

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES**

NOTICE OF PUBLIC HEARING

Natural Resources Emergency Board Order FH-03-14(E)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold public hearings on the dates and at the times and locations listed below on Board Order FH-03-14(E) affecting chs. NR 20 and 23, Wis. Adm. Code, relating to modifications in daily bag limits and minimum size limits in response to harvest. This emergency board order was approved by the Natural Resources Board on May 28, 2014, and by the Office of the Governor on June 6, 2014, and is in effect.

Hearing Information

Date and Time

Monday, July 14, 2014 at 4:00 p.m.

Location

Minocqua Public Library, 415 Menominee Street,
Suite B, Minocqua, WI 54548
Sue and Roger Smith Community Meeting Room

Wednesday, July 16, 2014 at 2:00 p.m.

Department of Natural Resources State Office
Building, 101 S. Webster Street, Madison, WI 53707
Room 413

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Joe Hennessy, P.O. Box 7921, 101 S. Webster St., Madison, WI 53707; by email joseph.hennessy@wisconsin.gov; or by calling (608) 267-9427. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Rules and Fiscal Estimate

The rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System website which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Joe Hennessy, Department of Natural Resources, Bureau of Fisheries Management, P.O. Box 7921, 101 S. Webster St, Madison, WI, 53707, or by calling (608) 267-9427.

Submitting Comments

Comments on the rule must be received on or before July 16, 2014. Written comments may be submitted by U.S. mail, fax, email, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the rules should be submitted to:

Joe Hennessy
Department of Natural Resources
Bureau of Fisheries Management
P.O. Box 7921
Madison, WI 53707

Phone: (608) 267-9427

Fax: (608) 266-2244

Email: joseph.hennessy@wisconsin.gov

Internet: Use the Administrative Rules System Web site accessible through the link provided

Analysis Prepared by the Department of Natural Resources

Statutory Authority:

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.

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.

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.

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.

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.

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 rule.

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 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.

Effect on Small Business:

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.

The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us, or by calling (608) 266-1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

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

Dated at Madison, Wisconsin June 12, 2014

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Cathy Stepp
Cathy Stepp, Secretary *lh*