Form 1100-001
(R 9/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.B.1

SUBJECT: Adoption of FH-30-07, Rules to control the spread of Viral Hemorrhagic Septicemia virus in Wisconsin

FOR: DECEMBER **BOARD MEETING**

TO BE PRESENTED BY: Michael Staggs

SUMMARY:

The Order broadens, clarifies and makes permanent 3 recent emergency measures for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state. It is identical to proposed Emergency Order FH-40-07(E). The Order limits the transport of live fish and fish eggs away from identified inland and outlying waters, and requires the immediate drainage of water from boats, boating equipment, fishing equipment and other containers upon removal from these waters. The Order adds a procedure for identifying waters where VHS may be present. The Department may authorize the commercial harvest of wild minnows from other waters for use as bait, and may set permit conditions to prevent the spread of VHS. The Order also requires that bait dealers keep daily harvest and disposition records. The Order bans the use or possession of imported live minnows as bait, with exceptions. It also prohibits any person from using dead fish, fish eggs, 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.

This item was originally considered at the October 24, 2007 meeting of the Natural Resources Board. Action on the item was tabled until the December meeting so that a representative from the Department of Agriculture, Trade and Consumer Protection could attend and present information about complementary DATCP rules. New DATCP emergency rules affecting fish health went into effect on October 31, 2007. A copy is included with this green sheet package. State Veterinarian Dr. Robert Ehlenfeldt will be available to explain the new rules and answer any questions. Otherwise, the background memo and rule order are identical to those considered by the Natural Resources Board in October.

RECOMMENDATION: Adoption of 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:

/s/ — 11/28/07
Bureau Director, Michael Staggs — Date

/s/ — 11/29/07
Administrator, Todd Ambs — Date

/s/ — 11/29/07
Secretary, Matt Frank — Date

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)
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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: October 10, 2007 FILE REF: 3600

TO: Natural Resources Board

FROM: Matt Frank

SUBJECT: Adoption of Natural Resources Board Order FH-30-07

OVERVIEW

The discovery of the fish disease Viral Hemorrhagic Septicemia (VHS) in Wisconsin's waters represents a significant fish health issue. This disease has demonstrated the potential to cause large fish kills and long term reductions in wild fish populations, and severe economic losses for aquaculture operations. Regardless of the impacts on Wisconsin's fisheries, VHS is an internationally reportable disease subject to state and federal regulations to prevent its movement, and these regulations have the potential to seriously impact Wisconsin's aquaculture, bait and live fish industries.

Since VHS was identified in Wisconsin waters in April, 2007, the Wisconsin Department of Natural Resources has worked closely with the Wisconsin Department of Agriculture, Trade and Consumer Protection, the Wisconsin Aquaculture Association, the Wisconsin Fish and Bait Dealers Association, and other concerned members of the public to develop a comprehensive program to help prevent the spread of VHS in Wisconsin's public waters and aquaculture operations. This task has not been easy because VHS can be easily spread by the movement of infected live fish – including bait fish, and contaminated water, boats and fishing equipment. Also there are literally millions of people affected. Wisconsin has approximately 1.4 million licensed anglers, 625,000 registered boats, 2,200 registered fish farms, 800 registered bait dealers, and 85 permitted wild bait harvesters participating in activities that could spread or be seriously impacted by the disease.

We are still learning about VHS. While we do have a long history of dealing with European and marine strains of the VHS virus dating back to the 1930s, we first observed the VHS virus strain that is currently affecting Great Lakes and Wisconsin fishes in 2003. While we believe many of its effects will be similar, we have already observed that this new strain is different in that it affects many more species and may operate at warmer water temperatures. It will likely be a decade before we have a more definitive understanding of the long term effects of VHS on Wisconsin's fisheries, and surveillance programs will always represent only a sample of Wisconsin's many lakes and streams at any given time. A major challenge has been to balance the known short term social and economic consequences of potential VHS control measures with the less certain long term consequences of its spread into other Wisconsin waters.

We have concluded that effectively controlling the spread of VHS will require an *integrated* program that ultimately requires that all affected citizens understand and take personal responsibility for making sure their activities are not spreading diseases and invasive species. *Regulations*, as contained in this Greensheet, are an important component but must be complemented by *surveillance and monitoring* programs to track VHS in Wisconsin, implementing fish disease *biosecurity best management practices* in Wisconsin's fish farms and fisheries operations, improving *quality control in Wisconsin's bait fish industry*, conducting needed *research* on the effects of the disease and ways to manage it in the wild and in fish farms, and perhaps most important, significant *public education and outreach* programs. All components of the integrated program are important if we hope to be successful in controlling the spread of VHS.

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The regulations proposed here are consistent with what we know about the current behavior and distribution of the disease, and flexible to allow for change as new information becomes available. The rules target the highest risk activities, movement of live fish and contaminated water from areas that are known to be high risks for VHS infection. They allow for continued wild bait harvesting under a new permit system with additional biosecurity conditions. The DNR rules are complemented by DATCP regulations that significantly improve fish health surveillance in the aquaculture and wild bait industry. Both regulatory efforts have been and will be supported by extensive public education and outreach efforts and increased surveillance of wild fish populations, farm raised fish and bait fish being imported or sold in Wisconsin.

BACKGROUND AND REASONS FOR RULE PROPOSAL

Background on 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. Since the adoption of the first of our emergency orders, the VHS virus has been documented in the Lake Winnebago system and in Wisconsin waters of Lake Michigan.

We do not know how many species of Wisconsin fish are susceptible to the virus. 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. Because this list reaches across many distinct families of fish, we cannot assume that any fish species is not susceptible.

The VHS virus meets the statutory definition (s. 23.22(1), Wis. Stats.) of an invasive species: "Invasive species means nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health."

We do not know how it was transported to the Great Lakes or exactly how it has been spread. 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. 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.

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.

Regulations

On January 25, 2007, the Michigan Department of Natural Resources announced the discovery of VHS in samples of chinook salmon, whitefish, and walleyes in northern Lake Huron including some samples that had originally been collected in 2005. Prior to that announcement, VHS had not been detected any further upstream in the Great Lakes than Lake St Clair. With that announcement, however, we concluded that there was a very strong probability that VHS was already in Lake Michigan and asked the Natural Resources Board to consider emergency rules to help control the spread of the disease.

On April 4, 2007 the Natural Resources Board adopted Order FH-22-07(E) to control the spread of VHS virus in Wisconsin by limiting the movement of live fish, bait, and water among already-infected and uninfected waters of the state. 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 which are directly connected to Lake Michigan.

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 was then reasonable to regard Lake Winnebago and the majority of the Fox/Wolf River system as infected, and prudent to assume that the virus might appear in any inland water. Accordingly, Order FH-28-07(E) was adopted on May 17, 2007, expanding the geographic applicability of the emergency rules to include the Lake Winnebago and the Fox/Wolf River system. Subsequently, VHS was confirmed in freshwater drum in Lake Winnebago itself, and in brown trout, smallmouth bass and whitefish in Lake Michigan.

On June 27, 2007 the NRB authorized public hearings on a proposed permanent rule, Order FH-30-07 which was largely identical to the cumulative emergency rules.

Following the public hearings, a number of revisions were made to proposed NRB Order FH-30-07. We are proposing to continue and expand the restrictions implemented in the emergency rules, and also to allow expansion of the geographic applicability of those restrictions to include additional waters of the state, not just the Great Lakes, Mississippi River, and Lake Winnebago drainages, if and when the Department has reason to believe the virus has been spread to those additional waters. Although the

proposed rule allows the continued harvest of wild bait, it requires wild harvest permit holders to disinfect boats and equipment after removal from any water and bans the transfer of bait between individuals unless fish health requirements established by DATCP are met.

Surveillance and Monitoring

The Department has established an active program of monitoring and surveillance for the virus.

- Since the fall of 2006, with assistance from the USFWS La Crosse Fish Health Center and the Wisconsin Veterinary Diagnostic Lab, DNR has tested 107 groups of wild fish as part of our VHS surveillance program, investigated 18 fish kills, and examined over 40 diagnostic cases of fish with lesions that were caught by anglers.
- All wild broodstocks used by DNR as a source of eggs for state hatcheries and coop ponds are tested for viruses during the spawning period.
- Fish reared at DNR hatcheries are tested for VHS virus and not stocked if VHS is detected.
- With the assistance of a $30,000 grant from the US Department of Agriculture, the Department will expand monitoring in the spring of 2008 to include 30 additional sites from the Wisconsin River basin and 15 additional high risk sites from around the state.
- In cooperation with our Bureau of Law Enforcement we have used the existing WDNR hotline (800-TIP-WDNR) to collect fish kill reports from the public. We will continue to do so in 2008 and follow through with investigations and testing if necessary.

