

## Report From Agency

### REPORT TO LEGISLATURE

NR 25, Wis. Adm. Code

Board Order No. FH-10-15  
Clearinghouse Rule No. CR 19-134

#### Basis and Purpose of the Proposed Rule

This rule codifies gear requirements for trawls used to harvest lake whitefish commercially. Trawling for smelt is currently allowed in a portion of Management Zone 3 near Two Rivers. In 2015, the department authorized a cooperative study to evaluate the use of trawls for lake whitefish in the same part of Zone 3. This rule would allow commercial fishers to trawl for whitefish only in this area of Zone 3 as an alternative to using other types of gear. Under current rules, only trap nets can be used to harvest whitefish in this area. Trawling would continue to be allowed only during part of the Lake Michigan lake whitefish season in the area in which the study was conducted. While trawling is a more efficient method of harvest than these other types of nets, the quota system and limited number of licenses currently in place for this zone will prevent overharvest of lake whitefish. Trawling may also help reduce user conflicts between commercial fishers and sport anglers. Trawls are dragged through the water to harvest fish over a period of an hour, while nets are deployed and left to catch fish for days before being lifted to retrieve the harvest. Fewer nets left in the water as obstacles would make it easier for sport anglers to navigate and troll for sportfish in Lake Michigan.

#### Summary of Public Comments

##### *Comments from the commercial fishing community*

**The lake whitefish population (specifically the North/Moonlight Bay stock) has declined over time, and trawling increases pressure on the fish population by actively pursuing and removing fish, including sublegal fish. Many commercial fishers are concerned that allowing a more active fishing method will further deplete whitefish, especially younger age classes.**

While trawling is a more efficient manner of harvest, it will be authorized to occur in a very small area of Lake Michigan under the proposed rule. The department conducts regular assessments of the lake whitefish population, and quotas are in place to limit the number of whitefish that may be taken by trawl or any other method of harvest. The sunset date on the rule will also require the department to review the rule and make changes if detrimental impacts to the fishery are observed. Sublegal fish are caught with all commercial gears deployed and if handled and released promptly they can survive well. Additionally, the department is currently developing a new scope statement for a rule to evaluate and potentially revise the whitefish quotas for Lake Michigan and Green Bay. The department will seek additional public input on quotas and harvest allocation during that rule-making process.

**Cameras or on-board observers should be required on trawling vessels to ensure accurate monitoring. Verifying bycatch rates, drag times and handling catch through these types of monitoring was a critical aspect of the trawl study.**

The trawl study demonstrated that on-board monitoring and video surveillance were both effective for monitoring bycatch levels and whitefish returned to the water. Monitoring will continue to be a high priority of the department under the proposed rule. While the proposed video surveillance system will be voluntary for commercial fishers that choose to trawl for whitefish, department staff will still be able to conduct on-board monitoring for commercial fishers that do not use a video surveillance system. NOTE: the video surveillance system was made mandatory following an amendment by the Natural Resources Board at the Dec. 11, 2019 meeting.

**The rule should be amended to include commercial sport guiding requirements.**

Guide reporting requirements are beyond the scope of the proposed rule, but the department will consider this suggestion for future rule-making.

**Bycatch of sublegal whitefish in trawls is a primary concern to some commercial fishers. The rule should have an enforceable drag time of 45 minutes or less to minimize risk of sublegal whitefish bycatch.**

The trawl drag time is defined in the rule to allow for enforcement and to remain as close to a 45-minute drag as possible. The 1 hour drag includes deployment and hauling of the trawl back onto the vessel.

**Whitefish quotas in Lake Michigan and Green Bay need to be analyzed and potentially realigned to maintain a sustainable fishery.**

The department is drafting a scope statement for a rule addressing whitefish quotas, and will conduct additional outreach and meetings to obtain stakeholder input on whitefish quotas.

**Commercial fishers should be able to fish until ice out, just as sport fishers can, rather than being restricted to the March end date proposed in the rule.**

Although the existing end date for using gill nets under the ice is no longer needed due to the low number of gill nets used during this period, a defined end date for commercial fishing under the ice is still needed to prevent harvest of bycatch and minimize user conflicts. As well, March 30 was the end date discussed with the Lake Michigan Commercial Fishing Board.

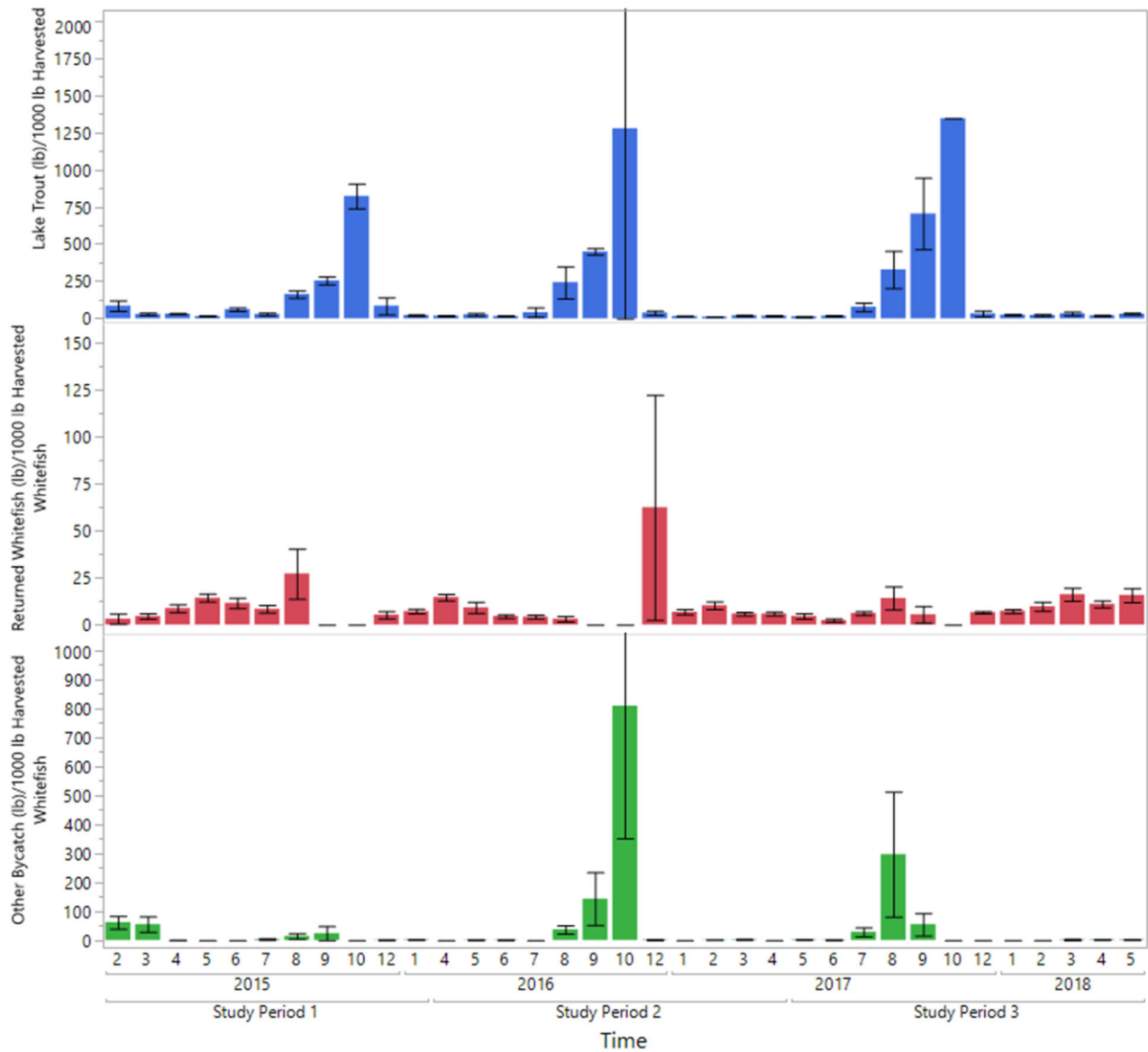
**User conflict between trap nets and sport fishers can be minimized with an educated sport fishing community and responsible trap net marking.**

We agree that good net marking and materials on how to navigate around nets can help reduce user conflicts. Ongoing initiatives to provide information to anglers include a trap net informational webpage and brochure, publishing net locations in conjunction with Sea Grant, and requiring wire cutters onboard sport boats fishing with downriggers.

**A sunset date and September and October season closure are not necessary, and could prevent trawling operations from conducting business and providing whitefish to customers to meet demand.**

The proposed rule attempts to balance the needs of commercial fishers, sport fishers and local communities, recognizing that each stakeholder group that benefits from a well-managed Lake Michigan fishery contributes to the culture and economy of surrounding communities. Therefore, the department has constructed the rule to provide trawling opportunity while protecting stocks of whitefish, lake trout and other game fish.

The graph below depicts bycatch rates during the trawl study; bycatch rates peaked during the fall months.



**Commercial fishers should not be restricted to a trawl box in a part of Zone 3, and should not have to use a camera system or electronic reporting system.**

Trawling for whitefish would be restricted to the small area near Two Rivers, which is the only area currently open to trawling for smelt. Maintaining this area as the only area open to trawling will reduce conflicts with other commercial fishers that harvest whitefish with nets, as well as sport fishers that prefer fishing in areas with a lower commercial fishing presence. In addition, the use of a video surveillance system as an alternative to on-board monitoring is voluntary as described in the proposed rule. NOTE: the video surveillance system was made mandatory by an amendment of the Natural Resources Board at their Dec. 11, 2019 meeting.

**The rule requiring movement of commercial fishing gear if the bycatch level reaches 10% is not necessary because lake trout are no longer threatened. Also, the requirement to move gear if 2 or more lake sturgeon are caught seems unreasonable since so many more lake sturgeon are harvested on Lake Winnebago.**

The 10% rule would apply to bycatch of non-target fish, not solely lake trout. Although lake trout populations have been improving and long-term monitoring shows a small level of natural fish in the system, lake trout are

not considered recovered throughout Lake Michigan. Additional unrestrained bycatch mortality could impact restoration and management efforts for lake trout and other game fish species.

Lake sturgeon populations and the fishery in Lake Michigan are managed differently from those in Lake Winnebago. In the Lake Winnebago fishery, each angler may take one sturgeon during a short season in February, and many lake sturgeon are harvested each year during this season. Also, bycatch mortality is not an issue in the Lake Winnebago fishery because it is closed to commercial fishing. There is no open season for anglers to take lake sturgeon from Lake Michigan. Lake Michigan lake sturgeon populations are under restoration currently. The bycatch thresholds on lake sturgeon are in place to reduce the risk of mortality and population-level impacts if multiple of these slowly maturing, long-lived fish are caught in trawls over several months, even if the sturgeon are released.

*Comments from other stakeholders*

### **How will the department handle the next commercial fisher that wants to trawl?**

The rule would allow any commercial fisher with trawling equipment to trawl for whitefish. However, due to the specialized nature of trawling gear and associated costs, the department does not anticipate that a high number of commercial fishers will use this method of harvest. All commercial fishers that choose to trawl for whitefish will be required to adhere to the same rules.

### **Trawling should remain under a contract with the department for a more controlled fishery.**

Since the trawl study is nearing its conclusion, the department does not have another mechanism for allowing trawling, outside of a rule change. Memoranda of Understanding are used when conducting a study, but a rule change is required to legalize the results of a study and apply standard regulations.

### **Allowing trawling to continue only under a study for the next 5 years could generate valuable data on age classes of whitefish and lake trout.**

Under the proposed rule, the department will continue to collect data on whitefish and bycatch from trawling through electronic harvest reporting and on-board monitoring or video surveillance records.

### **The department should undertake a bycatch study to determine effects of trawling on bycatch survival.**

The trawl study included a tagging component to gather information on survival of released fish. The department is currently working with partners and conducting a catch composition study for trap netters and gill netters in Green Bay. The department would be open to discussions on expanding this effort to the trawl fishery with willing partners.

### **What is law enforcement's experience with trawling, and what will prevent a commercial fisher from using a larger trawl?**

Law enforcement staff are familiar with trawling due to the long-standing smelt trawl fishery that has occurred in the same portion of Lake Michigan as is open to whitefish trawling. Enforceable gear standards in the proposed rule will prevent a commercial fisher from utilizing a larger trawl.

### **The rule sunset of Oct. 31, 2025, should be removed because regulatory uncertainty created by a hard sunset date makes business planning difficult. Instead, this should be changed to a rule review date.**

The department has decided the sunset date should remain a part of the trawl rule. This allows the department the flexibility needed to request changes to the rule as new information on trawling and its impacts are gathered. There has been a lot of stakeholder input on this issue and most believe the sunset should remain a part of this rule.

**The rule should further clarify that the camera surveillance system is a voluntary option.**

The department concurs with this recommendation, and has updated the rule language accordingly. NOTE: Following the Natural Resources Board meeting on Dec. 11, 2019, language referring to voluntary use of the camera system was removed.

**Trawling is the only form of commercial fishing that has a season that ends after August. The bycatch restrictions will protect the fishery, so a season closure for September and October is not needed.**

The proposed bycatch level restrictions and related trawl gear movement requirements are specific to trawling in August. The trawl study demonstrated that bycatch levels (namely of lake trout) in September and October increase in proportion to the whitefish harvested, so even under the bycatch restrictions, trawling would likely be suspended each day that bycatch thresholds are exceeded. The department has determined that based on the trawl study results, a closure in October and September is necessary to protect the recovering lake trout populations of Lake Michigan.

**The requirement to report and monitor incidental harvest should be maintained, and the September and October season closure for trawling should remain.**

The rule as currently written maintains both of these provisions.

