

Chapter NR 1

NATURAL RESOURCES BOARD POLICIES

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NR 1.01 The management of fisheries and aquatic resources. Preamble.

(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 The 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

(h) Propagate wildlife.

(2) The primary goal of wildlife management is to provide healthy life systems necessary to sustain Wisconsin's wildlife populations for their biological, recreational, cultural and economic values. Wildlife management is the application of knowledge in the protection, enhancement and regulation of wildlife resources for their contribution toward maintaining the integrity of the environment and for the human benefits they provide.

(a) The department's wildlife program ranges from endangered and threatened species management to the production of huntable game. At its best, wildlife management is a process that requires a considerable degree of harmony between people and land to provide the quality landscapes and diverse habitats necessary to produce and support all types of wildlife.

(b) Public concern for the welfare of wildlife resources can help to instill a land ethic in what has become a predominantly urban population. Public support for the maintenance of native or near-natural plant communities, as necessary wildlife habitat, indirectly assures continued opportunities for a whole range of human interactions with nature that goes well beyond hunting or wildlife-oriented recreation.

(c) The department's wildlife management program is financed in large part by user contributions, particularly license fees and excise taxes on selected equipment purchased by hunters; however, management programs directed at hunted game species provide very significant indirect benefits for a wide range of other wildlife. New sources of funds are needed to supplement the existing financial base and provide more adequate programs for nongame fish and wildlife, especially threatened and endangered species.

(d) Larger quantities of wildlife habitat are required to meet management objectives for hunting and trapping than for most other uses. The future of hunting, however, depends upon more than wildlife habitat. It depends upon the quality, the behavior and sense of responsibility of today's hunter, the willingness of private landowners to provide access, and the tacit approval of people who don't hunt. Since many hunters do not own the land on which they hunt and because wildlife belongs to all citizens, mutually acceptable relationships between hunters, landowners and the nonhunting public are required for hunting to continue as a socially acceptable form of outdoor recreation.

(3) The natural resources board directs the department to implement its statutory wildlife responsibilities through the execution of the state wildlife policy as set forth herein. For the purposes of this policy, wildlife means all varieties of birds, mammals and terrestrial vertebrates other than man and domestic animals.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 1.02 Inland fisheries management. The following actions are essential to carry out an effective fish management program.

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(1) **LAND ACQUISITION AND DEVELOPMENT.** The department shall provide for the protection of habitat essential to the maintenance of fish populations and for providing quality fishing opportunities through the acquisition of lands by gift or purchase. These lands shall be developed to provide access or be maintained as wilderness areas according to their potential.

(2) **HABITAT PROTECTION AND IMPROVEMENT.** The department shall actively protect and maintain habitat capable of supporting aquatic species. Management efforts include deterring point and nonpoint pollution, vegetation control, rough fish control, water level manipulation and limiting shoreline development. Habitat shall be improved where fish populations can be increased and such improvements are economically and ecologically feasible. Improvements include in-stream devices, wing deflectors, bank riprap, stream bank fencing, fish shelters, dredging and streamside brushing. The application of these techniques shall be consistent with the wild and wilderness policies of the board.

(3) **SURVEYS AND RESEARCH.** Programs shall be based on sound surveys and research. The department shall survey lakes and streams to obtain information needed to develop and implement management programs. Research shall be conducted to evaluate and resolve problems that have been defined.

(4) **PROPAGATION, REARING AND DISTRIBUTION.** The department shall rear fish for stocking in waters lacking adequate natural reproduction and where reasonable returns are demonstrated by surveys. Stocking priorities will be based on use opportunities, hatchery production capabilities, cost and habitat potential. Stocking of exotic species shall be thoroughly evaluated.

(5) **POPULATION MANIPULATION.** The department may, where feasible, control fish populations that are stunted or harmful to more desirable fish species. Control measures include mechanical removal, predator stocking, commercial harvest and chemical treatment.

