

The statement of scope for this rule, SS 023-21, was approved by the Governor on February 19, 2021, published in Register No. 783A1 on March 1, 2021, and approved by the Natural Resources Board on May 26, 2021. This rule was approved by the Governor on July 16, 2021.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 20.20 (73) (n) 2. and 3. relating to lake trout harvest and season in Lake Michigan.

FH-29-20 (E)

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted:

The department has interpreted sections 29.014 (1), 29.041, and 29.053 (2), Stats., as authorizing this rule.

2. Statutory Authority:

Sections 29.014 (1), 29.041, and 29.053 (2), Stats., grant the department the authority to set size and bag limits and other regulations to conserve fish populations and maintain opportunities for good fishing, on inland, outlying and boundary waters in whole or in part.

3. Explanation of Agency 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.

Section 29.053 (2), Stats., authorizes the department to regulate fishing in the state as a whole, in counties or parts of counties, and in lakes and streams or parts of lakes and streams.

4. Related Statutes or Rules:

A companion permanent rule, FH-30-20, will be promulgated following this emergency rule.

5. Plain Language Analysis:

SECTION 1 would restore the continuous open season for lake trout on outlying waters of Lake Michigan and Green Bay, as well as remove the 2021 sunset on the daily bag limit of five for lake trout so that a daily bag limit of five in total for trout and salmon (where all five may be lake trout) will be in place long term. No changes will be made to the lake trout regulations in the Mid-Lake Reef Complex, which has a closed season for lake trout.

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

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

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

During the preliminary public hearing and comment period, the department received five spoken or written comments. All comments indicated support for maintaining a continuous season and daily bag limit of five for lake trout. Some commenters expressed consternation that the rules were not extended prior to the 2021 sunset, given that recreational lake trout harvest has not adversely affected the fishery, and having the regulations revert to a daily bag limit of two and March to October season for lake trout causes confusion for anglers, businesses, and law enforcement. Other comments related to the benefit the more liberal regulations provide for sport anglers by adding value to the fishing license and Great Lakes trout and salmon stamp through additional fishing opportunity. This fishing opportunity also translates to benefits for the local tourist industry.

8. Comparison with Similar Rules in Adjacent States:

Individual state or provincial agencies are responsible for managing fisheries within their state boundaries, and each jurisdiction has its own decision-making process. However, all states and provinces that border a Great Lake are signatory to the Joint Strategic Plan for Management of Great Lakes Fisheries and have collaboratively developed Fish Community Objectives for each of the Great Lakes through their individual Lake Committees.

State agencies work together through the Lake Committee process to ensure that Great Lakes management actions are communicated and discussed among the state and provincial jurisdictions. The Lake Michigan Committee has the following membership: one representative from each state (Michigan, Wisconsin, Illinois, and Indiana) and one representative from the Chippewa-Ottawa Resource Authority.

Lake trout harvest, seasons, and refuges were established by each agency to maximize the chances that the lakewide rehabilitation objectives set for lake trout were achievable.

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

This rule provides good harvest opportunities for lake trout that will benefit recreational anglers while helping to keep lake trout and salmon populations in balance with the alewife prey base. While recreational lake trout harvest remains below safe harvest limits, a continuous season and daily bag limit of five allows anglers to keep more lake trout when they encounter areas with high densities of lake trout, or when salmon fishing is slow.

Lake trout assessment metrics have been set by Great Lakes agencies (A Guide for the Rehabilitation of Lake Trout in Lake Michigan, Great Lakes Fishery Commission Miscellaneous Publication 2008-01, 2008). Based on these metrics, the lake trout population is moving toward rehabilitation in Wisconsin waters of southern Lake Michigan (see Table 1). Most lake trout fishing occurs in southern Lake Michigan because the habitat of Green Bay is not as suitable for lake trout.

