

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

**SUBJECT:**

Request that the Board approve the statement of scope for Board Order FH-16-15 and Emergency Board Order FH-15-15(E) and conditionally approve the public hearing notice for those board orders and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse, proposed rules affecting chs. NR 20 and 25 related to lake trout harvest limits in Lake Superior

**FOR: October 2015 Board meeting**

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

**SUMMARY:**

The purpose of the rules is to amend Lake Superior lake trout harvest limits. The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fishers, tribal subsistence fishers, state-licensed commercial fishers, and state recreational anglers.

Adjustments to limits in current Administrative Code must be made to help manage the overall population of lake trout and ensure a sustainable lake trout fishery over the long-term. The recreational lake trout open season runs from December 1 through September 30. The commercial fishing season is open November 28 through September 30.

The proposed rule will:

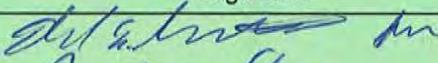
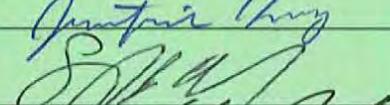
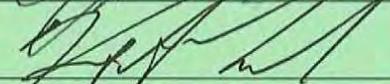
- Modify the commercial fishing harvest limits for lake trout on Lake Superior
- Modify the recreational daily bag limit and/or size limit for lake trout on Lake Superior

The Natural Resources Board approved a lake trout harvest rule in 2014 that expired September 30, 2015. Recent surveys show lake trout numbers remain well below historical averages and another emergency rule is necessary for the 2015-16 season.

**RECOMMENDATION:** That the Board approve the statement of scope and conditionally approve the public hearing notice for Board Order FH-16-15 and Emergency Board Order FH-15-15(E) 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		10/8/2015
Sanjay Olson, Division Administrator		10/11/15
Cathy Stepp, Secretary		10/12/15

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule officer - LS/8

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: FH-15-15(E) and FH-16-15

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

Rule Type: Emergency and Permanent

### 1. Finding/nature of emergency:

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. An emergency rule is necessary to implement harvest limits for the 2015-16 lake trout harvest seasons.

### 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 lake trout harvest limits. The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fishers, tribal subsistence fishers, state-licensed commercial fishers, and state recreational anglers.

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 lake trout quotas, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal fishing activities. The 2005-2015 Lake Superior Fishing Agreement was signed on April 19, 2007 and if not reaffirmed or renegotiated will terminate on November 27, 2015. Negotiations during the fall of 2015 may result in new lake trout harvest limits. Whether or not these negotiations result in agreed upon harvest limits, adjustments to limits in current Administrative Code must be made to help manage the overall population of lake trout and ensure a sustainable lake trout fishery over the long-term. The recreational lake trout open season runs from December 1 through September 30. The commercial fishing season is open November 28 through September 30.

The proposed rule will:

- Modify the commercial fishing harvest limits for lake trout on Lake Superior
- Modify the recreational daily bag limit and/or size limit for lake trout on Lake Superior
- Potentially 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 the total allowable lake trout harvest using the latest available data and modeling results. Although no recommendations were made in 2015, prior years' data and recommendations are being considered in order to change the total annual harvest of lake trout. Other issues related to shared harvest of lake trout and other species are sometimes addressed within the negotiated amendments to the Lake Superior Fishing Agreement.

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.

**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. Because of the decline in lake trout populations, these groups that fish in Lake Superior would have a reduction in overall harvest limits.

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 will be affected by a change in the lake trout daily bag limit or size limit in order to reduce overall harvest, but this is not expected to cause any expenditures for recreational fishers. The proposed rule will have an effect on small businesses that conduct commercial fishing and a potential indirect effect on

fishing guides and charter fishing businesses, but does not impose any compliance or reporting requirements nor would any design or operational standards be contained in the rule.

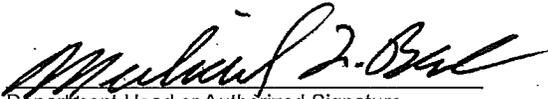
The rule imposing harvest reductions is necessary in order to ensure a sustainable lake trout fishery over the long-term that provides an economic and natural resource benefit for all affected. The rule may have a moderate economic impact in the Lake Superior region, but an exact amount of impact is 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.

The Department is meeting with state-licensed commercial fishers and holding public meetings in September and October 2015 to discuss the lake trout quotas, allocation, and options for management.

**9. Anticipated number, month and locations of public hearings:**

The Department will hold one public hearing in Ashland within 45 days after the emergency rule is in effect to collect additional public input on the rule.

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

  
Department Head or Authorized Signature

9/16/15  
Date Submitted



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

P.O. Box 7863  
MADISON, WI 53707

October 6, 2015

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-15-15 E)  
relating to lake trout harvest limits in Lake Superior**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on September 17, 2015, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying Chapters NR 20 and 25 (FH-15-15 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,

A handwritten signature in black ink, appearing to be "S. Walker".

Scott Walker  
Governor



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

P.O. Box 7863  
MADISON, WI 53707

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Sincerely,

Scott Walker  
Governor