

SUBJECT: Ratification of authorization for public hearing on Board Order FH-23-09 to amend Ch. NR 25 relating to the total allowable commercial harvest of whitefish in Lake Michigan (Bill Horns, 5 minutes)

FOR: SEPT. SPECIAL BOARD MEETING

TO BE PRESENTED BY: William Horns

SUMMARY:

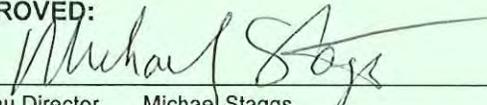
The Order revises annual harvest limits for lake whitefish from Wisconsin waters of Lake Michigan and Green Bay. Separate harvest limits exist for each of three zones. The total allowable commercial harvest of whitefish in Lake Michigan and Green Bay is increased from 2,470,000 to 2,880,000 pounds. This is a 16.6% increase. The increase is allocated among zones in proportion to the current allocations among zones. The harvest limit for zone 1 is changed from 225,518 to 262,952 pounds. The harvest limit for zone 2 is changed from 2,029,662 to 2,366,569 pounds. The harvest limit for zone 3 is changed from 214,820 to 250,479 pounds.

RECOMMENDATION: Approve public hearing on proposed Order FH-23-09

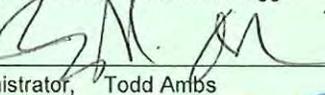
LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

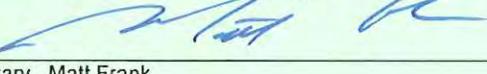
APPROVED:


Bureau Director, Michael Staggs

8-28-09
Date


Administrator, Todd Ambs

8/31/09
Date


Secretary, Matt Frank

9-2-09
Date

- cc: Laurie J. Ross - AD/8
- Todd Ambs - AD/8
- Mike Staggs - FH/4
- Pete Flaherty - LS/8
- Bill Horns - FH/4

DATE: August 28, 2009

FILE REF: 3600

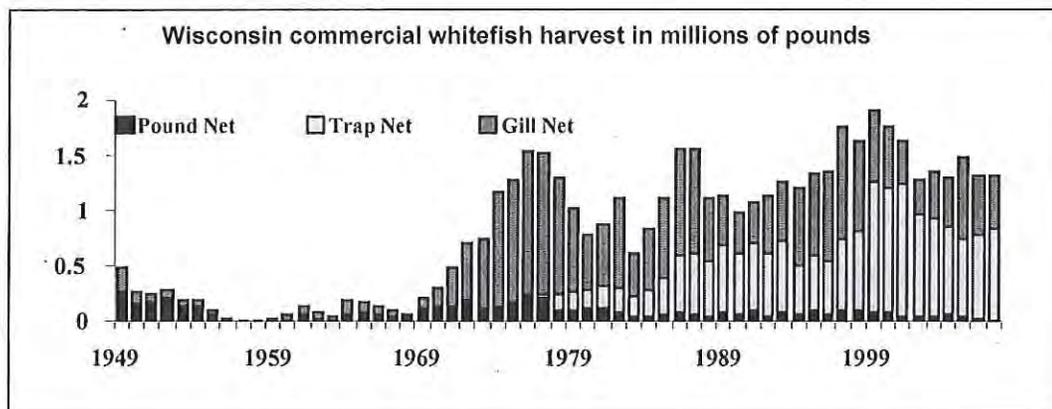
TO: Natural Resources Board

FROM: Matthew J. Frank 

SUBJECT: Ratification of authorization for public hearing for proposed Order FH-23-09, pertaining to Great Lakes commercial fishing

1. Why is the rule being proposed?

Commercial fishing harvest limits for lake whitefish¹ on Lake Michigan are specified in Chapter NR 25, Wis. Adm. Code. They are modified from time to time as the whitefish population fluctuates. The annual total allowable commercial harvest of whitefish from Lake Michigan is currently 2,470,000 pounds, and was last changed in 1999. As illustrated in the following chart, for over 20 years the lake whitefish fishery in Wisconsin has been stable and productive.



The total allowable harvest is split among three commercial fishing zones (see chart at right) following a percentage-based allocation formula that has been in effect since our current system of individual transferable quotas was first applied to whitefish in 1989. In our system of individual transferable quotas, the total allowable harvest of any species is divided on a percentage basis among license holders. License holders can acquire quota shares by transfer and can establish fishing operations in any zone, but cannot move quota shares from one zone to another. When qualified license holders are re-licensed each year their quota shares are carried over. Commercial fishers generally view this year-to-year continuity of the quota allocation system as central to the stability of their businesses, and view any reallocation of quota shares, whether among license holders or commercial fishing zones as a threat. For this reason the Department is reluctant to reallocate harvests among zones in the absence of a strong biological argument, such as the identification of discrete spawning stocks.



¹ Here the terms "whitefish" and "lake whitefish" are used interchangeably. The round whitefish is a separate species.

