



Department of the Auditor General

Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120-0018

October 21, 1999

The Honorable Italo S. Cappabianca
State Representative
333 Main Capitol
House Box 202020
Harrisburg, PA 17120-2020

Dear Representative Cappabianca:

This is in response to your September 22, 1999, letter asking if excess revenue remaining in a Fish Fund restricted revenue account for the "Gill Net Licensee Recompense Program" can be paid to the eight commercial fishermen who held 1992 gill net licenses.

According to information obtained from the Pennsylvania Fish and Boat Commission (PFBC), as of September 21, 1999, the PFBC collected \$940,731 in permit fees to compensate commercial fishermen for changing their method of fishing from gill to trap nets. Total payments to licensees were \$440,602 and the amount still owed to licensees is \$165,199. In addition, administrative costs are anticipated to be approximately \$66,727, leaving a balance of \$268,203.

Attorney Elliot Segel, who represents most of the former gill net licensees, initially took the position that his clients are entitled to this balance based on "the legislative intent and history of [Act 1994-79]." (April 14, 1999, letter to PFBC Assistant Counsel Laurie Shepler – copy enclosed.) Nonetheless, in that same letter Mr. Segel expressed acquiescence with the position taken by the PFBC, namely, that it has no express statutory authority to distribute these funds and that there must be "some lawful authorization made for said distribution." In his August 23, 1999, letter to you Mr. Segel appears to be acquiescing as well with the PFBC's procedural decision to seek legislative guidance.

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Thus the dispute no longer centers on the PFBC's power to distribute the funds to the former gill net licensees based solely on Mr. Segel's reading of legislative intent. Rather, Mr. Segel and the PFBC disagree concerning how the General Assembly should resolve this matter. Mr. Segel wants the money to go to his clients and the other former gill net licensees, whereas the PFBC wants to transfer the money to the Fish Fund and use it to benefit Lake Erie and its tributaries. (July 7, 1999, letter to Mr. Segel from PFBC Chief Counsel Dennis Guise – copy enclosed.)

Our Office of Chief Counsel concurs with the PFBC concerning its lack of authority to distribute the excess funds to the fishermen, or, indeed, to dispose of it in any other manner. Section 2907.2(f) of Act 1994-79 directs that money collected to fund the gill net licensee recompense program shall be used to recompense gill net licensees "as provided in section 2903(h)" and for administrative costs. Section 2903(h) sets out the payment formula; there is no language in the Act permitting deviation from that formula. Accordingly, our Office of Chief Counsel also concurs with the PFBC that a legislative solution must be sought.

I hope this response sufficiently addresses your question and the issue can be resolved to everyone's satisfaction. If you have additional concerns about this or any other matter, please contact me at 787-2543.

Sincerely,

A handwritten signature in black ink that reads "J. Terry Kostoff". The signature is written in a cursive style with a large initial "J" and a stylized "K".

J. Terry Kostoff, CPA

Deputy Auditor General for Audits



October 4, 1999

Robb Miller, Jr., Executive Director
Pennsylvania House of Representatives
Game & Fisheries Committee
204 South Office Building
House Box 202020
Harrisburg, Pennsylvania 17120-2020

RE: Act 79 of 1994 Surplus

Dear Mr. Miller:

Thank you for your September 17, 1999 letter, which my office received on September 24, 1999 about the above matter. The following, on behalf of the last eight commercial fishing licensees in Pennsylvania, is my response.

You assert in your letter that the PFBC has stated that they have met all of its financial obligations to the settled licensees under Act 79 of 1994 (hereinafter referred to as "Act"). So what. Their obligations under the Act were created by the Legislature with input *only from the PFBC*. The eight commercial licensees, with their 75-100 employees (some of the licensees had fish processing centers where the fish catch was processed, packaged and sold to market), were never given any prior notice of this Act and never consulted as to the recompense formula established by the Act. Now, all but one of the eight licensees and most of these 75-100 employees are out of work, and the only licensee left continues to lose his proverbial shirt.