(6) **RULES.** The department shall regulate the sport and commercial harvest of aquatic resources to achieve optimum sustained yields. Pollution and habitat destruction shall be stringently opposed through the strict enforcement of all laws and administrative rules. Special regulations shall be used to provide diverse angling opportunities and to distribute use in heavily fished areas.

(7) **TROUT STREAM CLASSIFICATION.** The department shall identify and classify trout streams as follows to ensure adequate protection and proper management of this unique resource.

(a) For the purpose of this subsection, the following terms are defined as:

1. "Classification survey" means a fishery survey employing techniques generally accepted by fisheries biologists that:

a. Investigates the variety of habitat types present in the water being surveyed;

b. Provides a representative sample of the fish species present, and their relative abundance;

c. Provides the length distribution and the age structure of the trout population.

2. "Trout spawning habitat" means areas of gravel, small rubble or coarse sand which are infiltrated by groundwater or stream flow of sufficient quantity and quality to allow successful hatching of trout eggs and emergence of fry.

3. "Trout habitat" means those areas having sufficient quantity and quality of water, cover and food to allow trout to complete one or more life history stages.

(b) Classification of trout streams, as determined by classification surveys, shall be based on the following criteria:

1. 'Class I'. A class I trout stream is a stream or portion thereof with a self-sustaining population of trout.

a. Such a stream contains trout spawning habitat and naturally produced fry, fingerling, and yearling in sufficient numbers to utilize the trout habitat, or

b. Contains trout with 2 or more age groups, above the age of one year, and natural reproduction and survival of wild fish in sufficient numbers to utilize the available trout habitat and to sustain the fishery without stocking.

2. 'Class II'. A class II trout stream is a stream or portion thereof that:

a. Contains a population of trout made up of one or more age groups, above the age one year, in sufficient numbers to indicate substantial survival from one year to the next, and

b. May or may not have natural reproduction of trout occurring; however, stocking is necessary to fully utilize the available trout habitat or to sustain the fishery.

3. 'Class III'. A class III trout stream is a stream or portion thereof that:

a. Requires the annual stocking of trout to provide a significant harvest, and

b. Does not provide habitat suitable for the survival of trout throughout the year, or for natural reproduction of trout.

c. After classification or reclassification of a stream or portion thereof under this subsection, the department shall as soon as is feasible or reasonable give notice in a newspaper or such other media the department selects in the area affected which is likely to inform the local residents. The department shall provide the information to all clerks of the county, town, city or village in which the stream or portion thereof is located. The department shall notify the legislators whose districts include the affected stream and the chairpersons of the committees of the legislature with jurisdiction for natural resources issues.

(d) The notice shall contain the location and description of the stream and the basis for its classification. If a hearing is not requested in writing within 30 days after the mailing of the notice, the department may waive the hearing. Upon receipt of a request for a hearing, the department

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shall, not less than 10 days before such hearing, mail written notice thereof to each person notified under par. (c).

(e) At each hearing, the department shall take evidence offered by persons in support of or in opposition to the stream classification. If the department finds the stream is not properly classified, the stream shall be reclassified on the basis of the criteria specified under par. (b).

(f) The department shall maintain a list of classified trout streams for public information. This list shall not be assumed to be exhaustive but will include all trout streams surveyed and classified.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80; cr. (7), Register, July, 1981, No. 307, eff. 8-1-81.

NR 1.03 Mississippi river fisheries management. In carrying out an effective management program for fish and aquatic resources, the department shall:

(1) Regulate sport and commercial harvest to provide an optimum sustained yield.

(2) Promote cooperative agreements with Iowa, Minnesota and the U.S. fish and wildlife service in an effort to maintain:

(a) The unique habitats on the river;

(b) Programs to maintain and improve public access;

(c) Cooperative research and surveys of populations and harvests, especially those related to endangered or threatened species.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

NR 1.04 Great Lakes fishery management. The board endorses a flexible management system for the protection, development and utilization of the waters and fish populations of the Great Lakes for the maximum public benefit.

