

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



Notice Date: October 24, 2013

Subject: Request for economic impact of proposed changes in Natural Resources Board Order FH-26-12 relating to amending Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement.

Comment Period: October 24-November 7, 2013

The Department of Natural Resources is conducting an economic impact analysis (EIA) of its rule proposal, FH-26-12. 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, recreational anglers, and associated businesses.

Notice is hereby given that the Department will accept written comments on the EIA until November 7, 2013. The Department is gathering information to determine if there is an economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state economy as a whole. Information and advice is requested from businesses, business associations, local governmental units, and individuals that may be affected economically by the proposed rule.

Would you, your business, your association, or your local unit of government be affected economically if this rule implemented the following:

- Put in place a reduced or zero recreational daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest during a fishing season exceeded certain percentages of the total allowable recreational lake trout harvest of fish; and
- Reduced the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior.

The full proposed rule may be reviewed at:

<http://dnr.wi.gov/news/input/proposedrules.html> or <http://adminrules.wisconsin.gov>

If you expect to be affected economically by this rule proposal please provide as much information as possible to the Department regarding:

1. any implementation or compliance costs you would expect to incur,
2. quantifiable benefits of the proposed rule, or
3. how the proposed rule would negatively affect your overall economic competitiveness, productivity, or jobs.

If requested, the Department will coordinate with local governments in the preparation of the EIA.

Please indicate whether you are responding as a business, small business, business association, local governmental unit, or individual. A small business is defined as an independently owned and operated business that is not dominant in its field and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

To request this material in an alternative format, please call Kate Strom Hiorns at (608) 266-0828 with specific information on your request by October 31, 2013.

Comments are due and shall be postmarked no later than November 7, 2013. Please provide your email address or phone number in order for the Department to contact you if additional information is needed. Written comments on economic effects of the proposal may be submitted via U.S. mail or email to:

Kate Strom Hiorns
Bureau of Fisheries Management
P.O. Box 7921
Madison, WI 53707

dnrfishrules@wisconsin.gov

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, recreational anglers, and associated businesses.

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 will contact 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 will be conducted during October - November 2013. Local governments will be contacted if they indicate 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 exact amount of economic impact is unknown, but is not expected to exceed \$50,000 in a fishing season. The total dockside value of the reported state commercial lake trout harvest in 2011 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, the result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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

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

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

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

14. Long Range Implications of Implementing the Rule

Reducing quota 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)

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

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

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

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

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

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

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

5. Describe the Rule's Enforcement Provisions

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

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

- Yes No
-

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.

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 for development of the State-Tribal Lake Superior Agreement and those changes must be ordered through administrative code.

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 conducting department

creel surveys during which staff gather harvest information directly from anglers at the water. 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, mortality of lake trout from sea lamprey over the last eight years has also been higher than Lake Superior target levels. This combination of increased harvest and lamprey mortality has caused lake trout abundance to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. The decline in lake trout population abundances and predicted further declines necessitate the emergency harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

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

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

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

10. Effects on small business.

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

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

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

12. Agency contact person.

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

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

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 trout bag limit is reduced to 1 and when recreational lake trout harvest during that same time exceeds 25,529 lake trout the lake</u>	Rainbow trout 26, brook trout 20, other trout 15, salmon none
----------------------	------------------	------------------	--	--	---

				<u>trout bag limit is reduced to</u> <u>0</u>	
--	--	--	--	--	--

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)