

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

SUBJECT:

Request that the Board adopt Emergency Board Order FH-10-21 (E), proposed rules affecting chapter NR 25 related to Lake Michigan whitefish management.

FOR: October 2021 Board meeting

PRESENTER'S NAME AND TITLE: Bradley Eggold, Great Lakes District fisheries supervisor

SUMMARY:

This emergency rule will continue the Zone 1 whitefish quota allocation for commercial fishers that was established in emergency rule FH-28-20 (E) (adopted in April 2021) and is currently under review for the permanent rule. The proposed emergency rule maintains the increase in the Green Bay (Zone 1) commercial whitefish quota of 207,603 pounds for the 2022 license year. In relation to the quota increase, this rule would also cap large mesh gill net effort for whitefish in Green Bay at 2,875,304 feet in total if bycatch thresholds are reached by June 30, 2022 based on at least 12 onboard monitored gill net lifts, to limit the potential for increased gill net catch and mortality of species susceptible to becoming bycatch such as walleye, northern pike and other sportfish.

This rule will also continue to require all commercial whitefish fishers operating in Green Bay to submit their harvest reports electronically, including information on bycatch. Electronic harvest reporting is especially important for monitoring levels of bycatch in a timely manner, which is not currently possible with the biweekly paper reporting system.




The provisions in this rule, as with the first emergency rule, will have a minimal (level 1) economic impact to the commercial fishing industry and associated businesses. The provisions contained in this rule will not have a direct economic impact on the sport fishing community, but will establish protections to ensure the continued welfare of the sport fishery alongside increased Zone 1 commercial whitefish harvest.

The permanent rule will set longer-term 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.

RECOMMENDATION: That the Board adopt Emergency Board Order FH-10-21 (E).

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

- | | |
|---|---|
| <input checked="" type="checkbox"/> Background Memo | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input checked="" type="checkbox"/> Board order/rule |
| <input type="checkbox"/> Response summary | <input type="checkbox"/> (insert document name) |

Approved by	Signature	Date
Justine Hasz, Fisheries Management bureau director		9/20/2021 1:56 PM CDT
Keith Warnke, FWP division administrator		9/21/2021 10:56 AM CDT
Preston D. Cole, Secretary		9/22/2021 12:53 PM CDT

for

cc: Board Liaison - AD/8

Program attorney – LS/8

by Todd Ambs

Department rule officer – LS/8

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CORRESPONDENCE/MEMORANDUM

DATE: September 17, 2021

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order FH-10-21 (E), relating to Lake Michigan whitefish management

1. Subject of Proposed Rule:

The proposed rule addresses the lake whitefish quotas, gear use and reporting requirements in Green Bay, similar to FH-28-20 (E) which was adopted in April 2021, to allow commercial fishers to continue utilizing the increased Green Bay whitefish quota until the permanent rule can be implemented in 2022.

2. Background:

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) exist in 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, with the three commercial fishing zones encompassing these stocks (Figure 1).

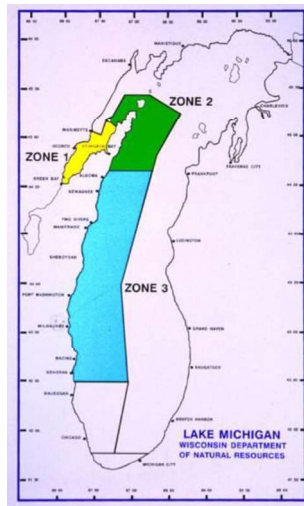


Figure 1: Lake Michigan commercial fishing zones.

The overall lake whitefish metapopulation (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 catch in Wisconsin waters of Lake Michigan 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 quota for many years.

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. Due to the increase in whitefish abundance in lower Green Bay, this rule would allow commercial fishers to harvest additional whitefish in Zone 1.

3. Why is the rule being proposed?

A harvestable surplus of lake whitefish currently occupies Green Bay, and commercial fishers have been making use of a small portion of the surplus through a Zone 1 quota increase in emergency rule FH-28-20 (E), while a permanent rule with a longer-term quota is under development. Additional whitefish quota in Zone 1 may help commercial fishers recover from economic hardships due to the COVID-19 public health emergency. In addition, the data gained through additional commercial whitefish fishing in Green Bay is providing important insights into the commercial fishing impacts on both whitefish and bycatch of non-target gamefish, which will be a key component of permanent rule development.

4. Summary of the rule.

This emergency rule provides for harvest of lake whitefish in Zone 1 (Green Bay) and implements associated regulations to ensure that this additional harvest is sustainable and does not threaten populations of bycatch such as walleye and other game fish species. Additional Zone 1 whitefish quota is expected to assist commercial fishers who have experienced economic hardship due to the COVID-19 public health emergency. The Green Bay lake whitefish population supports a commercial fishery as well as a sport fishery, which has been increasing in popularity in recent years. To protect the welfare of both commercial fishers and sport fishers, components of this rule aim to provide additional commercial harvest opportunities while maintaining the quality of the whitefish fishery and protecting populations of other Green Bay game fish. This includes requiring the use of the Electronic Fish Harvest Reporting System for Green Bay commercial whitefish fishers, which is critical for monitoring whitefish harvest and bycatch levels on a daily basis in light of increased commercial fishing effort in Green Bay.

