

Chapter NR 1

NATURAL RESOURCES BOARD POLICIES

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NR 1.01 Management of fisheries and aquatic resources (1) To meet its responsibilities established by statute, department programs shall be based on scientific management principles which emphasize the protection, perpetuation, development, and use of all desirable aquatic species.

(2) The goal of fish management is to provide opportunities for the optimum use and enjoyment of Wisconsin's aquatic resources, both sport and commercial. A healthy and diverse environment is essential to meet this goal and shall be promoted through management programs.

(3) Aquatic resources include both nongame and game species of fish, other aquatic animals and their habitats. Endangered and threatened species form a special group that will be managed according to ch. NR 27 and s. 29.415, Stats.

(4) To assure its effectiveness, the management program shall be based upon a close working relationship among all functions of the department, other governmental agencies, federally recognized Indian tribes, and the public. The department will keep interested parties informed of policies, plans and management. To anticipate change and meet future demand,

the department shall engage in long-range planning of management programs.

(5) Financing the department's fish and aquatic resource management program through, in large part, user fees, particularly license fees and excise taxes on selected equipment purchased by sport and commercial fishers, is an established principle. Although user fees collected for a specific purpose are targeted at that purpose, they provide significant indirect benefits for a wide range of wildlife and users. When beneficiaries are a broader or different segment of the public, other funding sources will be sought.

(6) Wisconsin law enunciates a trust doctrine which secures the right of all Wisconsin citizens to quality, non-polluted waters and holds that waters are the common property of all citizens. Fish management programs will vigorously uphold the doctrine that citizens have a right to use in common the waters of the state and these waters shall be maintained free of pollution.

(7) With access to Wisconsin's lakes and streams a prerequisite for their use by the public, the acquisition and development of public access to waters should be accelerated, particularly in the more populous areas of the state.

(8) Wild and wilderness lakes and streams are a special and limited resource providing unique settings for enjoyment of fishing and other outdoor activities. Additional efforts are required to designate lakes and streams for this status. Special management methods that increase fishing quality shall be encouraged on these waters. Such methods may include trophy fishing, regulated harvest, special seasons, and controlled entry.

(9) Sport fishing should remain a true amateur sport which combines the pleasures and skills of angling with wildlife and scenic enjoyment, contemplation, and other subtle pleasures, not competition. Recent trends toward commercialization of sport fishing through contests and tournaments will be closely monitored. Appropriate action within the existing authority will be taken to control excesses.

History: Cr. Register, March, 1976, No. 243, eff. 4-1-76; r. and recr. Register, February, 1980, No. 290, eff. 3-1-80.

NR 1.015 Management of wildlife, preamble. (1) The conservation act (s. 23.09 (1), Stats.) requires the department of natural resources to provide an adequate and flexible system for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state. Specific authorities and missions of the department for wildlife protection and use besides the general authority are:

(a) Protect and manage nongame species, particularly endangered, threatened and uncommon species;

(b) Acquire and lease lands;

(c) Conduct research and surveys;

(d) Establish long-range resource management plans and priorities;

(e) Manage wildlife habitat on public land;

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(f) Provide regulations to govern the harvest of game species and fur-bearing mammals;

(g) Establish resource management information and education programs; and

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3. Provide financial support to department properties, facilities and programs for such things as development projects, land acquisition, programs and interpretation. Friends groups may raise revenues for department properties, facilities and programs through such methods as membership fees, grants, donations, sales and special events.

4. Put particular emphasis on supporting the interpretive, educational and visitor service programs of department properties.

5. Not serve as an official advisory group to the property or program with which affiliated.

(b) *Organization.* 1. To be recognized as a friends group, the group shall organize as a non-profit, non-stock, tax-exempt corporation, and shall be structured through articles of incorporation and by-laws to direct its mission and activities to the support of the property, group of properties, or other department facilities and programs as approved by the department.

