

## Opponents of Back 40 mining project welcome Aquila's withdrawal from two contested permits but remain vigilant as company announces new plans

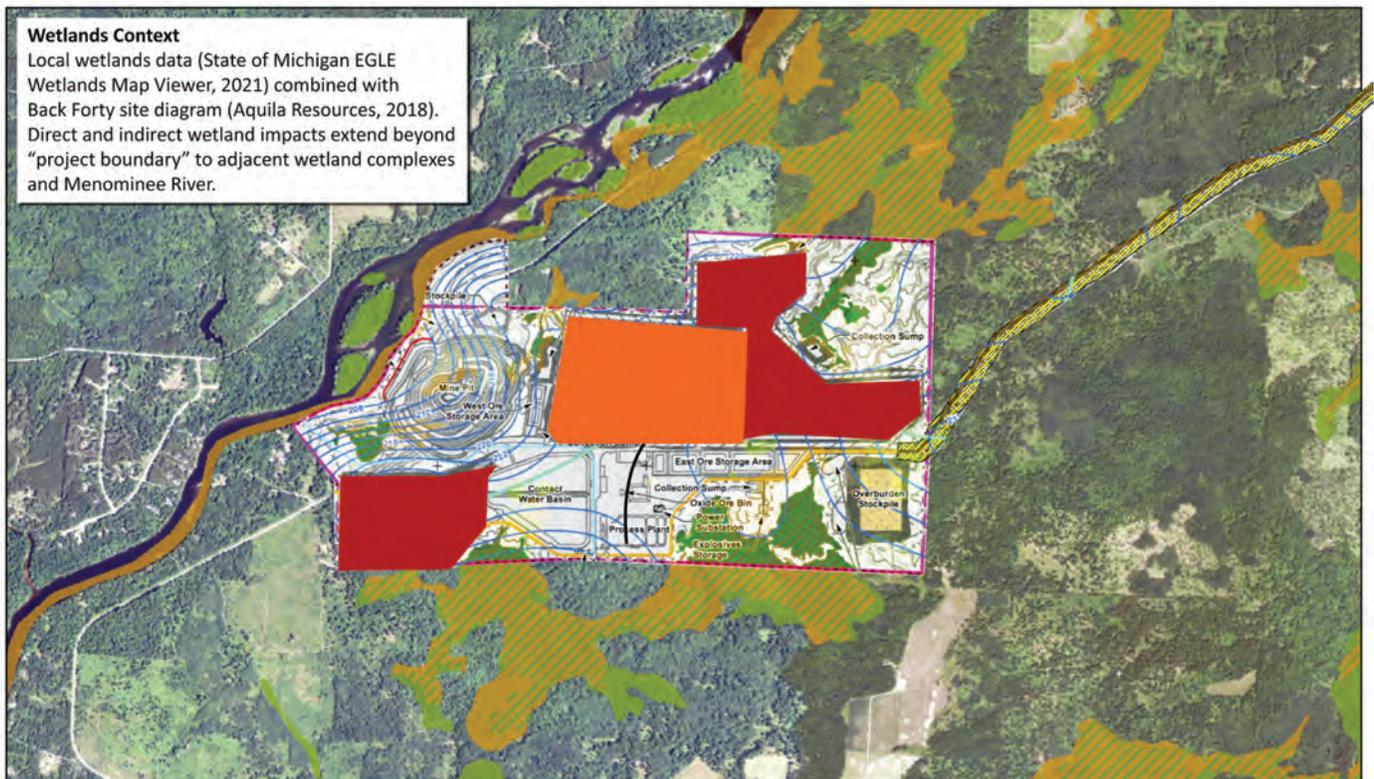
*Michele Bourdieu*

The Menominee Indian Tribe of Wisconsin and environmental groups opposed to Aquila Resources's Back 40 mining project near the Menominee River welcomed news on May 11 that Aquila has determined (1) not to proceed with its appeal of the January 2021 decision by Administrative Law Judge Daniel Pulter to deny the wetlands permit previously issued for the Back 40 and (2) not to proceed with the contested case of the amended Part 632 mining permit for the Back 40—a projected open-pit sulfide mine for gold, zinc, and other metals.

However, groups opposed to the project remain vigilant and concerned about potential pollution of the Menominee River, wetlands, and ecosystem as well as damage to the Menominee tribe's historical and cultural resources, including Native burial mounds and prehistoric gardens located in the area of the proposed mine site.

Environmentalists have long pointed out that Aquila's permits are for an open-pit mine with an estimated life of 7 years while the company has presented the project to

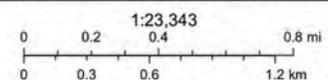
This map of Aquila Resources' proposed Back 40 mining project shows wetlands in the area of the mine site, which is only 150 feet from the Menominee River. Aquila recently withdrew from its appeal on the January 2021 denial of its wetland permit.



January 8, 2021

Part 303 Final Wetlands Inventory

- Wetlands as identified on NWI and MIRIS maps
- Soil areas which include wetland soils
- Wetlands as identified on NWI and MIRIS maps and soil areas which include wetland soils



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

Disclaimer: This map is not intended to be used to determine the specific



This ancestral burial mound is among the archaeological sites near the Menominee River that could be impacted by the proposed Back 40 mine.

investors as including an underground mine that would lengthen the life of the mine to 16 years. This underground “phase” is not included in the permits granted so far by Michigan’s Department of Environment, Great Lakes, and Energy (EGLE) or EGLE’s predecessor, the Michigan Department of Environmental Quality.

Opponents of the mine in both Michigan and Wisconsin have presented many reasons why Aquila lacks a social license to operate a mine that would be located only 150 feet from the Menominee River, which forms a natural border between the two states and which the Menominee people consider the cultural origin of their tribe.

### **Menominee Tribe defends cultural sites near proposed mine site**

“The position of the Menominee Indian Tribe of Wisconsin has consistently been that approval of these permit

applications is inappropriate without an understanding of the true impact of a proposed mine right next to the Menominee River, and we are glad to see the permits withdrawn,” said Gunnar Peters, chairman of Menominee Indian Tribe of Wisconsin. “The proposed project site is sacred to the Menominee people and should remain protected from destruction.”

The tribe has been in litigation against Aquila, with the assistance of Earthjustice attorneys, joining with other opponents of the mine in contested cases over the Michigan permits.

“This victory follows five years of fighting on behalf of the Menominee Tribe to protect the river and the Tribe’s cultural heritage, including the last intact Menominee agricultural village complex remaining in the state of Michigan,” said Earthjustice Attorney Gussie Lord. “The



This photo of the Menominee River was taken near prehistoric garden sites located on State of Michigan land near the proposed mine site. Archaeologists have estimated the gardens date from between 1100 and 1300 AD.

state of Michigan should realize that Aquila Resources has never been honest, nor transparent, about its plans, and that this project cannot be built without pollution, impairment and destruction of the Menominee River and its ecosystem.”

Menominee tribal member Wayne Swett, co-organizer of two annual four-day canoe trips down the Menominee River to call attention to the Back 40—in July of 2019 and 2020—told *Keweenaw Now* he sees Aquila’s withdrawal of the appeal on the wetlands permit as a victory. Moreover, their new plan could be long and costly.

“I guess they are going back to the drawing board to present a whole new plan that would be for an underground mine as I understand,” Swett noted. “I would imagine everything up to now concerning the permits would be null and void and they would have to start the whole process over again. This would mean a long, drawn-out process. Aquila will

never get a social license and the needed permits to start a mine. They are fighting a large costly battle on many fronts. You could say they are fighting the four directions: Tom Boerner, The Menominee nation, the Coalition to Save the Menominee river and Earthjustice. It’s going to be costly to fight on these fronts. Aquila stock isn’t doing very good and investors are shying away; they don’t want to lose money on a company that’s not making forward progress.

“I would like to commend the parties involved in keeping Aquila from progressing and to the justices hearing these cases. Politicians can be bought and swayed but the court is the one with common sense to hear this case. We are gradually wearing down Aquila and like what happened in the Penokees with GTAC [Gogebic Taconite], we are going to chase them [Aquila] out of the area. Common sense tells ya to pack up and move on but I guess Aquila doesn’t even have that.”

Dawn Wilber, Menominee tribal member and teacher of Menominee language and culture at the Menominee Indian High School on the Menominee Reservation, was co-organizer, with Wayne Swett, of the canoe trips. She also participated in the Menominee women’s ceremonies to protect the water during those trips.

“I was very pleased to see the notice about the withdrawal but still remained a little hesitant to actually celebrate because of Aquila’s new plans,” Wilber told *Keweenaw Now*. “We must still stay vigilant in our work for our Mother Earth and our Water.”

