

The statement of scope for this rule, SS 016-23 was approved by the Governor on February 2, 2023, published in Register No. 806A1 on February 6, 2023, and approved by the Natural Resources Board on April 12, 2023. This rule was approved by the Governor on insert date.

Clearinghouse Rule 24-091

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

The Wisconsin Natural Resources Board proposes an order to **amend** NR 25.09 (2m) (a) 3., to **repeal and recreate** NR 25.09 (2) (d) 2. d., and to **create** NR 25.095 and diagram relating to trawling regulation on Lake Michigan and affecting small business.

FH-01-23

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 29.014 (1), 29.041, 29.053 (2), and 29.519, Stats., have been interpreted as allowing the department to regulate fishing activities in waters of the state.

2. Statutory Authority: Sections 29.014 (1), 29.041, 29.053 (2), and 29.519, Stats., authorize the promulgation of this rule.

All rules promulgated under this authority are subject to review under ch. 227, Stats.

3. Explanation of Agency Authority: Under s. 29.014 (1), Stats., “Rule-making for this chapter,” the department is directed to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

The department is authorized to regulate fishing on and in all interstate boundary waters and outlying waters by s. 29.041, Stats., “Department to regulate hunting and fishing in interstate waters.”

Provisions of s. 29.053 (2), Stats., “Specific open and closed seasons,” provide that the department may establish conditions governing the taking of fish for the state as a whole, for counties or parts of counties, or for waterbodies or parts of waterbodies.

Under s. 29.519 (1m) (b), Stats., “Commercial fishing in outlying waters,” the department is granted the authority to establish restrictions on the kinds, size and amount of gear used in commercial fishing. Finally, this section authorizes the department to conduct inspections of buildings, boats, vehicles, storage and records associated with commercial fishing operations.

4. Related Statutes or Rules: No additional rules or statutes relate to commercial lake whitefish fisheries in Lake Michigan.

5. Plain Language Analysis: In 2015, the department authorized a cooperative study with UW Sea Grant to evaluate the use of trawls in the commercial harvest of lake whitefish in Lake Michigan to determine if trawling could be used to effectively harvest lake whitefish while limiting bycatch. The study was confined to specific grids in Zone 3 (Figure 1).

Trawls are dragged through the water on the bottom of the lake to harvest fish over a period of an hour

and have the potential to be more destructive to the lakebed. Trawling is also a more efficient method of harvest than other types of nets (gill and trap nets are deployed and left to catch fish for days before being lifted to retrieve the harvest). However, the quota system and the limited number of licenses currently in place for this zone will prevent overharvest of lake whitefish and fewer nets left in the water as obstacles would make it easier for sport anglers to navigate and troll for sportfish in Lake Michigan.

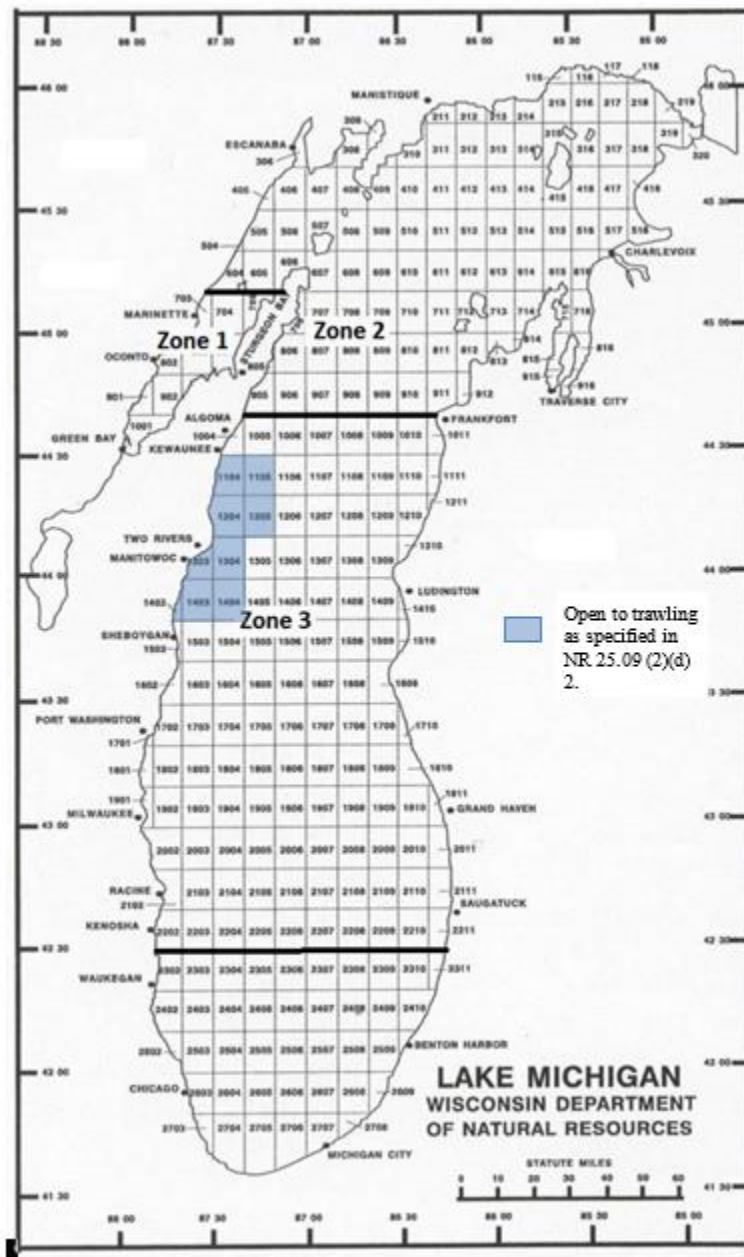


Figure 1: Area of Zone 3 where trawling is allowed

Due to the success of the UW Sea Grant cooperative study, a permanent rule was put in place in May 2020 that allowed this fishing activity to occur with the following provisions:

Season/ time

- Trawls may only be operated from December 1 to August 31
- Trawls may only be operated from one hour before sunrise to one hour before sunset
- One hour drag – when trawl doors enter the water and leave the water

Authorized Trawl Area

- Trawls may only be operated within the areas in blue in Figure 1 above (defined in s. NR 25.09 (2) (d) 2., Wis. Adm. Code.).

Reporting

- Commercial fishers trawling for lake whitefish must report electronically using our Electronic Fish Harvest Reporting System (EFHRS).
- Commercial fishers must report all trawling bycatch.

Surveillance Equipment

Commercial fishing boats trawling for whitefish in Lake Michigan must be equipped with the following video surveillance equipment:

- Two cameras on the boat
 - One camera looking aft over work area.
 - One camera looking over processing table and toward trawl reel.
- Measuring board in inches on bycatch chute
- Hard drive (1 TB) and retain at least 30 days of video.

Additionally, commercial fishers must:

- Turn the video surveillance equipment on with the boat and continually record until engine is turned off.
- Retain video for at least 30 days and allow DNR access to the system.
- If surveillance system stops working, return to dock and contact DNR.

Movement of Gear

- From December 1 to July 31:
 - If a single trawl drag catches 10% by weight or number of illegal fish, the commercial fisher must remove the net and move it 3 miles or 30 feet in depth.
- From August 1 to August 31:
 - If a single trawl drag catches 10% by weight or number of illegal fish, the commercial fisher must remove the net and move it 3 miles or 30 feet in depth.
 - If the daily average for the week is 2 lake sturgeon or 10 – 49.9% by weight of illegal fish, the commercial fisher must move the net 6 miles from the last area trawled the next week.
 - If a single day's catch is 3 or more lake sturgeon or more than 50% by weight of illegal fish, trawling must cease for 3 days.

Trawl Configuration

Trawls must comply with the following:

- Head rope height no more than 45 meters
- Wing mesh 4.5 inches or greater
- Beginning of trawl bag where it attaches to the wing – 2 to 4.5 inches.
- Fishing circle no more than 250 meshes
- Cod end 4.5 inches or greater and fishing circle no more than 80 meshes

This rule removes the sunset on the previous rule so that the regulation would be in place indefinitely; allows for an exemption that would allow trawls to continue to fish for a limited period of time in the event that their surveillance system wasn't working; clarifies previously ambiguous language to better define the size of the trawl, and gives current trawlers two years to get their gear into compliance with the requirements that are currently in place.

SECTION 1-2 describes the season dates and specific standards for the dimensions of trawling gear. These restrictions will help protect lake whitefish and minimize bycatch.

SECTION 3 describes the situations when the on-vessel video surveillance system to monitor lake whitefish trawling is not functioning.

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: The department held a preliminary public hearing and comment period on the statement of scope for FH-01-23, which relates to Lake Michigan trawling regulations. The rule associated with this scope statement would review and update trawling regulations on Lake Michigan, as needed, ahead of an October 2025 administrative code sunset on trawling regulations for lake whitefish in Lake Michigan. One person attended the hearing on March 6, 2023, and did not state a position on the scope statement but did have several questions. Five people submitted written comments simply stating that they support the scope statement, including individuals from the Susie Q Fish Company, a commercial fishing operation that trawls for lake whitefish in Lake Michigan.

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 and Minnesota has a Lake Superior 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. Minnesota does not allow trawling on Lake Superior. States have established quotas, gear requirements and other restrictions for commercial fishing in Lake Michigan.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: Lake whitefish, *Coregonus clupeaformis*, is widely distributed in North American fresh waters from the Atlantic coast westward across Canada and the northern United States. Whitefish are a species of commercial importance in Lake Michigan, and recently have been gaining in popularity among sport anglers as well. Known Wisconsin lake whitefish "stocks" (localized groups or populations that spawn and live in certain areas) within Lake Michigan and Green Bay include a spawning stock in the North/Moonlight Bays area off of eastern Door County and a stock from west shore Green Bay tributaries/Green Bay. During much of the year, some Lake Michigan lake whitefish stocks are highly mobile and Wisconsin fishers may also harvest fish from some of the Michigan stocks of lake whitefish, most notably the Big Bay DeNoc stock. Although the lake-wide population began increasing in the mid-1990s, most Lake Michigan lake whitefish stocks have declined over the past decade. Recent surveys to assess spawning fish near eastern Door County have shown very low abundance of younger lake whitefish entering the population, indicating problems with recruitment of

Lake Whitefish from the North/Moonlight Bays spawning stock (and most Michigan stocks) and a resulting population decline. Conversely, spawning stocks in Green Bay are thriving.

The department, in cooperation with Sea Grant and one Lake Michigan commercial fisher, conducted a three-year study on trawling for lake whitefish. Trawling occurred in the area of Manitowoc and Two Rivers in Lake Michigan (Figure 1) from January to December. The MOU was evaluated annually, and updates were made as needed to reflect information gathered during the previous year's trawling efforts. These changes allowed the commercial fisher to increase efficiency and provided the department with a means to research potential options for a possible permanent rule. The department renewed the MOU for 2019 (fourth year) to continue the data collection process to inform the department on any future regulations.

The trawl report details the results of a portion of the trawl study conducted between February 2015 and May 2018. This trawl study provided depth and seasonal harvest summaries of lake whitefish through trawling in the Zone 3 Wisconsin fishery (Two Rivers area). The trawling methods employed resulted in a relatively low catch rate of bycatch (non-target species and sizes) of 2.4% of the total catch. However, in August, September and October, the lake trout bycatch as a percentage of the overall harvested lake whitefish increased rapidly starting in August. In August, the percentage was over 10%, increased to over 25% in September, and climbed to more than 50% of the catch in some years in October. This was largely because the harvest of lake whitefish dropped during these months (See Figures 5 and 12 from the Sea Grant Trawling Report.)

