

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

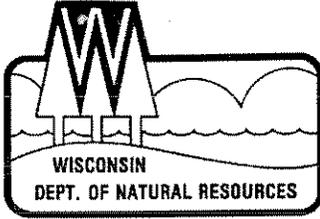
Joint Committee for
Review of
Administrative Rules
(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
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- Committee Hearings ... CH
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- Committee Reports ... CR
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- Executive Sessions ... ES
- 97hr_JCR-AR_ES_pt04
-
- Hearing Records ... HR
-
- Miscellaneous ... Misc
-
- Record of Comm. Proceedings ... RCP
-

— April 24, 1997 Executive Session —



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

March 6, 1997

MAR 24 1997

Honorable Glenn Grothman, Co-Chair
Joint Committee for Review of
Administrative Rules
Capitol

Honorable Richard Grobschmidt, Co-Chair
Joint Committee for Review of
Administrative Rules
Capitol

SUBJECT: Emergency Rule Extension for FM-52-96(E)

Gentlemen:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. FM-52-96(E) for 60 days. This emergency order pertaining to the Lake Superior fisheries management plan took effect on November 28, 1996 and is to expire on April 27, 1997.

The extension of the emergency rule is needed so that the commercial fishing season for Lake Superior can continue without a change in the regulations. The permanent rule was adopted by the Natural Resources Board on February 26, 1997 and was submitted to the presiding officers on February 28, 1997. A June 1, 1997 effective date is anticipated.

A copy of the emergency order is attached. If you have any questions, please contact Michael Lutz, Bureau of Legal Services at 267-7456.

Sincerely,

George E. Meyer
Secretary

cc: Carol Turner - LS/5
Michael Lutz - LS/5
Bill Horns - FH/4

Attach.

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 25.10(1)(b)7. and 26.23 (2)(a); to amend NR 25.06(1)(a)(intro.), 1. to 3., 25.09(1)(a)3.bm.3), d., (b)2. and 6., 25.10(1)(b) 4. and 6., 25.23(1)(a) and (b); to create NR 25.09(1)(b)9., 25.10(1)(b)10. and (c) relating to the Lake Superior fisheries management plan

FM-52-96(E)

Analysis Prepared by Department of Natural Resources

Statutory authority: 29.174(3), 227.11(2)(a) and 227.24, Stats.
Statutes interpreted: ss. 29.174(2)(a), 29.30 and 29.33, Stats.

This rule will implement the terms of the fisheries management plan for Lake Superior agreed to by the State and the Red Cliff and Bad River Bands of Chippewa. The changes include new quota allocations between the State and the Bands and refuge modifications.

SECTION 1. NR 25.06(1)(a)(intro.), 1. to 3. are amended to read:

NR 25.06(1)(a) Lake trout. (intro.) The total allowable annual harvest of lake trout by state and tribal commercial fishers and tribal home use fishers and 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 ~~department, the U.S. fish and wildlife service and the Great Lakes fishery commission.~~ No lake trout quota is established for the waters of Lake Superior west of Bark Point for state or tribal commercial and tribal home use fishers. All lake trout harvested by state and tribal commercial and tribal home use fishers in these waters shall be deducted from the lake trout quota established for the waters of Lake Superior east of Bark Point state/tribal technical committee which consists of state, tribal and national biological service representatives.

1. The total allowable commercial and home use harvest in waters of Lake Superior east of Bark Point may not exceed ~~50,600~~ 89,900 lake trout ~~during the open season.~~ The total allowable harvest in waters of Lake Superior west of Bark Point may not exceed 14,500 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 ~~13,000~~ 12,000 lake trout, and

from the waters of Lake Superior west of Bark Point may not exceed ~~600~~ 3,000 lake trout, ~~during the open season.~~

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 ~~39,600~~ 53,800 lake trout ~~during the open season. The Red Cliff and Bad River bands shall inform the department of the extent and method of the allocation between commercial and home use fishers.~~ 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 3,000 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 2. NR 25.09(1)(a)3.bm.3) is amended to read:

NR 25.09(1)(a)3.bm.3) The following catch-per-unit-of-efforts (CPEs) shall be used for the lake trout open season of November 28, ~~1993~~ 1995 to September 30, ~~1994~~ 1997:

period 1 - ~~15.9~~ 15.6

period 2 - ~~11.9~~ 22.5

period 3 - ~~4.6~~ 5.1

SECTION 3. NR 25.09(1)(a)3.d. is amended to read:

NR 25.09(1)(a)3.d. Shall be tagged by the licensed commercial fisher using the gill net with an informational tag, supplied by the department, on ~~each the buoy line 10 feet below the water's surface~~ staff above the water line. Each tag shall state the time and date upon which the gill net was set, the length of the gang of nets, the license number and the licensee's initials.

SECTION 4. NR 25.09(1)(b)2. is amended to read:

NR 25.09(1)(b)2. May be set, placed or operated only by permit issued under s. NR 25.10(4) in that part of Lake Superior lying between a line extending due north from the harbor entrance at Cornucopia in section 34, township 51 north, range 6 of a point one mile east of the mouth of the Iron river in section 34, township 50 north, range 9 west, Bayfield county, and a line extending due north from the mouth of the Bad river in section 17, township 48 north, range 2 west, Ashland county the Wisconsin-Michigan state line, and including all of the Apostle Islands area.

SECTION 5. NR 25.09(1)(b)6. is amended to read:

NR 25.09(1)(b)6. May not be placed within 1/2 mile of any other entrapping net except in waters west of Bark Point may not be placed within 1/2 mile of any entrapping net.

SECTION 6. NR 25.09(1)(b)9. is created to read:

NR 25.09(1)(b)9. Entrapment nets fished in the area west of Bark Point and also in the area known as the Van Tassells Point Area described in s. NR 25.10(1)(c)1. may harvest only whitefish and lake herring.

SECTION 7. NR 25.10(1)(b)4. is amended to read:

NR 25.10(1)(b)4. All waters less than 90 feet (15 fathoms) deep lying between a point extending due north from the mouth of the Iron river in section 34, township 50 north, range 9 west, and a line extending due north from the mouth of the Cranberry river at Herbster in section 5, township 50 north, range 7 west, all in Bayfield county except float nets described in s. NR 25.09(1)(a)2.c. may be fished from October 15 to December 31, a minimum distance of 1/2 mile from shore.

SECTION 8. NR 25.10(1)(b)6. is amended to read:

NR 25.10(1)(b)6. All waters less than 72 feet (12 fathoms) deep lying between a line extending due north from the mouth of the Cranberry pier at Herbster in section 5, township 50 north, range 7 west, and a line extending due north from the northernmost point of Roman (Quarry) point in section 29, township 50 north, range 6 west, all in Bayfield county, except that portion of Bark bay lying southwesterly of a line beginning at Roman (Quarry) point and extending northwesterly to Bark point in section 24, township 50 north, range 7 west, all in Bayfield county, which shall be open from April 1 through May 31 except float nets described in s. NR 25.09(1)(a) 2.c. may be fished from October 15 to December 31.

