

AMENDED 01/19/22

Form 1100-001P (Rev. 01/21)

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

Item No. 4.B.

AMENDED: Adjustments were made on pages 2, 3, 8, 12, and 13 of the Board Order and pages 3 and 4 of the memo.

SUBJECT:

Request that the Board adopt Board Order FH-02-20, proposed rules affecting chapter NR 25 related to Lake Michigan whitefish management and Great Lakes commercial harvest reporting

FOR: January 2022 Board meeting

PRESENTER'S NAME AND TITLE: Bradley Eggold, Great Lakes District Fisheries Supervisor

SUMMARY:

This permanent rule will establish the framework for two separate total allowable commercial harvest amounts (TACs) for Green Bay and Lake Michigan, and will establish a mechanism for setting future longer-term whitefish quotas for all three Lake Michigan fishing zones to appropriately reflect the current distribution and abundance of lake whitefish while maintaining a sustainable Lake Michigan commercial fishery.

This rule also provides zone-specific quotas to take effect upon implementation of the rule for the 2022 fishing season. Accordingly, this rule will continue the Zone 1 whitefish quota allocation of 569,788 pounds for commercial fishers that was established in emergency rules FH-28-20 (E) (adopted in April 2021) and FH-10-21 (E) (adopted in October 2021). While a higher Zone 1 quota of 800,000 pounds was initially discussed with stakeholders and in public meetings, public input during the hearing and comment period for this permanent rule indicated a greater level of comfort for remaining at the Zone 1 quota from the emergency rule and studying the impacts further before increasing the quota again. The remainder of the Green Bay TAC would then be allocated to Zone 2, and the Zone 3 quota will not change upon rule implementation.

This rule also establishes provisions for fishing in southern Green Bay, which have been proposed as a substitute for the restricted area in the version of the rule that went out for public hearing. These provisions limit the number of trap nets that can be set in southern Green Bay, allows for better monitoring and data collection from commercial fishers in this area, and requires reporting of bycatch by numbers. While commercial fishers would not be required to obtain a permit to fish in this area, these provisions would also address sport fishing concerns about catch of bycatch and user conflicts.


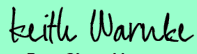

Additional provisions in this rule include requiring all Green Bay, Lake Michigan and Lake Superior state-licensed commercial fishers to submit daily electronic reports instead of biweekly paper reports, requiring whitefish fishers in Green Bay and Lake Michigan to name and report the locations of their trap nets, and establishing a harvest cap system to prevent overharvest of whitefish in Zone 2, should additional poundage of whitefish be allocated to Zone 2 in the future.

AMENDED: Adjustments were made to the Zone 1 percentage allocation to allow the Zone 1 quota to increase after 2023, if modeling indicates that an increase of up to 800,000 pounds is sustainable.

RECOMMENDATION: That the Board adopt Board Order FH-02-20.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- Background Memo
- Fiscal estimate and economic impact analysis (EIA) form
- Response summary
- Attachments to background memo
- Board order/rule
- (insert document name)

Approved by	Signature	Date
Justine Hasz, Fisheries Management bureau director		1/19/2022 3:00 PM CST
Keith Warnke, FWP division administrator		1/19/2022 3:23 PM CST
Preston D. Cole, Secretary		1/19/2022 3:34 PM CST

For

cc: Board Liaison - AD/8

Program attorney – LS/8

by Sarah Barry

Department rule officer – LS/8



1/19/2022 | 3:32 PM CST

CORRESPONDENCE/MEMORANDUM

DATE: January 13, 2021

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order FH-02-20, relating to Lake Michigan whitefish management and Great Lakes commercial harvest reporting

1. Subject of Proposed Rule:

The proposed rule addresses the lake whitefish total allowable commercial harvest and zone-specific allowable harvest allocations and associated regulations for Green Bay and Lake Michigan, and commercial harvest reporting methods for all commercial fishers in Lake Superior, Lake Michigan, and Green Bay.

2. Background:

This rule will address quotas (allowable harvest) and other harvest management regulations for lake whitefish in Green Bay and Lake Michigan, and will require electronic reporting for Lake Michigan, Green Bay and Lake Superior commercial fishers. The Lake Michigan/Green Bay lake whitefish (*Coregonus clupeaformis*) population is of high value to commercial fishers and is also popular among sport anglers, especially in Green Bay. Three principal whitefish “stocks” (localized groups or populations that spawn and live in certain areas) occupy the Wisconsin waters of Lake Michigan and Green Bay, including a stock in the North/Moonlight Bays area off eastern Door County, a stock in Big Bay de Noc (State of Michigan waters) and a newly developed stock from the west shore tributaries of Green Bay. These spawning stocks are localized in one or more of Wisconsin’s three commercial fishing zones. Zone 1 is located entirely in the waters of Green Bay, Zone 2 includes waters surrounding the Door County peninsula on both the Green Bay and Lake Michigan side, and Zone 3 includes Lake Michigan waters from the city of Algoma in Kewaunee County and southward.

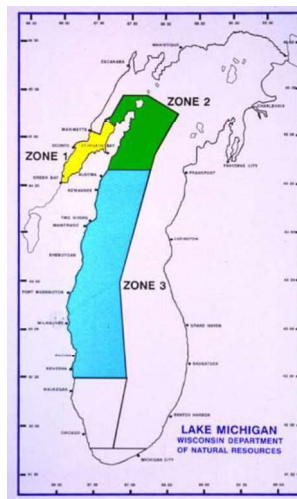


Figure 1: Lake Michigan commercial fishing zones.

The overall lake whitefish population (all stocks) in Lake Michigan has generally been in decline for several years with fewer fish recruiting to replenish the stocks. The current lake whitefish commercial total allowable commercial harvest in Wisconsin waters of Lake Michigan (including Green Bay) is 2.88 million pounds of dressed whitefish per year, which was approved in 2010 (an increase from the prior limit). However, the total pounds of whitefish harvested has been significantly lower than this TAC for many years (Figure 2).

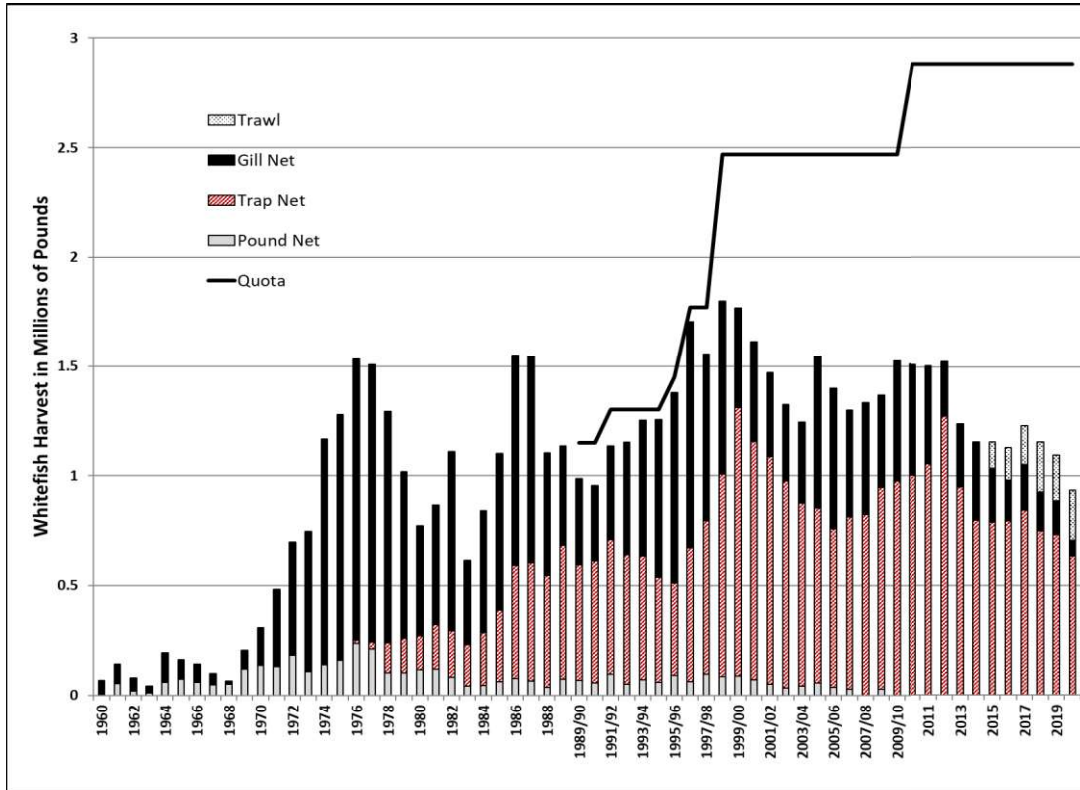


Figure 2: Lake Michigan commercial whitefish harvest by method compared to overall whitefish total allowable commercial harvest, 1960 - 2020

The trend of lower fish recruitment is especially true in the northern end of the lake. Preliminary data from an in-progress department-coordinated whitefish tagging study indicate that the whitefish from the Big Bay de Noc and North/Moonlight Bay stocks mix and contribute to the general Wisconsin commercial fishery in Lake Michigan. These data also indicate that some fish from these stocks, especially the Big Bay de Noc stock, to a limited extent move south into Wisconsin waters of Green Bay. In the lower half of Green Bay proper, however, whitefish stocks have been increasing in abundance and recolonizing historic spawning grounds over the past 10-15 years. Surveys show that some Wisconsin tributaries in Green Bay are sources of lake whitefish recruitment. Whitefish from these tributaries appear to generally remain in Green Bay as adults, with minimal movement into Lake Michigan.

The use of an electronic harvest reporting system was first identified as a priority in the 2000 Commercial Fisheries Task Force report, but to date, the goal to receive all commercial harvest reports electronically has not been fulfilled. The report stated: “DNR shall establish an electronic Fish Harvest Reporting System (FHRS) in order to record and report all elements of the commercial catch. This system will replace the current biweekly reporting system, reducing paperwork and improving the timeliness and accuracy of reports. It will also form the basis for a database about fish populations that will assist with efficient management of the Great Lakes resource.”

The first electronic fish harvest reporting system was codified in 2008, with a mandate that all commercial fishers report electronically by July 2010. However, this rule was not ever fully implemented, so many commercial fishers continued to report on the biweekly paper forms, and rule-making in 2016 once again formally restored the paper reporting option with electronic reporting as an elective reporting method.

3. Why is the rule being proposed?

A harvestable surplus of lake whitefish currently occupies Green Bay, and commercial fishers would like to make use of the surplus to better adjust to the changing dynamics of the whitefish population in Green Bay and Lake Michigan. This rule will revise the manner in which total allowable catch recommendations will be developed by the department in the future. For the 2022 and 2023 fishing seasons license years, this rule will also revise the allowable harvest allocations to each zone based on a total allowable commercial harvest (TAC) of 1,176,889 pounds for Green Bay and 800,407 pounds for Lake Michigan. This rule will also implement harvest limits that allow commercial fishers flexibility in their fishing operations while ensuring that the overall level of commercial harvest will not exceed sustainable levels. The rule will also improve the information that the department receives on the locations of trap nets and time that these nets spend in the water between lifts (soak time). This rule will also create provisions for commercial fishing in southern Green Bay to limit the number of trap nets and allow for better monitoring and data collection on bycatch and whitefish, and will require electronic reporting for all commercial fishers in Lake Michigan, Green Bay and Lake Superior to provide more timely access to reporting data that is used to manage fisheries.

4. Summary of the rule.

This rule establishes that two lake whitefish population models will be used to calculate the total allowable commercial harvest (TAC) for whitefish in Green Bay and Lake Michigan, describes the model inputs, and provides a framework for allocating the TACs between the three management zones of Lake Michigan. The framework for the zone-specific allocations is based on proposed quota allocations that have been developed in discussion with stakeholders over the past two years and would go into effect upon implementation of this rule, starting with 569,788 pounds in Zone 1 (the same level as in emergency rules established in 2021 to provide a short-term increase to the Zone 1 commercial whitefish quota), 351,487 pounds in Zone 3 (the amount allocated to Zone 3 under the current rules), and 1,056,021 pounds in Zone 2, which consists of the remainder of the Green Bay and Lake Michigan TACs that is not allocated to Zones 1 and 3. These initial zone-specific quota recommendations provide clarity to the public on how the TACs will be subdivided upon implementation of the rule.

Green Bay whitefish harvest

Due to the increase in whitefish abundance in lower Green Bay, this rule would allow commercial fishers to harvest additional whitefish in Zone 1 as compared to recent years. Initially, 800,000 pounds was proposed for Zone 1, but based on public input from the hearing phase of this rule, the department has adjusted this amount in the final rule draft to 569,788 pounds. This is the same amount allocated to Zone 1 in two emergency rules promulgated in 2021 to grant commercial fishers a temporary Zone 1 quota increase to help commercial fishing businesses recover from the economic impacts of the COVID-19 pandemic.

The initially proposed Zone 1 increase for a quota of 800,000 pounds per year represented a safe harvest level out of the total allowable commercial harvest (TAC) generated from the department's whitefish population model for Green Bay. The model produces a biologically sustainable TAC,

which represents the commercial half (1,176,889 pounds) of the overall harvestable surplus of whitefish in Green Bay (with the other half allocated to the sport fishery). The portion of the Green Bay TAC that is not allotted to Zone 1 may be harvested in the Green Bay waters of Zone 2.

Public feedback from both sport fishers as well as some individual commercial fishers expressed a preference for remaining at the Zone 1 commercial quota established in the emergency rule rather than increasing the quota again to reach the 800,000 pounds initially proposed for this permanent rule. Commenters indicated that remaining at the 569,788 level would allow this smaller increase to be studied for an additional 2-3 years before the department makes further changes, to ensure that increases do not detrimentally impact the whitefish population or populations of game fish. Because the Green Bay TAC itself is not proposed to change, the remainder of the TAC would then be allocated to Zone 2. Thus, the remaining 607,101 pounds of the Green Bay TAC would be harvestable in Zone 2 waters of Green Bay. However, the Zone 2 waters of Green Bay would close to additional whitefish harvest when the Zone 2 allowable harvest within the TAC is reached. After future runs of the Green Bay population model **following December 31, 2023**, Zone 1 harvest would be limited either by **48.4148% 67.9758%** of the future Green Bay TAC or 800,000 pounds, whichever is less. Retaining 800,000 pounds as a cap for Zone 1 allowable harvest would allow for additional harvest in Zone 1 in the future, should the Green Bay population model indicate that greater commercial harvest in Green Bay is sustainable.

Sport fishers have expressed concern about user conflicts in areas of Green Bay that are popular for recreational harvest of whitefish and other game fish, as well as commercial catch of non-target game fish species. The department initially proposed to address this through a new restricted area in southern Green Bay, since monitoring of trap nets set for lake whitefish in 2020-21 indicated higher levels of bycatch and whitefish discards caught in trap nets moving from north to south in the bay. Existing rules allow commercial fishing for whitefish with trap nets by permit only. However, feedback during the hearing and comment period for this rule, as well as from the Lake Michigan Commercial Fishing Board, expressed concern with the creation of a new restricted area. Specifically, some felt that a restricted area designation would restrict commercial fishing operations without having collected enough data on commercial catch in that area to support the restrictions. Additionally, some expressed concern that permits would be issued inconsistently or alternatively would be issued to everyone, thereby either limiting commercial fishing activities too much or not limiting them enough, depending on the commercial or sport fishing perspective. As a result of this feedback, this rule instead establishes provisions that limit commercial fishers to one trap net per license at any given time in southern Green Bay, require fishers to report numbers of bycatch, and require fishers to notify the department prior to lifting trap nets to allow for monitoring and data collection. This will provide a mechanism to reduce the issue of bycatch and sublegal whitefish caught in trap nets set for whitefish, and may reduce user conflicts between sport and commercial fishers.

Lake Michigan whitefish harvest

While whitefish stocks are increasing in Green Bay, the Lake Michigan whitefish population model reveals that stocks are stable or declining. Therefore, this rule adjusts the allowable harvest for Zones 2 and 3 to reflect the population model. After accounting for the proposed Zone 3 allotment of 351,487 pounds, which will not change when this rule is implemented, the remaining 448,920 pounds of the Lake Michigan TAC would be allotted to Lake Michigan waters of Zone 2. While the overall Zone 2 commercial allotment will decrease through this rule, annual commercial whitefish harvest in Zone 2 has not approached the level of the new harvest limit over the past 8 years. Commercial fishers with individual quota allocations for Zone 2 will be able to fish in either the Green Bay waters of Zone 2, Lake Michigan waters of Zone 2 or both to allow commercial fishers greater flexibility in where they fish for whitefish to maximize their individual quota allocations. When the Zone 2

portion of the TAC for Green Bay or Lake Michigan is reached, that portion of Zone 2 will close to further commercial fishing, with commercial fishing continuing to be allowed in the other portion of Zone 2 until that harvest limit is also reached. Commercial fishers would be able to continue fishing in Zone 1 and Zone 3 as long as they still have available quota in those zones.

The allowable harvest in Zone 3 will not change in the short term with this rule. Therefore, Zone 3 commercial whitefish fishers would be able to continue fishing as they have under rules currently in effect. After future runs of the Lake Michigan population model, Zone 3 harvest would be limited either by 43.9135% of the future Lake Michigan TAC or 351,487 pounds, whichever is less.

Trap net reporting

To provide better information to the department on the locations and soak time of trap nets, this rule requires commercial fishers using trap nets to fish for whitefish to report the name and location of each trap net when setting the nets, and to report the name of the trap net when lifting the net to remove fish. This is easily accomplished through the electronic fish harvest reporting system (EFHRS).

Electronic harvest reporting

When this rule is implemented, all state-licensed Great Lakes commercial fishers would be required to report information on their harvest and fishing activities through the current Electronic Fish Harvest Reporting System (EFHRS), which is a reporting option that multiple commercial fishers already utilize and which is the required reporting method in emergency rule FH-10-21 (E) / EmR 2123. EFHRS is the only reporting method that can both provide timely data on commercial fish harvest and track bycatch levels on a daily basis, so its use is critical for both monitoring commercial fisheries and catch of bycatch for certain fisheries, such as whitefish. Some commercial fishers have expressed discomfort with using smartphones or computers, or have noted inconsistent cell phone coverage to be able to enter reports when on the boat. However, over the past decade, advancements in cell phones, cell phone coverage, and integration of phones and mobile-friendly websites have improved exponentially, making electronic reporting even faster and easier. To safeguard against connectivity issues or system outages, the department has established procedures in s. NR 25.13 (2) (c), Wis. Admin. Code for situations in which the electronic device malfunctions or the licensee cannot connect to the electronic reporting system, including completing a paper copy of the report for that day before submitting it electronically upon reconnecting to the system.

To provide some flexibility for reporting if certain commercial fishers do not have easy access to a smartphone or computer while on the water, this rule offers two options: submit the report while on the water, or first record the information on a paper form after the last net lift of the day and then submit the report by the end of the day. To further assist commercial fishers in utilizing EFHRS, the department has developed an instruction manual on using the system and will provide training sessions as well.

5. How does this proposal affect existing policy?

The department manages shared Great Lakes fisheries for sustainable use by multiple stakeholder groups. The department utilizes quotas, harvest allocations, gear restrictions, reporting requirements and other regulations to appropriately manage the state's fish populations, as authorized in ch. 29, Stats.

6. Has Board dealt with these issues before?

Yes; the Board approved the statement of scope for this rule at the August 2020 meeting, adopted two related emergency rules pertaining specifically to whitefish harvest in Green Bay in 2021, and received an informational presentation on components of this rule and related data at the December 2021 meeting.

7. Who will be impacted by the proposed rule? How?

Commercial fishing businesses, fish markets and businesses that use fish products, and individual commercial fishers may be impacted by this rule, and have provided input during the preliminary public hearing, public meetings and hearings for this rule and the emergency rules, and the EIA comment period for this rule. Commercial fishers in Zone 1 may benefit from the allowable harvest adjustments in this rule by having the opportunity to harvest more whitefish, though the exact amount of impact to individual licensees and the Lake Michigan commercial fishing industry overall is unknown at this time, while fishers in Zones 2 and 3 may be less impacted.

Commercial fishers in Green Bay, Lake Michigan, and Lake Superior may be impacted by the requirement to report their catch electronically, especially if they are not as comfortable with technology or do not own a smartphone or other device to enter the reports, but many commercial fishers do own a smartphone, and the rule provides a mechanism for commercial fishers to be able to record the information on a paper report before entering it electronically, so the impact is likely to be minimal.

Though the rule does not contain any provisions directly impacting sport fishers, sport fishers and fishing guide businesses may be indirectly impacted by the rule due to redistribution of commercial fishing effort in Lake Michigan and Green Bay. A 2018 UW-Whitewater study, "[The Economic and Fiscal Impact of Green Bay Recreational Fishing](#)," values Green Bay sport fishing at an estimated \$264.3 million in direct and indirect contributions to the local economy, and some sport fishers are concerned that changes to commercial fishing activities in Green Bay could cause negative economic impacts to the sport fishery and local economy due to increased incidental catch of game fish and greater harvest of whitefish, as well as user conflicts. However, the degree to which sport fishers may perceive an impact will depend on the amount and distribution of commercial fishing activity, and provisions in this rule as well as existing rules limit the amount of gear that can be fished in southern Green Bay, an area with diverse game fish populations that is popular with sport fishers. This rule does not inherently increase commercial fishing effort in Green Bay.

8. Soliciting public input on economic impact synopsis

The department held a comment period on the economic impacts of this rule from October to November 2021, and received 42 comments, most (34) in support of the rule, with 5 in opposition or expressing concern and 3 not definitively indicating a position. Comments did not include any specific additional economic impacts stemming from the provisions in the rule or that would result from compliance from the rule; however, many of the comments indicated that positive economic impacts could result for businesses and the local economy with greater whitefish harvest, and conversely, some comments indicated that the sport fishing economy could be negatively impacted as a result of alterations in commercial fishing activity that could increase the catch of game fish species as bycatch or decrease the number of whitefish available for sport fishers. A summary of these comments, the comments from the rule hearing and comment period, and the department's responses, is attached in the Appendix.

9. Small Business Analysis

This rule may provide an economic benefit to some commercial fishing businesses that target whitefish in Green Bay, while having no expected economic impact to commercial fishers that fish for whitefish in Lake Michigan. This rule is likely to provide an economic benefit to small commercial fishing businesses that target whitefish in Green Bay due to the allowable harvest increase in Green Bay, and, by extension, the businesses that purchase whitefish or their parts to sell to consumers. The exact amount that each commercial fisher may gain due to the increased harvest limit is unknown, as is the economic impact to associated businesses as a result of increased whitefish harvest. However, the overall economic impact may be positive for the Green Bay commercial fishing industry because the rule would allow for more efficient harvest to make full use of the available lake whitefish commercial stocks. Currently, nine commercial fishing licensees and their employees actively fish for whitefish in Green Bay, and additional commercial fishers may be able to purchase quota in Green Bay to be able to fish, thereby benefitting from this increase. Assuming a dockside value of \$2 per pound for whitefish based on average dockside values over the past five years, a whitefish allowable harvest increase in Zone 1 of 207,603 pounds could convey up to a \$415,206 dockside value benefit to the commercial fishing industry, which would translate into additional income once the fish are sold at wholesale and retail prices, as well as benefits to associated businesses (restaurants, fish markets, taverns, grocers, fish boils, etc.), non-profit organizations that utilize whitefish, and the local economy. These businesses provide jobs and help support the economy. In Lake Michigan, however, the Zone 2 allowable harvest will decrease substantially while the Zone 3 allowable harvest will remain the same. The proposed Zone 2 allowable harvest is still greater than the actual harvest levels for Zone 2 over the past 8 years, and is greater than the 5-year average commercial whitefish harvest in Zone 2. Additionally, this rule would allow commercial fishers with Zone 2 individual licensee catch quotas to fish anywhere in Zone 2 (including the Green Bay portion, with a higher concentration of whitefish), until the Zone 2 allowable harvest is reached. Therefore, this rule is expected to have a minimal economic impact (if any) on Zone 2 fishers and Zone 3 fishers.

However, since commercial fishers in Lake Superior and Lake Michigan would be required to utilize the electronic fish harvest reporting system to report catch of whitefish and other fish where there is a need for additional catch data, this rule may have a minimal impact relating to reporting for some fishers. EFHRS will require the commercial fisher or crew member to have access to a smartphone or computer with which to enter the electronic reports, and those that do not would have to purchase such a device. According to the Pew Research Center¹, an estimated 85 percent of American adults owns a smartphone. With 46 licensed commercial fishers operating in Green Bay and Lake Michigan and 8 in Lake Superior, therefore, an estimated 7 commercial fishers in Lake Michigan and 1 in Lake Superior may not have a smartphone for entering reports electronically. However, some of these commercial fishers may have a computer for entering the reports, and crew members of licensees may also have an electronic device to enter the reports for the licensee's commercial fishing operations. With this information, and estimating that a low-cost smartphone and basic data plan can be obtained for about \$120 per year, the impact to each commercial fishing licensee and the industry overall is likely to be very minimal, about \$960 per year in total at maximum.

1. Demographics of mobile device ownership and adoption in the United States. (2021, April 07). Retrieved June 28, 2021, from <https://www.pewresearch.org/internet/fact-sheet/mobile/>

Drafter: Meredith Penthorn and Brad Eggold

Appendix: Summary of Comments

During the EIA comment period the department received 42 comments on this rule, with 35 in favor, 5 opposed, and 3 not explicitly stating a position. During the comment period accompanying the hearing, the department received 132 written comments on this rule, with 60 in support, 6 generally in support but opposed to the restricted area in the rule, 62 in opposition or expressing concern (and of these, 1 was in support of the electronic reporting requirements in the rule), and 3 not specifically stating a position. In addition, of the 53 non-DNR hearing attendees, 6 registered in support, 28 registered in opposition, and 19 did not state a position or attended for information only. 19 people testified at the hearing (4 in support, 14 in opposition, and 1 not explicitly stating a position). The themes of comments received during all comment periods and department responses are presented below. Comments can also be found on the [Lake Michigan whitefish page](#) (dnr.wi.gov, search “Lake Michigan whitefish”).

Will daily bag limits for whitefish for non-commercial fishers change with this rule?

No, this rule does not impact sport fishing regulations such as size and bag limits for whitefish or other species.

Commercial fishing allows some individuals to harvest many more fish than anglers using nets and associated gear and sell the fish for profit. Commercial fishing should be restricted so that commercial fishers can only take as many fish as anglers, to maintain the fishery for future generations.

The department and Wisconsin legislature manage commercial fisheries through licensing, commercial harvest limits, gear restrictions, individual licensee catch quotas, restricted areas, reporting requirements, and other regulations. Nets are a more efficient gear type than hook and line, and therefore can catch many more fish at a time. The legislature has directed that Wisconsin shall maintain a viable commercial fishery, which would not be possible if each licensee was restricted to recreational size and bag limits. However, the commercial fishing quotas and regulations in effect and those proposed through this rule ensure that commercial harvest remains sustainable in the long-term.

Electronic harvest reporting for commercial fishers will help improve management of the fishery, improve the accuracy of catch records, and provide more timely access to harvest information. Over the long-term, the paper reporting option if fishers are unable to access the electronic system should be eliminated.

All commercial fishers will have to report electronically using our EFHRS system. They can either report via smartphone immediately after their last net is lifted or write down that information on paper and then enter the information into EFHRS by 11:59 p.m. on the same day.

Commercial fishing regulation is needed to allow sustained regulated harvest that benefits the public, fishers, and fish. The alternative is population reductions and collapse of the fishery. If Green Bay can be sustainably fished, it should be open to both commercial and sport fishing.

Changes in the whitefish population and fishery require updated rules, and the 50/50 allocation of the Green Bay whitefish quota between sport and commercial fishers is appropriate and will allow more commercial harvest without threatening the whitefish population.

This rule proposes regulations to do just that—allow for sustainable commercial harvest while providing a deliberate and specific allocation of the harvestable surplus of whitefish to the sport fishery in Green Bay. This equal allocation of the whitefish surplus between the sport and commercial fisheries takes into

account the additional whitefish that can be commercially harvested in Green Bay to provide fish to local markets, while also recognizing the increasing popularity of the whitefish sport fishery during the ice and open water seasons. Both sport and commercial fishing activities centering on whitefish benefit the local economy.

Commercial fishing of whitefish is an important part of the Door County economy, providing jobs with good wages that contribute to the local and state economy. Fishing companies are small businesses that have been impacted by the pandemic, and other businesses rely on commercial whitefish harvest to provide fish to tourists. Commercial fishers should have equal access to Zone 1 whitefish fishing along with sport fishers.

This rule allows for additional commercial harvest in Zone 1 to allow commercial fishers to take more fish in the areas where the whitefish population has grown. An emergency rule implemented a shorter-term Zone 1 quota increase to help commercial fishers recover from the economic effects of the pandemic. The opportunity to harvest additional whitefish is likely to benefit commercial fishers, but the exact amount of economic benefit to each commercial fisher and the local economy is unknown at this time, as the actual level of harvest may differ from the harvest limits proposed in the rule.

Restricting commercial fishing would impact businesses that sell fish to markets in Wisconsin and out of state. This would make it harder to compete with other fish suppliers and would affect employees of commercial fishing businesses and fish supplier businesses. Demand for whitefish continues to increase for local businesses, including those in the tourism industry, and among the public.

While this rule will provide the opportunity for additional commercial harvest of whitefish in Green Bay, the actual availability of whitefish for markets will depend on the commercial fishing effort as well as variable conditions affecting whitefish population distribution. Additionally, while this rule contains an allocation for Zone 2 that is lower than the previous allocation, actual harvest has not reached the proposed allocation in recent years. The majority of the benefit to markets from the Green Bay whitefish commercial harvest limit increase will stem from the Zone 1 increase.

Commercial fishing provides an important product and cultural heritage (Friday fish fries, fish boils) to the area economy, and contributes to non-profit fundraising in the community. While sport fishing also attracts tourism to the Green Bay area, commercial fishing provides fresh, local, sustainable and healthy whitefish for restaurants, farmer's markets, stores, and consumers that seek fresh fish whether living in or visiting the area.

Of note, 34 comments during the solicitation of economic impacts stage and 65 comments during the public hearing comment period touched on the themes above.

The economic impacts of both the sport and commercial fishery extend to the local hospitality and tourism industries. Commercial fishing provides fresh fish to consumers (residents and tourists alike), restaurants, fish markets, and other businesses and organizations, while sport fishing attracts anglers to the area, who patronize local resorts, establishments, and fishing guide businesses. Both sport and commercial fishers also pay for fuel, equipment, and utilities to support their fishing activities, as well as contribute sales, local, and state taxes to the economy. Sport and commercial fishing are both components of the rich cultural heritage of the Green Bay region.

The DNR uses money from sport fishing and hunting to fund monitoring of commercial fishing activities, and legislative action is needed to return these funds to sporting activities.

As noted in this comment, the legislature is ultimately responsible for developing an appropriation for an alternate funding source for monitoring commercial fishing activities, and contacting members of the legislature is the best way for Wisconsinites to make progress in this area.

Increasing commercial harvest in Green Bay could increase the number of gill nets in lower Green Bay, which could result in more bycatch. With gill nets, the chance of releasing bycatch decreases because gill nets kill the fish caught in them, whether they are commercial fish or game fish. Multiple miles of gill nets could also cause issues for other users in finding where the gill net is set.

Gill nets do result in a much higher rate of mortality to fish, whether target or non-target species compared to trap nets. However, large mesh gill nets are designed to target whitefish that are of legal size and have reached reproductive maturity, and data from the recent Lake Michigan catch composition study show that a significant majority of the fish caught in large mesh gill nets are legal-sized whitefish. In addition, other fish species were caught in gill nets and release alive so not all bycatch caught in gill nets are killed.

The sport harvest of whitefish in Green Bay also generates money for guides and resorts that should be described.

This is true. According to the Economic and Fiscal Impact of Green Bay Recreational Fishing report, sport fishing contributes \$264.3 million in direct and indirect effects to the local economy. Because none of the provisions in this rule directly affect sport fishing, this rule will not directly alter sport fishing activities or spending patterns. However, upon implementation of this rule, commercial fishers may alter their activities to focus on Green Bay to a greater extent based on the Zone 1 quota increase. The degree to which they will do so is uncertain. Whether an increase in commercial fishing activities will result in a response in sport fishing activities and associated expenditures is likely variable, and sport harvest of whitefish also depends on numerous other factors outside of user conflicts, such as weather, fuel prices, gear and bait prices and availability, and ice conditions.

What would the procedures be if the number of whitefish dramatically declines? Would closures or reductions be equitable between sport and commercial fishers? On Lake Superior, sport fishing has to close when the sport fishing quota for lake trout is reached, but commercial fishing continues past the closure of the sport fishing season.

The department can use the emergency rule process to make more immediate adjustments to seasons and regulations in the unlikely event of a sudden and dramatic decline in the whitefish population. Also, because half of the Green Bay harvestable surplus of whitefish is allocated to the sport fishery, the sport fishing daily bag limits or other regulations would only need to be addressed if the sport harvest approaches the sport fishery allocation.

Although this rule does not impact Lake Superior quotas, the structure of the Lake Superior sport and commercial fisheries are the product of years of negotiations and discussions with stakeholders. Both the commercial and sport fisheries for lake trout are limited by overall lake trout quotas. Each commercial fishing licensee is further limited by individual lake trout tag allocations. In contrast, sport fishers are not limited by tags but rather by size and bag limits and a recreational harvest trigger when the overall harvest approaches the sport fishing quota. Rather than having a lower daily bag limit for lake trout and a longer open season, sport fishers and charter captains preferred a higher daily bag limit paired with the possibility for an early season closure if harvest reached the harvest trigger prior to the regular season closure date. Therefore, because the commercial quota is managed differently, commercial fishers that haven't yet filled their lake trout tags can keep fishing during the commercial open season, even when the recreational season closes early.

More details are needed on the proposed restricted area in grids 901, 902 and 1001 (conditions for issuing permits, restrictions on number of trap nets, impacts on bycatch, etc.).

Of note, both commercial and sport fishers expressed concerns that proposed restricted area was not well described and lacked data on how it would impact both whitefish and game fish. As a result, the department removed the restricted area from this version of the rule in favor of provisions that accomplish the following:

- Require commercial fishers using trap nets in this area to notify the department before lifts to allow the department to better monitor and collect data from these nets.
- Limit the number of trap nets set under each license in this area at any given time.
- Require bycatch reporting by numbers through EFHRS to gain better data on bycatch levels in this area.

If the whitefish quota is increased, the amount of allowable bycatch (10% of the harvest) would increase, posing a threat to game fish and affecting the number of game fish in the waters of Green Bay. Any salmon or trout raised with stamp funds can only legally be harvested by sport fishers, so how will the increase in bycatch be handled short-term and long-term? It's uncertain what impact the Zone 1 quota increase will have on bycatch numbers.

It is important to consider the context of the 10% rule for bycatch in relation to quota increases. The rule requiring commercial fishers to move their gear if the amount of bycatch in their nets reaches 10% is established in administrative code (s. NR 25.09 (5) (a)), and will not change with this rule. The 10% provision requires commercial fishers using gill nets to move their nets 3 miles away from the site or to a depth that is not within 5 fathoms of the depth at which the bycatch was caught before the net can be used again that day. The 10% rule applies to the activities and fishing patterns of individual commercial fishers on a scale of days rather than annually, so even with an increase in the Green Bay (Zone 1) allowable harvest, the 10% rule engages when a commercial fisher catches at least 10% of non-target fish during the day's gill netting activities, thereby prompting a response to bycatch issues that is much quicker and more targeted than what could be implemented if the department were to evaluate the total bycatch across the commercial fishing zone.

Furthermore, an increase in total allowable commercial harvest will not necessarily translate into an increase in the percentage or numbers of bycatch out of the total legal whitefish catch, because bycatch levels depend on a variety of factors, including fish distribution, time of day and year that nets are set, location of nets, and water depths that fish are currently occupying.

Trout and salmon are more likely to be caught in Lake Michigan than Green Bay, and existing bycatch rules require commercial fishers to move their gill net gear if they catch higher proportions of trout, salmon and other game fish. All trout and salmon caught in commercial gear must be released.

Initially, following the department's first run of the new Green Bay population model, the framework for allocating the TACs between the zones, which is proposed by this rule, resulted in a recommended Zone 1 quota allocation of 800,000 pounds. This quota for Zone 1 was biologically sustainable for whitefish, and bycatch levels remained low during the UW-Green Bay study over the period of the emergency rule, which contained a smaller Zone 1 quota increase. However, to respond to uncertainty about latent mortality of game fish caught in nets, especially in southern Green Bay, the department has updated the rule to continue the emergency rule Zone 1 quota of 569,788 pounds as the initial quota upon implementation of the rule. The department has also updated the rule to establish specific criteria to enhance monitoring and data collection on whitefish harvest and catch of bycatch, as well as to limit trap nets in this area that is highly utilized by sport fishers and spawning fish.

There should be a sport fishing board established by the legislature, DNR and NRB to represent sport fishing interests, similar to the Lake Superior and Lake Michigan commercial fishing boards.

The Lake Michigan and Lake Superior commercial fishing boards advise the department and Natural Resources Board in issues relating to commercial fisheries. Both of the commercial fishing boards and their defined roles and functions are established in state statutes, so legislation would be required to establish a sport fishing board with equivalent powers, structure and function. This would be the responsibility of the Wisconsin Legislature. The Wisconsin Conservation Congress is also statutorily established, and represents Wisconsin citizen interests in hunting, fishing, and outdoor recreation.

On issues that overlap with both the commercial and sport fisheries, the department has worked with members of the Conservation Congress and, when appropriate, *ad hoc* stakeholder groups and task forces to involve sport fishing representation in the decision-making process.

For this process, a lake whitefish sport group was established with named representatives from major sport sectors in Wisconsin. This sport group was individually invited to each informational and most Lake Michigan Commercial Fishing Board meetings and fully participated since the inception of the group in August of 2020.

Data has shown that many pounds of unmarketable whitefish harvested commercially were discarded dead into Green Bay over the period of the catch composition study. This does not indicate wise use and conservation of the resource. Game fish caught in trap nets can be killed from barotrauma when caught in deep water (water more than 25 feet deep), and doubling the allowable catch of whitefish would double the amount of gear and effort in fishing for whitefish, which could increase the amount of game fish mortality. Under this rule, thousands of walleye, whitefish, and other game fish would be killed each year in trap nets.

Over the period of the catch composition study, the projected numbers of dead whitefish from commercial fishing activity ranged from 17,439 to 22,269 whitefish. While these numbers seem high, they represent 0.11-0.15% of the total estimated fishable population of whitefish in Green Bay. Commercial fishing regulations aim to minimize whitefish discards and mortality through gear restrictions, restricted areas where higher densities of unmarketable fish are likely to occur, and other provisions. This rule contains provisions aimed at controlling the number of trap nets in southern Green Bay while allowing for better monitoring and data collection in this area, since the catch composition study showed that the number of whitefish discards and mortality increased from north to south in Green Bay.

Increasing the allowable catch of whitefish will likely increase the amount of gear and effort used to fish for whitefish; however, this will not necessarily double or even be proportional to the quota increase because a limited number of commercial fishers have individual catch quotas in Green Bay and existing rules also limit the amount of gear that can be used under one license. Similarly, the amount of mortality of game fish caught in whitefish nets may or may not increase proportionally with the quota increase in Green Bay.

However, this rule also contains the same Zone 1 increase as in the emergency rule, rather than the higher poundage discussed initially, which will also help manage commercial fishing activity in Green Bay.

While barotrauma is a concern, the speed at which a fish is lifted from deeper water as well as the species of fish and its anatomy determine the extent to which barotrauma can cause problems. However, more data on latent mortality specific to Green Bay is needed.

No commercial fishing gear should be set in the new restricted area in southern Green Bay. Commercial gear set in this area by permit on a short timeframe would result in sport fishers being unaware of the gear location and becoming entangled. The rule does not specify the justification for allowing permitted harvest in the restricted area or limitations on the number of nets or permits.

The framework for restricted areas is established in administrative code, and an earlier version of this rule added one new restricted area in southern Green Bay to the list of Lake Michigan and Green Bay restricted areas under the existing framework. Commercial fishing is prohibited in restricted areas unless the licensee applies for a permit and the department approves the permit for the specific grids and gear types. In lieu of the restricted area, the current rule proposal establishes conditions for licensees fishing with trap nets in southern Green Bay (grids 901, 902 and 1001), including limitations on the number of trap nets, a requirements to notify the department the day before trap net lifts, and a requirement for licensees to report the bycatch by number when fishing with trap nets in this area.

The department will also receive coordinates of any trap nets that fish in this area, and will notify the public of these locations accordingly. Nets are also marked with flags and buoys, and the Wisconsin hook and line fishing regulations pamphlet and DNR web page provide guidance on how to identify the positioning of nets based on how they are marked.

The rule does not mention incidental catch and mortality of lake sturgeon in Green Bay and ways to address it.

During the course of the Green Bay catch composition study, only one lake sturgeon was caught in commercial gear and was released alive. However, the large mesh opening size of the trap net leads can pose more of a risk for lake sturgeon entanglement. Although trap net leads from the commercial fishery were not monitored comprehensively, several sturgeon were observed to have been entangled in some of the leads that were monitored. If the bycatch of lake sturgeon became an issue, the department could pursue rules to address it.

Sport fishing contributes millions to the Green Bay-area economy annually, both directly and indirectly, and a strong sport fishery is very beneficial for economic development in the area. The winter sport fishery draws many visitors each year, and is important to the local economy, allowing businesses to stay open in the winter and allowing new small businesses to open.

According to a study by UW-Whitewater, the direct and indirect impacts of the sport fishery to the Green Bay-area economy have been estimated at about \$264.3 million annually (there is not a comparable study on the direct and indirect impacts of commercial fishing on the local economy). By equitably splitting the harvestable surplus of whitefish in Green Bay between the sport and commercial fisheries, the sport fishing community will be able to continue benefitting from the healthy Green Bay whitefish population. The department is also proposing limitations on the number of trap nets set in lower Green Bay to minimize potential bycatch issues and user conflicts.

The sport fishing bag limit for whitefish should be raised instead of the commercial limit; or, if the commercial limit is raised, the sport daily bag limit should be raised equitably. If commercial harvest takes too many fish, people will stop coming to the area to fish for whitefish, and/or it will be more difficult for sport fishers to catch whitefish. The whitefish fishery has not been the same since the last increase; it should be protected for future generations.

Half of the harvestable population of whitefish resulting from the Green Bay population model is reserved for the sport fishery. As more data is collected on sport fishing in Green Bay, the department will assess

the amount of whitefish harvested under the daily bag limit of 10 and could make future adjustments to raise the bag limit if biologically and publicly supported.

Because the department has revised the rule proposal to keep the Zone 1 commercial whitefish quota at the level of the emergency rule, the changes to the current dynamic between the sport and commercial fisheries are anticipated to be minimal.

Some sport fishers think the bag limits for whitefish and walleye should be lowered, but that would be pointless if the commercial limits go up.

Any adjustments to sport fishing bag limits would require a separate rule process. The commercial harvest limits proposed in this rule are based on sound biological data indicating that the Green Bay whitefish population can support additional commercial harvest without threatening the sport fishery.

It's unclear how commercial fishing activities will be monitored and enforced.

Commercial fishing enforcement has always been a priority for law enforcement dating back to 1879, with different organizational units monitoring the fishery over the years. Earlier in 2021, law enforcement in the Lake Michigan area reorganized and created a Green Bay/Lake Michigan-dedicated Marine Team with water- and tributary-only responsibilities. Part of the reason for the re-creation and expansion of the Marine Team was to bring back a more focused oversight of the commercial fishing industry and also ensure that law enforcement had a team of wardens who were similarly trained and knowledgeable on commercial fishing operations. Throughout 2021, the new Marine Team got underway and started to learn more about the commercial fishing industry. The Marine Team engaged in commercial fishing enforcement in 2021 by conducting net checks and observing commercial fishers setting and lifting nets. Staff also conduct independent monitoring based on their own work practices and also in some cases notifications from the public. As the Marine Team expands its knowledge, capabilities and work schedule, it will have a more visible LE presence in the industry in 2022.

More commercial fishing effort in Green Bay will lead to more commercial gear set in Green Bay, which will increase user conflicts between sport and commercial fishers. The rule does not set any limits on the number of nets allowed or commercial fishers allowed in Green Bay.

The number of commercial fishers that may fish in Green Bay is limited to the number of fishers with individual licensee catch quota allocations for Green Bay and those who may obtain a transfer of partial quota; this is generally less than 10 licensees. Also, although the proposed rule does not establish any further limitations on large mesh gill net footage or trap nets that can be used to fish for whitefish, existing rules limit the large mesh gill net footage and number of trap nets that can be used at any one time under a single license. Furthermore, new trap net limitations will reduce the risk of user conflicts in Green Bay.

The proposed restricted area does not adequately protect the unique spawning population of whitefish in tributaries of Green Bay. A restricted area should be established at the mouths of the Peshtigo and Oconto rivers to maintain a sustainable population of whitefish.

The commercial whitefish season in Lake Michigan and Green Bay is closed during the month of November, which helps protect spawning whitefish. In addition, commercial fishing is restricted within ¼ mile of Lake Michigan and Green Bay streams, including those that contain spawning whitefish.

Data has shown that night sets of gill nets cause higher mortality for bycatch, especially in August through October. Time restrictions on gill nets are needed.

While the bycatch levels for walleye tend to be higher in night sets than day sets of large mesh gill nets, overall, the vast majority of fish caught in large mesh gill nets are legal whitefish. If monitoring and data collection showed an increase in non-whitefish bycatch caught in large mesh gill nets, the department would consider additional regulations for large mesh gill net use. Also, a commercial fisher must move gill nets if the level of bycatch reaches 10% of the total legal harvest of whitefish caught in the fisher's nets.

The Zone 1 quota increase was proposed because the whitefish population has changed and commercial fishers cannot catch their quotas in northern Green Bay and Lake Michigan. Shouldn't the quotas in the other zones instead be reduced to allow the whitefish population to grow?

This rule contains a framework that would initially result in a reduction in the Zone 2 quota concurrent with the Zone 1 quota increase that is being carried over from the emergency rule, which may help the Lake Michigan population of whitefish recover. Commercial fishers have not approached the current Zone 2 quota in recent years. Because the Green Bay and Lake Michigan whitefish population dynamics differ, a reduction in Zone 2 and 3 quotas instead of an increase in the Zone 1 quota would not allow commercial fishers to fully utilize the abundant Zone 1 whitefish population, though quota reductions in Zones 2 and 3 might help the Lake Michigan whitefish population grow. Allowing commercial fishers to utilize the Zone 1 harvestable surplus of whitefish and splitting it equally with the sport fishery is also consistent with the legislature's directive to maintain a viable commercial fishery, as reductions in the Zone 2 and 3 quotas could impact these commercial fishing businesses and the availability of whitefish for local markets.

It is concerning to increase the Zone 1 quota again before we know the longer-term impacts on whitefish and game fish—the recent Zone 1 increase should be studied to assess the impacts on the sport fishery before raising the Zone 1 quota even more.

The proposed Zone 1 increase is more than doubling the previous quota in a very short time.

Of note, 26 commenters expressed concern about increasing the Zone 1 whitefish quota again before the impacts of the emergency rule increase can be studied, while additional comments expressed opposition to any commercial whitefish quota increase in Zone 1.

As a result of these comments, the department is proposing to change the initial Zone 1 quota that will take effect with this permanent rule to match the Zone 1 quota in the emergency rule, at 569,788 pounds instead of 800,000 pounds. This will allow commercial fishers in Zone 1 to continue benefitting from an increase as compared to the previous quota, which will present the opportunity for a potential increase in whitefish harvest to sell to consumers and associated businesses. However, this revision will also allow more data to be collected on the impacts of commercial whitefish harvest before the next quota adjustment.

Whitefish are a forage fish for game fish that support the sport fishery, and state and federal sport fishing dollars have funded the development of the fisheries for walleye, northern pike, yellow perch, and musky. Whitefish populations are already changing with environmental factors. It's not worth the risk to the fishery to increase the quota for the personal gain of some commercial fishers—if the whitefish population crashes, the fishery may not recover.

Yes, whitefish do contribute to the food web for several popular game fish species. The sport fishery allocation of whitefish in Zone 1 will help support game fish populations as well, since the sport harvest of whitefish has not yet approached the proposed level of the Zone 1 sport fishery allocation.

An increase in whitefish quotas is not necessarily tied to a decrease in game fish numbers over time. For example, following an increase in the commercial whitefish quota in 2010, the walleye population in Green Bay continued to increase. Multiple variables aside from commercial fishing effort influence game fish populations.

The department also plans to run the new whitefish population models every three years to ensure that the most current biological information is used to make harvest recommendations and set sustainable quotas.

Data on sport harvest from the new fishing guide reporting rule should be taken into account before raising the Zone 1 commercial quota.

The Green Bay whitefish population model does not contain reliable information on the sport harvest of whitefish. Data for the models may not provide an accurate representation of the whitefish population.

The department has gathered data on the sport harvest of whitefish through routine creel surveys of Green Bay anglers, which is accounted for in the models.

A rule restructuring the fishing guide reporting requirements for Lake Michigan, Green Bay, Lake Superior and their tributaries went into effect on Jan. 1, 2022. This rule is expected to provide enhanced data on sport harvest of whitefish and other game fish in Green Bay, which will be incorporated into the population models in addition to creel survey data and the limited data that had been gathered from fishing guide reports under the previous reporting framework.

There is no state mandate for commercial fishers to harvest whitefish, and fish belong to the public, not individuals.

The Wisconsin Legislature has established that fish are a public resource and are managed by the state for the benefit of the public (s. 29.011 (1), Stats.). Furthermore, the Wisconsin Legislature has established that the state shall maintain a multi-use fishery, including an economically viable commercial fishery ([Laws of 1977, Chapter 418, \(37\) \(d\)](#)) with limitations on commercial participation and harvest through scientific management. Commercial fishers in Lake Michigan and Green Bay have harvested whitefish as the primary component of their fishing operations for decades, spanning multiple generations of commercial fishers. Over time, the number of commercial fishing licenses has been reduced and consolidated, including by commercial fishers themselves. Both sport and commercial fishing allow the general public to make use of whitefish resources harvested from Wisconsin waters. Sport fishers value whitefish fishing as a unique and challenging hook and line fishing opportunity that also provides table fare and business to fishing and hospitality industries in the Green Bay area, while commercial fishers harvest whitefish to sell directly to consumers (including non-anglers) that desire fresh fish, as well as to numerous businesses that sell fish and fish products to the public.

Wisconsin's commercial fishery has been dependent on Zone 1 whitefish for years, and the numbers in the rule proposal will benefit the fishery.

Yes, one of the goals of the rule is to allow commercial fishers to better utilize the Green Bay whitefish surplus while maintaining an equitable allocation for the sport fishing community.

However, thriving commercial fisheries still exist in areas of Zones 2 and 3 as well. These fisheries have contributed substantially to Wisconsin's commercial whitefish fishery.

Netting should not be allowed in spawning areas. It takes a long time for whitefish to mature, and excessive catch and mortality of year classes in commercial gear would cause the whitefish population to take a longer time to recover.

Existing restricted areas limit the amount of commercial fishing gear in areas with higher concentrations of spawning fish. Additional provisions in the proposed rule will also limit the number of trap nets in lower Green Bay to minimize the catch of sublegal whitefish and game fish.

The commercial fishing industry is committed to maintaining a viable fishery for the future, since it supports their livelihoods.

This comment is noted for the record.

This rule has been developed after seven years of discussion, data collection and development of the new population models. Nothing in this rule, UW-Green Bay study or UW-Whitewater economic study indicates that commercial fishing activity will harm the sport fishery. Commercial fishing is highly regulated.

The Lake Michigan Commercial Fishing Board, DNR, stakeholders, and members of the public have engaged in discussions over the past seven years to move forward with the first major update in decades to total allowable commercial harvest and zone-specific whitefish harvest limits in Lake Michigan and Green Bay. More recently, in 2020-21, the department convened a sport fishing advisory group consisting of members of key sport fishing organizations, holding public meetings to gain their input, and also participated in multiple Lake Michigan Commercial Fishing Board meetings over the past two years to discuss potential rule inclusions.

Commercial fishing is indeed highly regulated through chapter NR 25, Wis. Admin. Code to ensure equitable, sustainable use of the whitefish resource for the benefit of the public. While the commercial harvest limits in this rule are well within the bounds of what is considered biologically sustainable, provisions in this rule limit the allowable harvest in Zone 1 of Green Bay to prevent catch of non-target fish and reduce user conflicts.

What model was used for the previous Zone 2 quota, and why was actual harvest so much lower?

Previously, a lakewide whitefish population model was utilized to set the Zone 2 quota, and commercial fishers also favored a higher Zone 2 quota. However, changing populations and distribution of lake whitefish resulted in more whitefish occupying Zone 1 than replenishing Zones 2 and 3, and therefore commercial fishers did not reach that quota.

This rule is based on years of research and monitoring, with 23% of trap net lifts monitored by the UW-Green Bay study. Data also show that gill nets can be efficient and intelligently used, and that bycatch concerns are minimal.

Yes, according to the UW-Green Bay study, large mesh gill nets were very effective in catching lake whitefish and very few other species, and most of the whitefish caught were able to be kept. Researchers also monitored trap nets set in areas that commercial fishers routinely fish, and provided data on the catch composition of whitefish and other species caught in these nets. While bycatch caught in trap nets make

up a very small proportion of the total population of the species, bycatch levels can increase seasonally and moving north to south in Green Bay.

Electronic harvest reporting is too difficult for Lake Superior fishers in remote areas without adequate cell service, and could cause safety issues if fishers are entering reports as they are getting close to the dock (near other boats).

This rule allows commercial fishers to first record their reports on a paper form while on the water before entering the reports into the electronic fish harvest reporting system by 11:59 p.m. that same day. This will ensure accurate recording of the information while also allowing fishers some flexibility in entering the reports electronically so that they can do so when they have cell phone coverage or computer connection and are in a safe location.

Commercial fishing could increase the spread of invasive species and disease, further harming game fish. Was this studied in the UW-Green Bay study? Also, whitefish can help control invasive species such as the round goby, so fewer whitefish could lead to more invasive species.

No, this was not studied in the UW-Green Bay study. Invasive species and certain diseases (such as VHS) have been present in Lake Michigan for many years predating this rule.

Commercial netting has had a detrimental impact on perch populations, causing substantial decline.

The subjects of this rule are Lake Michigan whitefish harvest management and Lake Michigan, Green Bay and Lake Superior commercial harvest reporting. Based on population models for lake whitefish in Lake Michigan and Green Bay, the whitefish population is stable in Lake Michigan and increasing in Green Bay, even in the presence of commercial fishing.

Increases in commercial fishing in Green Bay could impact migratory ducks, such as scaup, that use Green Bay during migration season and could get entangled in nets. Bag limits of these species for waterfowl hunters are already very limited to protect the population.

Monitoring of commercial fishing activities in Green Bay has not shown any catch of diving ducks in commercial nets. Commercial fishing gear is designed to catch fish rather than wildlife. Should the catch of migratory waterfowl become a problem, the department would work with commercial fishers and the U.S. Fish and Wildlife Service to implement appropriate measures.

The numbers of fish caught as bycatch that die after release (latent mortality) are unknown.

This comment was a common theme during the public hearing for this rule. The department recognizes that more investigation of latent mortality of bycatch is needed, especially in southern Green Bay. However, provisions in this rule aim to minimize non-target species from being caught in commercial gear in the first place.

Will future quota adjustments involve public input? Will they require that the 50/50 split remain in place? How often will quota numbers be adjusted?

Yes, for future adjustments, the department will first run the population models, then will hold public meetings and bring total allowable commercial harvest and zone-specific quota recommendations to the Natural Resources Board for approval (during which the public may also submit comments). The 50/50 split for the sport and commercial fishery in Green Bay will remain each time the total allowable

commercial harvest is adjusted. The population model runs and TAC and quota recommendations will go before the Natural Resources Board every three years, if not earlier.

Data supports the increased commercial harvest in Zone 1, and many people, including sport fishers, benefit from commercial whitefish fishing. The level of opposition is surprising.

While the biological population models indicate that abundant whitefish occupy Zone 1, this rule also takes into account the perspectives of the stakeholders that fish commercially and recreationally in Green Bay.

Is overpopulation a concern in Zone 1? With lower whitefish populations in the Great Lakes, why exploit a thriving fishery? Are lower effort/fish due to commercial fishers finding the higher concentrations of fish rather than higher overall fish populations? DNR trawl numbers for young of year seem to indicate a consistent rather than increasing population.

Due to the abundance of whitefish in this area, allowing a conservative increase in commercial harvest limits will provide more equitable access to whitefish while reflecting the changes in population distribution of whitefish that have occurred over the past decade. This will help fulfill the state legislature's goal of maintaining a viable commercial fishery. There is no indication that commercial fishers are expending less effort in fishing; the whitefish abundance in Zone 1 has been determined using biological population models that take into account weight at age, length at age, maturity schedule, trap net harvest by weight, trap net fishing effort by number of lifts, age composition of whitefish caught in trap nets, gill net harvest by weight, gill net fishing effort by number of lifts, age composition of whitefish caught in gill nets, recreational harvest by numbers, recreational fishing effort by angler hours, age composition of recreationally caught whitefish, and, in Green Bay, young-of-the-year index survey.

Are current catch rates meeting local demand for whitefish?

Not necessarily; some stakeholders that buy whitefish to sell to markets have commented that the amount of whitefish available is not meeting public demand.

Could DNR donate bycatch to food pantries? Could future bycatch studies be extended further into the spring?

Monitoring and data collection on whitefish and bycatch has and will continue to occur in the spring, especially in areas of interest such as lower Green Bay, where there is a significant sport fishing presence.

The idea to donate bycatch to food pantries is noted for the record. Fish and wildlife seized by law enforcement can be donated to food pantries, but in this case, many of the fish caught as bycatch in trap nets are able to swim away upon release—so they are not immediately considered to be dead and able to be collected onsite and processed for food pantries. It would also take a substantial amount of effort and resources to keep bycatch in suitable condition for donation to food pantries, especially during the warmer months of the year. In addition, the policy across programs in the department on the catch of non-target species are the same: they must be returned alive or dead over the side.

Does the smaller size of Green Bay whitefish affect whitefish egg production? Could future studies assess the sex ratio of commercially harvested whitefish? Female whitefish mature to larger sizes more quickly than males, so it would stand to reason that most harvested whitefish are female.

Fecundity (egg production) is size-dependent in whitefish. So, generally speaking, the larger the fish the more eggs it will produce. The department collects a considerable amount of data on lake whitefish

during commercial fishing monitors including noting the sex of most fish, when possible. To date the data do not suggest that the sex ratio of males to females in Green Bay is heavily skewed to either sex.

No other sport fisheries in the state have a quota. Zone 1 is smaller than Zones 2 and 3, making fish management more difficult.

Another example of a sport fishery with a quota is the Lake Superior lake trout fishery, in which a harvest trigger is established to prevent the sport fishery from exceeding the quota.

The size of the zones does not have a significant bearing on the ease of fish management.

In addition, while a portion of the total allowable catch calculated for the bay has been allocated to the sport fishery, this fishery will be regulated by size and bag limits. If over the long-term the sport harvest is continually over the allocation, discussions with stakeholders would have to be conducted to talk about regulations to bring this number under the total allowable catch for the sport fishery.

Could the DNR consider part of the quota to be harvested by sport fishers and sold to a processor?

Wisconsin statutes specify that an appropriate commercial license is required to harvest and sell fish; sale of game fish is not legal.

Could the department require commercial fishers to restock dead bycatch?

This concept would likely encounter great stakeholder and legislative resistance. Rather, this rule seeks to minimize the potential for bycatch issues, especially in areas of Green Bay where the sport fishery is deeply rooted. The rule accomplishes this through a conservative Zone 1 allowable harvest allocation and provisions to minimize the impacts of trap nets in lower Green Bay while allowing for monitoring and data collection.

The average weight of an individual lake whitefish has decreased over time from 3-4 pounds to 1.5 pounds, so doesn't this mean that fishers would have to harvest more whitefish to get the same poundage?

The size at age of lake whitefish has decreased substantially over the last 15-20 years. Therefore, it is correct that more fish would be needed to achieve a certain harvest biomass. However, population management models take the size at age of whitefish into consideration when setting safe harvest levels.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 01/19/2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 25, Commercial Fishing: Outlying Waters	
4. Subject FH-02-20, Lake Michigan whitefish management and Great Lakes commercial harvest reporting	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$960	
<p>Implementation and compliance costs to commercial fishers due to this rule will mainly stem from the electronic reporting requirement. Individual Zone 2 commercial whitefish fishers may experience an economic impact if the revised total allowable commercial harvest impacts their actual harvest of whitefish (which is not expected), but the impact to commercial fishers overall is expected to be minimal.</p>	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule This rule establishes that two lake whitefish population models will be used to calculate the total allowable commercial harvest (TAC) for whitefish in Green Bay and Lake Michigan, describes the model inputs, and provides a framework for allocating the TACs between the three management zones of Lake Michigan. Using the two models and this framework, this rule also updates the total allowable commercial harvest of lake whitefish for all three zones of Lake Michigan for the 2022 and 2023 license years. Updates are necessary to respond to the changing distribution and population dynamics of lake whitefish, as revealed through recent lake whitefish population modeling in Lake Michigan, including Green Bay. If the lake whitefish population is not managed appropriately, the sustainability of the shared commercial and recreational whitefish fishery may be compromised. The rule also implements provisions to monitor and collect data on bycatch and whitefish from Green Bay whitefish trap netting operations. Minimizing bycatch is important because Lake Michigan also supports a sport fishery, with lake trout a key species in Lake Michigan proper and walleye, yellow perch, northern pike, smallmouth bass, lake whitefish and muskellunge occupying Green Bay. The rule requires whitefish fishers in Lake Michigan and Green Bay to report the name and location of trap nets to gain better data on the use of trap nets for whitefish fishing. This rule also requires electronic reporting for all Great Lakes commercial fishers, which provides quicker, more accurate access to harvest data than biweekly paper reporting. Electronic reporting has been a priority for managing commercial fisheries for at least a decade, but to date, only a subset of fishers have utilized the electronic reporting system.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Commercial fishing businesses, fish markets and businesses that use fish products, and individual commercial fishers may be impacted by this rule, and have provided some input during the preliminary public hearing and public meetings for this rule, as well as during the economic impact comment period for this rule. Sport fishers and fishing guide businesses may be indirectly impacted by the rule due to redistribution of commercial fishing effort in Lake Michigan and Green Bay. Impacted groups had an opportunity to comment on this economic impact analysis through a posting on the department's website from October 13 to November 11, 2021.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

Local governments in the vicinity of Lake Superior, Lake Michigan and Green Bay were contacted for input on this EIA.

14. 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)

Lake Michigan/Green Bay whitefish management

During the EIA comment period for this rule, 34 commenters provided comments in support of the Zone 1 allowable harvest increase and the commercial fishery, with the majority (29) expressing the importance of local, sustainable fish for area residents, restaurants, and the tourism industry. Of these, 8 expressed concern that without an adequate supply of whitefish, businesses that sell whitefish, local organizations, and the economy would be negatively affected (however, the amount of such an impact is not quantifiable at this time). It is important to note that while this rule proposes an increase in the Zone 1 whitefish allowable harvest, the actualized level of commercial harvest following rule implementation, and thus the amount of whitefish available for local markets, may differ from the Zone 1 allowable commercial harvest limit in the rule.

This rule is anticipated to positively impact commercial fishing businesses that fish for whitefish in Green Bay, as well as local businesses (restaurants, bars, taverns, fish markets, food processors, smoke houses, etc.) that purchase whitefish from commercial fishing businesses to sell to consumers. The exact amount of economic benefit that each commercial fisher may gain due to the increased allowable harvest in Zone 1 waters of Green Bay is unknown, as is the economic impact to associated businesses as a result of increased whitefish harvest. Currently, nine commercial fishing licensees and their employees actively fish for whitefish in Green Bay and have access rights to Zone 1, and additional commercial fishers may be able to purchase quota in Green Bay to fish there, thereby benefitting from this increase. Assuming a dockside value of \$2 per pound for whitefish based on average dockside values over the past five years, a whitefish allowable harvest increase in Zone 1 of 207,603 pounds to a total of 569,788 pounds could convey up to a \$415,206 dockside value benefit to the commercial fishing industry, which would translate into additional income for commercial fishers and their employees, as well as benefits to associated businesses (restaurants, fish markets, taverns, grocers, fish boils, etc.), non-profit organizations that utilize whitefish, and the local economy once the fish are sold at wholesale and retail prices. Four fish suppliers and restaurant managers commented that they have observed an increasing demand for fresh whitefish to supply markets both locally in Wisconsin, as well as in other states. The Door County Economic Development Corporation indicated that the commercial fishing industry supports the local economy and provides jobs with above-average wages, which contribute to spending in the local economy. However, the exact amount of benefit to businesses and the local economy is unknown at this time. Commercial fishers that fish in Zone 2, which falls across northern Green Bay and Lake Michigan, may experience a negative economic impact from this rule only if they are unable to harvest as much whitefish as in the past due to limits on Green Bay and Lake Michigan whitefish harvest in Zone 2. Over the past 10 years, total harvest in Zone 2 has not approached the current Zone 2 allowable harvest limit, and over the past 8 years and with the 5-year average commercial harvest, the Zone 2 actual harvest has remained below the proposed Zone 2 allowable harvest, so this rule and its adjustments to the Zone 2 may not impact the amount of whitefish commercial fishers are able to harvest and therefore may not have an economic impact. Additionally, this rule would continue to allow commercial fishers with Zone 2 individual licensee catch quota allocations to fish anywhere in Zone 2 (including the Green Bay portion, with a higher concentration of whitefish), until the harvest limits for Zone 2 are reached. In Zone 3, the allowable harvest will not change, so no negative impact from this rule is expected for Zone 3

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Fiscal Estimate & Economic Impact Analysis

commercial whitefish fishers due to harvest limits. Therefore, this rule is expected to have a minimal economic impact on Zone 2 fishers and Zone 3 fishers.

Great Lakes electronic harvest reporting

This rule would require harvest reports to be entered electronically. EFHRS will require the commercial fisher or crew member to have access to a smartphone or computer to enter the electronic reports, and those that do not have a phone or computer would have to purchase such a device. According to the Pew Research Center (1), an estimated 85 percent of American adults owns a smartphone. With 46 licensed commercial fishers operating in Green Bay and Lake Michigan and 8 in Lake Superior, therefore, an estimated 7 commercial fishers in Lake Michigan and 1 in Lake Superior may not have a smartphone for entering reports electronically. However, some of these commercial fishers may have a computer for entering the reports, and crew members of licensees may also have an electronic device to enter the reports for the licensee's commercial fishing operations. With this information, and estimating that a low-cost smartphone and basic data plan can be obtained for about \$120 per year, the impact to each commercial fishing licensee and the industry overall is likely to be very minimal, about \$960 per year in total at maximum.

During the EIA comment period, 2 commenters indicated support for commercial electronic harvest reporting.

1. Demographics of mobile device ownership and adoption in the United States. (2021, April 07). Retrieved June 28, 2021, from <https://www.pewresearch.org/internet/fact-sheet/mobile/>

Impacts to the Sport Fishing Community

During the EIA comment period, 5 commenters expressed opposition to the rule. Of these, one commenter expressed concern that additional funding from sport fishing license fees would be used for the DNR to manage the commercial fishery (however, the implementation of electronic reporting may offset additional staff time, if any, used to monitor commercial activities, as EFHRS is more efficient and requires less staff time than managing biweekly paper reports). Three commenters spoke on the economic importance of sport fishing in Green Bay to the local economy.

While this rule will not impose any additional regulations on sport fishers or related fishing businesses, nor will it directly contribute to user conflicts with sport fishers, sport fishers, fishing guides and associated businesses may be impacted indirectly if the increased Zone 1 allowable harvest limit in this rule leads to additional commercial fishing activities in Green Bay. Sport fishing attracts many anglers to the area each year and contributes \$264.3 million in direct and indirect impacts to the Green Bay-area economy annually through fishing expenditures (bait shops, outfitters, guide services, etc.) and related spending (travel, hotels, restaurants, taverns, etc.) (2), and the ice fishery and walleye fishery are increasing in popularity among sport fishers. This rule may result in changes to commercial fishing activity in Lake Michigan and Green Bay that members of the sport fishing community are concerned could influence the activities and expenditures of sport fishers and associated businesses. Of note, sport fishers are concerned about the impacts of additional commercial fishing on bycatch of walleye, pike, perch and other game fish species, as well as the effects on whitefish, especially in Green Bay. Because this rule will not inherently increase commercial fishing activity, and because both the commercial and sport fisheries are subject to a variety of influencing factors (weather, ice conditions, prey availability, fish distribution, etc.), economic impacts on the sport fishery and related businesses due to commercial fishing activity are unquantifiable at this time and are indirectly related to implementation of and compliance with this rule. However, this rule does include measures to maintain the shared fishery and balance user conflicts between sport and commercial fishers. Requiring electronic harvest reporting for commercial fishers will allow the department to

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obtain expeditious access to catch data for proper management of the fishery. This rule also creates provisions for trap nets in southern Green Bay to help the department monitor the fishery, collect better data on impacts to bycatch and sublegal whitefish, and reduce the potential for user conflicts..

2. Winden, Matthew, John Stoll, Kara Bennett and Russ Kashian. "The Economic and Fiscal Impact of Green Bay Recreational Fishing." University of Wisconsin-Whitewater, 2018. <https://widnr.widen.net/s/czhsxfl7dp/gb-economic-report>.

Overall, during the comment period for the EIA, those associated with the commercial fishing industry or sport fishing community commented on the benefits of commercial and sport fishing, respectively, to the Green Bay-area economy.

This rule may have a minimal fiscal impact on the department for fully implementing the electronic fish harvest reporting system for all Great Lakes commercial fishers. However, these expenses can be absorbed in the agency's budget, and the benefits of timelier, more accurate commercial fishing reports for monitoring and managing commercially important fisheries will offset short-term expenses.

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

This rule will benefit the Lake Michigan whitefish fishery, which is shared between the commercial and sport fishers, to ensure that a harvestable population remains for both commercial and sport fishers well into the future. Some of the key provisions in the rule align the zone-specific allowable harvest with the current distribution of whitefish in Lake Michigan (including Green Bay), to allow commercial fishers to fish where the whitefish population has grown while limiting fishing in areas that have shown signs of whitefish population decline. This rule utilizes a model approach to setting total allowable commercial harvest (TACs) for Green Bay and Lake Michigan, and allowable harvest for each of the three zones, so that these numbers can be adjusted along data analysis timelines without requiring rulemaking each time. Currently, there is no alternative to rule-making in order to adjust the total allowable commercial harvest or how the TACs are divided between the zones. However, the department will continue to inform and work with the Lake Michigan Commercial Fishing Board and other stakeholders when the population models are run and the TACs change.

By fully implementing electronic harvest reporting, this rule will greatly benefit fisheries management in both Lake Michigan and Green Bay through timelier and more accurate datasets gained from all commercial fishers. If this rule is not implemented, commercial fishers could continue to report electronically, but only on a voluntary basis. This would perpetuate issues the department has experienced in using harvest data to properly manage the fishery, and would also require the department to maintain two reporting systems for commercial fishers, at additional expense to the department due to the time required to enter all of the paper reports into an electronic format for data analysis.

16. Long Range Implications of Implementing the Rule

The long range implications include maintaining a harvestable lake whitefish population in Lake Michigan, allowing commercial fishers to make better use of Green Bay whitefish stocks while managing user conflicts between sport fishers and commercial fishers in Green Bay, and gaining better harvest reporting data from Great Lakes commercial fishers. Electronic harvest reporting will help cultivate a more accurate long-term harvest dataset for managing all Great Lakes commercial fisheries.

17. Compare With Approaches Being Used by Federal Government

No federal statutes or regulations apply. States possess inherent authority to manage the fishery and wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

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

Along with Wisconsin, Michigan and Illinois are the only adjacent states with a Lake Michigan commercial fishery. In Michigan, lake whitefish is the focus of the commercial fishery. In addition to the large commercial gill and trap net fishery, a small trawling fishery that focuses on smelt and lake whitefish has operated in Michigan waters of Green Bay

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DOA-2049 (R09/2016)

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Fiscal Estimate & Economic Impact Analysis

since the 1960s. Illinois has a very limited commercial fishery on Lake Michigan. Both states have established quotas, gear requirements and other restrictions for commercial fishing in Lake Michigan.

19. Contact Name
Meredith Penthorn

20. Contact Phone Number
608-316-0080

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

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis**ATTACHMENT A**

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)**Lake Michigan/Green Bay whitefish management**

During the EIA comment period for this rule, 34 commenters provided comments in support of the Zone 1 allowable harvest increase and the commercial fishery, with the majority (29) expressing the importance of local, sustainable fish for area residents, restaurants, and the tourism industry. Of these, 8 expressed concern that without an adequate supply of whitefish, businesses that sell whitefish, local organizations, and the economy would be negatively affected (however, the amount of such an impact is not quantifiable at this time). It is important to note that while this rule proposes an increase in the Zone 1 whitefish allowable harvest, the actualized level of commercial harvest following rule implementation, and thus the amount of whitefish available for local markets, may differ from the Zone 1 allowable commercial harvest limit in the rule.

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Great Lakes electronic harvest reporting

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This rule would require harvest reports to be entered electronically. EFHRS will require the commercial fisher or crew member to have access to a smartphone or computer to enter the electronic reports, and those that do not have a phone or computer would have to purchase such a device. According to the Pew Research Center (1), an estimated 85 percent of American adults owns a smartphone. With 46 licensed commercial fishers operating in Green Bay and Lake Michigan and 8 in Lake Superior, therefore, an estimated 7 commercial fishers in Lake Michigan and 1 in Lake Superior may not have a smartphone for entering reports electronically. However, some of these commercial fishers may have a computer for entering the reports, and crew members of licensees may also have an electronic device to enter the reports for the licensee's commercial fishing operations. With this information, and estimating that a low-cost smartphone and basic data plan can be obtained for about \$120 per year, the impact to each commercial fishing licensee and the industry overall is likely to be very minimal, about \$960 per year in total at maximum.

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2. Winden, Matthew, John Stoll, Kara Bennett and Russ Kashian. "The Economic and Fiscal Impact of Green Bay Recreational Fishing." University of Wisconsin-Whitewater, 2018. <https://widnr.widen.net/s/czhsxf17dp/gb-economic-report>.

Overall, during the comment period for the EIA, those associated with the commercial fishing industry or sport fishing community commented on the benefits of commercial and sport fishing, respectively, to the Green Bay-area economy.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The department receives information on commercial fishing from the Lake Michigan Commercial Fishing Board, and gathers some information from sport fishing through creel surveys and contacts from local businesses and sport fishing organizations.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

By requiring electronic harvest reporting instead of allowing both paper and electronic harvest reporting, this rule standardizes reporting methods for commercial fishers. However, this rule does allow commercial fishers some flexibility in the methods for submitting electronic harvest reports, allowing them to first record the information on a paper form before entering the information electronically by the end of the day.

5. Describe the Rule's Enforcement Provisions

DNR law enforcement, including specialized marine teams, routinely conducts checks of Great Lakes commercial fishers on the water and at the dock to inspect fish catches, which will continue under this rule.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes
 - No
-

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The statement of scope for this rule, SS 023-20, was approved by the Governor on April 20, 2020, published in Register No. 772B on April 27, 2020, and approved by the Natural Resources Board on June 24, 2020. This rule was approved by the Governor on insert date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING
AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 25.13 (1) and (2) (c) (second note); to **renumber and amend** NR 25.13 (2) (intro.) and (a); to **amend** NR 25.06 (2) (e) 1., 25.13 (2) (intro.), (a), (c), (c) (third note), (e), and (10) and (11) (intro); to **repeal and recreate** NR 25.06 (2) (e) 2. a. and b. and 25.13 (2) (f); and to **create** NR 25.06 (2) (e) 2. c. an d., 25.07 (2) (e) 5., 25.09 (3) (f), 25.10 (5), 25.102, and 25.13 (2) (at) relating to Lake Michigan whitefish management and Great Lakes commercial harvest reporting and affecting small business.

FH-02-20

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted: The department has interpreted ss. 29.014 (1), 29.041, 29.519 (1m) (b), 29.519 (5), and 29.973, Stats., as authorizing this rule.

