

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

Chapter NR 16

GAME FARMS AND, EXHIBITS AND FISH FARMS

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

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

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

NR 16.001 DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Threatened or endangered species or their habitat.

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

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

FOR: August BOARD MEETING

TO BE PRESENTED BY: Michael Staggs

SUMMARY: NR 16 subch. II was created based on the authority in s. 29.521, Stats. which was enacted in 1997, Wisconsin Act 27 and directed the Department to develop fees, criteria and procedures for issuing permits to use natural waters as fish farms. The rule applies to privately owned fish farms and State owned fish hatcheries. The types of water bodies that can be permitted are those that were licensed as private fish hatcheries by the Department in 1997 and freeze-out ponds. A freeze-out pond is a natural, self-contained body of water in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every five years as defined in Ch. 29.01 (3m), Stats.

Four public hearings were held on the proposed rule in May in Madison, West Bend, Wausau and Spooner. A total of 277 people participated, with 58 attending the hearings. The majority were opposed to the rule (251), six were in favor, and 20 were as interest may appear. There was some confusion on the part of the participants regarding the difference between the proposed rule and Ch. 29.521, Stats. which provides the authority to use natural waters as fish farms. Many people were opposed to the statute and on this basis, opposed the rule. The primary concern of fish farmers was the fee for new applications (\$500). The primary concerns of environmentalists were 1) limited public input on the development of the rule 2) the effect fish farming may have on amphibian populations which are declining worldwide 3) the need for a process to notify interested groups and individuals so they may comment on new permit applications 4) the use of toxicants/pesticides should be prohibited in natural water bodies 5) predator control on natural water bodies should be limited to non-lethal methods and 6) an environmental assessment (EA) should have been done by the Department. These and other general comments have been considered and revisions made to the rule to clarify the criteria and procedures used to issue these permits. Under NR 150.03(6) (a) 3.b the department is not required to prepare an EA for rules for which the department has limited discretion in formulating all important provisions of the rule.

RECOMMENDATION: That the Natural Resources Board approve Order FH-18-98 which creates the fees, criteria and procedures to use when permitting the use of natural waters as fish farms.

LIST OF ATTACHED MATERIALS:

- | | | | |
|--|---|---|----------|
| No <input type="checkbox"/> | Fiscal Estimate Required | Yes <input checked="" type="checkbox"/> | Attached |
| No <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes <input type="checkbox"/> | Attached |
| No <input type="checkbox"/> | Background Memo | Yes <input checked="" type="checkbox"/> | Attached |

APPROVED:

Michael D. Staggs
Bureau Director, Michael D. Staggs

8/5/98
Date

Susan E. Sylvester
Administrator, Susan E. Sylvester

8/5/98
Date

George E. Meyer
Secretary, George E. Meyer

8/6/98
Date

- | | | | | |
|-------------------------|-----------------------|------------------------------|-------------------------|------------------------------|
| cc: Judy Scullion- AD/5 | Susan Sylvester- AD/5 | George Meyer- AD/5 | Mike Staggs- FH/4 | Tom Hauge- WM/4 |
| Mel Vollbrecht-FH/6 | Dale Simon-FH/6 | Lois Stoerzer-FH/6 | Tim Andryk-LS/5 | Carol Turner-LS/5 |
| Jon Bergquist-WM/4 | Chuck Pils-ER/4 | Tom Solin-LE/5 | Al Shea-WT/2 | Sen. Dale Schultz |
| Rep. DuWayne Johnsrud | Hugo Kettula-Lewis | Bob Winkel-Elcho | Mac Graham-Star Prairie | David Gollon, Jr.-Dodgeville |
| Bob Ellingson-Madison | Caryl Terrell-Madison | WI Wetlands Assoc. | Madison Audubon Soc. | Dr. Bob Ehlenfeldt-DATCP |
| Lynn Jarzombek-DATCP | Sue Marcquenski-FH/4 | Bill Sherer-Boulder Junction | | |

CORRESPONDENCE/MEMORANDUM

DATE: July 16, 1998

FILE REF: 3660

TO: Natural Resources Board

FROM: George E. Meyer - AD/5 *George*

SUBJECT: Background memo for NR 16 subch. II - Permitting the use of natural waters as fish farms

Why the rule is being proposed

New statutory language concerning the use of natural waters as fish farms or part of fish farms (s. 29.521, Stats.) was enacted in 1997 Wisconsin Act 27. The Department was directed to work with the Wisconsin Aquaculture Industry Council and the Wisconsin Aquaculture Association to develop rules regarding the fees, criteria to use when issuing these permits and the procedures to process the permits.

Summary of the Proposed Rule

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

The rule provides a three tiered fee structure as follows:

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

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

The applicant must provide evidence that they own, lease, or otherwise control the land riparian to the water body and that the public does not have access to the water body, except

for allowing fishing for a fee. The applicant must also indicate why they believe the water body is a freeze-out pond. They must attach copies of any other permits required by state, local or federal authorities (Chapters 30 and 31, Army Corps of Engineers, etc.). The applicant will also indicate the water source and quantity used for the fish farm and whether there is a discharge to a water of the state.

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

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

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

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

The Department will renew permits subject to the provisions of s. 29.521 (2) (c), Stats., and will deny permits if the requirements in NR 16 have not been met.

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

Summary of Proposed Changes

Punctuation and grammatical changes identified by the legislative clearing house have been made. Based on comments received at public hearings, the following substantive changes to the proposed rule were made:

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

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

NR 16.74 (8) Providing a process to notify the public of new permit applications. "Upon receipt of a completed permit application, the department shall either schedule a hearing or provide notice stating that it will proceed on the application without a hearing if no substantive written objections to issuance of the permit is received within 30 days after publication or notice. The notice shall be provided to the clerk of each municipality in which the natural water is located and to any other person required by law to receive notice. The department may provide notice to other persons as it deems appropriate. The department will assume the cost of publishing the notice".

How does this proposal affect existing policy?

This rule provides a mechanism for achieving consistency when making determinations regarding the use of natural water bodies as fish farms or as part of fish farms.

Has the Board dealt with these issues before?

2

No.

Who will be impacted by the proposed rule? How?

Fish farmers will be affected by the proposed rule. In the past, department approval for the use of natural waters was implicit in issuing a private fish hatchery license. Under current law, the Department of Agriculture, Trade and Consumer Protection regulates the registration of fish farms but does not have the authority to regulate the use of natural water bodies as fish farms. Fish farmers will need to apply to the department for a permit to use natural waters as a fish farm or as part of a fish farm.

Small Business Analysis

Compliance and Reporting Requirements: At present, there are 40-50 natural water bodies that are being used as fish farms. In order to continue this use, the fish farmers will need to obtain a permit from the Department. The permittee must maintain fish barriers at inlets and outlets to the water body as required by s. 29.521 (2) (e), Stats. There is no reporting requirement for this permit.

Can the compliance and reporting requirements be made less stringent? The information requested of the applicant is minimal and will be used by the Department in combination with on-site visits to make a determination regarding adverse impacts to public or private rights in the natural body of water.

Compliance and Reporting Schedule: Fish farmers can apply for renewal permits up to 16 months before the permit expires. The Department will reissue or deny the permit within 3 months of the application date. This provides a 13 month window in which the fish farmer can make business decisions.

Can compliance and reporting requirements be consolidated or simplified? This is a 10 year permit which provides the fish farmer with considerable business opportunities and flexibility compared to the year to year licensing requirement under the old law s. 29.52, Stats.

Can small businesses be exempted from the requirements of the rule? No. Natural waters that are currently being used as fish farms do not need an initial determination by the Department. This saves the fish farmer \$450, since the Department already permitted the use under the 1997 private fish hatchery license. Department staff must make an initial determination for new ponds in order to insure public and private rights in the ponds are not adversely impacted. We estimate 1-10 new permit applications per year.

Initial Regulatory Flexibility Analysis: Fish farms are affected by this rule. There are no bookkeeping or reporting requirements for compliance. The only skill needed is to build barriers at the inlet/outlet of the water body.

Environmental Assessment

Under NR 150.03 (6) (a) 3.b the Department is not required to prepare an EA for rules for which the department has limited discretion in formulating all important provisions of the rule.

RESPONSE TO COMMENTS ON PROPOSED RULE NR 16, SUBCH. II

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GENERAL COMMENT/RESPONSE SECTION

Oral and written comments on proposed rule NR 16 , Subch. II were received from 277 persons.

Comments were received from the following: fish farmers, environmental organizations, wetland and aquatic ecologists, local government officials and the general public.

The oral and written comments were categorized into several main concerns. These concerns will be addressed first, followed by a specific comment/response summary of changes by section of rule.

Comment Summary: S. 29.521, Stats. was added late in the process of adopting the 1997-99 State Budget and was not subject to public input, notification or legislative debate.

Response: This comment is specific to the statute and not to the creation of this rule. The department did provide the opportunity for public review and input for this rule making process by conducting four public hearings across the state to solicit oral and written comments.

Comment Summary: DNR is supposed to have the initial responsibility of drafting rule language after which public hearings are held to solicit input and comments from all interested parties. NR 16 was developed with input exclusively from the aquaculture industry without the proper public hearing notice and opportunity for public input from other interested parties. Objections were raised as to the short time frame for preparation of the rule which did not allow adequate time for public entities to evaluate the proposed rule and prepare comments. There was not enough time to submit written comments between the last Public Hearing on May 20, 1998 and the comment deadline of May 22, 1998.

Response: Section 9137 (12m), Wis. Act 27 (1997), required the department to consult with the aquaculture industry advisory council appointed by the secretary of agriculture and with the Wisconsin Aquaculture Association in promulgating department rules as required under s. 29.521(2)(f), Stats., (NR 16). The law also required the department to accomplish this task within 6 months from the signing of the Budget Bill. The deadline imposed by the law gave the department little time to develop the present draft.

The department's rule making process generally takes 2 years from start to finish. Although time constraints prevented public involvement with the initial draft of the rule, the public was provided the opportunity to review and comment during the rule making process. A total of four public hearings were conducted across the state in addition to a supplemental written comment period.

Comment Summary: Wisconsin has historically held waters of the state in public trust for all of the public to enjoy, not for private exclusive use or gain. Fish farming is a private, for profit business and fish farmers should be willing to make a capital investment and dig artificial ponds

for use as fish farms. If natural waters are to be used, the fees should be increased substantially.

Response: We concur that waters of the state are held in trust by the state for all of the public to enjoy. However, there are provisions in the law that allow the use of those waters for private benefit or gain, provided the activity will not be detrimental to public interests or rights. The use of public waters for aquaculture purposes must undergo the same scrutiny as any other regulated activity in navigable waters such as the construction of a marina.

The proposed fees for the use of natural waters as fish farms are very consistent with the fees required for activities in navigable waters. All of which were based upon a workload analysis for the specific activity.

Comment Summary: Amphibians and reptiles are already declining in WI and this rule will allow for: 1) decimation of already stressed amphibian and reptile populations due to heavy fish predation, 2) exposure to toxic substances such as pesticides which have been implicated in amphibian deformities in the midwest, 3) destruction of aquatic food sources for shorebirds and waterfowl which will reduce nesting success, 4) destruction of wetland plants by herbicides used to facilitate fish seining, 5) damage to water quality from massive additions of nutrients in fish feed and chemical applications to control fish disease, 6) disease transmissions from non-native and exotic species to native populations.

Response: Any one of the six statements made in the comment would be good reason for the department to deny a permit for use of a natural water as a fish farm. We do not agree that the rule will allow for the decimation of Wisconsin's natural resources. The department's multi-disciplinary review of these projects will be more thorough than in the past which will ensure greater protection to Wisconsin's natural resources.

Testimony was provided in the hearings regarding the common use of pesticides and toxicants as a part of fish farming. However we are not of the opinion that such practice is common in Wisconsin. The department may condition the use of pesticides and toxicants in the natural waters permit and may deny the use of pesticides and toxicants in natural bodies of water used for fish farms if it has been determined that such use will be detrimental to the waters of the state.

Comment Summary: NR 16 will strengthen current laws governing use of ponds for fish farmers because 1) wildlife managers, fish managers and water management specialists will be scrutinizing use of these ponds for fish farms, before it was only the fish manager, 2) the 10 year permits will assure an increase in wildlife using these ponds and will strengthen wetland protection more than before, 3) amphibians will not decline because fish farms establish the food chain for higher life forms, 4) bait fish reared in these ponds will not harm amphibians since they are either too small to eat them or are not sought after as a food source and game fish are caught and stocked elsewhere long before they can consume amphibians. More amphibians are consumed by birds such as herons than fish, 5) pesticides are rarely used if the fish farms are

managed properly and techniques are properly carried out, 6) the definition of natural water bodies is too broad and ambiguous and DNR should be required to adhere to the rule and pay the fees.

Response: We concur that NR 16 will strengthen current laws governing the use of natural waters for aquaculture. We do not concur with the statements in items 2-5 because they are scientifically or factually incorrect. We do not concur that the definition of "natural water bodies" is too broad. The definition is consistent with existing statutes and administrative codes.

Comment Summary: Previously, fish farmers only dealt with one state agency - DNR. Now they are forced to deal with two, DNR and DATCP. The transfer of licensing to DATCP will only cause future problems for fish farmers. Fish farmers have been successful under the present regulations and there is no need for change. DATCP has never protected the natural resources for the benefit of public interest.

Response: This comment is in reference to the statute which is not the subject of this rule making process.

Comment Summary: An Environmental Impact Statement (EIS) or an Environmental Assessment (EA) should be required before DNR proceeds with NR 16.

Response: Under ch. NR 150.03 (6) (a) 3.b, the department is not required to prepare environmental assessments for rules for which the department has limited discretion in formulating all important provisions of the rule. Considering the new statute is more limiting on the use of public waters than the previous statute, we have determined that an EA or EIS is not warranted.

Comment Summary: How many fish farms will be permitted under NR 16? Will the Department develop a system to track permits authorized under NR 16?

Response: The Department has estimated that there are 40-50 natural waters currently being used as fish farms and that 1-10 new applications will be made in any one year. The Department will develop a system to track all fish farms permitted under NR 16.

Comment Summary: The extent of the effects on the natural resources of the state by permitting natural wetlands for use in aquaculture is unknown. How many wetlands are open to this use? What is the effect on the distribution of wetlands on the different regions statewide? How will changes in distribution of plant and wild animal habitat affect plant and wild animal populations?

Response: Scientists have been studying aquaculture and its associated impacts on wetlands for several years. Therefore we do have a good foundation for determining the impacts of aquaculture on natural resources. We are unable to determine the number and acres of unaltered wetlands in Wisconsin that would be suitable for aquaculture. Most wetlands with suitable water chemistry could be physically modified to support aquaculture. Distribution of wetlands throughout the state is a consideration for the department when analyzing wetland functions and values. Particularly the scarcity of wetlands in one region versus another. The department will also utilize various resource inventories such as the Natural Heritage inventory and the more recent publications on amphibian and reptile distributions in the state to assess the impact aquaculture may have on local/regional plant and animal populations.

Comment Summary: DNR is understaffed and current staff are already overworked. Will there be enough staff to adequately review these potential fish farm sites and issue permits under NR 16, especially in lieu of DATCP asking that 5 positions be transferred to them from DNR for their anticipated workload associated with fish farm registration. How can these sites be evaluated properly if only one site visit is made? If the site is studied in late summer or winter the presence of amphibians and macro-invertebrates may not be obvious. At least 3 visits should be made to each site at various times of the year to assure adequate review.

Response: Although the department is understaffed and overworked, we are committed to conducting thorough reviews for fish farms in natural waters. While some projects may not always be reviewed as extensively as they should be, we believe the majority of our determinations are sound scientific decisions that would be supported by additional information if it were to become available.

Although the original proposal was to transfer 5 positions to DATCP this has since changed. The DNR and DATCP will be conducting additional analysis to accurately determine the associated workload that was transferred to DATCP, at which time a decision will be made on the number of position(s) that may be transferred to DATCP.

The department has rarely had the opportunity to conduct extensive long term analysis on proposed projects regulated by the department. There are several instances where the department is required by law to make regulatory decisions within certain time frames, thus precluding the opportunity for long term analysis. At the request of those participating in this rule making process, the Department will be sharing completed natural waters permit applications with other persons it deems appropriate to obtain additional information for use when evaluating the impacts of fish farms on natural resources.

Comment Summary: The definition of freeze-out ponds needs to be interpreted to include fish that can and do exist in very low oxygen conditions. The definition of freeze-out pond is defined as a natural, self contained body of water (which has no inlet or outlet, except that it may have pipes equipped with barriers with which to put in or withdraw water... These pipes make these ponds no longer self contained and herbicides, pesticides, fish diseases, and non-native or exotic species could be transferred to other waters of the state.

Response: The definition of "freeze-out ponds" was established by law and this rule making process cannot alter that definition.

SPECIFIC COMMENT/RESPONSE SECTION BY SECTION OF RULE

The following is a section by section response to comments received.

Comment: The title of ch. NR 16 should be amended to reflect the inclusion of fish farms. This rule creates a subch. II in ch. NR 16. However, that chapter currently has no subchapters. Therefore a title for subch. I should be created and placed before s. NR 16.001. Subchapters should be numbered with roman numerals.

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

Chapter NR 16

GAME FARMS AND, EXHIBITS AND FISH FARMS

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

NR 16, SUBCHAPTER I

GAME FARMS AND EXHIBITS

All subchapters will be renumbered with roman numerals. Section 1. in the proposed rule will be renumbered as Section 4.

Comment: The section titles in the rule should be consistent. Some are all capital letters and some have only an initial capital letter. It is suggested that the latter be used.

Response: The section titles will be written in solid capital letters and underscored according to the Administrative Rules Procedures Manual.

NR 16.70 PURPOSE AND APPLICABILITY.

Comment: Is s. NR 16.70 (2) (b) intended to be part of par. (a)? If so, "(a)" should be deleted before the (intro.) and the three subunits should be pars. (a) to (c).

Response: This change has been made.

NR 16.71 DEFINITIONS.

Comment: "In this subchapter:" should be inserted after the title of s. NR 16.71. and after the current title of s. NR 16.001.

Response: This change has been made.

Comment: In s. NR 16.71 (6), "same" should be deleted.

Response: This change has been made.

NR 16.72 NATURAL BODY OF WATER PERMIT APPLICATION FEES.

Comment: In s. NR 16.72 (intro.), a colon should replace the period.

Response: This change has been made.

Comment: Instead of \$500 for a 10 year permit, a fee of \$50 per year with a 10 year agreement is suggested with the condition that the agreement could be terminated with no further payment or transferred to someone else if leasing arrangements change or the pond is not suitable for fish farming.

Response: Although this would lessen the financial burden upon proposed fish farms, this process would be more expensive to administer and would not adequately cover taxpayer costs associated with the permit review process.

Comment: The \$500 fee for a 10 year permit should be changed to \$100 with gradual increases over 5 years to \$500 to cover DNR expenditures if needed and justified.

Response: The \$500 fee for "new" fish farms was determined based upon a workload analysis associated with the permit process. The majority of the workload associated with this program occurs during the permitting process (before the permit is issued). If the fees were established as suggested in the comment, the fish farmer who paid the \$100 fee would be at a financial advantage over another fish farmer who applies for a permit 5 years later and has to pay \$500.

The department will establish a permit tracking program to document actual costs associated with this program. As we monitor the workload specific to this program we will be in a better position to justify changes to the fee structure.

Comment: 10 year permits should be changed to perpetual permits so that fish farms can be kept in families. Existing fish farms should be grandfathered in as long as they are in existence if there is no impact on public waters.

Response: The 10 year time period for these permits was established in s. 29.093 (8m), Stats. in 1997 Wisconsin Act 27, not by this proposed rule. All pre-existing fish hatcheries licensed by the department in 1997 were automatically grandfathered by statute (s. 29.521 (2) (b), Stats.) for a 10 year period. The use of a natural body of water for a fish farm is an activity that warrants periodic review of the resource due to changes in technology, science and sometimes law. We believe the 10 year permit period is a reasonable time period for a permit rather than

the previous year to year permit. The 10 year permit provides reasonable time and expectation for use of a natural body of water as a fish farm.

Comment: We question the validity of the actual costs submitted by DNR for fees. Currently, one person (fisheries) inspects freeze-out ponds. The price varies depending on mileage.

Response: Prior to 1998, one person (fish manager) inspected all waters being considered for use as fish farms. Please refer to fiscal note and workload analysis in the green sheet. The department will establish a permit tracking program to document actual costs associated with this program. As we monitor the workload specific to this program we will be in a better position to justify changes to the fee structure.

Comment: The \$500 fee is too low and should be changed to \$5000 to cover the cost for DNR to perform scientific analysis of these ponds prior to permitting and monitoring after permitting.

Response: The department will establish a permit tracking program to document actual costs associated with this program. As we monitor the workload specific to this program we will be in a better position to justify changes to the fee structure.

Comment: The fees should reflect total costs for fish farm permits. The DNR workload analysis shows a cost of \$552 for a 10 year permit but only proposes to charge \$500 which results in a 10% taxpayer subsidy for fish farmers using public resources for profit. There are no inflationary considerations built into the fee structure so this taxpayer subsidy will increase over the years.

Response: We hope our long term tracking and monitoring program will eventually provide the most accurate assessment of costs associated with the administration of this program at which time we will request authorization from the Natural Resources Board to adjust the fee structure if warranted.

Comment: The 10 year permit length is too long and there are no requirements for monitoring of amphibian, wildlife and invertebrate populations during the 10 year period to determine the affect of fish farming on these species.

Response: The 10 year time period for these permits was established in s. 29.093 (8m), Stats. in 1997 Wisconsin Act 27, not by this proposed rule. All pre-existing fish hatcheries licensed by the department in 1997 were automatically grandfathered by statute (s. 29.521 (2) (b), Stats.) for a 10 year period. We believe the 10 year permit period is a reasonable time period for a permit rather than the previous year to year permit. It is our intent to monitor amphibian, wildlife and invertebrate populations of those natural bodies of waters that are granted permits for fish farms. In order for the Department to issue a permit for use of a natural water body of water as a fish farm it has to make a determination that the issuance of a permit will not

have significant detrimental impacts to these resources to begin with. Therefore the freeze-out ponds that would likely be permitted in the future could be characterized as non-productive ecosystems for amphibian, wildlife and invertebrate populations.

Comment: The \$500 fee is too high and will discourage sound environmental decisions. DNR has been decentralized in Madison and there are water management specialists available in the regions to inspect these waters, not someone coming from Madison.

Response: Please refer to previous responses concerning permit fees. The review and approval of public waters for uses associated with aquaculture has always been a decentralized function of the department except license renewal. The permitting process will remain decentralized. Central office staff will be involved in some of the newer project proposals to insure program consistency and to evaluate the need for any changes in our administrative process.

NR 16.73 APPLICANT PERMIT PROCEDURES FOR USE OF NATURAL BODIES OF WATER AS FISH FARMS.

Comment: In s. NR 16.73 (3) (intro.), "all of" should be inserted after "verifying".

Response: This change has been made.

Comment: Will Ch 30, 31 and water quality standards established in NR 103 be applied to the permitting of natural waters as fish farms under NR 16?

Response: All department determinations affecting wetlands must comply with the requirements of NR 103, including NR 16. Ch. NR 103.06 (1)(a) states that permits, reviews, approvals and other actions under chs. 23 and 26 to 31 Stats. are subject to the requirements of ch. NR 103.

NR 16.74 DEPARTMENT DETERMINATIONS.

Comment: NR 16 needs to clearly reference water quality certification under NR 103 for conversion of wetlands.

Response: We have clarified the need for fish farms to comply with NR 103 under s. NR 16.74 (1)(c).

Comment: In the second sentence of s. NR 16.74 (1), "many" should be deleted. Also, in that section, what is the meaning of "Wetland functional values"?

Response: The word "many" was deleted. NR 16.74 (1) (c), "Wetland functional values." was changed to "Water quality related functional values or uses of wetlands identified in

s. NR 103.03."

NR 16.74 (1) (d) "Water Quality." was changed to "Surface water quality standards and minimum water quantity requirements."

Comment: In s. NR 16.74 (1) (e), the material in parentheses should be deleted or incorporated in a "note", or delete the parentheses and insert "including" before "fishing".

Response: The parentheses were deleted and the word "including" was inserted before "fishing".

Comment: In s. NR 16.74 (2), the first "that" should be replaced by "if".

Response: This change has been made.

Comment: In s. NR 16.74 (4), "provided" should be replaced by "if."

Response: This change has been made.

Comment: NR 16 needs to require a description of any predator management techniques. While live trapping for removal could be allowed, NR 16 should clearly prohibit the killing, maiming or poisoning of otter, mink, herons and other piscivorous animals.

Response: As a general condition of a permit authorizing the use of a natural body of water as a fish farm we may require that all predator management techniques be non-lethal.

Comment: The ecosystems found in freeze-out ponds have the potential to contain rare and threatened species. The rule should be changed to require that the Wisconsin Natural Heritage Inventory program be consulted and the DNR Bureau of Endangered Resources be required to visit the waterbody and approve any permit for a private aquaculture operation in a public body of water.

Response: As part of our current water regulatory permit process we review the natural heritage inventory for the presence or absence of unique resources and areas of special natural resource interest. We will provide copies of applications for permits to use natural bodies of water as fish farms to department staff that administer our threatened and endangered species programs for their review and input.

Comment: NR 16.74 must include adequate public notice to interested parties of any permit applications for fish ponds or must include mandatory public hearings for any permit issued

under this rule. This should be modelled after the notification process in the Incidental Take rule (NR 27.07).

Response: We have revised s. NR 16.74 (7) which retains the departments ability to hold a public hearing, at which time the department would publish a Class I public notice using the procedures in s. 30.02, Stats. If written objections are considered to be substantive, the department will either deny the application or conduct a public hearing on the matter.

Comment: NR 16.74 needs to be expanded to address more environmental assessment needs and include an assessment of practicable alternatives prior to a permit being issued.

Response: The current decision making process for this rule adequately considers the environmental impacts and alternatives assessment before approving a permit for a fish farm.

Comment: NR 16.74 (6) uses the words "may deny...". The word may suggests permissiveness. Does this mean that if the permit does not meet some or all of the requirements, the DNR will still grant the permit? This should be changed to "The department will deny a permit under this subchapter of the permit request does not conform to all of the provisions.

Response: NR 16.74 (6) was changed to "The department shall deny a permit for use of a natural body of water as a fish farm or as part of a fish farm if all requirements of NR 16.73 (1), (3) (a), (b), (d), (e) and (f) and NR 16.74 (1) (a), (b), (c), (d), (e), (2), (3) and (4) have not been met".

Comment: What does the term "substantial public interest" mean?

Response: The rule identifies those activities that are associated with the public interest, therefore our response is specific to the term "substantial". Webster's New World Dictionary defines the term substantial as: 1. of or having substance 2. real; actual; true; not imaginary 3. strong; solid; firm; stout 4. considerable; ample; large 5. of considerable worth or value; important 6. having property of possessions; wealthy 7. with regard to essential elements; in substance. To the best of our knowledge this term has not been defined in an administrative rule or law for that matter even though it is a frequently used term in law.

The term is defined on a case by case basis depending on the facts of a given situation. Therefore the term substantial is relative to the specific fact situation in question.

For example, activities eliminating the last remaining habitat of an endangered species may be construed as a substantial impact regardless of the size of the area. The fact that the species, even though only two in number, is on the verge of extirpation is the concern. Conversely, a clear cut eliminating 4 acres of red pine could affect a greater number of species within that area, but if the clear-cut is located within a 400 acre red pine plantation, we would likely view

that fact situation as not having a substantial impact. The fact situations dictate what is considered substantial or not.

NR 16.75 ENFORCEMENT.

Comment: NR 16.75 does not include any provisions or budget for monitoring of fish farms to determine if a permit should be suspended or revoked. A 90 day suspension or revocation does not address the problems created by failure of barriers and since this provision is in the statute, not NR 16, NR 16.75 should include guidance to address this issue.

Response: We concur that there were no budget provisions in the new law for the department to monitor fish farms to determine whether or not a permit should be suspended or revoked. However we purposely added this section to the rule to advise the regulated public that enforcement provisions remained with the passage of the new law. Compliance monitoring and enforcement of this code will remain a workload problem until the department is adequately staffed. The other alternative would be to establish a self monitoring program for the industry, similar to the self- monitoring requirements contained in waste water discharge permits.

Comment: NR 16 needs to include requirements for compliance monitoring and schedule immediate repair of fish barriers and other details to ensure adequate protection of the public's interest in waters of the state. Herbicides, pesticides, fish diseases, and non-native or exotic species could be transferred to other waters of the state. Who will be monitoring for accidental introduction of the above?

Response: The department has the authority by law to require the immediate repair of fish barriers. Furthermore it is in the best interest of the fish farm to maintain fish barriers to prevent lost revenue from farm raised fish that might escape to a public water. There are laws in place that currently regulate the introduction of non-native or exotic species. The state's ability to effectively regulate these activities are directly associated with having an adequate work force and budget, neither of which the Department has in place.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

We accepted all of the comments made by the Legislative Council regarding the creation of NR 16, subch II (Clearinghouse Rule 98-055). Our responses are reflected in the "Specific Comment/Response Section contained in this rule package.

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 N(R10/94)

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

Fiscal Effect

State: No State Fiscal Effect

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

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

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

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive 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 Ch. 20 Appropriations

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

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

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

Assumptions Used in Arriving at Fiscal Estimate

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

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

Long-Range Fiscal Implications
None.

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Agency/Prepared by: (Name & Phone No.)
Joe Polasek, 266-2794

Authorized Signature/Telephone No.
Joe Polasek 266-2794

Date
8-5-98

FISCAL ESTIMATE WORKSHEET

1997 Session

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

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. NR 16	Amendment No.
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Subject
Rule to permit the use of natural waters as fish farms

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

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$ 2300 - 6400	\$
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs	300 - 1600	
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	\$ 2,600 - 8,000	\$ 0

B. State Costs by Source of Funds	Increased Costs		Decreased Costs	
GPR	\$		\$	
FED				
PRO/PRS		2600 - 8000		
SEG/SEG-S				

III. State Revenues: Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.		Decreased Rev.	
GPR Taxes	\$		\$	
GPR Earned				
FED				
PRO/PRS		2600 - 800		
SEG/SEG-S				
TOTAL State Revenues	\$	2,600 - 8,000	\$	0

NET ANNUALIZED FISCAL IMPACT

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

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Agency/Prepared by: (Name & Phone No.) Joe Polasek, 266-2794	Authorized Signature/Telephone No. <i>Joe Polasek</i> 266-2794	Date 8-5-98
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ATTACHMENT 1

PERMIT FEES FOR USE OF NATURAL WATERBODIES AS FISH FARMS

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

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

Fee structures have remained the same for 30 years.

2. Previous annual renewal fees

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

3. Previous total fees over a 10 year period.

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

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

4. Proposed renewal fee: \$50.00

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

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

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

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

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

6. Proposed transfer fee: \$100.00

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

SECTION 1120vm. 29.513 (5) of the statutes is created to read:

29.513 (5) A person who is using a navigable lake that is a freeze-out pond as a fish farm, or as part of a fish farm, is exempt from obtaining a permit under this section.

SECTION 1120vr. 29.514 of the statutes is created to read:

29.514 Private fishing preserves. (1) A single person may register with the department a natural, navigable, self-contained body of water as a private fishing preserve if all of the following apply:

(a) All of the use and occupancy rights in the land that is riparian to the body of water are owned or leased by the registrant.

(b) The registrant and any owner of the riparian land do not provide 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.

(2) No lake association, corporation or other association that is formed to establish a private fishing preserve is eligible to register under this section.

(3) A registration under this section is valid for one year.

(4) A person who is fishing in a private fishing preserve is exempt from having any sport fishing approval issued under this chapter. No person may sell or trade fish that are caught in a private fishing preserve. No person may charge a fee for fishing in a private fishing preserve or a fee for an activity that includes the privilege of fishing in a private fishing preserve.

SECTION 1120xm. 29.52 of the statutes is repealed.

SECTION 1124d. 29.521 of the statutes is created to read:

29.521 Natural waters used in fish farms. (1) No person may use a natural body of water as a fish farm or as part of a fish farm unless all of the following apply:

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

(b) None of the owners of the fish farm or of the riparian land provides access to the body of water to the public by means of an easement or 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 that is barrier equipped.

(d) A permit for the body of water has been issued under sub. (2).

(2) (a) The department shall issue a permit under this subsection for a natural body of water specified under sub. (1) (c) 1. if the department determines that no substantial public interest exists in the body of water and that no public or private rights in the body of water will be damaged.

(b) Notwithstanding par. (a), for a freeze-out pond that is licensed as a private fish hatchery, or as part of a private fish hatchery, under s. 29.52, 1995 stats., on the effective date of this paragraph [revisor inserts date], or for a natural body of water as described under sub. (1) (c) 2., the department shall issue an initial permit without making the determination under par. (a).

29.521 cont.

(c) 1. The department shall renew a permit issued under this subsection unless the department determines that there has been a substantial change in circumstances that is related to a determination made under par. (a) for the natural body of water or that is related to the application of the criteria promulgated under par. (f) to the body of water.

2. A person may apply for a renewal of a permit issued under this subsection within the 16 months before the permit expires.

3. Except as provided in subd. 4., the department shall renew the permit, or deny the renewal, within 3 months after the date on which the department receives the application for the renewal.

4. The department may delay the renewal or denial of the renewal under subd. 3. until the May 31 immediately following the date on which the department receives the renewal application if ice conditions prevent the department from inspecting the body of water for purposes of renewal within a reasonable time after receiving the application.

(d) If the department denies a permit under par. (a), (b) or (c), the department shall issue written findings supporting the reason for the denial that are based on the criteria promulgated under par. (f).

(e) The department may suspend a permit for a body of water specified in sub. (1) (c) 2. for 90 days if the department finds that the permit holder has failed to adequately maintain the fish barriers and may revoke the permit if the department determines that the failure to adequately maintain the barriers has not been corrected within the 90-day period.

(f) The department shall promulgate rules to establish the fees, criteria and procedures to be used in issuing permits under this subsection.

SECTION 1124dm. 29.525 of the statutes is created to read:

29.525 Importation of fish. (1) No person may bring into this state any fish, or fish eggs, of a species that is not native to this state for the purpose of introduction into the waters of the state, as defined in s. 281.01 (18), of use as bait or of rearing in a fish farm without having a permit issued by the department.

(2) A person applying for a permit under this section shall submit a written application to the department.

(3) Subsections (1) and (2) do not apply to the importation of fish by the department.

(4) For the purpose of issuing permits under this section, the department may not require that any testing, inspection or investigation be performed concerning the health of the fish.

SECTION 1124e. 29.53 of the statutes is created to read:

29.53 Stocking of fish. (1) In this section:

(a) "Fish" includes fish eggs.

(b) "Qualified inspector" means a veterinarian licensed under ch. 453 or a person who is qualified to issue fish health certificates under s. 95.60 (4s) (c).

(c) "Waters of the state" does not include self-contained fish rearing facilities or preexisting fish rearing facilities that are barrier equipped and that are artificial bodies of water.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

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

FH-18-98

Analysis Prepared by the Department of Natural Resources

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

Statutes interpreted: s. 29.521, Stats.

Summary of the Proposed Rule

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

The rule provides a three tiered fee structure as follows:

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

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

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

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

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

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

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

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

After receiving a permit application, the Department shall schedule a public hearing or provide notice that it will proceed without a public hearing if no substantive written objections are received within 30 days of publication of the notice.

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

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

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

Chapter NR 16

GAME FARMS AND, EXHIBITS AND FISH FARMS

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

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

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

NR 16.001 DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

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

(3) "Natural body of water" means any spring, stream, pond, lake or wetland that was historically present in a natural state but may have been physically altered over time and has not

been permitted as an artificial and private water body under ch. 30 or 31, Stats.

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

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

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

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

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

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

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

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

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

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

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

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

(b) None of the owners of the fish farm or of the riparian lands provides access to the body of water to the public by means of an easement or other right-of way or by means of a

business open to the public, except that the owners of the fish farm may allow fishing by the public for a fee.

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

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

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

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

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

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

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

(b) Threatened or endangered species or their habitat.

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

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

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

(2) Fish farms may not introduce or propagate any non-native fish species if the department has determined that having the fish in that particular self-contained fish rearing facility or preexisting fish rearing facility will pose a risk of being detrimental to the waters of the state.

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

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

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

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

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

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

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on _____.

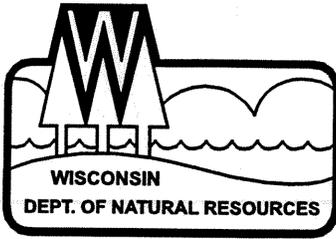
The rules contained herein shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2) (intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

July 27, 1998

IN REPLY REFER TO: NR 16

All Hearing Participants

SUBJECT: EXPLANATION OF STATUTE REVISIONS

Dear Friend,

During the four public hearings conducted by the department and the receipt of subsequent written testimony, the department received several comments specific to the change in statutes that prompted this rule making process.

Because there were substantial questions on the difference between the old statute and the new statute approved in the budget bill, the department would like to take this opportunity to clarify the statutes for the benefit of all who have taken time to participate in the public hearings and contribute to the development of this rule.

The most common comment expressed by the public was "the law is less restrictive than what was allowed in the past thus providing less protection to the natural resources of the State".

The old statute specific to the use of public waters for private fish hatcheries (s. 29.52 (3) (a) allowed the department to issue fish hatchery licenses for any navigable stream, lake, pond or spring where after investigation and review the department determined that no public or private rights therein would be damaged.

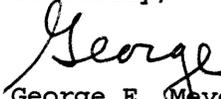
Section 29.521, Stats., the 1997 law that repealed and replaced the old private fish hatchery licensing program, grandfathered all previously approved hatcheries for a period of 10 years and established language that limited the scope of waters that could be eligible for a newly licensed fish farm. Under this statute, new fish farms permitted by the department could only be located in a freeze-out pond. Freeze-out ponds are defined in s. 29.01 (3m) "Freeze-out pond" means a natural self-contained body of water in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every 5 years.

This is the only type of natural water body that can be permitted as a fish farm by the department. Remember previously the department could approve licenses for "any navigable stream, lake, pond or spring. The new law, s. 29.521, Stats., is clearly more restrictive than in the past.

Attached is a copy of a legal analysis that I hope will further clarify the new law for you.

Thank you again for your comments and involvement in assisting us with the development of this rule.

Sincerely,


George E. Meyer
Secretary



Quality Natural Resources Management
Through Excellent Customer Service



DATE: June 2, 1998

FILE REF: 8300

TO: George Meyer - AD/5

FROM: Tim Andryk - LC/5 *Ta*

(608) 264-9228

SUBJECT: Allowing Use of Natural Waters as Fish Farms

You asked me to contrast the former requirements for allowing aquaculture use of freeze-out ponds versus requirements of the new law. The following summarizes this information.

Prior to 1998

Sec. 29.52(3)(a), Stats., allowed the Department to license navigable waters as a private fish hatchery if the Department finds that "no substantial public interest exists in such navigable stream, lake, pond or spring and that public or private rights therein will not be damaged."

The Department did not apply any consistent standards as to what constitutes "substantial public interest", and navigable streams, lakes, and ponds were licensed as private fish hatcheries, most of them licensed before the 1980's. In the 1990's we tried to limit (through Lee Kern's policy) the licensing of navigable waters to only freeze-out ponds that were small enough to allow a DNR finding of "no substantial public interest".

After Passage of 1997 Budget Bill

The state budget bill signed Oct. 1997, restricted the permitting of new private fish farms on natural waters to freeze-out ponds, although all existing fish farms licensed on other natural waters were grandfathered. Sec. 29.521, Stats. Consequently, the new law restricted the eligible natural waters from streams, lakes, ponds and springs to just freeze-out ponds. In addition, the Department still needs to find no substantial public interest exists in the freeze-out pond and that public or private rights therein will not be damaged.

Our proposed rule on permitting fish farms in natural waters states that when determining if substantial public interest and rights exist "among the many factors considered, the following are indicative of public rights and interests including but not limited to:

- (a) Plant and wild animal habitat or plant and wild animal populations.
- (b) Threatened or endangered species or their habitat.
- (c) Wetland functional values.
- (d) Water quality.

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

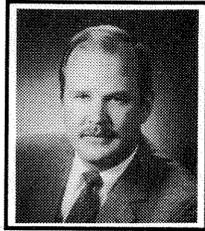
In addition, the proposed rule does not apply to waters declared "artificial and private" by the Department through a ch. 30 or 31, Stats., permit. If a fish farmer receives such a determination from the Department, the fish farmer may register the body of water as a fish farm without a DNR fish farm permit.

Sue Marcquenski - FH/4 and Dale Simon - FH/6 may be adding more to the above list (for NRB adoption) in response to approximately 200 comments received (during the rule comment period) in opposition to permitting natural waters as fish farms.

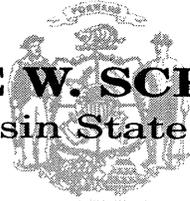
Please let us know if you have questions or wish to discuss further.

cc: Mike Staggs - FH/4
Sue Marcquenski - FH/4
Dale Simon - FH/4
Jim Kurtz - LS/5
Paul Heinen - AD/5

*The new law is more
restrictive than the old.*



DALE W. SCHULTZ
Wisconsin State Senator



REP. OTT
RM 318 N

September 22, 1998

Representative Alvin Ott, Chairman
and Members
Assembly Agriculture Committee
Room 318 North
State Capitol
Madison, WI

RE: Clearinghouse Rule # 98-055
Use of Natural Waters as Fish Farms

Dear Representative Ott,

I write regarding the above listed rule that has been referred to the Assembly Agriculture Committee.

Chapter 29.521 enacted in 1997 under Wisconsin Act 27 directed the Department of Natural Resources **in conjunction with the private aquaculture industry and the legislature**, to develop fees, and procedures for issuing permits to use natural waters as fish farms.

(It should be noted that certain natural waters have historically been used for this purpose without any detrimental effect for centuries.)

This rule is the result of that order.

During the formulation of this rule and continuing to the public hearings, the private aquaculture industry and the legislative authors of the language continually expressed concern over a number of rule changes being made by the Department of Natural Resources. Those concerns were ignored with no attempt to reach a compromise with the others who were to be included in the rule making process.

They included:

Excessive fees;

Historically a permit for use of a natural pond for a 1 year period was \$50.00 to a Class A Hatchery. This rule raises the fee to \$500.00 for a 10 year permit. It is the contention of the industry and the authors that the department does not need to inspect or conduct scientific surveys of these waters more than once or twice during the permit life. Historically a natural water was permitted, often without any survey or field inspection. It was done on the departments historical knowledge of the body of water. There is no indication that the ecology of the body of water changes significantly over the length of the permit life. For the department to change its policy and require that numerous personal on an annual basis inspect these waters

Member: Joint Committee on Finance

seems to be an excessive and an imprudent use of state resources. We ask the committee to review the departments justification for these excessive fee increases and consider a more appropriate fee schedule such as follows.

- The first time a permit is issued for the use of a pond as a fish farm: \$250.00
- The renewal of a permit: \$50.00
- The transfer of a permit \$100.00

Notice requirements;

The draft rule that was presented to the Natural Resources Board on August 26th, 1998 included a notice requirement provision which had been agreed upon by all parties involved. The language required that such notices be provided to the clerk of each municipality in which the natural water is located and to any other person required by law to receive notice. Before approving the rule for submission to the Legislature for review, the Natural Resource Board amended that provision to require that the notices be sent to the same list of people to whom notice are sent when the DNR receives an application for a permit for the **incidental taking of an endangered species.** This language places an undo burden and excessive cost on the department and the industry. There is no evidence that any body of water historically permitted for the production of any species of fish by the Department of Natural Resources or the private industry has ever caused any damage to any endangered species. There appears to be no documentation that the public has previously expressed concerns about this use of the waters of the state, or that any such use has caused damage to any species, or the environment. In fact prior to this legislation there was no notification requirement when issuing a permit. To permit this amendment will increase notification costs, lengthen the permitting process and possibly effect the use of appropriate waters for the necessary production of game fish and bait fish which support the outstanding fish resources of the state that our anglers have come to expect.

I have attached a copy of NR 27.07 the amended language for your consideration:

Applicability of rule to DNR Fish Rearing Activity;

The proposed rule applies to state-owned hatcheries in the same manner that applies to private fish farms. While this language ensure that the use of natural ponds by state fish hatcheries will be subject to the same review and standards as private fish farms it does not seem to be the best way to accomplish this result. First of all, it also applies the application fee to the state facilities, which makes little sense since the fee would go from the DNR to the DNR. Furthermore, DNR staff indicate that they would subject themselves to a "self-permitting process that would not involve the formal preparation of a permit application, while a strict reading of the rule language would require the DNR to submit a permit application to itself. To make the rule more rational and ot accomplish what the DNR staff indicate is their intent, the treatment of state fish hatcheries should be modified. The applicability provisions of the rule should precisely identify those portions of subch. II or ch. 16, Wis. Adm. Code, that apply to state hatcheries. In addition, separate provisions should be created that indicate the process that will be followed in reviewing proposals for a state hatchery to use a natural pond to allow public participation in the process and ensure accountability of the DNR in its self-regulation. One option for such a process would be as follows:

- The Department would issue a notice of intent to use a natural pond for a hatchery, including a written analysis of that proposal similar to the analysis that would be required of a private permit applicant.
- The Department would be required to distributed the notice for comments in the same manner as the rule requires of private permit applications, and that the DNR hold a public hearing on the proposal if there is any substantive objection raise to it.
- Provide that the requirements apply to the initial proposal of the DNR to convert a pond to use for fish raring and to the review of the continued use every 10 years thereafter, except that the DNR may continue to use ponds that were already in use by the DNR on January 1, 1998 without conducting an initial review.
- The fee requirement for the department be waived.

I sincerely appreciate the committees review of these concerns. The original intent of this legislation was to improve the aquaculture industries ability to grow and provide jobs, while improving the health inspection and permitting process. This rule in its current form is excessive and an undue burden on the private industry and the Department. We ask that the committee direct the department to consider the above modifications. If the department is not willing to cooperate with such modifications, we feel that the provisions for fees, and public notification, should not be adopted.

With kindest regards

A handwritten signature in cursive script, appearing to read "Dale", is written over the typed name below.

Dale W. Schultz
17th Senate District

after the above dates, no permit is required if the wild animals were acquired before the effective date of their addition to the list.

(b) *Proof.* Any person claiming an exemption under par. (a) must offer evidence acceptable to the department to show that the species was acquired prior to the effective date.

(c) *Marking.* All wild animals on the Wisconsin endangered and threatened species lists which are possessed, transported or sold pursuant to par. (a) shall be permanently marked, tagged or otherwise identified with a certificate and seal by or at the direction of the department to show the specimen or parts thereof is legally possessed. A certificate and seal may only be transferred incidental to the transfer of the specimen for which the certificate and seal were issued.

(3) **RECORDS.** (a) *Procedures.* Each person who possesses any live animal listed as a Wisconsin endangered or threatened species in s. NR 27.03 (2) or (3) shall keep a complete and accurate record in the English language of any action affecting the number of said wild animals that person possesses. This record shall be on forms provided by the department, and shall include a receipt book for purchases, births, or any action increasing the number of individuals in possession; and a separate book for sales, gifts, deaths or any action whereby the number of individuals in possession decreases. These receipts shall be completed immediately following the action or transaction affecting populations in possession, and one copy shall be mailed to the department at that time.

(b) *Inspection.* The permittee shall make all permitted wild plants and wild animals in their possession and all applicable records available for inspection by the department at any time.

(4) **NON-WISCONSIN SPECIMENS.** (a) *Animals.* Permits are not required for the possession, processing, sale or transportation of carcasses, skins, hides and furs or parts thereof from wild animals on the Wisconsin endangered or threatened species lists if each item is marked with a permanent locked seal attached by or with the authority of the government of the country, state or province where the wild animal originated, or if an endangered species certificate and seal has been issued under s. NR 27.05 (4) (b) to identify and mark the specimens.

(b) *Fur garments.* Permits are not required for the possession, processing, sale or transportation of articles of clothing manufactured from the skins, hides or furs of animals on the Wisconsin endangered or threatened species lists if documentation accompanies each garment stating that the furs from which it was made were legally taken outside of Wisconsin.

History: Cr. Register, September, 1979, No. 285, eff. 10-1-79; am. (1), Register, January, 1981, No. 301, eff. 2-1-80; cr. (4), Register, October, 1981, No. 310, eff. 11-1-81; am. (1) (a) and (2), r. and rec. (1) (b), Register, March 1990, No. 411, eff. 4-1-90; am. (2) (a), (c), (3) (b) and (4) (a), Register, April, 1993, No. 448, eff. 5-1-93.

NR 27.07 Incidental take applications. (1) **PUBLIC NOTIFICATION OF RECEIPT OF AN APPLICATION FOR THE INCIDENTAL TAKE OF ENDANGERED OR THREATENED SPECIES.** (a) 1. Upon receipt of an application for an incidental take permit, an accompanying conservation plan and an implementing agreement under s. 29.415 (6m), Stats., all of which are deemed complete and acceptable to the department, the department shall develop a news release that includes all of the following information:

- The name and address of the applicant.
- A brief description of the project or activity, including location, and the endangered and threatened species to be affected.
- A statement regarding the proposal's potential to cause significant adverse effects to endangered and threatened species, the whole plant-animal community of which they are a part, or the habitat that is critical to its existence.
- A brief description of efforts the applicant intends to conduct to minimize and mitigate the impact caused by the taking.
- The name and address of a contact within the department who can receive comments and respond to questions.

f. A date until which the department will accept and consider comments.

2. Notwithstanding subd. 1., but consistent with s. 29.415 (6m) (e), Stats., when deemed appropriate by the department, any other department notice, including a notice required under another statute or administrative rule, containing the information in subd. 1. a. to f. may be used in addition to a news release.

(b) The department shall distribute the news release or notice to appropriate news media in the vicinity of the proposed taking and to the official state newspaper designated under s. 985.04, Stats.

(c) In addition to distributing the news release or notice under par. (b), the department shall mail, or may otherwise provide the information specified in par. (a) in the manner requested, and consistent with s. 29.415 (6m) (e), Stats., to the following organizations, at the address or location they provide:

- University of Wisconsin-Madison, School of Natural Resources;
- University of Wisconsin-Stevens Point, College of Natural Resources;
- Sigurd Olson Environmental Institute, Northland College, Ashland;
- Wisconsin Wildlife Federation;
- Wisconsin Conservation Congress;
- Citizens Natural Resources Association of Wisconsin;
- Wisconsin Society for Ornithology;
- Wisconsin Woodland Owners Association;
- Sierra Club-Muir Chapter;
- Wisconsin Audubon Council;
- The Nature Conservancy;
- The Izaak Walton League;
- Wisconsin Wetlands Association;
- U.S. Department of the Interior, Fish and Wildlife Service;
- Wisconsin Paper Council;
- Wisconsin Association of County Planning Directors;
- Wisconsin Manufacturers & Commerce;
- Prairie Enthusiasts;
- Great Lakes Indian Fish & Wildlife Commission;
- Milwaukee Public Museum;
- Madison Audubon Society;
- Natural Areas Preservation Council;
- Wisconsin Waterfowl Association;
- Wisconsin Environmental Decade; and
- Other organizations or individuals clearly requesting notification of receipt of applications under s. 29.415 (6m), Stats., by filing a written request with the bureau of endangered resources.

Note: The mailing address for the Bureau of Endangered Resources is Department of Natural Resources, P.O. Box 7921, Madison, WI 53707.

(2) **PUBLIC COMMENT.** (a) A minimum of 2 weeks from the date the news release or notice was distributed to news media under sub. (1) (b) or mailed under sub. (1) (c), whichever is later, shall be allowed for the receipt of public comment on the proposed taking.

(b) The department shall consider all public comment on the application if received within the comment period by the bureau of endangered resources by mail or delivered to its offices in Madison, Wisconsin.

(3) **PUBLIC RECORD TREATMENT.** Any application, conservation plan and implementing agreement submitted under s. 29.415 (6m), Stats., shall be available for review at the offices of the bureau of endangered resources in Madison, Wisconsin. Any request for a copy of those documents, shall be considered a public record request and provided subject to payment of copying

Amendment Approved by NRB, 8/26/98

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

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

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

news media and other persons according to the procedures in s. NR 27.07(1)(b) & (c)

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

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

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

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

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

27

- Set up a meeting w/
OS, Schultz and DNR (Petrovsky)
People let them know of
concerns -> can they make
the changes -> we'll let
the review go. IF not
we'll get JCRAR to kill it
(Grossman + Welch)

- I should call them first

need to call
Eliz. Kvesner
wed. next week

Meeting in Cowles
office on Friday
at 11:00 re:
aquaculture rule



STATE OF WISCONSIN
OFFICE OF STATE REPRESENTATIVE BARBARA GRONEMUS

P.O. BOX 8952
STATE CAPITOL
MADISON, WISCONSIN 53708-8952
608-266-7015
TOLL-FREE HOTLINE: 800-362-9472
FAX: 608-266-7038

DISTRICT ADDRESS:
1634 WEST STREET, P.O. Box 676
WHITEHALL, WISCONSIN 54773-0676
715-538-4130

September 21, 1998

Representative Al Ott, Chairman
Assembly Committee on Agriculture
Room 318 North, State Capitol
Madison, WI 53708

Re: Clearinghouse Rule 98-055 Relating to the development of fees, criteria, and procedures to use when permitting the use of natural waters as fish farms. Submitted by the Department of Natural Resources.

Mr. Chairman and Dear Al:

Thank you for informing me of the referral of the above noted Clearinghouse Rule to the Assembly Committee on Agriculture.

As my staff has informed your Committee Clerk, I request a Public Hearing by the Assembly Committee on Agriculture on this Clearinghouse Rule. This request is made on the basis of my strong personal opposition to the rule, and the adamant opposition to it by the Aquaculture Industry (WAA) statewide membership and of grave concern to the DATCP Wisconsin Aquaculture Industry Advisory Council (WAIC).

On behalf of Wisconsin Agriculture, Aquaculture, I sincerely hope my request is granted.

Sincerely,

BARBARA GRONEMUS
State Representative - 91st Assembly District
Ranking Minority Member
Assembly Committee on Agriculture
Member-Governor's Aquaculture Blue Ribbon Task Force

cc: Committee Members
Mr. David Gollon-WAA
Mr. Bud Sholts-DATCP
DATCP Secretary, Ben Brancel
DNR Secretary, George Meyer
State Senator Dale Schultz

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

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 (NR10/94)

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

Fiscal Effect

State: No State Fiscal Effect

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

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

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

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive 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 Ch. 20 Appropriations

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

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

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

Assumptions Used in Arriving at Fiscal Estimate

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

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

Long-Range Fiscal Implications

None.

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

Joe Polasck, 266-2794

Authorized Signature/Telephone No.

Joe Polasck

Date

266-2794

8-5-98

FISCAL ESTIMATE WORKSHEET

1997 Session

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

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

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

Amendment No.

Subject

Rule to permit the use of natural waters as fish farms

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

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

NET ANNUALIZED FISCAL IMPACT

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

19

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

Authorized Signature/Telephone No.

Date

Joe Polasek, 266-2794

Joe Polasek

266-2794

8-5-93

ATTACHMENT I

PERMIT FEES FOR USE OF NATURAL WATERBODIES AS FISH FARMS

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

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

Fee structures have remained the same for 30 years.

2. Previous annual renewal fees

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

3. Previous total fees over a 10 year period.

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

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

4. Proposed renewal fee: \$50.00

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

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

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

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

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

6. Proposed transfer fee: \$100.00

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



Rep. OTT

DALE W. SCHULTZ
Wisconsin State Senator

September 15, 1998

Representative DuWayne Johnsrud, Chairman
and Members
Assembly Natural Resources Committee

RE: Clearinghouse Rule # 98-055
Use of Natural Waters as Fish Farms

Dear Representative Johnsrud and Members,

I write regarding the above listed rule anticipated to come before the Assembly Natural Resources Committee.

Chapter 29.521 enacted in 1997 under Wisconsin Act 27 directed the Department of Natural Resources **in conjunction with the private aquaculture industry and the legislature**, to develop fees, and procedures for issuing permits to use natural waters as fish farms.
(It should be noted that certain natural waters have historically been used for this purpose without any detrimental effect for centuries.)

This rule is the result of that order.

During the formulation of this rule and continuing to the public hearings, the private aquaculture industry and the legislative authors of the language continually expressed concern over a number of rule changes being made by the Department of Natural Resources. Those concerns were ignored with no attempt to reach a compromise with the others who were to be included in the rule making process.

They included:

Excessive fees;

Historically a permit for use of a natural pond for a 1 year period was \$50.00. This rule raises the fee to \$500.00 for a 10 year permit. It is the contention of the industry and the authors that the department does not need to inspect or conduct scientific surveys of these waters more than once or twice during the permit life. Historically a natural water was permitted, often without any survey or field inspection. It was done on the departments historical knowledge of the body of water. There is no indication that the ecology of the body of water changes significantly over the length of the permit life. For the department to change its policy and require that numerous personal on an annual basis inspect these waters seems to be an excessive and an imprudent use of state resources. We ask the committee to review the departments justification for these excessive fee increases and consider a more appropriate fee schedule such as follows.

Member: Joint Committee on Finance

1

- The first time a permit is issued for the use of a pond as a fish farm: \$250.00
- The renewal of a permit: \$50.00
- The transfer of a permit \$100.00

Notice requirements;

The draft rule that was presented to the Natural Resources Board on August 26th, 1998 included a notice requirement provision which had been agreed upon by all parties involved. The language required that such notices be provided to the clerk of each municipality in which the natural water is located and to any other person required by law to receive notice. Before approving the rule for submission to the Legislature for review, the Natural Resource Board amended that provision to require that the notices be sent to the same list of people to whom notice are sent when the DNR receives an application for a permit for the **incidental taking of an endangered species.** This language places an undo burden and excessive cost on the department and the industry. There is no evidence that any body of water historically permitted for the production of any species of fish by the Department of Natural Resources or the private industry has ever caused any damage to any endangered species. There appears to be no documentation that the public has previously expressed concerns about this use of the waters of the state, or that any such use has caused damage to any species, or the environment. Under previous law there was no specific statutory requirement for public notice or hearing when issuing a permit. To permit this amendment will increase notification costs, lengthen the permitting process and possibly effect the use of appropriate waters for the necessary production of game fish and bait fish which support the outstanding fish resources of the state that our anglers have come to expect.

I have attached a copy of NR 27.07 the amended language adopted by the Natural Resources Board for your consideration:

Applicability of rule to DNR Fish Rearing Activity;

The proposed rule applies to state-owned hatcheries in the same manner that applies to private fish farms. While this language ensure that the use of natural ponds by state fish hatcheries will be subject to the same review and standards as private fish farms it does not seem to be the best way to accomplish this result. First of all, it also applies the application fee to the state facilities, which makes little sense since the fee would go from the DNR to the DNR. Furthermore, DNR staff indicate that they would subject themselves to a "self-permitting process that would not involve the formal preparation of a permit application, while a strict reading of the rule language would require the DNR to submit a permit application to itself. To make the rule more rational and ot accomplish what the DNR staff indicate is their intent, the treatment of state fish hatcheries should be modified. The applicability provisions of the rule should precisely identify those portions of subch. II or ch. 16, Wis. Adm. Code, that apply to state hatcheries. In addition, separate provisions should be created that indicate the process that will be followed in reviewing proposals for a state hatchery to use a natural pond to allow public participation in the process and ensure accountability of the DNR in its self-regulation. One option for such a process would be as follows:

- The Department would issue a notice of intent to use a natural pond for a hatchery, including a written analysis of that proposal similar to the analysis that would be required of a private permit applicant.
- The Department would be required to distributed the notice for comments in the same manner as the rule requires of private permit applications, and that the DNR hold a public hearing on the proposal if there is any substantive objection raise to it.
- Provide that the requirements apply to the initial proposal of the DNR to convert a pond to use for fish raring and to the review of the continued use every 10 years thereafter, except that the DNR may continue to use ponds that were already in use by the DNR on January 1, 1998 without conducting an initial review.
- The fee requirement for the department be waived.

I sincerely appreciate the committees review of these concerns. The original intent of this legislation was to improve the ability of the aquaculture industry to grow and provide jobs, while improving the health inspections and permitting process. This rule in its current form is excessive and an undue burden on the private industry and the Department.

With kindest regards



Dale W. Schultz
17th Senate District

CC Gov. Thompson
 Rep. Powers
 Rep. Brandemuehl
 Rep. Ott
 Rep. Gunderson
 Rep. Hutchinson
 Rep. Black
 Rep. Bock

after the above dates, no permit is required if the wild animals were acquired before the effective date of their addition to the list.

(b) *Proof.* Any person claiming an exemption under par. (a) must offer evidence acceptable to the department to show that the species was acquired prior to the effective date.

(c) *Marking.* All wild animals on the Wisconsin endangered and threatened species lists which are possessed, transported or sold pursuant to par. (a) shall be permanently marked, tagged or otherwise identified with a certificate and seal by or at the direction of the department to show the specimen or parts thereof is legally possessed. A certificate and seal may only be transferred incidental to the transfer of the specimen for which the certificate and seal were issued.

(3) **RECORDS.** (a) *Procedures.* Each person who possesses any live animal listed as a Wisconsin endangered or threatened species in s. NR 27.03 (2) or (3) shall keep a complete and accurate record in the English language of any action affecting the number of said wild animals that person possesses. This record shall be on forms provided by the department, and shall include a receipt book for purchases, births, or any action increasing the number of individuals in possession; and a separate book for sales, gifts, deaths or any action whereby the number of individuals in possession decreases. These receipts shall be completed immediately following the action or transaction affecting populations in possession, and one copy shall be mailed to the department at that time.

(b) *Inspection.* The permittee shall make all permitted wild plants and wild animals in their possession and all applicable records available for inspection by the department at any time.

(4) **NON-WISCONSIN SPECIMENS.** (a) *Animals.* Permits are not required for the possession, processing, sale or transportation of carcasses, skins, hides and furs or parts thereof from wild animals on the Wisconsin endangered or threatened species lists if each item is marked with a permanent locked seal attached by or with the authority of the government of the country, state or province where the wild animal originated, or if an endangered species certificate and seal has been issued under s. NR 27.05 (4) (b) to identify and mark the specimens.

(b) *Fur garments.* Permits are not required for the possession, processing, sale or transportation of articles of clothing manufactured from the skins, hides or furs of animals on the Wisconsin endangered or threatened species lists if documentation accompanies each garment stating that the furs from which it was made were legally taken outside of Wisconsin.

History: Cr. Register, September, 1979, No. 285, eff. 10-1-79; am. (1), Register, January, 1981, No. 301, eff. 2-1-80; cr. (4), Register, October, 1981, No. 310, eff. 11-7-81; am. (1) (a) and (2), r. and rec. (1) (b), Register, March 1990, No. 411, eff. 4-1-90; am. (2) (a), (c), (3) (b) and (4) (a), Register, April, 1993, No. 448, eff. 5-1-93.

NR 27.07 Incidental take applications. (1) **PUBLIC NOTIFICATION OF RECEIPT OF AN APPLICATION FOR THE INCIDENTAL TAKE OF ENDANGERED OR THREATENED SPECIES.** (a) 1. Upon receipt of an application for an incidental take permit, an accompanying conservation plan and an implementing agreement under s. 29.415 (6m), Stats., all of which are deemed complete and acceptable to the department, the department shall develop a news release that includes all of the following information:

a. The name and address of the applicant.

b. A brief description of the project or activity, including location, and the endangered and threatened species to be affected.

c. A statement regarding the proposal's potential to cause significant adverse effects to endangered and threatened species, the whole plant-animal community of which they are a part, or the habitat that is critical to its existence.

d. A brief description of efforts the applicant intends to conduct to minimize and mitigate the impact caused by the taking.

e. The name and address of a contact within the department who can receive comments and respond to questions.

f. A date until which the department will accept and consider comments.

2. Notwithstanding subd. 1., but consistent with s. 29.415 (6m) (e), Stats., when deemed appropriate by the department, any other department notice, including a notice required under another statute or administrative rule, containing the information in subd. 1. a. to f. may be used in addition to a news release.

(b) The department shall distribute the news release or notice to appropriate news media in the vicinity of the proposed taking and to the official state newspaper designated under s. 985.04, Stats.

(c) In addition to distributing the news release or notice under par. (b), the department shall mail, or may otherwise provide the information specified in par. (a) in the manner requested, and consistent with s. 29.415 (6m) (e), Stats., to the following organizations, at the address or location they provide:

1. University of Wisconsin-Madison, School of Natural Resources;

2. University of Wisconsin-Stevens Point, College of Natural Resources;

3. Sigurd Olson Environmental Institute, Northland College, Ashland;

4. Wisconsin Wildlife Federation;

5. Wisconsin Conservation Congress;

6. Citizens Natural Resources Association of Wisconsin;

7. Wisconsin Society for Ornithology;

8. Wisconsin Woodland Owners Association;

9. Sierra Club-Muir Chapter;

10. Wisconsin Audubon Council;

11. The Nature Conservancy;

12. The Izaak Walton League;

13. Wisconsin Wetlands Association;

14. U.S. Department of the Interior, Fish and Wildlife Service;

15. Wisconsin Paper Council;

16. Wisconsin Association of County Planning Directors;

17. Wisconsin Manufacturers & Commerce;

18. Prairie Enthusiasts;

19. Great Lakes Indian Fish & Wildlife Commission;

20. Milwaukee Public Museum;

21. Madison Audubon Society;

22. Natural Areas Preservation Council;

23. Wisconsin Waterfowl Association;

24. Wisconsin Environmental Decade; and

25. Other organizations or individuals clearly requesting notification of receipt of applications under s. 29.415 (6m), Stats., by filing a written request with the bureau of endangered resources.

Note: The mailing address for the Bureau of Endangered Resources is Department of Natural Resources, P.O. Box 7921, Madison, WI 53707.

(2) **PUBLIC COMMENT.** (a) A minimum of 2 weeks from the date the news release or notice was distributed to news media under sub. (1) (b) or mailed under sub. (1) (c), whichever is later, shall be allowed for the receipt of public comment on the proposed taking.

(b) The department shall consider all public comment on the application if received within the comment period by the bureau of endangered resources by mail or delivered to its offices in Madison, Wisconsin.

(3) **PUBLIC RECORD TREATMENT.** Any application, conservation plan and implementing agreement submitted under s. 29.415 (6m), Stats., shall be available for review at the offices of the bureau of endangered resources in Madison, Wisconsin. Any request for a copy of those documents, shall be considered a public record request and provided subject to payment of copying

Amendment Approved by NRB, 8/26/98

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

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

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

news media and other persons according to the procedures in s. NR 27.07(1)(b) & (c)

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

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

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

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

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

- 1) - DNR used to charge \$50 for "A" ponds, although these ponds were rarely permitted → (John O'Brien), they would charge \$5 for class "B" pond.
- under the fee structure it seems like they'd always charge \$500 → but will they still do the same kind of inspection that only cost \$5 before?

2.) The notification requirements say they have to let everyone (Sierra Club, etc.) know when they are applying. They agreed in discussions that notification was necessary, they agreed to give newspapers, Govt Publications notice.

B Fees.

Consider the following approach to the fee issue

The first component would be a fee of \$100.00 for the handling and office review of a permit application; the second component would be a fee of \$100.00 for an initial field survey of the pond, in which a single DNR staff member would survey the pond for species that are indicative of the quality and type of aquatic community that might support rare or endangered species of amphibians, invertebrates, plants or other organisms; the third component would be a fee of \$200.00 for a follow-up field survey in which a team of DNR staff would survey the pond for rare or endangered species to be conducted only if the initial survey had found indicator species suggesting the need for a full survey

Under this approach, a proposal to use a high quality pond for a fish farm would cost \$400.00 and would be subject to substantial scrutiny in the field, while a proposal to use a lower quality pond would be subject to lesser scrutiny and would cost \$200.00. It is designed to encourage fish farmers to avoid the higher quality ponds for their use and to make the fee reflect the amount of field work that the review of an individual application requires.