**Aquila announces new feasibility study to include underground mine plans**

Aquila’s lack of transparency is evident in the fact that only now is the company publicly admitting to its plan for an underground mine to be extended from the open pit mine described in the permit applications. In their May 11, 2021, press release, Aquila states it is engaging Osisko Technical Services (OTS) to lead an optimized feasibility study that will include its plans for the underground mine, which were left out of the original permits.

“By incorporating the underground mine plan in the Feasibility Study and modifying the Project footprint, the Company expects to demonstrate substantially reduced surface impact, including wetland impacts, and a longer mine life for the benefit of all stakeholders,” Aquila states in the press release.

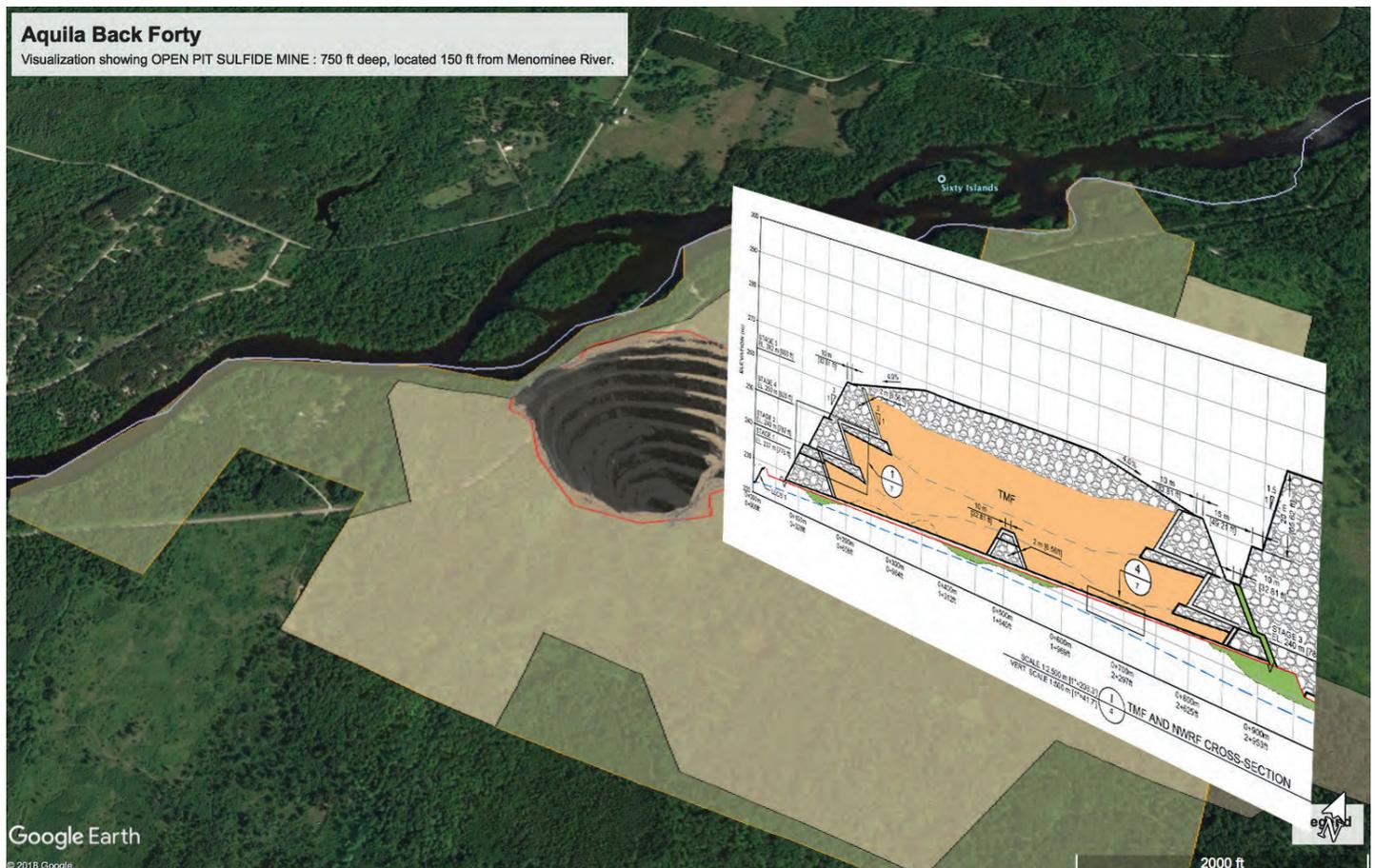
Aquila appears to depend on the feasibility team to come up with a new design that will include the underground mine—a study to be completed in the fourth quarter of 2021.