(1) Management of the Great Lakes is of intrastate, interstate, federal and international interest; therefore, cooperation with managing agencies shall be sought in developing management objectives and measures for fish stocks of common concern.

(2) The Great Lakes fisheries are to be considered part of a diverse community. The department shall promote efforts to maintain and enhance the quality of this community and its environment.

(3) Management of the fishery resources shall be based on a sound understanding of the dynamics of interacting fish stocks. The department shall conduct research and resource base, inventories, and collect harvest and utilization statistics on which to base sound management decisions.

(4) The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are limited. The resources will be managed in accordance with sound biological principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and quota limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and alloca-

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tion of allowable harvest among various users and the establishment of restricted areas.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

NR 1.11 Wildlife management. The natural resources board:

(1) Endorses the concept and principles of professional wildlife management, considers scientific findings to be the primary foundation of sound wildlife management programs, and supports research and surveys necessary to provide the technical information required for effective implementation of this policy.

(2) Recognizes that effective policy implementation requires the input and support of an informed public; endorses an active program to inform people of wildlife resource issues and alternative solutions; and will make every reasonable effort to obtain broad public input during its decision-making process.

(3) Recognizes the need to strengthen the educational efforts of the department relating to hunter competence, standards of ethical hunting behavior and respect for landowners rights; educational efforts must also be directed toward nonhunters to improve their knowledge and understanding of wildlife as a renewable natural resource and of hunting as both a method of controlling wildlife populations and as a form of outdoor recreation.

(4) Endorses the concept of comprehensive wildlife planning whereby actual and potential contributions of all functions of the department toward achievement of common wildlife management goals and objectives are recognized and, where feasible, integrated into operational activities.

(5) Recognizes that regulation of certain human activities is an integral and necessary part of wildlife management; that a sound legal system which combines equitable laws and judicious law enforcement is essential; and that wildlife law enforcement programs which are commensurate with other management efforts and contribute toward the achievement of common goals and objectives are necessary.

(6) Endorses the development and adoption of stronger regulatory measures, including more stringent license requirements, to assure an acceptable, minimum standard of hunting performance.

(7) Supports the maintenance of ecological diversity and health, and will do everything in its power to protect and maintain free-living populations of all species of wildlife currently existing in Wisconsin; extirpated species will be reintroduced whenever feasible ecologically, economically and socially.

(8) Supports the management of game species and habitat with the objective of increasing or maintaining populations to provide hunting opportunities.

(9) Supports the regulated use of wildlife for human benefits, including hunting and trapping where legal harvests do not reduce subsequent population levels of these renewable wildlife resources or where population reduction of certain species is a deliberate objective.

(10) Supports efforts to foster and promote the voluntary conservation of wildlife habitat on private lands and also supports the development and maintenance of cooperative programs for wildlife management and hunting recreation with landowners and operators of private lands.

(11) Recognizes that private use of Wisconsin's protected wildlife is appropriate provided that use for educational, recreational, scientific or economic purposes does not deleteriously affect native or migratory wildlife and identifies the necessity of establishing and administering licensing or permit systems to insure proper care and handling of protected wildlife when persons are entrusted with their care or use.

(12) Strongly encourages the use of well trained hunting dogs in the pursuit and retrieval of game; that extensive training and field trial competition provide hunting dogs which are proficient at finding and retrieving more game; and that the department will actively participate in programs which assist and encourage the training of hunting dogs including the designation and management of specific state controlled lands for trials and training provided this use does not conflict with the primary purpose of the property.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, July, 1977, No. 259, eff. 8-1-77; cr. (11), Register, October, 1982, No. 322, eff. 11-1-82; cr. (12), Register, April, 1985, No. 352, eff. 5-1-85.

