

**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Jim Doyle, Governor  
Scott Hassett, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
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February 4, 2003

Honorable Joseph Leibham, Chair  
Joint Committee for Review of Administrative Rules  
Room 409 South  
State Capitol

Honorable Glenn Grothman, Chair  
Joint Committee for Review of Administrative Rules  
15 North  
State Capitol

Re: Extension of Emergency Order No. FH-43-02(E)

Gentlemen:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. FH-43-02(E) for 60 days. This emergency order pertaining to the closure of carp fishing on Cedar Lake and connected waters in Polk and St. Croix Counties took effect on October 3, 2002 and is to expire on March 2, 2003.

The extension of this emergency rule is needed so that the Department can continue to sample for the spring viremia of carp virus. The continued closure will limit the potential spread of the virus from transport of fish and/or their parts and fluids to other waters.

A copy of the emergency order is attached. If you have any questions, please contact Patrick Schmalz of the Bureau of Fisheries Management and Habitat Protection at 266-8170.

Sincerely,

Scott Hassett  
Secretary

Attach.

cc: Presiding Officers  
Pat Schmalz – FH/3  
Tim Andryk – LS/5  
Carol Turner – LS/5

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

The Wisconsin Natural Resources Board adopts an order to repeal and recreate NR 20.20(49)(d) and (61)(c) relating to the closure of carp fishing on Cedar lake and connected waters in Polk and St. Croix counties.

FH-43-02 (E)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 29.014, 29.041(1) and 227.24, Stats.

Statutes interpreted: s. 29.041(1), Stats.

SECTION 1 closes all carp fishing on Cedar lake and connected waters in Polk county.

SECTION 2 closes all carp fishing on Cedar lake and connected waters in St. Croix county.

SECTION 1. NR 20.20(49)(d) is repealed and recreated to read:

**(49) POLK** (for species or waters not listed, see sub. (73))

(d) Rough fish	1. Big lake, Behning creek, Cedar lake, Church Pine lake, Horse creek, Horse lake, Lotus lake, Marlpit creek, Rice creek, Rice lake (32N R18W S11), Wind lake.	a. Hook and line, by hand, dip netting.	Continuous but there is no open season for carp	None but the daily bag limit for carp is 0	None
		b. Spearing	Saturday nearest May 20 to November 1 but there is no open season for carp	None but the daily bag limit for carp is 0	None
	2. All other trout streams	a. Hook and line	During the open season for trout	None	None
		b. By hand.	Continuous	None	None
	3. All other waters	a. Hook and line, by hand, dip netting.	Continuous	None	None
		b. Spearing	Saturday nearest May 20 to November 1	None	None

SECTION 2. NR 20.20(60)(c) is repealed and recreated to read:

**(60) ST. CROIX** (for species or waters not listed, see sub. (73))

(c) Rough fish	1. Apple river including sloughs, bayous flowages and tributaries, Cedar lake, Horse creek.	a. Hook and line, by hand, dip netting.	Continuous but there is no open season for carp	None but the daily bag limit for carp is 0	None
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	b. Spearing	Saturday nearest May 20 to November 1 but there is no open season for carp	None but the daily bag limit for carp is 0	None
2. All other trout streams	a. Hook and line	During the open season for trout	None	None
	b. By hand.	Continuous	None	None
3. All other waters	a. Hook and line, by hand, dip netting.	Continuous	None	None
	b. Spearing	Saturday nearest May 20 to November 1	None	None

FINDING OF EMERGENCY

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Spring viremia of carp virus is of international animal health concern. The virus effects fishes in the minnow family in nature. Minnows are extremely important forage fish for many important sport fishes in Wisconsin and are also important to the bait and aquaculture industries. Assuring the health of minnow populations and preventing the spread to other waters is important in preserving the welfare of Wisconsin citizens by protecting popular and economically valuable sport and bait fisheries. Little is currently known about the extent of the virus and until we can increase our knowledge, this closure will limit the potential spread from transport of fish and/or their parts and fluids.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on September 25, 2002.

The rules contained herein shall take effect on October 3 as emergency rules, as provided in s. 227.24(1)(c), Stats.

Dated in Madison, Wisconsin September 27, 2002

STATE OF WISCONSIN DNR  
DEPARTMENT OF NATURAL RESOURCES

By Darrell Bazzell  
Darrell Bazzell, Secretary

(SEAL)



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
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TO: JCRAR

February 19, 2003

FROM: Bureau of Fisheries Management and Habitat Protection, WDNR

SUBJECT: Extension of Emergency Rule on Carp in Cedar Lake and Connecting Waters

CONTACTS: Steve Hewett, 267-7501; Sue Marcquenski, 266-2871

We had a carp kill in Cedar Lake, Polk/St. Croix County in early May, 2002. The causative agent was found to be spring viremia of carp virus. This was the first case of this virus being reported from wild fish in the U.S. Cedar Lake is a flowage and is connected via the Apple River to the St. Croix and Miss. Rivers. The Department of Natural Resources banned carp fishing on Cedar Lake and connecting waters through emergency order to minimize the spread of the virus from Cedar Lake.

Because there are so many unknowns about SVCV in the U.S. (for example, what native species are susceptible) we have asked to continue the ban through extensions of the emergency rule. This will let us sample carp again in May to see if we can detect antibodies to the virus and the virus itself. We should have results from this testing sometime in June. We will also know by late spring whether a second SVCV outbreak occurs in Cedar Lake this year.

According to recommendations made by the national work group developing a national strategy for SVCV, control measures such as closing carp fisheries or bait harvest would only be implemented when the virus is cultured from a population. Although this is a draft document at this time, it is all we have for national guidance on the topic. Therefore, although we detected a high prevalence of SVCV antibodies in carp from the St. Croix River and Pool 10 of the Mississippi River, we did not isolate the virus from that population and therefore we are not going to propose closing carp fishing, commercial fishing or wild bait harvest in the Mississippi at this time. In the future, if we isolate SVCV from carp in the Mississippi, we would close the appropriate fisheries as we did for Cedar Lake.

In the few cases where SVC has occurred in carp lakes in England, it was a one time phenomenon. Hopefully the fish that survived last spring's outbreak have high enough antibody titers to prevent a new disease outbreak this spring. Without a susceptible population to infect, the virus may not be able to replicate at high enough rates to sustain itself.

The Department recognizes the need to educate anglers regarding the signs of SVC so that they can let us know of new occurrences of the disease. We will develop a fact sheet so the information is widely distributed. The Department would like to work with carp bowfishers to develop a set of best management practices for reducing the risk of spreading SVCV as well as other pathogens to other waters.

This spring we will go back to Cedar Lake to sample carp for antibodies and well as live virus. We will also be on the alert for signs of this disease in other waters of the state. The information we gather this spring will allow us to determine what further steps should be taken to limit the spread of this virus.



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(608) 266-2056

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

February 19, 2003

Scott Hassett, Secretary  
Department of Natural Resources  
101 South Webster Street  
P.O. Box 7921  
Madison, WI 53707-7921

Dear Secretary Hassett:

The Joint Committee for the Review of Administrative Rules met in Executive Session on February 19, 2003 and adopted the following motion:

**Emergency Rule NR 20.20(49)(d) and (60) (c) Relating to the closure of carp fishing on Cedar Lake and connected waters in Polk and St. Croix Counties.**

Moved by Representative Grothman, seconded by Representative Gunderson that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends NR 20.20 (49)(d) and (60)(c) at the request of Department of Natural Resources by 60 days.

Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham  
Senate Co-Chair

Representative Glenn Grothman  
Assembly Co-Chair

JKL:GSG:pvs



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**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

*Emergency Rule Extension Motion Form*

February 19, 2003  
Room 400 SE  
State Capitol

Moved by \_\_\_\_\_, Seconded by \_\_\_\_\_

**THAT**, pursuant to s. 227.24(2)(a), stats. the Joint Committee for Review of Administrative Rules extends the effective period of emergency rules NR 20.20(49)(d) and (60)(c) for 60 days at the request of the Department of Natural Resources.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator LEIBHAM			
2. Senator WELCH			
3. Senator LAZICH			
4. Senator ROBSON			
5. Senator CARPENTER			
6. Representative GROTHMAN			
7. Representative SERATTI			
8. Representative GUNDERSON			
9. Representative BLACK			
10. Representative HEBL			
Totals			

Motion Carried

Motion Failed

# Glenn Grothman

STATE REPRESENTATIVE

58TH ASSEMBLY DISTRICT

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Rep.Grothman@legis.state.wi.us  
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(262) 338-8061

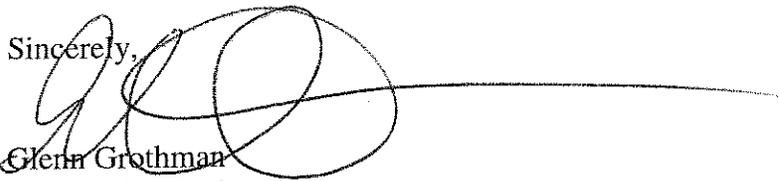
March 6, 2003

P. Scott Hassett, Secretary  
Department of Natural Resources  
101 South Webster Street  
Madison, WI 53707-7921

Dear Secretary Hassett:

Thanks, Scott, for getting back to me so quickly. I'm enclosing a copy of the notice that was emailed to both you and Elizabeth Kluesner on February 28, 2003. Elizabeth read it the same day per the enclosed email log. When no one appeared at the hearing, I instructed my clerk, Maggie Delaporte, to call your office. Maggie was told by a receptionist, who pulled Elizabeth Kluesner out of meeting, that the DNR would not be attending the hearing today. In eight years as committee chair we have on rare occasions had departments not show for hearings, but they always insisted it was an oversight and were apologetic. I've never had an agency just not show up. I know this is not your fault and continue to look forward to working together with you.

Sincerely,

  
Glenn Grothman  
JCRAR Co-Chair

Cc: Senator Joe Leibham

NR 20.20

• Concern is with virus -

• infecting game fish & bait  
(northern pike) (minnows)

VA 12.02

John & Bill DVA

# 63.7 million loaned out

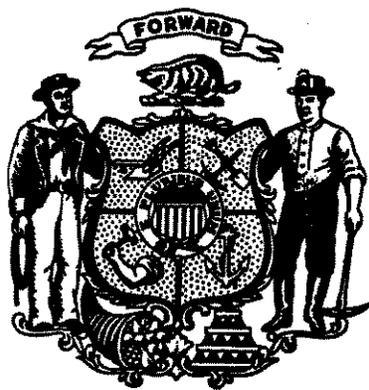
# 7.7 million back in (interest)

5% (w/ mortgage)

6% (w/ guarantor)

> interest ~~rate~~ <sup>loan</sup> period  
are for 10 years

*END*



*END*

NR27

**NR 27.03(3)(c) 3**  
**Relating to Endangered and Threatened Species**  
**Butler's garter snake**

JCRAR  
April 28, 2004  
12:30 p.m.

FORWARD  
**Alberta Darling**  
**Wisconsin State Senator**  
Co-Chair, Joint Committee on Finance

January 16, 2004

Sen. Joseph Leibham  
Co-chairman, JCRAR  
409 South  
State Capitol

Rep. Glenn Grothman  
Co-chairman, JCRAR  
15 North  
State Capitol

Dear Co-chairs Leibham and Grothman,

I am writing to respectfully request action by the Joint Committee for Review of Administrative Rules to suspend the rule by the Department of Natural Resources that placed the Butler's Gartersnake on the Wisconsin Threatened Species list.

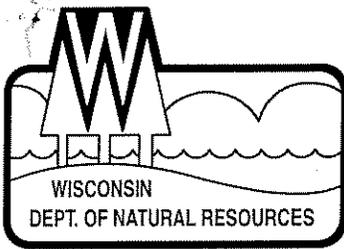
Simply put, I believe DNR has acted contrary to the legislative intent of the Wisconsin Endangered and Threatened Species Act, which defines a threatened species as "any species of wild animals or wild plants which appears likely, within the foreseeable future, on the basis of scientific evidence to become endangered."

In fact, there is a glaring lack of scientific evidence with regard to this issue. In the meanwhile, the issuance of this rule has had a very negative economic impact due to the resulting delays on both private and public projects. Furthermore, there appears to be a wealth of preserved habitat that will, if need be, protect the Butler's Gartersnake while the proper scientific research is conducted.

Thank you for your consideration of this request.

Sincerely,

  
ALBERTA DARLING  
State Senator



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
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TTY Access via relay - 711

January 27, 2004

Senator Joseph Leibham  
Senate Co-Chair- JCRAR  
Rm. 409 South, State Capitol  
P. O. Box 7882  
Madison, WI 73707-7882

Representative Glenn Grothman  
Assembly Co-Chair- JCRAR  
Rm. 15 North, State Capitol  
P. O. Box 8952  
Madison, WI 53708-8952

Subject: Butler's Gartersnake Conservation Strategy

Dear Senator Leibman and Representative Grothman;

The Department of Natural Resources has developed a draft conservation strategy for the Butler's gartersnake that we believe will significantly reduce the burden this listed animal places on the development community in southeastern Wisconsin. This strategy will also help insure that this threatened species will persist in the state. We urge you and the full JCRAR committee to strongly consider this strategy prior to your executive session vote tomorrow to delist the snake. We believe the strategy will substantially reduce time delays caused by the snake and will significantly reduce Butler's gartersnake-associated expenses for project proponents. We plan to begin the implementation of the plan immediately. The attached strategy is a compromise that the Department can implement.

We would also like to ask for your assistance in implementing this plan by encouraging the public land managers of significant conservation sites to cooperate with the Department on the development of conservation plans for their properties. If you are willing to assist us, we will provide you with the property managers and the locations of the sites we believe have the potential to serve as long-term conservation sites.

Thank you for considering this strategy.

Sincerely,

  
Laurie Osterndorf  
Administrator- Division of Land

cc. Committee Members  
Scott Matthaie  
Paul Kent

## Butler's Gartersnake Conservation Strategy with Timeline

We are moving ahead with our long-term conservation strategy for the Butler's gartersnake. Below we have identified the steps we are taking to address some of the conflicts with developers arising from the implementation of the state's Endangered Species Law, and steps we are taking to move forward with the development of a Habitat Conservation Plan for the snake. These are accompanied by a proposed timeline.

### Task

1. Identify criteria to classify the conservation significance of Butler's gartersnake sites according to the following three-tiered system.

<b>Tier I</b>	<b>Sites that DO NOT Contribute to Long-term Conservation</b>
<b>Tier II</b>	<b>Sites with Low to Moderate Long-term Conservation Value</b>
<b>Tier III</b>	<b>Sites with Significant Long-term Conservation Value (Preserve Sites)</b>

### Site Classification Definitions

**TIER I- Sites that DO NOT Contribute to Long-term Conservation** – Sites in Tier 1 will be pre-authorized through broad authorization under the Incidental Take Law. Tier I sites can proceed without further review regarding incidental take once the Department receives broad incidental take authorization for them. The broad incidental take authorization process (30-day notice and scheduled public hearing) is already underway for these sites. Fifty percent (50%) of the Butler's gartersnake sites we have reviewed since the enactment of the Incidental Take Law would have fallen into this site category.

Timeline: Seek authorization through 30-day Public Notice- early February, 2004;  
Anticipate authorization in March, 2004

**Tier II- Low to Moderate Long-term Conservation Value-** Sites in Tier II will be classified Low or Moderate based on criteria to be developed by mid-February.

In general, low conservation value sites are isolated from other Butler's sites and are not along riverine corridors. These sites will require some incidental take avoidance measures such as using snake barrier fences to avoid or minimize take. Sites classified as low conservation value should not cause project delays from an incidental take perspective if conservation measures are followed in a timely manner.

Moderate conservation value sites are those that follow riverine corridors where habitat connectivity exist with Significant Conservation Sites or that are sufficiently large enough to sustain Butler's gartersnake populations into the foreseeable future. These sites will require some incidental take minimization--timing/barrier fencing and minimal upland buffers (50-100 feet adjacent to stream banks or stream-associated wetlands. Upland buffer width will depend on the length of the corridor, with longer stretches requiring smaller upland buffers).

Once criteria are developed to characterize low and moderate sites, a second round of broad incidental take authorization will be sought for Tier II sites. The authorization will allow the

Department to approve projects from an incidental take perspective with minimal delay, by providing the project proponents with measures identified for minimization (timing, fencing, upland buffers). Implementation of the incidental take authorization for Tier II is dependent upon a receiving initial conservation agreement with all public land holders of Tier III sites (see second paragraph under Tier III below).

Timeline: Authorization is anticipated in May, 2004

**Tier III- Significant Conservation Sites-** Sites that support viable Butler's gartersnake populations and also support sufficient suitable Butler's gartersnake habitat that allow the populations to persist over time. The goal of Significant Conservation Sites is to preserve the species for the long-term. These sites will primarily exist on public lands (DNR, County and Municipal lands) or private lands (land trust lands, private nature center lands) and are sites where the department will be working to establish habitat conservation agreements to insure the long-term viability of the snake.

To speed up the conservation process, we will be asking land managers of Significant Conservation Sites to meet with the Department as a group. The purpose of this meeting is to discuss a strategy for achieving conservation through the development of site-specific conservation plans for their properties. The eventual and hopeful outcome of the meeting is to obtain a signed agreement from these managers, agreeing to implement conservation strategies that they and the Department cooperatively identify during the development of a conservation plan for their properties. Once these preliminary agreements are signed, the Department will continue to assess these sites for snake numbers and to delineate suitable Butler's habitat to help guide conservation plan development.

Timeline: Initial Agreements: Signatures will hopefully be obtained by May, 2004  
Conservation plans signed by both parties (land manager and DNR)- Future

## 2. Modify the Existing Butler's Gartersnake Screening Guidance

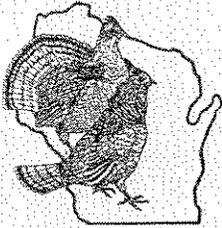
The existing Butler's Gartersnake Screening Guidance will be modified to include site characterization based on criteria developed in #1 above. This guidance will allow project reviewers to quickly determine which site rank their project falls in and will significantly reduce most project reviews and substantially cut snake mitigation-related costs and project delays.

Timeline: March, 2004

## 3. Continue Butler's gartersnake population assessments on potential Significant Conservation Sites

We will continue to gather population and habitat quality data from sites where we receive permission to conduct surveys. We have currently identified six sites on public lands that will be surveyed in 2004. We will be working to identify additional sites for assessment late this winter and spring.

May-Aug., 2004



# Wisconsin Wildlife Federation

720 ST. CROIX ST., SUITE 101, PRESCOTT, WI 54021 • (715) 262-9279 • 1-800-897-4161

*AFFILIATED WITH NATIONAL WILDLIFE FEDERATION*

January 29, 2004

## News Release

Contact George Meyer, Executive Director---608-516-5545

### **Wisconsin Wildlife Federation Praises Vote of the Joint Committee on Administrative Rules to Retain the Butler's Garter Snake on the State's Threatened Species List**

**Prescott---**Today the Wisconsin Wildlife Federation, the states largest conservation organization praised the actions of the Joint Committee for Review of Administrative Rules to retain the Butler's Gartersnake on the state's Threatened Species List. Controversy has arisen over the DNR's protection of the habitat for this rare species in the face of development pressures in Milwaukee, Waukesha, Washington and Ozaukee Counties. The Metropolitan Builders Association of Greater Milwaukee and the Wisconsin Builders Association had requested the Committee to totally remove the animal from Wisconsin's Threatened and Endangered Species List.

"The Wisconsin Wildlife Federation applauds the unanimous and bipartisan decision of the Joint Committee for Review of Administrative Rules to reject the delisting of the Butler's Gartersnake," said Chuck Matyska, (Cecil), Chair of the Wildlife Federation's Endangered Species Committee. "The directive of the Committee to the DNR to come up with a site conservation plan for the species by April 15, 2004 is a major step forward to assure the protection of this threatened animal," continued Matyska.

"Special recognition should be give to Representative Scott Gunderson, (Union Grove), who, speaking as a conservationist, expressed concern that the vote to remove the Butler's Gartersnake from Wisconsin's Threatened and Endangered Species List would be the first time in the United States that a species would be removed from that protection on a non-scientific basis," indicated George Meyer, Executive Director of the Federation.

“Representative Lorraine Seratti, (Spread Eagle), is also deserving of recognition for her comments in the Committee indicating that the DNR should be given sufficient time to complete the planning effort in light of the potential that snow cover conditions could delay field work for the study,” continued Meyer.

The Wisconsin Wildlife Federation believes that the Endangered Species Act does provide enough flexibility that habitat for species such as the Butler’s Gartersnake can be protected while still allowing environmentally sound development practices in the state. The Federation calls on the Metropolitan Builders Association of Greater Milwaukee and the Wisconsin Builders Association to work cooperatively with the DNR and conservationists to protect the habitat of the Butler’s Gartersnake and other threatened and endangered plants and animals in Wisconsin.

The Wisconsin Wildlife Federation is made up of eighty-two hunting, fishing and trapping organizations in Wisconsin and is the state affiliate of the National Wildlife Federation. The Federation is dedicated to the advancement of sound conservation education and policy. For further information, contact George Meyer, Executive Director of the Wisconsin Wildlife Federation at 608-516-5545.

**DRAFT**

**Butler's Gartersnake Conservation Strategy**

Wisconsin Department of Natural Resources  
Endangered Resources Program

April 2, 2004

**Table of Contents**

Introduction ..... 1

Background ..... 1

Goal ..... 2

Objectives ..... 2

**I. Butler's Gartersnake Site Classification ..... 4**

    Habitat Definitions ..... 4

**II. Conservation Measures for Conservation Sites ..... 6**

    Voluntary Actions for protecting Butler's gartersnake Habitat ..... 10

    Snake Exclusion Fencing Design and Construction Requirements ..... 11

    Moving Snakes- Methods and Requirements ..... 12

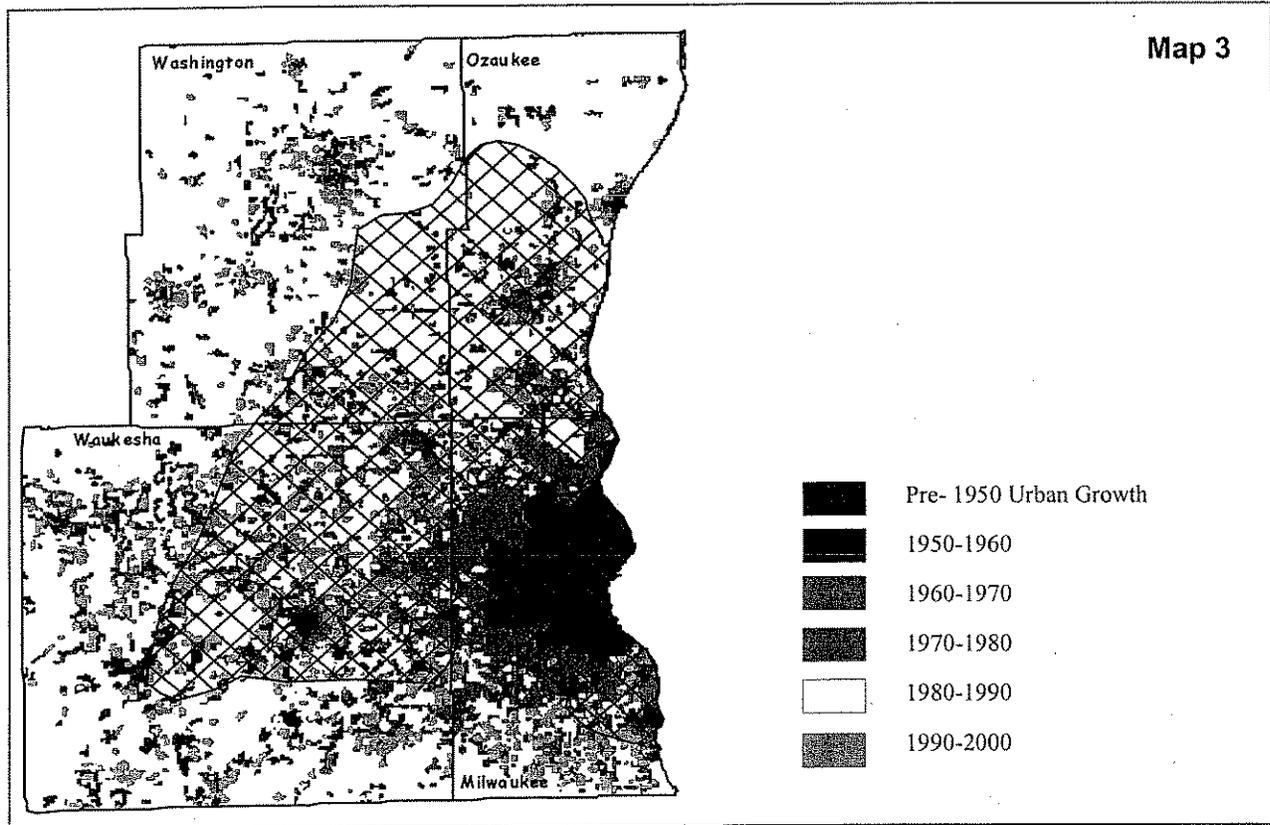
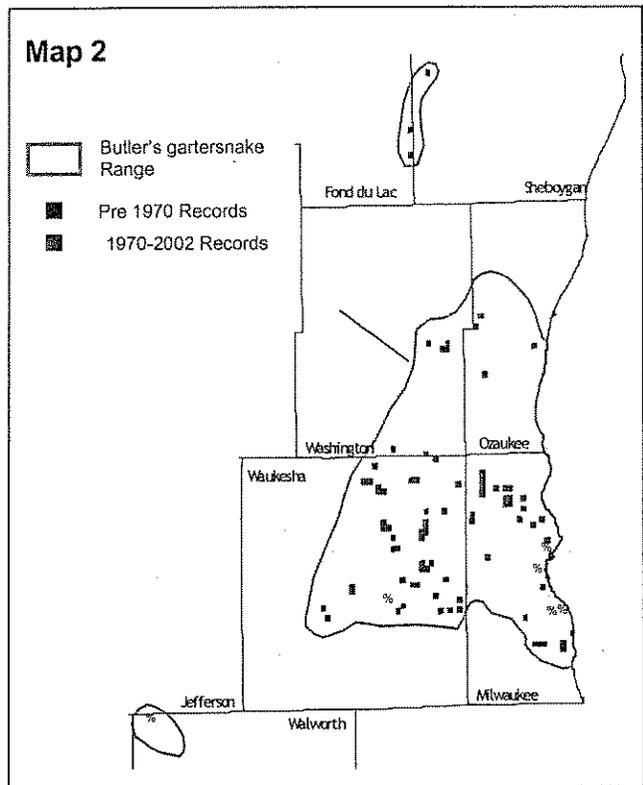
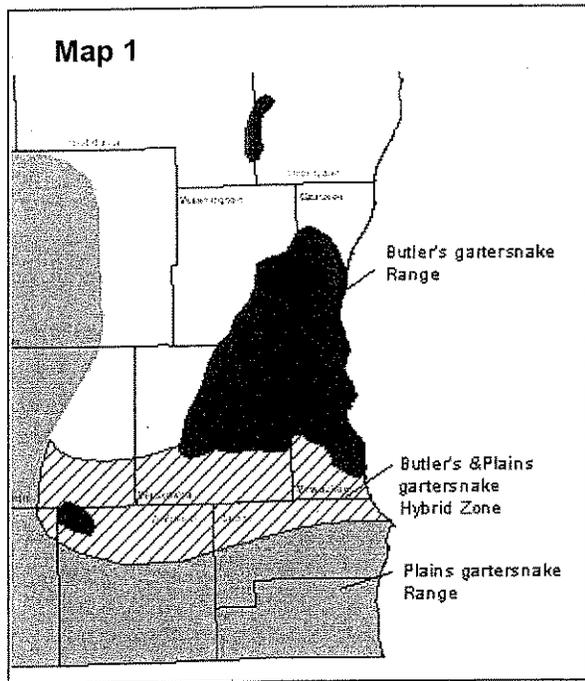
    Management Guidance for Butler's Gartersnake Habitat ..... 13

**Butler's Gartersnake Conservation Strategy Team**

Rebecca Abel- Wisconsin Wetlands Association  
 Dr. Gordon Burghardt- University of Tennessee- Knoxville  
 Andy Galvin- Wisconsin Department of Natural Resources  
 Dr. Gary Casper- Milwaukee Public Museum  
 Robert Hay- Wisconsin Department of Natural Resources  
 Joanne Kline- Wisconsin Department of Natural Resources  
 Dr. Doug Rossman- Luther College, Iowa

**Consultant-** Paul West- The Nature Conservancy

**Stakeholder's Group-** Andy Bruce - MLG Development; Bill Carity; Bob Hay - WDNR-Endangered Resources; Gary Casper - Milwaukee Public Museum; Jim Christenson - WDNR-Legal Services; Allen Curtes - Ozaukee Washington Land Trust; Kevin Dittmar; David Fowler - Milwaukee Metropolitan Sewerage District; Andy Galvin - WDNR-Endangered Resources; Ellen Gennrich - Waukesha County Land Conservancy; Mary Hamel - WDNR-Bureau of Communication/Education; Signe Holtz - DNR-Endangered Resources; Marlin Johnson - Waukesha County Land Conservancy; Kim Kavemeier - Waukesha County Park System; Scott Mathie; Jim Morrissey - WDNR-Southeast Region; Eric Parker - Graef, Anhalt, Schloemer & Associates; Don Reed - SEWRPC; Rebecca Schroeder - WDNR-Endangered Resources; Susan Schumacher - WE Energies



## The Conservation Strategy

### Introduction

This strategy was developed by a team of specialists with expertise in Butler's gartersnake biology, landscape ecology and ecological planning. Analysis using a Geographic Information System allowed the team to determine the locations and relative sizes of remaining habitat patches within the Butler's range. From this, the basis for this strategy was formed. The preliminary plan was then taken out to a group of stakeholders, including planners, county governments, land trusts and developers to obtain their feedback on the strategy. This DRAFT strategy is the outcome of those efforts.

### Background

The Butler's gartersnake (*Thamnophis butleri*) is one of five species of gartersnakes in Wisconsin. Its range in this state is limited to the greater Milwaukee area including most of Milwaukee County, the southern half of Ozaukee County, the southeastern quarter of Washington County and the eastern half of Waukesha County (see Map 1 and 2.). The Wisconsin population is disjunct from other Butler's gartersnake populations located in Indiana, where it is listed as an endangered species and in northwestern Ohio and southeastern Michigan where it is apparently secure. Southern Ontario also has a small population where the species is listed as Threatened. The Wisconsin Department of Natural Resources listed this snake as a threatened species in 1997. The two primary reasons for its listing are the loss and fragmentation of suitable habitat, and genetic swamping caused by hybridization with the eastern plains gartersnake (*Thamnophis radix*). Milwaukee County has lost significant amounts of suitable snake habitat since 1950 and many of the sites that supported historical occurrences (pre-1970) for this snake have been lost to development. Data accumulated by the Southeastern Wisconsin Regional Planning Commission clearly demonstrates that habitat loss due to urban development is occurring at an accelerated rate (see Map 3). The following conservation strategy was developed to help insure that the snake's population can be perpetuated at the same time as development is occurring.

## Goal

Secure long-term protection for the Butler's gartersnake through the implementation of the following conservation strategies:

## Objectives

1. Obtain data to better define the Butler's gartersnake range in southeastern Wisconsin.
  - a. Conduct genetic analysis to separate pure Butler's from hybrids (study is underway)
  - b. Survey additional areas of suitable habitat to determine snake presence/absence (extensive surveys planned for 2004 field season)

### Results to Date

- \$10,000 has been secured and the genetics work is underway.

### Planned Activities yet to be completed

- Results from the genetics study are anticipated in August 2005
  - Funding has been secured for the 2004 field season. Three surveyors and one ecologist will be hired to conduct surveys on approximately 40 habitat patches in 2004.
2. Develop criteria for classifying existing or potential Butler's gartersnake suitable habitat patches from a conservation perspective. The goal is to emphasize conservation efforts on the largest, healthiest habitat patches.
    - a. Conduct GIS analysis of sites within the Butler's gartersnake range to determine the patch size and habitat quality of these sites.
    - b. Classify sites based on site availability and quality (see attached **Site Classification Key**)

### Results to Date

- Preliminary GIS analysis has been completed that identifies potential that will be assessed in 2004.
- Based on the GIS analysis, a DRAFT Site Classification key has developed.

### Planned Activities yet to be completed

- Site Classification Key to be completed in May 2004 following Broad Authorization 2
3. Develop conservation guidelines for public and private land owners/managers
    - a. Develop specific **required and voluntary** measures for protecting remaining suitable habitat patches, with a focus on sites with the greatest long-term conservation potential (see attached **Required Conservation Measures and Voluntary Activities**).

### Results to Date

- Conservation Measures has been developed for the Site Classification Key

### Planned Activities yet to be completed

- The Conservation Measures will completed in May 2004 following Broad Authorization 2

4. Develop a Habitat Conservation Plan (HCP) for the Butler's gartersnake
  - a. Develop and implement broad incidental take authorization of conservation sites based on the classification for private and public sites.
    - Authorization #1 is for suitable habitat patches with minimal conservation value. This authorization has been completed
    - Conduct a second round of broad authorization for suitable habitat patches with low or moderate conservation value

*Note:* Suitable habitat patches classified as having significant conservation value will not be covered by broad incidental take authorization. Each project will be evaluated and individual incidental take authorizations will be issued for projects involving these sites
  - b. Develop long-term habitat management plans for Public lands that support high or potentially high quality suitable habitat and healthy Butler's gartersnake populations
  - c. Incorporate snake-friendly habitat conservation and management into development projects that incorporate conservation into the site design
    - Develop habitat management guidelines to assist site planners and consultants in site designs that benefits the Butler's gartersnake and other wetland-dependent wildlife (see attached list of and **Management Guidelines**)
    - Conduct workshops to teach consultants and developers how to design conservation into their projects to maximize values for the snake and other wetland-dependent wildlife.
  - d. Work with private landowners that are interested in managing their lands to benefit the Butler's gartersnake. This process will begin in spring 2004 as we begin working with willing private landowners that have provided us access to their sites to conduct snake surveys.

#### **Results to Date**

- Public authorization to use the Key and its associated Conservation Measures (see #3 below) is underway.
  - Broad authorization 1 has been completed for Tier 1 sites and for temporary projects.
- We have started talking with Milwaukee and Waukesha County about cooperative snake conservation including
  - Obtained permission to access their properties in 2004- Done
  - Obtained preliminary agreements from these agencies to cooperate on the development of long-term habitat management plans for their properties.
- Management guidelines have been developed to assist consultants and developers site planning where conservation is one of their objectives.

#### **Planned Activities yet to be implemented**

- Broad authorization 2 will be public noticed in mid-April with an expected approval around May 21, 2004.
- Begin an intensive landowner contact program for owners of privately-held significant conservation sites. The purpose is to obtain access to their properties to determine Butler's presence/absence and obtain initial population data
- Conduct workshops to help developers and consultants understand the new conservation strategy and how it affects them—summer through winter of 2004.

## I. Butler's Gartersnake Site Classification

Proposed project sites that may impact suitable habitat (see below) for the Butler's gartersnake will be evaluated and classified according to the classification criteria described in Figure 1 (Conservation Measures for Site Classifications). The criteria are used to evaluate the entire suitable habitat patch, including that portion of the patch that is not included within the project site (i.e. do not limit the acreage calculation to just the project site – rather include the total contiguous suitable habitat beyond the project site (not isolated- see definition).

Each suitable habitat patch is evaluated by two primary factors, suitable habitat size and habitat quality (see definitions). The application of these two factors provides a scientifically sound framework for setting protection and management priorities directed at the long-term survival of this species.

The criteria assumes that as habitat patch size increases the potential for snakes to persist increases because larger sites tend to be better buffered against localized affects and have the potential to support larger Butler's populations. Larger sites tend to also support a greater diversity of microhabitats that afford better buffering against wholesale invasions of exotic plant species. Exotic plants, like reed canary grass, often grow in dense stands that prevent crayfish from burrowing. Crayfish burrows provide essential overwintering habitats for Butler's gartersnake. Increased patch size often provides more snake-friendly edge habitat between uplands and wetlands. Edges appear to be especially important for Butler's gartersnakes. These three factors can help secure the long-term persistence of Butler's gartersnake populations.

**Note:** A site's conservation value can change as habitat quality and quantity improves or declines.

### Habitat Definitions

#### Suitable Habitat Patch:

This is defined as undeveloped areas that include both wetland and adjacent upland habitat. The patch size is not limited to the acreage of the project site only but may continue beyond the project site where suitable habitat is contiguous. To be considered as potential Butler's Gartersnake habitat:

- The wetland habitat may be any classification except permanent open water. Lakes, streams, and deep ponds are not considered suitable, nor are permanent stormwater management ponds. A 100' edge of forested wetland where it abuts or is adjacent to suitable upland habitat is also considered suitable, as crayfish burrows are likely to be present in this habitat.
- The upland habitat must be within 300 feet of over-wintering wetlands AND have intact ground vegetation (grasses, forbs) AND have less than 75% canopy closure. Closed canopy forests where ground vegetation is very sparse are not considered suitable, but old fields with significant invasion of woody shrubs and trees is suitable if grasses and forbs are still largely intact. Lawns and fields in active agricultural are not considered suitable. Most pastures will be included as suitable habitat.

**Habitat Quality:**

**Poor:** Habitat is considered to be *poor quality* if more than 75% of the wetland habitat component is dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass, *Phalaris arundinacea*; purple loosestrife, *Lythrum salicaria*; giant reed grass, *Phragmites* sp.); and/or more than 75% of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.

**Moderate:** Habitat is considered to be *moderate quality* if 50-75% of the wetland habitat component is dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass, *Phalaris arundinacea*; purple loosestrife, *Lythrum salicaria*; giant reed grass, *Phragmites* sp.); and/or 50-75% of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.

**Good:** Habitat is considered to be *good quality* if less than 50% of the wetland habitat component is dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass, *Phalaris arundinacea*; purple loosestrife, *Lythrum salicaria*; giant reed grass, *Phragmites* sp.); and/or less than 50% of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.

**Isolated:**

A site that does not exchange genetic material with other sites, due to being physically separated from other suitable habitat patches. Barriers may include *impassable physical structures* (paved roads, parking lots, walls), or *resistant terrain* (lawns, golf courses, forests, agriculture). *Resistant terrain* is land use that a snake could still physically pass through, but would do so only occasionally, with risk of predation, desiccation, and lack of shelter from the elements. Where *resistant terrain* connects suitable habitat patches, *resistant terrain* of over 1000 feet should be considered an impassable barrier.

## II. Conservation Measures for Conservation Sites

As projects are proposed, the DNR will evaluate sites within the Butler's range per the Site Classification criteria (see above) and be classified within one of the four tiers. Conservation measures have been developed for each of the tiers and are summarized in Figure 1 and described in detail below. Voluntary conservation measures are also described and recommended for projects that can go beyond the required measures.

The presence of Butler's gartersnake is assumed if a site contains habitat suitable to the snake (see definition above). Take of the snake can be avoided if all impacts to available snake habitat are avoided. This includes limiting construction activities within the snake's upland habitat to the inactive period (Nov 6 – Mar. 15). Surveys to confirm snake presence are not required, but can be conducted if the applicant so desires.

Sites classified under Tier 1 – Minimal long-term conservation value – will be covered under a broad incidental take authorization that completed its public notice period on March 26<sup>th</sup>. It is anticipated that sites under Tiers 2 and 3 will be covered under a similar broad authorization slated for completion in May 2004. Sites classified as Tier 4 will be required to undergo incidental take authorization for each individual project.

The following conservation measures are recommended to ensure the long-term conservation of the Butler's gartersnake and provide flexibility in the regulatory requirements of the Wisconsin Endangered Species Law pertaining to the snake:

### **Tier 1 Sites of Minimal Long-term Conservation Value**

Requirements for existing Incidental Take authorization:

1. All existing wetland/water regulation requirements remain in effect.
2. Voluntary conservation measures are recommended.

### **Tier 2 Sites of Low Long-term Conservation Value**

Requirements for proposed Incidental Take authorization:

1. The same regulatory requirements and voluntary measures for Tier 1 apply for Tier 2.
2. If the proposed project impacts suitable habitat, then snake exclusion fencing\* must be installed around immediate edge of construction zone prior to March 16<sup>th</sup>.
  - 2.1. If snake exclusion fencing cannot be installed prior to March 16<sup>th</sup>, then fencing should be installed prior to project initiation and moving snakes outside of construction zone may be required.

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\* See Snake exclusion fencing Design and Constructions Requirements

### Tier 3 Sites of Moderate Long-term Conservation Value- Private Lands

Requirements for proposed Incidental Take authorization:

1. The same regulatory requirements and voluntary measures for Tier 1 apply for Tier 3
2. If suitable upland habitat within proposed project area is of poor quality, protect a minimum of a 75' width of upland habitat immediately adjacent to the suitable wetland habitat. Install snake exclusion fencing\* around the construction footprint to isolate it from the protected suitable snake habitat. Fencing must be installed prior to March 16<sup>th</sup>.
  - 2.1. If not installed by March 16<sup>th</sup>, moving snakes outside of construction zone will likely be required.
3. If suitable upland habitat within proposed project area is of moderate to good quality, protect minimum of a 180' width of upland habitat immediately adjacent to the suitable wetland habitat. Install snake exclusion fencing\* around the construction footprint to isolate it from the protected suitable snake habitat. Fencing must be installed prior to March 16<sup>th</sup>.
  - 3.1. If not installed by March 16<sup>th</sup>, moving snakes outside of construction zone will likely be required.
4. If suitable wetland habitat within proposed project area is impacted, install snake exclusion fencing at the immediate edge of the authorized construction footprint to minimize snake losses. moving snakes outside of construction zone will likely be required.
5. Periodic maintenance of the suitable upland habitat area may be required per the Butler's gartersnake habitat management guidance.
6. Habitat protection requirements, such as deed restrictions, covenants or other legally binding agreements, must be legally transferred to the appropriate managing entity whenever this property transfers to another party.

Note: The Department will work with the project habitat/snake consultants to modify plans that maximize use of the available habitat for the developer while insuring adequate protection of the on-site Butler's gartersnake population where appropriate.

### Tier 4 Sites of Significant Conservation Value-

Tier 4 sites potentially support large Butler's gartersnakes populations and are critical to the long-term conservation of this animal. The loss of a population at a significant site could jeopardize the status of the species based on the current data available. The Conservation Strategy calls for take to be avoided at these sites, except in the case of habitat management. If take is proposed outside of that necessary for habitat management, project-specific incidental take authorization is required.

- A. **Public Significant Conservation Sites-** - Publicly owned Tier 4 sites currently have the greatest potential to serve as long-term conservation sites. These have sufficient habitat or the potential to support sufficient habitat to preserve the snake in perpetuity. The Department will pursue the development of cooperative habitat management plans for each of these sites. Within each plan, all allowances for incidental take of Butler's will be identified. These plans will include agreed upon detailed snake and snake habitat conservation measures to be implemented to help insure the long-term viability of the snake on these sites. See the management guidance section for snake-appropriate management actions.

- B. Private Significant Conservation Sites-** - Privately owned Tier 4 sites have the potential to serve as long-term conservation sites but are less certain because of multiple private ownerships. Projects impacting all or a portion of these sites will be required to avoid or minimize incidental take to the maximum extent authorized by the Department. The long-term conservation of these sites is essential to the long-term conservation and recovery of the Butler's gartersnake. These sites may or may not be connected to publicly owned significant conservation sites.

*Measures to avoid incidental take include:*

1. The same regulatory requirements and voluntary measures for Tier 1 apply for Tier 4.
2. If suitable upland habitat within proposed project area is of poor quality, protect a minimum of a 120' width of upland habitat immediately adjacent to the suitable wetland habitat. Install snake exclusion fencing\* at the outer edge of the 120' upland habitat protection area prior to March 16<sup>th</sup>.
3. If suitable upland habitat within proposed project area is of moderate to good quality, protect a minimum of a 300' width of upland habitat immediately adjacent to the suitable wetland habitat. Install snake exclusion fencing at the outer edge of the 300' upland habitat protection area prior to March 16<sup>th</sup>.

*If incidental take cannot be avoided, then incidental take authorization is required on project by project basis with following requirements:*

1. A conservation plan is likely required.
2. If snake exclusion fencing for upland habitat cannot be installed prior to March 16<sup>th</sup>, then fencing should be installed prior to project initiation and moving snakes outside of construction zone will likely be required.
3. If suitable wetland habitat within proposed project area is impacted, install snake exclusion fencing at the immediate edge of the authorized construction footprint to minimize snake losses. Moving snakes outside of construction zone will likely be required.
4. Suitable wetland habitat loss must be mitigated through the applicable permits wetland mitigation process. The following measures are required:
  - 4.1 Any wetland mitigation must occur within or contiguous with the significant site being impacted wherever possible.
  - 4.2 Wetland loss must not result in isolation or fragmentation of the habitat (e.g. no roads can be constructed through the wetlands that will fragment the site into two sites).

*Standard management and site protection measures include:*

1. Periodic maintenance of the suitable upland habitat area required per the Butler's gartersnake habitat management guidance.
2. All suitable habitat areas protected through Department permits or through Butler's gartersnake conservation plans must be protected in perpetuity. Therefore, as property is

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\* See Snake exclusion fencing Design and Construction Requirements

transferred, deed restrictions, covenants or other legal restrictions on activities and/or land use, including required habitat management, must accompany transfer or the sale of properties to insure that the upland habitat will not be manicured, used or developed in a manner that reduces habitat suitability for the Butler's gartersnake.

### **Optional**

1. Time did not allow for the development of a possible mitigation plan, but there seems to be support for the idea of mitigating the unavoidable loss of suitable habitat within the development community. Through the various stakeholder and public hearing meetings held over the past two months, the idea of setting up a mitigation bank of suitable Butler's gartersnake habitat has been discussed. The concept could include two elements:
  - 1.1 When a portion of a privately owned significant site is proposed for development, the habitat loss could potentially be mitigated by purchasing other privately owned significant sites lands and placing them into public ownership for the long-term management and protection of the snake.
  - 2.1 Identify habitat restoration areas that currently do not support the snake within the same significant habitat patch and use as mitigation for privately owned significant sites lost to development. These sites would also be protected in perpetuity.

\*Note: The Department will work with the project habitat consultants to modify plans that maximize use of the available habitat for the developer while insuring adequate protection of the on-site Butler's gartersnake population per the requirements in A. above where appropriate.

## Voluntary Actions for protecting Butler's gartersnake Habitat

The following actions may be taken to avoid take of the snakes and provide protection for the species and their habitat.

Tier 1	Tier 2	Tier 3	Tier 4	Voluntary Protection Measures
✓				Install trenched-in silt fencing just outside the wetland boundary prior to Mar. 16 to prevent snakes from entering the project site once snakes emerge from hibernation. The fence will need to encompass the construction site on all sides up to 300 feet from any snake overwintering wetlands in order to avoid snake mortality. The fence should be installed with loop-arounds at the ends and at openings in order to redirect the snakes away from them (see Diagram 1). Fences should be maintained throughout the snake's entire active period (Mar. 16 – Nov. 5).
✓	✓	✓	✓	Time projects so that they occur during the snakes inactive period (Nov. 6-Mar. 15).
✓	✓	✓	✓	Redesign project to maximize remaining suitable habitat patch size. This can include building in natural green space, especially including unmanicured upland habitat adjacent to the natural wetlands, including the perimeters of stormwater management ponds.
✓	✓	✓	✓	Redesign stormwater management ponds to be retention (hold water temporarily) rather than detention (permanent/semi-permanent) ponds where permissible.
✓	✓	✓	✓	Support research that increases our knowledge of snake habitat requirements and management. This could include providing access to your properties by researchers or helping fund this research.
✓	✓			Conduct periodic maintenance of the suitable upland habitat area, including either mowing, burning or brush/tree removal with glyphosate applications to cut stems during the snake's inactive period to prevent the habitat from becoming unsuitable habitat (see definition of suitable upland habitat).
		✓	✓	Land Trusts or other conservation organizations obtain conservation easements to protect additional habitat
		✓	✓	Establish voluntary protection agreements with private landowners
		✓	✓	Establish upland habitats to further protect and/or maintain Butler's habitat.
		✓	✓	Fee Title acquisition by DNR or other conservation organization Private

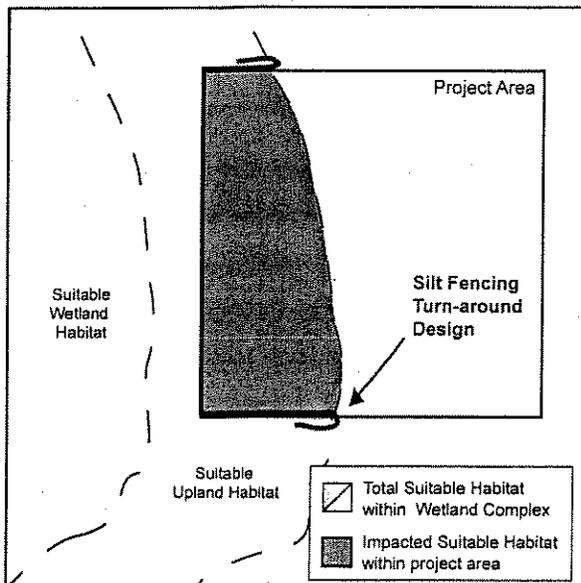
## Snake Exclusion Fencing Design and Construction Requirements

When suitable habitat is being infringed upon, trenched-in sediment fencing must be installed prior to the initiation of construction per the requirements of each Tier described above. Fencing design/construction requirements include:

- The fencing must separate the entire authorized construction footprint from the surrounding snake habitat up to 300 feet from the wetland boundary. The fence should be installed with loop-arounds at the ends furthest from the wetland habitat and at any access openings needed in the fencing in order to redirect the snakes away from them (see Diagrams 1 and 2).
- Fences must be inspected at least twice weekly on non-consecutive days and repairs must be made within 24 hours.
- These fences must be maintained through out the snake's entire active period (Mar. 16 – Nov. 5).
- Fencing for Tiers 3 and 4 sites requires that the snake exclusion fencing be installed with the fence stakes on the construction side of the fence wherever the fencing cuts through snake habitat. Because this is opposite the normal erosion-fence installation method, both erosion and snake exclusion fencing may be required in some instances as determined by the Department's Water Management Specialist.

\*Note. If fencing cannot be installed by March 15, please contact the Bureau of Endangered Resources, as there may be some latitude with the installation date based on weather-related conditions in spring.

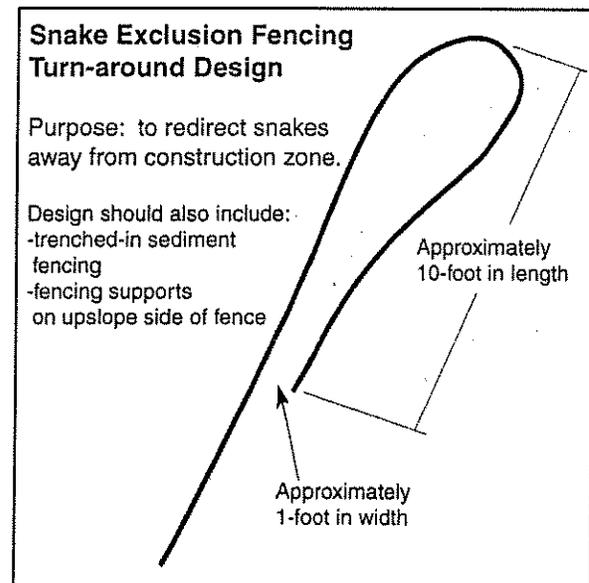
Diagram 1



Snake Exclusion Fencing Diagram for projects Impacting Upland Habitat for the Butler's gartersnake

2/17/2004

Diagram 2



Turn-around Design for Snake Exclusion Fencing for the Butler's gartersnake

2/17/2004

## Moving Snakes- Methods and Requirements

Moving snakes involves capturing snakes that are living in suitable snake habitat within a construction footprint and moving them immediately outside of the snake exclusion fencing into adjacent suitable snake habitat, preferably toward the suitable wetlands. This work can be performed by qualified consultants that are familiar with Butler's gartersnake habitat requirements. Consultants who plan to conduct snake removals must obtain an Endangered Species Permit prior to handling Butler's gartersnakes. Species identifications involving all gartersnakes found must be verified by a qualified herpetologist familiar with Butler's gartersnakes until the consultant doing the work has proven his or her ability to properly identify Butler's gartersnakes.

Moving snakes usually employs two methods:

1. Placing plywood boards to attract snakes- Specific methods and timing are continually changing as we learn more through observation and research.
2. Funnel trapping along the construction side of the snake exclusion fencing- This method was recently tested on an experimental level but will be allowed. Methods and timing will continue to be modified as more of this work is conducted.

Consultants performing this work should check with the Department on the latest specific methods and timing requirements.

## Management Guidance for Butler's Gartersnake Habitat

Periodic maintenance of suitable upland habitat is required for Tiers 3 and 4 and is recommended for Tiers 1 and 2. If the management activity is for the purpose of recovering, maintaining or improving the grassland, prairie or savanna ecosystem that includes habitat for Butler's gartersnakes, then incidental take is allowed if the following protocols are followed. If incidental take of Butler's gartersnakes results from the activity, please notify BER so we can reevaluate this guidance. Incidental Take Authorization for these activities is proposed for April 2004.

**To maintain suitable habitat for the Butler's gartersnake, partial mowing or burning of the suitable upland habitat should be conducted at least once every 3-5 years to suppress natural succession.**

### A. Burning:

1. If burning will be done between Nov. 1 – March 15 , there are no restrictions.
2. If burning will be done between March 16 – October 31, then only up to 25% of the available grassland habitat for that site (*see definition*) should be burned in any one year.

### B. Mowing/Haying:

Herbaceous mowing and brush-mowing should be done as follows:

1. Conduct mowing in small patches in a monthly rotational pattern, with no more than 33% of the available grassland habitat on the site (*see definition*) affected in any one year.
2. Mower blades should be set a minimum of 8 inches off the ground.
3. Conduct when weather conditions are most likely to avoid snake activity:
  - 3.1 during the hottest period of the day when sunny conditions prevail and air temperatures exceed 80° F, OR
  - 3.2 on very cool, overcast days when temperatures are below 50° F

### C. Selective Brush/Tree-Cutting:

Selective cutting (i.e. chain saw) may be done without restriction.

### A. Grazing:

Light-to-moderate grazing (<1.0 head per acre) may be used in rotations among habitat patches, with no more than 33% of the available habitat on the site (*see definition*) grazed in any one year. Grazing should be discontinued in a patch as soon as 50% of the grasses and forbs in a grazed patch are cropped to 8 inches in height. For heavier grazing, contact Bob Hay in BER.

### B. Herbiciding:

1. To the maximum extent possible, herbiciding should occur during the snake's dormant period (Nov. 1- March 15).
2. Where active season (March 16 – November 5) herbiciding is necessary to control herbaceous vegetation, spot treat, preferably with a low persistence/short half-life herbicide (i.e. Round-up®), using wick, sponge or hand-held spray applications, not broadcast spraying. Basal-bark or cut-stump-treatment methods should be used when treating woody vegetation.

# DRAFT

## Butler's Gartersnake Conservation Strategy

Wisconsin Department of Natural Resources  
Endangered Resources Program

April 26, 2004

### Table of Contents

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<b>I. The Conservation Strategy</b> .....	1
Introduction .....	1
Background .....	1
Goal of the Butler's Gartersnake Conservation Strategy.....	3
Objectives.....	3
<b>II. Butler's Gartersnake Site Classification</b> .....	5
Habitat Definitions .....	6
<b>III. Conservation Measures for Conservation Sites</b> .....	7
Voluntary Actions for protecting Butler's gartersnake Habitat .....	11
Snake Exclusion Fencing Design and Construction Requirements .....	12
Moving Snakes- Methods and Requirements .....	13
Management Guidance for Butler's Gartersnake Habitat.....	14

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# I. The Conservation Strategy

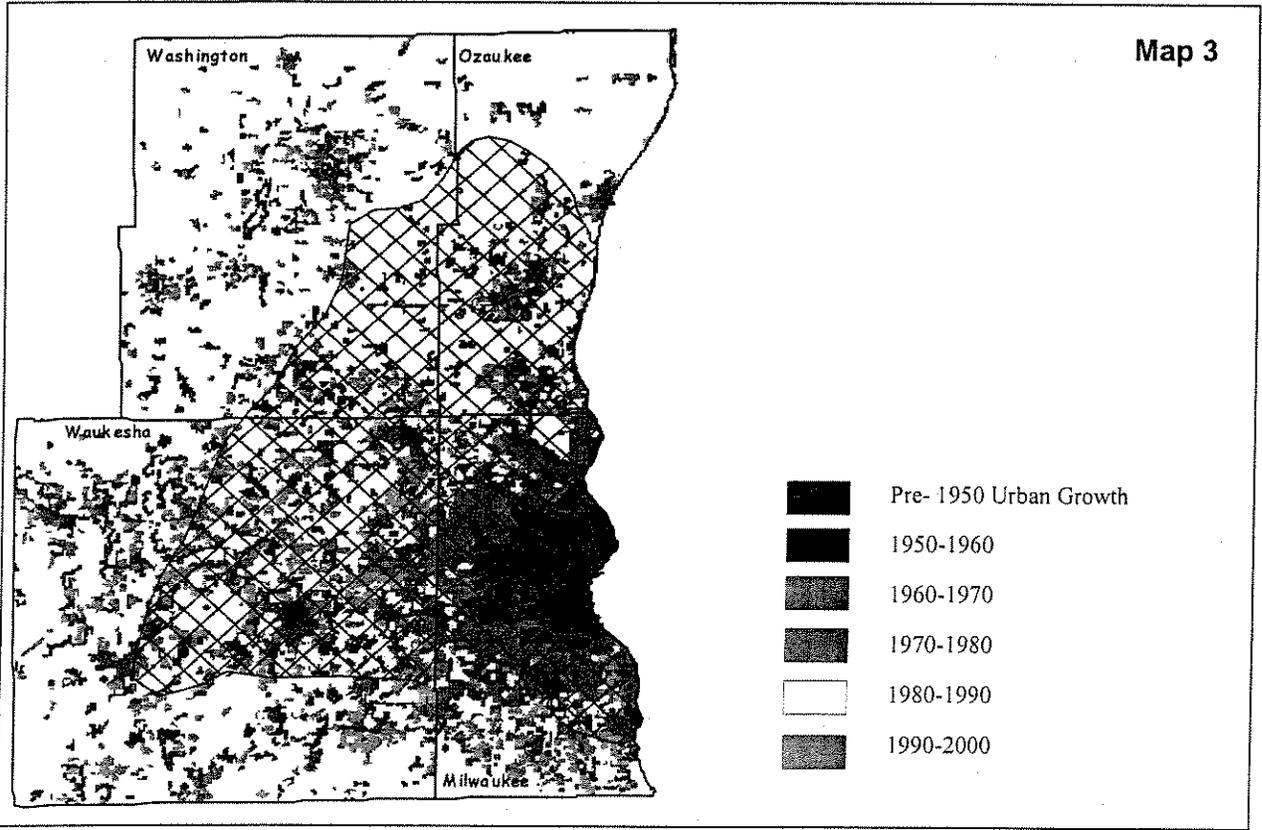
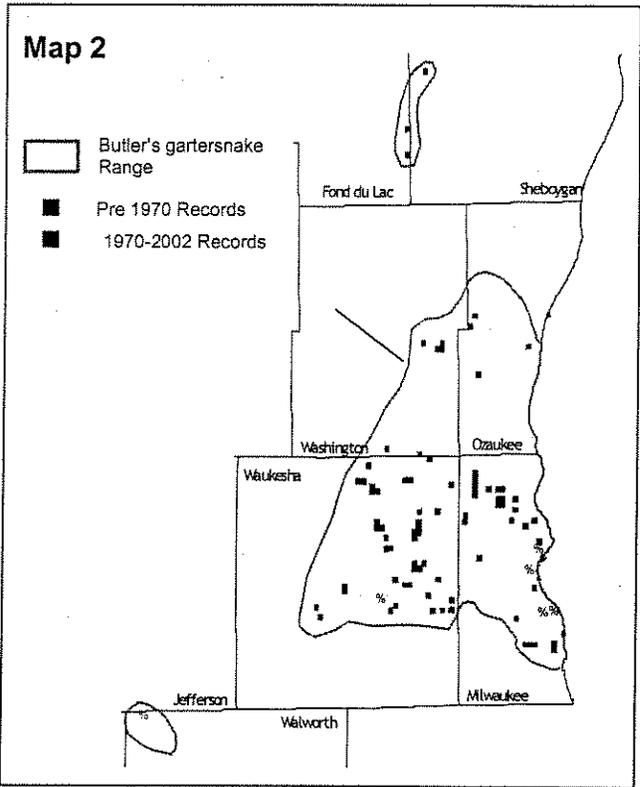
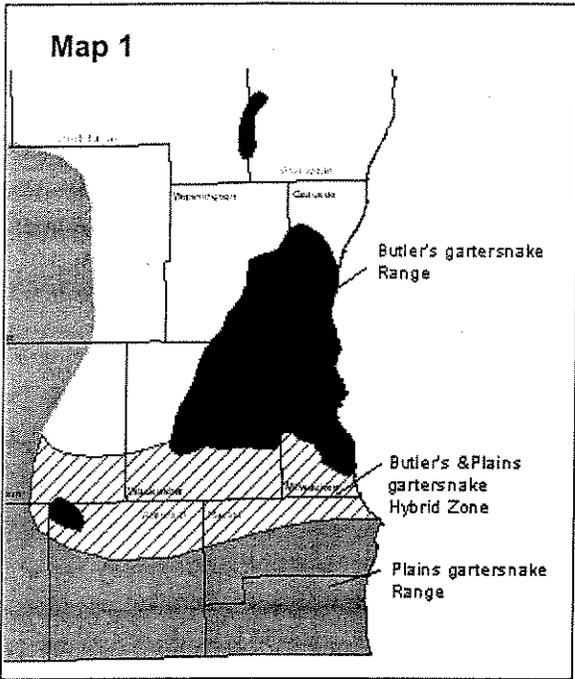
## Introduction

The Butler's Gartersnake Conservation Strategy was developed by the Wisconsin Department of Natural Resources (DNR) in partnership with a team of specialists with expertise in Butler's gartersnake biology, landscape ecology and ecological planning. Analysis using a Geographic Information System allowed the team to determine the locations and relative sizes of remaining habitat patches within the Butler's range. From this, the basis for this strategy was formed. The preliminary plan was then taken out to a group of stakeholders, including planners, county governments, land trusts and developers to obtain their feedback on the strategy. This DRAFT strategy is the outcome of those efforts.

## Background

The Butler's gartersnake (*Thamnophis butleri*) is one of five species of gartersnakes in Wisconsin. Its range in this state is limited to the greater Milwaukee area including most of Milwaukee County, the southern half of Ozaukee County, the southeastern quarter of Washington County and the eastern half of Waukesha County (see Map 1 and 2.). The Wisconsin population is disjunct from other Butler's gartersnake populations located in Indiana, where it is listed as an Endangered species and in northwestern Ohio and southeastern Michigan where it is apparently secure. Southern Ontario also has a small population where the species is listed as Threatened. The Wisconsin Department of Natural Resources listed this snake as a Threatened species in 1997. The two primary reasons for its listing are the loss and fragmentation of suitable habitat, and genetic swamping caused by hybridization with the eastern plains gartersnake (*Thamnophis radix*) along the southern boundary where the ranges overlap. Milwaukee County has lost significant amounts of suitable snake habitat since 1950 and many of the sites that supported historical occurrences (pre-1970) for this snake have been lost to development. Data accumulated by the Southeastern Wisconsin Regional Planning Commission clearly demonstrate that habitat loss due to urban development is occurring at an accelerated rate (see Map 3). The following conservation strategy was developed to help insure that the snake's population can be perpetuated at the same time as development is occurring.

The current strategy classifies sites throughout the snake's range according to the site's presumed conservation value. This assessment was made, in many cases, solely on the presence of suitable habitat that exists at a site and without the recorded presence of Butler's gartersnakes (presence assumed). It is always the option of a project applicant to have a particular site surveyed to confirm the presence or absence of the state-listed snake.



## Goal of the Butler's Gartersnake Conservation Strategy

Secure long-term protection for the Butler's gartersnake through the implementation of the following conservation strategies:

### Objectives

1. Obtain data to better define the Butler's gartersnake range in southeastern Wisconsin.
  - a. Conduct genetic analysis to separate pure Butler's from hybrids (study is underway).
  - b. Survey additional areas of suitable habitat to determine snake presence/absence (extensive surveys planned for 2004 field season).

#### Results to Date

- Secured funding and initiated the genetics analysis for the Butler's gartersnake population in Wisconsin.
- Secured additional funding for fieldwork and site analysis for the 2004 field season.

#### Planned Activities yet to be completed

- Anticipate results from the genetics analysis in August 2005.
- Hire three surveyors and one ecologist to conduct surveys on approximately 40 habitat patches in 2004.
- Get data into the Natural Heritage Inventory database

2. Develop criteria for classifying existing or potential Butler's gartersnake suitable habitat patches from a conservation perspective. The goal is to emphasize conservation efforts on the moderate and significant conservation sites with the healthiest habitat patches.
  - a. Conduct GIS analysis of sites within the Butler's gartersnake range to determine the patch size and habitat quality of these sites.
  - b. Classify sites based on site availability and quality (see **Figure 1**)

#### Results to Date

- Completed preliminary GIS analysis that identifies potential sites for assessment in 2004.
- Developed DRAFT Site Classification key.

#### Planned Activities yet to be completed

- Complete Site Classification Key in May 2004.

3. Develop conservation guidelines for public and private land owners/managers
  - a. Develop specific **required and voluntary** measures for protecting remaining suitable habitat patches, with a focus on sites with the greatest long-term conservation potential (see attached **Figure 1 and Voluntary Activities**).

#### Results to Date

- Developed Draft Conservation Measures for the Site Classification Key

### **Planned Activities yet to be completed**

- Complete the Conservation Measures in May 2004
4. Develop a Habitat Conservation Plan (HCP) for the Butler's gartersnake
- a. Develop and implement broad incidental take authorization of conservation sites based on the classification for private and public sites.
  - b. Develop long-term habitat management plans for Public lands that support high or potentially high quality suitable habitat and healthy Butler's gartersnake populations.
  - c. Incorporate snake-friendly habitat conservation and management into development projects that incorporate conservation into the site design.
  - d. Educate consultants and developers regarding how to design conservation into their projects to maximize values for the snake and other wetland-dependent wildlife.
  - e. Work with private landowners that are interested in managing their lands to benefit the Butler's gartersnake. This process will begin in spring 2004 as we begin working with willing private landowners that have provided us access to their sites to conduct snake surveys.

### **Results to Date**

Completed Broad Incidental Take Authorization for sites containing habitat of minimal conservation value.

- Coordinated with Milwaukee and Waukesha County concerning cooperative snake conservation including:
  - Obtained permission to access their properties in 2004
  - Obtained preliminary agreements from these agencies to cooperate on the development of long-term habitat management plans for their properties.
- Developed Butler's gartersnake management guidelines to assist in site planning and minimizing or avoiding impacts to the snake.

### **Planned Activities yet to be implemented**

- Complete broad Incidental Take Authorization for sites containing habitat of moderate conservation value upon approval of Conservation Strategy
- Develop habitat management guidelines to assist site planners and consultants in site designs that benefit the Butler's gartersnake and other wetland-dependent wildlife (see attached **Management Guidance for Butler's gartersnake**).
- Begin an intensive landowner contact program for owners of privately-held significant conservation sites. The purpose is to obtain access to their properties to determine Butler's presence/absence and obtain initial population data
- Conduct workshops to help developers and consultants understand the new conservation strategy and how it affects them—summer through winter of 2004.
- Conduct a population viability study to determine a minimum theoretical number of sites that would need protecting and factors affecting the long-term survival of snakes in order to ensure the continued existence of Butler's gartersnakes in Wisconsin.

## II. Butler's Gartersnake Site Classification

Proposed project sites that have the potential to impact the Butler's gartersnake will be evaluated and classified according to the classification criteria described in Figure 1 (Conservation Measures for Site Classifications) to determine the likely presence of the snake. For all projects, surveys can be conducted to confirm the presence or absence of the snake at a site. However, due to a season-limited survey window and the success of identifying confirmed records based on suitable habitat characteristics, project proponents may instead decide to assume snake presence in order to reduce potential project delays and costs.

The criteria in Figure 1 are used to evaluate the entire suitable habitat patch, including that portion of the patch that is not included within the project site. The acreage calculation is not limited to just the project site – rather it includes the total contiguous suitable habitat within and beyond the project site (not isolated- see definition).

The Department developed the criteria in Figure 1 with the assistance of the Conservation Strategy Team and after reviewing the most current scientific research for the Butler's gartersnake and conducting a generalized GIS analysis of potential suitable habitat within the snake's range. Aerial photography and land cover coverages were reviewed to identify suitable snake habitat for each county. This effort was undertaken to identify and delineate the number and size of the larger habitat patches that appear to have moderate to high conservation value for the snake. From this analysis, the Department was then able to quantify habitat patches into size categories. We then developed habitat quality criteria to give value to the various habitat conditions present among sites. This combination provided the framework and justification for the three-tiered system found in Figure 1.

The analysis resulted in the identification of an apparently sufficient number of potential sites that, if adequately protected, could conserve the species in the long-term. As a result, original requirements to minimize take were reduced for the low and minimal conservation sites. We will continue to assess significant sites over the next six months to determine snake presence and ground truth their quality and size and the results of this work will guide the development of this dynamic conservation strategy.

Each suitable habitat patch is evaluated by two primary factors, suitable habitat size and habitat quality (see definitions). The application of these two factors provides a scientifically sound framework for setting protection and management priorities directed at the long-term survival of this species.

The habitat patch size and habitat quality criteria assumes that as habitat patch size increases the potential for snakes to persist increases because larger sites tend to be better buffered against localized affects and have the potential to support larger Butler's populations. Larger sites tend to also support a greater diversity of microhabitats that afford better buffering against wholesale invasions of exotic plant species. Exotic plants, like reed canary grass, often grow in dense stands that prevent crayfish from burrowing. Crayfish burrows provide essential overwintering habitats for Butler's gartersnake. Increased patch size often provides more snake-friendly edge habitat between uplands and wetlands. Edges appear to be especially important for Butler's gartersnakes. These three factors can help secure the long-term persistence of Butler's gartersnake populations.

**Note:** A site's conservation value can change as habitat quality and quantity improves or declines.

## Habitat Definitions

### Suitable Habitat Patch:

This is defined as undeveloped areas that include both wetland and adjacent upland habitat. The patch size is not limited to the acreage of the project site only but may continue beyond the project site where suitable habitat is contiguous. To be considered as potential Butler's Gartersnake habitat:

- The wetland habitat may be any classification except permanent open water. Lakes, streams, and deep ponds are not considered suitable, nor are permanent stormwater management ponds. A 100' edge of forested wetland where it abuts or is adjacent to suitable upland habitat is also considered suitable, as crayfish burrows are likely to be present in this habitat.
- The upland habitat must be within 300 feet of over-wintering wetlands AND have intact ground vegetation (grasses, forbs) AND have less than 75% canopy closure. The upland habitat must be directly connected to the wetland in at least one location. Closed canopy forests where ground vegetation is very sparse are not considered suitable, but old fields with significant invasion of woody shrubs and trees is suitable if grasses and forbs are still largely intact. Lawns and fields in active agriculture row crops or in crop rotation are not considered suitable. Fields that remain fallow for more than one year may be considered suitable habitat. Pastures will be included as suitable habitat if more than 50 percent of the acreage had an eight-inch or greater canopy height.

### Habitat Quality:

**Poor:** Habitat is considered to be *poor quality* if more than 75% of the wetland habitat component is dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass, *Phalaris arundinacea*; purple loosestrife, *Lythrum salicaria*; giant reed grass, *Phragmites* sp.); and/or more than 75% of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.

**Moderate:** Habitat is considered to be *moderate quality* if 50-75% of the wetland habitat component is dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass, *Phalaris arundinacea*; purple loosestrife, *Lythrum salicaria*; giant reed grass, *Phragmites* sp.); and/or 50-75% of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.

**Good:** Habitat is considered to be *good quality* if less than 50% of the wetland habitat component is dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass, *Phalaris arundinacea*; purple loosestrife, *Lythrum salicaria*; giant reed grass, *Phragmites* sp.); and/or less than 50% of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.

### Isolated:

A site that does not exchange genetic material with other sites, due to being physically separated from other suitable habitat patches. Barriers may include *impassable physical structures* (paved roads, parking lots, walls), or *resistant terrain* (mowed lawns, golf courses, forests, agriculture). *Resistant terrain* is land use that a snake could still physically pass through, but would do so only occasionally, with risk of predation, desiccation, and lack of shelter from the elements. Where *resistant terrain* connects suitable habitat patches, *resistant terrain* of over 1000 feet should be considered an impassable barrier.

### **III. Conservation Measures for Conservation Sites**

As projects are proposed, the DNR will evaluate sites within the Butler's range per the Site Classification criteria (see above) and be classified within one of the three tiers. Conservation measures have been developed for each of the tiers and are summarized in Figure 1 and described in detail below. Voluntary conservation measures are also described and recommended for projects that can go beyond the required measures.

The option of conducting presence/absence snake surveys is available to determine if snakes are present at a site. Such surveys are not required, but can be conducted if the applicant so desires. However, due to limited survey windows, it may be more expeditious to assume snake presence based on presence of suitable habitat (see definition above). Take of the snake can be avoided if all impacts to available snake habitat are avoided. This includes limiting construction activities within the snake's upland habitat to the inactive period (Nov 6 – Mar. 15).

Sites classified under Tier 1 – Minimal long-term conservation value – will be covered under a broad incidental take authorization that completed its public notice period on March 26<sup>th</sup>. It is anticipated that sites under Tier 2 will be covered under a similar broad authorization slated for completion in May 2004. Sites classified as Tier 3 will be required to undergo incidental take authorization for each individual project.

The following conservation measures are recommended to ensure the long-term conservation of the Butler's gartersnake and provide flexibility in the regulatory requirements of the Wisconsin Endangered Species Law pertaining to the snake:

The Butler's gartersnake workshop mentioned above and the following conservation measures are designed to reduce the need for snake consultant expertise. However, in more complex projects the employment of consultant expertise will ensure efficient and effective development design. We anticipate that over time this expertise will transfer to the development community as experience is gained with project designs.

#### **Tier 1 Sites of Minimal Long-term Conservation Value**

Requirements for existing Incidental Take authorization:

1. All existing wetland/water regulation requirements remain in effect.
2. Voluntary conservation measures are recommended.

## Tier 2 Sites of Moderate Long-term Conservation Value- Private Lands

Requirements for proposed Incidental Take authorization:

1. The same regulatory requirements and voluntary measures for Tier 1 apply for Tier 2
2. If project impacts suitable upland habitat within proposed project area and is of poor quality, *protect a of 75' average width of this upland habitat immediately adjacent to the suitable wetland habitat*. Install snake exclusion fencing\* around the construction footprint to isolate it from the protected suitable snake habitat. Fencing must be installed prior to March 16<sup>th</sup>.
  - 2.1. If not installed by March 16<sup>th</sup>, moving snakes outside of construction zone will likely be required.
3. If project impacts suitable upland habitat within proposed project area and is of moderate to good quality, *protect minimum of a 180' average width of upland habitat adjacent to the suitable wetland habitat*. Install snake exclusion fencing\* around the construction footprint to isolate it from the protected suitable snake habitat. Fencing must be installed prior to March 16<sup>th</sup>.
  - 3.1. If not installed by March 16<sup>th</sup>, moving snakes outside of construction zone will likely be required.
4. If suitable wetland habitat within proposed project area is impacted, install snake exclusion fencing at the immediate edge of the authorized construction footprint to minimize snake losses. Moving snakes outside of construction zone will likely be required.
5. Periodic maintenance of the suitable upland habitat area required per the Butler's gartersnake habitat management guidance.
6. Habitat protection requirements, such as deed restrictions, covenants or other legally binding agreements, must be legally transferred to the appropriate managing entity whenever this property transfers to another party.

## Tier 3 Sites of Significant Conservation Value-

Tier 3 sites potentially support large Butler's gartersnakes populations and are critical to the long-term conservation of this animal. The loss of a population at a significant site could jeopardize the status of the species based on the current data available. The Conservation Strategy calls for take to be avoided at these sites, except in the case of habitat management. If take is proposed outside of that necessary for habitat management, project-specific incidental take authorization is required.

- A. **Public Significant Conservation Sites** - Publicly owned Tier 3 sites currently have the greatest potential to serve as long-term conservation sites. These have sufficient habitat or the potential to support sufficient habitat to preserve the snake in perpetuity. The Department will pursue the development of cooperative habitat management plans for each of these sites. Within each plan, all allowances for incidental take of Butler's will be identified. These plans will include agreed upon detailed snake and snake habitat conservation measures to be implemented to help insure the long-term viability of the snake on these sites. See the management guidance section for snake-appropriate management actions.

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\* See Snake exclusion fencing Design and Constructions Requirements

**B. Private Significant Conservation Sites-** - Privately owned Tier 3 sites have the potential to serve as long-term conservation sites but are less certain because of multiple private ownerships. Projects impacting all or a portion of these sites will be required to avoid or minimize incidental take to the maximum extent authorized by the Department. The long-term conservation of these sites is essential to the long-term conservation and recovery of the Butler's gartersnake. These sites may or may not be connected to publicly owned significant conservation sites.

*Measures to avoid incidental take include:*

1. The same regulatory requirements and voluntary measures for Tier 1 apply for Tier 3.
2. If project impacts suitable upland habitat within proposed project area and is of poor quality, protect a 120' average width of upland habitat adjacent to the suitable wetland habitat. Install snake exclusion fencing at the outer edge of the 120' upland habitat protection area prior to March 16<sup>th</sup>.
3. If project impacts suitable upland habitat within proposed project area and is of moderate to good quality, protect a 300' average width of upland habitat adjacent to the suitable wetland habitat. Install snake exclusion fencing at the outer edge of the 300' upland habitat protection area prior to March 16<sup>th</sup>.

*If incidental take cannot be avoided, then incidental take authorization is required on project by project basis with following requirements:*

1. A conservation plan is likely required.
2. If snake exclusion fencing for upland habitat cannot be installed prior to March 16<sup>th</sup>, then fencing should be installed prior to project initiation and moving snakes outside of construction zone will likely be required.
3. If suitable wetland habitat within proposed project area is impacted, install snake exclusion fencing at the immediate edge of the authorized construction footprint to minimize snake losses. Moving snakes outside of construction zone will likely be required.
4. Suitable wetland habitat loss must be mitigated through the applicable permits wetland mitigation process. The following measures are required:
  - 4.1 Any wetland mitigation must occur within or contiguous with the significant site being impacted wherever possible.
  - 4.2 Wetland loss must not result in isolation or fragmentation of the habitat (e.g. no roads can be constructed through the wetlands that will fragment the site into two sites).

*Standard management and site protection measures include:*

1. Periodic maintenance of the suitable upland habitat area required per the Butler's gartersnake habitat management guidance.
2. All suitable habitat areas protected through Department permits or through Butler's gartersnake conservation plans must be protected in perpetuity. Therefore, as property is transferred, deed restrictions, covenants or other legal restrictions on activities and/or land use, including required habitat management, must accompany transfer or the sale of

properties to insure that the upland habitat will not be manicured, used or developed in a manner that reduces habitat suitability for the Butler's gartersnake.

### **Optional**

1. Time did not allow for the development of a possible mitigation plan, but there seems to be support for the idea of mitigating the unavoidable loss of suitable habitat within the development community. Through the various stakeholder and public hearing meetings held over the past two months, the idea of setting up a mitigation bank of suitable Butler's gartersnake habitat has been discussed. The concept could include two elements:
  - 1.1 When a portion of a privately owned significant site is proposed for development, the habitat loss could potentially be mitigated by purchasing other privately owned significant sites lands and placing them into public ownership for the long-term management and protection of the snake.
  - 2.1 Identify habitat restoration areas that currently do not support the snake within the same significant habitat patch and use as mitigation for privately owned significant sites lost to development. These sites would also be protected in perpetuity.

## Voluntary Actions for protecting Butler's gartersnake Habitat

The following actions may be taken to avoid take of the snakes and provide protection for the species and their habitat.

Tier 1	Tier 2	Tier 3	Voluntary Protection Measures
✓			Install trenched-in silt fencing just outside the wetland boundary prior to Mar. 16 to prevent snakes from entering the project site once snakes emerge from hibernation. The fence will need to encompass the construction site on all sides up to 300 feet from any snake overwintering wetlands in order to avoid snake mortality. The fence should be installed with loop-arounds at the ends and at openings in order to redirect the snakes away from them (see Diagram 1). Fences should be maintained throughout the snake's entire active period (Mar. 16 – Nov. 5).
✓	✓	✓	Time projects so that they occur during the snakes inactive period (Nov. 6- Mar. 15).
✓	✓	✓	Redesign project to maximize remaining suitable habitat patch size. This can include building in natural green space, especially including unmanicured upland habitat adjacent to the natural wetlands, including the perimeters of stormwater management ponds.
✓	✓	✓	Redesign stormwater management ponds to be retention (hold water temporarily) rather than detention (permanent/semi-permanent) ponds where permissible.
✓	✓	✓	Support research that increases our knowledge of snake habitat requirements and management. This could include providing access to your properties by researchers or helping fund this research.
✓			Conduct periodic maintenance of the suitable upland habitat area, including either mowing, burning or brush/tree removal with glyphosate applications to cut stems during the snake's inactive period to prevent the habitat from becoming unsuitable habitat (see definition of suitable upland habitat).
	✓	✓	Land Trusts or other conservation organizations obtain conservation easements to protect additional habitat.
	✓	✓	Establish voluntary protection agreements with private landowners.
	✓	✓	Establish upland habitats to further protect and/or maintain Butler's habitat.
	✓	✓	Fee Title acquisition by DNR or other conservation organizations.

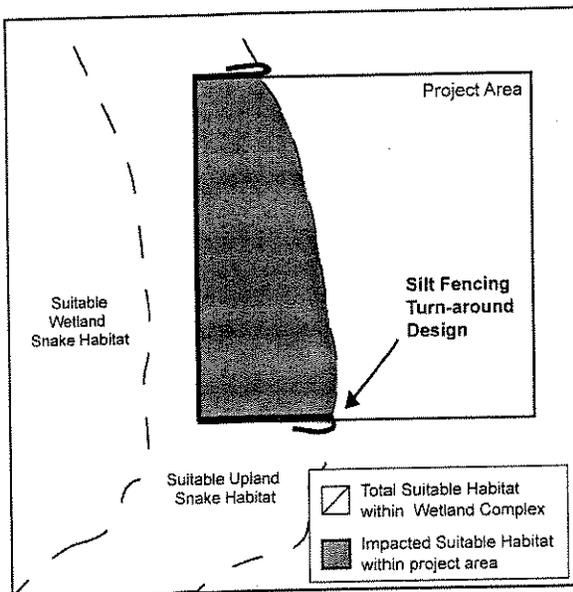
## Snake Exclusion Fencing Design and Construction Requirements

When suitable habitat is being infringed upon, trenched-in sediment fencing must be installed prior to the initiation of construction per the requirements of each Tier described above. Fencing design/construction requirements include:

- The fencing must separate the entire authorized construction footprint from the surrounding snake habitat up to 300 feet from the wetland boundary. The fence should be installed with loop-arounds at the ends furthest from the wetland habitat and at any access openings needed in the fencing in order to redirect the snakes away from them (see Diagrams 1 and 2).
- Fences must be inspected at least twice weekly on non-consecutive days and repairs must be made within 24 hours.
- These fences must be maintained through out the snake's entire active period (Mar. 16 – Nov. 5).
- For Tier 3, it's required that the snake exclusion fencing be installed exclusion wherever the project impacts snake habitat (see Diagram 1). Additional sediment control fencing may be required as part of other Department permit conditions.

\*Note. If fencing cannot be installed by March 15, please contact the Bureau of Endangered Resources, as there may be some latitude with the installation date based on weather-related conditions in spring.

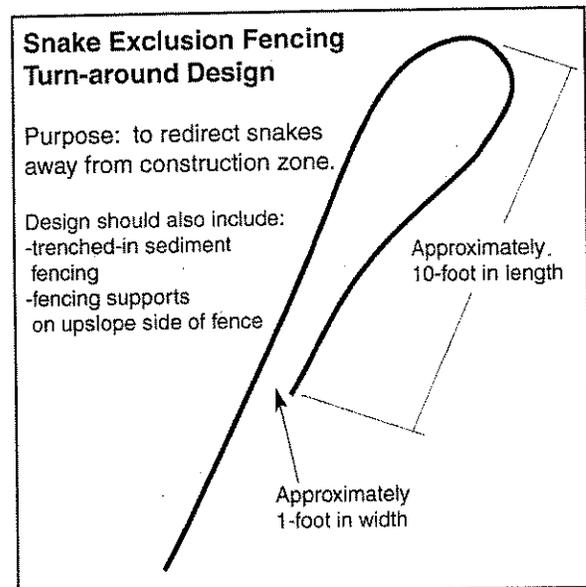
Diagram 1



Snake Exclusion Fencing Diagram for projects Impacting Upland Habitat for the Butler's gartersnake

2/17/2004

Diagram 2



Turn-around Design for Snake Exclusion Fencing for the Butler's gartersnake

2/17/2004

## Moving Snakes- Methods and Requirements

Moving snakes involves capturing snakes that are living in suitable snake habitat within a construction footprint and moving them immediately outside of the snake exclusion fencing into adjacent suitable snake habitat, preferably toward the suitable wetlands. This work can be performed by qualified consultants that are familiar with Butler's gartersnake habitat requirements. Consultants who plan to conduct snake removals must obtain an Endangered and Threatened Species Permit prior to handling Butler's gartersnakes. Species identifications involving all gartersnakes found must be verified by a qualified herpetologist familiar with Butler's gartersnakes until the consultant doing the work has proven his or her ability to properly identify Butler's gartersnakes.

Moving snakes usually employs two methods:

1. Placing plywood boards to attract snakes - specific methods and timing are continually changing as we learn more through observation and research.
2. Funnel trapping along the construction side of the snake exclusion fencing- this method was recently tested on an experimental level but will be allowed. Methods and timing will continue to be modified as more of this work is conducted.

Projects have experienced significant increases in the time involved for snake removals where project proponents failed to maintain fence integrity and snakes return to the removal area. It is more cost effective and protective to maintain fences than to continue the snake removal process. Snake removals will be required until the Department is satisfied that the majority of snakes have been removed.

Consultants performing this work should check with the Department on the latest specific methods and timing requirements.

## Management Guidance for Butler's Gartersnake Habitat

Periodic maintenance of suitable upland habitat is required for Tiers 2 and 3 and is recommended for Tier 1. If the management activity is for the purpose of recovering, maintaining or improving the grassland, prairie or savanna ecosystem that includes habitat for Butler's gartersnakes, then incidental take is allowed if the following protocols are followed. If incidental take of Butler's gartersnakes results from the activity, please notify BER so we can reevaluate this guidance. Incidental Take Authorization for these activities is proposed for April 2004.

**To maintain suitable habitat for the Butler's gartersnake, partial mowing or burning of the suitable upland habitat should be conducted at least once every 3-5 years to suppress natural succession.**

### A. Burning:

1. If burning will be done between November 6 – March 15 , there are no restrictions.
2. If burning will be done between March 16 – November 5, then only up to 25% of the available grassland habitat for that site (*see definition*) should be burned in any one year.

### B. Mowing/Haying:

Herbaceous mowing and brush-mowing should be done as follows:

1. Conduct mowing in small patches in a monthly rotational pattern, with no more than 33% of the available grassland habitat on the site (*see definition*) affected in any one year.
2. Mower blades should be set a minimum of 8 inches off the ground.
3. Conduct when weather conditions are most likely to avoid snake activity:
  - 3.1 during the hottest period of the day when sunny conditions prevail and air temperatures exceed 80° F, OR
  - 3.2 on very cool, overcast days when temperatures are below 50° F

### C. Selective Brush/Tree-Cutting:

Selective cutting (i.e. chain saw) may be done without restriction.

### A. Grazing:

Light-to-moderate grazing (<1.0 head per acre) may be used in rotations among habitat patches, with no more than 33% of the available habitat on the site (*see definition*) grazed in any one year. Grazing should be discontinued in a patch as soon as 50% of the grasses and forbs in a grazed patch are cropped to 8 inches in height. For heavier grazing, contact Bob Hay in BER.

### B. Herbiciding:

1. To the maximum extent possible, herbiciding should occur during the snake's dormant period (Nov. 6- March 15).
2. Where active season (March 16 – November 5) herbiciding is necessary to control herbaceous vegetation, spot treat, preferably with a low persistence/short half-life herbicide (i.e. Round-up®), using wick, sponge or hand-held spray applications, not broadcast spraying. Basal-bark or cut-stump-treatment methods should be used when treating woody vegetation.

## **Butler's Gartersnake Testimony- April 28, 2004**

In late January of this year, this committee considered the delisting of the State-Threatened Butler's gartersnake. You decided at that time to delay a vote to delist the species and the Committee instructed the Department of Natural Resources to develop a conservation strategy for the Butler's gartersnake that would help alleviate pressure on the development community in southeast Wisconsin. You asked us to return to the Committee by April 15<sup>th</sup> to brief you on the strategy. Before you is a handout of the latest Conservation Strategy. Today, I would like to describe this strategy and outline our plans to continue our work of protecting this species for the benefit of the Citizens of Wisconsin while being attentive to the needs of the development community.

### Plan Development Process

Over the past three months, the Department has worked diligently to develop a strategy that balances the conservation needs of the species with the economic demands of the Metropolitan Milwaukee area. First, the Department established a **Conservation Strategy Team** to develop a draft plan and provide comments and feedback. The Conservation Strategy Team consisted of eight members representing the Department, the Milwaukee Public Museum, the Wisconsin Wetland Association, Southeastern Wisconsin Regional Planning Commission, Luther College in Iowa and the University of Tennessee-Knoxville. A consultant from The Nature Conservancy was also involved in review of the strategy.

Next, this **conceptual conservation strategy** was taken to a stakeholder's meeting for feedback on March 11, 2004. Stakeholders included members of the Milwaukee Builder's Association, the Milwaukee Metropolitan Sewerage District, Southeastern Wisconsin Regional Planning Commission, Waukesha County, the Ozaukee/Washington Land Trust, Waukesha Land Conservancy and WE Energies. Though much detail remained to be developed, the stakeholders were supportive of the direction the Department was headed.

I met with most of you earlier this month to review our progress toward developing our Conservation Strategy. I also met with the Metropolitan Builders Association and discussed the strategy with them in great detail on several occasions. We have also met with and took comments from Milwaukee Metropolitan Sewerage District (MMSD). We incorporated these comments and adjusted the draft accordingly. Hence, this plan is simplified from the strategy you saw earlier this month.

The plan before you is a synthesis of current science and stakeholder input. What emerged is a tiered system that classifies sites relative to their long-term conservation value. The key to its success is a strategy that focuses on sites with significant long-term conservation value.

In summary, sites that contain habitat suitable for the Butler's gartersnake will be reviewed and assigned to one of the three categories. You may recall that the earlier plan delineated four categories. These simplified categories include:

- Minimal Conservation Value
- Moderate Conservation Value
- Significant Conservation Value

Of most significance to the development community, perhaps, are those sites that would fall into the Minimal category - all sites under 10 acres and sites up to 20 acres that are of poor habitat quality. A broad incidental take authorization was completed that would allow development to continue unhindered beyond the current DNR laws for stormwater, runoff, etc.. Sites in Tier 1 require no protected upland snake habitat, no surveys, and no snake exclusion fencing. Looking back over the past projects that we have authorized for incidental take, over 45% would have fallen into this category.

The middle category, Tier 2, includes moderate sites. In both Tiers 1 and 2, developers will have broad incidental take authority if they follow the required conservation measures. We can allow broad incidental take on Tiers 1 and 2 because the long-term protection of the species will be provided in Tier 3, which we call, "Significant Conservation Value Sites."

Next, let me tell you about Tier 3 sites. These sites are over 30 acres or between 20 and 30 acres of good habitat quality. Sites within this category will require protected habitat areas and other important conservation measures based on the current science. Providing for the long-term protection of the species on Significant Conservation Value sites allows for

the incidental take of snakes on the sites of less significance. In other words, allowing the loss of individual animals and small sites where they occur is only acceptable when we have corresponding protection for the species on the sites of Significant Conservation Value. These sites are significant to the conservation community because identification and protection of sites large enough and of sufficient habitat quality are essential to provide for long-term conservation of the species. However, **it is critical to understand at this point is that these sites have been identified as potential sites but snakes have yet to be documented at most of these locations and the conservation of these sites has not been secured.** Partnerships with the counties and other public entities are essential and we are working in the direction. We have discussed management with Milwaukee and Waukesha Counties regarding sites under their ownership. They have verbally agreed to work with us to protect and manage significant sites on their lands.

As a result of this work, we have now reduced by one-half the requirements for the development community that is caused by the listing of the Butler's gartersnake. We have also clarified our understanding and vision of what habitat is potentially available for the long-term conservation of the snake.

But there is much work that remains and we are pursuing it aggressively.

- The Department plans on issuing a second authorization that will further streamline the review process for the Moderate Conservation Value Sites, thereby expediting permit reviews involving the snake.

- The Department has secured significant funding to conduct extensive field surveys this Spring that will assist in confirming the presence of snakes at sites delineated from aerial photograph analysis. This work has already begun.
- The Department will conduct training for the development community to assist them in understanding the details of the current and future Incidental Take authorizations and further streamline the permit process.
- We will continue to develop a partnership with interested and affected parties for the benefit of the snake and to ensure that the Department is open and reasonable.
- We will begin a much needed population study so that we understand what minimal number of snakes is needed to sustain a viable population. Analysis of the population genetics continue.

We consider this Conservation Plan as a work in progress. We are pleased that the strategy represents the work of a team of knowledgeable science experts with practical input from representatives of the development community. With the constant addition of new information, it is essential that both DNR and other affected parties remain flexible. In this way, our overall strategy and individual consultations can be adjusted as science necessitates. We are optimistic that this strategy will address the concerns of developers, allow for flexibility as the Department gathers more information about the snake, and provide for long-term conservation of Butler's gartersnake as part of Wisconsin's natural heritage.



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### JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

## Rule Suspension Motion Form

April 28, 2004  
201 Southeast  
State Capitol

Moved by Grothman, Seconded by Lazich

THAT, pursuant to s. 227.24(2)(d) and ~~227.19(4)(d)(5&6)~~, stats. the Joint Committee for Review of Administrative Rules ~~suspends~~ NR 27.03(3)(c)3.

227.26(2)(b)

requests "policy" ~~cons. measures~~ to promulgate as an em. rule.

draft rule before JCRAR for site classification within 30 days specific to Butler's Carter Snake

COMMITTEE MEMBER	Aye	No	Absent
1. Senator LEIBHAM	✓		
2. Senator WELCH	✓		
3. Senator LAZICH	✓		
4. Senator ROBSON		✓	
5. Senator COGGS		✓	
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative BLACK		✓	
10. Representative HEBL		✓	
Totals	6	4	

Motion Carried

Motion Failed

SENATOR JOSEPH LEIBHAM  
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

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## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 30, 2004

The Honorable Alan Lasee  
Senate President  
State Capitol Building, Room 220 South  
Madison, WI 53702

The Honorable John Gard  
Assembly Speaker  
State Capitol Building, Room 211 West  
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 28, 2004 and adopted the following motions:

**Emergency Rule DWD 274.035 Relating to overtime pay for employees performing companionship services.** Moved by Representative Grothman, seconded by Senator Lazich that, pursuant to s. 227.26(2)(d) & 227.19(4)(d) 1-3, stats, the suspends Emergency Rule DWD 274.035 in it's entirety.  
**Ayes 6, Noes 4 Motion Carried.**

**NR 27.03(3)(c) 3 Relating to the Endangered and Threatened Species Butler's garter snake.** Moved by Representative Grothman, seconded by Senator Lazich that, the Joint Committee for Review of Administrative Rules requests the Department of Natural Resources to promulgate their policy, "conservation measures for site classifications" as it relates to the Butler's garter snake into a draft emergency rule within 30 days.  
**Ayes 6, Noes 4 Motion Carried.**

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to the above emergency rule.

Sincerely,

Senator Joseph Leibham  
Senate Co-Chair

Representative Glenn Grothman  
Assembly Co-Chair

JKL:GSG:pvs

cc: Secretary of State Doug LaFollette  
Revisor of Statutes Gary Poulson



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## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 30, 2004

Scott Hassett, Secretary  
Department of Natural Resources  
101 South Webster Street  
P.O. Box 7921  
Madison, WI 53707-7921

Dear Secretary Hassett:

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 28, 2004 and adopted the following motion:

**NR 27.03(3)(c) 3 Relating to the Endangered and Threatened Species Butler's garter snake.** Moved by Representative Grothman, seconded by Senator Lazich that, the Joint Committee for Review of Administrative Rules requests the Department of Natural Resources to promulgate their policy, "conservation measures for site classifications" as it relates to the Butler's garter snake into a draft emergency rule within 30 days.  
**Ayes 6, Noes 4 Motion Carried.**

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham  
Senate Co-Chair

Representative Glenn Grothman  
Assembly Co-Chair

JKL:GSG:pvs

cc: Secretary of State Doug LaFollette  
Revisor of Statutes Gary Poulson

# BUTLER'S GARTER SNAKE

MBA - Scott Matthey

- If suspend great
- Tier system concerns
  - DNR should not protect habitat
  - Fed vs State Law
- letter: MBA member
  - That member still wants de-listing

Allow de-lis.

Get rid of 1<sup>st</sup> and 2<sup>nd</sup>

Tiers

leave 4<sup>th</sup> tier