

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

**SUBJECT:** Request that the board approve the statement of scope for Board Orders FH-01-18(E) and FH-02-18 and conditionally approve the public hearing notice and notice of submittal of proposed rules to the legislative council rules clearinghouse for FH-02-18, proposed rules affecting Ch. NR 20 and 25 related to harvest management regulations in the Lake Superior fishery.

**FOR:** April 2018 Board meeting

**TO BE PRESENTED BY:** Todd Kalish, Fisheries Bureau Deputy Director

**SUMMARY:**

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 has been extended for two years while negotiations occurred. 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 are needed to help manage overall populations of Lake Superior fish species and ensure a sustainable fishery over the long-term.

The proposed rules 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
- Modify the existing harvest reporting requirements
- Include additional rule changes that are reasonably related to those discussed in this statement of scope.


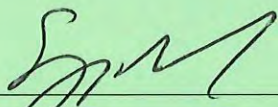

Lake Superior fish include species such as walleye, smallmouth bass, largemouth bass, northern pike, muskellunge, yellow perch, lake sturgeon, lake trout, brown trout, coho salmon, chinook salmon, rainbow trout, splake, brook trout, whitefish, cisco and panfish.

The policy alternatives being considered are not significantly different than current policies which establish harvest limits for both commercial fishers and anglers, and establish areas that are closed to commercial fishing and areas which are open.

**RECOMMENDATION:** Approval of the statement of scope for Board Orders FH-01-18(E) and FH-02-18 and conditional approval of the public hearing notice and notice of submittal of proposed rules to the legislative council rules clearinghouse for FH-02-18, proposed rules affecting Ch. NR 20 and 25 related to harvest management regulations in the Lake Superior fishery.

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

- Background memo
  Governor's letter of approval  
 Scope Statement

Approved by	Signature	Date
Justine Hasz, Fisheries Management Bureau Director		3/7/18
Sanjay Olson, Fish, Wildlife & Parks Division Administrator		3/8/18
Daniel L. Meyer, Secretary		3/8/18

by Ed Eberle

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** FH - 01 - 18 (E) and FH - 02 - 18

**Relating to:** Fisheries harvest management in Lake Superior, Ch's. NR 20 and 25

**Rule Type:** These will be companion emergency and permanent rules

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

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 has been extended for two years while negotiations occurred in 2016 and 2017. 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
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- Modify the existing harvest reporting requirements
- Include additional rule changes that are reasonably related to those discussed in this scope

Lake Superior fish include species such as walleye, smallmouth bass, largemouth bass, northern pike, muskellunge, yellow perch, lake sturgeon, lake trout, brown trout, coho salmon, chinook salmon, rainbow trout, splake, brook trout, whitefish, cisco and panfish.

### 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, harvest methods, and more using the latest available data and modeling results. Based on this information, the department has



implemented varying emergency and permanent rules for the Lake Superior fishery in recent years, primarily regulating harvest of lake trout and cisco. Comprehensive rules addressing all of the species harvested in Lake Superior have not been promulgated, in part because negotiations with the tribes have not been completed. These rule packages are likely to address harvest management of Lake Superior fishes more broadly than previous rule making.

The policy alternatives being considered are not significantly different than current policies which establish harvest limits for both commercial fishers and anglers, and establish areas that are closed to commercial fishing and areas which are open.

Lake Superior Commercial fishers and sport trollers are currently required to report harvest to the department on paper reports. There is an option for commercial fishers to report electronically under current rules but that is not well developed or utilized. The department will evaluate alternatives that would improve reporting. Harvest reporting is also required on Lake Michigan and, for consistency, changes could apply to both lakes.

The policy alternative of not promulgating new rules has been evaluated. The interested groups of stakeholders includes state and tribal harvesters as well as commercial fishers and sport anglers. As conditions on the lake or the way fishing rights are exercised change, not adjusting regulations could result in outcomes that are unacceptable for some interested groups or which the Lake Superior fishery can not sustain.

**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 800 hours developing these rules, approximately one month of effort each for five department staff people. The estimate includes travel time to meet with the Red Cliff and Bad River Bands of Lake Superior Chippewa.

**6. List with description 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

**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. States possess inherent authority to manage the fishery and wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

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 result in expenditures for recreational fishers or changes in fishing activity. 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. Commercial fishers and recreational sport fishing businesses have reporting requirements under current rules and the department will consider ways to improve that process.

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. When the 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:**

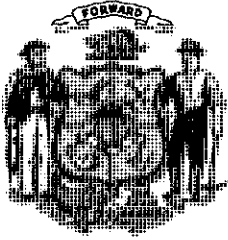
The Department anticipates holding a minimum of two public hearings in summer 2018. Hearing cities will be Ashland and Saxon, WI. Additional hearings will be held if it appears that more locations are needed to accommodate public interests.

Specific locations and times for these hearings will be established after rule language is developed and will be noticed in the Wisconsin Administrative Register.

**Contact Person:** Scott Loomans, Fisheries Program and Policy Analyst

  
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Department Head or Authorized Signature Kurt A. Thiede

  
\_\_\_\_\_  
Date Submitted



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

P.O. Box 7863  
MADISON, WI 53707

January 23, 2018

Daniel Meyer  
Secretary  
Wisconsin Department of Natural Resources  
101 S Webster Street  
P.O. Box 7921  
Madison, WI 53707

**RE: Scope Statement for Emergency Rule creating FH-01-18(E) and FH-02-18 relating to fisheries harvest management in Lake Superior, Ch's. NR 20 and 25**

Dear Secretary Meyer,

I hereby approve the statement of scope submitted on October 17, 2017 to SBO, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule creating Chapters FH-01-18(E) and FH-02-18 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,

A handwritten signature in black ink, appearing to be "S. Walker", written over a horizontal line.

Scott Walker  
Governor



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

P.O. Box 7863  
MADISON, WI 53707

January 23, 2018

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Sincerely,

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Scott Walker  
Governor