

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

The statement of scope for this rule, SS 065-16 was approved by the Governor on July 18, 2016, published in Register No. 727B on July 25, 2016, and approved by the Natural Resources Board on September 28, 2016. This rule was approved by the Governor on January 31, 2018.

The Wisconsin Natural Resources Board proposes an order to amend NR 20.20 (73) (n) 4., 25.06 (1) (a) 1. to 3., and 26.02 (1), to repeal 25.10 (1) (b) 8., and to create 20.20 (73) (n) 5. Wis. Adm. Code, relating to lake trout harvest limits in Lake Superior and affecting small business.

FH-17-17(E)

Analysis Prepared by the Department of Natural Resources

Statute Interpreted: Sections 29.014 (1), 29.041 and 29.519 (1m) (b), Stats.

Statutory Authority: Sections 29.014 (1), 29.041 and 29.519 (1m) (b), and 227.24, Stats.

Explanation of Agency 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.

Pursuant to s. 227.4, Stats., the department finds that an emergency exists and that this rule is necessary for the preservation of the public peace, health, safety, or welfare. The welfare of state-licensed commercial fishers, Chippewa commercial fishers, recreational fishers, and associated businesses is threatened by a decline in the lake trout population in the Wisconsin waters of Lake Superior, which is the result of harvest pressure by various user groups. The decline in lake trout population abundances requires harvest reductions by all parties in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits are discussed among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa that are all parties to the 2005-2015 Lake Superior Fishing Agreement. This emergency rule is needed to preserve the public welfare and adhere to the terms of the Agreement.

Related Statutes or Rules: The department is promulgating a companion permanent version of this rule. The department identifies the emergency companion rule as FH-19-16.

Plain Language Analysis: The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits for the 2017-18 open season and implement other reasonably related changes stemming from discussions regarding the Lake Superior Fishing Agreement. The total allowable catch of lake trout

in Wisconsin waters of Lake Superior is divided among Chippewa-licensed commercial fishers, state-licensed commercial fishers, Chippewa subsistence fishers, and recreational fishers.

This emergency rule amends the annual commercial fishing harvest limit for lake trout in the Apostle Islands region of Lake Superior and amends the bag limits and size restrictions for recreational anglers in order to manage the total population. The rule also prohibits previously allowed commercial fishing within certain refuge areas. The recreational lake trout open season runs from December 1, 2017, through September 30, 2018. The commercial fishing season is open November 28, 2017, through September 30, 2018.

SECTIONS 1 and 2 revise the recreational fishing minimum size limits in waters east of a line running north-south from Bark Point ($46^{\circ} 53.21'$, $-91^{\circ} 11.16'$) on the south shore of Lake Superior, an area also known as "WI-2." Only 2 fish may be harvested greater than 15 inches but only one lake trout could be greater than 25 inches. No other size of lake trout may be harvested in WI-2.

The size limits for lake trout harvested by sport fishers in waters west of a line running north-south from Bark Point (an area known as "WI-1") will remain unchanged: a 15-inch minimum size limit but only 1 lake trout may be harvested over 25 inches.

In Lake Superior, the current daily bag limit for all trout species is 5 fish of which only 1 may be a rainbow trout, only 1 may be a brook trout, and only 3 may be lake trout. The 3-fish lake trout daily bag limit will remain in Wisconsin waters of Lake Superior (WI-1). In WI-2 the bag for lake trout would be 2. For 2018, if the recreational lake trout harvest in the WI-2 waters east of Bark Point reaches 75% of the total allowable recreational lake trout harvest of 15,700 fish ($15,700 \times 0.75 = 11,775$) the lake trout season in the WI-2 waters will be closed. This quota is lower than in future years in order to account for overage that was harvested in 2017. Beginning with the 2019 season, if recreational harvest reaches 75% of the total allowable recreational harvest of 16,133 fish ($16,133 \times 0.75 = 12,100$) the lake trout season will be closed. Recreational lake trout harvest is measured by department creel surveys during which staff gather harvest information directly from anglers. The season closure would be effective upon issuance of an order of the department secretary and publication in the official state newspaper. If that occurs, up to 3 lake trout per day may continue to be harvested in WI-1 waters west of Bark Point.

In addition, because of differences between WI-1 and WI-2, this rule language separates the lake trout bag limits from the current 5-trout total daily bag limit for Lake Superior. Therefore, anglers will be able to take either 2 (WI-2) or 3 lake trout (WI-1) per day in addition to up to 5 other trout per day.

SECTION 3 increases the annual state-licensed and Chippewa-licensed commercial fishing harvest quota for lake trout in waters east of Bark Point on the south shore of Lake Superior. Harvest by state licensed commercial fishers would be 8,060 lake trout and, for tribal fishers, 48,800. Commercial fishers are issued tags that must be attached to harvested lake trout. The tags issued to state-licensed commercial fishers for the 2017-18 season have unique serial numbers that are designated for use in either WI-1 or WI-2 waters only.

SECTION 4 removes the Hagen's Beach Restricted Fishing area, which is normally closed to commercial fishing June 1 through August 31, and opens it to fishing during those months of the 2017-18 season.

SECTION 5 prohibits previously allowed commercial fishing within the Gull Island Refuge area. The Gull Island Refuge, wherein the lake bottom lies at a depth of 35 fathoms (210 feet) or more, or less than 7 fathoms (42 feet), or use of float nets has been open to limited commercial fishing in prior years. In order to limit the placement of fishing nets in the water and reduce potential for lake trout bycatch, it will be closed to commercial fishing.

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.

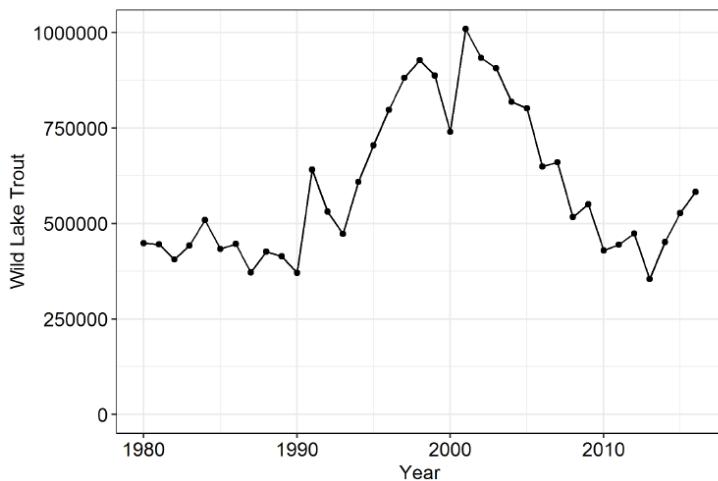
Comparison with Similar Rules in Adjacent States: Of the four adjacent states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but tribal harvest is guided by the same modeling approach as in Wisconsin, although harvest limits are much lower than in Wisconsin.

Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: An assessment of lake trout populations in the Apostle Islands region of Lake Superior is conducted by the Wisconsin State-Tribal Technical Committee using the latest available data and modeling. Based on those results and recommendations from the Committee, the harvest quotas associated with the Lake Superior Fishing Agreement are re-negotiated to change the allowable harvest of lake trout by various user groups and sometimes to address other issues related to shared harvest of lake trout and other species by state and Chippewa fishers.

There has been a decline in lean lake trout abundance in Lake Superior since the early 2000s, a trend has recently begun to turn around in response to emergency measures that reduced harvest in recent years. 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 because of 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, successive versions of a statistical catch-at-age model also suggest that previous estimates of lake trout abundance were inflated. This combination of increased harvest and re-scaled estimates of lake trout abundance caused total allowable catch recommendations to decline. Relatively stable abundances of spawning lake trout suggest that this decline is reversing but harvest quotas and the ability to close the season early if quotas are reached are important management tools that are needed to ensure a sustainable lake trout fishery over the long-term.

[See PDF for image]

- Abundance of Lake Trout in Apostle Islands



This rule includes changes to administrative code that support fisheries management policies and goals.

The department took steps to ensure the accuracy, integrity, objectivity and consistency of data used to prepare the proposed rule and related analysis.

Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: This rule revising lake trout harvest regulations is necessary in order to ensure a sustainable lake trout fishery over the long-term, and to assure there are economic and natural resource benefits for all affected. The rule may have a moderate economic impact in the Lake Superior region, but an exact amount of impact is unknown at this time and any impact should be beneficial. The department has met with the state-licensed commercial fishing representatives and held public meetings over the past several years to inform stakeholders of the current status of lake trout in Wisconsin waters of Lake Superior and to discuss lake trout regulation options. This rule enacts higher harvest quotas for commercial fishers than those established under current rules. Harvest quotas for anglers have been established by emergency rule in recent years and the quota established in this rule is an increase. If there is an economic impact, it should be beneficial.

Since finalization of the economic impact analysis, this rule proposal has been modified to increase lake trout harvest quotas. There will be no change in the compliance costs and no changes to the groups or individuals affected by the proposed rule as modified after hearings. The department has revised the economic impact analysis documents to reflect the increased quotas for anglers, state licensed commercial fishers, and tribal fishers.

Effect on Small Business - Initial Regulatory Flexibility Analysis: The rule will allow additional harvest of lake trout and other species by state-licensed commercial fishers, Chippewa-licensed fishers, and recreational fishers but is not expected to have a significant impact. All groups that fish in Lake Superior would have a moderate increase in overall harvest limits, resulting in some additional opportunity for commercial fishers. However, impact on commercial fishing businesses may be minimal because fishers may have had ample opportunities under current rules. Even when quotas were lower, impacts were buffered by the ability to transfer individual license catch quotas – through lake trout tags designated for use in WI-1 and WI-2 – between state-licensed commercial fishers. Quota transfers are a common practice that is approved and documented by the department, as authorized by s. NR 25.08.

The rule does not impose new compliance or reporting requirements nor would any design or operational standards be contained in the rule.

Agency Contact Person:

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Place where comments are to be submitted and deadline for submission: The department will accept written comments on this emergency rule until the date of a public hearing that will be held after the rule has been promulgated. The date of that hearing has not been selected but will be noticed in the Wisconsin Administrative Register and will be within 45 days of promulgation as required by s. 227.24 (4) Stats. Comments may be submitted to the agency contact person.

SECTION 1. NR 20.20 (73) (n) 4. is amended to read:

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OR OTHER RESTRICTIONS (SIZE)
NR 20.20 (73)					
(n)Trout and salmon	4. Lake Superior, <u>excluding lake trout</u>	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; 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 4 and when recreational lake trout harvest during that same time exceeds 25,529 lake trout the lake trout bag limit is reduced to 0	Rainbow trout 26, brook trout 20, other trout 15, splake 15, brown trout 15, salmon none

SECTION 2. NR 20.20 (73) (n) 5. is created to read:

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OR OTHER RESTRICTIONS (SIZE)
NR 20.20 (73) (n)					

	5. Lake Superior, lake trout only	a. Hook and line	December 1 to September 30 except that when recreational lake trout harvest during a season in waters east of a line running north-south from Bark Point ($46^{\circ} 53.21'$, $-91^{\circ} 11.16'$) measured by department creel surveys exceeds 11,775 lake trout in 2018 or 12,800 in any other year, the season may be closed only in those waters east of Bark Point. A season closure shall become effective upon issuance of an order of the secretary and publication in the official state newspaper.	2 in total in waters east of a line running north-south from Bark Point. 3 in total west of a line running north-south from Bark Point.	In waters east of a line running north- south from Bark Point (46° $53.21'$, -91° $11.16'$) the minimum is 15 and only 1 fish longer than 25 For lake trout in waters west of a line running north-south from Bark Point the minimum is 15 and only 1 fish longer than 25
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SECTION 3. NR 25.06 (1) (a) 1., 2., and 3. are amended to read:

NR 25.06 (1) (a) 1. The total allowable commercial and tribal home use harvest in the waters of Lake Superior east of Bark Point may not exceed 50,100 56,860 lake trout. The total allowable commercial and tribal home use harvest in waters of Lake Superior west of Bark Point may not exceed 2,850 5,130 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 5,300 8,060 lake trout, and from the waters of Lake Superior west of Bark Point may not exceed 2,150 4,430 lake trout.

3. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and tribal home use fishers, from the waters of Lake Superior east of Bark Point may not exceed 44,800 48,800 lake trout. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and tribal 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.

SECTION 4. NR 25.10 (1) (b) 8. is repealed.

SECTION 5. NR 26.02(1) is amended to read:

NR 26.02 (1) All waters bounded by a line from the Gull ~~island~~ Island light south to the northernmost point of Michigan ~~island~~ Island and then proceeding in a southerly direction following the shoreline of Michigan ~~island~~ Island to the Michigan ~~island~~ Island light, then southerly towards the center of the mouth of the Bad river in Ashland county to latitude 46° 40', then due east to the Michigan state line; then northerly along the state line to latitude 46° 59.3'; from that point due west to longitude 90° 26.5' and then due south to the Gull ~~island~~ Island light; ~~except that licensed commercial fishers may fish all that area within these external boundaries where in the lake bottom lies at a depth of 35 fathoms (210 feet) or more; and, except in those included waters less than 7 fathoms in depth which immediately adjoin Michigan island, gill nets with a mesh size of 2 3/4" or less stretch measure may be used from November 5 to December 5 for the taking of menominee whitefish. Float nets with a maximum stretch measure of 3 inches may be fished in this area for lake herring from November 1 to December 15 out to a bottom depth of 25 fathoms. The nets shall be a minimum of 2 fathoms from the bottom.~~

SECTION 6. STATEMENT OF EMERGENCY. Pursuant to s. 227.4, Stats., the department finds that an emergency exists and that this rule is necessary for the preservation of the public peace, health, safety, or welfare. The department and the Red Cliff and Bad River Bands of Lake Superior Chippewa are parties to the 2005-2015 Lake Superior Fishing Agreement, which specifies the procedure for allocating lake trout commercial harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for fisheries management in Wisconsin waters of Lake Superior. That agreement was extended for the previous two seasons and is expected to be extended another year to cover the 2017-2018 season. Lake trout harvest limits are discussed among the parties and the emergency version of this rule is needed to preserve the public welfare and adhere to the terms of the agreement. Finally, the population model that is used to establish the recommended quota shows that higher harvest can be sustained than previously anticipated and these rules will assure that harvest is only as economically restrictive as is biologically necessary.

SECTION 7. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper, as provided in s. 227.24 (1) (d), Stats.

SECTION 8. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 13, 2017.

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR
DEPARTMENT OF NATURAL RESOURCES

BY _____
Daniel L. Meyer, Secretary

(SEAL)