

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
AMENDING RULES

The statement of scope for this rule, SS 097-14, was approved by the Governor on September 22, 2014, published in Register No. 706 on October 15, 2014, and approved by the Natural Resources Board on October 29, 2014. This rule was approved by the Governor on December 30, 2014.

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

**FH-16-14(E)**

**Analysis Prepared by the Department of Natural Resources**

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

**2. Statutory Authority:** Sections 29.014 (1), 29.041 and 29.519 (1m) (b), and 227.4, Stats.

**3. Explanation of Agency Authority:**

Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, establish species harvest limits, and designate the kind, size and amount of gear to be used in the harvest.

Pursuant to s. 227.4, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state-licensed commercial fishers, Chippewa commercial fishers, recreational fishers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior, which is the result of harvest pressure by various user groups. The decline in lake trout population abundances requires harvest reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in September 2014 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare and adhere to the terms of the 2005-2015 Lake Superior Fishing Agreement.

**4. Related Statutes or Rules:**

Section 29.973, Stats., Commercial fish reporting system

**5. Plain Language Analysis:**

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits. The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among Chippewa-licensed commercial fishers, state-licensed commercial fishers, Chippewa subsistence fishers, and recreational fishers.

The 2005-2015 Lake Superior Fishing Agreement specifies the procedure for allocating lake trout commercial harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for fisheries management in Wisconsin waters of Lake Superior. After negotiations in September 2014, the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa agreed to new lake trout harvest limits that need to be put in place by emergency rule for the 2014-15 open season. Separate from the Lake Superior Fishing Agreement negotiations, regulations are also created by the department for state-licensed commercial fishers and recreational fishers in Lake Superior in order to manage the total population.

This emergency rule reduces the annual commercial fishing harvest limit for lake trout in the Apostle Islands region of Lake Superior and also amends the bag limits and size restrictions for recreational anglers. The terms of the Lake Superior Fishing Agreement are such that harvest by recreational anglers and state-licensed commercial fishers during the 2014-2015 season must be reduced compared to previous seasons. The recreational lake trout open season runs from December 1, 2014, through September 30, 2015. The commercial fishing season is open November 28, 2014, through September 30, 2015.

SECTION 1 reduces the recreational fishing daily bag limit from 3 lake trout to 2 (within the 5 total trout daily bag limit) in waters east of a line running north-south from Bark Point (46° 53.21', -91° 11.16') on the south shore of Lake Superior, an area also known as "WI-2." It also revises size limits for lake trout in WI-2, moving from the 15-inch minimum to allow only 1 fish to be harvested if it is between 20 and 25 inches and only 1 fish to be harvested if it is greater than 35 inches. No other size of lake trout may be harvested in WI-2.

The size limits and bag limit for lake trout harvested by sport fishers in waters west of a line running north-south from Bark Point (an area known as "WI-1") will remain the same: a 15-inch minimum size limit but only 1 lake trout may be harvested over 25 inches with a daily bag limit of 3 (within the 5 total trout daily bag limit).

SECTION 2 reduces the annual state-licensed and Chippewa-licensed commercial fishing harvest quota for lake trout in waters east of a line running north-south from Bark Point on the south shore of Lake Superior. To limit the number of lake trout harvested, commercial fishers are issued tags that must be attached to harvested lake trout. The tags issued to state-licensed commercial fishers for the 2014-15 season have unique serial numbers that are designated for use in either WI-1 or WI-2 waters only.

#### **6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Superior.

#### **7. Comparison with Similar Rules in Adjacent States:**

Of the four adjacent states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but tribal harvest is guided by the same modeling approach as in Wisconsin.

#### **8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:**

An assessment of lake trout populations in the Apostle Islands region of Lake Superior is conducted by the Wisconsin State-Tribal Technical Committee using the latest available data and modeling. Based on those results and recommendations from the Committee, the harvest quotas associated with the Lake

Superior Fishing Agreement are re-negotiated to change the allowable harvest of lake trout by various user groups and sometimes to address other issues related to shared harvest of lake trout and other species by state and Chippewa fishers.

There has been a steady decline in lean lake trout abundance in Lake Superior since the early 2000s. This decline has been confirmed by independent surveys conducted by the department and has been projected by models used to set safe harvest levels. Some level of decline was expected because of high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, successive versions of a statistical catch-at-age model also suggest that previous estimates of lake trout abundance were inflated. This combination of increased harvest and re-scaled estimates of lake trout abundance caused total allowable catch recommendations to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to stop the lake trout population's decline. The decline in lake trout abundance requires emergency harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

This rule includes changes to administrative code that support fisheries management policies and goals. The department took steps to ensure the accuracy, integrity, objectivity and consistency of data used to prepare the proposed rule and related analysis.

