

NATURAL RESOURCES BOARD

A G E N D A

For meeting at:
Room 613, State Natural Resources Building (GEF 2)
101 South Webster Street
Madison, Wisconsin

Thursday, May 17, 2007

NOTICE IS GIVEN that the Natural Resources Board will convene as a full Board via teleconference at 3:00 p.m. on Thursday, May 17, 2007, in Room 613, State Natural Resources Building (GEF 2), Madison, Wisconsin. The Board will act on item 1.

NOTICE IS FURTHER GIVEN that matters concerning natural resource issues or the Department's program responsibilities or operations specified in the Wisconsin Statutes, which arise after publication of this agenda may be added to the agenda and publicly noticed no less than two hours before the scheduled board meeting, if the Board Chair determines that the matter is urgent.

ORDER OF BUSINESS

1. Adoption of Emergency Order FH-28-07(E) to control the spread of Viral Hemorrhagic Septicemia virus in the waters of Wisconsin.

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

FOR: SPECIAL MAY BOARD MEETING

TO BE PRESENTED BY: Michael Staggs

SUMMARY:

It has been determined that the Viral Hemorrhagic Septicemia (VHS) is present in Little Lake Butte des Morts. For purposes of controlling the spread of this virus it is prudent to assume that it could be present in any Wisconsin waterway but that most waters are not yet infected. Earlier emergency orders had placed restrictions on the movement and use of fish, fish parts, and water taken from the Great Lakes and Mississippi River drainages. This proposal extends those restrictions to the Lake Winnebago system and the Fox River from Lake Winnebago to Green Bay, and allows extensions to other waters in the event that the VHS virus is discovered in those waters. Because it is essential to understand and quantify the mechanisms that may contribute to the spread of the virus, this proposal also establishes a permitting and reporting system for the commercial harvest and distribution of wild bait collected in Wisconsin waters. Finally the proposal limits the use of fish as bait for turtles and allows the use of non-fish bait for in crayfish traps.

RECOMMENDATION: Adopt Emergency Order FH-28-07(E)

LIST OF ATTACHED MATERIALS:

- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

APPROVED:



 Michael Staggs for Todd Ambs

 Todd Ambs

 Randy Romer for Scott Hussett

 Secretary, Scott Hussett

05/17/2007

 Date
05/17/2007

 Date
05/17/2007

 Date

- cc: Laurie J. Ross - AD/5
- Peter Flaherty - LS/5
- Todd Ambs - AD/5
- Mike Staggs - FH/4
- Bill Horns - FH/4 (50 copies for distr)

- Sec. Rod Nilsestuen - DATCP
- Sec. Kelli Trumble - Tourism
- Sen. Mark Miller - Capitol
- Rep. Scott Gunderson - Capitol
- Robert Ehlenfeldt - DATCP

- Paul McGraw - DATCP
- Myron Kebus - DATCP
- Tom Van Haren - LE/5

DATE: May 17, 2007

FILE REF: 3600

TO: Natural Resources Board

FROM: Scott Hassett *RSR for PCH*

SUBJECT: Adoption of Natural Resources Board Order FH-28-07(E)

BACKGROUND AND REASONS FOR RULE PROPOSAL

On May 11, the University of Wisconsin Veterinary Diagnostic Lab confirmed that samples of freshwater drum taken from Little Lake Butte des Morts by DNR Fisheries biologists tested positive for the Viral Hemorrhagic Septicemia (VHS) virus. We do not know how the VHS virus was transported to Little Lake Butte des Morts. Bait minnows imported from the lower Great Lakes may have been the source. Anglers are highly mobile, fishing in Lake Erie one week and in inland Wisconsin waters the next, for example. That means that the virus may have been imported in a live-well, in bilge water, or in other water inadvertently moved from an infected area to Wisconsin. For purposes of controlling the spread of the disease, it is now reasonable to regard Lake Winnebago and most of the Fox/Wolf River system as infected, and prudent to assume that the virus could be present in any public waterway in Wisconsin. Accordingly, we are now proposing to amend the existing emergency order dealing with the VHS problem.

On April 4, 2007 the Natural Resources Board adopted Order FH-22-07(E) to control the spread of Viral Hemorrhagic Septicemia (VHS) virus in Wisconsin. That rule was amended 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, but probably not yet in inland waters. Based on the recent findings from Little Lake Butte des Morts, we now realize that the virus is more wide spread than was previously thought.

The earlier rules identified live fish, live and dead bait, and lake or river water as vectors for the movement of the virus from infected waters to uninfected waters. Because the Great Lakes and Mississippi River drainages were identified as possibly infected, special regulations pertaining to the handling of fish and water taken from those drainages were established by the emergency rules. We now propose to expand the geographic applicability of those regulations to include the Lake Winnebago system, including tributaries, and to additional other waters of the state in the event that the VHS virus is found elsewhere. Although we are confident that most inland waters are still free of the virus, we know they are all vulnerable to transport of the virus from infected waters.

This proposal also clarifies the requirement that shore and bank anglers, like boating anglers, must drain fishing equipment at the end of each fishing trip, limits the use of fish in turtle traps, and allows the use of bait other than fish in crayfish traps.

The discovery of VHS in Little Lake Butte des Morts also highlights the need for better information about activities that may allow the virus to be dispersed farther in Wisconsin's inland waters. Accordingly, this proposal establishes a new wild-bait harvest permitting and reporting requirement for Wisconsin bait dealers. This will allow the Department to better monitor the harvest and transport of bait fish within the state.

SUMMARY

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

SECTION 1 expands emergency rules that conditionally prohibit the transport of live fish taken from the Great Lakes or Mississippi River, or from connected waters upstream to the first fish barrier, to also apply to live fish from Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, any water body formally identified by the department as infected with Viral Hemorrhagic Septicemia virus, and connected waters upstream to the first fish barrier.

SECTION 2 similarly expands to Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, any water body formally identified by the department as infected with Viral Hemorrhagic Septicemia virus, and connected waters upstream to the first fish barrier, the emergency rule that now requires any person who removes a boat, boat trailer, boating equipment or fishing equipment from the water of the Great Lakes or Mississippi River, or from connected waters upstream to the first fish barrier, to drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well and other containers immediately after removing it from the water. SECTION 2 also clarifies that fishing equipment such as bait buckets and other containers used by bank or shore anglers on these waters must also be immediately drained after removing it from the bank or shore.

SECTION 3 establishes a procedure for the department to formally identify waters that it determines are infected with Viral Hemorrhagic Septicemia virus, based on test results or other empirical evidence that the virus is present. Public notice must be given by issuing a press release and by publication of a notice in a newspaper of general circulation in the vicinity of the affected water. The department is also required to maintain an up-to-date list of infected waters. Upon listing and notice, infected waters become subject to the prohibition on live fish transport and to the requirement that water be drained from all boats, trailers, and equipment.

SECTIONS 4, 7, 9 and 10 of the Order require that bait dealers apply for and possess a department permit in order to harvest wild bait from any water, that they keep records of their harvest and of its disposition, except for retail sales to consumers, and that they not possess farm-raised fish while transporting wild harvested minnows, crayfish or frogs back to their business or to the point of sale.

SECTION 5 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.

SECTION 6 bans the use of fish (and fish parts) as bait to trap turtles unless the fish came from the same body of water where they will be used as bait, or with written approval of the Department.

SECTION 8 revises a Note that follows s. NR 20.14, "Minnow collecting restrictions" to make it consistent with revisions made by this Order and Orders FH-22-07(E) and FH-25-07(E). The current note incorrectly states that transportation of minnows is permitted throughout the state.

HOW DO THE RULES AFFECT EXISTING POLICY?

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

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

PAST BOARD ACTIONS AND DEVELOPMENT OF RULE PROPOSAL

This rule expands emergency rules put into affect by Order FH-22-07(E) and Order FH-25-07(E).

AFFECTED PARTIES

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

INITIAL REGULATORY FLEXIBILITY ANALYSIS

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

Fiscal Estimate — 2007 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number FH-28-07(E)

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

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

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

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 emergency rule package modifies and expands the emergency measures put into effect April 8, 2007 by Order No. FH-22-07(E) and May 2, 2007 by Order No. FH-25-07(E) for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state.

SECTION 1 expands emergency rules that conditionally prohibit the transport of live fish taken from specced waters.

SECTION 2 similarly expands emergency rules that now require anglers and boaters using specified waters to drain live wells, bilges, and other compartments after each fishing or boating trip.

SECTION 3 establishes a procedure for the department to formally identify waters that it determines are infected with VHS and to extend protective regulations to those waters.

SECTIONS 4, 7, 9 and 10 require that bait dealers apply for and possess a department permit in order to harvest wild bait from any water, and that they keep records of their harvest and of its disposition, except for retail sales to consumers.

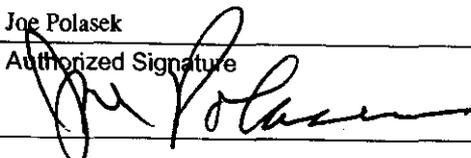
SECTION 5 eliminates the current requirement that only fish or fish parts and meal may be used as bait for trapping crayfish. It then adds a requirement that if fish (or fish parts) are used as crayfish bait, they must come from the same water from which they will be used as bait.

SECTION 6 bans the use of fish (and fish parts) as bait to trap turtles unless the fish came from the same body of water where they will be used as bait, or with written approval of the Department.

SECTION 8 revises a note that follows s. NR 20.14, "Minnow collecting restrictions" to make it consistent with revisions made by this Order and Orders FH-22-07(E) and FH-25-07(E). The current note incorrectly states that transportation of minnows is permitted throughout the state.

Long-Range Fiscal Implications

none

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 05-17-07

Fiscal Estimate — 2007 Session

**Page 2 Assumptions Narrative
Continued**

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

Assumptions Used in Arriving at Fiscal Estimate – Continued

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. Consequently, the Department is characterizing the state and local fiscal impact as "indeterminate" until more detailed cost information becomes available.

Fiscal Estimate Worksheet — 2007 Session

Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

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

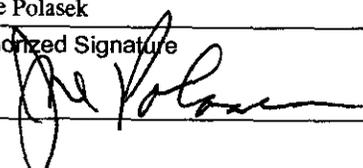
Subject
 Chapter NR 19 -- Miscellaneous Fur, Fish, Game and Outdoor Recreation
 Chapter NR 20 -- Fishing: Inland Waters; Outlying Waters

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

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

Net Annualized Fiscal Impact

	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) 05-17-07

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
RENUMBERING, AMENDING, REPEALING AND RECREATING AND
CREATING RULES**

The Wisconsin Natural Resources Board proposes an emergency order to renumber NR 20.39 (1), amend NR 19.05 (3) (intro), 19.055 (1) and 19.27 (4) (a) 2. a., as affected by Orders No. FH-22-07(E) and FH-25-07(E), and 20.14 (intro), repeal and recreate NR 20.14 Note, and create NR 19.056, 19.057, 19.275 (3) (i), and 20.39(1) relating to control of fish diseases and invasive species.

FH-28-07(E)

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: Sections 23.09 (2) (intro), 23.22 (2) (a), 29.014 (1), 29.041, and 227.11 (2) (a), Stats.

2. Statutory Authority: Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 27.01 (2) (j), 29.014 (1), 29.041, 29.509 (4) and (5), 227.11 (2) (a), and 227.24 (1) (a), Stats.

3. Explanation of agency authority to promulgate the rules under the statutory authority: Section 23.09 (2) (intro), Stats., grants the department general authority to adopt rules for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state. Section 23.091, Stats., authorizes the department to acquire, develop, operate and maintain state recreation areas, to establish use zones within state recreation areas providing for the full range of recreational uses, including hunting and fishing, and to promulgate rules to control uses within zones and limit the number of persons using any zone.

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

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

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

4. Related statute or rule: None.

5. Plain language analysis of the proposed rule: The Order modifies and expands the emergency measures put into effect April 8, 2007 by Order No. FH-22-07(E) and May 2, 2007 by Order No. FH-25-07(E) for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state.

SECTION 1 expands emergency rules that conditionally prohibit the transport of live fish taken from the Great Lakes or Mississippi River, or from connected waters upstream to the first fish barrier, to also apply to live fish from Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, any water body formally identified by the department as infected with Viral Hemorrhagic Septicemia virus, and connected waters upstream to the first fish barrier.

SECTION 2 similarly expands to Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, any water body formally identified by the department as infected with Viral Hemorrhagic Septicemia virus, and connected waters upstream to the first fish barrier, the emergency rule that now requires any person who removes a boat, boat trailer, boating equipment or fishing equipment from the water of the Great Lakes or Mississippi River, or from connected waters upstream to the first fish barrier, to drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well and other containers immediately after removing it from the water. SECTION 2 also clarifies that fishing equipment such as bait buckets and other containers used by bank or shore anglers on these waters must also be immediately drained after removing it from the bank or shore.

SECTION 3 establishes a procedure for the department to formally identify waters that it determines are infected with Viral Hemorrhagic Septicemia virus, based on test results or other empirical evidence that the virus is present. Public notice must be given by issuing a press release and by publication of a notice in a newspaper of general circulation in the vicinity of the affected water. The department is also required to maintain an up-to-date list of infected waters. Upon listing and notice, infected waters become subject to the prohibition on live fish transport and to the requirement that water be drained from all boats, trailers, and equipment.

SECTIONS 4, 7, 9 and 10 of the Order require that bait dealers apply for and possess a department permit in order to harvest wild bait from any water, that they keep records of their harvest and of its disposition, except for retail sales to consumers, and that they not possess farm-raised fish while transporting wild harvested minnows, crayfish or frogs back to their business or to the point of sale.

SECTION 5 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.

SECTION 6 bans the use of fish (and fish parts) as bait to trap turtles unless the fish came from the same body of water where they will be used as bait, or with written approval of the Department.

SECTION 8 revises a Note that follows s. NR 20.14, "Minnow collecting restrictions" to make it consistent with revisions made by this Order and Orders FH-22-07(E) and FH-25-07(E). The current note incorrectly states that transportation of minnows is permitted throughout the state.

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

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

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

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

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

On May 11, the University of Wisconsin Veterinary Diagnostic Lab informed the Department that samples of freshwater drum taken from Little Lake Butte des Morts had tested positive for

the VHS virus. For purposes of controlling the spread of the disease, it is now reasonable to regard Lake Winnebago and the majority of the Fox/Wolf River system as infected.

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

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

10. Effect on small business, including how the rule will be enforced: The most significant economic impact of the rule will be on businesses involved in bait harvest, importation, culture, or sale. Businesses handling bait harvested in VHS-affected areas will be adversely affected, while those involved in culturing bait may benefit. The rule will also make it harder for some crayfish trappers to obtain fish for use as bait in their traps. 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:

William Horns – FH/4
Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921
phone: (608) 266-8782
email: william.horns@wisconsin.gov

SECTION 1. NR 19.05 (3) (intro), as affected by Orders No. FH-22-07(E) and FH-25-07(E), is amended to read:

NR 19.05 (3) No person may transport away from the waters of Lake Michigan, Green Bay, Lake Superior, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, the Mississippi River, any water identified by the department under s. NR 19.056 as infected with Viral Hemorrhagic Septicemia virus, or any bays, sloughs or backwaters of these waters, or from any waters connected to these waters upstream to the first dam or other obstruction impassible to fish, any live fish or fish eggs taken from or possessed on these waters or on their banks or shores, except:

SECTION 2. NR 19.055 (1), as affected by Orders No. FH-22-07(E) and FH-25-07(E), is amended to read:

NR 19.055 (1) Except as provided in subs. (2) and (3), any person who operates a boat, boat trailer, boating equipment or fishing equipment in or on Lake Michigan, Green Bay, Lake Superior, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, the Mississippi River, any water identified by the department under s. NR 19.056 as infected with Viral Hemorrhagic Septicemia virus, or any bay, slough or backwater of these waters, or any waters connected to these waters, upstream to the first dam or other obstruction impassible to fish, or who removes a boat, boat trailer, boating equipment or fishing equipment from any of these waters or their banks or shores 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 or its bank or shore.

SECTION 3. NR 19.056 is created to read:

NR 19.056 Identification of waters infected with Viral Hemorrhagic Septicemia virus. The department shall, from time to time, identify waters that the department determines are infected with Viral Hemorrhagic Septicemia virus, based on test results or other empirical evidence that the virus is present in a water body. The department shall notify the public that a water body has been identified as infected with the virus by issuing a press release and by publication of a notice in a newspaper of general circulation in the vicinity of the affected water. The department shall maintain and update as necessary a list of infected waters.

SECTION 4. NR 19.057 is created to read:

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

(2) Each permit holder shall maintain a clear, legible daily record in the English language on forms available from the department of all minnows, crayfish or frogs harvested

from any inland or outlying water. The record shall include the water body of origin, the Town, Range and Section where harvested, the species harvested, the date of harvest, the quantity or volume harvested, the disposition, except that retail sales to consumers need not be recorded, and any other information required on the record form.

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

SECTION 5. NR 19.27 (4) (a) 2. a., as affected by Order No. FH-25-07(E), 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. ~~No person may use as bait parts of fish or fish by-products obtained from fish taken from Lake Michigan, Green Bay, Lake Superior, the Mississippi River or any bay, slough or backwater of these waters, or any waters connected to these waters, upstream to the first dam or other obstruction impassible to fish, except in the same body of water from which the fish was obtained,~~ or with written approval of the department.

SECTION 6. NR 19.275 (3) (i) is created to read:

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

SECTION 7. NR 20.14 (intro) is amended to read:

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

SECTION 8. NR 20.14 **Note** is repealed and recreated to read:

Note: With certain exceptions, s. NR 19.03 (3) prohibits the transportation of live fish eggs, including minnows, from Lake Michigan, Green Bay, Lake Superior, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, the Mississippi River, any water identified by the department under s. NR 19.056 as infected with Viral Hemorrhagic Septicemia virus, or any bays, sloughs or backwaters of these waters, or from any waters connected to these waters upstream to the first dam or other obstruction impassible to fish.

SECTION 9. NR 20.39 (1) is renumbered to be NR 20.39 (2).

SECTION 10. NR 20.39 (1) is created to read:

NR 20.39 (1) No bait dealer may take minnows, crayfish or frogs for use as bait from any inland or outlying water without a wild harvest permit from the department under s. NR 19.057.

SECTION 11. **STATEMENT OF EMERGENCY.** The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts were infected with the VHS virus. Earlier VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage basin. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

SECTION 12. **EFFECTIVE DATE.** These rules shall take effect on upon publication, as provided in s. 227.24 (1) (d), Stats. Notwithstanding the effective date of these rules, they shall remain in effect only for 150 days from April 8, 2007, the effective date of Order No. FH-22-07(E), unless extended pursuant to s. 227.24 (2), Stats.

SECTION 13. **BOARD ADOPTION.** The foregoing emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)