2. Statutory Authority: Sections 29.014 (1), 29.041, 29.519 (1m) (b), 29.519 (5), and 29.973, Stats., grant the authority for this rule.

3. Explanation of Agency Authority:

Section 29.014 (1), Stats., 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.

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., 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. In order to establish harvest limits, s. 29.519 (1m) (b), Stats., grants the department the authority to promulgate rules establishing formulas for harvest allocations among licensees or for the allotment of individual licensee catch quotas. Additional authorities granted to the department through s. 29.519 (1m) (b), Stats., include the authority to designate the size, kind and amount of gear allowed for harvesting fish, the authority to restrict the number of licenses issued, and the authority to designate areas in outlying waters as restricted to commercial fishing operations. This section also specifies that the limitations on harvests, licenses, restricted areas, and gear must be based on the available harvestable population of fish and must uphold the wise use and conservation of the fish to prevent overexploitation.

Section 29.519 (5), Stats., authorizes the department to determine the form and manner that commercial fishers must use to submit commercial fishing records and reports.

Section 29.973, Stats., requires commercial fishers to maintain and submit records of commercial fishing activities and directs the department to establish and implement a commercial fish reporting system. The department is given discretion regarding the form and manner of submission.

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4. Related Statutes or Rules: The department has also promulgated emergency rules, FH-28-20 (E) / EmR 2114 and FH-10-21 (E) / EmR 2130, to increase the Zone 1 whitefish harvest allotment in Green Bay and implement associated regulations.

5. Plain Language Analysis:

This rule establishes that two lake whitefish population models will be used to calculate the total allowable commercial harvest (TAC) for whitefish in Green Bay and Lake Michigan, describes the model inputs, and provides a framework for allocating the TACs between the three management zones of Lake Michigan. Using the two models and this framework, this rule also updates the total allowable commercial harvest of lake whitefish for all three zones of Lake Michigan for the 2022 and 2023 license years. Updates are necessary to respond to the changing distribution and population dynamics of lake whitefish, as revealed through recent lake whitefish population modeling in Lake Michigan, including Green Bay. If the lake whitefish population is not managed appropriately, the sustainability of the shared commercial and recreational whitefish fishery may be compromised. The rule also implements provisions to minimize the incidental catch of bycatch in whitefish netting operations. Minimizing bycatch is important because Lake Michigan also supports a sport fishery, with lake trout as a key species in Lake Michigan proper and walleye, yellow perch, northern pike, smallmouth bass and muskellunge occupying Green Bay. This rule also requires use of the Electronic Fish Harvest Reporting System (EFHRS) for all Great Lakes commercial fishers, which provides quicker, more accurate access to harvest data than biweekly paper reporting. Electronic reporting has been a priority for managing commercial fisheries for many years, but to date, only a subset of fishers has opted to utilize the electronic reporting system.

SECTION 1 includes a statement that the total allowable commercial harvest (TAC) will be based on department recommendations and results from the Green Bay and Lake Michigan whitefish population models. Previously, a single model was used to inform the total allowable commercial harvest, which was not reflective of the distinct Green Bay and Lake Michigan stocks that have emerged in recent years.

SECTION 2 describes the quantitative population model inputs that will be used to calculate the department's total allowable commercial harvest (TAC) recommendations for lake whitefish in Green Bay and Lake Michigan, which will serve as a foundation for the final total allowable commercial harvest limits and the allotments to the three whitefish commercial fishing zones.

To determine the proposed TAC recommendations, the department utilized two whitefish population models: one for Green Bay (consisting of Zone 1 in its entirety and part of Zone 2) and one for Lake Michigan (consisting of part of Zone 2 and Zone 3 in its entirety). During the current model runs, these models indicated that the Green Bay population could sustain additional harvest, while the Lake Michigan population was not producing sufficient whitefish to warrant the current TAC of 2.88 million pounds for Green Bay and Lake Michigan combined. For Green Bay, the current TAC resulting from the population model is 1,176,889 pounds per license year, which would allow for an increase in the Zone 1 allowable harvest to 569,788 pounds once this rule is implemented (consistent with emergency rule FH-10-21 (E) / EmR 2130). The remainder of the Green Bay TAC, 607,101 pounds, could be harvested in Zone 2 once this rule is implemented. The TAC of 1,176,889 pounds represents 50% of the commercial safe harvest limit derived from the Green Bay population model, with the other 50% being allocated to the whitefish sport fishery. For Lake Michigan, the TAC resulting from the population model is 800,407 pounds per license year. With 351,487 pounds allocated to Zone 3 upon rule implementation, this leaves the remainder of the Lake Michigan TAC, 448,920 pounds, which can be harvested in the Green Bay waters of Zone 2. The TAC of 800,407 pounds represents 100% of the commercial safe harvest limit derived from the Lake Michigan population model. At this time, no portion of the Lake Michigan TAC is allocated to the sport fishery in Lake Michigan because the whitefish sport fishery is very small in Lake

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Michigan. If a substantial whitefish sport fishery develops in the coming years, an appropriate portion of this TAC will be allocated to sport anglers.

Under previous rules, the department increased the total allowable commercial harvest for all zones combined to reach the current level of 2.88 million pounds, with the additional poundage from the increase allocated equally between all three zones, and the department also codified the future zone-specific harvest limit plan for situations in which a TAC for Lake Michigan and Green Bay beyond 2.88 million pounds was recommended. However, because the overall total allowable commercial harvest for all zones is now based on the two whitefish population models rather than one model for the entirety of Lake Michigan, including Green Bay, the components of the previous total allowable commercial harvest that applied to all three zones overall are no longer relevant.

SECTIONS 3 and 4 provide the framework for determining the amount of whitefish that may be harvested in zones 1, 2 and 3 of Green Bay and Lake Michigan when the TACs are adjusted in current and future years. SECTION 4 sets the allowable harvest for the 2022 and 2023 license years. Section 3 establishes caps on the amount of whitefish poundage which may be allocated to Zone 1 from the Green Bay TAC (up to 48.4148% (569,788 pounds) of the Green Bay TAC in the 2022 and 2023 license years and up to 67.9758% of the Green Bay TAC or 800,000 pounds, whichever is less, after December 31, 2023). SECTION 3 also establishes caps on whitefish poundage in Zone 3 (43.9135% of the Lake Michigan TAC or 351,487 pounds, whichever is less) and the remainder of the TACs from the Green Bay and Lake Michigan models going to the Zone 2 allowable harvest. To allow commercial fishers more flexibility in managing their business operations, additional poundage beyond the levels from the population models may be allotted to Zone 2 in the future. However, overall harvest for Zone 2 would remain limited to the levels of the TACs by the method in SECTION 5; however, if additional Zone 2 poundage is granted it would allow individual commercial fishers to make greater use of their existing individual catch quotas until the Zone 2 harvest cap is reached. When the recommended allotment for Zone 2 exceeds the level resulting from the population models, the excess amount is allocated to the Green Bay and Lake Michigan waters of Zone 2 under the same proportions as how the poundage for Zone 2 is allocated under the Green Bay and Lake Michigan population models (as outlined in SECTION 2 above). So, 57.5% of the additional poundage would be allocated to the Green Bay waters of Zone 2 and added to the poundage for Green Bay waters of Zone 2 originating from the population model, and 42.5% of the additional poundage would be allocated to the Lake Michigan waters of Zone 2 and added to poundage for Lake Michigan waters of Zone 2 originating from the population model.

SECTION 4 also establishes the proposed annual TACs and annual zone-specific allowable harvest allocations of the TACs for the 2022 and 2023 license years, with an annual Zone 1 allocation of 569,788 pounds, a Zone 2 allocation of 1,056,021 pounds (Zone 2 waters of Green Bay and Zone 2 waters of Lake Michigan combined), and a Zone 3 allocation of 351,487 pounds. Including these allocations in the rule would allow them to take effect immediately upon implementation of the rule to cover the remainder of the 2022 license year and the 2023 license year, and future zone-specific allowable harvest allocation recommendations would be presented to the Natural Resources Board for approval.

SECTION 5 establishes a harvest cap system for whitefish harvest in Zone 2 waters of Green Bay and Lake Michigan to allow commercial fishers flexibility in utilizing their individual catch quotas while ensuring a sustainable fishery. Commercial fishing licensees with individual licensee catch quota allocations in Zone 2 may fish in both the Green Bay and Lake Michigan portions of Zone 2 until the Zone 2 portion of each TAC (Green Bay or Lake Michigan TAC minus the Zone 1 or Zone 3 portion of the TAC, respectively), is reached, whereby the department would close Zone 2 waters of Lake Michigan, Green Bay or both to additional harvest to prevent exceeding the TACs for Green Bay and Lake Michigan.

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SECTION 6 requires licensees fishing for whitefish in Lake Michigan and Green Bay, or members of their crew, to notify the department of the location of trap nets upon setting or moving the net and the name of the trap net. Some commercial fishers in Green Bay and Lake Superior already do this. The exact locations of trap nets are needed to help reduce user conflicts as well as for fisheries management purposes. Under this rule, commercial fishers in Green Bay and Lake Michigan would name each net and record each lifted net into the electronic fish harvest reporting system (EFHRS).

SECTION 7 establishes criteria for fishers fishing with trap nets for whitefish in southern Green Bay to ensure that the department can appropriately monitor trap net activities in this area and collect data on the catch composition of fish caught in trap nets. This section would limit the number of trap nets that could be set in grids 901, 902 and 1001, require licensees to notify the department prior to lifting a trap net to allow the department to monitor the lift and collect data, and would require the licensee to report the bycatch by number through EFHRS.

SECTION 8 replaces the paper harvest reporting requirements for Great Lakes commercial fishers with a requirement to report electronically. Currently, state-licensed commercial fishers may voluntarily elect to use electronic harvest reporting in lieu of paper reporting. Electronic harvest reporting will be mandatory for all Lake Michigan, Green Bay and Lake Superior state commercial fishers under this rule. Pursuant to NR 25.01 (3), this rule will also apply to tribal commercial fishers if the Lake Superior Fishing Agreement or an equivalent agreement is no longer in effect. Currently, tribal commercial fishers are required to report harvest to the appropriate tribe in accordance with provisions of the Agreement.

SECTION 9 requires electronic harvest reporting for all commercial fishing licensees operating in Green Bay, Lake Michigan and Lake Superior, regardless of species fished. Electronic harvest reporting is much quicker and more accurate than biweekly paper reporting, which allows the department to better track harvest of commercial fish and bycatch levels.

SECTION 10 describes the method by which commercial fishers will report their daily catch, and provides that commercial fishers would have the option to first record the required reporting information on a paper form before entering it into the electronic fish harvest reporting system by 11:59 p.m. that same day.

SECTION 11 removes the requirement for licensees to notify the department when they are unable to access EFHRS and will be recording their information on a paper report, requires licensees to record their information on the paper form after completing the last net lift of the day and before starting for shore when they are unable to access EFHRS, and specifies that licensees will be required to submit the information from any paper reports to EFHRS once they are again able to access EFHRS. Since electronic reports will be required rather than elective and the paper backup system will ensure proper record-keeping in a timely manner, the department will be able to follow up appropriately with licensees without the notification requirement when the licensee is unable to access EFHRS.

SECTION 12 repeals the note explaining how the department will provide the designated phone number and email address to licensees with which to notify the department when they are unable to access EFHRS. This note is no longer needed since licensees will no longer be required to notify the department when they are unable to access EFHRS.

SECTION 13 modifies the note language relating to paper report forms, which will no longer be submitted biweekly but may be temporarily utilized to record catch information when a licensee is unable to access EFHRS.

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SECTION 14 describes how licensees will notify the department through EFHRS rather than a phone call or email to the department when they are unable to weigh their landed catch by the end of the day. Once the department has been notified, the licensee would be able to weigh their catch the next business day.

SECTION 15 removes duplicative language that is already established elsewhere in s. NR 25.13 (2), Wis. Admin. Code and through this rule, and requires whitefish fishers in Lake Michigan and Green Bay to report the name of lifted trap nets into EFHRS each day that they are lifted to check for fish, but not moved to a new location.

SECTION 16 removes references to s. NR 25.13 (1), Wis. Admin. Code, which is no longer an option for commercial fishers under this rule.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

No federal statutes or regulations apply. States possess inherent authority to manage the fishery and wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

On June 11, 2020, the department held a preliminary public hearing on the Statement of Scope for FH-02-20. Sixteen members of the public attended the virtual hearing either by computer or phone. Of the comments received at the hearing and in writing during the comment period, two people registered in support of the scope statement, 14 in opposition and 4 did not state a position. Some of the comments in opposition to the scope statement related to specific rule proposals that had not yet been discussed. Comments included a desire for a sport fishing advisory team for this rule to advise the department on behalf of sport fishers (which the department subsequently organized), that the scope statement is needed to create a rule to address whitefish and the healthy populations in Green Bay, that the scope statement should address user conflict created by nets set in areas popular with sport fishers, that bycatch mortality and disposition should be addressed, that TAC reductions would impact businesses that rely on commercial fishing, that the rule would impact sport fishers and associated businesses, and that sport fishing and hunting fees should not be used to fund activities relating to commercial fishing management.

8. Comparison with Similar Rules in Adjacent States:

Along with Wisconsin, Michigan and Illinois are the only adjacent states with a Lake Michigan commercial fishery. In Michigan, lake whitefish is the focus of the commercial fishery. In addition to the large commercial gill and trap net fishery, a small trawling fishery that focuses on smelt and lake whitefish has operated in Michigan waters of Green Bay since the 1960s. Illinois has a very limited commercial fishery on Lake Michigan. Both states have established quotas, gear requirements, and other restrictions for commercial fishing in Lake Michigan. Wisconsin, Minnesota and Michigan all have a Lake Superior multi-species commercial fishery for such species as lake trout, lake whitefish and cisco, and regulate it through seasons, limitations on the number of licenses, and gear restrictions.

The use of electronic reporting for commercial fishing operations is a requirement in Ohio and Michigan. Ohio requires most commercial fishers to keep accurate daily records of catch and submit the reports monthly. Trap net licensees must submit these records electronically, including entering estimated weight of quota species into the electronic reporting system immediately after net lifts. Trap net fishers are also

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required to report when they set and remove nets ½ hour prior to returning to the dock, and must electronically report the estimated weight of non-quota species before entering a different grid. Michigan requires electronic reporting for commercial fishing, when it occurs, through the Fishing Activity and Catch Tracking System which allows users to report on smartphones.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

This rule will address quotas (allowable harvest) and other harvest management regulations for lake whitefish in Green Bay and Lake Michigan. The Lake Michigan/Green Bay lake whitefish (*Coregonus clupeaformis*) population is of high value to commercial fishers and is also popular among sport anglers, especially in Green Bay. Three principal whitefish “stocks” (localized groups or populations that spawn and live in certain areas) occupy the Wisconsin waters of Lake Michigan and Green Bay, including a spawning stock in the North/Moonlight Bays area off eastern Door County, a stock in Big Bay de Noc (State of Michigan waters) and a newly developed stock from the west shore tributaries of Green Bay. Three zones for commercial fishing encompass these spawning stocks. Zone 1 is located entirely in the waters of Green Bay, Zone 2 includes waters surrounding the Door County peninsula on both the Green Bay and Lake Michigan side, and Zone 3 includes Lake Michigan waters from the city of Algoma in Kewaunee County and southward.