Zone 1 Quota

This rule would maintain the increased harvest quota of 207,603 pounds for commercial fishers in Zone 1, which was established in FH-28-20 (E). This increase in commercial quota for Zone 1 represents a conservative portion of the commercial fishing industry's share of the proposed quota in Green Bay, which is split into equal shares between commercial and sport fishing. The Zone 1 quota for the 2022 license year is anticipated to help commercial fishers recover from the COVID-19 public health emergency as markets for whitefish, such as fish markets and the hospitality industry, continue to recover. The Zone 1 quota will also be reviewed and revised as part of the permanent rule development process.

Bycatch Threshold for Large Mesh Gill Net Effort Cap

This rule would also continue the large mesh gill net effort cap of 2,875,304 feet in the event that the large mesh gill net fishery reaches a bycatch level of an average of 10 percent bycatch or 2 lake sturgeon of the total legal catch by June 30, 2022, based on 12 onboard monitored gill net lifts. Existing rules require fishers to move gill nets if they reach a 10 percent bycatch level and want to set gill nets again the same day, which addresses short-term bycatch issues. This rule aims to address chronic bycatch issues that may arise if gill net effort increases as commercial fishers continue to

utilize the higher Zone 1 quota. Large mesh gill nets are a more efficient gear type than trap nets and under the Zone 1 quota increase, commercial fishers could set more footage in Green Bay in order to maximize whitefish harvest. Because large mesh gill nets are indiscriminate and can result in a higher mortality for fish caught in them, a cap based on bycatch levels will help minimize mortality to non-target bycatch fish that are of importance to the sport fishing community while still providing an opportunity for commercial fishers to harvest whitefish by this method, and will provide additional gill net data to the department. Commercial fishers have expressed opposition to any gill net restrictions, citing the decrease in gill net usage over time and stating that the department does not have adequate scientific data indicating that gill nets are detrimental in Green Bay. However, because gill nets can cause higher levels of mortality in general than trap nets, protective measures are warranted while the department and partners continue to collect and analyze gill net data in Green Bay. In addition, the cap will only go into effect if data collected via onboard monitoring activities during this emergency rule period indicate a chronic problem. The cap on large mesh gill net effort does not represent an outright restriction on current levels of gill net usage, and will allow the department to continue to collect data on the impacts of gill netting on species susceptible to becoming bycatch in whitefish commercial fishing operations.

This gill net cap provision was included in the first emergency rule, and commercial fishers did not trigger the bycatch thresholds prior to the June 30, 2021 deadline, indicating that bycatch levels in gill nets were not becoming a chronic problem under the term of the first emergency rule. If conditions are similar in 2022, the gill net effort cap may not come into play; however, additional data is needed to determine whether a gill net effort cap is needed in the long-term as part of the permanent rule.

Electronic Harvest Reporting

Finally, this rule would continue to require electronic harvest reporting for commercial fishers fishing for whitefish in Green Bay. As of the implementation of the first emergency rule, reporting through the Electronic Fish Harvest Reporting System is required for both whitefish and bycatch caught in whitefish nets in Green Bay. Daily reporting is possible only through the electronic reporting system, and is necessary to track whitefish harvest and catch of bycatch in a timely manner. Reporting options include entering harvest information into the electronic fish reporting system after the last net lift of the day and no later than 11:59 p.m. that day, or recording the information on paper reports after the last net lift of the day and then entering it electronically no later than 11:59 p.m. the day of harvest. These options are similar to rules established in s. NR 25.13 (2) (c) in the event that the fisher's electronic device malfunctions or the fisher is unable to connect to the electronic reporting system. The options in this rule will provide additional flexibility to commercial fishers that may not have a cell phone or internet access on the water while ensuring that the department has timely access to data on whitefish and bycatch. The department will also provide training materials and instructional sessions to commercial fishers that are not yet enrolled in the electronic reporting system to help them learn how to use the system.

5. How does this proposal affect existing policy?

The department manages shared Great Lakes fisheries for the 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 authorized a preliminary public hearing for the scope statement for this rule at the January 2021 meeting, approved the statement of scope for this rule in February 2021, adopted emergency rule FH-28-20 (E) at the April 2021 meeting, and approved the statement of scope for the permanent rule (FH-02-20) on this topic and other Great Lakes issues in August 2020.

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

Commercial fishers in Green Bay will primarily be impacted by this rule, though the impacts will not differ significantly from those resulting from the initial emergency rule on this topic. Commercial fishers in Green Bay are likely to benefit economically from the increased harvest quota because they will have access to more whitefish to harvest for the market. However, commercial fishers without access to an electronic device to enter their harvest reports may face a minimal economic impact to purchase one; or, they can record their harvest information on a paper form and enter it into their home computer prior to the daily reporting deadline.