From the very beginning after receiving the after-the-fact notice of the passage of the Act, the eight commercial licensees strongly voiced their objections, many of which went to the gross inadequacy of the statutory formula to appropriately compensate the commercial licensees for their loss created by the Act. I refer you to the December 14, 1995 correspondence from myself to Dennis Guise, Deputy Executive Director and Chief Counsel of the PFBC, which I have enclosed for your convenience. This letter was virtually identical to letters which I sent on behalf of most of the commercial licensees within a month after they received notice of the passage of the Act. Incidentally, you will note that at Item No. 6 at Page 2 of that letter, nearly four years ago, the commercial licensees were questioning the PFBC as to what would be done with the "substantial sums of unused funds" which we then anticipated would exist from the Act's Permit Program. True to form, we never received an answer to this question, which of course goes to the heart of the pending matter.

Mr. Robb Miller, Jr.

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It also appears obvious that neither the Legislature nor the PFBC ever consulted with or received input from the few Great Lakes commercial fishing operations which were using trap nets (which actually would include only a few such commercial operations in the state of Ohio). Had they done so, the Legislature would have learned that the start-up costs required to implement the type of trap netting permitted by the Act would approximate \$200,000.00 to \$250,000.00. And this does *not* include the losses which would result from the loss of the use of gill nets. For example, Pennsylvania commercial licensee William Munch had over \$100,000.00 invested in his gill nets, alone, which of course were rendered useless contraband by the Act.

Yes, the PFBC, as they have told myself and the commercial licensees *ad nauseum*, have met their obligations under the statute. But these were obligations which its input alone created. To use this as a justification why the surplus balance should be left with the PFBC merely adds salt to the wounds of the commercial licensees, as they were never consulted about the Act or its statutory recompense formula prior to its passage.

The unfairness of this would be further compounded, because the above-referred input came from a Commission which had at least one member with a direct financial conflict of interest throughout the history of the passage of PFBC and statutory regulations imposed upon the commercial fishing industry in Pennsylvania up through the passage of the Act. I am speaking of Mr. Sam Concilla, who has been a Fish and Boat Commissioner throughout this period. Indeed, for years, Mr. Concilla has been the spearhead of the anti-commercial licensees regulations and legislation implemented by or through the PFBC. For years Mr. Concilla has fanned the flames of emotions against the commercials with false or reckless statements. For example, at about the time House Bill 1800 was being considered in 1990 and 1991 (that Bill also proposed a ban on gill nets), Mr. Concilla was quoted in Erie newspapers as stating that he had personally seen a Canadian fishing boat using gill nets traveling 80 knots per hour on Lake Erie waters, thereby emphasizing the need for gill net bans. To put it bluntly, there is no such animal, and when many of the Canadian fishing operators heard of Mr. Concilla's statement they simply laughed. An 80-knot per hour fishing vessel does not exist.

As another example, at the time the Act was passed, Mr. Concilla told myself and the commercial licensees that trap netting would be so profitable that he had several Ohio commercial fishing operations chomping at the bit to obtain Pennsylvania licenses as soon as they were available. To date, none of these anxious out-of-state anglers as alleged by Mr. Concilla, have ever applied for a Pennsylvania license.

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The point is that during the same time period, it is believed that Mr. Concilla and/or family members of his have operated charter fishing boats in Lake Erie waters in Pennsylvania. Not just Mr. Concilla, but many charter captains have throughout this time period complained about the commercial fishing operations. Interestingly, the PFBC admitted to myself and the commercial licensees that in the several years prior to the passage of the Act, the charter fishing boats were catching more fish out of the lake than the commercial operations. Yet, while the charter fishing industry remains virtually unregulated, Sam Concilla led the charge of the PFBC against the commercial fishing licensees, ultimately driving them out of business. He also "politically threatened" one of our local state legislators unless that legislator came on board PFBC's positions in these matters.

Given this background, it is hardly surprising that the PFBC has *never* shown any interest in resolving anything amicably with the commercial fishing licensees. You expressed the hope that we would work with the Commission towards an amicable solution to this problem in the near future. Mr. Miller, if the PFBC had ever taken just one step in that direction we would not have had to ask our local legislatures to intervene on behalf of the commercial fishing licensees. In the history of my involvement on behalf of certain members of the commercial fishing licensees since the middle 1980's, the PFBC has never responded to any initiative to resolve anything through compromise. More specifically, on April 14, 1999 and June 29, 1999 I wrote letters to the PFBC which invited the Commission to sit down with us and try to resolve this issue as to the disposition of the surplus funds through negotiation and compromise. When we *finally* got an answer, through the July 7, 1999 correspondence from Attorney Guise, the PFBC in effect told us to take a hike, saying that my clients had no claim to this money. (Copies of the aforesaid correspondence are enclosed for your review).

