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House Bill 4567 (Substitute H-5 as passed by the House)  
House Bill 4568 (Substitute H-5 as passed by the House)  
House Bill 4569 (Substitute H-5 as passed by the House)  
Sponsor: Representative Jack O'Malley (H.B. 4567)  
Representative Pauline Wendzel (H.B. 4568)  
Representative Jim Lilly (H.B. 4569)  
House Committee: Natural Resources and Outdoor Recreation  
Ways and Means  
Senate Committee: Natural Resources

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### **CONTENT**

**House Bill 4567 (H-5), House Bill 4568 (H-5), and House Bill 4569 (H-5) would amend Part 473 (Commercial Fishing) of the Natural Resources and Environmental Protection Act (NREPA).**

**House Bill 4567 (H-5) would do the following:**

- Add or modify various terms and definitions and consolidate them into one section.
- Specify that Part 473 would not apply to sport fishing regulated under Part 487 (Sport Fishing), or the taking of minnows and other small fish for bait with nets not otherwise prohibited by law.
- Allow the Department of Natural Resources (DNR) to take fish for the purposes of fisheries assessment, fisheries utilization, and fisheries management.
- Specify that a commercial fisher that was licensed on December 31, 2019, would have the right to have its licenses renewed by the DNR every year if the fisher continued to meet the qualifications of the Act, orders, or rules promulgated under the Act.
- Prescribe annual fees for a commercial fishing license.

**House Bill 4568 (H-5) would do the following:**

- Modify various provisions related to the gear that may or may not be used in certain waters of the State.
- Allow the Director to authorize and regulate, in a commercial fishing license, various aspects of the use of trawls.
- Prohibit a commercial fisher from having abandoned, unattended, unreported lost, or unreported vandalized gear in the waters of the Great Lakes.
- Allow the fish species specified in the bill to be authorized for commercial take from waters of the Great Lakes open to commercial fishing.
- Allow the Director of the DNR to establish a bycatch allowance for species, other than game fish, that were not commercial fish species or whose harvest otherwise was prohibited under Part 473.

- **Require, beginning January 1, 2020, and ending December 31, 2025, and at least once every ten years after the end of that period, the DNR to conduct a bycatch study on at least three separate active commercial Great Lakes fisheries.**
- **Modify reporting requirements for commercial fishing licensees.**

**House Bill 4569 (H-5) would do the following:**

- **Allow a peace officer, at any time when the business of commercial fishing was being conducted on the premises, to enter the premises and inspect records or equipment on the premises.**
- **Prohibit a person from engaging in the business as a wholesale fish dealer in the State unless the person held a wholesale fish dealer license, and specify requirements and license fees for licensure.**
- **Eliminate language that prohibits a person from taking or catching with a net or other device used in commercial fishing, or selling, offering to sell, or possessing, certain species of fish.**
- **Modify the penalties for a person who violated Part 473.**
- **Require a licensee who committed multiple violations of Part 473 to have its license suspended, and prescribe restrictions for entities with a suspended license.**
- **Require the DNR to establish a Commercial Fishing Advisory Committee, and prescribe the membership and duties of the Committee.**

The bills are tie-barred.

House Bill 4569 (H-5) also would repeal Part 461 (Regulating Fishing in Northport Harbor), Sections 47301a, 47302, 47329 to 47362, Part 479 (Fisheries Contamination), and Section 48901 of NREPA.

**House Bill 4567 (H-5)**

**Definitions**

The bill would consolidate definitions used within Part 473 and define additional terms, as listed below.

"Abandoned gear" would mean a commercial net, commercial hooks, or other commercial gear if a licensee has done any of the following: a) discarded, disowned, or dispossessed the gear, b) intentionally altered or removed the gear's ownership identification tags or similar markings, or c) failed to immediately restore the gear's ownership identification tags or similar markings after acquiring knowledge of the loss or destruction of the tags or markings.

"Aquatic species" means fish, reptiles, mollusks, crustacea, minnows, wigglers, and amphibians of the class amphibia. Under the bill, "aquatic species" would mean fish, reptiles, amphibians, mollusks, and crustaceans, including their parts, eggs, and products. "Fish", unless the context required otherwise, would include fish, fish parts, roe, and fish products. "Roe" would mean fish eggs.

"Buy" would mean to acquire or agree to acquire from another in exchange for anything of value. "Bought" and "buyer" would have corresponding meanings.

"Bycatch" would mean the nontarget, nonlegal, or undersized fish that are inadvertently caught in commercial fishing gear while used to fish for legal commercial fish species.

"Commercial fisher" would mean any of the following: a) a person licensed under Part 473 that is engaged in commercial fishing, or b) any employee or other person that is acting on behalf of a person licensed under this Part. "Commercial" would mean for the purpose of sale or offering to sell any aquatic species for its parts, including roe.

"Commercial net" means any of the following: a fyke net, a gill net, an impound net, a pound net, a seine net, a trap net, a trawl net. The bill also would define each of these terms.

"Designated offense" would mean any of the following offenses, if a misdemeanor:

- Taking, possessing, selling or offering to sell a game fish in violation of Part 473
- Taking fish during the closed season
- Taking or possessing fish in excess of a harvest or bycatch limit
- Taking or possessing roe in excess of lawful limits
- Taking, possessing, selling, or offering to sell undersized fish, subject to Section 47314
- Taking fish by use of an unlawful device
- Taking fish in waters closed to commercial fishing
- Taking fish in violation of specific license purposes of selling or buying, any illegal fish
- Falsifying catch records or required wholesale records.

"Dressed fish" means a fish with the head attached but with the gills and the entire gut or viscera (stomach, liver, intestine, gonads) removed. Under the bill, "dressed fish" would mean a fish with the head and tail attached but with the gills and the entire gut or viscera removed.

"Dressed headed fish" would mean a fish with the tail attached but with the head and entire gut and viscera removed.

"Extension measure" would mean measuring the distance between the extreme angles of any single mesh, between and inside the knots, when the mesh is pulled taut by hand. Extension measure is also commonly known as stretch mesh.