SECTION 9. NR 25.10(1)(b)7. is repealed.

SECTION 10. NR 25.10(1)(b)10. is created to read:

NR 25.10(1)(b)10. Those waters less than 35 fathoms immediately north of the Gull Island refuge as described in s. NR 26.23(1)(a) in management grids 1311, 1312, 1211 and 1212.

SECTION 11. NR 25.10(1)(c) is created to read:

NR 25.10(1)(c)1. No commercial fishing gear of any kind except by permit issued under sub. (4) for the taking of whitefish and lake herring only from June 1 to August 15 along the mainshore and Madeline Island from April 1 to September 30, float nets as described in s. NR 25.09(1)(a)2.c. fished under the ice only, and gill nets of not less than 4 7/16 inch minimum stretch measure will be allowed north of latitude 46° 45' at a minimum depth of 19 fathoms only under the ice and not from a boat.

2. Van Tassells Point area. The area from the easterly most tip of Houghton Point, section 27, township 49 north, range 4 west, Bayfield county, northerly along the shoreline to the entry to the city of Mayfield marina, then easterly to Point Defroid on Madeline island, section 30, township 50 north, range 3 west, Ashland county, then southerly along the western end of the island to the

tip of Grants Point, section 6, township 49 north, range 3 west, Ashland county, then southerly to Chequamegon Point on the western tip of Long island, section 13, township 48 north, range 4 west, Ashland county, thence southwesterly to the eastern tip of Houghton Point.

SECTION 12. NR 26.23(1)(a) is amended to read:

NR 26.23(1)(a) From the southernmost point of Outer island in a straight line and a southerly direction to the Gull island light and then south to the northernmost point of Michigan island proceeding in a southerly direction following the shoreline of Michigan island to the Michigan 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 a point due east of the southerly tip of Outer island; from that point due west to the southernmost point of Outer island, the place of beginning excluding those waters within 2 miles of Outer island and within one mile of the mainland shoreline of Ashland county; except that licensed commercial fishers may fish all that area within these external boundaries wherein 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 adjoining Michigan island, gill nets with a mesh size of 2 3/4; 2 3/4" or less stretch measure may be used from November 5 to December 5 for the taking of Menominee 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 13. NR 26.23(1)(b) is amended to read:

NR 26.23(1)(b) All waters wherein the bottom lies at a depth of less than 35 fathoms northerly from a line beginning 2 miles north of the Outer island light and extending westerly to the north end of North Twin island, then along the shoreline to the south end of North Twin island, then southwesterly to the north end of South Twin island, then northerly to the north end of Rocky island, then along the north shoreline to the northwest point of Rocky island, then northwesterly to

the south end of Devils island, then along the shoreline to the north end of Devils island, then westerly to a point 2 1/2 miles north of the York Island Shoal bell buoy. The area within the refuge from the northern tip of Devils island following the compass bearing 300 degrees to the refuge's western boundary, thence due south to the southwest corner of the refuge and back to the north tip of Devil's island will be open to commercial fishing during period 3 (June 1 to September 30).

SECTION 14. NR 26.23(2)(a) is repealed.

Statement of Emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent agreement between the State and the Red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. In accordance with the agreement, the Bands have already made these changes. Failure of the State to do so will not only deprive state fishers of the increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on October 23, 1996.

The rules shall take effect on November 28, 1996.

Dated at Madison, Wisconsin

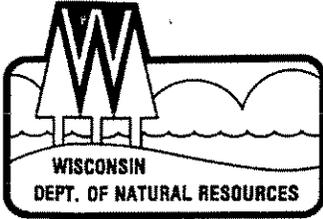
October 30, 1996

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By

George E. Meyer
George E. Meyer, Secretary

(SEAL)



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

March 6, 1997

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Honorable Glenn Grothman, Co-Chair
Joint Committee for Review of
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George E. Meyer
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FM-52-96(E)

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Statutory authority: 29.174(3), 227.11(2)(a) and 227.24, Stats.

Statutes interpreted: ss. 29.174(2)(a), 29.30 and 29.33, Stats.

This rule will implement the terms of the fisheries management plan for Lake Superior agreed to by the State and the Red Cliff and Bad River Bands of Chippewa. The changes include new quota allocations between the State and the Bands and refuge modifications.

SECTION 1. NR 25.06(1)(a)(intro.), 1. to 3. are amended to read:

NR 25.06(1)(a) Lake trout. (intro.) The total allowable annual harvest of lake trout by state and tribal commercial fishers and tribal home use fishers and 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 department, ~~the U.S. fish and wildlife service and the Great Lakes fishery commission.~~ No lake trout quota is established for the waters of Lake Superior west of Bark Point for state or tribal commercial and tribal home use fishers. All lake trout harvested by state and tribal commercial and tribal home use fishers in these waters shall be deducted from the lake trout quota established for the waters of Lake Superior east of Bark Point state/tribal technical committee which consists of state, tribal and national biological service representatives.

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SECTION 2. NR 25.09(1)(a)3.bm.3) is amended to read:

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SECTION 3. NR 25.09(1)(a)3.d. is amended to read:

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SECTION 4. NR 25.09(1)(b)2. is amended to read:

NR 25.09(1)(b)2. May be set, placed or operated only by permit issued under s. NR 25.10(4) in that part of Lake Superior lying between a line extending due north ~~from the harbor entrance at Cornucopia in section 34, township 51 north, range 6~~ of a point one mile east of the mouth of the Iron river in section 34, township 50 north, range 9 west, Bayfield county, and a line ~~extending due north from the mouth of the Bad river in section 17, township 48 north, range 2 west, Ashland county~~ the Wisconsin-Michigan state line, and including all of the Apostle Islands area.

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NR 25.09(1)(b)6. May not be placed within 1/2 mile of any other entrapping net except in waters west of Bark Point may not be placed within 1/2 mile of any entrapping net.

SECTION 6. NR 25.09(1)(b)9. is created to read:

NR 25.09(1)(b)9. Entrapment nets fished in the area west of Bark Point and also in the area known as the Van Tassells Point Area described in s. NR 25.10(1)(c)1. may harvest only whitefish and lake herring.

SECTION 7. NR 25.10(1)(b)4. is amended to read:

NR 25.10(1)(b)4. All waters less than 90 feet (15 fathoms) deep lying between a point extending due north from the mouth of the Iron river in section 34, township 50 north, range 9 west, and a line extending due north from the mouth of the Cranberry river at Herbster in section 5, township 50 north, range 7 west, all in Bayfield county except float nets described in s. NR 25.09(1)(a)2.c. may be fished from October 15 to December 31, a minimum distance of 1/2 mile from shore.

