

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request scope approval and adoption of Emergency Board Order FH-22-11(E), a proposal to change the whitefish commercial harvest season on Lake Michigan and Green Bay, affecting NR 25.05(1)(c)

FOR: OCT. 17, 2011 BOARD MEETING

TO BE PRESENTED BY / TITLE: William Horns, Great Lakes Coordinator

SUMMARY:

Current policy under NR 25.05 (1) (c), Wis. Adm. Code, specifies the open seasons for commercial fishing in the outlying waters of Green Bay, Lake Michigan, and Lake Superior. The existing open season for whitefish in Green Bay and Lake Michigan is December 1 through October 25, both dates inclusive.

In August 2011, the Lake Michigan Commercial Fishing Board and Lake Michigan Fisheries Team agreed to propose adding six days to the Lake Michigan and Green Bay commercial fishing season for whitefish. This emergency rule reflects that change. Department biologists have reviewed the proposal and believe the change would not threaten the whitefish population.

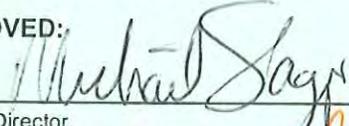
Statement of Emergency: The Department of Natural Resources finds that an emergency exists and the rule is necessary for the immediate preservation of the public welfare. The current commercial season for whitefish from Lake Michigan and Green Bay closes one week before the season closure for state-licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state-licensed commercial fishers in Wisconsin. The additional business revenue and improved competitiveness of the commercial fishing industry rises to the standard of preservation and improvement of the public welfare required for emergency rule making.

RECOMMENDATION: Approve scope and adopt Board Order FH-22-11(E), adding six days to the whitefish commercial harvest season on Lake Michigan and Green Bay

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 |

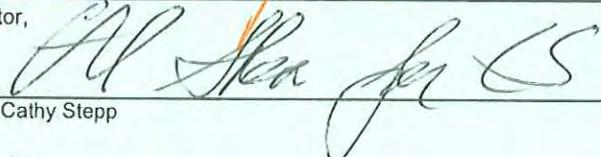
APPROVED:


Bureau Director,

10/4/2011
Date


Administrator,

10/4/11
Date


Secretary, Cathy Stepp

10/4/11
Date

cc: NRB Liaison
DNR Rules Coordinator

Natural Resources Board Order Number (If Applicable) FH-22-11(E)	Bureau Fisheries Management
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Amended	Date 09/12/2011

1. Subject of the administrative code action/nature of board action.
 Request scope statement approval of FH-xx-11(E) and authorization to proceed with drafting a modification to NR 25.05(1)(c), relating to changing the whitefish commercial harvest season on Lake Michigan and Green Bay.

2. Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue.

In August 2011, the Lake Michigan Commercial Fishing Board and Lake Michigan Fisheries Team agreed to propose adding six days to the Lake Michigan and Green Bay commercial fishing season for whitefish. The proposed rule change would expand opportunities for commercial fishing businesses and was initiated in response to the expressed concerns of commercial fishers.

3. Does rule/board action represent a change from past policy? Yes No Explain the facts that necessitate the proposed change.

The current commercial season for whitefish from Wisconsin waters of Lake Michigan and Green Bay closes one week before the season closure for state-licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state-licensed commercial fishers in Wisconsin.

Department biologists have reviewed the proposal and believe the change would not threaten the whitefish population.

4. Does rule/board action represent an opportunity for pollution prevention and/or waste minimization?

- Yes
- Unsure. Will consult with the Bureau's pollution prevention expert(s) and/or the Bureau of Cooperative Environmental Assistance.
- No. Adoption of federal requirements that do not include or allow for pollution prevention.
- No. Other reason (explain):

The rule is not related to pollution prevention or waste minimization.