"Fillet" would mean a cut or slice of edible meat from the side of a fish.

"Fish house" would mean a location owned or operated by a commercial fisher and to which fish are taken after landing to be processed or stored by the commercial fisher before being sold.

"Harvest quota" would mean a limit, in pounds, on the amount of a fish species that may be harvested by a commercial fisher.

"Live fish car" would mean a nonmotorized and nonsteerable floating box or hold that is towed behind a licensed commercial vessel for the exclusive purpose of holding or transporting live fish.

"Locker plant" would mean a facility with quick freezing equipment or locker rentable for food storage.

"Person" would mean an individual or a partnership, association, corporation or other legal entity.

"Record" would include any material on which information is recorded or preserved, regardless of physical form, that relates to the production, storage, transportation, buying, selling, or other acquisition or disposition of fish by a commercial fisher or wholesale fish dealer.

"Retail fish dealer" would mean a person, including but not limited to, a retail store, locker plant, restaurant, hotel, tavern, meat market, grocery store, or other establishment, or club, that sells fish to the final consumer or sells fish for resale at no reduction in retail price.

"Set hook line" would mean a long fishing line with a series of hooks on short separate leaders attached to the main line.

"Sport angling equipment" would mean a fishing rod and reel or bow and spear fishing equipment that meets both of the following requirements: is commonly used by recreational anglers to catch fish and is in working condition.

Under NREPA, "take" and "taking" mean to fish for by any lawful method, catch, kill, capture, trap, or shoot any species of fish, reptiles, amphibians, mollusks, wigglers, or crustacea regulated by this part, or to attempt to engage in any such activity. Under the bill, these terms would mean to fish for by any method, catch, kill, capture, trap, harvest, or shoot any aquatic species or to attempt to engage in any such activities.

"Type", when referencing fish, would mean the status of the fish as live, fresh, frozen, or smoked. However, type, when specifically referencing roe, means the status of the roe as processed or unprocessed.

"Unattended gear" would mean means gear not utilized or lifted and cleared of fish by the commercial fisher for a period of 10 days or containing dead fish in an amount and state of decay that indicate a prolonged period without being tended. Gear is not unattended gear if the commercial fisher did either of the following within the 10-day period: properly reported the gear as lost or vandalized, or rendered, as prescribed by the department, and properly reported the gear as unfishable.

"Undersized fish" would mean a fish of a smaller than legal size as established by this act, a rule promulgated under this act, an order of the director, or a specific license condition.

"Unfishable" would describe any commercial net, hook, or other gear that has been rendered inoperable as prescribed by the department.

"Unreported lost gear" would mean gear for which both of the following apply: the commercial fisher discovered the gear to be lost and the commercial fisher did not do either of the following by midnight of the day on which the commercial fisher discovered the loss: a) recover the gear, b) Report the loss of the gear to the department in the manner required by the department.

"Unreported vandalized gear" would mean gear for which both of the following apply: the commercial fisher discovered the gear to be vandalized, and the commercial fisher did not do either of the following by midnight of the day on which the commercial fisher discovered the vandalization: a) recover or repair the gear, or b) report the vandalization of the gear to the department in the manner required by the department.

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on water. Under the bill, "vessel" would mean every description of watercraft used or capable of being used as a means of transportation on water, including, but not limited to, any rowboat, sailboat, powerboat, motorboat, scow, tug, or launch.

"Vessel length" would mean the length of the vessel as measured in a straight line from the tip of the bow to the stern. Bow sprits, rudders, outboard motors and motor brackets, and other fittings, attachments, and extensions are not included in this measurement.

"Wholesale fish dealer" would mean a person that buys, offers to buy, obtains, or processes fish in any manner, for itself or any other person, for sale to someone other than the final consumer. Wholesale fish dealer includes a crew member of a commercial fisher who sells fish received from the commercial fisher as his or her share of the catch or as payment for his or her work, or who retains part or all of the sale proceeds of the catch.

A wholesale fish dealer would not include: a) a commercial fisher that sells only the fish that the commercial fisher catches, or b) a retail store or locker plant that sells fish to a restaurant, hotel, or tavern at no reduction in the retail price charged to retail customers other than a restaurant, hotel, or tavern.

#### Commercial Fishing; Waters of Great Lakes

Under Part 473, all fish found in the waters of the Great Lakes and the Great Lakes connecting waters are the property of the State and taking fish from those waters is a privilege. All fish in those waters must be taken, transported, sold, and possessed only in accordance with Part 473. Under the bill, fish in waters subject to Part 473 could be taken, possessed, transported, sold, or offered for sale only in compliance with Part 473. In addition, Part 473 would not apply to sport fishing regulated under Part 487, or the taking of minnows and other small fish for bait with nets not otherwise prohibited by law.

"Minnows" means that term as defined in Section 48728: chubs, shiners, suckers, when of a size ordinarily used for bait in hook and line fishing, dace, stonerollers, muddlers, and mudminnows

The bill would prohibit a person from possessing, transporting, selling, or offering to sell any illegal fish. "Illegal fish" would mean a fish to which any of the following apply:

- The fish was taken or possessed in violation of Part 473, the Michigan Aquaculture Development Act, or any other law of this State or the law of a tribal jurisdiction in this State.
- If imported, the fish is taken or possessed in violation of the laws of the State, province, country, or tribal jurisdiction from which imported.
- The fish has not been reported or a record for the fish has not been created as required by any law described above.
- The fish is a live prohibited species or restricted species.

#### Fish Taken for Fish Culture, Scientific Investigation

Currently, the DNR is authorized to take fish in any manner, in any of the waters mentioned in Part 473, during any season of the year, for the purpose of fish culture and scientific investigation. The bill also would allow the DNR to take fish for the purposes of fisheries assessment, fisheries utilization, and fisheries management, and would allow the DNR to issue permits for others to take fish for those purposes. The Act authorizes the DNR to have and hold ripe and unripe fish and to sell them to defray the expenses incurred in taking the fish. The bill would allow the DNR to direct the sale of those fish.

