



Senate Fiscal Agency
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Senate Bill 251 (as enacted)
Sponsor: Senator Ed McBroom
Senate Committee: Natural Resources
House Committee: Natural Resources and Outdoor Recreation

PUBLIC ACT 34 of 2022

Date Completed: 3-23-23

CONTENT

The bill amended Part 437 (Commercial Fishing) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- **Allow certain trap nets to be set at a depth of no more than 150, instead of 80, feet.**
- **Allow a designee of the Department of Natural Resources (DNR) acting in compliance with a permit issued by the DNR to take fish for fish culture and scientific investigation, to hold fish to take spawn from the fish, and to sell ripe or unripe fish to defray expenses incurred in taking, fertilizing, and planting fish spawn.**

The bill also modified the dates for which a person may not take whitefish from Lake Huron, Lake Michigan, and Lake Superior.

The bill took effect March 15, 2022.

Net Depth. Part 473 prohibits a person from possessing on a boat licensed under Part 473 or using in the waters of Lakes Michigan, Superior, Huron, and Erie, and the bays of those lakes, within the jurisdiction of the State, certain nets that are different from those specified in the Act.

Pound nets having meshes no less than 4-1/2 inches in the lifting pot, crib, or pocket and in the heart and tunnel, and having meshes not less than five inches in the lead, must be used for taking whitefish and lake trout. Previously, a pound net or any part of the webbing of the net may not be set in water than is more than 80 feet deep. Under the bill, the depth limit increased to 150 feet.

Trap nets having meshes no less than 4-1/2 inches in the lifting pot, crib, or pocket and in the heart and tunnel and having meshes not less than five inches in the lead must be used for taking whitefish or lake trout. Previously, these traps nests may not be used in any other waters except in Lakes Huron and Erie, and only in a manner that no trap net or any part of the webbing of the net is set at a depth of more than 80 feet. Under the bill, the depth limit increased to 150 feet.

Previously, trap nets having meshes as described above and with no part of the lifting pot or crib over 15 feet in depth may be used to take whitefish and lake trout in Lakes Superior and Michigan in water of a depth not greater than 80 feet. The bill increased that depth to 150 feet.

Trawls. Previously, Part 473 prohibits the licensure of a trawl of any kind. The bill removes this language.

Taking of Whitefish. A person was prohibited from taking whitefish in Lakes Huron and Michigan from October 1 to December 10. Under the bill, a person is prohibited from taking whitefish from Lakes Huron, Michigan, and Superior from November 1 to November 30.

The DNR may take fish in any manner, in any of the waters covered under Part 473, at any and all seasons of the year, for the purpose of fish culture and scientific investigation; may hold and hold ripe and unripe fish in order to take spawn from the fish; may sell all of those ripe and unripe fish; and may devote the proceeds of the sales exclusively toward defraying the expenses incurred in taking the fish and fertilizing and planting the spawn from the fish. The bill extends the provision to a designee of the DNR who acted in compliance with a permit issued by the DNR.

MCL 324.46709 et al.

BACKGROUND

Under NREPA, the Natural Resource Commission (NRC) may regulate the taking of fish in Michigan. Annually, the Department of Natural Resources (DNR) releases annual fishing regulations. On December 8, 2020, the DNR released Fisheries Order 243.21, commonly referred to as Order 243. The Order limited trap netting to a depth of 80 feet or less. In the past, the depth limit was 150 feet. Additionally, the Order closed the season for whitefish on Lake Huron and Lake Michigan from October 1 to December 10.¹ In response to Order 243, the Michigan Fish Producers Association filed a class action lawsuit against the DNR claiming a violation of its First Amendment rights. Ultimately, the Michigan Fish Producers Association and the DNR reached a settlement through which the DNR did not admit any wrongdoing and paid the Association \$75,000.²

Following the release of the order, the DNR modified the regulations and specifically stated that the changes were a direct response to the Legislature's not passing commercial fishing legislation, referring to House Bills 4567, 4568, and 4569 (2019). The DNR noted that, unless commercial fishing legislation was passed, the DNR would not be able enact provision that previously were within the commercial fishing order. On February 10, 2021, the DNR issued a new order 243.21A, which eliminated the previous restrictions allowing fishermen to fish in water up to 150 feet deep and modified the whitefish season to close on Lake Huron, Lake Michigan, and Lake Superior from November 1 to November 30.³

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco, Jr.
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¹ Caitlyn French, "Great Lakes Fishing Companies Say Michigan DNR Order 'Pretty Much Puts Us Out of Business'" *MLIVE*, 1-20-2021.

² *Michigan Fish Producers Ass'n v. Michigan Department of Natural Resources*, memorandum opinion of the Court of Appeals, issued July 20, 2022 (Case No. 20-000272-MZ).

³ "State-Licensed Commercial Fishing Order, FO 243.21a", MI Department of Natural Resources, 2-11-2021. Available at <https://www.michigan.gov/dnr>.