

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES**

NOTICE OF PUBLIC HEARING

Natural Resources Board Orders FH-26-12 and FH-26-13(E)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on revisions to ch. NR 25, Wis. Adm. Code, in permanent rule Order FH-26-12 and emergency rule Order FH-26-13(E), relating to lake trout harvest limits in Lake Superior on the date, time, and location listed below.

Hearing Information

Date and Time

Wednesday January 15, 2014 at 6:00 p.m.

Location

Bayfield DNR Office, 141 S. Third Street
Bayfield WI, 54814

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Peter Stevens by email at peter.stevens@wisconsin.gov or by calling 715-779-4035, ext. 12. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System website which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Kate Strom Hiorns, Department of Natural Resources, Bureau of Fisheries Management, 101 S. Webster St, Madison, WI, 53703, or by calling 608-266-0828.

Submitting Comments

Comments on the proposed permanent rule must be received on or before January 15, 2014. Written comments may be submitted by U.S. mail, fax, email, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Peter Stevens
Department of Natural Resources
Bureau of Fisheries Management
141 S. Third Street, Bayfield WI, 54814

Phone: 715-779-4035, ext. 12

Email: peter.stevens@wisconsin.gov

Internet: Use the Administrative Rules System Web site accessible through the link provided

Analysis Prepared by the Department of Natural Resources

Explanation of agency authority to promulgate the proposed rules under the statutory 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.

Plain language analysis of the proposed rule

The rules are necessary to implement lake trout commercial harvest limits. They reduce the annual commercial fishing harvest limit for lake trout on Lake Superior and place reduced bag limits on recreational fishing if the recreational lake trout harvest exceeds specified limits.

The continued, persistent decline in lake trout population abundances in the Apostle Islands vicinity of Lake Superior and predicted further declines necessitate the reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2013 among the Department and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. The rule elements are a result of regular negotiations stipulated in the State-Tribal Lake Superior Agreement.

Section 1 of both rules puts in place a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest in a season exceeds 95% of the total allowable recreational lake trout harvest of 26,050 fish ($26,050 \times 0.95 = 24,748$). If total lake trout harvest in a season exceeds 98% of the total allowable recreational harvest ($26,050 \times 0.98 = 25,529$), a zero bag limit would be enforced and no fish could be harvested for the rest of the season. Recreational lake trout harvest is measured by Department creel surveys during which staff gather harvest information directly from anglers. The open season for recreational lake trout harvest in Lake Superior is December 1 through September 30.

Section 2 of both rules reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior. The open season for commercial lake trout harvest in Lake Superior is November 28 through September 30.

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.

Comparison with 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.

Summary of factual data and analytical methodologies

The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. A ten-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The allowable lake trout harvests are reviewed by a state-tribal biological committee using the latest available data and modeling results. Based on those results and recommendations from the biological committee, the Agreement is re-negotiated as needed to change the total annual harvest of lake trout by all fishers, and possibly to address other issues related to shared harvest of lake trout and other species by state and tribal 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 due to 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, these year classes were not as large as predicted. This combination of increased harvest and lower than predicted population size has caused lake trout abundance to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. The decline in lake trout population abundances and predicted further declines necessitate the harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

There would be no implementation costs for the Department. State-licensed and tribal commercial fishers may be affected by the amount of fish they are able to harvest. It is not expected that fishers will have any compliance expenditures or reporting changes associated with the rule.

The decline in lean lake trout abundance in Lake Superior has been confirmed by surveys conducted by the Department and has been projected by models used to set safe harvest levels. Rule changes are necessary in order to ensure a sustainable lake trout fishery over the long-term.

Effects on small business

The proposed rule change would impact state-licensed commercial fishers, tribal commercial fishers, fish wholesalers, and others whose interests or businesses are affected by commercial fishing. Based on data available to the Department, minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

If the rule is not put in place, the negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

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 commercial fishers, and follow up investigations of citizen complaints.

The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us, or by calling 608-266-1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

The proposed rules do not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rules. Public utility rate payers and local governmental units will not be affected by the rules.

Based on data available to the Department, minimal impact is expected for businesses or business associations. The rules may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, the result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

Dated at Madison, Wisconsin DECEMBER 16, 2013

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Cathy Stepp
Cathy Stepp, Secretary *eh*