

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

**SUBJECT:**

Request that the Board approve the statement of scope for emergency Board Order FH-26-13(E), proposed rules affecting ch. NR 25 related to amending Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement.

**FOR: September 2013 Board meeting**

**PRESENTER'S NAME AND TITLE:** Mike Staggs, Fisheries Management Bureau Director

**SUMMARY:**

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior.

Lake trout harvest limits will be negotiated among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and need to be put in place by emergency rule for the 2013-14 open season (November 28, 2013 to September 30, 2014). The Wisconsin State-Tribal Technical Committee, which is made up of Department, Red Cliff, and Bad River biologists, has recommended about a 15% reduction in lake trout harvest for the 2013-14 and 2014-15 seasons. However, this is only a recommendation and must be formally agreed upon through the negotiation process before becoming final.

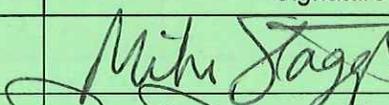
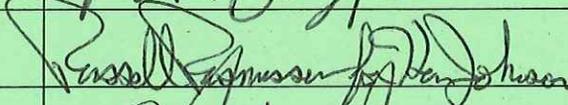
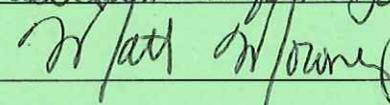
The rule is expected to:

- Modify the annual commercial fishing harvest limit for lake trout on Lake Superior.
- Revise rules used to determine the footage of gill net that may be set in the water by each commercial fisher, also called "fishing effort." No commercial fisher may set more than his or her allowable gill net effort during the lake trout open season, based on a formula to determine each commercial fisher's allowable gill net effort in feet of net. When targeting whitefish with gill nets, each fisher is allowed to fish only the amount of net that would cause an incidental catch and kill of his or her lake trout quota. However, harvest may be only moderately affected because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets.
- Allow the department to enforce a reduced recreational fishing daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest exceeds a percentage of the total allowable harvest. Lake trout harvest limits are created for both commercial and recreational fishers in Lake Superior in order to manage the total population.

**RECOMMENDATION:** That the Board approve the statement of scope for emergency Board Order FH-26-13(E).

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

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

Approved by	Signature	Date
Mike Staggs, Bureau Director		8/15/2013
Ken Johnson, Administrator		8/16/2013
Cathy Stepp, Secretary		9/13/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: FH-26-13 (E) RE: ch. NR 25

Relating to: Lake Trout Harvest Limits in Lake Superior

Rule Type: Emergency

### 1. Finding/nature of emergency (Emergency Rule only):

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, 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 for the 2013-14 lake trout commercial harvest season.

### 2. Detailed description of the objective of the proposed rule:

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement. 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 recreational anglers. The 10-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 Agreement was last negotiated in 2005, and has been amended three times, most recently in November 2012. Lake trout harvest limits will be amended by October 2013 via negotiation between the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and put in place by emergency rule for the 2013-14 open season. The Wisconsin State-Tribal Technical Committee, which is made up of Department, Red Cliff, and Bad River biologists, has recommended about a 15% reduction in lake trout harvest for the 2013-14 and 2014-15 seasons. However, this is only a recommendation and must be formally agreed upon through the negotiation process before becoming final. These harvest limits must be ordered through Administrative Code by emergency rule so limits are in place by November 28, 2013, the beginning of the 2013-14 season.

The rule will:

- Modify the annual commercial fishing harvest limit for lake trout on Lake Superior.
- Revise rules used to determine the footage of gill net that may be set in the water by each fisher, also called "fishing effort." No commercial fisher may set more than his or her allowable gill net effort during the lake trout open season, based on a formula to determine each commercial fisher's allowable gill net effort in feet of net. When targeting whitefish with gill nets, each fisher is allowed to fish only the amount of net that would cause an incidental catch and kill of his or her lake trout quota. However, harvest may be only moderately affected because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets.
- Allow the department to enforce a reduced recreational daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest exceeds a percentage of the total allowable harvest. Lake trout harvest limits are created for both commercial and recreational fishers in Lake Superior in order to manage the total population.

Additional rule changes may be pursued which are reasonably related to those discussed in this scope.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

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 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, these year classes did not attain the abundance originally anticipated and, as a result, the overall lake trout population did not reach the levels previously expected. This combination of increased harvest and re-scaled estimates of lake trout abundance has caused actual 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 continued, persistent decline in lake trout population abundances and predicted further declines necessitate harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

Lake trout harvest limits were reduced by emergency rule for the 2012-13 open season. Rule alternatives are not being considered because the recommendations must be negotiated through the State-Tribal Lake Superior Agreement.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

The proposed rule amends the annual commercial fishing harvest limit for lake trout on Lake Superior, which is an "outlying water." Commercial fishing harvest limits are authorized under s. 29.014(1), Stats., which directs the Department to establish and maintain any bag limits and 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., grants discretion to the Department to establish commercial fish species harvest limits after giving due consideration to the recommendations made by the commercial fishing boards. It also specifies that the limitations on harvests must be based on the available harvestable population of fish and in the wise use and conservation of the fish, so as to prevent over-exploitation.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

Employees may spend up to 200 hours developing the emergency rule. It will require in-state travel to meet with tribal negotiators.

**6. List with description of all entities that may be affected by the proposed rule:**

- State-licensed commercial fishers on Lake Superior
- Recreational fishers on Lake Superior
- Red Cliff Band of Lake Superior Chippewa
- Bad River Band of Lake Superior Chippewa

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.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

No federal regulations apply. None of the rule proposals violate or conflict with federal regulations.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

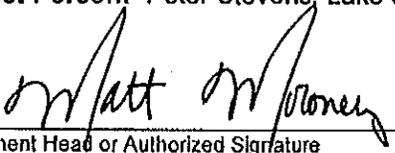
The rule may impact the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to change by more than 15%. Therefore the impacted to the value of the lake trout fishery is not expected to exceed  $\pm$ \$3,000. However, this rule may also alter the amount of gill net effort commercial fishers can use to target whitefish since lake trout are frequently caught in the same nets. Changes in gill net effort therefore have the potential to cause commercial fishers additional income changes. The total dockside value of whitefish harvested by state commercial fishers using gill nets was approximately \$155,000 in 2012. Harvest is expected to be modified by no more than 15% putting the total value adjustment at no more than  $\pm$ \$23,000 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.

**9. Anticipated number, month and locations of public hearings:**

The Department anticipates holding one public hearing in the month of December 2013. Hearing city will be: Bayfield.

The Department will hold the hearing in this location to collect public input on the proposed lake trout harvest quota.

**Contact Person:** Peter Stevens, Lake Superior Fisheries Supervisor, 715-779-4035 ext. 12



Department Head or Authorized Signature

7/29/13

Date Submitted



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

August 13, 2013

Cathy Stepp  
Secretary  
Wisconsin Department of Natural Resources  
101 South Webster St.  
P.O. Box 7921  
Madison, WI 53707-7921

**RE: Scope Statement for FH-26-13 Emergency Rule modifying NR 25 relating to lake trout harvest limits in Lake Superior**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on July 29, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying Chapter NR 25 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

Scott Walker  
Governor