

Clearinghouse Rule 23-008

The statement of scope for this rule, SS 022-21 was approved by the Governor on February 19, 2021, published in Register No. 783A1 on March 1, 2021, and approved by the Natural Resources Board on May 26, 2021. This rule was approved by the Governor on insert date.

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 25.01 (3) (j), 25.09 (1) (am) 3. h., (2) (c) 2. and (d) 1. c.; to **renumber** NR 25.02 (1), (2), (3m), (4), (5), (8), (9m), (10), (13), (14), (17), (18), (18m), (19), (20), (21), (22), (27), (29), (30), (32), (35), (37), (38), (40), (41), (42), (43), (44), (45), (46), (47), (48), (49), (54), (55), (57), (58), (59), (60), (61), (63), (64), (65), (66), (67), (68), (69), (69m), (70), (71), and (72), 25.16, 25.17, and 25.19; to **renumber and amend** NR 25.02 (2m), (9), and (33); to **amend** NR 25.01 (1) and (3) (k), 25.02 (11), 25.05 (4), 25.06 (1) (b) 2. and (3) (e) and (h), 25.09 (1) (intro.), (ad), (ah), and (am) 1., 2., 3. a., b., d., and f., 4., 5., 6., and 7., (ar), (as), (av), (b), and (bm) 1., (2) (a) 1. to 9. and 10. a., b., c., and d., (b) 1. and 2. a. to d., f. and g., (c) 1., (d) 1. a., b., and d. and 2. a. and b., (3) (f) 1., and 25.10 (1) (a) 1., (2) (a) 5. and (f), and (4) (a) 2.; to **repeal and recreate** NR 25 (title), 25.05 (1) (e), and 25.09 (2) (b) 2. e.; and to **create** NR 25 Subchapter I, 25.01 (3) (ag), (am), and (ar), Subchapter II, 25.027, 25.09 (2) (a) 10. am., Subchapter III, and NR 25.20 relating to the Chapter NR 25 reorganization rule.

FH-16-20

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted: The department has interpreted ss. 29.014 (1), 29.041, and 29.519, Stats., as authorizing these rules.

2. Statutory Authority: Sections 29.014 (1), 29.041, and 29.519, Stats., authorize these rules.

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.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519, Stats., provides that the department may regulate the commercial fishery, including through harvest limits, formulas for allocation of harvest limits among licensees, allotment of individual licensee catch quotas, gear regulations, and restricted fishing areas, and authorizes the department to determine the method of submission of all required reports and records. These rules are established in ch. NR 25, Wis. Admin. Code.

4. Related Statutes or Rules:

None apply.

5. Plain Language Analysis:

The purpose of this rule is to restructure, reorganize and simplify ch. NR 25, “Commercial Fishing – Outlying Waters.” These changes will aid the department and stakeholders in interpreting and implementing this chapter. This rule will not impose new regulations on commercial fishers, and changes will be of a minor nature.

SECTION 1 revises the title of ch. NR 25 to appropriately reflect the contents of the chapter.

SECTION 2 creates a new subchapter for the general provisions of ch. NR 25.

SECTION 3 clarifies that the purpose of the chapter is not only to regulate commercial fishing in outlying waters, but also to regulate wholesale fish dealers doing business in Wisconsin. Wholesale fish dealer regulations have long been included in this chapter, but the organization of ch. NR 25 has not accurately reflected that wholesale fish dealers include both Wisconsin commercial fishers and other entities that are not commercial fishers.

SECTIONS 4, 5, and 6 add and revise references to rule provisions that are applicable to treaty fishers in the absence of a Lake Superior fishing agreement and are being renumbered and reorganized in this rule.

SECTIONS 7, 8, 10 to 13, 15, 16, 18 to 30, and 32 to 62 renumber existing definitions to place them in a new commercial fishing subchapter.

SECTION 9 renumbers the definition of catch-per-unit-of-effort to place it in a new commercial fishing subchapter, and amends the definition to include CPE, a commonly used acronym.

SECTION 14 renumbers the definition of “commercial fishing gear” to place it in a new commercial fishing subchapter, and amends the definition to remove unnecessary language relating to recreational fishing gear that is not regulated under this chapter.

SECTION 17 modifies the definition of "condition of the fish" to clarify that "description of the fish" is a term also commonly used for the same purpose.

SECTION 31 renumbers the definition of “high value species” to place it in the commercial fishing subchapter, and amends the definition to clarify that in any zone where a commercial fisher’s individual catch quota is less than 13,656 pounds, whitefish are considered to be a high-value species.

SECTION 63 creates a new subchapter to better organize the regulations specific to commercial fishers and commercial fishing in outlying waters. This subchapter contains the definitions that are renumbered in the sections above.

SECTION 64 creates the definitions section in Subchapter II, which contains the definitions renumbered in the sections above, and also creates a definition of "home use fisher," a term that is used in this chapter but has not previously been defined.

SECTION 65 modifies the description of the yellow perch fishing seasons in Green Bay to be less confusing, and adds a map to better illustrate the restrictions.

SECTION 66 corrects the date of the end of the commercial ice fishing season to be March 31, which is the last day in March.

SECTION 67 removes the reference to feet in favor of the equivalency in miles to improve consistency in measurement units throughout the chapter, reconciles language on transferring lake trout tags with the existing ability for fishers to transfer lake trout quota on Lake Superior, and corrects a cross-reference.

SECTION 68 and 70 clarify language relating to gear restrictions at certain times of the year and depths to reduce use of the passive voice, make the existing language easier to read and understand, and remove the references to days as a measurement of time in favor of hours, which are more specific. SECTION 68 also clarifies that these gear requirements would apply to treaty fishers as well, in the absence of a Lake Superior fishing agreement. SECTION 70 also clarifies the statutory gill net marking requirements that apply for Lake Superior and clarifies an existing rule provision relating to gill net placement when trap nets are set illegally in the "all nets" gear restriction category for Lake Superior.

SECTION 69 repeals a duplicative provision that is already stated in s. NR 25.09 (1) (am) 3. f.

SECTIONS 71 and 73 clarify language relating to gear restrictions to reduce use of the passive voice and make the existing language easier to read and understand, and remove the references to days as a measurement of time in favor of hours, which are more specific.

SECTION 72 moves existing language on lifting gill nets with a mesh size greater than 2 ¾ inch stretch measure in Lake Michigan in water less than 25 fathoms into a new, separate provision to better separate the rules from gill nets in Lake Michigan that are 2 ¾ inch stretch measure or less.

SECTION 74 clarifies language on the restriction on pound or trap nets in specific areas of Lake Michigan from June 29 to Labor Day to more clearly state the requirements for using these nets during this timeframe and for removing the net webbing, and adds a map of where the restrictions apply.

SECTION 75 clarifies language and marking requirements for pound and trap nets so that each net is marked with the license number or fleet reporting number of the licensee using the net rather than the person to whom the net belongs, who may be a different person.

SECTION 76 clarifies language relating to gear restrictions for seines to reduce use of the passive voice.

SECTION 77 repeals a provision for fishing with seines that is being merged with existing seine provisions.