5. Who will participate in board action/rule development, and what is the anticipated time commitment?

	Name of Person Responsible	Time Before Hearing	Time After Hearing	Acknowledgement
a. Drafting bureau	William Horns	10 hours	10 hours	<i>WH</i>
b. Legal Services	Kathleen Strasbaugh / <i>Linda Haddix</i>	5 hours	5 hours	<i>KS/SH</i>
c. Env. Analysis/Liaison (SS)				
d. Management & Budget	Paul Neumann	5 hours	0	<i>Paul Neumann</i>
e. Other Department staff				
f. Recommended Public Participation	Public hearing within 45 days of rule promulgation			

Rule Agenda/Board Action Checklist

Form 1000-6 (R 9/00)

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6. Which federal statute, regulation, state statute or judicial decision is the authority for the proposed rule/board action?

Sections 23.11(1), 29.014(1), 29.041, 29.519(1m)(b), and 227.11(2)(a), Wis. Stats.

- a. The proposed rule/board action conforms to and does not exceed requirements of a federal or state statute or controlling judicial decision.
- b. The proposed rule/board action exceeds the minimum requirements of a federal or state statute or controlling judicial decision.
- c. The proposed rule/board action is based on general authorization that requires rule making, but contains no specific standards.
- d. The proposed rule/board action is based on a general authorization with no specific direction that rules must be developed.

Ann Amodeo
 Bureau of Legal Services

7. Proposed schedule (Fill in blanks applicable)

a. Month of green sheet for requesting authorization for hearing or briefing on proposed board action: October 2011 (special meeting)

b. Hearing(s) - Number: one

Date(s): within 45 days of rule enactment

Location(s): Sheboygan or nearby municipality

c. Rule adoption or action by Board: October 2011

Anticipated timing of Legislative review - Start: _____

End: _____

Anticipated effective date: November 1

Initials of Bureau Director: WMS

FOR DIVISION ADMINISTRATOR'S USE

- 8a. Recommendation to Secretary Approved Approved as amended Disapproved
- b. Other Board actions Approved Approved as amended Disapproved

Division Administrator's Signature

Kenneth S. Johnson

Date Signed

9/12/2011

FOR SECRETARY'S USE

9. Secretary's approval required before drafting begins.

Drafting may may not proceed on rule or action.

Secretary's Approval

John A. ...

Date Approved

9/13/11

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-22-11(E)

Relating to: Lake Michigan and Green Bay Commercial Harvest Season Change for Whitefish –
Emergency Rule

1. Description of the objective of the rule:

Add six days to the Lake Michigan and Green Bay whitefish commercial harvest season.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Current policy under NR 25.05 (1) (c), Wis. Adm. Code, specifies the open seasons for commercial fishing in the outlying waters of Green Bay, Lake Michigan, and Lake Superior. The existing open season for whitefish in Green Bay and Lake Michigan is December 1 through October 25, both dates inclusive.

In August 2011, the Lake Michigan Commercial Fishing Board and Lake Michigan Fisheries Team approved a motion to propose adding six days to the Lake Michigan and Green Bay commercial fishing season for whitefish. The current commercial season for whitefish from Wisconsin waters of Lake Michigan and Green Bay closes one week before the season closure for state-licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state-licensed commercial fishers in Wisconsin.

Department biologists have reviewed the proposal and believe the change would not threaten the whitefish population.

3. Statutory authority for the rule (including the statutory citation and language):

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.

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 Great Lakes 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. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

Approximately 40 hours

5. Description of all entities that may be impacted by the rule:

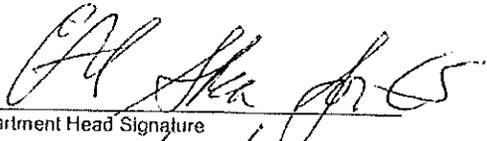
The proposed rule change would expand opportunities for commercial fishing businesses and was initiated in response to the expressed concerns of commercial fishers.

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

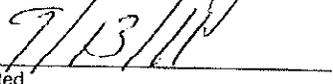
The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Michigan and Green Bay or Lake Superior.

