

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

Item No. 3.B.16.

**SUBJECT:**

Request that the Board adopt Emergency Board Order FH-03-14(E), proposed rules affecting NR 20 and 23 related to modifications in fish daily bag limits and minimum size limits in response to harvest.

**FOR: May 2014 Board meeting****PRESENTER'S NAME AND TITLE:** Ron Bruch, Fisheries Management Bureau Director**SUMMARY:**

This emergency rule is needed to promote the preservation and protection of public peace, health, safety, and welfare in the Ceded Territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters.

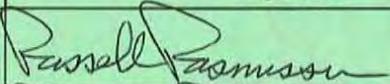
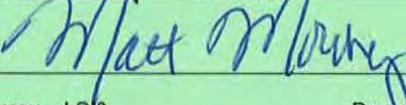
Based on projected harvest goals of the Chippewa Bands on off-reservation lakes each year, daily bag limits for sport anglers may be adjusted to prevent a total harvest of more than 35% of the adult walleye population, and size limits may be adjusted to prevent a total harvest of more than 27% of the adult muskellunge population. Adjustments are made in early spring using safe harvest levels determined by the department for individual waters. These adjustments are done in an effort to avoid depleting the fishery resource and to provide a sustainable walleye and muskellunge fishery.

In response to actual tribal harvest of walleye or muskellunge each year, the department may raise the daily bag limit or reduce the minimum size limit on lakes as appropriate using the percent of the safe harvest level actually harvested and any additional harvest expected through the first Sunday in March of the following year. These readjustments are typically made in late spring or early summer, after tribal spear harvest has diminished.

This rule allows the department to consider projections of angler harvest in addition to actual and expected tribal harvest when readjusting daily bag and/or size limits in late spring.

**RECOMMENDATION:** That the Board adopt Emergency Board Order FH-03-14(E).**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> background memo   | <input type="checkbox"/> Attachments to background memo               |
| <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
Ron Bruch, Bureau Director	<i>for</i> 	5-13-14
Russ Rasmussen, Division Administrator		5-13-14
Cathy Stepp, Secretary		5/14/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: May 12, 2014

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order FH-03-14(E), relating to modifications in fish daily bag limits and minimum size limits in response to harvest.

### 1. Subject of Proposed Rule:

The proposed emergency rule addresses adjustments to daily bag limits and minimum size limits for walleye and muskellunge in Ceded Territory waters in response to harvest by both tribal and non-tribal anglers.

### 2. Background:

Pursuant to litigation arising from *Lac Courte Oreilles v Voigt*, 700 F. 2d 341 (7th Cir. 1983), the six Wisconsin bands of Lake Superior Ojibwe (Chippewa Bands) have the right to take walleye from off-reservation waters within the areas the bands ceded to the United States in Treaties of 1837 and 1842, using highly efficient capture methods such as spearing and netting.

Based on projected harvest goals of the Chippewa Bands on off-reservation lakes each year, daily bag limits for sport anglers are annually adjusted to prevent a total harvest of more than 35% of the adult walleye population, and size limits may be adjusted to prevent a total harvest of more than 27% of the adult muskellunge population. Adjustments are typically made in early spring using safe harvest levels determined by the department for individual waters within the Wisconsin Ceded Territory.

In response to actual tribal harvest of walleye or muskellunge, the department may raise the daily bag limit or reduce the minimum size limit as appropriate using the percent of the safe harvest level actually harvested as well as any additional tribal harvest expected through the first Sunday in March of the following year. These readjustments are typically made in late spring or early summer, after tribal spearing harvest has diminished.

This rule allows the department to consider anticipated angler harvest in addition to actual and expected tribal harvest when making bag and/ or size limit readjustments in late spring.

### 3. Why is the rule being proposed?

Current rules limit the department's ability to fully consider all relevant harvest regulations when readjusting bag limits in late spring, and result in unnecessarily restrictive angling regulations that directly affect anglers and indirectly affect those who provide equipment, food, lodging and other support to both local and visiting anglers. Considering additional information when readjusting angler bag limits and/or size limits will allow for implementation of reasonable angling regulations that still provide the necessary degree of protection for walleye populations and do not in any way restrict or infringe upon tribal usufructuary rights. An indeterminate positive impact is expected for businesses that directly or indirectly support anglers by encouraging additional participation in angling.