Sport fishers will be indirectly affected by this rule because it will allow additional commercial fishing in Green Bay, which is an area popular among sport fishers for whitefish and an array of other game fish species. 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. Additional provisions in this rule would help prevent and mitigate bycatch catch and mortality, while existing restricted areas would help minimize user conflicts.

Similarly, businesses associated with commercial and sport fishing may be indirectly impacted by this rule, with commercial fishing-related businesses potentially receiving more whitefish from increases in harvest, and sport fishing-related businesses potentially experiencing user conflicts due to additional commercial netting effort.

8. Soliciting public input on economic impact synopsis

The department will solicit public input on the economic impact of these regulations during the development of the permanent rule in 2021, including contacting stakeholder groups with an interest in these rule topics.

9. Small Business Analysis

As with the first emergency rule, this rule is likely to provide an economic benefit to small commercial fishing businesses that target whitefish in Green Bay due to the quota 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 allocation is unknown. Currently, nine commercial fishing licensees 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 quota 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.

Any gill net cap implemented in response to bycatch levels is only expected to have a minimal impact on commercial fishing businesses, if any, since commercial fishers may also use trap nets to take whitefish in Green Bay.

However, since commercial fishers would be required to utilize the electronic fish harvest reporting system to report whitefish and bycatch catch, this rule may have a very minimal impact on some

fishers. While some commercial fishers already possess a phone or computer to enter the harvest reports, others may not own such technology and would either have to purchase it or ask someone else to assist in entering the information. Two licensees that fish for whitefish in Green Bay may or may not have an electronic device such as a computer or smartphone to report electronically, and four licensees transfer whitefish quota to other fishers, so the recipients of the quota may or may not have an electronic device. Assuming \$120 per year as the cost for a basic, inexpensive smartphone with a limited data plan, the estimated total cost to commercial fishers without electronic devices is \$720 or less.

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. Since the Green Bay fishery is a shared fishery between sport and commercial fishers, close monitoring of the impacts of the increased Zone 1 quota through the electronic reporting requirements and onboard monitoring in this rule will be important for ensuring that the welfare of sport fishing businesses is also protected.

The proposed rule would not contain any design or operational standards for commercial fishers.

Drafter: Meredith Penthorn and Brad Eggold

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 checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 08/19/2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 25, Commercial Fishing - Outlying Waters	
4. Subject FH-10-21 (E), Lake Michigan whitefish management	
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 type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" 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). \$Approximately \$720 or less.	
<p>Two licensees that fish for whitefish in Green Bay and do not currently report electronically may or may not have an electronic device such as a computer or smartphone to report electronically, and four licensees transfer whitefish quota to other fishers, so the recipients of the quota may or may not have an electronic device. Assuming \$120 per year in the cost for an inexpensive smartphone with data, the estimated total cost to commercial fishers without electronic devices is \$720 or less.</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 Green Bay is home to a harvestable surplus of lake whitefish due to the increase in the Green Bay whitefish population over the past several years. Commercial fishers would like to harvest some of this surplus to help aid their economic recovery in light of the COVID-19 public health emergency. However, the whitefish sport fishery in Green Bay is also valued by anglers, sport fishing businesses and the local hospitality industry, so finding balance between user groups is necessary to ensure fair use of the whitefish fishery for all. Therefore, in combination with the previous emergency rule (FH-28-20 (E)), this rule accomplishes the following: -Allocates 207,603 additional pounds of whitefish to commercial fishing Zone 1 (Green Bay) to provide additional harvest opportunity to commercial fishers to help aid their economic recovery; -Establishes a large mesh gill net effort cap for whitefish fishers in Green Bay in the event of elevated bycatch levels (10 percent or above or two lake sturgeon on average by June 30, 2022), as measured by at least 12 onboard monitoring activities, to take a protective approach to the shared fishery. Large mesh gill nets pose a greater risk of mortality to bycatch, such as walleyes, which are a key component of the sport fishery, so an upper cap on effort only if these bycatch levels are reached under the increased Zone 1 quota will allow commercial fishers to use gill nets as a method for utilizing the increased quota while minimizing the risk to populations of game fish that are susceptible to becoming bycatch. This cap is based on the 5-year average of gill net usage in Green Bay, plus an additional allotment to account for the increased Zone 1 quota and an adjustment to count day sets as fractions of the total day's footage (for example, if 5,000 feet of large mesh gill net are set for 12 hours, that would constitute 2,500 feet for the purpose of the total footage	

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Fiscal Estimate & Economic Impact Analysis

cap). The continued gill net usage with a cap only in the event of chronic bycatch issues will also allow the department to collect data from gill net users to better assess the impacts of gill nets on the whitefish fishery and populations of bycatch, which will be crucial to development of the permanent rule.

-Requires electronic harvest reporting for all commercial whitefish fishers in Green Bay. Electronic reporting is critical to enable the department to closely monitor whitefish harvest and levels of bycatch under the increased quota, as this system requires daily reports as opposed to the biweekly paper reporting system. Commercial fishers will have the option to first record the harvest information on a paper report form after the last net lift of the day while on the water before entering the information into the Electronic Fish Harvest Reporting System by 11:59 p.m. the day of the trip.

