

# MODEL GREAT LAKES COMMERCIAL FISHERIES STATUTE

adapted for use  
in the State of Michigan

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## ABSTRACT

### Model Great Lakes Commercial Fisheries Statute

The text of a model Act, including explanatory comments, which incorporates the current thinking of fishery biologists and economists regarding proper management of commercial fisheries is proposed. Among the principal concepts used are optimum (equitable) yield over time, fish stock assessment and quota share allocation. Written so as to conform to Michigan constitutional, legal and administrative constraints, the Act would be suitable for adoption in other states with only such minor changes as might be needed to conform to the different institutional structure of another state.

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## INTRODUCTION

Great Lakes fisheries have changed in many ways since Michigan's Commercial Fishing Act was adopted in 1929. Species composition, fish habitats, sport and commercial fishing methods and technology, and the desires of the public regarding fishery use have all changed substantially. In addition, much more is known now about fishery biology, fishery management, and the legal, social, and economic technology of utilizing the fishery resource in the most desirable way—optimum (and equitable) yield (OY) over time.

Even though the Act was revised most recently in 1968, the Michigan Department of Natural Resources (DNR), the State's Great Lakes Fishery Advisory Committee (GLFAC), the State's commercial and sport fishers and others generally felt that the present law was cumbersome and inadequate and should be completely rewritten. Therefore in 1978 the DNR appointed a task force to study the problem. The task force was comprised of three commercial fishers, a sport fishery representative, two public members, and a retired member of the academic community. The task force requested the assistance of Michigan Sea Grant, and this report is the result of the work done under Michigan Sea Grant funding.

Due to this history, this version of a Model Commercial Fisheries Act is designed for adoption in Michigan. With suitable small changes it can be adopted in any other Great Lakes state.

## FRAMEWORK

The task force recommended that a new law be written to more nearly achieve OY by incorporating the concepts of (1) quota shares, (2) assessment and allocation boards, (3) hearing processes, and (4) a system of fees assessed on quotas to pay the cost of management. The task force recommended this system because it felt that the system would (1) focus directly on the key problems of how many fish of each kind, size, and location to harvest rather than related factors such as number of boats or gear types; (2) be less expensive to administer; (3) permit considerable individual freedom and innovation by fishers; (4) be flexible enough to respond to changing biological, technological, and social conditions; (5) place the costs of commercial fishery management on those who utilize commercial fish; and (6) maintain a strong interest in the overall "health" of the fishery resource by the resource users.

### The Quota Shares System

The general idea of quota shares is that each fishing firm will be guaranteed a fixed percentage share of the annual optimum harvest level (overall quota) over some number of years. The overall quota for a particular fish stock can vary from year to year, depending on the condition of the fish stock and other factors, but the percentage allocation among firms remains fixed.

This system should permit a greater opportunity for optimal use of Great Lakes fishery resources for several reasons. First, fish stocks that differ in some significant way from other stocks of the same species or other species can be regulated separately to permit each stock to be managed as optimally as possible. For example, for genetic or environmental reasons some stocks of the same species grow at different rates, so their optimal harvesting rates differ. In another example, one stock may be more useful for sport fishing than other stocks of the same species, so their optimal commercial harvesting rates may differ. Separate treatment for various fish stocks is difficult under other management systems that focus on a secondary factor such as gear restrictions or on broader factors such as fleet size or tax rates.

Second, harvesting can be more efficient under this management system. Firms can be free to choose their own most efficient harvesting methods as long as they harvest only the prescribed fish. Under systems of general quotas without specific share allocations, firms waste resources by finding ways to increase harvest within the legal gear limits, whereas the

real purpose of the gear restrictions is usually to limit harvest. In addition, if firms have a long-term contract for a share of the quota they can afford long-term investments to increase efficiency. Furthermore, if firms can sell and buy their quota allocations, they will probably tend to consolidate such that the remaining firms approach some optimum firm size. This would happen voluntarily, eliminating the expense, unhappiness, and chances for bureaucratic errors of government actions for the same purpose. Under the quota shares system, fishing firms obtain a vested interest in the resource, making it to their own advantage to promote good resource management. This would probably minimize the adversarial relationships that often develop between managers and users in other management systems. The concept and composition of the assessment board and allocation committee would also work toward this end.

Finally, management and enforcement costs should be minimized under this system. Managers can focus on fish stocks instead of issues such as firm size or gear efficiency. Enforcement would similarly be focused on monitoring the fish harvest. Firms would have a vested interest in whether their fellow firms stay within their limits, so this may discourage misbehavior.

#### Assessment Board and Allocation Committee

The key management functions under the quota shares system are to set harvest quotas at levels as nearly optimal as feasible and to determine allocations among fishing firms. Since environmental and other conditions continually change, quotas should be reviewed and revised at least annually. The assessment board and the accompanying hearing process was designed to provide an open forum for the quota-setting process and to permit various interest groups to take part in the process. The Natural Resources Commission would maintain final authority and the obligation to consider the total public interest.

The allocation committee's primary function would be to establish share allocations between fishing firms. After the initial shares are established, the committee would have few duties. If a previously unexploited fish stock is to be allocated for the first time, or if the initial definitions of fish stocks are changed to consolidate or divide various stocks, the committee would have to establish new share allocations. The State's main interest here is that fishing firms are competent and reliable enough not to burden the public with navigational, safety, or enforcement problems. Therefore the allocation committee is comprised primarily of representatives of the fishing industry.

## Fees

A system of fees was adopted so the cost of managing and enforcing the commercial fishery could be paid by the fishery. The main advantages of this are (1) the fishery would be financially independent and more politically independent if it were self-sustaining, and (2) it is more equitable for resource users to pay for their own use of the resource. In addition, it may be feasible for the public to recover some "rent" for this special use of its resource--some monetary return over the cost of management and enforcement. The advantages would be similar to those just cited.

The fees are assessed when the quota is allocated because the fee is assessable against the right to fish. This provides incentive for the firm to actually harvest its quota. It also avoids the possible incentive to over-harvest and/or under-report catch that could result from charges on landings.

Fee structures may be established separately for each fish species based upon the economic efficiency of harvesting and selling the catch, expected demand and supply conditions, equity considerations, the cost of managing and enforcing regulations for the species, and other reasons.





MICHIGAN MODEL COMMERCIAL FISHERIES ACT

CHAPTER 1

GENERAL PROVISIONS

1-101 Short title.

This Act shall be known and may be cited as the Michigan Model Commercial Fisheries Act.

1-102 Purposes; rules of construction.

(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The fishery, being a resource belonging to the people of the State of Michigan, is to be managed for the optimum benefit to society over time. Therefore, the State shall attempt:

(a) to provide for the equitable distribution of benefits from the fisheries resource;

(b) to provide the maximum cost effective use of the resource within the management plan;

(c) to assure that the citizens of Michigan achieve an economic return from the uses of the resource;

(d) to promote employment in the commercial fishery and reduce the prevalence of unemployment in the fishery;

(e) to reduce conflicts among users of the fishery;

(f) to provide food resources for the citizens of Michigan; and  
(g) to recognize and enhance the values associated with the fishery industry, including, but not limited to, the historical values, ecological values, economic values, and potential use values.

(3) To effectuate these goals and policies, that management of the Michigan commercial fishery shall be based on ecological principles to achieve an optimum yield of the fishery which shall be based on research and recognized trends in fish population and biology.

(4) Management of the Michigan commercial fishery shall consider the long term effects on a viable fishery within the management of an entire ecosystem.

**MICHIGAN MODEL COMMERCIAL FISHERIES ACT: POLICY STATEMENT**

*The fishery resources of the State of Michigan are living, renewable resources which make an important material contribution to the economy and food supply, as well as a contribution to the health, well-being, employment, and recreation of the citizens. Michigan's fisheries are capable of being maintained and greatly increased with proper management and wise use. The fisheries, which belong to the people of the State of Michigan, are to be managed for the optimum benefit to society over time.*

Because no person has the inherent right to take or process fishery resources for commercial purposes without the express consent of the State, it is the intention of the State to establish a commercial Fisheries Act which shall attempt:

1. to provide for the equitable distribution of benefits from the fishery resources;
2. to provide food resources for the citizens of Michigan;
3. to provide the maximum cost-effective use of the resources within a management plan;
4. to assure that the citizens of Michigan receive an economic return from the users of the resources for the privilege of using the resource;
5. to promote employment in the commercial fishery and reduce the incidence of unemployment in the fishery;
6. to reduce conflicts among users of the resources; and
7. to recognize and enhance the values associated with the fishing industry, including historical, ecological, economic, social, and potential use values.