2. The department shall enter into written agreements with each qualifying friends group to ensure statewide consistency and fiscal accountability. The agreements shall, at a minimum, include provisions that require friends groups to:

a. Provide an annual fiscal and program report to the department, which may not include a list of donors or itemized donations,

b. Provide meeting notice which is reasonably likely to apprise interested persons,

c. Permit a fiscal audit by the department upon request,

d. Maintain non-profit status,

e. Provide liability insurance indemnifying the department if requested by the department,

f. Prohibit department employees from serving as officers or directors,

g. Agree to not represent their employees and volunteers as department employees,

h. Permit the department to promote the friends group in its publications and announcements,

i. Distribute assets upon dissolution to another not-for-profit corporation benefiting the same property, another DNR friends group, the Wisconsin natural resources foundation, inc., or the department. The agreements will include a provision for termination upon reasonable notice by either party.

3. The department may assist friends groups by making department facilities and equipment available to them, dependent upon availability, and as specified in written agreements.

4. Department employees may be members of a friends group, but may not serve as directors or officers of the group. Department employees may, incidental to their regular duties, sell items on behalf of the friends group.

NR 1.90 Adequacy of access. (1) It is the purpose of this section and ss. NR 1.91 and 1.92 to provide guidelines for access adequacy or abandonment decisions by the department. The public interest in the waters of this state and access to them shall be protected to the fullest extent authorized by the law. Abandonment of public access to a body of water shall not be approved if such abandonment would result in injury to the public rights as determined by the use of standards provided herein and in ss. NR 1.91 and 1.92. The burden of demonstrating that abandonment will not injure the rights and interests of the public in a body of water shall be on the party requesting the approval of the abandonment. The availability of a body of water for public use may be used by the department as a factor in the development of priorities for the following so that the public is afforded the opportunity to utilize or receive benefit from:

- (a) The awarding of development grants;
- (b) The development of facilities adjacent to a body of water; or
- (c) The delivery of management services designed to provide quality uses of a body of water.

(2) (a) "Adequate access" exists when the general public has been provided with entry to a body of water to enjoy quality uses at a reasonable fee, if one is charged, considering the character and uses of the water. The following criteria must also be met:

1. The public should be able to park within a reasonable walking distance of the body of water, given the character and use of the access, but in no case more than $\frac{1}{4}$ of a mile from the water. This paragraph is not applicable if the body of water or land surrounding it either has been designated as wild or wilderness by the department or is being managed as wild or wilderness in a manner and for a purpose acceptable to the department.

2. For a body of water having uses involving boating, adequate car-trailer unit parking must be provided to ensure that the existing or potential users are given an opportunity to park their vehicles within $\frac{1}{4}$ of a mile from the water.

3. The state of Wisconsin or one town, county, village, city or public inland lake protection and rehabilitation district in which the body of

water is located shall have an interest in an access to the body of water by deed, easement or lease. In lieu thereof, the secretary of the department may decide that an acceptable alternative exists if there is sufficient privately owned access that is open to use by the general public.

(b) "Body of water" includes all waters of the state as used in s. 147.015 (13), Stats.

(c) "Quality use" means an activity that can be enjoyed, given the character of the body of water, without damage to the resource or endangering the public health, safety or welfare.

(d) "Reasonable fee" means a fee that is consistent with, and acceptable under, s. NR 1.92 (6) (f).

(3) In determining eligibility for a development grant or management services for a project on a body of water, the department shall make findings regarding the following:

(a) The amount and character of the existing public and private access, and the fees charged for the use of such access;

(b) The present uses of the body of water;

(c) Additional quality uses that could be made of the body of water, given its existing character, but which are presently restricted by the character of the existing access;

(d) If the character or quality of the body of water will be changed by the proposed action, the additional quality uses that could be made of the water and the additional access necessary to accommodate such uses; and

(e) Regulatory activities and management services that have recently occurred or are contemplated to occur on the body of water other than the ones presently proposed.

(4) A project on a body of water shall be eligible for management services or a development grant if:

(a) The existing access provides the public with an adequate opportunity to engage in any existing or potential quality use of the body of water, and the fee charged, if any, for the use of the access is reasonable; or

(b) There is a need to provide the public with a higher quality or higher quantity of use of the body of water, and a written commitment has been made to provide adequate access so that the public will benefit from the development grant or management services.