SECTION 8. NR 25.10(1)(b)6. is amended to read:

NR 25.10(1)(b)6. All waters less than 72 feet (12 fathoms) deep lying between a line extending due north from the mouth of the Cranberry pier at Herbster in section 5, township 50 north, range 7 west, and a line extending due north from the northernmost point of Roman (Quarry) point in section 29, township 50 north, range 6 west, all in Bayfield county, except that portion of Bark bay lying southwesterly of a line beginning at Roman (Quarry) point and extending northwesterly to Bark point in section 24, township 50 north, range 7 west, all in Bayfield county, which shall be open from April 1 through May 31 except float nets described in s. NR 25.09(1)(a) 2.c. may be fished from October 15 to December 31.

SECTION 9. NR 25.10(1)(b)7. is repealed.

SECTION 10. NR 25.10(1)(b)10. is created to read:

NR 25.10(1)(b)10. Those waters less than 35 fathoms immediately north of the Gull Island refuge as described in s. NR 26.23(1)(a) in management grids 1311, 1312, 1211 and 1212.

SECTION 11. NR 25.10(1)(c) is created to read:

NR 25.10(1)(c)1. No commercial fishing gear of any kind except by permit issued under sub. (4) for the taking of whitefish and lake herring only from June 1 to August 15 along the mainshore and Madeline Island from April 1 to September 30, float nets as described in s. NR 25.09(1)(a)2.c. fished under the ice only, and gill nets of not less than 4 7/16 inch minimum stretch measure will be allowed north of latitude 46° 45' at a minimum depth of 19 fathoms only under the ice and not from a boat.

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tip of Grants Point, section 6, township 49 north, range 3 west, Ashland county, then southerly to Chequamegon Point on the western tip of Long island, section 13, township 48 north, range 4 west, Ashland county, thence southwesterly to the eastern tip of Houghton Point.

SECTION 12. NR 26.23(1)(a) is amended to read:

NR 26.23(1)(a) From the southernmost point of Outer island in a straight line and a southerly direction to the Gull island light and then south to the northernmost point of Michigan island proceeding in a southerly direction following the shoreline of Michigan island to the Michigan island light, then southerly towards the center of the mouth of the Bad river in Ashland county to latitude $46^{\circ}40'$; then due east to the Michigan state line; then northerly along the state line to a point due east of the southerly tip of Outer island; from that point due west to the southernmost point of Outer island, the place of beginning excluding those waters within 2 miles of Outer island and within one mile of the mainland shoreline of Ashland county; except that licensed commercial fishers may fish all that area within these external boundaries wherein 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 adjoining Michigan island, gill nets with a mesh size of ~~2 3/4~~ 2 3/4" or less stretch measure may be used from November 5 to December 5 for the taking of ~~Menominee~~ 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 13. NR 26.23(1)(b) is amended to read:

NR 26.23(1)(b) All waters wherein the bottom lies at a depth of less than 35 fathoms northerly from a line beginning 2 miles north of the Outer island light and extending westerly to the north end of North Twin island, then along the shoreline to the south end of North Twin island, then southwesterly to the north end of South Twin island, then northerly to the north end of Rocky island, then along the north shoreline to the northwest point of Rocky island, then northwesterly to

the south end of Devils island, then along the shoreline to the north end of Devils island, then westerly to a point 2 1/2 miles north of the York Island Shoal bell buoy. The area within the refuge from the northern tip of Devils island following the compass bearing 300 degrees to the refuge's western boundary, thence due south to the southwest corner of the refuge and back to the north tip of Devil's island will be open to commercial fishing during period 3 (June 1 to September 30).

SECTION 14. NR 26.23(2)(a) is repealed.

Statement of Emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent agreement between the State and the Red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. In accordance with the agreement, the Bands have already made these changes. Failure of the State to do so will not only deprive state fishers of the increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on October 23, 1996.

The rules shall take effect on November 28, 1996.

Dated at Madison, Wisconsin

October 30, 1996

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY

George E. Meyer
George E. Meyer, Secretary

(SEAL)

APR 15 1997

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

ROOM 404 • 100 NORTH HAMILTON
MADISON, WI 53707
(608) 266-7505



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

ROOM 125 WEST • STATE CAPITOL
MADISON, WI 53702
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Backgrounder

NR 25.03 and 25.06: Lake Superior Trial Incentive Program for Commercial Fishers (License Retirement)

In an action which has become colloquially known as the Lake Superior Commercial Fishing buyout, the Department of Natural Resources offered payments to eleven holders of commercial fishing licenses for Lake Superior in exchange for the voluntary submission of those licenses back to the Department. Controversy has swirled around the Department's decision to enter into these agreements with the licensees in question. This backgrounder presents a history of the development of the rules which authorize the "buyout," entitled the "Trial Incentive Program" by the Department, and presents the arguments made for and against the program by the affected parties.

History of the Rule

According to a letter from DNR Secretary George Meyer to the co-chairmen of the JCRAR on March 10, 1997, "the Department has had a long-standing interest in restoring the lake trout fishery in Lake Superior for the benefit of sport fishers." This was the impetus for the development of Clearinghouse Rule 96-098. In the spring of 1996, several commercial fishing license holders from the Lake Superior area notified the Department that they would be interested in retiring their licenses in exchange for financial incentives from the Department.

DNR officials reportedly recognized that this willingness on the part of these commercial fishers to retire their licenses voluntarily might spare them the usual political and practical difficulties of forcibly retiring the licenses of unwilling fishers. It would also provide the Department with the opportunity to

increase the number of lake trout available to sport fishers, as well as to increase the number of spawning-age adult fish in Lake Superior.

The Department submitted Clearinghouse Rule 96-098 to the Legislative Council on June 11, 1996 for review. The agency submitted the proposed rule to the presiding officers of both houses on July 26, 1996. In the Assembly, the Natural Resources committee received jurisdiction over the rule on July 31. On the same day, the Senate Environmental Resources and Urban Affairs Committee began its 30-day review over the proposed rule.

The Assembly Natural Resources committee held a public hearing on CR 96-098 on August 21, 1996. Its members voted 10-3 to request three modifications to the proposed rule:

1. *Include language in the proposed rule and the cooperative agreements (the contracts between the DNR and the fishers specifying the terms of the license buyouts) unequivocally denying the creation or recognition of a "property right" in the licenses to be surrendered.* Committee members were concerned that the buyout action by the DNR would implicitly create a precedent recognizing a "property value" to DNR licenses far in excess of the actual face value of the license.
2. *Include language in the proposed rule specifying that commercial fishers participating in the Trial Incentive Program officially recognize that they are receiving an incentive for the retirement of their licenses, as opposed to a payment based on any "property value" of the license.* Again the specter of a "property right" with regard to DNR licenses concerned the members of the committee.
3. *Specify that the Trial Incentive program be funded through GPR dollars in the DNR budget, rather than through fishing and hunting license fees.* The Department initially had resolved to fund the payments under the buyout program from hunting and fishing licensee fee moneys. It was the Department's assertion that this was proper because sport fishers would benefit by the increased catch opportunities the buyout would afford.

The agency accepted the modification request, and worked on the rule changes until November 20, 1996, at which time the modified rule was re-referred to the Assembly Natural Resources committee for a 10-day review period. The committee chair reportedly attempted to arrange another meeting of the committee for the purposes of reviewing the modified rule, but was unable to draw a quorum of members. As a result, the modified rule was returned to the agency for promulgation. The

promulgation order was signed by Secretary Meyer on December 12, 1996, with an effective date of February 1, 1997.

Sport Fishers Speak Up

After the implicit approval of the modified CR 96-098 by the Natural Resources committee, the sport fishing community engaged in a campaign to prevent sport fishing license fee moneys from being used to fund the Trial Incentive Program. A number of legislators were contacted by representatives of the Wisconsin Council of Sport Fishing Organizations. Finally, Secretary Meyer announced to all legislators in a memo dated January 21, 1997, that he and Administration Secretary Mark Bugher had worked out a deal to replace license fee funding with "appropriate funding not related to any fish and wildlife funding."

In response to this memo, the co-chairs of the Joint Committee for Review of Administrative Rules (JCRAR) sent a letter to Sec. Meyer on February 6, requesting more information on the specific mechanics of the rule and the funding mechanism. A copy of that letter, and of Sec. Meyer's response, is attached for your review.

The Rule Comes to Hearing

Even with the change in the funding source, citizen concerns about the propriety of the Trial Incentive Program arrangement have continued to arrive by phone and letter in the offices of legislators. Assembly Natural Resources committee chair DuWayne Johnsrud has asked the JCRAR to review the issue further.

The options of the JCRAR with regard to the handling of the rule seem rather limited. Committee counsel Ron Sklansky has prepared an explanatory memorandum dated April 14, 1997 on this and related issues, which is attached for your reference. It seems likely that a JCRAR suspension of the rule in this case, while resulting in an elimination of the DNR's authority to enter into cooperative agreements under the Trial Incentive Program, would *not* eliminate the Department's authority to make payments pursuant to the cooperative agreements already in place with the Lake Superior commercial fishers. The Department may *not* make these payments out of funds collected from sport fishing and hunting licensees as the result of 1997 Wisconsin Act 1 (the fee increase bill). However, only further statutory changes made through standard legislative action, as described in the Sklansky memo, could

have the effect of prohibiting further payment to fishers under the cooperative agreements in the Trial Incentive Program.

Arguments For and Against the Rule

Proponents of the Trial Incentive Program have made the following arguments in favor of the plan:

■ ***The Trial Incentive Program will Increase Sport Fishing Opportunities in Lake Superior:***

By providing an incentive for commercial fishers to submit their licenses and the associated quotas to the DNR instead of selling them to other commercial fishers, the Department is reducing the total number of lake trout which may be taken by commercial fishers. This will result in a greater number of mature, reproducing trout in the lake, as well as a higher density of fish per cubic yard of water. This will increase the success rate of sport fishers in Lake Superior.

■ ***The Trial Incentive Program is a Break-Even Proposition for the Department:*** Until now, the Department has had to raise and introduce mature trout into the lake if it hoped to encourage in-lake reproduction. If more trout are left in the lake to mature and reproduce under this program, however, the Department will not have to spend the money to produce such fish artificially. Therefore, the money spent on the TIP today will be money saved tomorrow.

■ ***The Trial Incentive Program is an Even-Handed Approach to License Retirement:*** It has been the Department's stated goal to reduce commercial fishing on Lake Superior in an effort to increase the populations of sport fish. The TIP allows the Department to do this without the inevitable conflict which would be caused by the outright non-renewal of the commercial licenses of active fishers.

The opponents of the Trial Incentive Program have argued the following:

■ ***The Trial Incentive Program is Not Biologically Indicated:*** In a point which the DNR concedes, there is no specific biological necessity (fish shortage) for the program. It is designed primarily to enhance sport fishing.

■ ***The Program is Corporate Welfare:*** The state is effectively paying commercial businessmen not to fish. Many have made the argument that the state will not pay an incentive for them to retire, nor will it pay a bailout if their businesses fail.

- ***The Department is Setting a Dangerous Precedent by Recognizing a Property Right in Commercial Licenses Issued by the DNR:*** Great pains were taken to assure that cooperative agreements reached between the commercial fishers and the Department did not recognize any value to a commercial fishing license beyond the face issuance value determined by the Department. However, it is possible that the 100-plus commercial fishers on Lake Michigan might approach the state, looking for a similar payment when catch limits are further reduced on that lake. The fear is that a judicial interpretation of the Department's action as the acknowledgment of a property right in a commercial fishing license may result in a required state payment to the holders of a variety of state-issued commercial licenses.

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

Room 404 • Hamilton
Madison, WI 53707
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

Room 125 West • State Capitol
Madison, WI 53703
Phone: 608-264-8486

JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES

FEB 13 1997

February 6, 1997

George E. Meyer, Secretary
Department of Natural Resources
101 S. Webster Avenue
Madison, WI 53702

Dear Secretary Meyer:

In recent days we have become aware of an action of the department that is of interest to us. We are informed that the department has entered into cooperative agreements with several holders of commercial fishing licenses on Lake Superior that will retire their licenses and lake trout quotas in exchange for payments from the state. The information we have received to date suggests that the agreements rely on a rule recently promulgated by the department - Clearinghouse Rule 96-098.

Our initial review of Clearinghouse Rule 96-098, does not give much information about the department's proposal. So that we can get a better understanding of the rule, could you provide us with an explanation of the relationship between the rule and the agreements? Also, could you please furnish us with a sample agreement and explain to us the current status of the agreements?

We are also aware from a previous memo sent by you to legislators on January 21st of this year that the department will no longer use Fish and Wildlife Account funds to pay these agreements as was described in the analysis of Clearinghouse Rule 96-098. Could you please provide us a description of the new funding source for this year and future payments?

Meyer
February 6, 1997
page two

Because we have received numerous inquiries about the agreements, and would like additional background to more adequately respond to the questions that have been raised, we would appreciate your response to our request as soon as possible. If you have any questions concerning our request, please do not hesitate to contact us.