SECTIONS 78 and 79 reduce use of the passive voice in language on the use of trawls in southern Green Bay, and consolidate language on where trawls may be used into the introductory language of the subdivision (in SECTION 78) rather than in a separate provision (which is repealed in SECTION 79).

SECTION 80 clarifies language relating to trawling gear restrictions to reduce use of the passive voice and duplicative language that is already stated earlier in the paragraph, and adds a map of the area where trawling is allowed.

SECTION 81 specifies that the lead line coordinates rather than the king line coordinates of trap nets must be reported. This would facilitate trap net reporting for commercial fishers, as they more often utilize lead line coordinates in their operations. In combination with the pot coordinates, the lead line coordinates provide an accurate representation of the layout of the net.

SECTION 82 removes an obsolete reference to statutes, removes an obsolete geographical point of reference, rectifies incorrect coordinates, and removes redundant geographical references for restricted areas in Lake Superior and Lake Michigan. This section also clarifies that applicants for a restricted area permit must complete the application form with all information required by the department on the form.

SECTIONS 83, 84 and 85 renumber existing provisions relating to lake trout tagging and identification, wholesale fish dealer reports, and vehicle identification requirements to reorganize them into the appropriate subchapters.

SECTION 86 organizes existing wholesale fish dealer regulations into a new subchapter.

SECTION 87 adds a definition of "wholesale fish dealer" based on the statutory definition since the term is used in this chapter of administrative code, and clarifies the relationship of the statutory definition to commercial fishing licensees.

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:

No preliminary public hearing and comment period were required.

8. Comparison with Similar Rules in Adjacent States:

Fisheries management rules are generally similar in the states surrounding Wisconsin. Neighboring states employ seasons, quotas, gear restrictions, reporting requirements, limitations on the number of licenses, and other regulations to regulate their commercial fishing industry, and have also established license, record-keeping and reporting requirements and other regulations for wholesale fish dealers.

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

The Bureau of Fisheries Management and Law Enforcement evaluated ch. NR 25, Wis. Admin. Code for ways to better organize the provisions that apply to commercial fishers, wholesale fish dealers, or both, as well as to make language less confusing and easier to navigate. All changes are very minor in nature and do not impact the existing operations of commercial fishers and wholesale fish dealers.

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

This rule is anticipated to have no economic impact on small businesses, because it is not making any substantive changes to the regulatory function of rule provisions in ch. NR 25, Wis. Admin. Code.

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

No economic effects are anticipated for small businesses as a result of this rule. In addition, this rule does not impose any new compliance or reporting requirements, nor are any changes to design or operational standards contained in the rule.

12. Agency Contact Person: Meredith Penthorn, Meredith.Penthorn@wisconsin.gov, 608-316-0080

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

101. S. Webster St.

Madison, WI 53704

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

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

RULE TEXT

SECTION 1. Chapter NR 25 (title) is repealed and recreated to read:

NR 25 COMMERCIAL FISHING IN OUTLYING WATERS AND WHOLESALE FISH DEALERS

SECTION 2. Chapter NR 25, Subchapter I (title) [precedes NR 25.01] is created to read:

Subchapter I - General Provisions

SECTION 3. NR 25.01 (1) is amended to read:

NR 25.01 (1) This chapter, along with other applicable rules and statutes, regulates commercial fishing in ~~the~~ outlying waters and wholesale fish dealers doing business in Wisconsin.

SECTION 4. NR 25.01 (3) (ag) and (ar) are created to read:

NR 25.01 (3) (ag) Section NR 25.022.

(ar) Section NR 25.027.

SECTION 5. NR 25.01 (3) (j) is repealed.

SECTION 6. NR 25.01 (3) (k) is amended to read:

NR 25.01 (3) (k) Section NR ~~25.17-25.21~~

SECTION 7. NR 25.02 (1) is renumbered NR 25.027 (1).

SECTION 8. NR 25.02 (2) is renumbered NR 25.027 (2).

SECTION 9. NR 25.02 (2m) is renumbered NR 25.027 (3) and is amended to read:

NR 25.027 (3) ~~“Catch per unit of effort”~~ “CPE” means catch-per-unit-of-effort, which is the average number of fish caught per 1,000-foot lift of gill net or per lift of trap net, and includes all dead and live fish.

SECTION 10. NR 25.02 (3m) is renumbered NR 25.027 (4).

SECTION 11. NR 25.02 (4) is renumbered NR 25.027 (5).

SECTION 12. NR 25.02 (5) is renumbered NR 25.027 (6).

SECTION 13. NR 25.02 (8) is renumbered NR 25.027 (7).

SECTION 14. NR 25.02 (9) is renumbered NR 25.027 (8) and is amended to read:

NR 25.027 (8) “Commercial fishing gear” or “commercial gear” is that equipment identified in or regulated by this chapter, ~~with the exception of hook and line or angling equipment, gear for the taking of smelt pursuant to s. NR 20.20, or the taking of minnows.~~

SECTION 15. NR 25.02 (9m) is renumbered NR 25.027 (9).

SECTION 16. NR 25.02 (10) is renumbered NR 25.027 (10).

SECTION 17. NR 25.02 (11) is amended to read:

NR 25.02 (11) “Condition of the fish” or “description of the fish” means the form that fish are in, and includes but is not limited to fresh round, fresh dressed, frozen dressed, fresh

fillet, frozen fillet, fresh chunked, frozen chunked, smoked dressed, smoked fillet, smoked chunked, fresh snipped or frozen snipped.

SECTION 18. NR 25.02 (13) is renumbered NR 25.027 (11).

SECTION 19. NR 25.02 (14) is renumbered NR 25.027 (12).

SECTION 20. NR 25.02 (17) is renumbered NR 25.027 (13).

SECTION 21. NR 25.02 (18) is renumbered NR 25.027 (14).

SECTION 22. NR 25.02 (18m) is renumbered NR 25.027 (15).

SECTION 23. NR 25.02 (19) is renumbered NR 25.027 (16).

SECTION 24. NR 25.02 (20) is renumbered NR 25.027 (17).

SECTION 25. NR 25.02 (21) is renumbered NR 25.027 (18).

SECTION 26. NR 25.02 (22) is renumbered NR 25.027 (19).

SECTION 27. NR 25.02 (27) is renumbered NR 25.027 (20).

SECTION 28. NR 25.02 (29) is renumbered NR 25.027 (21).

SECTION 29. NR 25.02 (30) is renumbered NR 25.027 (22).

SECTION 30. NR 25.02 (32) is renumbered NR 25.027 (23).

SECTION 31. NR 25.02 (33) is renumbered NR 25.027 (24) and is amended to read:

NR 25.027 (24) "High value species" means whitefish when a commercial fisher's whitefish individual catch quota in any zone is less than 13,656 pounds and yellow perch.

SECTION 32. NR 25.02 (35) is renumbered NR 25.027 (26).

SECTION 33. NR 25.02 (37) is renumbered NR 25.027 (27).

SECTION 34. NR 25.02 (38) is renumbered NR 25.027 (28).

SECTION 35. NR 25.02 (40) is renumbered NR 25.027 (29).

SECTION 36. NR 25.02 (41) is renumbered NR 25.027 (30).

SECTION 37. NR 25.02 (42) is renumbered NR 25.027 (31).

SECTION 38. NR 25.02 (43) is renumbered NR 25.027 (32).

SECTION 39. NR 25.02 (44) is renumbered NR 25.027 (33).

SECTION 40. NR 25.02 (45) is renumbered NR 25.027 (34).

SECTION 41. NR 25.02 (46) is renumbered NR 25.027 (35).

SECTION 42. NR 25.02 (47) is renumbered NR 25.027 (36).

SECTION 43. NR 25.02 (48) is renumbered NR 25.027 (37).

SECTION 44. NR 25.02 (49) is renumbered NR 25.027 (38).

SECTION 45. NR 25.02 (54) is renumbered NR 25.027 (39).

SECTION 46. NR 25.02 (55) is renumbered NR 25.027 (40).

SECTION 47. NR 25.02 (57) is renumbered NR 25.027 (41).

SECTION 48. NR 25.02 (58) is renumbered NR 25.027 (42).

SECTION 49. NR 25.02 (59) is renumbered NR 25.027 (43).

SECTION 50. NR 25.02 (60) is renumbered NR 25.027 (44).

SECTION 51. NR 25.02 (61) is renumbered NR 25.027 (45).

SECTION 52. NR 25.02 (63) is renumbered NR 25.027 (46).

SECTION 53. NR 25.02 (64) is renumbered NR 25.027 (47).

SECTION 54. NR 25.02 (65) is renumbered NR 25.027 (48).

SECTION 55. NR 25.02 (66) is renumbered NR 25.027 (49).

SECTION 56. NR 25.02 (67) is renumbered NR 25.027 (50).

SECTION 57. NR 25.02 (68) is renumbered NR 25.027 (51).

SECTION 58. NR 25.02 (69) is renumbered NR 25.027 (52).

SECTION 59. NR 25.02 (69m) is renumbered NR 25.027 (53).

SECTION 60. NR 25.02 (70) is renumbered NR 25.027 (54).

SECTION 61. NR 25.02 (71) is renumbered NR 25.027 (55).

SECTION 62. NR 25.02 (72) is renumbered NR 25.027 (56).

SECTION 63. Chapter NR 25, Subchapter II (title) [precedes NR 25.027] is created to read:

Subchapter II – Commercial Fishing—Outlying Waters

SECTION 64. NR 25.027 (title), (intro.), and sub. (25) are created to read:

NR 25.027 **Definitions.** Except as otherwise specifically defined in the statutes, in this subchapter:

(25) “Home use fisher” means an enrolled tribal member of either the Bad River or Red Cliff band of Chippewa Indians exercising off-reservation fishing rights in Lake Superior recognized by *State v. Gurnoe*, 53 Wis. 2d 390 (1972), who takes fish for non-commercial disposition, including consumption by the member or member’s family or donation for charitable purposes.

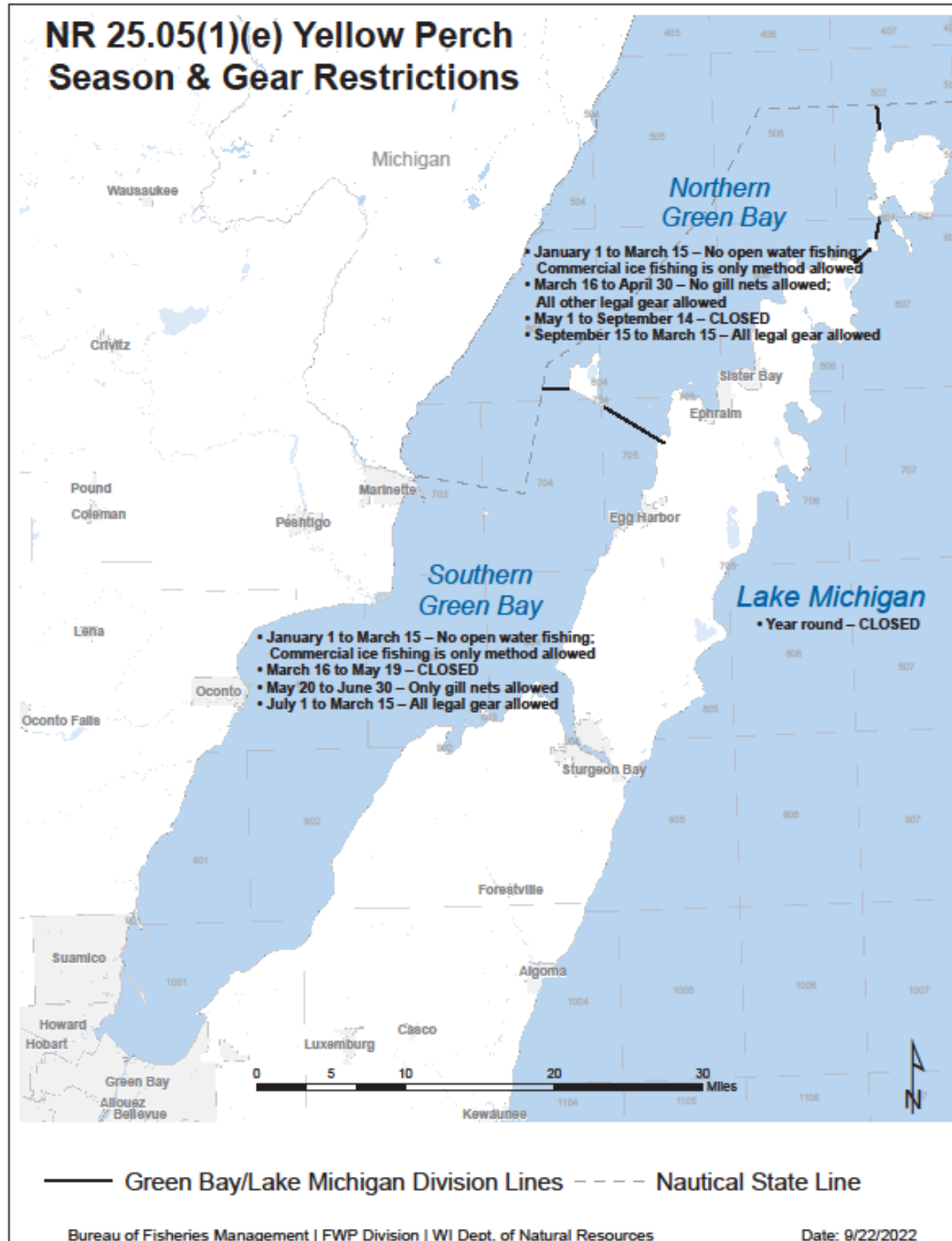
SECTION 65. NR 25.05 (1) (e) is repealed and recreated to read:

NR 25.05 (1)

Species	A Green Bay	B Lake Michigan	C Lake Superior
(e) Yellow perch	1. Southern Green Bay: a. January 1 to March 15 – no open water fishing; commercial ice fishing is the only method allowed. b. March 16 to May 19 – no open season c. May 20 to June 30 – only gill nets are allowed d. July 1 to March 15 – all legal gear is allowed 2. Northern Green Bay: a. January 1 to March 15 – no open water fishing;	No open season	No open season

- commercial ice fishing is
the only method allowed
- b. March 16 to April 30 –
no gill nets allowed; all
other legal gear allowed
 - c. May 1 to September 14 –
no open season
 - d. September 15 to March
15 – all legal gear allowed

See map for details



SECTION 66. NR 25.05 (4) amended to read:

NR 25.05 (4) ICE FISHING. Commercial fishing through the ice in Green Bay and Lake Michigan is prohibited after March ~~30~~ 31 during each license year.

SECTION 67. NR 25.06 (1) (b) 2. and (3) (e) and (h) are amended to read:

NR 25.06 (1) (b) 2. Permittees are restricted to the use of no more than 350 feet of gill net and sale of fish pursuant to these permits is prohibited. These fishing activities shall be restricted to waters adjacent to the reservations of the Bad River and Red Cliff bands, and during the closed season for lake trout no part of any net may extend beyond ~~1,320 feet~~ one-quarter mile from the shoreline of those waters.

(3) (e) Tags provided or authorized by the department for tagging fish may not be transferred, except when transferring a lake trout quota allotment as provided in s. NR 25.07 (1) (a) 2. to another licensee.

(h) All unused tags issued under this section for the commercial harvest of lean lake trout shall be returned to the department within 30 days of the close of the fishing season for lake trout described in s. NR ~~25.05 (1) (e)~~ 25.05 (1) (a).

SECTION 68. NR 25.09 (1) (intro.), (ad), (ah), and (am) 1., 2., and 3. a., b., d., and f. are amended to read:

NR 25.09 (1) Licensed commercial fishers and treaty fishers conducting commercial fishing operations may only use the following gear subject to the conditions stated in this section and in the areas designated:

(ad) *Gill nets - 1³/₄ inch.* ~~With Licensees may use gill nets with~~ a mesh size of not more than 1³/₄ inch stretch measure.

(ah) *Gill nets - 2³/₈ inch.* ~~With Licensees may use gill nets with~~ a mesh size of not less than 2³/₈ inch and not more than 3 inch stretch measure under the following conditions:

1. ~~Not more than 35 meshes in depth in water~~ From January 16 to November 9, licensees may use gill nets of this size stretch measure only when the bottom lead or maître cord, line, or rope is on the lake bottom, only when the depth of water at that location is 12 to 60 feet (2 to 10 fathoms) deep or 210 to 330 feet (35 to 55 fathoms) deep, and only when the number of meshes does not exceed 35 meshes in depth only from January 16 through November 9;

2. ~~Not more than 35 meshes in depth in water~~ From November 10 to January 15, licensees may use gill nets of this size stretch measure only when the bottom lead or maître cord, line, or rope is on the lake bottom, only when the depth of water at that location is 60 to 330 feet (10 to 55 fathoms) deep, and only when the number of meshes does not exceed 35 meshes in depth only from November 10 through January 15; or.

3. ~~Not more than 60 meshes in depth in water of any depth~~ At any time of year, licensees may use gill nets of this size stretch measure and during any time of the year may be used, provided that the bottom maitre cord or lead line is at least 6 feet (1 fathom) above the lake bottom and the top maitre cord or float line is at least 12 feet (2 fathoms) below the surface of the water, and that the number of meshes does not exceed 60 meshes in depth.

(am) *Gill nets - 4⁷/₁₆ inch.* ~~With~~ Licensees may set gill nets with a mesh size of not less than 4⁷/₁₆ inch stretch measure under all of the following conditions:

1. ~~Not more than~~ Licensees may set gill nets with 4⁷/₁₆ inch stretch measure not exceeding 36 meshes in depth and only when set on the bottom of the lake, including treaty fishers.

2. In addition to the requirement in subd. 1., licensees may set gill nets with 4⁷/₁₆ inch stretch measure not exceeding 36 meshes in depth in waters less than 330 feet (55 fathoms) deep only from November 28 through September 30.

3. In addition to the requirements in subds. 1. and 2., in water less than 330 feet (55 fathoms) deep, the total maximum feet of gill net with mesh size equal to 4⁷/₁₆ inch and greater which that licensees may be set by commercial fishers shall be determined by the department according to this subdivision based on ~~catch-per-unit-of-effort (CPE)~~ in order to ensure that total allowable state and tribal annual lake trout harvest quotas and individual fishers' harvest quotas are not exceeded.

a. The lake trout open season under s. NR 25.05 is divided into 3 periods. The department shall determine ~~catch-per-unit-of-effort (CPE)~~ and determine the total maximum feet of gill net with mesh size equal to 4⁷/₁₆ inch and greater which may be set by ~~commercial fishers~~

licensees during each of the following 3 periods: period 1: November 28 through March 31; period 2: April 1 through May 31; period 3: June 1 through September 30.

b. ~~Catch per unit of effort (CPE)~~ for each period shall be determined from department-monitored state and tribal net lifts occurring during each period.

d. The 3-year average ~~catch per unit of efforts (CPEs)~~ shall be calculated by the department as the average of the monitored ~~catch per unit of efforts (CPEs)~~ for the corresponding periods of the preceding 3 lake trout open seasons using data from department-monitored net lifts.

f. ~~Allowable~~ The department shall make available allowable gill net effort limitations for period 1 shall be made available by November 1 of each year. If a commercial fisher's allowable gill net effort has not been used by the end of period 1 or 2 and is reported by the commercial fisher according to s. NR 25.13, the remaining balance of allowable gill net effort in feet of net shall be carried over to succeeding periods within the lake trout open season but not carried over to the next lake trout open season. ~~Allowable~~ The department shall determine gill net effort limitations for periods 2 and 3 shall be determined by the department within 5 working days after the start of periods 2 and 3 using remaining allowable gill net effort reported according to s. NR 25.13.

SECTION 69. NR 25.09 (1) (am) 3. h. is repealed.

SECTION 70. NR 25.09 (1) (am) 4., 5., 6., and 7., (ar), (as), (av), (b), and (bm) 1. are amended to read:

NR 25.09 (1) (am) 4. ~~May not be set~~ Upon use of all tags issued for lake trout to the licensee under s. NR 25.07 (1) (a), or upon use of the total number of feet of gill net permitted to be set in any time period under subd. 3., a licensee may not set gill nets with a mesh size of 4 7/16 inch stretch measure in water less than 330 feet (55 fathoms) deep for the remainder of the lake trout open season by a licensed commercial fisher upon use of all tags issued for lake trout to the fisher under s. NR 25.07 (1) (a), or upon use of the total number of feet of gill net permitted to be set in any time period under subd. 3.

5. ~~Shall be tagged by the licensed commercial fisher using~~ The licensee using the gill net shall tag the gill net with an informational tag, supplied by the department, on the buoy staff above the water line. Each tag shall state the time and date upon which the gill net was set, the length of the gang of nets, the license number or fleet reporting number and the licensee's initials.

6. ~~May not be placed~~ Licensees may not set or place gill nets in the waters of Lake Superior from a boat or watercraft from January 15 through March 31, except as authorized by the department in a permit issued under sub. (6).

7. ~~May not set or place~~ Licensees may not set or place gill nets within $\frac{1}{4}$ one-quarter mile shoreward of the pot and lead of any entrapping net, except that if a trap net is set within $\frac{1}{4}$ one-quarter mile of a gill net, that gill net may continue to be lifted and reset in the same location.

