Form 1100-001
(R 2/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.B.7

SUBJECT: Approval of hearings on FH-07-07, revisions to NR 25 pertaining to the commercial harvest of yellow perch from Green Bay

FOR: JUNE **BOARD MEETING**

TO BE PRESENTED BY: Michael Staggs

SUMMARY:

Natural Resources Board Order FH-07-07 would increase the total allowable commercial harvest of yellow perch from Green Bay from 60,000 to 100,000 pounds.

RECOMMENDATION: Approve hearings on FH-07-07

LIST OF ATTACHED MATERIALS:

No	☐	Fiscal Estimate Required	Yes ☑	Attached
No	☑	Environmental Assessment or Impact Statement Required	Yes ☐	Attached
No	☐	Background Memo	Yes ☑	Attached

APPROVED:

Michael Staggs — 05/25/2007
Bureau Director, Date

Todd Ambs SWP — 5/25/2007
Administrator, Date

P Hassett — 6/1/07
Secretary, Scott Hassett Date

cc: Laurie J. Ross - AD/5
Randall Stark - LE/5
Todd Ambs - AD/5
Mike Staggs - FH/4
Dale Maas - GLSC
Chuck Weier - WF/GLSFC
Carol Turner - LC/5
Charles Verhoeven - NER
James McNelly - SER
Larry Freitag - WWF
Charlie Henriksen - WCF
Rick Johnson - LMCFB
Peter Flaherty - LS/5
Bill Horns - FH/4 (25 copies)
Mike Donofrio - NER/Peshtigo

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: May 25, 2007 FILE REF: 3600

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Approval of hearings for Natural Resources Board Order FH-07-07

BACKGROUND AND REASONS FOR RULE PROPOSAL

Yellow perch abundance fluctuates widely. For the most part these fluctuations can be attributed to weather and to biological factors outside our control. But commercial and recreational harvests can deplete a population and inhibit recovery when numbers are low, so the Department regulates the harvest of yellow perch from Green Bay by limiting the annual total allowable commercial harvest and the daily recreational bag limit.

The yellow perch population of Green Bay is monitored and studied in several ways, including the following: 1) Department biologists conduct an annual trawl survey at 78 reference sites in Green Bay. 2) We conduct an annual creel survey to estimate the recreational harvest. 3) All licensed commercial fishers report their harvests. 4) The age distribution and size-at-age of harvested fish are assessed using samples from the recreational and commercial harvests. Data from these sources are integrated through an analytic approach called statistical catch-at-age (SCAA) modeling[1]. The following figure illustrates estimates of the annual spring biomass of yellow perch in Green Bay using this approach.

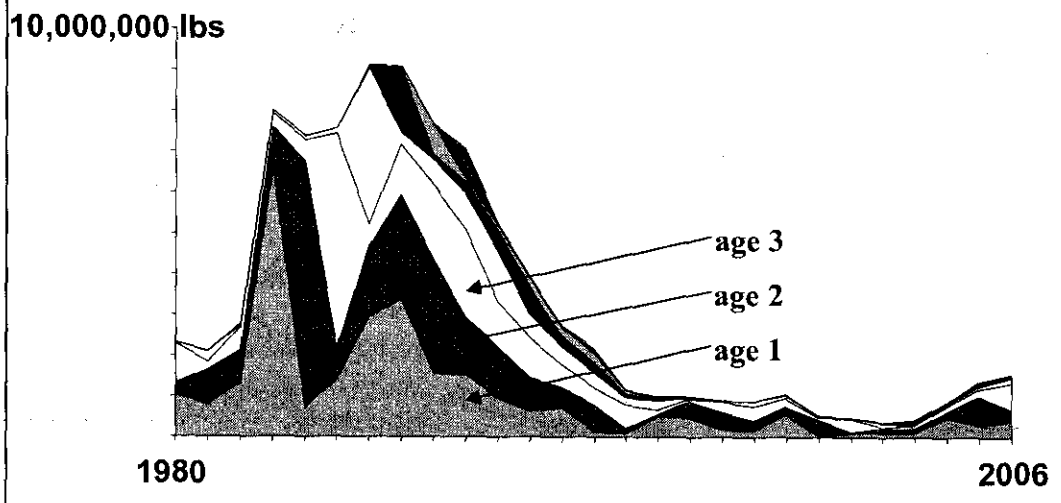

Figure 2. Estimated biomass of yellow perch aged 1 and older in Green Bay at the start of each summer from 1980 to 2006.

[1] We thank John Netto of the U.S. Fish and Wildlife Service for implementing the SCAA approach and the yield-per-recruit analysis using our data, and providing the results discussed in this background memo.

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Yellow perch abundance in Green Bay declined over 90% between 1988 and 2000, in response to several consecutive years of poor natural reproduction. In October, 2001, in order to protect the remaining adult yellow perch, the Natural Resources Board adopted NRB Order FH-12-01, reducing yellow perch harvest limits on Green Bay. The daily sport fishing bag limit was reduced from 25 to 10 and the total allowable annual commercial harvest limit was reduced from 200,000 pounds to 20,000 pounds. A sunset clause was included that would have reverted the bag limit and commercial harvest limit to 25 and 200,000, respectively, on June 30, 2004.

In the summer of 2003, Department surveys showed young-of-year yellow perch (referred to as the 2003 year-class) to be abundant, offering hope for recovery of the perch population. However, because those small fish might not survive to adulthood, the Department recommended extension of the reduced limits. That recommendation was accepted by the NRB, and a new sunset date of July 1, 2006, was established.

Department surveys in 2004 suggested that, although survival rates over the first winter were not as high as had been hoped and growth rates of fish from the 2003 year class were slow, significant numbers of fish from the 2003 year class were still present. Also, the 2002 and 2004 year classes were fairly strong. Based on those findings the NRB in November, 2005 accepted a Department recommendation to increase the commercial harvest limit to 60,000, increase the sport bag limit to 15, and remove the sunset clause.

In developing recommended harvest levels in 2005, we were guided by a yield-per-recruit analysis. This approach is highlighted in the National Research Council's review of harvest strategies in the management of wild fish populations[2]. That review describes the use of biological reference points (BRPs) in setting harvest limits, and suggests the use of yield-per-recruit (YPR) analysis, as described by Deriso and Quinn[3]. In this approach one determines the fishing mortality rate that provides the maximum safe yield from the fish already in the fishable population (i.e., "recruited"). That harvest rate is translated into a recommended total annual harvest. In 2005 the analysis suggested a total harvest (sport and commercial) in 2006 of 120,000 pounds. Respecting the accepted policy[4] of attempting to split the harvest equally between sport and commercial fishers, the proposed total annual commercial harvest of 60,000 pounds was selected.

The most recent yield-per-recruit analysis suggests a total harvest of 195,000 pounds for 2007. In 2006 the recreational harvest exceeded 200,000 pounds and the commercial harvest was 90,000 pounds[5]. We can expect that in 2007 the recreational harvest will again exceed 200,000 pounds, but because the change requested here in the commercial harvest will not take effect until calendar year 2008, the commercial harvest during calendar year 2007 will be around only 60,000 pounds. We are recommending an increase in the total allowable commercial harvest from 60,000 to 100,000 pounds, to take effect in 2008.

SUMMARY

Natural Resources Board order FH-07-07 would increase the total allowable annual commercial harvest of yellow perch from Green Bay from 60,000 pounds to 100,000 pounds.

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[2] National Research Council. 1998. Harvest Strategies, Ch. 4 in Improving Fish Stock Assessments. National Academy Press. Washington, D.C.

[3] Quinn, T.J. and R.B. Deriso. 1999. Quantitative Fish Dynamics. Oxford University Press.

[4] Department of Natural Resources. 2004. Lake Michigan Integrated Fisheries Management Plan. Administrative Report No. 56. Bureau of Fisheries Management. 60 p

[5] Note: The commercial harvest is regulated by fishing year, which runs from July 1of one year through June 30 of the next. Thus the actual harvest during a calendar year may exceed the total allowable commercial harvest. For calendar year 2006, commercial fishers had the benefit of an increase in their harvest limit from 20,000 to 60,000 pounds, which took effect in early spring of 2006. By harvesting that increase before the July 1 start of the regulated fishing year, and also catching most of the new 60,000 pounds harvest limit, they were able to harvest nearly 90,000 pounds during calendar year 2006.

HOW DO THE RULES AFFECT EXISTING POLICY?

The proposed rule does not represent a change in sport and commercial fishing management policy. This action is consistent with the following NRB policy:

> ***NR 1.04 (4)*** *The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are limited. The resources will be managed in accordance with sound management principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and quota limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas.*

PAST BOARD ACTIONS

Prior to 1982 the yellow perch fishery of southern Green Bay was characterized by occasional high levels of reproduction, producing large year classes that were heavily exploited when they reached the commercial minimum size of 7.5 inches. Increased protection through quota control of commercial harvests in the early 1980's brought the fishery under control and resulted in a more abundant and stable yellow perch population, with increasing numbers of larger and older fish. The recent history of yellow perch management on Green Bay begins in 1989 with the adoption of NRB Order FH-40-88. That rule addressed a broad range of issues related to commercial fishing management on Lake Michigan and Green Bay. Annual commercial harvest limits for yellow perch were set at 400,000 pounds from zone 1 (southern Green Bay), 13,300 pounds from zone 2 (northern Green Bay and a portion of Lake Michigan, and 306,700 pounds for zone 3 (the southern portion of Wisconsin's Lake Michigan waters). Changes in yellow perch harvest limits since then are summarized in the following table:

NRB Order	Year	Sport fishing daily bag limit		Commercial fishing annual harvest limit		
		Green Bay	Lake Michigan	Zone 1	Zone 2	Zone 3
FM-40-88	1988	(previously set at 50)	(previously set at 50)	established at 400,000 pounds	established at 13,300 pounds	established at 306,700 pounds
FM-32-89	1989			increased to 475,000 pounds		
FM-19-91(E) FM-59-90	1991	reduced to 25		reduced to 400,000 pounds		
FM-43-94(E) FM-44-94	1994			reduced to 300,000 pounds		
FM-21-95(E) FM-2-95	1995		reduced to 25 in Lake Michigan		reduced to 4,655 pounds	reduced to 107,345 pounds
FM-39-96(E)	1996		reduced to 5 in Lake Michigan		no change, but comm. fishing closed in L.Mich. portion	no change, but commercial fishing closed
FM-47-96(E) FM-40-96	1996		set permanently at 5 in Lake Michigan		no change, but comm. fishing closed in L. Mich. portion	no change, but commercial fishing closed
FM-3-97	1997	season shortened by spring closure		reduced to 200,000 pounds		
FH-48-98(E)	1998		reduced to 5 in Sauk Creek			

FH-50-98	1999		reduced to 5 in all other L.M. tributaries			
FH-28-01(E) FH-12-01	2001	reduced to 10 until 7/1/04		reduced to 20,000 pounds until 7/1/04		
FH-36-03	2004	sunset date extended to 7/1/06		sunset date extended to 7/1/06		
FH-27-05	2005	set at 15; sunset date removed		set at 60,000 pounds; sunset date removed		

DEVELOPMENT OF THE RULE PROPOSAL

This rule proposal was developed based on available assessment data collected in through 2006 and has been reviewed by the Lake Michigan Fisheries Team.

AFFECTED PARTIES

This proposal will directly affect commercial fishers and indirectly affect sport fishers and businesses that provide services or products for commercial or sport fishing on Green Bay.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

No additional compliance or reporting requirements will be imposed as a result of these rule changes. Commercial fishing businesses would be directly affected by the rule, but would not be subject to any new reporting, bookkeeping, or other procedures. No special skills would be required for compliance with the rule.

ENVIRONMENTAL ASSESSMENT

This is a Type III action under Chapter NR 150, Wis. Admin. Code, therefore no EA is required.

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2007 Session

☒ Original	☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number FH-07-07

Subject

Chapter 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

SUMMARY: NRB Order FH-07-07 increases the total allowable commercial harvest of yellow perch from Green Bay to 100,000 pounds.

FISCAL EFFECT: None. This is a simple adjustment of a harvest limit, and requires no special or additional work by state employees.

Long-Range Fiscal Implications

none

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
Joe Polasek by EHE	266-2794	5/25/07

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2007 Session

Detailed Estimate of Annual Fiscal Effect

☒ Original	☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number FH-07-07

Subject

Chapter NR 19 -- Miscellaneous Fur, Fish, Game and Outdoor Recreation
Chapter NR 20 -- Fishing: Inland Waters; 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:	
A. State Costs by Category	Increased Costs	Decreased Costs
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	$ 0	$ - 0

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)
Joe Polasek by EHR	266-2794	5/25/07

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes to adopt an order to amend s. NR 25.06 (2) (b) 1., relating to commercial fishing for yellow perch in zone 1 (Green Bay).

FH-07-07

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

Sections 29.014 (1), 29.041 and 29.519 (1m), Stats.

2. Statutory authority.

Sections 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.

The proposed rule increases the annual commercial fishing harvest limit for yellow perch on Green Bay, which is part of Lake Michigan and is an "outlying water". Commercial fishing harvest limits are authorized under s. 29.014 (1), Stats., which directs the department to establish and maintain any bag limits 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, while 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., grants discretion to the department to establish commercial fish species harvest limits after giving due consideration to the recommendations made by the commercial fishing boards. It also specifies that the limitations on harvests must be based on the available harvestable population of fish and in the wise use and conservation of the fish, so as to prevent over-exploitation. 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 statute or rule.

Section 29.014, Stats., "Rule-making for This Chapter"; s. 29.519, Stats., "Commercial fishing in outlying waters"; and ch. NR 25, Wis. Adm. Code, "Commercial Fishing – Outlying Waters".

5. Plain language analysis of the proposed rule.

SECTION 1 of the proposed rule changes the annual total allowable commercial harvest of yellow perch from zone 1 (Green Bay) from 60,000 pounds to 100,000 pounds.

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.

There are no existing or proposed federal regulations intended to address the recreational or commercial

harvest of yellow perch on the Great Lakes.

7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan).

There is no commercial harvest of yellow perch elsewhere in Green Bay or 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.

The Department uses a long-term database to assess trends in the Green Bay yellow perch population and to develop recommendations for recreational and commercial harvest limits. The database includes an annual creel survey, regular monitoring of commercial catches, commercial catch reports, and an annual trawl survey of Green Bay. The data are incorporated into a statistical catch-at-age model to estimate the numbers of yearling and older yellow perch in Green Bay. The annual trawl survey also provides an index of natural reproduction. The data demonstrate a steady decline in Green Bay yellow perch abundance through the 1990's, but indicate that exceptionally good natural reproduction in recent years have revived the population and justify some relaxation of current harvest limits.

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.

Wisconsin now has 68 individuals licensed as commercial fishers on Lake Michigan (including Green Bay). All 68 are small businesses, or conduct fishing operations with other licensees as part of a small business – often a family business where commercial fishing licenses are held by 2 or more family members. Of these 68 licensees, 21 currently hold permits to harvest yellow perch from zone 1 (Green Bay). Existing rules allocate the total zone 1 allowable harvest among these 21 licensees by percentages, and each permittee's harvestable percentage is then expressed in pounds.

10. Effects on small business, including how the rule will be enforced.

The only directly affected small business are the 21 commercial fishers with Green Bay yellow perch quotas. Any adjustment of commercial harvest limits will affect those businesses. The proposed rule increases the annual harvest commercial limit from 60,000 pounds to 100,000 pounds, so it is clear that as many as 21 small businesses will be beneficially affected by the proposed rule, assuming that the increase is not offset by an equivalent decline in the market price of yellow perch. Indirectly affected small businesses include fish wholesalers, restaurants, and other businesses that provide services to commercial fishers. The indirect effects are also expected to be beneficial.

Commercial fishing harvest limits on Green Bay are enforced by the Department's conservation wardens, county district attorneys and county circuit courts, through the use of citations and civil or criminal complaints under the provisions of ch. 29, Stats.

11. Agency contact person (including e-mail and telephone number).

William Horns – FH/4
Bureau of Fisheries Management
Department of Natural Resources

PO Box 7921
Madison, WI 53707-7921
phone: (608) 266-8782
email: William.Horns@dnr.state.wi.us

12. Place where comments are to be submitted and deadline for submission: To be determined.

SECTION 1. NR 25.06 (2) (b) 1. is amended to read:

NR 25.06 (2) (b) 1. The total allowable commercial harvest in zone 1 for any license year may not exceed ~~60,000~~ 100,000 pounds.

SECTION 2. EFFECTIVE DATE. This rule shall take effect 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 _____
Scott Hassett, Secretary

(SEAL)