

SUBJECT: Adoption of emergency rules to control the spread of Viral Hemorrhagic Septicemia virus in the waters of Wisconsin.

FOR: SPECIAL APRIL BOARD MEETING

TO BE PRESENTED BY: Michael Staggs

SUMMARY:

Viral hemorrhagic septicemia (VHS) virus is present in the Great Lakes, but not yet in inland waters of Wisconsin. This rule will aid the Department in controlling the spread of VHS virus in the following ways:

- 1) It prohibits the possession on the water and use of live bait (crayfish, frogs, and minnows) from outside Wisconsin, except minnows imported in compliance with USDA APHIS and DATCP import and health requirements.
- 2) It prohibits the possession on the water and use of dead bait, except used on Lake Michigan or on the water the bait originated from, or when preserved in a way that would kill VHS virus.
- 3) It prohibits the transportation of live fish or fish eggs from waters of the Great Lakes or the Mississippi River drainage, except a) fish being exported in compliance with USDA APHIS regulations and orders, b) fish or fish eggs tested and found to be free of VHS virus, and c) fish or fish eggs transported with the prior written approval of the Department.
- 4) It requires all boaters to drain water from bilges, ballast, buckets, and live wells immediately after leaving waters of the Great Lakes or of the Mississippi River drainage, unless exempted in writing by the Department.
- 5) It allows the Department to deny permits for the use of non-standard minnow gear to prevent the spread of invasive species or diseases.

RECOMMENDATION: Adopt Emergency Order FH-22-07(E)

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

/s/	3/30/07
_____	_____
Bureau Director, Michael Staggs	Date
/s/	3/30/07
_____	_____
Administrator, Todd Ambs	Date
/s/	3/30/07
_____	_____
Secretary, Scott Hassett	Date

- | | | |
|---|--------------------------------|---------------------|
| cc: Laurie J. Ross - AD/5 | Sec. Rod Nilsestuen - DATCP | Paul McGraw - DATCP |
| Peter Flaherty - LS/5 | Sec. Kelli Trumble - Tourism | Myron Kebus - DATCP |
| Todd Ambs - AD/5 | Sen. Mark Miller - Capitol | |
| Mike Staggs - FH/4 | Sen. Scott Gunderson - Capitol | |
| Bill Horns - FH/4 (50 copies for distr) | William Ehlenfeldt - DATCP | |

DATE: April 5, 2007

FILE REF: 3600

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Adoption of Natural Resources Board Order FH-22-07(E)

BACKGROUND AND REASONS FOR RULE PROPOSAL

Viral Hemorrhagic Septicemia (VHS) is caused by a rhabdovirus previously unknown in the Great Lakes. The World Health Organization for Animal Health (OIE) lists VHS as a notifiable disease, meaning that outbreaks are to be reported immediately to that organization and others. The virus has killed large numbers of cultured rainbow trout and turbot in Europe and caused large-scale mortality in wild Pacific herring and pilchard populations along the Pacific coast. A form of the VHS virus was recently discovered in the Great Lakes for the first time. It was diagnosed as the cause of huge fish kills in Lake Huron, Lake St Clair, Lake Erie, Lake Ontario and the St Lawrence River in 2005 and 2006. On January 25, 2007, the Michigan Department of Natural Resources announced that the VHS virus was confirmed in lake whitefish and chinook salmon collected near the western end of Lake Huron in 2005. Because these species, especially chinook salmon, move widely in and between lakes, we conclude that the VHS virus is probably already present in Lake Michigan. It is possible that it is also already present in Lake Superior (directly linked to Lake Huron) and in the Mississippi River drainage (linked to Lake Michigan via the Chicago Sanitary Ship Canal and the Illinois River). Immediate action is needed to slow or block the spread of the virus from the Great Lakes to hatcheries, inland lakes, and (if it is not too late) the Mississippi River drainage. The proposed rule addresses the possible spread of the virus via bait taken from infected waters, in water or fish held in live wells, and in other ways.

Thousands of muskies, walleye, lake whitefish, freshwater drum, yellow perch, gizzard shad, redhorse, and round gobies died in 2005 and 2006 in the lower Great Lakes. Many chinook salmon, white bass, emerald and spottail shiners, smallmouth bass, bluegill, black crappie, burbot and northern pike were infected with VHS virus and showed clinical signs of disease but did not die in large numbers. This is the first time any virus has affected so many different fish species from so many fish families in the Great Lakes.

The following Wisconsin species are listed as susceptible to VHS virus by the World Organization for Animal Health (OIE) and/or the US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS): black crappie, bluegill, bluntnose minnow, brown bullhead, brown trout, burbot, channel catfish, chinook salmon, coho salmon, emerald shiner, freshwater drum, gizzard shad, largemouth bass, muskellunge, northern pike, pumpkinseed, rainbow trout, redhorse, rock bass, round goby, smallmouth bass, walleye, white bass, white perch, lake whitefish, yellow perch.

VHS virus may be considered an invasive species because it is not native to the Great Lakes. We do not know how it arrived. Possible vectors include migrating fish from the Atlantic Coast, ballast water from ships, and frozen Pacific herring imported for use as cut bait.

VHS was first known as a disease of farmed rainbow trout in Europe as early as the 1930's. However, it was not until 1963 that scientists confirmed the disease was caused by a virus. In 1988-89, the virus was

detected in wild herring and cod from the U.S. Pacific Coast, and also in salmon and steelhead that returned to Washington hatcheries to spawn. Since then, the virus has been confirmed in several species on the Atlantic Coast and in Japan.

Infected fish shed the virus in their urine and reproductive fluids. Virus particles in the water infect gill tissue first, and then move to the internal organs and the blood vessels. The blood vessels become weak, causing hemorrhages in the internal organs, muscle and skin. Fish can also be infected when they eat an infected fish.

Fish that survive the infection will develop antibodies to the virus. Antibodies will protect the fish against new VHS virus infections for some time. However, the concentration of antibodies in the fish will decline over time and the fish may start shedding the virus again. This may create a cycle of fish kills that occurs on a regular basis.

VHS virus can remain infective up to 14 days in water. The virus reproduces best in fish when water temperatures are 37-54°F. Most infected fish will die when water temperatures are 37- 41°F, and rarely die above 59 °F.

Stress is an important factor in VHS outbreaks. Stress suppresses the immune system, causing infected fish to become diseased. Stressors include spawning hormones, poor water quality, lack of food, or excessive handling of fish.

In fall 2006, Department staff, with the help of the USFWS La Crosse Fish Health Center and the Wisconsin Veterinary Diagnostic Lab, tested spawning salmon, brown trout, and lake whitefish, bloater chubs and yellow perch from Lake Michigan for VHS virus. Spawning lake trout from Lake Superior were also tested. In addition, yellow perch, round gobies and emerald shiners from the St Louis River estuary were tested for the virus in cooperation with Minnesota DNR. VHS virus was not detected in any species. Nevertheless, based on the diagnosis of VHS virus in lake whitefish collected in western Lake Huron in 2005, our fisheries biologists feel the virus is probably already in Lake Michigan. Ballast water discharged from ships has potential to quickly move the virus to port cities on Lake Superior.

In Spring 2007, the Department will test more wild fish from Lake Michigan, Lake Superior, and other places and will respond to fish kills. DNR will rigorously disinfect all salmon and trout eggs obtained from Great Lakes fish before they are brought into state hatcheries. This disinfection should destroy any virus inside the egg or on the egg surface. DNR boats or gear used in the Great Lakes will be disinfected before they are used in other locations. All fish reared at DNR hatcheries will be tested for VHS virus before they are stocked.

Fisheries Management has conducted outreach to inform the public about the potential for VHS to affect our Great Lakes fishery as well as inland waters. Presentations to clubs, radio interviews and posters at sport shows are some of the methods used to date. There is a need to extend this awareness to posting information at boat ramps, stickers for bait buckets, etc., which can be achieved via partnerships with Sea Grant and others. DNR has met with DATCP on the topic of VHS and will be coordinating our efforts to protect both wild fish and those raised on fish farms.

Because the virus has been detected in baitfish species such as emerald and spottail shiners in Lake Ontario and Lake St Clair, we believe that wild harvested baitfish may be one way that the virus is quickly spread across large geographic areas.

What regulatory steps have been taken by other jurisdictions?

The Department of Agriculture, Trade, and Consumer Protection is a partner in this area. Under existing regulations, no fish may be imported for stocking, use as bait, or fish farming without a permit from DATCP, and that agency has revised their Administrative Code to require testing for VHS virus in all fish proposed for importation from VHS affected waters outside of Wisconsin.

In late 2006 the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA APHIS) issued an emergency order limiting the movement of live fish from Ontario or Quebec into the United States and limiting the interstate movement of live fish among the eight Great Lakes states and from those states to other parts of the United States. That order does not apply to fish moved within the boundaries of individual states.

In November of 2006 the New York State Department of Environmental Conservation announced emergency regulations prohibiting the commercial collection of bait fish from waters of the state where VHS has been detected, limiting the use of bait fish to the specific water from which they were collected, and prohibiting the placement of live fish into the waters of the State (including possessing, importing, and transporting live fish for purposes of placing them into the waters of the State) unless accompanied by a fish health inspection report issued within the previous 12 months.

In January the Pennsylvania Fish and Boat Commission placed a temporary ban on the transportation of live fish from Lake Erie and its tributaries to inland waters, and permanent rule changes are expected. Michigan and other jurisdictions are also considering regulations to address this issue.

What is the Department doing about VHS in addition to developing this rule?✓ Testing wild populations.

- We informed the Wisconsin Veterinary Diagnostic Lab (WVDL) about VHS virus in the Great Lakes and with their help we have been monitoring spawning salmon and spotted muskies for the virus since fall 2005.
- We sampled whitefish, yellow perch and bloater chubs from Lake Michigan and yellow perch, round gobies and emerald shiners from the St Louis Estuary in fall 2006 to screen them for VHS virus (all 2006 tests were negative).
- In 2007 we are initiating an expanded VHS virus testing plan, including fish from the Great Lakes and Mississippi River drainages, bait fish, and invertebrate bait species.
- We have asked the WVDL to add an additional cell line that is susceptible to the Great Lakes strain of VHS virus when testing samples from wild and feral salmonid and spotted musky brood fish from Lake Michigan and Lake Superior. So far, all tests have been negative.

✓ Testing hatchery fish.

- Prior to 2005, all trout and salmon brood fish and their progeny at DNR facilities were tested for VHS virus and other viruses. This level of effort was not made for cool water species because at the time, there were no serious viral pathogens known to infect Wisconsin cool water fish.

- All fish reared at DNR hatcheries are tested for VHS virus and only stocked if VHS is not detected.
 - Because the Les Voight State Fish Hatchery uses water directly from Lake Superior, we will develop a HACCP plan to protect that facility and block the spread of the virus from that facility.
- ✓ Disinfection.
- We disinfect salmon and trout eggs collected from Lake Michigan and Lake Superior parents before they are transported to hatchery buildings. Likewise, spawning gear, including raingear is disinfected daily.
 - Egg disinfection protocols for cool-water species are being developed with the help of Science Services and DATCP. Because validated disinfection protocols are not yet available, collections of eggs of musky, walleye, suckers, and sturgeon from Lake Michigan and Green Bay have been suspended.
 - We have alerted Fisheries and Law Enforcement staff to the risks of transmitting VHS through management activities and adopted a boat and gear disinfection protocol for use by field biologists.
- ✓ Interagency and interjurisdictional Cooperation.
- Through the Great Lakes Fish Health Committee, which is supported by the Great Lakes Fishery Commission and the Council of Lake Committees, we exchange information and develop policies with sister agencies on the Great Lakes.
 - Our Fish Health Specialist has, along with representatives of other agencies, met with USDA officials regarding federal action to restrict the inter-state movement of fish species that may carry the disease.
- ✓ Communication.
- Our Fish Health Specialist is available to meet with organizations to discuss the problem. She has made presentations to the Izaak Walton League (2/15/07), the Wisconsin Federation of Great Lakes Sport Fishing Clubs (2/17/07), the Milwaukee Great Lakes Sport Fishermen (3/13/07), the Racine Chapter of Salmon Unlimited (3/14/07), the Milwaukee chapter of Walleyes Forever (4/26/07), and the Ozaukee Great Lakes Sport Fishermen (5/1/07).
 - In addition, posters featuring VHS were developed and exhibited at the Madison Fishing Expo and the Milwaukee Journal/Sentinel sports show; a radio interview was done for Bob Hasse's show on KFIZ in Fond du Lac; a television interview for Outdoor Wisconsin and interviews for several outdoor writers.
 - A fact sheet on VHS has been developed and will be posted on the FM website.

✓ Other actions.

- We will block upstream passage of all fish at the Besadny Anadromous Fisheries Facility on the Kewaunee River.
- On February 5, 2007 we met with DATCP officials and private fish farmers to discuss the need to halt the transfer of suckers and sucker eggs to inland rearing facilities. We are assisting the fish farmers in finding alternate populations of suckers from which eggs may be taken for their purposes

SUMMARY

This rule will aid the Department in controlling the spread of VHS virus in the following ways:

1) It prohibits the possession on the water and use of live bait (crayfish, frogs, and minnows) from outside Wisconsin, except minnows imported in compliance with USDA APHIS and DATCP import and health requirements. Live bait enters Wisconsin from other parts of the country (including probably Lake Ontario) where VHS may be present. Because those requirements preclude the importation of live fish that have not tested negative for VHS, this will help assure that the VHS virus is not introduced to inland waters via live bait.

2) It prohibits the possession on the water and use of dead bait, except used on Lake Michigan or the water the bait originated from, or when preserved in a way that would kill VHS virus. VHS virus can survive in dead bait that has been refrigerated or frozen. Great Lakes smelt, lake herring, and chubs and Pacific Ocean herring are used for cut bait in Wisconsin. This provision will help assure that VHS virus is not imported in dead bait.

3) It prohibits the transportation of live fish or fish eggs from waters of the Great Lakes or Mississippi River drainages (including tributaries upstream to the first dam), except a) fish being exported in compliance with USDA APHIS regulations and orders, b) fish or fish eggs tested and found to be free of VHS virus, and c) fish or fish eggs transported with the prior written approval of the Department. We want to minimize the possibility that any live fish or fish eggs from VHS-affected waters are transported to VHS-free waters. As noted above, it is likely that VHS virus is present in Lake Michigan and quite possible that it is or soon will be present in Lake Superior and the Mississippi River drainage.

4) It requires all boaters to drain water from bilges, ballast, buckets, and live wells immediately after leaving waters of the Great Lakes or Mississippi River drainages (including tributaries upstream to the first dam), unless exempted in writing by the Department. This provision addresses the risk that boaters will inadvertently transport the VHS virus (which can survive up to 14 days in standing water) in boats and compartments of boats.

5) It allows the Department to deny permits for the use of non-standard minnow gear to prevent the spread of invasive species or diseases. Currently the presence of pathogens or invasive species is not sufficient to deny applications for non-standard minnow gear. With this provision, the Department will be able to assure that minnow harvest is not authorized from waters where the VHS virus is known to occur.

HOW DO THE RULES AFFECT EXISTING POLICY?

It has been the long-standing policy of the Department to slow or block the spread of invasive species and pathogens in Wisconsin. This rule will impose additional restrictions on the movement of potentially infected fish, fish parts, and water from waters where we have reason to believe VHS may be present, but does not represent a departure from the existing policy of trying to control the spread of invasive species and pathogens.

The rule is also consistent with the legislative policy underlying section 29.705(4), Stats., that authorizes the Department to seize and destroy any fish or any fish eggs found to be infected with disease organisms (including fish or eggs at fish farms, in response to a request from DATCP), and with the legislative policy underlying section 23.22, Stats., that requires the Department to develop a statewide program to control invasive species.

PAST BOARD ACTIONS AND DEVELOPMENT OF RULE PROPOSAL

There have been no NRB actions directly related to the control of VHS virus.

AFFECTED PARTIES

This rule will affect bait dealers, wholesale fish dealers, commercial fishers, anglers, boaters, and individuals involved in the harvest, rearing, or use of fish bait.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

This is a Type III action under Chapter NR 150, Wis. Admin. Code. No Environmental Assessment is required.

Fiscal Estimate — 2007 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number Bill Number	Amendment Number if Applicable Administrative Rule Number FH-22-07(E)
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Subject
 Chapter NR 19 -- Miscellaneous Fur, Fish, Game and Outdoor Recreation
 Chapter NR 20 -- Fishing: Inland Waters; Outlying Waters

Fiscal Effect
 State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs — May be possible to absorb within agency's budget. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local: No Local Government Costs
 Indeterminate

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

The rule is summarized below. It imposes no special burdens on state or local government.

This rule will aid the Department in controlling the spread of VHS virus in the following ways:

- 1) It prohibits the possession on the water and use of live bait (crayfish, frogs, and minnows) from outside Wisconsin, except minnows imported in compliance with USDA APHIS and DATCP import and health requirements. Live bait enters Wisconsin from other parts of the country (including probably Lake Ontario) where VHS may be present. Because those requirements preclude the importation of live fish that have not tested negative for VHS, this will help assure that the VHS virus is not introduced to inland waters via live bait.
- 2) It prohibits the possession on the water and use of dead bait, except used on the water the bait originated from or when preserved in a way that would kill VHS virus. VHS virus can survive in dead bait that has been refrigerated or frozen. Great Lakes smelt, lake herring, and chubs and Pacific Ocean herring are used for cut bait in Wisconsin. This provision will help assure that VHS virus is not imported in dead bait.
- 3) It prohibits the transportation of live fish or fish eggs from waters of the Great Lakes or the Mississippi River drainage, except a) fish being exported in compliance with USDA APHIS regulations and orders, b) fish or fish eggs tested and found to be free of VHS virus, and c) fish or fish eggs transported with the prior written approval of the Department. We want to minimize the possibility that any live fish or fish eggs from VHS-affected waters are transported to VHS-free waters. As noted above, it is likely that VHS virus is present in Lake Michigan and quite possible that it is present in Lake Superior and the Mississippi River drainage.

(continued)

Long-Range Fiscal Implications

none

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

Fiscal Estimate — 2007 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-22-07(E)

Assumptions Used in Arriving at Fiscal Estimate – Continued

4) It requires all boaters to drain water from bilges, ballast, buckets, and live wells immediately after leaving waters of the Great Lakes or of the Mississippi River drainage, unless exempted in writing by the Department. This provision addresses the risk that boaters will inadvertently transport the VHS virus in boats and compartments of boats.

5) It allows the Department to deny permits for the use of non-standard minnow gear to prevent the spread of invasive species or diseases. Currently the presence of pathogens or invasive species is not sufficient to deny applications for non-standard minnow gear. With this provision, the Department will be able to assure that minnow harvest is not authorized from waters where the VHS virus is known to occur.

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-22-07(E)

Subject
 Chapter NR 19 -- Miscellaneous Fur, Fish, Game and Outdoor Recreation
 Chapter NR 20 -- Fishing: Inland Waters; Outlying Waters

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$ 0	\$ - 0

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature	Telephone No. 266-2794	Date (mm/dd/ccyy)

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES**

The Wisconsin Natural Resources Board proposes an emergency order to amend NR 19.05 (Title) and 20.39 (1) (a), and create NR 19.05 (3), 19.055 and 20.08 (6) and (7), relating to control of fish diseases and invasive species.

FH-22-07(E)

Analysis Prepared by the Department of Natural Resources

- 1. Statutes interpreted:** Sections 23.09 (2) (intro), 23.22 (2) (a), 29.014 (1), 29.041, and 227.11 (2) (a), Stats.
- 2. Statutory Authority:** Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 27.01 (2) (j), 29.014 (1), 29.041, 227.11 (2) (a), and 227.24 (1) (a), Stats.
- 3. Explanation of agency authority to promulgate the rules under the statutory authority:** Section 23.09 (2) (intro), Stats., grants the department general authority to adopt rules for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state. Section 23.091, Stats., authorizes the department to acquire, develop, operate and maintain state recreation areas, to establish use zones within state recreation areas providing for the full range of recreational uses, including hunting and fishing, and to promulgate rules to control uses within zones and limit the number of persons using any zone.

Section 23.11 (1), Stats., gives the department the authority to have and take the general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, along with such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law. Section 23.22 (2) (a) and (b) 6., Stats., confer on the department the authority to establish a statewide program to control invasive species in this state, including rules to classify invasive species for purposes of the program. Section 27.01 (2) (j), Stats., grants the department authority to promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Sections 29.014 (1) and 29.041, Stats., grant rule making authority to the department to establish and maintain open and closed seasons for fish and any bag limits, size limits, rest days and conditions governing the taking of fish that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, and provide that the department may regulate fishing on and in all interstate boundary waters and outlying waters. Section 27.01 (2) (j), Stats., grants the department authority to promulgate rules necessary to govern the conduct of state park visitors, and for the

protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute. Finally, s. 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

4. Related statute or rule: None.

5. Plain language analysis of the proposed rule: SECTION 1 revises the title of s. NR 19.05, and SECTION 2 adds a new subsection to that rule, prohibiting the transport of live fish taken from the Great Lakes or Mississippi River, or from their tributaries upstream to the first dam or fish barrier, with 3 exceptions: live fish or fish eggs transported out of state in compliance with the United States Department of Agriculture Animal and Plant Health Inspection Service's regulations and orders; live fish or fish eggs that tested free of viral hemorrhagic septicemia (VHS) virus using DATCP-approved methods; and live fish or fish eggs transported with the prior written approval of the department, where the department has determined that VHS virus will not be transported to other waters.

SECTION 3 of the Order creates a new rule in ch. NR 19 that requires any person who operates a boat, boat trailer or boating equipment in the Great Lakes or Mississippi River, or in their tributaries upstream to the first dam or fish barrier, to drain all water from the boat, boat trailer or boating equipment, including water in any bilge, ballast tank, bait bucket and live well immediately after removing it from the water, unless it has been exempted in writing by the department after determining that it will not allow VHS virus to be transported to other waters.

SECTION 4 of the Order bans imported live bait, except minnows imported in compliance with DATCP's import and health requirements in ch. ATCP 10, Wis. Adm. Code. It also prohibits any person from using dead fish, fish eggs, crayfish, frogs, or any parts thereof as bait, with 3 exceptions: dead fish, fish eggs, crayfish, frogs, or any parts thereof may be used as bait on Lake Michigan, Green Bay and their tributaries upstream to the first dam or other obstruction impassible to fish; they may be used on the same water body from which they were obtained; and they may be used on any waters of the state if they have been preserved by means other than refrigeration or freezing.

SECTION 5 of the Order adds a new criterion for the issuance of permits that allow licensed bait dealers to use non-standard minnow gear. The new rule stipulates that such permits may be denied if the department determines that use of the non-standard gear

(minnow seines, minnow dip nets or minnow traps) is likely to result in the spread of invasive species or diseases.

6. Summary of and preliminary comparison with any existing or proposed federal regulation: In late 2006 the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA APHIS) issued an emergency order limiting the movement of live fish from Ontario or Quebec into the United States and limiting the interstate movement of live fish. That order does not apply to fish moved within the boundaries of individual states, and there are no known or proposed federal regulations that would do so.

7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan): The four adjacent states have not yet adopted regulations addressing the VHS problem, but steps have been taken elsewhere, particularly in the lower Great Lakes where the Great Lakes form of the VHS virus was first discovered.

In November of 2006 the New York State Department of Environmental Conservation announced emergency regulations prohibiting the commercial collection of bait fish from waters of the state where VHS has been detected, limiting the use of bait fish to the specific water from which they were collected, and prohibiting the placement of live fish into the waters of the State (including possessing, importing, and transporting live fish for purposes of placing them into the waters of the State) unless accompanied by a fish health inspection report issued within the previous 12 months.

In January the Pennsylvania Fish and Boat Commission placed a temporary ban on the transportation of live fish from Lake Erie and its tributaries to inland waters, and permanent rule changes are expected. Michigan and other jurisdictions are also considering regulations to address this issue.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the rule: The World Organization for Animal Health (OIE) and/or USDA APHIS list the following Wisconsin species as susceptible to VHS: black crappie, bluegill, bluntnose minnow, brown bullhead, brown trout, burbot, channel catfish, chinook salmon, coho salmon, emerald shiner, freshwater drum, gizzard shad, largemouth bass, muskellunge, northern pike, pumpkinseed, rainbow trout, redhorse, rock bass, round goby, smallmouth bass, walleye, white bass, white perch, lake whitefish, yellow perch.

The Aquatic Animal Health Code of the OIE provides specific guidance regarding the management of VHS. The rules proposed in this Order are consistent with that code. USDA APHIS has adopted emergency regulations to limit the transfer of VHS virus among states or into the United States from Ontario or Quebec. The rules proposed in this Order expand those protections by reducing the risk of spread of the virus from the Great Lakes or Mississippi River to inland waters.

9. Any analysis and supporting documentation that the agency used to determine in the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report: We know that small businesses related to boating and recreational fishing, commercial fishing, wholesale fish dealing, and bait harvesting, importation, culture, or sale may be affected by the rule. However, we currently have no basis for quantifying the economic impacts of the rule.

10. Effect on small business, including how the rule will be enforced: The most significant economic impact of the rule will be on businesses involved in bait harvest, importation, culture, or sale. Businesses handling bait harvested in VHS-affected areas will be adversely affected, while those involved in culturing bait may benefit. The rule will be enforced by Department conservation wardens, county district attorneys, and county circuit courts through the use of citations and civil or criminal complaints under the provisions of ch. 29, Stats.

11. Agency contact person:

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SECTION 1. NR 19.05 (Title) is amended to read:

NR 19.05 Release, ~~and~~ importation and transportation of fish.

SECTION 2. NR 19.05 (3) is created to read:

NR 19.05 (3) No person may transport live fish or fish eggs taken from the waters of Lake Michigan, Lake Superior, the Mississippi River or from any of their tributaries upstream to the first dam or other obstruction impassible to fish, except:

(a) Live fish and fish eggs being transported out of state in compliance with the United States Department of Agriculture Animal and Plant Health Inspection Service's regulations and orders.

(b) Live fish or fish eggs that have been tested for viral hemorrhagic septicemia using methods approved by the Department of Agriculture, Trade and Consumer Protection and that were found to be free of the viral hemorrhagic septicemia virus.

(c) Fish or fish eggs being transported with the prior written approval of the department, where the department has determined that the proposed activity will not allow viral hemorrhagic septicemia virus to be transported to other waters.

SECTION 3. NR 19.055 is created to read:

NR 19.055 **Drainage of water from boats required.** (1) Except as provided in sub. (2), any person who operates a boat, boat trailer or boating equipment in or on Lake Michigan, Lake Superior, the Mississippi River or in or on any bay or tributary of Lake Michigan, Lake Superior or the Mississippi River, upstream to the first dam or other obstruction impassible to fish, shall drain all water from the boat, boat trailer or boating equipment, including water in any bilge, ballast tank, bait bucket and live well immediately after removing the boat, boat trailer or boating equipment from the water.

(2) The Department may exempt any boat, boat trailer or boating equipment in writing from the requirements of sub. (1) if it determines that it will not allow viral hemorrhagic septicemia virus to be transported to other waters.

SECTION 4. NR 20.08 (6) and (7) are created to read:

NR 20.08 (6) Use or possess live fish, fish eggs, crayfish or frogs as bait if obtained outside of, or brought into, the state of Wisconsin, except fish imported in compliance with the Department of Agriculture, Trade and Consumer Protection's import and health requirements in ch. ATCP 10.

(7) Possess for use as bait, or use as bait any dead fish, fish egg, crayfish, or frog or any part of any dead fish, fish egg, crayfish, or frog, unless it is being possessed or used on Lake Michigan, Green Bay or their tributaries upstream to the first dam or other obstruction impassible to fish, or on the same water body from which it was obtained, or unless it has been preserved by means other than refrigeration or freezing.

SECTION 5. NR 20.39 (1) (a) is amended to read:

NR 20.39 (1) (a) The department shall issue the permit if it determines that the conditions of this paragraph are met.

1. For waters with adequate public access according to s. NR 1.90 (2) (a), the department shall determine if:
 - a. The department does not need the minnows for its fish management activities;
 - b. Removal of the minnows will not cause or substantially contribute to a long-term depletion of the forage base;
 - c. Threatened or endangered species listed in ch. NR 27 are not known to be present in or near the affected water;
 - d. Unique or sensitive biological values such as nesting loons or heron rookeries are not present in, on or near the affected water;
 - e. The use of the minnow seines, minnow dip nets or minnow traps is not likely to hinder or interfere with the exercise of a permit issued earlier in the year to another person for the water; ~~and~~
 - f. The use of the minnow seines, minnow dip nets or minnow traps is not likely to hinder or interfere with any other public uses of the water; and
 - g. The use of the minnow seines, minnow dip nets or minnow traps is not likely to result in the spread of invasive species or diseases.
2. For waters lacking adequate public access and for waters surrounded by private lands, the department shall determine if:
 - a. The requirements of subd. 1. a. to e. and g. are met; and
 - b. The applicant provided the department with the name, mailing address and telephone number of the person granting the applicant legal access to the water.

SECTION 6. STATEMENT OF EMERGENCY. The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial

species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

SECTION 7. EFFECTIVE DATE. This rule shall take effect on upon publication, as provided in s. 227.24 (1) (d), Stats.

SECTION 8. BOARD ADOPTION. The foregoing emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 4, 2007.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)