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.

Commercial fishing businesses, fish markets and businesses that use fish products, fishing guide businesses, and individual commercial fishers and anglers may be impacted by this rule, and provided some input during the preliminary public hearing and public meetings for this rule. They will also be contacted during development of the permanent rule.

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

Local governments will be contacted for input during development of the permanent rule.

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)

This rule will have a minimal impact on most businesses, and will result in an overall impact similar to emergency rule FH-28-20 (E). The rule is anticipated to positively impact commercial fishing businesses that fish for whitefish in Green Bay. The exact amount that each commercial fisher may gain due to the increased quota is unknown. Currently, nine commercial fishing licensees 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 quota 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.

Any large mesh gill net cap implemented in response to bycatch levels is only expected to have a minimal economic impact, if any, on commercial fishers; fishers can also fish with trap nets in Green Bay to fulfill their catch quotas.

This rule would require harvest reports to be entered electronically. Two licensees that fish for whitefish in Green Bay may or may not have an electronic device such as a computer or smartphone to report electronically, and four licensees transfer whitefish quota to other fishers, so the recipients of that quota may or may not have an electronic device. Assuming \$120 per year as the cost for a basic, inexpensive smartphone with a limited data plan, the estimated total cost to commercial fishers without electronic devices is \$720 or less.

While this rule will not impose any additional regulations on sport fishers or related fishing businesses, sport fishers may be impacted by additional netting in Green Bay. Sport fishing attracts many anglers to the area each year and contributes millions to the Green Bay-area economy annually, 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 as well as whitefish. Caps on large mesh gill net effort will help mitigate commercial catch of game fish species targeted by anglers, fishing guides and fishing charters, and requiring electronic harvest reporting for commercial fishers will allow the department to obtain expeditious access to bycatch catch data to ensure that impacts to bycatch remain minimal.

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

Implementing this rule will allow commercial fishers more immediate access to additional lake whitefish in Green Bay, which would translate into more lake whitefish available for restaurants and general consumers, and will allow the

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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

department to collect additional data on bycatch from whitefish commercial fishing operations. If this emergency rule is not implemented, commercial fishers would not be able to continue utilizing the increased Zone 1 quota and would have to wait until the permanent rule is implemented, which will not occur until mid-2022. As a result, the amount of whitefish available for market to Wisconsin businesses and consumers would remain static at best. Conversely, from the sport fishing perspective, if this rule is not implemented, sport fishers may benefit in the short term from fewer user conflicts in Green Bay. However, in that case, the department would also have less data on gill net catch composition, which is a key component of the process for determining permanent regulations to ensure a sustainable long-term management strategy for whitefish that balances the needs of all user groups.

16. Long Range Implications of Implementing the Rule

The long range implications will be similar to the short term. The permanent rule will further address whitefish quotas in all three Lake Michigan commercial fishing zones, including quota updates, gear restrictions, and review of harvest reporting methods.

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 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. The use of electronic reporting for commercial fishing operations is a requirement in Michigan. 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.

<h3>19. Contact Name</h3>	<h3>20. Contact Phone Number</h3>
Meredith Penthorn	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)

This rule will have a minimal impact on most businesses, and will result in an overall impact similar to emergency rule FH-28-20 (E). The rule is anticipated to positively impact commercial fishing businesses that fish for whitefish in Green Bay. The exact amount that each commercial fisher may gain due to the increased quota is unknown. Currently, nine commercial fishing licensees 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 quota 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.

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This rule would require harvest reports to be entered electronically. Two licensees that fish for whitefish in Green Bay may or may not have an electronic device such as a computer or smartphone to report electronically, and four licensees transfer whitefish quota to other fishers, so the recipients of that quota may or may not have an electronic device. Assuming \$120 per year as the cost for a basic, inexpensive smartphone with a limited data plan, the estimated total cost to commercial fishers without electronic devices is \$720 or less.

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. Since the Green Bay fishery is a shared fishery between sport and commercial fishers, close monitoring of the impacts of the increased Zone 1 quota to whitefish and bycatch through this rule will be important for ensuring that the welfare of sport fishing businesses is also protected.

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 Green Bay whitefish commercial fishers. However, this rule does allow commercial fishers some flexibility in the methods for submitting electronic harvest reports.

5. Describe the Rule’s Enforcement Provisions

DNR law enforcement routinely conducts checks of Green Bay commercial fishers, which will continue under this rule.

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

Yes No

The statement of scope for this rule, SS 124-20 was approved by the Governor on January 4, 2021, published in Register No. 781A2 on January 11, 2021, and approved by the Natural Resources Board on February 24, 2021. This rule was approved by the Governor on insert date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 25.06 (2) (e) 2. b., 25.09 (3) (e) 1., and 25.13 (2) (intro.) and (f) 1., and to **create** NR 25.06 (2) (e) 2. c., 25.09 (2) (a) 9m., and 25.13 (2) (fm) relating to Lake Michigan whitefish management and affecting small business.

