

Report From Agency

REPORT TO LEGISLATURE

NR 19 and 20, Wis. Adm. Code

Board Order No. FH-13-22
Clearinghouse Rule No. CR 23-053

Basis and Purpose of the Proposed Rule

Bait harvest regulations are established to manage harvest of wild bait, especially minnows, from waters of the state. These regulations are important for allowing bait harvesters and anglers of Wisconsin fair and equitable access to and use of baitfish, while maintaining populations of these fish as forage for native game and non-game fish and other wildlife. Bait harvest regulations also help mitigate the spread of aquatic invasive species and disease and minimize disturbances to sensitive aquatic resources. This rule aims to modernize bait harvest regulations to improve permitting and reporting efficiency for bait harvesters and the department while continuing to protect wild fish populations. This rule will also update gear use regulations to meet current needs. This rule will address regulations for commercial bait harvesters. Additionally, this rule creates a white sucker spawning permit to authorize bait dealers to harvest eggs and milt from white suckers for propagation as bait.

Summary of Public Comments

The department held a comment period from Aug. 29 – Sept. 11, 2023 to gain public input on potential economic impacts of implementing and complying with this rule, and received four comments mostly relating to components in the rule itself rather than the economic impacts. The department held a written comment period on the rule from Oct. 2 to Nov. 2, 2023, and received seven comments. Three people provided comments during the hearing; comments were a mix of support and opposition to different components of the rule. The comments and department responses are summarized below.

Wisconsin's bait harvest regulations should be more consistent with neighboring states.

The Wisconsin DNR coordinates with neighboring state agencies to help make regulations more consistent on boundary waters. However, because each state has its own process and policies for establishing regulations, Wisconsin cannot be completely consistent with neighboring states.

Mandatory daily reporting would add work for bait dealer businesses and could lead to restrictions on harvesting bait from certain or all waters.

Bait harvesters are already required to keep daily records of minnow harvest under s. NR 19.057 (3), Wis. Admin. Code., and these records are to be made available to the department upon request. Recording minnow harvest activities at the point of harvest and reporting this information to the department is necessary for accurate and valid data and compliance monitoring, since bait is not inventoried in the same way once it is transported to an aquaculture facility.

If personal bait harvest of minnows from VHS-affected waters is allowed, the DNR should again allow permits to move fish from one waterbody to another, as there will not be a good reason to prohibit relocation of fish within a watershed.

Under the initial draft of the proposed rule, no live minnows could be moved away from VHS-affected waterbodies, whether the minnows were harvested from the VHS-affected waterbody or purchased from a bait dealer. This was intended to minimize the risk of moving disease pathogens and aquatic invasive species to other waters. While the department can adjust rule requirements, permits are very seldom issued for moving fish from one waterbody to another (wild fish transfer) because statutes and Department of Agriculture, Trade and Consumer Protection (DATCP) rules make it extremely difficult to do so due to the fish health and quarantine requirements involved. Section 29.736, Stats., states that to introduce or stock fish into waters of the state, a person must obtain a permit and get the fish certified by a qualified inspector to ensure they meet the fish health requirements established in DATCP rules. These statutes and rules apply both to the public and to the department, so the department has all but abandoned wild fish transfer for its own management purposes as well.

A lot of people are concerned that the change allowing personal bait harvest of minnows from VHS-affected waters is not enforceable, and that minnows will be illegally moved away from these waters and infect lakes in northern Wisconsin similar to how watermilfoil made its way from southern Wisconsin to northern Wisconsin.

The current rules prohibit movement of live minnows away from any waterbody, but contain an exception to this prohibition for minnows that have been purchased from a bait dealer and are not exposed to any water or fish from the waterbody. Under the initial draft of the proposed rule, this exception would not apply on VHS-affected waters, as there would be no way to verify that the minnows in the bait bucket came solely from a bait dealer and did not contain a mix of purchased and harvested minnows. However, the department will no longer move forward with personal harvest of minnows from VHS-affected waters in this rule.

Illegal behavior can occur under current rules as well. If individual anglers intend to move minnows illegally at the risk of being issued a citation, even the current complete prohibition on minnow harvest from VHS-waters is not likely to dissuade them. Anglers are largely responsible and ethical when it comes to adhering to the fishing regulations and protecting the state's fish populations.

Stocking and harvesting permits need to be addressed, including consolidating permits for stocking and harvesting the same waterbody, not considering fish stocked and harvested by the same person as under title of the state, only issuing one permit for waterbodies on private or leased land with landowner permission or proof of lease attached, prioritizing historical use of the waterbody when issuing permits, and treating freeze-out ponds differently than rivers. Freeze-out ponds are closed bodies of water with limited or no public access, no history of public use, and leased from the landowner. Raising fish in freeze-out ponds requires health inspection and approval from DNR and DATCP, and fish are stocked into the ponds from farms and return to the farms under a DNR stocking permit.

This rule pertains to wild bait harvest regulations; stocking permits are beyond the scope of this rule.

The DNR should conduct a study on the relationship between forage fish and game fish and how bait harvest impacts them in river systems, including amount of bait fish harvested, growth rates, population estimates, reproduction, game fish fishing regulations, and the disposition of wild fish harvested from these system. This should also include studying the relationship of trout and smallmouth bass in trout streams.

A study of this nature is beyond the scope of this rule, as it would be very broad-scale and resource-intensive in nature. The enhanced reporting requirements in this rule would help provide data on minnow harvest and minnow populations in waters across the state.

The commercial harvest bait license should be separate from the bait retail license with differing fees.

The bait dealer license requirements and fees are established in statutes, which cannot be modified through department rule-making.

VHS waters should be open or closed for personal and commercial harvesters equally. Waters with invasive species should be closed to harvest of live bait, except for eggs.

The rule will continue the complete prohibition on all minnow harvest from VHS-affected waters, which is in place as much to prevent the spread of invasive species as to prevent the spread of VHS as aquatic invasive species are present in the majority of VHS-affected waters.

VHS waters should be closed for personal and commercial harvest whether the minnows are alive or dead.

As amended, this rule maintains the prohibition on personal and commercial harvest of minnows from VHS-affected waters.

VHS waters must be opened to commercial harvest by special permit in cases where harvest from certain waters will pose minimal risk to the spread of disease and invasive species, and the permit should include testing and biosecurity requirements to allow for safe commercial harvest. These waters have been closed for commercial harvest since the early 2000s.

More data on current commercial bait harvest practices are needed before opening VHS-affected waters to commercial harvest. Personal and commercial harvest of minnows from VHS-affected waters will be evaluated for the purposes of future rule-making once more data on recent VHS detections and commercial minnow harvest from other waters are available.

Wild bait harvest should only be allowed for taking and selling live minnows, not for dead and preserved bait.

While most bait harvesters sell their minnows live, preserving them by methods other than refrigeration or freezing to use as dead bait is still legal; this rule will not change that. This is also the case for bait dealers that do not harvest minnows themselves, but sell minnows through retail.

The department should track exportation of minnows of species susceptible to VHS since wild-caught minnows are exported from Wisconsin.

This rule addresses wild bait harvest regulations, and does not address disposition of the minnows once the minnows have been legally harvested and reduced to the possession of the bait harvester.

The rule should clarify that a person must possess a fish farm registration to be able to obtain a white sucker spawning permit and harvest sucker eggs since only registered fish farms can grow and rear eggs, and that eggs may not be exported.

While a fish farm registration is required in most cases to rear fish and fish eggs, there is an exception stating that a person may operate as a licensed bait dealer without a fish farm registration provided that the bait dealer does not hatch fish eggs or rear fish for any purpose other than retail sale as bait, per s. ATCP 10.61 (2) (f), Wis. Admin. Code. The department has not established specific regulations on egg exportation, and s. 29.705 (5), Stats., already restricts wild fish egg exportation.

This rule should eliminate the notification to the DNR hotline (biologist preferred) and requirement for a DNR employee to be present at the time of the egg harvest. The window for collecting sucker eggs is very small and requiring the DNR to be present would delay egg harvest operations.

The rule does not specify that notification must be to the DNR hotline, so the department has the flexibility to work with bait harvesters to establish workable notification procedures. The requirement for a DNR employee to be present for egg harvest is statutory, so the department cannot modify this requirement by rule; however, the department is working to advance a recommended removal of this language to the Legislature.

The changes allowing personal bait harvest on VHS-affected waters have been requested since 2010. Several Wisconsin Conservation Congress questions asked whether personal bait harvest should be allowed with no transportation of live minnows away from VHS-affected waters, but ice anglers want to be able to transport minnows away from the waterbody since water exchange is not necessary during the ice fishing season (which was the subject of a Conservation Congress question that gained broad majority support).

Under this proposed exception for minnows used in ice fishing, there would be no way to verify that the live bait fish transported off the ice were personally harvested from that waterbody or brought to the waterbody from a bait shop. In addition, live bait fish removed from a waterbody could have been used in that waterbody and subsequently transported to another waterbody. Once the live bait fish are placed in the waterbody they are susceptible to any disease or invasive species that is present in the waterbody. This rule will not move forward with personal bait harvest of minnows from VHS-affected waters.

The general public should not be able to harvest minnows from VHS-affected waters because they do not have the resources to ensure the biosecurity of waterbodies. Personally harvested minnows would not be tested, whereas commercial harvest would involve permitting, testing, and allow the department to learn more about VHS-affected waters.

While personally harvested minnows from VHS waters would not be tested, under the proposed rule it would be illegal to move any live minnows away from those waters, precluding the need for testing. However, this rule will not open any VHS-affected waters to bait harvest.

The 600-minnow limit for anglers is not needed and could be reduced.

The department considered this, but determined that the minnow limit was not a major concern requiring a change.

Minnow seining should be allowed on the lower Wisconsin River.

This rule no longer contains a component opening VHS-affected waterbodies such as the lower Wisconsin River to bait harvest, but this could be considered in future rules.

Is there a cap on commercial bait harvest, and have there been studies conducted on the effects of commercial bait harvest on bait fish in the state or is the bait population considered an unlimited resource? More research is needed on bait fish populations and the impacts of harvest on watersheds.

Limits on harvest are established by permit, and vary based on the waterbody and gear used. The wild bait harvest permit application is required to state the anticipated maximum amount of bait to be harvested.

The forage fish resource needs to remain sustainable to maintain game fish populations and the fishing (local and through tourism) that relies on game fish. Farming of forage fish species of concern would help prevent VHS impacts and negative impacts to wild forage fish populations.

This rule will allow the department to build a dataset on minnow populations and harvest to better illustrate the status of forage fish populations across the state. Some commercial bait operations do rear bait fish in fish farms.

Oversized gear should be restricted due to the amount of minnows removed from lakes and rivers to sell. The non-standard gear permit already allows for the use of oversized gear.

Gear specifications are not being changed in this rule.

The DNR should change the definition of standard gear for commercial harvest. The current definitions are not science-based and were implemented decades ago without input from commercial harvesters. Also, gear of the defined sizes does not match the industry standard and is very difficult to find for sale. The current standard gear requirements lead to harvesters using multiple gears to achieve the results of using larger gear, which is not as safe or effective. Standard commercial seines should be up to 100 feet in length with no depth restrictions, which is consistent with other states, and cloverleaf traps of 36" long by 36" wide by 18" deep with multiple funnels allowed (openings no wider than 1.5") should be the standard. Changing the standard gear definitions would also reduce the number of non-standard gear permits that the department must process.

Gear specifications are not being changed in this rule. The department believes that we need to receive and evaluate data on harvest prior to adjusting standard gear definitions. We are open to further discussing this after we have received additional baseline data on current gear use. In addition, commercial fishers can apply to use gear outside of standard gear through a non-standard gear permit.

Bait harvesters should be exempt from obtaining a permit unless using oversized gear, harvesting in trout streams, or harvesting in VHS waters. The department would be able to obtain information on harvest through daily reporting. This would be more efficient since bait harvesters almost always receive the permits they apply for.

The wild bait harvest permit is important not only for the department's awareness of where minnows are being harvested and how many, but also to manage cumulative minnow harvest from any one location. Eliminating this permit would also complicate the department's ability to restrict minnow harvest from a waterbody in the event of a disease outbreak or aquatic invasive species detection.

While in support of the extension of the wild bait harvest permit duration, these permits and the non-standard gear permits should still be reviewed in a timely manner.

The rule will retain the requirement for the department to act upon permit applications within 10 business days of receipt of the application.

Limiting permit amendments to only 3 per year could cause issues if harvesters want to harvest from new waterbodies or use different non-standard gear, and may lead to bait harvesters listing every waterbody and gear that they might need on their permit instead of being more selective.

The limit in the rule aims to balance the needs of bait harvesters with workload considerations for department staff who would be processing the amendments. However, as a result of these public comments, the rule has been updated to allow for 10 amendment requests per year to allow for additional flexibility for wild bait harvesters in light of the transition from monthly wild bait harvest permits to annual permits.

It would be good to allow new employees to be listed on permits within 24-48 hours of harvest to account for employee turnover, as the names of employees are hard to anticipate months in advance.

The wild bait harvest permits do not require that the employees be listed on the permit, and the draft rule has been revised to remove the requirement to list employees on the white sucker spawning permit application. However, employees would still need to carry a copy of the permit and work under the direct supervision of the bait dealer issued the permit.

Requiring a list of employees in advance for the white sucker spawning permits is inconsistent with other bait harvest regulations and is burdensome to bait harvesters applying for these permits.

The draft rule has been revised to remove the requirement to list employees on the white sucker spawning permit application to be consistent with the requirements of the wild bait harvest permit. Employees would still need to carry a copy of the permit and work under the direct supervision of the bait dealer issued the permit.

The proposed rule is unfair to farm-raised bait because currently, purchased bait can be moved away from waterbodies as long as no water is added, and dead smelt can be moved away from the waterbody and reused even though it originates from VHS-affected waters. Also, there is no place to dispose of bait, which could cause health issues in warm weather. This rule change could cost a lot of money in lost bait sales, and is unfair to fish farms, customers, and consumers.

Except when fishing on Green Bay and Lake Michigan, dead fish can only be used as bait if preserved by a method other than refrigeration or freezing (refrigeration and freezing do not neutralize VHS pathogens).

This rule will retain the prohibition on any minnow harvest from VHS-affected waters. While the original proposed rule change prohibiting the movement of live minnows away from VHS-affected waterbodies could dissuade some anglers from purchasing as many minnows to use on these waters, it conversely could also result in anglers making additional trips to bait stores if they need to purchase new bait for use on non-VHS waters. In addition, on non-VHS-affected waters, anglers can continue to move live purchased minnows away from the water as long as the minnows have not been exposed to water or fish from the waterbody where they were initially used.

Importing wild VHS-listed species should not be allowed. Out-of-state sources distribute minnows from VHS-susceptible waters, but harvest of minnows from Wisconsin's VHS-susceptible waters is not allowed. This is concerning for Wisconsin businesses and economically impacts Wisconsin bait harvesters.

Per DATCP rules (s. ATCP 10.62, Wis. Admin. Code), an import permit is required if the fish or eggs originate from the wild and will be delivered to a Wisconsin fish farm, or if the eggs or fish from any out-of-state source will be released into a private pond or waters of the state. The import permit requires a valid fish health certificate covering the fish to be imported. These rules, combined with the DNR's wild bait harvest rules, are designed to prevent the spread of aquatic invasive species and diseases in waters of Wisconsin.

The definition of VHS-susceptible waters should change. Positive VHS cases have not occurred in about 15 years in unhealthy fish, but VHS-susceptible waters extend almost 1000 miles. It doesn't make sense that certain tributaries of rivers connected to the Mississippi River, which is separated from Lake Michigan by other rivers with multiple locks and dams, is VHS-susceptible. Lake Superior, the Winnebago system, and Fox and Wolf rivers also have had no confirmed VHS infections in 15 years.

While the department is reevaluating the necessity for VHS-related restrictions, the spread of aquatic invasive species continues to be a pressing concern. Some highly invasive fish, such as juvenile invasive carp, can look almost indistinguishable from common minnow species, and could be inadvertently spread to other waters if restrictions on moving fish away from VHS-affected waters are lifted without proper precautions. In addition, VHS has been confirmed recently in fish collected from Wisconsin waters including in the Fox River in 2023 and 2021, in the Menominee River in 2021, in Lake Winnebago in 2018, and in Lake Michigan in 2018.

Requiring adult suckers over 10" to be counted is unworkable for commercial bait harvesting operations, results in more fish handling, and could lead to enforcement issues. Weight or volume is more doable.

The department has removed this requirement from the rule, and adult suckers would be counted by weight or volume along with other harvested bait.

The comparison with adjacent states in the rule analysis should mention activities that are allowed on VHS-affected waters in states like Michigan, New York and Ohio.

We agree with this change and have updated Michigan's allowable activities in the comparison with adjacent states.

The language restricting harvest on waterbodies due to a VHS detection should be allowed on a temporary basis, and if no further incidents of VHS are detected, the waterbody should be delisted as a VHS-affected waterbody. This would be similar to Michigan's policy and general public health policies.

The department will take this suggestion under consideration after we collect information on current harvest rates, numbers, trends, etc.

The inability of commercial bait harvesters to harvest bait from VHS-affected waters costs hundreds of thousands of dollars and lost jobs each year.

The implementation of this rule will not change the current policy of prohibiting commercial harvest of minnows from VHS-affected waters; economic impacts instead stemmed from the rules implemented in 2007-08 that prohibited minnow harvest from VHS-affected waters. Additional minnow harvest data is needed prior to considering commercial harvest of minnows from VHS-affected waters.

Modifications Made

The department made several changes to the rule draft following the public hearing and written comment period. These changes reflect the central goals of the rule, which are to improve minnow harvest reporting and the related data collection, and to improve permitting processes.

The department removed a component of the draft rule that would have opened VHS-affected waters to personal minnow harvest. The department has received requests to open these waters to bait harvest since 2010, and several personal bait harvest questions have been proposed through the annual spring fish and wildlife hearings held jointly by the department and Wisconsin Conservation Congress, including questions proposed by the department to gain public feedback on this proposal in 2022 and 2023. However, during the development of this rule, stakeholders raised the following concerns:

- With the prohibition on the movement of live minnows away from the waterbody regardless of source, anglers and bait dealers raised concerns about not being able to move purchased minnows, especially those used in ice fishing, away from the waterbody to use elsewhere as is allowed under current rules. If personal minnow harvest from VHS-affected waters is allowed, the complete prohibition on movement of live minnows away from VHS-affected waters would be necessary to ensure that no live minnows originating from or exposed to the VHS-affected waterbody could spread to other waters.
- To be fair to different user groups, if VHS-affected waters were to be opened to personal bait harvest, they should also be opened to commercial bait harvest by permit and with testing requirements.
- The prohibition on moving live purchased minnows away from VHS-affected waters is not fair to anglers that purchase the bait and may result in lost sales of bait for bait dealers if anglers restrict the amount of bait they purchase.
- Allowing any bait harvest from VHS-affected waters could result in the spread of VHS and aquatic invasive species to non-affected waters if anglers illegally move the minnows away from the waterbody.

The department also removed the requirement for bait harvesters to report a count of adult suckers over 10" from the wild bait harvest reporting requirements, as bait harvesters brought up some potential issues with this

including additional handling and stress to the suckers and the additional effort that would be required to measure and count adult suckers. Weight or volume are the standard measurements used to record the amount of minnows and suckers harvested.

Based on feedback from bait harvesters that commonly collect white sucker eggs for propagation as bait, the department also removed from the permit language the requirement for bait dealers to list all employees that will be collecting white sucker eggs on behalf of the bait dealer. This was a requirement under the white sucker cooperative agreements that preceded this rule. Instead, the language in the new white sucker spawning permit will mirror the language in the wild bait harvest permit, which requires all employees to work under the direct supervision of the bait dealer and to carry a copy of the permit while conducting harvest activities.

Finally, this rule allows bait harvesters to request amendments to the annual wild bait harvest permit to allow them flexibility for purposes such as adding new waterbodies in which to harvest minnows or to request new gear. Bait harvesters stated that the draft limit of three amendment requests per year was insufficient to allow them to adjust their harvesting plans to best harvest minnows at different times of the year and in different locations, so the department increased the limit to 10 amendment requests per year, which is approximately equivalent to the maximum number of monthly wild bait harvest permits for which bait harvesters apply under current rules.

The department also removed a reference to statutory language requiring department oversight of egg collection in the white sucker spawning permit section of the rule, as this requirement is already adequately stated in statutes.

Some language relating to the white sucker spawning permit was also updated to better align with statutes. Minor wording changes were also made to the rule draft to clarify certain sections of the rule following the above changes and public comments.

Appearances at the Public Hearing

- Robert McKinney
- Jannette Boyles
- LeAnn Ralph, Colfax Messenger and Glenwood City Tribune
- Benjamin Gollon
- Jonah Dombrowski, Point Bait Supply
- Mark Monaco
- Clayton Atkison
- David Gollon, Gollon Bait and Fish Farm
- William Gollon, Gollon Brothers Wholesale Live Bait Inc.
- Fred Gollon, Central Wisconsin Fish Farm
- Tiana Snyder
- Brandy Smith-Vuich

Changes to Rule Analysis and Fiscal Estimate

Changes to the rule analysis and fiscal estimate reflected the changes to the rule text in order to correctly describe the final rules. Additionally, the department added to the comparison with adjacent states based on a public comment that requested including allowable minnow harvest activities on VHS-affected waters in Michigan.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

Final Regulatory Flexibility Analysis

This rule is expected to have a minimal economic impact (less than \$50,000). No new costs are expected as a result of revising the wild bait harvest permit duration and creating a white sucker harvest permit, nor for changes to the non-standard gear permit. Commercial bait harvesters are already required to record information on their minnow harvests and disposition and maintain records for inspection upon the request of department staff. The main costs would stem from reporting minnow harvest activities electronically for bait dealers that do not currently own a smartphone; however, paper reporting will be allowed in the short-term after implementing this rule, so additional costs are not expected upon implementation. Additionally, according to the Pew Research Center¹, an estimated 85 percent of American adults owns a smartphone. Based on this estimate, we assumed that about 8 of the 55 commercial bait harvesters do not own a phone with internet access. Assuming a basic smartphone and plan would cost about \$230 a year, the total compliance cost for the group of bait harvesters without phones would be approximately \$1,840 per year.

This rule will primarily impact wild bait harvesters and their businesses; anglers who harvest minnows for personal use are not expected to experience an economic impact as a result of this rule. Based on the information presented in section 10 of the analysis section of this board order, the department anticipates that this rule will have a minimal economic impact on small business.

1. Demographics of mobile device ownership and adoption in the United States. (2021, April 07). Retrieved June 13, 2023, from <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.