**Coalition to SAVE the Menominee River, activist experts, continue Back 40 opposition**

Dale Burie, president of the Coalition to SAVE the Menominee River, issued this statement in reaction to Aquila’s announcement:

“The Coalition to SAVE the Menominee River is pleased that the decision of the Administrative law judge will stand and our hard work and efforts have contributed to the protection of the Menominee River and the surrounding wetlands from the detrimental effects of the proposed Back

A diagram of the proposed Back 40 tailings dam as it would be placed next to the open pit in the center. If an underground mine is added, the tailings dam (which presently has a dangerous, unstable design) would have to hold even more mining waste.



KATHLEEN HEIDEMAN / MINING ACTION GROUP

Forty mine. While we expected to prevail before the review panel, it is a welcome development.

“However, as is always the case, the fight goes on. Aquila indicated in its request to abandon its appeal of Judge Pulter’s decision, that it will be submitting a new mine application, later this year, that will for the first time include underground mining. Of course, we always expected going underground to be part of Aquila’s long-term plan. While Aquila will try to spin this as a new strategy to avoid or minimize wetlands impacts, we intend to remain diligent in our efforts and have significant concerns that extensive underground mining and the corresponding groundwater drawdown will have as much or even more impacts on the watershed and could be an even greater threat to the health of the Menominee River. Our Coalition and our partners remain steadfast in our resolve and will continue to fight to protect the Menominee River for all to enjoy.”

Dr. Al Gedicks, executive secretary of the Wisconsin Resources Protection Council and professor emeritus of sociology at the University of Wisconsin-La Crosse, who has warned of the dangers of the huge tailings dam that the Back 40 project would place close to the Menominee River, shares the Coalition’s concerns that Aquila’s new plan could have even greater destructive impacts on the environment. He sent the following comments on Aquila’s new permitting plans to *Keweenaw Now*:

“After Aquila’s decision not to appeal the denial of their wetlands permit they reaffirmed plans to submit a new Mining Permit application that will include both the open pit and underground mine plans,” Dr. Gedicks writes. “To minimize the cost and delay of submitting completely new mining, wetlands, air quality, wastewater discharge and dam safety permit applications, the company would like to submit a consolidated mining permit that would ‘compress the timeline to permit issuances.’ This would place an unfair financial burden on citizens and the Menominee Tribe to review the thousands of pages of technical studies in a short time period. A sequential permit process that allows adequate time for scientific review of each permit, as has been the case in the past, would allow for greater public participation and transparency in the process.”

Dr. Gedicks added his concerns that the impacts of the combined open pit and underground mining project would be unacceptable. “The expansion of the scope of the mine operation means that every aspect of the project has the potential for significant and unacceptable impacts to the

wetlands, air and water quality, groundwater, sacred sites and the safety of the enormous quantity and toxicity of the mine waste in the tailings dam,” Gedicks notes. “The mine expansion will increase the amount of mine waste in the dangerously unstable upstream construction design of the tailings dam. Aquila’s assertion that an expanded mine operation will avoid direct impacts to wetlands is scientific nonsense. These issues cannot be addressed in a rushed and haphazard manner to accommodate Aquila’s promises to its investors.”

Kathleen Heideman of the Mining Action Group, who has studied Aquila’s permits in detail, also commented on Aquila’s lack of transparency.

“Since 2015, Aquila has been telling investors and Canadian regulators that the Back Forty would be a 16-year mine, using both open pit and underground methods,” Heideman writes. “But they told Michigan regulators it would be a 7-year mine, open pit only. Now the whole design of the project will be changing again, if you believe the latest corporate press release. Aquila knowingly misrepresented the scope of the project in their permit applications, which is against the law.”

Heideman also questioned Aquila’s recent claims concerning its NPDES (National Pollutant Discharge Elimination System) permit and its air permit.

“Currently Aquila claims they can ‘keep’ their NPDES and air permits—but these claims appear baseless, since both permits depend on specific pollution calculations related to size of mine, amount of water to be treated, mill capacity (throughput), duration, type of mining operation (emissions from fugitive dust? ventilation stack?), facility layout, et cetera—none of which remains accurate,” Heideman said. “Both the NPDES and air permits expire this year, and ought to be voided or rescinded.”