NR 1.12 Migratory game birds. Migratory game birds are those species listed in s. 29.01 (3) (d), Stats., which in the course of their seasonal movements will almost always leave the land or water on which they fledged and will often cross state or international boundaries. These species are regulated under federal law and international treaties. To implement an adequate program for migratory game birds, the following needs and actions are essential:

(1) **HABITAT MANAGEMENT.** Wetlands are the primary habitat component for most migratory game bird species. Upland nesting cover and woodlands are also necessary for certain species. Legislation and programs that will protect and enhance migratory game bird habitat must be strengthened. Such a program has to include:

(a) Acquisition in fee title to protect critical lands and waters and to permit developments necessary for enhancement;

(b) Easement acquisition to protect other important lands and waters from excessive degradation by human activities;

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(c) Vigorous enforcement of the state's role in the use of its regulatory powers to protect wetland resources associated with navigable waters;

(d) Strong cooperation and support to other units of government in planning and zoning programs which protect wetlands;

(e) Support for state, federal and local government programs which manage suitable public waters as production, resting and feeding areas for migratory birds, with special emphasis on the provision of nesting and brood rearing habitat for ducks;

(f) Support for the U.S. department of agriculture's soil conservation service and U.S. department of transportation in implementing, on a continuing basis, their 1975 wetland maintenance policies;

(g) Opposition to programs and activities funded by government agencies which result in loss or degradation of wetlands of wooded migratory game bird habitat; and

(h) Maintenance and development of incentive programs, including the U.S. department of agriculture's water bank program, which encourage private landowners to manage land and water for the benefit of migratory birds.

(2) **HARVEST.** (a) Migratory game bird regulations must be adopted within constraints that put the future of the resource foremost in consideration. The department shall be represented on, and take part in the activities of, the Mississippi flyway council. This council makes recommendations to the U.S. fish and wildlife service including those affecting migratory game birds using the Mississippi flyway.

(b) Some Wisconsin hunting regulations may have to be more restrictive than the federal framework to assure that local breeding populations will be maintained at optimum levels.

(c) A balance between local production and harvest is essential, and regulations must be designed to achieve this end.

(d) To provide the opportunity for a quality hunting experience on major waterfowl projects, excessive hunter densities must be reduced by every available means.

(3) **DAMAGE CONTROL AND DISEASE.** Migratory game birds, especially waterfowl, often concentrate during migration, thereby increasing the potential for agricultural crop depredations and the development of disease epidemics within the flock.

(a) As a first order of priority, management of refuges and closed areas must be directed at keeping concentrations of migratory game birds at levels that are in accord with available food supplies in the vicinity and/or at levels that will minimize the probability of disease outbreaks.

(b) Disease surveillance programs for major waterfowl concentration areas, licensed game farms with waterfowl, and urban areas with semidomestic waterfowl, must be developed. Contingency plans to deal with disease outbreaks in wild populations must also be developed.

(c) When abnormal weather delays crop harvest on private lands near refuges or closed areas, damage abatement programs will be employed to

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assist landowners in protecting vulnerable crops. When unavoidable losses occur, damage payments authorized by legislation can be used to compensate for the loss of crops.

(4) **RESEARCH AND SURVEYS.** Research and surveys on local breeding populations, production, movements, harvest and habitat are essential to provide adequate information for developing regulations and programs to protect and manage these birds. Since migratory game birds utilize continental habitats, the international significance of cooperative surveys and research required to establish sound flyway management programs is recognized. Therefore, cooperation with other flyway states, federal agencies, Canadian agencies and the Mexican government shall be exercised as needed.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 1.13 Small game mammals. Small game mammals include rabbits, hares and squirrels. To effectively implement the small game mammal program, the following needs and actions are necessary.

(1) **HABITAT MANAGEMENT.** (a) The most efficient method of management is the maintenance of existing habitat.

(b) Habitat improvement measures, however, are currently needed, primarily in rural areas near population centers. Most habitat management opportunities are associated with woodlots, forests, wetlands, and odd areas that are neither plowed nor grazed. Wherever possible, squirrel and rabbit habitat needs are to be incorporated into woodland management recommendations.