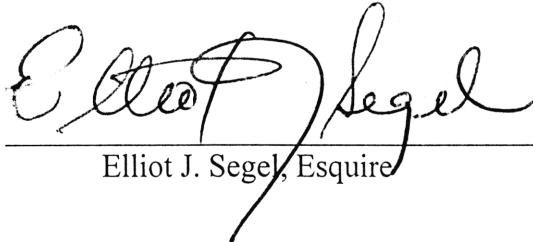
In sum, the commercial fishing licensees and their 75-100 employees have been steamrolled out of existence, to the detriment of the natural resources of Lake Erie I might add, by a financially conflicted state Commission which has been allowed to operate by state government pretty much as it pleases. My clients are not going to lay down and go away on this final issue, one which continues to attract statewide and now national media attention (a Washington Post reporter met last week with one of my clients). Towards that end, we are continuing to request assistance from our legislators

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and our state government. I remain available to speak with you about this matter at your convenience and I appreciate your attention to it.

Very truly yours,

SEGEL & SOLYMOSI



Elliot J. Segel, Esquire

EJS/fc
Enclosure

cc: Senator Jane Earll
Representative Linda Bebko-Jones
Representative Italo Cappabianca
Commercial Fishing Licensees

GAYNOR CAWLEY
DEMOCRATIC CHAIRMAN,
GAME AND FISHERIES COMMITTEE

204 SOUTH OFFICE BUILDING
HOUSE BOX 202020
HARRISBURG, PENNSYLVANIA 17120-2020
PHONE: (717) 705-2011
FAX: (717) 772-9998



ROBERT B. MILLER, JR.
EXECUTIVE DIRECTOR,
GAME AND FISHERIES COMMITTEE

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Memorandum

DATE: 15 October 1999

RE: Amendment to House Bill 1531

TO: Attorney Robert W. Zech, Jr.
Room 641, Main Capitol Building

FROM: Robb Miller, Executive Director
Room 204 South Office

Bob, Representative Wojnaroski has requested that an amendment be prepared for H.B. 1531, which provides for tuition waivers at state-owned and state-related institutions of higher education. The amendment should add Fish and Boat Commission Waterways Conservation officers and Deputies to those listed as eligible to receive the educational benefit.

Attached please find a copy of memo I received from Dennis Guise with suggested language. Representative Wojnaroski agrees with Mr. Guise's suggestion and unless you have concerns, you can draft the amendment accordingly.

Should you have any questions about this request, please feel free to call me at 5-2011.

As always, I appreciate your assistance.

Cc: Representative Ed Wonnaroski
Lynn Slabicki



August 23, 1999

Honorable Italo S. Cappabianca
Pennsylvania State Representative, 2nd District
1216 West 26th Street
Erie, Pennsylvania 16508

Re: Pennsylvania Gill Net Licensee Recompense Program

Dear Representative Cappabianca:

I write you on behalf of the recently demised commercial fishing licensees in the Commonwealth of Pennsylvania. Up until the mid-1990's, there were eight commercial fishing licensees left in the Commonwealth, all located in Erie County, Pennsylvania with their fishing operations centered on Lake Erie. From the mid-1980's up to the present time, I have continued to represent most of these commercial fishing licensees. In that capacity I have been a first-hand witness to the rape, pillage and ultimately the execution of the once-proud commercial fishing industry in Pennsylvania by the increasingly restrictive statutory and regulatory schemes implemented by the General Assembly and the Pennsylvania Fish and Boat Commission.

So, as the 20th Century opened with the commercial fishing industry being perhaps the most important in Erie County, Pennsylvania, the same Century closes with that industry extinct. One might think these words over-dramatic. Given the circumstances they are not. One might think them harsh. They are, but they are easily documented and supported.

I write now with specific reference to Act 1994-79, which was the death knell for the commercial fishing licensees in Pennsylvania. That Act outlawed the use of gill nets by commercial fishing operations. As part of the Act, the Pennsylvania Fish and Boat Commission (PFBC) implemented a special permit program, with the statutory purpose of providing transitional compensation to the eight commercial fishing operators effected by the Act.

I will spare you herein the history of the maneuverings behind and implementation of this permit program. Suffice it to say that I have represented six of the eight commercial fishing licensees from the time this Act was first proposed in 1990-91 up through the present time. A brief overview of the pertinent circumstances are set forth in two pieces of correspondences, which I wrote to counsel for the PFBC, one dated April 14, 1999, the other dated June 29, 1999. For your convenience, I am enclosing copies of those two items of correspondence.

Upon reading the two enclosures, you will see that the permit program no longer exists. You will also see that seven of the eight commercial fishing operators were put out of business by this legislation. The eighth, Jerry Mathers, has tried to continue his operation under the draconian restrictions established by the aforementioned Act. You will also see that in the first two years of his attempt, he lost over \$300,000. I have not spoken with Jerry recently and do not even know if he is still attempting to fish with the permitted trap nets. Although his efforts have been

Honorable Italo S. Cappabianca
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valiant, they have been fruitless and he continues to lose everything. If you need further information, I invite you to contact Mr. Mathers.

Finally, you will see from the enclosed correspondence that there remains an anticipated balance in the restricted fund maintained by the PFBC for the purpose of compensating the commercial fishing operators of \$246,000. The PFBC has acknowledged in correspondence to me that it has no jurisdiction or authority to transfer or use the funds for any purpose. It further acknowledges that the question for resolution of this \$246,000 balance must be answered by the General Assembly. That is, there is no statutory or legal authorization to do anything with these funds and will not be unless the General Assembly acts to provide same.

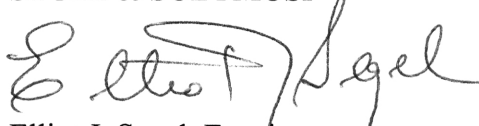
In the enclosed correspondence you will see that it is the position of the commercial fishing licensees that they are the only ones entitled to the approximate \$246,000 aforementioned balance. After all, the sole purpose of establishing these funds was to pay them for taking away their business. The PFBC has confirmed that it intends to petition the General Assembly to enact legislation which would authorize the PFBC to transfer the funds to their own funds for expenditures as they see fit. Given the purpose of these funds and the very real travesty thrust upon the former commercial fishing licensees by this Act, it is our position that the only appropriate disposition of the funds would be to disburse them to the final eight commercial fishing licensees who were regulated out of business by the Act.

Accordingly, I am writing to you and all the other local legislators to request that you support a proposal in the General Assembly to authorize disposition of the entire balance of the aforesaid funds to the last eight commercial fishing licensees. I would welcome the opportunity to meet personally with you and the other local legislators at the very earliest convenience to further discuss this proposal and its supporting information. As I stated in my June 29, 1999 letter to the PFBC, "the Commonwealth now has one opportunity to finally do the 'right thing' by my clients."

Your assistance in this matter is greatly appreciated.

Very truly yours,

SEGEL & SOLYMOSI



Elliot J. Segel, Esquire

EJS:bjc

Enclosures



ERIE COUNTY LEGISLATIVE DELEGATION
of the
Pennsylvania General Assembly

A. Buzz Andrezeski
State Senator, 49th District

October 6, 1993

Linda Bebko-Jones
Representative, 1st District

Karl W. Boyes
Representative, 3rd District

Italo S. Cappabianca
Representative, 2nd District

James R. Merry
Representative, 5th District

Thomas J. Scrimenti
Representative, 4th District

Mr. Edward R. Miller, Executive Director
PA Fish and Boat Commission
3532 Walnut Street
Harrisburg, PA 17106

Dear Mr. Miller:

As members of the Erie Legislative Delegation we are concerned that your Commission has not yet issued a formal position on House Bill 490, the legislation banning the use of Gill Nets on Lake Erie.

This legislation has been introduced for two consecutive sessions, and has been the subject of public hearings and much debate. It has been studied, reviewed and discussed. Now is the time for a statement of impact from your Department. Just how does the Fish Commission believe this bill will affect the fish and fishermen of Lake Erie?

