

Report From Agency

REPORT TO LEGISLATURE

NR 20 and 25, Wis. Adm. Code

Board Order No. FH-10-20
Clearinghouse Rule No. 21-024

Basis and Purpose of the Proposed Rule

This rule addresses cisco and lake trout quotas and harvest limits for Lake Superior sport and commercial fisheries. These changes were first implemented in the companion emergency rule, EmR2048. Adjustments to these quotas and limits are necessary to maintain sustainable harvest levels for a healthy Lake Superior ecosystem and the diverse fisheries and stakeholders it supports.

Summary of Public Comments

Commercial and tribal fishers are taking the greatest numbers of lake trout and cisco, contributing to their decline. What is the department doing to limit the commercial and tribal catch to make it more consistent with sport fishing?

As with emergency rule FH-12-20 (E), this rule represents a reduction in the commercial quotas for cisco and lake trout to keep populations stable, and also contains a cisco quota to which tribal fishers will adhere. The quota reductions may result in lower commercial and tribal harvest of cisco and lake trout if commercial fishers make full use of their individual limits.

Lake Superior is being satisfactorily managed with the quotas, bag limits and size limits. Using sound scientific data to manage the resource and working together will help ensure that everyone has a fair share and will keep the resource sustainable.

The proposed quotas reflect the data for lake trout and cisco populations collected in 2017 – 2019. Updating lake trout and cisco quotas periodically is important for keeping harvest sustainable and balancing the needs of all Lake Superior stakeholders.

The quota reductions are not “slight” and will negatively affect the livelihoods of state commercial fishers, who have already been experiencing economic impacts due to reduction in demand for fish during the COVID-19 pandemic. Fish harvest was greatly reduced in 2020 because restaurants and other markets weren’t buying fish due to the shutdowns. With each rule, further quota decreases go into effect and limit commercial fishers. The rule should be delayed until new models accounting for reduced 2020 harvest are available and have been shared with stakeholders.

Under the quotas in this rule, commercial fishers may or may not experience a decline in actual fish harvest. Actual commercial harvest has been below quota levels the past several years, so the commercial fishing community as a whole may harvest around the same amount of fish as under the previous quotas. However, commercial fishers that have fully utilized their quota allocations may not be able to harvest as many fish, unless they purchase quota from another fisher.

This rule utilizes data from 2017 – 2019 because the timing of the rule-making process does not allow for utilization of the most recent year of data during the development of the rule. The 2020 data will be taken into account for the next round of quota reviews. While the proposed quotas in the emergency and permanent rules represent a decrease for both lake trout and cisco, the department has actually raised quotas in recent years, such as with the increase in lake trout quotas in the previous Lake Superior quota rule, which went into effect in 2018.

If these quotas are not reduced, the lake trout and cisco populations are likely to further decline, threatening the sustainability of the fishery for all users and impacting the future viability of the Lake Superior commercial fishing industry.

If cisco numbers decline, game fish numbers will decline. Commercial fishing boats and nets should go further off shore, since nets can be hard to see for sport fishers.

The proposed cisco quotas represent a reduction both to protect the cisco population from overharvest and in recognition that cisco are an important component of the prey base for multiple game fish species. Existing rules have established areas restricted to commercial fishing to help reduce user conflicts involving commercial net placement and sport fishing boats.

No commercial fishers have ever exceeded the previous cisco quota, which was based on a small sampling of grids. What does the new biological information include, especially since COVID-19 impacted DNR data collection and there was reduced commercial fishing in 2020?

The proposed quotas reflect the most recent data for lake trout and cisco populations (2017 – 2019). Due to the timing of the harvest and the rule-making process, data in the process of being collected during 2020 was not used in recommending the quota. Specifically, cisco populations have continued to be reliant on a few year classes and 66% of the 2019 harvest was from the 2009 and 2015 year classes. The 2009 year class was 75% of the harvest in 2016 and has continued to decline and has not been replaced by subsequent year classes. The locations sampled for cisco account for nearly 90% of the total harvest since 2010 and therefore, represent where the fishery occurs. Mandatory commercial fishing reports for 2020 were still available and show that small-mesh gill net effort (used for cisco) fished by state-licensed commercial fishers was slightly higher than 2019 and consistent with the previous 5 years, while harvest in 2020 was lower than 2019 it was similar to the average of the previous 5 years. The slightly increased effort in 2020 with the slightly below average harvest suggests that more effort is needed to capture the same amount of fish and is additional evidence that the population cannot sustain the current quota and therefore, the quota needs to be reduced to ensure sustainability.

Modifications Made

The department did not make any changes to this rule as a result of public comments, aside from minor editorial changes to the plain language sections to improve clarity.

Appearances at the Public Hearing

Of the people that attended the virtual hearing, two submitted appearance slips stating a position (opposition).

William Bodin, Lake Superior Commercial Fishing Board
Jessica Resac

Other non-DNR hearing attendees included:

Andy Goyke
Bruce Prentice
Dana Denker
George Meyer
Luke
Mike Seider
Stephen James
Tom Johnson
Tyler M.
Student (did not state name)

Changes to Rule Analysis and Fiscal Estimate

Only minor, editorial changes were made to the rule analysis. The main change to the economic impact analysis was including more information on the value of sport fishing to the Lake Superior region.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

Final Regulatory Flexibility Analysis

This rule is expected to have a moderate economic impact (likely \$50,000 to \$140,000 in total) because it is very similar to rules which have been in place from 2018 to 2020, but does include quota reductions that could impact total commercial harvest. Estimated dockside value of lake trout for the ten state licensed commercial fishermen during the 2019 season was \$28,651. Even under a decreased quota, dockside value is dependent on a variety of factors including market value and fishing conditions, and fuel and other expenditures have a greater economic impact for commercial fishers. In 2018, a higher lake trout quota went into effect for commercial fishers; therefore, the average pounds of lake trout harvested by all commercial fishers in 2018-19 was 32,609 per year, compared to an average of 23,665 pounds per year in 2016-17. Assuming a value of \$1 per pound for lake trout, the total gain to commercial fishers under the higher quota years was \$8,944. A similar quota reduction, therefore, would result in a similar economic loss of less than \$10,000 across the 10 Lake Superior state commercial fishers. However, the reduction under this rule will not create quotas as low as the 2016-17 quotas, so the impact to profits will likely be felt to a lesser degree than under the 2016-17 quotas. Commercial fishing allowable effort is established at a level that will prevent overharvest of lake trout during whitefish gill netting operations, so commercial fishers may also see an economic impact from lower whitefish harvest. However, the average wholesale price of whitefish fluctuates from year to year, so lower harvest may not necessarily translate to lower profits. For example, in 2014 commercial fishers harvested a total of 380,968 (dressed weight) pound of whitefish with an estimated dockside value of \$792,413. In 2019, commercial fishers harvested a total of 393,269 (dressed weight) pounds of whitefish valued at \$385,403. The difference between the two years was due to the difference in average wholesale value. Though this rule does not apply to tribal fishers, tribal commercial fishers are also included under the quota through the Lake Superior Fishing Agreement, so they are likely to see a similar decrease or maintain pattern for lake trout and whitefish harvest.

In 2019, the cisco price per pound was \$0.40-0.75, but has been as high as \$1.20 per pound since 2012. While the price per pound has varied over time, estimated total value of the commercial cisco roe fishery is between \$200,000 and \$500,000 per year. The methods in the rules for determining harvest restrictions are expected to allow the commercial fishing community to harvest at or near the current total average annual catch amount. A reduction in cisco quota may impact commercial fishers, but actual harvest levels over the past 10 years have generally been below the proposed quota, so the total value of the fishery may not change significantly. Due to annual variation in value of the cisco fishery, the total economic impact is indeterminate. However, because the individual quota allotment for cisco will decrease, some individual fishers that harvested their full allotment in the past few years may see a decrease in actual harvest and corresponding economic impacts under the reduced quota (likely less than \$40,000 for each licensee). In 2019, three commercial fishing licensees harvested more cisco than the amount of cisco allowable harvest that would be allotted to those fishers under the proposed lower quota, so most licensees are not likely to experience reduced harvest due to this rule. Individual commercial fishers may need to reduce their harvest or acquire part of the individual quota allocated to another fisher as a result of the new quota. This would be viewed as a negative impact by commercial fishers that would experience decreased harvest or the need to purchase part of another fisher's quota, but could benefit the seller of the quota.

This rule may also have a minimal impact on sport fishing businesses and local businesses, in the event that the lake trout season closes early. Sport fishing is an important contributor to local economic activity in the Lake Superior region through direct spending to hotels, restaurants, bars, and to fishing businesses such as outfitters, guide or charter services and bait and tackle stores. However, because the lake trout season is not guaranteed to close early under this rule, and because this rule makes no changes to size or bag limits, sport fishing businesses may not be affected by this rule. It is difficult to determine the economic impact that might result from changes in the angling activities, and related spending, from non-commercial fishing, but it is expected to be minimal because lake trout are just one component of the fishery. Angling activity is

determined by weather conditions year-round as well as by success on other targeted salmonid species such as brown trout, splake, or coho salmon. Angler hours in WI-2 have ranged from 195,000 to 235,000 from 2017 through 2019. Charter fishing licenses for Lake Superior have remained stable over the past decade and a half (2005-2019) ranging from 22 to 29. The number of licensed charter fishers in 2019 was 24 and had the highest harvest and effort since 2010. Lake trout size and bag limits will not change with this rule, though an adjustment to the harvest trigger for lake trout could potentially lead to an early season closure if the trigger is reached prior to the end of the recreational lake trout season. The last time that the lake trout season closed early was 2017 and the new quota would not have resulted in early closure in 2017. Economic impacts on local businesses are expected to be similar to 2019.

Related to both commercial and angler use of lake trout and cisco, harvest quotas are ideally reviewed every 3 years, with data collection and review occurring each year. Because of the variability of harvest quotas, there is no true baseline against which to compare increases and decreases and related economic impacts. Because of this variability, it is also difficult to estimate specific long-term economic impacts except to surmise that continued availability of the resource has overall positive impacts.

The rule does not impose any compliance or reporting requirements nor would any design or operational standards be contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses. Public utility rate payers and local governmental units will not be affected by the rule.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.