

**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-23-12(E), proposed rules affecting ch. NR 25 related to lake trout harvest limits in Lake Superior.

FOR: January 2013 Board meeting

PRESENTER'S NAME AND TITLE: William Horns, Great Lakes Fisheries Specialist

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 2012-13 lake trout commercial harvest season, as required by revisions to the State-Tribal Lake Superior Agreement.

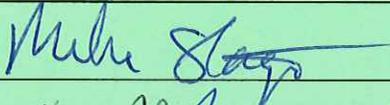
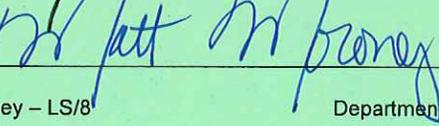
The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. The 10-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, 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, and has been amended twice, most recently in November 2009. Lake trout harvest limits were also negotiated in October 2012 by the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code.

The rule will reduce the annual commercial fishing harvest limit for lake trout on Lake Superior, revise rules limiting gill-net fishing effort, and authorize limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. Rule alternatives are not being considered because the recommendations have been negotiated to develop the State-Tribal Lake Superior Agreement.

RECOMMENDATION: That the Board approve the statement of scope for emergency Board Order FH-23-12(E).

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

- | | |
|--------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> memo to the Board (for scope statement approval) | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Statement of scope | <input checked="" type="checkbox"/> Governor approval of statement of scope |
| <input type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary | <input type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Mike Staggs, Bureau Director		12-21-12
Ken Johnson, Administrator		1/3/12
Cathy Stepp, Secretary		1/7/13

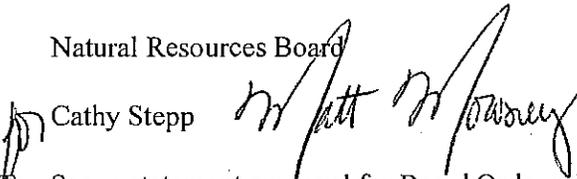
cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: November 6, 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?

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 2012-13 lake trout commercial harvest season.

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 has been amended twice, most recently in November 2009. 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 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.

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits as required by revisions to the State-Tribal Lake Superior Agreement. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code.

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 the current reductions in order to ensure a sustainable lake trout fishery over the long-term.

The rule will reduce the annual commercial fishing harvest limit for lake trout on Lake Superior, revise rules limiting gill-net fishing effort, and authorize limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. Rule alternatives are not being considered because the recommendations have been negotiated to develop 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 early 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 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>.

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-23-12

Relating to: Lake Trout Harvest Limits in Lake Superior

Rule Type: Emergency

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

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 2012-13 lake trout commercial harvest season.

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 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, and has been amended twice, most recently in November 2009. Lake trout harvest limits were amended in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative 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:

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 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 the current reductions in order to ensure a sustainable lake trout fishery over the long-term.

The rule will reduce the annual commercial fishing harvest limit for lake trout on Lake Superior, revise rules limiting gill-net fishing effort, and authorize limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. Rule alternatives are not being considered because the recommendations have been negotiated to develop 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 may spend up to 200 hours in total 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
- 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:

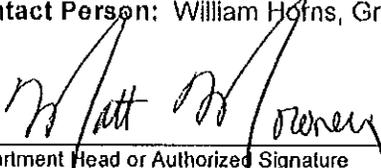
No federal regulations apply.

8. Anticipated economic impact of implementing the rule:

The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. 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. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

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



Department Head or Authorized Signature

11/9/2012

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-23-12 Emergency Rule relating to lake trout harvest
limits in Lake Superior**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on November 9, 2012, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying 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