To effectuate these goals and policies, the management of the Michigan commercial fishery shall be based on ecological principles to achieve an optimal sustainable yield of the fishery. The utilization of ecological principles in the conservation and management of the entire fishery, and specifically the commercial fishery, provides the organizing framework to ensure effective and efficient State control of its resources. Ecological principles pertaining to the conservation and management of Michigan fisheries include the following:

1. The concept of ecosystem provides an understanding of both the fish and their habitat in (a) the context of interactions and interdependencies among and between all living things and their non-living environment, and in (b) the premise that the ecosystem provides the most practical physical location where the effects and impacts of management practices, resource exploitation, and other environmental uses can be studied or modified through the gathering of scientific information. An understanding of the functional relationships among important ecosystem components is necessary in order to manipulate them; specifically, maximizing the populations of desired commercial fish stocks.
2. A second ecological principle requires the adoption and maintenance of a long-term carrying capacity approach to resource management. Basically, carrying capacity is the ability of a habitat to sustain a population of organisms over time. This requires that populations of fish in Michigan waters be managed to adequately utilize the available space and food supplies provided by the aquatic habitats. Such populations (and potential surpluses) can then be harvested by approved

methods as long as the populations are not over-exploited to the level where natural reproduction cannot replace the original populations.

3. Prevention of irreversible environmental changes is a third ecological principle which must be included in a fisheries management program. Any permanent change in the aquatic environment, such as the introduction of toxic substances or the destruction of habitat, may result in lowering of carrying capacity, extinction of a fish population, and the ultimate loss of the fishery. It is essential that the management program closely monitor land and water use activities for their potential impacts on the fishery.
4. A final ecological principle to be considered is the protection of critical environments. Michigan's fishery resource is of extreme importance, particularly in view of the increasing population and its continuing demand for food. The waters of the State can be managed to provide a potential, long-term supply of protein as needed by the citizens of this State and elsewhere.

Conformance with ecological principles, the development of successful management programs, and the equitable distribution of benefits from the fisheries, depend on the gathering of pertinent scientific, economic, social, and technological data. In order to promote optimal utilization and conservation of the fishery resources, such information must be assessed on a continuing basis. This gives resource managers the ability to assess the ecological conditions of aquatic habitats, the relative health of fish stocks, demand for fishery resources, harvest pressures, new fishing methods, and other pertinent information. Decision makers for the State of Michigan can then equitably allocate the fishery resources among user groups while maintaining a total ecosystem view of the resource in both the short and long-term contexts.

It is also the policy of the State of Michigan to encourage public participation in the determination of an equitable utilization of fishery resources. Since decisions concerning distribution and allocation of the resources have important consequences for all citizens of the State, opportunities for participation through advisory councils or public hearings can greatly contribute to a general understanding of resource problems and solutions. Participation by both the general public and individuals associated with the fishing industry will also maintain the lines of communication needed to assess the opinions of all user groups.

§ 1-103 Statutory interpretation.

All references herein made in the masculine gender apply also to the feminine and neuter genders. All references in the singular also include the plural.

§ 1-104 Severability.

If any provision or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are declared to be severable.

§ 1-105 Interstate compacts and international treaties.

This Act shall not supercede any interstate compact or international treaty which is in conflict with the Act. Where such agreements can be made to conform to this Act, such conformities shall be incorporated within the scope of the provisions of said compact or treaty.

*Federal law, including agreements made with other states and treaties (such as those made with Native Americans), cannot be changed by State legislation.*

§ 1-106 Saving clause.

All suits, actions or proceedings for the violation of any law now in force which may be started before this Act takes effect shall not be abated thereby, and may be prosecuted in the same manner and with like effect as though this Act had not been passed.

§ 1-107 Effective date.

This Statute shall become effective within 180 days of its passage.

§ 1-201 Definitions:

(1) "Act" means the Michigan Model Commercial Fisheries Act.

(2) "Allocation" is that percentage of the commercial fish stock that each commercial fisherman is permitted to catch.

(3) "Board" refers to the Assessment Board as defined and described herein.

(4) "Carrying capacity" is the maximum fish stock that can thrive in a designated body of water.

*Carrying capacity means the number and size of fish a given area will support and is related mainly to the availability of resources. It can be further defined as the average population of fish an area will support over an extended period of time. A population can exceed the carrying capacity of the resource temporarily, but eventually the population will decline to an equilibrium level.*

(5) "Commercial fisherman" means a natural person, firm, company, co-partnership, partnership, association or corporation that fishes and markets his catch as a livelihood or principal business.

(6) "Commercial fish stock" is that portion of the fish stock which is allocated for commercial fishing on the basis of optimal sustainable yield.

(7) "Commission" refers to the Natural Resources Commission of the State of Michigan.

(8) "Committee" refers to the Allocation Committee as defined and described herein.

(9) "Contested case" is a proceeding, including that not limited to rate-making, price fixing and licensing, in which determination of the legal rights, duties or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. When a hearing is held before an agency and an appeal from its decision is taken to another agency, the hearing and appeal are deemed to be a continuous proceeding as though before a single agency.

(10) "Department" refers to the Department of Natural Resources of the State of Michigan.

(11) "Fish stock" is a population of fish, whether geographically defined or not, that exists independently of other fish of the same species.

*Fish stock refers to separate fish populations of the same species. At certain times of the year these populations may be distinct, and other times, e.g., during migrations, these populations may not be distinct.*

(12) "Gear" includes the rods, lines, nets, hooks, traps, anchors, buoys, floats, lifting and handling equipment and appurtenances thereto, used to catch fish, but does not include boats.

(13) "Harvest fee" means the annual fee created by section 5-102, *infra*.

(14) "Maximum sustainable yield" is the largest average annual catch or yield in terms of weight of fish caught by both commercial and recreational fishermen that can be taken continuously from a stock under existing environmental conditions.

*Maximum sustainable yield is the greatest number of fish in terms of weight that can be harvested from a self-regenerating stock year after year, by both commercial and sport fishers, while still maintaining a constant average size of the original stock. The stock size reflects the carrying capacity of the habitat. At any sustained yield level the death rate is balanced by recruitment.*

(15) "Optimum yield" takes into account for both the present and the future, the economic well-being of the commercial fishermen, the habitat quality, and the State interest in conservation and management of the fishery. Optimum yield recognizes both the present and the future resource uses and values other than harvesting, allows for the importance of quality to the recreational fishing experience, considers social and economic factors as important criteria in setting harvest rates, recognizes the need for fishery products, and considers the present extent and condition of the habitat as well as long term changes.

(16) "Recreational fishing" is fishing for game fish to the extent and in the manner governed by the provision of MCL §301.1 *et seq.*; MSA §13.1591 *et seq.*, also known as the Michigan Sportsmen Fishing Law.

(17) "Waters" refers to all the navigable and non-navigable surface waters within the State of Michigan.



## CHAPTER 2

### GREAT LAKES FISHERY MANAGEMENT

§ 2-101 Department of Natural Resources; responsible agency.

The Department shall be the agency responsible for the supervision and general management of the commercial fishery in Michigan.

§ 2-102 Same; duties.

The Commission shall have the following duties:

(1) to review and modify the assessment and allocation information compiled by the Assessment Board and Allocation Committee;

(2) to formulate any policy which shall be in keeping with the general goals and policies of this Act but which is necessary for the furtherance of this Act; and

(3) to promulgate such rules as may be necessary to effectuate the purposes of this Act.

*Act 17 of 1921 prohibited the Conservation Commission (now, Natural Resources Commission) from making rules that apply to commercial fishing except as provided by law. This act broadens the regulatory power of the NRC, while assuring all interested parties that commercial fishing regulations will not be controlled by one interest group. Members of the NRC, are individuals with a knowledge of and concern for Michigan's natural resources. The NRC will oversee the activities of the Assessment and Allocation Boards so that their actions are in keeping with the general policies and goals of the model commercial Fishing Act and of the Department.*

§ 2-103 Same; procedure.

The Commission shall hold public hearings on any disputes which may arise over the allocations of the fishery resource. Such public hearings shall be held before an administrative law judge who shall resolve the conflict by making recommendations on the percentage of the resource allocated to each disputant. Such hearings shall be conducted pursuant to the procedures for contested cases in the Michigan Administrative Procedures Act (MCL §24.271 et seq.; MSA §3.560(171) et seq.).

*Hearings will be held by the NRC for the purposes of gathering information and opinions, and for settling disputes which may arise. Disputes may involve disagreements over individual allocation size as a result of periodic reallocation. Persons involved in such disputes will have the opportunity to present their cases before an impartial decision maker, an administrative law judge. After hearing the case, the judge will make his decision, which will be forwarded.*



§ 2-104 Same; contested cases.

The Commission shall have the authority to resolve all other contested cases within the procedures set forth by the Michigan Administrative Procedures Act (MCL §24.271 et seq.; MSA§3.560(171) et seq.).

§ 2-105 Same; enforcement; emergency powers.

The Commission shall have the authority necessary to enforce all sections of this Act and all rules and regulations promulgated hereunder.

The Commission shall have the authority to issue an order enacting emergency measures when, in its opinion, the commercial fishery resource is endangered.

Orders issued pursuant to this section may remain in effect for a maximum of 18 months from the date of issuance, shall take effect immediately and shall not be subject to legislative review.

*It is the responsibility of the NRC to protect and promote wise use of the natural resources belonging to the citizens of the State. The Commission has the staff, experience, and ability to assess the state of the environment for each resource and determine whether conditions affecting that resource may be damaging to the long-term, beneficial use of that resource by the people.*

*Emergency measures which may interrupt the use and enjoyment of any natural resource may be based on environmental conditions or human activities which introduce toxic substances, disease organisms, or competing exotic species affecting either the fish stocks themselves or the use of fish by consumers. Loss of a viable fishery may result from species die-off; overfishing or use of non-selective fishing equipment which adversely affects natural reproduction; man-made or natural structures which impede normal life forces of fish (access to spawning grounds, migration patterns, shelter for fingerlings and other protection from natural enemies); disruption or destruction of food supplies; lowering of proper oxygen levels; etc.*

*Emergency measures may include banning all fishing activities within designated areas or among certain species; size or sex restrictions; limitations on the type of gear used, or hours or seasons of legal operations; etc. They may also include temporal or area moratoria on fishing certain stocks to allow buildup or recovery of populations after environmental damage has occurred. The Commission may also recommend limitations in the number of fish caught, sold, and consumed due to concentrations of toxic substances in the fish which may harm humans.*

*The Commission also has the power to rescind or cancel emergency measures when it decides that the emergency condition has passed.*

§ 2-201 Assessment Board establishment; membership.

There shall be established an Assessment Board. This Board shall be composed of the following eleven members:

(1) one representative of the Department who shall be appointed by the Director of the Department;

(2) one member of a recognized recreational fishing organization having members in the State of Michigan who shall be appointed by the Director of the Department;

(3) the president of an organization of licensed commercial fishermen having members in the State of Michigan, or his designated alternate who shall be appointed by the Director of the Department;

(4) one commercial fisherman from each of the following fishing regions to be selected by a popular vote which will be conducted by mail by the Commission:

- (a) Lake Superior;
- (b) Lake Michigan; and
- (c) Lake Huron;

(5) one commercial fisherman to be appointed by the Director of the Department to represent the remaining fishing regions;

(6) one representative of the general public who shall be appointed by the Director of the Department;

(7) one representative of the federal government who shall be the Chair of the Great Lakes Basin Commission or his designated alternate;

(8) one representative of the academic community who shall be a faculty member of an institute of higher education and who shall be appointed by the Director of the Department; and

(9) one representative who shall be a Native American, selected in whatever manner the tribes may mutually agree upon, by recognized Indian tribes with fishing rights that are guaranteed by federal treaties.

*The organization of the Assessment Board is intended to reflect and support the various interests of the citizens of the State, including concern for the vitality and proper management of a natural resource, commercial and recreational use of the resource from both a professional and private point of view, persons who derive their livelihood from each aquatic area of the State supporting a fishery, and the interests of the general public and the federal government and their wards (Native Americans). The diverse make-up of the Board is also intended to provide a balance to the input of information necessary in the proper management of the fishery resource. This includes scientific research; management program design; political, social, and economic data; and the interactions and conflicts among the different interests. This balance is also necessary for intelligent and appropriate decision making.*

- (1) The appointee from the DNR represents the view and interests of the citizens of Michigan as a single entity. He also represents the official policy of the State Government with respect to the proper management and utilization of a resource for which it is responsible. The DNR representative will provide scientific, social, political, and economic data gathered and used by the State.
- (2) The appointee who represents a recognized recreational fishing organization will be expected to provide input from non-commercial fishing interests, specifically, the large and vocal group of sport and recreational fishermen in the State. Since the majority of fishing in Michigan is non-commercial, these groups must be represented, not only because many species of fish are sought by both interests, but also to settle disputes and provide a forum for discussion between sometimes conflicting interests. Without the support of non-commercial interests, a viable commercial fishing industry in Michigan is impossible.
- (3) The president of an organization of licensed commercial fishermen represents the commercial fishermen as a whole and in an official capacity. This representative is or has been fishing for his livelihood and, thus, is familiar with the problems inherent in a commercial fishery and has collected and considered various information submitted to him by his constituency.
- (4) Active commercial fishermen from each major fishery (Great Lake) of Michigan are represented on the Board because they are most familiar with the conditions, problems, and potentials of "their" region. Each representative can be expected to seek a balance in the management efforts, fish allocations and controlling regulations applied to the Michigan fishery as a whole.
- (5) Although the major fisheries are in Lakes Michigan, Huron, and Superior, the continued and advancing movement toward better water quality and management programs throughout the State may open new areas to commercial fishing. This may include portions of Lake Erie, Lake St. Clair and the Detroit River, and even some inland water. Therefore provision is made for the appointment of a fisherman representing a region not included in (4) above.
- (6) An appointee from the general public may or may not be a fisherman in his own right. This person will represent the views of the public as the true owners of the fishery resource of Michigan. It is the citizen appointee's responsibility to be aware of the public's attitudes concerning utilization and management of the fishery and to provide such input in the decision making process.
- (7) Because the Great Lakes are an international waterway, a representative of the federal government must be appointed to the Board, which assesses and allocates a migratory resource which may have international implication. In addition, other states in the Great Lakes region also have active commercial and recreational fisheries. Thus, the Chairman of the Great Lakes Basin Commission was designated to be a member of the Board to represent the interest of the Federal Government and of other states. The

federal representative will also have inputs from federal agencies such as the United States Department of Interior, HSS, etc., which should be factored into the resource decisions.

(8) An appointee from the academic community can be helpful in establishing an interaction between the government, the people of the State, and a recognized body of research which can be valuable in managing the fishery resource. While it may be helpful to appoint a faculty member from a university fisheries and wildlife or resource management program who has access to state-of-the-art information, such an appointment is not exclusive. A faculty member in political science, economics, or sociology may be more useful if such a need is identified by the Director of the DNR.

(9) Because Native Americans are protectees of the United States and have been guaranteed fishing rights by treaty (subject to legal interpretation), they must be represented on the Board and also must be part of the decision making process. Many Native Americans derive their livelihoods from fishing both as a commercial venture and as a source of food.

§ 2-202 Same; chair; quorum; meetings; jurisdiction.

The Chair of the Assessment Board shall be decided by a majority vote of the members of the Board and shall serve for a one (1) year term of office. The Chair may be re-elected for successive terms of office.

One-half (1/2) of the members of the Board must be present to constitute a quorum.

The Board shall meet a minimum of once every three (3) months to conduct regular business.

All motions or proposals before the Board shall be passed by a simple majority vote of those members present and voting.

The jurisdiction of the Assessment Board shall extend to all State waters.

*Meetings are to be held according to established rules of order and must meet a minimum of four (4) times per year (every three (3) months) to review pertinent information on the status and trends of the commercial fishery, evaluate the need for further research, and make recommendations to the DNR and NRC.*

§ 2-203 Same; compensation.

Members of the Assessment Board shall be compensated at a rate to be determined by the Department and the salary confirmed by the legislature within the financing of the Department for each fiscal year.

*Compensation may be paid to members of the Assessment Board at the discretion of the State legislature. Funds for compensation may be paid by budget appropriation; disbursement from the State's game and fish fund; from fines collected in administering and enforcing this Act; or by any other means deemed appropriate by the NRC or State legislature. Refer to Section 5-101, 102, 103 Comments for further explanation of this Section.*

§ 2-204 Same; duties.

The Board shall review yearly the research and data of the fishery resource which have been compiled by commercial fishing operations, the Department, and other such sources as the Board may recognize.

The Board shall evaluate the current capacity of fish stocks, considering the current and reasonably projected future fishery resource and past performances of the fishery. The Board shall determine what percentage of the total fish stock shall be allocated for commercial fishing based on its evaluation of the stocks and fishery and shall also state the tolerable margin of error in the allocation.

