



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
LANSING



DR. WILLIAM E. MORITZ
DIRECTOR

SUBMITTED: February 16, 2016
RESUBMITTED: March 14, 2016

MEMORANDUM TO THE NATURAL RESOURCES COMMISSION

Subject: Fisheries Order 245.16
Fish Disease Control

Authority:

The Natural Resources and Environmental Protection Act, 1994 PA 451, authorizes the Director and the Commission to issue orders to regulate the taking of fish in the waters of this state.

Discussion and Background:

Fisheries Order 245 establishes regulations to protect the aquatic resources of the State while minimizing the spread of pathogens such as Viral Hemorrhagic Septicemia (VHS) to uninfected waters. Special regulations listed in this Order place restrictions on the minnow trade and anglers and where baitfish and roe (fish eggs) may be used.

In response to the discovery of VHS in Michigan waters of the Great Lakes, the Department implemented a comprehensive set of regulations on June 28, 2007. These regulations, aimed at curtailing the spread of VHS into disease free waters, impacted recreational anglers, wholesale fish dealers, state licensed commercial fishermen, private aquaculturists, and retail bait outlets. Overall, these groups and the public at large have been accepting of the new regulations and understand the importance of protecting our fisheries. Largely, these regulations have been effective and we have seen only a single positive detection of VHS from a lot of shiners and two positive detections on inland waters Budd Lake (Clare County) and Base Line Lake (Livingston and Washtenaw Counties) since its inception.

In 2012, the Office of Regulatory Reinvention (ORR) recommended several changes to Michigan's natural resources regulations originating from the Natural Resources Advisory Rules Committee. Fisheries Order 245 was reviewed and several changes were recommended:

Recommendation #14

Subject: Bait Fish

Recommendation: Amend Fisheries Order 245 to relieve the angler of the obligation to keep a receipt when purchasing certified baitfish and require all baitfish producers selling in Michigan to produce, sell, and distribute only certified baitfish and roe to their customers (retail operators).

Following this recommendation, the Department proposed to remove the receipt requirement for baitfish purchases which was authorized by the Natural Resource Commission (NRC) in 2014. This change removed a burden on the retailers and the public. Additionally, a workgroup was established in 2014 by the Fisheries Division Chief to review Fisheries Order 245 in its entirety with these goals: 1) simplify the regulatory framework, 2) reduce importation of baitfish into Michigan, 3) require all importations into Michigan to be certified disease free, 4) simplify testing requirements in Michigan while keeping disease risk minimized and 5) improve messaging for Michigan produced baitfish. Members of the Workgroup included representation from Fisheries and Law Enforcement Divisions as well as the Department of Agriculture and Rural Development.

The Workgroup began meeting in early 2015 to review and discuss the various aspects of the Order with the understanding that the ORR provided a recommendation to certify all bait as disease free. The workgroup quickly realized that the baitfish industry should be engaged because requiring all baitfish to be certified would likely cripple the industry due to the fish holding requirements related to disease testing. Three workshops were conducted with the industry (June 18, 2015, September 22, 2015, and February 2, 2016) to foster discussion between the Department and individuals representing wholesale, catcher, and retail components of the baitfish industry. These workshops were extremely productive and helped build relationships while fostering a better understanding of the industry.

Important outcomes from the three workshops included:

- The baitfish industry was negatively impacted after VHS regulations were established in 2007.
- Importation of minnows has increased since 2007.
- Current testing requirements are prohibitive to harvest outside of November therefore, 80% of Michigan's harvest occurs during the month of November.
- The baitfish industry feels alienated due to strict requirements and negative press.
- Michigan Sea Grant is working with the industry to minimize risks associated with invasive species.
- Department efforts to engage the industry was appreciated.

The proposed changes to this Order meet three out of our original five goals. These regulations proposed are simpler, will reduce importation of minnows into Michigan (thus reducing the movement of Aquatic Invasive Species into Michigan) and reduce testing requirements while keeping Michigan's resources protected. However, it was clear that requiring all bait to be certified was not a requirement worth pursuing given our improved knowledge of potential effects of VHS so the Department does not recommend implementing the ORR recommendation to certify all bait disease free. Our fifth goal to improve messaging, while not addressed by these regulations, has begun by the Department and the industry. A website highlighting the baitfish industry (similar to the Department's current commercial fishing webpage) is under construction and should be available online this March. Further, a Departmental showcasing story was written after staff visited a baitfish catcher during a harvesting trip. This effort has been greatly appreciated by the industry and illustrates a positive collaborative effort.

Fisheries Order 245 was established in response to VHS detections in wild fish. The regulations were needed to not only protect the environment, but to also educate our anglers on how disease may spread. Eleven years later, VHS has been removed as a federally-reportable disease and there have not been any catastrophic fish kills as originally feared by the Department. Furthermore, the bait industry has accommodated the Department's regulatory framework originally set in place to help reduce the likelihood of further disease movement. The Department now has a much broader understanding about VHS and how the bait industry operates throughout Michigan. As a result, the Department is recommending several changes to the Order.

Major changes proposed:

- Removal of the VHS positive, surveillance, and free management zones: these zones are not accurate nor are they necessary at this time.
- Update the list of susceptible fish species: combine aquaculture species with baitfish species to simplify testing requirements.
- Removal of the restriction on use of roe (fish eggs) in the exclusion zones: roe has not been determined to transmit VHS or the risk is very small.
- Require all bait harvested in November and December to be certified disease free: this time period represents 80% of the total annual minnow harvest.
- Require a spring disease test in 5 zones of the Huron- Erie Corridor: this spring test will be used to continue to monitor VHS presence.
- Require all personally collected bait be used in the same water it was collected: this will also help with limiting movement of invasive species.

The proposed regulation changes have been very well received by the baitfish industry. However, even though we haven't detected VHS within bait in the past six years it could still manifest as a problem. If VHS or another harmful disease is detected the Department would implement an emergency Order to mitigate spread and harm. The emergency response from a positive disease detection would be determined on a case-by-case basis in consultation with the Department of Agriculture and Rural Development and the industry.

Issue Pros and Cons

The proposed changes will allow for over 80 percent of the baitfish harvested annually in Michigan waters to be tested in Michigan. The changes will also allow for more sale of spring collected baitfish as zone sampling will now be incorporated into the disease testing protocol. Therefore, the need for bait dealers to bring in minnows from other states will be greatly reduced. This will result in less chances of aquatic invasive species being brought into Michigan along with minnow shipments.

Neighboring States

After the federal order regarding VHS was rescinded several years ago many states followed suit by reducing their VHS testing requirements. However, Michigan has the most to lose by not being proactive in protecting our important water resources from VHS and other disease transmission. Therefore, Michigan should maintain its vigilance on reducing the risks of potential disease outbreaks by maintaining a level of disease testing as proposed.

March 14, 2016

Biological

Disease outbreaks can have a devastating effect on our important natural resources. Therefore, it makes sense to remain vigilant in our efforts to test for diseases to reduce the risks of allowing the spread of diseases.

Social

People are very supportive of efforts to protect Michigan's natural resources. The baitfish industry is also supportive of these efforts to maintain a continuing supply of disease free bait for our anglers.

Economic

The Department does not anticipate any economic losses or gains with the changes as proposed. The baitfish industry may benefit economically from these proposed changes.

Recommendation:

This Order was submitted for information and consideration. This item appears on the Department's March 2016 calendar and may be eligible for approval on April 14, 2016.



James Dexter, Chief
Fisheries Division



Gary Hagler, Chief
Law Enforcement Division



Russ Mason, Ph.D., Chief
Wildlife Division



Deb Begalle, Acting Chief
Forest Resources Division



Ronald A. Olson, Chief
Parks and Recreation Division



Bill O'Neill
Natural Resources Deputy

I have analyzed and discussed these recommendations with staff and concur as to matters over which the Director has authority.

William E. Moritz, Ph.D., Director

Date

FISHERIES ORDER

Fish Disease Control Order 245.16

By authority conferred on the Natural Resources Commission and the Department of Natural Resources by Part 411 1994 PA 451, MCL 324.41101 to 324.41105 and Part 487 of 1994 PA 451, MCL 324.48701 to 324.48740, it is ordered that effective April 15, 2016, the following section(s) of the Fisheries Order shall read as follows:

The goals of the Department's actions under this Fish Disease Control Order are to protect the aquatic resources of the State, minimize the spread of Pathogens of concern to uninfected waters, and protect the Department's fish hatchery system. The Department will address the control of diseases of fish through the development of regulations that are designed to contain or slow the spread of Pathogens of concern.

1) Definitions

As used in this order:

- a) Aquatic vegetation: a plant or algae species that grows in water whether rooted in the mud or floating without anchorage.
- b) Baitfish: live or dead species of any fish, or parts of fish excluding fish eggs, used to harvest or attract fish.
- c) Bilge: the part of the underwater body of a vessel between the flat of the bottom and the vertical topsides or the lowest point of a vessel's inner hull.
- d) Certification Process: a process used by the Department to grant or deny applications from individuals who want to conduct certain activities that are regulated by this order.
- e) Fish: includes live and dead fish of any species or parts other than baitfish and fish eggs as defined by this order.
- f) Fish eggs: eggs of a fish, also known as roe.
- g) Fish Stocking Permit: an official document issued by the Department giving an individual authorization to conduct fish stocking activities.
- h) Live well: a well for keeping fish alive in a vessel by allowing water to circulate through it.
- i) List of Fish Species: those fish species approved for stocking, importation, or use as baitfish in Michigan Public Waters.
- j) Pathogen: viruses, bacteria, fungi, and parasites that cause disease in living organisms.
- k) Purchase: to acquire for a consideration.
- l) Michigan Public Waters: waters within the jurisdiction of the state having public access or private waters that connect to public waters.
- m) Sale or sell: an exchange or attempt or offer to exchange money, barter, or anything of value.
- n) State-licensed baitfish retail, State-licensed baitfish wholesale operations, and State-licensed catchers: those that are required to be licensed by the state of Michigan for these activities.
- o) Vessel: every description of watercraft used or capable of being used as a means of transportation on water.

2) Bait Fish Exclusion Zones

The Department has identified locations vital to the protection of hatchery operations in an effort to control or contain pathogen movement and reduce disease risks to these facilities. In these critical areas restrictions on the possession and subsequent use of baitfish must be implemented. Therefore, baitfish shall not be possessed or used on the following waters of the State:

a) **Benzie County**

Brundage Creek and tributaries Kinney Creek and Stanley Creek, from its confluence with the Platte River (T26N, R13W, S7), to their headwaters, including Brundage Spring Pond.

b) **Chippewa County**

Pendills Lake (T47N, R4W, S25, 26) including tributary Pendills Creek downstream to its confluence with Lake Superior (T47N, R4W, S28).

Sullivan Creek from its headwaters (T46N, R4W, S32) downstream to its confluence with the North Branch of the Pine River (T45N, R4W, S23).

Viddian Creek from its headwaters (T47N, R4W, S32) downstream to its confluence with Pendills Creek (T47N, R4W, S28).

c) **Marquette County**

Cherry Creek from the location of the Cherry Creek Road (T47N, R24W, S18) to the headwaters at County Road 480 (T47N, R25W, S22).

3) General statewide provisions:

- a) It shall be unlawful to place any live fish, live baitfish, or fish eggs into Michigan Public Waters without first obtaining a Fish Stocking Permit from the Department except for fish reared within a facility registered under the Aquaculture Development Act (Public Act 199 of 1996) or otherwise allowed under this Order. Fish transported for stocking outside a facility registered under the Aquaculture Development Act require a Fish Stocking Permit from the Department. If an approved Fish Stocking Permit is issued by the Department, an applicant shall carry a copy of that Fish Stocking Permit when transporting or stocking those fish or eggs. This section does not include the practice of chumming with fish eggs by an angler in the act of recreational fishing.
- b) A person, who catches fish in a lake, stream, Great Lake, or connecting waterway shall only release those fish in the lake, stream, or Great Lake where the fish were caught, or in a connecting waterway of the lake, stream, or Great Lake where the fish were caught so long as those fish can freely move between the original location of capture and the location of release.
- c) Baitfish shall only be used on a hook and may not be disposed of or otherwise released into Michigan Public Waters.
- d) It shall be unlawful to import into this state for use as baitfish any uncertified fish species that are on the List of Fish Species in Table 1. This includes live, dead, preserved, and cut baitfish.
- e) It shall be unlawful to transport any vessel over land without first draining all water from the live well(s) and bilge upon leaving any body of water. The vessel, trailer or any conveyance used to transport the vessel or trailer must be free of aquatic vegetation.
- f) Personal collection of baitfish: All baitfish or fish collected for personal use as bait or cut bait shall only be used for fishing purposes in the original waters of collection.
- g) All species of live fish maintained at a location by an owner of a State-licensed commercial fishing operation shall be considered uncertified if live fish that are listed on the List of Fish Species in Table 1 are on site and have not received a clear Status of Fish Health Certification.

4) Commercial Bait

a) Importation from out of state

- i) Status of Fish Health - All persons importing baitfish that are on the List of Fish Species in Table 1 shall have those baitfish tested for each Pathogen of concern by a certified laboratory approved by the State of Michigan and shall submit the results of all tests to the Department. The Department will review the results for each application and respond with a letter of Certification that contains a transaction number and either grants or denies the application and includes the Department's rationale for the decision.

b) Harvest of baitfish from Michigan waters:

- i) Status of Fish Health - From November 1 – December 31 of each year, all persons holding a minnow catcher's license, including an owner of an aquaculture facility regulated and permitted by the Michigan Department of Agriculture and Rural Development, who harvest and wish to offer for sale or sell baitfish that are on the List of Fish Species in Table 1 shall have those baitfish tested for each Pathogen of concern by a certified laboratory approved by the State of Michigan and shall submit the results of all tests to the Department. The Department will review the results for each application and respond with a letter of Certification that contains a transaction number and either grants or denies the application and includes the Department's rationale for the decision.

State-licensed baitfish catchers shall coordinate and collect a single 150 fish sample during April or May from each of the 5 testing zones in Lake Huron and Lake Erie, including the connecting waters of the St. Clair River, Lake St. Clair, and Detroit River (Figure 1). Samples from each of the 5 testing zones shall be tested for each Pathogen of concern by a certified laboratory approved by the State of Michigan. Sampling plans for each respective zone shall be communicated to Department before samples are collected.

If all baitfish harvested in the state test negative for each Pathogen of concern during the November 1 – December 31 testing period and from the 5 spring testing zones, then all baitfish on the list of Fish Species in Table 1 may be harvested from Michigan waters and sold without further testing or certification from January 1 – October 31 of the following year. For fish to be legally sold in November and December without Status of Fish Health certification, they must have been harvested prior to November 1.

If any baitfish test positive for any Pathogen of concern during either the November - December testing period or from the 5 spring testing zones, then the Department shall take immediate emergency action to temporarily amend this Order and require additional testing certification of baitfish harvested January 1 – October 31. The Department will notify all licensed bait harvesters of the fall testing results and any subsequent emergency regulatory actions. If emergency action is taken, additional testing requirements shall take immediate effect and shall remain in place until the Department determines that the Pathogen threat has sufficiently diminished to lift the emergency order and reinstate the seasonal testing requirement outlined in this Order.

c) General Regulations for Commercial Bait

- i) All Michigan baitfish wholesalers are required to be licensed by the state of Michigan and must complete the following Certification Process for their facility or business:
 - (1) Status of a Facility - If keeping and holding baitfish at a facility for prolonged distribution and sale, baitfish wholesalers shall have that facility reviewed by the Department to ensure that there is minimal risk to Michigan Public Waters and that appropriate biological security measures are effective for the facility. The Department will review the results for each application and respond with a letter of Certification for Facility Status that either grants or denies the application and includes the Department's rationale for the decision, as well as the actions necessary for achieving Certification.

Once certified and licensed, facility operators who wish to continue being licensed must inform the Department in writing by September 30th each year whether changes were made to the facility during the current license year. If the facility is unchanged, a new certification will be issued with the new license year. If changes were made to the facility, a new Certification Process must be initiated at that time. This part does not apply to an owner of an aquaculture facility regulated and permitted by the Michigan Department of Agriculture and Rural Development or an owner of a State-licensed baitfish retail operation.

- (2) Statement of Direct Sale – If a wholesaler ships baitfish directly from the point of harvest or immediately after purchase from another licensed wholesale to licensed bait retailers in Michigan, that wholesaler shall notify the Department at the time of license application of their intent to direct sale only. The Department will respond with a letter of authorization for direct wholesale shipments to licensed retailers.
- ii) The steps for *Certification of Status of a Facility, Statement of Direct Sale, and Status of Fish Health* must be completed on a form as directed by the Department and as outlined in the Guide for Certification of Status of a Facility, Statement of Direct Sale, and Status of Fish Health. The guide is available online at www.michigan.gov/vhs.
 - iii) A person shall not offer for sale or sell any baitfish that are on the List of Fish Species in Table 1 that were imported from out of state or were harvested in Michigan between October 1 – December 31 without receiving a letter of Certification for Fish Health Status and Status of a Facility or Statement of Direct Sale from the Department permitting such activity.
 - iv) If an approved Certification for Fish Health Status is issued by the Department, a copy shall be carried by the baitfish wholesaler or retailer when transporting, offering for sale, or selling baitfish that are on the List of Fish Species in Table 1 and harvested in Michigan November 1- December 31. That letter of Certification shall be shown upon request to any law enforcement officer or Fisheries Division representative.
 - v) An owner of a State-licensed baitfish wholesale operation shall provide to each wholesale and retail purchaser at the point of sale a copy of a receipt for their purchase that will include the date of purchase, the common name of the species sold (as listed in Table 1), applicable certification number for Fish Health Status for species that are on the List of Fish Species in Table 1 and harvested in Michigan between November 1- December 31, and the quantity of each species sold.
 - vi) A State-licensed baitfish wholesaler must have a copy of the Certification for Fish Health Status letter at their facility as well as a receipt of purchase to accompany any baitfish they possess that was either imported into Michigan or harvested in Michigan November 1 – December 31. The letter and receipt shall be made available upon request of any law enforcement officer or a Fisheries Division representative.
 - vii) A wholesale baitfish dealer shall retain copies of receipts for purchases and all accompanying testing paperwork for at least one year after the date of purchase.
- 5) Koi Herpes Virus (KHV) - Due to the recent emergence of KHV in the wild in Michigan, the harvest of minnows for personal use and by state-licensed commercial minnow catchers is prohibited from the following waters:
- a) Kent Lake, Livingston and Oakland Counties, all tributaries flowing into Kent Lake, and the Huron River from Kent Lake upstream to the Hubbell Millpond dam in Milford.
 - b) Silver Lake, Oceana County, and all tributaries flowing into Silver Lake.

Table 1. List of Fish Species for Importation, Stocking, or for Baitfish in Public Waters in Michigan and Required Pathogen Testing

Species	Scientific Name	Species Code	Importation	Baitfish	Stocking	Pathogen Testing Required				
						VHSv	IHNv, IPNV, and Mc	HSP	LMBv	CCV
Atlantic Salmon	<i>Salmo salar</i>	ATS	X		X	X	X			
Black Bullhead	<i>Ameiurus melas</i>	BLB	X		X	X				X
Black Crappie	<i>Pomoxis nigromaculatus</i>	BCR	X		X	X			X	
Bluegill	<i>Lepomis macrochirus</i>	BLG	X		X	X			X	
Brook Trout	<i>Salvelinus fontinalis</i>	BKT	X		X	X	X			
Brown Bullhead	<i>Ameiurus nebulosus</i>	BRB	X		X	X				X
Brown Trout	<i>Salmo trutta</i>	BNT	X		X	X	X			
Channel Catfish	<i>Ictalurus punctatus</i>	CCF	X		X	X				X
Flathead Catfish	<i>Pylodictis olivaris</i>	FCF	X		X	X				X
Green Sunfish	<i>Lepomis cyanellus</i>	GSF	X		X	X			X	
Hybrid Sunfish	<i>Lepomis spp.</i>	HSF	X		X	X			X	
Lake Herring	<i>Coregonus artedi</i>	LHR	X		X	X	X	X		
Lake Trout	<i>Salvelinus namaycush</i>	LKT	X		X	X	X			
Lake Whitefish	<i>Coregonus clupeaformis</i>	LWF	X		X	X	X			
Largemouth Bass	<i>Micropterus salmoides</i>	LMB	X		X	X			X	
Muskellunge	<i>Esox masquinongy</i>	MUS	X		X	X	X	X		
Northern Pike	<i>Esox lucius</i>	NOP	X		X	X	X	X		
Pacific Herring	<i>Clupea pallasii</i>	PHR	X	X		X				
Pumpkinseed	<i>Lepomis gibbosus</i>	PSF	X		X	X		X	X	
Rainbow Smelt	<i>Osmerus mordax</i>	SMT	X	X		X				
Rainbow Trout (Steelhead)	<i>Oncorhynchus mykiss</i>	RBT	X		X	X	X			
Redear Sunfish	<i>Lepomis microlophus</i>	RSF	X		X	X			X	
Rock Bass	<i>Ambloplites rupestris</i>	RKB	X		X	X		X	X	
Smallmouth Bass	<i>Micropterus dolomieu</i>	SMB	X		X	X			X	
Walleye	<i>Sander vitreus</i>	WAE	X		X	X		X		
Warmouth	<i>Lepomis gulosus</i>	WAR	X		X	X				
White Bass	<i>Morone chrysops</i>	WHB	X		X	X			X	
White Crappie	<i>Pomoxis annularis</i>	WCR	X		X	X			X	
Yellow Bullhead	<i>Ameiurus natalis</i>	YLB	X		X	X				X
Yellow Perch	<i>Perca flavescens</i>	YEP	X		X	X		X		
Michigan's Common Baitfish Species										
Bluntnose Minnow	<i>Pimephales notatus</i>	BNM	X	X	X	X				
Common Shiner	<i>Luxilus cornutus</i>	CSH	X	X	X	X				
Common White Sucker	<i>Catostomus commersonii</i>	CWS	X	X		X		X		
Creek Chub	<i>Semotilus atromaculatus</i>	CRC	X	X		X				
Emerald Shiner	<i>Notropis atherinoides</i>	EMS	X	X	X	X				
Fathead Minnow	<i>Pimephales promelas</i>	FHM	X	X	X	X		X		
Golden Shiner	<i>Notemigonus crysoleucas</i>	GOS	X	X	X	X				
Northern Redbelly Dace	<i>Phoxinus eos</i>	NRD	X	X	X	X				
Sand Shiner	<i>Notropis stramineus</i>	SAS	X	X		X				
Spotfin Shiner	<i>Cyprinella spiloptera</i>	SFS	X	X		X				
Spottail Shiner	<i>Notropis hudsonius</i>	STS	X	X		X				

(VHSv – Viral Hemorrhagic Septicemia, IHNv – Infectious Hematopoietic Necrosis, IPNV – Infectious Pancreatic Necrosis, Mc – Whirling Disease, HSP – Heterosporis sp, LMBv – Largemouth Bass Virus, CCV – Channel Catfish Virus)

This Order shall be assigned number FO-245.16, and is entitled "Fish Disease Control." If a discrepancy occurs between this Fish Disease Control Order, FO-245.16, and other orders and laws currently in existence, the more restrictive regulation shall take precedence.

This Order supersedes the Order entitled "Fish Disease Control," which became effective January 9, 2014, and is assigned number FO-245.14.

This Order shall take on April 14, 2016. This Order shall remain in effect until March 31, 2021, or until this Order is amended or rescinded, whichever comes first. Although this Order may be reviewed and amended on an annual basis, a review of this Order shall occur no later than August 1, 2020.

Issued on this 15th day of April 2016.

Approved as to matters over which the Natural Resources Commission has authority.

John Matonich, Chairman
Natural Resources Commission

Approved as to matters over which the Director has authority.

William E. Moritz, Ph.D.
Director

Figure 1: Michigan's Spring Baitfish Testing Zones

