

Report to
Legislative Council Rules Clearinghouse
NR 25, Wis. Adm. Code
Natural Resources Board Order No. FH-02-18

Wisconsin Statutory Authority

Under s. 29.014 (1), Stats., “Rule-making for this chapter,” the department is directed 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.

The department is authorized to regulate fishing on and in all interstate boundary waters and outlying waters by s. 29.041, Stats., “Department to regulate hunting and fishing in interstate waters.”

Provisions of s. 29.053 (2), Stats., “Specific open and closed seasons,” provide that the department may establish conditions governing the taking of fish for the state as a whole, for counties or parts of counties, or for waterbodies or parts of waterbodies.

Under s. 29.519, Stats., “Commercial fishing in outlying waters,” the department is granted discretion to establish commercial fish species harvest limits after giving due consideration to the recommendations made by the commercial fishing boards, and to promulgate rules relating to quota allocations. This section also specifies that the limitations on harvests must be based on the available harvestable population of fish and on the wise use and conservation of the fish, so as to prevent overexploitation. In addition, this section grants the department the authority to designate areas where commercial fishing is restricted, as well as to establish restrictions on the types and sizes of gear used in commercial fishing.

Federal Authority

No federal statutes or regulations apply. States possess inherent authority to manage the fishery and wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

Comparison of Adjacent States

Along with Wisconsin, Michigan and Minnesota are the only adjacent states with a Lake Superior commercial fishery. In Michigan, whitefish is the focus of the commercial fishery. Minnesota regulates several commercial fisheries on Lake Superior. Both Minnesota and Michigan have established quotas, gear requirements and other restrictions for commercial fishing in Lake Superior, working in cooperation with the Chippewa tribes in those states.

Court Decisions Directly Relevant

The 1972 *Gurnoe Decision* established that the Lake Superior Chippewa tribes reserved the right to fish in Lake Superior. As part of the case settlement, the state and Red Cliff and Bad River bands of the Lake Superior Chippewa tribes negotiate the terms of the Lake Superior Fishing Agreement every 10 years.

Analysis of the Rule - Rule Effect - Reason for the Rule

This rule updates commercial fishing regulations for Lake Superior, including harvest allocations, reporting requirements, restricted areas, equipment regulations, data sharing and

other similar provisions. These updates aim to maintain healthy target and non-target fish populations while balancing the needs of resource users, including state and tribal commercial fishers, tribal home use fishers and state recreational anglers.

The 2018 – 2028 Lake Superior Fishing Agreement serves as the foundation for this rule. The Lake Superior Fishing Agreement reflects a commitment between the state and the Bad River and Red Cliff Bands of the Lake Superior Chippewa to cooperatively manage the shared Lake Superior fishery through agreed-upon harvest limits, allocations and other management tools. The agreement provides tribal, commercial and recreational harvest opportunities while protecting the Lake Superior fishery. According to the agreement, the goal of all parties is to maintain a healthy Lake Superior ecosystem that supports fish populations and fisheries and is managed through sound science. This is accomplished through regulations enacted by each party participating in the agreement.

Agency Procedures for Promulgation

The department will hold a public meeting in June followed by public hearings in September 2019 in the Lake Superior region. The hearings will be followed by board adoption in October 2019 followed by a request for the governor's signature and legislative review.

Description of any Forms (attach copies if available)

This rule does not create any new forms.

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