FH-10-21 (E)

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 should uphold the wise use and conservation of the fish to prevent overexploitation.

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

Section 29.973, Stats., directs the department to establish and implement a commercial fish reporting system.

4. Related Statutes or Rules: The department is currently pursuing a companion permanent rule, FH-02-20, to review Zone 1 quotas and regulations in addition to a comprehensive review and update of lake whitefish quotas and regulations throughout all three zones of Lake Michigan. The department

previously promulgated FH-28-20 (E) / EmR 2114, which is very similar to this rule in that it establishes the same Zone 1 quota increase, whitefish reporting requirements, and requirements to mitigate bycatch issues.

5. Plain Language Analysis:

This emergency rule provides for additional harvest of lake whitefish in Zone 1 of Green Bay and implements associated regulations in Green Bay to ensure that this additional harvest is sustainable and does not threaten populations of species susceptible to becoming bycatch, such as walleye and other game fish species. The Green Bay lake whitefish population supports a commercial fishery as well as a sport fishery, which has been increasing in popularity in recent years. The components of this rule aim to provide additional commercial harvest opportunities while maintaining the quality sport fishery for whitefish and preventing detrimental impacts to populations of game fish that may be caught as bycatch in whitefish netting operations.

SECTIONS 1 and 2 allow for 207,603 additional pounds of lake whitefish to be harvested commercially in Zone 1 of Green Bay for the effective period of the emergency rule. The quotas for all three zones are described in s. NR 25.06 (2) (e) 2. a., Wis. Admin. Code., and are dependent on the total allowable catch. This emergency rule would allow for a limited-term Zone 1 quota increase, while the total allowable catch and quotas for all three zones would be adjusted in the permanent rule.

SECTIONS 3 and 4 establish large mesh gill net bycatch thresholds for Green Bay to mitigate catch and mortality of sublegal whitefish and bycatch, as well as a large mesh gill net effort cap if the percent of bycatch reaches 10 percent before June 30, 2022, as measured by at least 12 onboard monitoring activities. Existing rules require gill net users to move their nets if the level of bycatch reaches 10 percent of the total legal catch, which aims to address short-term bycatch issues. As with the first emergency rule, this rule further establishes a mechanism for identifying and addressing chronic bycatch issues, should they arise. If the level of bycatch reaches an average of 10 percent or 2 lake sturgeon in either northern or southern Green Bay by June 30, 2022, as measured by onboard monitoring activities, a large mesh gill net effort cap for whitefish fishing in Green Bay would go into effect upon order of the DNR Secretary. The cap would be 2,875,304 feet during the license year. Gill net effort is not limited by total footage for the large mesh gill net fishery at this time due to the currently lower Green Bay whitefish quota. Most commercial fishers in Green Bay utilize trap nets for taking whitefish; however, the Zone 1 quota increase could encourage fishers to increase their use of gill nets. Gill nets may result in a higher mortality rate for fish than other types of commercial fishing gear, such as trap nets. The proposed cap on large mesh gill net footage, in the event that bycatch levels reach 10 percent, was calculated to allow for some increased gill net effort over the current 5-year average total large mesh gill net footage. This cap will allow commercial fishers to utilize large mesh gill nets to make use of the Zone 1 whitefish quota, while providing data on catch composition in large mesh gill nets. Catch composition data from large mesh gill nets is of high interest to the department and stakeholders.

SECTIONS 5 to 7 require all commercial whitefish fishers operating in Green Bay to submit electronic fish harvest reports, including information on bycatch. Electronic reporting provides more timely and accurate data to the department, which is critical for monitoring and responding to bycatch levels in an expanded whitefish fishery. Under this rule, Green Bay whitefish commercial fishers would have two options for reporting: either by using the existing electronic reporting method after the last lift of the day, or by recording the required information on a paper form while on the water, and then submitting that information through the electronic fish harvest reporting system either upon returning to the dock or shore or by the end of the day.

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 February 8, 2021, the department held a preliminary public hearing on the Statement of Scope for FH-28-20 (E). Twenty-six members of the public (not including DNR staff) attended the virtual hearing either by computer or phone. Six people provided testimony during the hearing and 29 people submitted written comments (including those on appearance slips) by the February 8, 2021 deadline. Comments included that the rule should address user conflict between sport and commercial fishers, that netting should not be expanded in Green Bay, that bycatch in commercial operations should be addressed, that sport fishing dollars should not be used to fund commercial fishery management and monitoring, that a Zone 1 whitefish quota increase is well below the harvestable surplus and additional harvest in Zone 1 will contribute to research studies, that commercial fishers are stewards of the resource working with the DNR, Sea Grant and UW-Green Bay to collect additional data on bycatch and mortality, that sport fishing interests should be represented, that the Zone 3 whitefish quota should not be decreased and lake trout harvest should be allowed (which is beyond the scope of the rule), that electronic reporting is burdensome to some fishers that don't have reliable access to technology, that the quotas for all zones should be adjusted together (subject of the permanent rule), that there should be licenses available for new fishers to be able to fish in Green Bay, and discussion of market availability for whitefish in light of COVID-19.

