

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

Item No. 3.B.3.

SUBJECT:

Request that the Board adopt Emergency Board Order FH-15-15(E), proposed rules affecting ch. NR 20 and 25 related to lake trout harvest limits in Lake Superior

FOR: December 2015 Board meeting

PRESENTER'S NAME AND TITLE: Terry Margenau, Lake Superior Fisheries Team Supervisor

SUMMARY:

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. 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. 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.

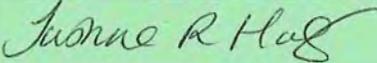
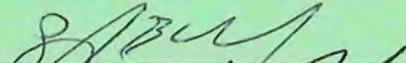
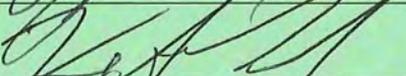
The emergency rule will:

- Adjust lake trout commercial fishing harvest quotas
- Implement new bag and size limit regulations for recreational fishing
- Implement catch and release only for the remainder of the season if harvest levels are reached in one area of the lake
- Prohibit commercial fishing within the Gull Island Refuge Area
- Open the Hagen's Beach Restricted Fishing area to fishing June 1 through August 31, 2016

RECOMMENDATION: That the Board adopt Emergency Board Order FH-15-15(E).

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input checked="" type="checkbox"/> background memo | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary | <input checked="" type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Justine Hasz, Bureau Director		11-19-15
Sanjay Olson, Division Administrator		11-20-15
Cathy Stepp, Secretary		11/24/15

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

CORRESPONDENCE/MEMORANDUM

DATE: November 19, 2016

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Emergency Board Order FH-15-15(E), relating to lake trout harvest limits in Lake Superior

1. Subject of Proposed Rule:

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.

2. Background:

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 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.

The Department and the Red Cliff and Bad River Bands of Lake Superior Chippewa are parties to the 2005-2015 Lake Superior Fishing Agreement, which 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.

3. Why is the rule being proposed?

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. Summary of the rule.

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.

RECREATIONAL FISHING:

The rule 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 current 3-fish lake trout daily bag limit will remain in place. This limit applies collectively across Wisconsin's two management zones (WI-1 and WI-2) in Lake Superior. 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 ($9,800 * 0.75 = 7,350$) 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. 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.

COMMERCIAL FISHING:

The rule also 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.

REFUGES:

The rule 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. However, because of agreements among the parties to the Lake Superior Fishing Agreement, the rule also 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.

Please Note: Although not included in this rule for reasons discussed below, the Department and the Red Cliff and Bad River Tribes have also agreed to the following prohibitions of commercial fishing within Lake Superior refuge areas:

- Not allowed in 2015-2016: For menominee, employing bottom nets within 7 fathoms of water adjoining Michigan Island, from November 5 through December 5. Float nets in this area for lake herring from November 1 to December 15 out to a bottom depth of 25 fathoms.
- Not allowed in 2015-2016: For herring, employing nets south of a line running northwesterly from the northern tip of Devils Island, from November 15 through December 15.

These prohibitions are intended to limit the placement of fishing nets in the water and reduce potential for lake trout bycatch.

The effective dates of this emergency rule are expected to be from January through October 2016, if granted approval and extensions. Therefore the prohibition of commercial fishing in the above refuge areas during November and December 2016 were not included in this rule language.

5. How does this proposal affect existing policy?

These proposals maintain existing policy. Chapter NR 1.04 provides the guiding Department policy related to harvest limits and quota allocations: “(4) The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are limited. The resources will be managed in accordance with sound management principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas.”

6. Has Board dealt with these issues before?

The Board has dealt with similar rules in the past to adjust lake trout harvest limits based on negotiations related to the 2005-2015 Lake Superior Fishing Agreement. The Board approved a permanent rule (FH-26-12) in February 2014 and a similar emergency rule (FH-16-14(E)) in December 2014.

7. Who will be impacted by the proposed rule? How?

- State-licensed commercial fishers on Lake Superior
- Recreational fishers on Lake Superior
- Recreational fishing guides and charter fishing businesses
- Commercial fishers licensed by the Red Cliff Band of Lake Superior Chippewa
- Commercial fishers licensed by the Bad River Band of Lake Superior Chippewa

State-licensed and Chippewa-licensed commercial fishers will be affected by the amount of fish they are able to harvest. Recreational fishers will need to learn and comply with new regulations. Fishers will not have any compliance expenditures or reporting changes associated with the rule.

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.

Results from the public input did not reveal any strong preference for any regulation. Options 4 (2 fish bag limit, only 20-25 inch harvest allowed) and 5 (2 fish 20-25 inch harvest allowed and 1 fish > 40 inches) had the most support from both the in-person questionnaires and the online survey groups. Option 5 allows an angler the opportunity to keep that rare trophy fish if he or she wishes. However, because this regulation has a higher risk of reaching or exceeding the recreational fishing quota, a trigger at 75% of the harvest quota automatically reduces the bag limit to 0 for lake trout with catch and release only allowed for the remainder of the season.

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. And 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.

8. Soliciting public input on economic impact synopsis

The fiscal estimate for emergency Board Order FH-15-15(E) is attached and did not require public comment at this time. A public hearing for the emergency rule will be held in Ashland within 45 days of rule promulgation.

9. Environmental Analysis

The process for emergency rules is a minor action under s. NR 150.20(1m)(n) and does not require an environmental analysis.

10. Small Business Analysis

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.

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.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

NR 20, Fishing in Inland and Outlying Waters; NR 25, Commercial Fishing in Outlying Waters

3. Subject

Lake trout harvest limits in Lake Superior, FH-15-15(E)

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

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 stemming from discussions regarding the Lake Superior Fishing Agreement for the 2015-16 lake trout harvest seasons.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

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.

A public hearing for the emergency rule will be held within 45 days of rule promulgation.

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

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 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.

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

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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 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. 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.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The 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.

14. Long Range Implications of Implementing the Rule

The continued decline of the lake trout population necessitates harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

15. Compare With Approaches Being Used by Federal Government

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

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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.

17. Contact Name

Terry Margenau, Lake Superior Fisheries Supervisor

18. Contact Phone Number

715-779-4035

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards 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.

The rule will impact the harvest of lake trout by state-licensed commercial fishers and Chippewa-licensed 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.

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.

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).

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

5. Describe the Rule's Enforcement Provisions

The rule will be enforced by Department Conservation Wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and state-licensed commercial fishers, and follow up investigations of citizen complaints.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No

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 .

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 ($9,800 * 0.75 = 7,350$) 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:

Terry Margenau, Lake Superior Fisheries Supervisor
PO Box 589
Bayfield, WI 54814-0589
715-779-4035
terry.margenau@wisconsin.gov

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, splake 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 3/4 " 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 _____.

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Cathy Stepp, Secretary

(SEAL)