The Board shall make recommendations of annual commercial quotas for each commercial fish stock and the harvest fee set therefor. After receiving the Board's recommendations the Commission shall order a hearing pursuant to §2-103 and, after receiving the report, issue final orders. The quotas shall be defined on the basis of species, size, seasonal variation and geographical area.

*Each year the Assessment Board will review data and research on the fishery. Data will come from the commercial fishers harvest information, DNR research and any other source which may provide valuable information. The Board, through its evaluations will project the future capacity of the fish stocks by reviewing past and current fishery trends (i.e., cyclical population fluctuations). After the Board has noted the fishery capacity, it will determine what percentage of that total will be allocated for commercial fishing while still maintaining a healthy reproductive population.*

§ 2-205 Same; hearings.

The Assessment Board shall hold public evidentiary hearings to gather and disseminate information. Any member of the public shall have the right to participate in these hearings.

*The Assessment Board will hold open hearings for public participation and input in fishery decisions.*

§ 2-301 Allocation Committee; establishment; membership.

There shall be established an Allocation Committee. This Committee shall be a subcommittee of the Board and shall be composed of the following members of the Board:

- (1) the representative of the Department;
- (2) the president of an organization of licensed commercial fishermen having members in the State of Michigan;
- (3) the representative of the following fishing regions;
  - (a) Lake Superior;
  - (b) Lake Michigan; and
  - (c) Lake Huron;

- (4) the representative who is a commercial fisherman representing the remaining fishing regions; and
- (5) the representative who is a Native American.

*The make-up of the Allocation Committee follows that of the Assessment Board in that each member of the Committee is also a member of the Board. However, only those members who have a direct association with the fishery or with its legal management will meet to decide how the commercial fishery will be divided among users. Active commercial fishermen from each lake or area, a Native American fisherman, the representative from the organization of licensed commercial fishermen (representing all commercial fishermen), and the DNR appointee will serve on the Allocation Committee.*

§ 2-302 Same; jurisdiction; chair; quorum; meetings.

The jurisdiction of the Committee shall extend to all State waters.

The representative of the Department will serve as Chair of the Committee.

All members of the Committee must be present to constitute a quorum.

The Committee shall meet at least once every ten (10) years.

*Meetings to determine the allocation of fish resources, based on pertinent and up-to-date information from economic, political, social, and biological sources gathered by the Assessment Board, and which set the allocation for a ten year (10) period, must meet every ten (10) years. The Committee must meet at least once during this period, but if more meetings are necessary to establish an allocation, such meetings must be provided for.*

§ 2-303 Same; duties.

The Committee shall determine the percentage of the fish stock that shall be allocated to each commercial fisherman.

Allocations shall be determined through a quota system. The maximum permissible commercial catch for the fishery shall be determined on the basis of weight of fish to be caught for each species. Each registrant under this Act shall be entitled to an allocation which shall be a percentage of each commercial fish stock allowed to be harvested in designated areas of each lake and each river within the jurisdiction of this Act.

*Besides information and recommendations of the Assessment Board, the Allocation Committee must also consider the needs of each individual licensed and registered commercial fisherman (see Section 4) who is applying for an allocation. In order to grant a fair percentage of each fish stock, it may be necessary for the Committee to examine past business records of individual fishermen. Sources for this data may include harvest information collected by the DNR or information voluntarily supplied by the fishermen themselves. It may be in the best interests of each fisherman to provide such information to ensure that his allocation under this act will provide an economic return.*

Other information required by the Committee to set allocations may come from resolutions and petitions from public meetings held in local communities, public hearings, and administrative hearings (Section 4-301-306), data from research conducted by the DNR or other organizations, rules and regulations established by the Commission, and so on. Such information is to be considered before setting allocations as well as after the allocations have been examined by public hearing and by the Commission.

**An Allocation is:**

- (1) a percentage or quota by weight of a designated fish species from a stock of that species which is granted to a licensed and registered commercial fisherman for his harvest and use;
- (2) limited to only those species of fish which can be economically exploited after such species have been designated as commercial by the State, and only from areas designated as open to commercial operations;
- (3) based on data and information collected, analyzed, and utilized by the Assessment Board in its capacity to assess the stocks of fish and quality of the environment supporting those stocks;
- (4) established by the Allocation Committee according to past records and performance of the commercial fishery, findings and recommendations of public hearings, and rules and regulations established by the State;
- (5) a property interest granted by the State with all the inherent rights, privileges, and duties, and subject to all laws governing such interests (see 4-305,6);
- (6) free to be harvested by any approved method or intensiveness of effort as long as the yearly allocation is not exceeded according to provisions of this Act, subject to regulations and modifications set by the NRC; and
- (7) a permanent quota for a 10 year period; i.e., if a fisherman is granted 10 percent of a particular fish stock, he will be able to harvest 10 percent each year for 10 years, whether there be 100 lbs. or 100 tons of fish in that stock in a given year.

## CHAPTER 3

### MANAGEMENT OF THE FISHERY RESOURCE

#### § 3-101 Data collection and data base; establishment.

Data shall be collected and a data base maintained by the Board and the Committee. This data base shall be used by the Board and the Committee in the exercise of their duties.

The data to be contained in the data base shall include, but not be limited to, the following sources:

(1) Federal and State government sources, including but not limited to, the Michigan Department of Natural Resources, the United States Fish and Wildlife Service, and the Great Lakes Basin Commission. These data may derive from other sources, but the studies must have been conducted under the auspices of the agency that is contributing the data.

(2) Academic research which pertains to the fishery resource or its industry. Such research may be used in the data base through either raw data or data that have been analyzed and published in a reputable journal.

(3) Economic studies of the fishery resource. Records that are indicative of economic trends may also be included in the data base without constituting an analysis of the actual commodity market.

(4) Required reports from commercial fishermen. The data collected from this source shall include, but not be limited to, the size of the catch from each outing, the location of the catch of each species, the time of day, the date on which the catch took place, the amount of time spent fishing, and the equipment that was used to take each catch.

*A data base must be established and maintained by the Assessment Board and the Allocation Committee for them to carry out their duties. These data will provide information on all aspects of fishery management.*

*Data can come from many sources and are not limited to those included in the Act. Sources included in the Act are:*

(1) *Federal and State government sources, such as the Michigan DNR and the U.S. Fish and Wildlife Service;*

(2) *Academic research in the form of raw data (data that have not been fully analyzed or published) and published data.*

(3) *Economic information on the fishery indicating demand and price trends.*

(4) *Reports from the commercial fishers including, but not limited to, those statistics listed in the Act.*



§ 3-102 Same; biological and ecological data.

Biological and ecological information shall include, but is not limited to, studies related to the species and trends of fish stocks. Population projections of the stocks shall be made on the basis of this information. The carrying capacity of Lake Michigan, Lake Superior, Lake Huron, and other waters of the State shall be determined and included in the data base. The quality of the habitat and any improvement or deterioration thereof shall be evaluated for inclusion in the ecological data base.

*Continuous input and analysis of biological and ecological data will be needed to ensure that this Act is compatible with, and supportive of, Michigan's fishery management programs. It is the responsibility of the Assessment Board and NRC to obtain past research efforts and to commission new studies where information is lacking. Officials must continually keep abreast of the latest findings of university fishery departments, federal and State-sponsored research, private efforts such as those done by ecological consulting firms, industry-sponsored studies, and any other sources identified as potential contributors. The data required of fishermen in reporting the status of their catch will also be invaluable in managing the resource.*

*Biological information on each individual species and the status of its stocks will be required in order to understand more about the resource itself. Natural historical information such as size, foods, reproductive potential, natural enemies, preferred habitat (water depth, temperature, movement, pH, etc.), seasonal and daily patterns of movement, spawning grounds, and so on, have been collected on most commercial species of fish, although continued "fine tuning" of the data will be helpful. More sophisticated research in areas such as population biology and behavior will also add to the usefulness of information. Biological information will continually be needed to set harvest levels, including data on present population levels and trends; i.e., whether a stock is increasing or decreasing. Initial allocations, if set too high, may seriously inhibit stock recovery. If stocks are found to be decreasing in number, even if initial assessments show that the populations are relatively large, it might be wise to limit fishing from such stocks until sufficient data are available to explain the trend.*

*Collection of ecological data will require a more intensive effort on the part of the Board. Ecological data describe the interactions between the fish and their environment. Research is needed to show how a fish species interacts with members of its own population and with other organisms of its environment and how it reacts to changes in water quality throughout its habitat. More research is needed to establish optimal living conditions for the stocks. This will include assessment of the carrying capacity of the home range of each stock in the lakes, from food source to shelter to environmental quality to intensity of fishing effort.*

*Protection and enhancement of lake habitats should be a high priority in the management effort, and the Assessment Board must constantly monitor lake conditions to determine how changes in habitat through improvement or deterioration are affecting each stock. This will allow shifting allocations from damaged stocks to ones which can support a dynamic fishery. In the meantime, steps can be taken to recover both habitat and fish numbers while fishermen are not put out of business due to lack of resources.*

§ 3-103 Same; social and economic data.

*Social and economic data shall include, but shall not be limited to, an evaluation of the economic efficiency of the commercial operations registered under this Act. Such evaluations may be based, in part, on the actual number of fish which commercial operations caught during the preceding year. The fair market value of the catch, the cost of operating a commercial fishery, and the cost of the fishing equipment and its maintenance may be included in the social and economic data.*

*Social and economic data are important in determining the public's attitudes and values toward the fishery and individual species. Optimum yield is a social concept based in part on both the preference of society (or measured by demand) and the ability of producers to provide products as indicated by production costs and the productivity of the resource (as measured by supply). Proper management of the resource includes evaluations of demand for fish species and the market conditions under which the resource will be allocated.*

*Other factors must be considered along with supply and demand to give a total economic picture. Additional considerations are costs to the State of operating the commercial fishery, and the operation of a commercial fishing business including wages to employees and equipment and maintenance costs.*

§ 3-201 Resource management and catch allocations; restrictions.

*The Commission shall have the power to restrict the resource allocations by rules and regulations if it shall be necessary to protect and conserve the fish populations and aquatic ecosystems. Such restrictions may take the form of minimum size requirements, prohibitions on the catch of certain species or sexes, seasonal, area and hourly restrictions, but said restrictions are not limited thereto.*

*This section gives the NRC the authority to take such other actions as may be necessary to protect the fish populations and the aquatic ecosystem. It may initiate rules and regulations it deems necessary to achieve that goal.*

§ 3-202 Same; emergency restrictions.

The Director shall have the authority to make a finding that an emergency exists which jeopardizes the fishery resource or endangers human health.

When a finding is made that an emergency state exists, restrictions may be placed on fishing to protect the resource. Such restrictions may include, but are not limited to, a suspension of all fishing, limitations on the size of the fish, and restrictions on the areas that may be fished.

*Refer to Section 2-105*

*In the case of an emergency, the Director of the DNR has the powers to place restrictions on the fishery. An emergency situation would be one where the fishery resource or human health is endangered, such as toxic chemical contamination. What restrictions may be enforced are left to the discretion of the Director.*

## CHAPTER 4

### LICENSURE AND REGISTRATION

#### § 4-101 Licensing; rules and regulations.

A commercial fisherman who is able to meet the qualifications for licensure may apply for a license as a commercial fisherman. The rules and regulations for licensing shall be promulgated by the Commission in accord with the Michigan Administrative Procedures Act (MCL §24.271 et seq.; MSA §3.560(171) et seq.).

*This section is self-explanatory - refer to Sections 4-102, 103, and 104 below:*

#### § 4-102 Same; eligibility.

Any applicant who is a commercial fisherman at the time of passage of this Act shall be given preference over all other applicants the first time licenses are issued by the Commission.

As among commercial fishermen who are fishing at the time of passage of this Act, the past performance of the fishermen may be considered by the Commission when the number of applicants exceeds the number of licenses to be issued.

Any person, firm, company, co-partnership, partnership, association or corporation may be licensed. The firm, company, co-partnership, partnership, association or corporation shall be licensed as an entity separate from its individual members.

*The management of Michigan's commercial fishing industry is based on a system of limited entry. Prospective fishermen are evaluated on (1) their past, successful operations in the commercial fishery; (2) the ability to qualify their operation according to captain and crew proficiency in seamanship, quality and efficiency of fishing gear and vessel, and knowledge of the fishery from the standpoint of fish biology, economics, and technology; and (3) the availability of viable populations of fish which can be economically harvested.*

#### § 4-103 Same; qualifications.

All commercial fishermen are required to meet the following criteria before a commercial fisherman's license may be issued:

- (1) That the applicant is or has in his employ a captain who has passed an examination that shall be administered by the Department. The captain's examination shall include such topics as basic fish population biology, statutory and regulatory provisions that govern the commercial fishery, identification of fish species, methods required by this Act to collect and report data, the maintenance of business records, and such other topics as are deemed necessary by the Commission.

(2) That he employs a crew which has demonstrated its proficiency in seamanship according to the minimum standards that are set by the United States Coast Guard.

(3) That all applicants for a license must be of good moral character.

*Qualifications (1) and (2) above can be met via U.S. Coast Guard inspection and examination, an inspection of business records and affidavits confirming the fisherman's past experience, and an examination administered by or for the NRC on topics pertinent to the enforcement of this Act. Past performance of the fisherman or fishing concern (as in the case of partnerships, corporations, etc.), a USCG-licensed vessel and crew, and the payment of a nominal fee to review the application are the only initial requirements for the fisherman seeking a license. This is made possible by Section 4-104, which is a "grandfather clause."*

§ 4-104 Same; examination requirement for present commercial fishermen.

Any applicant who is a commercial fisherman or a captain of a fishing vessel at the time of the passage of this Act shall pass the captain's examination within five (5) years of his licensure or his license shall be revoked.

*Each license holder is given five (5) years to demonstrate his proficiency in the understanding of the provisions and requirements of this Act. Topics include basic fish population biology, lake ecology, identification of commercial and non-commercial species and their habitat requirements, required methods for collecting and reporting data, the maintenance of business records, an understanding of this Act, and many other topics deemed necessary by the NRC. The license holder has five (5) years in which to take a written examination on the preceding topics. The NRC may organize a series of classes which could be taken by applicants and license holders to enhance their proficiency. The NRC may also devise a schedule of examinations on a regional or statewide basis as it deems practicable. If, after five (5) years, the license holder does not or cannot pass the written examination, his license and allocation are forfeit.*

§ 4-105 Same; implied consent.

Acceptance of a commercial fisherman's license under this Act shall imply the licensee's consent to have a fishing vessel boarded and inspected at any reasonable time by an official of the Department or the Commission. Denial of a reasonable request to board the vessel shall imply a violation of the provisions of this Act and shall result in a hearing before the Commission to determine if the license shall be revoked. Such hearing shall be conducted pursuant to the Michigan Administrative Procedures Act (MCL §24.271 et seq.; MSA §3.560 (171) et seq.).

*The requirement that the licensee permit reasonable (as may be defined by the courts) inspection of his operations and records by designated officials of the NRC or DNR is explicit. The refusal of a reasonable request for an inspection will constitute a violation of this Act and result in a hearing and possible revocation of the license and loss of a fishing allocation. The allocation can then be divided between current fishing operations or granted to a new license holder. (See procedures for license revocation in Chapter 6.)*

§ 4-106 Same; fees.

The Commission may designate a nominal fee for a review of an application for licensure. The Commission shall also determine fees for an initial license and for annual license renewals. The fees for licensure shall not be prohibitive to those fishermen who meet the qualifications for licensure. Different fees for the licensure of firms, companies, co-partnerships, partnerships, associations or corporations may be assessed at the discretion of the Commission.

The Commission may levy a fee for the administration of the captain's license examination. The fee for this examination shall not be prohibitive to the applicant.

*The types of fees listed in this section are self-explanatory - the disposition of such fees are discussed in Chapter 5.*

§ 4-107 Same; contents of the license.

When the Commission approves an application for a license, a printed license shall issue to the person, firm or corporation entitled to the same, setting forth the date of issuance, the date of expiration, to whom it was issued, and the number of the license.

§ 4-108 Same; revocation.

Licenses shall be revocable for the violations specified in Chapter 6 of this Act. Such revocation shall take place according to the procedures set forth in said chapter.

§ 4-201 Registration of vessels and equipment, of application; fees.

All commercial fishing vessels are required to register with the Commission. The rules and regulations for registering shall be promulgated by the Commission in accord with the Michigan Administrative Procedures Act (MCL §24.271 et seq.; MSA § 3.560(171) et seq.).

*Once the prospective commercial fisherman or organization has met the licensing requirements of Section 4-101-105 and has been granted a license by the NRC, the vessels and equipment used must be officially registered. This registration is required to provide data which will assist the Allocation Committee, NRC, and courts in equitably allocating the fish*

stocks. Number and size of boats and type, condition, and efficiency of gear will help indicate the relative demand for fishing and operations and the intensity with which each fish stock may be utilized.

4-202 Same; eligibility.

Any applicant who owns a commercial fishing vessel at the time of passage of this Act shall be given preference over all other applicants the first time registrations are issued by the Commission.

Any firm, company, co-partnership, partnership, association or corporation may register a vessel and its equipment.

*This section contains a "grandfather clause" and a statement that any qualified individual or organization may apply for and be granted a registration by the State of Michigan.*

4-203 Same; residency requirements; reciprocity with other states.

All commercial fishermen who meet the qualifications for licensure and who are residents of the State shall be given preference for registration over fishermen who are residents of other states.

Fishermen of other states may be given equal preference for registration only when the state in which they reside has extended a reciprocal preference to fishermen who are residents of the State of Michigan.

*This section recognizes reciprocal agreements with other Great Lakes States with active commercial fishing industries. Such agreements maintain good relations among states while promoting the use of resource managements statutes that promote wise use of community-held resources.*

4-204 Same; qualifications.

All commercial fishermen are required to meet the following qualifications before they may register a vessel and its equipment under this Act:

- (1) The applicant must be a licensed commercial fisherman under this Act.
- (2) The vessel and fishing equipment to be used must meet the minimum standards of safety and seaworthiness set by the United States Coast Guard.
- (3) The applicant must post a surety bond in an amount to be set by the Commission. At the time of application, the applicant shall be informed of the amount of bond he will be required to post, and he shall designate an agency for service of process in the event of a proceeding to revoke the bond.
- (4) The applicant must carry liability insurance on the vessel at all times to protect against damage or loss to any other person or property.
- (5) The applicant and/or his employees must be of good moral character.

Although anyone with the ability to meet the requirements for licensure can be granted a commercial fishing license by the NRC, there are additional requirements for registering a vessel. The registrant must own a vessel which has been certified safe and seaworthy by the USCG, as well as the necessary fishing equipment to profitably exploit a particular stock. This information will appear on the official printed registration form (Section 4-205). If the fisherman wishes to modify his methods or intensity of fishing effort through the purchase of different or additional gear (pursuant to Section 4-304), such changes are subject to review and regulation by the NRC and a new registration would have to be granted. Residents of the State of Michigan and licensees with previous commercial fishing experience will be given preference over all other applicants. Additionally, the applicant for a registration must post a bond guaranteeing that his operations will be performed according to the law and will not constitute a threat to the fishery or to other commercial or non-commercial activities. Liability insurance, similar to that required for the operation of motor vehicles, must also be held by the applicant.

4-205 Same; contents of registration.

When the Commission approves an application for a registration, a printed registration shall issue to the person, firm or corporation entitled to the same, setting forth the date of issuance, the date of expiration, to whom it is issued, the number of the registration, the waters in which the registrant is registered to fish, the identification of the vessel and a specification of the fishing equipment it is to carry.

*This section is self-explanatory; in addition, it reflects Section 4-204 above.*

4-206 Same; revocation.

Registrations shall be revocable for the violations specified in Chapter 6 of this Act. Such revocation shall take place according to the procedures set forth in said chapter.

4-301 Allocations, application, acquisition.

(1) Any holder of a registration for a vessel and equipment may apply to the Commission for an allocation from a given fish stock. The application shall be in such form and contain such information as the Commission, by rules promulgated pursuant to the Administrative Procedures Act, may require.

(2) An allocation to catch a certain percentage of the quota of a stated fish stock shall be recommended for award to an applicant by the Allocation Committee. The first time allocations for any given fish stock are recommended, the Committee shall accord significant weight to the fact that an applicant has previously profitably fished from that stock. All applicants who can prove that they have profitably fished from that stock must be awarded an allocation from the stock.



After all such recommendations are made, but before the adoption of such allocations, the Committee shall give notice of a public hearing and offer any person an opportunity to present data, views, evidence and arguments pertaining to the recommendations. The public hearing shall comply with the Michigan Administrative Procedures Act (MCL §24.271 et seq.; MSA § 3.560(171) et seq.) in all other procedures.

At the conclusion of the public hearing the administrative law judge shall make findings of fact, on which basis the Committee may accept or modify the recommended allocation. The Committee shall then forward its recommendations to the Commission which may accept modify or reject the recommendation. The Commission shall then award the allocation to the applicant.

*The application for an allocation from any given stock of fish requires that the fisherman is also a licensee and has registered his vessel and equipment under the provision of this Act. The fisherman will probably apply to fish a particular species, stock, and area based on his past performance, the type of gear he has available and his home port. Provisions for obtaining this information from each applicant may be included with each license or registration application or may be a separate form as designated by the NRC. However, such information as relative demand for particular species or favored fishing grounds will be valuable in assessing demand and intensity of effort, and will also be crucial in determining and recommending allocations. The Allocation Committee and NRC will require certain information from each applicant that should include past records of species and stocks fished, number and/or weight harvested, fishing grounds or areas fished successfully, or other records deemed important. This information, along with recommendations of the DNR, Assessment Board, NRC public information hearings, and so on, will allow the Committee to recommend allocations pertaining to species, stocks, and areas and submit such recommendations to an administrative law judge at a public hearing.*

*The judge at the hearing will decide whether the recommended allocation is fair and equitable based on his review of information and public and professional testimony. His findings are returned to the Committee for final changes (if necessary) and then submitted to the NRC which may accept, modify, or reject the recommendation. If an allocation is accepted or requires minor modifications, the NRC then makes an award to each applicant. Rejection, on the other hand, may require further collection of data, public hearings, and debate among participants.*

§ 4-302 Same; criteria for award.

In determining the allocation to be awarded to an applicant the following criteria shall be considered:

- (1) the type of registered vessel and equipment the applicant proposes to use;
- (2) the volume of fish necessary to make the employment of such registered vessel and equipment economically remunerative;

(3) the past performance of the applicant, including the applicant's record of conformance with this Act and its predecessor statutes and the regulations promulgated thereunder; and

(4) alternative uses the applicant could make of his registered vessel and equipment.

*The allocation is made on the basis of (1) commercial fish species (e.g., whitefish, chubs, lake trout, etc.); (2) the stocks, or separate populations of each species; (3) weight of the fish within each stock which can be economically harvested without lowering reproductive potential below the species' ability to replace itself; and (4) areas of each lake which have proper conditions which can support fish stocks and a viable commercial fishery.*

§ 4-303 Same; term.

All allocations made pursuant to this Act shall automatically expire ten (10) years from the date of Commission approval.

*Each allocation is made for a ten-year (10) period and represents a percentage of fish (by weight) which can be legally harvested by each fisherman during each designated yearly fishing season.*

§ 4-304 Same; entitlements; methods.

An allocation will permit a registrant to harvest fish resources within the maximum set by the allocation. The harvest may be accomplished by any approved method of fishing. An allocation may be harvested by any intensity of fishing subject to such restrictions as may be imposed by the Commission pursuant to Section 3-201 of this Act.

*This Section is self-explanatory, pursuant to Chapter 2 - the responsibilities of the NRC are to protect fishing and provide for the equitable utilization of natural resources by the citizens of the State; Chapter 3, Section 3-202 - emergency restrictions; and Chapter 4 - contents and provisions of an allocation.*

§ 4-305 Same; transfer.

An allocation may be sold, leased or otherwise transferred to another holder of a registration for a vessel and equipment.

§ 4-306 Same; property rights.

The ownership of an allocation is a property interest and the owner thereof shall have all rights and privileges which derive therefrom.

*The ownership of an allocation is also a property interest, and thus, can be sold, leased, or transferred to any other person with a current registration for a vessel and equipment.*

**Hypothetical Scenario: How the Allocation Program May Work after Adoption of This Act.**

In summation, the processes of obtaining a license, registration, and allocation to fish commercially may resemble the following hypothetical scenario. Fisherman Jones, who makes his living fishing for whitefish and chubs in Big Bay de Noc, has, for the past fifteen years, operated a seventy-foot vessel with appropriate gear. He has an approved captain's license issued by the U.S. Coast Guard allowing him to operate his boat as part of a commercial enterprise. In addition, his boat has been inspected and judged safe and seaworthy by the Coast Guard, and his crew of three has passed its seamanship requirements.

Fisherman Jones has applied for and received both a license and registration to fish commercially, having passed an examination administered by the DNR. Under the provisions of this Act, he has applied for an allocation of whitefish and chubs which can be harvested within his boat's cruising range from its home port in Escanaba. After reviewing his past records, Fisherman Jones estimates that an annual catch of 150 tons of chubs will allow him to remain in business over a ten-year period.

In the meantime the Assessment Board has determined that there are four viable stocks of whitefish of 300 tons each and two stocks of chubs of 40 tons each which are in the vicinity of Big Bay de Noc. Fifty percent of each stock can be harvested on a yearly basis without damaging natural reproduction. Therefore, 600 tons of whitefish and 40 tons of chubs can be harvested by commercial means. This total represents the amount of fish which can be allocated to registered fishermen, and the Assessment Board recommends this amount to the NRC.

There are eight registered fishermen who could utilize this fishery. The Allocation Board has recommended the following structure:

Big Bay de Noc Fishery

Whitefish 600 tons

Chubs 40 tons

Registered Fisherman	Whitefish 600 tons		Chubs 40 tons	
	% alloc.	weight (tons)	% alloc.	weight (tons)
A	20	120	0	0
B	10	60	40	16
C	6	36	10	4
D	9	54	10	4
Jones	30	180	5	2
F	15	90	5	2
G	3	18	20	8
H	7	42	10	4

Following public hearings and review by the NRC (assuming no major disputes or changes in the percentage of each allocation), each of the eight fishermen has his 10-year allocation for the percentage of each stock he can harvest on a yearly basis. This percentage will remain the same regardless of fluctuations in population levels. If, in the first year, the Assessment Board determines that there are 600 tons of whitefish and 40 tons of chubs, Fisherman Jones is allowed to harvest 30% or 180 tons of the whitefish and 5% or 2 tons of the chubs. Likewise, Fisherman B is allowed 60 tons of whitefish and 16 tons of chubs. (In the table above, Fisherman A derives his living fishing from whitefish only and has not been granted an allocation for chubs.)

During the second year, the Board determines that there are now 750 tons of whitefish and 20 tons of chubs that can be harvested. Fisherman Jones can then harvest 225 tons of whitefish and only one ton of chubs. This system will proceed for the 10-year period unless the NRC promulgates countermanding regulations due to unforeseen problems. For example, if the chub fishery continues its decline, the NRC may determine that there should be a closed season on chubs to allow population recovery and research into the reasons for the collapse. In such cases, the allocations for chubs would be suspended until further notice.

The Act also allows registered fishermen to purchase or lease other allocations in the expansion of their enterprises. However, if one fisherman decided to cease his operations without selling his allocation, the Allocation Board and NRC would decide the disposition of the unused percentage. They may auction or re-allocate the percentage or elect to let it remain unused with the purpose of augmenting population increase.



## CHAPTER 5

### COSTS AND FINANCES

#### § 5-101 Costs of administration and management.

The costs of administration and management shall be financed in part by the assessment and collection of the following fees:

- (1) Fees collected by the Commission from registration of commercial fishing vessels;
- (2) Fees collected annually for the issuance and renewal of licenses; and
- (3) All penalties and fines for violations of this Act.

*Monies collected by the State treasurer in the administration and enforcement of this Act will come from fees collected by the NRC for (1) registration of fishing vessels (Section 4-201), (2) examination fees (Sections 4-103(1) and 4-104), (3) review of application for license (Section 4-106). This fee structure is similar to that employed by the State for auto vehicle registration and use, driver instruction, and driver's licensing procedure. Additionally, monies will be paid to the State by commercial fishermen in the form of a severance tax similar to that paid by commercial lumbering interests. The amount, a fixed fee per pound of each species caught, will be set by the NRC. Finally, all penalties or fines paid to the State in violation of this Act will also be collected by the NRC.*

*The total monies paid by licensed commercial fishermen will be placed in the game and fish fund from which operating expenses (administration, management and enforcement) will be drawn according to State regulations. The State legislature also has the ability and discretion to appropriate additional funds as it deems necessary in the proper function of this Act and its responsibilities.*

#### § 5-102 Same; harvest fee.

(1) Each holder of an allocation shall pay to the State of Michigan game and fish protection fund an annual fee for the right to harvest the fish allocated. Payment shall be made in four (4) equal installments on March 31, June 30, September 30 and December 31.

(2) The amount of the harvest fee shall be set by the Assessment Board each year when it sets the yearly harvest figure for a given fish stock. The size of the harvest fee shall be such as to assure the people of the State of Michigan a reasonable return on the resource and shall in no event exceed twenty (20%) percent of the average per pound fair dockside market price for that fish stock over the three (3) most recent seasons. If that fish stock has not been fished commercially during the past three (3) years the Assessment Board may set a harvest fee based on the best information available to it, but shall return to the holders of allocations any fees collected that exceed twenty (20%) percent of the actual fair dockside market price.

5-103 Financing of operations.

The State treasurer shall credit all monies received by him from the Department from the fees to the game and fish protection fund as provided for by MCL 21.8; MSA 3.288. All monies credited to the game and fish protection fund shall be disbursed by the State treasurer upon warrants issued in accordance with the accounting laws of the State:

(1) For services rendered by the Board and Committee, together with the expenses incurred in the enforcement and administration of this Act, including the necessary enforcement thereof, and the protection, propagation, distribution, and control of the fishery resource.

(2) For the purpose of conducting investigations of and for the purpose of compiling and publishing information pertaining to the propagation, protection and conservation of the fishery resource.

(3) For the purpose of developing cooperation and carrying on appropriate education activities relating to the conservation of wildlife in this State.

(4) For any other purposes consistent with the goals of this Act as the Commission shall determine.

*The costs of the administration of this Act may include per diem allowances for members of the Assessment Board and Allocation Committee; support staff of researchers, aides, typists, etc.; costs of reproducing documents used in researching the capacity of fish stocks and in disseminating information, such as management plans; notices of classes and examinations, or notices of modification of regulations; travel allowances for Board Members; and other expenses for services rendered.*

*Funds may also be necessary to conduct or support investigation or research into new methods of managing the commercial fishery. This may take the form of support for any pertinent research. In many cases, it may be practical to lend financial support to any State agency with the appropriate manpower to meet the management needs. On the other hand, the Assessment Board can be expected to gather data on particular issues or request the Department to conduct particular research. In such cases, funds will be necessary to cover the expenses of those endeavors.*

*After the implementation of this Act, costs will be incurred in publicizing the Act's role in promoting conservation and wise use of one of Michigan's natural resources. These costs may take the form of posters, newsletters, advertisements in periodicals; educational meetings or seminars; and visits by Board Members or legislators to communities which may be affected by the provisions of the Act.*

Also included in the cost of education will be the implementation of classes for applicants for commercial fishing licenses (Sections 4-103(1) and 4-104). Although the format for such classes will be at the discretion of the Board and the NRC, it is expected that there will be classes on fishery biology, lake ecology, efficient fishing methods and use of new technologies, methods required by the Act to collect and report data, maintenance of business and insurance records, and statutes and regulations. Costs of education may include classroom rental, rental of films and other material, travel and per diem for instructors, and so on.

Finally, there will be costs related to the enforcement of this Act. Such costs can be divided between policing the fishing fleet and prosecution. The enforcement provisions of this Act may require funding for the training, equipping, and salary of enforcement personnel while costs incurred in prosecuting alleged law breakers may include transportation, lodging, lawyer's fees, and court costs.

§ 5-104 Same; other funds.

The State may provide in its annual budget for additional funds to finance and manage the commercial fishery.





## CHAPTER 6

### VIOLATIONS OF THE ACT, ENFORCEMENT AND PUNISHMENT

#### § 6-101 Violations of the license; punishment.

(1) It shall be unlawful for any commercial fisherman to fail to report his catch to the Commission.

(2) It shall be unlawful for any commercial fisherman to fail to maintain business records as required by this Act.

Any person violating any of these provisions shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00) and costs of prosecution, or imprisonment in the county jail not to exceed thirty (30) days, or both such fine and imprisonment. Any person convicted of three (3) violations of this section within a thirty-six (36) month period shall suffer automatic revocation of his license and cancellation thereof for the balance of the term for which the license is issued. Such revocation shall prohibit the use of any commercial fishing gear and equipment by the person. The Commission may also suspend all applications for another license for a period not to exceed ten (10) years.

