

SUBJECT:

Request that the Board adopt emergency Board Order FH-23-12(E), proposed rules affecting NR 20 and 25 related to lake trout harvest limits as required by the State-Tribal Lake Superior Agreement, and approve the public hearing notice and the notice of submittal of the rule to the Legislative Council.

FOR: February 2013 Board meeting

PRESENTER'S NAME AND TITLE: Peter Stevens, Lake Superior Fisheries Field Unit Supervisor

SUMMARY:

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2012-13 lake trout commercial harvest season, as required by revisions to the State-Tribal Lake Superior Agreement.

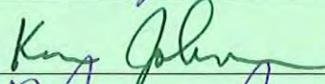
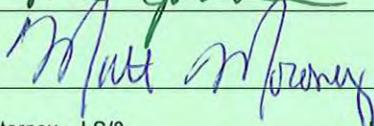
The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. The 10-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The Agreement was last negotiated in 2005, and has been amended twice, most recently in November 2009. Lake trout harvest limits were also negotiated in October 2012 by the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code.

The rule will reduce the annual commercial fishing harvest limit for lake trout on Lake Superior, revise rules limiting gill-net fishing effort, and authorize limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. Rule alternatives are not being considered because the recommendations have been negotiated to develop the State-Tribal Lake Superior Agreement.

RECOMMENDATION: That the Board adopt emergency Board Order FH-23-12(E).

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input checked="" type="checkbox"/> background memo | <input checked="" type="checkbox"/> Attachments to background memo |
| <input type="checkbox"/> Statement of scope | <input type="checkbox"/> Governor approval of statement of scope |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary | <input checked="" type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Mike Staggs, Bureau Director		2/13/13
Ken Johnson, Administrator		2/13/13
Cathy Stepp, Secretary		2/14/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: January 30, 2013

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on emergency Board Order FH-23-12(E), relating lake trout harvest limits in Lake Superior

ATTACHMENTS: Public Hearing Notice, Notice of Submittal to the Legislative Council, Fiscal Estimate

1. Subject of Proposed Rule:

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2012-13 lake trout commercial harvest season. The rule will reduce the annual commercial fishing harvest limit for lake trout on Lake Superior, revise rules limiting gill-net fishing effort, and authorize limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits.

2. Background:

The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. A ten-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing.

There has been a steady decline in lean lake trout abundance in Lake Superior since the early 2000s. This decline has been confirmed by surveys conducted by the Department and has been projected by models used to set safe harvest levels. Some level of decline was expected due to high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, mortality from sea lamprey over the last eight years has also been higher than Lake Superior target levels. This combination of increased harvest and lamprey mortality has caused lake trout abundance to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. A continued decline in lake trout population abundances necessitates the current harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

3. Why is the rule being proposed?

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code.

4. Summary of the rule.

The emergency rule is necessary to implement harvest limits for the 2012-13 lake trout commercial harvest season. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior, revises rules limiting gill-net fishing effort, and authorizes limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. The rule elements have been negotiated to develop the State-Tribal Lake Superior Agreement.

Section 1 authorizes the department to enforce a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest during the 2012-13 fishing season exceeds 95% of the total allowable recreational lake trout harvest of 27,500 fish ($27,500 \times 0.95 = 26,125$). If total lake trout harvest during that same time exceeds 98% of the total allowable harvest ($27,500 \times 0.98 = 26,950$), a zero bag limit would be enforced and no fish could be harvested. Recreational lake trout harvest is measured by conducting department creel surveys during which staff gather harvest information directly from anglers at the water.

Section 2 reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior.

Section 3 amends the calculation used to determine the footage of gill net that may be set in the water by each fisher, also called "fishing effort." Each fisher is allowed to fish only the amount of net that would cause an incidental catch and kill of his or her lake trout quota.

5. How does this proposal affect existing policy?

Chapter NR 1.04 provides the guiding department policy related to harvest limits and quota allocations: "(4) The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are limited. The resources will be managed in accordance with sound management principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas."

6. Has Board dealt with these issues before?

The Board has dealt with similar rules in the past to adjust lake trout harvest limits based on negotiations for the State-Tribal Lake Superior Agreement. The Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The full Agreement was last negotiated in 2005 and has been amended.

7. Who will be impacted by the proposed rule? How?

- State-licensed commercial fishers on Lake Superior
- Recreational fishers on Lake Superior
- Red Cliff Band of Lake Superior Chippewa
- Bad River Band of Lake Superior Chippewa

State-licensed and tribal commercial fishers may be affected by the amount of fish they are able to harvest. It is not expected that fishers will have any compliance expenditures or reporting changes associated with the rule.