History: Cr. Register, October, 1977, No. 262, eff. 11-1-77.

NR 1.91 Access abandonment. (1) (a) The department of natural resources, upon receiving a petition for the abandonment of a public access to a navigable lake or stream, will publish a notice of the proposed abandonment pursuant to the procedures in s. 31.06, Stats. If no hearing is requested, the department shall proceed under sub. (3) to grant or deny the petition.

(b) If a hearing is requested, the department shall hold the hearing as a class 1 contested case in the county in which the access is proposed to be

abandoned. At the close of the hearing, the department shall make its decision based on the standards in sub. (3).

(2) "Adequate access" is defined in s. NR 1.90 (2) (a).

(3) The department shall grant the petition to abandon the public access if it finds one of the following:

(a) There is alternate adequate access available to meet the existing uses of the body of water and such other uses as may be reasonably anticipated; or

(b) Conditions of approval ordered by the department such as, but not limited to, a showing of financial capability of an applicant for approval of abandonment to maintain a comparable or superior replacement public access site, existence of a comparable or superior replacement public access site provided by the applicant or other conditions related to assurance of protection of the interest of the public in the body of water have been fully complied with by the applicant; or

(c) Environmental degradation is occurring as a result of existing usage of the body of water, and abandonment of the access will reduce or eliminate such degradation so as to outweigh the public rights and interest in access to that body of water.

History: Cr. Register, October, 1977, No. 262, eff. 11-1-77.

NR 1.92 Providing vehicular access to lakes and streams. (1) **ACCESS TO WATERS.** Access to waters is a variable requirement which must be based on the qualities of the waters, the space available, and the levels of use experienced. The department shall provide such public access, consistent with the quality of the resource and respecting private rights and developments, when approved by the natural resources board.

(2) **PUBLIC ACCESS.** Public access to navigable waters is defined as a way to such waters, publicly owned or under public control, reasonably direct and available to all by means of water, road, trail or otherwise through the privilege of crossing public or private lands without involving trespass.

(3) **LAND ACQUISITION.** Subject to approval of the natural resources board, the department shall:

(a) Acquire boat launching access to important stream systems.

(b) Actively pursue acquisition on lakes having more than 1,000 acres of surface water.

(c) Pursue acquisition on smaller lakes when the importance for recreational activities to the general public are such that the board determines it is desirable for the state to take action.

(d) Provide assistance to local units of government through state or federal aids administered by the state on waters where public access is desirable.

(4) **AID PROGRAMS FOR ACCESS TO WATERS.** Providing access is the joint responsibility of the state and local governments. The secretary is authorized to approve qualified aid projects in compliance with the rules set forth in ch. NR 50.

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(5) ACCESS IN PLATS. Under s. 236.16 (3), Stats., the department has authority to recommend wider access at less frequent intervals than prescribed in the statutes. The department shall:

(a) Consider waiver of the 60-foot access requirement only where it will be advantageous to the public to do so;

(b) Assure adequate space for users and adequate buffering for private property, with access wider than 60 feet where possible;

(c) Assure adequate access to the body of water upon approval of accessway abandonment.

(6) GUIDELINES FOR PUBLIC ACCESS. In state acquisition for access, in granting state or federal aids administered by the department to local governmental units, and in reviewing plats under s. 236.16 (3), Stats., the following guidelines shall apply.

(a) Each project, whether an aid project or state development, shall have a demonstrable public interest and need.

(b) Lakes of less than 50 acres in size shall not be considered for improved boat launching developments or vehicular access. Walk-in and trail access will be encouraged for lakes of less than 50 acres. Parking for not more than 5 cars may be provided at the entry to trail accesses.

(c) For lakes of 50 or more acres and rivers, the parking capacity of an access site shall be in accord with the size of the lake or river. The general rule to be applied for lakes shall be not more than one parking unit for each 10 acres of water.

(d) The minimum width of an accessway to assure adequate buffering between public and private sites shall be 60 feet, but the department shall attempt to obtain a width of at least 100 feet.

(e) The primary objective of the state access aid program is to provide public access where needed and none exists. Where access exists but is inadequate, improvement will be considered as a lower priority.

(f) State boating laws (s. 30.77, Stats.) authorize local units of government to charge reasonable fees for the use of access sites. Reasonable fees shall be deemed to be those currently charged for daily entrance to state parks and forest areas and shall be stipulated prior to the granting of state aid. Fees shall not be increased without the written approval of the department.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; renun. from NR 1.32, Register, October, 1977, No. 262, eff. 11-1-77.

NR 1.93 Fees for vehicular access. (1) The department finds that charging excessive or unreasonable boat launching fees serves to restrict or prohibit public access to and use of navigable bodies of water in the state. A reasonable fee for the use of a vehicular access site to navigable lakes and streams, including parking fees assessed the users of the access site, is that currently charged an individual vehicle for daily entrance to state park and forest areas. Access fees charged in excess of such daily entrance fees are unreasonable unless the department has approved them in accordance with this section.

(2) (a) A city, village, town or county may petition the department in writing for approval of launching fees in excess of the fee established in

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sub. (1). Documentation of expenses directly attributable to the operation and maintenance of the access site, fees collected for the use of a site for up to 5 years preceding the petition, the fees proposed, and such other information as it deems pertinent or the department requests shall be submitted along with the petition.

(b) Expenses of operation or maintenance of a site may include:

1. Installation and maintenance of a pier useful for boat control, loading and unloading.
2. Clean-up and trash pick-up.
3. Installation and maintenance of a roadway and ramp serving the access site.
4. Installation and maintenance of access user parking facilities.
5. Signs and directional devices guiding or assisting access users.
6. Installation and maintenance of toilet facilities assignable to the access use.
7. Traffic management at heavily used sites. Personnel costs shall be at normal wage rates commensurate with the work performed.
8. Land acquisition including interest on deferred payments. Acceptable interest rates are those encountered in normal government borrowing.
9. The proportionate share of boat policing costs not covered by state aids. The proportionate share shall be based on estimates of the number of access site users.
10. Such other costs as are directly attributable to the access site operation and use.

(3) (a) Upon receipt of the petition and supporting information under sub. (2) (a), the department shall publish a class 1 notice under ch. 985, Stats., in the county in which the access site lies, informing the public of the facts and proposals in the petition. Copies of the notice shall be sent to committees of the assembly and senate with jurisdiction of natural resource issues. Within 60 days of receipt of the petition and supporting information under sub. (2), the department shall issue a determination of the reasonableness of the proposed fees.

(b) Upon objection to the decision by the petitioner, a legislative committee or any other person filing a written comment on the petition prior to issuance, the matter will be considered as and set for a class 1 proceeding under s. 227.01 (2) (a), Stats. The determination as a result of such hearing shall be issued within 30 days from the date that the record is closed.

(4) (a) In making its determination, the department shall consider:

1. The past and present use of the body of water upon which the site is located; and
2. The adequacy of public access sites on that body of water according to the standards in ss. NR 1.90 and 1.92.
3. Public interest in the site.

(b) The department shall approve a fee higher than such daily entrance fees if it finds that:

1. Such fees are related directly to the expenses of the operation and maintenance of the access site and are reasonable, taking into consideration the use and demand on the body of water and the access sites thereto; and

2. Such fees and access management are not designed or intended to restrict or prohibit members of the public from using the body of water upon which the site is located; and

3. The charging of such fees on the body of water affected will not significantly restrict public access to those waters.

History: Cr. Register, January, 1980, No. 289, eff. 2-1-80; am. (2) (a) and (2) (b) 7., r. and recr. (3), r. (4) (a) 3., Register, October, 1982, No. 322, eff. 11-1-82.

NR 1.95 Wetlands preservation, protection and management. (1) **PURPOSE.** It is the intent of the natural resources board to establish rules for the preservation, protection and management of wetlands in the state of Wisconsin. The rules shall be applied in such a manner as to avoid or minimize the adverse effects on wetlands due to actions over which the department has regulatory or management authority and to maintain, enhance and restore wetland values.

(2) **AUTHORITY.** The department, under existing law, has the responsibility of making regulatory and management decisions which, directly or indirectly, affect the quantity and quality of many Wisconsin wetlands.

(a) Wisconsin has a history of active water resource protection under the public trust doctrine which originated in the northwest ordinance of 1787, the enabling act under which Wisconsin became a state, and the Wisconsin constitution.

(b) The department is designated under s. 144.025, Stats., as the central unit of state government responsible for protecting, maintaining and improving the quality of the waters of the state. Department actions must be consistent with the goal of maintaining, protecting and improving water quality.

(c) Under the Wisconsin environmental policy act, s. 1.11, Stats., the department is required to study, develop and describe appropriate alternatives to recommended courses of action for proposals which involve unresolved conflicts concerning alternative uses of available resources and to make decisions with the knowledge of their effects on the quality of the human environment.

(d) The department, pursuant to ss. 23.09 and 29.02, Stats., and s. NR 1.015, must provide for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources of the state. The department is obliged to develop and implement appropriate scientific management practices to achieve these objectives.

(3) **NATURAL RESOURCES BOARD FINDINGS.** (a) *Introduction.* The presence of wetlands signifies physical characteristics which are limiting factors in the human activities which may occur in and adjacent to them. What may be limitations for one use of a wetland may also be the principal values supporting a different use. The state's policy as articulated in its trusteeship of navigable waters and the statutes enacted to further

the protection and enhancement of the quality of its waters, creates a presumption against activities which adversely affect those wetlands under department jurisdiction or control.

(b) *Wetland values.* Wetlands are known to possess a wide range of natural and human values, some or all of which may apply to a particular wetland under review. Assessing the value of a wetland is a complex procedure requiring thoughtful analysis of all possible wetland values and functions.

1. **Biological functions.** Wetlands are environments in which a variety of biological functions occur. In many cases, wetlands are very productive ecosystems which support a wide diversity of aquatic and terrestrial organisms. Many wetland areas are vital spawning, breeding, nursery or feeding grounds for a variety of indigenous species. Some wetlands are the habitats for state or federally designated rare, threatened or endangered species.

2. **Watershed functions.** In addition to their biological functions, wetlands may serve important physical and chemical functions with respect to other wetlands and waters of the state. A specific wetland (or set of wetlands) may play a critical role in maintaining the stability of the entire system to which it is physically and functionally related. This functional role may include the maintenance of both the hydrologic patterns and the physical and chemical processes of related wetlands and other related waters of the state.

a. **Hydrologic support functions.** A particular wetland may function to maintain the hydrologic characteristics, and thereby the physical and chemical integrity of an entire aquatic ecosystem.

b. **Groundwater functions.** Groundwater may discharge to a wetland, recharge from a wetland to another area, evaporate from and/or flow through a wetland.

c. **Storm and flood water storage.** Some wetlands may be important for storing water and retarding flow during periods of flood or storm discharge. Even wetlands without surface water connections to other water bodies may serve this function. Such wetlands can reduce or at least modify the potentially damaging effects of floods by intercepting and retaining water which might otherwise be channelled through open flow systems. The importance of a given wetland for storm and flood water storage may be modified by the cumulative effects of the proposed activities and previous activities within the watershed.

d. **Shoreline protection.** Wetlands also function to dissipate the energy of wave motion and runoff surges from storms and snowmelt, and thus lessen the effects of shoreline erosion. Wave action shielding by wetlands is not only important in preserving shorelines and channels, but also in protecting valuable residential, commercial and industrial acreage located adjacent to the aquatic ecosystems.

e. **Other watershed functions.** A wetland may perform a variety of other important functions within a watershed. Wetlands may degrade, inactivate or store materials such as heavy metals, sediments, nutrients, and organic compounds that would otherwise drain into waterways.

3. **Recreational, cultural and economic value.** Some wetlands are particularly valuable in meeting the demand for recreational areas (for uses