(c) The capacity to produce small game mammals on state wildlife areas must be increased through more intensive management of suitable habitat. The need for den or nut bearing trees for squirrels, brush or grassy openings for cottontail rabbits and interspersions of important timber types and age classes for snowshoe hares must be considered in the course of making forest and woodlot management recommendations for all public lands.

(d) The majority of small game mammals depend upon habitat occurring on private lands. This is especially true of jackrabbits where open agricultural land is the main component of habitat. Effective management information must be provided to private landowners who request it and incentives to manage small game mammals should be provided in areas where there is high demonstrated need.

(2) **HARVEST.** In most areas of the state, harvest levels of small game mammals do not approach the surplus that could safely be removed. Therefore, with the exception of jackrabbits, which are not abundant, harvest regulations for these species should provide maximum opportunities for sport hunting without sacrificing the quality of the hunting experience. Improved hunter/landowner relations are important to effectively meet any increasing demands for rabbit and squirrel hunting.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 1.14 Upland game birds. Upland game birds are pheasants, quail, Hungarian (gray) partridge, grouse and wild turkey. While these species depend primarily upon upland sites, most species also utilize

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wetlands to meet part of their habitat needs. The following needs and actions are essential for effective implementation of the upland game bird program.

(1) **HABITAT MANAGEMENT.** (a) The maintenance of existing habitat and, where necessary, improvement or restoration of critical components of habitat are the preferred methods of management. Management recommendations for upland game bird habitat will become an integral part of land-use plans on all public lands.

(b) **Prairie grouse** (prairie chickens and sharp-tailed grouse) habitat is constantly threatened by natural forest succession and development of land for intensive agricultural and forestry uses. Positive efforts shall be made to assure that free-living populations of these species and their necessary habitat will be perpetuated.

1. **Prairie grouse management and habitat restoration programs** shall be accorded high priority on all publicly-owned lands designated by the department. Where remnant flocks of sharp-tailed grouse occur, associated with habitat on public lands, the emphasis in land-use plans will be on maintenance or improvement of this habitat.

2. **The maintenance of huntable populations of sharp-tailed grouse** shall be the management objective where suitable continuity of habitat makes this feasible. Cooperative agreements, including leases where necessary, shall be executed with other public and private owners of lands where it is deemed practicable and essential to prairie grouse management by the department.

(c) **Much of the remaining habitat for upland game birds is the result of land-use decisions made by owners of private property.** Therefore, programs that will promote the conservation and improvement of upland game bird habitat and improve access to private lands will be supported. In addition to the technical advice supplied by department wildlife managers, the board recognizes the contribution of wildlife management assistance given to private landowners through cooperative forest management, U.S. department of agriculture and university of Wisconsin-extension programs. However, much more must be done to offset losses of wildlife habitat in predominantly agricultural areas. Cooperative wildlife habitat management programs, including the "acres for wildlife" program, which offer additional incentives and management assistance to landowners shall be developed. Conservancy district zoning as well as other programs and policies of local and federal agencies which conserve upland game bird habitat will also be supported.

(2) **HARVEST.** Harvest regulations must have as their objective to take no more than the harvestable surplus of each species within broad areas of range. Regulations must also, to the extent of the law, have as their objective reasonable minimum standards of conduct for hunters and equitable distribution of hunting opportunities.

(3) **STOCKING AND TRANSPLANTING.** There are 3 basically different objectives to the artificial introduction of upland game birds. The first is to restore a species which has been extirpated, the second to speed recovery of severely depleted numbers as a result of catastrophe, and the third to provide birds for hunting recreation on areas where the demand exceeds the capacity to produce wild birds. The first 2 are ordinarily

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short-term efforts involving wildtrapped stock, which are aimed at establishing or increasing wild populations which sustain themselves. The third is an annual effort which does not have lasting benefits and which often masks the continued deterioration of the habitat base necessary to sustain wild populations.

(a) Stocking of state wildlife areas to supplement wild populations for hunting recreation will be confined primarily to cock pheasants. However, stocked hens as well as cocks can be harvested on state wildlife areas in submarginal pheasant range. While stocking can usually put additional birds in the field at a lesser cost than habitat improvement, it yields only short-term, single-purpose benefits reaped primarily by the participants who hunt them. Therefore, user fees should be the primary means of support for pheasant stocking on designated state-owned areas. In order to assure the opportunity for a quality hunting experience on heavily hunted wildlife areas stocked with pheasants, (as was the case in NR 1.12 (2) (d) relating to waterfowl projects) a reduction in excessive hunter densities will be pursued by every available means.

(b) Cooperative game bird stocking (pheasant) programs will be used as necessary to supplement wild populations on privately-owned land in areas where the demand for upland game bird hunting exceeds the supply of wild birds. All game birds reared under cooperative programs continue to be the property of the state until released and harvested under general hunting regulations provided in Wis. Adm. Code chapter NR 10. The department will provide chicks and a specified amount of feed per chick to individuals or groups who care for the birds and provide rearing facilities that meet state standards. When the cost-sharing program is not elected, all game birds reared by private individuals or groups shall be released on lands which are accessible to the public for hunting without charge.

(c) Game birds shall not be stocked on lands to which the public is denied access for hunting unless a percentage of chicks fixed by the department is returned to the state at 8 or more weeks of age as specified in a written cost-share agreement. When cost-share birds are to be released, a percentage of the birds representing in total value the state's investment in chicks and feed shall be returned to the department and released on state wildlife areas. Cost records from the Poynette game farm will be used to determine the value at release age. The balance of the cost-share birds may be released by the individual or group on private lands, posted as desired, except that none may be released on private shooting preserves or private game farms.

(4) **RESEARCH AND SURVEYS.** Statewide or regional surveys and investigations shall have high priority. Their primary objective is the establishment of base information regarding population densities, harvest, range and habitat quality or quantity. Periodic reassessment of these same bases will yield trend information necessary for management.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 1.15 Big game mammals. Big game mammals in Wisconsin are white-tailed deer and black bear. The needs and actions specified in this section are essential to an effective big game management program.

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(1) **HABITAT MANAGEMENT.** The natural growth and changing composition of forest stands, particularly in the north, is causing a long-term decline in habitat quality for big game and other forest wildlife.

(a) *Forest diversity.* A planned program of maintaining forest diversity including shade-intolerant cover types, particularly aspen, oak and forest openings, is required to slow or halt this decline in habitat quality and to maintain deer populations at established goal levels.

(b) *Summer range.* Habitat conditions are deteriorating most rapidly on summer deer range. Forest maturation, conversion from sun-loving tree species to shade tolerant species and loss of grassy openings are reducing the quality of summer deer range and with it, the deer carrying capacity in northern Wisconsin. The management objective, depending upon the deer population goal, is to provide an adequate mixture of aspen, oak, upland brush, jack pine and sodded openings in connection with regular forest management practices.

(c) *Winter range.* Winter habitat may be increasing as a result of expanding coniferous cover and implementation of deer yard plans on public lands. However, winter deer survival is largely dependent on fat acquired on the summer range. Deer have evolved physiologically and behaviorally to survive in northern forest habitats under average winter conditions. Occasional severe winters will result in deer mortality. These periodic losses are considered normal for northern deer and will occur irrespective of winter habitat quality. Severe deer losses can be mitigated most effectively by maintaining quality summer habitat. Direct feeding of hay, corn or other agricultural crops is seldom effective and even detrimental if not introduced gradually over time. While browse cutting does provide natural feed, it is largely ineffective. Specially formulated feed in pelletized form has been demonstrated to benefit malnourished deer. However, the cost and logistics of feeding enough deer to produce a measurable result in subsequent years precludes feeding as normal public policy. The department recognizes public concern for malnourished deer, public desire to feed stressed deer regardless of cost or measurable results and the benefits to individual animals which are properly fed. Therefore, the following policy is adopted for wintering deer in the northern forest.

1. The department will seek appropriate deer harvest quotas to maintain deer populations at established goals.

2. Habitat management will emphasize maintaining summer range quality which will produce well nourished deer in the fall and enhance their overwinter survival.

3. The department will monitor wintering deer herds by surveying yarding areas and measuring winter severity.

4. The department will implement existing deer yard plans to maximize browse and perpetuate priority cover.

5. The department will provide technical advice and guidance to individuals and groups on where, when, what and how to feed privately acquired food to deer during severe winters.

(2) **HARVEST.** Big game hunting regulations shall be designed to meet the following objectives:

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(a) *Population goals.* Maintaining a deer herd in balance with its range and at population goals reasonably compatible with agricultural and forest management objectives in each deer management unit. Deer management units are areas of similar habitat bounded by major roads. Population goals in the forested deer range are to be based on long-term average carrying capacity as determined by unit population responses to habitat quality and past winters of varying severity. Goals in the agricultural range are to be based upon hunter demand balanced with an assessment of local human tolerance to deer numbers, particularly as it relates to crop damage and the frequency of deer-vehicle collisions on highways. Annual hunting seasons will harvest deer to maintain goal levels and will include buck, either-sex or buck and party quota permit bag limits as the need dictates.

(b) *Hunting objectives.* Achieving and maintaining opportunities for a range of deer hunting experience while still allowing to the extent possible, freedom of choice by hunters. Regulations should provide incentives or disincentives to encourage better distribution of hunting pressure. If hunter numbers continue to increase, control of hunting pressure may become necessary.

(c) Maintaining the black bear as a trophy big game animal and offering the best opportunity for a quality hunting experience. In addition, the maintenance of a quality hunt will be emphasized by continuing controls over the use of bait and dogs.

(d) Deer and bear damage complaints will be handled according to the provisions of s. 29.598, Stats., and rules as published in the Wisconsin administrative code. Damage can be most economically controlled by maintaining populations with a hunting season harvest as specified in par. (a).

(3) **RESEARCH AND SURVEYS.** Surveys, investigations and research shall be conducted to provide technical information necessary to establish population estimates, harvest recommendations, population goals and habitat management needs and guidelines.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, July, 1977, No. 259, eff. 8-1-77; am. (2) (d), Register, January, 1984, No. 337, eff. 2-1-84; am. (1) (a), (2) (a) and (b), r. and recr. (1) (b) and (c), Register, July, 1987, No. 379, eff. 8-1-87.

NR 1.16 Furbearers. For the purposes of this section, furbearers are muskrat, mink, weasel, beaver, otter, skunk, raccoon, fox, coyote, bobcat and opossum. The furbearer management program has the following essential needs and actions:

(1) **HABITAT MANAGEMENT.** (a) Wetlands are the primary habitat component for many furbearers so the actions regarding wetland protection and management stated in NR 1.12(1) are reemphasized in relation to furbearers.

(b) The capacity to produce furbearers on lands and waters under the management and control of the department can be increased through more intensive management of suitable habitat. Generally, management activities designed to improve furbearer populations are compatible with management for other species of wildlife. In certain situations populations of furbearers such as fox, raccoon, coyotes and skunks can depress the population of other game species. Management activities on department lands should be designed to achieve a desirable balance between

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predator and prey species which is consistent with goals and objectives established in the course of developing master plans for state properties.

(c) Since the majority of furbearers depend upon habitat under the control of private landowners, management information will be provided to private landowners requesting it. Incentive programs to encourage habitat preservation and management on private lands will be developed where they are feasible.

(2) HARVEST. Furbearers are significant from a biological, recreational and economic standpoint. Regulations will be designed to make optimum use of these species for these purposes.

(a) Every effort shall be made to design regulations on as uniform a basis as possible that will still maintain desirable population levels from year to year. High pelt prices on these species can result in temporarily depressed, local populations. Both recreational and biological objectives shall be accorded primary consideration in the establishment of harvest regulations.

(b) Because of the recreational and economic value of the furbearer harvest present trapping methods and techniques must continue. However, efforts to develop new trapping methods and techniques will be encouraged.