Contact Person:

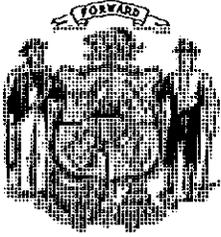
William Horns
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921
Telephone: (608) 266-8782
E-mail: William.Horns@wisconsin.gov



Department Head Signature



Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

September 15, 2011

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Statement of Scope for Emergency Rule Modifications to Chapter NR 25

Dear Secretary Stepp,

I hereby approve the Statement of Scope submitted on September 13, 2011, pursuant to Wisconsin Statutes § 227.135, in regards to emergency rule modifications to Chapter NR 25 of the Wisconsin Administrative Code. You may send the Statement of Scope to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes §§ 227.135(3) and 227.24(1)(e)1d.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker", with a stylized flourish at the end.

Scott Walker
Governor

DATE: October 4, 2011

TO: Natural Resources Board

FROM: Cathy Stepp

SUBJECT: Adoption of NRB Emergency Order FH-22-11(E) regarding the commercial whitefish season in Lake Michigan and Green Bay

1. Why is the rule being proposed?

Commercial Fishing Boards established under s. 15.345, Stats., may advise the Department regarding commercial fishing issues on the Great Lakes. In August of this year, the Lake Michigan Commercial Fishing Board recommended extending the commercial whitefish season on Lake Michigan. The Lake Michigan Fisheries Team reviewed and endorsed the recommendation.

The current open season for whitefish in Green Bay and Lake Michigan is December 1 through October 25, both dates inclusive. The proposed Order adds six days to the 2011 commercial harvest season for whitefish from Lake Michigan and Green Bay.

Department biologists believe the change would not likely threaten whitefish stocks in Wisconsin waters. The current October 25 closure 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 robust. 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.

The emergency order is limited to the current fishing season. Department biologists have raised some concerns that will be reviewed further during consideration of a parallel permanent order. Severely declining body condition in lake whitefish over the past 20 years has resulted in less energy available for gonadal development, therefore resulting in lower levels of egg production and lapses/delays in maturation. Also, because whitefish eggs are a highly-valued product of the commercial fishery, extending the harvest closer to the peak of spawning may result in a differential harvest of females over males. For the past five years, whitefish assessment data show the harvest ratio has generally either favored males or been close to 1:1.

Nature of the Emergency

The current commercial season for whitefish from Wisconsin waters of Lake Michigan and Green Bay closes one week before the season closure for state-licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state-licensed commercial fishers in Wisconsin.

The Department estimates that the value to the commercial fishing industry of extending the whitefish season by 6 days is approximately \$161,300. 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. We estimate that this rule will have an effect on a dozen commercial fishers. Assuming an even catch distribution, each business stands to gain \$13,583 per year before expenses as a result of this rule. Specific information about the economic viability of these individual businesses is not available, but it is assumed that the increased revenues will contribute toward the health and welfare of their business.

The number of commercial fishers has been declining over the last 20 years from 145 to 57. While some of this decline has been due to consolidation, some of the reduction is due to adverse economics of the industry. This rule requires emergency action to enhance public welfare as it applies to the economic health of the commercial fishing industry, which requested this rule change. The extended season date is in line with the regulations in Michigan and makes Wisconsin businesses more competitive with counterparts in Michigan. The additional business revenue and improved competitiveness of the commercial fishing industry rises to the standard of preservation and improvement of the public welfare required for emergency rule making.

2. Summary of the rule as presented for adoption.

The Order adds six days to the 2011 commercial harvest season for whitefish from Lake Michigan and Green Bay. The six consecutive days would start on October 26 or as soon as the rule is published and goes into effect, whichever comes later. This may require commercial fishers to close their nets after October 25 and reopen them once the additional six days begin.

3. How does this proposal affect existing policy?

This proposal is consistent with existing policies regarding the management of Great Lakes commercial fisheries, which allow the adjustment of fishing seasons, fishing areas, allowable gear, and harvest limits from time to time as needed. NR 1.04 (Great Lakes fisheries management) states: "Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitations as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas."