Level of economic impact expected: Level 3, minimal economic impact (less than \$50,000)

8. Soliciting public input on economic impact synopsis

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement. The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code. The Department met with the Lake Superior Commercial Fishing Board in November 2012. The Board understood the biological need for making harvest quota changes, but it had concerns that cuts be made fairly and equitably across all fishers. Additional information can be found in the attached Fiscal Estimate.

9. Environmental Analysis

This is a Type III action under Chapter NR 150, Wis. Admin. Code. No environmental assessment is required.

10. Small Business Analysis

The proposed rule change would impact state-licensed commercial fishers, tribal commercial fishers, fish wholesalers, and others whose interests or businesses are affected by commercial fishing. Minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes. Additional information can be found in the attached Fiscal Estimate.

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
FH-23-12(E)

NOTICE IS HEREBY GIVEN THAT pursuant to and interpreting ss. 29.014(1), 29.041, 29.519(1m)(b), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 20 and 25, Wis. Adm. Code, in emergency rule Order FH-23-12(E) relating to lake trout harvest limits on Lake Superior.

NOTICE IS HEREBY FURTHER GIVEN THAT the hearing will be held on:

~~Around April 15, 2013 Bayfield, WI (location and time to be determined)~~

Availability of Rules and Submitting Comments:

The proposed rule and supporting documents may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the proposed rules and supporting documents may also be obtained from Peter Stevens, Bureau of Fisheries Management, 141 S. Third Street, Bayfield WI, 54814 or peter.stevens@wisconsin.gov.

Written comments on the proposed rule may be submitted via U.S. mail or email to Peter Stevens at the addresses noted above. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearing. Comments may be submitted until [public hearing date].

Analysis Prepared by the Department of Natural Resources:

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2012-13 lake trout commercial harvest season. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior, revises rules limiting gill-net fishing effort, and authorizes limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. The rule elements have been negotiated to develop the State-Tribal Lake Superior Agreement.

Section 1 authorizes the department to enforce a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest during the 2012-13 fishing season exceeds 95% of the total allowable recreational lake trout harvest of 27,500 fish ($27,500 \times 0.95 = 26,125$). If total lake trout harvest during that same time exceeds 98% of the total allowable harvest ($27,500 \times 0.98 = 26,950$), a zero bag limit would be enforced and no fish could be harvested. Recreational lake trout harvest is measured by conducting department creel surveys during which staff gather harvest information directly from anglers at the water.

Section 2 reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior.

Section 3 amends the calculation used to determine the footage of gill net that may be set in the water by each fisher, also called "fishing effort." Each fisher is allowed to fish only the amount of net that would cause an incidental catch and kill of his or her lake trout quota.

Agency contact person:

Peter Stevens
Department of Natural Resources
141 S. Third Street
Bayfield WI, 54814
Telephone: (715) 779-4035 Ext: 12
Email: peter.stevens@wisconsin.gov

NOTICE IS HEREBY FURTHER GIVEN THAT pursuant to ss. 227.14, Stats., the proposed rule is expected to have minimal economic impact on small businesses. The Department determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN THAT the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN THAT pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Peter Stevens at (715) 779-4035 Ext: 12 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____

Cathy Stepp, Secretary

**State of Wisconsin
Department of Natural Resources**

**NOTICE OF SUBMITTAL OF PROPOSED RULES TO
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE**

Date Submitted:

Board Order No.: FH-23-12(E)

Administrative Code: NR 20 and 25, Wis. Adm. Code

Subject: Lake trout harvest limits in Lake Superior

Date of Public Hearing: Around April 15, 2013 in Bayfield, WI

Name and Organizational Unit of Agency Contact:

Peter Stevens, Bureau of Fisheries Management, (715) 779-4035 Ext: 12 or

Linda Haddix, Bureau of Legal Services, (608) 266-1959

Approved by:

Cathy Stepp, Secretary
Department of Natural Resources

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Sections of chs. NR 20 and 25 related to lake trout harvest limits in Lake Superior

3. Subject

The emergency rule will implement harvest limits for the 2012-13 lake trout commercial harvest season. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior, revises rules limiting gill-net fishing effort, and authorizes limitations on recreational fishing based on negotiations to develop the State-Tribal Lake Superior Agreement

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2012-13 lake trout commercial harvest season.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement. The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code. The Department met with the Lake Superior Commercial Fishing Board in November 2012. The Board understood the biological need for making harvest quota changes, but it had concerns that cuts be made fairly and equitably across all fishers.

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2011 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, this rule will also limit the amount of gill net effort commercial fishers can use to target whitefish since lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

fishers in gill nets was approximately \$160,000 in 2011. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$40,000 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses. Public utility rate payers and local governmental units will not be affected by the rule.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

A predicted continued decline in lake trout population abundances necessitates the current reductions in harvest numbers to support a sustainable lake trout fishery over the long-term. Allowing harvest at current quota and effort limits - an alternative to implementing the rule - is not biologically sustainable and could create negative economic impacts for commercial fishers.

14. Long Range Implications of Implementing the Rule

Reducing quota and effort limits for commercial fishers, authorizing harvest limits on recreational fishers, and monitoring lake trout populations will support a sustainable lake trout fishery over the long-term.

15. Compare With Approaches Being Used by Federal Government

Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Of the four states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but there is a tribal harvest guided by the same modeling approach as Wisconsin.

<h3>17. Contact Name</h3> <p>Peter Stevens</p>	<h3>18. Contact Phone Number</h3> <p>(715) 779-4035 Ext. 12</p>
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2011 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, this rule will also limit the amount of gill net effort commercial fishers can use to target whitefish since lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$160,000 in 2011. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$40,000 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses. Public utility rate payers and local governmental units will not be affected by the rule.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses
Dockside values of fish; commercial fishing harvest reports

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

5. Describe the Rule's Enforcement Provisions

The rule will be enforced by Department Conservation Wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES**

Wisconsin Natural Resources Board proposes an order to amend NR 20.20(73)(n) 4., 25.06(1)(a), and 25.09(1)(am)3.e. relating to lake trout harvest limits in Lake Superior.

FH-23-12(E)

Analysis Prepared by Department of Natural Resources

1. **Statutes interpreted.** Sections 29.014(1), 29.041 and 29.519(1m)(b), Stats.
2. **Statutory authority.** Sections 29.014(1), 29.041, 29.519(1m)(b), Stats.
3. **Explanation of agency authority to promulgate the proposed rules under the statutory authority.** Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

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

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, establish species harvest limits, and designate the kind, size and amount of gear to be used in the harvest.

4. **Related statutes or rules.**
29.973 Commercial fish reporting system

5. Plain language analysis of the proposed rule.

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2012-13 lake trout commercial harvest season. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior, revises rules limiting gill-net fishing effort, and authorizes limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. The rule elements have been negotiated to develop the State-Tribal Lake Superior Agreement.

SECTION 1 authorizes the department to enforce a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest during the 2012-13 fishing season exceeds 95% of the total allowable recreational lake trout harvest of 27,500 fish ($27,500 \times 0.95 = 26,125$). If total lake trout harvest during that same time exceeds 98% of the total allowable harvest ($27,500 \times 0.98 = 26,950$), a zero bag limit would be enforced and no fish could be harvested. Recreational lake trout harvest is measured by conducting department creel surveys during which staff gather harvest information directly from anglers at the water.

SECTION 2 reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior.

SECTION 3 amends the calculation used to determine the footage of gill net that may be set in the water by each fisher, also called "fishing effort." Each fisher is allowed to fish only the amount of net that would cause an incidental catch and kill of his or her lake trout quota.

6. Summary of and comparison with existing or proposed federal statutes and regulations.

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Superior.

7. Comparison with rules in adjacent states.

Of the four adjacent states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but tribal harvest is guided by the same modeling approach as in Wisconsin.

8. Summary of factual data and analytical methodologies.

The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. A ten-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The allowable lake trout harvests are reviewed by a state-tribal biological committee using the latest available data and modeling results. Based on those results and recommendations from the biological committee, the Agreement is re-negotiated as needed to change the total annual harvest of lake trout by all fishers, and possibly to address other issues related to shared harvest of lake trout and other species by state and tribal fishers.

There has been a steady decline in lean lake trout abundance in Lake Superior since the early 2000s. This decline has been confirmed by independent surveys conducted by the department and has been projected by models used to set safe harvest levels. Some level of decline was expected due to high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, mortality of lake trout from sea lamprey over the last eight years has also been higher than Lake Superior target levels. This combination of increased harvest and lamprey mortality has caused lake trout abundance to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. The decline in lake trout population abundances and predicted further declines necessitate the emergency harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.

There would be no implementation costs for the department. State-licensed and tribal commercial fishers may be affected by the amount of fish they are able to harvest. It is not expected that fishers will have any compliance expenditures or reporting changes associated with the rule.

