

SUBJECT: Request for authorization of public hearings and to prepare an economic impact analysis on Board Order FH-25-11, relating to extending the whitefish commercial harvest season

FOR: OCTOBER 2011 BOARD MEETING

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

SUMMARY:

In August 2011, 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 commercial harvest season for whitefish from Lake Michigan and Green Bay.

The Natural Resources Board approved an emergency rule to extend the whitefish season for six days in October 2011 because a limitation on fishing opportunities threatened the welfare of Wisconsin-licensed commercial fishers. The commercial season for whitefish from Wisconsin waters of Lake Michigan and Green Bay closed one week before the season closure for Michigan-licensed fishers. The extended season is for the benefit of Wisconsin commercial fishing businesses.

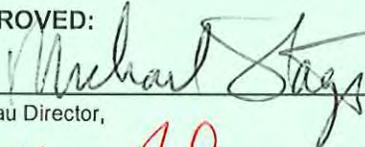
RECOMMENDATION: Approve public hearings and preparation of an economic impact analysis on Board Order FH-25-11

LIST OF ATTACHED MATERIALS:

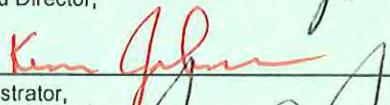
- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

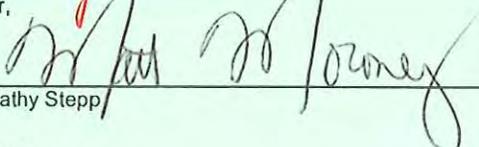
APPROVED:


Bureau Director,

10/17/2011
Date


Administrator,

10/20/2011
Date


Secretary, Cathy Stepp

10/20/2011
Date

cc: NRB Liaison
DNR Rules Coordinator

CORRESPONDENCE/MEMORANDUM

DATE: October 17, 2011

TO: Natural Resources Board

FROM: Cathy Stepp

SUBJECT: Board Order FH-25-11 relating to the commercial whitefish season in Lake Michigan and Green Bay

Why is the rule being proposed? Has the Natural Resources Board dealt with these issues before?

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 and 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 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 because a limitation on fishing opportunities threatened the welfare of Wisconsin-licensed commercial fishers. The commercial season for whitefish from Wisconsin waters of Lake Michigan and Green Bay closed one week before the season closure for Michigan-licensed fishers. The extended season is for the benefit of Wisconsin commercial fishing businesses.

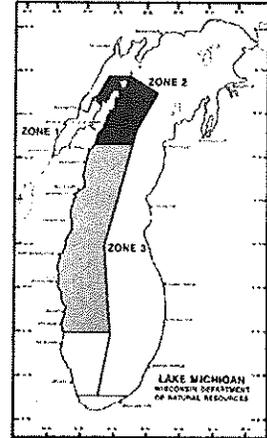
Commercial harvesting of yellow perch, rainbow smelt, and chubs has declined significantly since 1990. As a result, whitefish are now the mainstay of the commercial fishery in Lake Michigan. The Department estimates that the value to the commercial fishing industry of extending the whitefish season by 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. It is estimated that this rule will have an effect on a dozen commercial fishers. 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.

Department biologists believe that the additional six days will not 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 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.

At present, whitefish harvest limits are not being reached. The total reported whitefish harvest (pounds dressed weight) for the past 5 years indicates that commercial fishers, particularly in zone 2, are catching significantly fewer pounds of whitefish than in past years, as shown in Table 1.

Table 1. Total Reported Whitefish Catch (pounds dressed weight) from July 1 to September 3 by Year

| Year | Zone | | | Total lbs. |
|------|---------|---------|---------|------------|
| | 1 | 2 | 3 | |
| 2007 | 70,510 | 109,697 | 50,642 | 230,849 |
| 2008 | 77,883 | 101,169 | 100,012 | 279,064 |
| 2009 | 92,399 | 106,977 | 113,208 | 312,584 |
| 2010 | 83,225 | 74,186 | 56,134 | 213,545 |
| 2011 | 113,444 | 51,765 | 141,423 | 306,632 |



Summary of the rule:

The Order extends the commercial harvest season for whitefish from Lake Michigan and Green Bay from October 25 to October 31.

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."

Public hearing

A public hearing is expected to be held in conjunction with Emergency Board Order FH-22-11(E), as allowed by s. 227.24(4), Stats., which states that if a proposed permanent rule corresponds with an emergency rule, the department shall hold a public hearing on both rules within 90 days after promulgation of the emergency rule.

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

The rule will expand fishing opportunities for Wisconsin-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.

Environmental assessment

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

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"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget. |
| <input type="checkbox"/> Indeterminate | <input type="checkbox"/> Decrease Existing Revenues | <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"/> 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"/> Indeterminate | <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:

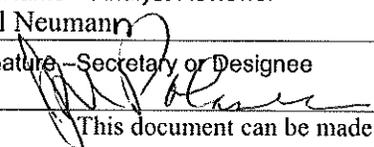
State-licensed commercial fishers

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 10/17/11 |
| 14. Name - Analyst Reviewer Paul Neumann | Telephone Number 6-0818 | Date 10/17/11 |
| Signature - Secretary or Designee  | Telephone Number 608-266-2744 | Date 10-18-11 |

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**

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 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.

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 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 because a limitation on fishing opportunities threatened the welfare of Wisconsin-licensed commercial fishers. The commercial season for whitefish from Wisconsin waters of

Lake Michigan and Green Bay closed one week before the season closure for Michigan-licensed fishers. The extended season is for the benefit of Wisconsin commercial fishing businesses.

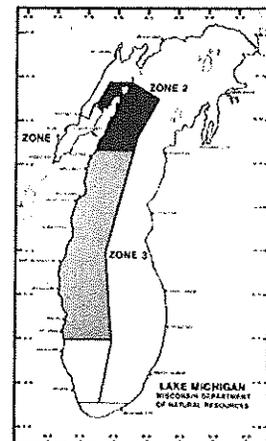
Commercial harvesting of yellow perch, rainbow smelt, and chubs has declined significantly since 1990. As a result, whitefish are now the mainstay of the commercial fishery in Lake Michigan. The Department estimates that the value to the commercial fishing industry of extending the whitefish season by 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. It is estimated that this rule will have an effect on a dozen commercial fishers. 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.

Department biologists believe that the additional six days will not 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 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.

At present, whitefish harvest limits are not being reached. The total reported whitefish harvest (pounds dressed weight) for the past 5 years indicates that commercial fishers, particularly in zone 2, are catching significantly fewer pounds of whitefish than in past years, as shown in Table 1.

Table 1. Total Reported Whitefish Catch (pounds dressed weight) from July 1 to September 3 by Year

| Year | Zone | | | Total lbs. |
|------|---------|---------|---------|------------|
| | 1 | 2 | 3 | |
| 2007 | 70,510 | 109,697 | 50,642 | 230,849 |
| 2008 | 77,883 | 101,169 | 100,012 | 279,064 |
| 2009 | 92,399 | 106,977 | 113,208 | 312,584 |
| 2010 | 83,225 | 74,186 | 56,134 | 213,545 |
| 2011 | 113,444 | 51,765 | 141,423 | 306,632 |



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 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 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) 266-8782
Email: 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>31</u> | December 1 to October 25 <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 _____

DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)