We have met with Chairman Tom Fee, of the Game and Fisheries Committee and voiced our concern that this bill is still in Committee. While the Committee has compiled testimony on this proposal, their work remains incomplete, awaiting an opinion from your staff. The time has come for all to make a decision; we must move on this bill, in one way or another. The public demands it. We therefore ask your opinion and seek your counsel on this very important legislation. We look forward to your response.

Sincerely yours,

Italo S. Cappabianca
Representative, 2nd District

Linda Bebko-Jones
Representative, 1st District

Karl W. Boyes
Representative, 3rd District

Thomas J. Scrimenti
Representative, 4th District

James R. Merry
Representative, 5th District

ISC/cmr

PENNSYLVANIA FISH PRODUCERS ASSOC
13227 W. Lake Rd
East Springfield, PA 16411
October 4, 1993

Thomas Fee, Chairman
House Game & Fisheries Committee
Room 100 Capitol Bldg.
Harrisburg, PA
Re: House Bill 490

Dear Sir;

Your committee has already given a great deal of time to this issue, which was raised by the arrogance of sports groups who insist that the Commonwealth award them the exclusive right to fish Lake Erie. This letter will bring you up to date on new developments and provide some background information of which you may be unaware.

If you ask your colleagues to vote us out of business you are attempting to exchange one good thing for another: To their great credit the formerly unbiased resource management of the Pennsylvania Fish Commission prevented the Commonwealth from blindly following the unwise decisions of its neighboring states. The first of the Great Lake states to eliminate commercials are no "rethinking" that decision (addendum A). Despite virulent anti-commercial misinformation, over the years, the PFC continually insisted that the co-existence of the two user groups was the "highest and best" use of the resource. Those days, sports groups accused us of targeting lake trout; the fish commission pointed out that to spend our time and energy in pursuit of a species which we could not market was self-defeating.

But suddenly, and without any responsible research, the PF&BC has decided that although the greatest efficiency of gill nets is in keeping the species we target ALIVE, the species which become incidentally entrapped are KILLED. (Please see our response: addendum C.) These days sports groups wrongly accuse us of "killing" sports species. As we said in our letter of Sept. 5, they even went so far as to dummy a video tape during deliberations over HB 1800.

The fact that we do more good than harm was recently supported by a front page story in the Erie Daily Times (addendum B). Reporter Jack Grazier quotes the manager of the Walnut Creek Access Area as saying the following: "The fish are weighing in from five to six pounds and are averaging 26 inches long." You can not deny, Mr. Fee, that those fish grew up during the most intensive commercial targeting of whitefish in modern times. Trading one industry for the other is no more necessary or advisable today than it ever was. The Commonwealth--and the lake, with its currently tenuous food base--can continue to benefit from both.

If you ask your colleagues to eliminate the commercial fishing industry, you are investing in fantasy rather than fact: The awful reality is that the put and take species constitute a danger to public health.

According to the June 3, 1993 health advisory provided you at the public hearing, lake trout should not be eaten. Currently a draft "Protocol for a Uniform Great Lakes Sport Fish Consumption Advisory," which is being studied by the governors of the four Great Lakes states and the premier of Ontario, addresses the addition of both walleye and steelhead to that advisory list (addendum D). An Erie County Health Department official told us that the governments are considering the safe consumption per month of totally fat free flesh to be around 18 ounces of walleye or 12 ounces of steelhead. When tourists come into an area to fish, they expect to eat the fish they catch.

If you ask your colleagues in the House to eliminate the commercial fishing industry, not only will you be taking jobs away from 50 residents of Erie County and likely putting them on the welfare rolls for the rest of their lives, but you will also be divesting the Commonwealth of the income from a major renewable resource: Elimination of Pennsylvania's commercial fishing industry would waste thousands of tons of whitefish which can be harvested no other way.

Forcing us into trap net gear would eliminate the industry without the financial agony of the buyout the Pennsylvania Fish Producers seeks to avoid. But it would not eliminate the agony of a federal lawsuit. We believe we have demonstrated a legally valid argument against the use of trap nets in Pennsylvania waters. Addendum E illustrates the current situation in New York. In that regard, we strongly suggest that the committee contact PF&BC attorney Dennis Guise regarding federal restraints on state legislation which would set commonly owned natural resources aside for the exclusive use of one portion of its population.

