

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

**SUBJECT:**

Request that the Board approve the statement of scope for Board Order FH-11-16, and conditionally approve the public hearing notice for Board Order FH-11-16 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse proposed rules affecting ch(s). NR 21 and 22 related to commercial fishing in Wisconsin-Minnesota and Wisconsin-Iowa boundary waters.

**FOR: June 2016 Board meeting**

**PRESENTER'S NAME AND TITLE:** Kate Strom Hiorns, Fisheries Policy Specialist

**SUMMARY:**

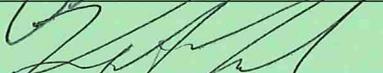
In July 2015, the Minnesota Department of Natural Resources notified WI DNR that several lake sturgeon (a special concern species) and paddlefish (a threatened species) had come ashore with gill net marks and slit bellies, a sign that commercial fishers had caught and released the fish. This happened in the Lake Pepin area of the Mississippi River where both WI and MN commercial fishers are active. Both WI and MN implemented a temporary closure of gill net commercial fishing in Lake Pepin, and WI made plans to create best management practices and ensure commercial fishing activity on the water was compliant with the state's incidental take laws (NR27) related to threatened species.

The proposed rule would codify some of the best management practices, including the closure of gill net fishing in Lake Pepin. The State of Minnesota has also prohibited the use of gill nets in Lake Pepin. Under s. NR 21.11 (1) (p), the department is currently able to require any commercial fisher to cease fishing operations when they are destructive to game fish or will endanger any other species of wild animal. Rather than annually using this policy authority, the changes will be made permanent in chapter NR 21.

**RECOMMENDATION:** That the Board approve the statement of scope and conditionally approve the public hearing notice for Board Order FH-11-16 Board Order FH-11-16 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

**LIST OF ATTACHED MATERIALS:**

- Statement of scope
- Governor approval of statement of scope

Approved by	Signature	Date
Justine Hasz, Bureau Directory		5-17-16
Sanjay Olson, Division Administrator		5-22-16
Cathy Stepp, Secretary		5-24-16

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule officer - LS/8

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** FH-11-16

---

**Relating to:** Commercial Fishing in Wisconsin-Minnesota and Wisconsin-Iowa Boundary Waters  
(NR 21 and 22)

---

**Rule Type:** Permanent

---

### 1. Finding/nature of emergency:

This rule is proposed as a permanent rule.

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

The proposed rule would prohibit the use of gill nets in most of Lake Pepin, an area of the Mississippi River about 60 miles south of St. Paul, Minnesota. The rule would also clarify reporting requirements when commercial fishers incidentally catch living or dead endangered, threatened, or special concern species.

The objective is to reduce and prevent the unintentional bycatch of endangered, threatened, or special concern species when conducting commercial fishing activities on the Mississippi River and its connected waters. It will also provide guidance to commercial fishers if they do encounter rare species.

Additional rule changes may be pursued which are reasonably related to those discussed here.

### 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:

In July 2015, the Minnesota Department of Natural Resources notified WI DNR that several lake sturgeon (a special concern species) and paddlefish (a threatened species) had come ashore with gill net marks and slit bellies, a sign that commercial fishers had caught and released the fish. This happened in the Lake Pepin area of the Mississippi River where both WI and MN commercial fishers are active. Both WI and MN implemented a temporary closure of gill net commercial fishing in Lake Pepin, and WI made plans to create best management practices and ensure commercial fishing activity on the water was compliant with the state's incidental take laws (NR27). The department has developed a draft permit for incidental take of threatened species for commercial fishing activities in the Mississippi River and its connected waters. It also has created best management practices in conjunction with commercial fishers to reduce the take of the rare species in the system.

Commercial fishing in the Mississippi River and connected waters is typically conducted by individuals using nets and setlines. Any WI resident may purchase a net license or setline license. Gill nets are a type of entanglement net in which fish gills become tangled in the net, typically resulting in death of the fish. Gill net seasons are open year-round along the WI-MN and WI-IA boundary waters. There are already areas of the Mississippi River designated in code where gill nets are not allowed.

The proposed rule would codify some of the best management practices, including the closure of gill net fishing in Lake Pepin. The State of Minnesota has also prohibited the use of gill nets in Lake Pepin. Under s. NR 21.11 (1) (p), the department is currently able to require any commercial fisher to cease fishing operations when they are destructive to game fish or will endanger any other species of wild animal. Rather than annually using this policy authority, the changes will be made permanent in chapter NR 21.

**4. Detailed explanation of statutory authority for the rule:**

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 29.604 (1) and (6m), Stats., find that certain wild animals are endangered or threatened and are entitled to preservation and protection as a matter of general state concern, and that the department may issue a permit authorizing a taking that otherwise is prohibited if the taking is only incidental to an otherwise lawful activity.

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

Approximately 180 hours

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

There are approximately 60 commercial fishers with net licenses who may fish anywhere along the Wisconsin waters of the Mississippi River. Only six commercial fishers with net licenses actively fish in Lake Pepin. Approximately 100 people have setline licenses that they are able to use in Wisconsin waters of the Mississippi River, but a majority of those people use setlines solely for recreational fishing.

**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):**

It is expected that the proposed rule would have minimal economic impact overall and on small commercial fishing businesses. (Governor's Executive Order 50, level 3 economic impact analysis of less than \$50,000) Only six commercial fishers actively fish Lake Pepin with gill nets, and only during certain times of the year. To help alleviate any potential loss of fishing activity, the department plans to allow gill net fishing in two bays in the upper portions of Lake Pepin, known as Wacouta Bay and Catherine's Pass, because it is uncommon for paddlefish and lake sturgeon to use these bays.

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.

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

The Department anticipates holding one public hearing in the fall of 2016 in the City of Pepin, WI.

**Contact Person:** Kate Strom Hiorns, 608-266-5206

---

Department Head or Authorized Signature

---

Date Submitted



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

P.O. Box 7863  
MADISON, WI 53707

May 9, 2016

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 21 and 22 (FH-11-16) relating to Commercial Fishing  
in Wisconsin-Minnesota and Wisconsin-Iowa Boundary Waters**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on April 5, 2016, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapters NR 21 and 22 (FH-11-16) of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker".

Scott Walker  
Governor