**Since sport hunting and fishing license dollars subsidize law enforcement of commercial fishing activities, video surveillance of all catching activities should be mandatory and should be submitted to a DNR data library within 24 hours of being recorded on each fishing trip. The video data could then be used for random audits and monitoring of bycatch, and would be the most efficient method of making data available.**

Prior to initiation of the trawl study, on-board monitoring by department staff was the main method of directly monitoring commercial fishing activity. The trawl study proved that consistent use of a video surveillance system could provide strong monitoring data on trawling activities. However, if commercial fishers do not elect to use the video surveillance system, department staff will continue to utilize on-board monitoring to ensure that bycatch are being properly handled and recorded. NOTE: a video surveillance system will be required through a Natural Resources Board amendment to the rule at the Dec. 11, 2019 meeting.

**Fisheries biologists must work to determine a maximum time limit per trawl drag to keep bycatch mortality at a minimum—especially sport fish that are supported by Great Lakes Salmon Stamp funds. Mortality of stamp-supported fish could be interpreted as violating the law requiring stamp funds to be used for sport fish management and not commercial activities.**

During the trawl study, the trawl drag variable was carefully monitored and managed to minimize bycatch. The rule includes a maximum time limit for each trawl drag to minimize mortality of fish that are caught in the trawl, and also includes bycatch thresholds and corresponding triggers to require trawls to be moved and subsequently operated away from the site or depth at which the bycatch thresholds were met.

The trawl study indicated that lake trout comprised the greatest proportion of bycatch, and that appropriate levels were rarely exceeded except during the months of August through October when lake trout as a proportion to the harvested lake whitefish increased.

**The economic impact and contributions of the Lake Michigan sport fishery should be considered.**

The Lake Michigan sport fishery contributes significantly to local economies through license fees, direct and indirect spending and other contributions. By establishing restrictions on gear use, season dates and trawling zone, the proposed rule aims to minimize bycatch and sublegal whitefish catch to ensure sustainable, thriving populations of lake trout and whitefish for sport fishers in addition to maintaining viable commercial fisheries.

**Harvest of whitefish from the Michigan waters of the Green Bay area should be taken into account, as there has been a disconnect between Wisconsin and Michigan in managing lake-wide populations.**

**Additionally, the current harvest limit is not based on current productivity of whitefish and may not prevent excessive harvest of the current population.**

The department coordinates with the other state and federal agencies that participate in managing Lake Michigan to determine appropriate management practices. This proposed rule does not make any changes to the whitefish quota, so although trawling may be more efficient, the limit that each commercial fisher may harvest has not changed. The department will be pursuing additional rule-making to review and revise the whitefish quota for Wisconsin waters of Lake Michigan, and will take into account Michigan's regulations and harvest during that process.

#### Modifications Made

The key change to the rule was an amendment adopted by the Natural Resources Board prior to adoption of the rule, which makes use of a video surveillance system mandatory for all commercial fishers who choose to trawl for whitefish. This amendment to the rule was also supported by members of the sport and commercial fishing communities during the public hearing and written comment period.

The department also made several minor changes to the rule, including making corrections to the trawl dimension descriptions to align with those used in the study and better describing certain video surveillance requirements, such as formats for transferring footage to the department. A commercial fishing license definition was also added to the rule, as "commercial fishing license" is not already defined in administrative code. This definition reflects existing statutory descriptions.

#### Appearances at the Public Hearing

Jerry Fetterer  
Steve Ruleau Jr., RS Fish  
Richard Jones, GLSF  
Mike LeClair, Susie Q Fish Co.  
Dan Pawlitzke  
Glenn Seger  
Shae Sortwell, Wisconsin Assembly  
Shawn Seger  
Brett Schwarz

#### Changes to Rule Analysis and Fiscal Estimate

Changes to the fiscal estimate and plain language analysis included an amendment at the request of the Natural Resources Board to make the video surveillance system mandatory for commercial fishers that choose to trawl. This will not result in any additional expenses beyond what is outlined in the economic impact analysis, but those expenses will now likely apply to most commercial fishers that choose to trawl for whitefish.

#### Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except as discussed below.

The department did not add contact information for the department staff person who would be working with a commercial fishing licensee in the event of a video surveillance system malfunction, because due to staff workload and turnover, that contact may change more frequently than a rule change allows.

#### Final Regulatory Flexibility Analysis

Commercial fishers that choose to trawl instead of using other types of nets for harvesting whitefish will be required to use the electronic reporting system described in s. 25.13 (2), Wis. Admin. Code. In addition, the

rule will set requirements for trawling gear for lake whitefish that differ slightly from gear requirements for other species. 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 changes in the type of gear used in the area of Lake Michigan near Two Rivers. Reduction in the use of trap nets due to increased trawling could reduce the incidence of boat entanglement with nets, and because trawling does not overlap as much with the sport fishing season as does the use of trap nets, the incidence of sport and commercial fishers encountering one another may also diminish.

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. Public utility rate payers and local governmental units will not be affected by the rule.

#### Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.