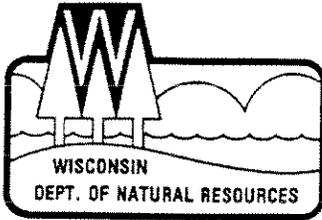
Sincerely,


RICHARD GROBSCHMIDT
Senate Co-Chair


GLENN GROTHMAN
Assembly Co-Chair

RG:GG:js

MAR 19 1997



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

March 10, 1997

IN REPLY REFER TO: 9310

Senator Richard Grobschmidt
Co-Chairman
Joint Committee for Review of
Administrative Rules
Room 404
100 N. Hamilton
Madison, WI. 53707

Representative Glenn Grothman
Co-Chairman
Joint Committee for Review of
Administrative Rules
Room 125 West
State Capitol
Madison, WI 53703

SUBJECT: Clearinghouse Rule 96-098

Rick *Glenn*
Dear Senator Grobschmidt and Representative Grothman:

Thank you for your letter regarding Clearinghouse Rule 96-098 relating to the retirement of commercial fishing licenses and a reduction of lake trout harvest quotas on Lake Superior. Your letter posed two questions addressed separately below:

Background on the Rule and Cooperative Agreements - The following background will address your first question about the relationship between the rule and the cooperative agreements:

The Department has had a long-standing interest in restoring the lake trout fishery in Lake Superior for the benefit of sport fishers. One mechanism to achieve this goal is to reduce the harvest of lake trout by commercial fishers, thereby increasing the lake trout stock available for sport anglers. Since 1976, 21 commercial fishing licenses have been available to Lake Superior commercial fishers. The Department had not moved to reduce that number of licenses and is well aware of the controversy that usually arises with a reduction proposal.

In the spring of 1996, an opportunity arose that would seemingly allow such a reduction of licensees without controversy with those licensees and benefit our lake trout restoration efforts. Several of the Lake Superior commercial licensees informed the Department that they would like to retire from the fishery and relinquish their licenses and quotas for the benefit of the lake trout fishery, but would like some financial incentive for their retirement. The Department, in response to these contacts, offered to pay financial incentives on the condition that the appropriate administrative rule be amended to reduce the number of state licensees in the commercial fishery and return to the fishery their lake trout quotas. By reducing the number of commercial fishing licenses, the Department would be able to redirect a significant portion of the commercial lake trout harvest to enhance the lake trout restoration effort and the quality of the sport fishery.

Under the cooperative agreements, the participating licensees agreed that, upon adoption of the necessary rules, they would surrender their commercial licenses, lake trout quotas and refrain from engaging in the commercial fishery as a licensee, or investing in it. Thus, while Clearinghouse Rule 96-098 does not directly provide or authorize payments to commercial fishers in Lake Superior, it implements the license and lake trout quota reductions made possible by the cooperative agreements.

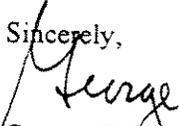
The Natural Resources Board approved Order FM-42-96 - revision of Ch. NR 25 at their July, 1996 meeting. As you are aware, this rule was promulgated as Clearinghouse Rule 96-098 and became effective February 1, 1997. On February 7, 1997, the Department issued the first annual financial incentive payments to the 11 state-licensed Lake Superior commercial fishers who entered into cooperative agreements. A sample agreement is attached as requested.

Source of Funds used for Payment of Agreements - As you correctly stated, the Department's original intent was to use funds from the segregated Fish and Wildlife Account to pay for these agreements. However, to address concerns raised by sport anglers, the Department has determined that general purpose revenues (GPR) from the Department's existing budget will be used instead of Fish and Wildlife Account funds. Due to the lateness of the funding source change in this fiscal year, the payments made on February 7, 1997 had to be made from the Division of Resource Management's GPR general program operations appropriation (numeric 101).

In fiscal year 1998 and beyond, the payments will be made from the GPR program operations budget within the Department's newly created Water Division. The source of these funds will be from lower priority GPR-funded activities recommended for elimination by the Department in its budget submittal to the Department of Administration to meet mandated 1997-99 GPR reduction goals. However, to allow the Department to pay for the cooperative agreements without impacting ongoing Department programs, the Governor's biennial budget bill permitted the Department to retain GPR funding sufficient to cover the annual long-term cost of the agreements, rather than taking these funds as base reductions to the Department's GPR budget.

I hope this information addresses the questions you have regarding Clearinghouse Rule 96-098. I believe the actions taken by the Department to retire some of the lake trout commercial fishing licenses on Lake Superior are in the long-term best interests of Lake Superior's fisheries, the sport anglers who enjoy the pristine quality of this resource, and the tourist-based economy of the region. Please let me know if I can be of further assistance on this matter.

Sincerely,


George E. Meyer
Secretary

cc: Lee Kernen - FH/4
Joe Polasek - MB/5
Jim Christenson - LS/5

**LAKE SUPERIOR COMMERCIAL FISHERY
COOPERATIVE RETIREMENT AGREEMENT**

Whereas, the Wisconsin Department of Natural Resources, as a trial initiative, is willing to offer financial incentives to state-licensed commercial fishers on Lake Superior to facilitate their retirement from commercial fishing; and

Whereas, by reducing the total number of state-licensed commercial fishers on the Lake the Wisconsin Department of Natural Resources hopes to redirect a significant portion of the commercial lake trout harvest to enhance lake trout restoration efforts and the quality of the sport fishery while preserving the economic viability and stability of the remaining commercial fishery; and

Whereas, the undersigned state-licensed commercial fisher is willing to surrender his or her commercial fishing license and lake trout quota tags to the State of Wisconsin Department of Natural Resources and retire from the commercial fishery in accordance with the terms and conditions of this agreement;

Now therefore, this Cooperative Agreement is entered into by and between the State of Wisconsin Department of Natural Resources (the Department) and _____ of _____ (the Cooperator) for the purpose of cooperatively reducing the number of state-licensed commercial fishers and the total allowable annual commercial harvest of lake trout on Lake Superior.

For and in consideration of the following terms and conditions, the parties mutually agree:

1. **Period of Agreement.** This agreement shall commence upon its signing by both parties and continue into perpetuity with all performance as described in this agreement being fully completed, unless terminated in accordance with ARTICLE 8.
2. **Entire Agreement; Amendments.** This agreement, together with any referenced parts and attachments, shall constitute the entire agreement between the parties and previous communications or agreements pertaining to the subject matter of this agreement are hereby superseded. Any revision of this agreement may be made only by written amendment to it, signed by both parties.
3. **Assignment.** Neither this agreement nor any right or duty in whole or in part by the

AGREEMENT

March 4, 1997

Page 2

Cooperator under this agreement may be assigned, delegated or subcontracted without the written consent of the Department, **except** any payments owed to the Cooperator hereunder shall be paid to any person the Cooperator designates in writing as the named beneficiary in the event of the death of the Cooperator.

4. Surrender of License and Lake Trout Tags; Crew Member Activities.

A. Surrender of Commercial Fishing License and Quota Tags. The Cooperator, holder of state commercial fishing license No. ____, issued under s. 29.33, Stats., agrees to do the following after the signing of this Agreement and the adoption of administrative rules determined to be necessary by the Department to implement this agreement:

- (1) Immediately retire and surrender to the Department, at its Bayfield office, commercial fishing license No. ____, and all crew licenses issued under that commercial fishing license;
- (2) Immediately surrender any and all lake trout quota tags in his or her possession or control to the Department, at its Bayfield Office; and
- (3) Not apply for or obtain, through application, transfer, or otherwise, another Wisconsin Great Lakes commercial fishing license issued under the authority of s. 29.33;

B. Request that the Department Withhold the Issuance of Lake Trout Quota Tags From the Signing of the Agreement to its Termination. The Cooperator, upon signing this Agreement, requests that the Department withhold the issuance of further Lake Trout Quota Tags until termination of this Agreement under ARTICLE 10 or February 1, 1997, whichever occurs first.

B. Crew Member Status. The Cooperator may continue to work in the commercial fishery as a crew member operating under a crew license or temporary crew identification card under the authority of s. 29.33(4), Stats. The Cooperator's eligibility to apply for and receive a crew license or temporary crew identification card, and the authority granted under a crew license or temporary crew identification card, is dependent upon administrative rules and statutes in effect at the time of application or issuance. This agreement may not be construed to authorize or guarantee conduct or privileges inconsistent with any rule or statute in effect while the activity is engaged in or an application is made.

5. Investment in Commercial Fishery Prohibited; Sale of Cooperator's Boats and Gear. The Cooperator agrees that he or she will not invest assets, property, funds or moneys into or in aid of commercial fishing operations in the State of Wisconsin including authorizing the use or rental of his or her commercial fishing boat or boats, gear, equipment or other real or personal property during the period of this agreement. This provision shall not be

AGREEMENT

March 4, 1997

Page 3

construed to limit the bona fide sale of the Cooperator's boat or boats, gear, equipment or other real or personal property to others engaged in commercial fishing in (or outside of) the State of Wisconsin or the possession of such property by the Cooperator until its sale.

6. Limited Entry and Lake Trout Quota Rules To Be Revised.

A. Obligation to Pursue Rule Change. The Department shall pursue changes in administrative rules necessary to reduce the number of state-issued Great Lakes commercial fishing licenses authorized to be issued and used on the waters of Lake Superior and to reduce the lake trout quota or total allowable annual commercial harvest of lake trout made available to state-licensed commercial fishers and to otherwise aid in or implement the provisions of this agreement.

B. Necessity for Rule Change. The parties understand and agree that the provisions of this agreement, including any payment, shall be conditioned upon the promulgation and implementation of administrative rules which the Department deems necessary to implement this agreement.

C. Time Limit on Pursuing Rule. The Department shall have until February 1, 1997 to adopt and make effective rules deemed necessary by the Department under this Article. Upon the failure of the Department to adopt and make effective the necessary rules by February 1, 1997, this agreement shall terminate.

7. Payment. The parties agree that the sole consideration to be paid by the Department to the Cooperator under and for the purpose of this agreement shall be as follows:

A. Total. The total amount to be paid by the Department to the Cooperator may not exceed \$ _____.

B. Payments. The total amount identified in PARAGRAPH A. (above) to be paid to the Cooperator shall be paid as follows:

(1) **First Payment.** The first payment shall be \$ _____ ;

(2) **Remaining Payments.** The remaining nine payments shall be paid in the following annual amount: \$ _____ .

C. Payment Dates. Payment shall be made annually on or about October 1 of each of the years 1996 to 2005, with the last payment made on or about October 1, 2005. However, it is agreed and understood by the parties that the annual payment date shall be extended to within 60 days after the effective date of the State Budget enacted by the Legislature and signed by the Governor in any year if the effective date of the State Budget is later than September 1 of that year.

D. Payee. Payments shall be made payable to the Cooperator and mailed to his or

AGREEMENT

March 4, 1997

Page 4

her last known address, unless otherwise directed in writing by the Cooperator.

8. Termination. This agreement may be terminated by either party upon any of the following:

A. If the other party violates or otherwise fails to perform any term or condition of this agreement; or

B. The Department fails, refuses or is unsuccessful in promulgating administrative rules necessary for implementing the provisions of this agreement, as described in ARTICLE 6.(above); or

C. The Department may terminate this agreement in whole or part, without penalty, due to non-appropriation of the funds from which the payments described in ARTICLE 7.(above) are to be paid. The funds used to fund this agreement are segregated fish moneys, under s. 20.370(1)(mu), Stats. (1993-1994), arising from sport fishing license sales, which traditionally have been and -- it is anticipated -- will be appropriated to the Department for its sport fishery program.

9. Prior Notice Required. Either party desiring to terminate this agreement in accordance with ARTICLE 8.(above) shall give the other party no less than 10 day's written notice of the party's intent to terminate. The notice shall include the specific reasons for the termination.

10. Effect of Termination.

A. If this agreement is terminated by the Department for failure of the Cooperator to perform his or her terms or conditions, the Cooperator shall reimburse the Department any and all payments made to the Cooperator prior to the termination.

B. If the Department fails to perform the terms or conditions of this agreement, the Cooperator may retain any and all payments made to the Cooperator by the Department prior to the termination and, provided that it is allowed under applicable statutes and administrative rules at the time of termination, a Great Lakes commercial fishing license authorizing fishing on the waters of Lake Superior shall be issued to the Cooperator upon application and payment of statutorily required license fees.

11. Taxes. The Cooperator agrees to pay any and all taxes arising out of or due because of payments under this agreement, including any taxes which may be due to the State of Wisconsin Department of Revenue as required by law. If the Cooperator has a delinquent Wisconsin tax liability, the Cooperator may have his or her payments offset by the State of Wisconsin.

AGREEMENT

March 4, 1997

Page 5

12. Applicable Law. This agreement shall be governed by the laws of the State of Wisconsin. The Cooperator shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this agreement.

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

By _____

Date _____

COOPERATOR

By _____

Date _____

This Agreement was drafted by the Wisconsin Department of Natural Resources.

**LAKE SUPERIOR COMMERCIAL FISHER
COOPERATIVE RETIREMENT AGREEMENT
FIRST AMENDMENT**

Pursuant to **ARTICLE 3.** of that Cooperative Agreement entered into between the Parties in 1996, **ARTICLE 7.C.** of the Cooperative Agreement is amended to read as follows:

7. C. Payment Dates. Payment shall be made in 10 payments with the first payment made on or about February 1, 1997 and additional annual payments made on or about October 1 of each year with the second payment in 1997 and the last payment in 2005. However, it is agreed and understood by the Parties that the annual payment date shall be extended to within 60 days after the effective date of the State Budget enacted by the Legislature and signed by the Governor in any year if the effective date of the State Budget is later than September 1 of that year.