Table 1: Lake Michigan lake trout assessment metrics

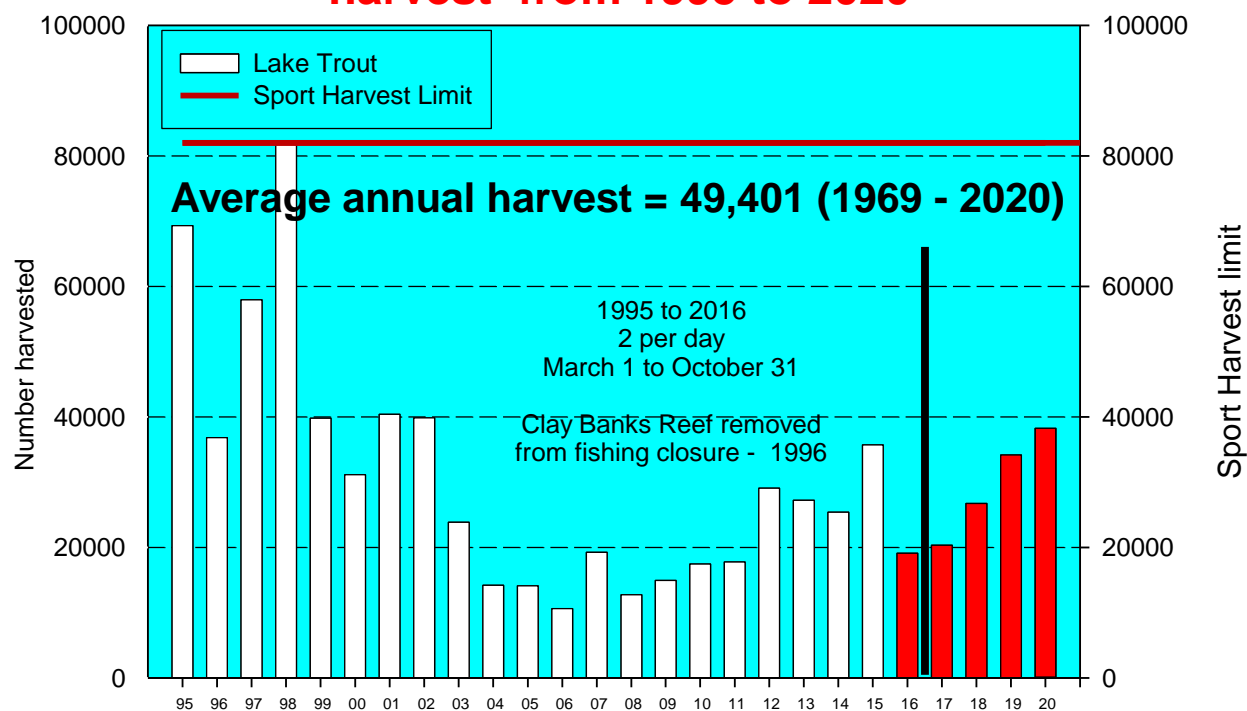
Lake Trout Metrics	Significance	Southern Lake Michigan
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Natural Reproduction	Important for wild lake trout populations to be self-sustaining	Trending upward
Spring Survey Catch Numbers	Important for assessing lake trout population density	Below target in most locations but above target on the Mid-Lake Refuge
Fall Survey Catch Numbers	Indicates levels of juvenile recruitment into the population and densities of spawning adult lake trout	Above target
% Females in Fall Survey	Indicates the proportion of females able to contribute to the breeding population	At target in some years
10 Age Groups over Age 7	Indicates how many age classes are reaching reproductive maturity	Above target
Lamprey Annual Mortality	Important for determining the impacts of invasive sea lamprey predation on the growth of the lake trout population	At target
Egg Thiamine Levels	Indicates egg and embryo viability and impacts fry survival	At or near target

Data have shown that Wisconsin anglers could harvest around 82,000 lake trout and not jeopardize the chances for lake trout rehabilitation in Lake Michigan, and harvest levels from 2017 to 2020 are comfortably below that level. Over the last 20 years, Wisconsin anglers have consistently harvested very low numbers of lake trout, averaging only 23,722 fish per year. In the last four years, lake trout harvest has been trending upward, but still remains very sustainable.

