

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND REPEALING RULES

The statement of scope for this rule, SS 117-15, was approved by the Governor on October 7, 2015, published in Register No. 718A2 on October 12, 2015, and approved by the Natural Resources Board on October 28, 2015. This rule was approved by the Governor on December 22, 2015.

The Wisconsin Natural Resources Board proposes an order to amend NR 20.20 (73) (n), 25.06 (1)(a) 1. to 3., and 26.02 (1), and to repeal 25.10 (1) (b) 8., Wis. Adm. Code, relating to lake trout harvest limits in Lake Superior and affecting small business.

FH-15-15(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 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 Wisconsin waters of Lake Superior, which is the result of harvest pressure by various user groups. The decline in lake trout population abundances requires harvest reductions by all parties in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits are discussed among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa that are all parties to the 2005-2015 Lake Superior Fishing Agreement. This emergency rule is needed to preserve the public welfare and adhere to the terms of the Agreement.

4. Related Statutes or Rules: Section 29.973, Stats., Commercial fish reporting system.

Note: Notwithstanding the repeal and recreation of ch. NR 20.20 on April 20, 2016, by CR 14-023, this emergency rule shall remain in effect until the initial 150 day effective period and all extension periods under s. 227.24 have expired.

5. Plain Language Analysis:

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits for the 2015-16 open season and implement other reasonably related changes stemming from discussions regarding the Lake Superior Fishing Agreement. 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.

This emergency rule amends the annual commercial fishing harvest limit for lake trout in the Apostle Islands region of Lake Superior and amends the bag limits and size restrictions for recreational anglers in order to manage the total population. The rule also prohibits previously allowed commercial fishing within certain refuge areas. The recreational lake trout open season runs from December 1, 2015, through September 30, 2016. The commercial fishing season is open November 28, 2015, through September 30, 2016.

SECTION 1 revises the recreational fishing minimum size limits 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." Instead of a 15-inch minimum, only 2 fish may be harvested between 20 and 25 inches and only 1 fish may be harvested if it is greater than 40 inches. No other size of lake trout may be harvested in WI-2.

The size limits 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 unchanged: a 15-inch minimum size limit but only 1 lake trout may be harvested over 25 inches.

In Lake Superior, the current daily bag limit for all trout species is 5 fish of which only 1 may be a rainbow trout, only 1 may be a brook trout, and only 3 may be lake trout. The 3-fish lake trout daily bag limit will remain in Wisconsin waters of Lake Superior (WI-1 and WI-2 combined). However, if the recreational lake trout harvest in the WI-2 waters east of Bark Point during the 2015-16 fishing season reach 75% of the total allowable recreational lake trout harvest of 9,800 fish ($9,800 \times 0.75 = 7,350$) the lake trout bag limit in the WI-2 waters east of Bark Point will be reduced to 0 with catch and release fishing for lake trout only. Recreational lake trout harvest is measured by department creel surveys during which staff gather harvest information directly from anglers. The bag limit would change upon issuance of an order of the department secretary and publication in the official state newspaper. If that occurs, up to 3 lake trout per day may continue to be harvested in WI-1 waters west of Bark Point. In addition, because of differences between WI-1 and WI-2, this rule language separates the lake trout bag limits from the current 5-trout total daily bag limit for Lake Superior. Therefore, anglers will be able to take up to 3 lake trout per day in addition to up to 5 other trout per day.

SECTION 2 revises 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 2015-16 season have unique serial numbers that are designated for use in either WI-1 or WI-2 waters only.

SECTION 3 removes the Hagen's Beach Restricted Fishing area, which is normally closed to commercial fishing June 1 through August 31, and opens it to fishing during those months of the 2015-16 season.

SECTION 4 prohibits previously allowed commercial fishing within the Gull Island Refuge area. The Gull Island Refuge, wherein the lake bottom lies at a depth of 35 fathoms (210 feet) or more, has been open to limited commercial fishing in prior years. In order to limit the placement of fishing nets in the water and reduce potential for lake trout bycatch, it will be closed to commercial fishing in the 2015-16 season.

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, although harvest limits are much lower than 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 harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

To help determine the bag and size limit changes for recreational fishing, the department had an online survey open from September 28 to October 15 and held two public meetings in September 2015 to gather input on regulation options. Each option was presented showing its level of risk associated with meeting or exceeding the recreational fishing quota before the season ends in September 2016. Based on written and verbal public comments and results from the survey, the most biologically and socially acceptable bag and size limit regulations were selected. In the 2014-15 season, the recreational angling daily bag limit was 1 lake trout between 20 and 25 inches and only 1 if greater than 35 inches. Anglers desired a larger bag limit and will have that in the 2015-16 season under this emergency rule, although there is a greater risk of reaching the overall harvest limit and having a season closure (catch and release only).

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 revisions 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 fishing representatives and held two public meetings in September 2015 to inform stakeholders of the current status of lake trout in Wisconsin waters of Lake Superior and to discuss lake trout regulation options for the 2015-16 fishing season. Although this emergency rule enacts lower harvest limits than those described in administrative code, it puts in place higher limits for both commercial and recreational fishing than those implemented by an emergency rule during the 2014-15 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 recreational 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. In addition, this emergency rule puts in place higher limits for both commercial and recreational fishing than those implemented by an emergency rule during the 2014-15 season.

Minimal to no 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). It may be a positive impact for fishing guides and charter businesses because the rule increases the overall trout recreational daily bag limit. Anglers will be able to take up to 3 lake trout per day in addition to up to 5 other trout per day.

The rule does not impose any compliance or reporting requirements nor would any design or operational standards be contained in the rule.

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 will occur within 45 days after the emergency rule is in effect. 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) is amended to read:

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

(n) Trout and salmon

1. Mid lake reef complex	a. Hook and line	Continuous except there is no open season for lake trout	5 in total, of which 0 may be lake trout. No person may possess lake trout within this area	10
2. Green Bay, major Green Bay tributaries, all other waters of Lake Michigan, Lake Michigan tributaries	a. Hook and line	Continuous except the open season for lake trout is March 1 to October 31	5 in total but 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 but only 2 may be lake trout	10
4. Lake Superior, <u>excluding lake trout</u>	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 only 3 may be lake trout 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 reduced to 0	Rainbow trout 26, brook trout 20, other trout 15, lake 15, brown trout 15, salmon none

5. Lake Superior, lake trout only

a. Hook and line

December 1 to September 30

3 in total. When recreational lake trout harvest during a season in waters east of a line running north-south from Bark Point (46° 53.21', -91° 11.16') measured by department creel surveys exceeds 7,350 lake trout the lake trout bag limit only in those waters east of Bark Point is reduced to 0 (catch and release only). Bag limit modifications by the department shall become effective upon issuance of an order of the secretary and publication in the official state newspaper.

In waters east of a line running north-south from Bark Point (46° 53.21', -91° 11.16') only 2 fish between 20 and 25 and 1 fish longer than 40; For lake trout in waters west of a line running north-south from Bark Point the minimum is 15 and only 1 fish longer than 25

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~~ 44,200 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~~ 4,900 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~~ 39,300 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. NR 25.10 (1) (b) 8. is repealed.

SECTION 4. NR 26.02 (1) is amended to read:

NR 26.02 (1) 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, 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 latitude 46° 59.3'; from that point due west to longitude 90° 26.5' and then 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.

SECTION 5. 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 and other reasonably related changes for the 2015-16 lake trout harvest seasons.

SECTION 6. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper, as provided in s. 227.24 (1) (d), Stats.

SECTION 7. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 9, 2015.