Heideman offered a positive note for those opposing the Back 40: “It is a really great win for those who have been fighting the Back Forty project and a fitting end to a very bad wetland permit,” she said. “Lawyers cost money, which Aquila clearly doesn’t have.”

Coalition member Tina Lesperance confirmed that financial statement, noting, “Their [Aquila’s] stocks have been steadily falling. They are having a hard time keeping it at .07.” Lesperance, who has worked closely with Menominee leaders of canoe trips on the river to protest the Back 40



The scenic Menominee River, not far from the proposed Back 40 mining project site.

and with Coalition community activities calling attention to the dangers of the Back 40, also expressed determination to continue the fight.

“We knew from the beginning that Aquila planned to mine underground, even as far as possibly going under the Menominee River,” Lesperance said. “Aquila has been trying to get this mine going for almost 20 years and failed. Times have since changed. People are more aware of the dangers to the environment and how we have to protect our water. Governments around the world are realizing the importance of changing our ways and protecting the environment. We have Water Protectors who will never give up their fight to protect our waters and Mother Earth. Aquila’s attempts to mine on the Menominee River failed for 20 years and will continue to fail, as we will never give up the fight to protect our precious river!”

Another Coalition member who says she will never give up the fight is Mary Hansen, who has been organizing regular Friday protests against Back 40 in front of the Ogden Club, a Menominee, Michigan, business that supports Aquila’s project. Reacting to Aquila’s recent announcement of their new plans, Hansen commented, “Their story changes yearly. Ours remains the same. No mine next to, under or near our Menominee River.”

Adjacent landowner Tom Boerner says he has been participating in all the contested case hearings against

Aquila’s permits. “I started opposing this back in 2002 when I discovered persons at Aquila had claimed mineral rights that didn’t belong to them,” Boerner said. “From that point on I knew we were dealing with people who are less than honest. I helped write the Part 632 law as I was appointed to a work group. That went from 2003 to 2004. Unfortunately all the good work we did was negated as once we gave our language to the legislature they took it in the back room and gutted it in favor of mining. So, I’ve been involved in this thing from the beginning.”

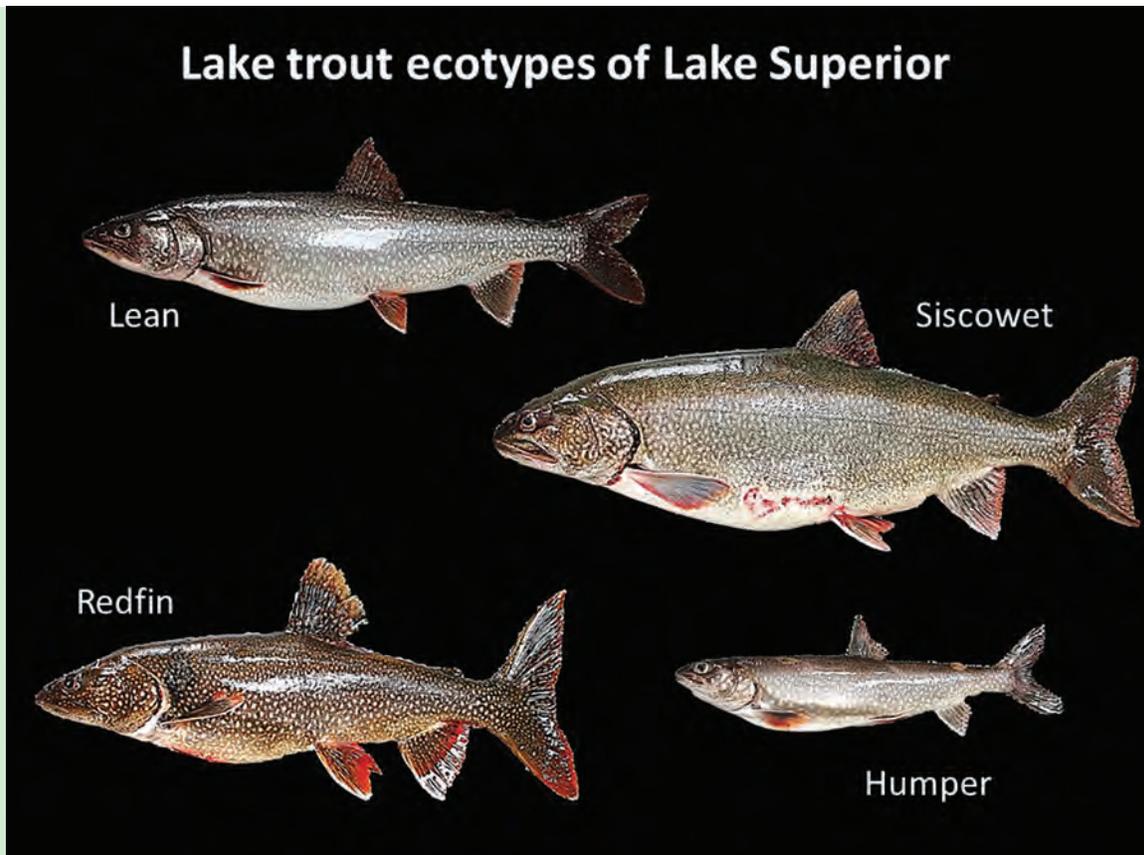
Reacting to Aquila’s latest announcement on the permits and the underground mine plans, Boerner said he believes there is a disconnect between what Aquila tells the state of Michigan and what they tell the rest of the world and that the state “is seen as turning a blind eye to this fact, and the lack of accountability is a significant concern for the public regarding the integrity of the permitting process—for all permits.”

Boerner added, “Now is not the time to stop or rest. Now is the time to make sure we tell the world that the state of Michigan was manipulated and thanks to a small handful of people at one group within EGLE thankfully integrity found its way into the permitting process and going forward a standard for truth has been set.”

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# LAKE SUPERIOR'S UNIQUE LAKE TROUT FISHERIES

Bill Ziegler



Lake trout are native to and historically the dominant game fish in Lake Superior as well as the Upper Great Lakes. Shawn Sitar, Michigan Department of Natural Resources fisheries research biologist and lake trout specialist said, “We are lucky to currently have the world’s largest population of wild lake trout on earth.” As has been well documented, this world-class Lake Superior and Upper Great Lakes lake trout fishery almost collapsed in the 1960s in Lake Superior and the 1940s in Lakes Michigan and Huron. Sitar stated, “Lake trout in Lake Superior are self-sustaining through natural reproduction.” That means lake trout stocking is not required to maintain the population.

As an avid angler who grew up during the depleted trout fishery era of the Upper Great Lakes, I can remember it was always reported that the sea lamprey wiped out the Great Lakes lake trout populations. As a fisheries student at the University of Michigan School of Natural Resources, we learned that was a misleading interpretation of actual history. The commercial fisheries in the Upper Lakes depressed the lake trout populations and then sea lamprey became established and then abundant. These two factors drove “lean” lake trout populations to collapse.

There is also more to the story of lake trout population collapse. Lake Superior has at least four ecotypes (sub-species) of lake trout, according to Sitar. Siscowet lake trout populations never collapsed in Lake Superior. Siscowet lake trout are adapted to live in some of the deeper areas of Lake Superior. The other name for Siscowet lake trout is “fat” lake trout. Siscowets have layers of fat in their flesh that reportedly help with buoyancy regulation. *Fishes of Wisconsin* author G.C. Becker reports, “Siscowet lake trout’s high fat content is some of the highest known in fishes. The percentage of fat increases with the increase in length of the fish.” The main difference between “lean” lake trout and Siscowet (fat) lake trout is that the leans were in high demand from commercial and sport fishers in the past, and Siscowet trout not so much. As for identifying the difference between lean lake trout and Siscowet, Sitar said, “I look for its skull shape: leans have a long skull, pointed snout. Siscowets have a short skull, angled (more rounded) snout and the eye is close to the top of the skull. Their eye is larger diameter than in leans.”

ABOVE Ecotypes of lake trout found in different habitat types in Lake Superior. | R. GOETZ / UNIVERSITY OF WISCONSIN-MILWAUKEE



Derek Smith of Marquette with a nice Lake Superior lake trout.

Sitar stated that “lean lake trout tend to occupy waters less than 250 feet of depth. Siscowet trout tend to be found in waters greater than 250 feet in depth although they are also found in shallower waters. The other two ecotypes (subspecies) are Humpers and Redfins. Humpers are found at offshore island and underwater ‘sea mount’ areas (e.g., Isle Royale, Stannard Rock, Big Reef, Caribou Island). Not much is known about Redfins. Only two locations have documented populations: Isle Royale and Superior Shoal. However, I have seen Redfins near Munising and Big Reef. I suspect they are where the Humpers are.”

As the lake trout were dramatically declining, the Great Lakes Fishery Commission was formed in the mid-1950s. The state, provincial, and federal resource agencies on the

Great Lakes started to work on lake trout rehabilitation. Tribal authorities joined that effort at a later date. Under the auspices of the Great Lake Fishery Commission a massive effort to control sea lamprey and reestablish lake trout populations was carried out by all resource agencies.

Lake trout spawn from mid-October into December from water temperatures between 46 to 52 degrees F. Sitar stated that lake trout were fortunate to have considerable good natural spawning habitat in Lake Superior. “Fortunately, spawning habitat is abundant in Lake Superior along the shoreline as well as many offshore areas.” The federal Lake Superior biologists stationed in Ashland, Wisconsin, consider the Apostle Islands National Lakeshore area to be a good lake trout spawning area for Wisconsin Lake Superior waters. Sitar added that Lake Superior has areas that have *less* lake trout spawning habitat, including the Minnesota shoreline, the west side of the Keweenaw, and from Grand Marais to Whitefish Bay (these areas are sandy, not the rock-type habitat that is preferred).

Sitar noted, “Lake trout are opportunistic, resourceful feeders—they feed on anything they can find in all habitat zones in the lake from the bottom (sculpins, burbot), to mid depth (lake herring and chubs, smaller members of the whitefish subfamily), to the surface (birds, terrestrial insects).” He continued, “They tend to maximize growth by foraging on prey fishes when possible but take advantage of macro-invertebrates. Juvenile lake trout feed mostly on mysis (opossum shrimp) and small prey fishes (smelt, sticklebacks, sculpins). Once they get large enough, lake trout shift to bigger prey fishes though they still consume small prey fish species. Lean lakera appear to overlap with smelt in terms of habitat and especially the smelt spawning run, therefore their stomachs are often packed with smelt in the springtime.”

In the US waters of Lake Superior there is currently no targeted commercial fishery for lake trout (although Michigan commercial fishermen are pushing to get the law changed to allow that again). The tribal commercial fishery (lake whitefish fishery) allows non-targeted lake trout to be taken up to 200,000 pounds per year by agreement between 1993 to 2016 in Michigan waters. Sport anglers have taken about 23,700 lake trout per year in Michigan waters. Sitar stated, “the Apostle Islands area has high levels of fishery exploitation—mostly commercial, so the mortality rates have been near target maximum levels. Whitefish Bay is also an area of concern for lake trout due to excessive commercial fishing (from Canada).”

Wisconsin DNR established two lake trout refuges through an agreement with the tribal commercial fishers. The two refuges are at Gull Island Shoal Refuge (west of Little Girls Point, Michigan), established in 1976, and at Devils Island (in Apostle Islands National Lakeshore), established in 1981. Michigan DNR also established lake trout refuges in Lakes Huron and Michigan. Sitar said in Lake Huron there is the Drummond Island refuge in the north, and Six Fathom Bank/Yankee Reef refuge in central Lake Huron. In Lake Michigan there is the northern refuge near the Beaver Islands; and a mid-lake refuge in the central basin. The refuges are closed to sport and commercial fishing for lake trout.

Sitar noted that the Lake Superior lake trout population in Michigan waters east of the Keweenaw to Munising had reached their carrying capacity probably by the mid-1990s to early 2000s. The populations have corrected (“declined”) somewhat since those days. Lake trout populations are still recovering west of the Keweenaw. Regarding lake trout movement within Lake Superior, conventional tagging

studies indicate that lake trout have broad movement across the lake (along the shallow shelf along the shoreline). In addition, the bulk of the population stays within 50 kilometers (30 miles) of spawning reefs. Tagging studies also reveal that lake trout are long-lived (aged up to 50 years).

Sea lamprey have been largely controlled in the Upper Great Lakes, although under current technology total control is not possible. Sitar felt that “sea lampreys continue to be the significant mortality source in most areas of the upper Great Lakes, especially in northern Lake Michigan. In Lake Superior, they are a problem in Munising-Grand Marais region.”

We are fortunate that, thanks to the Great Lakes Fishery Commission, Great Lakes DNR agencies, the US Fish and Wildlife Service (now partially covered by the US Geological Survey) and Tribal resource agencies, the restoration of lake trout is largely a success story. A recent

Michigan DNR fisheries biologist Shawn Sitar with a 53 inch redfin lake trout that was captured, evaluated and released from the Isle Royale area lake trout survey in 2019.



