



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-144

AN ORDER to create NR 150.08 (a) 22. and 23. and chapter NR 353, relating to wetland conservation activities.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-06-01 RECEIVED BY LEGISLATIVE COUNCIL.

01-09-02 REPORT SENT TO AGENCY.

RNS:JES:ksm;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 01-144

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Given the vague references to the statutes that the rule interprets and the statutes that authorize promulgation of the rule in the analysis accompanying the rule, it cannot be determined whether the statutes that require the approvals covered by the rule are sufficiently flexible to allow the use of the general permits created by the rule. Additional comments on the statutory authority and statutes interpreted are presented below in item 4. a.

2. Form, Style and Placement in Administrative Code

a. The department should review the entire rule to ensure that it conforms with the preferred drafting style for the use of parentheses. [See s. 1.01 (6), Manual.] Material in parentheses should instead be set apart by commas or incorporated into notes and the plural of a noun with the "s" in parentheses should be avoided. See, for example, s. NR 353.03 (5).

b. A slashed alternative should not be used in a rule. [See s. 1.01 (9) (a), Manual.] This style was not followed in a number of provisions in the rule, including ss. NR 353.03 (11), (12) (intro.), (a) and (b) and 353.10 (1) (b).

c. Substantive provisions should never be incorporated as part of a definition. [See s. 1.01 (7) (b), Manual.] The style was not followed in the last sentences in s. NR 353.03 (11) and (12) (a) and (b).

d. Notes should not include substantive requirements, as they are not part of the substantive law created by the rule. [See s. 1.09 (1), Manual.] The style was not followed in a number of the notes included in the rule, including the notes after s. NR 353.04 (1) (h) and (2) (b).

e. The department should review the entire rule to ensure that its treatment of mandatory and permissive actions are consistent with the preferred drafting style. [See s. 1.01 (2), Manual.] In particular, in specifying a permissive action, "may" should be used rather than "should." Also, "shall" should be used instead of "must." See, for example, ss. NR 353.05 (intro.), 353.06 (2) (e) and 353.08 (1) (g).

f. The terms defined in s. NR 353.03 (8) and (9) should be reversed so that they appear in alphabetical order.

g. The verb in s. NR 353.05 (3) should be expressed as the participle "Constructing" at the beginning rather than the past tense verb "constructed," to be in parallel construction with the other subsections in s. NR 353.05.

h. The department should rewrite s. NR 353.07 to reflect the sequencing of the determinations called for in that section. The determination under sub. (1) precedes determinations or actions under subs. (2) to (5). In addition, as drafted, the introductory clause with the phrase "the department shall determine" is redundant with the phrase "the department shall determine" in sub. (3). Finally, sub. (2) (intro.) should contain the phrase "do any of the following" before the colon; and pars. (a) to (c) should end with periods. A similar change is needed in s. NR 353.09 (2) (intro.) and (a).

i. Section NR 353.08 (1) (intro.) should be made an introduction to the entire section and the paragraphs in sub. (1) should be renumbered as subsections since, as drafted, there is no sub. (2) in s. NR 353.08.

j. Since the requirement for access in s. NR 353.10 (4) appears to be a condition for the department to approve maintenance activities on preexisting wetland conservation projects under s. NR 353.10, sub. (4) should be incorporated into the conditions under s. NR 353.10 (1).

k. The titles of the subsections in s. NR 353.05 do not conform with the drafting style set forth in s. 1.05 (2) (c), Manual.

l. The defined term "post settlement deposition" should be used in s. NR 353.05 (4) rather than the term "post European settlement deposition."

m. The second sentence in s. NR 353.03 (11) is not a complete sentence as it does not include a subject.

3. Conflict With or Duplication of Existing Rules

Given the vague references in the analysis accompanying the rule to the statutory authority for the rule and the statutes interpreted by the rule and the lack of references in the rule to existing department rules that may relate to the processing and granting of approvals of activities affecting wetlands, it is not possible to determine if these other rules conflict with or duplicate the proposed rule or if they will be applied in tandem with the rule. Examples of these existing rules include the time limits for the department to act on permits and approvals specified in s. NR 300.04, the fees for permits and approvals in s. NR 300.06 and the wetland water quality standards in ch. NR 103.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the analysis accompanying the rule, the list of the statutes that authorize promulgation of the rule and of the statutes that the rule interprets are unduly broad and vague. The list of statutes that authorize promulgation of the rule should contain explicit authority for rule-making. The list of statutes interpreted by the rule appears to be too narrow as it only references ch. 30, Stats., whereas the statutes identified for authorizing promulgation of the rule include other statutory chapters, i.e., chs. 23, 29, 31 and 281, Stats. In addition, the rule identifies specific provisions in other statutory chapters which are not included in the list of statutes being interpreted in the analysis. See, for example, the reference to ch. 87, Stats., in s. NR 353.02, the reference to s. 44.40, Stats., in s. NR 353.04 (1) (g), and the reference to s. 88.91 (1), Stats., in s. NR 353.06 (2) (g).

b. The references in ss. NR 353.02 and 353.11 (1) to chapters in the statutes and the Administrative Code are vague. The department should provide citations to specific statutes and rules.

c. The reference in s. NR 353.03 (2) to s. NR 353.05 (2) appears to be an error as s. NR 353.05 (2) does not identify any information which should be submitted in an application. Should this be a reference to s. NR 353.06 (2)?

d. The department should review the entire rule and replace vague references to related rules or statutes with specific citations. Examples of vague references include the references to "applicable provisions of law," in s. NR 353.03 (2), "all other necessary approvals," in s. NR 353.08 (1) (d), "applicable laws" in s. NR 353.09 (1) and "applicable statutes" in s. NR 353.11 (2).

e. The reference in s. NR 353.04 (1) (e) to s. NR 102.04 should be to s. NR 102.04 (3) (a).

f. The rule incorporates standards by reference. See s. NR 353.05 (intro.) and (3). Consent for incorporation of the standards must be obtained from the Revisor of Statutes and the Attorney General pursuant to s. 227.21 (2) (a), Stats. In addition, the analysis accompanying the rule should, but does not, indicate that this consent has been given either prior to this rule promulgation or concurrently with this rule promulgation.

g. The reference in s. NR 353.06 (2) (g) to s. 88.91, Stats., should be to s. 88.91 (1), Stats.

h. The reference to the Wisconsin Natural Heritage Inventory in s. NR 353.08 (1) (h) is vague. The department should indicate where a copy of the inventory may be obtained or viewed.

i. The reference in s. NR 353.07 (4) to a general wetland conservation permit under s. NR 353.05 should refer to a general wetland conservation permit under s. NR 353.04. Section NR 353.05 specifies the activities that are included in wetland conservation activities but does not delineate the requirements for a general wetland conservation permit.

j. Since the cross-reference in s. NR 353.10 (3) appears to be to the provision in which the maintenance plan is approved by the department, sub. (3) should use the phrase "under sub. (1) (d)" instead of "in sub. (1)."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The rule contains a number of redundant and unnecessary phrases including "but are not limited to" in s. NR 353.03 (4) and "navigable-in-fact" rather than "navigable" in s. NR 353.04 (1) (d).

b. Section NR 353.03 (5) refers to a "wetland site." If a "wetland site" is different than a "wetland," the department should include a definition of "wetland site" in the rule. If there is no difference between these terms, then the term "wetland" should be used consistently throughout the rule. Similarly, if a "wetland complex," as used in s. NR 353.04 (1) (b), is different from a "wetland," then the department should define "wetland complex" in the rule.

c. The adjectives "an undisturbed or degraded" should precede "wetland" in the first sentence in s. NR 353.03 (5).

d. The last sentence in the definition of "enhancement" in s. NR 353.03 (5) contains terms that are either redundant or potentially ambiguous and should either be deleted or incorporated directly into the definition of "enhancement." Similarly, the second sentence in the definition of "protection and maintenance" in s. NR 353.03 (11) should be deleted or incorporated into the definition of that term.

e. The definition of "wetland conservation" in s. NR 353.03 (14) refers to preservation activities. This definition should either refer to protection and maintenance activities, a defined term, or the rule should create a definition of preservation.

f. A comma should be inserted after "enhancement" in s. NR 353.03 (14).

g. The reference in s. NR 353.04 (1) (c) to a proposed activity that is "maintenance or repair of structures permitted under this chapter" is potentially ambiguous. Does this provision refer to the maintenance or repair of a previously permitted activity specified in s. NR 353.05 or

is it meant to apply to the maintenance of a preexisting wetland conservation project under s. NR 353.10? In addition, the distinction between "maintenance" and "repair" is not apparent. Will one term suffice?

h. The sentence in s. NR 353.04 (1) (e) is incomplete and, thus, grammatically incorrect. In addition, in this paragraph, the phrase "as defined in s. NR 102.04 (3) (a)" should be set off by commas.

i. The department should review the entire rule to ensure that all provisions are drafted clearly in the present tense and the active voice. [See s. 1.01 (1), Manual.] Examples of provisions that are potentially ambiguous because they are not in the active voice include the substantive provisions in the notes following s. NR 353.04 (1) (h) and the second and third sentences in s. NR 353.10 (1) (b).

j. In s. NR 353.04 (2) (a), "dominates" should be in the plural form "dominate."

k. How will an applicant know that s. NR 353.04 will not preclude projects that may result in adverse impacts to small patches of intact native plant communities pursuant to the note following s. NR 353.04 (2) (b)?

l. The department should define acronyms used in the rule. See, for example, "NRCS" in s. NR 353.05 (intro.) and (3), "USDA" and "USEPA" in s. NR 353.05 (6) and "USGS" in s. NR 353.06 (2) (a).

m. The phrase "in addition to the information listed in s. NR 353.04" at the beginning of s. NR 353.06 (2) (intro.) is inconsistent with the requirement under s. NR 353.06 (2) (d) that the applicant provide information on a form supplied by the department that indicates how the project will meet the eligibility requirements listed in s. NR 353.04. Will the department's form identify all information that the department seeks from an applicant?

n. How does the department want the location of the project site on a USGS quad map to be provided on the form supplied by the department under s. NR 353.06 (2) (a)? Should the quad map be copied onto the form or should it be attached to the form? Also, should "quad map" be defined to avoid any ambiguity over which maps are acceptable to the department?

o. A comma should follow "conservation" in s. NR 353.07 (2) (intro.).

p. The phrase "If sub. (1) is met" in s. NR 353.07 (3) and (4) is potentially ambiguous. Is sub. (1) met when the department engages in the act of making the determination or when the department has determined that the project's purpose is wetland conservation?

q. The department should use consistent terminology for referring to the permits issued under ch. NR 353.08. Section NR 353.08 (1) refers to approvals issued under ch. NR 353 and s. NR 353.09 (1) refers to general wetland conservation permits, permits for maintenance of preexisting wetland conservation projects, and individual wetland conservation permits.

r. Since s. NR 353.08 (1) establishes conditions that apply to "All approvals issued under this chapter," they will also apply to permits for the maintenance of preexisting wetland conservation projects approved under s. NR 353.10. Is that the department's intent?

s. The rationale for the July 1, 1991 cutoff for preexisting wetland conservation project maintenance activities under s. NR 353.10 is not apparent from the text of the rule. To assist readers of the rule, the department may wish to consider adding a comment in either the analysis accompanying the rule or a note following s. NR 353.10 (1) that provides a brief explanation of the reason that the department prescribed the July 1, 1991 cutoff date for these projects.

t. As drafted, maintenance activities on a wetland conservation project constructed on or after July 1, 1991 will be subject to either a general wetland conservation permit or an individual wetland conservation permit. If that is not the department's intent, the department should clarify the rule to specify the treatment of these maintenance activities.

u. The department should reconcile the terminology used to refer to components of the submittals made by an owner of a wetland conservation project constructed prior to July 1, 1991 who wishes to conduct maintenance activities on the project. Section NR 353.10 (1) (a) refers to submittal of a description and a diagram and par. (b) refers to submittal of a plan. In referring to these submittals, s. NR 353.10 (1) (c) refers to "plans under pars. (a) and (b)," and s. NR 353.10 (1) (d) and (3) refer to the "plan."

v. Section NR 353.11 (1) refers to prosecutions of violations of ch. NR 353 by the department under the specified statutes. In this context, "prosecute" is an inappropriate verb, since the common reference in Wisconsin judicial proceedings is to prosecution by either district attorneys or the Department of Justice.

w. Section NR 353.11 (3) refers to violations of an approval or contract issued relating to a project under ch. NR 353. Since ch. NR 353 only addresses permits for wetland conservation projects and the enforcement of those permits, the reference in s. NR 353.11 (3) to an approval or contract is potentially ambiguous.

7. Compliance With Permit Action Deadline Requirements

Since the rule appears to establish the requirement for a business to obtain a permit, the rule should comply with s. 227.116 (1), Stats., and specify the number of business days within which the department will review and make a determination on a permit application. The rule does not specify the number of business days the department will take to review and make a determination on a general wetland conservation permit, permit for maintenance of a preexisting wetland conservation project or an individual wetland conservation permit.

Report to
Legislative Council Rules Clearinghouse
NR 353, Wis. Adm. Code
Natural Resources Board Order No. FH-8-02

30.206 - General permits
- conflict?

Wisconsin Statutory Authority

Chs. 23, 29, 30, 31 and 281 and s. 227.11(2)(a), Stats.

Federal Authority

N/A

30.12(5)(a) 3. eu

Court Decisions Directly Relevant

30.19(1)(a)

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Wisconsin has lost about half of its original wetland acreage. Because of this and the important functions that wetlands serve, wetland conservation (restoration, enhancement, protection and maintenance) and management activities are a state and national priority. Wetland conservation and management is an important and significant program component of many of the natural resource agencies and non-governmental organizations operating in Wisconsin.

To encourage wetland conservation and management projects, the department is proposing to create a general permit process for specific activities used in wetland conservation projects. In addition, the proposed rule establishes a process to authorize maintenance activities by owners of existing wetlands.

The proposed rule is devoted to streamlining the process required of organizations and landowners before they undertake a wetland conservation or management effort. The anticipated result is a system that enables agencies and landowners to efficiently restore and enhance degraded habitat or to manage wetlands. A secondary goal is to recognize the overall benefits of increased wetland restoration and to change permitting procedures and standards for wetland conservation projects.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Scott Hausmann, Bureau of Fisheries Management and Habitat Protection - 266-7360
Michael Cain, Bureau of Legal Services - 266-2177
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on December 5, 2001

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 353

Subject
 NR 353, Wetland Conservation Activities

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 |
| 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 |

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations


Assumptions Used in Arriving at Fiscal Estimate

Summary of Rule: The proposed rule creates a general permit process for wetland conservation activities and a process to permit the maintenance of pre-existing wetland conservation projects. Wetland conservation projects are already being permitted using individual permit processing.

Fiscal Effect. None. The permitting process proposed in this rule will not create any additional workload or demand for additional resources.

Long-Range Fiscal Implications

None

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency DNR
Authorized Signature 	Telephone No.	Date (mm/dd/ccyy) 11/16/2001

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to create NR 150.03(8)(a)22. and 23. and ch. NR 353 relating to wetland conservation activities.

FH-8-02

Summary Prepared by Department of Natural Resources

Statutory authority: Chs. 23, 29, 30, 31 and 281, Stats.

Statutes interpreted: Ch. 30, Stats.

*Vague,
Too
Broad*

*Concerns
with 22.15.15 & 23.15
NR 150.03
Dams & other
wetland + sewage
444.40 (B33.04 (1/9))*

Wisconsin has lost about half of its original wetland acreage. Because of this and the important functions that wetlands serve, wetland conservation (restoration, enhancement, protection and maintenance) and management activities are a state and national priority. Wetland conservation and management is an important and significant program component of many of the natural resource agencies and non-governmental organizations operating in Wisconsin.

To encourage wetland conservation and management projects, the department is proposing to create a general permit process for specific activities used in wetland conservation projects. In addition, the proposed rule establishes a process to authorize maintenance activities by owners of existing wetlands.

SECTION 1: NR 150.03(8)(a)22. and 23. are created to read:

NR 150.03(8)(a)

22. Wetland conservation permits Issuance of permits under s. NR 353.07 or 353.10

23. Wetland conservation permits Issuance of permits under NR 353.09.

*Placement
OK.*

*IV
III*

*actions individually
or cumulatively
do not
affect quality of human
env.*

SECTION 2: NR 353 is created to read:

Chapter NR 353
Wetland Conservation Activities

NR 353.01 Purpose and policy. (1) This chapter will facilitate the regulation of projects whose purpose is wetland conservation by establishing a process to review activities associated with the restoration of former wetlands, the enhancement of degraded wetlands, and the maintenance or management of existing wetlands.

(2) Wisconsin has lost almost half its historic wetland acreage and it is recognized that the protection, management and restoration of wetlands in the state will benefit fish, wildlife, water quality, flood control, biodiversity and natural scenic beauty. Pursuant to s. NR 1.95, it is the policy of the department to reverse the loss of wetlands in Wisconsin and to encourage and facilitate the protection, management and restoration of wetlands.

[Signature]

*Regulation
5-P is created
clears from Stats.*

*Normal
do not
affect
the
efforts*

1, 5 4
15 approved in authorized
Flood control Flood plain zoning

NR 353.02 Applicability. This chapter applies to projects whose purpose is wetland conservation and which are reviewed by the department under chs. 23, 30, 31, 87 and 281 Stats, and s. NR 1.95 and chs. NR 103, 107, 116, 150, 299, 300, 333 and 350.

Note: This chapter does not authorize an activity unless the purpose of the project is wetland conservation. For example, this chapter does not authorize the construction of a detention basin in wetlands for stormwater management, even if the detention basin or the project of which the basin is a part will also result in habitat creation or enhancement. Similarly, this chapter does not authorize a flood control project that may also result in creation or enhancement of some wildlife habitat.

NR 353.03 Definitions. For the purposes of this chapter:

(1) "Aquatic community" means lake or river biological resources.

US DNR 10304
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10304 (2)
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4
10304 (2)

(2) "Complete application" means a completed and signed application form, the information specified in s. NR 353.05(2) and any other information which can reasonably be required from an applicant and which the department needs to make a decision under applicable provisions of law, as outlined in s. NR 300.04 (2).

(3) "Degraded wetland" means a wetland subjected to deleterious activities such as drainage, grazing, cultivation, increased stormwater input, and partial filling, to the extent that natural wetland characteristics are compromised and where wetland function is reduced.

2-1/5
5/1/15
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10304 (2)

(4) "Early successional hydrophyte" means a plant adapted to quickly colonize open, disturbed wetlands, which do not persist over time and are replaced by native perennials that hold space and persist over time. Examples of these plants include, but are not limited to, nut sedge (*Cyperus* spp.), nettle (*Urtica dioica*), smartweed (*Polygonum* spp.), wild millet (*Echinochloa* spp.), ragweed (*Ambrosia* spp.), Beggar's ticks (*Bidens* spp.), and foxtail (*Setaria viridis*).

5/1/15
5/1/15
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10304 (2)

(5) "Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland, undisturbed or degraded, site to heighten, intensify, or improve specific function(s) or for a purpose such as water quality improvement, flood water retention or wildlife habitat. Enhancement results in a change in wetland functions and can lead to a decline in other wetland function, but does not result in a gain in wetland acres. This term includes activities commonly associated with the terms enhancement, management, manipulation, directed alteration, restoration.

ok
4
10304 (2)

(6) "Functional values" means the physical, chemical and biological processes or attributes that occur in a wetland system and how society finds certain functions beneficial as listed in s. NR 103.03(1).

(7) "Invasive plant" means plant species that invade natural plant communities and wild areas and replace desirable native vegetation. The following plants are known to be invasive in Wisconsin wetlands: purple loosestrife (*Lythrum salicaria*); reed canary grass (*Phalaris arundinacea*); cattails (*Typha latifolia* and *T. angustifolia* and their hybrid); common and glossy buckthorn (*Rhamnus cathartica* and *R. frangula*), and common reed (*Phragmites australis*). Other plants may be invasive under specific site conditions.

(8) "Monoculture" means a single species occupying a large area.

alpha
see (9)

General Restored wetland
Public
15 - Public input
Wis. 10304 (2)

(9) "Management" means actions taken at a wetland site to establish and maintain desired habitat and human use conditions including water level manipulations, herbicide application, wetland species introduction and control, fencing, monitoring, signage, and vandalism repair.

(10) "Post settlement deposition" means sediment accumulated over original hydric surface soils since European settlement of the area.

(11) "Protection/maintenance" means the removal of a threat to, or preventing decline of, wetland conditions. Includes purchase of land or easement, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with preservation. Protection/maintenance does not result in a gain of wetland acres or function.

(12) "Restoration" means the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural/historic functions to former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

(a) Re-establishment meaning the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural/historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres.

(b) Rehabilitation meaning the manipulation of the physical, chemical or biological characteristics of a site with the goal of repairing natural/historic functions of degraded wetland. Rehabilitation results in a gain in wetland function, but does not result in a gain in wetland acres.

(13) "Wetland" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

(14) "Wetland conservation" means activities used in the restoration, enhancement, preservation and management of wetlands.

NR 353.04 Eligibility for a general wetland conservation permit. (1) To be eligible for a general wetland conservation permit the department shall determine that all of the following conditions are met:

(a) The project purpose is wetland conservation.

(b) The project proponent has demonstrated that site conditions exhibit impacts to topography, soils, native vegetation or hydrology that have degraded a wetland or wetland complex and are potentially reversible.

(c) The project proponent has demonstrated that the project involves only listed wetland conservation activities as specified in s. NR 353.05 or that the proposed activity is maintenance or repair of structures permitted under this chapter.

(d) The project does not involve any activities in navigable-in-fact waters with prior stream history, or is otherwise determined to not cause significant adverse impacts to those waters.

(e) The project does not cause significant adverse impacts to a cold water community as defined in s. NR 102.04 cause significant adverse impacts to access of fish to existing spawning areas.

E-1
Subpart

S-
Subpart

E-1

S-
Subpart

S-
Subpart

S-
Subpart

S-
Subpart

(3)(a) ← grammar
"or" ?

(f) The project will not cause significant adverse impacts to state threatened or endangered resources.

(g) The project will not cause significant adverse impacts to historical or cultural resources and will comply with s. 44.40, Stats.

(h) The project proponent has demonstrated that any proposed dikes, embankments or low berms as defined in s. NR 353.05(3), will have a height of less than 6 feet measured from natural ground to design top of the structure and will result in less than 50 acre-feet total storage, and are designed by a professional engineer registered in the state of Wisconsin or submitted by a county, state or federal agency.

Note: Projects with 50 acre-feet or more of storage may be eligible if it is determined that they do not pose a risk to life, health and property and the structure is not a large dam as defined in ch. NR 333.

Note: The professional engineering design requirement is waived for projects with a design embankment height 2 feet or less above the natural ground and with less than 50 acre-feet of storage.

(i) The project does not involve the planned introduction of non-native or invasive wetland plants.

(j) The project does not involve the control of native wetland plant species unless the project proponent has demonstrated that the activity is to maintain a wetland community or to diversify a monoculture or a monotypic stand of invasive wetland plants. Removal of monotypic stands of invasive herbaceous vegetation may include excavation only if incidental soil removal and deposition occurs on uplands or like monoculture adjacent to the area of removal.

Note: This provision applies only to incidental soil associated with plant removal and is not intended to allow conversion of wetlands to uplands.

(2) Project proposals which include activities listed in s. NR 353.05 (3) to (5) and have existing wetlands on or adjacent to the project area are eligible for the general wetland conservation permit only if both of the following conditions are met:

(a) Agricultural crops, invasive wetland species, or early successional hydrophyte species dominates the project area.

(b) The proposed activities will not cause significant adverse impacts to undisturbed wetland plant communities on-site or adjacent to the project area.

Note: This section will not preclude projects that may result in adverse impacts to small patches of intact native-plant communities.

NR 353.05 Wetland conservation activities and design specifications. Unless otherwise specified in this section, wetland conservation activities should be designed and constructed to applicable NRCS Field Office Technical Guide Standard Conservation Practice 657, 378, 410, 638 Criteria available at www.wi.nrcs.usda.gov/tech.html. Wetland conservation activities include:

(1) **Tile Breaks:** Removing or disabling a section of drain tile in the project area.

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Substantive
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US VSOA Tech. Stds

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Do these
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permits

2-4-15

general permits
and require a class of activities

(2) ~~Ditch Plugs and Fills~~: Disabling surface drains by filling lengths of the ditch downstream of the drainage system to be altered. Ditch fills may be added upstream of ditch plugs.

(3) ~~Dikes, Embankments and Low Berms~~: Earthen fill structures constructed to NRCS Field Office Technical Guide Standards 657, 378, 410 or 638, in addition to 657, that impede surface water drainage or runoff.

(4) ~~Excavations~~: Removing soil and vegetation or post European settlement deposition that has accumulated over historic wetland soils or creating micro-topography to enhance hydrologic diversity including shallow scrapes, channels, submerged islands, and interconnected open water areas.

(5) ~~Water Level Manipulation~~: Altering the hydrology of an area by removing pumps, breaching structures such as dikes, or re-routing artificial drainage features or manipulation of water control structure.

(6) ~~Vegetation management~~: Introducing plants by planting, cultivating, stocking, or releasing. Controlling plants by cutting, removing, destroying or suppressing using manual or mechanical methods, introducing USDA approved biological agents, manipulating water levels, burning, or using a USEPA registered herbicides/chemicals applied according to the label instructions.

(7) ~~Wetland monitoring~~: Installing and maintaining devices such as staff gauges, water level recording devices, water quality testing, small weirs and flumes whose purpose is to measure and record scientific data for monitoring of the conservation activity.

NR 353.06 Application and information requirements. (1) An application to the department is required before commencing any regulated wetland conservation activity.

(2) In addition to the information listed in s. NR 353.04, the applicant shall provide the following information on a form supplied by the department:

(a) Location of site on a USGS quad map.

(b) A general description of the site and any adjacent wetland areas including aerial photographs of the proposed restoration area.

(c) A description of existing site conditions including soils, hydrologic conditions, current land-use and plant communities present.

(d) A narrative description of the planned project including how it meets the eligibility requirements listed in s. NR 353.04.

(e) A sketch of the project with dimensions. For projects under s. NR 353.05(3), design plans and specifications must be provided.

(f) Goal and objectives for the project including long-term site management.

(g) Sufficient information to demonstrate compliance with s. 88.91, Stats.

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map
scale
cont?
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u/ use sub(1)
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Construction

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determinations
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how to on form? (vs. attach to form?)

obstructing ditches

Not a state interpellated

2-1
(h) For diking, embankments and low berms in riverine sites, sites not located on a lake or impoundment, a hydrologic/hydraulic analysis may be required if the proposed project will reduce the effective flood flow capacity of the waterway by obstruction of existing flow area. If the analysis is required, the applicant may be required to retain an engineer registered in the state of Wisconsin, to prepare this analysis.

(i) For ditch plugs and fills the applicant shall supply a top, cross-sectional and side view of the project on the department supplied application form and plan drawing sheet.

(3) This section is not applicable to a person applying to the department under s. NR 353.10 for maintenance of a preexisting wetland conservation project.

phoned
NR 353.07 Department determinations. Upon receipt of a complete application, the department shall determine:

(1) Whether the project purpose is wetland conservation.

(2) If the department determines that the project purpose is not for wetland conservation the department shall notify the applicant of his or her option to: *do any*

(a) Apply for a permit under other authorities;

(b) Revise the project to comply with the requirements of this chapter;

(c) Withdraw the request; or

(d) Appeal the department's decision under s. 227.42, Stats.

5/1/91
(3) If sub. (1) is met, the department shall determine if the proposed project is maintenance of a project constructed prior to July 1, 1991, and, if so, the review process shall follow the procedures established in s. NR 353.10.

(4) If sub. (1) is met, the department shall review an application to determine if the proposed activities are eligible for a general wetland conservation permit under s. NR 353.05. If the activities are eligible for a general permit, the project may proceed upon receipt of written notice from the department.

(5) If the department determines the project is not eligible for a general permit, the department shall follow s. NR 353.09.

include maintenance 353.10
NR 353.08 General wetland conservation permit conditions (1) All approvals issued under this chapter shall be subject to the following conditions:

spell
(a) The applicant submits a completed and signed application form.

(b) The proposed project shall be constructed in compliance with this chapter and applicable statutes, and the conditions in the wetland conservation permit.

(c) The project proponent shall maintain the project in compliance with the terms and conditions of the general permit, this chapter and applicable statutes. The applicant may conduct maintenance activities described in the application without any further approval by the department.

(d) Approvals issued in compliance with this chapter and applicable statutes are valid only if all other necessary approvals are received from local, state or federal jurisdictions.

(e) Wherever possible, project sites should include an adjacent zone of vegetated upland pursuant to NRCS Technical Guide Standard Conservation Practice 657, unless the site conditions or configuration will not accommodate such a zone.

(f) Any removed vegetation or soil shall be deposited on uplands or used in other approved wetland conservation activities.

(g) During project establishment, all applicable provisions of NRCS Technical Guide Standard Conservation Practice 657 shall apply. Applicable practices shall be those that adequately control or prevent erosion, and prevent damage to waterways and wetland soils. Where purple loosestrife (*Lythrum salicaria*); reed canary grass (*Phalaris arundinacea*) or common reed (*Phragmites australis*) are present, equipment washing or other practices to prevent accidental dispersal must be utilized.

(h) Where species of special concern listed in the Wisconsin Natural Heritage Inventory are known to be present in the project area, the department may notify and advise the applicant of reasonable activities to prevent significant adverse impacts or to enhance the habitat for the species of concern. Notification and recommendation shall take place within the permit review period specified in ch. NR 300.

NR 353.09 Eligibility for individual wetland conservation permits. (1) If the department determines that the proposed project is not eligible for a general wetland conservation permit under s. NR 353.04, or a permit for maintenance of a pre-existing wetland conservation project under s. NR 353.10, the project may not proceed without an individual wetland conservation permit from the department issued pursuant to applicable laws.

(2) The department shall give full consideration to the benefits to wetland functional values together with the potential adverse effects on aquatic community values and public rights and uses. The department shall grant the individual wetland conservation permit if it finds:

- (a) That the primary purpose of the project is wetland conservation;
- (b) The proposed project will meet the requirements of the applicable laws.

NR 353.10 Maintenance of pre-existing wetland conservation projects. (1) An owner of any wetland conservation project constructed prior to July 1, 1991, may conduct maintenance activities if all the following conditions are met:

(a) The owner submits to the department a description and a diagram of existing site conditions which includes: the location of the project; hydrologic characteristics of the site; existing plant communities on the site; the location and condition of existing dikes, ditches, nesting islands, water level control structures and pumps, and other project infrastructures; current land use for the site; and past management and maintenance activities that have occurred on the site.

(b) The owner submits to the department a plan that describes the proposed maintenance activities including areas to be excavated and cross-sections of proposed enhancements to existing dikes and nesting islands. A hydrologic/hydraulic analysis may be required if the proposed project includes alteration to the height or cross-section of the dike. If the analysis is required, the applicant may be required to retain an engineer registered in the state of Wisconsin, to prepare this analysis.

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(c) Upon receipt of the plans under pars. (a) and (b), the department and the applicant shall conduct a field review of the project.

(d) After field review and such modifications deemed necessary to the maintenance project, the department shall approve the maintenance plan if it determines the plan is consistent with the purpose of enhancing wetland functional values.

(2) The department may approve excavation of material from a wetland or from any existing ditches, if the purpose of the excavation is to enhance wetland functional values related to wildlife habitat.

(3) Upon approval of the plan in sub. (1), the applicant may conduct the maintenance activities described in the plan without any further approval by the department.

(4) The applicant shall allow department employees access to make inspections to assure that the maintenance activities are in compliance with the approved plan.

NR 353.11 Enforcement. (1) Violations of this chapter may be prosecuted by the department under chs. 23, 29, 30, 31, 281 and 283, Stats.

(2) Department employees may obtain access under applicable statutes to make inspections for the purpose of assuring that activities performed under this chapter are in compliance with the applicable provisions of law.

(3) A violation of a permit, approval, contract or order issued relating to a project under this chapter is a violation of the statutes or rules relating to the issuance of that permit, approval, contract or order.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provides in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Darrell Bazzell, Secretary

(SEAL)

CNR 00-164

Handwritten notes:
Time limits
NR 300.06
Relation to NR 103
NR 350.0
30,10 - 30,205
30,21 - 30,27 85
31,02 - 31,02
31,33 - 31,33
31,28,12
w/land construction
M. Sigob
M. Sigob
350,12

Handwritten note: NR 305 - Time limits for rule making decisions

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FH-8-02

Legislative Council Rules Clearinghouse Number 01-144

Subject of Rules Wetland conservation activities

Date of Transmittal to Presiding Officers August 28, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 150.08 and 353, Wis. Adm. Code
Wetland conservation activities

Board Order No. FH-8-02
Clearinghouse Rule No. 01-144

Statement of Need

The proposed rule is being created to facilitate the processing of permits for restoration of former wetlands, the enhancement of degraded wetlands and the maintenance of existing wetlands. It addresses the problem of using a permit program designed for development projects, rather than environmentally beneficial projects. The rule creates a short form permit procedure for certain projects whose sole purpose is wetland conservation, creates a process for approving maintenance activities in existing marshes and allows the weighing of wetland restoration versus adverse impacts to other aquatic communities and public rights in the individual permit process for non-eligible activities.

The rule is applicable only on impacted wetland sites, in non-chapter 30, Stats., waters and does not allow approval of any project negatively impacting cold water resources, endangered and threatened species and historical and cultural resources.

For projects whose purpose is wetland conservation, the rule identifies certain activities, if planned and carried out according to Natural Resources Conservation Service national criteria, will be permitted using the short form permit procedure. Activities not meeting the rule's requirements will be processed using existing individual permitting procedures. But in all cases, the rule requires staff to weigh the overall benefits of restoring wetlands versus the potential adverse impacts to other aquatic resources or public rights. The rule also creates a procedure to approve maintenance of wetland restoration projects constructed before 1991 (restoration projects approved since the enactment of wetland water quality standards include approval of planned maintenance activities).

Modifications as a Result of Public Hearing

Minor wording changes were made for clarity.

Appearances at the Public Hearing and Their Position

March 12, 2002 – Madison

Alice Thompson, Wisconsin Wetlands Association, 1320 Manitowoc Ave. S., Milwaukee, WI 53122
Jim Ruwaldt, U.S. Fish and Wildlife Service, 4511 Helgesen Drive, Madison, WI 53718
Robert D. Weihrouch, NRCS Wetland Biologist, 6515 Watts Road, Suite 200, Madison, WI 53719
Thomas M. Boos II, 10747 Moyer Road, Blue Mounds, WI 53517
Eric Parker, Graef, Anhalt Schloemer & Associates, 4821 Elm Island Circle, Waterford, WI 53185

In opposition – none

As interest may appear:

Greg Sambs, 315 Rogers Street, Ft. Atkinson, WI 53538
Bill McKinley, Applied Ecological Services, 1310 Iowa Drive, Madison, WI 53704

Hilda McVoy, 1406 W. Skyline Drive, Madison, WI 53705
Ron Kuehn, 2 E. Mifflin Street, Madison, WI 53703
Jeff Nania, Wisconsin Waterfowl Association, W11360 Highway 127, Portage, WI
Aaron Kubichka, Applied Ecological Services, 17921 W. Smith Road, Brodhead, WI 53550
Charlie Luthin, Wisconsin Wetlands Association, 222 S. Hamilton St., #1, Madison, WI 53703
Peter Peshek, Attorney, 2 E. Mifflin Street, Suite 600, Madison, WI

March 13, 2002 - Oshkosh

In support:

Dan Sambs, 403 S. River Road, Fremont, WI 54940
Clarence Kunde, 104 Wenban Avenue, Neenah, WI 54956
Jeff Gropp, 345 Saratoga Avenue, Oshkosh, WI 54901
Mark Ramge, Property Mgr., W.D. Steenberg, 1213 W. South Park Ave., Oshkosh, WI 54902
Nathaniel [last name illegible], 521 Jackson, Oshkosh, WI 54901
Clay Georgeson, 2854 Stoney Beach Street, Oshkosh, WI 54902
James R. Schuster, 5133 Island View Drive, Oshkosh, WI 54901
Chris Peshek, 734 W. 10th Street, Oshkosh, WI 54902
Bill Rosnow, President, Wisconsin Wetlands, 2954 Timberline Drive, Green Bay, WI 54313
David Metzger, 7742 State Road 110, Fremont, WI 54940
Paul Bernegger, N3154 Highway 45, Hortonville, WI 54944
Pat Arens, 555 Oak Street, Neenah, WI 54956
Thomas Hansen, Wisconsin Wetlands, 233 Mound Street, Berlin, WI 54923
Thomas R. Arens, 7265 Trauba Road, Larsen, WI 54947
Dick Sedlachek, N6087 Heritage Drive, P.O. Box 483, Green Lake, WI 54941

In opposition - none

As interest may appear:

Bob Lang, 9396 Clayton Avenue, Neenah, WI 54956
Patrick White, W8554 Pheasant Run, Hortonville, WI 54944
Curt Holman, W6361 Northwestern Avenue, Fond du Lac, WI 54937

March 14, 2002 - Eau Claire

In support:

Tom Wilson, Northern Thunder, 500 E. Jefferson Street, Suite 201, Viroqua, WI 54665

In opposition:

Carol Hale, 1403 Frederick Street, Eau Claire, WI 54701

As interest may appear:

Alex Kadinger, N1264 420 Street, Menomonie, WI 54751
Thomas C. Kempen, 2654 Calumet Road, Eau Claire, WI 54703
Paul M. Pettis, 29966 10th Avenue, Cadott, WI 54727
Mary Jo Wagner, Wisconsin Public Radio, 1221 W. Clairemont Avenue, Eau Claire, WI

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The proposed rules do not regulate small businesses. Therefore, a final regulatory flexibility analysis is not required.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to create NR 150.03(8)(a)22. and 23. and ch. NR 353 relating to wetland conservation activities.

FH-8-02

Summary Prepared by Department of Natural Resources

Statutory authority: ss 23.09, 281.11, 281.12, 281.15, 281.36, 30.12, 30.124, 30.19, 30.195, 30.20, 31.02, 31.12, 227.10 and 227.11, Stats.

Statutes interpreted: ss 44.40, 281.36, 30.12, 30.124, 30.19, 30.195, 30.20, 31.02 and 31.12 and 88.91, Stats.

Wisconsin has lost about half of its original wetland acreage. Because of this and the important functions that wetlands serve, wetland conservation (restoration, enhancement, protection and maintenance) and management activities are a state and national priority. Wetland conservation and management is an important and significant program component of many of the natural resource agencies and non-governmental organizations operating in Wisconsin.

To encourage wetland conservation and management projects, the department is proposing to create a short form permit process for specific activities used in wetland conservation projects. In addition, the proposed rule establishes a process to authorize maintenance activities by owners of existing wetlands.

SECTION 1: NR 150.03(8)(a)22. and 23. are created to read:

NR 150.03(8)(a)

- 22. Wetland conservation permits Issuance of permits under s. NR 353.07 or 353.10 IV
- 23. Wetland conservation permits Issuance of permits under NR 353.09. III

SECTION 2: NR 353 is created to read:

Chapter NR 353
Wetland Conservation Activities

NR 353.01 Purpose and policy. (1) This chapter will facilitate the regulation of projects whose purpose is wetland conservation by establishing a process to review activities associated with the restoration of former wetlands, the enhancement of degraded wetlands, and the maintenance or management of existing wetlands.

(2) Wisconsin has lost almost half its historic wetland acreage and it is recognized that the protection, management and restoration of wetlands in the state will benefit fish, wildlife, water quality, flood control, biodiversity and natural scenic beauty. Pursuant to s. NR 1.95, it is the policy of the department to reverse the loss of wetlands in Wisconsin and to encourage and facilitate the protection, management and restoration of wetlands.

NR 353.02 Applicability. This chapter applies to projects whose purpose is wetland conservation and which are reviewed by the department under ss. 281.36, 30.12, 30.124, 30.19, 30.195, 30.20, 31.02 and 31.12, Stats., and s. NR 1.95 and chs. NR 103, 107, 115, 116, 150, 216, 299, 300, 333 and 350.

Note: This chapter does not authorize an activity unless the purpose of the project is wetland conservation. For example, this chapter does not authorize the construction of a detention basin in wetlands for stormwater management, even if the detention basin or the project of which the basin is a part will also result in habitat creation or enhancement. Similarly, this chapter does not authorize a flood control project that may also result in creation or enhancement of some wildlife habitat.

NR 353.03 Definitions. For the purposes of this chapter:

- (1) "Aquatic community" means lake or river biological resources.
- (2) "Complete application" means a completed and signed application form, the information specified in s. NR 353.06(2) and any other information which can reasonably be required from an applicant and which the department needs to make a decision.
- (3) "Degraded wetland" means a wetland subjected to deleterious activities such as drainage, excess nutrient runoff, grazing, cultivation, increased stormwater input and partial filling, to the extent that natural wetland characteristics are compromised and where wetland function is reduced.
- (4) "Early successional hydrophyte" means a plant adapted to quickly colonize open, disturbed wetlands, which do not persist over time and are replaced by perennials that hold space and persist over time. Examples of these plants include nut sedge (*Cyperus* spp.), nettle (*Urtica dioica*), smartweed (*Polygonum* spp.), wild millet (*Echinochloa* spp.), ragweed (*Ambrosia* spp.), Beggar's ticks (*Bidens* spp.) and foxtail (*Setaria* spp.).
- (5) "Enhancement" means the manipulation of the physical, chemical or biological characteristics of a degraded wetland to heighten, intensify or improve specific functions or for a purpose such as water quality improvement, flood water retention or wildlife habitat.
- (6) "Functional values" means the physical, chemical and biological processes or attributes that occur in a wetland and how society finds certain functions beneficial as listed in s. NR 103.03(1).
- (7) "Invasive plant" means plant species that invade natural plant communities and wild areas and replace desirable native vegetation. Plants known to be invasive in Wisconsin wetlands include, but are not limited to: purple loosestrife (*Lythrum salicaria*); reed canary grass (*Phalaris arundinacea*); cattails (*Typha latifolia* and *T. angustifolia* and their hybrid); common and glossy buckthorn (*Rhamnus cathartica* and *R. frangula*) and common reed (*Phragmites australis*).
- (8) "Maintenance" means the removal of a threat to, or preventing decline of, wetland conditions and includes activities commonly associated with preservation.
- (9) "Management" means actions taken at a wetland to establish and maintain desired habitat and human use conditions including water level manipulations, herbicide application, wetland species introduction and control, fencing, monitoring, signage and vandalism repair

(10) "Monoculture" means a single species occupying a large area.

(11) "Post settlement deposition" means sediment accumulated over original hydric surface soils since European settlement of the area.

(12) "Preservation" means the protection of ecologically important wetlands in perpetuity through the implementation of appropriate legal and physical mechanisms.

(13) "Restoration" means the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to former or degraded wetland.

(14) "Wetland" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

(15) "Wetland conservation" means activities used in the restoration, enhancement, preservation and management of wetlands.

NR 353.04 Eligibility for a shortform wetland conservation permit. (1) To be eligible for a shortform wetland conservation permit, the department shall determine that all of the following conditions are met:

- (a) The project purpose is wetland conservation.
- (b) The project proponent has demonstrated that site conditions exhibit impacts to topography, soils, native vegetation or hydrology that have degraded a wetland and are potentially reversible.
- (c) The project proponent has demonstrated that the project involves only listed wetland conservation activities as specified in s. NR 353.05 or that the proposed activity is maintenance of a preexisting wetland conservation project under s. NR 353.10.
- (d) The project does not involve any activities in navigable waters with prior stream history, or is otherwise determined to not cause significant adverse impacts to those waters.
- (e) The project does not cause significant adverse impacts to a cold water community, as defined in s. NR 102.04(3)(a).
- (f) The project does not cause significant obstruction of fish passage to existing spawning areas.
- (f) The project does not cause significant adverse impacts to state threatened or endangered resources.
- (g) The project does not cause significant adverse impacts to historical or cultural resources and will comply with s. 44.40, Stats.
- (h) Any proposed dikes, embankments or low berms as defined in s. NR 353.05(3), will have a height of less than 6 feet measured from natural ground to design top of the structure and will result in less than 50 acre-feet total storage, and have been designed by a professional engineer registered in the state of Wisconsin or submitted by a county, state or federal agency. A project

with a design embankment height 2 feet or less above the natural ground and with less than 50 acre-feet of storage does not have to be designed by a professional engineer.

(i) The project does not involve the planned introduction of non-native or invasive wetland plants.

(j) The project does not involve the control of native wetland plant species unless the project proponent has demonstrated that the activity is to maintain a wetland community or to diversify a monoculture or a monotypic stand of invasive wetland plants. Removal of monotypic stands of invasive herbaceous vegetation may include excavation only if incidental soil removal and deposition occurs on uplands or like monoculture adjacent to the area of removal.

Note: This provision applies only to incidental soil associated with plant removal and is not intended to allow conversion of wetlands to uplands.

(2) Project proposals which include activities listed in s. NR 353.05 (3) to (5) and have existing wetlands on or adjacent to the project area are eligible for the general wetland conservation permit only if both of the following conditions are met:

(a) Agricultural crops, invasive wetland species or early successional hydrophyte species dominate the project area.

(b) The proposed activities will not cause significant adverse impacts to undisturbed wetland plant communities on-site or adjacent to the project area.

NR 353.05 Wetland conservation activities and design specifications. Unless otherwise specified in this section, wetland conservation activities should be designed and constructed to applicable Natural Resources Conservation Service Field Office Technical Guide Standard Conservation Practice 378 – Pond (7/01), 410 – Grade Stabilization Structure (7/01), 638 – Water and Sediment Control Basin (7/01) and 657 – Wetland Restoration (9/00). Wetland conservation activities include:

Note: These materials are available at the United States Department of Agriculture Wisconsin Natural Resources Conservation Service website: www.wi.nrcs.usda.gov/tech.html or from the county NRCS office or the Wisconsin Land and Water Conservation Association office, Madison, WI at (608) 833-1833. Copies of the materials are available for inspection in the offices of the department of natural resources, secretary of state and revisor of statutes in Madison, Wisconsin.

(1) Removing or disabling a section of drain tile in the project area.

(2) Disabling surface drains by filling lengths of the ditch downstream of the drainage system to be altered. Ditch fills may be added upstream of ditch plugs.

(3) Constructing dikes, embankments and low berms to Natural Resources Conservation Service Field Office Technical Guide Standard Conservation Practice 657, 378, 410 or 638, that impede surface water drainage or runoff.

(4) Removing soil and vegetation or post European settlement deposition that has accumulated over historic wetland soils or creating micro-topography to enhance hydrologic diversity including shallow scrapes, channels, submerged islands and interconnected open water areas.

(5) Altering the hydrology of an area by removing pumps, breaching structures such as dikes, or re-routing artificial drainage features or manipulation of water control structure.

(6) Introducing plants by planting, cultivating, stocking or releasing. Controlling plants by cutting, removing, destroying or suppressing using manual or mechanical methods, introducing United States department of agriculture approved biological agents, manipulating water levels, burning, or using a United States environmental protection agency registered herbicides and chemicals applied according to the label instructions.

(7) Installing and maintaining devices such as staff gauges, water level recording devices, small weirs and flumes whose purpose is to measure and record scientific data for monitoring of the conservation activity, periodic water quality testing and periodic sampling to show changes in flora and fauna composition and abundance.

NR 353.06 Application and information requirements. (1) An application to the department is required before commencing any regulated wetland conservation activity.

(2) In addition to the information listed in s. NR 353.04, the applicant shall provide the following information:

(a) Location of the project site delineated on the appropriate United States geological survey 1:24,000 quadrangle map or map copy.

(b) A general description of the site and any adjacent wetlands including any aerial photographs of the proposed restoration area.

(c) A description of existing site conditions including soils, hydrologic conditions, current land-use, plant communities present and wetland delineation, if applicable.

(d) A narrative description of the planned project including how it meets the eligibility requirements listed in s. NR 353.04.

(e) A sketch of the project with dimensions, including a top, cross-sectional and side view of the project. For projects under s. NR 353.05(3), design plans and specifications shall be provided.

(f) Goal and objectives for the project including long-term site management.

(g) Sufficient information to demonstrate compliance with s. 88.91(1), Stats.

(h) If the department determines the proposed project will reduce the effective flood flow capacity of the waterway by obstruction of existing flow area, information sufficient for the department to conduct a hydrologic or hydraulic analysis.

(3) This section is not applicable to a person applying to the department under s. NR 353.10 for maintenance of a preexisting wetland conservation project.

NR 353.07 Department determinations. Upon receipt of a complete application, the department shall determine:

(1) Whether the project purpose is wetland conservation.

(2) If the department determines that the project purpose is not for wetland conservation, the department shall notify the applicant of his or her option to do any of the following:

- (a) Apply for a permit under other authorities.
- (b) Revise the project to comply with the requirements of this chapter.
- (c) Withdraw the request.
- (d) Appeal the department's decision under s. 227.42, Stats.

(3) If the department determines that the project purpose is for wetland conservation and is maintenance of a project constructed prior to August 1, 1991, the procedures established in s. NR 353.10 shall be followed.

(4) If the department determines that the project purpose is wetland conservation and that the proposed project activities comply with s. NR 353.04, the project may proceed upon receipt of written notice from the department.

(5) If the department determines the project is not eligible for a general permit, the procedures in s. NR 353.09 shall be followed.

NR 353.08 Wetland conservation permit conditions. All approvals issued under ss. NR 353.04, 353.07(4) and 353.10 shall be subject to the following conditions:

- (1) The applicant submits a completed and signed application form.
- (2) The proposed project shall be constructed in compliance with this chapter and applicable statutes, and the conditions in the wetland conservation permit.
- (3) The project proponent shall maintain the project in compliance with the terms and conditions of the general permit, this chapter and applicable statutes. The applicant may conduct maintenance activities described in the application without any further approval by the department.
- (4) Approvals issued in compliance with this chapter and applicable statutes are valid only if all other necessary approvals are received from local, state or federal jurisdictions.
- (5) Wherever possible, project sites should include an adjacent zone of vegetated upland pursuant to NRCS Technical Guide Standard Conservation Practice 657- Wetland Restoration (9/00), unless the site conditions or configuration will not accommodate such a zone.

Note: This practice is available at the United States Department of Agriculture Wisconsin Natural Resources Conservation Service website: www.wi.nrcs.usda.gov/tech.html or from the county NRCS office or the Wisconsin Land and Water Conservation Association office, Madison, WI at (608) 833 -1833. A copy of the practice is available for inspection in the offices of the department of natural resources, secretary of state and revisor of statutes in Madison, Wisconsin.

(6) Any removed vegetation or soil shall be deposited on uplands or used in other approved wetland conservation activities.

(7) During project establishment, all applicable provisions of NRCS Technical Guide Standard Conservation Practice 657 shall apply. Applicable practices shall be those that adequately control or prevent erosion, and prevent damage to waterways and wetland soils. Where purple loosestrife

(*Lythrum salicaria*); reed canary grass (*Phalaris arundinacea*) or common reed (*Phragmites australis*) are present, equipment washing or other practices to prevent accidental dispersal shall be utilized.

(h) If the department determines that species of special concern listed in the Wisconsin natural heritage inventory are known to be present in the project area, the department may notify and advise the applicant of reasonable activities to prevent significant adverse impacts or to enhance the habitat for the species of concern. Notification and recommendation shall take place within the permit review period specified in ch. NR 300.

NR 353.09 Individual permits for wetland conservation projects. (1) If the department determines that the proposed project is for wetland conservation but is not eligible for a shortform wetland conservation permit under s. NR 353.04 or 353.10, the project may not proceed without an individual permit from the department issued pursuant to applicable laws.

(2) The department shall give full consideration to the benefits to wetland functional values together with the potential adverse effects on aquatic community values and public rights and uses. The department shall grant the individual wetland conservation permit if it finds:

- (a) That the primary purpose of the project is wetland conservation;
- (b) The proposed project will meet the requirements of the applicable laws.

NR 353.10 Maintenance of pre-existing wetland conservation projects. (1) An owner of any wetland conservation project constructed prior to August 1, 1991, may conduct maintenance activities if all the following conditions are met:

Note: The construction and maintenance of wetland conservation projects has been regulated since August 1, 1991, the effective date of ch. NR 103, Wetland Water Quality Standards.

(a) The owner submits to the department a description and a diagram of existing site conditions which includes: the location of the project; hydrologic characteristics of the site; existing plant communities on the site; the location and condition of existing dikes, ditches, nesting islands, water level control structures and pumps, and other project infrastructures; current land use for the site; and past management and maintenance activities that have occurred on the site.

(b) The owner submits to the department a description of proposed maintenance activities including areas to be excavated and cross-sections of proposed enhancements to existing dikes and nesting islands. A hydrologic or hydraulic analysis may be required if the proposed project includes alteration to the height or cross-section of the dike. If the analysis is required, the applicant may be required to retain an engineer registered in the state of Wisconsin, to prepare this analysis.

(c) Upon receipt of the descriptions and diagram under pars. (a) and (b), the department and the applicant shall conduct a field review of the project.

(d) After field review and modifications deemed necessary to the maintenance project, the department shall approve the maintenance activities if it determines the plan is consistent with the purpose of enhancing wetland functional values.

(e) The applicant shall allow department employees access to make inspections to assure that the maintenance activities are in compliance with the approved plan.

(2) The department may approve excavation of material from a wetland or from any existing ditches, if the purpose of the excavation is to enhance wetland functional values related to wildlife habitat.

(3) Upon approval of the plan under sub. (1)(d), the applicant may conduct the maintenance activities described in the plan without any further approval by the department.

NR 353.11 Enforcement. (1) Violations of this chapter shall be subject to enforcement under the enforcement and penalty provisions of chs. 23, 29, 30, 31, 281 and 283, Stats.

(2) Department employees may obtain access under applicable statutes to make inspections for the purpose of assuring that activities performed under this chapter are in compliance with the applicable provisions of law.

(3) A violation of a permit issued relating to a project under this chapter is a violation of the statutes or rules relating to the issuance of that permit.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 14, 2002.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provides in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin _____

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

By _____
Darrell Bazzell, Secretary

(SEAL)