

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2251/P2dn
RNK:sac:jf

August 9, 2013

Certain of the instructions for this draft were somewhat vague. One instruction was to exempt net pens from fish farm registration. Under current law, not only must fish farms be registered but also persons who bring fish or fish eggs into the state for introduction into the waters of this state must have a permit. See s. 95.60 (2) (a), stats. I have assumed that you wanted the exemption to apply to both the registration and the permit requirements. Please let me know if my assumption is incorrect.

The instructions also indicated that the net pens should be exempt from DATCP fish health rules. Elsewhere, the instructions provided that fish placed into the net pen would have to meet DATCP health standards. These instructions seem to be contradictory. Consequently, the draft does not exempt fish that are placed in net pens from DATCP rules. Again, please let me know if this does not meet your intent.

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

8/12/13

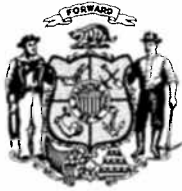
Telephone call from Rob Kovach re: LRB-2251

Rob called with redraft instructions

He said that the idea for this draft is to allow sporting clubs to put "fingerlings" in net pens on a temporary basis. There is no intent to place fish eggs in the net pen.

He wants anyone, not just a riparian owner to be able to place the net pen in the water.

He said that the fish would be healthy fish because they would come from a licensed fish hatchery. Once they are placed in the pen they should be entirely exempt from any requirements under s. 95.60 and DATCP should have no authority over those fish.



Rm run
P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In
8/12

LPS: please add RNK to Carbon Copy (cc) on request sheet, as marked, if it hasn't already been done. already done

regen cat.

1 **AN ACT to amend** 29.503 (7) and 95.60 (2) (a) (intro.); and **to create** 30.01 (4o),
2 30.12 (3) (a) 7. and 95.60 (3r) of the statutes; **relating to:** allowing placement
3 of net pens in navigable waters under a statewide general permit and
4 exceptions for certain requirements that apply to fish farms.

Analysis by the Legislative Reference Bureau

Under current law, no person may place a structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line unless the Department of Natural Resources (DNR) has issued an individual or general permit allowing the structure. Certain structures, including a fish crib intended to improve fish habitat, certain piers and wharves, and a biological shore erosion control structure, are exempted from these permitting requirements if they are not in an area of special natural resource interest and do not interfere with riparian rights.

person

This bill requires DNR to issue a statewide general permit that authorizes a ~~riparian owner~~ ^a person to place a net pen in navigable water adjacent to the owner's property as long as the net pen is not used for commercial purposes. The bill defines a net pen as an enclosure placed in a body of water and used to ~~hold or rear fish~~ ^{hatch fish eggs or to} hold or rear fish. ^{placed on temporary basis and is}

The owner must also hold a fish stocking permit from DNR.

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) administers laws regulating fish farms. A fish farm is a facility at which a person hatches fish eggs or rears fish for the purpose of introduction into the waters of the state or for various other purposes including human or animal

on a temporary basis,

consumption. Current law requires most persons who bring fish or fish eggs into this state for the purpose of introduction into the waters of this state to obtain a permit from DATCP. Current law also requires a person who operates a fish farm to annually register the fish farm with DATCP.

This bill exempts from these requirements a person who places a net pen in the waters of this state for the purpose of ~~hatching fish eggs~~ holding or rearing fish if the placement of the net pen is authorized by a general permit issued by DNR. ~~The exemption applies with respect those fish or fish eggs held, placed, or reared in that net pen.~~

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

INS.
ANALYSIS

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

1 SECTION 1. 29.503 (7) of the statutes is amended to read:

2 29.503 (7) EXEMPTION. This section does not apply to fish produced in a state
3 or municipal fish hatchery or to farm-raised fish that are bought, bartered, sold,
4 obtained, processed, solicited, or transported by a person who operates a fish farm
5 that is registered, or exempt from registration, under s. 95.60 (3m) or by that person's
6 employees.

INS.
2-6

7 SECTION 2. 30.01 (4o) of the statutes is created to read:

8 30.01 (4o) "Net pen" means an enclosure placed in a body of water and used
9 to ~~hatch fish eggs or to~~ hold or rear fish.

10 SECTION 3. 30.12 (3) (a) 7. of the statutes is created to read:

11 30.12 (3) (a) 7. Place a net pen in navigable waters adjacent to the owner's
12 property if the net pen is not used for commercial purposes and the owner holds a
13 permit under s. 29.736.

INS.
-13

14 SECTION 4. 95.60 (2) (a) (intro.) of the statutes is amended to read:

15 95.60 (2) (a) (intro.) Except as provided in sub. (3r) and par. (e), no person may
16 bring any fish or fish eggs into this state for the purpose of introduction into the

(9)

1 waters of the state, of use as bait or of rearing in a fish farm without an annual permit
2 issued by the department.

3 **SECTION 5.** 95.60 (3r) of the statutes is created to read:

4 95.60 (3r) A person who ~~places a net pen in the waters of this state for the~~
5 ~~purpose of hatching fish eggs or holding or rearing fish as authorized under a general~~
6 ~~permit issued under s. 30.12 (3) (a) 7. is exempt from the requirements under subs.~~
7 (2) (a) and (3m) with respect to fish or fish eggs held, placed, or reared in that net pen.

8

(END)

INS.
3-7

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2251/P3ins.
RNK:.....

INSERT ANALYSIS

Current law generally prohibits a person from using a natural body of water as a fish farm unless the land that is riparian to the body of water is owned, leased, or controlled by the owners of the fish farm and the body of water is a freeze-out pond, a preexisting fish rearing facility, or a body of water for which DNR has issued a permit for certain other navigable waters activities. This bill creates an exemption to this prohibition against using a natural body of water as a fish farm. Under the bill, the exemption applies to a person who places a net pen on a temporary basis for the purpose of holding or rearing fish under the authority of a general permit issued by DNR.

