

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-11-23 (E), FH-12-23

Relating to: Lake Superior cisco and lake trout regulations; chs. NR 20 and 25

Rule Type: Both Permanent and Emergency

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

Lake Superior is the largest freshwater lake in the world and its sport, commercial and tribal subsistence fisheries are internationally significant. The welfare of state-licensed commercial fishers, Tribal commercial fishers, recreational anglers, Tribal subsistence fishers, and associated businesses of Lake Superior depends upon abundant, sustainable fish populations. Appropriate quotas and other harvest regulations allow all users to sustainably and equitably utilize the available fishery resources. Wisconsin's jurisdictional waters are cooperatively managed by the state and the Red Cliff and Bad River Bands of Lake Superior Chippewa, which meet annually to develop and update management strategies and associated regulations in a coordinated manner to ensure these goals are met. Additionally, the department and Red Cliff and Bad River Bands reassess harvest quotas on three-year cycles, requiring three years of data to identify trends in fish populations and harvest and determine the need for quota adjustments. Rule promulgation timelines do not allow for a permanent rule to be implemented after such decisions are made but in time for the regulations to be in place for the start of the fishing season. To preserve the welfare of fish populations in Lake Superior and the fishers and businesses that rely on them, the department finds that an emergency rule is necessary to implement rule changes that apply to the harvest of commercial and recreational fish species. In order to use the most current biological information and align with the start of the fishing season, an emergency rule process needs to be implemented.

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

The primary purpose of the emergency and permanent rules is to amend Lake Superior harvest regulations, including cisco and lake trout quotas, individual harvest limits, and associated regulations for the 2023-24 fishing seasons. The current quotas were established through a combination of emergency and permanent rules during 2020 to 2021, and populations are monitored continuously.

The proposed rules are necessary to make changes in response to state-Tribal discussions, annual assessments, and three-year fish population and harvest trend data, and to evaluate cisco and lake trout regulations implemented in 2020 and 2021 (FH-10-20; CR 21-024). These two rules may impact both commercial and recreational fishers, and lake trout and cisco quotas and associated regulations are designed to be updated every three years as new biological data becomes available. The proposed rules will establish revised quotas and regulations that will take effect with the 2023-2024 fishing season.

The Wisconsin Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa cooperatively manage Lake Superior resources. The total allowable catch of commercial fish species in Wisconsin waters of Lake Superior is divided among state-licensed commercial fishers, state recreational fishers, Tribal commercial fishers, and Tribal subsistence and recreational fishers. The state and Tribes meet annually to share data and discuss topics relating to management of the shared Lake Superior fishery.

Adjustments to cisco and lake trout harvest quotas depend on the output of the population models and state-Tribal discussions. Depending on the model outputs or fishery assessment metrics, recommendations could be made to create regulations that address gear restrictions, season dates, or allowable fishing areas. Such adjustments will help the department and Tribes manage overall populations of Lake Superior fish species and ensure a sustainable fishery over the long-term.

The proposed rule may:

- Establish a mechanism in administrative code for allowing lake trout and cisco quotas to be updated more easily based on model outputs or fishery assessment metrics;
- Modify the commercial fishing harvest limits and regulations for commercial fish species in Lake Superior;
- Modify the recreational daily bag limit and/or size limit for lake trout and cisco in Lake Superior;
- Modify the season dates, allowable gear and fishing zones for commercial fish species;
- Modify reporting requirements for commercial fishers;
- Review and revise the requirements for open water permits in Lake Superior;
- Include additional rule changes that are reasonably related to those discussed in this scope statement, including those that are based on current biological data.

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:

Lake Superior offers a diverse fishery in which lake trout, cisco and lake whitefish are the three main commercial fish species. Recreational fishers and local charter and guide businesses also value these species as game fish, and frequently target lake trout and whitefish. Because commercial, recreational and subsistence fishers all depend on a sustainable Lake Superior fishery, harvest regulations must frequently be analyzed and balanced using updated biological data and public input from the different stakeholder groups. It is necessary to implement rule elements that distribute cisco and lake trout harvest equitably among stakeholders. Cisco and lake trout are also vulnerable to overfishing if no harvest restriction is implemented, which could result in population declines for these and other popular fish species and negative consequences for small commercial fishing and charter businesses.

Lake trout are an important game fish species for recreational fishers on Lake Superior. For lake trout, the commercial and recreational harvest is regulated under a quota. The commercial fishing season for lake trout runs from Nov. 28 to Sept. 30 and harvest limits are set at the beginning of each season with a total allowable catch, while the sport fishing season runs from Dec. 1 to Sept. 30 and has a safe harvest of 12,670 in waters of management zone WI-2. However, the department may close the recreational season early if lake trout harvest reaches a harvest closure trigger of 9,500 fish, in order to prevent exceeding the state's total lake trout safe harvest limit. This harvest closure trigger occurs at 9,500 fish because of the short lag in tabulating creel recreational harvest estimates. The recreational bag limit is 2 fish per day in total east of Bark Point in WI-2, with a 15-inch minimum length limit, and only one fish over 25 inches may be harvested.

Cisco are a key species in the Lake Superior ecosystem, and are harvested in Wisconsin waters for commercial, recreational, and subsistence purposes by state licensees and members of the Red Cliff and Bad River Bands of Lake Superior Chippewa. Cisco populations in Lake Superior have been declining and have lacked strong year classes to help rebuild the population. In 2020-21, a revised cisco quota of 1,794,000 pounds, split equally between the state and the Bad River and Red Cliff Bands of the Lake Superior Chippewa, went into effect. The recreational fishing season for cisco is open year-round in Lake Superior with a 10-fish daily bag limit per person and no size limit, and recreational cisco harvest is minimal. However, populations are still vulnerable and the harvest limit needs to be reviewed periodically to ensure a sustainable cisco population is maintained.

