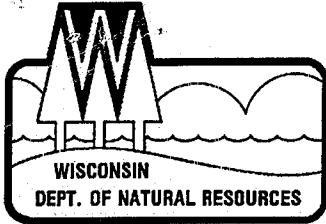


96-098



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

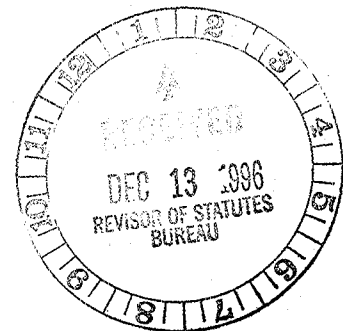
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. FM-42-96 was duly approved and adopted by this Department on July 24, 1996. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 12th day of December, 1996.

George E. Meyer
George E. Meyer, Secretary

(SEAL)



2-1-97



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

.....
The State of Wisconsin Natural
Resources Board proposes an
order to amend NR 25.03(1)(a)
and 25.06(1)(a)2. and to create
NR 25.03(1)(a)2. relating to
commercial fishing licenses and
the annual lake trout harvest limit
on Lake Superior
.....

FM-42-96

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 29.085, 29.174(2), 29.33(1) and
227.11(2)(a), Stats.
Statutes interpreted: s. 29.174(3)(a) and 29.33(1), Stats.

Currently, 21 state commercial fishing licenses are authorized for
issuance on Lake Superior. Those 21 state licensees share equally in
a 13,600 fish lake trout quota established for non-Tribal commercial
fishers for the lake, or 648 lake trout per licensee.

The order reduces the number of authorized non-Tribal commercial
fishers on Lake Superior to 10 and reduces the total lake trout quota
or annual harvest limit for non-Tribal commercial fishers on Lake
Superior to 6,480 lake trout, or 648 trout per licensee with 10
licensees on Lake Superior. The order is part of a trial retirement
incentive program whereby state-licensed commercial fishers willing to
retire their commercial fishing licenses and individual lake trout
quota allocations will receive financial incentives from the
Department for early retirement. Payments to the retired licensees
will be made out of the sport fishing license segregated account,
consistent with a retirement agreement entered into between the
Department and the participating licensees.

The trial retirement incentive program is not based upon any
recognition of a property right in licenses or quotas held by
commercial fishers. For over 50 years, Wisconsin and Federal court
decisions have made it clear that commercial fishing licenses and
quotas do not establish property rights and are subject to the full
regulatory authority of the state. LeClair, et al. v. Natural
Resources Board and DNR, 168 Wis.2d 227 (Ct. App. 1992), (Supreme
Court review denied, June 2, 1992); Olson v. State Conservation
Comm'n, 235 Wis. 473 (1940); LeClair v. Swift, 76 F.Supp. 729 (E.D.
Wis. 1948). That continues to be the position of the Department of
Natural Resources. Instead, the trial retirement incentive program is
a joint effort between the Department and commercial fishers to
voluntarily reduce commercial fishing licenses on Lake Superior and
redirect the quota lake trout to enhance the lake trout stock
restoration effort. The commercial fishers involved and the
Department agree that such a partnership will benefit the lake trout
fishery in Lake Superior.

Rather than be allocated among the remaining 10 state-licensed commercial fishers, the lake trout formerly available for harvest by those fishers who elected to participate in the program will remain uncaught and thus enhance lake trout restoration in Lake Superior. It is hoped that this program will significantly augment the lake trout restoration effort as well as benefit the total fishery of Lake Superior.

SECTION 1. NR 25.03(1)(a) is amended to read:

NR 25.03(1)(a)1. Not more than ~~21~~ 10, subject to subd. 2, licenses authorizing commercial fishing in Lake Superior may be issued for each license year except that this section does not apply to licenses for fishing only for the harvest of rough fish from outlying waters under permit or contract issued under s. 29.62 or 29.625, Stats.

SECTION 2. NR 25.03(1)(a)2. is created to read:

NR 25.03(1)(a)2. Notwithstanding the total number of licenses established in subd. 1, the department may issue up to 21 licenses authorizing commercial fishing in Lake Superior if required by the terms of cooperative agreements between the department and persons licensed during the 1995-1996 license year.

Note: The Wisconsin Attorney General and the Department of Natural Resources interpret LeClair et al. v. Natural Resources Board and DNR, 168 Wis. 2d 227 (Ct. App. 1992), (review denied June 2, 1992) and prior cases to hold that commercial fishing licenses and quotas do not establish property rights and are subject to the full regulatory authority of the state. By voluntarily withdrawing from the commercial fishery in conjunction with the creation of this subdivision and the amendment of ss. NR 25.03(1)(a) and 25.06(1)(a)2., (effective [Revisor to insert effective date]), participating commercial fishers acknowledge this interpretation and agree to cooperate in reducing the size of the commercial fishery while enhancing the lake trout fishery of Lake Superior.

SECTION 3. NR 25.06(1)(a)2., as affected by Natural Resources Board Emergency Order No. FM-52-96(E), is amended to read:

NR 25.06(1)(a)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 ~~12,000~~ 5,710 lake trout, and from the waters of Lake Superior west of Bark Point may not exceed ~~3,000~~ 1,430 lake trout, during the open season.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on July 24, 1996.

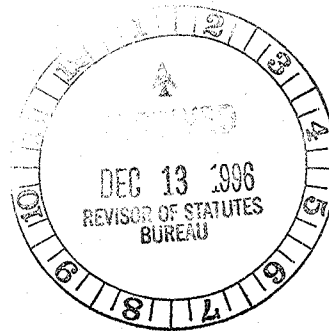
The rules contained herein shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

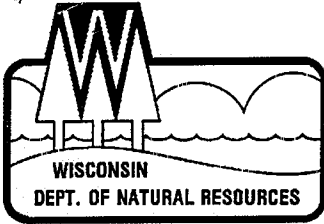
Dated at Madison, Wisconsin December 12, 1996.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)





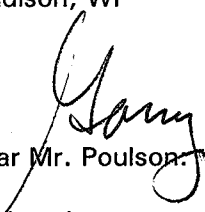
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
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December 9, 1996

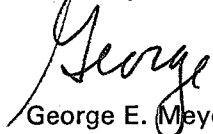
Mr. Gary L. Poulson
Assistant Revisor of Statutes
131 West Wilson Street - Suite 800
Madison, WI


Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. FM-42-96. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources and Urban Affairs pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


George E. Meyer
Secretary

Enc.