CHRIS LITTLE



Lake trout lean being caught and returned in Huron Bay, Lake Superior by the author.

report from Ontario is that a strain of lake trout started spawning in the Nimoosh River in recent years. River run lake trout were present in the past in Lake Superior, although they have not shown up for decades. In terms of lake trout fishing in Lake Superior, it may be presumptuous to say “the good old days are now,” although the lake trout fishery for both size structure and abundance is better now than it has been at any point in modern times.

*Bill Ziegler is a regular contributor to UP Environment.*

## MISSED THIS YEAR'S CELEBRATE THE U.P.?

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## ADVANCING COMMUNITY & STEWARDSHIP: UPEC's 2021 Community Conservation & Environmental Education grants

The projects selected for this year's Environmental Education and Community Conservation grants represent an impressive variety of approaches to preserving and enhancing the unique cultural and natural resources of the Upper Peninsula through public education and the promotion of sound land stewardship. The recipients are a mix of new and repeat applicants, and the projects cover a wide swath of the U.P.

The 2021 Environmental Education grant winners are:

- Three Lakes Academy in Curtis, Mackinac County, for upgrades to its exploration station/outdoor classroom. The grant will allow the school to add an enclosed

display case, which will let students share findings from their explorations of nature with the community. The school currently has an open display created from pallets, but the new project will have shelves and a plexiglass covering to protect the displays. The organizers also hope to host some community-based events when current restrictions are lifted.

- Stanton Township Schools, Houghton County, for new composting bins. The school has recently constructed a school/community garden that contains raised beds; in-ground strip garden beds; an orchard containing apple, plum, apricot and pear trees; and a beehive. Student-built composting bins made from wooden

pallets, which are deteriorating due to harsh winter weather, will be replaced by four 172-gallon plastic bins. Students will use the compost from the lunchroom to help enrich the soil for the gardens and orchard.

- In addition, several of the 2020 grantees were allowed to extend their projects into 2021 since they were unable to carry out their plans last year due to the pandemic.

In 2021, Community Conservation grants will go to:

- Bay Mills Indian Community for Spectacle Lake Nature Park, Chippewa County. The award is for implementation of an interpretive trail along the lakeshore. The trail will link to other trails that help define the Bay Mills Indian Community. Spectacle Lake Nature Park will assure that part of the reservation remains undeveloped for all to use.
- Upper Peninsula Land Conservancy for the Dead River Community Forest, Marquette County. The grant will help in the final fundraising push for land acquisition through a matching grant and in the production of numerous short videos to support marketing on social media. The grants committee sees the DRCF as a near-perfect embodiment of what UPEC envisions as a community conservation project: it has rich community support and protects undeveloped areas near population centers.
- Delta Conservation District for invasive plant species control within the new Delta County Community Forest. The money will be used to control several acres of phragmites within the forest wetlands. Phragmites, also known as common reed, is a stubborn, hard-to-eradicate invasive plant that can quickly spread in

wetland areas, depleting nutrients and overtaking space needed for native plants and wildlife to flourish. It blocks access to water, spoils shoreline views, and poses a fire hazard, growing up to 15 feet tall.

- Wild Ones Keweenaw Chapter for native plantings on the streets of Hancock. The award will help turn several weedy boulevard strips into places of beauty and usefulness for pollinators and people. There are neglected corners in many U.P. small towns and villages, and in this project activist gardeners and urban designers will rejuvenate their town with native plant species.
- Keweenaw Natural Areas for The Missing Linkage piece of the Gratiot River protected watershed. This grant marks another step toward the completion of a 30-year-old vision of a protected watershed on the Keweenaw Peninsula. UPEC has provided grants to the project before.
- Coalition to SAVE the Menominee River, Inc., for budgetary support for coalition building and legal expenses to fight the Aquila Back 40 mine project. See the lead article in this issue for the latest developments.
- Bates Township in Iron County for Miskwaagamii-wiziibi Park on the Paint River. The award is for materials to build a rustic shelter at the park. Bates Township and local citizens endeavor to provide a safe and easily approached canoe take-out as well as a rustic cordwood shelter for overnight paddling groups on the river. This community-led park project has been discussed for many decades and the Community Conservation grant will help realize the vision.

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Please give us the honoree's contact information on the space below this form; or, if a memorial, the name and information for a family member.

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