Form 1100-001P (Rev. 11/12)

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

Item No. 3.C.1

SUBJECT:
Request that the Board approve the statement of scope for Board Order FH-26-12, proposed rules affecting ch. NR 25 related to lake trout harvest limits and other issues as required by the State-Tribal Lake Superior Agreement.

FOR: February Board meeting

PRESENTER'S NAME AND TITLE: Peter Stevens, Lake Superior Fisheries Field Unit Supervisor

SUMMARY:
Rule amendements are needed in response to a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior that threatens harvest capability of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses.

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 sport anglers under the 10-year State-Tribal Lake Superior Agreement. It also defines refuges and special fishing areas and establishes other terms and arrangements for state and tribal commercial fishing. The allowable lake trout harvests in the Agreement are determined 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.

The rule will amend the annual commercial fishing harvest limit for lake trout on Lake Superior. Additional rule elements and alternatives will be discussed with the Red Cliff and Bad River Bands of Lake Superior Chippewa and agreements made in the State-Tribal Lake Superior Agreement.

RECOMMENDATION: That the Board approve the statement of scope for Board Order FH-26-12.

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

- ☒ memo to the Board (for scope statement approval)
- ☒ Statement of scope
- ☐ Fiscal estimate and economic impact analysis (EIA) form
- ☐ Response summary
- ☐ Attachments to background memo
- ☒ Governor approval of statement of scope
- ☐ Environmental assessment or impact statement
- ☐ Board order/rule

Approved by	Signature	Date
Mike Staggs, Bureau Director	Michael Staggs	12-21-12
Ken Johnson, Administrator	Ken Johnson	1/3/12
Cathy Stepp, Secretary	Matt Moroney	2/14/13

cc: Board Liaison - AD/8 Program attorney – LS/8 Department rule coordinator – LS/8

State of Wisconsin

CORRESPONDENCE/MEMORANDUM

DATE: November 14, 2012

TO: Natural Resources Board

FROM: Cathy Stepp

SUBJECT: Scope statement approval for Board Order relating to lake trout harvest limits in Lake Superior

Why is the rule being proposed?

A decline in the lake trout population in the Apostle Islands vicinity of Lake Superior threatens harvest capability of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses. The purpose of the rule is to amend Lake Superior lake trout harvest limits and other issues related to shared fisheries as required by revisions to the State-Tribal Lake Superior Agreement.

Has the Natural Resources Board dealt with these issues before?

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 sport 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 is amended as needed in response to lake trout population estimates. The Board has dealt with similar rules in the past to adjust lake trout harvest limits based on those negotiations.

Summary of the rule:

The allowable lake trout harvests are determined 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.

The rule will amend the annual commercial fishing harvest limit for lake trout on Lake Superior. Additional rule elements and alternatives will be discussed with the Red Cliff and Bad River Bands of Lake Superior Chippewa and agreements made in the State-Tribal Lake Superior Agreement.

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."

Public hearing

One public hearing is expected in fall 2013

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

- 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.

Level of economic impact expected: Level 3, minimal economic impact (less than $50,000)

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 state-licensed commercial fishers, tribal commercial fishers, fish wholesalers, and others whose interests or businesses are affected by commercial fishing. Minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements are expected to 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.

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH- 26-12

Relating to: Lake Trout Harvest Limits in Lake Superior

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only): Not applicable

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

A decline in the lake trout population in the Apostle Islands vicinity of Lake Superior threatens harvest capability of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses. The purpose of the rule is to amend Lake Superior lake trout harvest limits and other issues related to shared fisheries 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 sport 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, but has been amended as needed in response to lake trout population estimates. Lake trout harvest limits were negotiated among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa in October 2012 and will be negotiated again in mid-2013. The results of those discussions will be formalized through this permanent rule change.

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 determined 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 due to 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, sea lamprey mortality over the last eight years has also been higher than Lake Superior target levels. This combination of increased harvest and lamprey mortality has caused 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 rule changes to assist in maintaining a sustainable lake trout fishery over the long-term.

The rule will amend the annual commercial fishing harvest limit for lake trout on Lake Superior. Additional rule elements and alternatives will be discussed with the Red Cliff and Bad River Bands of Lake Superior Chippewa and agreements made in 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 will spend approximately 200 hours developing the 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.

8. Anticipated economic impact of implementing the rule:

The exact amount of economic impact is unknown, but is not expected to exceed $50,000 in a fishing season. The total dockside value of the reported state commercial lake trout harvest in 2011 was approximately $20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed $5,000. However, this rule will also limit the amount of gill net effort commercial fishers can use to target whitefish since lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately $160,000 in 2011. Harvest is expected to be reduced by no more than 25% putting the

total loss at no more than $40,000 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.

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

Matt Moran

Department Head or Authorized Signature

11/29/12

Date Submitted

SCOTT WALKER

OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. BOX 7863
MADISON, WI 53707

December 14, 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-26-12 relating to lake trout harvest limits in Lake Superior

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on December 4, 2012, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule FH-26-12. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor