

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** FH-10-20 and FH-12-20 (E)

**Relating to:** Fish harvest in Lake Superior, chs. 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 and commercial fisheries are internationally significant. The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses of Lake Superior depends upon abundant, sustainable fish populations. Additionally, appropriate quotas will allow commercial and recreational fishers to sustainably utilize the available fishery resources while managing harvest of species currently experiencing a population decline, such as cisco. Three years of data are required to identify trends in fish populations and harvest and formulate management decisions, and 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 commercial 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 fish species. In order to use the most current biological information and align with the start of the commercial season, an emergency rule process needs to be implemented.

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

The 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 2021 season. The current quotas were established through a combination of emergency and permanent rules from 2016 to 2018, and populations are monitored continuously. The potential changes are not directly related to rule FH-02-18 (CR 19-103), which implemented broad regulations across the Lake Superior commercial fishery and addressed harvest allocations between the state and Lake Superior Chippewa tribes, but not the overall quota. Rather, the proposed rules are necessary to make changes resulting from the annual assessments of Lake Superior fisheries during a three-year period, and to

evaluate cisco and lake trout regulations implemented in 2017 (FH-13-16; CR 16-061) and 2018 (FH-19-16; CR 17-071) respectively. The cisco quota established in 2017 will sunset on Jan. 1, 2021. These two rules may impact both commercial and recreational fishers, and are designed to be updated every two to three years as new biological data becomes available. The proposed rules will establish revised quotas and regulations that will take effect with the 2021 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. Adjustments to cisco and lake trout harvest quotas depend on the output of the population models. Depending on the model output, recommendations could be made to create regulations that address gear restrictions, season dates, or allowable fishing areas. These adjustments will also 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 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;
- 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 be analyzed and balanced using updated biological data and public input from the different stakeholder groups.

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 17,000 in waters of management zone WI-2. However, the department may close the recreational season early if lake trout harvest reaches a harvest trigger of 12,800 fish, in order to prevent exceeding the state's total lake trout safe harvest limit. 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.

Lake trout abundance in Lake Superior experienced a decline from the early 2000s to 2013, but has been gradually increasing since 2014. This trend is due to a reduction in sport and commercial fishing mortality through a reduction in total allowable catch and an apparent influx of younger fish. Total allowable catch is determined through use of a statistical catch-at-age model in WI-2 and a static quota in WI-1. Assessment data and harvest reports during the last three years will be used to update the statistical catch-at-age model in WI-2 to revise the recommend total allowable catch.

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 Indians. Cisco populations in Lake Superior have been declining and have lacked strong year classes to help rebuild the population. Since 2016, cisco harvest regulations have included a harvest limit of 7.5 percent of the total cisco biomass estimate in round weight pounds of cisco, not to exceed 1,497,900 round weight pounds in a calendar year, as well as specific date restrictions for certain types of commercial fishing gear for state users. 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 declining and the harvest limit needs to be reduced further in attempts to create a sustainable cisco population.

A healthy cisco population is important for several reasons:

- Cisco are an important species for both sport and commercial harvest. Cisco contribute to the local economy through the tourism, guiding, charter and commercial fishing industries.
- Cisco are an important food chain link between trophic levels. They link the lower (zooplankton) to the upper (lake trout) trophic levels.
- Cisco reproduction is variable, with populations relying on strong year classes (fish born in the same year) to sustain them. This unpredictable year to year recruitment into the population can make cisco vulnerable to overfishing. Cisco are also important forage food for lake trout, a species which has been showing signs of increasing.
- A decline in cisco could have negative consequences on whitefish and other near-shore fish, because the eggs of cisco are an important part of other species' diets.

- The link between Wisconsin's waters and those of other jurisdictions is not totally understood. Some jurisdictions believe that harvest in Wisconsin waters acts as a driver for populations elsewhere in the lake.

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

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.

#### **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 overexploitation.

#### **5. Estimate of a 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
- Tribal-licensed commercial fishers on Lake Superior (indirect impact)
- Recreational fishers on Lake Superior
- Related fishing businesses such as 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. 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 rules could have an impact on the harvest of Lake Superior fish species, including cisco and lake trout, by commercial fishers and recreational fishers. The 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 permanent rule may have a moderate economic impact (economic impact analysis 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 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.

Average state-licensed commercial fishers' annual catch between 2016 and 2019 was 688,710 round pounds of cisco and 28,137 dressed pounds of lake trout. In 2019, the cisco price per pound was \$0.40-0.75, 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 \$1.00 per pound and has not fluctuated as much due to the lack of international forces present with the cisco roe fishery. The methods in the 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 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 a change to recreational seasons, daily bag limits, or size limits is needed in order to manage overall harvest. If so, that is 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 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 November 2020 for the emergency rule and one public hearing in the month of January 2021 for the permanent rule. The hearing city for both will be: Ashland, WI.

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

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Preston D. Cole, Secretary

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Date Submitted