4. Has the Natural Resources Board dealt with these issues before? If so, when and why?

The current commercial whitefish season was established approximately 40 years ago.

5. Public hearing

A public hearing will be held within 45 days of adoption of FH-22-11(E), as required by s. 227.24(4), Stats.

6. Who will be impacted by the proposed rule? How will they be impacted?

The rule will expand fishing opportunities for state-licensed commercial fishers on Lake Michigan by extending the time during which fish may be harvested. The rule change was requested by the Lake Michigan Commercial Fishing Board.

7. Environmental assessment.

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

8. Small business analysis. Initial regulatory flexibility analysis.

No additional compliance or reporting requirements will be imposed as a result of these rule changes. A state fiscal estimate is attached.

ADMINISTRATIVE RULES – FISCAL ESTIMATE

1. Fiscal Estimate Version

Original Updated Corrected

2. Administrative Rule Chapter Title and Number

Chapter NR 25 -- Commercial Fishing - Outlying Waters

3. Subject

Commercial whitefish season

4. State Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs

5. Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

6. Affected Ch. 20, Stats. Appropriations:

7. Local Government Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

8. Local Government Units Affected:

Towns Villages Cities Counties School Districts WTCS Districts Others:

9. Private Sector Fiscal Effect (small businesses only):

<input type="checkbox"/> No Fiscal Effect	<input checked="" type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No May have significant economic impact on a substantial number of small businesses
	<input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	<input type="checkbox"/> Decrease Costs

10. Types of Small Businesses Affected:

State-licensed commercial fishers

11. Fiscal Analysis Summary

The proposed rule will add six days to the commercial whitefish season on Lake Michigan and Green Bay. It will have no effect on state or local government finances, but will benefit commercial fishing businesses by expanding the harvest of lake whitefish.

12. Long-Range Fiscal Implications

same

13. Name - Prepared by William Horns	Telephone Number 6-8782	Date 9/13/11
14. Name – Analyst Reviewer Paul Neumann	Telephone Number 6-0818	Date 9/13/11
Signature - Secretary or Designee 	Telephone Number 608-266-2794	Date 10/04/11

This document can be made available in alternate formats to individuals with disabilities upon request.

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

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

FH-22-11(E)

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), 227.11(2)(a), and 227.24(1)(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 limit the number of Great Lakes 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.

Section 227.24(1)(a), Stats., expressly confers emergency rulemaking authority on the Department to preserve public peace, health, safety, or welfare.

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.
- 29.99 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 2011 commercial harvest season for whitefish from Lake Michigan and Green Bay.

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 or Lake Superior.

7. Comparison of Similar Rules in Adjacent States: There is no commercial whitefish harvest in Iowa or 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 would likely 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 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.

William Horns
 Department of Natural Resources
 P.O. Box 7921
 Madison, WI 53707-7921
 Telephone: (608) 266-8732
 E-mail: William.Horns@wisconsin.gov

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 25, <u>plus six consecutive days in 2011 that would start on October 26 or as soon as the rule is published and goes into effect</u>	December 1 to October 25, <u>plus six consecutive days in 2011 that would start on October 26 or as soon as the rule is published and goes into effect</u>	November 26 to September 30

SECTION 2. STATEMENT OF EMERGENCY. The Department of Natural Resources finds that an emergency exists and the rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The current commercial season for whitefish from Lake Michigan and Green Bay closes one week before the season closure for state-licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state-licensed commercial fishers in Wisconsin and makes these Wisconsin businesses less competitive with counterparts in Michigan. The additional business revenue, approximately \$161,300, and improved competitiveness of the commercial fishing industry, rises to the standard of preservation and improvement of the public welfare required for emergency rule making.

The number of commercial fishers has been declining over the last 20 years from 145 to 57. While some of this decline has been due to consolidation, some of the reduction is due to adverse economics of the industry. This rule requires emergency action to enhance public welfare as it applies to the economic health of the commercial fishing industry, which requested this rule change.

SECTION 3. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper.

SECTION 4. 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)