Form 1100-001
(R 2/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.B.6

SUBJECT: Authorization for hearings on rules to control the spread of Viral Hemorrhagic Septicemia virus in Wisconsin

FOR: JUNE **BOARD MEETING**

TO BE PRESENTED BY: Michael Staggs

SUMMARY:

The Order makes permanent and clarifies recent emergency measures for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state.

The Order limits the transport of live fish away from specied waters, and requires the immediate drainage of water from boats, boating equipment, fishing equipment and other containers upon removal from those specified waters. Waters specified in the Order include Lake Michigan, Lake Superior, Mississippi River, Lake Winnebago and the Fox River downstream to Green Bay, and all connecting waters upstream to the first barrier impassable to fish. If VHS is found outside of the waters specified in the Order, then all waters of the state would be included in the Order.

The Order also requires that bait dealers apply for and possess a department permit to harvest wild bait from any water and keep daily harvest and disposition records.

The Order bans the use or possession of imported live bait (minnows, crayfish and frogs), with exceptions. It also prohibits any person from using dead fish, fish eggs, crayfish, frogs, or any parts thereof as bait, with exceptions, and it limits the use of fish and fish parts as bait in crayfish traps and turtle traps, with exceptions.

Finally, the Order adds a new criterion for the issuance of permits for licensed bait dealers to use non-standard minnow gear, allowing the permits to be denied if use of the gear could spread invasive species or diseases.

RECOMMENDATION: Authorized public hearings on proposed Order FH-30-07

LIST OF ATTACHED MATERIALS:

No	☐	Fiscal Estimate Required	Yes ☑	Attached
No	☑	Environmental Assessment or Impact Statement Required	Yes ☐	Attached
No	☐	Background Memo	Yes ☑	Attached

APPROVED:

Bureau Director, Michael Staggs — Date 06/20/2007

Administrator, Todd Ambs — Date 6/20/07

Secretary, Scott Hassett — Date 6/21/07

cc: Laurie J. Ross - AD/5
Peter Flaherty/Carol Turner - LS/5
Todd Ambs - AD/5
Mike Staggs - FH/4
Bill Horns - FH/4 (10 copies)
Sec. Rod Nilsuestuen - DATCP
Sec. Kelli Trumble - Tourism
Sen. Mark Miller - State Capitol
Rep. Scott Gunderson - State Capitol
Robert Ehlenfeldt - DATCP
Paul McGraw - DATCP
Myron Kebus - DATCP
Tom Van Haren - LE/5
Randy Stark - LE/5

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: June 20, 2007 FILE REF: 3600

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Approval of hearings for Natural Resources Board Order FH-30-07

BACKGROUND AND REASONS FOR RULE PROPOSAL

The Natural Resources Board recently adopted three closely-related emergency orders dealing with the threat of Viral Hemorrhagic Septicemia (VHS) virus to Wisconsin fish populations. Those orders (FH-22-07(E), FH-25-07(E), and FH-28-07(E)), sought to slow or stop the spread of the virus by limiting the movement of live fish, bait, and water among already-infected and uninfected waters of the state. Those emergency orders can be extended by JCRAR, but all will expire in early January 2008 (allowing for extensions authorized by the Joint Committee for the Review of Administrative Rules). If public hearings can be approved at the June NRB meeting, the hearings can take place in August and it may be possible to have the permanent rules take effect soon after the emergency orders expire.

In NRB Order FH-30-07 we are proposing to make permanent the rules implemented in the emergency orders. Certain aspects of this rule apply only to waters in which VHS has been discovered and connecting waters up to the first barrier impassable to fish. Those include requirements for boaters and anglers to drain all water from their boats, livewells, and bait buckets when leaving affected waters, and to not move live fish or fish eggs away from affected waters. At the time of their adoption, there was considerable debate on whether to proactively apply these rules to all waters of the state in anticipation that VHS was in fact more widespread in state waters that previously thought.

Since that time, the VHS virus has been documented in the Lake Winnebago system and in northern Wisconsin waters of Lake Michigan. The Department has established an active program of monitoring and surveillance for the virus, and to date has not discovered the virus in any other waters. That VHS is not widespread in Wisconsin is a very positive finding and argues that measures designed to contain the virus and protect uninfected waters are more important than ever. Conversely, it also suggests statewide application of the immediate drainage and live fish movement aspects of the rule are not necessary at this time. The proposed permanent rule retains the emergency rule provision that if VHS is discovered in waters not covered by the rule, that the immediate drainage and live fish movement aspects of the rule are automatically extended to all waters of the state.

We know that there are many questions about the emergency rules and we are looking forward to learning through the public hearing process how the proposed rules can be improved. This input will be important to ensure that our permanent rules both reasonable and effective, and that they complement fish health regulations administered by the Department of Agriculture, Trade, and Consumer Protection.

Figure 1 summarizes monitoring results as of Monday June 18.

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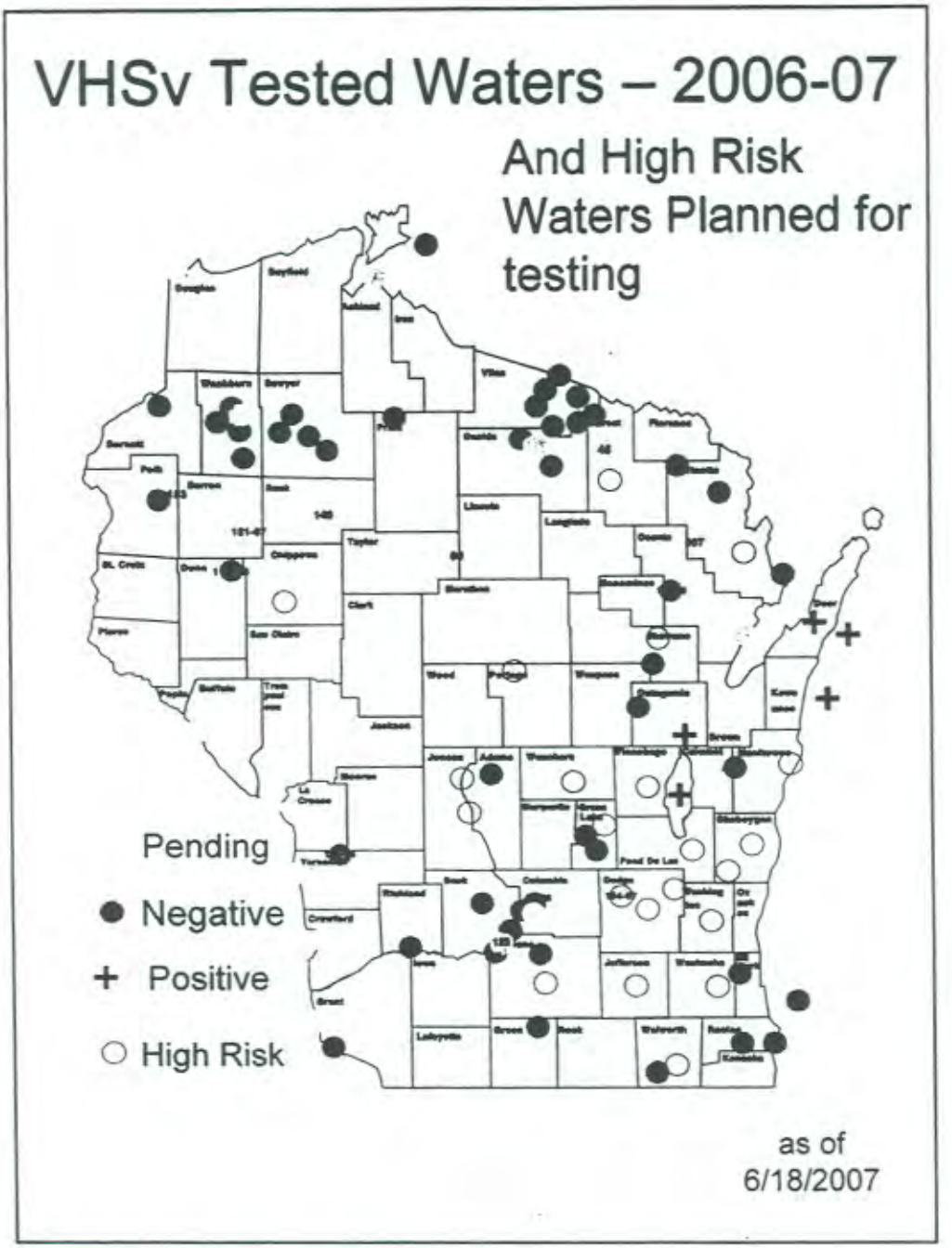

Figure 1. Distribution of fish tested for VHS virus. Fish testing positive have been recovered from Lake Winnebago (freshwater drum), Little Lake Butte des Mortes (freshwater drum), Sturgeon Bay (smallmouth bass), and Lake Michigan (lake whitefish and brown trout).

What is known about the VHS virus

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. It has been confirmed in several species on the Atlantic coast and in Japan.

A form of the VHS virus was recently discovered in the Great Lakes for the first time. It was diagnosed as the cause of fish kills in Lake Huron, Lake St Clair, Lake Erie, Lake Ontario and the St Lawrence River in 2005 and 2006. 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), the Merck Veterinary Manual, and/or the US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS): black crappie, bluegill, bluntnose minnow, brook trout, brown bullhead, brown trout, burbot, channel catfish, chinook salmon, coho salmon, emerald shiner, freshwater drum, gizzard shad, largemouth bass, lake trout, muskellunge, northern pike, pumpkinseed, rainbow trout, redhorse, rock bass, round goby, smallmouth bass, walleye, white bass, white perch, lake whitefish, yellow perch. This list contains those species that have been identified to date as having the VHS virus. It is very possible that other closely related species found in Wisconsin are also susceptible.

VHS virus may be considered an invasive species because 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.

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. Past studies of the virus have shown it reproduces best in fish when water temperatures are 37-54°F with fish kills most common below 59 °F. However fish kills in the Great Lakes regions have been observed at water temperatures in the 60s and low 70s so it is not clear whether this new strain has different temperature tolerances.

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.

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 Wisconsin 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 its Administrative Code to require testing for VHS virus in all fish proposed for importation from VHS-affected waters outside of Wisconsin. They are also currently considering modifications to their fish health regulations in response to the finding that Wisconsin is now a VHS positive state.

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. M

The Michigan Department of Natural Resources has enacted regulations that will go into effect on June 28, 2007 that are intended to minimize the spread of VHS in that state. Their waters are classified based on the actual or likely presence of VHS and then regulate live fish movement and bait harvest and use depending on the classification.

What is the Department doing about VHS in addition to developing these rules?

✓ Testing and Surveillance.

- 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 River estuary (Lake Superior) in fall 2006 to screen them for VHS virus (all 2006 tests were negative).
- In 2007 we initiated an expanded VHS virus testing plan, including fish from the Great Lakes, Mississippi River, and Lake Winnebago drainages, other inland waterbodies thought to be at risk of exposure to the VHS virus, and samples bait fish, and invertebrate bait species. In addition we have tested samples from almost all broodstocks use for hatchery production in 2007, and are testing samples from any suspicious fish kills.
- 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.

- WDNR staff are examining fish for signs of VHS as part of our routine monitoring which results in WDNR staff visiting high use waters, which may be of higher VHS risk, on a more frequent basis than other waters. Fish that display signs of VHS that may provide new information about the spread of the disease or susceptibility of particular species will be tested as appropriate.
- Since 1984, 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. Expanded monitoring for other species was initiated in 2007.
- Currently, all fish reared at DNR hatcheries are tested for VHS virus and only stocked if VHS is not detected.

✓ 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 DNR Bureau 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 inter-jurisdictional 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.
- We are working closely with Wisconsin DATCP to ensure that our regulatory approach is complementary given our respective agency authorities, effective given our current knowledge of VHS distribution, and consistent in application to both public and private stocking and fish movements.
- We have been consulting with US Department of Agriculture, Animal Plant Health Inspection Services (APHIS) on their regulation on interstate movement of fish.

✓ Communication.

Since passage of the emergency rules, the Department has mounted a considerable communication and outreach effort to inform the public about the VHS threat and things they can do to help prevent its spread. These include:

- Frequent press releases
- Development of public information materials including fact sheets, frequently asked questions, brochures, information cards, posters and signs.
- Signs have been posted at many boat launches and access points in the affected areas, plans are in place to expand postings if the affected area changes

- Radio and TV advertisements have been produced and are being distributed statewide as Public Service Announcements, and also as part of several paid advertising campaigns throughout the summer
- Maintain an up-to-date web site with the latest information and copies of all publications and outreach materials: http://dnr.wi.gov/fish/pages/vhs.html
- Outreach efforts by staff at the statewide, regional and local levels in giving talks to interested groups, contacting anglers and boaters at landings, and proactively encouraging press coverage.
- Encouraging anglers to retain fish that show possible signs of VHS and contact their local fisheries biologist. The WDNR TIP line protocol has been modified to accept reports of fish kills and angler caught fish that may display signs of VHS. Contact information will be routed to the appropriate fisheries biologist.

✓ Other actions.

- We will block upstream passage of all fish at the Besadny Anadromous Fisheries Facility on the Kewaunee River.
- We continue to meet with DATCP officials and affected stakeholders on implementation of these rules. We are assisting the fish farmers in finding alternate populations of suckers from which eggs may be taken for their purposes.
- On May 16, the Department temporarily suspended all Department stocking of fish, transfers of fish among Department hatcheries, collections of forage fish or eggs from the wild by Department staff, and field fish transfers by Department staff, while the situation is being assessed.
- On May 24, the Department sent out Wild Bait Harvest Permit applications to all licensed bait dealers in Wisconsin, pursuant to the permitting system created by the emergency rules adopted earlier that month.

SUMMARY

The Order makes permanent and clarifies the emergency measures put into effect April 8, 2007 by Order No. FH-22-07(E), May 2, 2007 by Order No. FH-25-07(E) and May 27, 2007 by Order No. FH-28-07(E) for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state.

SECTION 1 of this Order creates definitions of "live fish" and "live fish eggs" for purposes of the rule created by SECTION 3 that prohibits the transport of live fish and live fish eggs taken from or possessed on any outlying water and certain inland waters or their bank or shore.

SECTION 2 revises the title of s. NR 19.05.

SECTION 3 adds a new subsection (3) to s. NR 19.05, prohibiting live fish or fish eggs that were taken from or possessed on the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters, from being transported away from that water, bank or shore, 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. In addition, if the

department formally determines that any other water body is infected with Viral Hemorrhagic Septicemia virus, SECTION 3 makes this conditional prohibition on the transport of live fish apply to all waters of Wisconsin. The live fish transportation ban only applies to transport away from the water or its bank or shore, not on the water.

SECTION 4 of the Order creates a new rule in ch. NR 19 that requires any person who removes a boat, boat trailer, boating equipment or fishing equipment from the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters, to immediately drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container, 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. In addition, if the department formally determines that any other water body is infected with Viral Hemorrhagic Septicemia virus, SECTION 4 makes the immediate drainage requirement apply to all waters of Wisconsin. The drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. Finally, it exempts tanks or containers of potable drinking water and other beverages intended for human consumption.

SECTION 5 of the Order establishes a procedure for the department to formally notify the public if it determines that any water body other than the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected water upstream to the first fish barrier, is infected with Viral Hemorrhagic Septicemia virus, based on test results or other empirical evidence that the virus is present. Public notice must be given by issuing a press release, by publication of a notice in the official state newspaper, and by any other means that is reasonably likely to inform the public. Following such a determination and public notice, the provisions of s. NR 19.03 (3) restricting the transport of live fish and eggs from these waters, and of s. NR 19.056 requiring immediate drainage of boats, boat trailers, boating equipment and fishing equipment upon removal from the water, bank or shore of these waters, thereafter apply state-wide to all waters.

SECTION 6 of the Order requires that bait dealers apply for and possess a department permit in order to harvest wild bait from any water, that they keep records of their harvest and of its disposition, except for retail sales to consumers, and that they not possess farm-raised fish while transporting wild harvested minnows, crayfish or frogs back to their business or to the point of sale.

SECTION 7 of the Order eliminates the current requirement that only fish or fish parts and meal may be used as bait for trapping crayfish. It then adds a requirement that if fish (or fish parts) are used as crayfish bait, they must come from the same water where they will be used as bait, except with written approval of the department.

SECTION 8 of the Order bans the use of fish (and fish parts) as bait to trap turtles unless the fish came from the same body of water where they will be used as bait, or with written approval of the department.

SECTION 9 of this Order creates definitions of "live fish" and "live fish eggs" for purposes of the rules created by SECTION 10 that restrict the use of improperly imported live bait and the use of dead bait that has not been preserved by a means that will kill the VHS virus.

SECTION 10 of the Order bans the use or possession of imported live bait (minnows, crayfish and frogs) except bait imported in compliance with DATCP's import and health requirements in ch. ATCP 10, Wis. Adm. Code, and live bait from Iowa or Minnesota used or possessed on boundary waters with those states

(the Mississippi River "between the tracks", Lake St. Croix, and the St. Croix river and the St. Louis river as defined in s. NR 21.02 (16)). It also prohibits any person from possessing or using dead fish, dead fish eggs, dead crayfish, dead frogs, or any parts thereof as bait, with 3 exceptions: dead fish, dead fish eggs, dead crayfish, dead 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. The rules also allow dead minnows to still be used as bait, as if they were alive, if certain conditions are met, even though the dead minnows are not preserved by any particular method.

SECTION 11 adds a provision to the current rule governing minnow collection, reiterating the requirement that a bait dealer must obtain the wild bait harvest permit created by SECTION 6 of this Order; describes the permit issued under s. NR 20.39 as a "non-standard gear permit" to distinguish it from the wild harvest permit; and corrects the wording of the Note to NR 20.14 regarding transport of live minnows as affected by this Order. The current note incorrectly states that transportation of minnows is permitted throughout the state.

SECTION 12 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. SECTION 12 also adds a Note to NR 20.39 regarding the need for a wild harvest permit issued under rules created by SECTION 6 of this Order.

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 fish, fish parts, and water from waters of the state, 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

The Order makes permanent and clarifies the emergency measures put into effect April 8, 2007 by Order No. FH-22-07(E), May 2, 2007 by Order No. FH-25-07(E) and May 27, 2007 by Order No. FH-28-07(E) for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state.

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

No additional compliance or reporting requirements will be imposed as a result of these rule changes. No additional skills are required. A state fiscal estimate is attached.

ENVIRONMENTAL ASSESSMENT

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

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2007 Session

☒ Original ☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected ☐ Supplemental	Bill Number	Administrative Rule Number FH-30-07

Subject

Administrative Rules for Prevention and Control of Viral Hemorrhagic Septicemia (VHS) Virus

Fiscal Effect

State: ☐ No State Fiscal Effect
☒ Indeterminate

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

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs — May be possible to absorb within agency's budget. ☐ Yes ☐ No

☐ Decrease Costs

Local: ☐ No Local Government Costs
☒ Indeterminate

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others ☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The Order makes permanent and clarifies the emergency measures put into effect April 8, 2007 by Order No. FH-22-07(E), May 2, 2007 by Order No. FH-25-07(E) and May 27, 2007 by Order No. FH-28-07(E) for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state.

SECTION 1 of this Order creates definitions of "live fish" and "live fish eggs" for purposes of the rule created by SECTION 3 that prohibits the transport of live fish and fish eggs taken from or possessed on any inland or outlying water or its bank or shore.

SECTION 2 revises the title of s. NR 19.05.

SECTION 3 adds a new subsection (3) to s. NR 19.05, that prohibits the transport of live fish or fish eggs that were taken from or possessed on the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters.

SECTION 4 of the Order creates a new rule in ch. NR 19 that requires any person who removes a boat, boat trailer, boating equipment or fishing equipment from the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters, to immediately drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container, 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. In addition, if the department formally determines that any other water body is infected with Viral Hemorrhagic Septicemia virus, SECTION 4 makes the immediate drainage requirement apply to all waters of Wisconsin. The drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. Finally, it exempts tanks or containers of potable drinking water and other beverages intended for human consumption.

Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	06-21-07

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2007 Session

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FH-30-07

Page 2 Assumptions Narrative Continued

Assumptions Used in Arriving at Fiscal Estimate - Continued

SECTION 5 of the Order establishes a procedure for the department to formally notify the public if it determines that any water body other than the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected water upstream to the first fish barrier, is infected with Viral Hemorrhagic Septicemia virus, based on test results or other empirical evidence that the virus is present. Public notice must be given by issuing a press release, by publication of a notice in the official state newspaper, and by any other means that is reasonably likely to inform the public. Following such a determination and public notice, the provisions of s. NR 19.03 (3) restricting the transport of live fish and eggs from these waters, and of s. NR 19.056 requiring immediate drainage of boats, boat trailers, boating equipment and fishing equipment upon removal from the water, bank or shore of these waters, thereafter apply state-wide to all waters.

SECTION 6 of the Order requires that bait dealers apply for and possess a department permit in order to harvest wild bait from any water, that they keep records of their harvest and of its disposition, except for retail sales to consumers, and that they not possess farm-raised fish while transporting wild harvested minnows, crayfish or frogs back to their business or to the point of sale.

SECTION 7 of the Order eliminates the current requirement that only fish or fish parts and meal may be used as bait for trapping crayfish. It then adds a requirement that if fish (or fish parts) are used as crayfish bait, they must come from the same water where they will be used as bait, except with written approval of the department.

SECTION 8 of the Order bans the use of fish (and fish parts) as bait to trap turtles unless the fish came from the same body of water where they will be used as bait, or with written approval of the department.

SECTION 9 of this Order creates definitions of "live fish" and "live fish eggs" for purposes of the rules created by SECTION 10 that restrict the use of improperly imported live bait and the use of dead bait that has not been preserved by a means that will kill the VHS virus.

SECTION 10 of the Order bans the use or possession of imported live bait (minnows, crayfish and frogs) except bait imported in compliance with DATCP's import and health requirements in ch. ATCP 10, Wis. Adm. Code, and live bait from Iowa or Minnesota used or possessed on boundary waters with those states (the Mississippi River "between the tracks", Lake St. Croix, and the St. Croix river and the St. Louis river as defined in s. NR 21.02 (16)). It also prohibits any person from possessing or using dead fish, dead fish eggs, dead crayfish, dead frogs, or any parts thereof as bait, with 3 exceptions: dead fish, dead fish eggs, dead crayfish, dead 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. The rules also allow dead minnows to still be used as bait, as if they were alive, if certain conditions are met, even though the dead minnows are not preserved by any particular method.

SECTION 11 adds a provision to the current rule governing minnow collection, reiterating the requirement that a bait dealer must obtain the wild bait harvest permit created by SECTION 6 of this Order; describes the permit issued under s. NR 20.39 as a "non-standard gear permit" to distinguish it from the wild harvest permit; and corrects the wording of the Note to NR 20.14 regarding transport of live minnows as affected by this Order. The current note incorrectly states that transportation of minnows is permitted throughout the state.

SECTION 12 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. SECTION 12 also adds a Note to NR 20.39 regarding the need for a wild harvest permit issued under rules created by SECTION 6 of this Order.

Fiscal Effect: The fiscal impact that this rule package will have on state and local government--namely the increased costs associated with addressing or containing the VHS problem--is difficult to estimate given the short amount of time that has elapsed since the discovery of the virus and the uncertainty about the extent to which the virus may or may not spread to other parts of the state. Consequently, the Department is characterizing the state and local fiscal impact as "indeterminate" until more detailed cost information becomes available.

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2007 Session

Detailed Estimate of Annual Fiscal Effect

☒ Original	☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number FH-30-07

Subject

Administrative Rules for Prevention and Control of Viral Hemorrhagic Septicemia (VHS) Virus

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:	
A. State Costs by Category	Increased Costs	Decreased Costs
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	$	$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	$	$
Net Change in Revenues	$	$

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	06-21-07

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

The Wisconsin Natural Resources Board proposes an order to amend NR 19.05 (title), 19.27 (4) (a) 2. a., 20.14 (intro.), (1), (2), (6), (7) (a) and (8) Note and 20.39 and create NR 19.001 (8g) and (8r), 19.05 (3), 19.055, 19.056, 19.057, 19.275 (3) (i), 20.03 (19g) and (19r) and 20.08 (6) and (7) relating to control of fish diseases and invasive species.

FH-30-07

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: Sections 23.09 (2) (intro), 23.22 (2) (a), 29.014 (1), 29.039 (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, 29.039 (1), 29.509 (4) and (5) and 227.11 (2) (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 29.039 (1), Stats., authorizes the department to develop conservation programs to ensure the perpetuation of nongame species, require harvest information and establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species. Section 29.509 (4) and (5), Stats., require bait dealers to keep records as required by the department and authorize the department to issue permits for the taking of bait from specified waters and to restrict the number of permits that may be issued for any designated body of water. 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.

Finally, s. 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.

4. Related statute or rule: None.

5. Plain language analysis of the proposed rule: The Order makes permanent and clarifies the emergency measures put into effect April 8, 2007 by Order No. FH-22-07(E), May 2, 2007 by Order No. FH-25-07(E) and May 27, 2007 by Order No. FH-28-07(E) for the control and prevention of Viral Hemorrhagic Septicemia (VHS) in fish in waters of the state.

SECTION 1 of this Order creates definitions of "live fish" and "live fish eggs" for purposes of the rule created by SECTION 3 that prohibits the transport of live fish and live fish eggs taken from or possessed on any outlying water and certain inland waters or their bank or shore.

SECTION 2 revises the title of s. NR 19.05.

SECTION 3 adds a new subsection (3) to s. NR 19.05, prohibiting live fish or fish eggs that were taken from or possessed on the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters, from being transported away from that water, bank or shore, 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. In addition, if the department formally determines that any other water body is infected with Viral Hemorrhagic Septicemia virus, SECTION 3 makes this conditional prohibition on the transport of live fish apply to all waters of Wisconsin. The live fish transportation ban only applies to transport away from the water or its bank or shore, not on the water.

SECTION 4 of the Order creates a new rule in ch. NR 19 that requires any person who removes a boat, boat trailer, boating equipment or fishing equipment from the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters, to immediately drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container, 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. In addition, if the department formally determines that any other water body is infected with Viral Hemorrhagic Septicemia virus, SECTION 4 makes the immediate drainage requirement apply to all waters of Wisconsin. The drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. Finally, it exempts tanks or containers of potable drinking water and other beverages intended for human consumption.

SECTION 5 of the Order establishes a procedure for the department to formally notify the public if it determines that any water body other than the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected water upstream to the first fish barrier, is infected with Viral Hemorrhagic Septicemia virus, based on test results or other empirical evidence that the virus is present. Public notice must be given by issuing a press release, by publication of a notice in the official state newspaper, and by any other means that is reasonably likely to inform the public. Following such a determination and public notice, the provisions of s. NR 19.03 (3) restricting the transport of live fish and eggs from these waters, and of s. NR 19.056 requiring immediate drainage of boats, boat trailers, boating equipment and fishing equipment upon removal from the water, bank or shore of these waters, thereafter apply state-wide to all waters.

SECTION 6 of the Order requires that bait dealers apply for and possess a department permit in order to harvest wild bait from any water, that they keep records of their harvest and of its disposition, except for retail sales to consumers, and that they not possess farm-raised fish while transporting wild harvested minnows, crayfish or frogs back to their business or to the point of sale.

SECTION 7 of the Order eliminates the current requirement that only fish or fish parts and meal may be used as bait for trapping crayfish. It then adds a requirement that if fish (or fish parts) are used as crayfish bait, they must come from the same water where they will be used as bait, except with written approval of the department.

SECTION 8 of the Order bans the use of fish (and fish parts) as bait to trap turtles unless the fish came from the same body of water where they will be used as bait, or with written approval of the department.

SECTION 9 of this Order creates definitions of "live fish" and "live fish eggs" for purposes of the rules created by SECTION 10 that restrict the use of improperly imported live bait and the use of dead bait that has not been preserved by a means that will kill the VHS virus.

SECTION 10 of the Order bans the use or possession of imported live bait (minnows, crayfish and frogs) except bait imported in compliance with DATCP's import and health requirements in ch. ATCP 10, Wis. Adm. Code, and live bait from Iowa or Minnesota used or possessed on boundary waters with those states (the Mississippi River "between the tracks", Lake St. Croix, and the St. Croix river and the St. Louis river as defined in s. NR 21.02 (16)). It also prohibits any person from possessing or using dead fish, dead fish eggs, dead crayfish, dead frogs, or any parts thereof as bait, with 3 exceptions: dead fish, dead fish eggs, dead crayfish, dead 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. The rules also allow dead minnows to still be used as bait, as if they were alive, if certain conditions are met, even though the dead minnows are not preserved by any particular method.

SECTION 11 adds a provision to the current rule governing minnow collection, reiterating the requirement that a bait dealer must obtain the wild bait harvest permit created by SECTION 6 of this Order; describes the permit issued under s. NR 20.39 as a "non-standard gear permit" to distinguish it from the wild harvest permit; and corrects the wording of the Note to NR 20.14

regarding transport of live minnows as affected by this Order. The current note incorrectly states that transportation of minnows is permitted throughout the state.

SECTION 12 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. SECTION 12 also adds a Note to NR 20.39 regarding the need for a wild harvest permit issued under rules created by SECTION 6 of this Order.

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): Among adjacent states, only Michigan has adopted regulations addressing the VHS problem. The Michigan Department of Natural Resources has enacted regulations that will go into effect on June 28, 2007 that are intended to minimize the spread of VHS in that state. Their waters are classified based on the actual or likely presence of VHS and then regulate live fish movement and bait harvest and use depending on the classification. Steps have also 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. Other jurisdictions are also developing regulations.

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 Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On April 4, 2007 the Natural Resources Board adopted Order FH-22-07(E) to control the spread of Viral Hemorrhagic Septicemia (VHS) virus in Wisconsin. Provisions of that rule were clarified and expanded in NRB Order FH-25-07(E), adopted on April 25, 2007. At the time those rules were adopted, VHS virus had caused fish kills in the lower Great Lakes, but had not been documented west of Lake Huron. Department biologists believed it was probably already in Lake Michigan, and possibly in Lake Superior and the Mississippi River. We now believe that the virus is more wide spread than had previously been believed.

On May 11, the University of Wisconsin Veterinary Diagnostic Lab informed the department that samples of freshwater drum taken from Little Lake Butte des Morts had tested positive for the VHS virus. For purposes of controlling the spread of the disease, it is now reasonable to regard Lake Winnebago and the majority of the Fox/Wolf River system as infected, and prudent to assume that the virus may appear in any inland water.

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 infected to uninfected 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, crayfish trapping, turtle trapping 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 also make it harder for some crayfish trappers to obtain fish for use as bait in their traps, but allows other types of bait to be used in lieu of fish. Similarly, the rule will make it harder for some turtle trappers to obtain fish for use as bait, but current rules already allow the use of other types of bait. 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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12. Place where comments are to be submitted and deadline for submission: To be determined.

SECTION 1. NR 19.001 (8g) and (8r) are created to read:

NR 19.001 (8g) "Live fish" means, for purposes of this chapter, any fish possessed by a person that is handled or treated in a manner that will keep it alive, such as keeping it in water, or that is revived by placement back into water. "Live fish" includes any minnow possessed by a

person for use as bait and that dies while the person is fishing, but only until it is transported away from the body of water on or along which it died.

(8r) "Live fish eggs" means, for purposes of this chapter, fertilized or unfertilized fish eggs that are handled or treated in a manner likely to keep them alive or viable for the purpose of propagation.

SECTION 2. NR 19.05 (Title) is amended to read:

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

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

NR 19.05 (3) No person may transport live fish or live fish eggs away from any of the following waters or their banks or shores if the fish or fish eggs were taken from the following waters or possessed on any of these waters or their bank or shore: Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, any bay, slough or backwater of these waters, or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish; or, if the department determines under s. NR 19.056 that any other water is infected with Viral Hemorrhagic Septicemia virus, any inland or outlying water, except:

(a) Live fish or live 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 live 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) Live fish or live 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 4. NR 19.055 is created to read:

NR 19.055 Drainage of water from boats and equipment required. (1) Except as provided in subs. (2) and (3), any person who removes a boat, boat trailer, boating equipment or fishing equipment from the water, bank or shore of Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, or any bay, slough or backwater of these waters, or any water connected to these waters, upstream to

the first dam or other obstruction impassible to fish; or, if the department determines under s. NR 19.056 that any other water is infected with Viral Hemorrhagic Septicemia virus, from the water, bank or shore of any inland or outlying water, shall drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container immediately after removing the boat, boat trailer, boating equipment or fishing equipment from the water, bank or shore.

(2) The department may exempt any boat, boat trailer, boating equipment or fishing 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.

(3) Subsection (1) does not apply to tanks or containers of potable drinking water or other beverages meant for human consumption.

SECTION 5. NR 19.056 is created to read:

NR 19.056 Determination of waters infected with Viral Hemorrhagic Septicemia virus. If, based on test results or other empirical evidence, the department determines that the Viral Hemorrhagic Septicemia virus is present in any water body other than Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, or any bay, slough or backwater of these waters, or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish, the department shall notify the public that s. NR 19.05 (3) relating to the transport of live fish and live fish eggs and s. NR 19.055 relating to drainage of all water from boats, boat trailers, boating equipment or fishing equipment apply thereafter to all inland and outlying waters. The notice shall be given by issuing a press release, by publication in the official state newspaper, and by such other means as the department determines are reasonably likely to inform the public.

SECTION 6. NR 19.057 is created to read:

NR 19.057 Bait dealer's wild harvest permit required; records required. (1) No bait dealer may take minnows, crayfish or frogs for use as bait from any inland or outlying water without a wild harvest permit issued by the department under this section. A bait dealer shall apply for a permit on forms available from the department. The department shall issue a permit within 10 business days after receipt of a complete application. Permits shall be valid for the dates specified on the permit, not to exceed 14 days and shall require compliance with all minnow collecting restrictions. A complete application shall include the applicant's name, street address, bait dealer's license number if any, the specific water body where bait will be harvested, the

town, range and section where bait will be harvested, the species of bait that will be harvested, the maximum quantity of bait expected to be harvested, proof that the applicant is allowed under s. NR 19.05 (3) (a), (b) or (c) to lawfully transport live fish or live fish eggs, and any other information required on the application form.

Note: See s. NR 20.14 for minnow collecting restrictions.

(2) Each permit holder shall maintain a clear, legible daily record in the English language on forms available from the department of all minnows, crayfish or frogs harvested from any inland or outlying water. The record shall include the water body of origin, the town, range and section where harvested, the species harvested, the date of harvest, the quantity or volume harvested, the disposition, except that retail sales to consumers need not be recorded, and any other information required on the record form.

(3) No bait dealer may possess farm-raised fish while engaged in the harvest of wild bait, or while transporting wild harvested bait from the water where it was harvested to the bait dealer's business location or from the water where it was harvested to the point of sale.

SECTION 7. NR 19.27 (4) (a) 2. a.. is amended to read:

NR 19.27 (4) (a) 2. a. Crayfish may not be taken with use of bait consisting ~~only~~ of fish, including parts of fish lawfully taken, ~~or~~ fish by-products including fish meal or prepared parts of such fish except in the same body of water from which the fish was obtained, or with written approval of the department.

SECTION 8. NR 19.275 (3) (i) is created to read:

NR 19.275 (3) (i) Use fish, including parts of fish as bait, except that fish and fish parts may be used as bait in the same body of water from which the fish was obtained, or with written approval of the department.

SECTION 9. NR 20.03 (19g) and (19r) are created to read:

NR 20.03 (19g) "Live fish" means, for purposes of s. NR 20.08, any fish possessed by a person that is handled or treated in a manner that will keep it alive, such as keeping it in water, or that is revived later by placement back into water. "Live fish" includes any minnow possessed by a person for use as bait and that dies while the person is fishing, but only until it is transported away from the body of water on or along which it died.

(19r) "Live fish eggs" means, for purposes of s. NR 20.08, fertilized or unfertilized fish eggs that are handled or treated in a manner likely to keep them alive or viable for the purpose of propagation.

SECTION 10. NR 20.08 (6) and (7) are created to read:

NR 20.08 (6) Use or possess live fish, live fish eggs, live crayfish or live frogs as bait if obtained outside of, or brought into, the state of Wisconsin, except for the following:

(a) Live fish, live fish eggs, live crayfish or live frogs imported in compliance with the department of agriculture, trade and consumer protection's import and health requirements in ch. ATCP 10.

(b) Live fish, live fish eggs, live crayfish or live frogs obtained in Minnesota or Iowa and used in or on waters of the Mississippi River lying between the Chicago, Milwaukee, St. Paul and Pacific railroad tracks on the Iowa or Minnesota side of the river, and the Burlington Northern and Santa Fe railroad tracks lying on the Wisconsin side of the river, including all sloughs and backwaters, bays and newly extended water areas connected with the main channel of the Mississippi River by a channel which is navigable when the waters are approximately equal to the normal pool elevation as created by the U.S. army corps of engineers and in the waters of Lake St. Croix, and the St. Croix River and the St. Louis River as defined in s. NR 21.02 (16).

Note: Section ATCP 10.62 (1) prohibits the importation into Wisconsin of live fish or live fish eggs for use as bait and s. ATCP 10.07 (2) prohibits the importation into Wisconsin of live crayfish or live frogs without a written import permit from the department of agriculture, trade and consumer protection.

(7) Possess for use as bait, or use as bait any dead fish, dead fish egg, dead crayfish, or dead frog or any part of any dead fish, dead fish egg, dead crayfish, or dead frog unless at least one of the following applies:

(a) It is being possessed or used on Lake Michigan, Green Bay or any waters connected to these waters upstream to the first dam or other obstruction impassible to fish.

(b) It is being possessed or used on the same water body from which it was obtained, or on any water connected to that water body that is not separated by a dam or other barrier impassible to fish.

(c) It has been preserved by means other than refrigeration or freezing.

(d) It is a minnow that is a "live fish" as defined in s. NR 20.03 (19g) and was obtained and possessed lawfully from waters of the state or it was imported in compliance with sub. (6) (a) or (b).

Note: Methods of preservation other than refrigeration or freezing include but are not limited to salting, brining or treatment with other preservatives to prevent or inhibit decay or spoiling.

SECTION 11. NR 20.14 (intro.), (1), (2), (6), (7) (a) and (8) Note are amended to read:

NR 20.14 Minnow collecting restrictions. No bait dealer may take minnows, crayfish or frogs for use as bait from any inland or outlying water without a wild harvest permit from the department under s. NR 19.057. ~~No~~ In addition, no person may do any of the following:

(1) Set, use or operate any net, trap or similar device for the taking of minnows other than minnow seines, minnow dip nets and minnow traps as authorized in s. NR 20.20 unless issued a non-standard gear permit by the department under s. NR 20.39 pursuant to s. 29.516 (1), Stats.

(2) Set, use or operate any minnow seine, minnow dip net, minnow trap or similar device for the taking of minnows in any water unless specifically authorized in s. NR 20.20 or 20.39. Minnow seines or minnow dip nets of any type or description may not be set, used or operated in any trout stream unless a non-standard gear permit is issued by the department under s. NR 20.39.

(6) Set, use or operate minnow traps in trout streams during the closed season for trout unless issued a non-standard gear permit by the department under s. NR 20.39. The permit authorizing placement of minnow traps in trout streams during the closed season for trout shall specify conditions on raising the traps and removing minnows.

(7) Set, use or operate more than 3 minnow traps in trout streams during the open season for trout except licensed bait dealers.

(a) No more than a total of 20 minnow traps may be set, used or operated by licensed bait dealers during the open season for trout when removing minnows from one or more trout streams unless issued a non-standard gear permit by the department under s. NR 20.39.

(8) **Note:** ~~The possession and transportation of legally taken minnows is permitted throughout the state.~~ With certain exceptions, s. NR 19.03 (3) prohibits the transportation of live fish and live fish eggs, including minnows, from Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, any bay, slough or backwater of these waters, and any water connected to these waters upstream to the first dam or other obstruction impassible to fish. However, if the department determines under s. NR 19.056 that any other water is infected with Viral Hemorrhagic Septicemia virus, s. NR 19.03 (3) thereafter prohibits the transportation of live fish and live fish eggs, including minnows, from all inland and outlying waters, with certain exceptions.

SECTION 12. NR 20.39 is amended to read:

NR 20.39 Permits for use of nonstandard minnow gear on inland waters. (1) The department may issue a permit to a licensed bait dealer for the taking of minnows with minnow seines, minnow dip nets or minnow traps which are otherwise prohibited by s. NR 20.14. Applications shall be submitted on forms available from the department to the regional office having jurisdiction over the affected waters.

(a) The department shall issue the permit if it determines that all of 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;.

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.

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.

Note: Under s. NR 19.057, a bait dealer must have a wild harvest permit from the department to take wild minnows, crayfish or frogs for use as bait.

SECTION 13. **EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

SECTION 14. **BOARD ADOPTION.** The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)