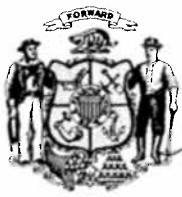
INSERT 2-6

x

1 **SECTION 1.** 29.733 (3) of the statutes is created to read:
2 29.733 (3) This section does not apply to a person who places a net pen in a
3 natural body of water on a temporary basis for the purpose of holding or rearing fish
4 in accordance with a general permit issued under s. 30.12 (3) (b).

INSERT 2-13

5 **SECTION 2.** 30.12 (3) (b) of the statutes is created to read:
6 30.12 (3) (b) The department shall issue a statewide general permit under s.
7 30.206 that authorizes a person to place a net pen in the waters of this state for the
8 purpose of holding or rearing fish if the net pen is placed on a temporary basis and
9 is not used for commercial purposes and the owner holds a permit under s. 29.736.
10 **SECTION 3.** 30.206 (1) (a) of the statutes is amended to read:



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2251/P3
EHS&RNK:sac:jmt

Run
run
1
e

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2013 BILL

no changes

- gen cert

1 AN ACT *to amend* 29.503 (7), 30.206 (1) (a) and 95.60 (2) (a) (intro.); and *to create*
2 29.733 (3), 30.01 (4o), 30.12 (3) (b) and 95.60 (9) of the statutes; **relating to:**
3 allowing placement of net pens in navigable waters under a statewide general
4 permit and exceptions for certain requirements that apply to fish farms.

Analysis by the Legislative Reference Bureau

Under current law, no person may place a structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line unless the Department of Natural Resources (DNR) has issued an individual or general permit allowing the structure. Certain structures, including a fish crib intended to improve fish habitat, certain piers and wharves, and a biological shore erosion control structure, are exempted from these permitting requirements if they are not in an area of special natural resource interest and do not interfere with riparian rights.

This bill requires DNR to issue a statewide general permit that authorizes a person to place a net pen in a navigable water as long as the net pen is placed on a temporary basis and is not used for commercial purposes. The owner must also hold a fish stocking permit from DNR. The bill defines a net pen as an enclosure placed in a body of water and used to hold or rear fish.

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) administers laws regulating fish farms. A fish farm is a facility at which a person hatches fish eggs or rears fish for the purpose of introduction into the waters of the state or for various other purposes including human or animal

consumption. Current law requires most persons who bring fish or fish eggs into this state for the purpose of introduction into the waters of this state to obtain a permit from DATCP. Current law also requires a person who operates a fish farm to annually register the fish farm with DATCP.

This bill exempts from these requirements a person who places a net pen in the waters of this state, on a temporary basis, for the purpose of holding or rearing fish if the placement of the net pen is authorized by a general permit issued by DNR.

Current law generally prohibits a person from using a natural body of water as a fish farm unless the land that is riparian to the body of water is owned, leased, or controlled by the owners of the fish farm and the body of water is a freeze-out pond, a preexisting fish rearing facility, or a body of water for which DNR has issued a permit for certain other navigable waters activities. This bill creates an exemption to this prohibition against using a natural body of water as a fish farm. Under the bill, the exemption applies to a person who places a net pen on a temporary basis for the purpose of holding or rearing fish under the authority of a general permit issued by DNR.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 29.503 (7) of the statutes is amended to read:

2 29.503 (7) EXEMPTION. This section does not apply to fish produced in a state
3 or municipal fish hatchery or to farm-raised fish that are bought, bartered, sold,
4 obtained, processed, solicited, or transported by a person who operates a fish farm
5 that is registered, or exempt from registration, under s. 95.60 (3m) or by that person's
6 employees.

7 **SECTION 2.** 29.733 (3) of the statutes is created to read:

8 29.733 (3) This section does not apply to a person who places a net pen in a
9 natural body of water on a temporary basis for the purpose of holding or rearing fish
10 in accordance with a general permit issued under s. 30.12 (3) (b).

11 **SECTION 3.** 30.01 (4o) of the statutes is created to read:

1 30.01 (4o) “Net pen” means an enclosure placed in a body of water and used
2 to hold or rear fish.

3 **SECTION 4.** 30.12 (3) (b) of the statutes is created to read:

4 30.12 (3) (b) The department shall issue a statewide general permit under s.
5 30.206 that authorizes a person to place a net pen in the waters of this state for the
6 purpose of holding or rearing fish if the net pen is placed on a temporary basis and
7 is not used for commercial purposes and the owner holds a permit under s. 29.736.

8 **SECTION 5.** 30.206 (1) (a) of the statutes is amended to read:

9 30.206 (1) (a) The department shall issue the statewide general permits
10 required under ss. 30.12 (3) (a) and (b), 30.123 (7), 30.19 (3r), and 30.20 (1t) (a).

11 **SECTION 6.** 95.60 (2) (a) (intro.) of the statutes is amended to read:

12 95.60 (2) (a) (intro.) Except as provided in sub. (9) and par. (e), no person may
13 bring any fish or fish eggs into this state for the purpose of introduction into the
14 waters of the state, of use as bait or of rearing in a fish farm without an annual permit
15 issued by the department.

16 **SECTION 7.** 95.60 (9) of the statutes is created to read:

17 95.60 (9) The requirements established under this section, and the
18 department’s authority to regulate fish farms under this section, do not apply with
19 respect to fish placed, held, or reared in a net pen placed in the waters of this state
20 if the net pen is placed on a temporary basis for the purpose of holding or rearing fish
21 under a general permit issued under s. 30.12 (3) (b).

