

ILLINOIS REGISTER

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF EMERGENCY RULES

1) Heading of the Part: Viral Hemorrhagic Septicemia Virus

2) Code Citation: 17 Ill. Adm. Code 875

3) Section Numbers: Emergency Action:

875.10 New Section

875.20 New Section

875.30 New Section

875.40 New Section

875.50 New Section

4) Statutory Authority: Implementing and authorized by Sections 1-20, 1-20.5, 1-75, 1-80, 1-85, 1-105, 1-125, 1-135, 1-140, 1-145, 1-150, 1-185, 1-190, 1-210, 5-5, 5-10, 10-100, 10-105, 15-5, 15-10, 20-35, 20-70, 20-90, 20-100, 20-105, 20-125, and 25-20 of the Fish and Aquatic Life Code [515 ILCS 5/1-20, 1-20.5, 1-75, 1-80, 1-85, 1-105, 1-125, 1-135, 1-140, 1-145, 1-150, 1-185, 1-190, 1-210, 5-5, 5-10, 10-100, 10-105, 15-5, 15-10, 20-35, 20-70, 20-90, 20-100, 20-105, 20-125, and 25-20].

5) Effective Date of Emergency Rules: June 30, 2008

6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: Not applicable

7) Date filed with the Index Department: June 30, 2008

8) A copy of the emergency rules, including any material incorporated by reference, is on file in the Department of Natural Resource's principal office and is available for public inspection.

9) Reason for Emergency: VHS can cause devastating fish kills in certain sportfish species. It has been spreading throughout the Great Lakes region and was recently isolated in the Illinois waters of Lake Michigan at Winthrop Harbor. Fish can be infected by direct contact with other infected fish, by consuming infected prey, or from contact with water which contains the virus. There is no vaccine for VHS, so control methods rely upon prevention techniques. It is necessary that the State of Illinois take action to immediately and decisively protect its inland waters from VHS to the extent possible. The urgency of this situation is amplified given that a significant amount of Lake Michigan water enters the Illinois River through the Chicago Sanitary and Ship Canal.

10) A Complete Description of the Subjects and Issues Involved: The USDA – APHIS has taken action to restrict movements of fish from several states and requires testing of others to ensure that the disease is not spread. Several adjacent states have enacted rules to minimize transfer of VHS to new waters. During recent sampling in Milwaukee, WI (June 5, and June 13) positive samples were found in the southern basin of Lake Michigan. IDNR samples of Round goby and Rock bass taken June 10 indicated presence of the virus in the Illinois waters of Lake Michigan during routine surveillance.

While IDNR will ensure that operations remain much the same, some adjustments will be made. This rule changes requirements for fish stocking and transport in the State of Illinois:

All fish imported from affected areas (currently the 8 Great Lakes states) must be certified as free of VHS.

All susceptible species for stocking must be certified VHS free regardless of their point of origin (including both intra- and inter-state shipments).

Use of wild-trapped fishes from within the state as bait will be restricted to the waters where legally captured.

Wild-trapped minnows and other wild-trapped species must be certified VHS-free, or originate from west of the Mississippi River.

There will also be some changes required by recreational anglers and boaters. Statewide, users will be requested to follow the "Stop Aquatic Hitchhikers" campaign guidelines. However, the following activities will be made mandatory:

Eliminate natural water from all equipment when leaving a body of water.

Empty and drain all bait buckets, livewells, baitwells, bilges, etc. or any other compartment capable of holding natural waters when leaving a body of water.

Do not remove VHS-susceptible species from any waters without permission of the Department (a fisherman must kill and ice his catch).

11) Are there any proposed rules pending on this Part? The Department plans to submit proposed rules to replace this emergency in the near future.

12) Statement of Statewide Policy Objective: This rulemaking will not affect units of local governments.

13) Information and questions regarding these rules shall be directed to:

Jack Price, Legal Counsel  
Department of Natural Resources  
One Natural Resources Way

Springfield IL 62702-1271  
217/782-1809

The full text of the Emergency Rules begins on the next page:

TITLE 17: CONSERVATION  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER b: FISH AND WILDLIFE

PART 875  
VIRAL HEMORRHAGIC SEPTICEMIA VIRUS

Section

875.10 Definitions  
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875.20 Susceptible Species  
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EMERGENCY

AUTHORITY: Implementing and authorized by Sections 1-20, 1-20.5, 1-75, 1-80, 1-85, 1-105, 1-125, 1-135, 1-140, 1-145, 1-150, 1-185, 1-190, 1-210, 5-5, 5-10, 10-100, 10-105, 15-5, 15-10, 20-35, 20-70, 20-90, 20-100, 20-105, 20-125, and 25-20 of the Fish and Aquatic Life Code [515 ILCS 5/1-20, 1-20.5, 1-75, 1-80, 1-85, 1-105, 1-125, 1-135, 1-140, 1-145, 1-150, 1-185, 1-190, 1-210, 5-5, 5-10, 10-100, 10-105, 15-5, 15-10, 20-35, 20-70, 20-90, 20-100, 20-105, 20-125, and 25-20].

SOURCE: Adopted by emergency rulemaking at 32 Ill. Reg. \_\_\_\_\_ effective \_\_\_\_\_, for a maximum of 150 days.

**Section 875.10 Definitions**  
EMERGENCY

"Affected Regions" – those areas designated by USDA – APHIS as Affected or At-Risk Regions. Currently, these are the U.S. states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and the Canadian Provinces of Ontario and Quebec.

"Aquatic Life Farm" – property containing any or a combination of levee ponds, a strip mine lake, or other type of lake maintained for the exclusive purpose of rearing aquatic life for harvest and resale.

"Baitfish" – live or dead species of fish, or parts of fish including roe, that are used by anglers to catch or attempt to catch fish.

"BlueBook" – Suggested Procedures for the Detection and Identification of Certain Finfish and Shellfish Pathogens, American Fisheries Society, Fish Health Section, Bethesda, Maryland (2005 Edition).

"Department" – the Illinois Department of Natural Resources.

"Farm-Raised" – farm-raised means any species of aquatic life which has been reared entirely in captivity on an aquatic life farm.

"Fish Health Inspection Report (FHIR)" – official document reporting health status of inspected fish issued by a trained, qualified fish health professional in accordance with BlueBook or OIE standards.

"Lot" – a population of fish as defined in the BlueBook.

"OIE" – the World Organization for Animal Health.

"Private Waters" – waters of the State of Illinois which are wholly upon properties held in private ownership and contained on the land of its owners.

"Public Waters" – all other waters of the State of Illinois.

"Resident" – an Illinois resident is a person who actually resides in Illinois. For businesses, resident means at least 51% owned by Illinois residents and organized under the laws of Illinois.

"Specific Pathogen Free (SPF)" – a lot of fish which have tested negative for VHS.

"VHSv" – Viral Hemorrhagic Septicemia virus. For purposes of this regulation, VHSv and VHS (the disease caused by the virus) are considered synonymous.

"Wild-Trapped" – any species of aquatic life which has any portion of its life history not under direct control of an aquatic life farm (i.e., those which are not farm-raised).

## **Section 875.20 Susceptible Species**

### **EMERGENCY**

a) For purposes of this Part, susceptible species are:

1) those species designated by USDA – APHIS in the Federal Order update of April 2, 2008;

2) hybrids (offspring) of listed species for which both parent species are listed;

3) all species (including those commonly used as bait) which originate from affected regions; and

4) wild-trapped minnows and other wild-trapped species (including those commonly used as bait) which originate east of the Mississippi River.

b) The current list of susceptible species from the APHIS Federal Order is as follows:

Black crappie *Pomoxis nigromaculatus*  
Bluegill *Lepomis macrochirus*  
Bluntnose minnow *Pimephales notatus*  
Brown bullhead *Ictalurus nebulosus*  
Brown trout *Salmo trutta*  
Burbot *Lota lota*  
Channel catfish *Ictalurus punctatus*  
Chinook salmon *Oncorhynchus tshawytscha*  
Emerald shiner *Notropis atherinoides*  
Freshwater drum *Aplodinotus grunniens*  
Gizzard shad *Dorosoma cepedianum*  
Lake whitefish *Coregonus chupeaformis*  
Largemouth bass *Micropterus salmoides*  
Muskellunge *Esox masquinongy*  
Shorthead redhorse *Moxostoma macrolepidotum*  
Northern Pike *Esox lucius*  
Pumpkinseed *Lepomis gibbosus*  
Rainbow trout *Onchorhynchus mykiss*  
Rock bass *Ambloplites rupestris*  
Round goby *Neogobius melanostomus*  
Silver redhorse *Moxostoma anisurum*  
Smallmouth bass *Micropterus dolomieu*  
Spottail shiner *Notropis hudsonius*  
Trout-Perch *Percopsis omiscomaycus*  
Walleye *Sander vitreus*  
White bass *Morone chrysops*  
White perch *Morone americana*  
Yellow perch *Perca flavescens*

c) Examples:

1) Hybrid bluegill (bluegill X green sunfish) are not considered susceptible species as only one parent species is listed.

2) Tiger muskellunge (muskellunge X northern pike) are considered susceptible species because both parent species are listed.

- 3) All wild-trapped minnows are subject to certification standards if they originate from eastern states.
- 4) Farm-raised minnows from affected regions (defined above) are subject to testing.
- 5) Farm-raised minnows from Arkansas or Missouri are not subject to testing.

d) The official list of VHS-susceptible species as identified by the Department will be available from the Department and posted on the Fisheries Division website (<http://dnr.state.il.us/admin/systems/fishing.htm>). Updates to the list of susceptible fish species will be made as necessary, and notice shall be given by issuing a press release, by publication in the official state newspaper, and by such other means as the Department determines are reasonably likely to inform the public, including notification on the Department web site.

### **Section 875.30 Permits**

#### **EMERGENCY**

##### a) Application Requirements

Permits to import live VHS-susceptible species may be issued by the Department of Natural Resources in accordance with Sections 10-110 and 20-100 of the Fish and Aquatic Life Code [515 ILCS 5/10-110, 20-100] for persons or businesses holding an Aquaculture Permit, Aquatic Life Dealer's License, Minnow Dealer's License, or Research or Educational Institutions for scientific purposes, under the following provisions:

- 1) Applicants wishing to import live VHS-susceptible species must make application to the Department in writing, at the following address:

Illinois Department of Natural Resources  
Region V Office  
VHS-Susceptible Species Permit  
11731 State Hwy. 37  
Benton, IL 62812

- 2) The Department may accept applications via fax or email if time permits and it is deemed to be in the best interest of the Department to do so.

- 3) Applications must contain the following minimum information:

A) name, address and telephone number of the applicant, including the business, research or educational institution;

B) the common and scientific name, size, and total number (or pounds) of each VHS-susceptible species for which a permit is requested;

C) date of anticipated imports and number of shipments;

D) source of supply, including Name, address and telephone number of the supplier; and

E) any other information as requested by the Department (e.g., route of transportation, holding facility location, stocking locations, disposition of animals and federal permit, if required.)

#### b) Issuance Criteria

The Department shall consider the following in determining whether to issue a permit to import live VHS-susceptible species:

1) whether the request is for persons or businesses holding an Aquaculture Permit, Aquatic Life Dealer's License, Minnow Dealer's License, or Research or Educational Institutions for scientific purposes;

2) whether the supplier of the fish stocks has an acceptable Fish Health Inspection Report on file with the Department.

3) for importation of minnows and species commonly used as bait, whether the supplier / importer has submitted an officially recognized management plan (Hazard Analysis and Critical Control Points HACCP / Best Management Practices BMP) to minimize transfer of exotic species and potential pathogens; and

4) whether the Department approves of the stocking locations based upon the potential risk to the fishery resource of the State.

#### c) Permit Conditions

Permits issued to import live VHS-susceptible species shall be subject to the following conditions:

1) All specimens approved under the permit must be imported only to the facilities, and at the location approved on the permit.

2) A person in possession of VHS-susceptible species, at all times during shipment and stocking, shall allow the Department, its agents or

authorized employees to inspect the shipment and pertinent records to ensure compliance with this Part.

3) Permits issued under this Part shall be valid only for the time periods and under the provisions designated by the Department on the permit or accompanying letter.

4) All importers shall maintain records documenting disposition of all VHS-susceptible species for a minimum of 2 years from date of disposition.

5) It is unlawful for any person to violate any condition stipulated on the permit or accompanying letter issued by the Department. Violation of any special condition will result in revocation of the permit.

6) Shipments found in violation of this part shall be subject to confiscation, quarantine and / or seizure. Disposition of specimens confiscated, placed under quarantine (including conditions under which they may be sold, traded, bartered or transferred), or seized under this Part shall be as designated by the Department.

#### d) Permit Exceptions

The permits required by Section 875.40(a) do not apply to:

1. Any licensed veterinarian, agent of a veterinary clinic, Fish Pathologist, or Fish Health Inspector recognized by the American Fisheries Society providing diagnostic services subject to all of the following conditions:
  - A) the fish are in transit to an approved research or diagnostic laboratory authorized by the Department to work with VHS;
  - B) the fish are accompanied by a valid Form VS 1-27 (Permit for Movement of Restricted Animals) issued by an APHIS area office; and
  - C) effluent and carcasses shall be considered medical waste and shall be disposed of at the receiving research or diagnostic facility according to all applicable EPA and State regulatory criteria.
2. Any person moving fish to a slaughter facility subject to all of the following conditions:
  - A) the fish are for human consumption;
  - B) the fish are accompanied by a valid Form VS 1-27 (Permit for Movement of Restricted Animals) issued by an APHIS area office;

C) the fish are being transported to a State-inspected slaughter facility:

1) the facility must discharge waste water to a municipal sewage system that includes waste water disinfection, or

2) may discharge to either a non-discharging settling pond or a settling pond that disinfects according to all applicable EPA and State regulatory criteria; and

D) offal, including carcasses, from the slaughter facility must be rendered or composted.

3) Persons involved in catch and release fishing activities where VHS-susceptible fish will be released into the same water body where caught, except VHS-susceptible species used or intended to be used as bait.

4. Any shipment in interstate transport for lawful commercial purposes who do not buy, sell, barter, trade, transfer, loan or offer to do so in Illinois may transport live VHS-susceptible species across Illinois without a permit from the Department. Under no circumstances shall an interstate transporter:

A) transfer any VHS-susceptible species from one container to another; or

B) exchange or discharge water or other materials from a container containing VHS-susceptible species without first obtaining written permission from the Department.

5) Persons having a Salmonid Import Permit issued in accordance with Administrative Rule 870 (117 Ill. Adm. Code 870), provided that:

A) FHIR is issued in accordance with Section 875.60(a); and

B) lot inspections (60-fish each) were tested according to Standard Procedures for Aquatic Animal Health Inspections section of the BlueBook.

#### **Section 875.40 Fish Health Inspection Reports**

#### **EMERGENCY**

a) Official FHIR must be issued by and received directly from one of the following:

1) the State Competent Authority for fish health in the issuing State;

- 2) a Department approved veterinarian offering diagnostic services for aquatic animals; or
- 3) a Department approved laboratory for certifying lots of fish as VHS-free.
  - b) It is the responsibility of the importer and / or supplier to arrange for appropriate delivery of FHIR.
  - c) FHIR must contain the suppliers contact information, water supply, lot designation, original egg or fry source, age of fish, number in lot, size, pathogens tested, numbers of individuals sampled, results, and original signature of inspector.
  - d) FHIR and supporting documentation must state that fishes were sampled and tested negative for VHS virus in accordance with procedures set forth in either:
    - 1) Standard Procedures for Aquatic Animal Health Inspections section of the BlueBook; or
    - 2) the World Organization for Animal Health (OIE) Manual of Diagnostic Tests for Aquatic Animals, Fifth Edition (2006), Chapter 2.1.5, OIE, Paris, France.

#### **Section 875.50 Unlawful Acts/Penalties**

#### **EMERGENCY**

- a) It shall be unlawful to:
  - 1) import VHS-susceptible species into the State of Illinois without a VHS-susceptible species permit issued by the Department;
  - 2) stock VHS-susceptible species into public waters of the State unless that stocking location is approved in writing by the Department;
  - 3) remove live VHS-susceptible species from the waters where legally taken without first securing permission from IDNR Fish Health Authorities;
  - 4) remove natural water from waters of the State via bait bucket, livewell, baitwell, bilge, etc. or any other method without first securing permission from IDNR fish health authorities;
  - 5) remove any watercraft, boat, boat trailer, or other equipment from waters of the State without emptying and draining any bait bucket,

livewell, baitwell, bilge, etc. or any other compartment capable of holding natural waters; and

6) use wild-trapped fishes as bait within the State of Illinois other than in the waters where they were legally taken.

b) Violation Classifications

1) Violation of subsections (a)(1) and (3) shall be a Class A Misdemeanor if the value of the aquatic life is less than \$300, and a Class 3 Felony if the value of the aquatic life is \$300 or more. Multiple transactions within a 90-day period shall be treated as a single offense.

2) Violation of subsections (a)(2), (4), (5), (6) and (7), shall be a Petty Offense.

c) Revocation/Suspension

1) Any violations of the Fish and Aquatic Life Code [515 ILCS 5] or administrative rules of the Department may result in revocation of licenses and permits as well as suspension of privileges for up to five years.

2) Violation of any conditions of a permit issued under this Part shall result in cancellation of the permit.