During the trawl study, potential user conflicts were minimized when trawling was employed as compared to trap nets because fewer trap nets were placed in the area concurrently. From 2015 to 2017, the commercial fisher set a reduced number of trap nets, and in 2018 no trap nets were set. In addition, whitefish trawling pursuant to the MOU were allowed during times of the year (December through early May) when sportfishing was reduced or absent.

Since the rule went into effect in May of 2020, fishing for lake whitefish in Zone 3 in the Manitowoc/Two Rivers area (Figure 1) has been exclusively by trawling gear (Table 1).

Table 1. Lake whitefish harvest in Zone 3 by commercial fishers using trawl and trap net gear. The table shows that no trap nets were set in the Manitowoc/Two Rivers area the last 4 years.			
Year	Area	Gear	Lake Whitefish Harvest (pounds)
2020	Manitowoc/Two Rivers	Trawl	228,099
	Sheboygan/Milwaukee	Trap net	27,592
2021	Manitowoc/Two Rivers	Trawl	167,109
	Sheboygan/Milwaukee	Trap net	16,487
2022	Manitowoc/Two Rivers	Trawl	228,062
	Sheboygan	Trap net	8,495
2023	Manitowoc/Two Rivers	Trawl	156,087
	Sheboygan	Trap net	6,866

This has reduced the user conflict between sport anglers and commercial fishers due to the lack of trap nets in prime sport fishing areas off the Manitowoc/Two Rivers ports.

In addition, fisheries management staff have been conducting a monitoring program by comparing the onboard video against the fishers' reports. Two video cameras placed in the stern of the commercial trawler record the entire commercial trawl catch. One camera captures a portion of the aft end where the cod end of the net is emptied into a boxed-in area on the deck. The second camera is positioned above the fish cleaning area and records bycatch being passed over a measuring board before being discarded. Video footage is downloaded monthly, and two days of trawl video are randomly selected each month for review. Using footage from both cameras, total harvested lake whitefish and bycatch are quantified for all trawl drags on the selected dates. Reported and observed gamefish (most frequently lake trout) and sub-legal whitefish bycatch numbers are also calculated as a proportion of the daily harvest of whitefish. During August, these values are used as decision points to determine whether trawl fishers must change their fishing practices or cease trawling for a period in the event of high weight of bycatch species relative to the whitefish weight as required in s. NR 25.09 (5) (bm).

In summary, the monitoring program has documented the following:

- 1) Lake whitefish weights, as observed on the video system, match very closely with the reported weights.
- 2) The primary illegal species observed and reported in the trawl fishery as bycatch are lake trout and sub-legal lake whitefish.
- 3) Lake trout, burbot and sub-legal lake whitefish numbers, as observed on the video system, match very closely with the reported numbers.
- 4) Trawling conducted in July and August show that less lake whitefish are harvested thereby making illegal lake trout a higher proportion of the catch. For 3 of the 5 years of the monitoring program from 2020 to 2024, no trawl drags were done in August.

Reports from the 2021, 2022 and 2023 fishing seasons can be found on our [Lake Michigan Management Reports webpage](#).

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: Because this rule will not impact the annual lake whitefish quota or zone boundaries in Lake Michigan, which restrict how many lake whitefish commercial fishers may harvest or where they may fish, the department expects minimal economic impacts to commercial and recreational fishers. The only costs would apply to commercial fishers that choose to trawl through purchase of trawling gear and installation of the video surveillance system. Commercial fishers that continue to use trap nets would not be affected. Dockside value of lake whitefish harvested from Lake Michigan/Green Bay is expected to remain the same or potentially increase from its current value of \$2.7 million. The fishery is controlled by a quota, such that any increased value to the local economy would be from fishers' ability to harvest fish more efficiently during certain fishing periods. The rule change could also lead to the harvest of quota currently not filled. This may occur because the department's commercial harvest records show there is uncaught quota available for purchase or transfer. Hook and line bag limits and season dates for recreational fishing will not change with the new rules.

The department will conduct an economic impact analysis comment period to gather comments from any individuals, businesses, local governments, or other entities that expect to be affected economically by the rule change.