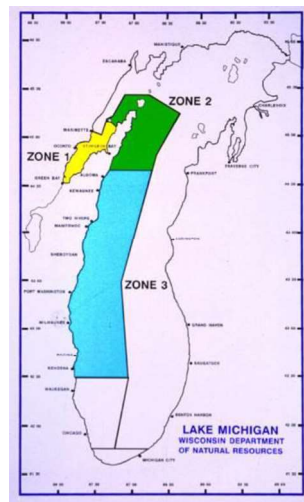


Figure 1: Lake Michigan commercial fishing zones.

The overall lake whitefish population (all stocks) in Lake Michigan has generally been in decline for several years with fewer fish recruiting to replenish the stocks. The current lake whitefish commercial total allowable commercial harvest in Wisconsin waters of Lake Michigan (including Green Bay) is 2.88 million pounds of dressed whitefish per year, which was approved in 2010 (an increase from the prior limit). However, the total pounds of whitefish harvested has been significantly lower than this TAC for many years (Figure 2).

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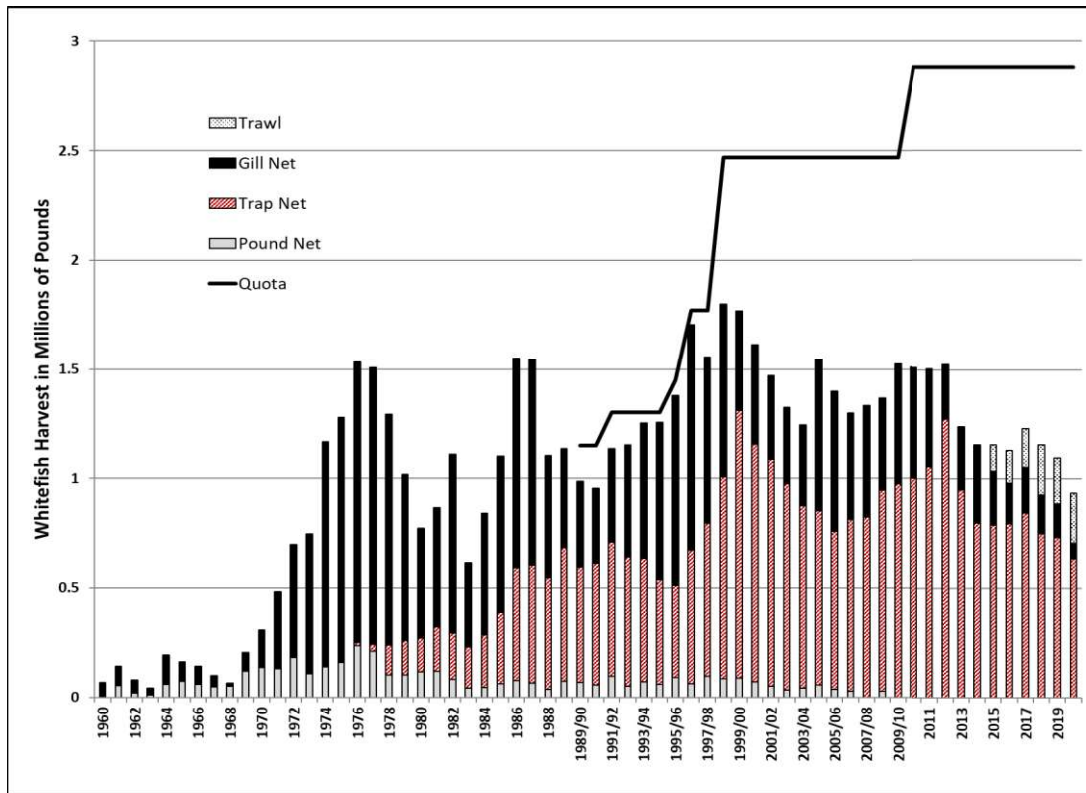


Figure 2: Lake Michigan commercial whitefish harvest by method compared to overall whitefish total allowable commercial harvest, 1960 - 2020

The trend of lower fish recruitment is especially true in the northern end of the lake. Preliminary data from an in-progress department-coordinated whitefish tagging study indicate that the whitefish from the Big Bay de Noc and North/Moonlight Bay stocks mix and contribute to the general Wisconsin commercial fishery in Lake Michigan. These data also indicate that some fish from these stocks, especially the Big Bay de Noc stock, move south into Wisconsin waters of Green Bay. In the lower half of Green Bay proper, however, whitefish stocks have been increasing in abundance and recolonizing historic spawning grounds over the past 10-15 years. Surveys show that some Wisconsin tributaries in Green Bay are sources of lake whitefish recruitment. Whitefish from these tributaries appear to generally remain in Green Bay as adults, with minimal movement into Lake Michigan.

Green Bay whitefish harvest

Due to the increase in whitefish abundance in lower Green Bay, this rule would provide a framework for allowing commercial fishers to harvest additional whitefish in Zone 1, consistent with the emergency rule. However, sport fishers have expressed concern about user conflicts in areas popular for recreational harvest of whitefish and other game fish, as well as commercial catch of non-target game fish species, which this rule addresses through new commercial fishing provisions in southern Green Bay.

The Zone 1 allowable harvest increase of 207,603 pounds of whitefish for a total allowable harvest of 569,788 pounds upon implementation of this rule represents a safe harvest level derived from the total allowable commercial harvest (TAC) generated from the department's whitefish population models for Green Bay, and also takes into account public input received during the public hearing and comment period. According to the Green Bay whitefish population model, the sustainable level of whitefish harvest for Green Bay is 2,355,778 pounds (which includes 2,000 pounds for department assessment

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work), which would be equally split between the sport fishing community and the commercial fishing industry. Therefore, the total commercial fishing portion (Green Bay TAC) would be 1,176,889 pounds in whitefish management zones WM1 and WM2, which overlay Zone 1 and part of Zone 2 in Green Bay. For the remainder of the 2022 license year **and the 2023 license year**, this rule would maintain an **annual** Zone 1 quota allocation of 569,788 pounds first established through emergency rule FH-10-21 (E) / EmR 2130. Aside from the 569,788 pounds allotted to Zone 1, the remaining 607,101 pounds of the TAC for Green Bay would be allowed to be harvested in the Green Bay portion of Zone 2. **Beginning after December 31, 2023**, after future runs of the Green Bay population model, the Zone 1 harvest would be limited either by **67.9758%** of the future Green Bay TAC or 800,000 pounds, whichever is less. The **67.9758%** was calculated by dividing the maximum Zone 1 allowable harvest of 800,000 pounds by the Green Bay TAC in this rule of 1,176,889 pounds.

To address bycatch issues, should they arise, existing rules require large mesh gill net users to move their nets if the level of bycatch reaches 10 percent of the total legal catch. Existing and proposed rules also limit the number of trap nets that a license holder may use at any one time.

Lake Michigan whitefish harvest

While whitefish stocks are increasing in southern Green Bay, the Lake Michigan whitefish population models indicate that stocks are stable or declining. Therefore, this rule adjusts the allowable harvest for Zones 2 and 3 in Lake Michigan to reflect the population model. When this rule is implemented in 2022, the Zone 3 allocation will remain the same as prior to the rule, at 351,487 pounds. After accounting for the Zone 3 allotment of 351,487 pounds, the remaining 448,920 pounds would be allotted to Lake Michigan waters of Zone 2. Therefore, the allowable harvest for Zone 2 (Lake Michigan and Green Bay waters combined) will decrease from the previous Zone 2 limit. However, the actual annual commercial whitefish harvest in Zone 2 has not approached the level of the new harvest limit over the past 8 years. Commercial fishers with individual quota allocations for Zone 2 will be able to fish in either the Green Bay waters of Zone 2, Lake Michigan waters of Zone 2 or both until the total allowable commercial harvest for Green Bay or Lake Michigan, less the Zone 1 and Zone 3 allowable harvest, is reached, to allow commercial fishers greater flexibility in where they fish for whitefish to maximize their individual quota allocations. Once the harvest limits for Zone 2 are reached, the Zone 2 waters of Green Bay, Lake Michigan, or both will be closed to further commercial fishing, but commercial fishers would be able to continue fishing in Zone 1 and Zone 3 as long as they still have available quota in those zones.

The allowable harvest in Zone 3 will not change in the short term with this rule. Therefore, Zone 3 commercial whitefish fishers would be able to continue fishing as they have under rules currently in effect. After future runs of the Lake Michigan population model, Zone 3 harvest would be limited either by 43.9135% of the future Lake Michigan TAC or 351,487 pounds, whichever is less. The 43.9135% was calculated by dividing the current Zone 3 allowable harvest of 351,487 pounds by the Lake Michigan TAC in this rule of 800,407 pounds.

Provisions for commercial fishing in southern Green Bay

Historically, commercial fishing activity for lake whitefish using trap nets in southern Green Bay has been low to zero since 1990. However, due to concerns about the potential impacts of increased trap net use on both sublegal whitefish that spawn in Green Bay as well as game fish species susceptible to becoming bycatch, which may result from the increased Zone 1 quota, a framework to allow for meaningful data collection and monitoring from trap net users is needed. This rule limits the number of trap nets that may be used in southern Green Bay at any one time, requires fishers to notify the department prior to lifting trap nets in this area, and requires reporting of bycatch. These provisions were

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devised as alternatives to establishment of a new restricted area due to concerns from the public that any commercial fisher could be issued a permit to fish at will in the proposed restricted area and, conversely, that the criteria for licensees to obtain a permit were too uncertain, especially since data on the impacts of trap nets on fish in this area are sparse. These proposed provisions aim to measure the impacts on species susceptible to becoming bycatch, limit user conflicts, and allow the department to monitor and collect data on trap net fishing activities.

Electronic harvest reporting

The use of an electronic harvest reporting system was first identified as a priority in the 2000 Commercial Fisheries Task Force report, but to date, the goal to receive all commercial harvest reports electronically has not been fulfilled. The report stated: “DNR shall establish an electronic Fish Harvest Reporting System (FHRS) in order to record and report all elements of the commercial catch. This system will replace the current biweekly reporting system, reducing paperwork and improving the timeliness and accuracy of reports. It will also form the basis for a database about fish populations that will assist with efficient management of the Great Lakes resource.”

The first electronic fish harvest reporting system was codified in 2008, with a mandate that all commercial fishers report electronically by July 2010. However, this rule was not ever fully implemented, so many commercial fishers continued to report on the biweekly paper forms, and rule-making in 2016 once again formally restored the paper reporting option with electronic reporting as an elective reporting method. Some commercial fishers have expressed discomfort with using smartphones or computers, or have noted inconsistent cell phone coverage to be able to enter reports when on the boat. However, over the past decade, advancements in cell phones, cell phone coverage, and integration of phones and mobile-friendly websites have improved exponentially, making electronic reporting even faster and easier. To safeguard against connectivity issues or system outages, the department has established procedures in s. NR 25.13 (2) (c), Wis. Admin. Code for situations in which the electronic device malfunctions or the licensee cannot connect to the electronic reporting system, including completing a paper copy of the report for that day before submitting it electronically upon reconnecting to the system.

When this rule is implemented, all Great Lakes commercial fishers would be required to report information on their harvest and fishing activities through the current Electronic Fish Harvest Reporting System (EFHRS), which is a reporting option that multiple commercial fishers already utilize and which is the required reporting method in emergency rule FH-28-20 (E) / EmR 2114 / FH-10-21 (E) / EmR 2123. EFHRS is the only reporting method that can both provide timely data on commercial fish harvest and track bycatch levels on a daily basis, so its use is critical for both monitoring commercial fisheries and catch of bycatch for certain fisheries, such as whitefish. As with the emergency rule, to provide some flexibility for reporting if certain commercial fishers do not have easy access to a smartphone or computer while on the water, this rule would provide two options, one of which allows the commercial fisher to first record the information on a paper form after the last net lift of the day. To further assist commercial fishers in utilizing EFHRS, the department has developed an instruction manual on using the system and will provide training sessions as well.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The rule will impact the harvest of lake whitefish by commercial fishers, and exact economic impacts are likely to vary among commercial fishers. Because of the shift in distribution and overall decline in lake whitefish populations, some members of the Lake Michigan commercial fishing community may benefit

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more from the increase of allowable whitefish harvest in Green Bay than others. Additionally, more commercial harvest of whitefish may benefit associated businesses that sell whitefish to consumers (restaurants, taverns, fish boils, fish markets, smoke houses, grocers, fish suppliers, etc.).

The rule is not anticipated to result in any economic impacts from harvest in Zones 2 and 3 because the actual harvest in Zone 2 has not reached the proposed level in several years, and the Zone 3 allowable harvest will not change initially through this rule. However, some commercial fishers may experience a minimal economic impact relating to mandatory use of EFHRS for reporting the daily catch.

While this rule will not impose any additional regulations on sport fishers or related fishing businesses, nor will it directly contribute to user conflicts with sport fishers, sport fishers, fishing guides and associated businesses may be impacted indirectly if the increased Zone 1 allowable harvest limit in this rule leads to additional commercial fishing activities in Green Bay. Sport fishing attracts many anglers to the area each year and contributes \$264.3 million in direct and indirect effects to the Green Bay-area economy annually through fishing expenditures (bait shops, outfitters, guide services, etc.) and related spending (travel, hotels, restaurants, taverns, etc.)¹, and the ice fishery and walleye fishery are increasing in popularity among sport fishers. Of note, sport fishers are concerned about the impacts of additional commercial fishing on bycatch of walleye, northern pike, smallmouth bass, yellow perch and other game fish species, as well as the effects on whitefish. This rule also creates provisions for collecting data on and monitoring trap net activities in southern Green Bay to address concerns of bycatch impacts, mortality of sublegal whitefish, and user conflicts.

1. Winden, Matthew, John Stoll, Kara Bennett and Russ Kashian. "The Economic and Fiscal Impact of Green Bay Recreational Fishing." University of Wisconsin-Whitewater, 2018.

11. Effect on Small Business (final regulatory flexibility analysis):

This rule is anticipated to positively impact commercial fishing businesses that fish for whitefish in Green Bay, as well as local businesses (restaurants, bars, taverns, fish markets, food processors, smoke houses, etc.) that purchase whitefish from commercial fishing businesses to sell to consumers. The exact amount of economic benefit that each commercial fisher may gain due to the increased allowable harvest in Zone 1 waters of Green Bay is unknown, as is the economic impact to associated businesses as a result of increased whitefish harvest. Currently, nine commercial fishing licensees and their employees actively fish for whitefish in Green Bay and have access rights to Zone 1, and additional commercial fishers may be able to purchase quota in Green Bay to fish there, thereby benefitting from this increase. Assuming a dockside value of \$2 per pound for whitefish based on average dockside values over the past five years, a whitefish allowable harvest increase in Zone 1 of 207,603 pounds could convey up to a \$415,206 dockside value benefit to the commercial fishing industry, which would translate into additional income for commercial fishers and their employees, as well as benefits to associated businesses (restaurants, fish markets, taverns, grocers, fish boils, etc.), non-profit organizations that utilize whitefish, and the local economy once the fish are sold at wholesale and retail prices. Four fish suppliers and restaurant managers commented that they have observed an increasing demand for fresh whitefish to supply markets both locally in Wisconsin, as well as in other states. The Door County Economic Development Corporation indicated that the commercial fishing industry supports the local economy and provides jobs with above-average wages, which contribute to spending in the local economy. However, the exact amount of benefit to businesses and the local economy is unknown at this time.