Part 473 authorizes the DNR to take, for fish cultural purposes only, fish taken by any person fishing in State waters. Under the bill, the DNR would be authorized to take fish for the purposes of scientific investigation, fisheries assessment, fisheries utilization, fisheries management, or fish culture harvested by a licensee under Part 473. Currently, when these fish are taken, they must be weighed and paid for, and the price paid must be based on the Chicago, Detroit, and New York markets, or another price agreed upon by the person or people

taking the fish and the DNR, plus the cost of transportation, if any. Under the bill, instead, the price would be based on fair market value.

The bill would prohibit the DNR from authorizing a licensee under Part 473 to take fish under any license except as provided.

### Commercial Fishing License

The Act prohibits a person from using any kind of a boat, tug, or launch, except when used in hook and line fishing, or any kind of net or nets, set hook lines, or commercial trolling rigs for the purpose of taking, catching, killing, or transporting fish in any of the waters bordering the State, regardless of whether for commercial purposes or for personal use, without a license issued under Part 473. Under the bill, a person would be prohibited from using any kind of vessel, net, set hook lines, or other device authorized for the purpose of taking or transporting fish for a commercial purpose without first being issued a commercial license authorizing the activity. The bill also would prohibit a person from taking fish from any commercial net, set hook line, or other commercial device unless the person had been issued a commercial fishing license.

Under the Act, notwithstanding Part 473, any other part, or any other Act, the DNR, when in its opinion it is necessary for better protection, preservation, management, harvesting, and utilization of fisheries in applicable waters, is authorized to limit the number of commercial fishing licenses to be issued and determine the qualifications for those to whom licenses are issued. The bill would retain criteria similar to those currently used to determine the number of licenses that the Department would issue during a license year.

The bill also specifies that a commercial fisher that was licensed on December 31, 2019, would have the right to have its licenses renewed by the DNR every year if the fisher continued to meet the qualifications of the Act, orders, or rules promulgated under the Act, regardless of the determination of the number of licenses to be issued under the Act. However, the DNR, with cause, could revise a commercial fishing license under Section 47308.

The DNR could rescind or not reissue a commercial fishing license if the DNR determined that it was necessary for the protection or utilization of a fishery. The DNR first would have to provide the licensee a written justification for its decision and notice that it would do one of the following:

- Initiate license revocation proceedings under the Administrative Procedures Act.
- Make a good-faith offer to the compensate the licensee for the fair market value of the license.

In the latter case, the DNR would have to provide the licensee with a reasonable opportunity to submit information to the Department regarding fair market value within 180 days. The Department then would have to issue a final determination that could be appealed under the process provided for in the Revised Judicature Act.

### Application for License

To obtain a license under Part 473, an applicant must submit an application for that license to the DNR on oath when required on a form provided for that purpose by the Department, accompanied by the applicable fee. The bill would remove the phrase "on oath when required". The application must state the applicant's name and residence, and must include the following information:

- The manner in which the applicant proposes to fish.
- The name or number of the tug, launch, boat, scow, or skiff.
- The overall length and the gross tonnage of the boat.
- The value of the boat.
- The name of the port from which the boat will operate.
- The number and kind of net or nets and hooks or other gear which the applicant intends to use.
- The value of the buildings and grounds.
- Any other information as may be required for statistical purposes.

Where the Act refers to tug, launch, boat, scow, or skiff, the bill would refer to "vessel". The bill would eliminate the requirement to include in the application the boat's gross tonnage, and the value of the boat, the value of buildings or grounds, and any other information as may be required for statistical purposes. Instead, an applicant would have to include any other information required by the DNR.

The bill would require an applicant for a commercial fishing license to submit an application annually at least 30 days before fishing operations were expected to begin or electronically submit the application on or before November 15 of the current license year, whichever was earlier. In addition to qualifications under Part 473, to be eligible for a license, the applicant would have to have been issued a commercial fishing license in Michigan for the immediately preceding year or legally transferred the ownership of a commercial fishing license that was issued for the immediately preceding year.

Under the Act, in addition to the requirements of Part 473 and rules promulgated under it, the license issued by the DNR may contain provision that do one or more of the following:

- Establish the amount of fish to be taken by species and kind.
- Designate the areas in which the licensee is permitted to fish.
- Specify the season when and the depths where the licensee may conduct commercial fishing operations.
- Specify the methods and gear that the licensee must use.
- Specify other conditions, terms, and restrictions that are considered necessary in implementing Part 473, including the right to inspect the licensee's fishing operations in the waters, on board, or ashore.

Under the bill, if not specifically designated by license condition, a licensee could fish waters open to commercial fishing within a maximum radius of 50 miles of the home port specified on the license. A license could include a provision that listed the authorized vessels to be used. Single or multiple vessels could be added to a license upon application the licensee and approval by the Director of the DNR; however, individual vessels could not be listed on more than one license at a time. In addition, the license could specify the time period required for tending or lifting commercial fishing gear. If a commercial fisher could not tend nets within the specified time period, the commercial fisher would have to contact the DNR with the location of the gear and estimated lift date.

All licenses issued by the DNR under Part 473 would expire on December 31 of the year in which the license was issued, as is currently the case.

### Fees & Issuance of License

Currently, the Act requires the DNR, when a person submits an application for a commercial fishing license, to issue the license after the applicant paid the applicable fee. The Act also

prescribes a schedule of fees based for the issuance of a commercial fishing license, as follows:

- For fishing with set hook lines or nets, with or without a boat not exceeding 16 feet in overall length, or a boat used in sport trolling for lake trout for hire, \$16 per year.
- For each rowboat, sailboat, powerboat, motorboat, steamboat, or scow used in catching, killing, taking, or transporting fish caught with nets, set hook lines, or trolling rigs, \$3 per foot overall length, and \$1 per ton additional for each ton over 10 gross tons (for a resident, a minimum of \$50, but no more than \$200 per vessel per license year).
- For a nonresident of the State, five times the fee required for a resident in accordance with the schedule.

The bill would eliminate the current fee schedule. For a commercial fishing license without a listed vessel, the bill would require the following annual fee:

- For 2020, \$200.
- For 2021 through 2030, \$250.
- For 2031 through 2040, \$300.
- For 2041 and each year thereafter, \$350.

For a commercial fishing license that included one or more listed vessels, the bill would require the following annual fee:

- For 2019 through 2020, \$1,400.
- For 2021 through 2030, \$1,500.
- For 2031 through 2040, \$1,600.
- For 2041 and each year thereafter, \$1,700.

After payment of the required fee, the DNR must issue to an eligible person a license signed by the Director or his or her designee that specifies all of the following:

- The date the license was issued.
- The name of the commercial fisher.
- The date that the license expired.
- The name, number, and kind of vessel authorized.
- The number and kind of nets authorized.
- The port or ports.

The Act also authorizes the DNR, after receiving an application and the payment of a \$1 fee, to allow the transfer of a license to a larger or smaller boat while the licensed vessel was undergoing repair, transfer the license to the new owner (in the case of a sale), or, in the case of the loss of a vessel by fire, collision or other cause, transfer the license to a similar vessel to which the licensee acquired title. The bill would increase the transfer fee to \$25, and allow a licensee to transfer the landing port listed on the license to a new location, in addition those transfer currently permitted.

Under the Act, the Department must keep a record of all applications and licenses. On the first day of each month, the DNR must pay to the State Treasurer all money received under Part 473, and the money must be credited to the Game and Fish Protection Account of the Michigan Conservation and Recreation Legacy Fund. Under the bill, the money would have to be paid to the Game and Fish Protection Trust Fund.



### Suspension or Revocation of License

The Act authorizes the DNR to suspend or revoke any license issued under Part 473 if the licensee fails to fulfill or violates any of the conditions, terms, or restrictions of the license. Under the bill, this could be in addition to applicable fines or restitution. A violation of a license condition would be a violation of Part 473. The bill also would authorize the DNR to suspend or revoke a license issued under Part 473 if the licensee violated a statute, administrative rule, or fisheries order pertaining to commercial fishing. The bill would retain the Act's language pertaining to a licensee right to a hearing under the Administrative Procedures Act and the ineligibility of a person whose license was suspended or revoked to receive a license for two years following the suspension or revocation.

This language also would apply to a violation of any statute, administrative rule, or fisheries order pertaining to wholesale fish dealers.

### Transfer of Commercial Fishing License

Under the Act, a commercial fishing license is transferable only with the approval of the DNR. Under the bill, in determining the qualifications of any new applicant to which a license transfer was being proposed, the DNR could consider the following: a) any violations of the Act, b) any violations of a law of the United States, another state, or another country substantially corresponding to a violation of the Act during the previous five years; and c) other relevant factors.

## **House Bill 4568 (H-5)**

### Prohibited Locations

Part 473 prohibits a from fishing with certain gear in various listed bodies of water or portions of bodies of water. The bill instead would prohibit a person taking or catching fish with commercial gear in any of the listed waters.

### Gear

Except as otherwise prohibited by law, a person authorized by commercial fishing license may use set hook lines for the purpose of taking fish in the waters of the Great Lakes. The bill would allow the Director to authorize and regulate, in a commercial fishing license, the use of trawls, including the kind and size of the trawls, the size of the mesh in the trawls, and the areas, depths of water, and time and manner in which the trawls could be used. The Director could regulate the use of trawls for taking any commercial species of fish he or she designated.

Currently, the Act prohibits a person from possessing or using on board any commercial vessel in the waters of the Great Lakes any pound or trap net, gill net, seine, or any fixed, set, or movable net of any kind or description, the meshes of which are different than those prescribed under the Act, and lists specifications and uses for each type of permitted gear. The bill would eliminate the description of gear currently permitted, except where noted, and instead would prohibit the possession or use on board a commercial vessel, or on the waters subject to Part 473 or on the ice of those waters, a pound or trap net, gill net, seine, or fixed, set, or movable net, except those specified in the bill.

Under the Act, the measurement of the mesh of all nets and seines, and the size of the mesh of all nets or netting used in fishing must be by extension measure. The measurement must

be made of meshes irrespective of where the net or netting is found, whether in the water, on boat, on reel, on dock, or in any other place on land. Measurements of gill nets must be made with a flexible steel gauge that meets certain specifications under the Act. The bill would specify that a net would have to be wet or wetted before measuring.

Under the Act, if a mesh is found to be unlawful, and if the majority of 10 or more meshes selected at random by an enforcement officer from any part or parts of the gill net or from the entire gill net or from any gill netting being gauged are found to be unlawful, the gill net or gill netting if found in use or in or upon any licensed commercial fishing boat must be seized and confiscated. If found in possession but not in use, any net must be sealed by the enforcement officer with a suitable seal provided by the Department and, when once sealed and for so long as the seal remains intact on the net or netting, may be possessed by the owner until disposed of or destroyed by the owner as provided in this section. The bill would remove language regarding the procedure for illegal nets not in use on a commercial fishing vessel.

The Director could approve the use of commercial gear types in addition to those described in Part 473 and regulate their use by a specific license condition, including the kind and size of the gear; the size of mesh in net gear; the areas, time, and manner in which the gear could be used; and the commercial fish species that the gear could harvest. Gear described above or approved by the Director would have to be authorized specifically by license condition for legal use by a specific commercial fisher. A commercial fisher could possess only the type and amount of gear specified in the license. The Director could evaluate and specify the depth at which gear specified in Part 473 or approved through a license condition could be fished.

A commercial fisher, a member of the crew, or any other individual would be prohibited from possessing sport angling equipment when aboard a licensed commercial fishing vessel. A commercial fisher, a crew member, or any other person could not possess a game fish when aboard a licensed commercial fishing vessel unless the person had a permit to possess the game fish or the person was a Department employee carrying out his or her official duties.

#### Abandoned, Lost, or Vandalized Gear

If a commercial fisher could not tend or lift gear within the time period, if any, specified in the license, the commercial fisher would have to notify the Department of the location of the gear and an estimated date by which the gear would be tended or lifted.