(ar) *Gill nets - unrestricted size.* ~~With~~ Licensees may set gill nets with no restrictions on mesh size or the number of meshes in depth at any time during the year only in water more than 330 feet (55 fathoms) deep and only when set on the bottom.

(as) *Gill net marking requirements.* ~~Shall be~~ The licensee shall legibly marked mark each gill net with the license number or fleet reporting number of the license holder on each float or on each lead, and shall mark the bowls of the buoys on each end of the gang with the license number of the license holder in accordance with s. 29.516 (2) (d) 1., Stats. ~~with the license number or fleet reporting number of the commercial fishing license holder to whom it belongs.~~

(av) *Gill net lifting requirements.* ~~Shall be lifted~~ The licensee shall lift each gill net a minimum of:

1. Once every 72 hours ~~(3 days)~~ in open water less than 96 feet (16 fathoms) deep.
2. Once every 120 hours ~~(5 days)~~ in open water 96 to 210 feet (16 to 35 fathoms) deep.
3. Once every 240 hours ~~(10 days)~~ in open water more than 210 feet (35 fathoms) deep.
4. Once every 120 hours ~~(5 days)~~ in commercial ice fishing.

(b) *Entrapping nets.* 1. ~~Only~~ Licensees may use entrapping nets only when the pot or crib is set, placed or operated in water not more than 90 feet (15 fathoms) deep.

2. ~~May be set, placed or operated~~ Licensees may set, place or operate entrapping nets only by permit issued under s. NR 25.10 (4) in that part of Lake Superior lying between a line extending due north of a point one mile east of the mouth of the Iron river in section 34, township 50 north, range 9 west, Bayfield county, and a line extending due north from the mouth of the Bad river in section 17, township 48 north, range 2 west, Ashland county, including all of the Apostle Islands area.

3. ~~May be used up to 10 such nets by each licensed commercial fisher, that being~~ Each licensee may use up to 10 entrapping nets per license, as measured by the maximum number of pots or cribs ~~allowed~~.

4. ~~Shall be lifted~~ Licensees shall lift each entrapping net a minimum of once every 168 hours (~~7 days~~).

5. ~~Shall~~ Each entrapping net shall have the fish holding pot portion rendered inoperable during the closed seasons for whitefish and lake trout and shall have the webbing removed from the water within 3 days after the close of the lake trout season.

6. ~~May not be placed~~ Licensees may not place entrapping nets within $\frac{1}{2}$ one-half mile of any other entrapping net.

7. ~~May not be placed or operated~~ Licensees may not place or operate entrapping nets in the waters of Lake Superior during the months of April, May, June, July, August, and September if the mesh covering the top of the hearts of the nets is less than 14 inch stretch measure.

8. ~~May not be placed or operated~~ Licensees may not place or operate entrapping nets in the waters of Lake Superior from a boat or ~~water-craft~~ watercraft from November 28 through March 31.

9. ~~Entrapment nets fished~~ Licensees fishing with entrapment nets in the area west of Bark Point known as WI-1 may harvest cisco, whitefish, and lake trout less than 25 inches in length, and ~~may only be used~~ from April 1 to September 30.

10. ~~May not be placed or operated~~ Licensees may not place or operate entrapping nets within ~~1~~ one mile of a designated trout stream.

11. ~~Shall each be marked and maintained~~ The licensee shall mark and maintain each entrapping net with 2 flags, one above the other, on a single staff attached to the inside or shallow lead end of the net, one flag on a staff attached to the pot or lifting buoy, one flag on a staff attached to the anchor at the outward end of the king line, and one float measuring a minimum of 5 inches in diameter attached to the anchor at the outward end of each net wing. All staffs shall be marked with reflective tape. All flags shall measure not less than 9 inches high by 18 inches wide and shall be displayed so that the top edge of the flag is not less than 5 feet above the water, except that the lower of 2 flags on one staff shall be displayed so that the bottom edge is not less than 3 feet above the water. Two flags displayed on one staff shall be separated by not less than 6 inches. All floats and all flags except the flag attached to the king line anchor shall be of a highly visible color commonly referred to as hunter orange or blaze orange with a color range between 595 nm and 605 nm. The flag attached to the king line anchor shall be a dark color other than orange. The license number or fleet reporting number of the commercial fishing license holder ~~to whom each net belongs~~ shall be displayed and maintained in legible, block figures at least 1 inch high on the bowl of the pot or lifting buoy. Flags are not required October 16 through April 14.

(bm) 1. No net may be placed within ~~1/4~~ one-quarter mile of any other net, except that if a trap net is set illegally within one-quarter mile of a legally placed gill net, that gill net may continue to be lifted and reset in the same location in accordance with par. (am) 7. ~~and~~ ~~entrapment~~ Entrapment nets are further subject to s. NR 25.09 (1) (b) 6.

SECTION 71. NR 25.09 (2) (a) 1. to 9. and 10. a. are amended to read:

(2) Lake Michigan and Green Bay. (a) *Gill nets*. 1. ~~With~~ 'Gill nets of 1 ¾ inch stretch measure for smelt.' For taking smelt only, licensees may use gill nets with a mesh size of not

more than $1\frac{3}{4}$ inch stretch measure not exceeding 60 meshes in depth in Green Bay and 30 meshes in depth in Lake Michigan ~~for taking smelt only.~~

2. ~~With~~ 'Gill nets of $2\frac{3}{8}$ to $2\frac{1}{2}$ inch stretch measure in southern Green Bay.' In southern Green Bay, licensees may use gill nets with a mesh size of not less than $2\frac{3}{8}$ inch and not more than $2\frac{1}{2}$ inch stretch measure not exceeding 60 meshes in depth ~~in southern Green Bay only.~~

3. ~~With~~ 'Gill nets of $2\frac{3}{8}$ to $2\frac{3}{4}$ inch stretch measure in the southern chub fishing zone in Lake Michigan.' In water more than 150 feet (25 fathoms) deep in the southern chub fishing zone in Lake Michigan only except as provided in subd. 4., licensees may use gill nets with a mesh size of not less than $2\frac{3}{8}$ inch and not more than $2\frac{3}{4}$ inch stretch measure, and not less than 24 meshes and not more than 60 meshes in height, ~~only in the southern chub fishing zone in water more than 150 feet (25 fathoms) deep.~~

4. ~~With~~ 'Gill nets of $2\frac{1}{2}$ to $2\frac{3}{4}$ inch stretch measure.' In any of the following areas and under the following conditions, licensees may use gill nets with a mesh size of not less than $2\frac{1}{2}$ inch and not more than $2\frac{3}{4}$ inch stretch measure:

a. For chubs in Lake Michigan ~~and Green Bay~~, licensees may use gill nets of $2\frac{1}{2}$ to $2\frac{3}{4}$ inch stretch measure in the northern chub fishing zone only and those nets may not exceed 60 meshes in depth.

b. For other legal fish species in Lake Michigan and Green Bay, licensees may use gill nets of $2\frac{1}{2}$ to $2\frac{3}{4}$ inch stretch measure only in the areas and with the restrictions described under subd. 4. c. and d.