[See pdf for image]

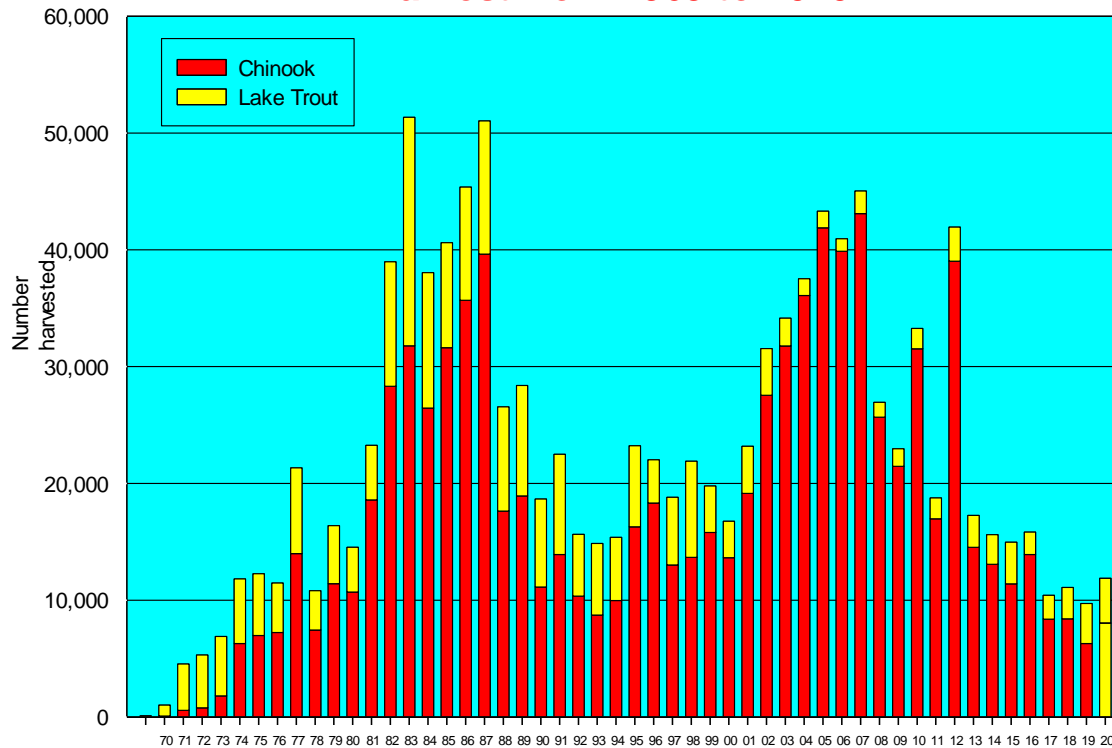
Lake Michigan Lake trout harvest from 1995 to 2020



The department collects information on chartered fishing trips through reporting, and in 2020, 21,456 lake trout were harvested across 11,353 chartered trips. Only 332 of these trips resulted in angler harvest of more than two lake trout per person, representing 2.92% of the total trips. The average number of lake trout harvested per person across all trips is 0.40, and 0.74 when at least one lake trout was harvested. Almost half of the 2020 chartered fishing trips—46.6% or 5,292 trips—resulted in no lake trout harvest at all.

While recreational lake trout harvest is not detrimental to the lake trout population and benefits anglers, it also impacts populations of highly desirable salmon. The department recently increased the number of chinook salmon stocked into Lake Michigan at the request of anglers and charter businesses. The increased number of chinook salmon present in this put-grow-take fishery will further pressure the alewife prey base shared between lake trout and non-native salmonids. This rule focuses on lake trout in order to balance management options among species that prey on alewives.

Wisconsin Lake Michigan Chinook Salmon and Lake Trout harvest from 1969 to 2020



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

Because of the increased bag limit and longer season, the rule is expected to have a positive economic impact on recreational angling businesses, including fishing guides and charter fishing businesses. This impact is expected to be minimal because prior to January 2021, these regulations were already in effect—therefore, restoring them will maintain excellent fishing opportunities for lake trout and angler spending at Lake Michigan businesses.