#### **9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:**

This rule imposing harvest reductions is necessary in order to ensure a sustainable lake trout fishery over the long-term, an economic and natural resource benefit for all affected. The rule may have a moderate economic impact in the Lake Superior region, but an exact amount of impact is unknown at this time. The department met with the state-licensed commercial fishers and is holding a public meeting in late 2014 to inform stakeholders of the current status of lake trout in Wisconsin waters of Lake Superior and to discuss the direction of management as it relates to the need for reduced lake trout harvest during the 2014-15 fishing season.

#### **10. Effect on Small Business (initial regulatory flexibility analysis):**

The rule will impact the harvest of lake trout and other species by state-licensed commercial fishers, Chippewa-licensed fishers, and sport fishers. Because of the decline in lake trout populations, all groups that fish in Lake Superior would have a reduction in overall harvest limits, resulting in potential short-term income reduction (compared to prior years) for commercial fishers. However, impact on commercial fishing businesses may be buffered by the ability to transfer individual license catch quotas – through lake trout tags designated for use in WI-1 and WI-2 – between state-licensed commercial fishers. Quota transfers are already a common practice that are approved and documented by the department, as authorized by s. NR 25.08.

The rule does not impose any compliance or reporting requirements nor would any design or operational standards be contained in the rule. Minimal impact is expected for businesses or business associations that do not rely on harvest of lake trout (e.g., charter fishers that promote catch and release, commercial fishers that use trap nets).

#### **11. Agency Contact Person:**

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**12. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, fax, or email to the contact noted above. Hearing dates and the comment submission deadline are to be determined.

Written comments may also be submitted to the department using the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>.

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

**NR 20.20 (73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)**

|                      |                  |                  |  |   |  |
|----------------------|------------------|------------------|--|---|--|
| (n) Trout and salmon | 4. Lake Superior | a. Hook and line | Continuous except the open season for lake trout is December 1 to September 30 | 10 in total but only 5 may be salmon and only 5 may be trout, of which only 1 may be a rainbow trout, only 1 may be a brook trout and <del>only 3 may be lake trout</del> in waters east of a line running north-south from Bark Point (46° 53.21', -91° 11.16') only 2 may be lake trout and in waters west of a line running north-south from Bark Point only 3 may be lake trout. <del>with only 1 lake trout longer than 25 inches; when recreational lake trout harvest during a season measured by department creel surveys exceeds 24,748 lake trout the lake trout bag limit is reduced to 1 and when recreational lake trout harvest during that same time exceeds 25,529 lake trout the lake trout bag limit is</del> | Rainbow trout 26; <sub>2</sub> brook trout 20; <sub>2</sub> <del>other trout 15;</del> splake 15; brown trout 15; salmon none; <sub>2</sub> lake trout harvested west of Bark Point: 15 but only 1 may be longer than 25; lake trout harvested east of Bark Point: 1 fish between 20 and 25, and 1 fish longer than 35 |
|----------------------|------------------|------------------|--|---|--|

~~reduced to 0~~

**SECTION 2. NR 25.06 (1)(a) 1., 2., and 3. are amended to read:**

**NR 25.06 Quotas and catch fees.** (1) LAKE SUPERIOR. (a) *Lake trout*. The total allowable annual harvest of lake trout by state and tribal commercial fishers and tribal home use fishers under par. (b) during the open season in Wisconsin waters of Lake Superior east of Bark Point (WI-2) and west of Bark point (WI-1) shall be determined by the natural resources board based upon recommendations from the state/tribal biological committee which consists of state, tribal and national biological service representatives.

1. The total allowable commercial and tribal home use harvest in the waters of Lake Superior east of Bark Point may not exceed ~~50,100~~ 40,200 lake trout. The total allowable commercial and tribal home use harvest in waters of Lake Superior west of Bark Point may not exceed ~~2,850~~ 5,130 lake trout.

2. That number of lake trout to be harvested by non-Indian licensed commercial fishers from the waters of Lake Superior east of Bark Point may not exceed ~~5,300~~ 3,900 lake trout, and from the waters of Lake Superior west of Bark Point may not exceed ~~2,150~~ 4,430 lake trout.

3. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and tribal home use fishers, from the waters of Lake Superior east of Bark Point may not exceed ~~44,800~~ 36,300 lake trout. That number of lake trout to be harvested by the Red Cliff and Bad River bands, including both commercial and tribal home use fishers, from the waters of Lake Superior west of Bark Point may not exceed 700 lake trout. If the Red Cliff and Bad River bands do not reach an agreement on the method of allocating the tribal quota

between them, the department may divide the quota 50% for the Bad River band and 50% for the Red Cliff band, or by any other equitable method.

**SECTION 3. STATEMENT OF EMERGENCY.** The welfare of state-licensed commercial fishers, Chippewa tribal commercial fishers, recreational fishers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2014-15 lake trout harvest seasons.

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

**SECTION 5. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 10, 2014.