A commercial fisher could not have abandoned, unattended, unreported lost, or unreported vandalized gear in the waters of the Great Lakes. A commercial fisher also could not have gear that was lost or vandalized in the Great Lakes, if the fisher had not removed or tended it within seven days after locating it or being notified by the DNR of its location. A peace officer would have to seize all abandoned, unattended, unreported lost, or unreported vandalized gear and that gear would be forfeited.

A licensed commercial fisher that was convicted of having abandoned, unattended, unreported lost, or unreported vandalized gear would have to reimburse the State for costs incurred by the DNR for gear's seizure, as determined by the court, and for the value of the dead fish found in the gear in accordance with and at levels established by Part 473. Also, the DNR would have to reduce the amount of gear that the licensed commercial fisher would be allowed to use by the amount of gear that was the subject of the violation.

## Fish Authorized for Commercial Take

The following fish species would be authorized for commercial take from waters of the Great Lakes open to commercial fishing:

- Lake whitefish.
- Round whitefish.
- Bloater chubs.
- Rainbow smelt.
- Species of the family Catostomidae, including quillback, white sucker, longnose sucker, northern hogsucker, silver redhorse, black redhorse, golden redhorse, shorthead redhorse, bigmouth buffalo, and black buffalo.
- Freshwater drum.
- Burbot.
- Gizzard shad.
- Common carp.
- Catfishes of the family Ictaluridae, including black bullhead, yellow bullhead, brown bullhead, channel catfish, and flathead catfish.
- White perch.
- White bass.
- Rock bass.

The Director could designate additional species for commercial take, other than game fish. "Game fish" would mean that term as defined in Section 48701 (which lists species of fish, including lake trout, large and smallmouth bass, bluegill, yellow perch, walleye, and northern pike). The term would not include black crappie or white crappie.

## Bycatch Allowances, Closed Season, & Other Restrictions

The bill would allow the Director to establish a bycatch allowance for species, other than game fish, that were not commercial fish species or whose harvest otherwise was prohibited under Part 473. A person who exceeded a bycatch allowance by five pounds or less of fish in the round would be subject to a civil infraction punishable by a fine of \$100 for the first offense and \$200 for a second offense in a license year. The entire bycatch for that species on the day that the violation occurred would be subject to confiscation by the DNR.

A person who exceeded a bycatch allowance by more than five pounds in the round, or a person who exceeded the allowance for a third or subsequent time within a license year, would be guilty of a misdemeanor. The entire bycatch for that species on the day that the violation occurred would be subject to confiscation by the DNR. In addition, the license of a person found guilty for a violation would have to be suspended for 30 days, and the suspension would have to be served between April 15 and October 31 within one year of the conviction.

Currently, the Act establishes closed seasons for lake trout, whitefish, yellow pickerel, northern perch, white bass, suckers, and black crappie during certain dates, determined based on the particular Great Lake or connecting water. The bill would eliminate that language and authorize the Director to issue orders establishing closed seasons for any commercial fish species. In every case, the season would be open and close at 12 noon on the dates established by the Director. All harvested fish would have to be landed at port by no later than 2 PM on the date the season closed.

Subject to a provision that would allow undersized fish to be kept for personal use, a commercial fisher that took an illegal fish would have to do one of the following: a) if the fish

were alive, return the fish to the water at once with as little injury as possible; and b) if the fish were dead, return it to the water at once or dispose of it in accordance with any instructions provided by the Director.

A person could not sell, offer for sale, or possess fish taken under a commercial fishing license unless it was a commercial fish species or was a bycatch allowance. If possession of the fish were prohibited, it would have to be disposed of in the same manner as for illegal fish.

Beginning January 1, 2020, and ending December 31, 2025, and at least once every ten years after the end of that period, the Department would have to conduct a bycatch study on at least three separate active commercial Great Lakes fisheries. The Department would have to use the information from the study to manage harvest quotes, gear, grounds, and other license conditions as needed.

#### Minimum Length & Weight Requirements; Undersized Fish

The Act prescribes length and weight requirements for certain fish, and prohibits a person from marketing, possessing, transporting, or offering for sale at any time in Michigan a fish under the weight and/or length requirement, whether caught within or outside of the State. The bill would eliminate the prescribed length and weight requirements, and would allow the Director to establish minimum length and weight requirements for all of the listed commercial fish species taken under a commercial fishing license. The bill would prohibit a person from marketing, possessing, transporting, or offering for sale at any time a fish of a size or weight prohibited by the Director. As is currently the case, any measurement of minimum length or weight established by the Director would apply and would be enforced without allowance made for shrinkage of the fish.

The bill also would allow the Director to establish an allowable possession limit for certain undersized commercial fish species. An undersized commercial fish species that could be kept would have to be for personal use and could not be sold. These fish, when found during sorting or processing, would have to be removed from the commercial catch and set aside for personal use or disposed of.

A person who retained more than twice the amount of the allowable possession limit for undersized commercial fish would be guilty of a misdemeanor punishable by up to 90 days' imprisonment or a fine of at least \$500 but no more than \$5,000, or both, and could be ordered to pay the costs of prosecution. A person who retained more than the allowable possession limit for undersized commercial fish species but less than twice the limit would be responsible for a State civil infraction and would be ordered to pay a civil fine as follows:

- First offense of the license year, \$200.
- Second offense of the license year, \$300.
- Third and all subsequent offenses during the license year, \$400.

The Act prohibits a person engaged in lifting pound nets, trap nets, or seines in the waters of the State from taking any undersized fish, and all undersized fish found in the nets fished in those waters must be returned to the waters with as little injury as possible. Under the bill, this would apply except as provided for the allowable possession limits for certain undersized commercial fish.

#### Taking of Fish for Fish Culture; Possession of Fish Roe, Viscera

The Act allows the DNR to authorize the taking of trout, whitefish, and yellow pickerel for the purpose of fish culture at any time during the open or closed seasons provided in Part 473,

and requires all people engaged in fishing for whitefish, trout, yellow pickerel, or perch in the Great Lakes and connecting waters, from the beginning of spawning season until the beginning of the closed season to strip all ripe fish, both male and female, save all of the spawn, properly impregnate it, and deliver it to the DNR at its fishing port, as well as to have sufficient numbers of people and equipment needed to save, handle, impregnate, and deliver the spawn. The DNR must deliver to the designated representative of the United States Bureau of Fisheries as much spawn as desired by the Bureau for propagation and planting. The bill would eliminate this language.

Under the bill, a person on a commercial vessel could not possess fish roe that weighed more than 15%, or fish viscera that weighed more than 20%, of the combined weight of all the onboard dressed fish and dressed headed fish of the species from which the roe, or viscera, was taken.

### Inspection

The Act requires a person taking fish for market in any of the waters mentioned in Part 473 to bring the fish to a port or place in the State where they may be inspected before shipping. Under the bill, a licensed commercial fisher would be required to bring the fish to a port or place for inspection. The Act allows the DNR to grant permission to take fish to ports or places in other states when the commercial fishing laws of those states substantially conform to Michigan's commercial fishing laws. The bill would eliminate this provision.

### Daily Report of Catch

Under the Act, a person taking fish for the market in waters of the Great Lakes must keep an accurate report of each day's catch of the number of pounds of each kind of fish taken, the locality fished, the kind and amount of fishing gear employed, the length of time each unit of gear employed fished without being lifted, the kind and amount of spawn and caviar taken, and other data as may be needed to follow the trend of the fisheries. Under the bill, a licensed commercial fisher would have to keep a commercial catch record of this information, as well as to whom the fish were sold, the estimated average price received for them, and any other reasonable and pertinent data that the Director could require in following the biologic and economic trends of a fishery. The bill would refer to "caviar" as "roe" and would eliminate the requirement to report the type and amount of spawn taken.

The records of individual prices received for fish would be proprietary and would not be subject to the Freedom of Information Act.

The bill would require a licensed commercial fisher to complete an annual inventory record of all freshwater fish and roe in possession, or under ownership or control, including in cold storage facilities, as of a date specified by the Department.

The commercial fisher would have to submit the commercial catch records and annual inventory records electronically. The Director would have to establish the format and schedule for these submissions. A commercial fisher who failed to submit a complete record required above would be responsible for a State civil infraction and would be ordered to pay the following civil fines:

- First offense during a license year, \$100.
- Second and subsequent offense during license year, \$200.

The bill would retain similar language to that currently in the Act allowing for the suspension of a license for failing to file two or more required records.

The bill would prohibit a person from falsifying information contained in the required commercial catch records or annual inventory record.

### **House Bill 4569 (H-5)**

#### Entrance onto Premises

The bill would allow a peace officer, at any time when the business of commercial fishing was being conducted on the premises to enter any of the following:

- A building or structure where fish were stored, processed, packed, or held by a commercial fisher; where a commercial fisher's records were kept; where vehicles, vessels, equipment, or gear used in the business were kept; or where activities related to the business were conducted.
- A vehicle, vessel, or live fish car used to harvest, transport, or hold fish.

The bill also would allow the officer to inspect fish stored or in the possession of a commercial fisher, inspect or copy records or reports, and inspect buildings, structures, vehicles, vessels, fishing gear, and other materials and equipment related to the harvest, possession, and sale of fish taken under a commercial fishing license or with commercial fishing gear.

A commercial fisher could not prohibit entry or an inspection to be conducted, or refuse to produce records, unless a court restrained or enjoined the entry, inspection, or production. If a person were convicted of violating the above prohibition, the court would have to order the person's commercial fishing license to be suspended for one year beginning 30 days after conviction.

#### Packaging & Shipping Requirements

Under the Act, a person may not ship or transport within the State any fish in packages or containers without plainly and correctly marking each package or container with the name of the consignor and the kinds of fish contained in the package. Also, a railroad company, boat line, express company, motor truck company, aerial freight or express company, or other transportation company or common carrier, or its agent, or a vehicle operated privately or as a common carrier, may not accept for shipment or transport any package or container of fish unless it is properly marked. The bill would eliminate this language.

Under the bill, except as otherwise provided below, a person would be prohibited from shipping, accepting for shipment, transporting, or causing to be transported any container, package, or box containing any fish or fish products, unless the container, package, or box was plainly and correctly marked with the name of the consignor, the name of the consignee, and the kinds and amount by weight of fish contained in the container, package, or box.

The marking of each container, package, or box with the information described above would not be required for multiple containers containing fish or fish product being shipped to one destination in Michigan if those containers were prepared as follows: a) all individual containers were packaged or bound together in a manner so that they would stay together as one unit in shipping; and b) each bound unit was individually labeled as to the type and pounds of fish or fish product, or roe. The label would have to be visible on all four sides of the unit, correctly identify the consignor and consignee of the shipment, and state the number of packages in the bound unit, the species of fish contained, and the total weight of the fish or container.

Marking each container, package, or box also would not be required if the containers, packages, or boxes were shipments to individual destinations consigned by a single wholesaler, transported in a vehicle registered to the wholesaler for same-day delivery within the State and within 100 miles of the wholesaler's business, if each container were marked with the name of the consignee.

In addition to the labeling requirements, an accurate bill of lading or an invoice containing the name and address of the seller and buyer of the fish, the point of origin of the fish, and the number of containers would have to accompany the shipment. The bill of lading or invoice would have to be available for inspection and comparison to the cargo being shipped by any peace officer.

The labeling and bill of lading or invoice requirements would not apply to a licensed commercial fisher that was transporting the fish directly from its landing port to its fish house or to a processor. The licensed commercial fisher would have to complete a bill of lading or invoice indicating the number of containers, packages, or boxes being transported for each species of fish. The bill of lading or invoice would have to accompany the fish and be available for inspection and comparison to the cargo being transported. In addition, the requirements would not apply to a wholesale fish dealer that was transporting fresh fish directly from a State or tribal licensed fisher's port of landing within the State to that wholesaler's facility. The wholesale fish dealer would have to complete a bill of lading or invoice with the same information, and would be subject to the same conditions, as a licensed commercial fisher.

The Act specifies that the presence in any package or container of 10% by weight of any fish that is illegal to ship makes the entire contents of the package or container subject to seizure as an illegal shipment. Under the bill, the entire contents of a container, package, or box that contained any illegal fish would be subject to seizure. Also, the entire catch of a licensed commercial fisher that contained any fish that was illegal to take by that licensee would be subject to seizure.

#### Wholesale Fish Dealer

Under Section 47333 of the Act, a person who deals in fish by operating a wholesale fish market or fish house, or who solicits the purchase of or buys fish for wholesale distribution, must secure a license from the DNR. Each license expires on December 31, and the fee for the license is \$5. As noted above, the bill would repeal Section 47333. The bill instead would prohibit a person from engaging in the business as a wholesale fish dealer in the State unless the person held a wholesale fish dealer license. The application would have to be accompanied by the following fee based on the calendar year for which the license was issued:

- For 2020, \$100.
- For 2021 through 2030, \$110.
- For 2031 through 2040, \$130.
- For 2041 and each year thereafter, \$150.

A wholesaler fish dealer could not, at any time, sell, buy, or have in its possession or under his or her control for the purpose of sale, any illegal fish.

A dealer would have to require identification from any person who sold fish to the wholesale fisher dealer. A dealer would have to purchase fish only from a State or tribally licensed commercial fisher or other legal source of fish.

Every dealer would have to keep a record of all fish bought, possessed, acquired, or obtained including by trade and barter as well as records of disposition for fish received as required by

the DNR. The wholesale fish dealer would have to keep these records in a format designated by the Director. The records of prices paid for fish purchased and sold by a licensed wholesale fish dealer would not be subject to the Freedom of Information Act.

A wholesale fish dealer would have to complete an annual inventory record of all freshwater fish and roe in possession, or under ownership or control, including in cold storage facilities, on a date specified by the DNR.

The Director would have to establish the format and schedule that the required records would have to be submitted, as well as the specific information they would have to contain. A dealer would have to retain all records and inventories required under Part 473 for at least six years from the date the record or inventory was created.

A person would be prohibited from falsifying any information contained in the wholesale records or the annual inventory record. A wholesale fish dealer that failed to timely submit complete records would be responsible for a State civil infraction and would be ordered to pay the following civil fines:

- First offense during a license year, \$100.
- Second and subsequent offense during license year, \$200.

The bill would include similar language to that currently in the Act allowing for the suspension of a commercial fishing license for failing to file two or more required record to allow the suspension of a wholesale fish dealer's license for the same reason.

The bill would prohibit the DNR from issuing a wholesale fish dealer's license to a business that would occupy the same business location as that of a wholesale fish dealer whose license was suspended.

A wholesale fish dealer or its employee would be prohibited from possessing, controlling, storing, transporting, or causing to be transported any freshwater fish for which there was no record or inventory. Also, the bill would prohibit a wholesale fish dealer from transporting or causing to be transported any fish unless the transporting vehicle was clearly marked on each of its sides with the dealer's or transporting company's correct business name, displayed in letters at least one inch high.

Upon the officer's request, a dealer would have to produce for inspection and copying all records relating to the purchase, acquisition, sale, trade, barter, storage, or disposition of fish that were kept at the dealer's place of business or at a residence, dwelling, or location other than the dealer's business. The officer would be authorized to enter any of the following:

- Any building or structure where fish were stored, processed, packed, or held.
- Any building or structure where a dealer's records were kept.
- Any building or structure vehicles, vessels, or equipment or gear were located.
- Any building or structure where activities related to a wholesale fish dealer's business were conducted.
- Any vehicle, vessel, or live fish car used to harvest, transport, or hold fish.

The officer also could inspect fish stored or in the possession of a wholesale fish dealer, inspect or copy a dealer's records or reports, and inspect buildings, structures, vehicles, vessels, equipment, and materials related to the dealer's business.

The bill would prohibit wholesale fish dealer, operator of a vehicle or vessel for a wholesale fish dealer, or an employee or person acting on behalf of the dealer from prohibiting entry or



an inspection to be conducted as authorized, unless a court restrained or enjoined the entry, inspection, or production.

Under the bill, a court would have to order that a person convicted of violating the requirements pertaining to the production of records or entry of an officer into a building, structure, vehicle, or vessel for an inspection, or a person who prohibited an officer from entry or inspection, have its license automatically suspended for one year. The DNR would be prohibited from issuing or renewing that license for one year following the conviction.

#### Retail Fish Dealer

The bill would require a retail fish dealer to retain from the time it acquired freshwater fish or roe, a bill of sale or invoice, indicating the quantity and species of the fish or roe and the name and address of the consignor. A retail fish dealer would have to make the fish, roe, and records available for inspection by a conservation officer or other peace officer designated by the Director at any reasonable time. A retail fish dealer would have to maintain records for one year after the fish or roe was disposed of by sale or otherwise.

#### Obstructing or Interfering in Lawful Taking of Aquatic Species

Currently, Part 473 prohibits a person from obstructing or interfering the lawful taking of fish, and specifies that a person violates the prohibition if he or she engages in certain conduct with respect to interfering in the taking of aquatic species or fish, such as blocking, impeding, or harassing another person who is engaged in the process of lawfully taking fish. Under the bill, where the Act refers to "fish", the bill would refer to "aquatic species".

The bill would retain the current penalties for a violation of the prohibition. (A person who violates the prohibition is guilty of a misdemeanor, punishable by up to 93 days' imprisonment or a fine of between \$500 and \$5,000, or both, and the costs of prosecution. If the person violates the prohibition a second or subsequent time, he or she is guilty of a misdemeanor punishable by imprisonment for up to one year or a fine at least \$1,000 but no more than \$10,000, or both, and the costs of prosecution. Also, any permit or license issued by the DNR authorizing the person to take aquatic species must be revoked.)

#### Criminal Penalties Not Otherwise Specified; Forfeiture for Illegally Taken Fish

Currently, a person who violates Part 473 is guilty of a misdemeanor. The punishment to which the offender may be sentenced depends on the violation and ranges from 30 to 60 days' imprisonment or a fine of between \$10 and \$100, or both, and the costs of prosecution. The bill would eliminate these various prohibitions and penalties.

Instead, under the bill, except as otherwise provided, a person who violated Part 473, any license or permit issued under Part 473, or an administrative rule or fisheries order issued under the authority of Part 473 would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of at least \$500, but no more than \$5,000, or both. The offender also could be ordered to pay the costs of prosecution.

Under the Act, if a person violated Part 473 while holding a permit or a license to take aquatic species, that person's license or permit be revoked. Under the bill, the person's license would be suspended for one year or revoked if the remaining term of the permit or license was one year or less, and the person would not be eligible to apply for or receive another such license for one year after the conviction.

In addition to the penalties provided, a licensed commercial fisher or an agent operating under a commercial fishing license convicted of illegally taking, possessing, or selling of fish would have to reimburse the State for the value of the fish, as follows:

- Each game fish, except lake sturgeon, of an individual weight of one or more pounds: \$10 per pound or fraction of a pound.
- Each game fish, except lake sturgeon, of an individual weight of less than one pound: \$10 per fish.
- Lake sturgeon: \$1,500 per fish.
- All other fish: \$5 per pound or fraction of a pound.
- All roe violations, \$20 per pound or fraction of a pound.

The court in which a conviction for illegally taking, possessing, or selling of fish was obtained would have to order the defendant to forfeit to the State the sum specified. If two or more defendants were convicted, the order would have to provide that the defendants were jointly and severally liable. If a defendant failed to pay the sum ordered, the court would have to require the defendant to satisfy the forfeiture in the amount prescribed and fix the manner and time of payment, or make a written order permitting the defendant to pay the forfeited sums in installments at the time and in the amounts as the court determined the defendant was able to pay.

A default in the payment of forfeiture or an installment of the forfeiture could be collected by any means authorized for the collection of a judgment under the Revised Judicature Act. A court collecting a forfeiture would have to remit it to the county treasurer, who would have to transmit it to the State Treasurer for credit to the Game and Fish Protection Account of the Michigan Conservation and Recreation Legacy Fund.

#### Suspension for Multiple Violations

Under the bill, if a person licensed under Part 473 were convicted of three misdemeanor violations of Part 473 that occurred in a one-year period starting with the date of the first offense and ending with the date of the third, the court would have to order the person's license be suspended for one year beginning after the third conviction. If the suspended license were a wholesale fish dealer license, the person would not be eligible to apply for or be issued another license during the term of the suspension.

If a person licensed under Part 473 were convicted of five designated offenses that occurred in a seven-year period beginning with the date of the first and ending with the date of the fifth, the Department would have to permanently suspend the person's license and the person would be prohibited from buying an interest in any additional license of the same type for seven years after the fifth conviction.

A commercial fisher whose license was suspended could not use any vessel, net, or other gear listed on the license, and the vessels, nets, or other gear listed on a suspended license could not be transferred onto another licensing during the suspension. A wholesaler dealer whose license was suspended or revoked could not buy, sell, or process any fish originating within or outside the State at the physical location listed on the revoked license. A suspended license could not be sold or transferred to a third party during suspension.

The place of a wholesale business, including the physical store and processing facility, of the person whose license was suspended could not be run or operated under any wholesale license during the suspension. The vessels, nets, or other gear listed on a commercial fishing license under suspension could not be transferred onto or used by another license during the suspension.

The Department would have to permanently suspend a person's license if the person engaged in or attempted to engage in any commercial or wholesale fishing activity under the suspended license during the suspension period. If a person owned multiple licenses, the suspension of one license would not result in suspension of all of the owned licenses; however, a person who had a commercial fishing license under suspension would be prohibited from buying an interest in an additional commercial fishing license for the duration of the suspension.

#### Commercial Fishing Advisory Committee

The bill would require the DNR to establish a Commercial Fishing Advisory Committee, consisting of the following members:

- A commercial fisher licensed to engage in commercial fishing in Lake Superior.
- A commercial fisher licensed to engage in commercial fishing in Lake Michigan.
- A commercial fisher licensed to engage in commercial fishing in Lake Erie.
- A commercial fisher licensed to engage in commercial fishing in Lake Huron but not in Saginaw Bay
- A commercial fisher licensed to engage in commercial fishing in Saginaw Bay.
- The President of the Michigan Fish Producers Association or successor organization, or his or her designee.
- The President of the Michigan Charter Boat Association or successor organization, or his or her designee.
- A wholesale fish dealer that was not also a licensed commercial fisher.
- An individual representing sport fishing anglers.
- Up to three individuals who have technical knowledge regarding the impacts of the commercial fishing industry.

The DNR would appoint members to the Committee, other than the membership positions for the Michigan Fish Producers Association and the Michigan Charter Boat Association. The Department could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The DNR would have to call the first meeting, at which the Committee would have to elect from its members a chairperson and other officers it considered necessary or appropriate. The Committee would have to meet not more than twice per year. Members would serve without compensation; however, they could be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

The Committee could provide formal recommendations to the Department regarding the commercial fishing industry.

MCL 324.47301 et al. (H.B. 4567)  
324.47309 et al. (H.B. 4568)  
324.47318 et al. (H.B. 4569)

Legislative Analyst: Dana Adams

#### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the DNR and no fiscal impact on local units of government. According to the DNR, the changes in commercial fisher and wholesaler license fees contained in the bill would result in an increase in annual revenue, from approximately \$9,000 per year to \$70,000 per year. It is likely, however, that despite this increase in revenue, the licensing programs would continue to operate at a deficit, albeit a smaller one than under current law, and would require a subsidy from other DNR fund sources.

The bills also would create some increased short-term costs for the DNR from rule promulgation and a study of bycatch before December 31, 2025, and then once every ten years thereafter.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.