Biosecurity

During 2007, the Wisconsin DNR completed a comprehensive review of our hatchery and field operations to make sure appropriate fish disease biosecurity procedures and best management practices were in place to prevent the spread of VHS. That review was conducted following a complete moratorium on the movement of live fish enacted on May 16, 2007. The completed plan was reviewed by DATCP and approved by the Secretary on June 25, 2007 before resumption of field operations. Improved hatchery biosecurity measures included quarantines of hatcheries which received spawn from potentially infected sources and disease testing of all hatchery broodstock, large fingerlings, forage minnows purchased from outside vendors, and open hatchery water supplies. To date there have been no positive VHS tests of any fish associated with the DNR hatchery system. The complete 2007 plan can be found on the DNR website at:
(http://dnr.wi.gov/fish/documents/VHS%20Hatchery%20Plan%20v06_27_2007.pdf)

For 2008, we are developing a similar operations plan which will contain a similar high level of disease testing, and additional long term measures to deal with the permanent presence of VHS in Lake Michigan such as universal egg disinfection during all spawning operations, raising fish from Lake Michigan sources only in the Lake Michigan watershed and stocking fish from Lake Michigan sources only into Lake Michigan or other known VHS positive waters. Also, we are finalizing internal policies requiring proper disinfection of all boats and sampling gear used by Wisconsin DNR personnel after use on all Wisconsin waters.

Bait Fish

We recognize that bait minnows are a popular and economically important part of Wisconsin's $3 billion sport fish industry as well as a critical potential vector for the spread of VHS. The virus has been found in popular bait species such as emerald shiners, spottail shiners and bluntnose minnows, though to date

has not been found in the wild in the most popular Wisconsin bait species which are fathead minnows, white suckers, and golden shiners. Because the Department of Agriculture, Trade and Consumer Protection (DATCP) has substantial statutory authority in the area of fish health, we are working closely with that agency to improve the fish disease quality control in the bait minnow supply in Wisconsin. DATCP establishes fish health standards for all imported fish, all stocked fish (including those stocked by the Department), and all fish farms. Recently they have developed standards for fish harvested from wild sources and distributed for use as bait. Currently DATCP is developing emergency rules modifying those standards to address VHS. The emergency rules were scheduled to be considered on October 10, 2007.

The two sets of regulations will be complementary in two important ways. First, there are both practical and economic limitations to any wild bait-fish disease testing program. Since this proposed rule would not permit the harvest of wild bait from waters known to be infected with VHS or connecting waters up to the first barrier impassible to fish, that removes a critical source of potentially infected fish and allows the DATCP rules to require a more reasonable testing protocol of other sources of bait minnows. Second, this proposal also clearly requires that wild bait cannot be sold, bartered or given away unless it meets DATCP standards. This not only provides seamless authority, but allows for coordinated enforcement of the rules.

However, recognizing the importance of the wild bait fish industry, DNR and DATCP have worked closely with industry representatives to streamline the permit process. The current rule proposal for example would expand the duration of the normal bait harvest permit from 14 to 30 days, and allow for longer durations for special combined stocking and harvest permits in controlled access situations. The proposed rules also provide more certainty about the future of wild bait harvest in that it removes the provision of the prior emergency rules requiring automatic statewide closure of bait harvesting if VHS is found in a new waterbody.

Research

Wisconsin DNR is cooperating with other agencies and the public to identify, conduct or support necessary research to help better understand VHS and how it affects fish and fish operations in the wild and aquaculture operations. During 2007, for example, the DNR Bureau of Integrated Science Services worked with DNR Fisheries Management staff to study the effects of common virus disinfection practices on coolwater species fish eggs. Although a common practice for coldwater trout and salmon species, much less was known about the effects of disinfection on walleye, pike, musky or sucker eggs. We continue to actively participate in the interjurisdictional Great Lakes Fish Health Committee which has been developing research and disease management recommendations. Wisconsin DNR will also be hosting a workshop on VHS for affected state and federal agencies at the December, 2007 Midwest Fish and Wildlife Conference being held in Madison, Wisconsin.

Public Outreach

The lives of millions of people would be affected by the uncontrolled spread of VHS, but our efforts to control the disease will not be successful unless the public understands the significance of the disease and supports those efforts. Wisconsin has approximately 1.4 million licensed anglers, 625,000 registered boats, 2,200 registered fish farms, 800 licensed bait dealers, and 88 permitted wild bait harvesters participating in activities that could spread or be seriously affected by the disease, so the importance of a public education and outreach component to this effort cannot be overemphasized.

During 2007, the Department took unprecedented steps to alert the public to the threat of VHS and deliver a short but consistent message on steps that they could take to control its spread.

- Posted information signs at all major boat and fishing access points on affected waters in Great Lakes, Mississippi River and Lake Winnebago system. These have been translated into Spanish and Hmong.
- Developed a comprehensive information web page (http://dnr.wi.gov/fish/pages/vhs.html)
- Produced radio and TV public service announcements and distributed to stations across Wisconsin.
- Purchased approximately $70,000 worth of radio and TV airtime for PSA announcements
- Developed informational posters and distributed to all bait dealers for posting.
- Developed other brochures, posters, FAQ sheets, kids cards and other information for distribution and posting on the website.
- Coordinated with other Department aquatic invasive species outreach programs including the growing DNR and volunteer boat inspection program.
- Made countless informational presentations to media, angling and conservation groups, and anglers across the state
- Encouraged anglers to retain fish that show possible signs of VHS and contact their local fisheries biologist. The DNR 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.

We plan to continue many of these activities into 2008 with the hope of continuing to raise public awareness of this issue and continue to deliver a consistent message on the personal actions that people can take to participate in this integrated attack on VHS.

What regulatory steps have been taken by other jurisdictions?

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.

The Wisconsin Department of Agriculture, Trade, and Consumer Protection is a partner in this area. Under its regulations, no fish may be imported for stocking, use as bait, or fish farming without a permit from DATCP, and it has revised its Administrative Code to require testing for VHS virus in all fish proposed for importation from VHS-affected states and provinces outside of Wisconsin. DATCP is also developing emergency rules to provide additional protections against the spread of the virus.

New regulations have been put into effect in New York, Pennsylvania, Ohio, and Michigan. Michigan is the only adjoining state that has enacted new regulations to address the VHS threat. Like ours, Michigan's regulations limit the movement of live fish, fish eggs, and water from one water body to another. Michigan's approach to minimizing the risk of spread of the virus in bait fish differs from ours. 1) Their new regulations apply only to bait species on a "prohibited species" list. 2) They provide a system of certification so that anglers can obtain bait that has been certified as disease-free. 3) They classify their waters as affected ("positive management area"), at risk ("surveillance management area"), or disease-free ("VHS-free management area"). The allowed use of bait then depends on the species, the certification status, the source of the bait, and location of the lake or stream where the bait will be used.

SUMMARY

The Order broadens, 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 17, 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 water body (or its bank or shore) identified in the rule or identified later by the department.

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 live 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 live 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 live fish eggs that tested free of Viral Hemorrhagic Septicemia (VHS) virus using DATCP-approved methods; and live fish or live 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 identifies any other water bodies where the VHS virus may be present, SECTION 3 makes this conditional prohibition on the transport of live fish and live fish eggs also apply to those additional waters, their banks and shores. The live fish and live fish egg transportation ban only applies to transport away from the water or its bank or shore, not to transport 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 identifies any other water bodies where the VHS virus may be present, SECTION 4 makes this immediate drainage requirement also apply to those additional waters, their banks and shores. The immediate drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. Finally, SECTION 4 exempts tanks or containers of potable drinking water and other beverages intended for human consumption.

SECTION 5 of the Order establishes a formal procedure for the department to notify the public if the Secretary determines that there is reason to believe that VHS virus may be present in 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. Public notice that the department has identified an additional water body where the VHS virus may be present 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 the public notice, the provisions of s. NR 19.05 (3) restricting the transport of live fish and live fish eggs apply to these waters, their banks and shores,

and the provision of s. NR 19.056 requiring immediate drainage of water from boats, boat trailers, boating equipment and fishing equipment upon removal from these waters, their banks and shores also apply to the identified waters. Finally, the department is prohibited under s. NR 19.057 from issuing wild harvest permits to bait dealers for the harvest of minnows from all identified waters.

SECTION 6 of the Order requires that bait dealers apply for and possess a department permit in order to harvest wild minnows for bait from any water of the state, 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 bait (minnows, crayfish or frogs) back to their business or to the point of sale. Permits may not be issued for harvest from 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 from any other waters formally identified by the department as water bodies where the VHS virus may be present, although an exception is made for local sale and use involving minnows that will not be transported away from the water, bank or shore where they were taken. Permits may contain specific conditions to implement these requirements, to require decontamination of minnow gear and harvest and transport equipment after use, and to prohibit the gift, sale or barter of wild harvested minnows by a bait dealer unless applicable DATCP fish health requirements have been met. The department may revoke a permit after written notice if necessary to ensure compliance with the wild harvest rules or to prevent or control the spread of the VHS virus or other invasive species. Finally, the rule allows the department to issue permits that are valid for more than 30 days if it is for the harvest of minnows stocked by the applicant under a DNR stocking permit or a DNR permit for private management.

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. The rule also allows minnows or minnow parts obtained from a Wisconsin bait dealer to be used as crayfish trap bait in any water.

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. The rule also allows minnows or minnow parts obtained from a Wisconsin bait dealer to be used as turtle trap bait in any water.

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 as bait and possession of imported live fish, including minnows) except fish imported in compliance with DATCP’s import and health requirements in ch. ATCP 10, Wis. Adm. Code, and live fish from Iowa or Minnesota used or possessed as bait on boundary waters with those states (i.e., 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 or dead fish eggs or any parts thereof as bait, with 3 exceptions: dead fish and dead fish eggs 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 that do not require either refrigeration or freezing. The rules also allow minnows that just died to still be

used as bait, as if they were still 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 bait 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 criterion 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 eggs, 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, clarifies and expands 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 17, 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.

HEARING SYNOPSIS

Six public hearings were held in August regarding FH-30-07. Public attendance totaled 33. The following table summarizes attendance and hearing slips:

	attendance	hearing slips		
		as interest may appear	in support	opposed
Green Bay	9	1	1	2
Superior	5	1	2	0
Milwaukee	2	0	1	0
LaCrosse	1	0	1	0
Fitchburg	4	1	2	0
Wausau	12	2	1	5

We received 22 written comments from groups or individual members of the public.

The following groups submitted written comments:

- Wisconsin Wildlife Federation (in support, but encouraging statewide application of the rules)
- Vilas County Lakes Association (recommending mandatory quarantine of entire watersheds where VHS outbreaks occur)
- Wisconsin Fish and Bait Dealers Association (generally in support, but with certain concerns)
- Wisconsin Aquaculture Association (expressing concerns).

Summary of written and oral public comments on FH-30-07:

Department Authority. Several comments pertained to DNR and DATCP legal authority. No changes have been made to the proposed rule in response to these comments.

1) Comment: The provision (SECTION 10) that it would be illegal to "use or possess live fish, fish eggs, crayfish, or frogs as bait if obtained outside of, or brought into, the state of Wisconsin, except . . ." duplicates DATCP rules that already prohibit the importation into Wisconsin of live fish or fish eggs for use as bait and prohibit the importation into Wisconsin of crayfish or frogs without a written import permit from DATCP.
   Response: In this provision, the Department does not duplicate DATCP rules or assert authority held by DATCP. The provision in question does not regulate the importation of live fish or fish eggs. Rather, under authority of s 29.039(1), Stats., it regulates the use as bait or possession of nongame species that have been imported. Fish imported legally under DATCP rules are explicitly excepted.
2) Comment: DNR has authority over bait harvested within Wisconsin, not imported or farm-raised bait.
   Response: Section 29.039(1), Stats., states that the Department "may require harvest information and may establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species." This includes fish species defined by statute as either rough fish or minnows, whether harvested in Wisconsin, imported, or farm-raised. In addition, s. 29.735, Stats., requires that any person have a DNR permit to import non-native fish species into Wisconsin for the purpose of introduction into waters of the state, use as bait, or rearing in a fish farm.
3) Comment: DATCP has statutory authority over all imported animals, and is the issuer of import permits related to fish health requirements.
   Response: This is incorrect. DATCP does regulate the importation of fish and establishes regulations pertaining to fish health within the state, but as explained above the Department retains broad authority over the use of fish that have been imported, particularly non-native fish.
4) Comment: DNR is not the overseer of DATCP regarding import permits and related health requirements and has no authority over Wisconsin fish farms.
   Response: The proposed rule does not assert Department authority regarding importation of fish and related health requirements.
5) Comment: Any fish, fish eggs, crayfish, or frogs that are brought into Wisconsin in compliance with DATCP rules are legal regardless of whether they are intended for bait or not.

Response: The proposed rule specifically exempts bait imported in compliance with DATCP rules. Importation of non-native fish for stocking, use as bait or in fish farms also requires a DNR permit.

6) Comment: Farm-raised fish are exempt from NR 19 and 20, regardless of what they are used for. Registered fish farms are under the jurisdiction of DATCP. The rule creates confusion and intrudes on DATCP authority.
   Response: Farm-raised nongame fish are not exempt from Department authority provided under Section 20.039(1).
7) Comment: The Legislature mandated that DATCP have complete control over all fish health in the state, including fish managed by DNR.
   Response: This is not correct. The Department's authority and responsibility to protect and sustain wild fish populations allows the consideration of fish health issues.
8) Comment: DATCP, DNR, and the aquaculture industry are cooperatively working on issues of concern regarding VHS. Regulations are being worked out on several issues, including health assessments, health certificates, and VHS testing for fish and bait sold within the state.
   Response: This is correct.
9) Comment: DNR should not be involved with private fish farms; it has enough to do dealing with fish in public waters.
   Response: The proposed rule only directly affects fish farms that are located in or use public waters.

Geographic applicability of the rule. Several comments pertained to when and under what circumstances the geographic applicability of the rule would be expanded. As presented at hearings, the rule restricts the movement of live fish, fish eggs, and water from designated affected or directly-vulnerable waters and provides that those restrictions would apply to all waters of the state in the event that VHS virus is detected elsewhere. The comments listed below pertain to the question of when and to what extent the geographic applicability of the rule should be expanded. In light of these comments, the rule proposal has been revised to have the restrictions apply to additional waters following public notification when the Department has reason to believe that the virus is present in those additional waters.

10) Comment: Provisions should be extended to all state waters, because a) the disease is likely to spread and b) it would encourage practices that will help slow or stop the spread of other invasive species.
    Response: At this time we are proposing only to expand the geographic applicability of the restrictions to waters where we have reason to believe the virus may exist. We agree that the restrictions contained in the rule are relevant to controlling the spread of other invasives.
11) Comment: DNR should approve some waters for bait harvest, if they are VHS virus-free.
    Response: Because we are still trying to understand the rate and direction of spread of the virus, we cannot be confident about designating waters as VHS virus-free. However, the proposed rule will allow the continued issuance of short-term wild harvest permits from specified waters until the Department determines that there is reason to believe the virus might be present there.
12) Comment: We need an immediate closure of all inland lake landings.
    Response: This is not realistic and would not be particularly effective. It would destroy recreational fishing and boating in Wisconsin and would apply unfairly only to those who use public landings.
13) Comment: If the rule goes statewide small wild-bait harvesters could not survive. Small operators do not have the space, time, or funds to meet the testing requirements.
    Response: We understand the difficulties the proposed rule, along with DATCP's announced requirements, pose for small operations. The rule proposal allows for the issuance of wild harvest permits, with restrictions, from waters outside the Great Lakes, Mississippi River, and Lake Winnebago drainages, until the Department determines that there is reason to believe the virus is present.

14) Comment: The rule states that if VHS virus is discovered "in any water body" other than currently affected or directly vulnerable waters, the provisions will apply statewide. What does "any water body" mean. Does it include private or state hatcheries?
Response: The proposed revisions have removed this trigger for expanding the geographic applicability of the rule to the entire state. Under the proposed rule the geographic applicability of the rule will be expanded on a case-by-case basis, following public notice, to waters where the Department has reason to believe the virus is present.
15) Comment: The geographic applicability of the rule should be on a water-by-water or drainage-by-drainage basis.
Response: The proposed revisions attempt to do this.

Wild-bait harvesting issues. Bait dealers who harvest wild minnows will be directly affected by this rule. While we must take the appropriate steps to protect the wild fish populations of the state, we want to minimize disruption to these businesses. We will pursue statutory authority to require reporting of wild-bait harvests. Until that authority is in provided, the wild harvest permit and record-keeping requirements in the proposed rules should provide reasonably current information about wild-bait harvesting, allowing it to continue while limiting it to waters not yet affected by VHS.

16) Comment: It would be good to require wild-bait harvesters to disinfect gear between use in two water bodies.
Response: The Department agrees with this. Under the proposed rule this requirement will be specified in wild harvest permits.
17) Comment: If the harvest of minnows from inland waters is stopped, it will encourage importation of minnows, which may carry the virus. Few imported minnows are actually tested for VHS virus.
Response: Under the proposed rule, the Department will allow the harvest of minnows to continue under the terms of wild harvest permits except in waters where the Department has reason to believe the virus is present. VHS virus is present in Wisconsin, so we know there is some risk associated with minnows harvested from Wisconsin waters. On the other hand, imports from states not affected by VHS virus may pose no risk and imports from affected states must be tested for VHS virus under DATCP rules.
18) Comment: It would be desirable to lengthen the duration of wild harvest permits from 14 days to a longer period, perhaps one year. Note, wild harvest permits are required for isolated ponds as well as lakes and streams.
Response: The rule has been changed to allow permits with durations of up to 30 days. Because the sites of wild-bait harvesting can vary frequently and because we cannot at this time impose reporting requirements on wild-bait harvesters, it is necessary to use short-term permits to monitor wild-bait harvesting. If and when a reporting requirement is implemented, frequent reporting can replace frequent permitting and the duration of permits can be extended.
19) Comment: It would be desirable to allow wild harvest permits to apply to entire creeks or rivers.
Response: One of the purposes of the permitting system is to allow the Department to know with some precision where bait harvesting is taking place. If permits were written to apply to entire creeks or rivers, this precision would be lost.
20) Comment: If wild-bait harvesting is stopped, the less than desirable bait species will be left unchecked to compete with game species.
Response: This assertion is not supported by scientific evidence. Native species harvested for use as bait are not ecologically undesirable and do no harm to game fish.

Other issues.

21) Comment: The provision allowing dead fish preserved by methods other than freezing is problematic because preservation methods known to kill the virus are not specified or even known.

Response: We know of no preservation method that is known to kill the virus, so we are not able to specify an acceptable preservation method. However, we do know that refrigeration or freezing do not kill the virus. The rule language has been modified slightly to clarify the intent of limiting the use of dead bait that has simply been refrigerated or frozen.

22) Comment: Because this is a complex situation and we cannot predict how VHS will affect Wisconsin waters, it would be best to include a one-year sunset clause.
Response: VHS is not a transient problem. Once a water body is infected, there is no known way to eradicate the virus. Adoption of this rule does not preclude later revision.

23) Comment: There should be a provision to allow local anglers to retain minnows used in an affected water if they will use them later on the same water. This would do no harm, and local anglers are doing it anyway. Similarly, anglers should be allowed to keep minnows that are held in the water they were brought in, if there has been no contact with water of an affected lake or stream.
Response: Limitations on the movement of fish and water into and out of affected waters must be clear and enforceable. Because it is impossible for wardens to distinguish minnows intended for later use in the same water body from those to be transported elsewhere, the exceptions suggested would not be enforceable.

24) Comment: Anglers should be allowed to keep the water that certain artificial baits are packaged in, if there has been no contact with water of an affected lake or stream.
Response: If the baits are packaged in water containing preservatives, the rule does not require that the water be drained. If the baits are packaged in pure water, drainage should not be a problem.

25) Comment: The note under NR 20.08(6) could be misread. The clause, "without a written import permit", was likely meant to modify both the first part of the sentence referencing ATCP 10.62(1) and the second part of the sentence referencing ATCP 10.07(2). However, it could be read to indicate that ATCP 10.62(1) prohibits the importation of bait. The clause could be added after each of two parts, creating two distinct sentences, to make the import permit requirement (and thus the exception to the importation prohibition) clearer.
Response: The note has been changed. Because the rule has been simplified to apply only to fish and fish eggs, the reference to crayfish and frogs is no longer needed.

26) Comment: Bait shops serving the Mississippi River fishery should be allowed to handle willowcats that were harvested from that river, because that would not increase the risk of spreading VHS.
Response: Because the willowcats purchased from those shops could legally be used anywhere in the state, this would provide a pathway for movement of infected willowcats from the Mississippi River into inland waters.

27) Comment: DNR should make boat cleaning easier by providing bleach and washing equipment at landings for use by boaters.
Response: This would be a non-regulatory action, and thus is not germane to this rule-making. The Department would like to do what it can to encourage boat cleaning, and is willing to advise non-DNR landing owners, but we see two problems with this suggestion: 1) Because the number of landings is very large, there would be a large cost. 2) The need to dispose of the bleach-containing rinse-water would raise questions related to the discharge of pollutants into public waters.

28) Comment: DNR should provide minnow composting areas near landings.
Response: This would be a non-regulatory action, and thus is not germane to this rule-making. The Department is willing to advise non-DNR landing owners, but will not attempt to do this at DNR landings because the number of landings is very large and the needed staff time and money are not available.

29) Comment: Opening locks on the Fox River will allow movement of VHS in boats along the river.
Response: This is correct, but outside the scope of this rule-making.

30) Comment: The rules do nothing to stop the main source of the problem, ships' ballast.

Response: We do not know that ships' ballast is the main source of the VHS problem. In any case, this vector is outside the scope of this rule-making.

31) Comment: DNR should put in place mandatory quarantines of entire watersheds where confirmed outbreaks of the disease are found.
Response: The rule goes as far in this direction as can be justified.

32) Comment: It makes no sense to ban the interstate movement of all bait fish. Only species that are proven carriers of the virus should be restricted.
Response: This rule does not ban the interstate movement of all bait fish, but it does prohibit the use or possession of imported bait that does not meet DATCP health standards. Because VHS is known to affect a very wide variety of fish species, it is realistic to assume for regulatory purposes that all fish species are vulnerable.

33) Comment: The prohibition of the use of fish as crayfish bait makes crayfish trapping much more difficult, and can hurt crayfish trappers. Other baits are ineffective or much less effective than fish. Remember the rusty crayfish is in itself a controllable pest that is removed by trappers. Solutions to this problem might include a) an approved way of treating fish to kill VHS virus or b) an approved VHS virus-free source of fish for crayfish bait.
Response: We understand this concern. Regarding the first proposed solution, at this time we simply have no method of preserving fish that is known to kill the virus. Regarding the second, the draft rule has been amended to allow fish purchased from licensed Wisconsin bait dealers or that have been tested for VHS according to DATCP testing methods and found to be negative to be used as crayfish bait.

34) Comment: The prohibition on the use of dead crayfish is not needed, because crayfish do not carry the VHS virus.
Response: The draft rule has been amended to remove restrictions on the use of crayfish and frogs as bait.

35) Comment: The prohibition of the movement of live fish from where they are captured is a violation of the constitutional provision, "All residents have the right to hunt, fish, trap and take game only subject to reasonable restriction by law."
Response: This rule is consistent with that constitutional provision. The provisions are reasonable and will have the force of law.

36) Comment: The importation of bait should be completely banned.
Response: We are not prepared to go this far. Currently, DATCP requires VHS-testing of all bait imported from states where VHS has been found. DNR has authority to deny the importation of non-native species for use as bait, but no authority to ban the importation of native fish species.

37) Comment: DNR should assess the economic impact of the rule on small businesses.
Response: The small business most affected by the rule are wild-bait harvesters and all other businesses that provide supplies and services to sport fishers. The harvesters will be negatively affected by limitations on where bait may be withdrawn from, while all other sport fishing related businesses would be hurt by the affects of VHS if it is allowed to spread freely across the state. We have learned through the implementation of permitting requirements under the existing emergency rules that there are approximately 88 individuals who harvest wild bait for commercial purposes. Most of those are very small operations. Sport fishing in Wisconsin is a 2.3 billion dollar industry that supports more than 26,000 jobs and generates $100 million in state tax revenue.

38) Comment: VHS virus should be considered a disease, not an invasive species.
Response: Section 23.22(1), Stats, states, "Invasive species means nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health." The VHS virus meets that definition.

39) Comment: All fishing tournaments that draw boats from other states and or Canada should have mandatory disinfection and special training for participants.

Response: Tournament boats are one vector for VHS virus. In the present rule proposal we are attempting to codify general standards for all boaters. Separate rules dealing with fishing tournaments may impose additional requirements or allow tournament permits to require special actions such as disinfection of boats and training of participants.

40) Comment: The rule prohibits the possession of farm-raised fish while engaged in the harvest of wild bait or while transporting wild bait. How will wardens distinguish wild bait from farm-raised bait?
Response: The difficulty of distinguishing farm-raised bait and game fish from wild bait and game fish is the reason for this provision. The purpose of this provision was not so much directed at farm-raised bait fish, but at farm-raised game fish. Because it is difficult if not impossible to determine where a fish originated from after it goes into the tanks of a truck used to transport bait or other fish, this provision prevents a person engaged in harvesting and transporting bait fish from the wild from also possessing bass, bluegills, walleyes or other game fish and simply claiming that those fish were from the person's fish farm.

41) Comment: All VHS testing requirements hurt businesses because of the expense and delays involved.
Response: These rules do not impose testing requirements.

42) Comment: A clearer distinction between fish farmers and bait dealers is needed. A business should be one or the other, not both. Fish farmers are playing both sides of the fence, and not fairly.
Response: This is not germane to the proposed rule.

43) Comment: Wild harvest permits merely monitor the harvest.
Response: This is true at present, but they can provide the information needed to allow the selective regulation of wild-bait harvesting.

44) Comment: Blanket health inspections of commercial bait are not adequate.
Response: This comment is not germane to the proposed rule, and should be directed to DATCP because that agency is responsible for developing and enforcing regulations pertaining to fish health inspections for imported fish, stocked fish, and cultured fish.

45) Comment: Wild harvest permit system requires harvesters to reveal best waters to competitors.
Response: This may be a risk in some cases.

46) Comment: The term "impassable to fish" requires a definition.
Response: Two points of ambiguity have to do with seasonal flooding and downstream passage. Context and plain usage make it clear that a) a structure or physical feature that is seasonably passable by fish swimming upstream is not impassable and that b) the rule refers to upstream passage, not downstream passage.

47) Comment: The distinction between "hatchery" and "wild" fish should be clarified.
Response: The proposed rule does not use the term "hatchery fish", but does say that a bait dealer harvesting wild bait may not possess "farm-raised fish". That term is define by statute to mean a fish that is kept on a fish farm for propagation purposes or reared on a fish farm and that has not been introduced, stocked or planted into waters outside a fish farm or that has not escaped from a fish farm.

48) Comment: Is non-commercial bait harvest adequately addressed?
Response: Yes, individuals who harvest bait for personal use are covered by the rule.

49) Comment: Could the rule encourage the use of well water to transport bait.
Response: It is unclear how this would help. It is possible under this rule to require that wild-bait be transported in well water, as a condition of wild harvest permits, but if infected fish are transported in that water, they may shed the virus and cause the well water to become infected too.

RESPONSE TO CLEARINGHOUSE COMMENTS

A number of the Clearinghouse comments are mooted by the revisions made to the rule following hearing. All other comments have been accepted and incorporated into the rule, with the following exceptions:

Comment 2.a. regarding Form, Style and Placement in Administrative Code requires further analysis and will be dealt with in a subsequent housekeeping rule revision.

Comment 4. regarding Adequacy of References to Related Statutes, Rules and Forms is unclear and the department does not understand what the Clearinghouse is recommending.

Comment 5.a. regarding Clarity, Grammar, Punctuation and Use of Plain Language is accepted in part, but the wording suggested by the Clearinghouse is too broad.

Finally, the department agrees that the change recommended by Comment 5. f. would be helpful, but it is not accepted because it is not necessary for the rule to be understood or effective. The department intends to use educational materials and pamphlets to explain the rules to affected parties.

FINAL 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.

EMERGENCY RULE
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rulemaking order ***to amend*** ATCP 10.63(2), 10.64(1) and (2), and 10.65(1); ***to repeal and recreate*** ATCP 10.51(2), 10.65(4), and 10.65(5)(b)4.; and ***to create*** ATCP 10.61(12), 10.64(3), and10.645 and (note); ***relating to*** diseases of fish and farm-raised deer.

Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection

This emergency rule modifies current health certification and disease testing requirements for fish and farm-raised deer. This emergency rule does all of the following:

- Adds new viral hemorrhagic septicemia (VHS) testing requirements for all of the following fish and fish eggs if they are of a known VHS-susceptible species and were either (1) collected from a wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or eggs of *any* species collected from a wild source within the preceding 12 months:
    - Fish stocked into Wisconsin public waters.
    - Fish moved between Wisconsin fish farms.
    - Fish distributed by a bait dealer for use as bait. This rule also prohibits any person from selling bait fish if the seller has reason to know that the bait fish are affected with VHS or another reportable disease.
- Clarifies that VHS and other routine fish disease testing requirements do not apply when operators, including the Wisconsin Department of Natural Resources (DNR), are moving fish or fish eggs between Wisconsin fish farms registered by the same operator. Current rules will continue to prohibit an operator from moving fish between the operator's registered fish farms if the operator has reason to know that the fish are affected with VHS or another reportable disease.

- Extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. That will allow participating herd owners to conduct simultaneous tests for both diseases.

Statutory Authority

Statutory Authority:	ss. 93.07(1) and (10), 95.55(6) and 95.60(2)(c), (3), (4)(c) and (4s), Stats.
Statute Interpreted:	ss. 93.07(10), 95.55 and 95.60, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has broad general authority, under s. 93.07(1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP also has broad authority under s. 93.07(10), Stats., to adopt rules and issue orders to protect the health of animals, and to prevent, control and eradicate communicable diseases among animals. DATCP has specific authority, under ss. 95.55 and 95.60, Stats., to regulate farm-raised deer and fish.

Animal Health Programs: Background

DATCP administers Wisconsin's animal health and disease control programs, including programs to control diseases among fish and farm-raised deer. DATCP regulates fish farms, including DNR-operated fish farms, and regulates the import, movement and disease testing of fish. DATCP also regulates farm-raised deer herds and the import, movement and disease testing of farm-raised deer.

Disease Testing of Fish

Viral Hemorrhagic Septicemia

VHS is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms.

Current DATCP rules require health certificates for (1) fish and fish eggs (*including* bait) imported into the state, (2) fish and fish eggs stocked into Wisconsin public waters, and (3) fish and fish eggs moved between Wisconsin fish farms. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for any of the following:

- Fish or fish eggs stocked into Wisconsin public waters from *Wisconsin* sources.
- Bait fish or fish eggs originating from *Wisconsin* sources.
- Fish or fish eggs moved between *Wisconsin* fish farms.

- Non-salmonids imported from states (such as Minnesota) where VHS has not yet been found.

Because VHS has now been found in Wisconsin public waters, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to add VHS testing requirements by emergency rule, pending the adoption of a "permanent" rule.

This emergency rule expands current VHS testing requirements. Under this emergency rule, a fish health certificate and VHS testing are required for all of the following fish and fish eggs if they are of a *known VHS-susceptible species* identified by the United States department of agriculture (USDA) and were either (1) collected from a wild source in any state within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source in any state within the preceding 12 months:

- Fish or fish eggs stocked into Wisconsin public waters.

- Fish or fish eggs moved between Wisconsin fish farms.

- Fish or fish eggs distributed by a bait dealer for use as bait. The bait fish testing requirement will initially apply emerald shiners (a known VHS-susceptible species), but will *not* initially apply to other major bait species such as fathead minnows, white suckers and golden shiners (which are not yet known to be VHS-susceptible). However, it could eventually apply to other species if USDA finds that those species are also VHS-susceptible. A retail bait dealer is not required to conduct duplicate tests on fish previously tested by a wholesale bait dealer.

This rule also prohibits any person from selling bait fish *of any kind* if the seller has reason to know that the bait is affected with VHS or another reportable disease.

Operators Moving Fish Between Their Own Fish Farms

This emergency rule clarifies that VHS and other routine disease testing requirements do not apply when operators (including DNR) are moving fish or fish eggs between their own registered fish farms. However, current DATCP rules continue to prohibit such movement if the operator knows or has reason to know that the fish or fish eggs are affected with a reportable disease such as VHS. DATCP may also issue quarantine and other disease control orders to individual fish farm operators, as necessary.

Disease-Free Certification of Farm-Raised Deer

Under current rules, DATCP may certify a herd of farm-raised deer as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the herd owner. Participation is voluntary, but disease-free herd certification facilitates the sale and movement of farm-raised deer. Herd certification is generally governed by federal rules (uniform methods and rules) that DATCP has incorporated by reference in its rules.

Under current federal rules, tuberculosis-free herd certification is good for 3 years, while brucellosis-free herd certification is good for only 2 years. USDA proposes to harmonize the certification terms, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the terms by state rule.

This emergency rule extends brucellosis-free herd certification from 2 years to 3 years (a herd owner may request a shorter term), consistent with tuberculosis-free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. It is necessary to adopt this change by emergency rule, so that certain herd owners can avoid unnecessary testing this year.

Fiscal Impact

Disease Testing of Fish

Effect on DNR

This emergency rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS-susceptible fish and fish eggs (including VHS-susceptible bait species) must be tested for VHS before being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source within the preceding 12 months.

Under current rules, a veterinarian or other qualified fish health inspector must issue a fish health certificate for all fish or fish eggs stocked into Wisconsin public waters. The inspector must issue the health certificate on a form prescribed by DATCP. Under this rule, if the fish are of a VHS-susceptible species, and were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months, the fish health certificate must certify that the fish are VHS-free. The certification must be based on VHS tests conducted according to approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP identifies on the health certificate form.

VHS tests must be conducted on a statistically representative test sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately $500 (actual costs vary depending on test method, number of fish in the lot, number of different species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and the purposes for which the fish are kept and distributed.

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state-owned fish hatcheries. The remainder are registered by DNR but owned by private DNR "cooperators" (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year (including fish at state hatcheries and "cooperator" fish farms registered by DNR).

Assuming an average test cost of $500 per lot, the total cost to DNR would be approximately $60,000 per year. However, DNR has already implemented a number of internal controls and VHS testing protocols, so the added cost of this rule will be less than $60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

Effect on DATCP

DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule. DATCP will need *at least* 2.0 FTE staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

The 2.0 FTE staff will have a combined total cost of at least $120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

Effect on UW and Local Governments

This rule may have a slight fiscal impact on University of Wisconsin research facilities and some local governments, to the extent that they may operate fish farms or procure fish from farms affected by this rule. However, the effect will likely be minimal unless those entities are engaged in distributing VHS-susceptible fish or fish eggs from wild sources.

Disease-Free Certification of Farm-Raised Dear

This emergency rule extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. The change will allow participating herd owners to conduct simultaneous tests for both diseases. The change will have no fiscal impact on DATCP, on other agencies of state government, or on local government.

Business Impact

Disease Testing of Fish

Effect on Private Fish Farm Operators

DATCP estimates that this rule will affect 30-40 private fish farms, not counting DNR "cooperator" fish farms registered by DNR (see above). Many of the affected fish farms are "small businesses," and many of them will be substantially affected by this rule. VHS testing requirements may force some fish farm operators to curtail all or part of their operations. However, some fish farms already conduct VHS tests in order to meet federal requirements for interstate movement of fish.

Fish farm operators may incur added testing requirements under this rule if they keep VHS-susceptible fish or fish eggs that were either (1) collected from any wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs (of *any* species) collected from any wild source within the preceding 12 months. Operators must test those VHS-susceptible fish or fish eggs before they distribute them for bait, for stocking to Wisconsin public waters, or for delivery to other fish farms (other than those registered by the same operator).

A veterinarian or other qualified fish health inspector must certify that the fish or fish eggs are VHS-free, based on tests using approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP has identified on the health certificate form.

VHS tests must be conducted on a statistically representative sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately $500 (actual costs vary depending on test method, number of fish in the lot, number of fish species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and purposes for which the fish are kept and distributed.

DATCP estimates that approximately 30-40 private fish farm operators will need to conduct VHS tests, and that they will conduct those tests on a combined total of approximately 40 lots of fish per year. Assuming an average cost of $500 per test per lot, the *combined total cost to all affected private fish farm operators* will be approximately $20,000 per year. However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than $20,000. Fish farm costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

Effect on Bait Dealers

Wisconsin bait dealers are licensed by DNR. This rule will affect licensed bait dealers in 2 ways:

- If bait dealers buy VHS-susceptible bait species that originate from wild sources, their purchase costs may reflect the seller's added cost of VHS testing under this rule.

- If bait dealers collect VHS-susceptible bait species from wild sources, they will need to conduct VHS tests before reselling or distributing the bait. They will also need to withhold the bait from distribution for at least 4 weeks pending the completion of VHS tests. That will add costs, and may not be practically feasible for affected bait dealers.

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild-harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. DATCP estimates that each of those bait dealers would need to test an average of 6 lots of wild-harvested emerald shiners each year, before distributing the emerald shiners for sale. Assuming an average cost of $500 per test lot, the average annual cost for an individual bait dealer would be about $3,000 per year, and the combined total cost to all 25 of those bait dealers would be about $75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed. It is extremely difficult to hold emerald shiners for extended periods, so it may not even be possible for most bait dealers to hold them for the required 4 weeks.

The difficulty of holding emerald shiners for 4 weeks, combined with the added cost of testing emerald shiners, may drive many bait dealers out of the business of harvesting wild emerald shiners for sale as bait. However, those bait dealers may still be able to harvest and sell other types of bait that are not affected by this rule.

Bait dealers that are not currently harvesting emerald shiners will not be substantially affected by this rule unless USDA finds that additional bait species are susceptible to VHS. If USDA finds that other major bait species are susceptible to VHS, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

Accommodation for Small Business

This rule will have a limited effect on most private fish farms and bait dealers. But in some cases (especially in the case of bait dealers that harvest emerald shiners from wild sources for sale as bait), this rule may impose substantial added costs. If USDA finds that additional fish or bait fish species are susceptible to VHS, this rule may have a more dramatic impact on fish farm operators or bait dealers, or both. Many of the affected entities are small businesses.

This emergency rule is needed to protect the health of wild and farm-raised fish populations in this state. Effective disease control is important for the entire aquaculture industry in this state. Although this rule may increase costs for some fish farm operators and bait dealers, the costs are currently outweighed by the need to prevent and control the spread of disease. DATCP has not exempted small businesses, or adopted more lenient VHS testing requirements for small business, because the risk of disease spread is unrelated to business size.

Disease-Free Certification of Farm-Raised Deer

This rule will have no negative effects on farm-raised deer keepers, and will reduce testing costs for some farm-raised deer keepers. Actual cost savings will depend on herd size and current test schedules. By facilitating simultaneous testing for brucellosis and tuberculosis, this rule will also avoid some stress on tested deer.

Federal and Surrounding State Programs

Federal Programs

DATCP administers animal disease control programs in cooperation with USDA. USDA has issued federal orders in response to the discovery of VHS in the United States and Canada. The orders limit interstate and international shipments of VHS-susceptible fish from states and provinces that border the Great Lakes, and require negative VHS testing to permit movement. This rule supplements current federal rules by establishing testing requirements for *intrastate* movement and stocking of wild source fish and fish eggs (including bait species) in Wisconsin.

Surrounding State Programs

Michigan and Minnesota require VHS testing on salmonids stocked into state waters. On June 7, 2007, Michigan also announced a one-year moratorium on state hatchery production of walleye, northern pike and muskellunge using eggs collected from wild sources in Michigan during 2007. Illinois and Iowa have no VHS testing requirements for intrastate movement or stocking of fish.

DATCP Contact

Questions and comments related to this rule may be directed to:

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FINDING OF EMERGENCY

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers Wisconsin's animal health and disease control programs, including programs to control diseases of fish and farm-raised deer.

Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources ("DNR"). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (*including bait*) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout,

etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non-salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a "permanent" rule.

Disease-Free Herd Certification of Farm-Raised Deer Herds

(6) DATCP registers farm-raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm-raised deer. Under current DATCP rules, DATCP may certify a deer herd as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the deer keeper. Certification is voluntary, but facilitates sale and movement of deer.

(7) Under current rules, a tuberculosis-free herd certification is good for 3 years, but a brucellosis-free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis-free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that deer farmers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for deer farmers this year, pending the adoption of permanent rules.

EMERGENCY RULE

SECTION 1. ATCP 10.51(2) is repealed and recreated to read:

ATCP 10.51(2) MAINTAINING CERTIFICATION. (a) Except as provided in par. (b) or (c), a herd certification under sub. (1) expires 36 months after the date on which it is issued.

(b) The department may change the expiration date under par. (a) if all of the following apply:

1. The keeper of the farm-raised deer requests the change.

2. The new expiration date occurs before the original expiration date.

3. All test-eligible farm-raised deer in the herd test negative for brucellosis within 3 months before or after the new expiration date.

(c) The department may renew a herd certification under sub. (1) for a 36-month period beginning immediately after the applicable herd certification expiration date under par. (a) or (b) if the herd keeper submits proof that all test-eligible farm-raised deer in the herd have tested negative for brucellosis within 3 months before or after that expiration date.

(d) Test methods and procedures under pars. (b) and (c) shall comply with the brucellosis uniform methods and rules.

(e) Except as provided in pars. (a) to (c), a herd certification under sub. (1) is contingent upon compliance with the brucellosis uniform methods and rules.

SECTION 2. ATCP 10.61(12) and (note) are created to read:

ATCP 10.61(12) REGISTRANT RESPONSIBILITY. A person who registers a fish farm under sub. (1) is responsible for ensuring that fish farm operations comply with relevant provisions of this chapter. This subsection does not relieve other persons of liability for violations of this chapter.

NOTE: If the Wisconsin Department of Natural Resources (DNR) registers as the operator of a privately-owned "cooperator" fish farm under sub. (1), DNR is

responsible for ensuring that all operations of that fish farm comply with this chapter (the private operator may also be held responsible if that operator violates this chapter).

SECTION 3. ATCP 10.63(2) is amended to read:

ATCP 10.63(2) DISEASED FISH. No person may introduce live fish or fish eggs into waters of the state or distribute live fish or fish eggs for sale as bait if that person knows, or has reason to know, that those fish or fish eggs are infected with or show clinical signs of any reportable disease under s. ATCP 10.66.

SECTION 4. ATCP 10.64(1) and (2) are amended to read:

ATCP 10.64(1) VALID HEALTH CERTIFICATE REQUIRED. ~~No~~ Except as provided in sub. (3), no person may move any live fish or fish eggs between fish farms in this state unless those fish or fish eggs are covered by a valid health certificate under s. ATCP 10.65. A qualified fish health inspector shall issue the health certificate based on an inspection of the fish or fish eggs, or of the farm from which they originate. A health certificate does not cover a movement that occurs after the health certificate expires.

(2) DISEASED FISH. No person may move any live fish or fish eggs between fish farms in this state if that person knows, or has reason to know, that those fish or fish eggs are infected with or show clinical signs of any reportable disease under s. ATCP 10.66.

SECTION 5. ATCP 10.64(3) is created to read:

ATCP 10.64(3) Subsection (1) does not apply to the movement of live fish or fish eggs between fish farms that are registered under s. ATCP 10.61 by the same registrant, provided that the registrant keeps complete records of the movement as required by s. ATCP 10.61(10).

SECTION 6. ATCP 10.645 and (note) are created to read:

ATCP 10.645 Bait fish from wild sources. No bait dealer who is required to hold a license under s. 29.509, Stats., may distribute for use as bait any of the following fish or fish

eggs of a species that the federal bureau has found to be susceptible to viral hemorrhagic septicemia (VHS) unless the fish or fish eggs are covered by a valid fish health certificate that complies with s. ATCP 10.65:

(1) Fish or fish eggs collected from a wild source within the 12 month period immediately preceding the distribution date.

(2) Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species collected from a wild source within the 12 month period immediately preceding the distribution date.

NOTE: A "wild source" under s. ATCP 10.645 includes a wild source in this state or outside this state. Fish and fish eggs imported from other states (including bait fish and fish eggs) must also comply with import requirements under s. ATCP 10.62. Species that the federal bureau has found to be susceptible to viral hemorrhagic septicemia are listed at www.aphis.usda.gov/vs/aqua/. Section ATCP 10.645 applies to additional species if and when the federal bureau finds that those species are susceptible. DATCP will identify susceptible species (per USDA findings) in the fish health certificate form under s. ATCP 10.65.

SECTION 7. ATCP 10.65(1) is amended to read:

ATCP 10.65(1) GENERAL. A fish health certificate under s. ATCP 10.62(3)(f), 10.63(1), ~~or~~ 10.64(1) or 10.645 shall comply with this section.

SECTION 8. ATCP 10.65(4) is repealed and recreated to read:

ATCP 10.65(4) CERTIFICATE CONTENTS. (a) A fish health certificate under s. ATCP 10.62(3)(f) shall certify that the fish and fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following:

1. Visible signs of contagious or infectious disease.

2. Infectious hematopoietic necrosis, viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*) if an import shipment covered by the health certificate includes salmonids.

3. White sturgeon iridovirus if an import shipment covered by the health certificate includes sturgeon.

4. Viral hemorrhagic septicemia (VHS) if an import shipment covered by the health certificate includes fish or fish eggs from a state or province where that disease is known to occur.

5. Other diseases, if any, specified on the certificate form. The certificate form shall identify the species for which, and circumstances under which, the disease-free certification is required.

(b) A fish health certificate issued under s. ATCP 10.63(1) shall certify that the fish and fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following:

1. Visible signs of contagious or infectious disease.

2. Whirling disease (*Myxobolus cerebralis*) if a shipment covered by the health certificate includes salmonids.

3. Viral hemorrhagic septicemia (VHS) if a shipment covered by the health certificate includes any of the following fish or fish eggs of a species that the federal bureau has found to be susceptible to viral hemorrhagic septicemia (VHS):

a. Fish or fish eggs collected from a wild source within the 12 month period immediately preceding the shipment.

b. Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species collected from a wild source within the 12 month period immediately preceding the distribution date.

NOTE: A "wild source" under subd. 3. includes a wild source in this state or outside this state. Fish and fish eggs imported from other states (including bait fish and fish eggs) must also comply with import requirements under s. ATCP 10.62. Species that the federal bureau has found to be susceptible to viral hemorrhagic

septicemia are listed at www.aphis.usda.gov/vs/aqua/. Subdivision 3. applies to additional species if and when the federal bureau finds that those species are susceptible. DATCP will identify susceptible species (per USDA findings) in the fish health certificate form under s. ATCP 10.65.

4. Other diseases, if any, specified on the certificate form. The certificate form shall identify the species for which, and circumstances under which, the disease-free certification is required.

(c) A fish health certificate issued under s. ATCP 10.64(1) shall certify that the fish and fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following:

1. Visible signs of contagious or infectious disease.

2. Viral hemorrhagic septicemia (VHS) if a shipment covered by the health certificate includes any of the following fish or fish eggs of a species that the federal bureau has found to be susceptible to viral hemorrhagic septicemia (VHS):

a. Fish or fish eggs collected from a wild source within the 12 month period immediately preceding the shipment.

b. Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species collected from a wild source within the 12 month period immediately preceding the distribution date.

NOTE: A "wild source" under subd. 2. includes a wild source in this state or outside this state. Fish and fish eggs imported from other states (including bait fish and fish eggs) must also comply with import requirements under s. ATCP 10.62. Subdivision 2. applies to additional species if and when the federal bureau finds that those species are susceptible. DATCP will identify susceptible species (per USDA findings) in the fish health certificate form under s. ATCP 10.65.

3. Other diseases, if any, specified on the certificate form. The certificate form shall identify the species for which, and circumstances under which, the disease-free certification is required.

(d) A fish health certificate issued under s. ATCP 10.645 shall certify that the fish and fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following

1. Visible signs of contagious or infectious disease.

2. Viral hemorrhagic septicemia (VHS).

3. Other diseases, if any, specified on the certificate form. The certificate form shall identify the species for which, and circumstances under which, the disease-free certification is required.

NOTE: A fish health certificate is required under s. ATCP 10.645 whenever a bait dealer distributes as bait any of the following fish or fish eggs of a species that the federal bureau has found to be susceptible to VHS:

- Fish or fish eggs collected from a wild source (in Wisconsin or elsewhere) within the 12 month period immediately preceding the distribution date.

- Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species collected from a wild source within the 12 month period immediately preceding the distribution date.

(e) A fish health certificate shall include test results from a qualified laboratory to confirm the statements under pars. (a) to (d) if those test results are required by the certificate form.

(f) Fish egg inspection under this subsection may be based on brood stock inspection and, if testing is required by the certificate form, testing of the brood stock.

NOTE: A certificate form that includes requirements under par. (a)5., (b)4., (c)3., (d)3., (e) or (f) constitutes an order under s. 93.07(10), Stats., which is subject to review in a contested case hearing under ch. 227, Stats., and ch. ATCP 1 unless the department adopts those requirements by rule. If a health certificate does not comply with instructions on the certificate form, the health certificate is invalid.

SECTION 9. ATCP 10.65(5)(b)4. is repealed and recreated to read:

ATCP 10.65(5)(b)4. Special disease concerns that are not adequately addressed by the health certificate. These may include special disease concerns related to the species of fish or fish eggs, or the source from which the fish or fish eggs originate.

EFFECTIVE DATE: This emergency rule takes effect upon publication, and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this _____day of October, 2007.

STATE OF WISCONSIN DEPARTMENT
OF AGRICULTURE TRADE AND
CONSUMER PROTECTION

_____
Rodney J. Nilsestuen, Secretary

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 broadens, 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 water body (or its bank or shore) identified in the rule or identified later by the department.

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 live 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 live 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 live fish eggs that tested free of Viral Hemorrhagic Septicemia (VHS) virus using DATCP-approved methods; and live fish or live 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 identifies any other water bodies where the VHS virus may be present, SECTION 3 makes this conditional prohibition on the transport of live fish and live fish eggs also apply to those additional waters, their banks and shores. The live fish and live fish egg transportation ban only applies to transport away from the water or its bank or shore, not to transport on the water.

(Continued)

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	

Fiscal Estimate — 2007 Session

Page 2 Assumptions Narrative Continued

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

Assumptions Used in Arriving at Fiscal Estimate – Continued

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 identifies any other water bodies where the VHS virus may be present, SECTION 4 makes this immediate drainage requirement also apply to those additional waters, their banks and shores. The immediate drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. Finally, SECTION 4 exempts tanks or containers of potable drinking water and other beverages intended for human consumption.

SECTION 5 of the Order establishes a formal procedure for the department to notify the public if the Secretary determines that there is reason to believe that VHS virus may be present in 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. Public notice that the department has identified an additional water body where the VHS virus may be present 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 the public notice, the provisions of s. NR 19.05 (3) restricting the transport of live fish and live fish eggs apply to these waters, their banks and shores, and the provision of s. NR 19.056 requiring immediate drainage of water from boats, boat trailers, boating equipment and fishing equipment upon removal from these waters, their banks and shores also apply to the identified waters. Finally, the department is prohibited under s. NR 19.057 from issuing wild harvest permits to bait dealers for the harvest of minnows from all identified waters.

SECTION 6 of the Order requires that bait dealers apply for and possess a department permit in order to harvest wild minnows for bait from any water of the state, 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 bait (minnows, crayfish or frogs) back to their business or to the point of sale. Permits may not be issued for harvest from 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 from any other waters formally identified by the department as water bodies where the VHS virus may be present, although an exception is made for local sale and use involving minnows that will not be transported away from the water, bank or shore where they were taken. Permits may contain specific conditions to implement these requirements, to require decontamination of minnow gear and harvest and transport equipment after use, and to prohibit the gift, sale or barter of wild harvested minnows by a bait dealer unless applicable DATCP fish health requirements have been met. The department may revoke a permit after written notice if necessary to ensure compliance with the wild harvest rules or to prevent or control the spread of the VHS virus or other invasive species. Finally, the rule allows the department to issue permits that are valid for more than 30 days if it is for the harvest of minnows stocked by the applicant under a DNR stocking permit or a DNR permit for private management.

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. The rule also allows minnows or minnow parts obtained from a Wisconsin bait dealer to be used as crayfish trap bait in any water.

(Continued)

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. The rule also allows minnows or minnow parts obtained from a Wisconsin bait dealer to be used as turtle trap bait in any water.

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 as bait and possession of imported live fish, including minnows) except fish imported in compliance with DATCP’s import and health requirements in ch. ATCP 10, Wis. Adm. Code, and live fish from Iowa or Minnesota used or possessed as bait on boundary waters with those states (i.e., 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 or dead fish eggs or any parts thereof as bait, with 3 exceptions: dead fish and dead fish eggs 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 that do not require either refrigeration or freezing. The rules also allow minnows that just died to still be used as bait, as if they were still 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 bait 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 criterion 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: 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 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 (1) (intro.) and (a) 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. Minnows are nongame fish 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 broadens, 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 water body (or its bank or shore) identified in the rule or identified later by the department.

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 live 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 live 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 live fish eggs that tested free of the VHS virus using DATCP-approved methods; and live fish or live 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 identifies any other water bodies where the VHS virus may be present, SECTION 3 makes this conditional prohibition on the transport of live fish and live fish eggs also apply to those additional waters, their banks and shores. The live fish and live fish egg transportation ban only applies to transport away from the water or its bank or shore, not to transport 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 identifies any other water bodies where the VHS virus may be present, SECTION 4 makes this immediate drainage requirement also apply to those additional waters, their banks and shores. The immediate drainage requirement also applies to containers and fishing equipment used by bank or

shore anglers. Finally, SECTION 4 exempts tanks or containers of potable drinking water and other beverages intended for human consumption.

SECTION 5 of the Order establishes a formal procedure for the department to notify the public if the Secretary determines that there is reason to believe that VHS virus may be present in 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. Public notice that the department has identified an additional water body where the VHS virus may be present 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 the public notice, the provisions of s. NR 19.05 (3) restricting the transport of live fish and live fish eggs apply to these waters, their banks and shores, and the provision of s. NR 19.055 requiring immediate drainage of water from boats, boat trailers, boating equipment and fishing equipment upon removal from these waters, their banks and shores also apply to the identified waters. Finally, the department is prohibited under s. NR 19.057 from issuing wild harvest permits to bait dealers for the harvest of minnows from all identified waters.

SECTION 6 of the Order requires that bait dealers apply for and possess a department permit in order to harvest wild minnows for bait from any water of the state, 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 bait (minnows, crayfish or frogs) back to their business or to the point of sale. Permits may not be issued for harvest from 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 from any other waters formally identified by the department as water bodies where the VHS virus may be present, although an exception is made for local sale and use involving minnows that will not be transported away from the water, bank or shore where they were taken. Permits may contain specific conditions to implement these requirements, to require decontamination of minnow gear and harvest and transport equipment after use, and to prohibit the gift, sale or barter of wild harvested minnows by a bait dealer unless applicable DATCP fish health requirements have been met. The department may revoke a permit after written notice if necessary to ensure compliance with the wild harvest rules or to prevent or control the spread of the VHS virus or other invasive species. Finally, the rule allows the department to issue permits that are valid for more than 30 days if it is for the harvest of minnows stocked by the applicant under a DNR stocking permit or a DNR permit for private management.

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. The rule also allows minnows or minnow parts obtained from a Wisconsin bait dealer to be used as crayfish trap bait in any water.

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. The rule also allows minnows or minnow parts obtained from a Wisconsin bait dealer to be used as turtle trap bait in any water.

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 as bait and possession of imported live fish, including minnows) except fish imported in compliance with DATCP's import and health requirements in ch. ATCP 10, Wis. Adm. Code, and live fish from Iowa or Minnesota used or possessed as bait on boundary waters with those states (i.e., 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 or dead fish eggs or any parts thereof as bait, with 3 exceptions: dead fish and dead fish eggs 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 that do not require either refrigeration or freezing. The rules also allow minnows that just died to still be used as bait, as if they were still 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 bait 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 criterion 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): 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.

The Wisconsin Department of Agriculture, Trade, and Consumer Protection is a partner in this area. Under its regulations, no fish may be imported for stocking, use as bait, or fish farming without a permit from DATCP, and it has revised its Administrative Code to require testing for VHS virus in all fish proposed for importation from VHS-affected waters outside of Wisconsin. DATCP is also developing emergency rules to provide additional protections against the spread of the virus.

New regulations have been put into effect in New York, Pennsylvania, Ohio, and Michigan. Michigan is the only adjoining state that has enacted new regulations to address the VHS threat.

Like ours, Michigan's regulations also limit the movement of live fish, fish eggs, and water from one water body to another. Michigan's approach to minimizing the risk of spread of the virus in bait fish differs from ours. 1) Their new regulations apply only to bait species on a "prohibited species" list. 2) They provide a system of certification so that anglers can obtain bait that has been certified as disease-free. 3) They classify their waters as affected ("positive management area"), at risk ("surveillance management area"), or disease-free ("VHS-free management area"). The allowed use of bait then depends on the species, the certification status, the source of the bait, and location of the lake or stream where the bait will be used.

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 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 the 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.

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 was then reasonable to regard Lake Winnebago and the majority of the Fox/Wolf River system as infected, and prudent to assume that the virus might appear in any inland water. Accordingly, Order FH-28-07(E) was adopted, expanding the geographic applicability of the emergency rules to include the Lake Winnebago and the Fox/Wolf River system.

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: The small business most affected by the rule are wild-bait harvesters and all other businesses that provide supplies and services to sport fishers. The harvesters will be negatively affected by limitations on where bait may be withdrawn from, while all other sport fishing-related businesses would be hurt by the effects of VHS if is allowed to spread freely across the state. We have learned through the implementation of permitting requirements under the prior emergency rules that there are approximately 88 individuals who make a living harvesting wild bait. Most of those are very small operations. Sport fishing is a 2.3 billion dollar industry that supports more than 26,000 jobs in Wisconsin and generates $100 million in state tax revenue.

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 in fish farms 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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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 that is possessed by a person for use as bait and that dies while the person who possesses it is on the water, bank or shore for the purpose of fishing, but only until the minnow is transported away from water, bank or shore where 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 banks or shores: 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 any other inland or outlying water identified by the department under s. NR 19.056 where the Viral Hemorrhagic Septicemia virus may be present, 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 a water body 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 if the water body is 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 any other water body identified by the department under s. NR 19.056 where the Viral Hemorrhagic Septicemia virus may be present.

(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 Identification of water bodies where the Viral Hemorrhagic Septicemia virus may be present. If the Secretary determines that there is reason to believe that the Viral Hemorrhagic Septicemia virus may be 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 thereafter also apply to that water body, its bank and shore. 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. The department shall maintain a current list of water bodies identified under this section.

SECTION 6. NR 19.057 is created to read:

NR 19.057 Bait dealer's wild harvest permit required; criteria; records required. (1) No bait dealer may take minnows for use as bait from any inland or outlying water unless the bait dealer possesses a wild harvest permit issued by the department under this section and the bait dealer complies with all terms and conditions of the wild harvest permit. A bait dealer shall apply for a permit on forms available from the department. Applications may be submitted no earlier than 30 days prior to the proposed starting date of harvesting. The department shall act on a complete permit application within 10 business days after receipt, based on the criteria in sub. (2). Except as provided in sub. (5), permits shall be valid for the dates specified on the permit, not to exceed 30 days, and shall require compliance with all minnow collecting requirements. 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, and any other information required on the application form.

Note: Permit application forms may be obtained at no charge from the Bureau of Fisheries Management, Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921 or on the Internet at http://dnr.wi.gov/fish/pages/wildbaitharvestpermit.pdf

Note: See s. NR 20.14 for general minnow collecting restrictions, s. NR 20.20 for county and statewide restrictions on waters, authorized methods, open seasons, size limits, bag limits and other restrictions, and s. NR 20.39 for permits authorizing the use of non-standard minnow gear on inland waters.

(2) The department shall grant an application for a wild harvest permit under this section if it determines that all of the following criteria are met, but the department may set specific conditions in permits or deny applications when necessary to ensure compliance with this section and prevent or control the spread of the Viral Hemorrhagic Septicemia virus or other invasive species. By written notice mailed to the permittee's last known address, the department may

revoke a permit to ensure compliance with this section or to prevent or control the spread of the Viral Hemorrhagic Septicemia virus or other invasive species.

(a) The applicant is a bait dealer who holds a bait dealer's license or is exempt under s. 29.509 (3), Stats., from the requirement to hold a bait dealer's license.

(b) Except for minnows that are not transported away from the water, bank or shore where they are taken, minnows may not be taken from 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 from any other waters identified by the department under s. NR 19.056 where the Viral Hemorrhagic Septicemia virus may be present, or where other invasive species may be present.

(c) Minnow gear and harvest and transport equipment shall be disinfected after use to prevent the spread of the Viral Hemorrhagic Septicemia virus and other invasive species.

(d) Minnows taken from inland or outlying waters may not be given, sold or bartered to another person unless applicable fish health requirements specified by the department of agriculture, trade and consumer protection in ch. ACTP 10 have been met.

(3) Each permit holder shall maintain a clear, legible daily record in the English language on forms available from the department of all minnows 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.

Note: Minnow harvest record forms may be obtained at no charge from the Bureau of Fisheries Management, Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921 or on the Internet at http://dnr.wi.gov/fish/pages/wildbaitharvestpermit.pdf.

(4) 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.

(5) Notwithstanding the 30-day limit in sub. (1), the department may issue a wild harvest permit that is valid for the dates specified on the permit, which may exceed 30 days duration, if the permit is for the harvest of minnows from a water of the state stocked with minnows by the applicant pursuant to a stocking permit under s. 29.736, Stats., or for the harvest of minnows from a lake stocked with minnows by the applicant pursuant to a permit for private management under

s. 29.737, Stats. The department may issue a wild harvest permit under this section in conjunction with a stocking permit or a permit for private management.

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 if the fish are minnows obtained from a Wisconsin bait dealer, 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 if the fish are minnows obtained from a Wisconsin bait dealer, 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 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 who possesses it is on the water, bank or shore for the purpose of fishing, but only until the minnow is transported away from water, bank or shore where 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 or live fish eggs as bait if obtained outside of, or brought into, the state of Wisconsin, except for the following:

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

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

(b) Live fish or live fish eggs obtained in Minnesota or Iowa and used as bait 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).

(7) Possess for use as bait, or use as bait any dead fish, dead fish egg or any part of any dead fish or dead fish egg 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 obstruction impassible to fish.

(c) It has been preserved in a manner that does not require either 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).

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 <u>bait dealer may take minnows for use as bait from any inland or outlying water without a wild harvest permit from the department under s. NR 19.057.</u> <u>In addition, no</u> 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 <u>non-standard gear</u> 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 <u>non-standard gear</u> 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 <u>non-standard gear</u> 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 19.05 (3) prohibits the transportation of live fish and live fish eggs, including minnows, taken 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. If, under s. NR 19.056, the department identifies additional water bodies where the Viral Hemorrhagic Septicemia virus may be present, s. NR 19.05 (3) thereafter also prohibits the transportation of live fish and live fish eggs, including minnows, from those additional waters and their banks or shores, with certain exceptions.

SECTION 12. NR 20.39 (1) (intro.) and (a) are amended to read:

NR 20.39 Permits for use of nonstandard minnow gear on inland waters. (1) The department may issue a permit under this section 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.

Note: Permit application forms may be obtained at no charge from the Bureau of Fisheries Management, Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921.

(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 also must have a wild harvest permit from the department to take wild minnows 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 _____
Matthew J. Frank, Secretary

(SEAL)