

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** FH-28-20 (E)

**Relating to:** Lake Michigan whitefish management (Chs. NR 20 and 25)

**Rule Type:** Emergency

### 1. Finding/nature of emergency (Emergency Rule only):

The department finds that the welfare of commercial fishers and businesses associated with commercial fishing may be compromised due to the economic impacts of COVID-19 on small businesses. Allowing additional commercial whitefish harvest in management Zone 1 (south 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 recreational anglers in Green Bay under an increased commercial whitefish harvest scenario, the department needs additional information on commercial fishing and whitefish bycatch and latent mortality in Green Bay. Currently, only the electronic fish harvest reporting system is set up to allow timely, efficient input of standardized information on commercial catch of bycatch species to effectively monitor bycatch populations. This information is also needed to develop a new permanent whitefish quota (the subject of permanent rule FH-02-20) for sustainable management of the whitefish fishery and associated bycatch populations.

### 2. Detailed description of the objective of the proposed rule:

This rule will address quotas and other harvest management regulations for lake whitefish in Lake Michigan, specifically raising the lake whitefish allowable harvest limit in Zone 1 waters of Green Bay. The Lake Michigan 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. 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.

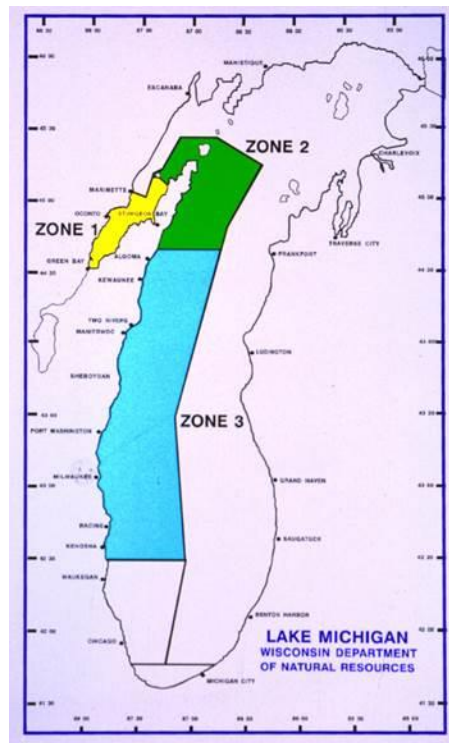


Figure 1: Lake Michigan commercial fishing zones.

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. This is especially true in the northern end of the lake. Preliminary data from an in-progress whitefish tagging study indicate that the whitefish from the Big Bay de Noc and North/Moonlight Bay stocks mix and contribute to the general WI commercial fishery in Lake Michigan. These data also indicate that some fish from these stocks, especially the Big Bay de Noc stock, move south into Wisconsin waters of Green Bay. In the lower half of Green Bay proper, however, whitefish stocks have been increasing in abundance and recolonizing historic spawning grounds over the past 10-15 years. Surveys show that some Wisconsin tributaries in Green Bay are sources of lake whitefish recruitment. Whitefish from these tributaries appear to generally remain in Green Bay as adults, with minimal movement into Lake Michigan. Due to the increase in whitefish abundance in lower Green Bay, some commercial fishers would like the option to harvest more whitefish in this area. However, sport anglers have expressed concern about user conflicts in areas popular for non-commercial harvest of whitefish and other game fish.

The current lake whitefish commercial harvest limit 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.

### *Commercial Harvest Reporting*

The department launched a new electronic reporting system for reporting commercial fish harvests in 2016, following several years of development and discussion with commercial fishers. Previously, commercial fishers were required to use a paper reporting system to provide information on harvest that could be used to manage the fishery and prevent overharvest. However, this system was outdated and somewhat inefficient. Following rule-making for adoption of the new system and updates to the paper reporting language in administrative code, Lake Michigan, Green Bay and Lake Superior commercial fishers could use either the electronic system through a computer or mobile device, or the old paper reporting system. Because the electronic system is more accurate, efficient, and timely, this rule would require all licensed commercial fishers in Lake Michigan and Green Bay to use the electronic system instead of the paper reporting system.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Currently, the total allowable commercial harvest of lake whitefish is allocated into three commercial fishing zones:

Lake whitefish commercial harvest limits	Pounds per year
Zone 1 – Southern Green Bay	362,185
Zone 2 – Northern Green Bay and Northern Lake Michigan	2,166,329
Zone 3 – Southern Lake Michigan	351,487
Total Allowable Harvest Limit	2,880,000

The zone allocation structure is largely based on historical fishing effort and catch. Since 2010, Zone 1 and 3 harvest has been near the allowable harvest limit with some individual quota holders catching their complete individual quotas. However, Zone 2 harvest has been less than half the allowable harvest limit.

Historically, many of the lake whitefish captured in Wisconsin waters were from the North/Moonlight Bays spawning stock. However, in recent years the west shore Green Bay tributaries, particularly the Fox and Menominee Rivers, are producing a large number of lake whitefish. Overall, the distribution of lake whitefish has changed with many more fish present in southern Green Bay relative to northern Green Bay and Lake Michigan than in the past.

This rule may adjust the total commercial harvest of lake whitefish in Lake Michigan to protect certain stocks from overharvest and ensure the long-term sustainability of the fishery. In particular, this rule may allow commercial fishers to

better utilize whitefish in Zone 1 waters of Green Bay. This rule may make adjustments to commercial gear, effort, or season length as an alternative to or in addition to adjusting the total allowable commercial harvest of lake whitefish.

This rule may also adjust the lake whitefish commercial fishing zone boundaries, the formulas used to determine zone specific harvest, or both to better reflect the current whitefish distribution and abundance within the lake, and between Green Bay and the rest of Lake Michigan. Changes to the zone boundaries, zone allocation scheme, or both may allow commercial fishers to better utilize lake whitefish that are available from new spawning stocks from the west shore Green Bay tributaries.

This rule may also modify commercial fishing reporting requirements, such as the use of electronic reporting, to more efficiently collect and tabulate information from commercial fishers.

This rule may also determine the percentage of total allowable whitefish catch allocated to commercial and sport anglers to ensure equitable use of this public trust resource.

This rule may also adjust requirements to collect and report bycatch and latent mortality data.

Modification of zone boundaries or allocations would involve modification of commercial fishers' fishing practices and quotas. Advice will be sought from the Lake Michigan Commercial Fishing Board (LMCFB) regarding these proposed rule changes. The LMCFB is directed by s. 29.519(7), Stats., to "recommend to the department species harvest limits and formulas for the allotment of individual licensee catch quotas when the department establishes species harvest limits for allocation among licensees."

#### *Commercial harvest reporting requirements*

Existing reporting rules require commercial fishers on Lakes Michigan and Superior to report their harvests. The electronic reporting system is more efficient and accurate than paper reporting, and allows the department and commercial fishers to access data in a timelier manner to monitor fish harvest. Requiring Lake Michigan and Green Bay commercial fishers to utilize the electronic reporting system would standardize commercial harvest reporting and improve data accuracy. This rule may modify the provisions relating to paper harvest reporting, as well as the timeframe and methods for reporting commercial harvests electronically, and may update the types of information that must be reported electronically for specific fisheries or Lake Michigan and Green Bay fisheries in part or as a whole.

#### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

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. It also specifies that the limitations on harvests must be based on the available harvestable population of fish and should uphold the wise use and conservation of the fish, so as 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.

**5. Estimate of a amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

Employees will spend approximately 200 hours developing this rule.

**6. List with description of all entities that may be affected by the proposed rule:**

Wisconsin-licensed commercial fishers, wholesale fish dealers, and others whose businesses are tied to commercial fishing will be affected by this rule. Lake Michigan and Green Bay commercial fishers will be impacted by potential changes to the harvest reporting systems. Sport fishers, fishing guides, and related fishing businesses on Green Bay may be impacted by a potential geographical shift or increase in commercial fishing effort for whitefish. A perception of increased fishing pressure or increased commercial net use may cause some sport fishers to alter their fishing patterns, especially in the waters of Green Bay. Southern Green Bay is a very popular sport fishing location, including for whitefish, and sport anglers may not support potential commercial fishing increases and related game fish bycatch in this area. Currently, the combined harvest of sport and commercial fishers is below the Wisconsin Lake Michigan commercial whitefish quota. However, increased commercial harvest in southern Green Bay may create user conflicts between sport and commercial fishers. Adequate education and enforcement would be needed to help prevent additional commercial gear from interfering with sport fishing, and vice versa.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

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.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):**

The rule will impact the harvest of lake whitefish by commercial fishers, and exact economic impacts are likely to vary among commercial fishers. Because of the shift in distribution and overall decline in lake whitefish populations, some commercial fishers could have a reduction in their individual harvest quotas or percentage of the harvest while others have an increase. Certain areas or the whole fishery may be further restricted by season and methods. However, the overall economic impact may be positive for the commercial industry because the rule would allow for more efficient harvest to make full use of the available lake whitefish commercial stocks.

The rule may also have a minimal economic impact on sport anglers, guides and charter businesses, especially if commercial fishers shift part of their harvest effort to Green Bay. This could affect the density and distribution of sport anglers in Green Bay, including those that are targeting game fish other than whitefish. However, fishing may also improve in areas where commercial fishing is lessened due to revised quota allocations.

This rule change would better allow commercial fishers to harvest the total allowable commercial catch for whitefish. The rule may have a moderate economic impact in the Lake Michigan region, but an exact amount of impact is unknown at this time. The department will conduct an economic impact analysis to gather comments from any individuals, businesses, local governments, or other entities that expect to be affected economically by the rule change. In addition, the department will seek advice from sport fishing groups and the Lake Michigan Commercial Fishing Board when developing the rule.

The proposed rule would likely not contain any design or operational standards.

**9. Anticipated number, month and locations of public hearings:**

The department anticipates holding one public hearing in the month of June 2021 for the emergency rule. Hearing city will be: Green Bay, WI or through a virtual conferencing platform.

The department will hold this hearing in this locations to gain public input on the proposed whitefish emergency rule near the affected waters.

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Preston D. Cole, Secretary

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Date Submitted