In addition, the Cooperative Agreement is further amended by adding the following **ARTICLE 13.:**

13. Interpretation. By entering into this agreement and voluntarily withdrawing from the commercial fishery, the Cooperator hereby acknowledges and the Department agrees that the act of entering into this agreement, the terms contained in this agreement and the performance of this agreement are not intended as and shall not be interpreted or construed as a recognition that Great Lakes commercial fishing licenses or quotas constitute or establish proprietary rights or interests, and the parties further agree that such licenses and quotas are and shall remain subject to the full regulatory authority of the state.

No other terms or conditions of the Cooperative Agreement shall be affected by this FIRST AMENDMENT. This **FIRST AMENDMENT** shall take effect when it has been signed by both parties.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____ Date _____

COOPERATOR

By _____ Date _____



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: April 14, 1997

TO: MEMBERS OF THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

FROM: Ronald Sklansky, Senior Staff Attorney

SUBJECT: Retirement of Commercial Fishing Licenses and Reduction of Lake Trout Harvest Quotas on Lake Superior

This memorandum responds to questions concerning the retirement of commercial fishing licenses and the reduction of lake trout harvest quotas on Lake Superior. These questions were raised at the last meeting of the Joint Committee for Review of Administrative Rules (JCRAR) on March 20, 1997. The changes in the Lake Superior commercial fishery have been effected by cooperative agreements entered into by the Department of Natural Resources (DNR) and commercial fishing licensees. Questions relating to the cooperative agreements and the responses to the questions follow below.

1. What are the basic terms of the cooperative agreements?

The purpose of each cooperative agreement is to reduce the total number of state-licensed commercial fishers on Lake Superior in order to enhance lake trout restoration efforts and the quality of the sport fishery, while preserving the economic viability and stability of the remaining commercial fishery. To accomplish this goal, each state-licensed commercial fisher involved has surrendered the fisher's license and lake trout quota tags to DNR in return for 10 annual monetary payments.

Although a former licensee may continue to work in the commercial fishery as a crew member, the former licensee may not invest in, or aid, other commercial fishing operations in the state.

The effectiveness of each cooperative agreement was conditioned, in part, on the promulgation of administrative rules necessary to reduce the authorized number of commercial fishing licenses for Lake Superior and to reduce the lake trout quota for the commercial fishery. The rule amendments required to make the cooperative agreements operational took effect on February 1, 1997.

2. How have the cooperative agreements been implemented?

Cooperative agreements were entered into by DNR and 11 commercial fishing licensees. The department made the first annual financial payments under the cooperative agreements on February 7, 1997. Additional payments are to be made annually on or about October 1 in each of the years 1997 to 2005, with the last payment made on or about October 1, 2005.

Although the cooperative agreements indicate that the funds used to make the annual payments are to be derived from sport fishing license sales, correspondence from DNR Secretary, George E. Meyer, to JCRAR on March 10, 1997, states in part that:

. . . However, to address concerns raised by sport anglers, the Department has determined that general purpose revenues (GPR) from the Department's existing budget will be used instead of Fish and Wildlife Account funds. Due to the lateness of the funding source change in this fiscal year, the payments made on February 7, 1997 had to be made from the Division of Resource Management's GPR general program operations appropriation.

. . .

In fiscal year 1998 and beyond, the payments will be made from the GPR program operations budget within the Department's newly created Water Division

The total amount of funds to be expended over the 10-year period of the cooperative agreements is approximately \$1.6 million.

3. May the state take any action to affect the cooperative agreements?

If legislation were enacted to void the cooperative agreements, a claim could arise challenging the enactment on the grounds that the law violates the prohibition against the impairment of contracts contained in both the U.S. and Wisconsin Constitutions. In general, for such a claim to succeed, it must be shown that a law impairs an existing contractual relationship; that the impairment is substantial; and that the governmental purpose of the legislation does not outweigh the effects of the impairment. An analysis of this type of claim is very fact dependent. That is, the severity of an alleged impairment is determined by reviewing the contract, the particular terms that are alleged to be impaired, the impact of the impairment on the parties affected, the expectations of the parties when the contract was made and the particular problems that were meant to be resolved by the legislation enacted. Because the question is so fact dependent, it is very difficult to predict, in most cases, the outcome of an impairment claim; the issue ultimately would require a judicial resolution.

However, the cooperative agreements themselves may provide a method for further state intervention. The termination clause of each agreement states in part that:

8. **Termination.** This agreement may be terminated by either party upon any of the following:

...

C. The Department may terminate this agreement in whole or part, without penalty, due to non-appropriation of the funds from which the payments . . . are to be paid

Arguably, if legislation were enacted providing that funds appropriated to DNR were not to be used to make the payments prescribed in the cooperative agreements, DNR then could terminate the agreement due to "non-appropriation" of the funds from which the payments were to be made. In other words, because such legislation would clearly state that appropriations were not made available to DNR for the cooperative agreements, the department could exercise the termination clause contained in each cooperative agreement. (For example, see s. 25.29 (4r), Stats., as created by 1997 Wisconsin Act 1, which provides that money from the conservation fund may not be used to retire fishing licenses or the cessation of fishing under those licenses.)

If the department were to exercise the termination clause, it would give each former licensee no less than 10 days written notice of the intent to terminate and a statement of the specific reasons for the termination. Each cooperative agreement provides that if DNR fails to perform the terms or conditions of the agreement, the former licensee may retain all payments made by DNR prior to the termination and, if it is allowed to do so under statutes and administrative rules existing at the time of termination, the department is required to issue a fishing license to the former licensee authorizing fishing on the waters of Lake Superior upon appropriate application and payment of fees.

4. Are any further legislative or agency actions required to finalize the retirement of commercial fishing licenses and a reduction of lake trout harvest quotas on Lake Superior?

There are **no** other actions required by the Legislature or DNR in order to finalize the retirement of commercial fishing licenses and a reduction of lake trout harvest quotas on Lake Superior.

RS:wu;ksm

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

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

April 21, 1997

APR 21 1997

THE HONORABLE GLEN GROTHMAN, CO-CHAIR
JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
CAPITAL

THE HONORABLE RICHARD GROBSCHMIDT, CO-CHAIR
JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
CAPITAL

SUBJECT: Emergency Rule Extension for FM-52-96(E)

Dear Gentlemen:

At the hearing before the Joint Committee for the Review of Administrative Rules on April 17, 1997, the Department sought an extension of Natural Resources Board Emergency Order no. FM-52-96(E) for 60 days. The committee decided not to grant the requested extension.

