 5. have been reported caught. Trawl gear may not be used to harvest smelt in the "racehorse" smelt fishery except by licensees who hold a permit under both this subdivision and subd. 5.

3. Permittees under subd. 2. may harvest smelt from either Green Bay or Lake Michigan, or both, but shall cease fishing for smelt in Green Bay and in Lake Michigan, respectively, when notified by the department. Notwithstanding s. NR 25.06 (2) (c) 1., the department shall notify all "racehorse" smelt fishery permittees to cease fishing in Green Bay or Lake Michigan upon receipt of information that 85% of the smelt allocated under subd. 4. for the "racehorse" fishery for Green Bay or Lake Michigan, respectively, has been caught, except that all nets in the water shall be lifted under s. NR 25.09 (2) (a) 10., and the legal fish harvested.

4. The portion of the total annual Green Bay smelt harvest limit set in s. NR 25.06 (2) (c) 1., allocated to the Green Bay "racehorse" smelt fishery for licensees holding permits issued under subd. 2. is X pounds, where $X = (A)(B)(D)(E)$, and the portion of the total annual Lake Michigan and Green Bay smelt harvest limit set in s. NR 25.06 (2) (c) 1., allocated to the Lake Michigan "racehorse" smelt fishery, excluding Green Bay, by licensees holding permits issued under subd. 2. is Y pounds, where $Y = (A)(C)(D)(E)$. In these equations,

A = the total annual Lake Michigan and Green Bay smelt harvest limit, in pounds, set in s. NR 25.06 (2) (c) 1.;

B = 35.19932%;

C = 64.80067%;

D = in any license year, the total number of Lake Michigan commercial fishing licensees minus the number of licensees issued quota smelt fishery permits under subd. 5; and

E = .0004241

5. A quota smelt fishery permit and individual licensee catch quota for Lake Michigan and Green Bay shall be issued to each applicant who holds a valid commercial fishing license issued under s. 29.33, Stats., and reported a commercial harvest by trawls of smelt legally taken from the Wisconsin waters of Green Bay or Lake Michigan between July 1, 1991 and June 30, 1992:

a. Individual licensee catch quotas issued under this subdivision shall comprise the remaining portion of the total allowable annual commercial harvest limits set for Green Bay and for Lake Michigan and Green Bay in s. NR 25.06 (2) (c) 1., after subtraction of the pounds of smelt required for the Green Bay and Lake Michigan "racehorse" smelt fisheries established under subd. 2.

b. Two separate individual licensee catch quotas, expressed as percentages of the poundages calculated under subd. 5., shall be calculated for each permittee subject to this subdivision. The first percentage shall be calculated by dividing the total commercial harvest of smelt reported lawfully harvested from the Wisconsin waters of Green Bay under each license during the period of July 1, 1991 through June 30, 1992 by the overall total reported commercial harvest of smelt from Green Bay during that period, and multiplying the result by 100. The second percentage shall be calculated by dividing the total commercial harvest of smelt reported lawfully harvested from the Wisconsin waters of Lake Michigan, excluding Green Bay, under each license during the period of July 1, 1991 through June 30, 1992 by the overall total reported commercial harvest of smelt from Lake Michigan during that period, and multiplying the result by 100. The resulting percentages shall be rounded off to 2 decimal places or to hundredths of a percent. The individual licensee catch quotas shall be allocated in whole pound increments.

c. A quota smelt fishery permittee who receives an individual licensee catch quota for Green Bay may take all or part of the Green Bay quota from either Green Bay or Lake Michigan, but no quota smelt fishery permittee who receives an individual licensee catch quota for Lake Michigan may take any portion of the Lake Michigan quota from Green Bay.

d. Notwithstanding subd. 5. a. and b., for the 1995-1996 license year, before allocating the individual licensee catch quotas under this subdivision, the department shall deduct from each individual licensee catch quota the number of pounds of smelt harvested by the permittee during July 1, 1995 to November 15, 1995.

(3) APPLICATION. (a) Applications for individual licensee catch quotas and fishing permits under this section shall be made annually on forms 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) To be timely, applications, if mailed, must be postmarked no later than April 30 preceding the license year for which application is being made and if submitted to the department other than by mail 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 appli-

cation 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.

(c) The applications shall be reviewed by the department and approved or denied no later than June 15 preceding the license year for which application is being made, unless there are circumstances that may prevent the applicant from being a licensed commercial fisher on July 1 of the license year for which application is being made. In those cases, the applicant shall be notified of the approval or denial of the application in conjunction with the notice of approval or denial of the license authorizing commercial fishing on the outlying waters.