c. ~~May not exceed~~ In Lake Michigan in waters less than 150 feet (25 fathoms) deep outside the northern chub fishing zone, licensees may use gill nets of $2\frac{1}{2}$ to $2\frac{3}{4}$ inch stretch measure only if the gill nets do not exceed 18 meshes in depth when set in waters less than 150 feet (25 fathoms) deep in Lake Michigan outside the northern chub fishing zone.

d. ~~May~~ In Green Bay, or within the northern chub fishing zone, or in waters 150 feet (25 fathoms) deep or deeper in Lake Michigan, gill nets of $2\frac{1}{2}$ to $2\frac{3}{4}$ inch stretch measure may be

~~used only if the gill nets do not exceed 60 meshes in depth when set in Green Bay, or in waters 150 feet (25 fathoms) deep or deeper in Lake Michigan, or within the northern chub fishing zone.~~

6. ~~With~~ 'Gill nets of 4 to 4 ½ inch stretch measure in southern Green Bay.' Licensees may use gill nets with a mesh size of not less than 4 inch and not more than 4¹/₂ inch stretch measure in southern Green Bay under all of the following conditions and in accordance with subd. 9.:

a. ~~Only~~ Gill nets of 4 to 4 ½ inch stretch measure may be used only in southern Green Bay in water less than 30 feet (5 fathoms) deep.

c. ~~From~~ Gill nets of 4 to 4 ½ inch stretch measure may be used only from May 20 to March 9, except that these gill nets may not be used during the closed season for whitefish.

d. ~~Not~~ Gill nets of 4 to 4 ½ inch stretch measure may not be more than 30 meshes in depth.

7. ~~With~~ 'Gill nets greater than 4 ½ inch stretch measure to 6 ½ inch stretch measure.' Licensees may use gill nets with a mesh size ~~of not less~~ greater than 4¹/₂ inch and not more than 6¹/₂ inch stretch measure under all of the following conditions and in accordance with subd. 9.:

a. ~~In~~ Gill nets of this size may be used in those waters of Lake Michigan lying north of a line extending from the mid-channel marker buoy of Bailey's Harbor on 135° bearing.

b. ~~In~~ Gill nets of this size may be used in Green Bay.

c. ~~Only~~ Gill nets of this size may only be used during the open season for whitefish.

d. ~~May~~ Gill nets of this size may not exceed 30 meshes in depth for one-half of the total length of these nets set at any time by a licensed commercial fisher, and the remaining half may not exceed 50 meshes in depth.

8. ~~With~~ Licensees may use gill nets with a mesh size of not less ~~greater than~~ 6¹/₂ inch stretch measure under all of the following conditions and in accordance with subd. 9.:

b. ~~Only~~ Gill nets of this size may be used only during the open seasons for whitefish and yellow perch.

c. ~~Not~~ Gill nets of this size may not be more than 12 meshes in depth.

9. ~~With~~ Licenseses may use gill nets with a mesh size of 4 inch or larger stretch measure. The total length of gill nets used under each license may not to exceed 12,000 feet may be used under each license at any one time.

10. ~~Shall be lifted a minimum of~~ Licenseses shall lift all gill nets within the following time intervals:

a. Once every 24 hours (~~1 day~~) in open water less than 150 feet (25 fathoms) deep for all mesh sizes in Green Bay and Lake Michigan ~~except as provided in subd. 10. d.~~

SECTION 72. NR 25.09 (2) (a) 10. am. is created to read:

NR 25.09 (2) (a) 10. am. Once every 24 hours in open water less than 150 feet (25 fathoms) deep for mesh sizes greater than 2 ³/₄ inch stretch measure in Lake Michigan.

SECTION 73. NR 25.09 (2) (a) 10. b., c., and d. and (b) 1. and 2. a. to d. are amended to read:

NR 25.09 (2) (a) 10. b. Once every 120 hours (~~5 days~~) in open water 150 feet (25 fathoms) deep or deeper for mesh sizes of ~~not more than~~ 2³/₄ or less inch stretch measure in Lake Michigan.

c. Once every 48 hours (~~2 days~~) in commercial ice fishing.

d. Once every 120 hours (~~5 days~~) in open water less than 150 feet (25 fathoms) deep for mesh sizes of ~~not more than~~ 2³/₄ inch or less stretch measure in Lake Michigan.

(b) *Entrapping nets.* 1. ~~Drop~~ Licenseses may use drop nets and fyke nets under all of the following conditions:

a. ~~Only~~ Licensees may only use drop nets and fyke nets during the open season for yellow perch, except by permit issued under s. NR 25.10 (4).

b. ~~May be used~~ Licensees may use up to 30 drop nets or fyke nets in aggregate under each license, that being as measured by the maximum number of pots or cribs allowed.

c. ~~Shall be lifted~~ Licensees shall lift drop and fyke nets a minimum of once every 72 hours (~~3 days~~).

2. ~~Pound~~ Licensees may use pound nets and trap nets under all of the following conditions:

a. Only when the pot or crib is set, placed or operated in water not more than 150 feet (25 fathoms) deep, ~~and~~ except from June 29 to Labor Day south of a line extending from the Lake Michigan shoreline along 44°52'30" north latitude ~~only when~~ where the entire net, including the lead, is set, placed or operated in water not more than 150 feet (25 fathoms) or less than 60 feet (10 fathoms) deep.

