

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

FOR: FEBRUARY 2012 BOARD MEETING

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

SUMMARY:

The Natural Resources Board approved an emergency rule (FH-22-11E) in October 2011 to extend the whitefish season on Lake Michigan and Green Bay for six days. This proposed rule permanently changes the open season for whitefish on Lake Michigan and Green Bay by adding six days to the open season, extending the season from October 25 to October 31. The rule change was requested by the Lake Michigan Commercial Fishing Board.

RECOMMENDATION: Adopt Board Order FH-25-11, relating to the commercial whitefish season in 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:

Michael Stepp
Bureau Director,

1/26/2012
Date

Kim Johnson
Administrator,

1/30/2012
Date

Matt Moroney
Secretary, Cathy Stepp

2/1/12
Date

cc: NRB Liaison
DNR Rules Coordinator

DATE: January 20, 2012

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

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 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. With this extension our closing date will match that for state-licensed commercial fishers in Michigan.

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. Whitefish are now the mainstay of the commercial fishery in Lake Michigan, as the harvests of yellow perch, rainbow smelt, and chubs have declined significantly since 1990.

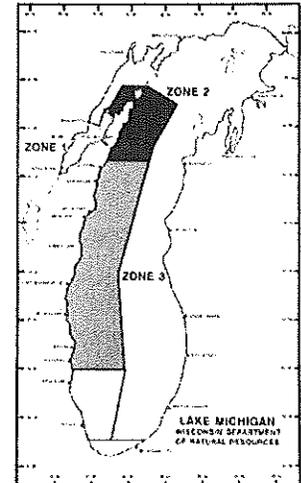
Department biologists believe that the additional six days will not threaten whitefish stocks in Wisconsin waters. The current October 25 closure was established around 1970 and was implemented when whitefish populations were in a much more reduced state, but recovering. Current abundance and recruitment data indicate Wisconsin's population is healthy in terms of number of fish. This fishery is managed through a quota system that controls the total annual harvest. At present, whitefish harvest limits are not being reached.

Although there appear to be no immediate concerns over this season extension, there is cause for caution. Extension of the season will bring the harvest pressure closer to the whitefish spawning period. And 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. This would result in an overall loss of egg deposition and fewer progeny to contribute to the population. This is compounded by the fact that over the past 15 years Department biologists have measured declining body condition in whitefish, resulting in lower levels of egg production and delays in maturation. Adequate spawning time and protection of the female component is necessary for continued health of the population. However, for the past five years, whitefish assessment data show the October harvest ratio has generally either favored males or been close to a 1:1 catch ratio. 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. Continued close monitoring of the commercial fishery and life history characteristics of this stock is critical to ensure there are no negative impacts to the population as a result of this rule change.

In October of 2011, the Natural Resources Board approved an Emergency Order FH-22-11(E) to extend the whitefish season for six days. The following table summarizes the harvest and wholesale value of

dressed whitefish flesh and whitefish eggs for calendar year 2011, showing the additional harvest made possible by the extended season. The dockside value of the harvest of dressed whitefish is based on an assumed wholesale price of \$1.15/pound. For eggs, the assumed value is \$6.00/pound. Most of the benefit accrued to fishers in Zone 2, the waters of Door County where most whitefish in Wisconsin waters aggregate to spawn.

		Jan 1 – Oct 25 (normal open season)	Oct 26 – Oct 31 (added week)	Dec 1 – Dec 31 (normal open season)
Zone 1	flesh (lbs)	301,562	1,466	8,020
	value	\$346,796	\$1,686	\$9,223
	eggs (lbs)	80	86	0
	value	\$480	\$516	\$0
Zone 2	flesh (lbs)	658,999	103,531	94,174
	value	\$757,849	\$119,061	\$108,300
	eggs (lbs)	9,903	5,801	0
	value	\$59,418.00	\$34,806	\$0
Zone 3	flesh (lbs)	330,566	0	0
	value	\$380,151	\$0	\$0
	eggs (lbs)	0	0	0
	value	\$0	\$0	\$0



2. 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. All recommendations made in the attached Legislative Clearinghouse report have been incorporated in the final version of the rule.

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. Public hearing

A public hearing on NRB Order FH-25-11 was held on January 17, 2012. This hearing also addressed 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. The hearing was held in Sturgeon Bay at the Department of Natural Resources Service Center, 110 S. Neenah Avenue, at 5:00 pm.

