DRAFT #1
05/30/19

The scope statement for this rule, SS 004-18 was approved by the Governor on January 23, 2018, published in Wisconsin Administrative Register 745B on January 29, 2018 and approved by the Natural Resources Board on April 11, 2018. The final emergency rule was approved by the Governor on .

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 25.06 (1) (a) 4. and 25.13 (2) (d); to **amend** NR 25.05 (1) (a), (c), and (h), 25.06 (title), 25.06 (1) (b) 2., 25.06 (3) (g), 25.09 (1) (am) 3. b., 25.09 (1) (b) 5., 25.09 (1) (b) 9., 25.10 (1) (b) 1. to 6. and 9., 25.10 (1) (c), 25.13 (1) (a); to **repeal and recreate** NR 25.06 (1) (a) 1., 2. and 3.; and to **create** NR 25.02 (2m), 25.02 (69m), 25.06 (1) (b) 3., 4. and 5., 25.06 (3) (h), 25.09 (1) (bm), 25.09 (1) (d), 25.09 (1) (e), 25.09 (7), 25.10 (1) (b) 10. and 25.10 (1) (d) relating to harvest management regulations in the Lake Superior fishery and affecting small business.

FH-02-18

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 29.014 (1), 29.041 and 29.053 (2), Wis. Stats. have been interpreted as authorizing the department to conserve the fish supply on waters of the state while continuing to provide good opportunities for fishing. Section 29.519 is interpreted as allowing the department to regulate commercial fish harvest.

2. Statutory Authority: Sections 29.014 (1), 29.041, 29.053 (2), and 29.519, Wis. Stats. authorize the promulgation of this rule. All rules promulgated under this authority are subject to review under ch. 227, Stats.

3. Explanation of Agency Authority:

Under s. 29.014 (1), Stats., "Rule-making for this chapter," the department is directed 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.

The department is authorized to regulate fishing on and in all interstate boundary waters and outlying waters by s. 29.041, Stats., "Department to regulate hunting and fishing in interstate waters."

Provisions of s. 29.053 (2), Stats., "Specific open and closed seasons," provide that the department may establish conditions governing the taking of fish for the state as a whole, for counties or parts of counties, or for waterbodies or parts of waterbodies.

Under s. 29.519, Stats., "Commercial fishing in outlying waters," the department is granted discretion to establish commercial fish species harvest limits after giving due consideration to the recommendations made by the commercial fishing boards, and to promulgate rules relating to quota allocations. This section also specifies that the limitations on harvests must be based on the available harvestable population of fish and on the wise use and conservation of the fish, so as to prevent overexploitation. In addition, this section grants the department the authority to designate areas where commercial fishing is

restricted, as well as to establish restrictions on the types and sizes of gear used in commercial fishing.

4. Related Statutes or Rules:

The department promulgated a companion emergency rule, FH-01-18(E), to implement new regulations for the 2018-19 commercial fishing seasons.

5. Plain Language Analysis:

This rule updates commercial fishing regulations for Lake Superior, including harvest allocations, reporting requirements, restricted areas, equipment regulations, data sharing and other similar provisions. These updates aim to maintain healthy target and non-target fish populations while balancing the needs of resource users, including state and tribal commercial fishers, tribal home use fishers and state recreational anglers.

The 2018 – 2028 Lake Superior Fishing Agreement serves as the foundation for this rule. The Lake Superior Fishing Agreement reflects a commitment between the state and the Bad River and Red Cliff Bands of the Lake Superior Chippewa to cooperatively manage the shared Lake Superior fishery through agreed-upon harvest limits, allocations and other management tools. The agreement provides tribal, commercial and recreational harvest opportunities while protecting the Lake Superior fishery. According to the agreement, the goal of all parties is to maintain a healthy Lake Superior ecosystem that supports fish populations and fisheries and is managed through sound science. This is accomplished through regulations enacted by each party participating in the agreement.

On March 18, 2019, a companion emergency rule, FH-01-18(E) went into effect to implement new fishing regulations for the 2018-19 commercial fishing season. In recognition of public feedback and the Board's action to amend the emergency rule, these permanent rules do not include an allowance for state commercial fishers to harvest whitefish in October.

SECTIONS 1 and 11 establish a definition for catch-per-unit-of-effort (CPE), which is an index of measurement for fish species abundance that is used determine allowable harvest for a given species, and remove duplicative language from s. NR 25.06.

SECTION 2 defines Wisconsin Statistical Districts WI-1 and WI-2, which are the two fisheries management zones in Lake Superior.

SECTION 3 outlines the periods within the open seasons for lake trout and whitefish in Lake Superior.

SECTIONS 4 and 5 restructure the paragraph that establishes a total allowable harvest limit for lake trout. While the overall quotas remain the same, these sections revise the allocation between state and tribal fishers in WI-1 and WI-2 to be more equitable within each zone.

SECTIONS 6 and 15 move restrictions on gear use and the disposition of lake trout from the quota section, s. NR 25.06, to the commercial fishing gear section, s. NR 25.09.

SECTION 7 specifies that no parts of gill nets placed for tribal home use fishing activities may extend more than 1,320 feet from the shoreline adjacent to a tribal reservation during the closed season for lake trout.

SECTION 8 revises regulations for tribal home use fishing nets that differentiate between commercial and

home use fishing, require harvest reporting, and establish net mesh size requirements.

SECTION 9 clarifies that commercial fishers may not possess tags from any jurisdiction other than Wisconsin.

SECTION 10 requires that all unused lean lake trout tags be returned to the department following the close of the lake trout fishing season.

SECTION 12 requires removal of entrapment net material, referred to as webbing, from the water within 3 days of the close of the season instead of 14 days.

SECTION 13 describes the requirements for trap net use in WI-1, specifying that only cisco, whitefish and lake trout no larger than 25 inches may be harvested during periods 2 and 3 of the season.

SECTION 14 creates standard requirements for all fishing gear, specifying that nets must be set at least ¼ mile from one another, and all nets must begin actively fishing within 24 hours of placement.

SECTION 16 establishes standards for ice buoys which are used by state and tribal commercial fishers to mark nets set when ice is present.

SECTION 17 updates the boundary description for the Sand Cut Lake Superior restricted area, specifies that trap nets may not be used in this area, and associates the names of restricted areas with their descriptions.

SECTION 18 modifies gear regulations for the Bark Bay restricted area.

SECTION 19 modifies gear restrictions and clarifies boundary references for the Van Tassell's Point restricted area.

SECTION 20 describes the Red Cliff, Bad River and Madeline Island shoreline areas and establishes fishing restrictions in those areas.

SECTION 21 modifies the deadline for submitting paper commercial fishing reports.

SECTION 22 updates language relating to the electronic reporting system for commercial fishing.

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. Comparison with Similar Rules in Adjacent States:

Along with Wisconsin, Michigan and Minnesota are the only adjacent states with a Lake Superior commercial fishery. In Michigan, whitefish is the focus of the commercial fishery. Minnesota regulates several commercial fisheries on Lake Superior. Both Minnesota and Michigan have established quotas, gear requirements and other restrictions for commercial fishing in Lake Superior, working in cooperation with the Chippewa tribes in those states.

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

The state and the Bad River and Red Cliff Bands of Lake Superior Chippewa Indians have cooperated regarding the management of the Lake Superior fishery under the Lake Superior Fishing Agreement since 1986. The department and the two bands meet periodically to discuss quotas, tag allocations and other harvest provisions for the major fisheries, including lake trout, cisco and whitefish. Quotas and other harvest limits are based on commercial and recreational harvest data and population modeling, and are designed to ensure the sustainability of the shared Lake Superior Fishery for the benefit of all user groups.

The parties to the agreement determine a total allowable annual harvest of lake trout for each of the Wisconsin Statistical Districts (WI-1 and WI-2) in Lake Superior that takes into account established biological parameters. The total allowable annual harvest is allocated between state and tribal fishers according to an agreed-upon division. The department further allots a portion of the state allowable harvest to each licensed commercial fisher in the form of an individual quota, while the remainder is earmarked for recreational fishers. Through tagging, reporting methods and various surveys, the department can monitor progress toward the harvest quotas and modify the season if necessary.

The parties also establish gear restrictions that protect target and non-target fish populations while providing for the needs of state and tribal commercial fishers and tribal home use fishers.