Commercial fishers that fish in Zone 2, which lies across northern Green Bay and Lake Michigan, may experience a negative economic impact from this rule only if they are unable to harvest as much whitefish as in the past due to limits on Green Bay and Lake Michigan whitefish harvest in Zone 2. Over the past

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10 years, total harvest in Zone 2 has not approached the current Zone 2 allowable harvest limit, and over the past 8 years and with the 5-year average commercial harvest, the Zone 2 actual harvest has remained below the proposed Zone 2 allowable harvest, so this rule and its adjustments to the Zone 2 quota may not impact the amount of whitefish commercial fishers are able to harvest and therefore may not have an economic impact. Additionally, this rule would continue to allow commercial fishers with Zone 2 individual licensee catch quota allocations to fish anywhere in Zone 2 (including the Green Bay portion, with a higher concentration of whitefish), until the harvest limits for Green Bay and Lake Michigan waters of Zone 2 are reached. In Zone 3, the allowable harvest will not change, so no negative impact from this rule is expected for Zone 3 commercial whitefish fishers due to harvest limits. Therefore, this rule is expected to have a minimal economic impact on Zone 2 fishers and Zone 3 fishers.

This rule would require harvest reports to be entered electronically. EFHRS will require the commercial fisher or crew member to have access to a smartphone or computer to enter the electronic reports, and those that do not have a phone or computer would have to purchase such a device. According to the Pew Research Center (1), an estimated 85 percent of American adults owns a smartphone. With 46 licensed commercial fishers operating in Green Bay and Lake Michigan and 8 in Lake Superior, therefore, an estimated 7 commercial fishers in Lake Michigan and 1 in Lake Superior may not have a smartphone for entering reports electronically. However, some of these commercial fishers may have a computer for entering the reports, and crew members of licensees may also have an electronic device to enter the reports for the licensee's commercial fishing operations. With this information, and estimating that a low-cost smartphone and basic data plan can be obtained for about \$120 per year, the impact to each commercial fishing licensee and the industry overall is likely to be very minimal, about \$960 per year in total at maximum.

The rule will not directly impact sport fishing businesses, but sport fishing businesses and anglers may have a perception of increased user conflict due to additional commercial fishing effort in Green Bay, namely Zone 1, if commercial fishing effort in Green Bay does in fact increase. Since the Green Bay fishery is a shared fishery between sport and commercial fishers, close monitoring of the impacts of the increased Zone 1 allowable harvest through this rule will be important for ensuring that the welfare of sport fishing businesses is also protected. User conflicts will likely remain the same or decrease slightly in Lake Michigan.

12. Agency Contact Person: Bradley Eggold, Great Lakes District Fisheries Supervisor, 414-303-0138, Bradley.Eggold@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, or email to:

Meredith Penthorn

Department of Natural Resources

P.O. Box 7921

Madison, WI 53707

608-316-0080; Meredith.Penthorn@wisconsin.gov

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

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The deadline for submission of comments was Jan. 4, 2022.

RULE TEXT

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

NR 25.06 (2) (e) 1. The total allowable annual commercial harvest of whitefish in Wisconsin waters of Lake Michigan and the total allowable annual commercial harvest of whitefish in Wisconsin waters of Green Bay shall be determined by the natural resources board based on recommendations from the department and results from Green Bay and Lake Michigan whitefish population models described under subd. 2. a.

SECTION 2. NR 25.06 (2) (e) 2. a. is repealed and recreated to read:

NR 25.06 (2) (e) 2. a. The department shall utilize the Green Bay whitefish population model for calculating the department recommendation for the total allowable commercial harvest of lake whitefish in Green Bay and shall utilize the Lake Michigan whitefish population model for calculating the department recommendation for the total allowable commercial harvest of lake whitefish in Lake Michigan. The recommendation for the total allowable commercial harvest for each area shall be calculated every three years using output from the population models. The population models shall use the following quantitative data for each whitefish management unit: weight at age, length at age, maturity schedule, trap net harvest by weight, trap net fishing effort by number of lifts, age composition of whitefish caught in trap nets, gill net harvest by weight, gill net fishing effort by number of lifts, age composition of whitefish caught in gill nets, recreational harvest by numbers, recreational fishing effort by angler hours, age composition of recreationally caught whitefish, and, in Green Bay, young-of-the-year index survey. An appropriate exploitation rate based on recent harvest trends shall be applied to the Green Bay and Lake Michigan model estimates, respectively, and the department may also account for whitefish mortality to reach the total allowable commercial harvest recommendation for Green Bay and the total allowable commercial harvest recommendation for Lake Michigan.

SECTION 3. NR 25.06 (2) (e) 2. b. is repealed and recreated to read:

NR 25.06 (2) (e) 2. b. For the 2022 and 2023 license years, the allowable harvest for zone 1 shall not exceed 48.4148% of the total allowable commercial harvest of whitefish in Green Bay determined under subd. 2. a. or 569,788 pounds. For any given license year after December 31, 2023, the allowable harvest for zone 1 shall not exceed 67.9758% of the total allowable commercial harvest of whitefish in

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Green Bay determined under subd. 2. a. or 800,000 pounds, whichever is less. **For any given license year,** the allowable harvest for zone 3 shall not exceed 43.9135% of the total allowable commercial harvest of whitefish in Lake Michigan determined under subd. 2. a. or 351,487 pounds, whichever is less, and the allowable harvest for zone 2 shall consist of the total allowable commercial harvest for Green Bay less the allowable harvest for zone 1 plus the total allowable commercial harvest for Lake Michigan less the allowable harvest for zone 3, and shall be implemented in accordance with subds. 2. c. and 5.

SECTION 4. NR 25.06 (2) (e) 2. c. and d. are created to read:

NR 25.06 (2) (e) 2. c. If the allocation for zone 2 exceeds the allowable harvest for zone 2 produced by the Green Bay and Lake Michigan population models as described under subd. 2. b., the adjusted amount of whitefish that may be allocated to the Green Bay waters of zone 2 shall be calculated by the following formula: $[X + ((\text{zone 2 recommended allocation} - (X+Y)) * (X/(X+Y)))]$, and the adjusted amount of whitefish that may be allocated to the Lake Michigan waters of zone 2 shall be calculated by the following formula: $[Y + ((\text{zone 2 recommended allocation} - (X+Y)) * (Y/(X+Y)))]$, where X is the difference between the Green Bay total allowable commercial harvest calculated under subd. 2. a. and the zone 1 allowable harvest under subd. 2. b., and Y is the difference between the Lake Michigan total allowable commercial harvest calculated under subd. 2. a. and the zone 3 allowable harvest under subd. 2. b. For accuracy, decimals shall be rounded to nearest sixth decimal place.

d. For the 2022 **and 2023** license years, the Green Bay total **annual** allowable commercial harvest shall be 1,176,889 pounds, the Lake Michigan total **annual** allowable commercial harvest shall be 800,407 pounds, the zone 1 **annual** allowable harvest shall be 569,788 pounds, the zone 2 **annual** allowable harvest shall be 1,056,021 pounds, and the zone 3 **annual** allowable harvest shall be 351,487 pounds.

SECTION 5. NR 25.07 (2) (e) 5. is created to read:

NR 25.07 (2) (e) 5. Licensees with an individual licensee catch quota issued under this paragraph may fish for whitefish in either the Green Bay waters of zone 2, the Lake Michigan waters of zone 2, or both. Licensees shall cease fishing for whitefish in either the Green Bay waters of zone 2, the Lake Michigan waters of zone 2, or both as follows:

a. When the whitefish total allowable commercial harvest in Green Bay as established under s. NR 25.06 (2) (e) 2. a. less the zone 1 allowable harvest set under s. NR 25.06 (2) (e) 2. b. has been reported caught, the department shall notify licensees to cease fishing for whitefish in Green Bay waters

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of zone 2, except that all whitefish nets in the water shall be lifted or rendered inoperable under s. NR 25.09 (2) (a) 10. or (b) 2. and the legal fish may be harvested.

b. When the whitefish total allowable commercial harvest in Lake Michigan as established under s. NR 25.06 (2) (e) 2. a. less the zone 3 allowable harvest set under s. NR 25.06 (2) (e) 2. b. has been reported caught, the department shall notify licensees to cease fishing for whitefish in Lake Michigan waters of zone 2, except that all whitefish nets in the water shall be lifted or rendered inoperable under s. NR 25.09 (2) (a) 10. or (b) 2. and the legal fish may be harvested.

SECTION 6. NR 25.09 (3) (f) is created to read:

NR 25.09 (3) (f) After setting, moving, replacing, or recasting a trap net for whitefish in Green Bay or Lake Michigan and before starting for the dock or shore, the licensee, or a member of the licensee's crew, shall record all of the following in accordance with s. NR 25.13 (2) (at):

1. The latitude and longitude at which the pot and king line buoy of the net are set.
2. A unique name for that trap net.

SECTION 7. NR 25.102 is created to read:

NR 25.102 Commercial fishing in southern Green Bay. For commercial fishers fishing for whitefish in that portion of southern Green Bay south of the line at 44° 50' N latitude, commonly known as grids 901, 902 and 1001, all of the following requirements apply:

- (1) Each commercial fisher may set, use, or operate no more than one trap net per license at a time.
- (2) The commercial fisher shall notify the department through the phone number, email address or other method specified by the department no later than 4 p.m. the day prior to lifting a trap net. The notification shall include the license number and name of the licensee, name and location of net to be lifted, departure location, date of departure, and time of departure.
- (3) The commercial fisher or a member of the commercial fisher's crew shall report the number of incidentally caught fish of each species through the electronic fish reporting system, in accordance with s. NR 25.13.

SECTION 8. NR 25.13 (1) is repealed.

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SECTION 9. NR 25.13 (2) (intro.) and (a) are renumbered NR 25.13 (2) (ad), (ah), and (ap) and amended to read:

NR 25.13 (2) ELECTRONIC REPORTING. (ad) A person required to be licensed under s. 29.519 (1m), Stats., to conduct commercial fishing operations on Lake Michigan, Green Bay, or Lake Superior, ~~or fishing as a treaty fisher, in lieu of the requirements under sub. (1), may elect to~~ shall submit a daily fishing report to the department by means of the electronic fish reporting system that includes ~~all records of pounds of fish harvest, harvest effort, and all other information called for on the report form by means of the electronic fish reporting system.~~ all of the following:

1. The licensee's name, address, license number or fleet reporting number.
2. The date.
3. The name and number of the boat fished.
4. The licensee's fishing location and depth.
5. The licensee's fishing effort.
6. The gear used.
7. The estimated pounds of each fish species harvested for each fishing trip, excluding estimated pounds of lake trout taken in Lake Superior.
8. The number of lake trout taken in Lake Superior.
9. The weighed pounds of harvest.
10. The weighed catch by species for commercial fish.
11. The number of incidentally caught fish of the species and waters that the department annually specifies.
12. All other information called for on the report form.

(ah) ~~At~~ A licensee shall report all fishing activities for the day under par. (ad); ~~including the estimated pounds of each fish species caught required pursuant to par. (f) and the weighed catch by species for commercial fish, shall be reported~~ before 11:59 p.m. of each day during which the licensee

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engages in on-water fishing activity. Reports shall be submitted in the English language on electronic forms provided for this purpose by the department and include such information as may be deemed necessary by the department for management of the fishery and to prevent depletion of the fish supply. ~~The~~ Except as provided under par. (c), the daily report shall be submitted using an electronic communication device operated by the licensee or a licensee's crew member. The daily fishing report, which may include a record of the report on an electronic communication device, shall accompany the fish to the dock or shore and be made available to a department representative upon request.

(ap) ~~At the request of the licensee, the~~ The department shall issue unique login credentials to the licensee and, upon request of the licensee, to any licensee crew member in order to access the electronic fish reporting system and submit reports. ~~Unique login credentials shall be assigned to each person for whom login credentials are requested.~~ A person shall only enter or submit a record into the electronic fish reporting system using their own department issued login credentials.

SECTION 10. NR 25.13 (2) (at) is created to read:

NR 25.13 (2) (at) The licensee or member of the licensee's crew may submit the report in any of the following ways:

1. By direct input through an electronic communication device to the electronic fish reporting system after completing the last net lift of the day but before starting for the dock or shore, and no later than 11:59 p.m. that same day.

2. By recording all required information on a daily paper report form supplied by the department after completing the last net lift of the day but before starting for the dock or shore, then submitting this information through an electronic communication device to the electronic fish reporting system no later than 11:59 p.m. that same day.

SECTION 11. NR 25.13 (2) (c) is amended to read:

NR 25.13 (2) (c) If the electronic communication device malfunctions or is unable to connect to the electronic fish reporting system, the licensee or a licensee's crew member shall ~~immediately notify the department by calling a designated phone number or by submitting an email message to a designated email address.~~ The licensee or licensee's crew member shall complete a paper copy of the biweekly report for that day after completing the last net lift of the day but before starting for the dock or shore, and before 11:59 p.m. the same day. The paper copy of the fishing report shall accompany the fish to dock or shore. After each trip's information has been recorded, the report may not be transported for the rest of

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the day in such a way that it can be altered except to record information pertaining to additional fishing trips taken that day. Upon reestablishing the functionality of the electronic communication device or reestablishing connection with the electronic fish reporting system, the licensee or licensee's crew member shall enter the daily fishing activity information and information from any paper reports completed under this paragraph and shall submit ~~them~~ electronically to the department. The paper copy of the ~~biweekly~~-report shall be retained as part of the licensee's records required under s. 29.519 (5) (dm), Stats., and made available to a department representative upon request.

SECTION 12. NR 25.13 (2) (c) (second note) is repealed.

SECTION 13. NR 25.13 (2) (c) (third note) is amended to read:

NR 25.13 (2) (c) Note: ~~Biweekly fishing~~ Paper report forms are provided by the department to each licensee at the beginning of the license year. Additional forms may be obtained by writing: DNR, 110 South Neenah Avenue, Sturgeon Bay, WI 54235.

SECTION 14. NR 25.13 (2) (e) is amended to read:

NR 25.13 (2) (e) Except for reporting trawl fish harvest ~~pursuant to~~ under par. (g), when the landed catch cannot be weighed by the end of the day, the licensee or crew member shall ~~call a department designated telephone number or submit an email message to a department designated email address before 11:59 p.m. that day and notify the department of the licensee's name, commercial fishing license number or fleet reporting number, species of fish, and estimated pounds of each species and~~ note in the comment box of the report form submitted under this section that the landed catch cannot be weighed and reported until the next business day. The licensee or crew member shall then weigh the landed catch the next business day and report the weight by fish species and other information required by the department on the form of the electronic fish reporting system before 11:59 pm of that day.

SECTION 15. NR 25.13 (2) (f) is repealed and recreated to read:

NR 25.13 (2) (f) In addition to the other requirements in this subsection, each person required to be licensed under s. 29.519 (1m), Stats., to conduct commercial whitefish fishing operations on Lake Michigan or Green Bay, or a member of the licensee's crew, shall report the name of the lifted trap net pursuant to s. NR 25.09 (3) (f) to the department after lifting the trap net and before starting for the dock or shore through the electronic fish reporting system in accordance with par. (at).

SECTION 16. NR 25.13 (10) and (11) (intro.) are amended to read:

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(10) High value species. In addition to the reporting requirements contained ~~in subs. (1) and~~ under sub. (2), when fishing for a high value species, each commercial fisher or designated crew member shall file a float plan each day prior to the start of the day’s fishing activity by calling a department designated telephone number.

(11) Enhanced reporting. In addition to the reporting requirements contained ~~in subs. (1) and~~ under sub. (2), any person convicted of 2 or more violations of s. 29.503 or 29.519, Stats., or this chapter is subject to the enhanced reporting requirements of this section in addition to any court-ordered penalties, at the following levels:

SECTION 17. EFFECTIVE DATE. This rule takes 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 18. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary