

2011 DRAFTING REQUEST

Bill

Received: **03/28/2011**

Received By: **btradewe**

Wanted: **As time permits**

Companion to LRB: **-4211**

For: **Howard Marklein (608) 266-7502**

By/Representing: **Crystal Lee**

May Contact:

Drafter: **btradewe**

Subject: **Agriculture - animals
Nat. Res. - fish and game**

Addl. Drafters: **rkite**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Marklein@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Changes related to aquaculture

Instructions:

See attached

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1/?	btradewe	PI 6/7 JLD	M 6/7	[Signature]			

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<END>

Tradewell, Becky

From: Lee, Crystal
Sent: Monday, March 28, 2011 3:22 PM
To: Tradewell, Becky
Subject: Aquaculture Law

Attachments: Wisconsin Aquaculture 2011 Proposed Legislature Actions (2).doc

Ms. Tradewell,

I appreciate the call back. I've attached the document that I was referring to in our conversation. Please feel free to give me a call if you have any further questions, comments, concerns, or suggestions!

Thanks!

Crystal Lee

Legislative Assistant
Office of State Representative Howard Marklein
51st Assembly District
608-266-7502
Crystal.Lee@legis.wi.gov



Wisconsin
Aquaculture 2011 Pro

Wisconsin Aquaculture Industry 2011 Proposed Legislature Actions

- *To create jobs and grow the industry*

1. Adopt 2004 US EPA effluent limitations guidelines for Concentrated Aquatic Animal Production (CAAP) Aquaculture Facilities.
- ✓2. In Wisconsin Statutes make Aquaculture Water/Wetland dependent
3. Create a new Agriculture Retail License for Bait shops and sale of gamefish retail
- ✓4. Administrative Rule NR 40 – Eliminate disease and pathogens from authority
- ✓5. Wisconsin Veterinary Diagnostic Laboratory – require lab results of private customers to be confidential information unless tests show a reportable disease.
- ✓6. Administrative Rule NR -19 Natural Water Body – Modify definition of natural water body and the permitting process.
- ✓7. DNR should not be exempt from any rule that the aquaculture industry must comply with
8. Import Permits ATCP 10.62 - Eliminate farm to farm import permits, keep FHC
9. Aquaculture Development

Background Information

EPA CAAP

In June of 2004 the Environmental Protection Agency (EPA) finalized a new rule which established effluent limitations guidelines for concentrated aquatic animal production (CAAP) aquaculture facilities. The new rules were promulgated based on a settlement with the Natural Resources Defense Council (NRDC). Many people in the aquaculture industry around the United States worked hard over several years during the rule making process to ensure the rules would work for aquaculture. The rule covers CAAP facilities that use flow-through, recirculating, or net pen systems, that directly discharge wastewater and produce at least 100,000 pounds of fish a year. The rule requires best management practices to control the discharge of pollutants in the wastewater instead of setting numeric limits.

Currently the Wisconsin DNR bases the requirement for Wisconsin Pollutant Discharge Elimination System (WPDES) permits on recommendations from the EPA using effluent limits for aquaculture facilities. This was the old system used by EPA prior to 2004 adopting of the CAAP guidelines. That system required aquaculture facilities with production of more than 20,000 lbs of cold water species, 100,000 lbs of warm water species, feeding more than 5,000 lbs of feed/month or a facility is defined as a significant source of pollution to obtain a WPDES permit. The facility was treated as an industry with waste water and followed NR 101 for fees. Permits are for 5 year duration. Wisconsin statute 283.11 states that “all rules promulgated by the department under this chapter as they relate to point source discharges, effluent limitations ... shall comply with and not exceed the requirements of the federal water pollution control act, 33 USC 1251 to 1387, and regulations adopted under that act.”

It appears that all new and renewal of aquaculture WPDES permits should be based on the EPA CAAP guidelines that no longer use effluent limits but rather permits should be written on best management guidelines as outlined by EPA for aquaculture facilities. Wisconsin belongs to the EPA National Pollutant Discharge Elimination System (NPDES) program and is an approved state for the NPDES permit program. The department has been slow to respond to adoption of the current EPA guidelines for aquaculture. Language should be added in Statute 299.15(3) (am)³ that includes aquaculture along with “concentrated animal feeding operations” as being exempt from fees.

Water/Wetland Dependency Aquaculture defined as Agriculture

Aquaculture is broadly defined as the propagation, rearing or keeping of aquatic species including fish shellfish and plants in controlled environments. Aquatic organisms need water to survive – they die without water. Aquaculture in Wisconsin statutes and administrative code is defined one way in the Agriculture Statutes and code and another in the Environmental Statutes and code.

Wisconsin Chapter 93.01 **(1b)** “Agriculture” includes aquaculture and in **(1d)** “Aquaculture” means the controlled cultivation of aquatic plants and animals. In Chapter 95.001 “Domestic animal” means any of the following: 2 A farm-raised deer, farm- raised game bird or farm-raised fish.

Wisconsin further defines fish farm in Administrative Rule ATCP 10.60 1(m) “Fish farm” means a facility or group of facilities, all located on a single parcel of land or on 2 or more contiguous parcels, at which a person hatches fish eggs or hold live fish. “Fish farm” does not include a wild source.”

In Chapter 29 Wild Animals and Plants 29.001 Defines (25) “Farm-raised fish” means a fish that is kept on a fish farm for propagation purposes or reared on a fish farm and has not been introduced, stocked or planted into waters outside a fish farm or that has not escaped from a fish farm”. In (26) “Fish Farm” has the meaning given in s. 95.001 (1) (aj) except that “fish farm” does not include a state or municipal fish hatchery or a private fishing preserve.” .

In Chapter 30 Navigable Waters, Harbors and Navigation Subchapter IV Lower Wisconsin State Riverway 30.40 Definitions (1) “Agriculture use” means beekeeping; dairying; egg production; feedlots; grazing; floriculture; raising of livestock; raising of poultry; raising of fruits, nuts and berries; raising of grains, grass, mint and seed crops; raising of vegetables; and sod farming.” What is left out is aquaculture.

The above statutes and administrative codes combined together lead to confusion and restriction of activities preventing the industry from development, for expanding employment and promoting of economic activity in the state. What is needed is a definition that acknowledges that aquaculture or fish farming is water dependent, may be carried out in soils defined as wetlands and needed to carry out the legal activities in the state; that aquaculture be added to the ‘Agriculture use’ in 30.40; and that in Chapter 29.001 (25) “Farm-raised fish” includes the definition in s 95.001 domestic animal means farm-raised fish.

Retail Bait/gamefish Agriculture License

Bait Dealer License is defined in Wisconsin Statute 29.509. The statute defines bait; type of license according to dollar amount sold, and allows the department to issue permits for the taking of bait from specified waters. Activities for collection are further defined in administrative code NR 20.14 - Minnow collecting restrictions. NR 20.20 list waters or portions of waters by county and specify authorized methods, open seasons, daily bag limits and size restrictions for the taking of fish. Non-standard gear permit is defined in NR 20.39. These statutes and codes were set up for wild bait harvest and sale of bait in retail shops, except that in 29.509 (6) states "This section does not apply to bait produced in a state or municipal fish hatchery or to bait that is farm-raised fish.

Fish Importing and fish farms including fish health authority is found in Statute 95.60 and defined in Administrative Code ATCP Subchapter VIII – Fish 10.60-10.67. In 2007 Viral hemorrhagic septicemia (VHS) was found in the state; both DNR and DATCP promulgated rules about transfer of fish or minnows from "waters of the state" (DNR) and transfer of fish within the state (DATCP). Wild bait harvesters that hold a DNR Bait Dealer License are required as a condition of the Wild Bait Harvest Application Permit and defined in NR 19.057 (2) and (2) (d) Must have minnows inspected by a qualified fish health inspector and issued a Fish Health Certificate (FHC) before they can be used or distributed. VHS susceptible species must also be tested for VHS as a condition for issuance of a FHC.

In order to comply with NR 19.057 and fish health requirements (ATCP 10.65) most wild fish harvesters hold fish in ponds so a qualified veterinarian can do the testing. DATCP requires that persons "Holding fish eggs or holding live fish for any of the following purposes: Sale or distribution, Introduction into the waters of the state, fishing, use as bait or fertilizer, use as human food or animal feed, or holding live fish or fish eggs owned by another person" must be registered as a fish farm (ATCP 10.61). So DNR wild bait harvest rules require testing as stipulated in DATCP's ATCP 10.65 and in order to comply with testing bait is held in ponds and therefore a fish farm registration is required.

One of the requirements of a fish farm registration is record keeping ATCP 10.61 (10) part (1) requires: "The name, address, fish farm registration number, and livestock premises code if any, of the person from whom the operator received, or to whom the operator delivered fish or fish eggs." This section was intended to allow DATCP to track fish health diseases in case of an outbreak of reportable disease. This section does not allow selling of minnows or fish in a retail market unless proper records are kept.

The industry has suggested an Agricultural Retail Aquaculture License for all farmed fish including bait. A person holding this type of license would not be required to keep the same type of records a fish farm registration does. Wild bait would still be under the jurisdiction of DNR

Wild Bait Harvest Permits and DATCP's fish health rules. This Agriculture Retail Aquaculture License would give separation from wild bait harvest and farm raised product, thus allowing bait shops that only sell farm raised minnows to not have a DNR Bait Dealer License. The fish health rules in ATCP 10.65 would remain in effect for fish sold in retail markets. Additionally an Agriculture Retail License will have the benefits of allowing retail sales of live fish in farmers markets, or to pet stores for native farm raised game fish.

NR 40 Modifications

Authority for control program of invasive species is found in Statute 23.22 and provides that DNR promulgate rules to "identify, classify, and control invasive species for the purposes of the program" (updated on October 31, 2010). Definitions include in s 23.22 (1) (c) "Invasive Species" means nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health". Prior to that in 2007-2008 there was a section 23.225 Invasive fish species (1)"In this section, "invasive fish species" means a species of fish that is not native to the waters of this state and that causes, or is likely to cause, harm to the economy, to the environment, or to human health". On November 11, 2009 Wisconsin ACT 55 was published which repealed 23.225 and now has been replaced with s 23.22; taking fish out of the definition for invasive species.

Rules were promulgated by DNR based on s 23.22 in NR 40 which was published August, 2010. NR 40 has further made 53 definitions for purposes of the chapter. Although all definitions are important to understand the full latitude of the administrative rule the following are in particular important to the aquaculture industry:

(2) "Animal" means all vertebrate and invertebrate species, including but not limited to mammals, birds, reptiles, amphibians, fish, mollusks, arthropods, insects, and their eggs, larvae or young, but excluding humans.

(3) "Aquatic animal" means any vertebrate or invertebrate species that lives or grows only in water during any life stage, and includes the eggs, larvae or young of those species.

(3m) "Aquatic invasive species" means any invasive species that dwells in water or wetlands.

(17) "Established nonnative fish species and established nonnative crayfish species" means alewife (*Alosa pseudoharengus*), common carp (*Cyprinus carpio*), rainbow smelt (*Osmerus mordax*), round goby (*Neogobius melanostomus*), ruffe (*Gymnocephalus cernuus*), sea lamprey (*Petromyzon marinus*), three-spine stickleback (*Gasterosteus aculeatus*), tubenose goby (*Proterorhinus marmoratus*), white perch (*Morone americana*), and rusty crayfish (*Orconectes rusticus*).

(19) "Genetically modified" refers to an organism whose genome, chromosomal or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques, and includes the progeny of any genetically modified organism. (20) "Identified carrier of an invasive species" means any material identified in a department infestation control designation under s. 26.30 (7), Stats., a DATCP quarantine under s. 94.01, Stats., or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine declaration under 7 USC section 7714 or 7715 as potentially carrying an invasive species.

(21) "Import" means to bring into Wisconsin or to arrange for another person to bring into Wisconsin.

(22) "Incidental" means something is done inadvertently when performing an otherwise legal activity.

(24) "Invasive species" has the meaning given it in s. 23.22 (1) (c), Stats. In addition, "invasive species" means nonnative species including hybrids, cultivars, subspecific taxa, and genetically modified variants whose introduction causes or is likely to cause economic or environmental harm or harm to human health, and includes individual specimens, eggs, larvae, seeds, propagules and any other viable life-stages of such species. For fish, "invasive species" includes all nonnative species.

Note: Section 23.22 (1) (c), Stats., states that "invasive species" means nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Eliminate eastern and western gambusio (mosquito fish) from the prohibited list.

(27) "Native species" means a species indigenous to Wisconsin, and includes an individual specimen. For fish, "native species" means those fish species identified as native fish species in *Wisconsin Fishes 2000: Status and Distribution*, by Lyons, J., P. A. Cochran, and D. Fago, published by University of Wisconsin Sea Grant Institute, and includes an individual specimen, regardless of the specimen's origin.

(30) "Nonnative fish species in the aquaculture industry" means arctic char (*Salvelinus alpinus*), Atlantic salmon (*Salmo salar*), brown trout (*Salmo trutta*), chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*Oncorhynchus kisutch*), rainbow trout (*Oncorhynchus mykiss*), pink salmon (*Oncorhynchus gorbuscha*), redeer sunfish (*Lepomis microlophus*), tiger trout (a hybrid of *Salvelinus fontinalis* and *Salmo trutta*) and tilapia (*Tilapia* spp).

(33) "Nonviable" means, with respect to aquatic vertebrates including fish species, species for which eggs, fry, or adults are not capable of surviving water temperature below 38 degrees Fahrenheit or not capable of surviving in fresh water. "Nonviable" means, with respect to terrestrial vertebrates, species that are not capable of living, growing, developing, and functioning successfully in Wisconsin's outdoor environment.

(48) "Species" means monera, protista, fungi, plantae, animalia, viruses, phytoplasmas, mycoplasma-like organisms and prions and includes seeds, propagules and individual living specimens, eggs, larvae, and any other viable life-stages of such species. "Species" includes genetically modified species, cultivars, hybrids and sub-specific taxa.

(53) "Wild animal" means any mammal, bird, or other creature of a wild nature endowed with sensation and the power of voluntary motion, except fish and crayfish.

Definition (24) includes the statement that "For fish, "invasive species" includes all nonnative species" that statement was repealed in 2009 Wisconsin ACT 55 and s 23.22 no longer carries that statement therefore should not be included in definition (24).

Of particular interest are definitions (20), (24), (48) and (53). These rule definitions have expanded the definition in statute 23.22 to include most conceivable life forms including disease

pathogens and organisms such as viruses and prions which most scientists do not classify as "species".

NR 40.09 Interagency coordination. "This chapter does not affect the authority of DATCP under chs. 93, 94, 95 and 97, Stats. The action of the department under this chapter shall be coordinated with DATCP. The secretaries of the department and DATCP shall execute a memorandum of agreement to enable coordination of invasive species work of their departments". However, with the broad definitions of "invasive species" it appears that DNR has extended authority via administrative rule into areas that DATCP has authority in Chapters 93, 94, 95 and 97.

The National Association of State Aquaculture Coordinators (NASAC) in 2007 developed a position statement opposing defining microbial pathogens as aquatic nuisance species because it has created issues in over regulation. Animal health organizations like the United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS) on a federal level and the Department of Agriculture, Trade and Consumer Protection (DATCP) are in charge of health issues. Natural resource agencies are charged with management of wild species populations.

If the aquaculture industry wants the state to separate authority between "invasive species", management of wild (true) species and microbial pathogens regulated by animal health organizations then the definition in s 23.22 needs to be modified.

There does not appear to be any exemptions for the DNR in either s 23.22 or in NR 40 that would allow the department any immunity or exception to prohibited or restrictive activities listed.

✓ WVDL

The Wisconsin Veterinary Diagnostic Laboratory (WVDL) is part of the University of Wisconsin System and defined in statute 36.58 created by Act 107 signed in 2000. The WVDL has a Board of Directors that prescribes policies and operation of the laboratory and is governed by the Wisconsin University Board of Regents. The aquaculture industry is concerned about the confidentiality of records relating to diagnosis and testing results from samples sent to WVDL or activities performed at the laboratory. Since WVDL is a public institution within the University of Wisconsin System the facility and records are subject to the Wisconsin Public Records Law s 19.31- 19.39. In 19.31 (2) Records is defined: "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority". Therefore diagnosis and laboratory testing results are subject to the Wisconsin Public Records Law.

Confidentiality is important to fish farmers from a business perspective keeping a competitive edge, adverse use of records by third parties, misinterpretation of records or false positives when very sensitive testing techniques are utilized. If a reportable disease is found, the laboratory is obligated to notify appropriate authorities (DATCP/USDA APHIS) as outline in ATCP 10.66 Fish diseases: reporting (1) "Report required. Except as provided in sub (2), a person who tests or obtains credible diagnostic evidence of any of the following diseases in the state shall report that diagnosis or evidence to the department in writing, by mail, e-mail, or fax, within 10 days after making the diagnosis or obtaining the evidence:" The aquaculture industry has no objections to notification of reportable diseases but objects to release of records that are not necessary to protect the public health, safety or welfare.

In s 36.55 (6) confidentiality of paratuberculosis records is not subject to inspection or copying under s 19.35. The aquaculture industry would like the same protection of privacy as paratuberculosis records. In s 95.60 (7) confidentiality is provided for "any information kept by the department(DATCP) that identifies the type or number of fish or fish eggs bought, raised or sold by a privately owned fish farm or the supplier or purchaser of those fish for fish eggs is not subject to inspection or copying under s 19.35".

In order for the aquaculture industry to compete and grow plus better utilization of WVDL these changes are needed. It should also be noted that Wisconsin is under reported in the "USDA Viral Hemorrhagic Septicemia Virus IVb U.S. Surveillance Report 2009" because of fish farmers using laboratories outside of Wisconsin instead of WDWL. Language could be incorporated in a confidentiality section of s 36.58 to allow reporting of numbers while safeguarding personal information.

Natural Water Body

Natural Water Body can be traced back to 1997 in Wisconsin Act 248 where Subchapter X Fish and Game Propagation and Stocking - SECTION 581. 29.521 of the statutes, as created by 1997 Wisconsin Act 27 is renumbered 29.733 titled Natural Waters Used in Fish Farms. Statute 29.733 sets conditions for use of a natural body of water as a fish farm. 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 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) The body of water is one of the following:
1. A freeze-out pond.
2. A preexisting fish rearing facility.
(d) A permit for the body of water has been issued under sub. (2)".

The rest of 29.733 describes how the department shall assure no public or private rights in the body of water will be damaged, issue permits, renew or deny the renewal, and allow the department to promulgate rules. The department promulgated rules in NR 16 which was changed

to NR 19 in 2003 specifically Subchapter III – Permitting the Use of Natural Bodies of Water as Fish Farms 19.90-19.95. It is curious to note that Wisconsin Statutes do not define “Natural Body of Water”, not in s 29.733 nor in s 30 Navigable Waters, Harbors and Navigation. There is a definition of “Artificial Water Body” in 30.19 (1b) (a) “Artificial water body” means proposed or existing body of water that does not have a history of being a lake or stream or being part of a lake or stream”. It appears the department defined “Natural Water Body” from the antithesis of the definition of “Artificial Water Body”. That definition in NR 19.91 (3) reads “Natural Water Body” means any spring, stream, pond, lake, or wetland that was historically present in a natural state but may have been physically altered over time except any waterbody that has been permitted by the department under ch. 30 or 31, Stats. or ch. NR 299 water quality certification and declared public under s 30.19 (5), Stats”.

The Aquaculture Industry has had difficulties with Natural Waters used in fish farms both s 29.733 and NR 19.90-19.95 for the following reasons:

1. The industry is singled out by the department for use of water in the state
2. Through definitions and conditions aquaculture in Wisconsin is severely limited as to location and use. Only freeze-out ponds and preexisting fish facilities (prior to 1997) can be used for fish farms.
3. The use of artesian flow water is not permitted unless grandfathered in 1998 or state hatcheries – limiting growth. The Aquaculture Outreach Specialists have received numerous inquiries from people in Wisconsin wanting to utilize the artesian flow on their property.
4. The department chose a 10 year duration for the Natural Water Body permits which limits the value of the land and business. Banks do not lend capital with assets or land with conditions of a permit, which allows operation of the business, which may or may not be renewed. The permit should be perpetual unless substantial change or modifications affecting public interest have occurred.
5. The notification clause with provisions in NR 19.94 (7) to “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” and “The notice shall be provided to news media and other persons according to the procedures in s NR27.07 public notification of receipt of an application for the incidental take of endangered or threatened species (25 organizations) is unnecessary. Aquaculture is a legal business in Wisconsin and notice of initial or renewal of the permit should not be afforded the same protection as taking of endangered or threatened species.

✓ **DNR Rule Exemptions**

The Department of Natural Resources should adhere to the same rules and regulations as the private fish farms in Wisconsin. In s 95.60 Importing fish; fish farms (2) (d) “The department of natural resources is exempt from par (a) Paragraph (a) reads “No person may bring any fish or

fish eggs into this state for the purpose of introduction into the waters of the state, of use as bait or rearing in a fish farm without an annual permit issued by the department” (DATCP). In a Memorandum of Understanding (MOU) between DNR and DATCP the DNR is allowed to import fish or fish eggs into Wisconsin and report the activity twice per year. In some circumstances the DNR and private fish farms are in competition and this gives the DNR a competitive edge in business.

Import Permits – Farm to Farm

Fish and fish eggs imports into the State of Wisconsin are defined in s 95.60. This was an important chapter of legislation back in 1997 when authority for fish health and fish farm registration was moved from the DNR to DATCP. Statute 95.60 (4s) (b) reads “ In consultation with the department of natural resources, promulgate rules specifying fish health standards and requirements for certifying that fish meet those standards for the purpose of s29.736. DATCP has promulgated rules for fish health certificates in ATCP 10.65 which includes standards of inspection, who is allowed to certify the fish health, type of inspection, certificate contents including types of testing from qualified laboratories for reportable diseases and visual inspections. These requirements have been in place for over 10 years.

It is the belief that Import permits for fish and fish eggs coming from one farm and going to another as outlined in s 95.60 and defined in ATCP 10.62 are no longer needed to assure the health and well being of the aquaculture industry and fish in waters of the state, as long as the Fish Health Certificate (FHC) in ATCP 10.65 is required. This is a duplication of records and wastes time and resources.

Aquaculture Development

Aquaculture in Wisconsin statutes and administrative code is fractionalized, sometimes redundant, not coordinated; hindering development and job growth. Aquaculture in the United States is a \$1 billion dollar business whereas Wisconsin has \$14.1 million in farm sales combining both private and public sectors and contributes \$21 million in economic activity to the state. Worldwide aquaculture is the fastest growing agriculture sector, but not in Wisconsin. Over burdensome rules has hampered aquaculture growth in Wisconsin. If the Wisconsin aquaculture industry is to grow there has to be improvement and clarity in regulations and the Wisconsin Legislature needs to acknowledge the importance of the industry and encourage its development.

The Wisconsin Aquaculture Industry suggests that the Wisconsin Legislature expands Aquaculture Development in the state in s 93.46 (1m) Agriculture Diversification, with the addition of the following:

The Legislature finds and declares that aquaculture has the potential for reducing the United States trade deficit in fisheries products, for augmenting food supplies, for expanding employment, for promoting economic activity, for improving public health, for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting Wisconsin and the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the state's interest and it is state policy to recognize aquaculture as agriculture, that aquaculture is water dependent, and to encourage the development of aquaculture in Wisconsin and thereby complimenting the Buy local, buy Wisconsin program.

The rest of the wording in s 93.46 (1m) is also important for aquaculture diversification and should remain intact.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1772/P1
RCT&RNK:.....

Fri., 6/10, or sooner, if possible

JLd

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

DLVte

X

Gen

1

AN ACT ...; relating to: the regulation of aquaculture. ✓

Analysis by the Legislative Reference Bureau

✓ This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

SECTION 1. 23.22 (1) (c) ^X of the statutes is amended to read:

3

23.22 (1) (c) "Invasive species" [✓] means nonindigenous species, other than

4

microbial pathogens, [✓] whose introduction causes or is likely to cause economic or

5

environmental harm or harm to human health.

History: 2001 a. 109 ss. 72t, 72xd; 2003 a. 33; 2005 a. 25, 160; 2007 ^X a. 20; 2009 a. 55.

6

SECTION 2. 23.22 (2) (b) 6. of the statutes is amended to read:

7

23.22 (2) (b) 6. Promulgate rules to identify, classify, and control invasive

8

species for purposes of the program. In promulgating these rules, the department

9

shall consider the recommendations of the council under sub. (3) (a). As part of these

SECTION 2

1 rules, the department may establish procedures and requirements for issuing
 2 permits to control invasive species. The rules may not identify or classify gambusia
 3 affinis or gambusia holbrooki as invasive species.

History: 2001 a. 109 ss. 72t, 72xd; 2003 a. 33; 2005 a. 25, 160; 2007 a. 20; 2009 a. 55.

4 **SECTION 3.** 29.001 (76) (b) of the statutes is amended to read:

5 29.001 (76) (b) A freeze-out pond, or a naturally occurring artesian flowage,
 6 for which a permit is issued under s. 29.733 (2).

History: 1997 a. 248 ss. 39 to 47, 49 to 75, 84; 1999 a. 9; 2001 a. 56, 90, 109; 2005 a. 286, 288.

7 **SECTION 4.** 29.733 (1) (c) 3. of the statutes is created to read:

8 29.733 (1) (c) 3. A naturally occurring artesian flowage.

9 **SECTION 5.** 29.733 (2) (c) 1. of the statutes is renumbered 29.733 (2) (c) and
 10 amended to read:

11 29.733 (2) (c) ~~The department, subject~~ Subject to s. 29.024 (2g) and (2r), shall
 12 renew a permit issued under this subsection does not expire unless the department
 13 determines that there has been a substantial change in circumstances that is related
 14 to a determination made under par. (a) for the natural body of water or that is related
 15 to the application of the criteria promulgated under par. (f) to the body of water.

History: 1997 a. 27, 191, 237; 1997 a. 248 s. 581; Stats; 1997 s. 29.733; 1999 a. 32.

16 **SECTION 6.** 29.733 (2) (c) 2. of the statutes is repealed.

17 **SECTION 7.** 29.733 (2) (c) 3. of the statutes is repealed.

18 **SECTION 8.** 29.733 (2) (c) 4. of the statutes is repealed.

19 **SECTION 9.** 29.733 (2) (f) of the statutes is amended to read:

20 29.733 (2) (f) The department shall promulgate rules to establish the fees,
 21 criteria and procedures to be used in issuing permits under this subsection. The
 22 rules may not require the department, before issuing a permit under this subsection,

1 to hold a hearing or to provide notice to any person, other than the applicant, that
2 the department will proceed on an application for a permit without a hearing. ✓

3 History: 1997 a. 27, 191, 237; 1997 a. 248 s. 581; Stats; 1997 s. 29.733; 1999 a. 32.

3 SECTION 10. 30.40 (1) of the statutes is amended to read:

4 30.40 (1) "Agricultural use" means beekeeping; dairying; egg production;
5 feedlots; grazing; floriculture; aquaculture; ✓ raising of livestock; raising of poultry;
6 raising of fruits, nuts and berries; raising of grains, grass, mint and seed crops;
7 raising of vegetables; and sod farming.

8 History: 1989 a. 31; 1991 a. 76; 1993 a. 112; 1995 a. 211, 217; ✓ 1997 a. 35; 2005 a. 441; 2007 a. 11.

8 SECTION 11. 36.58 (7) of the statutes is created to read:

9 36.58 (7) CONFIDENTIALITY OF RECORDS RELATING TO AQUACULTURE. ✓ Any
10 information kept by the veterinary diagnostic laboratory that identifies the owners
11 of farm-raised fish, as defined in s. 95.001 (1) (ah), ✓ and that relates to testing results
12 or diagnosis is not subject to inspection or copying under s. 19.35 ✓ except as the
13 veterinary diagnostic laboratory determines is necessary to protect the public
14 health, safety, or welfare.

15 SECTION 12. 95.60 (2) (d) of the statutes is repealed. ✓

16 SECTION 13. 281.36 (4) (a) of the statutes is amended to read: ✓

17 281.36 (4) (a) Normal farming, aquaculture; ✓ silviculture, or ranching
18 activities.

19 History: 2001 a. 6; 2005 a. 253.

(END)

Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1772/P1dn
RNK&RCT:.....

date

Jed

This draft is in preliminary form. It includes⁵ language for items[✓] 2, 4, 5, 6, and 7 in the drafting instructions.

Some of your drafting instructions are intended to address problems identified in rules promulgated by the Department of Natural Resources (DNR).[✓] The only way that the legislature may address these problems in a bill is to treat the statutes that give DNR the authority to promulgate those rules. Consequently, the draft amends the relevant statutes rather than the rules.

One of your instructions included a request that the draft create a definition that "acknowledges that aquaculture or fish farming is water dependent"[?] I have assumed^{*} that the purpose of this request is to ease restrictions placed on fish farms that are located in wetlands. That objective would not necessarily be accomplished simply by inserting a definition into the statutes because the term "water dependent" is not used in the statutes relating to wetlands. Consequently, I have amended s.[✓]281.36 (4) (a) of the statutes to specifically exempt aquaculture activities from the requirement to obtain a water quality certification. This exemption only applies, however, to "nonfederal" wetlands. A water quality quality certification may still be required^{*} under federal law for activities conducted in "federal" wetlands.

As requested, the draft amends the definition of the term "agricultural use" in s.[✓] 30.40 (1), stats. to specifically include aquaculture. Please note that ss. 30.19[✓](1m) (b) (concerning permits required for the construction or dredging of artificial waterways) and[✓] 30.29 (3) (b) (concerning prohibitions on the operation of a motor vehicle in a navigable water) also use the term "agricultural use"[?] Do you want to amend these^{*} provisions with regard to aquaculture activities?

Your instructions included a request to modify DNR rules to exclude certain language from the definition of "invasive species" in ch. NR 40, Wis. Adm. Code.[✓] As explained above, the legislature does not amend administrative rules but may amend the statutes that authorize an agency to promulgate rules. Under s. 23.22 (1), stats., DNR is required to promulgate rules to identify, classify, and control invasive species. You have indicated that the definition of "invasive species" in NR 40 should not specify, as it currently does, that "for fish, invasive species includes all nonnative species"[?] For^{*} purposes of this draft, if you do not want DNR to designate all nonnative species as

(2)

“invasive species” please let me know how you would like to limit DNR’s statutory authority to designate certain fish as “invasive species” *

This draft authorizes an artesian flowage to be used as a fish farm. Accordingly, please review s. 29.733 (2) (a) and (b) in current law. It will be necessary to amend one of those provisions in the next version of the draft depending on whether you want to require DNR to make the determination specified in s. 29.733 (2) (a) before issuing a permit for a fish farm in an artesian flowage.

I have amended the definition of a “self-contained fish rearing facility” under s. 29.001 (76), stats. to include a naturally occurring artesian flowage. Please review the following statutes that use the term “self-contained fish rearing facility” to ensure that the new definition accomplishes your intent with regard to those provisions: ss. 29.088 (2g) (a), 29.421, 29.424 (2) (intro.) and (a), 29.601 (5) (b) 1., 29.705 (4) (b), and 29.736 (1) (c). *

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

✓
The federal Clean Water Act and the regulations under it are very complex. I need to do some additional research for the item related to effluent limitations guidelines for concentrated aquatic animal production facilities.

The item related to the agricultural retail aquaculture license is not clear to me. It appears to me that a bait shop that sells only farm-raised minnows is not required to have a DNR bait dealer license under current law. Is that incorrect? It appears to me that this new license would be issued by DATCP. Is that correct? Is the intent that persons who qualify for this retail license would not need a fish farm registration? I will need to know specifically what the requirements would be for the exemption from the fish farm license and what the requirements would be for the issuance of the new license (duration of license, fees, what sort of rules DATCP could promulgate). Also, the request indicates that the new kind of license will allow retail sales of live fish in farmer’s market or to pet stores for native farm-raised game fish. Please let me know how those sales are regulated now or, if those sales are prohibited, what the source of the prohibition is. *

* I also am also not certain that I understand the item related to farm-to-farm import permits. Is the idea that if a person imports fish from a fish farm in another state to a registered fish farm in this state, the person is not required to have an annual importation permit, but would be required to have a fish health certificate?

The last item in the drafting request is to add legislative findings to s. 93.46 (1m). This state’s drafting policy is not to include language in the statutes that does not have a legal effect, including legislative findings and statements of intent, except in very limited situations, which are not present in this case. There are a number of reasons

for this policy, including cases in which courts have used statements of this kind to interpret laws in ways that the legislature did not intend. If you wish to include language that has a legal effect, please let me know what the intended effect is.

Please contact us with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
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E-mail: becky.tradewell@legis.wisconsin.gov

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FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1772/P1dn
RNK&RCT:jld:md

June 7, 2011

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E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Lee, Crystal
Sent: Tuesday, July 26, 2011 9:46 AM
To: Tradewell, Becky
Cc: Kite, Robin
Subject: RE: Aquaculture Bill

Attachments: Aquaculture Answers to Draft 1 Note.pdf; Wisconsin Aquaculture 2011 Proposed Legislature Actions (2).doc

Becky,

I apologize for not getting back to you sooner. The constituent that requested this legislation had not gotten back to us with his suggestions for Draft 1 and Drafter's Note. I have attached a copy of the proposed changes to the draft and to answer the questions you posed in the Drafter's Note. These questions have been answered by the constituent that requested the legislation.

I know that Draft 1 includes the suggestions proposed by the constituent Numbers 2, 4, 5, 6, 7. Is there any way to address items 1, 3, 8, and 9 from the proposed legislative actions? I've attached the document.

They include:

1. Adopt 2004 US EPA effluent limitations, guidelines for Concentrated Aquatic Animal Production (CAAP) Aquaculture Facilities.
3. Create a new Agriculture Retail License for Bait shops and sale of gamefish retail
8. Import Permits ATCP 10.62-Eliminate farm to farm import permits, keep FHC
9. Aquaculture Development-expanding the language in 93.46 with additional language (included in the attachment, right at the end).

Thanks for your help with this!

Sincerely,

Crystal Lee

Legislative Assistant
Office of State Representative Howard Marklein
51st Assembly District
608-266-7502
Crystal.Lee@legis.wi.gov



Aquaculture
Answers to Draft 1...aquaculture 2011 Pro

Wisconsin

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1772/P1dn
RNK&RCT:jld:md

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This draft is in preliminary form. It includes language for items 2, 4, 5, 6, and 7 in the drafting instructions.

Some of your drafting instructions are intended to address problems identified in rules promulgated by the Department of Natural Resources (DNR). The only way that the legislature may address these problems in a bill is to treat the statutes that give DNR the authority to promulgate those rules. Consequently, the draft amends the relevant statutes rather than the rules.

One of your instructions included a request that the draft create a definition that "acknowledges that aquaculture or fish farming is water dependent." I have assumed that the purpose of this request is to ease restrictions placed on fish farms that are located in wetlands. That objective would not necessarily be accomplished simply by inserting a definition into the statutes because the term "water dependent" is not used in the statutes relating to wetlands. Consequently, I have amended s. 281.36 (4) (a) of the statutes to specifically exempt aquaculture activities from the requirement to obtain a water quality certification. This exemption only applies, however, to "nonfederal" wetlands. A water quality certification may still be required under federal law for activities conducted in "federal" wetlands.

As requested, the draft amends the definition of the term "agricultural use" in s. 30.40 (1), stats. to specifically include aquaculture. Please note that ss. 30.19 (1m) (b) (concerning permits required for the construction or dredging of artificial waterways) and 30.29 (3) (b) (concerning prohibitions on the operation of a motor vehicle in a navigable water) also use the term "agricultural use." Do you want to amend these provisions with regard to aquaculture activities? Do not need

Your instructions included a request to modify DNR rules to exclude certain language from the definition of "invasive species" in ch. NR 40, Wis. Adm. Code. As explained above, the legislature does not amend administrative rules but may amend the statutes that authorize an agency to promulgate rules. Under s. 23.22 (2), stats., DNR is required to promulgate rules to identify, classify, and control invasive species. You have indicated that the definition of "invasive species" in NR 40 should not specify, as it currently does, that "for fish, invasive species includes all nonnative species." For purposes of this draft, if you do not want DNR to designate all nonnative species as

Exclude agriculture including aquaculture

"invasive species" please let me know how you would like to limit DNR's statutory authority to designate certain fish as "invasive species." **DNR must demonstrate it's invasive**

This draft authorizes an artesian flowage to be used as a fish farm. Accordingly, please review s. 29.733 (2) (a) and (b) in current law. It will be necessary to amend one of those provisions in the next version of the draft depending on whether you want to require DNR to make the determination specified in s. 29.733 (2) (a) before issuing a permit for a fish farm in an artesian flowage.

I have amended the definition of a "self-contained fish rearing facility" under s. 29.001 (76), stats., to include a naturally occurring artesian flowage. Please review the following statutes that use the term "self-contained fish rearing facility" to ensure that the new definition accomplishes your intent with regard to those provisions: ss. 29.088 (2g) (a), 29.421, 29.424 (2) (intro.) and (a), 29.601 (5) (b) 1., 29.705 (4) (b), and 29.736 (1) (c).

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

The federal Clean Water Act and the regulations under it are very complex. I need to do some additional research for the item related to effluent limitations guidelines for concentrated aquatic animal production facilities.

They either need to have a DNR license or a FFR and record every address of sale. current law allows DNR to treat farm raised bait as

The item related to the agricultural retail aquaculture license is not clear to me. It appears to me that a bait shop that sells only farm-raised minnows is not required to have a DNR bait dealer license under current law. Is that incorrect? It appears to me that this new license would be issued by DATCP. Is that correct? Is the intent that persons who qualify for this retail license would not need a fish farm registration? I will need to know specifically what the requirements would be for the exemption from the fish farm license and what the requirements would be for the issuance of the new license (duration of license, fees, what sort of rules DATCP could promulgate). Also, the request indicates that the new kind of license will allow retail sales of live fish in farmers' market or to pet stores for native farm-raised game fish. Please let me know how those sales are regulated now or, if those sales are prohibited, what the source of the prohibition is. **Almost prohibited, no mechanism is in must record name, address of**

Yes and no

Yes
Yes

1 year
retail only

I also am also not certain that I understand the item related to farm-to-farm import permits. Is the idea that, if a person imports fish from a fish farm in another state to a registered fish farm in this state, the person is not required to have an annual importation permit, but would be required to have a fish health certificate? Yes

The last item in the drafting request is to add legislative findings to s. 93.46 (1m). This state's drafting policy is not to include language in the statutes that does not have a legal effect, including legislative findings and statements of intent, except in very limited situations, which are not present in this case. There are a number of reasons

for this policy, including cases in which courts have used statements of this kind to interpret laws in ways that the legislature did not intend. If you wish to include language that has a legal effect, please let me know what the intended effect is.

Please contact us with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Tradewell, Becky
Sent: Monday, August 15, 2011 3:33 PM
To: Lee, Crystal
Cc: Kite, Robin
Subject: RE: Aquaculture Bill

Crystal,

Robin Kite and I are working on the redraft and do have some questions and comments.

Here are Robin's questions and comments:

1. Certain of the notes provided by your constituent in response to my drafter's note require clarification. On the bottom of the first page of the drafter's note, there is a note to "exclude agriculture including aquaculture". I don't understand this note. From what should it be excluded?
2. On the second page of the drafter's note, in response to a question I raised about invasive species, your constituent indicates that DNR may not designate a nonnative fish species as invasive unless DNR demonstrates that it is invasive. In what manner, and to whom, must DNR make this demonstration?
3. As indicated in my drafter's note, please review of s. 29.773 (2) (a) and (b) in current law. Do you want an artesian flowage to meet the requirements in s. 29.733 (2) (a) before a permit under s. 29.773 may be issued?
4. I had asked that you review the statutes identified in the last paragraph of my drafter's note to determine if the new definition of a "self-contained fish rearing facility" is consistent with your intent as it is used in those statutes. Unless I hear otherwise, I will assume that the new definition in those statutes meets your intent.

Here are my questions and comments:

5. In my part of the drafter's note, I asked whether it is correct that a bait shop that sells only farm-raised minnows is not required to have a bait dealer license from DNR. It seems that no bait dealer license is required because of s. 29.509 (6), which states that the bait dealer section of the statutes does not apply to bait that is farm-raised fish. The response from your constituent, in the right margin, seems to be "Yes and no." In the left margin, there is what I believe to be a further response to this inquiry that reads: "They either need to have a DNR license or a FFR and record every address of sale. Current law allows DNR to treat farm raised bait as ..." [the response ends there]. It would be helpful to have the conclusion of that comment.
6. It would also help me to know whether DNR interprets current law to allow DNR to ever require a bait dealer license for a bait shop that sells only farm-raised bait. If your constituent believes that DNR ever requires a license for such a bait shop, may I contact DNR to ask them what law authorizes this? I would not tell them why I am asking, if that is your preference.
7. I need to know specifically what the proposed law for the retail aquaculture license should include, but do not yet have much information on that.

Should DATCP promulgate rules specifying a fee for the retail license?

Should DATCP be authorized to make any other rules for the retail license?

What parts, if any, of the current fish farm statute (s. 97.65) should apply to the retail license?

Perhaps it would help to ask the constituent to look at some of the other sections in chapter 97 that require licenses to see the types of provisions those sections include.

Please let us know if any of our questions or comments are unclear. We will continue to work on the items about which we do not have questions.

Sincerely,
Becky Tradewell

From: Lee, Crystal
Sent: Monday, August 15, 2011 11:44 AM
To: Tradewell, Becky
Subject: RE: Aquaculture Bill

Ms. Tradewell,

I hope you are doing well.

Rep. Marklein has requested a status of this legislation. How are we doing? Is there anything I can answer for you?

Thank you.

Sincerely,

Crystal Lee

Legislative Assistant
Office of State Representative Howard Marklein
51st Assembly District
608-266-7502
Crystal.Lee@legis.wi.gov

From: Tradewell, Becky
Sent: Wednesday, July 27, 2011 2:28 PM
To: Lee, Crystal
Cc: Kite, Robin
Subject: RE: Aquaculture Bill

Crystal,

The questions in the drafter's note primarily relate to the items that we have not yet drafted. Robin and I will review the constituent's answers to those questions and work on a redraft. We will let you know if any questions arise.

As I indicated in the Drafter's Note, there is a difficulty with item 9:

The last item in the drafting request is to add legislative findings to s. 93.46 (1m). This

state's drafting policy is not to include language in the statutes that does not have a legal effect, including legislative findings and statements of intent, except in very limited situations, which are not present in this case. There are a number of reasons for this policy, including cases in which courts have used statements of this kind to interpret laws in ways that the legislature did not intend. If you wish to include language that has a legal effect, please let me know what the intended effect is.

Please let me know if you have any questions.

Becky Tradewell
Managing Attorney
Legislative Reference Bureau
266-7290

From: Lee, Crystal
Sent: Tuesday, July 26, 2011 9:46 AM
To: Tradewell, Becky
Cc: Kite, Robin
Subject: RE: Aquaculture Bill

Becky,

I apologize for not getting back to you sooner. The constituent that requested this legislation had not gotten back to us with his suggestions for Draft 1 and Drafter's Note. I have attached a copy of the proposed changes to the draft and to answer the questions you posed in the Drafter's Note. These questions have been answered by the constituent that requested the legislation.

I know that Draft 1 includes the suggestions proposed by the constituent Numbers 2, 4, 5, 6, 7. Is there any way to address items 1, 3, 8, and 9 from the proposed legislative actions? I've attached the document.

They include:

1. Adopt 2004 US EPA effluent limitations, guidelines for Concentrated Aquatic Animal Production (CAAP) Aquaculture Facilities.
3. Create a new Agriculture Retail License for Bait shops and sale of gamefish retail
8. Import Permits ATCP 10.62-Eliminate farm to farm import permits, keep FHC
9. Aquaculture Development-expanding the language in 93.46 with additional language (included in the attachment, right at the end).

Thanks for your help with this!

Sincerely,

Crystal Lee

Legislative Assistant
Office of State Representative Howard Marklein
51st Assembly District
608-266-7502
Crystal.Lee@legis.wi.gov

Tradewell, Becky

From: Lee, Crystal
Sent: Wednesday, July 27, 2011 2:57 PM
To: Tradewell, Becky
Subject: RE: Aquaculture Bill

Thank you. I will discuss item #9 with the rep and the constituent.

Crystal Lee

Legislative Assistant
Office of State Representative Howard Marklein
51st Assembly District
608-266-7502
Crystal.Lee@legis.wi.gov

From: Tradewell, Becky
Sent: Wednesday, July 27, 2011 2:28 PM
To: Lee, Crystal
Cc: Kite, Robin
Subject: RE: Aquaculture Bill

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Becky Tradewell
Managing Attorney
Legislative Reference Bureau
266-7290

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8. Import Permits ATCP 10.62-Eliminate farm to farm import permits, keep FHC
9. Aquaculture Development-expanding the language in 93.46 with additional language (included in the attachment, right at the end).

Thanks for your help with this!

Sincerely,

Crystal Lee

Legislative Assistant

Office of State Representative Howard Marklein

51st Assembly District

608-266-7502

Crystal.Lee@legis.wi.gov

Kite, Robin

From: Lee, Crystal
Sent: Wednesday, October 26, 2011 4:23 PM
To: Kite, Robin; Tradewell, Becky
Subject: FW: Wisconsin Aquaculture Economic Data
Attachments: Pond denial June 8, 1999.pdf
A copy of the denial that David Gollon received.

Crystal Lee
Legislative Assistant
Office of State Representative Howard Marklein
51st Assembly District
608-266-7502
Crystal.Lee@legis.wi.gov

From: gollon bait [mailto:gollon@frontier.com]
Sent: Wednesday, October 26, 2011 3:22 PM
To: Lee, Crystal
Subject: Wisconsin Aquaculture Economic Data

Good afternoon Crystal

Attached you will see the pond denial we received on June 8, 1999.

Sorry I did not get this to you sooner.

If you have any questions please call or email.

Thank you,
Dave
608-935-2098

From: Lee, Crystal [mailto:Crystal.Lee@legis.wisconsin.gov]
Sent: Wednesday, October 26, 2011 11:35 AM
To: gollon bait
Subject: RE: Wisconsin Aquaculture Economic Data

David,

Do you have this information for them? If not, I think they've figured out a way to proceed without it.

Crystal:

At our meeting, I had understood your constituents to say that they would forward to me certain communications that they had received from DNR concerning the basis on which DNR has prohibited the operation of a fish farm in or near wetlands. I had been waiting for that information, but I think that I have determined a way to proceed with the redraft without that information. We are finishing work on the redraft now and we will get it to you as soon as possible.

Thanks.
Robin

10/27/2011

Crystal Lee

Legislative Assistant
Office of State Representative Howard Marklein
51st Assembly District
608-266-7502
Crystal.Lee@legis.wi.gov

From: gollon bait [mailto:gollon@frontier.com]
Sent: Thursday, October 20, 2011 11:52 AM
To: Lee, Crystal
Subject: Wisconsin Aquaculture Economic Data

Crystal

Any information on the aquaculture proposed legislation? Also, attached are some documents that explain the industry's need for the extension agents.

Thanks and let me know.

Dave Gollon

From: Johnson, Ron [mailto:Ron.Johnson@uwsp.edu]
Sent: Saturday, September 24, 2011 10:07 AM
To: Dave Gollon; Peter Fritsch
Subject: Wisconsin Aquaculture Economic Data

Dave and Peter;

Attached are several documents that we have produced on the economics of the Wisconsin Aquaculture Industry. I have included the longer versions and the condensed brochure along with a 2011 fact sheet that shows numbers of workshops and participants. Look these over and send what you feel is most helpful. If you have any questions – let me know.

Thanks

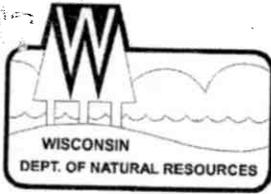
Ron

***Wisconsin Aquaculture has over 2300 fish farms and contributes \$21 million in economic activity
Wisconsin Cooperative Extension – Purpose, Vision, Values – Working to serve, engage and transform: lives
and communities throughout the state***

Ron Johnson, Aquaculture Outreach Specialist
UW - Extension
UWSP Northern Aquaculture Demonstration Facility
P O Box 165
Bayfield, Wi 54814

10/27/2011

715-779-3189
ron.johnson@uwsp.edu



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary
Ruthe E. Badger, Regional Director

South Central Region Headquarters
3911 Fish Hatchery Road
Fitchburg, Wisconsin 53711-5397
Telephone 608-275-3266
FAX 608-275-3338
TDD 608-275-3231

June 8, 1999

GLC Associates, Inc.
5117 HWY 191
Dodgeville, WI 53533

3-SC-99-1016GP
3-SC-99-1017GP

Dear Sirs:

Re: Application To Construct Three Ponds and Request For Approval of A Dam

We have reviewed your application for a permit to construct three ponds adjacent to a navigable, Unnamed Tributary of the Dodge Branch and plan approval to construct a dam across a non-navigable, unnamed Tributary, also of the Dodge Branch, Town of Dodgeville, Iowa County. We are sorry to inform you that we have denied your permit request.

We have determined that your proposed project would be detrimental to the public interest in the waters involved. A denial order is attached which includes our findings of fact listing the specific reasons for denial. Your rights to appeal this action are also defined.

Wisconsin law gives special protection to wetlands, particularly those associated with lakes and streams. Your project would convert wetland to dikes and deep water, resulting in harm to the functions that the wetlands perform. Streams in the Dodge Branch system would be harmed by loss of the wetlands and by altering water quality and flow patterns.

You should know that pond #2 identified on your plans could be constructed in a way that meets state standards. If you are interested in seeking approval for that pond, please contact me about obtaining the needed permit.

I am personally committed to working with you to try to find an alternative that meets your needs without causing negative impacts. I will be contacting you soon to keep the lines of communication open.

If you have any questions about this determination, please feel free to contact me.

Sincerely,

Robert D. Hansis
Grant-Platte/Sugar-Pecatonica Basin Leader
608-275-3304

Quality Natural Resources Management
Through Excellent Customer Service



BEFORE THE DEPARTMENT OF NATURAL RESOURCES

Application of GLC Associates, Inc. for a) 3-SC-99-1016GP
permit to construct three ponds and to obtain) 3-SC-99-1017GP
plan approval for a dam, in the Town of)
Dodgeville, Iowa County.)
)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The application of GLC Associates, Inc. pursuant to Sections 30.19(1) and 31.12, Wisconsin Statutes, for a permit to construct three fish ponds adjacent to an Unnamed Tributary of the Dodge Branch and plan approval to construct a dam across another Unnamed Tributary of the Dodge Branch in the SE¼ of Section 2, Township 5 North, Range 03 East, Town of Dodgeville, Iowa County, is hereby denied.

FINDINGS OF FACT

1. GLC Associates, Inc., 5117 HWY 191, Dodgeville, WI 53533, filed a revised application with the Department on April 23, 1999, under Sections 30.19 and 31.12, Wisconsin Statutes, for a permit/approval to construct three ponds adjacent to an Unnamed Tributary to Dodge Branch, in the SE¼ of Section 2, Township 5 North, Range 03 East, Iowa County. One of the ponds would be created by constructing a dam on a stream that feeds the Unnamed Tributary.
2. The project consists of constructing three ponds that would be within 500 feet of a navigable tributary to Dodge Branch. An earthen dam, labeled as dam #1 on Schmit Engineering and Surveying's plans dated 2-9-99, would be constructed on a non-navigable tributary that feeds the navigable stream. The two ponds, labeled as pond #1 and pond #2 on the Schmit plans, would be created by a combination dugout/dike construction method. The water supply for ponds #1 and #2 will be taken primarily from the pond surface of dam #1 and then be transferred through a piping system, by gravity flow, into ponds #1 and #2. Dam #1 with its impoundment, and pond #1, are located either partially, or entirely, in a sedge meadow wetland which is designated as mapping unit "G" on the plan. Pond #2 is not located in a wetland. The stated purpose of the project is fish farming.

The dam/pond and the two ponds have water level control structures and will discharge to surface waters. The dam/pond will discharge continually, while ponds #1 and #2 will discharge periodically to surface waters, depending on pond management needs. Water loss from the ponds through evaporation and transpiration is expected to be significant during low stream flow conditions. Water budget losses are expected to result in diminished stream flow downstream from the project during low flow conditions, unless flow is augmented.

The total water surface area of all three ponds is approximately 3.16 acres. The proposed maximum depth of each pond, including the impoundment created by dam #1, is 12 feet deep.

3. This proposal will destroy, by filling and covering with deep water, a total of three acres of sedge meadow wetland in mapping unit "G". Sedge meadow wetland communities are not common in southwest Wisconsin.

Department staff have evaluated the functional values of the wetlands in mapping unit "G" and have determined it has high value for floral diversity and a high value for groundwater discharge due to the presence of seeps and springs. The wetland has medium to high functional value for water quality protection and medium value for flood/stormwater attenuation and aesthetic/education functions.

Wetland mapping unit "G" currently supports a diverse native plant community dominated by Tussock sedge (*Carex stricta*). Although parts of this community had been mowed prior to the department's evaluation, much of the wetland is high quality, with many native forb species present. This wetland does not show significant degradation from past agricultural activities. Non-native species, such as Reed canary grass (*Phalaris arundinacea*) are not dominant and are only present on the edge of the wetland where past agricultural disturbance has occurred.

Southern sedge meadows, especially diverse high quality communities, are regionally scarce to rare in Wisconsin. The direct and indirect impacts to a wetland plant community type that is becoming increasingly scarce, sensitive to disturbance, and very difficult to restore constitutes a significant and cumulative adverse impact to the affected wetland and wetlands of this type.

The habitat associated with this sedge meadow plant community will be lost. Wildlife species associated with the wetland, within the riparian zone, will be lost or displaced as a result of the proposed project. According to the US Fish and Wildlife Service's Breeding Bird Survey, many sedge meadow bird species are declining statewide. Pond construction will eliminate habitat for invertebrates, small and large mammals, reptiles and invertebrates. The wetland is part of a travel corridor for wildlife species; their movements and use of the area will be disrupted due to pond construction. Human activity associated with the construction, maintenance and operation of the ponds will adversely impact species that are sensitive to human disturbance.

The wetland's ability to protect downstream water quality will be adversely affected by the proposed project. Wetland mapping unit "G" currently contributes to the maintenance of base flow in the receiving stream due to the presence of springs and seeps. The seepage and spring areas will be altered due to pond construction.

The project site has natural scenic beauty qualities due to the characteristics associated with the high quality sedge meadow/stream community.

The project will result in significant adverse impacts to wetland functional values in wetland mapping unit "G".

4. The non-navigable stream, on which the dam is proposed, currently has three dams constructed on it and supports six other ponds that receive their water from it. In addition, another seven ponds discharge to it. This stream receives discharges from a total of sixteen fish ponds. The two other ponds proposed in this application will discharge to another stream, the navigable Unnamed Tributary to the Dodge Branch. The applicant has not given assurance that more ponds will not be proposed in wetlands.
5. The navigable, Unnamed tributary to the Dodge Branch has a base flow of 2.1 to 2.7 cubic feet per second. The stream has a meandering channel with a riffle and pool complex fed by springs, seepage areas, and groundwater. Aquatic vegetation is present.

The stream supports a warm water forage fish community. The stream had a diverse forage fish population containing Stoneroller, Common shiner, Redbelly dace, Fathead minnow, Creek chub, White sucker, Brook stickleback, Fantail darter, and Mottled sculpin. The stream flows into the Dodge Branch which is classified as class II Brown trout water 2/3 of a mile downstream of where the tributary joins.

The applicant has not demonstrated that their proposal will not adversely impact water quality and aquatic resources in the surface waters involved.

6. The proposed project is not consistent with the legal standards found under 30.19 and 31.12, Wisconsin Statutes, for the following reasons:
 - a) The project will injure public rights or interests in the waters involved.
 - b) The project may cause environmental pollution as defined in Subsection 281.01(10), Wisconsin Statutes.
7. Water Quality Standards for Wetlands are not met. The project does not conform to the standards in Chapters NR102, NR103, and NR299, Wisconsin Administrative Code.
8. The proposed project is not wetland dependent. Fish farming, the stated purpose of the proposed project, is not of a nature that requires location in or adjacent to surface waters or wetlands to fulfill its basic purpose.
9. Department staff have reviewed the applicant's plans, pursuant to Sections 31.12 and 30.19, Wisconsin Statutes. In addition Department staff have reviewed the applicant's practicable alternatives analysis, pursuant to Chapters NR103 and NR299, Wisconsin Administrative Code.
10. The applicant has not demonstrated that there are no practicable alternatives that would avoid or substantially minimize predicted adverse environmental impacts to wetland "G". There are other fish ponds on this property that are supplied by runoff water or that are stream fed and do not result in significant adverse effects to wetland functional values. Other properties owned or controlled by Gollon Bait and Fish Farms have deep wells, runoff, or streams as their primary water sources for fish farming. They lease additional ponds for fish farming.
11. This project has been reviewed for its consistency in the administration of all applicable legal standards.

CONCLUSIONS OF LAW

1. The Department has authority under Section 1.11, 30.19 and 31.12, Wisconsin Statutes, and the foregoing Findings of Fact, to deny the permit requested.
2. Legal standards found in Chapters NR102, NR103 and NR299, Wisconsin Administrative Code, are not met.
3. The proposed project is detrimental to the public interests and therefore does not meet the requirements for approval set forth at Sections 30.19(4) and Section 31.12, Wisconsin Statutes. The proposed project is a type III action under Section NR150.03(8)(f)(2) and Section NR150.03(8)(f)(7)(d), Wisconsin Administrative Code. Type III actions do not require the preparation of an environmental impact assessment.
4. The Department of Natural Resources must consider the "cumulative effects" on public rights when considering an application for permit under Chapter 30 or 31, Wisconsin Statutes. *Hixon v PSC*, 32 Wis. 2d 608, 631-32, 146 N. W. 2d 577(1966). There would be substantial detrimental "cumulative effects" reasonably anticipated from approval of conversion of 3 acres of sedge meadow wetland to dikes and deep water. The project will result in significant adverse cumulative impacts on wetlands due to the loss of an intact and relatively high quality southern sedge meadow wetland of an increasingly rare plant community type. The actions of filling,

modification of the hydrology and land alteration are significant enough to result in irreversible impacts. Southern sedge meadows are a wetland type that, once disturbed, are very difficult to restore.

NOTICE OF APPEAL RIGHTS

If you believe that you have the right to challenge this decision, you should know that Wisconsin Statutes and Wisconsin Administrative Rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to Section 227.42, Wisconsin Statutes, you have 30 days after the decision is mailed or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. This notice is provided pursuant to Section 227.48(2), Wisconsin Statutes.

Dated at Fitchburg, Wisconsin, on June 8, 1999

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

by



Robert D. Hansis
Grant-Platte/Sugar-Pecatonica Basin Leader

Decision mailed 6/8/99

RDH

9/21 ^{Robin Kato and I} met with Rep. Marklein, his aide, 2 reps. of Fish Farms, Tom Jackson (Sen. Schultz), Dan Johnson (Sen. Kedzie), Ron Johnson (UW Extension) ^(Crystal)

- ✓ 1. Regarding Concentrated Aquatic Animal Production, the important thing is to exempt them from discharge fees.
2. - Robin's issue.
- ✓ 3. Rather than creating a new license, it would be fine to exempt retail sales from recording all sales.
Question is whether "retail" needs to be defined.
4. Robin's issue
5. "
6. "
7. OK
- ✓ 8. My proposed language OK

RLT

meeting w/ Rep. Marklein, Becky & constituents - 9/21
fish not "water dependent" under statute

treat like cranberry growers in regard to
water dependency issue

wetlands issue -

w/ in 500 feet of waterway } not relevant to
where is the 500 foot rule? } draft -

create retail license for farm fish including
bait

wants pet store to be able to sell native
fish without registering as a fish farm
also farmers market (?)

NR 40 - invasive species issues OK as in
draft - don't need to add anything

Cooperative agreements between DNR + fish farms -
agreements are too complicated

other agreements are simpler because they
are authorized by statute - not sure
what this statute is -

hold off on this issue for now

Re: artesian flowage - DNR must make
same determination as under 29.733(2)(a)