**4. Summary of the rule.**

This rule would continue to allow the department to readjust daily bag limits based on actual tribal harvest, but would enable the department to additionally consider expected harvest by non-tribal anglers. Lower bag limits at the start of the fishing season result in lower angler harvests, particularly in the month of May. It may not be necessary to continue stringent reductions in angler bag limits for the entire duration of the angling season to meet overall goals for the reduction of angler harvest.

Section 1 of the rule provides flexibility for a readjustment of the daily bag limits that considers that reduction of angler harvest realized by reduced angler bag limits during the month of May.

**5. How does this proposal affect existing policy?**

The proposed rules would make modifications to portions of chs. NR 20 and 23, Wis. Adm. Code, pertaining to sport fishing regulations on inland and border waters of Wisconsin. These changes are proposed to protect and enhance the State's fish resources.

Current administrative code requires the department to make changes to angler bag limits for walleye and minimum size limits for muskellunge in lakes named for harvest by any of the Chippewa Bands. These walleye bag limit adjustments are designed to prevent exceeding 35% exploitation of individual walleye fisheries by joint tribal and angler harvest. Angler bag limit reductions are designed to accommodate the actual and/or intended amount of tribal harvest.

The department requests approval to consider additional relevant information when implementing angling regulations relating to tribal harvest as tribal harvest totals become known for the 2014-15 fishing season.

**6. Has Board dealt with these issues before?**

The most recent change to this section of administrative code occurred in 2013 by changing when readjustment of bag or size limits is allowed (FH-18-12). Wording was changed in s. NR 20.36(2) and 23.055(2) from "*After the third Monday in May*" to "*In response to actual tribal harvest*, the secretary may raise the daily bag limit or reduce the minimum size limit to the limit specified as appropriate using the percent of the safe harvest level expected to be harvested through the first Sunday in March of the next year as indicated in sub. (1). If actual harvest subsequently exceeds the expected harvest level, the daily bag limit for walleye may be reduced or the minimum size limit for muskellunge may be increased the following year to reflect actual harvest for that year and harvest goals of the Chippewa bands for the next year."

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

State-licensed sport anglers will be impacted by the proposed rule. As needed, considering safe harvest levels, daily bag limits for walleye and/or minimum size limits for muskellunge may be adjusted using actual tribal harvest as well as anticipated harvest by all anglers.

**8. Soliciting public input on economic impact synopsis**

The fiscal estimate for emergency Board Order FH-03-14(E) is attached and did not require public comment at this time. A public hearing for the emergency rule will be held within 45 days of rule promulgation.

## **9. Environmental Analysis**

An environmental analysis is not required under ch. NR 150, Wis. Adm. Code. See the attached WEPA Findings of Fact and Conclusions of Law.

## **10. Small Business Analysis**

The proposed rule change would impact sport anglers. Changes in angling regulations enacted to accommodate declared, expected, or realized tribal harvest could potentially alleviate and minimize regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters within the Ceded Territory, and avoiding unnecessarily stringent regulations may encourage additional participation in angling. Exact economic impact of the rule is unknown, but positive impact is expected for businesses that directly or indirectly support both local and visiting anglers.

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

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DETERMINATION OF WEPA COMPLIANCE  
FOR BOARD ORDER FH-03-14(E)**

FINDINGS OF FACT

1. On March 19, 2014, the Department received authorization from the Natural Resources Board (Board) to proceed with the rulemaking related to modifications in fish daily bag limits and minimum size limits in response to harvest.
2. The Department prepared proposed rules as Emergency Board Order FH-03-14(E). A future permanent board order may be developed as needed.
3. The proposed rules constituted a Type IV action under s. NR 150.03(6)(a)3.c., Wis. Adm. Code.
4. Effective April 1, 2014, ch. NR 150, Wis. Adm. Code, was repealed and recreated.
5. Under current NR 150.10(1m)(a) the Department must conduct a strategic analysis for all new or revised administrative rules if the rule involves unresolved conflicts concerning alternative uses of available resources and the Department has substantial discretion in formulating important provisions of the rule.
6. On March 19, 2014, the Board approved the Department's request to publish a public hearing notice and hold public hearings on proposed rules in Board Order FH-03-14(E) and a future permanent board order. Public hearings for emergency rules are held after rule promulgation.
7. Public hearings are expected to be held in Madison and Wausau, Wisconsin, during the months of June or July 2014.
8. The proposed rules in Board Order FH-03-14(E) do not involve unresolved conflicts concerning alternative uses of available resources. The proposed rules continue to protect the safe harvest level of fish as determined by the department for individual waters. The objective of the rule is to allow the department to consider projections of all angler harvest in addition to actual and expected tribal harvest when readjusting daily bag and/or size limits. This emergency rule is needed to promote the preservation and protection of public peace, health, safety, and welfare in the Ceded Territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters.
9. The current s. NR 150.20(1) and (1m) establish that an environmental analysis is required for all department actions not specifically exempt by statute nor defined as minor actions.
10. The current s. NR 150.20(2)(b) provides that the Department may determine under s. NR 150.35 that there is equivalent analysis for a specific action which satisfies the requirement for an environmental analysis.
11. The rulemaking process for Board Order FH-03-14(E) evaluated environmental impacts and alternatives, and will provide for public disclosure input.

