

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FH-21-24

Relating to: NR 25, Establishing a Lake Michigan lake trout commercial harvest and associated regulations and NR 20, lake trout harvest, bag limits, and season

Rule Type: Permanent

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

This will be a permanent rule.

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

This rule will primarily seek to establish a commercial bycatch fishery for lake trout in Wisconsin waters of Lake Michigan as part of Lake Whitefish fishing. Topics which may be addressed as part of this rulemaking include but are not limited to: lake trout management zones; locations where harvest may or may not occur, such as restricted fishing areas and refuges; season dates; size limits; total allowable catch (TAC) of lake trout; allocations of the TAC between the commercial and recreational fisheries; allocation of the TAC between individual commercial fishers; tagging requirements; reporting requirements; and potential lake trout tag transfers. This rule may additionally update lake trout sport fishery regulations, as needed, including individual bag limits, and sport fishing seasons. The rule may include a sunset date. Additionally, rule changes that are reasonably related to those discussed in this scope statement may be included.

Lake Michigan lake trout Total Allowable Catch and harvest regulations

Lake trout are a critical component of a diverse Lake Michigan fishery, and have been the focus of significant, cooperative rehabilitation efforts since the 1950s, when lake trout neared the point of extinction.

Commercial fishing for lake trout in Wisconsin waters of Lake Michigan dates back to at least the late 1880s, with stable harvest from 1915-1945. After 1945, lake trout populations collapsed due to the invasion of sea lamprey and overfishing. This led to a substantial decline in sport and commercial harvest. No commercial lake trout fisheries have existed in Wisconsin waters of Lake Michigan since the 1960s. A sport fishery currently exists, with past and current limitations to reduce mortality on lake trout, including a total allowable catch, individual bag limits, season closures, and area restrictions.

Establishing a self-sustaining population of lake trout has been identified as a priority for Lake Michigan on a lake-wide scale. Lake trout rehabilitation is ongoing and achieved through cooperation and collaboration of numerous federal, state and tribal governments and academic entities organized through the Joint Strategic Plan for Management of Great Lakes Fisheries and the Great Lakes Fishery

Commission. Wisconsin is a signatory to the Joint Strategic Plan and actively participates in multi-jurisdictional collaboratives.

The three main activities actively being implemented in Lake Michigan for lake trout rehabilitation are sea lamprey control, lake trout stocking, and control of lake trout mortality. Through rehabilitation efforts, the lake trout populations have begun to recover, with some successful, albeit limited, natural reproduction occurring in portions of Wisconsin waters. The Lake Trout Working Group, operating under the direction of the [Lake Michigan Technical Committee](#), coordinates lake-wide surveys to monitor the status of lake trout populations and utilizes various data inputs in the recently completed Lake Michigan Lake Trout statistical catch-at-age (SCAA) model (e.g., WI345 model is specific to Wisconsin waters) to manage current lake trout populations. The TAC for the sport fishery is currently generated under this new model framework.

Despite these efforts, data demonstrates many lake-wide lake trout rehabilitation goals remain unmet. Some areas of the lake are farther along in restoring lake trout than others, and the limited natural reproduction that is occurring is insufficient for lake trout to be self-sustaining.

The Lake Michigan Commercial Fishing Board has requested that a portion of the TAC be allocated for the commercial fishing industry. When developing specific rules and regulations for a possible new lake trout commercial fishery (e.g., item 3 below), it will be important to consider many factors including commercial fishers, sport fishers, and ongoing efforts for lake trout rehabilitation.

Currently, the total allowable catch, as calculated through the lake trout SCAA model, is 48,443 lake trout. From 2019-2023, the annual sport harvest of lake trout averaged 32,252 fish. During this time period, the highest annual harvest was 40,145 lake trout in 2021, and the lowest annual harvest was 23,067 lake trout in 2022. In addition, from 2019-2023 an average of 86% of lake trout harvested came from Kenosha to Sheboygan. The current sport lake trout regulation is open all year with an aggregate bag limit of 5 in total across all species of trout and salmon and a minimum length limit of 10 inches except that no fishing for lake trout is allowed in the Mid Lake Reef Complex.

A targeted commercial harvest has the potential for greater impact to the fishery than a bycatch fishery due to higher potential catch and catch rates. In contrast to Lake Michigan, Wisconsin waters of Lake Superior (WI-2) is home to a self-sustaining, naturally reproducing lake trout population. While commercial harvest of lake trout is permitted on Lake Superior, fish may only be retained as bycatch to the lake whitefish fishery. Lake whitefish, and lake trout are found in similar habitats. To protect the more vulnerable lake trout, effort controls, seasons, protected areas, catch and size limits are used to manage the fishery and have contributed to the long-term sustainability of the Lake Superior lake trout population.

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:

This rulemaking will establish a new commercial bycatch fishery for lake trout in Lake Michigan, in which lake trout bycatch that is incidental to the commercial harvest of lake whitefish may be sold and retained in certain circumstances. Currently, the commercial harvest of lake trout is prohibited, such that sufficient regulations to implement this fishery are not in place. The establishment of a new fishery involves many components, which may be included in this rulemaking.

This rule may establish lake trout management zones and clarify the locations where commercial harvest of lake trout may or may not occur, such as through restricted fishing areas or refuges. As currently established, the Clay Banks area will remain a restricted area for commercial fishing and the Mid-Lake Reef Complex, which is currently established as a refuge closed to sport harvest of lake trout, will also be closed to commercial harvest of lake trout.

This rule may establish size limits for commercially harvested lake trout. This rule will establish that lake trout in the “Do Not Eat” category of the Department’s Choose Wisely publication would not be allowed for commercial harvest. Currently, lake trout larger than 29 inches fall into this category (2024).

This rule may establish a lake trout total allowable catch (TAC). Alternatively, the rule may establish the manner by which the TAC is determined and the frequency of such determinations. This rule may also establish a minimum TAC that would be required in order for commercial harvest to be permitted.

This rule may allocate the lake trout TAC between the commercial and sport fisheries and may establish a mechanism for making adjustments to this ratio in the future. The proposed allocation of the TAC will be no more than 20% for the commercial fishery.

This rule may establish the manner in which the commercial TAC is allocated between any lake trout management zones and the allocation to the commercial fishery is further subdivided between individual licenses.

This rule will specify that individual allotments of lake trout will be made through the issuance of Department tags. Current s. 25.022, Stats., Wis. Admin. Code requires commercially caught lake trout to be tagged prior to sale or transport.

This rule may establish times of year in which commercial lake trout harvest is not permitted, such as during typical spawning seasons. Like many fish species, lake trout are especially vulnerable during their spawning season because they congregate on spawning reefs.

This rule may establish a mechanism for adjusting sport bag limits or season length in response to a new TAC or exceedance of the TAC.

This rule may limit the commercial harvest of lake trout based on origin of the fish (naturally reproduced or stocked).

This rule may address the disposition of lake trout caught as bycatch after a commercial licensee has fulfilled their individual lake trout allotment.

This rule may revise the information that is required to be included in commercial fishing reports and include requirements related to the collection and submission of lake trout biological data, such as length, weight, fin clip, snout removal if lake trout has an adipose-only fin clip, or other data.

This rule may include a sunset date to ensure the long-term sustainability of a lake trout population that is not yet fully rehabilitated.

Advice will be sought from the Lake Michigan Commercial Fishing Board (LMCFB) regarding these proposed rule changes. The LMCFB is directed by s. 29.519 (7), Stats., Wis. Admin. Code to “recommend to the department species harvest limits and formulas for the allotment of individual licensee catch quotas when the department establishes species harvest limits for allocation among licensees.” Additionally, the LMCFB “may also advise the department on all other commercial fishing matters relating to Lake Michigan”.

Advice will additionally be sought from the Wisconsin Conservation Congress (WCC) regarding these proposed rule changes. The WCC is directed by s. 15.348, Stats., Wis. Admin. Code to “serve in an advisory capacity to the Natural Resources Board on all matters under the jurisdiction of the Board.”

In addition, this scope statement reflects input from the Lake Michigan Lake Trout Commercial Fishing Stakeholder Group. The work group consisted of Lake Michigan Commercial Fishing Board members, a Lake Michigan wholesale fish dealer, a restaurant owner that sells Lake Michigan fish, sport trollers and fishing guides, general anglers and sport fishing groups, the Wisconsin Economic Development Corporation, the WCC, the WI Sea Grant, and the WI Department of Natural Resources. The work group met four times in 2023 to provide input and perspectives on Lake Michigan lake trout commercial harvest concepts.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Under s. 29.014 (1), Stats., Wis. Admin. Code “Rulemaking for this chapter,” the department is directed to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

The department is authorized to regulate fishing on and in all interstate boundary waters and outlying waters by s. 29.041, Stats., Wis. Admin. Code “Department to regulate hunting and fishing in interstate waters.”

Provisions of s. 29.053 (2), Stats., Wis. Admin. Code “Specific open and closed seasons,” provide that the department may establish conditions governing the taking of fish for the state as a whole, for counties or parts of counties, or for waterbodies or parts of waterbodies.

Under s. 29.519 (1m) (b), Stats., Wis. Admin. Code “Commercial fishing in outlying waters,” the department is granted the authority to establish restrictions on the kinds, size and amount of gear used in commercial fishing. Finally, s. 29.519 (6), Stats., Wis. Admin. Code authorizes the department to conduct inspections of buildings, boats, vehicles, storage and records associated with commercial fishing operations.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 1,200 employee hours will be required to hold public meetings, attend Lake Michigan Commercial Fishing Board meetings, attend sport club meetings, discuss rule options, develop rule language and hold public hearings.

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

Wisconsin-licensed commercial fishers, wholesale fish dealers, and others whose businesses are tied to commercial fishing, in addition to consumers, will be affected by this rule. Sport fishers, fishing guides, charter captains, and related fishing businesses on Lake Michigan and Green Bay may be impacted by commercial fishing opportunities for lake trout. Stakeholders that fish for or consume lake trout may also be impacted.

During development of this rule, the department will conduct comprehensive outreach to the Lake Michigan Commercial Fishing Board, commercial fishers, the Wisconsin Conservation Congress, sport clubs, sport fishers and other interested stakeholders to gain input and will aim to balance the needs of all stakeholders.

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 statutes or 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 an economic impact on small businesses):

This rule may allow lake trout bycatch to be harvested by commercial fishers. The exact economic impacts to commercial fishers are likely to vary because some commercial fishers could be less likely to harvest lake trout than others. Commercial fishers that harvest lake trout if this rule is pursued will likely see an economic benefit due to additional revenue from a species they are currently not allowed to harvest and market.

In addition to commercial fishers, this rule may also have an economic impact on sport anglers, guides, and charter businesses, especially if the sport TAC is exceeded in any one year and thus could result in bag limit reductions and season changes in the following year. In addition, depending on how the TAC is allocated between sport and commercial fishers, this may also limit the ability of sport fishers to harvest lake trout without additional regulations.

This rule is not anticipated to impose any new costs on commercial fishers or commercial fishing businesses as a result of compliance and implementation.

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

The department anticipates holding at least two public hearings in the month of August 2026. Hearing cities will be Green Bay and Cleveland, WI.

The department will hold the hearings in-person as well as virtually to allow for as many people to attend as possible. Comments may be provided by mail, phone and email as well as in-person.

Contact Person: Brad Eggold, Fisheries Great Lakes District Supervisor, 414-303-0138, Bradley.Eggold@wisconsin.gov; Laura Schmidt, Fisheries Biologist, 414-416-0591, Laura.Schmidt@wisconsin.gov

Signed by:

7A5DFF3497144B5

Steven Little, Deputy Secretary

11/22/2024 | 9:45 AM CST

Date Submitted