While the current quotas are set as numbers in administrative code, the rule-making process is not nimble enough to adjust quotas in a timely manner following joint biological data review and discussion between the department and the Tribes, thus requiring a combination of emergency and permanent rules in order to

implement and maintain the updated quotas throughout the fishing seasons. Therefore, similar to the quotas for certain wildlife species and lake whitefish in Lake Michigan, this rule may establish a quota update mechanism that establishes the methods used to develop the cisco and lake trout quotas while also allowing for public input. This would involve developing an accompanying public process in administrative code.

The proposed rules may also revise cisco and lake trout harvest regulations for commercial fishers and potentially for recreational anglers in Lake Superior, with the potential for other related rule elements for commercial fish species management including season dates, allowable gear and fishing zones for commercial fishers and bag, length and season limits for recreational fishers. The rules may define how population assessments will be calculated, a methodology to determine total and individual commercial harvest limits, and reporting and monitoring requirements.

Adjustments to limits in current administrative code must be made to help manage the overall populations of commercial fish species and ensure a sustainable fishery over the long-term. The department has implemented various emergency rules for the Lake Superior fishery over the past several years, and this emergency rule will be similar in structure to those rules. A permanent rule will be developed following implementation of the emergency rule.

This rule may also amend the tagging and marking requirements for Lake Superior commercial gill nets to improve consistency among gill nets of different mesh sizes and allow for better tracking of commercial effort.

This rule may also amend allowable trap net specifications for Lake Superior commercial trap nets to prevent capture of illegal fish.

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. In order to establish harvest limits, s. 29.519 (1m) (b), Stats., grants the department the authority to promulgate rules establishing formulas for harvest allocations among licensees or for the allotment of individual licensee catch quotas. Additional authorities granted

to the department through s. 29.519 (1m) (b), Stats., include the authority to designate the size, kind and amount of gear allowed for harvesting fish, the authority to restrict the number of licenses issued, and the authority to designate areas in outlying waters as restricted to commercial fishing operations. This section also specifies that the limitations on harvests, licenses, restricted areas, and gear must be based on the available harvestable population of fish and must uphold the wise use and conservation of the fish to prevent overexploitation.

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 300 hours developing the emergency rule and permanent rules, including travel time to meet with the Red Cliff and Bad River Bands of Lake Superior Chippewa and meetings with the Lake Superior Commercial Fishing Board and other stakeholders.

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

- State-licensed commercial fishers on Lake Superior
- Tribally licensed commercial and subsistence fishers on Lake Superior (indirect impact)
- Recreational fishers on Lake Superior
- Related fishing businesses such as recreational fishing guides and charter fishing businesses that operate in the area of Lake Superior, and wholesale fish dealers who purchase fish from commercial fishers

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 (note if the rule is likely to have an economic impact on small businesses):

The proposed rules could have an impact on the harvest of Lake Superior fish species, including cisco and lake trout, by commercial fishers and recreational fishers. Rules imposing harvest restrictions are necessary in order to ensure a sustainable fishery over the long-term that provides an economic and natural resource benefit for all user groups. The proposed permanent rule may have a moderate economic impact (economic impact above \$50,000 but less than \$20 million), but an exact amount of impact is unknown at this time. When a permanent rule is pursued, the department will prepare an economic impact analysis and will solicit input and comments from any individuals, businesses, local governments, or other entities that expect to be affected economically by the proposed rule change.

Average state-licensed commercial fishers' annual catch between 2019 and 2022 was 631,754 round pounds of cisco and 30,702 dressed pounds of lake trout. In 2022, the cisco price per pound was \$0.25-0.80, but has been as high as \$1.20 per pound since 2012. While the price per pound has varied over time, estimated total value of the commercial cisco roe fishery is between \$200,000 and \$500,000 per year. Lake trout price per pound has been approximately \$1.50 per pound and has not fluctuated as much due to the lack of international forces present with the cisco roe fishery. The estimated dockside values are also considered minimum values obtained and retail markets are likely much higher. The methods in the proposed rules for determining harvest restrictions are expected to allow commercial fishers to harvest at or near the current total average annual catch amount. Therefore, the rules may have minimal to moderate economic impact on commercial fishing businesses. Outside of the rules, market demand and fuel and other variable expenditures would have a greater economic impact. The proposed rules will allow the department to reduce or increase the harvest limit based on assessment data and recommended harvest parameters.

Recreational fishers may be affected if changes to recreational seasons, daily bag limits, or size limits are needed in order to manage overall harvest. If so, such changes are not expected to cause any new expenditures for recreational fishers. The proposed rules may have an indirect effect on fishing guides and charter fishing businesses, but total allowable harvest of the main target of the fishery, lake trout, is expected to be similar or to increase and therefore could benefit these businesses and recreational fishers with a reduction in the chance of an early season closure.

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

The department anticipates holding one public hearing in the month of December 2023 for the emergency rule and one public hearing in the month of May 2024 for the permanent rule. The hearings will be held virtually or in the city of Ashland, WI.

The department will hold these hearings in these locations to obtain feedback on the proposed rules from Lake Superior stakeholders and the public.

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For

Adam N. Payne, Secretary

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