The decline in lean lake trout abundance in Lake Superior has been confirmed by surveys conducted by the department and has been projected by models used to set safe harvest levels. Rule changes are necessary in order to ensure a sustainable lake trout fishery over the long-term.

10. Effects on small business.

The proposed rule change would impact state-licensed commercial fishers, tribal commercial fishers, fish wholesalers, and others whose interests or businesses are affected by commercial fishing. Minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements

will be imposed on small businesses as a result of these rule changes.

The rule will be enforced by department conservation wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

11. Rules proposed by the Department of Veterans Affairs. No information

12. Agency contact person.

Peter Stevens
 Department of Natural Resources
 141 S. Third Street
 Bayfield WI, 54814
 Telephone: (715) 779-4035 Ext: 12
 Email: peter.stevens@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission. Comments on this proposed rule may be submitted to the agency contact person listed above. The deadline for written comments is April 15, 2013.

SECTION 1. NR 20.20(73)(n) 4. is amended to read:

NR 20.20(73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)

(n) Trout and salmon	4. Lake Superior	a. Hook and line	Continuous except the open season for lake trout is December 1 to September 30	10 in total but only 5 may be salmon and only 5 may be trout, of which only 1 may be a rainbow trout, only 1 may be a brook trout and only 3 may be lake trout with only 1 lake trout longer than 25 inches; <u>when total recreational lake trout harvest between December 1, 2012 and September 30, 2013 measured by department creel surveys exceeds 26,125 fish, the lake trout bag limit is reduced to 1 and when total lake trout harvest during that same time exceeds 26,950 the lake trout bag limit is reduced to 0</u>	Rainbow trout 26, brook trout 20, other trout 15, salmon none
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SECTION 2. NR 25.06(1)(a) is amended to read:

NR 25.06 **Quotas and catch fees.** (1) LAKE SUPERIOR. (a) *Lake trout*. The total allowable annual harvest of lake trout by state and tribal commercial fishers and tribal home use fishers under par. (b) during the open season in Wisconsin waters of Lake Superior east of Bark Point (WI-2) and west of Bark point (WI-1) shall be determined by the natural resources board based upon recommendations from the state/tribal biological committee which consists of state, tribal and national biological service representatives.

1. The total allowable commercial and home use harvest in the waters of Lake Superior east of Bark Point may not exceed ~~87,900~~ 52,650 lake trout. The total allowable commercial and home use harvest in waters of Lake Superior west of Bark Point may not exceed 2,850 lake trout.

2. That number of lake trout to be harvested by non-Indian licensed commercial fishers from the waters of Lake Superior east of Bark Point may not exceed ~~8,600~~ 5,850 lake trout, and from the waters of Lake Superior west of Bark Point may not exceed 2,150 lake trout.

3. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and home use fishers, from the waters of Lake Superior east of Bark Point may not exceed ~~79,300~~ 46,800 lake trout. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and home use fishers, from the waters of Lake Superior west of Bark Point may not exceed 700 lake trout. If the Red Cliff and Bad River bands do not reach an agreement on the method of allocating the tribal quota between them, the department may divide the quota 50% for the Bad River band and 50% for the Red Cliff band, or by any other equitable method.

4. All lake trout caught in gill nets not less than 4 7/16 inch stretch measure set in waters less than 330 feet (55 fathoms) deep shall be kept and tagged except during November 28 through May 31, live lake trout may be released. Lake trout caught in gill nets in waters 330 feet (55 fathoms) deep or deeper or in entrapping nets may be returned to the lake or kept and tagged, except that dead lake trout 25 inches or less in length caught in entrapping nets shall be kept and tagged. All lake trout, dead or alive, larger than 25 inches in length caught in entrapping nets shall be returned to the lake. All lake trout and siscowet harvested by commercial and home use fishers shall be tagged in accordance with sub. (3).

5. The department may recall tags furnished or authorized in accordance with sub. (3), when necessary to implement a quota reduction.

SECTION 3. NR 25.09(1)(am) 3. e. is amended to read:

NR 25.09(1)(am) 3. e. No commercial fisher may set more than his or her allowable gill net effort during each period of the lake trout open season. The department shall use the following formula to determine each commercial fisher's allowable gill net effort in feet of net:

period 1 allowable gill net effort:

[Individual Lake Trout Quota / Period 1 CPE] x 1000

period 2 allowable gill net effort:

[Unused Effort Period 1 – 26,442][Period 1 CPE] / Period 2 CPE

period 3 allowable gill net effort:

[Unused Effort Period 2][Period 2 CPE] / Period 3 CPE

SECTION 4. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper, as provided in s. 227.24(1)(d), Stats.

SECTION 5. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)