

TELETYPE

MIKE STEGGS - DNR

7-0796

aquaculture

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

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

Natural Resources Board Order No. FH-16-01

Legislative Council Rules Clearinghouse Number 01-128

Subject of Rules PERMITTING THE USE OF NATURAL
BODIES OF WATER AS FISH FARMS

Date of Transmittal to Presiding Officers MARCH 12, 2002

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

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

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

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

REPORT TO LEGISLATURE

NR 16, subch. II, Wis. Adm. Code
Permitting the use of natural bodies of water as fish farms

Board Order No. FH-16-01
Clearinghouse Rule No. 01-128

Statement of Need

After a year of implementing subch II of ch. NR 16 on permits for the use of natural bodies of water as fish farms, the aquaculture industry has requested the department to change the definition of natural body of water and provide more clarity in the rule about how the department will review permit renewals. In addition, the department has recognized the need for some minor housekeeping changes to the rule. The proposed revisions include:

1. Adding an exemption for department permitted wetland ponds to the definition of natural body of water consistent with the exemption of waterways considered private under chs. 30 and 31, Stats.
2. Clarifying the criteria the department will use to assess permit renewals after the 10-year permit expires.
3. Minor housekeeping changes including updating permit application deadlines, clarifying statutory enforcement provisions and how multiple waterways on a contiguous parcel of property are permitted, and adding a definition for "department hatching and rearing facilities".

Modifications as a Result of Public Hearing

No changes were made as a result of the hearing.

Appearances at the Public Hearings and Their Position

December 18, 2001 – Fitchburg

In support:

Rob Walker, Rushing Waters Fisheries, 2918 Agriculture Drive, Madison, WI 53718
Bill Isermann, Rushing Waters Fisheries, 2918 Agriculture Drive, Madison, WI 53718

In opposition – none

As interest may appear:

Dennis Laridan, 102C Ponwood Circle, Madison, WI 53717

December 20, 2001 – Wausau

In support – none

In opposition:

Sally Tadda, W3902 Sandy Lane, Owen, WI 54460

As interest may appear:

Ruby Kettula, Seven Pines Fishery, Inc., 1029 Clam Falls Drive, Frederic, WI 54837
Hugo Kettula, Seven Pines Fishery, Inc., 1029 Clam Falls Drive, Frederic, WI 54837

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The revisions to subch. II of ch. NR 16 impose no new or additional compliance or reporting requirements for small businesses, nor are any design or operational standards proposed to be revised by these changes. The rule changes will not have a significant impact on a substantial number of small businesses and thus, under s. 227.19(3m), Stats., a final regulatory flexibility analysis is not required.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 16.71(3), 16.73(1), 16.75; to repeal and recreate NR 16.74(5); and to create NR 16.71(1m) and 16.74(6m) related to the permitting the use of natural bodies of water as fish farms.

FH-16-01

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 29.733(2)(f) and 227.11(2), Stats.
Statutes interpreted: s. 29.733, Stats.

In this order:

Section 1 creates a definition of "department fish hatching and rearing facilities" for the purpose of this subchapter.

Section 2 amends the definition of "natural bodies of water" providing an exemption to private waterbodies permitted under ch. NR 299 water quality certification. This exemption is consistent with the existing exemption for water bodies permitted as private under chs. 30 and 31, Stats.

Section 3 amends the note under s. NR 16.71 clarifying the definition of natural bodies of water as defined in s. NR 16.71(3).

Section 4 amends the permit application cut-off date from May 1, 1999 to June 30, 2002.

Section 5 repeals and recreates language describing the criteria and the conditions for permit renewal under s. 29.733(2)(a) and (b), Stats., and creates a note clarifying what is meant by historical conditions for the purpose of permit renewals.

Section 6 clarifies that a single permit may be issued for natural bodies of water located on contiguous parcels of property.

Section 7 adds language clarifying that the general enforcement provisions of s. 29.971, Stats., are applicable to this subchapter.

SECTION 1. NR 16.71(1m) is created to read:

NR 16.71(1m) "Department fish hatching and rearing facilities" means all fish hatching and rearing waterbodies owned by the department, or leased or controlled through a cooperative agreement between the property owner and the department and where the department owns all the fish.

SECTION 2. NR 16.71(3) is amended to read:

NR 16.71(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~~ except any waterbody that has been permitted by the department under ch. 30 or 31 Stats., or ch. NR 299 water quality certification and not declared public under s. 30.19(5), Stats.

SECTION 3. NR 16.71 Note is amended to read:

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.~~ an artificial wetland, as defined under s. NR 103.02(1m) or any swale, bermed area or excavation that is not located in a wetland, pond, lake, stream or spring that was historically present in a natural

state, if the artificial wetland, swale, bermed area or excavation retains water as the result of human modification of the landscape or is constructed of man-made materials.

SECTION 4. NR 16.73(1) is amended to read:

NR 16.73(1) For permits reauthorized under s. 29.733(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 May 1, 1999~~ by June 30, 2002.

SECTION 5. NR 16.74(5) is repealed and recreated to read:

NR 16.74(5) The department shall renew under s. 29.733(2)(c), Stats., a permit issued under s. 29.733(2)(a) and (b) Stats., for use of a natural body of water as a fish farm or any part of a fish farm in a natural body of water unless the department determines there has been a substantial adverse change affecting one or more of the criteria specified in s. NR 16.74(1)(a) to (e) resulting from the operation of the fish farm. The department shall consider the historical condition of the natural water body prior to the presence and operation of the fish farm as part of their permit renewal decision under s. 29.733(2)(c), Stats.

Note: Under this paragraph, historical conditions refer to known uses of the natural body of water prior to the inception of the fish farm.

SECTION 6. NR 16.74(6m) is created to read:

NR 16.74(6m) A single permit shall be issued for multiple natural bodies of water located on the same contiguous parcel of property under the same ownership or leasehold.

SECTION 7. NR 16.75 is amended to read:

NR 16.75 Enforcement. The department may suspend or revoke a permit issued under this subchapter subject to the provisions of s. 29.733(2)(e), Stats. A fish farmer operating a fish farm in a natural body of water as defined in s. NR 16.71(3) without a valid permit under this subchapter may be penalized under s. 29.971, Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on February 27, 2002.

The rules shall take effect on the 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 _____
Darrell Bazzell, Secretary

(SEAL)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

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Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 01-128

AN ORDER to amend NR 16.71 (3), 16.73 (1) and 16.75; to repeal and recreate NR 16.74 (5); and to create NR 16.71 (1m) and 16.74 (6m), relating to permitting the use of natural bodies of water as fish farms.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

11-12-01 RECEIVED BY LEGISLATIVE COUNCIL.

12-06-01 REPORT SENT TO AGENCY.

RNS:PGC:jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO



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

2. Form, Style and Placement in Administrative Code

SECTION 5 of the rule states that s. NR 16.74 (1m) is being repealed and recreated. Therefore, in the text, "(5)" should replace "(1m)".



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Dated at Madison, Wisconsin # #

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