*The contents of records and required reports are described in Section 3-101(4). Failure by a commercial fisherman to periodically report his catch to the NRC or to properly maintain his business records pertaining to his operations hinders the proper and efficient management of the fishery resources. Inaccurate or irregular data prevent the DNR from analyzing each fish stock for purposes of augmenting and updating management programs, directing restocking programs, and recognizing trends in the overall health of the fish stocks and ecosystems. Without such data, the Assessment Board would be handicapped in its efforts to assess the commercial fishery and its continued development. Past record-keeping efforts have shown which fish species were in danger of depletion and which areas of the lakes needed remedies to problems such as pollution or overfishing. If records are inaccurate, costly research and field sampling undertaken by the State may become necessary. This could lead to a temporary or even permanent cessation of fishing activities until enough data are gathered to assess the stocks. It would be foolish to overfish a stock which has fallen below its ability to replace its numbers naturally. Continued restocking of an overused resource may become a tax burden too great for the citizens of the State.*

#### § 6-102 Fishing without a valid license; punishment.

It shall be unlawful for any person to fish commercially without a valid license issued under this Act.

Any person violating this provision shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not less than

One Hundred Dollars (\$100.00) nor more than Ten Thousand Dollars (\$10,000.00) and costs of prosecution, or imprisonment in the county jail for not less than six (6) months nor more than ten (10) years, or both such fine and imprisonment. Any person convicted under this section shall suffer automatic disqualification for licensure for a period of five (5) years from the date of said conviction.

See comment on Section 6-103 below.

§ 6-103 Violations of the registration; punishment.

(1) It shall be unlawful for a registrant to operate a commercial fishing vessel without a licensed commercial fisherman serving as captain in command.

(2) It shall be unlawful for a registrant to operate a fishing vessel which does not meet the minimum standards of safety and seaworthiness set by the United States Coast Guard.

(3) It shall be unlawful for a registrant to fail to maintain the fishing vessel and gear in good working order at all times.

(4) It shall be unlawful for a registrant to fail to maintain the bonds and insurance required under this Act.

Any person violating any of these provisions shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00) and costs of prosecution, or imprisonment in the county jail not to exceed thirty (30) days, or both such fine and imprisonment. Any person convicted of three (3) violations of this Section within a thirty-six (36) month period shall suffer automatic revocation of his registration and cancellation thereof for the balance of the term for which the registration was issued. Any violation of paragraph 2 of this section shall result in the immediate suspension of the registration until such time as the vessel and equipment are in compliance with the appropriate standards of the United States Coast Guard. Any violation of paragraph 4 of this section shall result in the immediate suspension of the registration until such time as the proper bonds and insurance are maintained in force.

*Violations of the Act which include fishing without a valid license (Section 6-102) and/or registration (Section 6-103) indicate contempt on the part of the violator for the laws of the State of Michigan, for the wishes of the citizens of the State, and of the conscientious efforts of the peoples' representatives to provide for the safety and welfare of all citizens. In addition, the violator feels above rules and regulations established to conserve and promote long-term viability and availability of natural resources. Owning and operating a fishing vessel which does not meet safety requirements presents a threat to both the owner and his crew and the general public. Improperly maintained and deployed fishing equipment also represents a threat to public safety. Further, failure to carry insurance*

and bonds required under this Act also represents a hazard to the owner and the general public in terms of costly and time-consuming litigation in cases of malicious destruction or accident.

§ 6-104 Violations of the allocation; punishment.

(1) It shall be unlawful to overfish the allocations in excess of the tolerable margin of error set by the Board pursuant to Section 2-204 of this Act.

(2) It shall be unlawful to fish in violation of restrictions imposed by the Commission pursuant to Section 3-201 of this Act.

(3) It shall be unlawful to fish in violation of emergency restrictions imposed by the Commission pursuant to Section 3-202 of this Act.

(4) It shall be unlawful to fish an allocation if one is more than thirty (30) days in arrears in the payment of the harvest fee for that allocation.

Any person violating any of these provisions shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Ten Thousand Dollars (\$10,000.00) and costs of prosecution, or imprisonment in the county jail not less than six (6) months nor more than ten (10) years, or both such fine and imprisonment. Violations of this section may also be punished by suspension of the allocation for a minimum of one (1) month but not to exceed one (1) year. Any person convicted of three (3) violations of this section within a one hundred twenty (120) month period shall suffer automatic permanent revocation of his commercial fishing license and the registration of his equipment and shall forfeit the entire amount of his bond to the State.

*Violation of the allocation (Section 6-104) represents an attempt on the part of the violator to receive more than his fair share of the fishery resource. It is a hindrance to conservation efforts by the DNR, and to efforts of the Allocation Board, courts, and NRC to equitably distribute a natural resource to qualified and deserving users. The allocation represents an attempt to allow efficient and economic harvest of commercial fish stocks while leaving a percentage of each population to replenish its numbers through natural reproduction. While harvesting fish in gross excess of an allocation is one clear means of endangering the fishery (Section 6-105(2a)), continued and widespread violations of smaller proportions may, in the long run, be just as great a hazard.*

§ 6-105 Endangering the fishery; prima facie evidence; punishment.

(1) It shall be unlawful for any person to commit any act which may endanger the fishery resource or the aquatic ecosystem.

(2) In any prosecution for violation of this section, proof of the following actions shall constitute prima facie evidence of violation:

(a) Fishing in excess of the allocation by thirty percent (30%) or more of the allocation;

(b) Emission of a toxic or dangerous pollutant into the water as defined by the Department pursuant to the general water pollution statutes of the State;

(c) Introduction of exotic and noxious species into the waters;

(d) Conviction for a violation of a federal water pollution statute.

(3) All persons violating any of the provisions of this section whether as principal agent, servant, or employee shall be liable as principals.

(4) Any person violating any of the provisions of this section shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not less than Three Thousand Dollars (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or imprisonment in the county jail not less than one (1) year nor more than fifteen (15) years, or both such fine and imprisonment, and actual costs of the prosecution. Any person convicted under this section shall have his license automatically permanently revoked by the Commission and the registration of any equipment he may own, and shall forfeit his entire bond. The bond shall be applied by the Commission to the costs of rectifying the injury to the fishery or ecosystem.

*The above section lists the acts which may endanger the health and utility of the fishery resource. Refer to Section 2-105 for other actions which may endanger the fishery and lead to emergency measures by the Commission.*

§ 6-106 Venue

(1) All misdemeanor violations of these provisions may be tried in a District Court of the county wherein the residence of the defendant is located or in the District Court having jurisdiction in the port where the allegedly offending vessel may be found.

(2) All felony violations of these provisions shall be tried only in the Circuit Court for the County of Ingham.

§ 6-201 License, registration or allocation; procedure for suspension and revocation.

All proceedings for the suspension or revocation of a license, registration or allocation shall be heard pursuant to the contested cases provisions of the Michigan Administrative Procedures Act (MCL §24.271 et seq.; MSA §3.560(171) et seq.).

§ 6-202 Same; appeals; jurisdiction of proceedings.

The Circuit Court for the County of Ingham shall have exclusive jurisdiction of all appeals regarding license, registration or allocation suspensions and revocations.

§ 6-203 Forfeiture of bonds; procedure.

(1) When the Commission determines that forfeiture of a bond is either required or appropriate as a result of a violation, it shall enter an ex parte order and shall serve that order upon the violator and the surety, if any, or his designated agent pursuant to Section 4-204(3). Said order shall set forth the statutory basis and the facts supporting the determination.

(2) The violator or surety may appeal said order within ten (10) days of service of the order to the Circuit Court for the County of Ingham which may reverse only if it finds the order to have been arbitrary, capricious, or an abuse of discretion.

§ 6-204 Civil liability to the State.

The Commission may institute a civil proceeding for monetary damages, injunctive relief, or both, against a person holding a license, registration or allocation if it believes that such a proceeding is necessary.

§ 6-205 Same venue.

Any suit filed pursuant to Section 6-204 shall be filed in the circuit court of the defendant's county of residence.

§ 6-301 Contraband.

(1) All fish taken in violation of Section 6-104(1) of this Act are declared contraband and may be confiscated at any time.

(2) If such fish are confiscated, they shall be sold for fair dockside value at the time they are seized and the money received therefore deposited with the court pending final disposition of the criminal proceedings.

(3) If the fish had been sold before they could be confiscated, the Commission may file a civil suit to recover the fair dockside value of the fish after the defendant has been convicted of said violation. Said civil suit shall be filed in the Circuit Court for the County of Ingham.



## CHAPTER 7

### RELATIONSHIP TO OTHER LAWS

#### § 7-101 Remedies available under other statutes.

Nothing in this Act shall be constructed to in any way limit the remedies available to the State, the Commission, and the general public which are contained in Act 127 of 1970 being MCL § 691.1201 et seq.; MSA § 14.528(201) et seq.).

#### § 7-102 References to former laws.

Any reference to any former commercial fisheries laws are deemed to be references to this Act.

#### § 7-103 Repeal.

All previous statutes which are inconsistent with the provisions in this Act are expressly repealed.



