

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

SUBJECT:

Request that the Board adopt Board Order FH-26-12, proposed rules affecting NR 25 related to lake trout harvest limits on Lake Superior.

FOR: February 2014 Board meeting

PRESENTER'S NAME AND TITLE: Mike Staggs, Fisheries Management Bureau Director

SUMMARY:

The Department is requesting approval of FH-26-12 in order to make permanent the lake trout harvest limits in Lake Superior. The rule elements are a result of regular negotiations stipulated in the State-Tribal Lake Superior Agreement.

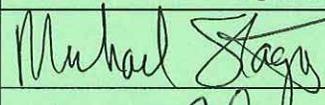
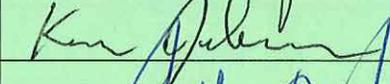
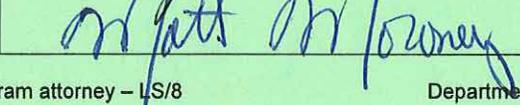
The rule reduces the annual commercial fishing harvest limit for lake trout on Lake Superior and places reduced bag limits on recreational fishing if the recreational lake trout harvest exceeds specified limits.

The continued, persistent decline in lake trout population abundances in the Apostle Islands vicinity of Lake Superior and predicted further declines necessitate the reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2013 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.

RECOMMENDATION: That the Board adopt Board Order FH-26-12.

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 checked="" type="checkbox"/> Response summary | <input checked="" type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Mike Staggs, Bureau Director		1/22/2014
Ken Johnson, Division Administrator		1/24/2014
Cathy Stepp, Secretary		1/30/2014

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: January 17, 2014

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order FH-26-12, relating to lake trout harvest limits in Lake Superior

1. Subject of Proposed Rule:

The rule is necessary to implement lake trout commercial harvest limits. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior and places reduced bag limits 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. 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, these year classes were not as large as predicted. This combination of increased harvest and lower than predicted population size 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.

3. Why is the rule being proposed?

The continued, persistent decline in lake trout population abundances in the Apostle Islands vicinity of Lake Superior and predicted further declines necessitate harvest reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2013 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 rule elements are a result of regular negotiations stipulated in the State-Tribal Lake Superior Agreement.

4. Summary of the rule.

SECTION 1 puts in place a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest in a season exceeds 95% of the total allowable recreational lake trout harvest of 26,050 fish ($26,050 \times 0.95 = 24,748$). If total lake trout harvest in a season exceeds 98% of the total allowable recreational harvest ($26,050 \times 0.98 = 25,529$), a zero bag limit would be enforced and no fish

could be harvested for the rest of the season. Recreational lake trout harvest is measured by department creel surveys during which staff gather harvest information directly from anglers. The open season for recreational lake trout harvest in Lake Superior is December 1 through September 30.

SECTION 2 reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior. The open season for commercial lake trout harvest in Lake Superior is November 28 through September 30.

5. How does this proposal affect existing policy?

These proposals sustain 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 specified by 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 four times. A matching emergency rule went into place on January 15, 2014, to cover the 2013-14 fishing season.

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

- State-licensed and tribal commercial fishers on Lake Superior
- Recreational fishers on Lake Superior

Commercial and recreational 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.

8. Soliciting public input on economic impact synopsis

The economic impact analysis (EIA) comment period for permanent Board Order FH-26-12 was held from October 25 to November 8, 2013. The EIA form is attached. The Department received two comments during the EIA comment period:

Halvorson Fisheries, LLC, (Bayfield, WI) responded with the attached letter. The following is a summary of their comments:

- In the years prior to 2013 we had received 1075 lake trout tags per license. In March of 2013, that number was reduced to 800 tags and footage was reduced by 26,442 feet of net. Based on this new proposal, each license would see cuts of an additional 300 tags and the loss of 20,000 feet more of gill net effort. The impact of this new proposal would almost certainly force us to lay off or let go employees, potentially lose clients to whom we supply fish and absolutely result in money loss in fish sales.
- The estimated dockside value of lake trout in the draft EIA is based on the fish prices in 2011, which were considerably lower than they are at present, or at any time in the past year. Furthermore, these estimates of the lake trout dockside value are not valid to our business, as we fillet all of our lake trout. Lake trout fillets, or fillets of any other type of fish, are far more profitable than the whole, dressed fish. Our business estimates a loss of \$15,000 based on the sale

of lake trout fillets in 2013. This figure is just for our business with five licenses, and still is three times higher a loss than the numbers in the draft EIA for all ten state licenses! The proposed decrease in gill net footage would only amplify our business' profit loss. I calculate that a reduction of about 20,000 feet of gill net footage per license would result in a loss of 5000 pounds of whitefish and a current dockside value of \$10,000. Considering the five licenses within our business, we stand to lose around \$50,000 from the sale of whitefish. This figure is just a rough estimate based on an average of the prior years' catch, and is subject to how much fish is caught and the market value.

- Halvorson Fisheries would also be affected by cuts to tribal quotas. Numerous local restaurants depend on our business to supply them with Lake Superior lake trout and whitefish. In order to meet the demand for trout fillets from our restaurant trade and retail store, we must purchase lake trout from Native American fisherman. A reduction to tribal quota has the potential to decrease the amount of available lake trout to purchase by our business, making it impossible for us to meet the demands of restaurant orders and consumer requests. Again, our business would experience monetary loss, but so too would Native American fishermen who supply us with lake trout, and potentially the local restaurants that serve our products.
- The rule would not only result in profit loss for our business, but for other local businesses, persons employed in the fishing industry and quite possibly persons who rely on local tourism to make a living.

Red Cliff Band of Lake Superior Chippewa responded with the attached letters. The following is a summary of their comments:

- The Fiscal Estimate provided by the State is narrowly focused and largely underestimates the economic impact to Bayfield and Ashland Counties.
- When developing the fiscal estimate, only state harvest was considered, and even those calculations seem low. State fishermen harvested 170,770 lbs. of whitefish with gillnets in 2011. Whitefish wholesale averaged \$1.60/lb. through most of 2013, and the economic impact needs to consider current price structure. This would put the value of the 170,770 pound catch for whitefish caught in state gillnets at \$273,232, and this does not include the harvest from the trap net fishery by state license holders.
- The economic impact does not even attempt to address the impact to the tribal commercial fishery. In 2013, 100% of the tribal fishery in Wisconsin was by gillnet harvest. Because of the effort restrictions on gillnets that are based on the lake trout quota, a lake trout quota reduction will lead to severe reduction in tribal whitefish harvest. In 2011, Red Cliff harvested 377,407 pounds of whitefish and 74,536 pounds of lake trout. Bad River harvested 264,906 pounds of whitefish and 83,007 pounds of lake trout that same year.
- A true economic impact analysis cannot simply multiply pounds harvested by wholesale price per pound. The fishing industry circulates dollars throughout the counties through employment, dock fees, equipment purchases, fuel and maintenance costs, direct sales to restaurants, etc. The State's estimate that, "the exact estimate of economic impact is unknown, but is not expected to exceed \$50,000" is almost comical in its inaccuracy. Especially since the EIA doesn't even consider the loss of tourism dollars that would occur if the recreational fishery faced emergency closure.
- Estimating the direct economic costs should be undertaken through a focus group consisting of tribal fishermen, state fishermen, fish processors, retailers and biologists.

Response from the Department:

The Department thanks both Halvorson Fisheries, LLC, and the Red Cliff Band of Lake Superior Chippewa for their comments. We have added those comments to the EIA and will work with both groups as we move through the rule making process.

Comments received from these state and tribal commercial fishers assume the economic impact of the permanent rule is greater than the Department's estimate. The economic impact was estimated by the Department using available reported data from 2012 dockside values of lake trout and whitefish sales, as well as commercial fishing harvest reports submitted to the Department. Commercial fishers and tribes are not required to submit any additional economic information to the Department, therefore the estimate of minimal economic impact was the best analysis based on available data.

If the rule is not put in place, the estimate of negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

In addition, lake trout harvest limits were negotiated in October 2013 among the Department and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes are reflected in this rule. This State-Tribal Agreement amendment was agreed to by all parties. While negotiations do not preclude the Red Cliff Band from providing EIA comments, it was assumed that they were aware of the economic effects of the harvest limit when the Agreement amendment was made.

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

Based on data available to the Department, minimal impact is expected for businesses or business associations. If the rule is not put in place, there would likely be negative economic impact for small commercial fishing businesses. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

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.

Final regulatory flexibility analysis:

Minimal economic impact is expected overall for 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.

The proposed rule change would impact commercial and recreational fishers. No compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

11. Public Hearing Response Summary

Eight people appeared at the hearing held on January 15, 2014. Attendees included the president and two members of the Apostle Islands Sport Fishing Association (all in support of rule), a commercial fisher/commercial fishing board member (support or opposition not indicated on appearance slip and no comment made), and four individuals (two registering in support and two with no indication).

No public hearing attendees registered or spoke in opposition to the proposed rule. Attendees had several questions for the rules expert about harvest levels, what affects the population levels, and how levels are measured. Two attendees then spoke in support of the rule to control harvest and said they approve of the harvest limits being spread among commercial and sport fishers.

No modifications were made to the rule in response to public comments.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chs. NR 20, Fishing-Inland Waters Outlying Waters, and NR 25, Commercial Fishing-Outlying Waters

3. Subject

Amending Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement: The rule would reduce the annual commercial fishing harvest limit for lake trout on Lake Superior and list potential limitations on recreational fishing limits.

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 rule is being submitted to address a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior that threatens harvest capability of state-licensed commercial fishers, tribal commercial fishers, and recreational anglers.

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.

For comments on the economic impact of the rule, the department contacted the Wisconsin Conservation Congress, the Wisconsin Wildlife Federation, the Great Lakes Indian Fish and Wildlife Commission, Wisconsin Association of Lakes, WI Federation of Great Lakes Sport Fishing Clubs, WI Council of Sport Fishing Organizations, Musky Clubs Alliance of Wisconsin, Inc., Salmon Unlimited, Sturgeon for Tomorrow, Trout Unlimited - WI Council, Walleyes for Tomorrow, WI Bass Federation, Izaak Walton League-Wisconsin Division, Lake Michigan Fisheries Forum, WI Commercial Fisheries Association, American Fisheries Society-Wisconsin Chapter, Natural Resources Foundation of WI, Gathering Waters, River Alliance of Wisconsin, UW Sea Grant, League of WI Municipalities, WI Towns Association, WI Counties Association, NE WI Great Lakes Sport Fishermen, Great Lakes Sport Fishermen of Milwaukee, and the Lake Michigan and Lake Superior Commercial Fishing Boards.

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

The EIA comment period was conducted from October 25 to November 8, 2013. No local governments indicated that they would like to participate in the development of the final EIA.

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 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.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Based on data available to the Department, minimal impact is expected for businesses or business associations. 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 2012 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, the result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because 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 \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 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 Department received two comments during the EIA comment period that suggested the impact would be greater than estimated. The comments are summarized below:

Halvorson Fisheries, LLC, (Bayfield, WI):

- In the years prior to 2013 we had received 1075 lake trout tags per license. In March of 2013, that number was reduced to 800 tags and footage was reduced by 26,442 feet of net. Based on this new proposal, each license would see cuts of an additional 300 tags and the loss of 20,000 feet more of gill net effort. The impact of this new proposal would almost certainly force us to lay off or let go employees, potentially lose clients to whom we supply fish and absolutely result in money loss in fish sales.
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- The rule would not only result in profit loss for our business, but for other local businesses, persons employed in the fishing industry and quite possibly persons who rely on local tourism to make a living.

Red Cliff Band of Lake Superior Chippewa:

- The Fiscal Estimate provided by the State is narrowly focused and largely underestimates the economic impact to

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Bayfield and Ashland Counties.

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- The economic impact does not even attempt to address the impact to the tribal commercial fishery. In 2013, 100% of the tribal fishery in Wisconsin was by gillnet harvest. Because of the effort restrictions on gillnets that are based on the lake trout quota, a lake trout quota reduction will lead to severe reduction in tribal whitefish harvest. In 2011, Red Cliff harvested 377,407 pounds of whitefish and 74,536 pounds of lake trout. Bad River harvested 264,906 pounds of whitefish and 83,007 pounds of lake trout that same year.
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- Estimating the direct economic costs should be undertaken through a focus group consisting of tribal fishermen, state fishermen, fish processors, retailers and biologists.

Response from the Department:

The Department thanks both Halvorson Fisheries, LLC, and the Red Cliff Band of Lake Superior Chippewa for their comments. The Department will work with both groups as it moves through the rule making process.

Comments received from these state and tribal commercial fishers assume the economic impact of the permanent rule is greater than the Department's estimate. The economic impact was estimated by the Department using available reported data from 2012 dockside values of lake trout and whitefish sales, as well as commercial fishing harvest reports submitted to the Department. Commercial fishers and tribes are not required to submit any additional economic information to the Department, therefore the estimate of minimal economic impact was the best analysis based on available data.

If the rule is not put in place, the estimate of negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

In addition, lake trout harvest limits were negotiated in October 2013 among the Department and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes are reflected in this rule. This State-Tribal Agreement amendment was agreed to by all parties. While negotiations do not preclude the Red Cliff Band from providing EIA comments, it was assumed that they were aware of the economic effects of the harvest limit when the Agreement amendment was made.

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 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

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Reducing quota 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.

17. Contact Name

Peter Stevens, Lake Superior Fisheries Supervisor

18. Contact Phone Number

715-779-4035 ext. 12

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)

Based on data available to the Department, minimal impact is expected for businesses or business associations. 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 2012 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. The result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because 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 \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 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.

Economic impact comments were provided during the comment period suggesting the impact to small businesses would be greater than the Department's estimate. However, if the rule is not put in place, the negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

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
-

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES**

The statement of scope for this rule, SS 098-12, was approved by the Governor on December 14, 2012, published in Register No. 685 on January 14, 2012, and approved by the Natural Resources Board on February 27, 2013. This rule was approved by the Governor on ____.

Wisconsin Natural Resources Board proposes an order to amend ss. NR 20.20(73)(n) 4. and 25.06(1)(a), Wis. Adm. Code, relating to lake trout harvest limits in Lake Superior.
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FH-26-12

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 rule is necessary to implement lake trout commercial harvest limits. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior and places reduced bag limits on recreational fishing if the recreational lake trout harvest exceeds specified limits.

The continued, persistent decline in lake trout population abundances in the Apostle Islands vicinity of Lake Superior and predicted further declines necessitate the reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2013 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 rule elements are a result of regular negotiations stipulated in the State-Tribal Lake Superior Agreement.

SECTION 1 puts in place a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest in a season exceeds 95% of the total allowable recreational lake trout harvest of 26,050 fish ($26,050 * 0.95 = 24,748$). If total lake trout harvest in a season exceeds 98% of the total allowable recreational harvest ($26,050 * 0.98 = 25,529$), a zero bag limit would be enforced and no fish could be harvested for the rest of the season. Recreational lake trout harvest is measured by department creel

surveys during which staff gather harvest information directly from anglers. The open season for recreational lake trout harvest in Lake Superior is December 1 through September 30.

SECTION 2 reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior. The open season for commercial lake trout harvest in Lake Superior is November 28 through September 30.

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, these year classes were not as large as predicted. This combination of increased harvest and lower than predicted population size 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 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. Based on data available to the Department, 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.

Economic impact comments were provided during the economic impact analysis period suggesting the impact to small businesses would be greater than the Department's estimate. However, if the rule is not put in place, the negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

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 January 15, 2014.

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 recreational lake trout harvest during a season measured by department creel surveys exceeds 24,748 lake trout the lake</u>	Rainbow trout 26, brook trout 20, other trout 15, salmon none
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				<u>trout bag limit is reduced to 1 and when recreational lake trout harvest during that same time exceeds 25,529 lake trout the lake trout bag limit is reduced to 0</u>	
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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~~ 50,100 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~~ 5,300 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~~ 44,800 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. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

SECTION 4. 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)