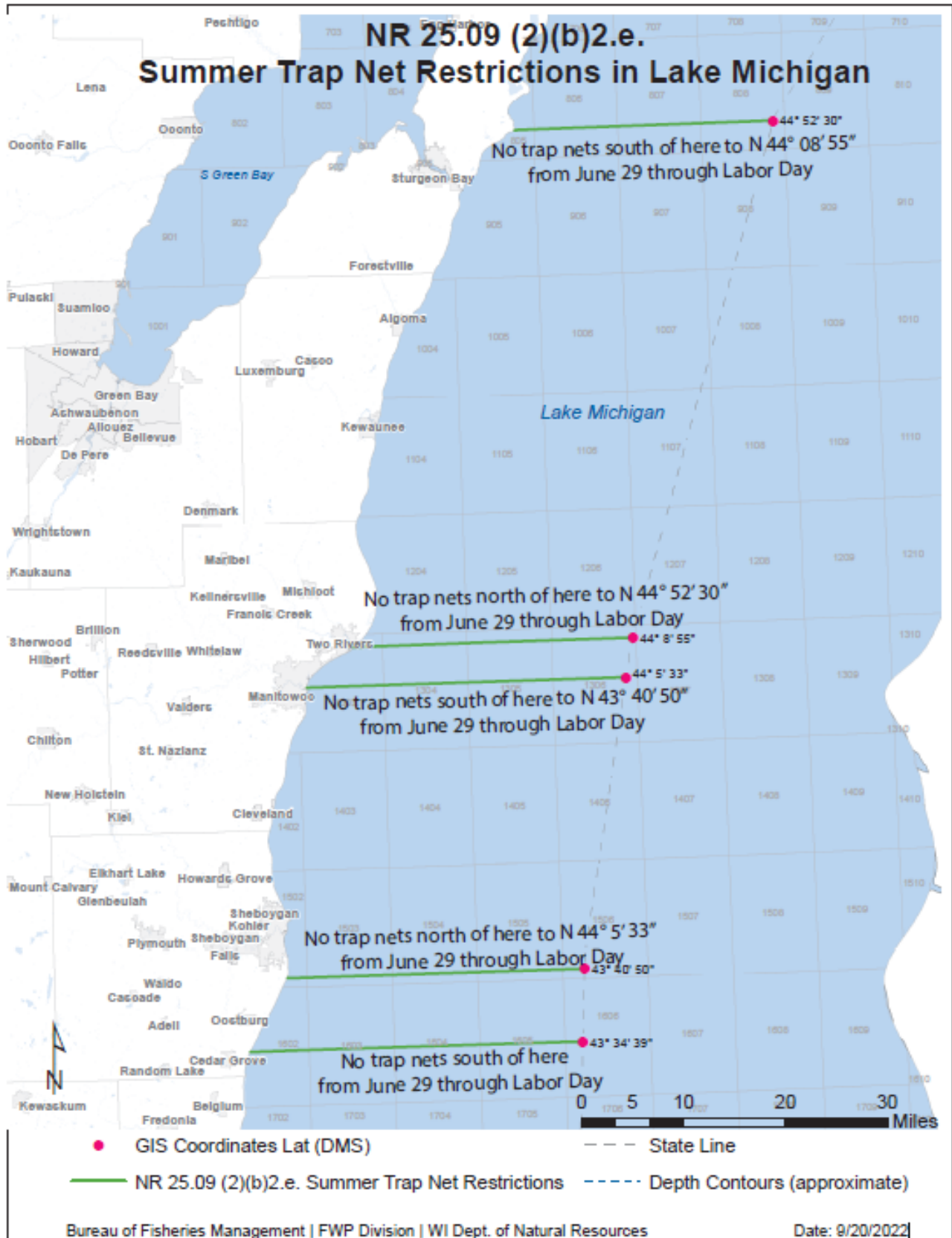
b. ~~No~~ From the day following Labor Day to June 28, licensees may use no more than 12 pound nets and trap nets in aggregate may be used under each license as measured by the number of pots or cribs, that being the maximum number of pots or cribs allowed, except that from, except in southern Green Bay as described under s. NR 25.102. From June 29 to Labor Day in the waters of Lake Michigan lying south of a line extending from the Lake Michigan shoreline along 44°52'30" north latitude, licensees may use no more than 3 pound nets and trap nets in aggregate may be used under each license, as measured by the number of pots or cribs, in the waters of Lake Michigan lying south of a line extending from the Lake Michigan shoreline along 44°52'30² north latitude while north of this line licensees may use no more than 12 pound nets and trap nets in aggregate under each license.

c. ~~Shall be lifted~~ Licensees shall lift nets under this subdivision a minimum of once every 120 hours (~~5 days~~).

d. ~~Shall~~ Each net shall have the fish holding or pot portion rendered inoperable during the closed season for whitefish and shall have the webbing removed from the water within 14 days after the close of the whitefish season.

SECTION 74. NR 25.09 (2) (b) 2. e. is repealed and recreated to read:

NR 25.09 (2) (b) 2. e. From June 29 through Labor Day, licensees may not use pound nets or trap nets in Lake Michigan between 44°52'30" north latitude and 44°08'55" north latitude, between 44°05'33" north latitude and 43°40'50" north latitude, and south of 43°34'39" north latitude. Unless the department has granted an extension of time, the webbing of each pound net and each trap net shall be removed from the water by June 28 and may not be reinstalled until the day after Labor Day. If adverse weather conditions or unanticipated equipment problems prevent removal of the webbing by June 28, a licensee may request and the department may grant a brief extension of time sufficient to allow safe removal. See map for details.



SECTION 75. NR 25.09 (2) (b) 2. f. and g. are amended to read:

NR 25.09 (2) (b) 2. f. ~~Shall each be marked and maintained~~ Licensees shall mark each pound or trap net with 2 flags, one above the other, on a single staff attached to the inside or shallow lead end of the net, one flag on a staff attached to the pot or lifting buoy, one flag on a staff attached to the anchor at the outward end of the king line, and one float measuring a minimum of 5 inches in diameter attached to the anchor at the outward end of each net wing. All staffs shall be marked with reflective tape. All flags shall measure not less than 9 inches high by 18 inches wide and shall be displayed so that the top edge of the flag is not less than 5 feet above the water, except that the lower of 2 flags on one staff shall be displayed so that the bottom edge is not less than 3 feet above the water. Two flags displayed on one staff shall be separated by not less than 6 inches. All floats and all flags required under this subdivision paragraph except the flag attached to the king line anchor shall be of a highly visible color commonly referred to as hunter orange or blaze orange with a color range between 595 nm and 605 nm. The flag attached to the king line anchor shall be a dark color other than orange. The license number or fleet reporting number of the commercial fishing license holder ~~to whom each net belongs~~ shall be displayed and maintained in legible, block figures at least 1 inch high on the bowl of the pot or lifting buoy. Flags are not required October 16 through April 14.

g. ~~For~~ Licensees may use pound nets and trap nets for legal fish species in Lake Michigan and Green Bay.

SECTION 76. NR 25.09 (2) (c) 1. is amended to read:

NR 25.09 (2) (c) Seines. 1. ~~With~~ Licensees may use seines. Seines shall have a mesh size of not less than 3 inch stretch measure and shall be at least 75 feet in length.

SECTION 77. NR 25.09 (2) (c) 2. is repealed.

SECTION 78. NR 25.09 (2) (d) 1. a. and b. are amended to read:

NR 25.09 (2) (d) 1. In southern Green Bay north of a line from the southernmost point of Little Tail point to the Green Bay navigation channel entrance light at 87°54'4.176" west

longitude, 44°39'11.088" north latitude only, licensees may use trawls only under the following provisions:

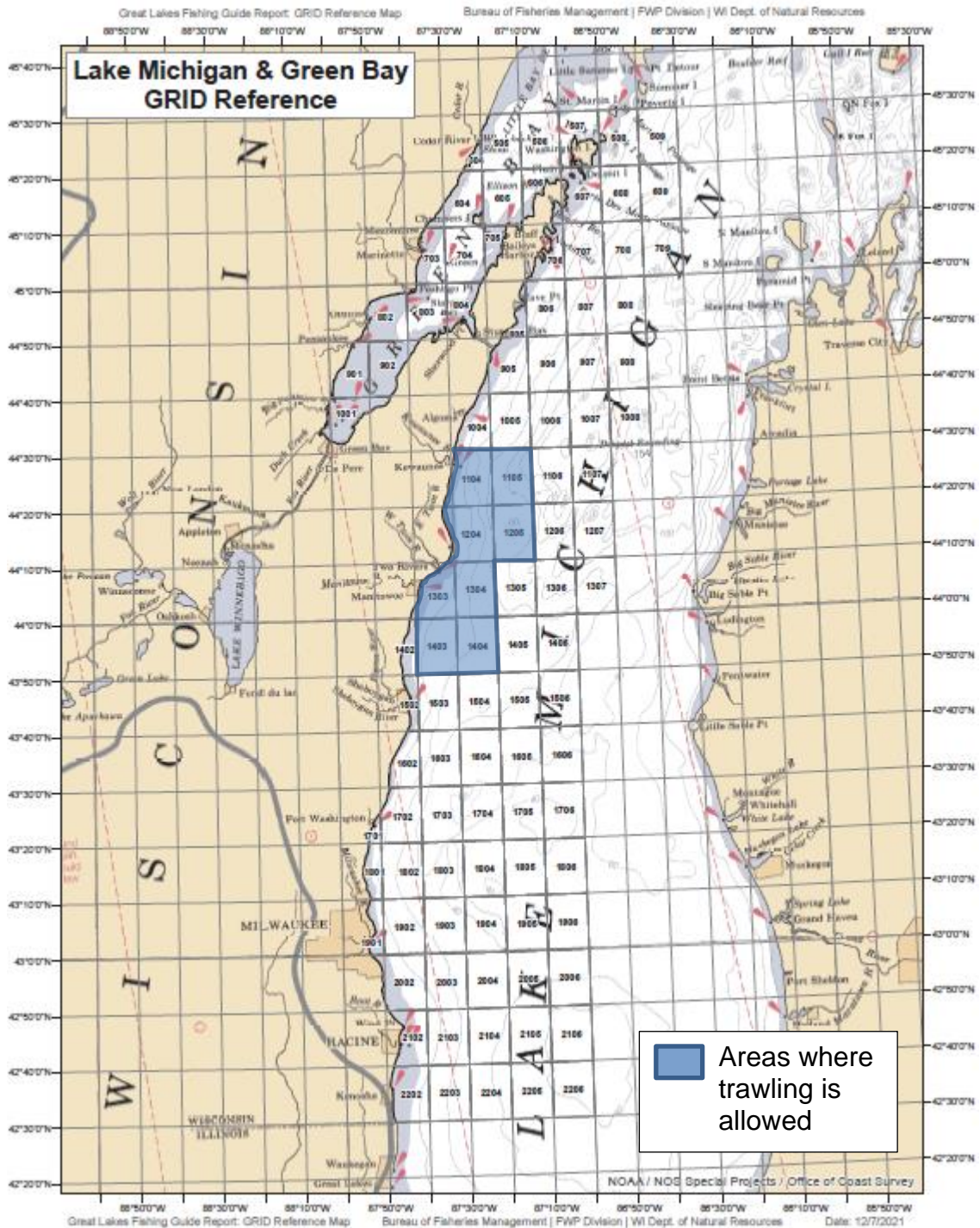
- a. ~~Only~~ Licensees may only use trawls for taking smelt under s. NR 25.06 (2) (c).
- b. ~~Only~~ Licensees trawling under this subdivision may only use trawls in water more than 65 feet deep.

SECTION 79. NR 25.09 (2) (d) 1. c. is repealed.

SECTION 80. NR 25.09 (2) (d) 1. d. and 2. a. and b. are amended to read:

NR 25.09 (2) (d) 1. d. ~~When used to harvest smelt in Green Bay, diverters~~ Licensees trawling under this subdivision shall use diverters with openings no larger than $\frac{7}{8}$ inch wide ~~shall be used.~~

2. In Lake Michigan, licensees may use trawls under all of the following conditions:
 - a. ~~Only~~ Licensees may use trawls only in waters 60 feet (10 fathoms) deep or deeper bounded by a line beginning at a point where 44° 30' north latitude intersects with the Wisconsin shore of Lake Michigan, then proceeding east along 44° 30' north latitude, to its intersection with 87° 10' west longitude, then proceeding south along 87° 10' west longitude to its intersection with 44° 10' north latitude then proceeding west along 44° 10' north latitude to its intersection with 87° 20' west longitude, then proceeding south along 87° 20' west longitude to its intersection with 43° 50' north latitude, then proceeding west along 43° 50' north latitude to its intersection with 87° 40' west longitude, then proceeding north along 87° 40' west longitude to its intersection with 44° 00' north latitude, then proceeding west along 44° 00' north latitude to the Wisconsin shore of Lake Michigan and then north along the shore to the point of beginning. This area can also be described as all of grids 1105, 1205, 1304, 1403 and 1404, and part of grids 1104, 1204, and 1303. See map for details.



- b. Only Licensees may use trawls for taking smelt as provided in s. NR 25.06 (2)
- (c) except chubs may be harvested during the trawling season for smelt, subject to s. NR 25.07 (2) (a), and whitefish may be harvested subject to the requirements in this subdivision and s. NR 25.09 (2m).

SECTION 81. NR 25.09 (3) (f) 1. is amended to read:

NR 25.09 (3) (f) 1. The latitude and longitude at which the pot and ~~king~~ lead line buoy of the net are set.

SECTION 82. NR 25.10 (1) (a) 1. and (2) (a) 5. and (f), and (4) (a) 2. are amended to read:

NR 25.10 (1) (a) 1. Allouez bay, Superior bay, and St. Louis bay, all in Douglas county ~~and as described in s. 29.417, Stats.~~

(2) (a) 5. That portion of southern Green Bay bounded by a line beginning ~~at the site west of Little Sturgeon Bay~~ at $87^{\circ}35'W$ longitude $44^{\circ}51.029'N$ latitude ~~in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, section 33, township 28 north, range 24 east,~~ then proceeding northeasterly 7.75 statute miles on a 54° bearing through the Sherwood Point shoal signal buoy and 0.37 statute miles beyond to latitude $44^{\circ}55'N$, then due east on a $44^{\circ}55'$ bearing, 2.75 statute miles to the shoreline in section 12, township 28 north, range 25 east, all in Door county.

(f) No commercial fishing gear of any kind except pound nets authorized by permit under sub. (4) for the taking of whitefish and rough or detrimental species may be used, set, placed or operated in the waters of Lake Michigan in depths less than 45 fathoms (270 feet) deep in the area between a line extending east from the end of the north pier at Algoma at $N44^{\circ}36.415'$ $N44^{\circ}36.405'$, ~~$W87^{\circ}25.760'$~~ $W87^{\circ}25.769'$ and a line extending east from the entrance of Kewaunee harbor at ~~$N44^{\circ}27.450'$~~ $N44^{\circ}27.459'$, $W87^{\circ}29.500'$.

(4) (a) 2. Applications shall be made on forms provided by the department and shall contain all information required by the department on the form, at least one week prior to commencing fishing operations, unless otherwise authorized.

SECTION 83. NR 25.16 is renumbered NR 25.022.

SECTION 84. NR 25.17 is renumbered NR 25.21.

SECTION 85. NR 25.19 is renumbered NR 25.025.

SECTION 86. Chapter NR 25, Subchapter III (title) [precedes NR 25.20] is created to read:

Subchapter III – Wholesale Fish Dealers

SECTION 87. NR 25.20 is created to read:

NR 25.20 DEFINITION. In this subchapter, “wholesale fish dealer” has the meaning given in s. 29.503 (1) (e), Stats., and includes a holder of a commercial fishing license or contract under ch. 29, Stats., who sells fish under s. 29.503 (2) (b), Stats., to another wholesale fish dealer or to a retailer, even if the seller is exempt from the wholesale fish dealer license requirement under s. 29.503 (2) (b), Stats.

SECTION 88. 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 89. 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 Adam N. Payne, Secretary