

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.C.2

SUBJECT: Request approval of the statement of scope for Board Order FH-10-12, revisions to NR 25 relating to commercial fish harvest limits for bloater chubs and other species in Lake Michigan

FOR: JUNE 2012 BOARD MEETING

TO BE PRESENTED BY / TITLE: William Horns, Great Lakes Fisheries Specialist

SUMMARY:

The Department requests that the Board approve the scope statement for the proposed rule that will adjust the commercial harvest limit for bloater chubs in Lake Michigan. The rule may also include two additional elements: the establishment of criteria for automatic adjustment of commercial harvest limits in the future, and an updated formula for allocating the bloater chub harvest among licensed commercial fishers.

The Department will seek advice from the Lake Michigan Commercial Fishing Board regarding the allocation of a reduced bloater chub harvest limit among commercial fishing license holders and, based on that advice, will update the allocation formula. Under existing practice, harvest limits may be adjusted by rule at any time that assessment data indicate a fish population is either growing or declining. Use of an objective measure for fish population changes will allow the Department to respond in a timely and predictable manner when quota adjustments are necessary. Advantages to automatic adjustment of harvest limits include protecting fish populations by reducing harvest promptly when fish abundance declines and supporting commercial fisheries by allowing immediate harvest increases when fish populations recover.

RECOMMENDATION: Approve scope statement for Board Order FH-10-12, revisions to NR 25 relating to commercial fishing

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input checked="" type="checkbox"/> | Fiscal Estimate Required | Yes | <input type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

Michael Stagg
Bureau Director,

4/25/2012
Date

K. G. [Signature]
Administrator,

5/4/12
Date

W. Matt [Signature]
Secretary, Cathy Stepp

6/17/12
Date

cc: NRB Liaison
DNR Rules Coordinator

Kate Strom Horns FH/4
William Horns FH/4

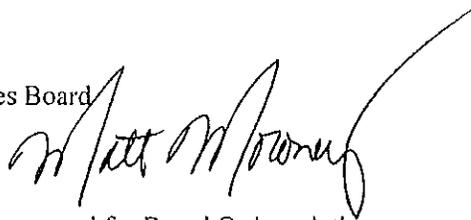
CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: April 12, 2012

TO: Natural Resources Board

FROM: Cathy Stepp



SUBJECT: Scope statement approval for Board Order relating to commercial fishing

Why is the rule being proposed?

The proposed rule will adjust the commercial harvest limit for bloater chubs in Lake Michigan. It may also include two additional elements: 1) the establishment of criteria for automatic adjustment of commercial harvest limits in the future and 2) an updated formula for allocating the bloater chub harvest among licensed commercial fishers.

Bloater chub harvest limits. Great Lakes fish populations fluctuate unpredictably in response to ecosystem changes (including, especially, the proliferation of invasive species). Changes in the abundance of commercial fish species require adjustments in harvest limits in order to either protect declining stocks or to allow commercial fishing businesses to safely exploit increasing stocks. Currently the bloater chub population in Lake Michigan is in a state of severe decline. Even though the reported annual harvest has also declined, new harvest limits are clearly needed to assure that the population is adequately protected now and in the early stages of the hoped-for recovery.

Automatic adjustment of harvest limits. Currently, commercial fish harvest limits are specified in the Administrative Code, so a reduction or increase requires new rule-making. Because rule-making can take two or more years from the time a proposal is initiated to the time it takes effect, the Department is not able to adjust harvest limits in a timely manner. The Department is not able to respond quickly when fish populations decline and harvest reductions are appropriate or when fish populations recover and increased harvests could be sustained. An automated system for adjusting harvest limits in response to changes in objective indices of fish abundances would protect fish populations when abundance declines and support commercial fishing businesses when abundance increases.

Allocation formula. The current allocation formula for bloater chubs was established over 30 years ago. Retirements and transfers of licenses and quota shares since then have made the formula difficult to interpret in the event that harvest limits are sharply cut.

Has the Natural Resources Board dealt with these issues before?

Harvest limits for bloater chubs, yellow perch, lake whitefish, round whitefish, and rainbow smelt have been revised many times (see Table 1 at end of this memo). This is the first time that the establishment of criteria for automatic adjustment of harvest limits has been considered. The formulas for allocating the total allowable commercial harvest among license holders are rarely changed, and the intent here is to clarify and simplify the formula for bloater chubs, not to re-allocate quota shares.

Summary of the rule:

Bloater chub harvest limits. This rule would revise the total allowable annual commercial harvests for bloater chubs from Lake Michigan (s. NR 25.06(2)(a)). The current harvest limit of 3.6 million pounds was established by the Department in 1991. Since then the bloater chub population in Lake Michigan has declined steadily and the reported total annual harvest now falls below 50,000 pounds.



Automatic adjustment of harvest limits. The Department will also consider establishing criteria for automatic adjustment of harvest limits for bloater chubs and other Lake Michigan commercial species, possibly including yellow perch, lake whitefish, round whitefish, and rainbow smelt (s. NR 25.06(2)(b-e)). Criteria to be considered will be objective indices of population abundance.

Allocation formula. Finally, the Department will seek advice from the Lake Michigan Commercial Fishing Board (LMCFB) regarding the allocation of a reduced bloater chub harvest limit among commercial fishing license holders and, based on that advice, may seek to update the allocation formula (s. NR 25.07(2)(a)).

How does this proposal affect existing policy?

Chapter NR 1.04 provides the guiding Department policy related to harvest limits and quota allocations: “(4) The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are limited. The resources will be managed in accordance with sound management principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas.”

Although the development of objective criteria by which harvest limits would be automatically adjusted is a departure from past practice of periodic *ad hoc* adjustments of harvest limits, it is fully consistent with the existing policy. Under existing practice, harvest limits may be adjusted by rule at any time that assessment data indicate that a fish population is either growing or declining. Use of an objective measure for fish population changes will allow the Department to respond in a timely and predictable manner when quota adjustments are necessary. Automatic adjustment of harvest limits will have two advantages: 1) It will protect fish populations by reducing harvests promptly when fish abundance declines. 2) It will support commercial fisheries by allowing immediate harvest increases when fish populations recover.

The Lake Michigan Commercial Fishing Board is directed by s. 29.519(7) to “recommend to the department species harvest limits and formulas for the allotment of individual licensee catch quotas when the department establishes species harvest limits for allocation among licensees.” The Department has held preliminary discussions with the Board members and are aware of some concerns they have raised, including the need to fully consider LMCFB advice during rule development, to find objective criteria that reliably reflect the status of the fish populations, and to consider incorporating more than one data source into the criteria.

Public hearing

One or two public hearings are expected at cities on the Lake Michigan coast, likely in early 2013.

Who will be impacted by the proposed rule? How will they be impacted?

The proposed rule change would affect commercial fishing license holders, fish wholesalers, and others whose interests or businesses are affected by commercial fishing. With automatic adjustments of harvest limits in response to objective indices, the actual harvests would respond more quickly to changes in fish abundance than has been the case in the past. In years of population decline this could reduce revenues of commercial fishers in the short term, but in years of population growth it would increase revenues. The more responsive system would benefit the fish population by restraining harvest in years of decline and benefit commercial fishers by allowing quick increases in harvest in years of population growth.

Level of economic impact expected: Level 2, moderate economic impact of between \$50,000 and \$2,000,000.

Environmental assessment

This is a Type III action under Chapter NR 150, Wis. Admin. Code. No environmental assessment is required.

Small business analysis; Initial regulatory flexibility analysis

The proposed rule change would impact commercial fishing license holders, fish wholesalers, and others whose interests or businesses are affected by commercial fishing. No negative impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes. During rule development, the proposed rule will be available for review and comment at <https://health.wisconsin.gov/admrules/public/Home>.

Table 1.

Commercial harvest limits for Lake Michigan (LM), Green Bay (GB), and Lake Superior (LS) during 1982-2009. All harvest limits are expressed in pounds, except that starting in 1986 harvest limits for Lake Superior lake trout are expressed in numbers of fish. For all changes, dates of NRB adoption are shown.

		Perch (GB)	Perch (LM)	Chubs (LM & GB)	Whitefish (LM & GB)	Menominee (LM & GB)	Forage (LM & GB)	Smelt (LM and GB)	Lake Trout (LS)
1982	May	(no limit)	(no limit)	1,650,000	(no limit)	(no limit)	(no limit)	(no limit)	180,000
1983	Feb.	200,000		2,500,000					
1984	Feb.	350,000		3,000,000					
1986	July	400,000		3,500,000			18,000,000		80,000 fish
1989	Feb.		320,000		1,150,000	75,000		1,000,000 (GB only, no LM limit)	
	Sept.	475,000							
1991	Feb.	400,000							81,200 fish
	Mar.						0	2,358,000 (830,000 from GB)	
	Dec.			3,600,000	1,300,000				
1994	Jun.	300,000							
1995	Apr.		112,000		1,450,000				
1996	Sept.		0						104,400 fish
	Dec.				1,770,000				
1997	Mar.	200,000							
1999	Feb.				2,470,000				
	June							1,000,000 (351,993 from GB)	
2001	Oct.	20,000							
2002	Oct.								126,600 fish
2004	Feb.							1,000,000 (25,000 from GB)	
2005	Dec.	60,000							150,500 fish
2007	Dec.	100,000							
2009	Nov.				2,880,001				
current	limits	100,000	0 ¹	3,600,000	2,880,001	75,000	0 ²	1,000,000 (25,000 from GB)	150,500 fish

¹ The harvest limit of 112,000 is still on the books, but the season is closed.

² By law, alewives and chubs caught during commercial trawling may be landed.

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-10-12

Relating to: Great Lakes commercial fishing harvest limits

Rule Type: Permanent

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

Not applicable

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

This rule would revise the total allowable annual commercial harvests for bloater chubs from Lake Michigan (s. NR 25.06(2)(a), Wis. Adm. Code). The current harvest limit of 3.6 million pounds was established by the Department in 1991. Since then the bloater chub population in Lake Michigan has declined steadily and the reported total annual harvest now falls below 50,000 pounds. The proposed rule may use objective criteria by which harvest limits would be adjusted as fish abundance changes.

We will also consider establishing criteria for automatic adjustment of harvest limits of other Lake Michigan commercial species, possibly including yellow perch, lake whitefish, round whitefish, and rainbow smelt (s. NR 25.06(2)(b-e), Wis. Adm. Code). Those harvest limits have been adjusted many times over the past 30 years as populations have fluctuated.

Finally, we will seek advice from the Lake Michigan Commercial Fishing Board (LMCFB) regarding the allocation of a reduced bloater chub harvest limit among commercial fishing license holders and, based on that advice, may seek to update the allocation formula (s. NR 25.07(2)(a), Wis. Adm. Code).

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:

Chapter NR 1.04, Wis. Adm. Code, provides the guiding Department policy related to harvest limits and quota allocations: "(4) The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are limited. The resources will be managed in accordance with sound management principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas."

Although the development of objective criteria by which harvest limits would be automatically adjusted is a departure from past practice of periodic *ad hoc* adjustments of harvest limits, it is fully consistent with the existing policy. Under existing practice, harvest limits may be adjusted by rule at any time that assessment data indicate that a fish population is either growing or declining. Use of an objective measure for fish population changes will allow the Department to respond in a timely and predictable manner when quota adjustments are necessary. Automatic adjustment of harvest limits will have two advantages: 1) It will protect fish populations by reducing harvests promptly when fish abundance declines. 2) It will support commercial fisheries by allowing immediate harvest increases when fish populations recover.

The Lake Michigan Commercial Fishing Board is directed by s. 29.519(7), Stats., to "recommend to the department species harvest limits and formulas for the allotment of individual licensee catch quotas when the department establishes species harvest limits for allocation among licensees." We have held preliminary discussions with the Board members and are aware of some concerns they have raised, including the need to fully consider LMCFB advice during rule development, to find objective criteria that reliably reflect the status of the fish populations, and to consider incorporating more than one data source into the criteria.

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 open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing hunting and trapping." Section 29.041, Stats., provides that the department "may regulate fishing and fishing on and in all interstate boundary waters, and outlying waters." Section 29.519 (1m) (b), Stats., provides that "After giving due consideration to the recommendations made by the commercial fishing boards under sub. (7), the department may establish species harvest limits and promulgate rules to establish formulas for the allocation of the species harvest limits among commercial fishing licensees or for the allotment of individual licensee catch quotas."

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 approximately 200 hours developing the rule. This will require some within-state travel to meet with the Lake Michigan Commercial Fishing Board and interested members of the public.

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

The rule will affect commercial fishing license holders, fish wholesalers, and others whose interests or businesses are affected by commercial 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:

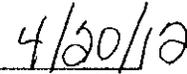
No federal regulations apply.

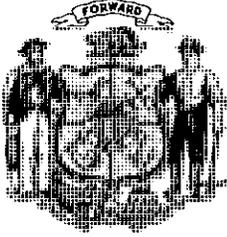
8. Anticipated economic impact of implementing the rule:

Adjustments in harvest limits always affect the livelihoods of commercial fishers and associate businesses, but such adjustments are a necessary part of fisheries management. Because this rule will cause those adjustments to be more timely and responsive to fish population changes it will support stability in fish populations and in the fishery. Harvest limit adjustments can result in economic benefit to commercial fishers or, when the fish population is in decline, economic losses. We expect that the economic analysis will reveal a moderate impact (Level 2) of between \$50,000 and \$2,000,000.

Contact Person: William Horns, Great Lakes Fisheries Specialist, 608-266-8782


Department Head or Authorized Signature


Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 2, 2012

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-10-12

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on April 20, 2012, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 25.06 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", with a stylized flourish at the end.

Scott Walker
Governor