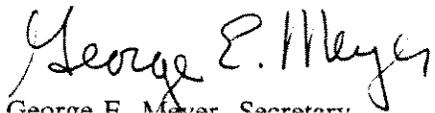
Unfortunately, the permanent rule implementing the terms of FM-52-96(E) will likely not take effect until July 1, 1997. The emergency rule will expire on April 27, 1997.

The lack of an extension of the emergency rule will have a number of significant impacts. First, it precludes us from implementing the terms of an agreement reached with the Red Cliff and Bad River bands for the management of the Lake Superior fishery. As you may know, the waters of Lake Superior were not part of the extensive off-reservation treaty right litigation known as the Voigt Case. The parties stipulated that the Chippewa Lake Superior fishing rights would be dealt with, to the extent possible, by agreement rather than litigation. Thus far, we have managed to do so, with the most recent three-party agreement signed on September 17, 1996. As part of that agreement, we were required to modify our laws to be consistent with changes already put into place by the Red Cliff and Bad River bands. Failure to do so will put us in violation of the agreement and could jeopardize our relationship with the Red Cliff and Bad River bands. It is my view that it is not in the best interest of the State of Wisconsin to litigate the Lake Superior fishery, not only due to the uncertainty of the results but also because of the possibility that all six Chippewa bands will intervene and assert rights to fish in Lake Superior.

In addition, the failure to extend the emergency rule, will require us to manage non-Indian fishers consistent with ch. NR 25, Wis. Adm. Code as it existed prior to the emergency rule. This will result in non-Indian commercial fisherman being subject to a reduced quota for the months of May and June. They will not be allowed to fish in areas which the agreement opened up to the Red Cliff and Bad River bands. It also subjects non-Indian commercial fishermen to catch per unit effort calculations which are outdated.

We request that you reconsider your decision not to extend FM-52-96(E).

Sincerely,

A handwritten signature in black ink that reads "George E. Meyer". The signature is written in a cursive style with a large initial "G".

George E. Meyer, Secretary

o:\lutz\malfm529.wp5

cc: Michael A. Lutz - LS/5
Bill Horns - FH/4
Michael Staggs - FH/4
Susan Sylvester - AD/5
Bill Smith - NOR
Steve Schram - NOR/Bayfield

Senate/Assembly

EXECUTIVE SESSIONS

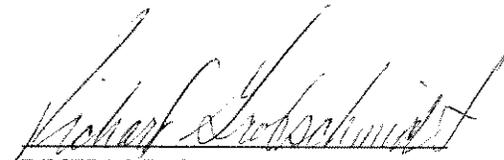
Joint committee for review of Administrative Rules

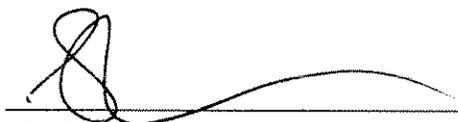
The committee will hold an Executive session on the following items at the time specified below:

Thursday, April 24, 1997
9:30 AM
North Hearing Room

The committee will hold an Executive Session on the following:

Emergency Rule NR 25.06(1)(a), et al. **Relating to** Lake Superior Fisheries Management Plan. Extension of the effective date of the emergency rule for a period of 60 days.


RICHARD GROBSCHMIDT
Senate Co-Chair


GLENN GROTHMAN
Assembly Co-Chair

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

DATE 4/24/07 Executive Session Public Hearing _____ Rule NR 25

Moved by Grobschmidt Seconded by Thompson Grothman

MOTION: That the Joint Committee for Review of Administrative Rules extend the effective date of the emergency rule of the Department of Natural Resources revising chapter NR 25, relating to the Lake Superior Fishery Management plan, for a period of 60 days.

^{es}

LEGISLATOR	AYE	NO	ABSENT
Senator GROBSCHMIDT	X		
Senator POTTER	X		
Senator WIRCH	X		
Senator WELCH		X	
Senator SCHULTZ			
Representative GROTHMAN	X		
Representative GUNDERSON	X		
Representative SERATTI		X	
Representative YOUNG	X		
Representative KREUSER			
Totals			

MOTION CARRIED "

MOTION FAILED "

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

DATE 4/24/97 Executive Session Public Hearing _____ Rule _____

Moved by _____ Seconded by _____

Attendance

MOTION: That the Joint Committee for Review of Administrative Rules extend the effective date of the emergency rule of the Department of Natural Resources revising chapter NR 25, relating to the Lake Superior Fishery Management plan, for a period of 60 days.

LEGISLATOR	AYE	NO	ABSENT
Senator GROBSCHMIDT	X		
Senator POTTER	X		
Senator WIRCH	X		
Senator WELCH	X		
Senator SCHULTZ			
Representative GROTHMAN	X		
Representative GUNDERSON	X		
Representative SERATTI	X		
Representative YOUNG	X		
Representative KREUSER			
Totals			

MOTION CARRIED "

MOTION FAILED "

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

DATE 4/24/97 Executive Session X Public Hearing _____ Rule NR55

Moved by Grobschmidt Seconded by Grothman

MOTION: That the Joint Committee for Review of Administrative Rules extend the effective date of the emergency rule of the Department of Natural Resources revising chapter NR 25, relating to the Lake Superior Fishery Management plan, for a period of 60 days.

LEGISLATOR	AYE	NO	ABSENT
Senator GROBSCHMIDT	✓		
Senator POTTER	✓		
Senator WIRCH	✓		
Senator WELCH		✓	
Senator SCHULTZ		✓	
Representative GROTHMAN	✓		
Representative GUNDERSON	✓		
Representative SERATTI		✓	
Representative YOUNG	✓		
Representative KREUSER			✓
Totals			

MOTION CARRIED

MOTION FAILED

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

Room 404 • Hamilton
Madison, WI 53707
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

Room 125 West, • State Capitol
Madison, WI 53703
Phone: 608-264-8486

**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

April 24 , 1997

George E. Meyer, Secretary
Department of Natural Resources
101 South Webster Street
Madison, WI 53702

Dear Secretary Meyer:

We are writing to inform you that the Joint Committee for Review of Administrative Rules met in executive session on April 24, 1997 and adopted the following motion:

"That the Joint Committee for Review of Administrative Rules extend the effective date of the emergency rule revising chapter NR 25, related to the Lake Superior Fisheries Management Plan for a period of 60 days."

The motion carried by a vote of six in favor, three against, and one member absent.

Pursuant to s. 227.24(2)(c), we are notifying the Secretary of State, and the Revisor of Statutes, of the committee's action through copies of this letter.

Sincerely,

RICHARD GROBSCHMIDT
Senate Co-Chair

GLENN GROTHMAN
Assembly Co-Chair

RG:GSG:js

cc: Secretary of State La Follette
Gary Poulson, Asst. Revisor of Statute