(d) Applicants for Lake Michigan chub fishing permits and individual licensee catch quotas under sub. (2) (a) shall select and designate on their applications the northern chub fishing zone, the southern chub fishing zone or both zones as the waters they wish to fish chubs in.

(4) ASSESSMENT QUOTA. Fish harvested under contract for the department for assessment purposes may not be considered part of nor deducted from an individual licensee catch quota.

(5) PERIOD OF VALIDITY. Individual licensee catch quotas and fishing permits determined and issued in accordance with this section shall be issued on a license year basis. They shall be valid only during the open season for the species of fish subject to the harvest quota and only while the quota holder or permittee holds a valid license authorizing commercial fishing in the waters to which the quota applies.

(6) REINSTATEMENT OF QUOTA RIGHTS. If the commercial fishing license of a quota holder is revoked under s. 29.33, Stats., the right to that quota and ranking, if any, shall be reinstated upon reinstatement of the revoked license and upon proper application.

(7) REALLOCATION OF SURPLUS TOTAL ALLOWABLE COMMERCIAL HARVEST. If the number of eligible permittees is inadequate to utilize a total allowable commercial harvest established by s. NR 25.06 (2) (a) 3., (b), (c), (d) or (e) and allocated under sub. (2) (a) 3. a., (b), (bg), (br), (c), (d), (e), (f) or (g) 5., the surplus shall be divided permanently among the remaining eligible permittees based on the percentage calculated for each permittee under sub. (2) (a) 3. a., (b), (bg), (br), (c), (d), (e), (f) or (g) 5., respectively.

History: Cr. Register, September, 1976, No. 249, eff. 10-1-76; emerg. r. and recr. and cr. (2) (a) 1, eff. 5-16-79; r. and recr. Register, October, 1979, No. 286, eff. 11-1-79; r. and recr. (2) (a) 1., Register, June, 1981, No. 306, eff. 7-1-81; emerg. am. (1) (a), eff. 7-1-81; am. (1) (a), Register, August, 1981, No. 308, eff. 9-1-81; emerg. cr. (2) (a) 1. b. 6, eff. 1-2-82; am. (2) (a) (intro.) Register, April, 1982, No. 316, eff. 5-1-82; emerg. am. (2) (a) 1. b. and c., eff. 7-1-82; am. (2) (a) 1. b. and c. and (3), Register, September, 1982, No. 321, eff. 10-1-82; cr. (2) (a) 1. b. 6, Register, February, 1983, No. 326, eff. 3-1-83; am. (1) and (2), Register, April, 1983, No. 328, eff. 5-1-83; r. and recr. (2) (a) 2., (2) (b) and (3), r. (2) (a) 4. and 5., renum. (2) (a) 3. to be (2) (a) 4. and am., cr. (2) (a) 3., Register, June, 1983, No. 330, eff. 7-1-83; am. (1) (b) 1., (2) (b) 2. c. and 5., cr. (2) (b) 1. c. and d., Register, June, 1984, No. 342, eff. 7-1-84; am. (2) (a) 1. b. and 2. a., renum. (2) (a) 3. c. to be 3. d., cr. (2) (a) 3. c., Register, July, 1984, No. 343, eff. 8-1-84; am. (2) (a) 2, intro. and b., 3, intro. and d., r. and recr. (3) to (6), Register, January, 1985, No. 349, eff. 2-1-85; emerg. am. (2) (a) 3. b. 2, eff. 3-15-85; am. (2) (a) 3. c., renum. (2) (a) 3. d. to be 3. e., cr. (2) (a) 3. d., Register, May, 1985, No. 353, eff. 6-1-85; am. (1) (a), Register, June, 1985, No. 354, eff. 7-1-85; am. (2) (a) 3. b. 2, Register, July, 1985, No. 355, eff. 8-1-85; am. (2) (a) 2. a., Register, August, 1985, No. 356, eff. 9-1-85; am. (1) (d), Register, February, 1986, No. 362, eff. 3-1-86; emerg. am. (2) (a) 3. d., eff. 5-5-86; am. (2) (a) 2. a. and b., r. (2) (a) 2. c., Register, October, 1986, No. 370, eff. 11-1-86; r. and recr. (2) (a) 3. d., Register, December, 1986, No. 372, eff. 1-1-87; cr. (2) (c), Register, January, 1988, No. 385, eff. 2-1-88; am. (2) (a) 3. b., Register, July, 1988, No. 391, eff. 8-1-88; r. (2) (a) 3. d. 3), am. (2) (a) 1. and 3, intro., cr. (2) (a) 1m., r. and recr. (2) (a) 2. a., Register, January, 1989, No. 397, eff. 7-1-89, except (2) (a) 3. d. 3), eff. 2-1-89; r. (2) (a) 4., (b) 4. and (c) 5., am. (2) (b) 5., Register, June, 1989, No. 402, eff.

7-1-89; emerg. renum. (2) (b) 1. to 3. to be 2. to 4. and am. 2. intro., c. and d., 3. c. and 4., cr. (2) (b) 1., (bg) and (d) to (g), eff. 7-1-89; renum. (2) (b) 1. to 3. to be 2. to 4. and am. (2) (b) 2. intro., c. and d., 3. c. and 4., cr. (2) (b) 1., (bg), (br) and (d) to (g), Register, October, 1989, No. 406, eff. 11-1-89; emerg. r. (2) (b) 5. and (c), renum. (2) (d) to (g) to be (2) (c) to (f), am. (3) (a) and (b), eff. 4-1-91; r. (2) (b) 5. and (c), renum. (2) (d) to (g) to be (2) (c) to (f), am. (3) (a) and (b), Register, August, 1991, No. 428, eff. 9-1-91; r. (2) (a) 3. b. 2) and c., (b) 3. b., (bg) 4. and (br) 4., am. (2) (a) 3. d., renum. (2) (a) 3. e., (b) 3. c., (bg) 5. and (br) 5. to be (2) (a) 3. f., (b) 3. b., (bg) 4. and (br) 4., cr. (2) (a) 3. e. and (7), Register, November, 1991, No. 431, eff. 12-1-91; am. (2) (a) 2. a., Register, March, 1992, No. 435, eff. 4-1-92; reprinted to correct error in (2) (a) 2. a., Register, May, 1993, No. 449; am. (1) (a) 2., Register, November, 1993, No. 455, eff. 12-1-93; correction in (2) (a) 2. b. and 3. f. made under s. 13.93 (2m) (b) 7, Stats., Register, November, 1993, No. 455; r. and recr. (2) (a) 1. and 1m., am. (3) (d), Register, March, 1994, No. 459, eff. 7-1-94; am. (2) (a) 2. a., b., Register, February, 1995, No. 470, eff. 3-1-95; cr. (2) (g), am. (7), Register, October, 1995, No. 478, eff. 11-15-95.

NR 25.08 Transfer of individual licensee catch quotas. Individual licensee catch quotas allotted under s. NR 25.07 (1) (a) or (2) (a) 3.a., (b), (bg), (br), (c), (d), (e) or (f) may be transferred by the licensee receiving the quota allocation to another valid licensee authorized to engage in commercial fishing in the waters to which the quota applies, who meets all criteria for receiving such a quota other than previous fishing history, subject to the conditions stated in this section.

(1) Application for individual licensee catch quota transfers shall be made on forms provided by the department.

(2) All or part of an individual licensee catch quota allotted under s. NR 25.07 (1) (a) or (2) (a) 3.a., (b), (bg), (br), (c), (d), (e) or (f) may be permanently or temporarily transferred by the quota holder.

(2m) A northern chub fishing zone permit issued under s. NR 25.07 (2) (a) 1., may be permanently transferred by the permit holder only in conjunction with the transfer of the permit holder's valid license authorizing commercial fishing in the outlying waters under s. NR 25.04.

(2t) 1. All or part of an individual licensee catch quota allotted under s. NR 25.07 (2) (g) 5., may be temporarily or permanently transferred by the licensee receiving the quota allocation to another licensee who also holds a valid quota smelt fishery permit and individual licensee catch quota issued under s. NR 25.07 (2) (g) 5.

2. A quota smelt fishery permit and individual licensee catch quota allotted under s. NR 25.07 (2) (g) 5., may be transferred by the licensee receiving the permit and catch quota to a person who does not also hold a valid quota smelt fishery permit and individual licensee catch quota issued under s. NR 25.07 (2) (g) 5., only in conjunction with the transfer of the permit holder's valid license authorizing commercial fishing in the outlying waters under s. NR 25.04.

(3) A licensee may designate on the application for their individual licensee catch quota a person to whom the licensee wishes that quota to be transferred in the event of the licensee's death or incapacity. This designation may be changed during the license year as requested in writing by the licensee. The designated person shall meet the criteria under this section for the transfer to occur.

(a) In the absence of such a designation, or a qualified transferee, or a transferee capable of accepting the transfer under this section, members of the immediate family of the licensee who meet the eligibility requirements of this section shall be offered the quota. The offer shall be made by the department in the following order:

1. Spouse;

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2. Children, eldest first, then in order of age;
3. Parents;
4. Siblings, eldest first, then in order of age.