There may be, however, one positive outcome of this unfortunate piece of legislation: We have long believed that as a living museum of Pennsylvania history, we could be a powerful drawing card to the Erie bayfront. We envision a fisherman's wharf where the public could see fish offloaded, cleaned and shipped. And where both fresh and cooked fish would be available for sale. We are an important part of Erie's history and we are willing to invest in that effort. But first we need your help.

You asked us to tell you what we want, Mr. Fee. Here is your answer:

1/ We want you to make our licenses transferrable so that we would have the security any business needs in order to reinvest-- the right to sell out to a qualified buyer for full market value.

2/ We want individual perch quotas divided according to the size of current individual licenses. Commercials must be notified beforehand and included in the discussion regarding annual adjustment.

3/ We want the PF&BC to stop planting lake trout and steelhead which compete with the native species for scarce food.

4/ We want the commercial quota of walleye--which was lowered fifty percent in 1992--raised to 50,000 as a more equitable distribution between sports users and the fish consumers of the Commonwealth.

5/ We want you to use your influence to persuade the PF&BC to recognize us through their literature and rhetoric as a valuable industry on Lake Erie. By so doing we would hope to eliminate the intimidation and abuse to which we are subjected by some so-called sportsmen.

These are not unreasonable requests for any industry struggling in the currents of economic and sociological change. We thank you for giving them serious consideration and we look forward to being able to take an active role in the preservation of Erie's historical bayfront.

Yours truly,

A handwritten signature in cursive script, reading "CarylAnn Minor".

CarylAnn Minor, secretary

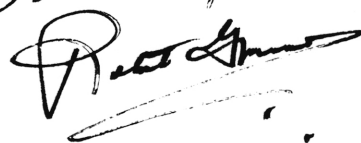
PENNSYLVANIA FISH PRODUCERS ASSOC

PA Fish Producers Assoc.
13227 W. LAKE RD.
K. SPAINGFIELD PA 16411

House of Representatives
Commonwealth of PA.
HARRISBURG.

Dear Distinguished Representative:

Please find enclosed information that is being sent to each member of the house and was not included in our packet to you at the meeting on Sept 13/93 in the capital building.

Sincerely


Enclosure.

PA FISH PRODUCERS ASSOC.
13227 W LAKE RD
E. SPRINGFIELD PA 16411

10/12/93

Rep. Scott E Hutchinson
Harrisburg PA.

Dear Distinguished Representative:

Thank you for your letter of October 1/93
and I most certainly respect your views on H.B. 490.

Being a member of the Firefighters & Emergency Services
Caucus you will be interested in the following
facts.

1. Minor Fishery supplies yellow perch fillets (Lake Erie)
to the Albion, Bronsonville, Spungtown and Bronsonville
fire department over the years
2. The price has been 4.00 per lb over the years.
3. The retail price in Supermarkets where you can
find them for the last 3 years has been between
8.00 to 11.00 per lb.
4. Putting us out of business would impose
hardship on the volunteer work of the Fire Depts.
because perch being in limited supply wholesalers
are taking on no new customers.
5. Albion Fire Dept alone - buys 1100 lbs
of fillets over the past 10 years enough fish to
feed 2200 surrounding residents each year.

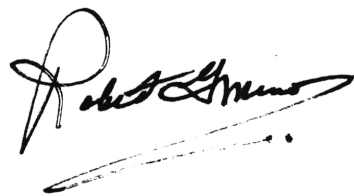
Sincerely,
Pat Gunn

PLEASE NOTE THESE TWO IMPORTANT FACTS

When gill nets were banned in Ohio (1981)
and the Lake Erie portion of New York (1986)
(Lake Ontario allows gill nets to be fished in New York)

#1 There was no health advisory on Lake trout then.
Now they are not to be eaten (June 1993)
A health advisory on Steelhead & walleye is
presently in draft form and to be released soon

#2. There was no appreciable amount of
whitefish in Lake Erie until 1989. They have
been greatly increasing each year since and have
become our best money maker. (95% are shipped
to New York city) Our whitefish are not
polluted even though they grow to 5 or 6 lbs.
The reason is because they do not eat the
same food as the trout, Steelhead & walleye.
The anglers in Lake Michigan & Lake Superior
have been trying to catch them for 20 years
but have not been successful at all.



Addendum F

October 12, 1993

H.B. 490