Lake trout are one component of the diverse Lake Michigan sport fishery, and providing additional opportunities to harvest them has benefitted anglers, charter businesses, and associated businesses, even those that may also be targeting other species. A greater bag limit for lake trout allows anglers to take home fish if they have limited success in their efforts to catch other species.

Each year, Wisconsin’s Great Lakes fishing opportunities draw at least 178,000 anglers (as measured by the sale of the Great Lakes Salmon and Trout stamp) who spend more than 1.2 million days fishing. According to the American Sport Fishing Association, these anglers contribute \$114.3 million to the economy through direct retail expenditures and generate more than \$12.5 million in state and local tax revenue.

11. Effect on Small Business (initial regulatory flexibility analysis):

Because of the larger bag limit and longer season, the rule is expected to have a positive economic impact on recreational angling businesses, including fishing guides and charter fishing businesses. When a permanent rule is pursued, the department will conduct an economic impact analysis to gather comments from any individuals, businesses, local governments, or other entities that expect to be affected economically by the rule change.

The rule is necessary in order to ensure a sustainable lake trout fishery over the long-term that provides an economic and natural resource benefit for all affected. The rule does not impose any compliance or reporting requirements nor would any design or operational standards be contained in the rule.

12. Agency Contact Person: Bradley Eggold, Great Lakes District Supervisor;
Bradley.Eggold@wisconsin.gov, 414-303-0138

13. Place where comments are to be submitted and deadline for submission:
 Written comments may be submitted at the public hearings, by regular mail, or email to:
 Meredith Penthorn
 Department of Natural Resources
 101 S. Webster St.
 Madison, WI 53704
Meredith.Penthorn@wisconsin.gov, 608-316-0080

Comments may be submitted to the department contact person listed above or to DNRAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department’s website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 20.20 (73) (n) 2. and 3. are amended to read:

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OR OTHER SIZE RESTRICTIONS (INCHES)
(73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)					
(n) Trout and salmon	2. Green Bay, major Green Bay tributaries, all other waters of Lake Michigan, Lake Michigan tributaries	a. Hook and line	Continuous except that beginning in 2021 the open season for lake trout is March 1 to October 31	5 in total except that beginning in 2021 only 2 may be lake trout	10
	3. All other tributary streams, rivers and ditches to Green Bay upstream to the first dam or lake	a. Hook and line	First Saturday in May to the first Sunday in March	5 in total except that beginning in 2021 only 2 may be lake trout	10

SECTION 2. STATEMENT OF EMERGENCY. The welfare of recreational angling businesses and recreational anglers operating in Lake Michigan and Green Bay depends on healthy lake trout and salmon fisheries. Providing continued good lake trout harvest opportunities for recreational anglers and associated businesses is especially important given the economic hardships and increased interest in fishing that have emerged as impacts of the 2020 COVID-19 pandemic. For the 2020 fishing seasons, the department sold 137,721 Great Lakes salmon and trout stamps, an increase of 14 percent over 2019, but in the absence of the proposed rules, this number could decrease because anglers will have reduced lake trout fishing opportunities. Additionally, many recreational anglers and charter businesses specifically target chinook salmon, which compete with lake trout for food. Chinook salmon feed primarily on alewives and the alewife population decline in Lake Michigan threatens the valuable chinook salmon fishery in the lake. Lake trout also consume alewives as part of their overall diet and are not currently as desirable by angling businesses (guides and charter boats) as chinook.

A combination of emergency and permanent rules was implemented in 2017 and 2018 to allow anglers to make immediate use of the lake trout available for harvest through a continuous season and a daily bag limit of five. Those 2017-18 lake trout regulations sunsetted in 2021. This rule would extend fishing opportunities and allow harvest of lake trout, keeping lake trout in balance within the fish community and decreasing the predation pressure on alewives. The department finds that an emergency rule is necessary to extend these lake trout harvest and season regulations for the 2021 fishing season while the permanent rule is being drafted.

SECTION 3. EFFECTIVE DATE. This rule takes effect upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 23, 2021.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary