

SUBJECT: Adoption of FH-30-07A and FH-40-07A(E), rules to control the spread of Viral Hemorrhagic Septicemia virus in Wisconsin

FOR: MARCH BOARD MEETING

TO BE PRESENTED BY: Michael Staggs

SUMMARY:

In December of 2007 the NRB adopted Natural Resources Board Order FH-30-07 to control and prevent the spread of viral hemorrhagic septicemia among wild fish populations. In consideration of concerns raised by the Assembly Natural Resources Committee and the Senate Environment and Natural Resources Committee, NRB Order FH-30-07A has been prepared. This amended rule sustains most provisions of NRB Order FH-30-07, but makes the following amendments: 1) Anglers will be allowed to retain minnows after a fishing trip if the minnows were obtained from a Wisconsin bait dealer and a) have not been exposed to the water or fish of the lake or stream or b) will subsequently be used for bait only on that same water body. 2) Up to 2 gallons of water in a container holding those minnows may be transported away from the water body. 3) The harvest of minnows (except suckers) from any water body where the VHS virus may be present (as identified by the Department) is prohibited. 4) Suckers may be harvested from those waters, but may not be transported alive away from those waters. Other clarifying amendments are also included.

In October of 2007 the NRB adopted Emergency Order FH-40-07(E), which was identical to NRB Order FH-30-07. Emergency Order FH-40-07A(E) further amends Chapters NR 19 and 20 to achieve the same effects as new permanent order FH-30-07A.

RECOMMENDATION: Adoption of proposed Order FH-30-07A and Emergency Order FH-40-07A(E).

LIST OF ATTACHED MATERIALS:

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

APPROVED:

_____ /s/ Bureau Director, Michael Staggs	_____ 3/14/08 Date
_____ /s/ Administrator, Todd Ambs	_____ 3/14/08 Date
_____ /s/ Secretary, Matt Frank	_____ 3/14/08 Date

- | | | |
|------------------------------------|--------------------------------------|----------------------|
| cc: Laurie J. Ross - AD/5 | Sec. Rod Nilsuestuen - DATCP | Paul McGraw - DATCP |
| Peter Flaherty/Carol Turner - LS/8 | Sec. Kelli Trumble - Tourism | Myron Kebus - DATCP |
| Todd Ambs - AD/8 | Sen. Mark Miller - State Capitol | Tom Van Haren - LE/8 |
| Mike Staggs - FH/4 | Rep. Scott Gunderson - State Capitol | Randy Stark - LE/8 |
| Bill Horns - FH/4 (10 copies) | Robert Ehlenfeldt - DATCP | |

DATE: March 17, 2008

TO: Natural Resources Board

FROM: Matthew Frank

SUBJECT: Recommended adoption of FH-30-07A and FH-40-07A(E) -- modifications to FH-30-07 and emergency rule amendments pertaining to controlling the spread of Viral Hemorrhagic Septicemia in Wisconsin

Background

Natural Resources Board Emergency Order FH-40-07(E), pertaining to controlling the spread of Viral Hemorrhagic Septicemia in Wisconsin, was adopted in October and took effect on November 2, 2008 upon publication. Identical permanent order FH-30-07 was adopted in December and submitted for Legislative review. Following a hearing on January 16, the Assembly Natural Resources Committee voted unanimously to ask the NRB to make unspecified changes to FH-30-07. The Senate Environment and Natural Resources Committee at its January 29th hearing expressed serious concerns about the rule but did not vote on the rule, in part because of the previous Assembly Committee action. Although legislators seemed unanimous in their concern about the spread of VHS, several expressed concern about the provisions that prohibit anglers from taking live minnows that they had possessed on the water or along the bank away from the water for later use. We are now proposing modifications to both rules to address those concerns.

Because it is an Emergency Order, FH-40-07(E) will expire on March 31, 2008 unless it is extended by the Joint Committee for the Review of Administrative Rules (JCRAR). Because of legislative concerns about FH-30-07, the Department requested an extension of the emergency order for only 7 days. At the same time we also requested a longer extension of the emergency order following the adoption of modifications to both rules.

Proposed Emergency Order FH-40-07A(E) amends Chapters NR 19 and 20 so that Emergency Orders FH-40-07(E) and FH-40-07A(E), taken together, have the same effect as the proposed revised permanent order, FH-30-07A.

Proposed changes to FH-30-07 (renumbered FH-30-07A, as revised).

The first two changes to the permanent rules directly address the primary concern of legislators.

- 1) Anglers will be allowed to retain live minnows after a fishing trip if they were obtained from a Wisconsin bait dealer and have not been exposed to water or fish from the lake or stream, or if the live minnows will subsequently be used for bait only on that same water body. This is accomplished by the creation of s. NR 19.05 (3) (e) and (f) in SECTION 3 of FH-30-07A.
- 2) Up to 2 gallons of water in a container holding those live minnows may be transported away from the water body. This is accomplished by the creation of s. NR 19.055 (5) in SECTION 4 of FH-30-07A.

To prevent minnows captured by recreational anglers in VHS-affected water body from being transported to another water body under the liberalized rule, the following limitations on minnow harvesting are

imposed, with special exceptions for suckers, which are sometimes harvested for human consumption.

- 3) The use of any net, trap, or similar device to harvest minnows (except suckers) from any water body where the VHS may be present (as identified by the Department) is prohibited. This is accomplished by the creation of s. NR 20.14 (9) in SECTION 11 of FH-30-07A.
- 4) Live suckers may not be transported away from such waters. They may be harvested, but may not be kept alive when being transported away from such waters. This is accomplished by the creation of s. NR 20.14 (10) in SECTION 11 of FH-30-07A.

The following changes are also included in FH-30-07A to clarify the original intent of FH-30-07.

- 5) Minnows purchased from a Wisconsin bait dealer may be possessed by an angler on a water body that has no open season for minnow harvesting. This is accomplished by an amendment to s. NR 20.05 (6) in SECTION 9 of FH-30-07A.
- 6) Such minnows do not count toward an angler's daily bag limit. This is accomplished by an amendment to s. NR 20.05 (7) in SECTION 9 of FH-30-07A.
- 7) A summary table in the Administrative Code is amended to be consistent with the new minnow and sucker rules. This is accomplished by amendments to s. NR 20.20 (73) (h) in SECTION 13 of FH-30-07A.

**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., 20.05 (6) and (7), 20.14, 20.20 (24) (a) 1. a. and (73) (h) and 20.39 (1) (intro.) and (a) and create NR 19.001 (8g) and (8r), 19.05 (3), 19.055, 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-30-07A

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: This rule makes permanent the emergency measures put into effect by emergency rule Order No. FH-40-07(E), as amended by emergency rule Order No. FH-40-07A(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.

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 any inland or outlying water or its bank or shore from being transported away from that water, bank or shore, with 6 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;
- live fish or live fish eggs transported with the prior written approval of the department,
- live minnows harvested by bait dealers under a permit issued by the department,
- live minnows possessed on a waterbody if they were obtained from a Wisconsin bait dealer and have not been exposed to water or fish from that waterbody, and
- live minnows possessed on a waterbody if they were obtained from a Wisconsin bait dealer and will be used for bait only on the same waterbody.

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 any inland or outlying water or from its bank or shore 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. The immediate drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. However, the rule exempts water in a container that holds live minnows obtained from a Wisconsin bait dealer, if the container holds no other fish, contains 2 gallons or less of water, and is used to transport only minnows that have not been exposed to water or fish from that inland or outlying water or that will be used for bait only on the same inland or outlying water, its bank or shore. In addition, SECTION 4 prohibits any person from transporting over land from another state any boat, boat trailer, boating equipment or fishing equipment for use on any water of the state or its bank or shore unless, before entering the state, the person drains 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. Finally, SECTION 4 exempts tanks or containers of potable drinking water and other beverages intended for human consumption.

SECTION 5 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 where the department has reason to believe that 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 6 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 7 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 8 of this Order creates definitions of “live fish” and “live fish eggs” for purposes of the rules created by SECTION 9 that restrict the possession or use of imported live bait and the use of dead bait that has not been preserved by a means that will kill the VHS virus.

SECTION 9 of the Order clarifies that minnows possessed by an angler on a water that has no open season for minnow harvesting are not illegal to possess if the minnows were purchased from

a Wisconsin bait dealer. It also clarifies that minnows purchased from a Wisconsin bait dealer do not count toward an angler's daily bag limit.

SECTION 10 of the Order bans the possession and use as bait of live fish obtained outside of Wisconsin, (including minnows), with exceptions for fish imported in compliance with DATCP's import and health requirements in ch. ATCP 10, Wis. Adm. Code, and live fish obtained in Iowa or Minnesota and 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)). SECTION 9 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 5 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; prohibits a person from setting, using or operating any net, trap or similar device for the taking of minnows, or fishing for minnows except suckers for any purpose using any gear from any water listed in or identified by the Department under s. NR 20.14 (9) as a water where the VHS virus may be present; makes it illegal to transport any live suckers harvested from any waters listed in or identified by the Department under s. NR 20.14 (9) away from those waters; 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 removes the current ban on the use of minnows as bait in Big Green lake when fishing through the ice in water 50 feet or deeper.

SECTION 13 clarifies, in the open and closed season table in s. NR 20.20 (73), that there is a closed season on taking all species of minnows except suckers on any water listed in or identified by the department under s. NR 20.14 (9) as having the VHS virus present, and that suckers harvested from waters of the state may not be transported away from those waters alive.

SECTION 14 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 14 also adds a Note to NR 20.39 regarding the need for a wild harvest permit issued under s. NR 19.057, as created by SECTION 5 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 2.9 billion dollar industry that supports more than 31,000 jobs in Wisconsin and generates over \$200,000,000 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:

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 19.001 (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 inland or outlying water or its bank or shore, 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.

(d) Live minnows being transported away from the water where they were taken by a bait dealer who harvested the minnows in compliance with a wild bait harvest permit issued under s. NR 19.057.

(e) Live minnows that were obtained from a Wisconsin bait dealer and subsequently possessed by the person while on an inland or outlying water, its bank or shore, if the minnows have not been exposed to water or fish from that inland or outlying water.

(f) Live minnows that were obtained from a Wisconsin bait dealer and subsequently possessed by the person while on an inland or outlying water, its bank or shore, if the minnows will be used for bait only on the same inland or outlying water, its bank or shore.

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. (3) to (5), any person who removes a boat, boat trailer, boating equipment or fishing equipment from any inland or outlying water or its bank or shore shall drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container immediately after removing the boat, boat trailer, boating equipment or fishing equipment from the water, bank or shore.

(2) Except as provided in subs. (3) and (4), no person may transport over land from another state any boat, boat trailer, boating equipment or fishing equipment for use on any water

of the state or its bank or shore unless the person drains 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 before entering the state.

(3) The department may exempt any boat, boat trailer, boating equipment or fishing equipment in writing from sub. (1) or (2) if it determines that it will not allow Viral Hemorrhagic Septicemia virus to be transported to other waters.

(4) Subsections (1) and (2) do not apply to tanks or containers of potable drinking water or other beverages meant for human consumption.

(5) Subsection (1) does not apply to water in a container that holds live bait minnows obtained from a Wisconsin bait dealer, if the container holds no other fish, contains 2 gallons or less of water, and is used to transport only live minnows that have not been exposed to water or fish from that inland or outlying water or will be used for bait only on the same inland or outlying water, its bank or shore.

SECTION 5. 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/wildbait harvest permit.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 where the department has reason to believe that 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/wildbait harvest permit.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 6. 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 7. 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 8. 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 9. NR 20.05 (6) and (7) are amended to read:

NR 20.05 (6) Fish for, possess or control fish in excess of the daily bag limit authorized in s. NR 20.20 for that water while on the waters, banks or shores of waters or while fishing except as authorized on specific waters by s. NR 20.35, 20.36 or 20.37 and minnows described in s. NR 19.05 (3) (e) or (f).

(7) ~~Possess~~ Except for minnows purchased from a Wisconsin bait dealer, possess or control fish unless they are included as part of the daily bag limit. Fish that are not released immediately shall be included as part of the daily bag limit.

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

NR 20.08 (6) Possess for use as bait, or use as bait any live fish or live fish eggs 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 is amended to read:

NR 20.14 Minnow collecting restrictions. No 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. In addition, no person may do any of the following:

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

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

(3) Set, use or operate minnow traps in any water that is posted as having been chemically treated to reestablish a trout fishery.

(4) Set, use or operate minnow traps unless a label or tag bearing the legible name and address of the operator in the English language is securely attached.

(5) Set, use or operate minnow traps unless they are raised and the minnows are removed from them at least once every 48 hours from all waters except trout streams.

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

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

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

(b) Minnow traps set, used or operated on trout streams during the open season for trout shall be raised and the minnows removed from them at least once every 24 hours.

(8) Possess or control more than 600 minnows at any time unless licensed as a bait dealer under s. 29.509, Stats.

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 any water of the state.

(9) Notwithstanding any other provision in this chapter or chs. NR 21 to 23, use or operate any net, trap or similar device for the taking of minnows, or fish for minnows except suckers for any purpose using any gear in 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 in any other water where the department has determined that the Viral Hemorrhagic Septicemia virus is present based on test results or other empirical evidence. If the department determines that the Viral Hemorrhagic Septicemia virus is present in any additional water body, it shall promptly notify the public of its determination 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.

(10) Transport away from the water or its bank or shore any live sucker 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 additional water where the department has determined under sub. (9) that the Viral Hemorrhagic Septicemia virus is present.

SECTION 12. NR 20.20 (24) (a) 1. a. is amended to read:

(24) GREEN LAKE (for species or waters not listed, see **sub. (73)**)

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OR OTHER SIZE RESTRICTIONS (INCHES)
(a) All species	1. Big Green lake, Fox river, Maria	a. Motor trolling is permitted. No person may fish through the ice using minnows	As specified in this subsection or sub.	As specified in this subsection or sub.	As specified in this subsection or sub. (73)

	lake, Puckaway lake	(dead or alive or as cut bait) in water 50 or more feet deep in Big Green lake	(73)	(73)	
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SECTION 13. NR 20.20 (73) (h) is amended to read:

(73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OR OTHER SIZE RESTRICTIONS (INCHES)
(h) Minnows	1. Lake Superior, its bays and tributaries	a. None.	No open season	-----	-----
	2. Green Bay, Lake Michigan	a. Dip netting <u>and hook and line</u> for suckers only. <u>Unless authorized under s. NR 19.05(3), no person may transport live suckers away from Green Bay or Lake Michigan.</u>	Continuous	None	None
	3. Lake Michigan tributaries, major Green Bay tributaries	a. Hook and line, minnow dip netting, minnow trapping and minnow seining for suckers only. <u>Unless authorized under s. NR 19.05(3), no person may transport live suckers away from Lake Michigan tributaries or major Green Bay tributaries or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish.</u>	Continuous	600 suckers in total	None
	4. All other Green Bay tributaries upstream to the first dam or lake	a. Minnow dip Dip netting, minnow trapping and minnow seining for suckers only. <u>Unless authorized under s. NR 19.05(3), no person may transport live</u>	Continuous	600 suckers in total	None

		<p><u>suckers away from all other Green Bay tributaries upstream to the first dam or lake or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish.</u></p> <p>b. Hook and line for suckers only.</p>	<p>First Saturday in May to the first Sunday in March.</p>	<p>600 suckers in total</p>	
	<p>5. Trout streams and tributary spring holes inhabited by trout</p>	<p>a. Hook and line, <u>and minnow trapping, except as established under subpar. b.</u> No more than 3 traps per person. Traps must be raised and emptied at least once every 24 hours</p> <p>b. <u>In waters listed in or identified under s. NR 20.14(9), hook and line for suckers only. Unless authorized under s. NR 19.05(3), no person may transport live suckers away from any trout stream or tributary spring hole listed in or identified under s. NR 20.14(9).</u></p>	<p>During the open season for trout</p> <p>During the open season for trout</p>	<p>600 in total</p> <p>600 in total</p>	<p>None</p> <p>None</p>
	<p>6. All other waters not listed in subs. (1) to (72) or this paragraph</p>	<p>a. Hook and line, minnow dip netting, minnow seining, <u>and minnow trapping, except as established under subpar. b.</u> Traps must be raised and emptied at least once every 48 hours.</p> <p>b. <u>In waters listed in or identified under s. NR 20.14(9), hook and line for suckers only. Unless authorized under s. NR 19.05(3), no person may transport live suckers away from any waters of the state.</u></p>	<p>Continuous</p> <p>Continuous</p>	<p>600 suckers in total</p> <p>600 suckers in total</p>	<p>None</p> <p>None</p>

SECTION 14. 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 15. 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 16. 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)

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

The Wisconsin Natural Resources Board proposes an emergency order to amend NR 20.05 (6) and (7) and 20.20 (73) (h) and create NR 19.05 (3) (e) and (f), 19.055 (5) and 20.14 (9) and (10), relating to control of fish diseases and invasive species.

FH-40-07A(E)

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: Sections 23.09 (2) (intro), 23.22 (2) (a), 29.014 (1), 29.039 (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), 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 29.039 (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: This emergency rule amends the emergency measures put into effect November 2, 2007 by Order No. FH-40-07(E) for the control and prevention of Viral Hemorrhagic Septicemia (VHS) in fish in waters of the state.

SECTION 1 of the Order adds 2 new exemptions to s. NR 19.05 (3), which generally prohibits live fish or live fish eggs that were taken from or possessed on any inland or outlying water or its bank or shore from being transported away from that water, bank or shore. The new exceptions are for:

- live minnows possessed on a waterbody if they were obtained from a Wisconsin bait dealer and have not been exposed to water or fish from that waterbody, and
- live minnows possessed on a waterbody if they were obtained from a Wisconsin bait dealer and will be used for bait only on the same waterbody.

SECTION 2 of the Order creates a new exemption to s. NR 19.05 (3), which requires generally that any person who removes a boat, boat trailer, boating equipment or fishing equipment from any inland or outlying water or from its bank or shore must 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. The immediate drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. The new exemption applies to water in a container that holds live minnows obtained from a Wisconsin bait dealer, if the container holds no other fish, contains 2 gallons or less of water, and is used to transport only minnows that have not been exposed to water or to fish from that inland or outlying water, or that will be used for bait only on the same inland or outlying water, its bank or shore.

SECTION 3 of the Order clarifies that minnows possessed by an angler while on a water that has no open season for minnow harvesting are not illegal to possess if the minnows were purchased from a Wisconsin bait dealer. It also clarifies that minnows purchased from a Wisconsin bait dealer do not count toward an angler's daily bag limit.

SECTION 4 adds a provision to the current rule governing minnow collection, reiterating the requirement that prohibits a person from setting, using or operating any net, trap or similar device for the taking of minnows, or fishing for minnows except suckers for any purpose using any gear

from any water listed in or identified by the Department under s. NR 20.14 (9) as a water where the VHS virus may be present. It also adds language reiterating that no person may transport any live suckers harvested from any waters listed in or identified by the Department under s. NR 20.14 (9) away from those waters.

SECTION 5 clarifies, in the open and closed season table in s. NR 20.20 (73), that there is a closed season on taking all species of minnows except suckers on any water listed in or identified by the department under s. NR 20.14 (9) as having the VHS virus present, and that suckers harvested from waters of the state may not be transported away from those waters alive.

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 it 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 2.9 billion dollar industry that supports more than 31,000 jobs in Wisconsin and generates over \$200,000,000 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:

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) (e) and (f) are created to read:

NR 19.05 (3) (e) Live minnows that were obtained from a Wisconsin bait dealer and subsequently possessed by the person while on an inland or outlying water, its bank or shore, if the minnows have not been exposed to water or fish from that inland or outlying water.

(f) Live minnows that were obtained from a Wisconsin bait dealer and subsequently possessed by the person while on an inland or outlying water, its bank or shore, if the minnows will be used for bait only on the same inland or outlying water, its bank or shore.

SECTION 2. NR 19.055 (5) is created to read:

NR 19.055 (5) Subsection (1) does not apply to water in a container that holds live bait minnows obtained from a Wisconsin bait dealer, if the container holds no other fish, contains 2 gallons or less of water, and is used to transport only live minnows that have not been exposed to water or fish from that inland or outlying water describe or will be used for bait only on the same inland or outlying water, its bank or shore.

SECTION 3. NR 20.05 (6) and (7) are amended to read:

NR 20.05 (6) Fish for, possess or control fish in excess of the daily bag limit authorized in s. NR 20.20 for that water while on the waters, banks or shores of waters or while fishing except as authorized on specific waters by s. NR 20.35, 20.36 or 20.37 and minnows described in s. NR 19.05 (3) (e) or (f).

(7) ~~Possess~~ Except for minnows purchased from a Wisconsin bait dealer, possess or control fish unless they are included as part of the daily bag limit. Fish that are not released immediately shall be included as part of the daily bag limit.

SECTION 4. NR 20.14 (9) and (10) are created to read:

NR 20.14 (9) Notwithstanding any other provision in this chapter or chs. NR 21 to 23, use or operate any net, trap or similar device for the taking of minnows, or fish for minnows except suckers for any purpose using any gear in 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 in any other water where the department has determined that the Viral Hemorrhagic Septicemia virus is present based on test results or other empirical evidence. If the department determines that the Viral Hemorrhagic Septicemia virus is

present in any additional water body, it shall promptly notify the public of its determination 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.

(10) Transport away from the water or its bank or shore any live sucker 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 additional water where the department has determined under sub. (9) that the Viral Hemorrhagic Septicemia virus is present.

SECTION 5. NR 20.20 (73) (h) is amended to read:

(73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OR OTHER SIZE RESTRICTIONS (INCHES)
(h) Minnows	1. Lake Superior, its bays and tributaries	a. None.	No open season	-----	-----
	2. Green Bay, Lake Michigan	a. Dip netting <u>and hook and line</u> for suckers only. <u>Unless authorized under s. NR 19.05(3), no person may transport live suckers away from Green Bay or Lake Michigan.</u>	Continuous	None	None
	3. Lake Michigan tributaries, major Green Bay tributaries	a. Hook and line, minnow dip netting, minnow trapping and minnow seining for suckers only. <u>Unless authorized under s. NR 19.05(3), no person may transport live suckers away from Lake Michigan tributaries or major Green Bay tributaries or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish.</u>	Continuous	600 suckers in total	None

	<p>4. All other Green Bay tributaries upstream to the first dam or lake</p>	<p>a. Minnow dip Dip netting, minnow trapping and minnow seining for suckers only. <u>Unless authorized under s. NR 19.05(3), no person may transport live suckers away from all other Green Bay tributaries upstream to the first dam or lake or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish.</u></p> <p>b. Hook and line for suckers only.</p>	<p>Continuous</p> <p>First Saturday in May to the first Sunday in March.</p>	<p>600 suckers in total</p> <p>600 suckers in total</p>	<p>None</p>
	<p>5. Trout streams and tributary spring holes inhabited by trout</p>	<p>a. Hook and line, <u>and</u> minnow trapping, <u>except as established under subpar. b.</u> No more than 3 traps per person. Traps must be raised and emptied at least once every 24 hours</p> <p>b. <u>In waters listed in or identified under s. NR 20.14(9), hook and line for suckers only. Unless authorized under s. NR 19.05(3), no person may transport live suckers away from any trout stream or tributary spring hole listed in or identified under s. NR 20.14(9).</u></p>	<p>During the open season for trout</p> <p><u>During the open season for trout</u></p>	<p>600 in total</p> <p><u>600 in total</u></p>	<p>None</p> <p><u>None</u></p>
	<p>6. All other waters not listed in subs. (1) to (72) or this paragraph</p>	<p>a. Hook and line, minnow dip netting, minnow seining, <u>and</u> minnow trapping, <u>except as established under subpar. b.</u> Traps must be raised and emptied at least once every 48 hours.</p> <p>b. <u>In waters listed in or identified under s. NR 20.14(9), hook and line for suckers only. Unless authorized under s. NR 19.05(3),</u></p>	<p>Continuous</p> <p><u>Continuous</u></p>	<p>600 suckers in total</p> <p><u>600 suckers in total</u></p>	<p>None</p> <p><u>None</u></p>

		<p><u>no person may transport live suckers away from any waters of the state.</u></p>			
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SECTION 6. STATEMENT OF EMERGENCY. The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts (part of the Lake Winnebago system) were infected with the VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the 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. Information obtained pursuant to an emergency rule that took effect May 17 revealed that 88 bait dealers harvest live wild minnows from a large number of state waters, including waters that are near or connected to the Mississippi river, the Lake Winnebago system, Green Bay and Lakes Michigan and Superior.

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. It is expected the USDA APHIS will soon expand its emergency order limiting the interstate transportation of these species to apply to all fish 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 7. EFFECTIVE DATE. This rule shall take effect 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 November 2, 2007, the effective date of Order No. FH-40-07(E), unless extended pursuant to s. 227.24 (2), Stats.

SECTION 8. 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 _____
Matthew J. Frank, Secretary

(SEAL)