

Chairman:
Agriculture Committee



Member:
Consumer Affairs
Government Operations
Natural Resources

Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee

MEMO

To: Members of the Assembly Agriculture Committee

From: Representative Al Ott, Chair

Date: September 10, 1998

The following clearinghouse rule has been referred to the Assembly Agriculture Committee:

Clearinghouse Rule 98-055

Relating to the development of fees, criteria and procedures to use when permitting the use of natural waters as fish farms. Submitted by the Department of Natural Resources.

The deadline for action on this rule is October 10, 1998. If you would like a copy of the rule, please contact my office at 266-5831.

REPORT TO LEGISLATURE

Ch. NR 16, subch. II, Wis. Adm. Code
Development of fees, criteria and procedures to use when
permitting the use of natural waters as fish farms

Board Order No. FH-18-98
Clearinghouse Rule No. 98-055

Statement of Need

The proposed rule was created based on s. 29.521, Stats., which directs the Department to develop fees, criteria and procedures for issuing permits to use natural waters as fish farms. The rule applies to privately owned fish farms and state-owned fish hatcheries. The types of water bodies that can be permitted are those that were licensed as private fish hatcheries by the Department in 1997 and freeze-out ponds. A freeze-out pond is a natural, self-contained body of water in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every 5 years. The rule provides a three-tiered fee structure as follows:

1. For natural waters that were licensed as a private fish hatchery or as part of a private fish hatchery in 1997, the Department will issue a 10-year permit for this use without making an initial determination as specified in s. 29.521(2)(b), Stats. The fee is \$50.

2. For natural waters that are freeze-out ponds that were not formerly licensed by the Department, the Department will make an initial determination of substantial public interest in the freeze-out pond and whether public or private rights in the freeze-out pond would be damaged. This will entail an on-site inspection by Department personnel. The fee is \$500.

3. The natural waters permit is transferrable. The fee to transfer the permit is \$100.

Applications for this permit may be made beginning 60 days after the effective date of the rule. Renewal applications may be made up to 16 months before the expiration date of the permit, but no later than 2 months before the expiration date of the permit. The Department will issue, renew or deny the permit within 3 months of receiving the application; however, if the natural water body is ice-covered at the time of application, the Department may delay its action until the following May 31.

Modifications as a Result of Public Hearings

The following substantive changes were made as a result of public hearing:

NR 16.74(1)(c) - clarifying the term "wetland functional values" as "water quality related functional values or uses of wetlands identified in s. NR 103.03".

NR 16.74(1)(d) - clarifying the term "water quality" as "surface water quality standards identified in chs. NR 102, 104, 105, 106 and 107 and minimum water quantity requirements identified in s. 31.02, Stats."

NR 15.74(8) - providing a process to notify the public of new permit applications. "Upon receipt of a completed permit application, the department shall either schedule a hearing or provide notice stating that it will proceed on the application without a hearing if no substantive written objections to issuance of the permit is received within 30 days after publication or notice. The

notice shall be provided to the news media and other persons according to the procedure in s. NR 27.07(1)(b) and (c). The department may provide notice to other persons as it deems appropriate. The department will assume the cost of publishing the notice."

Appearances at the Public Hearings and Their Positions

May 12, 1998 - Madison

In support:

David Gollon, Gollon Bait & Fish Farm, 5117 Hwy. 191, Dodgeville, WI 53533

In opposition:

Todd F. Miller, 2013 Catlin Place, #1, Madison, WI 53713
Kerry Schumann, WISPIRG, 1121 University Avenue, Madison, WI 53715
Rose B. Smith, 445 W. Center, Whitewater, WI 53190
Galen Smith, 445 W. Center Street, Whitewater, WI 53190
Michael J. Lannoo, 11880 S. County Road 500 East, Selma, IN 47383
Matthew Lowonn, 4357 Britta Drive, #2, Madison, WI 53706
Charles Luthin, 3526 Cross Street, Madison, WI 53711
John Coleman, 500 Babcock Drive, Room B102, Madison, WI 53706
Gail M. Epping, Wisconsin Wetlands Association, 306 S. Baldwin, #1, Madison, WI 53703
Karen Etter Hale, Madison, Audubon Society, 222 S. Hamilton St., #1, Madison, WI 53703

As interest may appear:

Terence Barry, 123 Babcock Hall, Madison, WI 53706
Michael C. Berry, 1140 Freedom Court, Wisconsin Dells, WI 53965
Harold E. Jordahl, The Natural Conservancy, 633 W. Main Street, Madison, WI 53703
Jeff Malison, UW-Madison Aquaculture Program Director, 123 Babcock, Madison, WI 53706

May 13, 1998 - West Bend

In support:

Ervin Buenner, P.O. Box 1904, Eagle River, WI 54521

In opposition:

Joanne Kline, 1370 Chestnut Street, West Bend, WI 53095
Michelle Labry, 107 Maple Avenue South, #8, Slinger, WI 53086-0222
Gary Casper, Milwaukee Public Museum, 800 W. Wells Street, Milwaukee, WI 53233
Timothy Ehlinger, 4634 N. 105th, Wauwatosa, WI 53225
Paul Brautigan, 3428 N. Pierce Street, Milwaukee, WI 53212

As interest may appear:

Susan M. Beyler, N9563 Hwy. 67, Eagle, WI 53119
Don Bloecher, Timber Creek Fish Hatchery, 3205 Tree Lane, West Bend, WI 53095
Judy Brown, The Country Today, Fond du Lac, WI 54936

May 19, 1998 - Wausau

In support:

Robert H. Winkel, Silver Moon Springs, N10638 E. Isle of Pines Drive, Elcho, WI 54428
Robert E. Rotim, N10842 Circle Drive, Elcho, WI 54428
Fred Gollon, 1102 Old Wausau Road, Stevens Point, WI 54481

In opposition:

Sally Tadda, W3902 Sandy Lane, Owen, WI 54460
Alice Thompson, Chair, Wisconsin Wetland Association, 1320 Manitowoc Avenue, South
Milwaukee, WI 53172
Herbert Hintze, President, Wis. River Valley Chapter, Trout Unlimited, 629 Hamilton Street,
Wausau, WI 54403
Bill Lazarz, N5418 Church Road, Deerbrook, WI 54424
Jane Raymond-Wood, Wausau Bird Club, 1417 Skyline Lane, Wausau, WI 54403
Mary Reser, 1563 County Road ZZ, Amherst Junction, WI 54407
Stuart Grimstad, Frank Hornberg Chapter, Trout Unlimited 1563 County Road ZZ,
Amherst Junction, WI 54407
Mitch Bent, Wisconsin Trout Unlimited, 935 South Union Street, Shawano, WI 54166-3145
Henry Bruse, Aldo Leopold Audubon Society, 1820 Wickham Avenue, Wis. Rapids, WI 54495
Marge Gibson, Raptor Education Group, Inc., N2160 W. Rollwood Road, Antigo, WI 54409

As interest may appear:

Rand Atkinson, N4546 Butternut Lane, Birnamwood, WI 54414
Carl Gollon, 1141 N. Old Wausau Road, Stevens Point, WI 54481
Don Hildebrandt, Wisconsin State Bass Federation, 2310 N. 6th Street, Wausau, WI 54403-3307

May 20, 1998 - Spooner

In support:

Charles M. Graham, Star Prairie Trout Farm, 400 Hill Avenue, Star Prairie, WI 54026

In opposition:

James Olson, 550 Graham Avenue, #210, Eau Claire, WI 54701
Craig Friess, Friesses Minnow Farm Inc., 736 20th Avenue, Cumberland, WI 54829
Edward Carlson, 5783 County Road X, Webster, WI 54893

As interest may appear:

Glenna Carlson, 5783 County Road X, Webster, WI 54893
Josephine Gurtner, N3355 Deer Path Road, Sarona, WI 54870
John Gurtner, N3355 Deer Path Road, Sarona, WI 54870
Kevin Hagen, Country Today Newspaper, W5676 Highway 70, Spooner, WI 54801
Ronald Johnson, P.O. Box 662, Iron River, WI 54847
Hugo Kettula, 1029 Clam Falls Drive, Lewis, WI 54837-4705
Ruby Kettula, Seven Pines Fisher Inc., 1029 Clam Falls Drive, Lewis, WI 54837-4705
James Michalski, Route 1, Downing, WI 54734
James L. Streeter, W9401 Valley View, Shell Lake, WI 54871
Harold E. Swanson, Cedar Island Conservancy, Ltd., P.O. Box 106, Brule, WI 54820-0106

Response to Legislative Council Rules Clearinghouse Report

The recommendations have been accepted.

Final Regulatory Flexibility Analysis

At present, there are 40-50 natural water bodies that are being used as fish farms. In order to continue this use, the fish farmers will need to obtain a permit from the Department. The permittee must maintain fish barriers at inlets and outlets to the water body as required by s. 29.521(2)(e), Stats. There is no reporting requirement for this permit. The information requested of the applicant is minimal and will be used by the Department in combination with on-site visits to make a determination regarding adverse impacts to public or private rights in the natural body of water.

Fish farmers can apply for renewal permits up to 16 months before the permit expires. The Department will reissue or deny the permit within 3 months of the application date. This provides a 13 month window in which the fish farmer can make business decisions. This is a 10-year permit which provides the fish farmer with considerable business opportunities and flexibility compared to the year to year licensing requirement under the old law.

Small businesses cannot be exempt from the requirement of this rule. Natural waters that are currently being used as fish farms do not need an initial determination by the Department. This saves the fish farmer \$450, since the Department already permitted the use under the 1997 private fish hatchery license. Department staff must make an initial determination for new ponds in order to insure public and private rights in the ponds are not adversely impacted. We estimate 1-10 new permit applications per year.

Fish farms are affected by this rule. There are no bookkeeping or reporting requirements for compliance.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 16, subch. II relating to the development of fees, criteria, and procedures to use when permitting the use of natural waters as fish farms.

FH-18-98

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 29.521 (2) (f), Stats.

Statutes interpreted: s. 29.521, Stats.

Summary of the Proposed Rule

NR 16, subch. II is created to set the fee structure, criteria, and procedures to use when permitting the use of natural waters as fish farms. The rule applies to fish farms and state-owned fish hatcheries located in, or proposed to be located in freeze-out ponds, and to natural water bodies that were licensed by the Department in 1997 as part of a private hatchery. A freeze-out pond is defined in s. 29.01 (3m), Stats. as a natural, self contained body of water (which has no inlet or outlet, except that it may have pipes equipped with barriers with which to put in or withdraw water) in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every five years. An application to use freeze-out ponds as fish farms may include more than one freeze-out pond if they are located on a contiguous parcel of property under the same ownership or leasehold.

The rule provides a three tiered fee structure as follows:

- 1) For natural waters that were licensed as a private fish hatchery or as part of a private fish hatchery in 1997, the Department will issue a 10 year permit for this use without making an initial determination as specified in s. 29.521 (2) (b), Stats. The fee is \$50.
- 2) For natural waters that are freeze-out ponds that were not formerly licensed by the Department, the Department will make an initial determination of substantial public interest in the freeze-out pond and whether public or private rights in the freeze-out pond would be damaged. This will entail an on-site visit by water management specialists, fisheries personnel, and other Department personnel as needed. The fee is \$500.
- 3) The natural waters permit is transferrable. The fee to transfer the permit is \$100.

Applications for this permit may be made beginning 60 days after the effective date of the rule. Renewal applications may be made within 16 months before the expiration date of the permit. The Department will issue, renew or deny the permit within 3 months of receiving the

application, however, if the natural water body is ice-covered at the time of application, the Department may delay its action until May 31.

The applicant must provide evidence that they own, lease, or otherwise control the land riparian to the water body and that the public does not have access to the water body, except for allowing fishing for a fee. The applicant must also indicate why they believe the water body is a freeze-out pond. They must attach copies of any other permits required by state, local or federal authorities (Chapters 30 and 31, Army Corps of Engineers, etc.). The applicant will also indicate the water source and quantity used for the fish farm and whether there is a discharge to a water of the state.

The Department will issue a permit for the use of a natural water body as a fish farm if all the requirements of this subchapter are met and if the Department determines that there is no substantial public interest in the body of water and that no public or private rights in the body of water will be damaged.

Although not inclusive, the following are indicative of public rights and interests: plant and wild animal habitats and populations, including threatened or endangered species; wetland functional values; water quality; navigability and associated incidents to navigation (fishing, swimming, canoeing, wading).

Species reared in the natural water body may not be detrimental, non-native species pursuant to s. 29.623 (2), Stats.

Physical improvements or modifications to the natural water body must comply with all federal, state, and local laws and ordinances.

After receiving a permit application, the Department shall schedule a public hearing or provide notice according to the procedures under NR 27.07(1)(b)&(c) that it will proceed without a public hearing if no substantive written objections are received within 30 days of publication of the notice.

The Department will renew permits subject to the provisions of s. 29.521 (2) (c), Stats., and will deny permits subject to the provisions of s. 29.521 (2) (d), Stats.

The Department will suspend or revoke permits subject to the provisions of s. 29.521 (2) (e), Stats.

SECTION 1. Chapter NR 16 (title) is amended to read:

Chapter NR 16

GAME FARMS AND, EXHIBITS AND FISH FARMS

SECTION 2. NR 16, subch. I (title) is created to read :

**NR 16, SUBCHAPTER I
GAME FARMS AND EXHIBITS**

SECTION 3. NR 16.001 (intro) is created to read:

NR 16.001 DEFINITIONS. In this subchapter:

SECTION 3. NR 16, subch. II is created to read:

**NR 16, SUBCHAPTER II
PERMITTING THE USE OF NATURAL BODIES OF WATER AS FISH FARMS**

NR 16.70 PURPOSE AND APPLICABILITY. (1) **PURPOSE.** The purpose of this subchapter is to establish fees, criteria and procedures to be used for permitting the use of natural bodies of water as fish farms as required under s. 29.521(2)(f), Stats.

(2) **APPLICABILITY.** The provisions of this subchapter are applicable to:

(a) Fish farms and state-owned hatcheries located in or proposed to be located in freeze-out ponds.

(b) Natural bodies of water that were licensed as a private fish hatchery or licensed as a part of a private fish hatchery in 1997.

(c) A freeze-out pond or more than one freeze-out pond that is proposed as a fish farm at the time of application and is located on the same contiguous parcel of property under the same ownership or leasehold.

NR 16.71 DEFINITIONS. In this subchapter: (1) "Barrier equipped" means the placement of a structure or device which prevents the movement of fish or bait from a fish farm to a natural body of water.

(2) "Freeze-out pond" has the meaning specified in s. 29.01(3m), Stats.

(3) "Natural body of water" means any spring, stream, pond, lake or wetland that was historically present in a natural state but may have been physically altered over time and has not been permitted as an artificial and private water body under ch. 30 or 31, Stats.

(4) "Preexisting fish rearing facility" has the meaning specified in s. 29.01(11c), Stats.

(5) "Transfer of permit" means the conveyance of a permit from one party to another as a result of change in ownership or leasehold interest of a fish farm.

(6) "Wetland" has the meaning specified under s. 23.32, Stats.

Note: For purposes of this subchapter, a natural body of water does not include a physically altered body of water that has been permitted as an artificial and private body of water under ch. 30 or 31, Stats.

NR 16.72 NATURAL BODY OF WATER PERMIT APPLICATION FEES. Permit application fees for the use of natural bodies of water for fish farms for a period of 10 years shall be as follows:

(1) Permit applicants for natural bodies of water reauthorized for use as fish farms under s. 29.521(2)(b) and (c), Stats., shall pay a non-refundable renewal fee of \$50.00.

(2) Permit applicants for the initial use of freeze-out ponds as fish farms shall pay a \$500.00 non-refundable permit application fee.

(3) Recipients of permit transfers shall pay a non-refundable permit transfer fee of \$100.00. The expiration date of the original permit shall remain in effect for the transferred permit.

NR 16.73 APPLICANT PERMIT PROCEDURES FOR USE OF NATURAL BODIES OF WATER FOR FISH FARMS. (1) For permits reauthorized under s. 29.521(2)(b), Stats., the applicant shall complete and submit an application form provided by the department and the appropriate permit fee within 60 days from the effective date of this rule ... [revisor insert date].

(2) For renewal of permits under s. 29.521(2)(c), Stats., the applicant shall submit a new application to the department not more than 16 months before the expiration date of the permit granted under this chapter but not less than 2 months from the expiration date of the permit.

(3) Applications for permits under this subchapter shall include documents verifying all of the following:

(a) The land that is riparian to the body of water is owned, leased or controlled by the owners of the fish farm.

(b) None of the owners of the fish farm or of the riparian lands provides access to the body of water to the public by means of an easement or other right-of way or by means of a business open to the public, except that the owners of the fish farm may allow fishing by the public for a fee.

(c) Documentation that the natural body of water may be a freeze-out pond or that the natural body of water is a preexisting fish rearing facility that is barrier equipped.

(d) Copies of any other permits or authorization required by ch. 30 or 31, Stats., the Army corps of engineers and any other federal, state or local laws and zoning ordinances.

(e) All applicants shall identify the water source and quantity used for the fish farm and whether there is any discharge to a water of the state.

(f) Any other information requested by the department to determine whether a permit would or would not be granted by the department.

Note: Permit application forms are available from the bureau of Fisheries Management and Habitat Protection, 101 South Webster St., P.O. Box 7921, Madison, WI 53707.

NR 16.74 DEPARTMENT DETERMINATIONS. (1) The department shall issue a permit for use of a natural body of water as a fish farm or as a part of a fish farm if all requirements of this subchapter have been met and if the department determines that no substantial public interest exists in the body of water and that no public or private rights in the body of water will be adversely impacted. Among the factors considered, the following are indicative of public rights and interests including but not limited to:

(a) Plant and wild animal habitat or plant and wild animal populations.

(b) Threatened or endangered species or their habitat.

(c) Water quality related functional values or uses of wetlands identified in s. NR 103.03.

(d) Surface water quality standards identified in chs. NR 102, 104, 105, 106 and 107 and minimum water quantity requirements identified in s. 31.02, Stats.

(e) The public's right to navigate and associated incidents to navigation including fishing, swimming, wading and canoeing.

(2) Fish farms may not introduce or propagate any non-native fish species if the department has determined that having the fish in that particular self-contained fish rearing

facility or preexisting fish rearing facility will pose a risk of being detrimental to the waters of the state.

(3) Physical improvements or modifications to natural bodies of water used as fish farms shall comply with all federal, state and local laws and ordinances.

(4) Permits approved under this subchapter may be transferred to another party if the department determines that all conditions of this subchapter and s. 29.521, Stats., have been satisfied.

(5) The department shall renew permits issued under this subchapter subject to the provisions of s. 29.521(2)(c), Stats.

(6) The department shall deny a permit for use of a natural body of water as a fish farm or as part of a fish farm if the requirements of this subchapter have not been met.

(7) Upon receipt of a complete permit application, the department shall either schedule a hearing or provide notice stating that it will proceed on the application without a hearing if no substantive written objections to issuance of the permit is received within 30 days after publication or notice. The notice shall be provided to the news media and other persons according to the procedures in s. NR 27.07(1)(b)&(c). The department may provide notice to other persons as it deems appropriate. The department will assume the cost of publishing the notice.

NR 16.75 ENFORCEMENT. The department may suspend or revoke a permit issued under this subchapter subject to the provisions of s. 29.521(2)(e), Stats.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on August 26, 1998.

The rules contained herein 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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

1997 Session

LRB or Bill No./Adm. Rule No.
NR 16

Amendment No. if Applicable

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 N(R10/94)

Subject
Rules to permit the use of natural waters as fish farms

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

SUMMARY OF BILL - NR 16, subch. II is created in response to legislation enacted in 1997, Wisconsin Act 27 regarding the use of natural waters as fish farms. Wis. Stat. Ch. 29.521 directs the Department to develop rules that address the fees, criteria and procedures to follow in issuing 10 year permits to use natural waters as fish farms. This rule establishes a three tiered approach for fees: 1) For those natural waters already being used as fish farms (preexisting fish rearing facilities that are barrier equipped), a permit will be issued without an initial determination by the Department and the permit fee is \$50. 2) For natural water bodies that are freeze-out ponds not already being used as part of a fish farm, the Department will determine whether there is substantial public interest in the freeze-out pond and that public and private rights in the freeze-out pond will not be damaged. This will entail an on-site visit by water management specialists, fisheries personnel and possibly other Department personnel as needed. A fee of \$500 is needed to cover the costs of professional time, mileage, lodging as needed, and administrative costs in issuing the permit. 3) In cases where the 10 year permit is transferred before the expiration date, a \$100 fee will be assessed to cover the administrative costs of transferring the permit.

A person may apply two months after the effective date of this rule for an initial permit. A person may renew an existing permit up to 16 months before the permit expires. The Department will issue, renew, or deny the permit within three months of receiving the application, except when ice covers the freeze-out pond. In this case, the Department will have until the following May 31 to make a determination.

FISCAL IMPACT - The Department estimates that there will be a fiscal effect. However, the fees have been set so that revenues will equal costs, leading to no net fiscal effect.

Assumptions Used in Arriving at Fiscal Estimate

1. There are 40-50 natural waters currently being used as fish farms. As directed by Ch. 29.521 (2) (b), permits for these water bodies will be issued without a determination by the Department. This will create \$2000-2500 in revenue.
2. We estimate that 1-10 new applications will be made in any one year. These applications will require a determination by the Department. This would generate \$500-5,000 per year.
3. We estimate that less than 5 applications to transfer natural water body permits will be made in a 10 year period. This would generate \$100-500.

The fees listed above were derived as indicated on the attached sheet.

Long-Range Fiscal Implications
None.

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Agency/Prepared by: (Name & Phone No.) Joe Polasek, 266-2794	Authorized Signature/Telephone No. <i>Joe Polasek</i> 266-2794	Date 8-5-98
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FISCAL ESTIMATE WORKSHEET

1997 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
NR 16

Subject
Rule to permit the use of natural waters as fish farms

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
\$200 for printing costs related to public hearing materials.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$ 2300 - 6400	\$
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs	300 - 1600	
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	\$ 2,600 - 8,000	\$ 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$
FED		
PRO/PRS	2600 - 8000	
SEG/SEG-S		
III. State Revenues: Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS	2600 - 800	
SEG/SEG-S		
TOTAL State Revenues	\$ 2,600 - 8,000	\$ 0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 2600 - 8000	\$ 0
NET CHANGE IN REVENUES	\$ 2600 - 8000	\$ 0

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Agency/Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

Joe Polasek, 266-2794

Joe Polasek

266-2794

8-5-98

ATTACHMENT 1

PERMIT FEES FOR USE OF NATURAL WATERBODIES AS FISH FARMS

1. Previous annual permit fee schedule (pre 1998).

<u>ITEM</u>	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D</u>
License	\$50.00	\$25.00	\$5.00	\$5.00
Travel	\$29.00	\$29.00	\$29.00	\$29.00
Meals	\$6.00	\$6.00	\$6.00	\$6.00
TOTAL	\$85.00	\$60.00	\$40.00	\$40.00

Fee structures have remained the same for 30 years.

2. Previous annual renewal fees

<u>ITEM</u>	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D</u>
License	\$50.00	\$25.00	\$5.00	\$5.00

3. Previous total fees over a 10 year period.

<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D</u>
\$535.00	\$285.00	\$85.00	\$85.00

Previous law prohibited DNR from charging costs associated with staff time.

4. Proposed renewal fee: \$50.00

Administrative and consultation expenses (\$16.00 x 2 hours)	\$32.00
Fringe benefit (salary x 38.02%)	\$12.00
Shipping and handling	\$5.00
TOTAL	\$49.00*

* Cost will increase by \$82.00 if a public notice is required.

5. Proposed fee schedule (post 1998) paid once every 10 years, for natural waterbodies: \$500.00.

Staff time (\$16.00 x 5 hours x 3 staff*)	\$240.00
Fringe benefit (salary x 38.02%)	\$91.00
Travel (100 miles x 0.29/mile x 3 staff)	\$87.00
Meals (\$6.00/meal x 3 staff)	\$18.00
Applicant consult \$16.00 x 3 hours)	\$48.00
Fringe benefit (salary x 38.02%)	\$18.00
Permit processing (computer time, mailing, public notice)	\$50.00
TOTAL	\$552.00 per 10 years or \$55.00 per year

Fisheries Manager, Wildlife Manager, Water Management Specialist. Staff time will vary depending on the size of waterbody and the time of year the application is received.

6. Proposed transfer fee: \$100.00

Permit administrative and consultation expenses	\$50.00
File transfer review and verification (3 hrs x \$16.00/hr)	\$48.00
Fringe benefit (salary x 38.02%)	\$18.00
TOTAL	\$116.00

11/5/98

Paper Ballot →

* reduces the Fee and

great the DNR

the same

the DNR will have to

come back to us w/

Possible changes for

10 day review

Sean will be sending a
copy of what they recommend

11/9/98

Senate's Recommendations

Passed unanimously

Hubbard, Gregory

From: Dilweg, Sean
Sent: Friday, November 06, 1998 2:02 PM
To: Hubbard, Gregory
Subject: RE: Fish Farming Motion

Hey Greg,

I talked with Elizabeth. If our motion is successful they will have a letter from George to the Senate Committee prior to 5:00pm on Monday stopping the clock and saying they will take our motion under consideration at the November Board meeting. We will physically hold onto the rule.

However, talking with Ron Sklansky in Leg Council the Assembly Committee's clock will not stop on the rule, but when the Board and department formally consider the motion and agree or adjust it both Committee's will have 10 working days to agree or disagree. I assume you physically hold onto the rule but I'm not sure.

--Sean

From: Hubbard, Gregory
Sent: Friday, November 06, 1998 1:53 PM
To: Dilweg, Sean
Subject: RE: Fish Farming Motion

Sean,

Thanks for all your help on this stuff. Let me know if there is anything else we can do.

-Greg

From: Dilweg, Sean
Sent: Friday, November 06, 1998 8:43 AM
To: Hubbard, Gregory
Subject: RE: Fish Farming Motion

We don't have to notice it. But I will be letting interested parties know about it today.

--Sean

From: Hubbard, Gregory
Sent: Thursday, November 05, 1998 5:21 PM
To: Dilweg, Sean
Subject: RE: Fish Farming Motion

Sean,

Do you have to notice this in any way? Are the various interested parties going to know?

-Greg

From: Dilweg, Sean
Sent: Thursday, November 05, 1998 4:40 PM
To: OBrien, John
Cc: Hubbard, Gregory; Stolzenberg, John
Subject: Fish Farming Motion

John,

This was circulated at 4:30pm today.

--Sean

<<File: fish farm motion.doc>>

TO: Environment & Energy Committee Members
FROM: Senator Robert Cowles
DATE: November 5, 1998
RE: Executive action on Clearinghouse Rule 98-055

Please indicate your vote on the following motion, sign at the bottom, and return this ballot to my office by **11:00am Monday, November 9th, 1998**. I have included a copy of the rule, legislative fiscal bureau memo and legislative council memo for your review.

- 1) Moved by Senator Cowles that pursuant to Section 227.19(4)(b)2 of the State Statutes the Senate Committee on Environment and Energy requests that the Department of Natural Resources make the following modification to **CR 98-055** relating to the creation of subchapter 2 of chapter NR 16, relating to the development of fees, criteria and procedures to use when permitting the use of natural waters as fish farms.

MODIFY: NR 16.72 (2) to read:

Permit applicants for the initial use of freeze-out ponds as fish farms shall pay a \$250.00 non-refundable permit fee application.

ADD Language:

- a) Requirements that the DNR issue notice of intent to use a natural pond for a hatchery, including written analysis of that proposal similar to the analysis that would be made of a private permit application.
- b) Requirement that the DNR distribute the notice for comments in the same manner as the rule requires of private permit application, and that the DNR hold a public hearing on the proposal if there is any substantive objection raised to it.
- c) Provide that the requirements apply to the initial proposal of the DNR to convert a pond to use for fish rearing and to the review of the continued use every 10 years thereafter, except that the DNR may continue to use ponds that were already in use by the DNR on January 1, 1998 without conducting an initial review.

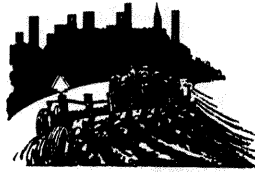
2) If the Department of Natural Resources has not agreed by 5:00pm on November 9th, 1998 to consider the modifications contained in this motion, then CR 98-055 is objected to for failure to comply with legislative intent, arbitrariness, and imposition of an undue hardship.

_____ Aye _____ No

sign here

Chairman:
Agriculture Committee

Member:
Consumer Affairs
Government Operations
Natural Resources



Al Ott

State Representative • 3rd Assembly District

October 9, 1998

Mr. George Meyer, Secretary
Department of Natural Resources
101 South Webster
Madison, WI 53703

Dear Secretary Meyer:

I am writing to inform the Department of the Assembly Agriculture Committee's intention to exercise our option to extend the review period of Clearinghouse Rule 98-055, relating to the development of fees, criteria and procedures to use when permitting the use of natural waters as fish farms, for an additional 30 days from the date of this letter.

I would like to schedule a meeting with the Department to review the proposed rule with the Committee. My office will be in contact with you in the near future to schedule a date and time to meet.

If you have any questions regarding the extension of the review period, please feel free to contact me.

Sincerely,

Al Ott
State Representative
3rd Assembly District

cc: Elizabeth Kluesner

Carol Terrell
256-0565
Sierra Club

STATE OF WISCONSIN

To AI

Date 9/30/98 Time _____

WHILE YOU WERE OUT

M Fred Gollon

of Stevens Point

Phone 715-344-4193

Telephoned		Please Call	
Called to See You		Rush	
Returned Your Call		Will Call Again	

Message Against Reel - especially
500 + notification



Party Receiving Call

STATE OF WISCONSIN

To AI

Date 10/22 Time _____

WHILE YOU WERE OUT

M Bob Dammann

of Farmer's Union

Phone ~~715-723-554~~
715-723-554

Telephoned		Please Call	
Called to See You		Rush	
Returned Your Call		Will Call Again	

Message In Support of
Aquaculture Position on
these issues



Party Receiving Call

STATE OF WISCONSIN

To AI

Date 10/7/98 Time _____

WHILE YOU WERE OUT

M Alice Thompson

of WI Wetlands Assoc.

Phone 414 - 571 - 8383

Telephoned		Please Call	
Called to See You		Rush	
Returned Your Call	<u>E. Linder</u>	Will Call Again	

Message Tim [unclear] 229-4358
Gary Kasper 414-278-2766



Party Receiving Call

STATE OF WISCONSIN

To AI

Date 9/29/98 Time _____

WHILE YOU WERE OUT

M Dave Gollon

of Dodgeville

Phone 608-935-2098

Telephoned	Please Call	
Called to See You	Rush	
Returned Your Call	Will Call Again	

Message against Rule - want hearing

- ① Fee too high, for most reviews
- ② Notification unnecessary -> passed at the last hearing of the Board



③ DNR has to follow same rules -> want that in rules
Party Receiving Call

STATE OF WISCONSIN

To AI

Date 9/28 Time _____

WHILE YOU WERE OUT

M Gail Epping

of WI Wetlands Assoc.

Phone 286-0772

Telephoned	Please Call	
Called to See You	Rush	
Returned Your Call	Will Call Again	

Message Support of Rule as is - especially the notification

* Please call if we have a hearing



Party Receiving Call

Hubbard, Gregory

From: Timothy J. Ehlinger[SMTP:ehlinger@uwm.edu]
Sent: Monday, October 05, 1998 1:19 PM
To: Rep.Ott
Cc: 'Ehlinger, Timothy'
Subject: Aquaculture Hearings

Dear Representative Ott:

I have heard that you will be conducting hearings in your committee regarding the proposed changes in permitting aquaculture in natural waters and "freeze-out" ponds.

As a researcher and educator experienced with Wisconsin fishes and biodiversity, I would welcome the opportunity to attend these hearings. Please place my name on the list of individuals to be notified when hearings are scheduled.

Thank you,

Timothy J. Ehlinger
Associate Professor of Biological Sciences
University of Wisconsin-Milwaukee
3209 N. Maryland Avenue
Milwaukee, WI 53211

Voice: 414.229.4358
Fax: 414.229.3926
Email: ehlinger@uwm.edu

Hubbard, Gregory

From: OBrien, John
Sent: Tuesday, October 20, 1998 7:34 AM
To: Ott, Alvin; Hubbard, Gregory; Moore, Kevin
Subject: DNR Natural Pond Rule
Importance: High

Has Rep. Ott made any decisions on the DNR Natual Pond Rule? ✓
Has the committee asked for an extension? ✓
Does the committee plan to have a hearing? ✓
Please let me know the status.

John O'
Staff to Senator Dale Schultz



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: October 6, 1998
TO: SENATOR ROBERT L. COWLES
FROM: David L. Lovell, Senior Analyst
SUBJECT: Applicability to the Department of Natural Resources of its Proposed Rule
Relating to the Use of Natural Ponds for Fish Farming

Clearinghouse Rule 98-055, a proposed Department of Natural Resources (DNR) rule relating to the use of natural ponds for fish farming, has been referred to the Senate Committee on Environment and Energy for review. This memorandum, prepared at the request of your staff, discusses the adequacy of the language in the rule that applies the rule to the fish rearing activities of the DNR.

A. PROPOSED RULE

The rule creates subch. II of ch. 16, Wis. Adm. Code, *Permitting the Use of Natural Bodies of Water as Fish Farms*. It requires that a person seeking a permit to use a natural body of water as part of a fish farm submit a permit application and fee to the DNR. It requires that, upon receipt of a complete permit application, the DNR must either schedule a public hearing on the application or issue a notice stating that it will proceed on the application without a hearing if no substantive written objections to issuance of the permit are received within 30 days after publication of the notice. It requires that the notice be provided to the same individuals and organizations to which notice is provided when the DNR receives an application for a permit for the incidental take of an endangered species. The rule articulates factors that the DNR will consider in determining whether to grant the permit and requires that the DNR deny the permit if the requirements of the new subchapter are not met. It provides that the DNR may suspend or revoke a permit under certain circumstances related to the failure to maintain required fish barriers.

The rule applies to state-owned fish hatcheries in the same manner that it applies to private fish farms. Proposed s. NR 16.70 (2) (intro.) and (a) state:

NR 16.70 (2) APPLICABILITY. The provisions of this subchapter are applicable to:

- (a) Fish farms and state-owned hatcheries located in or proposed to be located in freeze-out ponds.

This language ensures that the use of natural ponds by state fish hatcheries will be subject to the same procedural review, notice and public comment requirements and approval standards as private fish farms. It also requires the DNR to submit a permit application to itself, along with an application fee.

However, DNR staff indicate that, under the rule, they would subject themselves to a "self-permitting" process that would not involve the formal preparation of a permit application or the payment of an application fee. The DNR would develop separate procedures for the application of the permit requirements to DNR activities. The procedures would be similar to the procedures followed for the application of other regulatory requirements to the activities of the DNR. They would be contained in the DNR's Manual Code, an internal handbook of department procedures, rather than in the Wisconsin Administrative Code. The Manual Code language that would guide the DNR's self-permitting has not been drafted.

B. DISCUSSION

1. DNR Manual Code

Since the Manual Code language that would govern the DNR's self-permitting process under the rule has not been drafted yet, the DNR has provided a copy of the Manual Code provisions that specify its self-permitting procedures for projects in or adjacent to navigable waters, to illustrate the type of process that is intended. [DNR Manual Code 3565.1, copy attached.] The activities covered by this Manual Code section include the placement of structures or materials in and the removal of material from navigable waters, changing of stream courses and diversion of water from lakes and streams. The Manual Code directs the project manager or property manager who proposes a project to submit specified application forms to the district water management supervisor and to obtain any required local zoning approvals. It directs the district water management supervisor or his or her designee to review the application and grant or deny approval. The review includes input from other DNR staff, as needed; an environmental assessment, if required under another provision of the Manual Code; and engineering review and analysis, if needed, to determine structural adequacy and compliance with the Administrative Code. In addition, for projects that may affect nondepartmental lands or interests or that may be considered controversial, the review includes a determination of whether an informational hearing should be held.

The Manual Code does not require any public notice of the fact that an application has been made, although s. 30.02, Stats., requires that such a notice be provided for certain of the permits covered by this section of the Manual Code and that such a notice be provided for certain others if the DNR determines that substantial interests of any party may be adversely affected by the proceeding. DNR staff indicate that this is a conscious policy decision and that the DNR generally does not provide public notice of its self-permitting activities.

The Manual Code is developed by the DNR staff and adopted by the Secretary of Natural Resources; it is not subject to legislative review or public comment prior to adoption or amendment.

2. Clearinghouse Rule 98-055

There are two potential objections to the manner in which the rule is applied to the activities of the DNR. First, the language of the rule does not reflect what the DNR actually intends to do. While the rule very specifically subjects the DNR's activities to a permitting process that includes an application, a fee, public notice and the opportunity for public hearings, the DNR staff indicates its intention to follow some other and as yet unspecified self-permitting process in permitting the DNR's own activities. The law is very literal; it should be written to say exactly what is meant and individuals, including state agencies, should expect to be held to exactly what it says. It appears highly unadvisable for the DNR to promulgate a rule while intending to do something other than what the rule plainly says. This is especially true when the rule could be drafted to reflect the self-permitting process that the DNR intends to use for review of its own activities, as is described below.

Second, some may object to placement of the self-permitting procedures in the Manual Code, rather than the Administrative Code. The procedures would not be subject to public review or comment prior to promulgation and would not be as readily accessible to the public as the Administrative Code is. Members of the public who are concerned about the use of natural ponds for fish rearing will be particularly concerned about their ability to receive notice of proposed permits and to comment on the proposed permits. Private fish farm operators will also be concerned about whether the DNR, as a competitor to them, is subjecting itself to the same rigorous review to which it subjects them. It is not known what notice and comment provisions would be included in the procedures.

There are at least two options for responding to the preceding objections in your Committee's review of the rule. If the Committee finds neither objection to be of great concern, it could accept the language as it is and take no action. For example, it might conclude that, while, as a general rule, it is preferable for rules to be as precise as possible, administrative expediency and precedent justify the imprecision of this rule. Similarly, it might conclude that the lack of any apparent problem arising from the DNR's practice of placing self-permitting procedures in its Manual Code justifies a similar treatment in this case.

Alternatively, if the Committee finds either or both of the preceding objections to have merit, it could request modifications to the rule to address the objections. Specifically, it could request that separate provisions be created to indicate the process that will be followed in reviewing proposals for a state fish hatchery to use a natural pond, to allow public participation in the process and ensure accountability of the DNR in its self-regulation. One option for such a process would be as follows:

- a. Require that the DNR issue a notice of intent to use a natural pond for a hatchery, including a written analysis of that proposal similar to the analysis that would be made of a private permit application.

b. Require that the DNR distribute the notice for comments in the same manner as the rule requires of private permit applications, and that the DNR hold a public hearing on the proposal if there is any substantive objection raised to it.

c. Provide that the requirements apply to the initial proposal of the DNR to convert a pond to use for fish rearing and to the review of the continued use every 10 years thereafter, except that the DNR may continue to use ponds that were already in use by the DNR on January 1, 1998, without conducting an initial review.

In addition, the applicability provisions of the rule could be modified to precisely identify those portions of subch. II of ch. 16, Wis. Adm. Code, that apply to state fish hatcheries.

If you have further questions regarding Clearinghouse Rule 98-055, please contact me at the Legislative Council Staff offices.

DLL:ksm;jal

Attachment

State of Wisconsin
Department of Natural Resources

SUBJECT: Department Projects Located in or Adjacent to Navigable Waters

REASON FOR CHANGE: Adoption of NR 103.

Unless otherwise directed by the Secretary, the following procedures shall be followed for all proposed projects by the Department that may affect waters of the State.

All Department projects, where Chapters 30 and 31, Wis. Stats., and ~~Section NR 1.95~~ and Chapters NR 103, 115, 116, 117 or 118, Wis. Adm. Code, would apply if built by a private individual, must receive the approval of the district office prior to construction. Decisions will be based on the standards in the appropriate statutes and administrative rules that would apply to similar privately sponsored projects.

- | | |
|---|--|
| Project or
Property Manager | 1. Submits the following to the district water management supervisor: Form 3500-53 (Joint WDNR-USCOE Application Form) or other appropriate application; Form 1600-1 (Environmental Assessment), if required in accordance with NR 150, Wis. Adm. Code; and a copy of any local zoning approvals already obtained. The project or property manager is responsible for obtaining all required local zoning approvals. |
| District Water
Management
Supervisor/Designee | 2. Conducts initial screening of application to assure that the information required in number 1 above is complete, assigns docket number to file, and ensures that all appropriate staff have input. Completes Water Regulation Investigation Report (Form 3500-23 or 3500-23S), if appropriate. |
| | 3. Reviews proposal and obtains any additional input or information needed from district staff, areas or bureau staff. |
| | 4. Processes Environmental Assessment, if required, in accord with M.C. 1606.1. |

(more)

SECRETARY'S DIRECTIVE *KPM*

Distribution:

Date 10-13-93

All Manual Holders

Special Instructions:

Rescinds and replaces M.C. 3565.1 (2-6-91)
(See strike throughs and underlining for changes)

5. Submits completed applications for permit(s) to Corps of Engineers, if required.
6. Determines if an informational hearing should be held for projects which may affect nondepartment lands or interests or may be considered controversial.
7. Conducts engineering review and analysis if necessary to determine structural adequacy and compliance with all applicable administrative codes (coordinates review with Bureau of Property Management and Bureau of Water Regulation and Zoning as necessary).
8. After completion of Steps 4-7, grants or denies approval for project in writing to the project or property manager. (The district director signature on any required Form 1600-1 does not constitute project approval.)
9. Secures funding (if appropriate) and initiates project only after receipt of approval from required local, state and federal jurisdictions.
10. Monitors district decisions and advises appropriate division administrator/district director of problems requiring attention.
11. Consult as necessary to resolve problems and advise Office of the Secretary of problems that cannot be resolved between the divisions.

Project or
Property Manager

Director of
Bureau of Water
Regulation and
and Zoning or
District Water
Management
Supervisor

Administrators,
Divisions of
Resource Manage-
ment and
Enforcement



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

October 2, 1998

TO: Senator Robert Cowles
Representative Alvin Ott

FROM: Russ Kava, Fiscal Analyst

SUBJECT: DNR Fish Farming Rule (NR 16)

At your request, I am providing you with information on the fiscal note for the administrative rule being promulgated by the Department of Natural Resources (DNR) for the authorization of fish farming on natural waters.

1997 Act 27 Provisions

1997 Act 27 generally transferred the regulation of fish farming from DNR to the Department of Agriculture, Trade and Consumer Protection (DATCP). Prior to Act 27, DNR licensed four classes of private fish hatcheries, with the fee ranging from \$5 to \$50 annually based on the characteristics of the facility. Act 27 transferred responsibility for fish health, importation of native species and fish farm registration and inspection to DATCP, while regulation of the importation of non-native species and determination of allowable fish farming on natural waters remained under DNR.

Under the act, no person may use a natural body of water as a fish farm unless all of the following apply: (a) the land that is riparian to the body of water is owned, leased or controlled by the owners of the fish farm; (b) none of the owners of the fish farm or of the riparian land provides access to the body of water to the public by means of an easement or by means of a business open to the public except to allow fishing by the public for a fee; (c) the body of water is a freeze-out pond or a preexisting fish rearing facility that is barrier equipped.

DNR is required to issue a permit for a freeze-out pond if the Department determines that no substantial public interest exists in the body of water and that no public or private rights in the body of water will be damaged. Further, DNR is required to issue the initial permit without making such a determination if a freeze-out pond or a preexisting fish rearing facility that is barrier equipped was

licensed as a private fish hatchery on January 1, 1998. The permits are valid for 10 years. DNR is required to renew a permit unless the Department determines that there has been a substantial change in circumstances. DNR was also given the authority to promulgate rules to establish the fees, criteria and procedures to be used for issuing permits for fish farms on natural waters.

Fiscal Effect of DNR Rule

Under the proposed rule, DNR would establish the following fee structure for fish farm permits.

- If a natural water was licensed as a private fish hatchery by DNR in 1997, the Department would issue the 10-year permit for continued use of the facility without making an initial determination. The fee for this permit would be \$50.
- If the natural water is a freeze-out pond not previously licensed by DNR, the Department would make the statutory determination of public and private interest and rights in the pond. The fee for this application would be \$500.
- If a ten-year permit is transferred before the expiration date, a \$100 fee would be charged.

In the fiscal note, DNR sets out the number of facilities expected to apply for each of the permits and the amount of revenue to be generated by each. The table below shows both the one-time (once every ten-year period) and ongoing annual revenue from the fees.

Fish Farm Permit Revenue Estimates

<u>Type of Permit</u>	<u>Fee</u>	<u>Number of Permits</u>	<u>One-Time Revenue</u>	<u>Ongoing Annual Revenue</u>
Existing facility	\$50	40-50	\$2,000-\$2,500	
New facility	\$500	1-10		\$500-\$5,000
Transfer	\$100	0-1		\$0-\$100

DNR proposes to use these revenues to cover the anticipated costs related to the permits, including staff salary and fringe benefits, travel, processing, and mailing costs.

Concerns have been raised regarding the fee structure proposed by DNR. In particular, objections have been raised to the structure of the one-time \$500 fee for an application for the initial permit for a new facility. Some have suggested altering the structure, for example, to \$50 per year for 10 years. This would maintain a fee closer to the previous structure and reduce the one-time burden on potential permittees. However, the Department argues that spreading the fee over a

longer period of time would reduce the revenue available to DNR to cover the initial costs of making the statutory determinations related to a new fish farm facility.

Other concerns have been raised regarding the level of the \$500 fee being charged for a new facility. The Department proposes review and inspections by fisheries, wildlife and water management staff (a total of 20 hours per facility, on average) to make determinations. If this level of review is viewed as necessary, the fee might be judged as appropriate. However, the Department notes that waters previously proposed for use as a fish farm were inspected by, at most, one fisheries staff person. To the extent that this staffing level is viewed as adequate for making the statutory determinations, the fee could be seen as excessive. If, for example, DNR staff spend an average of eight hours to review, field inspect and discuss each applicant's facility, the agency cost would be reduced by approximately \$285 to \$215.

If the program revenue fees under the permitting structure were inadequate for DNR to make the statutory findings, other sources of revenue would likely be used to cover the shortfall. This funding could be either segregated fish and wildlife account revenue, GPR or federal funding. For example, prior to the Act 27 changes, DNR deposited the revenue from private fish hatchery licenses (\$22,600 in 1996-97) in the fish and wildlife account. To the extent that hatchery revenue was insufficient to fund program needs, other fish and wildlife revenue (primarily hunting and fishing license sales) was utilized.

Please contact me if you have further questions or would like additional information.

RK/dls

NATURAL RESOURCES BOARD

Committee of the Whole

MINUTES

The Natural Resources Board convened as a Committee of the Whole at 8:35 a.m. on Wednesday, August 26, 1998, at the West Bend Inn, West Bend, Wisconsin.

PRESENT: Trygve A. Solberg, Chair
Betty Jo Nelsen, Vice-Chair
Neal Schneider, Secretary
Herbert F. Behnke
Howard D. Poulson
James E. Tiefenthaler
Stephen D. Willett

* * *

ORDER OF BUSINESS

3. Committee of the Whole.

3.A Presentation of the John C. Brogan External Environmental Award by Secretary George Meyer.

Secretary Meyer presented this year's John C. Brogan External Environmental Award to Artistic Plating Company, Inc. of Milwaukee. Artistic Plating is a family-owned, 75-employee metal surface finishing company located in Milwaukee. The company serves a wide range of clients including the electrical power, medical, automotive, general manufacturing, household products and aircraft industries. Secretary Meyer lauded the company's style of proactive environmental management that included adopting many environment-protecting process changes before they were required. He also noted that the company's foresight in developing a disaster management plan avoided any release of toxic materials to the environment during a devastating plant fire in October of 1996. John Lindstedt, President of Artistic Plating was present to accept the award.

3.B Citizen participation.

Ody Fish, Co-Chair of the Kettle Moraine Task Force, distributed copies of a report completed by the Task Force in April of 1996, a copy is incorporated in the official Board minutes. The report recommends complete acquisition of private inholdings, as they become available, with the use of forestry mill tax and Stewardship funds in both units of the Kettle Moraine State Forest. The report also recommends that the Department pursue acquisition of lands linking the two units. Mr. Behnke suggested working with the mountain biking organization, R.I.D.E., to assist financially with the expansion efforts.

William Bathke, Germantown, discussed about the decline of yellow perch in Lake Michigan and feels the season should be closed completely to protect the resource. Secondly, he felt there should be total ban on all commercial fishing on Lake Michigan. He suggested using any surpluses in the state coffers to buy out the commercial fishers and the possibility of setting them up in an aquaculture business.

3.C Adoption of Order FH-18-98 - creation of Chapter NR 16, Sub. II, Wis. Adm. Code, pertaining to use of natural waters as fish farms.

Mike Staggs, Sue Marcquenski and Dale Simon, all of the Bureau of Fisheries and Habitat Protection, made the Department presentation on the green sheet proposal.

Steve Willett asked that the rule be amended to include the public notification provisions of Chapter 27.07. Secretary Meyer agreed and asked staff to prepare an appropriate amendment for the Board's consideration during the Full Board Meeting.

Chairman Solberg reminded those making appearances that the rule was required by the Legislature and that the Natural Resources Board was favorable to the proposed fee structure.

Appearances:

Michael Lanoo (a researcher involved with amphibians) opposed use of wetlands for fish farming in a general way as it will contribute to amphibian decline. He asked that DNR provide feedback on this issue to Legislature.

Gary Casper (amphibian researcher at Milwaukee Public Museum) objected to licensing of freeze-out ponds as this is the only available amphibian populations. Believes evaluation and monitoring requirements in FH-18-98 are too weak to protect amphibians and fees are insufficient to conduct adequate analysis.

Karen Etter Hale (representing the Madison Audubon Society) wants DNR to provide feedback to legislature; is opposed to use of natural waters for private fish farming; cited negative impacts of nonnative species escapes, disease; impacts on other native species. She agreed with issues raised by Gary Casper and believes an Environmental Analysis (EA) should be done. She believes that the Natural Heritage Inventory is insufficient to find all T/E species. She also believes oversight of aquaculture should be in DNR, not DATCP.

Dave Gollon (vice president, Wisconsin Aquaculture Association) believes rule did increase protection of resources; did not change issues of public access since only landlocked ponds surrounded by private land; is opposed to \$500 nonrefundable fee because no guarantee that will get permit. He believes there should be a graduated (over time) fee increase. He was supportive of the 3-month permit turnaround time. He opposed the public notice since he believes it infringes on private property and privacy rights. Mr. Gollon also objected to changes in WPDES temperature requirement changes since it wasn't involved in development. He pointed out that DNR already uses freeze out pounds in hatchery operations.

Neal Schneider suggested that the Natural Resources Board tour a fish farm at a future Board meeting.

There was extensive discussion of the fees and refundability and impacts on the industry.

Hugo Kettula deferred to Ruby Kettula.

Ruby Kettula (owner of 7 Pines Fish Farm in Lewis, WI) does not use herbicides or rotenone in their operations; is opposed to fees; believes they already pay fees to DATCP as a landowner. It was Ms. Kettula's understanding that the fees include travel from Madison and include overnight stay (was corrected by Secretary Meyer that the proposal does not include overnight travel or travel from Madison). She believes rule does bring criteria to use of such ponds.

Caryl Terrell (Sierra Club - John Muir Chapter) asked for specific changes to the public notice requirement to reference procedures in Section 27.07 of the Statutes. She requested that NHI staff and staff trained in fish barriers be formally involved in inspections. She asked that the fee be increased before adoption using rule similar to 4 year SEG license fee increase cycle. Ms. Terrell pointed out that the requested fees are already 10% lower than projected costs, and that DNR did not include follow-up inspection and enforcement. She also asked that fees include a surcharge for needed amphibian research and that the Natural Resources Board be proactive in working with legislature on these budget policy decisions. Ms. Terrell also voice general concerns about use of natural waters for fish farms, objected to grandfathering of existing fish farm, and objected to the process of establishing policy in the budget bill.

Alice Thompson (Wisconsin Wetlands Association) expressed opposition to use of freeze out ponds for fish farms due to declining amphibians. She supports more monitoring and research on amphibian impacts. She expressed concern about fish health issues and inadequate resources for enforcement. She asked for a 2-year review of permits; that BER staff be involved in the reviews; landscape scale analyses as suggested by Gary Casper; routine use of practicable alternatives analyses; and supported changes in public notice requirements requested by Board Member Steve Willett.

Tim Gollon (private fish farmer) reinforced comments made by Dave Gollon, particularly for fees and public notice. He thinks ponds are suitable for aquaculture use, not the type of wetlands being addressed by environmental concerns. He feels industry uses few chemicals; believes less than 1% of such waters in state are in such uses; thinks their ponds have an abundance of amphibians despite presence of fish; and helps waterfowl populations.

Carl Gollon (private fish farmer) thinks fees will increase pressure on wild bait stocks which he believes are declining. Contrasted \$500 fee versus \$50 bait harvest license. Believes less than 1 in 10 such ponds will support aquaculture.

Fred Gollon (private fish farmer) opposed to \$500 fee due to uncertainty of whether pond can actually produce fish. Wants guarantee that the pond can produce fish for 10 years. Wants annual fee. Agrees with Carl Gollon on increased pressure on wild bait stocks.

3.D INFORMATIONAL ITEM - Update on DNR Reorganization.

Darrell Bazzell, Deputy Secretary, presented this item highlighting a memorandum dated August 20, 1998 from Secretary George Meyer to the Natural Resources Board. A copy of the memorandum is incorporated in the official Board minutes.

Overall, Mr. Bazzell believes the reorganization to be very successful and that most of the specific objectives of the reorganization have been either met, exceeded or on a path to completion. Mr. Bazzell summarized the following highlights:

Decentralization

The original goal was to decentralize upwards of 350 staff from the central office into the field. Due to legislative budget cuts of 232 positions, that goal was revised downward and 142 positions have been decentralized.

Service Centers

It was proposed to create 35 service centers by the year 2000. Fourteen service centers have been opened and there are plans to complete a total of 22 by July of 1999. Another eight service centers are being proposed in the 1999-01 biennium. The completion of the Department's service center goal is now targeted for the 2001-03 biennium.

Another goal was to make sure that service centers had good technology available. The Department is also in the process of implementing its automated license issuance system with the pilot scheduled to begin in October with full implementation to happen within a year.

Electronic Equipment

Another key goal was to make sure that all Department staff had basic, uniform hardware and software on their desks so that staff can communicate effectively within the agency and with other state agencies. It is hoped that 95% of Department staff will have uniform hardware and software on their desks by the end of the fiscal year.

Integrated Ecosystem Management

The full operations for all land and water programs have been fully integrated into respective work teams for land and water basins. The teams have developed 46 integrated environmental management projects which, when completed, will greatly benefit fish and wildlife habitat in the state. Another major objective of these teams was to have broadly diverse external partnership teams for each water basin. Except for two basins, such external teams have either been created, or are being currently created.

Streamlining

Previously, there were up to eight or nine layers of supervision, with six or seven layers not being uncommon. With less than a handful of exceptions, the maximum number of supervisory layers in the Central Office is four and five in the field. One-third of the supervisory positions in the agency (206) were eliminated. The reduction of six districts to five regions was also completed as a streamlining measure.

Although not fundamentally organizational issues, several systems issues are being addressed.

Consistency. As part of the reorganization, a more refined consistency system was established. In recent years, complaints on inconsistent Department decisions have decreased substantially.

Work Planning. A more highly integrated and systematic work planning system was successfully created in the last biennium, fully evaluated and refined for the next biennial work plan.

Strategic Planning. The Department is in the process of updating its Strategic Plan to bring it into conformity with the goals of reorganization.

Chairman Solberg asked Mr. Bazzell for his comments on what state government is doing with regard to the Year 2000 Program. Mr. Bazzell responded that he was participating on an executive oversight committee made up of key people from state agencies who are providing information to Secretary Bugher of the Department of Administration.

Chairman Solberg also asked if the need for additional water regulation and zoning positions was being addressed in the budget and Mr. Bazzell responded that it was.

Mr. Behnke commented that one of the goals of reorganization was to have decision-making occur at the lowest possible level. He asked for the status of implementing that goal. Mr. Bazzell indicated that the Department undertook an initiative two months ago, called one level above originator, whereby staff are reviewing DNR policies and setting some priorities to assure that key decisions are made locally. He added that the numerous internal guidance documents will also be reviewed.

Mr. Behnke called attention to comments made by some of the fish farmers who stated that previously one staff person, usually a fisheries biologist, would come out to make a decision. Since there are three different disciplines under the current GMU structure, Mr. Behnke wondered if this slows down decision-making until all disciplines can agree. Mr. Bazzell indicated that he has not heard of any situations where that process has hindered decision-making.

Ms. Nelsen asked about decision-making when a project is located within two different watersheds. Mr. Bazzell stated that any issue involving two watersheds would be dealt with through the Department's integrated workplanning process.

Mr. Tiefenthaler asked if the Department was using the equivalent of paralegals or paramedics to conduct some of the field work. He said he continually hears the Department does not have experienced personnel in some areas in the field and specifically mentioned the water permitting program. Mr. Bazzell noted the staffing and workload problems in the Water Regulation and Zoning Program which he said would be addressed in the Biennial Budget process.

Mr. Behnke asked that the Board be kept apprised of any problems with reorganization implementation as they occur and how they are being dealt by the Department.

Mr. Solberg noted that during reorganization, no DNR employees lost their jobs, all are working at their same pay scale and no had to relocate against their will. "From that standpoint alone," he said, "reorganization has been successful."

3.E Retirement resolutions.

1. Doris Anderson.
2. Rodney Bush.
3. Dick Royston.
4. Bonita Senske.
5. Sharon Vasko.
6. Phil Wallace.
7. Thomas Winqvist.

Secretary Meyer reviewed the careers of each employee and commended them for their exemplary service to the Department and the citizens of Wisconsin.

4. Board Members' Matters.

4.A Approval of the 1999 Natural Resources Board Meeting schedule.

The Board's 1999 meeting schedule was approved during the Full Board Meeting.

4.B Update on tally of wetlands in the state.

Ms. Nelsen recalled that in March she asked for a tally of wetlands in the state and was advised by the Department sometime in June that more time was needed to develop a list and that it would most likely be ready in the fall. She asked for the list by the October Board meeting. Secretary Meyer agreed to that timeline.

5. Special Committees' Reports.

There were no Special Committees' reports this month.

* * *

The Committee adjourned at 10:40 a.m.

NATURAL RESOURCES BOARD

M I N U T E S

The regular meeting of the Natural Resources Board was held Wednesday, August 26, 1998 at the West Bend Inn, West Bend, Wisconsin. The meeting was called to order at 8:30 a.m. for action on Items 1 and 2. The meeting was recessed at 8:35 a.m. and reconvened at 1:20 p.m.

PRESENT: Trygve A. Solberg, Chair
Betty Jo Nelsen, Vice-Chair
Neal W. Schneider, Secretary
Herbert F. Behnke
Howard D. Poulson
James E. Tiefenthaler
Stephen D. Willett

* * * * *

ORDER OF BUSINESS

1. Minutes to be approved.

1.A Full Board Minutes of June 24, 1998.
Committee of the Whole Minutes of May 27, 1998.

A correction was made on page 2 of the Full Board Minutes for June relating to Item 3.C. The Minutes incorrectly stated that Mr. Willett made a motion and it was pointed out that he was absent from the June Board meeting. With that change, Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, approval of the minutes. The motion was carried unanimously.

Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, approval of the Committee of the Whole Minutes for June as presented. When put to a vote, the motion was carried unanimously.

1.B Agenda for August 26, 1998.

Secretary Meyer noted that Item 6.B-4 relating to the trawling petition, would be deferred to the October Board meeting. With that change, Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, approval of the agenda. The motion was carried unanimously.

2. Ratification of acts of the Department Secretary.

2.A Real estate transactions.

Ms. Nelsen MOVED, seconded by Mr. Willett, approval of the real estate transactions as printed. The motion was carried unanimously.

3. Committee of the Whole.

3.A Presentation of the John C. Brogan External Environmental Award by Secretary George Meyer.

This item was taken up during the Committee of the Whole meeting.

3.B Citizen participation.

This item was taken up during the Committee of the Whole meeting.

3.C Adoption of Order FH-18-98 - creation of Chapter NR 16, Sub. II, Wis. Adm. Code, pertaining to use of natural waters as fish farms.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, adoption of Order FH-18-98.

Mr. Willett MOVED the following amendment:

On page 27 of the green sheet package, Subsection (7) is changed as follows:

"(7) Upon receipt of a complete permit application, the department shall either schedule a hearing or provide notice stating that it will proceed on the application without a hearing if no substantive written objections to issuance of the permit is received within 30 days after publication of notice. The notice shall be provided to the news media and other persons according to the procedure in s. NR 27.07(1)(b) and (c). ~~provided to the clerk of each municipality in which the natural water is located and to any other person required by law to receive notice.~~ The department may provide notice to other persons as it deems appropriate. The department will assume the cost of publishing the notice."

Mr. Poulson seconded the motion. When put to a vote, the motion was carried unanimously.

Ms. Nelsen MOVED an amendment to s. NR 16.72(2) as follows:

"Permit applicants to the initial use of freeze-out ponds as fish farms shall pay a \$50.00 non-refundable permit application fee upon approval for the years 3 through 10. The fee will be \$950.00 on approval."

Mr. Willett seconded the motion. There was considerable discussion about the amendment and the fees contained in the rule proposal. The vote on the motion:

Affirmative - Ms. Nelsen, Messrs. Tiefenthaler and Willett.
Negative - Messrs. Solberg, Schneider, Behnke and Poulson.

The motion was lost.

Mr. Tiefenthaler MOVED an amendment to allow "one fee" licensing of all waters within a one and one-half mile radius. Ms. Nelsen seconded the motion. The vote on the motion:

Affirmative - Mr. Tiefenthaler.
Negative - Messrs. Solberg, Schneider, Behnke, Poulson, Willett and Ms. Nelsen.

The motion was lost.

Chairman Solberg called for a vote on the main motion, as amended. The motion was carried unanimously.

Secretary Meyer stated that the Department will come back to the Board in two years with actual costs and that numbers could be re-refined as appropriate.

3.D INFORMATIONAL ITEM - Update on DNR Reorganization.

No action was taken on this informational item.

3.E Retirement resolutions.

1. Doris Anderson.
2. Rodney Bush.
3. Dick Royston.
4. Bonita Senske.
5. Sharon Vasko.
6. Phil Wallace.
7. Thomas Winquist.

Mr. Tiefenthaler MOVED, seconded by Mr. Willett, approval of the retirement resolutions. The motion was carried unanimously.

4. Board Members' Matters.

4.A Approval of the 1999 Natural Resources Board Meeting schedule.

Ms. Nelsen MOVED, seconded by Mr. Poulson, approval of the Board's 1999 meeting schedule. When put to a vote, the motion was carried unanimously.

4.B Update on tally of wetlands in the state.

Ms. Nelsen recalled that in March she asked for a tally of wetlands in the state and was advised by the Department sometime in June that more time was needed to develop a list and that it would most likely be ready in the fall. She asked for the list by the October Board meeting. Secretary Meyer agreed to that timeline.

5. Special Committees' Reports.

There were no Special Committees' reports this month.

6. Operating Committees.

6.A Air, Waste and Water/Enforcement Committee.

6.A-1 Minutes of June 24, 1998.

The minutes were approved as printed.

6.A-2 Adoption of Emergency Order RR-43-98(E) - creation of Chapter NR 749, Wis. Adm. Code, pertaining to the assessment and collection of fees for providing assistance regarding the remediation and redevelopment of contaminated lands.

The Committee recommended and Mr. Willett MOVED adoption of Emergency Order RR-43-98(E) as presented. Mr. Poulson seconded the motion. The motion was carried unanimously.

6.A-3 Authorization for hearing on revision of Chapter NR 5, Wis. Adm. Code, pertaining to size requirements for posting boating ordinances.

The Committee recommended and Mr. Willett MOVED that the Board authorize public hearing. Ms. Nelsen seconded the motion. The motion was carried unanimously.

6.A-4 Authorization for hearing on revision of Chapters NR 102, 104 and 106, Wis. Adm. Code, relating to stream classifications and thermal discharge standards.

The Committee recommended and Mr. Willett MOVED that the Board authorize public hearing. Mr. Poulson seconded the motion. The motion was carried unanimously.

6.A-5 Approval to remove the groundwater standard for ammonia from Order DG-11-98; adoption of a delayed effective date of January 1, 2000 for a health standard for boron; and authorization for additional hearings on proposed revisions to Chapter NR 140, Wis. Adm. Code, pertaining to a health standard for ammonia. (Item 6.A-2, Min. of April 29, 1998)

The Committee recommended and Mr. Willett MOVED approval to remove the groundwater standard for ammonia from Order DG-11-98; adoption of a delayed effective date of January 1, 2000 for a health standard for boron; and authorization for additional hearings on proposed revisions to Chapter NR 140 pertaining to a health standard for ammonia. Ms. Nelsen seconded the motion. There were concerns raised over the Board

authorizing public hearings without reviewing a draft rule. Secretary Meyer indicated that the Department will provide the Board with copies of the rule proposal when drafted. The vote on the motion was as follows:

Affirmative - Messrs. Solberg, Schneider, Behnke, Poulson, Willett and Ms. Nelsen.

Negative - Mr. Tiefenthaler.

The motion was carried.

6.A-6 Authorization for hearing on revision of Chapter NR 410, Wis. Adm. Code, pertaining to air pollution construction permit fees.

The Committee recommended and Mr. Willett MOVED that the Board authorize public hearing. Mr. Poulson seconded the motion. The motion was carried unanimously.

6.B Land Management, Recreation and Fisheries/Wildlife Committee.

6.B-1 Minutes of May 27, 1998 and June 24, 1998.

The minutes of May 27 were corrected to show that Mr. Schneider was in attendance. With that change, both sets of minutes were approved.

6.B-2 MASTER PLANNING - Approval to rename the Plover to Portage County Line State Trail the "Tomorrow River State Trail" and approval of the master plan for the project.

The Committee recommended and Mr. Behnke MOVED that the Board approve renaming the Plover to Portage County Line State Trail the "Tomorrow River State Trail" and approve the master plan for the project. Mr. Tiefenthaler seconded the motion.

Ms. Nelsen referred to page 17 which states that "the Department would need to purchase land for an alternative trailhead in the Village Industrial Park." She asked if the cost of this alternative was discussed in Committee, and assuming Board approval of the plan if the Department was committed to this purchase. Dick Steffes of the Bureau of Facilities and Lands indicated the Board would not be committed to any purchase, that any land acquisition proposal would come separately to the Board for approval.

Mr. Poulson referred to page 13 and asked what the Department's obligation is with regard to fencing. Doug Fendry of the Bureau of Facilities and Lands responded that the Department determines fencing needs on a case-by-case basis. He indicated that fencing is used to confine livestock on properties adjacent to a trail or act as a deterrent to public access to fields where aerial spraying may be occurring.

When put to a vote, the motion was carried unanimously.

6.B-3 Adoption of Emergency Order WM-29-98(E) and Permanent Order WM-28-98 - revision of Chapter NR 10, Wis. Adm. Code, to establish the 1998 migratory game bird season.

The Committee recommended and Mr. Behnke MOVED approval of Emergency Order WM-29-98(E) and Permanent Order WM-28-98 as outlined in the green sheet package. Mr. Tiefenthaler seconded the motion.

Mr. Behnke MOVED an amendment "to open the waterfowl season 15 minutes before sunrise on the first nine days of the season to give some protection to hen mallards, and on the tenth day and thereafter return to one-half hour before sunrise." Mr. Willett seconded the motion. The vote on the amendment:

Affirmative - Messrs. Behnke and Willett.
Negative - Messrs. Solberg, Schneider, Poulson, Tiefenthaler and Ms. Nelsen.

The motion was lost.

Chairman Solberg called for a vote on the main motion to establish the 1998 migratory game bird season. The motion was carried unanimously.

6.B-4 Recommendation on petition from Green Bay Area Sport Fishermen, et. al., regarding commercial trawling (Order FH-26-98).

This item was deferred to the October Board Meeting.

6.B-5 Bailey's Harbor Boreal Forest and Wetlands land acquisition, Door County; and acceptance of \$6,000 from The Nature Conservancy for the project.

Mr. Behnke reviewed the green sheet material pointing out that a federal grant for this project will provide \$869,000 to be used toward the purchase, along with a \$6,000 donation. He also pointed out that the residence and 1300 feet of frontage on Lake Michigan will be sold and therefore the Department will recover almost the entire cost of this acquisition. The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 94.94 acres from Edward and Marian Augustine for \$1,120,000 and accept the donation of \$6,000 from The Nature Conservancy. Mr. Schneider seconded the motion. The motion was carried unanimously.

6.B-6 Willow River Wildlife Area land acquisition - St. Croix County.

The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 260 acres from Peter Fink for \$1,170,000 for the Willow River Wildlife Area. Mr. Tiefenthaler seconded the motion. Mr. Behnke also pointed out that the U.S. Fish & Wildlife Service will give the Department \$375,000 in grant monies to be used toward the purchase. Mr. Poulson expressed his concerns about croplands being taken out of agricultural production in this area. When put to a vote, the motion was carried unanimously.

6.B-7 Kettle Moraine State Forest-Loew Lake land acquisition - Washington County.

Mr. Behnke reviewed the green sheet proposal pointing out the Committee's concerns about the cost of this acreage (over 6,200 per acre). Mr. Behnke felt that this property could be purchased at a reduced amount sometime in the future if "we finally say we've gone far enough in spending state dollars, just because somebody else paid something for some piece of property in the near vicinity There comes a time when we may have to say we don't need it that bad and we may have to pass one up." On a vote of 2-1 (Schneider voting no), the Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 80 acres from Mark and Susan Landt for \$485,000. Mr. Tiefenthaler seconded the motion.

Ms. Nelsen agreed with Mr. Behnke that the Board may have to pass on some of these high unit values, but because this parcel is located in the middle of the project she felt this one necessary. Mr. Tiefenthaler urged approval of this parcel. He asked the Department to conduct a study of land costs (cost per acre) on recent purchases

in both units of the Kettle Moraine State Forest and return to the Board in September with its findings.

The vote on the motion:

Affirmative - Messrs. Solberg, Tiefenthaler, Willett and Ms. Nelsen.

Negative - Messrs. Schneider, Behnke and Poulson.

The motion was carried.

6.B-8 Kettle Moraine State Forest-Northern Unit land acquisition - Sheboygan County.

The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 119 acres from Jeffrey and Patricia Holmes for \$258,750. Mr. Schneider seconded the motion. The motion was carried unanimously.

6.B-9 Oshkosh Office Building land transactions - Winnebago County.

The Committee recommended and Mr. Behnke MOVED that the Board find 3.024 acres of state land no longer needed for conservation purposes, approve the sale of state land to Schneider-Mueller, General Partnership and five neighboring landowners; and approve the purchase of 0.23 acre for \$3,600 from Winnebago County for the new Oshkosh Service Center. Mr. Schneider seconded the motion. The motion was carried unanimously.

6.B-10 Northern Highland-American Legion State Forest land acquisition - Vilas County.

The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 80 acres from Vandercook Lake Woodland Corporation for \$177,400. Mr. Schneider seconded the motion. The motion was carried unanimously.

6.B-11 DONATION - 21 acres in Trempealeau County from Charlotte Elkins for Perrot State Park.

The Committee recommended and Mr. Behnke MOVED that the Board accept 21 acres of land from Charlotte Elkins for Perrot State Park. Mr. Schneider seconded the motion. The motion was carried unanimously.

7. Department Secretary's Matters.

7.A DONATION - \$25,000 from the Natural Resources Foundation of Wisconsin, Inc. for the Trumpeter Swan Recovery Program.

Mr. Behnke MOVED, seconded by Mr. Schneider, acceptance of the donation. The motion was carried unanimously.

7.B DONATION - \$6,600 from the memorial fund of Kayleen Brereton for purchase of building materials to construct a small accessible cabin at Copper Falls State Park for use by people with disabilities.

Mr. Willett MOVED, seconded by Mr. Schneider, acceptance of the donation. The motion was carried unanimously.

* * * * *

The meeting was adjourned at 4:05 p.m.

NATURAL RESOURCES BOARD MEETING

Wednesday, August 26, 1998

PUBLIC APPEARANCES

COMMITTEE OF THE WHOLE.

3 B Citizen participation

1. Ody Fish, Co-Chair, Kettle Moraine Task Force, pertaining to expansion of the Kettle Moraine State Forest Units.
2. William Bathke, Germantown, pertaining to fishery activities on Lake Michigan.

3 C Use of natural waters as fish farms

1. Randall Atkinson, Birnamwood.
2. Edward Carlson, Webster.
3. Gary Casper, representing the Milwaukee Public Museum.
4. Timothy Ehlinger, Wauwatosa.
5. Karen EtterHale, representing the Madison Audubon Society.
6. Craig Friess, Cumberland.
7. David Gollon, Dodgeville, Vice President, Wisconsin Aquaculture Assn.
8. Charles Graham, Star Prairie.
9. Hugo Kettula, Lewis.
10. Ruby Kettula, Lewis.
11. Michael Lannoo, Selna, Indiana.
12. James Michalski, Spooner.
13. James Olson, Eau Claire.
14. Caryl Terrell, Legislative Coordinator, Sierra Club-John Muir Chapter.
15. Alice Thompson, South Milwaukee, Chair, Wisconsin Wetlands Assn.
16. Tim Gollon, Dodgeville.
17. Sally Tadda, Owen.
18. Carl Gollon, Stevens Point.
19. Fred Gollon, Stevens Point.

LAND MANAGEMENT COMMITTEE.

6.B-2 Tomorrow River Trail master plan

1. Dan Trainer, Stevens Point.
2. Jim Gifford, Stevens Point, Portage County Park Commission.
3. Gary Speckman, Stevens Point, County Park Director.

6.B-3 Waterfowl order

John Edelbute, Hartford, representing WI Conservation Congress.

Steve Oestreicher, Harshaw, Chair, Wisconsin Conservation Congress.

AS OF AUGUST 25, 1998

~~Mike~~ STOLL-DNR
Mike

Permit for natural Ponds (Freeze Out)
for Fish Farms

one owner, NO public access,
kills ~~to~~ 2 of 5 years

Specify
No stat. criteria to ~~include~~ things that
determine Public Rights + Interest -
[pg 2, 3rd Paragraph]

Stats. asked DNR to develop criteria -
(were getting flack for not including
things included in pg 2, 3rd paragraph)

Fee's

they don't have real good records of
Ponds → DNR

notification - (final mtg)
This was changed by the Board,
not brought up in any Public Hearing.

these groups have the ability to contact
DNR to info. on any ^{requested} ~~new~~ permits.

- they have the ability to get the info.
- costs to Dept. to send this notice

REPORT TO LEGISLATURE

Ch. NR 16, subch. II, Wis. Adm. Code
Development of fees, criteria and procedures to use when
permitting the use of natural waters as fish farms

Board Order No. FH-18-98
Clearinghouse Rule No. 98-055

Statement of Need

The proposed rule was created based on s. 29.521, Stats., which directs the Department to develop fees, criteria and procedures for issuing permits to use natural waters as fish farms. The rule applies to privately owned fish farms and state-owned fish hatcheries. The types of water bodies that can be permitted are those that were licensed as private fish hatcheries by the Department in 1997 and freeze-out ponds. A freeze-out pond is a natural, self-contained body of water in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every 5 years. The rule provides a three-tiered fee structure as follows:

1. For natural waters that were licensed as a private fish hatchery or as part of a private fish hatchery in 1997, the Department will issue a 10-year permit for this use without making an initial determination as specified in s. 29.521(2)(b), Stats. The fee is \$50.

2. For natural waters that are freeze-out ponds that were not formerly licensed by the Department, the Department will make an initial determination of substantial public interest in the freeze-out pond and whether public or private rights in the freeze-out pond would be damaged. This will entail an on-site inspection by Department personnel. The fee is \$500.

3. The natural waters permit is transferrable. The fee to transfer the permit is \$100.

Applications for this permit may be made beginning 60 days after the effective date of the rule. Renewal applications may be made up to 16 months before the expiration date of the permit, but no later than 2 months before the expiration date of the permit. The Department will issue, renew or deny the permit within 3 months of receiving the application; however, if the natural water body is ice-covered at the time of application, the Department may delay its action until the following May 31.

Modifications as a Result of Public Hearings

The following substantive changes were made as a result of public hearing:

NR 16.74(1)(c) - clarifying the term "wetland functional values" as "water quality related functional values or uses of wetlands identified in s. NR 103.03".

NR 16.74(1)(d) - clarifying the term "water quality" as "surface water quality standards identified in chs. NR 102, 104, 105, 106 and 107 and minimum water quantity requirements identified in s. 31.02, Stats."

NR 15.74(8) - providing a process to notify the public of new permit applications. "Upon receipt of a completed permit application, the department shall either schedule a hearing or provide notice stating that it will proceed on the application without a hearing if no substantive written objections to issuance of the permit is received within 30 days after publication or notice. The

notice shall be provided to the news media and other persons according to the procedure in s. NR 27.07(1)(b) and (c). The department may provide notice to other persons as it deems appropriate. The department will assume the cost of publishing the notice."

Appearances at the Public Hearings and Their Positions

May 12, 1998 - Madison

In support:

David Gollon, Gollon Bait & Fish Farm, 5117 Hwy. 191, Dodgeville, WI 53533

In opposition:

Todd F. Miller, 2013 Catlin Place, #1, Madison, WI 53713
Kerry Schumann, WISPIRG, 1121 University Avenue, Madison, WI 53715
Rose B. Smith, 445 W. Center, Whitewater, WI 53190
Galen Smith, 445 W. Center Street, Whitewater, WI 53190
Michael J. Lannoo, 11880 S. County Road 500 East, Selma, IN 47383
Matthew Lowonn, 4357 Britta Drive, #2, Madison, WI 53706
Charles Luthin, 3526 Cross Street, Madison, WI 53711
John Coleman, 500 Babcock Drive, Room B102, Madison, WI 53706
Gail M. Epping, Wisconsin Wetlands Association, 306 S. Baldwin, #1, Madison, WI 53703
Karen Etter Hale, Madison, Audubon Society, 222 S. Hamilton St., #1, Madison, WI 53703

As interest may appear:

Terence Barry, 123 Babcock Hall, Madison, WI 53706
Michael C. Berry, 1140 Freedom Court, Wisconsin Dells, WI 53965
Harold E. Jordahl, The Natural Conservancy, 633 W. Main Street, Madison, WI 53703
Jeff Malison, UW-Madison Aquaculture Program Director, 123 Babcock, Madison, WI 53706

May 13, 1998 - West Bend

In support:

Ervin Buenner, P.O. Box 1904, Eagle River, WI 54521

In opposition:

Joanne Kline, 1370 Chestnut Street, West Bend, WI 53095
Michelle Labry, 107 Maple Avenue South, #8, Slinger, WI 53086-0222
Gary Casper, Milwaukee Public Museum, 800 W. Wells Street, Milwaukee, WI 53233
Timothy Ehlinger, 4634 N. 105th, Wauwatosa, WI 53225
Paul Brautigam, 3428 N. Pierce Street, Milwaukee, WI 53212

As interest may appear:

Susan M. Beyler, N9563 Hwy. 67, Eagle, WI 53119
Don Bloecher, Timber Creek Fish Hatchery, 3205 Tree Lane, West Bend, WI 53095
Judy Brown, The Country Today, Fond du Lac, WI 54936

May 19, 1998 - Wausau

In support:

Robert H. Winkel, Silver Moon Springs, N10638 E. Isle of Pines Drive, Elcho, WI 54428
Robert E. Rotim, N10842 Circle Drive, Elcho, WI 54428
Fred Gollon, 1102 Old Wausau Road, Stevens Point, WI 54481

In opposition:

Sally Tadda, W3902 Sandy Lane, Owen, WI 54460
Alice Thompson, Chair, Wisconsin Wetland Association, 1320 Manitowoc Avenue, South Milwaukee, WI 53172
Herbert Hintze, President, Wis. River Valley Chapter, Trout Unlimited, 629 Hamilton Street, Wausau, WI 54403
Bill Lazarz, N5418 Church Road, Deerbrook, WI 54424
Jane Raymond-Wood, Wausau Bird Club, 1417 Skyline Lane, Wausau, WI 54403
Mary Reser, 1563 County Road ZZ, Amherst Junction, WI 54407
Stuart Grimstad, Frank Hornberg Chapter, Trout Unlimited 1563 County Road ZZ, Amherst Junction, WI 54407
Mitch Bent, Wisconsin Trout Unlimited, 935 South Union Street, Shawano, WI 54166-3145
Henry Bruse, Aldo Leopold Audubon Society, 1820 Wickham Avenue, Wis. Rapids, WI 54495
Marge Gibson, Raptor Education Group, Inc., N2160 W. Rollwood Road, Antigo, WI 54409

As interest may appear:

Rand Atkinson, N4546 Butternut Lane, Birnamwood, WI 54414
Carl Gollon, 1141 N. Old Wausau Road, Stevens Point, WI 54481
Don Hildebrandt, Wisconsin State Bass Federation, 2310 N. 6th Street, Wausau, WI 54403-3307

May 20, 1998 - Spooner

In support:

Charles M. Graham, Star Prairie Trout Farm, 400 Hill Avenue, Star Prairie, WI 54026

In opposition:

James Olson, 550 Graham Avenue, #210, Eau Claire, WI 54701
Craig Friess, Friesses Minnow Farm Inc., 736 20th Avenue, Cumberland, WI 54829
Edward Carlson, 5783 County Road X, Webster, WI 54893

As interest may appear:

Glenna Carlson, 5783 County Road X, Webster, WI 54893
Josephine Gurtner, N3355 Deer Path Road, Sarona, WI 54870
John Gurtner, N3355 Deer Path Road, Sarona, WI 54870
Kevin Hagen, Country Today Newspaper, W5676 Highway 70, Spooner, WI 54801
Ronald Johnson, P.O. Box 662, Iron River, WI 54847
Hugo Kettula, 1029 Clam Falls Drive, Lewis, WI 54837-4705
Ruby Kettula, Seven Pines Fisher Inc., 1029 Clam Falls Drive, Lewis, WI 54837-4705
James Michalski, Route 1, Downing, WI 54734
James L. Streeter, W9401 Valley View, Shell Lake, WI 54871
Harold E. Swanson, Cedar Island Conservancy, Ltd., P.O. Box 106, Brule, WI 54820-0106

Response to Legislative Council Rules Clearinghouse Report

The recommendations have been accepted.

Final Regulatory Flexibility Analysis

At present, there are 40-50 natural water bodies that are being used as fish farms. In order to continue this use, the fish farmers will need to obtain a permit from the Department. The permittee must maintain fish barriers at inlets and outlets to the water body as required by s. 29.521(2)(e), Stats. There is no reporting requirement for this permit. The information requested of the applicant is minimal and will be used by the Department in combination with on-site visits to make a determination regarding adverse impacts to public or private rights in the natural body of water.

Fish farmers can apply for renewal permits up to 16 months before the permit expires. The Department will reissue or deny the permit within 3 months of the application date. This provides a 13 month window in which the fish farmer can make business decisions. This is a 10-year permit which provides the fish farmer with considerable business opportunities and flexibility compared to the year to year licensing requirement under the old law.

Small businesses cannot be exempt from the requirement of this rule. Natural waters that are currently being used as fish farms do not need an initial determination by the Department. This saves the fish farmer \$450, since the Department already permitted the use under the 1997 private fish hatchery license. Department staff must make an initial determination for new ponds in order to insure public and private rights in the ponds are not adversely impacted. We estimate 1-10 new permit applications per year.

Fish farms are affected by this rule. There are no bookkeeping or reporting requirements for compliance.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 16, subch. II relating to the development of fees, criteria, and procedures to use when permitting the use of natural waters as fish farms.

FH-18-98

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 29.521 (2) (f), Stats.

Statutes interpreted: s. 29.521, Stats.

Summary of the Proposed Rule

NR 16, subch. II is created to set the fee structure, criteria, and procedures to use when permitting the use of natural waters as fish farms. The rule applies to fish farms and state-owned fish hatcheries located in, or proposed to be located in freeze-out ponds, and to natural water bodies that were licensed by the Department in 1997 as part of a private hatchery. A freeze-out pond is defined in s. 29.01 (3m), Stats. as a natural, self contained body of water (which has no inlet or outlet, except that it may have pipes equipped with barriers with which to put in or withdraw water) in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every five years. An application to use freeze-out ponds as fish farms may include more than one freeze-out pond if they are located on a contiguous parcel of property under the same ownership or leasehold.

The rule provides a three tiered fee structure as follows:

- 1) For natural waters that were licensed as a private fish hatchery or as part of a private fish hatchery in 1997, the Department will issue a 10 year permit for this use without making an initial determination as specified in s. 29.521 (2) (b), Stats. The fee is \$50.
- 2) For natural waters that are freeze-out ponds that were not formerly licensed by the Department, the Department will make an initial determination of substantial public interest in the freeze-out pond and whether public or private rights in the freeze-out pond would be damaged. This will entail an on-site visit by water management specialists, fisheries personnel, and other Department personnel as needed. The fee is \$500.
- 3) The natural waters permit is transferrable. The fee to transfer the permit is \$100.

Applications for this permit may be made beginning 60 days after the effective date of the rule. Renewal applications may be made within 16 months before the expiration date of the permit. The Department will issue, renew or deny the permit within 3 months of receiving the

application, however, if the natural water body is ice-covered at the time of application, the Department may delay its action until May 31.

The applicant must provide evidence that they own, lease, or otherwise control the land riparian to the water body and that the public does not have access to the water body, except for allowing fishing for a fee. The applicant must also indicate why they believe the water body is a freeze-out pond. They must attach copies of any other permits required by state, local or federal authorities (Chapters 30 and 31, Army Corps of Engineers, etc.). The applicant will also indicate the water source and quantity used for the fish farm and whether there is a discharge to a water of the state.

The Department will issue a permit for the use of a natural water body as a fish farm if all the requirements of this subchapter are met and if the Department determines that there is no substantial public interest in the body of water and that no public or private rights in the body of water will be damaged.

Although not inclusive, the following are indicative of public rights and interests: plant and wild animal habitats and populations, including threatened or endangered species; wetland functional values; water quality; navigability and associated incidents to navigation (fishing, swimming, canoeing, wading).

Species reared in the natural water body may not be detrimental, non-native species pursuant to s. 29.623 (2), Stats.

Physical improvements or modifications to the natural water body must comply with all federal, state, and local laws and ordinances.

After receiving a permit application, the Department shall schedule a public hearing or provide notice according to the procedures under NR 27.07(1)(b)&(c) that it will proceed without a public hearing if no substantive written objections are received within 30 days of publication of the notice.

The Department will renew permits subject to the provisions of s. 29.521 (2) (c), Stats., and will deny permits subject to the provisions of s. 29.521 (2) (d), Stats.

The Department will suspend or revoke permits subject to the provisions of s. 29.521 (2) (e), Stats.