

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: FH-13-22

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Relating to: Wild bait harvest regulations; chs. NR 19-22 and 40

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Rule Type: Permanent

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### 1. Finding/nature of emergency (Emergency Rule only):

This will be a permanent rule.

### 2. Detailed description of the objective of the proposed rule:

Bait harvest regulations are in place 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 may also update gear use regulations to meet current needs. This rule may address regulations for both commercial and personal bait harvesters.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Commercial bait harvesters licensed as bait dealers under s. 29.509, Stats., must currently apply for a wild bait harvest permit under s. NR 19.057, Wis. Admin. Code to harvest bait minnows from waters of the state for sale, barter, or trade. Along with the requirement to hold a bait dealer license, bait dealers may not harvest minnows from waters affected by viral hemorrhagic septicemia (VHS) and are required to disinfect minnow harvest and transport gear after use and fulfill fish health requirements promulgated by the Department of Agriculture, Trade and Consumer Protection. Bait dealers with a wild bait harvest permit are required to maintain records of minnow harvest and disposition and make them available for inspection, but there is no requirement to submit these records to the department.

Wild bait harvest permits are currently valid for 30 days in most cases. This permit duration was established to allow the department to more quickly respond to fish disease outbreaks by restricting harvest in waters of new disease outbreaks, and the 30-day duration was deemed to be appropriate when VHS was first confirmed in Wisconsin in 2006. However, VHS has not spread in Wisconsin as originally anticipated, so a review and revision of the wild bait harvest permit duration may better serve customers and the department.

Bait dealers are also required to obtain a non-standard gear permit to use gear other than standard minnow traps, minnow seines or minnow dip nets, to use gear in trout streams during the closed season, or to use more than 20 minnow traps during the open trout season. Current rules establish criteria for issuing the non-standard gear permit and permit conditions, as well as allow the department to require reporting of harvest activities conducted under the non-standard gear permit.

This rule may extend the allowable duration of a wild bait harvest permit past the current 30-day limit to reduce the regulatory burden on bait harvesters, and may review and modify the restrictions for bait harvest in waters where VHS has been confirmed or where its presence is suspected. This rule may also revise or establish new criteria for wild bait harvest permits and non-standard gear permits to prevent the spread of aquatic invasive species and better protect forage fish and game fish populations and their habitats. This rule may further evaluate the regulations for standard and non-standard bait harvest gear. To improve efficiency for customers and the department, this rule may provide for an online framework for bait harvesters to apply for permits and report bait harvest, and may also update the information required to be reported and establish a reporting timeline.

Existing rules also regulate the gear types and bait harvest practices of those harvesting bait for personal use, including the waterbodies where minnow harvest gear may be used, gear marking and lifting requirements, requirements for using minnow harvest gear in trout streams, and bag limits for minnows. This rule may review and revise the daily bag and possession limit for personal bait harvesters, and may modify minnow harvest gear regulations for personal bait harvesters. These revisions would provide more flexibility to department staff to protect fish and habitat while also incorporating public feedback and preferences on regulations.

This rule may also modify the times of year when bait harvest gear may be placed in trout streams, as well as the types of gear that may be placed in trout streams, in order to protect game fish from inadvertent harvest and mortality.

This rule may also permit the taking of white suckers or their eggs for rearing to use as wild bait. The department has previously utilized cooperative agreements to allow commercial bait dealers to take white suckers or their eggs from the wild to rear as bait while returning a subset of the reared suckers to state fish hatcheries

for use in rearing muskies. However, the cooperative agreements no longer provide reciprocal benefit due to the complexities involved with moving fish between private fish farms and state fish hatcheries, so a permitting approach would provide a more practical means to authorize bait dealers to take white suckers or their eggs for use as wild bait.

This rule may also contain changes of a minor nature reasonably related to those discussed above.

If this rule is not pursued, existing bait harvest regulations will continue to provide protection to baitfish and associated fish populations, but these regulations would not allow the department to adapt to current baitfish management needs or improve the efficiency of permitting and data collection, and would not reflect stakeholder input and preferences.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 29.509, Stats., requires commercial bait harvesters to obtain a bait dealer license, with the exception of youth under 16 years of age that make no more than \$500 annually in sales of bait and operate under a possession limit of 5,000 of each species. Under s. 29.509 (4), Stats., bait dealers are required to keep records of bait transactions, open to department inspection. The department is granted the authority to issue permits for taking bait from specific waterbodies under s. 29.509 (5), Stats.

Section 29.014, Stats., “rule-making for this chapter,” grants the department the authority to establish and maintain open and closed seasons, bag limits, size limits and other conditions that will conserve fish populations and provide good fishing opportunities for the citizens of the state.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.053 (2), Stats., provides that the department may establish conditions governing the taking of fish for the state as a whole, for counties or parts of counties, or for waterbodies or parts of waterbodies.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The department will spend 500 hours developing this rule, including holding task team discussions and public meetings to gain stakeholder input and holding the hearing for this rule.

**6. List with description of all entities that may be affected by the proposed rule:**

Commercial bait dealers and anglers that harvest bait for personal use will be most impacted by this rule, as this rule will address bait harvest regulations. Other anglers may be indirectly impacted if this rule impacts where and when bait harvest gear can be used, such as areas popular for hook and line fishing.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

No federal regulations apply. States possess inherent authority to manage the fishery and wildlife resources within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Registrar.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):**

This rule is likely to have a minimal economic impact on both commercial and personal bait harvesters. No new costs are expected to be imposed on bait harvesters, including small businesses, as a result of this rule. This rule may improve regulatory flexibility for bait harvesters by adjusting the duration of a wild bait harvest permit. The department will develop an economic impact analysis to accompany this rule, which will outline the expected costs of implementation of and compliance with the rule, and will solicit public feedback on the economic impact analysis.

**9. Anticipated number, month and locations of public hearings:**

The department anticipates holding one public hearing in the month of June 2023. Hearing cities will be: virtual or Madison, WI.

The department will hold these hearings in these locations to gain public input from bait harvesters of Wisconsin on the proposed regulations.

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