

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

**SUBJECT:**

Request that the Board approve the statement of scope for Board Order FH-16-14(E) for proposed rules affecting chs. NR 20 and 25 related to lake trout harvest limits in Lake Superior.

**FOR: October 2014 Board meeting**

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

**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. The emergency rule is necessary to implement harvest limits for the 2014-15 lake trout harvest seasons.

The 10-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout tribal and commercial harvests. The Agreement was last signed among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa in 2005, and has been amended four times, most recently in October 2013. Negotiations in September 2014 recommended new lake trout commercial harvest limits that need to be put in place by emergency rule.

Harvest limits are created for recreational fishers in Lake Superior as well in order to sustain and manage the total population. The proposed rule would limit the total number of fish that are harvested by recreational fishers, which is measured by department creel surveys.

The rule will:

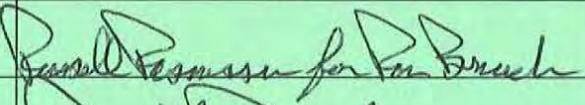
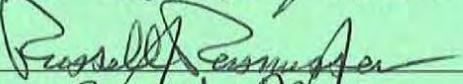
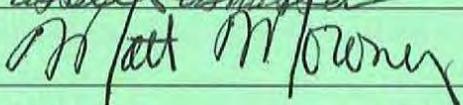
- Modify the commercial fishing harvest limits for lake trout on Lake Superior.
- Revise rules used to determine the footage of gill net that may be set in the water by each fisher, also called "fishing effort."
- Allow the Department to enforce a reduced recreational daily bag limit and/or size limit for lake trout in the Apostle Islands region of Lake Superior.

The rule may have a moderate economic impact (Level 2) in the Lake Superior region, but an exact amount of impact is unknown at this time.

**RECOMMENDATION:** That the Board approve the statement of scope for FH-16-14(E)

**LIST OF ATTACHED MATERIALS:**

- Statement of scope
- Governor approval of statement of scope

Approved by	Signature	Date
Ron Bruch, Bureau Director		9/26/2014
Russ Rasmussen, Division Administrator		9/26/2014
Cathy Stepp, Secretary		10/6/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule officer - LS/8

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: FH-16-14(E)

Relating to: Lake Trout Harvest Limits in Lake Superior (ch. NR 20 and 25)

Rule Type: Emergency

### 1. Finding/nature of emergency:

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 2014-15 lake trout harvest seasons.

### 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. 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 tribal and commercial harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The Agreement was last signed among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa in 2005, and has been amended four times, most recently in October 2013. Negotiations in September 2014 recommended new lake trout harvest limits that need to be put in place by emergency rule for the 2014-15 open season. The Wisconsin State-Tribal Technical Committee, which is made up of Department, Red Cliff, and Bad River biologists, has recommended a reduction in lake trout commercial harvest for the 2014-15 season.

Harvest limits are created for recreational fishers in Lake Superior as well in order to sustain and manage the total population. The proposed rule would limit the total number of fish that are harvested by recreational fishers, which is measured by department creel surveys.

The rule will:

- Modify the commercial fishing harvest limits 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, after fishers have used their allowable gill net effort they can shift to using trap nets, which are not subject to the same effort restrictions governing gill nets.
- Allow the department to enforce a reduced recreational daily bag limit and/or size limit for lake trout in the Apostle Islands region of Lake Superior.

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, successive versions of a statistical catch-at-age model also suggest that previous estimates of lake trout abundance were inflated. This combination of increased harvest and re-scaled estimates of lake trout abundance has resulted in total allowable catch recommendations to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to stop the lean lake trout population's decline. The continued, persistent decline of the lake trout population necessitates harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

Rule alternatives are not being considered because the process is guided by the 2005 State-Tribal Lake Superior Agreement.

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

Section 29.014(1), Stats., 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
- Recreational fishing guides and charter fishing businesses
- Commercial fishers licensed by the Red Cliff Band of Lake Superior Chippewa
- Commercial fishers licensed by the Bad River Band of Lake Superior Chippewa

State-licensed and tribal commercial fishers will 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 will impact the harvest of lake trout and other species by state-licensed commercial fishers, tribal fishers, and sport fishers. Because of the decline in lake trout populations, all of these three groups that fish in Lake Superior would have a reduction in overall harvest limits. The rule may alter the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets, potentially reducing harvest and income. However, the impact can be buffered if fishers shift to using trap nets, which are not subject to the same effort restrictions governing gill nets. Sport fishers will be affected by a change in the lake trout daily bag limit or size limit in order to reduce overall harvest, but this is not expected to cause any expenditures for sport fishers.

The rule imposing harvest reductions is necessary in order to ensure a sustainable lake trout fishery over the long-term, an economic and natural resource benefit for all affected. The rule may have a moderate economic impact in the Lake Superior region, but an exact amount of impact is unknown at this time. The Department 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. In addition, the Department is planning to meet with the state licensed commercial fishers in September 2014 and to hold a public meeting in November 2014 to discuss the rule's lake trout quotas, allocations, and options for the 2014-15 lake trout management actions on Lake Superior, before the rule is finalized.

The proposed rule will have an effect on small businesses, but does not impose any compliance or reporting requirements nor would any design or operational standards be contained in the rule.

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

In November 2014, prior to rule implementation, the Department is planning to hold a public meeting in Ashland to discuss the rule's lake trout quotas, allocations, and options for the 2014-15 lake trout management actions on Lake Superior. The Department anticipates holding one public hearing in the month of February 2015, or within 45 days after the emergency rule is in effect. Hearing city will be: Ashland, WI.

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

**Contact Person:** Terry Margenau, Lake Superior Fisheries Supervisor, 715-779-4035 ext. 15

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Department Head or Authorized Signature

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Date Submitted



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

P.O. Box 7863  
MADISON, WI 53707

September 22, 2014

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

**RE: Scope Statement for NR 20 and 25**  
**Relating to Lake Trout Harvest Limits in Lake Superior**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on September 12, 2014, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule creating/modifying Chapters NR 20 and 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