

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-17-16(E) and Board Order FH-19-16 and conditionally approve the public hearing notice for FH-19-16 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse, for proposed rules affecting chapters NR 20 and 25 related to fish harvest in Lake Superior.

FOR: September 2016 Board meeting

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

SUMMARY:

In order to preserve the welfare of state-licensed commercial fishers, tribal commercial fishers, recreational fishers, and associated businesses, as well as the welfare and sustainability of fish populations in Lake Superior, the department finds that rule changes are necessary to implement harvest regulations. The total allowable catch of commercial fish species in Wisconsin waters of Lake Superior is divided among tribal commercial fishers, tribal subsistence and recreational fishers, state-licensed commercial fishers, and state recreational fishers.

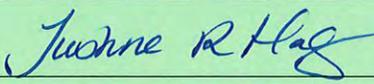
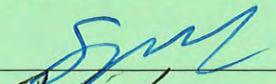
The proposed rule may:

- Modify the commercial fishing harvest limits for fish species in Lake Superior
- Modify the recreational daily bag limit and/or size limit for fish species in Lake Superior
- Adjust where fishing is allowed and where refuges are established
- Alter the amount of effort (gear allowed and length of nets) that commercial fishers may use to target certain species

RECOMMENDATION: That the Board approve the statement of scope and conditionally approve the public hearing notice for FH-17-16(E) and FH-19-16 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 Director		7-19-16
Sanjay Olson, Division Administrator		7/19/16
Cathy Stepp, Secretary		8/31/16

cc: Board Liaison - AD/8

Program attorney – LS/8

Department rule officer – LS/8

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-17-16(E), FH-19-16

Relating to: Fish Harvest in Lake Superior (chs. NR 20 and 25)

Rule Type: Emergency and Permanent

1. Finding/nature of emergency:

In order to preserve the welfare of state-licensed commercial fishers, tribal commercial fishers, recreational fishers, and associated businesses, as well as the welfare and sustainability of fish populations in Lake Superior, the department finds that an emergency rule is necessary to implement harvest regulations.

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

The purpose of the emergency rule, and a possible permanent rule, is to amend Lake Superior harvest regulations. The total allowable catch of commercial fish species in Wisconsin waters of Lake Superior is divided among tribal commercial fishers, tribal subsistence and recreational fishers, state-licensed commercial fishers, and state recreational fishers.

The Wisconsin Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa are signatory to the Lake Superior Fishing Agreement, which specifies the allocation of annual quotas, defines refuges, establishes gear use requirements, and establishes other terms and arrangements for state and tribal fishing activities. The 2005-2015 Lake Superior Fishing Agreement was extended for one year while negotiations occur in 2016. Those negotiations may result in new harvest limits and other provisions related to the management of the fishery. Regardless of the result of the negotiations, adjustments to limits in current Administrative Code must be made to help manage overall populations of Lake Superior fish species and ensure a sustainable fishery over the long-term.

The proposed rule may:

- Modify the commercial fishing harvest limits for fish species in Lake Superior
- Modify the recreational daily bag limit and/or size limit for fish species in Lake Superior
- Adjust where fishing is allowed and where refuges are established
- Alter the amount of effort (gear allowed and length of nets) that commercial fishers may use to target certain species
- Include additional rule changes that 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 Wisconsin State-Tribal Technical Committee, which is made up of Department, Red Cliff, and Bad River biologists, provides recommendations for total allowable species harvest, including lake trout, using the latest available data and modeling results.

For example, there has been a steady decline in 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 produced 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.

The combination of increased harvest and re-scaled estimates of lake trout abundance has led to lower total allowable catch recommendations. While relatively stable indices of spawning lake trout suggest that this decline is still reversible, action needs to be taken to protect the population from further decline. The persistent decline of the lake trout population necessitates harvest reductions in order to ensure a sustainable lake trout fishery over the long-term. Data review such as this, along with other considerations and negotiations, will be taken into account for rules managing the Lake Superior fishery.

The department has implemented varying emergency rules for the Lake Superior fishery over the past three years. A permanent rule has not yet been created because of the status of negotiations with the tribes. However, a permanent rule process may be conducted in 2016 and 2017 so it is in place before the start of the November 2017 lake trout season.

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 will likely spend more than 240 hours developing the emergency rule, including travel time to meet with the Red Cliff and Bad River Bands of Lake Superior Chippewa.

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

- State-licensed commercial fishers on Lake Superior
- Tribal-licensed commercial fishers on Lake Superior
- Recreational fishers on Lake Superior
- Recreational fishing guides and charter fishing businesses

State-licensed 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:

The rule will impact the harvest of lake trout and other species by commercial fishers and recreational fishers. The rule may alter the amount of gillnet effort commercial fishers can use to target lake whitefish, which is the primary species sought by commercial fishers. Lake trout are often caught in the same nets as whitefish. However, the impact of reduced gillnet footage can be buffered if commercial fishers shift to using trap nets, which are not subject to the same effort restrictions governing gillnets. Recreational fishers may be affected by a change in daily bag limits or size limits, but this is not expected to cause any expenditures for recreational fishers. The proposed rule would have an effect on small businesses that

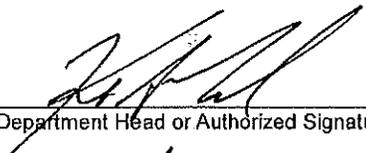
conduct commercial fishing and a potential indirect effect on fishing guides and charter fishing businesses, but would not impose any compliance or reporting requirements.

The rule imposing harvest limits is necessary in order to ensure a sustainable fishery over the long-term that provides an economic and natural resource benefit for all affected. The rule may have a moderate economic impact (Governor's Executive Order 50, level 2 economic impact analysis above \$50,000 but less than \$20 million), but an exact amount of impact is unknown at this time. If a permanent rule is pursued, 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 two public hearings in fall 2016 for the emergency rule. Hearing cities will likely be Ashland and Saxon, WI. Locations and times for a permanent rule will be determined.

Contact Person: Terry Margenau, Lake Superior Fisheries Supervisor, 715-779-4035



Department Head or Authorized Signature

6/24/16

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

July 18, 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 Emergency Rule modifying NR 20 and 25 (FH-17-16 E)
relating to Fish Harvest in Lake Superior**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on June 27, 2016, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying Chapters NR 20 and 25 (FH-17-16 E) 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



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

July 18, 2016

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
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RE: Scope Statement for NR 20 and 25 (FH-19-16)
relating to Fish Harvest in Lake Superior

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Sincerely,

Scott Walker
Governor