

EmR1304

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES**

Filed with LRB: March 19, 2013

Publication date: March 27, 2013

Effective dates: March 27, 2013 to August 23, 2013

Hearing Dates: April 11, 2013

The statement of scope for this rule, SS 097-12, was approved by the Governor on December 14, 2012, published in Register No. 684 on December 31, 2012, and approved by the Natural Resources Board on January 23, 2013.

Wisconsin Natural Resources Board proposes an order to amend NR 20.20(73)(n) 4., 25.06(1)(a), and 25.09(1)(am)3.e. relating to lake trout harvest limits in Lake Superior.

FH-23-12(E)

Finding of emergency:

Pursuant to s. 227.4, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare.

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 welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2012-13 lake trout commercial harvest season. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior, revises rules limiting gill-net fishing effort, and authorizes limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. The rule elements have been negotiated to develop the State-Tribal Lake Superior Agreement.

SECTION 1 authorizes the department to enforce a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest during the 2012-13 fishing season exceeds 95% of the total allowable recreational lake trout harvest of 27,500 fish ($27,500 \times 0.95 = 26,125$). If total lake trout harvest during that same time exceeds 98% of the total allowable harvest ($27,500 \times 0.98 = 26,950$), a zero bag limit would be enforced and no fish could be harvested. Recreational lake trout harvest is measured by conducting department creel surveys during which staff gather harvest information directly from anglers at the water.

SECTION 2 reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior.

SECTION 3 amends the calculation used to determine the footage of gill net that may be set in the water by each fisher, also called “fishing effort.” Each fisher is allowed to fish only the amount of net that would cause an incidental catch and kill of his or her lake trout quota.

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.

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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 April 30, 2013.

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 total recreational lake trout harvest between December 1, 2012 and September 30, 2013 measured by department creel surveys exceeds 26,125 fish, the lake trout bag limit is reduced to 1 and when total lake trout harvest during that same time exceeds 26,950 the lake trout bag limit is reduced to 0</u>	Rainbow trout 26, brook trout 20, other trout 15, salmon none
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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~~ 52,650 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~~ 5,850 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~~ 46,800 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. NR 25.09(1)(am) 3. e. is amended to read:

NR 25.09(1)(am) 3. e. No commercial fisher may set more than his or her allowable gill net effort during each period of the lake trout open season. The department shall use the following formula to determine each commercial fisher's allowable gill net effort in feet of net:

period 1 allowable gill net effort:

$[\text{Individual Lake Trout Quota} / \text{Period 1 CPE}] \times 1000$

period 2 allowable gill net effort:

$[\text{Unused Effort Period 1} - \underline{26,442}] / [\text{Period 1 CPE}] / \text{Period 2 CPE}$

period 3 allowable gill net effort:

$[\text{Unused Effort Period 2}] / [\text{Period 2 CPE}] / \text{Period 3 CPE}$

SECTION 4. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper, as provided in s. 227.24(1)(d), Stats.

SECTION 5. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 27, 2013.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)