The hearing was attended by five members of the public, all licensed commercial fishers. One participant spoke in opposition to the rule and three spoke in support. The individual opposing the rule stated concern regarding the increased harvest of fish and eggs during spawning season, and noted that

this favored those fishers who fish in or near the whitefish spawning grounds. This individual suggested closing the season one week early (October 18) and re-opening it a week early (the last week of November), asserting that this might also allow increased harvest but would minimize the harvest of females prior to spawning. Supporters of the rule made the following assertions orally or in written comments: 1) The whitefish population is healthy. 2) Whitefish are tending to spawn later in the year than in the past. 3) The whitefish season in Wisconsin ended on December 1 many years ago. 4) The added harvest would substantially benefit commercial fishing businesses. 5) The change would make Wisconsin commercial fishers competitive with state-licensed commercial fishers in Michigan. 6) The current minimum harvestable size of 17 inches protects whitefish for seven years, allowing a timely reversal of the rule change if reproduction declines in the future. 7) The whitefish population is protected by harvest limits. 8) The fishery is vulnerable to unpredictable weather patterns, making harvests highly variable late in the year and making it difficult to predict the benefits of the extended season.

The President of a company that produces fertilizers from fish scraps filed a written comment in support of the proposed rule.

5. Environmental Assessment

This is a Type III action under Chapter NR 150, Wis. Adm. Code, therefore no environmental assessment is required.

6. Final Regulatory Flexibility Analysis

The proposed rule does not impose any additional compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. This rule will have a positive economic effect on commercial fishing businesses as well as Wisconsin-licensed wholesale fish dealers. Increased revenues will contribute toward the health and welfare of these businesses. There would be no implementation or compliance costs expected to be incurred by the proposed rule. No fiscal impacts are expected for public utility rate payers or local governmental units. This determination was made after conducting an economic impact analysis, which is attached as part of this green sheet packet. The Department requested economic impact comments from all Wisconsin-licensed commercial fishers, the Lake Michigan Commercial Fishing Board, 17 port city mayors offices and the same cities' chambers of commerce, the Wisconsin Wildlife Federation, Wisconsin Conservation Congress, Wisconsin Federation of Great Lakes Sport Fishing Clubs, UW Sea Grant, the Great Lakes Indian Fish and Wildlife Commission, and Wisconsin-licensed wholesale fish dealers, as well as posted the proposed rule documents to the Department website and the Wisconsin Administrative Rules website.

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:

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Yes No May be possible to absorb within agency's budget.
 Decrease Costs

5. Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

6. Affected Ch. 20, Stats. Appropriations:

7. Local Government Fiscal Effect:

No Fiscal Effect Increase Revenues Increase Costs
 Indeterminate Decrease Revenues Decrease Costs

8. Local Government Units Affected:

Towns Villages Cities Counties School Districts WTCS Districts Others:

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

No Fiscal Effect Increase Revenues Increase Costs
 Indeterminate Decrease Revenues Yes No May have significant economic impact on a substantial number of small businesses
 Yes No May have significant economic impact on a substantial number of small businesses Decrease Costs

10. Types of Small Businesses Affected:

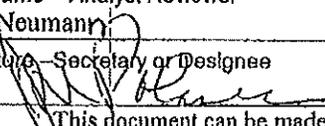
State-licensed commercial fishers

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.

**ADMINISTRATIVE RULES
 FISCAL ESTIMATE AND
 ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

NR 25.05(1)(c), Wis. Adm. Code

Subject

Adding six days to the commercial harvest season for whitefish in Lake Michigan and Green Bay

Fund Sources Affected

Chapter 20 , Stats. Appropriations Affected

GPR FED PRO PRS SEG SEG-S

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy
 Local Government Units

Specific Businesses/Sectors
 Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

This rule change was requested by the Lake Michigan Commercial Fishing Board, which was established under s. 15.345, Wis. Stats., to advise the Department regarding commercial fishing issues on the Great Lakes. The seven member Board includes five licensed, active commercial fishers; one licensed, active wholesale fish dealer; and one state citizen. The proposed rule extends the commercial fishing season for whitefish from the Wisconsin waters of Lake Michigan and Green Bay for the benefit of Wisconsin commercial fishing businesses.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. This rule will have a positive economic effect on commercial fishing businesses as well as Wisconsin-licensed wholesale fish dealers. Increased revenues will contribute toward the health and welfare of these businesses. There would be no implementation or compliance costs expected to be incurred by the proposed rule. No fiscal impacts are expected for public utility rate payers or local governmental units.