11. Effect on Small Business (initial regulatory flexibility analysis): As is the case with the current regulations that allow trawling for whitefish in Lake Michigan, commercial fishers that choose to trawl instead of using other types of nets for harvesting whitefish will continue to be required to use a commercial trawl that differs slightly from gear requirements for other species and will also continue to be required to have a video surveillance system. Installation of the video system is estimated to cost \$7,000 per trawling vessel. Trawls are expected to cost up to \$10,000 per fishing vessel, if the commercial fisher does not already own appropriate trawling gear. However, since the use of trawling over other methods of harvesting lake whitefish is voluntary, only commercial fishers that choose to trawl may incur the costs associated with complying with the monitoring, reporting and gear requirements.

Sport anglers, fishing guides and related businesses may be indirectly affected due to the ongoing changes in the type of gear used in the area of Lake Michigan near Two Rivers. Reduction or elimination of trap nets due to increased trawling have reduced the potential for boat entanglement with nets, and because trawling does not overlap as much with the sport fishing season as the use of trap nets, the incidence of sport and commercial fishers encountering one another is also diminished. For example, trawling operations were completed for the season by August 30 in 2020, July 27 in 2021, August 2 in 2022, July 13 in 2023 and June 24, 2024.

The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish “alternative enforcement mechanisms” for “minor violations” of administrative rules made by small businesses. This rule will not require additional payments from public utility rate payers and local governmental units.

12. Agency Contact Person: Brad Eggold, Bradley.Eggold@wisconsin.gov, 414-303-0138

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

Kari Lee-Zimmermann
Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
608-316-0080
Kari.LeeZimmermann@wisconsin.gov

Written comments may also be submitted to the Department at 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.wisconsin.gov/calendar>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 25.09 (2) (d) 2. d. is repealed and recreated to read:

NR 25.09 (2) (d) 2. d. Lake Whitefish may be taken by trawling from December 1 to August 31 from one hour before sunrise to one hour before sunset. No trawl may be deployed for longer than one hour per drag, measured from the time the trawl door enters the water until the time the trawl door leaves the water upon retrieval. The net shall be composed of twine material capable of remaining open under tension. No person may use a trawl for whitefish unless it meets the configuration requirements under s. NR 25.095.

SECTION 2. NR 25.095 and diagram are created to read:

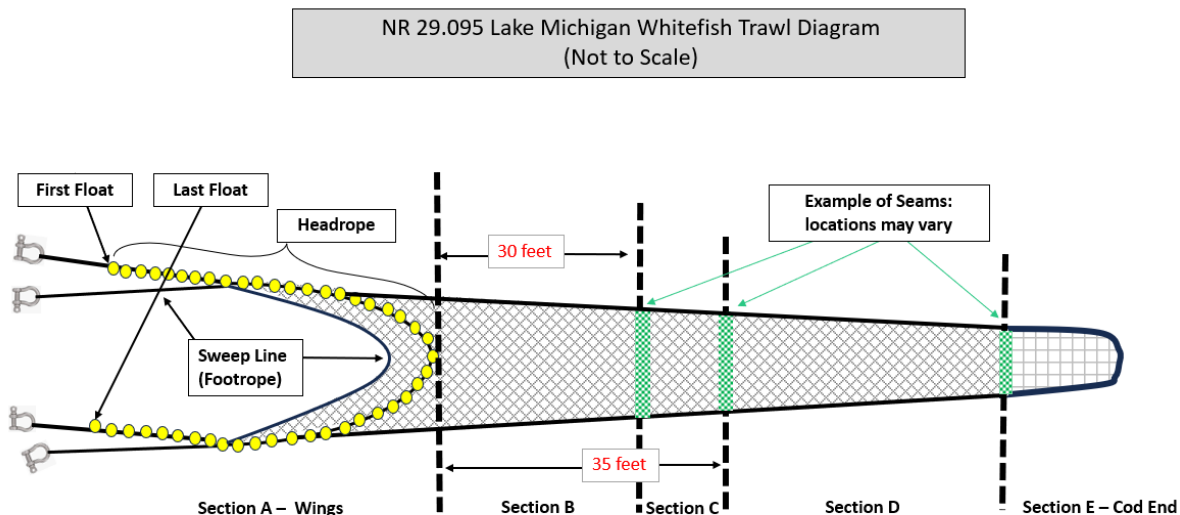
NR 25.095 Lake Michigan trawl configuration requirements. A trawl authorized under s. NR 25.09 (2) (d) 2. d. may consist of the sections and parts identified in s. NR 25.095 (diagram). The trawl shall meet all of the following requirements:

- (1) **HEADROPE.** The headrope shall have a maximum length of 140 feet, measured along the entire length from the first float to the last float.
- (2) **MESH.** The trawl may consist of the different sections identified in s. NR 25.095 (diagram). The size and measurement requirements for each of the mesh sections shall be as follows:
 - (a) *Section A – Wings.* Mesh between the leading edge of the floats on the headrope and the trailing edge of the headrope, all of which shall have a minimum 4 ½ inches stretch measure.
 - (b) *Section B.* Mesh from the wings to 30 feet behind the wings, all of which shall have a minimum 4 ½ inches stretch measure.
 - (c) *Section C.* Mesh from 30 feet to 35 feet behind the wings, all of which shall have a minimum 3 ½ inches stretch measure. The fishing circle within Section C may not exceed 200 ft. in length around the circumference of the trawl.
 - (d) *Section D.* Mesh further than 35 feet behind the wings, all of which shall have a minimum 1 ½ inches stretch measure and a maximum 3 ¾ inches stretch measure. The fishing circle where Section D is joined to Section E may not exceed 34 feet in length around the circumference of the trawl, when measured within the first 2 meshes of the Section D/E seam.

(e) *Section E – Cod End*. Rather than measuring stretch measure as described in ss. NR 25.02 (62) and 25.09 (4) (a), the mesh size of the cod end shall be measured by measuring the lengths of the four bars of a mesh. Each of the four bars shall be measured from the inside of one knot to the inside of the next knot, to the nearest 1/16 inches. Until December 31, 2026, the sum of the four bar measurements shall not be less than 8 7/16 inches. Beginning January 1, 2027, the sum of the four bar measurements shall not be less than 9 inches. The remaining measurement procedures in s. NR 25.09 (4) (b), (c), and (d) apply to measuring the cod end, except that the use of a one-pound weight is not required. Length may not exceed 18 feet as measured from the D/E seam to the furthest trailing mesh of the cod end.

(3) **SEAMS**. Seams may be used to connect sections of mesh. Meshes of a seam are allowed to be out of compliance with the mesh requirements of the adjoining section(s), but the length of any seam may not exceed 12 inches. No more than seven seams may be used in a trawl.

(4) **MEASUREMENTS**. To measure lengths of sections or seams of the trawl, the trawl shall be placed on a hard surface, stretched taut by two people, and then measured. The amount of tension required shall only be as taut as can reasonably be done by hand rather than under an exact amount of tension.



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

NR 25.09 (2m) (a) 3. The video recording system shall be equipped with an audible alarm warning that indicates system malfunction. If a system malfunction occurs, the licensee shall immediately cease

trawling and shall contact the department within 2 hours of returning to the dock. ~~Upon restoration of system functionality, the licensee shall notify the department and shall resume using the system. The~~ department may grant the licensee one exemption from the video recording system requirement per calendar year not to exceed a 14-day (336 hour) period to repair the video recording system. When the video recording system is repaired the licensee shall notify the department that the system has been repaired and shall resume using the video recording system. If the video recording system malfunctions again during the same calendar year, the licensee shall immediately cease trawling, shall notify the department of the malfunction within two hours of returning to the dock and shall repair the video recording system and notify the department that the system has been repaired prior to resuming trawling.

SECTION 4. 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 5. 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 _____

Steven Little, Deputy Secretary