CONCLUSIONS OF LAW

12. A strategic analysis under the current s. NR 150.10 (1m), Wis. Adm. Code, is not required for Board Order FH-03-14(E) because the proposed rules do not involve unresolved conflicts concerning alternative uses of available resources.
13. The Department has determined the rulemaking process for Board Order FH-03-14(E) constitutes an equivalent analysis action, under current s. NR 150.20(2)(b), Wis. Adm. Code.
14. The Department has complied with WEPA, pursuant to both the former ch. 150, and the current ch. NR 150, Wis. Adm. Code, for Board Order FH-03-14(E).

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original    Updated    Corrected

2. Administrative Rule Chapter, Title and Number

NR 20 Fishing; Inland Waters; Outlying Waters and NR 23 WI-MI Boundary Waters

3. Subject

The proposed emergency rule addresses adjustments to fish daily bag limits and minimum size limits in response to harvest by both tribal and non-tribal anglers.

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 proposed rules would make modifications to portions of chs. NR 20 and 23, Wis. Adm. Code, pertaining to sport fishing regulations on inland and border waters of Wisconsin. These changes are proposed to protect and enhance the State's fish resources.

This emergency rule is needed to promote the preservation and protection of public peace, health, safety, and welfare in the Ceded Territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters. Pursuant to litigation arising from *Lac Courte Oreilles v Voigt*, 700 F. 2d 341 (7th Cir. 1983), the six Wisconsin bands of Lake Superior Ojibwe (Chippewa Bands) have the right to take walleye from off-reservation waters using efficient methods such as spearing and netting.

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.

N/A - emergency rule   A public hearing for the emergency rule will be held within 45 days of rule promulgation.

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

N/A - emergency rule

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)

Exact economic impact of the rule is unknown. The proposed rule does not directly affect businesses; it affects sport anglers. No expenses are imposed on businesses, business associations, public utility rate payers, or local governmental units. The proposed rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the State, but is expected to have an indeterminate positive impact on all of the above listed entities by encouraging additional participation in angling by both local citizens and visiting tourists.

No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes. No implementation or compliance costs are expected to be incurred.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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

To accommodate harvest by high efficiency capture methods such as spearing and netting, the department adjusts angling regulations in lakes where such harvest occurs. In response to actual tribal harvest of walleye or muskellunge, the department may raise the daily bag limit or reduce the minimum size limit as appropriate using the percent of the safe harvest level expected to be harvested through the first Sunday in March of the following year. This rule allows the department to readjust daily bag limits based on actual tribal harvest and additionally consider anticipated harvest by non-tribal anglers.

Current rules limit the department's ability to fully consider all relevant harvest regulations when readjusting bag limits in late spring, and result in unnecessarily restrictive angling regulations that directly affect anglers and indirectly affect those who provide equipment, food, lodging and other support to both local and visiting anglers.

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**14. Long Range Implications of Implementing the Rule**

This is an emergency rule that will be in effect for one fishing season.

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**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.

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

In Minnesota, several bands of Lake Superior Chippewa have harvested walleye and northern pike from Mille Lacs since 2000. Annual allowable total catch quotas are calculated for the lake and apportioned between tribal members and anglers. The State of Minnesota adjusts the size of fish allowed for angler harvest annually (a "harvest slot" limit), based on walleye population size and the age composition of that population.

Off-reservation spear harvest also occurs in Michigan, and the state of Michigan and the Great Lakes Indian Fish and Wildlife Commission use the same model for calculating Safe Harvest that is used in Wisconsin. Michigan has no specific response to tribal harvest in the regulations for state anglers but may consider such rules in the near future.

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<b>17. Contact Name</b>	<b>18. Contact Phone Number</b>
Steve Hewett	608-267-7501

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This document can be made available in alternate formats to individuals with disabilities upon request.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 20.36(2) and 23.055(2) relating to modifications in daily bag limits and minimum size limits in response to tribal harvest

**FH-03-14(E)**

**Analysis Prepared by the Department of Natural Resources**

**1. Statute Interpreted:** Sections 29.014(1) and 29.041, Stats., have been interpreted as giving the department the authority to make changes to fishing regulations on inland, outlying, and boundary waters of Wisconsin.

**2. Statutory Authority:** ss. 29.014(1) and 29.041, Stats.

**3. Explanation of Agency 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.

**4. Related Statutes or Rules:** The department will consider a related permanent rule at a later time that considers long-term tools that provide the flexibility necessary to adjust angler regulations associated with reductions in walleye bag limits on off-reservation waters within the Ceded Territory.

**5. Plain Language Analysis:** Pursuant to litigation arising from *Lac Courte Oreilles v Voigt*, 700 F. 2d 341 (7th Cir. 1983), the six Wisconsin bands of Lake Superior Ojibwe (Chippewa Bands) have the right to take walleye from off-reservation waters using efficient methods such as spearing and netting. To accommodate harvest by high efficiency capture methods such as spearing and netting, the department adjusts angling regulations in lakes where such harvest occurs. This emergency rule is needed to promote the preservation and protection of public peace, health, safety, and welfare in the Ceded Territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters.

Based on projected harvest goals of the Chippewa Bands on off-reservation lakes each year, daily bag limits for sport anglers (typically 5 walleye/ day) may be adjusted to prevent a total harvest of more than 35% of the adult walleye population, and size limits may be adjusted to prevent a total harvest of more than 27% of the adult muskellunge population. Adjustments to 3, 2, or 1 walleye/day bag limits are typically made in early spring using safe harvest levels determined by the department on individual waters within the Wisconsin Ceded Territory.

In response to actual tribal harvest of walleye or muskellunge, the department may raise the daily bag limit or reduce the minimum size limit as appropriate using the percent of the safe harvest level expected to be harvested through the first Sunday in March of the following year. These readjustments are typically made in late spring or early summer, after spring spearing and netting harvest has diminished.

This rule would continue to allow the department to readjust daily bag limits based on actual tribal harvest, but would enable the department to additionally consider expected harvest by non-tribal anglers.

Lower bag limits at the start of the fishing season result in lower angler harvests, particularly in the month of May. It may not be necessary to continue stringent reductions in angler bag limits for the entire duration of the angling season to meet overall goals for the reduction of angler harvest.

Section 1 of the rule provides flexibility for a readjustment of the daily bag limits that considers that reduction of angler harvest realized by reduced angler bag limits during the month of May.

**6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:** The 1991 Voigt Decision affirms that the state bears responsibility and authority for management of all natural resources of the state. However, this responsibility and authority must be exercised in a manner that does not infringe on the Chippewa tribes' treaty rights as determined by the Voigt Decision. As such, the department is required to regulate angler harvest in a manner that both accounts for and accommodates tribal spearing and netting harvest, though the manner of such regulation is not specifically prescribed.

**7. Comparison with Similar Rules in Adjacent States:** In Minnesota, several bands of Lake Superior Chippewa have harvested walleye and northern pike from Mille Lacs since 2000. Annual allowable total catch quotas are calculated for the lake and apportioned between tribal members and anglers. The State of Minnesota adjusts the size of fish allowed for angler harvest annually (a "harvest slot" limit), based on walleye population size and the age composition of that population.

Off-reservation spear harvest also occurs in Michigan, and the state of Michigan and the Great Lakes Indian Fish and Wildlife Commission use the same model for calculating Safe Harvest that is used in Wisconsin. Michigan has no specific response to tribal harvest in the regulations for state anglers but may consider such adjustments in the near future.

**8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:**

To accommodate harvest by high efficiency capture methods such as spearing and netting, the department adjusts angling regulations in lakes where such harvest occurs. In response to actual tribal harvest of walleye or muskellunge, the department may raise the daily bag limit or reduce the minimum size limit as appropriate using the percent of the safe harvest level expected to be harvested through the first Sunday in March of the following year. This rule would continue to allow the department to readjust daily bag limits based on actual tribal harvest, but would enable the department to additionally consider expected harvest by non-tribal anglers.

The department ensures the accuracy, integrity, objectivity and consistency of data used in preparing the proposed rule.

**9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:**

Exact economic impact of the rule is unknown. The proposed rule does not directly affect businesses; it affects sport anglers. No expenses are imposed on businesses, business associations, public utility rate payers, or local governmental units.

Current rules limit the department's ability to fully consider all relevant harvest regulations when readjusting bag limits in late spring, and result in unnecessarily restrictive angling regulations that directly affect anglers and indirectly affect those who provide equipment, food, lodging and other support to both local and visiting anglers. Considering additional information when readjusting angler bag limits and/or size limits will allow for implementation of reasonable angling regulations that still provide the necessary degree of protection for walleye populations and do not in any way restrict or infringe upon tribal

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 20.36(2) and 23.055(2) relating to modifications in daily bag limits and minimum size limits in response to tribal harvest

FH-03-14(E)

**Analysis Prepared by the Department of Natural Resources**

**1. Statute Interpreted:** Sections 29.014(1) and 29.041, Stats., have been interpreted as giving the department the authority to make changes to fishing regulations on inland, outlying, and boundary waters of Wisconsin.

**2. Statutory Authority:** ss. 29.014(1) and 29.041, Stats.

**3. Explanation of Agency 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.

**4. Related Statutes or Rules:** The department will consider a related permanent rule at a later time that considers long-term tools that provide the flexibility necessary to adjust angler regulations associated with reductions in walleye bag limits on off-reservation waters within the Ceded Territory.

**5. Plain Language Analysis:** Pursuant to litigation arising from *Lac Courte Oreilles v Voigt*, 700 F. 2d 341 (7th Cir. 1983), the six Wisconsin bands of Lake Superior Ojibwe (Chippewa Bands) have the right to take walleye from off-reservation waters using efficient methods such as spearing and netting. To accommodate harvest by high efficiency capture methods such as spearing and netting, the department adjusts angling regulations in lakes where such harvest occurs. This emergency rule is needed to promote the preservation and protection of public peace, health, safety, and welfare in the Ceded Territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters.

Based on projected harvest goals of the Chippewa Bands on off-reservation lakes each year, daily bag limits for sport anglers (typically 5 walleye/ day) may be adjusted to prevent a total harvest of more than 35% of the adult walleye population, and size limits may be adjusted to prevent a total harvest of more than 27% of the adult muskellunge population. Adjustments to 3, 2, or 1 walleye/day bag limits are typically made in early spring using safe harvest levels determined by the department on individual waters within the Wisconsin Ceded Territory.

In response to actual tribal harvest of walleye or muskellunge, the department may raise the daily bag limit or reduce the minimum size limit as appropriate using the percent of the safe harvest level expected to be harvested through the first Sunday in March of the following year. These readjustments are typically made in late spring or early summer, after spring spearing and netting harvest has diminished.

This rule would continue to allow the department to readjust daily bag limits based on actual tribal harvest, but would enable the department to additionally consider expected harvest by non-tribal anglers.

Lower bag limits at the start of the fishing season result in lower angler harvests, particularly in the month of May. It may not be necessary to continue stringent reductions in angler bag limits for the entire duration of the angling season to meet overall goals for the reduction of angler harvest.

Section 1 of the rule provides flexibility for a readjustment of the daily bag limits that considers that reduction of angler harvest realized by reduced angler bag limits during the month of May.

**6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:** The 1991 Voigt Decision affirms that the state bears responsibility and authority for management of all natural resources of the state. However, this responsibility and authority must be exercised in a manner that does not infringe on the Chippewa tribes' treaty rights as determined by the Voigt Decision. As such, the department is required to regulate angler harvest in a manner that both accounts for and accommodates tribal spearing and netting harvest, though the manner of such regulation is not specifically prescribed.

**7. Comparison with Similar Rules in Adjacent States:** In Minnesota, several bands of Lake Superior Chippewa have harvested walleye and northern pike from Mille Lacs since 2000. Annual allowable total catch quotas are calculated for the lake and apportioned between tribal members and anglers. The State of Minnesota adjusts the size of fish allowed for angler harvest annually (a "harvest slot" limit), based on walleye population size and the age composition of that population.

Off-reservation spear harvest also occurs in Michigan, and the state of Michigan and the Great Lakes Indian Fish and Wildlife Commission use the same model for calculating Safe Harvest that is used in Wisconsin. Michigan has no specific response to tribal harvest in the regulations for state anglers but may consider such adjustments in the near future.

**8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:**

To accommodate harvest by high efficiency capture methods such as spearing and netting, the department adjusts angling regulations in lakes where such harvest occurs. In response to actual tribal harvest of walleye or muskellunge, the department may raise the daily bag limit or reduce the minimum size limit as appropriate using the percent of the safe harvest level expected to be harvested through the first Sunday in March of the following year. This rule would continue to allow the department to readjust daily bag limits based on actual tribal harvest, but would enable the department to additionally consider expected harvest by non-tribal anglers.

The department ensures the accuracy, integrity, objectivity and consistency of data used in preparing the proposed rule.

**9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:**

Exact economic impact of the rule is unknown. The proposed rule does not directly affect businesses; it affects sport anglers. No expenses are imposed on businesses, business associations, public utility rate payers, or local governmental units.

Current rules limit the department's ability to fully consider all relevant harvest regulations when readjusting bag limits in late spring, and result in unnecessarily restrictive angling regulations that directly affect anglers and indirectly affect those who provide equipment, food, lodging and other support to both local and visiting anglers. Considering additional information when readjusting angler bag limits and/or size limits will allow for implementation of reasonable angling regulations that still provide the necessary degree of protection for walleye populations and do not in any way restrict or infringe upon tribal

usufructuary rights. An indeterminate positive impact is expected for businesses that directly or indirectly support anglers by encouraging additional participation in angling.

**10. Effect on Small Business (initial regulatory flexibility analysis):**

No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes. No implementation or compliance costs are expected to be incurred.

**11. Agency Contact Person:** Steve Hewett, 608-267-7501, [steven.hewett@wisconsin.gov](mailto:steven.hewett@wisconsin.gov)

**12. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Steve Hewett

Department of Natural Resources

101 S. Webster St.

Box 7921

Madison, WI 53707

(ph) 608-267-7501

(fax) 608-266-2244

[steven.hewett@wisconsin.gov](mailto:steven.hewett@wisconsin.gov)

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

Hearing dates and the comment submission deadline are to be determined.

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**SECTION 1. NR 20.36(2) is amended to read:**

**NR 20.36(2) READJUSTMENT.** In response to actual tribal harvest and anticipated angler harvest, the secretary may raise the daily bag limit or reduce the minimum size limit to the limit specified as appropriate using the percent of the safe harvest level expected to be harvested through the first Sunday in March of the next year as indicated in sub. (1). If actual harvest subsequently exceeds the expected harvest level, the daily bag limit for walleye may be reduced or the minimum size limit for muskellunge may be increased the following year to reflect actual harvest for that year and harvest goals of the Chippewa bands for the next year. If a new population estimate is made, the safe harvest level shall be changed accordingly and the secretary may adjust the daily bag limit or minimum size limit according to the percentage of the new safe harvest level that is expected to be harvested as indicated in sub. (1), where deemed necessary to remain consistent with the safety factors established under *Lac Courte Oreilles v. State of Wis.*, 707 F. Supp. 1034 (W. D. Wis. 1989). The readjusted daily bag and size limits shall be in effect until the first Sunday in March of the year following the tribal harvest.

**SECTION 2. NR 23.055(2) is amended to read:**

**NR 23.055(2) READJUSTMENT.** In response to actual tribal harvest and anticipated angler harvest, the secretary may raise the daily bag limit or reduce the minimum size limit to the limit specified as appropriate using the percent of the safe harvest level expected to be harvested as indicated in sub. (1). If a new population estimate is made, the safe harvest level shall be changed accordingly and the daily bag limit or minimum size limit shall be adjusted according to the percentage of the new safe harvest level that is expected to be harvested as indicated in sub. (1). The readjusted daily bag and size limits shall be in effect until the first Sunday in March of the year following the tribal harvest.

**SECTION 3. STATEMENT OF EMERGENCY.** This emergency rule is needed to promote the preservation and protection of public peace, health, safety, and welfare in the Ceded Territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters.

**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 DNR

DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

Cathy Stepp, Secretary

(SEAL)