The new 2018 – 2028 Lake Superior Fishing Agreement contains several changes to allocations, gear use, restricted areas and other regulations that impact state and tribal fishers. These rules implement provisions of the agreement and help ensure that the Lake Superior is appropriately and fairly managed.

The department has provided information and sought input on Lake Superior topics and priorities for commercial fishers and sport anglers in several ways. The department holds biannual Lake Superior public meetings to provide updates on topics related to the agreement and management of the Lake Superior fisheries. During the emergency rule process, the department contacted stakeholders directly to inform them of the contents of the rule and subsequently held a public meeting in January 2019 to provide details on the rule. Upon implementation of the emergency rule, the department held a public hearing to gather additional feedback to begin the process for this permanent rule. Department staff also attend angler group meetings. The department will also pursue enhanced surveys to monitor potential impacts of the new Lake Superior Fishing Agreement, and a defined process to communicate with and involve stakeholders in future Lake Superior management decisions and direction.

Population monitoring is a key component of managing Lake Superior fisheries. A statistical catch-at-age-model has been developed to sustainably manage lake trout harvest in the WI-2 waters of Lake Superior. This model predicts the maximum sustainable harvest of lake trout based on recent data. The model incorporates length, age, and mortality data to maintain a 42% mortality rate on lake trout. The allowable harvest of lake trout is used to restrict footage available for gill net effort, which also regulates whitefish harvest. The footage is based on monitored catch-per-unit-effort of lake trout in three time periods. A rolling 3-year average is used for each period to determine the amount of footage that can be sustainably used while staying within the lake trout quota. The effort restriction also encourages the avoidance of lake trout which are more vulnerable than whitefish and rewards minimizing lake trout bycatch.

These rules also revise gear regulations to enhance consistency amongst state and tribal commercial fishers and to protect target and non-target fish populations. Requiring that gill nets be placed at least ¼ mile apart establishes a known standard that helps sport fishermen understand how nets are placed and

assists in avoidance when trolling. Nets set closely together or perpendicular to one another can be difficult for the average sport fisherman to navigate.

Lost nets continue to kill fish and impact fish populations through direct loss and damage to habitat. Requiring that all nets be marked visibly will emphasize the responsibility of fishermen to set and retrieve nets during appropriate weather and ice conditions and reduce the risk of lost nets.

Refuges or restricted areas are areas where commercial fishing is prohibited in general or restricted by certain methods or at certain times. Refuges and closed areas protect non-target species by protecting normal areas of congregation such as key habitats or spawning areas. Refuges provide sanctuary that can facilitate lakewide rehabilitation of key species or help promote overall ecosystem health. Most restricted areas are nearshore areas that host a diversity of fishes. Some areas are near spawning tributaries important for lake sturgeon, coastal brook trout, and other important species. Other areas occur in unique habitats that are important for warm- and cool-water fish communities. These selected areas are protected from high-efficiency gears in order to maintain the progress made in the restoration of Lake Superior fisheries. Gill nets are size-selective; however, incidental catch (bycatch) can include numerous other species important to the Lake Superior fish community and closed areas are still needed. Additionally, gill net mortality is high. For example, lake trout mortality in gill nets is 60.4%.[1] Recent estimates of delayed mortality of 41% may increase the true mortality experienced by gill nets.[2] With high mortality of fisheries exposed to gill nets, protecting areas that have a diverse fish community is imperative to maintain the fish community objectives established through various planning processes in this state and the Lake Superior Region.

Harvest reporting is critical to monitoring efforts and assuring that populations are protected from overharvest. Effective harvest reporting strategies also ensure economic stability of businesses that rely on commercial harvest.

1. Johnson, J. E., M. P. Ebener, K. Gebhardt, and R. A. Bergstedt. 2004. Comparison of catch and lake trout bycatch in commercial trapnets and gillnets targeting lake whitefish in northern Lake Huron. Michigan Department of Natural Resources, Fisheries Research Report 2071, Ann Arbor.

2. Ng EL, Fredericks JP, Quist MC. 2015. Effects of gill-net trauma, barotrauma, and deep release on postrelease mortality of lake trout. Journal of Fish and Wildlife Management 6(2):265–277; e1944-687X. doi: 10.3996/122014-JFWM-096

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

This rule is necessary in order to ensure a sustainable, cooperatively managed fishery over the long-term that provides an economic and natural resource benefit for all affected. 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 will impact the harvest of lake trout and whitefish by commercial fishers, tribal home use fishers and recreational anglers. The rule will achieve more equitable harvest allocations for lake trout for the benefit of state commercial fishers and anglers alike, as well as whitefish season dates and gear specifications in ways that may provide additional commercial harvest opportunities. The proposed rule would affect small businesses that conduct commercial fishing. Any changes to reporting requirements for commercial and recreational fishing businesses as a result of these rules will be minor in nature.

This rule may affect recreational anglers, but the exact economic impacts are difficult to predict. This rule does not establish regulations that directly apply to activities of sport anglers or charters that take

sport anglers fishing on Lake Superior. Recreational anglers and charter license holders utilize a diverse fishery that includes lake trout, whitefish, cisco and other salmonids such as brown trout, splake and coho salmon. Hook and line bag limits and season dates for these species will not change with these new rules, and trolling regulations will also remain the same. Recreational anglers and charter license holders may experience a minimal economic impact relating to user conflicts in some areas of Lake Superior. The rule modifies the boundaries of some restricted areas, previously open only to recreational fishing, to allow commercial and tribal fishing in a very small area totaling approximately 3 percent of the 300 square miles of restricted areas. Some recreational anglers are concerned that this will preclude them from fishing in the area, reduce the quality of the fishing experience and potentially lead to a loss of business for charter guides and local businesses. However, overall the department anticipates that the rule will result in continued good fishing opportunities for anglers, and comparable contributions to the economy through sport fishing activities. The department will seek further input from sport anglers through the permanent rule hearings.

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

The items proposed in this rule may result in implementation or compliance costs relating to net marking and reporting. Certain new requirements apply to the placement and marking of nets in waters of Lake Superior that aim to standardize regulations between the state and the tribes, which may require some adjustments in gear use by state commercial fishers. A minor update to electronic fish harvest reporting system rules also removes the requirement for commercial fishers to print and sign any biweekly reports that the system generates for that commercial operation. An estimate of the cost for each business is not known at this time, but the impact is expected to be minimal, if any.

When assessing the effects of the rule on state commercial fishers, the changes to harvest allocations and seasons are likely to result in minimal economic impacts. The average dockside value for all species harvested by state commercial fishers from 2015 - 2017 is approximately $1.08 million. Total allowable catch for lake trout by state commercial fishers will increase by 440 fish in WI-2 and decrease by 430 fish in WI-1, resulting in a similar annual total dockside value for future catches as under previous rules. Due to the minimal changes in total allowable catch for lean lake trout and no changes for cisco (lake herring) or whitefish, the annual dockside value for commercially harvested fish in Lake Superior is not expected to deviate significantly from the current value as a result of these rules.

The effect of this rule on tourism in the Lake Superior area is also likely to be minimal, since past spending patterns remained unaffected during other regulation changes. Direct visitor spending in Bayfield County increased from $46.5 million in 2016 to $47.7 million in 2017, despite early closure of the recreational lake trout fishery and removal of a summer restricted area that was previously open only to recreational fishing. Direct visitor spending in Ashland County similarly increased from $34.9 million in 2016 to $35.1 million in 2017, and Iron County direct visitor spending increased from $19.6 million in 2016 to $20.5 million in 2017.

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.

11. Agency Contact Person: Todd Kalish, Todd.Kalish@wisconsin.gov, 608-266-5285

12. 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 53703
608-316-0080
Meredith.Penthorn@wisconsin.gov

Written comments may also be submitted here: DNRAdminRulesComments@Wisconsin.gov

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 25.02 (2m) is created to read:

25.02 Definitions. (2m) "Catch-per-unit-of-effort (CPE)" means the average number of fish caught per 1,000-foot lift of gill net or per lift of trap net. CPE includes all dead and live fish.

SECTION 2. NR 25.02 (69m) is created to read:

25.02 Definitions. (69m) "WI-1" and "WI-2" mean Wisconsin Statistical Districts 1 and 2 as defined in the Lake Trout Management Plan of the Lake Superior Technical Committee of the Great Lakes Fishery Commission. The line between the districts extends due north from the northernmost tip of Bark Point at N46° 53.21', W91° 11.16' with WI-1 waters to the west and WI-2 waters east to the Michigan border.

SECTION 3. NR 25.05 (1) (a), (c) and (h) are amended to read:

25.05 Open seasons; size limits; possession and harvest limits. (1) OPEN SEASONS.

	Species	A Green Bay	B Lake Michigan	C Lake Superior
(a)	Lake trout	No open season	No open season	November 28 to September 30, subject to the requirements in ss. NR 25.06 (1) (a), ~~and~~ 25.07 (1) (a), and 25.09 (7) and subdivided into the following periods: 1. Period 1: November 28 to March 31 2. Period 2: April 1 to May 31 3. Period 3: June 1 to September 30

(c)	Whitefish	No open season	No open season	November 28 to September 30, subdivided into the following periods: 1. Period 1: November 28 to March 31 2. Period 2: April 1 to May 31 3. Period 3: June 1 to September 30
(h)	~~Lake herring~~Cisco	No open season	No open season	~~At all times~~ January 1 to December 31

SECTION 4. NR 25.06 (title) is amended to read:

25.06 Quotas ~~and ,~~catch fees and special regulations.

SECTION 5. NR 25.06 (1) (a) 1., 2., and 3. are repealed and recreated to read:

25.06 (1) LAKE SUPERIOR. (a) *Lake trout.*

Wisconsin Statistical District	Allowable annual harvest
WI-1	1. The total allowable commercial and tribal home use harvest in the waters of Lake Superior west of Bark Point may not exceed 6,000 lake trout. a. That number of lake trout to be harvested by non-tribal licensed commercial fishers from the waters of Lake Superior west of Bark Point may not exceed 4,000 lake trout. b. 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 2,000 lake trout.
WI-2	2. The total allowable commercial and tribal home use harvest in the waters of Lake Superior east of Bark Point may not exceed 56,000 lake trout. a. That number of lake trout to be harvested by non-tribal licensed commercial fishers from the waters of Lake Superior east of Bark Point may not exceed 8,500 lake trout. b. 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 47,500 lake trout.
Note: 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 6. NR 25.06 (1) (a) 4. is repealed.

SECTION 7. NR 25.06 (1) (b) 2. is amended to read:

25.06 (1) LAKE SUPERIOR. (b) *Harvest of fish from Lake Superior for home use by Lake Superior Chippewas.*

2. Permittees are restricted to the use of no more than 350 feet of gill net and sale of fish pursuant to these permits is prohibited. These fishing activities shall be restricted to waters adjacent to the reservations of the Bad River and Red Cliff bands, and during the closed season for lake trout no part of any net may extend beyond 1,320 feet from the shoreline of those waters.

SECTION 8. NR 25.06 (1) (b) 3., 4., and 5. are created to read:

25.06 (1) LAKE SUPERIOR. (b) *Harvest of fish from Lake Superior for home use by Lake Superior Chippewas.*

3. In no instance may a boat fish both commercial and home use nets at the same time. If such home use nets are fished by a commercial licensee, those nets must be labeled as home use and must be marked in the same manner as required for commercial nets under s. NR 25.09.

4. Permittees shall limit the use of gill nets to mesh sizes of 2 ¾ inch stretch measure or smaller, and 4 ½ inch stretch measure or larger.

5. All game fish harvested under permits issued under this section shall be tagged in accordance with sub. (3). The Bad River and Red Cliff bands shall provide quarterly home use harvest reports on forms supplied by the department.

SECTION 9. NR 25.06 (3) (g) is amended to read:

25.06 Quotas, catch fees and special regulations. (3) TAGGING OF FISH. (g) No treaty fisher may lift nets in Wisconsin waters while in possession of tags issued by aanother tribe or ~~another state for fish taken in Michigan waters~~ jurisdiction.

SECTION 10. NR 25.06 (3) (h) is created to read:

25.06 Quotas, catch fees and special regulations. (3) TAGGING OF FISH. (h) All unused tags issued under this section for the commercial harvest of lean lake trout shall be returned to the department within 30 days of the close of the fishing season for lake trout described in ss. NR 25.05 (1)(c).

SECTION 11. NR 25.09 (1) (am) 3. b. is amended to read:

25.09 Commercial fishing gear. (1) LAKE SUPERIOR. (am) *Gill nets – 4 7/16 inch.*

b. Catch-per-unit-of-effort (CPE) for each period shall be determined from department-monitored state and tribal net lifts occurring during each period. ~~Catch-per-unit-of-effort (CPE) is the ratio of dead and live lake trout caught for each period divided by the feed of monitored net in thousands of feet set during each period.~~

SECTION 12. NR 25.09 (1) (b) 5. is amended to read:

25.09 Commercial fishing gear. (1) LAKE SUPERIOR. (b) *Entrapping nets.*

5. Shall have the fish holding pot portion rendered inoperable during the closed seasons for whitefish and lake trout and shall have the webbing removed from the water within ~~14~~3 days after the close of the lake trout season.

SECTION 13. NR 25.09 (1) (b) 9. is amended to read:

25.09 Commercial fishing gear. (1) LAKE SUPERIOR. (b) *Entrapping nets.*

9. Entrapment nets fished in the area west of Bark Point known as WI-1 ~~and also in the area known as the Van Tassells Point area described in s. NR 25.10 (1) (c)~~ may harvest ~~only~~ cisco, whitefish and lake trout less than 25 inches in length, ~~and lake herring,~~ and may only be used from April 1 to September 30.

SECTION 14. NR 25.09 (1) (bm) is created to read:

25.09 Commercial fishing gear. (1) LAKE SUPERIOR. (bm) *All nets.* The following regulations shall apply to all nets:

1. No net may be placed within ¼ mile of any other net, and entrapment nets are further subject to s. NR 25.09 (1) (b) 6.

2. Within 24 hours of setting any portion of a net, the net shall be fully deployed and actively fishing.

SECTION 15. NR 25.09 (1) (d) is created to read:

25.09 Commercial fishing gear. (1) LAKE SUPERIOR. (d) All lake trout caught in gill nets not less than 4 7/16 inch stretch measure set in waters less than 330 feet (55 fathoms) deep shall be kept and tagged except during November 28 through May 31, live lake trout may be released. Lake trout caught in gill nets in waters 330 feet (55 fathoms) deep or deeper or in entrapping nets may be returned to the lake or kept and tagged, except that dead lake trout 25 inches or less in length caught in entrapping nets shall be kept and tagged. All lake trout, dead or alive, larger than 25 inches in length caught in entrapping nets shall be returned to the lake. All lake trout and siscowet harvested by commercial and home use fishers shall be tagged in accordance with s. NR 25.06 (3).

SECTION 16. NR 25.09 (1) (e) is created to read:

25.09 Commercial fishing gear. (1) LAKE SUPERIOR. (e) *Ice buoy standards.* Whenever ice may reasonably be expected to encroach upon fishing gear, in lieu of the requirements in s. NR 25.09, no commercial fisher may fish except with gear that meets the following standards:

1. Ice buoys shall have an overall minimum length of 12 feet.

2. At least two feet of any ice buoy shall extend above water with the license number of the commercial fisher visible.

3. The top foot of the above-water portion of an ice buoy shall be marked with the highly visible color known as hunter orange or blaze orange.

SECTION 17. NR 25.10 (1) (b) 1. to 6. and 9. are amended to read:

25.10 Restricted commercial fishing areas. (1) LAKE SUPERIOR. (b)

1. *Saxon Harbor.* All waters bounded by a line beginning at the mouth of Graveyard creek in section 3, township 47 north, range 1 west, extending north to the Gull Island Shoals refuge south boundary as described in s. NR 26.02, then east to the Wisconsin–Michigan state line, then southerly along the state line to the shore at the mouth of the Montreal river in section 7, township 47 north, range 1 east, all in Iron county, except from November 15 through December 15 in water 84 feet (14 fathoms)

deep or deeper, when and where gill nets with a mesh size of not less than 2½ inch and not more than 3 inch stretch measure may be used for taking ~~lake herring~~cisco.

2. *Siskiwit Bay.* That portion of Siskiwit bay lying south of a line extending from Roman (Quarry) point in section 29, township 50 north, range 6 west, to Squaw point in section 22, township 50 north, range 6 west, all in Bayfield county.

3. *Sand Cut.* All waters bounded by a line beginning at the ~~signal~~Chequamegon Point light on the western end of Long island in section 13, township 48 north, range 4 west at ~~N46°43.708'~~46°43'12"N, ~~W90°48.587'~~90°48'10"W, then extending northeasterly to the southernmost point of Madeline island in section 6, township 49 north, range 4 west at ~~N46°45.150'~~ 46°45'09"N, ~~W90°34.500'~~ 90°34'08"W, then due east 2.5 miles to 46°45'11"N 90°44'05"W, then due south 1 mile to 46°44'22"N 90°44'05"W, then due east to 46°44'22"N 90°36'06W, then due north to 46°45'11"N90°36'06"W, then due east to the western boundary of Gull Island Shoals refuge as described in s. NR 26.02, then southerly along the refuge boundary to latitude ~~N46°40'~~ 46°40'00"N at ~~N46°40' W90°37.910'~~90°37'15"W, then due west to the mainland shoreline commonly known as Long Island, then northwesterly along the shoreline to the point of beginning, all in Ashland county, except waters within 1½ miles of the mainland shoreline in Ashland county. No person may fish with entrapment nets in waters starting at 46°45'11"N 90°44'05"W, then due south 1 mile to 46°44'22"N 90°44'05"W, then due east to 46°44'22"N 90°36'06"W, then due north to 46°45'11"N 90°36'06"W, then due west to the starting coordinates of 46°45'11"N 90°44'05"W.

4. *Iron River to Cranberry River.* All waters less than ~~90~~72 feet (~~15~~12 fathoms) deep lying between a point extending due north from the mouth of the Iron river in section 34, township 50 north, range 9 west, and a line extending due north from the mouth of the Cranberry river at Herbster in section 5, township 50 north, range 7 west, all in Bayfield county except float nets described in s. NR 25.09 (1) (ah) 3. may be fished from October 15 to December 31, a minimum distance of 1/2 mile from shore.

5. *Minnesota boundary to Iron River.* All waters less than 210 feet (35 fathoms) deep lying between a line extending due north from the mouth of the Iron river in section 34, township 50 north, range 9 west, Bayfield county, and the Wisconsin-Minnesota state line, except all waters more than 90 feet (15 fathoms) deep lying between a line extending due north from the mouth of the Iron river and a line extending due north from the mouth of the Bois Brule river in section 10, township 49 north, range 10 west, Douglas county, where gill nets with a mesh size of 3 inches or less stretch measure may be used from November 15 through December 31.

6. *Cranberry River to Bark Point.* All waters less than 72 feet (12 fathoms) deep lying between a line extending due north from the mouth of the Cranberry river at Herbster in section 5, township 50 north, range 7 west, and a line extending due north from the northernmost point of Roman (Quarry) point in section 29, township 51 north, range 6 west, all in Bayfield county~~, except that portion of Bark bay lying southwesterly of a line beginning at Roman (Quarry) point and extending northwesterly to Bark point in section 24, township 51 north, range 7 west, all in Bayfield county, which shall be open from April 1 through May 31~~.

9. *Outer Island.* Those waters less than 35 fathoms lying north of latitude ~~46°59.3'~~46°59'18"N refuge line, in grids 1212, 1312 and east of longitude ~~90°25'~~90°25'00"W and south of latitude ~~47°05'~~47°05'00"N in grids 1311 and 1211.

SECTION 18. NR 25.10 (1) (b) 10. is created to read:

25.10 Restricted commercial fishing areas. (1) LAKE SUPERIOR. (b)

10. *Bark Bay.* That portion of Bark bay lying southwesterly of a line beginning at Roman (Quarry) point and extending northwesterly to Bark point in section 24, township 51 north, range 7 west, all in Bayfield county, which shall be open for gill nets from April 1 through May 31 and for entrapment nets only from June 1 to September 30.

SECTION 19. NR 25.10 (1) (c) is amended to read:

25.10 Restricted commercial fishing areas. (1) LAKE SUPERIOR. (c) *Van Tassells Point.*

No commercial fishing gear of any kind except by permit issued under sub. (4) for the taking of whitefish ~~and lake herring~~ only from June 1 to August 15 may be used, set, placed or operated in the following waters: the area from the easterly most tip of Houghton Point, section 27, township 49 north, range 4 west, Bayfield county, northerly along the shoreline to the entry to the city of Bayfield marina, then easterly to Point Defroid on Madeline island, section 30, township 50 north, range 3 west, Ashland county, then southerly along the western end of the island to the tip of Grants Point, section 6, township 49 north, range 3 west, Ashland county, then southerly to Chequamegon Point on the western tip of Long island, section 13, township 49 north, range 4 west, Ashland county, thence southwesterly to the eastern tip of Houghton Point, except that float nets as described in s. NR 25.09 (1) (ah) 3. may be fished ~~under the ice only~~, bottom set gill nets of not less than 4 7/16 inch minimum stretch measure may be fished from November 28 to March 31 of the following year~~under the ice and not from a boat~~ north of latitude

~~N46° 45'~~46° 45'00"N at a minimum depth of 19 fathoms, gill nets of not greater than 1 3/4 inch stretch measure may be fished for smelt and ~~herring~~cisco under the ice, but must be at least 1/2 mile from the mouth of any trout stream, and entrapment gear for smelt may be allowed by permit from ice out to May 15. Commercial trap nets operated under permits issued under sub. (4) for the restricted area described in this paragraph, but not including the exception for float nets as described in s. NR 25.09 (1) (ah) 3., shall be limited to a maximum of one per commercial fishing license and may not be set within the following waters: the area from ~~N46° 44.22' W90° 50.22'~~46°44'01"N 90°50'00" then southeast to ~~N46° 43.08' W90° 49.44'~~46°43'00"N 90°49'00"W then southwest to ~~N46° 42.6' W90° 50.10'~~46°42'00"N 90°50'00"W then northwest to ~~N46°43.74 ' W90° 50.94'~~46°43'01"N 90°50'02"W then northeast to ~~N46° 44.22' W90° 50.22'~~46°44'00"N 90°50'00"W. All commercial fishing gear operated under permits issued under sub. (4) for the restricted area described in this paragraph, but not including the exception for float nets as described in s. NR 25.09 (1) (ah) 3., shall have the fish holding pot portion rendered inoperable after August 15 and shall have the webbing removed from the water on or before August 18.

SECTION 20. NR 25.10 (1) (d) is created to read:

25.10 Restricted commercial fishing areas. (1) LAKE SUPERIOR. (d) Fishing within these areas is subject to the following restrictions.

1. Red Cliff shoreline. No person may place or operate entrapment nets within ½ mile of shore on the westernmost boundary at 46°55'08"N, 90°59'37"W, extending along the 22.6-mile reservation shoreline to the southernmost boundary at 46°50'45"N, 90°47'17W.

2. Bad River shoreline. No person licensed by the state or the Red Cliff band may commercially fish within an area, the boundary of which begins at 46°43'54"N 90°48'27"W, then northeast in a line to 46°44'16"N 90°48'07"W along the eastern boundary of Van Tassell's restricted area described in s. NR 25.10 (1)(c), then east to 46°43'27"N 90°45'52"W at a distance of ½ mile from the shoreline, then continuing east at a distance of 1 ½ miles from the shoreline to the eastern boundary of the Bad River Reservation. To accommodate a ¾-mile safe zone of passage within the Sand Cut Restricted Area, the far northwestern corner of the 1 ½ mile-wide portion of Bad River shoreline area is bounded by an arc between the points 46°43'54"N 90°45'26"W and 46°43'51"N 90°44'37"W.

3. Madeline Island Reservation Shoreline. No person may place or operate entrapment nets in an area starting at the westernmost corner of the Trust parcel, extending due north 1 ½ mile to 46°52'56"N 90°35'22"W and continuing along a 1 ½ mile contour of the island to a maximum easterly boundary of

46°50'56"N 90°32'15"W then circling southwest at a maximum southerly boundary of 46°49'27"N 90°34'26" W then due north to the island.

SECTION 21. NR 25.13 (1) (a) is amended to read:

25.13 Commercial fishing reports. (1) PAPER REPORTING. (a) The biweekly report shall be mailed or delivered to the department at the address provided on the form no later than the ~~Tuesday~~ third working day following the biweekly reporting period. All biweekly commercial fishing reports shall be signed by the commercial fishing licensee under whose license the fish were taken.

SECTION 22. NR 25.13 (2) (d) is repealed.

SECTION 23. EFFECTIVE DATE. This rule takes effect upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

SECTION 25. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on .

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)