(b) Any transferee under this subsection who relies on commercial fishing gear of a deceased licensee to meet the eligibility criteria of this chapter, but such gear has not been distributed or assigned in accordance with appropriate probate procedures shall have 2 years from the date of acceptance of the transfer to meet those eligibility requirements. During that time, the quota shall be held in abeyance by the department.

(c) All offers of transfer under this subsection shall be accepted within 30 days from the date of offer or be considered refused.

(d) The provisions of this subsection shall apply to quotas granted for license year July 1, 1983 to June 30, 1984 and subsequent license years.

(4) Individual licensee catch quotas may not be transferred if the quota holder or the recipient are charged with a violation of outlying waters commercial fishing laws under which conviction could cause revocation or suspension of their respective commercial fishing license. This subsection shall apply from issuance of the citation or complaint until the matter is adjudicated or dismissed.

(5) Individual licensee catch quota transfers shall be reviewed and approved or denied by the Lake Superior commercial fishing board or, for Lake Michigan and Green Bay, by the department. Such review and approval or denial shall occur no later than the next regular quarterly meeting of the Lake Superior commercial fishing board or, in the case of Lake Michigan and Green Bay, within 20 business days after receipt by the department of a complete transfer request. Lake Michigan and Green Bay individual licensee catch quota transfer requests which the department determines meet criteria in this section shall be granted by the department without further action by the Lake Michigan commercial fishing board. The Lake Michigan commercial fishing board may review any individual licensee catch quota transfer request that has been denied by the department and may grant the request if it determines that the request meets the criteria in this section.

History: Cr. Register, January, 1985, No. 349, eff. 2-1-85; emerg. am. (intro.), eff. 7-1-89, am. (intro.), Register, October, 1989, No. 406, eff. 11-1-89; am. (intro.) and (2), cr. (2m), Register, November, 1991, No. 431, eff. 12-1-91; am. (2), Register, November, 1993, No. 455, eff. 12-1-93; am. (2m) and (5), Register, March, 1994, No. 459, eff. 4-1-94; am. (intro.) and (2), cr. (2t), Register, October, 1995, No. 478, eff. 11-15-95.

NR 25.09 Commercial fishing gear. Licensed commercial fishers conducting commercial fishing operations may only use the following gear subject to the conditions stated in this section and in the areas designated:

(1) LAKE SUPERIOR. (a) *Gill nets*:

1. With a mesh size of not more than 1¾" stretch measure.
2. With a mesh size of not less than 2¾" and not more than 3" stretch measure:
 - a. Not more than 35 meshes in depth in water 12 to 60 feet (2 to 10 fathoms) deep or 210 to 330 feet (35 to 55 fathoms) only from January 16 through November 9;

b. Not more than 35 meshes in depth in water 60 to 330 feet (10 to 55 fathoms) deep only from November 10 through January 15; or

c. Not more than 60 meshes in depth in water of any depth and during any time of the year may be used provided the bottom maitre cord or lead line is at least 6 feet (1 fathom) above the lake bottom.

3. With a mesh size of not less than $4\frac{7}{16}$ " stretch measure:

a. Not more than 36 meshes in depth and only when set on the bottom of the lake, including treaty fishers.

b. In waters less than 330 feet (55 fathoms) deep only from November 28 through September 30.

bm. In water less than 330 feet (55 fathoms) deep, the total maximum feet of gill net with mesh size equal to $4\frac{7}{16}$ " and greater which may be set by commercial fishers shall be determined by the department according to this subparagraph based on catch-per-unit-of-effort (CPE) in order to ensure that total allowable state and tribal annual lake trout harvest quotas and individual fishers' harvest quotas are not exceeded.

1) The lake trout open season under s. NR 25.05 is divided into 3 periods. The department shall determine catch-per-unit-of-effort (CPE) and determine the total maximum feet of gill net with mesh size equal to $4\frac{7}{16}$ " and greater which may be set by commercial fishers during each of the following 3 periods:

period 1: November 28 through March 31

period 2: April 1 through May 31

period 3: June 1 through September 30.

2) Catch-per-unit-of-effort (CPE) for each period shall be determined from department-monitored state and tribal net lifts occurring during each period. Catch-per-unit-of-effort (CPE) is the ratio of dead and live lake trout caught for each period divided by the feet of monitored net in thousands of feet set during each period.

3) The following catch-per-unit-of-efforts (CPEs) shall be used for the lake trout open season of November 28, 1993 to September 30, 1994:

period 1 — 15.9

period 2 — 11.9

period 3 — 4.6.

4) After September 30, 1994, 3-year average catch-per-unit-of-efforts (CPEs) shall be calculated by the department as the average of the

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