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.

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 the estimated weight of quota species into the electronic reporting system immediately after net lifts. Trap net fishers are also 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 and other harvest management regulations for lake whitefish in Green Bay. 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.

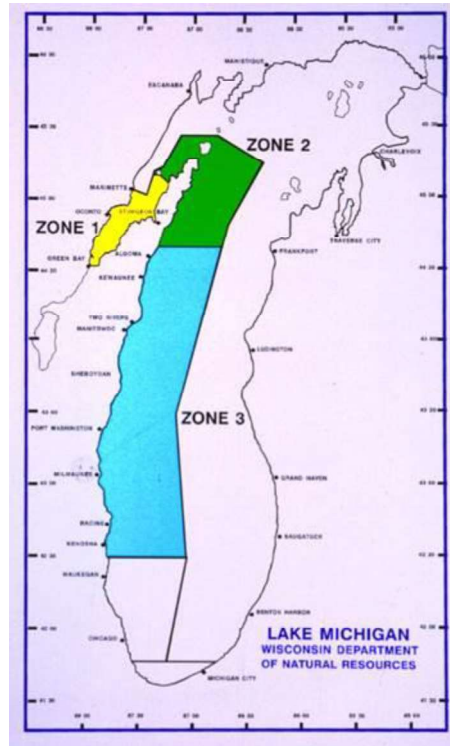


Figure 1: Lake Michigan commercial fishing zones.

The overall lake whitefish metapopulation (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 catch in Wisconsin waters of Lake Michigan 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 quota for many years. The trend of fewer 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 the 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. Due to the increase in whitefish abundance in lower Green Bay, this rule would allow commercial fishers to harvest additional whitefish in Zone 1. 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. Additional provisions in this rule would help prevent and mitigate bycatch catch and mortality, while existing restricted areas where commercial fishing is limited would remain in place to help address user conflicts.

The Zone 1 quota increase of 207,603 pounds of whitefish represents a conservative portion of the total quota generated from the department's whitefish population models for Green Bay. According to the whitefish population models, the total sustainable whitefish quota for Green Bay is 2,355,778 pounds, which would be equally split between the sport fishing community and the commercial fishing industry. Therefore, the total commercial fishing portion of that quota 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). However, for the purposes of this emergency rule, a more conservative quota increase is proposed while the permanent rule is under development. With the quota increase, the total Zone 1 quota (existing plus poundage added through the emergency rule) for commercial fishers would be 569,788 pounds. The department and stakeholders are in the process of evaluating the impacts of an increased Zone 1 whitefish quota, and will adjust the quota if needed during permanent rule development.

This rule includes the potential for a cap on large mesh gill net usage based on bycatch levels, which seeks to minimize the risk for increases in bycatch levels as well as balance user conflicts between commercial and sport fishers with the increase in Zone 1 whitefish quota. While large mesh gill net use is on the decline as compared to the use of trap nets, the Zone 1 quota increase could encourage commercial fishers to increase their gill net usage. Gill nets are a high-efficiency gear that can result in a high level of mortality for both whitefish and non-target bycatch favored by the sport fishing community. Existing rules require gill net users to move their nets if the level of bycatch reaches 10 percent of the total legal catch, which aims to address short-term bycatch issues. This rule further establishes a mechanism for identifying and addressing chronic bycatch issues, should they arise, by providing for a cap on large mesh gill net footage if the total large mesh gill net fishery reaches the 10 percent bycatch threshold or 2 lake sturgeon by June 30, 2022, as measured by at least 12 onboard monitoring activities. These rules will not impose initial restrictions on the existing, well-developed gill net fishery, but will be protective of both whitefish and game fish populations in the event that gill net usage dramatically increases and bycatch averages over 10% in Green Bay due to the Zone 1 quota increase. The department calculated the proposed large mesh gill net footage cap based on the five-year average total large mesh gill net footage used in Zone 1, plus an additional 50 percent to account for the Zone 1 quota increase. The department also adjusted the total large mesh gill net footage to allow day sets to count for fractions of a day in terms of the total large mesh gill net footage, since day sets are commonly set for only a few hours at a time. For example, if a commercial fisher sets 5,000 feet of net for 12 hours (many of the existing day sets are set for less time than this), it would count as 2,500 feet of the total large mesh gill net cap. Assuming commercial fishers will continue to utilize trap nets on a greater scale than gill nets, this gill net footage cap, if implemented, is still anticipated to provide adequate gill net fishing opportunities. This large mesh gill net effort cap reflects the importance of the Green Bay fishery as a shared resource between sport and commercial fishers.