Background Information

Commercial fishing is managed in Wisconsin by a limited number of licenses, by harvest limits, and by individual transferable quotas. There are 65 available licenses for Lake Michigan. Since 1990, commercial harvesting of yellow perch, rainbow smelt, and chubs has declined significantly. As a result, whitefish are now the mainstay of the commercial fishery in Lake Michigan. The current open season for whitefish in Green Bay and Lake Michigan is December 1 through October 25, both dates inclusive. If this rule is promulgated, the projected added harvest of whitefish during October 26-31 is 137,184 pounds, which is the average harvest during October 20-25 over the last five 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

The Department estimates that the value to the commercial fishing industry of extending the whitefish season by six 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 table below shows the reported value of whitefish harvests by fishing year.

Dockside value by fishing year* – Lake Michigan				
Product	2007-08	2008-09	2009-10	2010-11
Dressed Whitefish	\$2,268,837	\$1,342,070	\$1,927,781	\$2,022,978
Whitefish Eggs	\$52,718	\$63,245	\$63,473	\$63,395

*Fishing years run from July to June

Emergency Rule

The Natural Resources Board (NRB) approved an emergency rule (FH-22-11E) to extend the whitefish season for six days in October 2011. During the NRB hearing to approve the rule, Charles Henriksen, a member of the Lake Michigan Commercial Fishing Board and President of the Wisconsin Commercial Fisheries Association provided the following testimony: "This rule is necessary because of the difficulty and unpredictability that has recently beset the Lake Michigan whitefish harvest. Quagga mussels, cladophora, and cormorants along with varying weather conditions have drastically altered our ability to fish and made an already challenging occupation even more difficult. The whitefish fishery is the last remaining success on Lake Michigan and for most whitefish fishers October is vitally important. Many of us produce 30-50% of our annual income in October and adding six days will be immensely beneficial and may be the difference maker to our survival in business. We give all the people of Wisconsin access to their wonderful renewable resource. Enacting this rule change will benefit and preserve the public welfare of our great state and aid the preservation and welfare of our first industry."

As of December 2, 2011, commercial fishers reported harvesting 78,416 pounds of whitefish – less than the projected 137,184 pounds – and 3,642 pounds of whitefish eggs during October 26-31, 2011, but not all harvest data had been reported.

Economic Impact - Request for Comments

Prior to the November 10-26 open period for economic impact comments, the Department requested comments from all Wisconsin-licensed commercial fishers, the Lake Michigan Commercial Fishing Board, 17 port city mayors offices and the same cities' chambers of commerce, the Wisconsin Wildlife Federation, Wisconsin Conservation Congress, Wisconsin Federation of Great Lakes Sport Fishing Clubs, UW Sea Grant, the Great Lakes Indian Fish and Wildlife Commission, and Wisconsin-licensed wholesale fish dealers, as well as posted the proposed rule documents to the Department website and the Wisconsin Administrative Rules website. The Department received the following comments:

Mike LeClair, President of Susie-Q Fish Company, Two Rivers, WI

The rule proposal FH-25-11 would be very beneficial economically to our business. We would be able to purchase 10 to 15 thousand pounds of whitefish in late October to process in our wholesale and retail markets over the winter months. Although our fishing season in Two Rivers is usually over by October 1st, it still would give us the opportunity to buy fish from fishermen in Door County the whole month of October. This rule also gives the restaurants and stores a fresh product for a longer time. As far as I can see, there are no adverse effects in ratifying this rule.

Ken Koyen, Commercial fisher, Washington Island, Door County

Mr. Koyen stated during a phone conversation with Department staff that he is opposed to the extension of the whitefish harvest season proposed in FH-25-11 because he thinks the extended catch time, along with a growing whitefish sport fishery, would be risky for the future population of whitefish. Mr. Koyen said he benefited economically from the extended season in October 2011, but he said the current season dates are fine. He said he was concerned that economic benefits may not be there in the future. Mr. Koyen noted that he fished during the six-day extension in October 2011 because he was unable to fish during the week prior to that time. He said that he caught a large amount during those six days: 300 pounds of eggs and 6,000 pounds of fish. He said he was concerned that a lot of eggs would not be allowed to spawn due to the extended season.

Robert Ruleau III, President Ruleau Bros. Inc.