22

(END)

Kite, Robin

From: Kovach, Robert
Sent: Tuesday, August 20, 2013 5:27 PM
To: Kite, Robin
Cc: Letzing, Rachel; Bruce, Cory; Ruby, Erin; Scott Meyer; Kovach, Robert; Jenkins, Kevin
Subject: FW: Net Pen Draft

Dear Robin,

Let's go ahead and change the draft so the exemptions in Rachel's paragraph #2 below don't apply. The draft also exempts fish placed, held or reared in a net pen from the prohibition on importing any fish or fish eggs into the state for the purpose of introduction into the waters of the state, of use as bait or of rearing in a fish farm, without a permit from DATCP. In light of VHS and other health issues, exempting net pen fish from this provision may increase opposition to the draft.

We don't want those exceptions to be in place. We only want safe fish put in the net pens.

1. I'm ok with allowing riparian owners as well as nonriparian owners to be allowed to be permitted to operate a net pen. Advise if the draft is clear enough?
2. Pens are used no more than 8 weeks per use. Usually 3-6 weeks-- max 8. We can spell it out that pens will only be used for a maximum of 8 weeks after fish are placed in the pens before the fish are released. We understand that the general permits are good for 5 years. We don't want to somehow indicate that the permit only allows 1 use of the pen. It's my understanding that the pen and the permit would be used at least once per year for all 5 years.
3. I don't think we would need to specify the size of the pen. I think that might complicate the permit process. The pens are custom made to accommodate the size of the load of fish that are going to be planted, and I don't want that to be regulated.

I'll bring the stripes back.

In all of the emails that we've been sending, have all of the questions been answered, and all of the legal intent questions been addressed?

Let me know.

THANKS EVERYONE!

Rob Kovach

Policy Advisor/Committee Clerk
Office of Senator Frank Lasee
(608) 266-3512

From: Letzing, Rachel
Sent: Monday, August 19, 2013 4:25 PM
To: Kovach, Robert
Subject: RE: Net Pen Draft

Hi Rob,

The bill draft exempts fish placed, held or reared in a net pen placed in the waters of the state [if the net pen is placed on a temporary basis for the purpose of holding or rearing fish under a general permit issued under s. 30.12 (3) (b)] from all of the requirements of s. 95.60, Stats., which include the DATCP rules applicable to fish farms regarding fish health. So it appears to me that fish in net pens would not be required to meet DATCP health requirements, regardless of where the fish originate.

The draft also exempts fish placed, held or reared in a net pen from the prohibition on importing any fish or fish eggs into the state for the purpose of introduction into the waters of the state, of use as bait or of rearing in a fish farm, without a permit from DATCP. In light of VHS and other health issues, exempting net pen fish from this provision may increase opposition to the draft.

Additional items to consider:

1. As drafted, any person can place a net pen in waters of the state. General permits under 30.12 (3), Stats. are currently only provided to riparian owners. Or would DNR only give a fish stocking permit under s. 29.736, Stats. to a riparian? In any case, consider clarifying Section 4 to achieve your intent.
2. The definition of temporary. If you want the general permit to define what "temporary" means, consider including that directive to DNR in the draft. Or you can define it in the draft.
3. Consider defining the allowable size of the net pen in the draft or directing DNR to determine the allowable size in the general permit.

Sorry if it seems I'm piling on here, but I think addressing these issues now will help minimize opposition to the bill. Would it help for all of us to meet and discuss? Thanks.

Rachel

Rachel Letzing
Senior Staff Attorney
Wisconsin Legislative Council
608.266.3370
rachel.letzing@legis.wisconsin.gov

From: Kovach, Robert
Sent: Friday, August 16, 2013 2:06 PM
To: Kite, Robin; Letzing, Rachel
Cc: Bruhn, Michael L - DNR; Moll, Keeley A - DATCP
Subject: FW: Net Pen Draft

Dear Robin and Rachel,

Could both of you look at the questions from Erin below?

I agree that the general permit would likely specify how long the "temporary" net pen would be in place each time it is filled with fingerlings/fry.

As far as the DATCP regulations go regarding fish hatching/farming, those shouldn't apply to the net pen, because the net pen isn't fish hatching or fish farming.

Since the net pen is just a place where fish imprint on the waterway and are where fish will be released to, all regulations that already apply to fish hatcheries/fish farms will still apply, and they (fish farms) would only be able to plant fish in a net pen that is located in the waterway that they would have otherwise been permitted to release them.

Does that make sense? Am I answering those questions correctly?

Rob Kovach

Policy Advisor/Committee Clerk
Office of Senator Frank Lasee
(608) 266-3512

From: scottmeyer489@hotmail.com
To: robert.kobach@legis.wisconsin.gov; contactaccurate@sbcglobal.net
Subject: FW: Net Pen Draft
Date: Fri, 16 Aug 2013 07:24:23 -0500

Rob I think the first question should and probably will be defined by the general permit and oversight comes from the DNR. The second set of questions again I believe would be regulated by the DNR and new rules would have to be created to allow private industry to originate eggs from a different body of water and be placed in the Net Pens. need to have a leg council memo to address these concerns

Subject: Net Pen Draft
Date: Fri, 16 Aug 2013 07:03:56 -0500
From: Erin.Ruby@legis.wisconsin.gov
To: scottmeyer489@hotmail.com

Scott,

Thank you for taking the time to meet with us yesterday regarding the proposed net pen legislation. I took a look at the language and do have a few questions.

Based on yesterday's discussion, I understand that fry would be kept in the pens anywhere from two to seven weeks, with about four weeks being the average holding time. The bill speaks to the net pen being placed on a temporary basis. I'm wondering if there has been any discussion about defining "temporary." Should the bill speak to the maximum duration a net pen can be in place (i.e. – 8 weeks), or is this something that would be spelled out in the general permit?

Now I'm going to reach back into the cobwebs of my days working with the aquaculture folks when I clerked the Ag Committee. Would the fry placed in these nets always be produced from eggs harvested in the same water body/system? Could the fry ever originate from another body of water? If so, would the bill exempt those fish originating from a different body of water from the DATCP fish health certification requirements? If the fish will have always originated from the same water body, is there a benefit to specifying as such in the

draft in order to avoid any potential concerns from the aquaculture industry? (“We have to get a health certification to move our fish, but they don’t?”)

Thank you for the opportunity to take a look at the draft and to ask some questions!

Erin

Erin Ruby

Office of State Representative Al Ott

Committee Clerk

Assembly Committee on Natural Resources & Sporting Heritage

608.266.5831

erin.ruby@legis.wi.gov

Per Rob Kovach 8/21/13

Placement of pen for up to 8 weeks -
But can place any number of firms
during the permit period
once fish are in pen, DATCP has no authority
to regulate

Kite, Robin

From: Letzing, Rachel
Sent: Thursday, August 22, 2013 11:45 AM
To: Kite, Robin
Subject: FW: Net Pen Draft

Robin, I'm sorry I didn't cc you on this, but I think it was in an email string from Rob on Tuesday. About item 1., below, in looking back at DNR emails about this draft, I think they are/were assuming that only riparians or at least a person who had an agreement with a riparian would be authorized to place a net pen under a general permit. Rob wants "anyone" to be able to place a net pen. I told him that current 30.12 (3) (a) general permits only apply to riparians and that including nonriparians here could be a problem. He wanted me to see what you thought about that. I also think DNR needs to be consulted with again on this point and Rob agreed.

What is the best way for me to help with this? Do you want me to talk to DNR? Both of us?

I also have no idea if Rob reviewed the "fish farm" cross references list you sent.

Another complicating factor is that today is my last day in the office until Sept. 4. I'm going to bring Mike Queensland up to speed on this before I leave, but if there is anything I can do today, I will.

Rachel

From: Letzing, Rachel
Sent: Monday, August 19, 2013 4:25 PM
To: Kovach, Robert
Subject: RE: Net Pen Draft

Hi Rob,

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Additional items to consider:

1. As drafted, any person can place a net pen in waters of the state. General permits under 30.12 (3), Stats. are currently only provided to riparian owners. Or would DNR only give a fish stocking permit under s. 29.736, Stats. to a riparian? In any case, consider clarifying Section 4 to achieve your intent.
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Sorry if it seems I'm piling on here, but I think addressing these issues now will help minimize opposition to the bill. Would it help for all of us to meet and discuss? Thanks.

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Sent: Friday, August 16, 2013 2:06 PM
To: Kite, Robin; Letzing, Rachel
Cc: Bruhn, Michael L - DNR; Moll, Keeley A - DATCP
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As far as the DATCP regulations go regarding fish hatching/farming, those shouldn't apply to the net pen, because the net pen isn't fish hatching or fish farming.

Since the net pen is just a place where fish imprint on the waterway and are where fish will be released to, all regulations that already apply to fish hatcheries/fish farms will still apply, and they (fish farms) would only be able to plant fish in a net pen that is located in the waterway that they would have otherwise been permitted to release them.

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From: scottmeyer489@hotmail.com
To: robert.kobach@legis.wisconsin.gov; contactaccurate@sbcglobal.net
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Date: Fri, 16 Aug 2013 07:03:56 -0500
From: Erin.Ruby@legis.wisconsin.gov
To: scottmeyer489@hotmail.com

Scott,

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Based on yesterday's discussion, I understand that fry would be kept in the pens anywhere from two to seven weeks, with about four weeks being the average holding time. The bill speaks to the net pen being placed on a temporary basis. I'm wondering if there has been any discussion about defining "temporary." Should the bill speak to the maximum duration a net pen can be in place (i.e. - 8 weeks), or is this something that would be spelled out in the general permit?

Now I'm going to reach back into the cobwebs of my days working with the aquaculture folks when I clerked the Ag Committee. Would the fry placed in these nets always be produced from eggs harvested in the same water body/system? Could the fry ever originate from another body of water? If so, would the bill exempt those fish originating from a different body of water from the DATCP fish health certification requirements? If the fish will have always originated from the same water body, is there a benefit to specifying as such in the draft in order to avoid any potential concerns from the aquaculture industry? ("We have to get a health certification to move our fish, but they don't?")

Thank you for the opportunity to take a look at the draft and to ask some questions!

Erin

Erin Ruby

Office of State Representative Al Ott

Committee Clerk

Assembly Committee on Natural Resources & Sporting Heritage

608.266.5831

erin.ruby@legis.wi.gov

Kite, Robin

From: Kite, Robin
Sent: Monday, August 19, 2013 2:50 PM
To: Kovach, Robert
Cc: Letzing, Rachel
Subject: RE: Net Pen Draft
Attachments: Cross.docx

Rob:

As we discussed last week, I have done a very preliminary review of the statutes that use the term "fish farm". There are also statutes, not included in this list that use the term "farm-raised fish" and these statutes are also relevant to the discussion below.

Many statutes in current law exempt fish farms (as defined in ch. 95) from the requirement to hold certain licenses or permits. That is, where a person might ordinarily be required to hold a permit, that person is exempt from the permit requirement if the person operates a fish farm. By changing the definition of fish farm in ch. 95 to exclude net pens, these exemptions would no longer apply to net pens. For example, under s. 23.24 (3), stats., a person may not remove aquatic plants from navigable waters without a permit. This permit requirement does not apply to a person operating a fish farm. But if the definition of fish farm is changed so that it excludes net pens, then a person using a net pen will have to obtain a permit under s. 23.24 (3) if he or she needs to remove aquatic plants when placing the net pen. I am assuming for purposes of this discussion that DATCP and DNR take the position that a net pen falls within the definition of a fish farm.

I have attached a list of all of the statutes that use the term "fish farm". Please review those statutes and let me know which approach you prefer:

1. Not changing the definition of fish farm but creating an exemption as in the current version of the draft.
2. Changing the definition of fish farm in ch. 95 to exclude net pens so that the new definition applies throughout the statutes (in which case certain exemptions for fish farms would no longer apply).
3. Changing the definition of fish farm in ch. 95 to exclude net pens and creating a different definition of "fish farm" in the other statutes that use the term so that the exemptions under current law are preserved.

Please let me know if you have any questions.

Robin

From: Kovach, Robert
Sent: Friday, August 16, 2013 2:41 PM
To: Kite, Robin
Cc: Letzing, Rachel
Subject: RE: Net Pen Draft

I didn't think there were any regulations that require newly hatched fish be released into the same body of water either. Since they are new baby fish, I wouldn't think they had a first body of water to begin with. I was speaking to Erin's question. I do not think we should speak to that in the draft.

When I say all regulations that apply to fish farms will still apply, I mean to fish farms. Net pens should not count as fish farms, just as a safe place in the waterway to plant new baby fish that came from a fish farm.

It is my understanding that the fish farms are the ones that the regulations for fish health and disease apply to, as well as the regulations for where and when they can put their hatchlings into the waterways. I think we should remain silent about those regulations in our bill.

Rob Kovach

Policy Advisor/Committee Clerk
Office of Senator Frank Lasee
(608) 266-3512

From: Kite, Robin
Sent: Friday, August 16, 2013 2:33 PM
To: Kovach, Robert
Cc: Letzing, Rachel
Subject: RE: Net Pen Draft

Rob:

Your email says the following:

Since the net pen is just a place where fish imprint on the waterway and are where fish will be released to, all regulations that already apply to fish hatcheries/fish farms will still apply, and they (fish farms) would only be able to plant fish in a net pen that is located in the waterway that they would have otherwise been permitted to release them.

I'm not sure I understand this point. I don't think there is anything in the draft that requires the fish to be released into the same body of water. Should this requirement be in the draft? And you state that "all regulations" that already apply to fish farms will still apply. But doesn't the draft specifically exempt these net pens from DATCP regulation?

Robin

From: Kovach, Robert
Sent: Friday, August 16, 2013 2:06 PM
To: Kite, Robin; Letzing, Rachel
Cc: Bruhn, Michael L - DNR; Moll, Keeley A - DATCP
Subject: FW: Net Pen Draft

Dear Robin and Rachel,

Could both of you look at the questions from Erin below?

I agree that the general permit would likely specify how long the "temporary" net pen would be in place each time it is filled with fingerlings/fry.

As far as the DATCP regulations go regarding fish hatching/farming, those shouldn't apply to the net pen, because the net pen isn't fish hatching or fish farming.

Since the net pen is just a place where fish imprint on the waterway and are where fish will be released to, all regulations that already apply to fish hatcheries/fish farms will still apply, and they (fish

farms) would only be able to plant fish in a net pen that is located in the waterway that they would have otherwise been permitted to release them.

Does that make sense? Am I answering those questions correctly?

Rob Kovach

Policy Advisor/Committee Clerk
Office of Senator Frank Lasee
(608) 266-3512

From: scottmeyer489@hotmail.com
To: robert.kobach@legis.wisconsin.gov; contactaccurate@sbcglobal.net
Subject: FW: Net Pen Draft
Date: Fri, 16 Aug 2013 07:24:23 -0500

Rob I think the first question should and probably will be defined by the general permit and oversight comes from the DNR. The second set of questions again I believe would be regulated by the DNR and new rules would have to be created to allow private industry to originate eggs from a different body of water and be placed in the Net Pens. need to have a leg council memo to address these concerns

Subject: Net Pen Draft
Date: Fri, 16 Aug 2013 07:03:56 -0500
From: Erin.Ruby@legis.wisconsin.gov
To: scottmeyer489@hotmail.com

Scott,

Thank you for taking the time to meet with us yesterday regarding the proposed net pen legislation. I took a look at the language and do have a few questions.

Based on yesterday's discussion, I understand that fry would be kept in the pens anywhere from two to seven weeks, with about four weeks being the average holding time. The bill speaks to the net pen being placed on a temporary basis. I'm wondering if there has been any discussion about defining "temporary." Should the bill speak to the maximum duration a net pen can be in place (i.e. – 8 weeks), or is this something that would be spelled out in the general permit?

Now I'm going to reach back into the cobwebs of my days working with the aquaculture folks when I clerked the Ag Committee. Would the fry placed in these nets always be produced from eggs harvested in the same water body/system? Could the fry ever originate from another body of water? If so, would the bill exempt those fish originating from a different body of water from the DATCP fish health certification requirements? If the fish will have always originated from the same water body, is there a benefit to specifying as such in the draft in order to avoid any potential concerns from the aquaculture industry? ("We have to get a health certification to move our fish, but they don't?")

Thank you for the opportunity to take a look at the draft and to ask some questions!

Erin

Erin Ruby
Office of State Representative Al Ott
Committee Clerk
Assembly Committee on Natural Resources & Sporting Heritage
608.266.5831
erin.ruby@legis.wi.gov

Cross-references to fish farms:

23.24 (4) (b) 3.

29.001 (25), (26), (64), and (76) (a)

29.024 (2r) (a) 14.

29.055

29.057

29.088 (2g) (a) and (b)

29.503 (7)

29.519 (4g)

29.523 (6)

29.526 (6)

29.529 (5)

29.531 (4)

29.533 (5)

29.563 (7) (c) 5m. and (15) (n)

29.601 (5) (b) 1. And 2.

29.701 (3)

29.705 (6)

29.733 (1) (intro.), (a), and (b)

29.734

29.735 (1)

29.737 (5)

29.739 (1), (3) (intro.), (a), and (b)

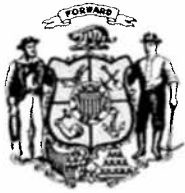
29.740 (2) and (3) (a) and (b)

29.969

29.971 (14)

95.001 (1) (ah) and (aj)

943.74 (1) (a) and (b)



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2013 BILL

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1 AN ACT *to amend* 29.503 (7), 30.206 (1) (a) and 95.60 (2) (a) (intro.); and *to create*
 2 29.733 (3), 30.01 (4o), 30.12 (3) (b) and 95.60 (9) of the statutes; **relating to:**
 3 allowing placement of net pens in navigable waters under a statewide general
 4 permit and exceptions for certain requirements that apply to fish farms.

Analysis by the Legislative Reference Bureau

Under current law, no person may place a structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line unless the Department of Natural Resources (DNR) has issued an individual or general permit allowing the structure. Certain structures, including a fish crib intended to improve fish habitat, certain piers and wharves, and a biological shore erosion control structure, are exempted from these permitting requirements if they are not in an area of special natural resource interest and do not interfere with riparian rights.

This bill requires DNR to issue a statewide general permit that authorizes a person to place a net pen in a navigable water as long as the net pen is placed ~~on a~~ ^{noncommercial} temporary basis and is not used for commercial purposes. ~~The owner must also hold a fish stocking permit from DNR.~~ The bill defines a net pen as an enclosure placed in a body of water and used to hold or rear fish.

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) administers laws regulating fish farms. A fish farm is a facility at which a person hatches fish eggs or rears fish for the purpose of introduction into the waters of the state or for various other purposes including human or animal

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consumption. Current law requires most persons who bring fish or fish eggs into this state for the purpose of introduction into the waters of this state to obtain a permit from DATCP. Current law also requires a person who operates a fish farm to annually register the fish farm with DATCP.

This bill exempts from these requirements a person who places a net pen in the waters of this state, on a temporary basis, for the purpose of holding or rearing fish if the placement of the net pen is authorized by a general permit issued by DNR.

Current law generally prohibits a person from using a natural body of water as a fish farm unless the land that is riparian to the body of water is owned, leased, or controlled by the owners of the fish farm and the body of water is a freeze-out pond, a preexisting fish rearing facility, or a body of water for which DNR has issued a permit for certain other navigable waters activities. This bill creates an exemption to this prohibition against using a natural body of water as a fish farm. Under the bill, the exemption applies to a person who places a net pen on a temporary basis for the purpose of holding or rearing fish under the authority of a general permit issued by DNR.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 29.503 (7) of the statutes is amended to read:

2 29.503 (7) EXEMPTION. This section does not apply to fish produced in a state
3 or municipal fish hatchery or to farm-raised fish that are bought, bartered, sold,
4 obtained, processed, solicited, or transported by a person who operates a fish farm
5 that is registered, or exempt from registration, under s. 95.60 (3m) or by that person's
6 employees.

7 **SECTION 2.** 29.733 (3) of the statutes is created to read:

8 29.733 (3) This section does not apply to a person who places a net pen in a
9 natural body of water on a temporary basis for the purpose of holding or rearing fish
10 in accordance with a general permit issued under s. 30.12 (3) (b).

11 **SECTION 3.** 30.01 (4o) of the statutes is created to read:

BILL

1 30.01 (4o) "Net pen" means an enclosure placed in a body of water and used
2 to hold or rear fish.

3 **SECTION 4.** 30.12 (3) (b) of the statutes is created to read:

4 30.12 (3) (b) The department shall issue a statewide general permit under s.
5 30.206 that authorizes a person to place a net pen in the waters of this state for the
6 purpose of holding or rearing fish if the net pen is placed on a temporary basis and
7 is not used for ^{noncommercial} commercial purposes and the owner holds a permit under s. 29.730.

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3-7

8 **SECTION 5.** 30.206 (1) (a) of the statutes is amended to read:

9 30.206 (1) (a) The department shall issue the statewide general permits
10 required under ss. 30.12 (3) (a) and (b), 30.123 (7), 30.19 (3r), and 30.20 (1t) (a).

11 **SECTION 6.** 95.60 (2) (a) (intro.) of the statutes is amended to read:

12 95.60 (2) (a) (intro.) Except as provided in sub. (9) and par. (e), no person may
13 bring any fish or fish eggs into this state for the purpose of introduction into the
14 waters of the state, of use as bait or of rearing in a fish farm without an annual permit
15 issued by the department.

16 **SECTION 7.** 95.60 (9) of the statutes is created to read:

17 95.60 (9) The requirements established under this section, and the
18 department's authority to regulate fish farms under this section, do not apply with
19 respect to fish placed, held, or reared in a net pen placed in the waters of this state
20 if the net pen is placed on a temporary basis for the purpose of holding or rearing fish
21 under a general permit issued under s. 30.12 (3) (b).

INS.
3-2/22

(END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2251/2ins.
RNK:.....

INSERT ANALYSIS A

no of
The bill specifies that the general permit may not authorize the placement of a net pen for a period of ~~not~~ more than *eight* weeks and provides that the general permit may not limit the number of times that a person may place a net pen in the waters of this state.

INSERT ANALYSIS B

9
This bill exempts a person who is authorized under a general permit to place a net pen in the waters of this state from obtaining a permit from DATCP or registering that net pen with DATCP as a fish farm. The bill provides that after the date on which fish are placed in a net pen under the authority of a general permit, DATCP's authority to regulate fish farms does not apply to fish held in that net pen.

INSERT 3-7

No 4
1 A general permit issued for the purpose described in this section shall authorize
2 a person to place a net pen in the waters of this state for a period not to exceed 8
3 weeks. The general permit may not limit the number of times that a person may
4 place a net pen in the waters of this state under the authority of that general permit.

INSERT 3-21

5 (a) Subsections (2) and (3^m) do not apply to a person who places a net pen in
6 the waters of this state under the authority of a general permit issued under s. 30.206
7 for the purpose described in s. 30.12 (3) (b).

8 (b) After the date on which fish are placed in a net pen under the authority of
9 a general permit issued under s. 30.206 for the purpose described in s. 30.12 (3) (b),
10 the department's authority to regulate fish farms under this section, *do* not apply to
11 the fish that are held in that net pen. *does*

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

LRB-2251/2dn

RNK:.....

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date

Rob Kovach:

Please note the following with regard to this redraft:

1. Current law requires DNR to issue general permits authorizing certain activities in navigable waters activities, including specific activities that may be undertaken by riparian owners. See ss. 30.12 (3) (a) and 30.206 (1), stats. Please also note that DNR has authority to impose conditions on these general permits. See s. 30.206 (1) (ag), stats. I recommend that you have the appropriate expert at DNR review this draft to determine whether DNR's general permit, once issued, will meet your objectives.
2. Please also note that under this draft, once fish are introduced into a net pen that is placed in accordance with a general permit issued by DNR, DATCP may not regulate the fish in that net pen under s. 95.60. Again, I recommend that you have the appropriate expert at DATCP review this draft to ensure that it will accomplish your intent.

Please feel free to contact me if you have any questions.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2251/2dn

RNK:eev:rs

August 23, 2013

Rob Kovach:

Please note the following with regard to this redraft:

1. Current law requires DNR to issue general permits authorizing certain activities in navigable waters, including specific activities that may be undertaken by riparian owners. See ss. 30.12 (3) (a) and 30.206 (1), stats. Please also note that DNR has authority to impose conditions on these general permits. See s. 30.206 (1) (ag), stats. I recommend that you have the appropriate expert at DNR review this draft to determine whether DNR's general permit, once issued, will meet your objectives.
2. Please also note that under this draft, once fish are introduced into a net pen that is placed in accordance with a general permit issued by DNR, DATCP may not regulate the fish in that net pen under s. 95.60. Again, I recommend that you have the appropriate expert at DATCP review this draft to ensure that it will accomplish your intent.

Please feel free to contact me if you have any questions.

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

Kite, Robin

From: Kovach, Robert
Sent: Friday, August 23, 2013 4:56 PM
To: Staggs, Mike D - DNR; Bruhn, Michael L - DNR; Kite, Robin; Letzing, Rachel; Queensland, Michael; Moll, Keeley A - DATCP
Cc: Jenkins, Kevin
Subject: Latest version of the Net Pens Bill
Attachments: 13-2251_2.pdf; 13-2251_2dn.pdf

Dear Everyone,

So far I am happy with the language that we have here so far that I have the stripes in my office.

I would like all of you to double check the language and get any needed feedback before Tuesday, because we would like to roll this out for cosponsorship on Tuesday.

The questions that are still outstanding:

- Do we need to be more specific that general permits are for riparian owners
 - According to Mike Staggs, he doesn't think this bill needs to be that specific as they have history with clubs that receive permits for other structures that work in agreement with the riparian owner as part of the permit process. The General Permit is always only given to a riparian owner or with the riparian owners permission. He figures these specifics are just normal operating procedure for a general permit.
- Does DATCP see any problem with the way this is written?
 - We see the net pen less as a "fish rearing" device but just a way to protect fish that are placed in the waterway. Without the net pen, the fish would be in the same waterway but just free to be eaten by predators. We are trying to specify that all of the regulations that apply to the point the fingerlings enter the waterway still apply, and no additional regulations apply if they happen to be in a net pen in the waterway. Let me know if we aren't saying any of that correctly.

...and any other issues that any of you might see that we didn't address.

I don't want any oversight on my part to cause opposition to this bill.

Thanks to all of you for your help!

Rob Kovach

Policy Advisor/Committee Clerk
Office of Senator Frank Lasee
(608) 266-3512

8/26/13

Meeting

- Mike Bruch - DNR

Mike Stagg - Fisheries Bureau

Rob Kovach

Instructions for redraft -

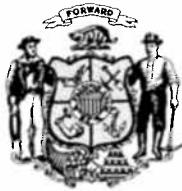
Take out ~~the~~ amendment to s. 29.503(7) -

the situation would never apply to net pens

Re: "repair" - leave language as that
it applies to "any person" - Rob said
that DNR could limit the permit to
repairs if it wants to

Clarify that stocking must be made by
DNR (doesn't need permit under 29.736) or
by person who has a permit under 29.736

fish must be released into same body
of water where pen is placed



Wanted Tues 9:00 am (8/27)
State of Wisconsin
2013 - 2014 LEGISLATURE

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LRB-2251/2

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2013 BILL

In
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1 AN ACT *to amend* 29.503 (7), 30.206 (1) (a) and 95.60 (2) (a) (intro.); and *to create*
 2 29.733 (3), 30.01 (4o), 30.12 (3) (b) and 95.60 (9) of the statutes; **relating to:**
 3 allowing placement of net pens in navigable waters under a statewide general
 4 permit and exceptions for certain requirements that apply to fish farms.

Analysis by the Legislative Reference Bureau

Under current law, no person may place a structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line unless the Department of Natural Resources (DNR) has issued an individual or general permit allowing the structure. Certain structures, including a fish crib intended to improve fish habitat, certain piers and wharves, and a biological shore erosion control structure, are exempted from these permitting requirements if they are not in an area of special natural resource interest and do not interfere with riparian rights.

This bill requires DNR to issue a statewide general permit that authorizes a person to place a net pen in a navigable water as long as the net pen ~~is placed for noncommercial purposes~~ *meets certain conditions*. The bill defines a net pen as an enclosure placed in a body of water and used to hold or rear fish. The bill specifies that the general permit may not authorize the placement of a net pen for a period of more than eight weeks and provides that the general permit may not limit the number of times that a person may place a net pen in the waters of this state.

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Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) administers laws regulating fish farms. A fish farm is a facility

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at which a person hatches fish eggs or rears fish for the purpose of introduction into the waters of the state or for various other purposes including human or animal consumption. Current law requires most persons who bring fish or fish eggs into this state for the purpose of introduction into the waters of this state to obtain a permit from DATCP. Current law also requires a person who operates a fish farm to annually register the fish farm with DATCP.

This bill exempts a person who is authorized under a general permit to place a net pen in the waters of this state from obtaining a permit from DATCP or registering that net pen with DATCP as a fish farm. The bill provides that after the date on which fish are placed in a net pen under the authority of a general permit, DATCP's authority to regulate fish farms does not apply to fish held in that net pen.

Current law generally prohibits a person from using a natural body of water as a fish farm unless the land that is riparian to the body of water is owned, leased, or controlled by the owners of the fish farm and the body of water is a freeze-out pond, a preexisting fish rearing facility, or a body of water for which DNR has issued a permit for certain other navigable waters activities. This bill creates an exemption to this prohibition against using a natural body of water as a fish farm. Under the bill, the exemption applies to a person who places a net pen under the authority of a general permit issued by DNR.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 29.503 (7) of the statutes is amended to read:

2 29.503 (7) **EXEMPTION.** This section does not apply to fish produced in a state
3 or municipal fish hatchery or to farm-raised fish that are bought, bartered, sold,
4 obtained, processed, solicited, or transported by a person who operates a fish farm
5 that is registered, or exempt from registration, under s. 95.60 (3m) or by that person's
6 employees.

7 **SECTION 2.** 29.733 (3) of the statutes is created to read:

8 29.733 (3) This section does not apply to a person who places a net pen in a
9 natural body of water for the purpose of holding or rearing fish in accordance with
10 a general permit issued under s. 30.12 (3) (b).

11 **SECTION 3.** 30.01 (4o) of the statutes is created to read:

BILL

1 30.01 (4o) "Net pen" means an enclosure placed in a body of water and used
2 to hold or rear fish.

3 **SECTION 4.** 30.12 (3) (b) of the statutes is created to read:

4 30.12 (3) (b) ^{1.} The department shall issue a statewide general permit under s.
5 30.206 that authorizes a person to place a net pen in the waters of this state ~~for the~~
6 ~~purpose of holding or rearing fish for noncommercial purposes.~~ ^{2.} A general permit
7 issued for the purpose described in this section shall authorize a person to place a net
8 pen in the waters of this state for a period not to exceed 8 weeks. The general permit
9 may not limit the number of times that a person may place a net pen in the waters
10 of this state under the authority of that general permit.

11 **SECTION 5.** 30.206 (1) (a) of the statutes is amended to read:

12 30.206 (1) (a) The department shall issue the statewide general permits
13 required under ss. 30.12 (3) (a) and (b), 30.123 (7), 30.19 (3r), and 30.20 (1t) (a).

14 **SECTION 6.** 95.60 (2) (a) (intro.) of the statutes is amended to read:

15 95.60 (2) (a) (intro.) Except as provided in sub. (9) and par. (e), no person may
16 bring any fish or fish eggs into this state for the purpose of introduction into the
17 waters of the state, of use as bait or of rearing in a fish farm without an annual permit
18 issued by the department.

19 **SECTION 7.** 95.60 (9) of the statutes is created to read:

20 95.60 (9) (a) Subsections (2) and (3m) do not apply to a person who places a net
21 pen in the waters of this state under the authority of a general permit issued under
22 s. 30.206 for the purpose described in s. 30.12 (3) (b).

23 (b) After the date on which fish are placed in a net pen under the authority of
24 a general permit issued under s. 30.206 for the purpose described in s. 30.12 (3) (b),

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SECTION 7

1 the department's authority to regulate fish farms under this section does not apply
2 to the fish that are held in that net pen.

3 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2251/3ins.
RNK:.....

INSERT ANALYSIS

no d
The bill specifies that a person may place a net pen only for noncommercial purposes. The fish must be stocked, and released into the water, by DNR or by a person who has a fish stocking permit. Finally, the bill requires that the fish held or reared in the net pen be released into the same body of water into which the net pen is placed.

INSERT 3-6

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1 if all of the following apply:

2 a. The net pen is placed for the purpose of holding or rearing fish for
3 noncommercial purposes.

4 b. The fish held or reared in the net pen are stocked by the department or by
5 a person who is in compliance with s. 29.736.

6 c. The fish held or reared in the net pen are released by the department or by
7 a person who is in compliance with s. 29.736 into the same body of water in which
8 the net pen is placed.