To provide a foundation for the permanent rule as well as provide a level of protection to non-target game fish populations, data on gill net use and impacts to bycatch are critical. The department is partnering with UW-Green Bay and commercial fishers to collect data on the catch composition of non-target fish caught in large mesh gill nets (such as walleye, yellow perch, sturgeon, salmonids, and rough fish), lethal and sublethal effects on fish caught in large mesh gill nets (such as barotrauma, heat shock, and bird predation), and environmental metrics for the areas in which bycatch is caught in gill nets (such as temperature, depth, and dissolved oxygen levels). The department's gill net monitoring strategy includes monitoring specific feet of effort in priority grids that commercial fishers already fish during times of the year when commercial fishers are already fishing, for a rate of 7 percent of the 3-year average total gill net footage.

The use of an electronic harvest reporting system was first identified as a priority in the 2000 Commercial

Fisheries Task Force report. However, to date, Green Bay whitefish commercial fishers are the only subgroup of commercial fishers consistently reporting harvests entirely electronically, as required under emergency rule FH-28-20 (E) / EmR 2114, aside from certain individual fishers that choose to do it voluntarily. 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 notifying the department and completing a paper copy of the report for that day before submitting it electronically upon reconnecting to the system.

Under this rule, commercial fishers that fish for lake whitefish in Green Bay would continue to report whitefish harvest and bycatch for their fishing activities in Green Bay through the current Electronic Fish Harvest Reporting System (EFHRS). 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 the whitefish fishery under this rule and catch of bycatch. 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, including one which allows the commercial fisher to first record the information on a paper form. To further assist commercial fishers in utilizing EFHRS, the department has developed an instruction manual on using the system and will continue to 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. No new economic impacts are expected beyond those resulting from the initial emergency rule implementing these rule changes. Because of the shift in distribution and an overall decline in lake whitefish populations, some members of the Lake Michigan commercial fishing community may benefit more from the increase of allowable whitefish harvest in Green Bay than others. However, the overall economic impact may be positive for the commercial industry because the rule would allow for a more efficient harvest to make full use of the available lake whitefish commercial stocks. Assuming a dockside value of \$2 per pound for whitefish based on average dockside values over the past five years, a whitefish quota 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.

Two licensees that fish for whitefish in Green Bay may or may not have an electronic device such as a computer or smartphone to report electronically, and four licensees transfer whitefish quota to other fishers, so the recipients of the quota may or may not have an electronic device. 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 \$720.

While this rule will not impose any additional regulations on sport fishers or related fishing businesses, sport fishers may be impacted by additional netting in Green Bay. Sport fishing attracts many anglers to the area each year and contributes millions to the Green Bay-area economy annually, and the ice fishery and whitefish fishery are increasing in popularity among sport fishers. Of note, sport fishers are concerned about the impacts of additional commercial fishing on non-target game fish as well as whitefish. Caps on gill net effort in the event that bycatch levels exceed safe levels will help mitigate commercial catch of game fish targeted by anglers, fishing guides, and fishing charters, and requiring electronic harvest reporting for commercial fishers will allow the department to obtain expeditious access to bycatch catch data to ensure that impacts to bycatch remain minimal.

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

This rule would not impose any different impacts beyond those resulting from the current emergency rule (FH-28-20 (E)). These rules, in combination, are likely to provide an economic benefit to small commercial fishing businesses that target whitefish in Green Bay due to the continuation of the quota 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 in the short-term and long-term due to the increased quota is unknown since the quota increase has been in place for less than one year. Currently, nine commercial fishing licensees 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.

However, since commercial fishers would be required to utilize the electronic fish harvest reporting system to report whitefish and bycatch catch, this rule may have a very minimal impact on some fishers. While some commercial fishers already possess a phone or computer to enter the harvest reports, others may not own such technology and would either have to purchase it or ask someone else to assist in entering the information. Two licensees that fish for whitefish in Green Bay may or may not have an electronic device such as a computer or smartphone to report electronically, and four licensees transfer whitefish quota to other fishers, so the recipients of the quota may or may not have an electronic device. Assuming \$120 per year as the cost for a basic, inexpensive smartphone with a limited data plan, the estimated total cost to commercial fishers without electronic devices is \$720 or less.

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. Since the Green Bay fishery is a shared fishery between sport and commercial fishers, close monitoring of the impacts of the increased Zone 1 quota through this rule will be important for ensuring that the welfare of sport fishing businesses is also protected.

The proposed rule would not contain any design or operational standards for commercial fishers.

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 DNRAdministrativeRulesComments@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/emergency_rules/comment.

RULE TEXT

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

25.06 (2) (e) 2. b. The total allowable commercial harvest of whitefish in Lake Michigan and Green Bay may not exceed 2,880,001 pounds in any license year except as provided in subd. 2. c.

SECTION 2. NR 25.06 (2) (e) 2. c. is created to read:

25.06 (2) (e) 2. c. Notwithstanding subd. 2. a. and b., an additional 207,603 pounds of lake whitefish may be taken in Zone 1 for a total allowable harvest in Zone 1 of 569,788 pounds.

