

Report to
Legislative Council Rules Clearinghouse
NR 20 and 25, Wis. Adm. Code
Natural Resources Board Order No. FH-10-20

Wisconsin Statutory Authority

Section 29.014(1), Stats., directs the department to establish and maintain any bag limits and 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.

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

Section 29.519(1m)(b), Stats., grants discretion to the department to establish commercial fish species harvest limits after giving due consideration to the recommendations made by the commercial fishing boards. It also specifies that the limitations on harvests must be based on the available harvestable population of fish and in the wise use and conservation of the fish, so as to prevent overexploitation.

Federal Authority

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

Comparison to Adjacent States

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

Court Decisions Directly Relevant

The 1972 Gurnoe Decision (*State v. Gurnoe*, 53 Wis. 2d 390 (1972)) established that the Lake Superior Chippewa tribes reserved the right to fish in Lake Superior as part of their treaties with the United States government. Thus, the state of Wisconsin works in coordination with these tribes to manage the Lake Superior fishery for sustainable harvest.

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

Lake Superior offers a diverse fishery in which lake trout, cisco and lake whitefish are the three main commercial fish species. Recreational fishers and local charter and guide businesses also value these species as game fish, and frequently target lake trout and whitefish. Because commercial, recreational and subsistence fishers all depend on a sustainable Lake Superior fishery, harvest regulations must be analyzed and balanced using updated biological data and public input from the different

stakeholder groups.

Quotas and associated regulations for lake trout and cisco are updated every three years based on the most current biological data. Population monitoring is a key component of managing Lake Superior fisheries. A statistical catch-at-age-model has been developed to sustainably manage lake trout harvest in waters of WI-2 Lake Superior, while a static quota is used in WI-1. The lake trout statistical catch-at-age model incorporates data from independent fishery assessments, the sport fishery, the commercial fishery and tribal fisheries to project population trends and predict the maximum sustainable harvest of lake trout. The model incorporates length, age, and mortality data to maintain a 42% mortality rate on lake trout. The allowable harvest of lake trout is used to restrict footage available for gill net effort, which also regulates whitefish harvest. The footage is based on monitored catch-per-unit-effort of lake trout in three time periods. A rolling 3-year average is used for each period to determine the amount of footage that can be sustainably used while staying within the lake trout quota. The effort restriction also encourages the avoidance of lake trout which are more vulnerable than whitefish and rewards minimizing lake trout bycatch. Department and tribal biologists are currently developing a whitefish model as well to better assess and predict the impacts of harvest on the whitefish population.

The department and tribes utilize hydroacoustics surveys to determine the density of cisco in the water column, and then extrapolate to the total biomass of cisco in Wisconsin waters of Lake Superior. The hydroacoustics data are validated with department and tribal agency netting surveys to verify that the numbers and species caught correlate with the results from the hydroacoustics surveys. Cisco are a key species in the Lake Superior ecosystem, and are harvested in Wisconsin waters for commercial, recreational and subsistence purposes by state licensees and members of the Red Cliff and Bad River Bands of Lake Superior Chippewa Indians. Cisco are also an important food chain link, connecting the lower trophic level of zooplankton with the higher trophic level occupied by predatory fish such as lake trout, and are an important component of the prey base for lake trout. Whitefish and other fish also consume cisco eggs as part of their regular diet.

Cisco populations in Lake Superior have been declining and have lacked strong year classes to help rebuild the population. Since 2016, cisco harvest regulations have included a harvest limit of 7.5 percent of the total cisco biomass estimate in round weight pounds of cisco, not to exceed 1,497,900 round weight pounds in a calendar year, as well as specific date restrictions for certain types of commercial fishing gear for state users. The recreational fishing season for cisco is open year-round in Lake Superior with a 10-fish daily bag limit per person and no size limit, and recreational cisco harvest is minimal. However, populations are still declining and the harvest limit needs to be reduced further in attempts to create a sustainable cisco population. The Lake Superior Chippewa tribes will join the cisco quota, allowing the cisco fishery to be managed under a single, unified state-tribal quota.

Agency Procedures for Promulgation

The department will hold a public hearing in March 2021. We will request board adoption at the Natural Resources Board's April 2021 meeting, followed by a request for the governor's signature and then legislative review.

Description of any Forms (attach copies if available)

No forms are required as part of this rule.

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