The Lake Michigan Commercial Fishing Board is charged by statute with advising the Department regarding harvest limits, harvest allocations, and other matters. In January of 2009 the LMCFB recommended increasing the annual total allowable commercial harvest by 200,000 pounds, with that amount to be split between Zones 1 and 3. This recommendation was largely in response to arguments advanced by Zone 3 commercial fishers for changing the allocation formula based on the fact that in some years the zone-specific harvest limits have been reached in Zone 3 but not in Zone 2. Although this was the formal recommendation of the LMCFB, it should be noted that only three of the seven members voted on the matter. Three members abstained and one was absent.

The lake whitefish population of Lake Michigan appears to be stable or growing, but the picture is not completely clear. The situation is complicated by changes in the ecosystem, apparently driven primarily by the proliferation of dreissenid mussels^{2,3}. Among the manifestations of those changes is a decline in size-at-age of whitefish over the past 15 years.

Because of the importance of lake whitefish for state-licensed commercial fishers in both Wisconsin and Michigan and for tribal fishers in Michigan, a great deal of recent work has focused on better defining the stock structure, on estimating and tracking the population size, and on developing criteria for setting sustainable harvest levels. Our biologists have worked with colleagues in the Michigan DNR, the Chippewa/Ottawa Resource Authority, and the Fish and Wildlife Service to better understand these issues and to develop the recommendation reflected in the proposed rule. In interpreting fisheries data and developing harvest recommendations we try to apply the “precautionary approach”, as recommended by the National Research Council’s Committee on Ecosystem Management for Sustainable Marine Fisheries⁴.

The whitefish stock that our fishers utilize is referred to as the North/Moonlight Bay stock because that is the primary spawning area for these fish. Our biologists applied statistical catch-at-age (SCAA) analysis to estimate the population size. This method should be considered one tool in developing harvest recommendations, and other factors must be considered. SCAA is applied widely in the Great Lakes and, in particular, is used for lake whitefish harvested from Michigan waters under terms of the 1836 Great Lakes Treaty Waters Consent Decree. Our SCAA analysis indicated an expanding lake whitefish population, but our biologists recognize uncertainty in the analysis and, in keeping with the precautionary approach, applied some conservative assumptions in developing the recommendation that is reflected in the present rule proposal. Some factors that contribute to uncertainty are 1) a substantial and growing recreational whitefish harvest in our waters, 2) the harvest by Michigan commercial fishers of fish from the North/Moonlight Bay stock when they move seasonally into Michigan waters, 3) ecosystem changes reflected in slower whitefish growth rates and delayed maturity, and 4) reliance on fishery-dependent data in the analysis.

The Department has no biological basis for changing the formula for allocating allowable harvests among zones, so the proposed increase would be allocated according to the existing formula.

² Hecky, R.E., Smith, R.E.H., Barton, D.R., Guildford, S.J., Taylor, W.D., Charlton, M.N., and Howell, T. 2004. The nearshore phosphorus shunt: a consequence of ecosystem engineering by dreissenids in the Laurentian Great Lakes. *Can. J. Fish. Aquat. Sci.* 61: 1285-1293.

³ Clapp, D.F. and W. Horns [EDS.]. 2008. The state of Lake Michigan in 2005. *Great Lakes Fish Comm. Spec. Pub.* 08-02.

⁴ *Sustaining Marine Fisheries*. National Academy Press. 1999

We are advancing this proposal now so that the rule-making process can be completed before the start of the next commercial fishing license year. We will continue to monitor the fishery and review the data during this period and may revise the proposal based on new information.

2. Summary of the Rule.

The rule increases the annual total allowable commercial harvest of lake whitefish from three fishing zones in Lake Michigan. All harvest limits, and therefore all individual quotas, will be increased by 16.6%. The overall total allowable commercial harvest is increased from 2,470,000 pounds to 2,880,000 pounds. For the three zones the increases are as follows: Zone 1 – 225,518 to 262,952 pounds, Zone 2 – 2,029,662 to 2,355,569 pounds, and Zone 3 – 214,820 to 250,479 pounds.

3. How does this proposal affect existing policy?

This does not affect existing policy, it is simply an increase in the allowable harvest within the existing management framework.

4. Has Board dealt with these issues before? When? Board Action?

The Natural Resources Board has changed harvest limits for lake whitefish several times in the past. Harvest limits for lake whitefish from Lake Michigan were first established in 1989, with a limit of 1,150,000 pounds. At that time the current proportional allocation to zones was established based on historic distribution of lake whitefish harvest, with 9.1% going to Zone 1, 82.2% going to Zone 2, and 8.7% going to Zone 3. The annual total allowable harvest was increased to 1,300,000 pounds in 1991, to 1,450,000 pounds in 1995, to 1,770,000 pounds in 1996, and to 2,470,000 pounds in 1999.

5. Who will be affected by the proposed rule? How?

NRB Order FH-21-08 will affect state-licensed commercial fishers on Lake Michigan.

6. Environmental assessment

This is a Type III action under Chapter NR 150, Wis. Admin. Code. No Environmental Assessment is required.

7. Small business analysis --Initial Regulatory Flexibility Analysis

- 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.** None.
- c. Describe the type of professional skills necessary for compliance with the rule.** None.

Fiscal Estimate — 2009 Session

<input type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number	Amendment Number if Applicable
	Bill Number	Administrative Rule Number FH-23-09

Subject
 NR 25--Commercial Fishing - Outlying Waters

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

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
 Indeterminate

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

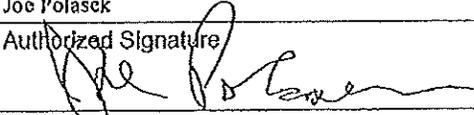
GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule changes harvest limits for lake whitefish from three commercial fishing zones in Lake Michigan. These changes will have no fiscal impact at either the state or local level.

Long-Range Fiscal Implications

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07-17-09

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-23-09

Subject
 NR 25--Commercial Fishing - Outlying Waters

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	07-17-09

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES**

The Wisconsin Natural Resources Board proposes a rule to amend ss. NR 25.06 (2) (e) 2., relating to commercial fishing for lake whitefish in outlying waters and affecting small business

FH-23-09

Analysis Prepared by Department of Natural Resources

- 1. Statutes interpreted.** Sections 23.09, 29.011 (1) and (2), 29.014 (1), 29.041, and 29.519, 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 conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing, and s. 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 promulgate rules to establish species harvest limits and formulas for the allocation of the species harvest limits among commercial fishing licensees or for the allotment of individual licensee catch quotas.

Finally, s. 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.	29.973 Commercial fish reporting system.
29.563 Fee schedule.	29.984 Commercial fish protection surcharge.
29.924 Investigations; searches.	29.99 Great Lakes resource surcharge.
29.931 Seizures.	29.991 Fishing net removal surcharge.
29.971 General penalty provisions.	

5. Plain language analysis of the proposed rule. The Order revises annual harvest limits for lake whitefish from Wisconsin waters of Lake Michigan and Green Bay. Separate harvest limits exist for each of three zones. The total allowable commercial harvest of whitefish in Lake Michigan and Green Bay is increased from 2,470,000 to 2,880,000 pounds. The harvest limit for zone 1 is changed from 225,518 to 262,952 pounds. The harvest limit for zone 2 is changed from 2,029,662 to 2,366,569 pounds. The harvest limit for zone 3 is changed from 214,820 to 250,479 pounds. The increases for each zone are allocated according to the same proportions as the current zone allocations of the lake-wide harvest limit.

- 6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.** Federal regulations do not apply; the State of Wisconsin has exclusive authority to regulate commercial fishing in Wisconsin waters of the Great Lakes.
- 7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan).** Of these states the only meaningful comparison is harvest limits established for lake whitefish from Michigan waters of Lake Michigan. The department adopted the methods employed by the State of Michigan and the Chippewa/Ottawa Resource Authority under terms of a negotiated Consent Decree issued by a United States District Court in Michigan. Iowa has no Great Lakes waters. The harvest of lake whitefish from Minnesota waters of Lake Superior is not regulated by harvest limits. There is no commercial harvest of lake whitefish from Illinois waters of Lake Michigan.
- 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.** This rule was based on modern conventional methods for assessing fish populations and for setting harvest limits. Fish stocks were assessed using standard data from commercial harvests employing statistical-catch-at-age modeling. Harvest limits were set based on the estimated population using standards and methods also used for state and tribal whitefish fisheries in the State of Michigan.
- 9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.** Small businesses engaged in commercial fishing and wholesale fish dealing may be affected by the rule. However, the department currently has no basis for quantifying the economic impacts of the rule.
- 10. Effects on small business, including how the rule will be enforced.** This rule is of interest to commercial fishers and was initiated in response to their expressed concerns. 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 (including e-mail and telephone number).**
William Horns
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921
Telephone: (608) 266-8732
E-mail: William.Horns@wisconsin.gov
- 12. Place where comments are to be submitted and deadline for submission.** Comments may be electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the rule may be submitted via U.S. mail to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707-7921. Comments may be submitted until October 31, 2009.
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SECTION 1. NR 25.06 (2) (e) 2. is amended to read:

NR 25.06 (2) (e) 2. The total allowable commercial harvest of whitefish in Lake Michigan and Green Bay may not exceed ~~2,470,000~~ 2,880,000 pounds in any license year, with no more than ~~225,518~~ 262,952 pounds to be taken from zone 1, ~~2,029,662~~ 2,366,569 pounds to be taken from zone 2, and ~~214,820~~ 250,479 pounds to be take from zone 3.

SECTION 2. EFFECTIVE DATE. This rule 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 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 _____
Matthew J. Frank, Secretary

(SEAL)