As both a Michigan and Wisconsin Commercial Fisher, I would be in favor of extending the whitefish harvest from Oct 25 to Oct 31. I would though, like to see some cooperation between Michigan DNR and Wis DNR in treating the entire Upper Lake Michigan "Spawning" areas, such as Moonlight Bay and Big Bay deNoc with equal management...just because Wisconsin has come around to the Oct 31 end date, should not mean that Michigan should extend their season by one more week...that is not only not good for the overall stock of whitefish but also extremely harms the price and effects the few commercial fishers that try to fish the entire season...Instead of a 2-3 week spawning season fishery, which many are now undertaking...we need to get back to a year round fishery, to save both the fish and the Fishermen themselves.

Angie Schafer, Schafer Fisheries, Inc.

We feel that this will benefit our company in that we will be able to receive the fish in question for a longer period of time during one of our busiest sales seasons and don't see how this would affect our business negatively in any way.

Charles W Henriksen

I am commenting as a commercial fisherman, wholesaler, President of Wisconsin Commercial Fisheries Association and as a member of the Lake Michigan Commercial Fishing Board. As this was the most difficult fishing fall in most of our experience it is difficult to quantify the extended season benefit, but without the (emergency) rule change every fisher who participates in the fall whitefish harvest would have had their worst year ever. Not implementing this rule permanently will adversely affect our economic competitiveness. To put this in perspective: During October my business produced 50,000# - 40% in the extra six days - while this was still our smallest catch (by 17-65,000#), the extra time prevented a complete disaster. My business bought roe from 5 gillnet boats- all but 1 had 50-80% of their production during the extra six days. The one that did not had crew problems at the end and a couple excellent lifts just prior to the extension, they still produced 36% during the extra six days. It appears that we have only scratched the surface of what is possible, but in these difficult economic times the chance to compete for those extra days is vitally important in order to maintain an economically viable fishery. And there is no downside.

Jeff and Mark Weborg, J & M Fisheries

This rule not only positively affects us personally financially, but all of the people and their families that work with us. It also enables us to be more competitive economically with our counterparts in other states. This rule helps us to ensure more product to our buyers when it is most needed. We will have no increased cost as a result of this rule. We see no adverse affects of this rule.

Kurt Dramm, President of Dramm Corporation, Manitowoc, WI

Dramm Corporation supports adding six days to the whitefish commercial harvest. Dramm Corporation produces fertilizers from fish scraps for organic crop production. This product is also exported to nine foreign countries. Due to the lack of commercial fishing on Lake Michigan we have a very difficult time obtaining the quantity of fish scraps we require. The additional six days of whitefish fishing will help to supply fish for the strong demand for whitefish as a food and it will provide us with a few more scraps.

Paul Becker, Riverside Foods, Two Rivers, WI

The lengthening of the season will help Riverside Foods procure product that is from Wisconsin, USA

versus bringing in product from a foreign country and keeping our monies local.

Based on these comments, the Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. The Department consulted with Mr. Ken Koyen, a commercial fisher from Washington Island, who said he benefited economically from the emergency rule change but did not support the permanent rule because of potential future population and economic losses. He said he believes that additional information from the October 2011 harvest of eggs and fish as well as future harvests would need to be reviewed in order to know if extending the season would not adversely affect the commercial fishing economy in Wisconsin.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

As noted above, the extended season is for the economic benefit of Wisconsin commercial fishing and wholesale fish dealer businesses. Current abundance and recruitment data indicate Wisconsin's whitefish population is healthy. This fishery is managed through a quota system that controls the total annual harvest and, at present, whitefish harvest limits are not being reached. This rule will allow commercial fishing businesses to catch and sell more fish, and Department biologists believe that the additional six days will not threaten whitefish stocks in Wisconsin waters.

Alternatives to implementing this rule:

If the rule would extend the season into November, angling pressure would infringe upon whitefish spawning time. Adequate spawning time is necessary for continued health of the population. Over the past 20 years, Department biologists have noticed lower levels of whitefish egg production and delays in maturation. And 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, resulting in less spawning opportunity over time. For the past five years, whitefish assessment data show the harvest ratio has generally either favored males or been close to a 1:1 catch ratio.

If this rule is not implemented, commercial fishing businesses would have limited fishing opportunities compared with Michigan commercial fishing businesses that can fish for whitefish until November 1. Wisconsin businesses would miss the opportunity to earn approximately \$161,300 during the extra six days of fishing. Department biologists believe that the six day extension to October 31 will not harm the whitefish population.

Long Range Implications of Implementing the Rule

It is expected that this rule would annually contribute to the economic viability of commercial fishing businesses in Wisconsin.

In consultation with entities that would be affected by this rule, it was determined that the rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

The proposed rule will not have an economic effect on public utilities or their ratepayers.

The Department is planning to hold a public hearing on the proposed rule in January 2012 to solicit any additional comments.

Compare With Approaches Being Used by Federal Government

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.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

There is no Lake Michigan commercial whitefish harvest in Illinois. In Michigan, the season for licensed commercial fishers closes on November 1, while for tribal fishers it lasts one week longer.

Name and Phone Number of Contact Person

William Horns, Great Lakes Coordinator 608-266-8782



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Pam Shannon
Clearinghouse Director

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Assistant Directors

Terry C. Anderson
Legislative Council Director

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Legislative Council Deputy Director

CLEARINGHOUSE RULE 11-049

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.

2. Form, Style and Placement in Administrative Code

a. The rule summary should contain all 13 headings listed in s. 1.02 (2), Manual. If there is no information under a particular heading, the heading is to be included and the text should state that there is no information. Therefore, heading #11 should be included, along with a statement that there is no information. Also, information on the agency contact person should be included in heading #12. Finally, a heading #13 should be added to identify the location and deadline for submission of comments regarding the proposed rule.

b. The effective date language in SECTION 2 should be changed to the following: “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.” [s. 1.02 (4), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The first two paragraphs of the plain language analysis would be clearer if rewritten as follows:

SECTION 1 of the order adds 6 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) in October 2011 to extend the whitefish season on Lake Michigan and Green Bay for an additional 6 days so that the season ends on October 31 instead of October

25. This change was made for the benefit of Wisconsin commercial fishing businesses. This proposed rule would make permanent the extension of the season to October 31.

b. In SECTION 1, the title "OPEN SEASONS." should be inserted after the "(1)" in the text of s. NR 25.05 (1) (c). Also, as shown in the current Administrative Code provision, the letters "A", "B", and "C" should be inserted, respectively, directly above "Green Bay", "Lake Michigan", and "Lake Superior". Also, there appears to be a typographical error in the opening date for the whitefish season for Lake Superior. The emergency rule referenced above did not change the opening date of November 28 for the Lake Superior whitefish season as shown in the current Administrative Code provision. However, this proposed rule shows that date as November 26.



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 11-049

AN ORDER to amend s. NR 25.05 (1) (c), relating to commercial fishing in outlying waters.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-08-2011 RECEIVED BY LEGISLATIVE COUNCIL.

12-30-2011 REPORT SENT TO AGENCY.

PS:BL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

**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.** 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 or rules.

- 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 analysis.** SECTION 1 of the order adds 6 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) in October 2011 to extend the whitefish season on Lake Michigan and Green Bay for an additional 6 days so that the season ends on

October 31 instead of October 25. This change was made for the benefit of Wisconsin commercial fishing businesses. This proposed rule would make permanent the extension of the season to October 31.

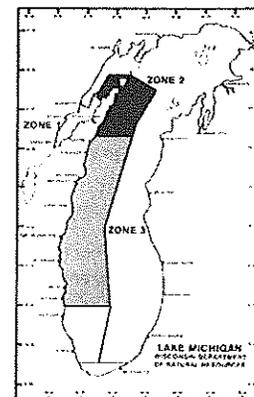
Commercial harvesting of yellow perch, rainbow smelt, and chubs has declined significantly since 1990. As a result, whitefish are now the mainstay of the commercial fishery in Lake Michigan. The Department estimates that the value to the commercial fishing industry of extending the whitefish season by 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 existing or proposed federal statutes and 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 with 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. 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 supporting documents used to determine effect on small business or in preparation of an economic impact analysis. 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. Effect on small business. 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. Rules proposed by the Department of Veterans Affairs. No information

12. Agency contact person.

William Horns
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 Telephone: (608) 266-8782
 Email: William.Horns@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission. Comments on this proposed rule may be submitted to the agency contact person listed above. The deadline for written comments was January 18, 2012.

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

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

Species	A Green Bay	B Lake Michigan	C Lake Superior
(c) Whitefish	December 1 to October 25 <u>31</u>	December 1 to October 25 <u>31</u>	November 28 to September 30

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. 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)