

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DETERMINATION OF WEPA COMPLIANCE
FOR BOARD ORDER FH-26-12**

FINDINGS OF FACT

1. On February 27, 2013, the Department received authorization from the Natural Resources Board (Board) to proceed with the rulemaking related to lake trout harvest limits in Lake Superior.
2. The Department prepared proposed rules as Board Order FH-26-12.
3. The Department made a preliminary determination that promulgation of the proposed rules constituted a Type III action under s. NR 150.03(6)(b)3.b., Wis. Adm. Code.
4. On December 11, 2013, the Board approved the Department's request to publish a public hearing notice and hold public hearings on proposed rules in Board Order FH-26-12.
5. In the Notice of Public Hearing dated January 1, 2014, for the proposed rules, the Department included its preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. The Notice included a statement that, based on comments received, an environmental analysis may be prepared before proceeding with the adoption of the proposed rules.
6. A public hearing was held on January 15, 2014. The public comment period closed that same day.
7. No comments were received on the Department's preliminary determination that an environmental analysis under ch. NR 150, Wis. Adm. Code, would not be needed.
8. Effective April 1, 2014, ch. NR 150, Wis. Adm. Code, was repealed and recreated.
9. 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.
10. The proposed rules in Board Order FH-26-12 do not involve unresolved conflicts concerning alternative uses of available resources. The rule elements are a result of regular negotiations among the department and the Red Cliff and Bad River Bands of Lake Superior Chippewa. They are stipulated in the State-Tribal Lake Superior Agreement and formalized through administrative code.
11. The current s. NR 150.20(1) establishes that an environmental analysis is required for all department actions except those specifically exempt by statute.
12. The current s. NR 150.20(2)(b) provides that the department may determine that there is equivalent analysis for a specific action.
13. The rulemaking process for Board Order FH-26-12 contained procedures for evaluating the environmental impacts of the proposed rules and provided for public disclosure and multiple opportunities for public input.

CONCLUSIONS OF LAW AND DETERMINATIONS

14. A strategic analysis under the current s. NR 150.10 (1m), Wis. Adm. Code, is not required for Board Order FH-26-12 because the proposed rules do not involve unresolved conflicts concerning alternative uses of available resources.
15. The department has determined that there is equivalent analysis for the rulemaking process for Board Order FH-26-12 under s. NR 150.20(2)(b), Wis. Adm. Code.
16. The Department has complied with WEPA, pursuant to both the former ch. NR 150 and the current s. NR 150.35(1) and (1m), Wis. Adm. Code, for Board Order FH-26-12.