SECTION 3. NR 25.09 (2) (a) 9m. is created to read:

25.09 (2) (a) 9m. a. If by June 30, 2022, 12 onboard monitored lifts of gill nets with a mesh size of 4 inches or larger stretch measure in either southern Green Bay or northern Green Bay catch an average of at least 2 lake sturgeon, or an average of 10 percent or more by numbers of the total incidental catch of illegal fish out of the total dressed whitefish reported harvested by number, not to exceed 2,875,304 feet in total of gill nets with a mesh size of 4 inches or larger stretch measure may be set for the 2022 license year. The change in total gill net effort under this subdivision shall become effective upon order of the secretary.

b. Once the total footage of gill nets has reached 95 percent of the total allotment, the department shall notify licensees that no additional gill net footage with a mesh size of 4 inches or larger stretch measure may be set for the remainder of the season.

c. Licensees shall remove all gill nets with a mesh size of 4 inches or larger stretch measure set in Green Bay by 11:59 p.m. of the following workday after notification from the department that gill nets with a mesh size of 4 inches or larger stretch measure may no longer be used.

d. The following formula shall be used to determine the percentage of incidental catch of illegal fish out of the reported whitefish harvest for the purposes of subd. 9m. a.: $[(\text{number of illegal fish}) / ((\text{reported dressed whitefish harvest in pounds} \times 1.17) / 2.3)] \times 100$.

SECTION 4. NR 25.09 (3) (e) 1. is amended to read:

25.09 (3) (e) 1. All gill nets in the water and marked with a commercial fishing license number or a fleet reporting number shall count toward the total allowable gill net effort authorized under sub. (1) (am) or the linear feet of nets authorized under sub. (2) (a) 9. and 9m.

SECTION 5. NR 25.13 (2) (intro.) is amended to read:

25.13 (2) 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, in lieu of the requirements under sub. (1), may elect to submit a daily fishing report to the department 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, except that each person required to be licensed under s. 29.519 (1m), Stats., who conducts commercial whitefish fishing operations on Green Bay shall be required to submit a daily fishing report thereof by means of the electronic fish reporting system, as described in par. (fm). All fishing activities for the day, including the estimated pounds of each fish species caught required pursuant to par. (f) and the weighed catch by species, shall be reported before 11:59 p.m. of each day during which the licensee 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 daily report shall be submitted using an electronic communication device operated by the licensee or a licensee's crew member.

SECTION 6. NR 25.13 (2) (f) 1. is amended to read:

1. ~~For~~ Except as provided in par. (fm), for each fishing trip on Lake Michigan or Green Bay, the licensee or crew member shall carry an electronic communication device and, after completing the last net lift but before starting for shore, shall login to the electronic fish reporting system and submit the date, licensee's name, commercial fishing license number or fleet reporting number, boat name, zone of fishing, the estimated pounds of each fish species caught by zone, and any other information requested on the electronic fish reporting system for each fishing trip.

SECTION 7. NR 25.13 (2) (fm) is created to read:

25.13 (2) (fm) Each person required to be licensed under s. 29.519 (1m), Stats., who conducts commercial whitefish fishing operations on Green Bay, or a member of the licensee's crew, who is required to submit a daily fishing report by means of the electronic fish reporting system shall submit the date, licensee's name, commercial fishing license number or fleet reporting number, boat name, zone of fishing, the estimated pounds of each commercial fish species caught by zone, weighed catch by species for commercial fish, number of incidentally caught fish, and any other information required on the report form for each whitefish fishing trip. The licensee or member of the licensee's crew may submit the report in one 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 but before starting for shore, and no later than 11:59 p.m. the day of harvest.

2. By recording all required information on a daily paper report form supplied by the department after completing the last net lift but before starting for shore, then submitting this

information through an electronic communication device to the electronic fish reporting system by 11:59 p.m. the day of harvest.

SECTION 8. STATEMENT OF EMERGENCY. The department finds that the welfare of commercial fishers and businesses associated with commercial fishing may be compromised due to the continuing economic impacts of COVID-19 on small businesses. Allowing additional commercial whitefish harvest in management Zone 1 of Green Bay may alleviate these impacts by increasing the amount of fish available for commercial fishers to sell to restaurants and other customers as the market begins to recover and demand for fish rebounds. In addition, to ensure the continued protection of game fish populations and welfare of sport fishers in Green Bay with increased commercial whitefish harvest, large mesh gill net monitoring requirements and the option to implement a large mesh gill net effort cap are needed to mitigate user conflicts and mortality of bycatch. Furthermore, only the electronic fish harvest reporting system is set up to allow daily, efficient input of standardized information on commercial catch of whitefish and incidental catch of non-target species to effectively monitor whitefish harvest and populations of non-target fish susceptible to becoming bycatch in whitefish large mesh gill nets. This information is also being utilized to develop new permanent whitefish quotas (the subject of permanent rule FH-02-20) for sustainable management of the whitefish fishery and associated bycatch populations. Electronic harvest reporting on a daily basis will help protect the welfare of the Green Bay fishery and all user groups.

SECTION 9. EFFECTIVE DATE. This rule takes effect upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

SECTION 10. 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