

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 25.06(1)(a)1. to 3., 25.09(1)(am)3.d. and (b)7., 25.10(1)(b)9. and 26.23(1) relating to allocation of lake trout and commercial fishing for lake trout in Lake Superior

FH-45-05

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

Sections 29.014(1), 29.041, 29.516(2) and 29.519(1)(b), Stats.

2. Statutory authority.

Sections 29.014(1), 29.041, 29.519(1)(b) and 227.11(2)(a), Stats.

3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.

The proposed rule increases annual commercial fishing harvest limit for lake trout on Lake Superior, which is an “outlying water”. Commercial fishing harvest limits are authorized under s. 29.014(1), Stats., which 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, while s. 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters, and outlying waters.

Section 29.519(1)(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 over-exploitation. Finally, s. 227.11(2)(a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statute or rule.

None.

5. Plain language analysis of the proposed rule.

SECTION 1 of the proposed rule increases the allowable harvest of lake trout from Wisconsin waters of Lake Superior by state-licensed commercial fishers and by Red Cliff and Bad River tribal fishers. SECTION 2 removes a provision in the calculation of allowable gill net fishing effort by which allowable effort is reduced substantially when lake trout catch rates are unusually high during one fishing period. SECTION 3 is a house-keeping correction clarifying the original intent of setting a minimum mesh size in trap nets. SECTION 4 alters the boundaries of an area where commercial fishing is prohibited.

SECTION 5 changes the boundaries of the Gull Island and Devils Island Refuges.

The proposed rule reflects terms agreed to by negotiators and expected to be adopted by parties to the renegotiated State-Tribal Lake Superior Agreement. The Agreement reflects a long-standing effort by the parties to recognize tribal fishing rights in Lake Superior on a cooperative basis.

6. Summary of and preliminary comparison with existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

There are no existing or proposed federal regulations intended to address the recreational or commercial harvest of lake trout on the Great Lakes.

7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois, and Michigan)

Of the four 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 an assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery. The tribal harvest there is guided by the same modeling approach that we use.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule.

Lake trout harvest limits for Lake Superior are reviewed periodically by a state-tribal biological committee. Recent analyses have used a statistical catch-at-age model that incorporates annual assessment data collected by Department biologists, commercial harvest reports, and sport fishing creel survey results. Mortality attributable to sea lamprey is also taken into account, with essential data provided by the Great Lakes Fishery Commission and its cooperators.

9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rules effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.

Wisconsin now has 10 individuals licensed by the State as commercial fishers on Lake Superior and an unknown number of tribal commercial fishers. All are believed to be small businesses. These are the only small businesses directly affected by the proposed rule. The primary effect of the proposed rule is to increase the allowable harvest by each business. The Department has not attempted to estimate the economic impact of the proposed rule, but it can only be favorable for the directly affected businesses.

10. Effects on small business, including how the rule will be enforced.

The rule will directly affect 10 state-licensed commercial fishers and an unknown number of tribal commercial fishers, and will indirectly affect sport fishers and businesses that are related to sport and commercial fishing. Because the proposed rule increases the allowable harvests, it imposes no new limitations on businesses and its effects should be beneficial to both sport and commercial fishers. State-licensed commercial harvest limits on Lake Superior are enforced by the Department's conservation wardens, county district attorneys, and county circuit courts, through the use of citations and civil or criminal complaints under the provisions of ch. 29, Stats. Tribal fishing is regulated by tribal wardens and tribal courts.

11. Agency contact person (including e-mail and telephone number).

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

NR 25.06(1)(a)1. The total allowable commercial and home use harvest in waters of Lake Superior east of Bark Point may not exceed ~~74,438~~ 87,900 lake trout. The total allowable commercial and home use harvest in waters of Lake Superior west of Bark Point may not exceed ~~2,472~~ 2,850 lake trout.

2. That number of lake trout to be harvested by non-Indian licensed commercial fishers from the waters of Lake Superior east of Bark Point may not exceed ~~7,088~~ 8,600 lake trout, and from the waters of Lake Superior west of Bark Point may not exceed ~~1,772~~ 2,150 lake trout.

3. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and home use fishers, from the waters of Lake Superior east of Bark Point may not exceed ~~67,350~~ 79,300 lake trout. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and home use fishers, from the waters of Lake Superior west of Bark Point may not exceed 700 lake trout. If the Red Cliff and Bad River bands do not reach an agreement on the method of allocating the tribal quota between them, the department may divide the quota 50% for the Bad River band and 50% for the Red Cliff band, or by any other equitable method.

SECTION 2. NR 25.09(1)(am)3.d. is amended to read:

NR 25.09 (1)(am)3.d. ~~After September 30, 1994, 3-year~~ The 3-year average catch-per-unit-of-efforts (CPEs) shall be calculated by the department as the average of the monitored catch-per-unit-of-efforts (CPEs) for the corresponding periods of the preceding 3 lake trout open seasons using data from department-monitored net lifts, ~~except that if the monitored catch per unit of effort (CPE) determined under subd. 3. b. for the corresponding period of the most recent lake trout open season exceeds the 3-year average for that period by more than 50%, the period's monitored CPE for the most recent lake trout open season shall be used for the corresponding period in the following lake trout open season in place of the 3-year average catch per unit of effort (CPE).~~

SECTION 3. NR 25.09(1)(b)7. is amended to read:

NR 25.09(1)(b)7. May not be placed or operated in the waters of Lake Superior during the months of April, May, June, July, August, and September ~~after March 31, 1994, if the twine covering the hearts of submarine trap nets exceeds a minimum of 14" stretch~~ if the mesh covering the top of the hearts of the nets is less than 14 inch stretch.

SECTION 4. NR 25.10 (1)(b)9. is amended to read:

NR 25.10 (1)(b)9. Those waters less than 35 fathoms lying ~~east of a line extending due north from the northwest corner of the Gull Island refuge as described in s. NR 26.23 (1) (a) in management grids 1311, 1312, 1211 and 1212~~ north of latitude 46° 59.3' refuge line, in grids 1212, 1312 and east of longitude 90° 25' and south of latitude 47° 05' in grids 1311 and 1211.

SECTION 5. NR 26.23(1) is amended to read:

NR 26.23 Fish refuges. (1) In order to prevent substantial depletion of the fish supply, the following described spawning areas and nursery areas in Lake Superior are hereby created and established as fish refuges and no person may take, catch, capture, kill or fish for fish in any manner at any one time in, on or along the following described water areas:

(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;~~ All waters bounded by a line from the Gull island light south to the northernmost point of Michigan island and then proceeding in a southerly direction following the shoreline of Michigan island to the Michigan island light, thence southerly towards the center of the mouth of the Bad river in Ashland county to latitude 46° 40', thence due east to the Michigan state line; thence northerly along the state line to latitude 46° 59.3'; from that point due west to longitude 90° 26.5' and thence due south to the Gull island light; 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 adjoin Michigan island, gill nets with a

mesh size of 2 ¾" 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.

(b) All waters in which 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 ½ 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, then due south to the southwest corner of the refuge and back to the north tip of Devils island will be open to fishing during period 3 (June 1 to September 30).~~ south of a line running northwesterly from the north tip of Devils Island to the refuge's western boundary, thence due south to the southwest corner of the refuge and back to the north tip of Devils Island shall be open to sport and commercial fishing during period 3 (June 1 to September 30).

SECTION 6. EFFECTIVE DATE. The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 7. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on March 22, 2006.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)