(3) STOCKING. Stocking of furbearers is restricted to the trapping and relocation of certain species to effect planned range extension or introductions.

(4) **DAMAGE.** (a) All of these species are capable of causing economic damage. Section 29.596, Stats., provides a procedure for dealing with wild animals causing damage to private property. Desired population levels of furbearers and hunted carnivores will be maintained primarily by the use of general public hunting and trapping seasons. Control of damage through the issuance of permits to the complainant shall be the next step employed to control problem animals. Direct control by the department shall be employed only where other control methods are not feasible or effective.

(b) In addition to the above, beaver activities can harm trout habitat and lowland forest stands but at the same time can benefit the habitat of other wildlife species. Beaver reduction and management programs shall be based on the following guidelines:

1. In all areas containing class I trout waters or productive lowland coniferous stands, a program to keep beaver populations at low levels that do not adversely affect these resources shall be conducted;

2. On reaches of other trout streams, where it is clearly demonstrated that beaver activity is deleterious to water quality or trout habitat, beaver populations shall be kept at sufficiently low levels to protect these resources;

3. In all other areas, beaver shall be managed to produce populations that will provide sustained annual harvest.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; r and recr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 1.17 Nongame wildlife. Nongame species play an important role in the normal functioning of eco-systems and contribute to the esthetic quality of our environment. Since nongame management programs provide significant benefits to many segments of society, new sources of revenue (other than hunting license fees or excise taxes) will be sought to support expansion of these programs. New federal excise taxes on selected outdoor recreation equipment are supported as one appropriate source of funding for this program. Nongame species include all birds, mammals and other terrestrial vertebrates which usually have no open season for hunting or trapping. Species classified as endangered or threatened are also included in this section. To implement an adequate program for nongame wildlife, the following needs and actions are essential:

(1) **HABITAT MANAGEMENT.** Habitat requirements of nongame wildlife collectively encompass almost every combination of topography, soils, water and vegetative types. The highest priority for management will be allotted to endangered, threatened and uncommon species. In order to protect and manage habitat for nongame species on public and private lands, programs will be initiated as required which may include the protection, development and maintenance of key nesting grounds, den sites, feeding areas, roosting areas, wintering areas, strategic migrational rest areas and other critical habitat components. Program implementation may employ one or more of the following actions:

(a) Acquisition, lease or easement of land rights;

(b) Food and cover management, construction of artificial nest or roost devices, refuge creation, protective fencing, incorporating impor-

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tant habitat needs into management plans for public lands, or providing incentives to private landowners to develop or protect habitat.

(2) **PROTECTION.** Most nongame species are protected by law; however, certain species may become so low in numbers that the special status of "endangered" is created by administrative rule under s. 29.415, Stats., and ch. NR 27. Endangered species are those whose continued existence as a part of the state's wild fauna (or flora) is in jeopardy and, without further state action, may become extirpated. Threatened species currently receive some protection under ss. 23.09, 23.11, 29.02, 29.085 and 29.174, Stats., and those which appear likely, within the foreseeable future, to become endangered. Additional regulations will be adopted as necessary for the protection of endangered and threatened species and for any nonhunted wildlife species that is exhibiting a chronic decline in abundance. Human access to critical areas of endangered or threatened species habitat on public lands will be limited or prohibited as necessary.

(3) **DAMAGE.** The payment of damages caused by nonhunted wildlife species is opposed. Should legislation mandate such payment, sources of funding other than hunting license fees or excise taxes will be sought.

(4) **RESEARCH AND SURVEYS.** (a) Many nongame species require the development of new survey techniques as well as a system to monitor population trends. Annual surveys will not be required for most species. Indications of marked population declines will require more frequent and precise surveys to determine if management action is required. Endangered and threatened species will require close monitoring until they become more abundant.

(b) A nongame program must rely on the knowledge available for each individual species to be managed. Research projects will be initiated as required to provide the following information: life history, habitat requirements, population distribution and abundance, census methods, management techniques and effects of land use changes, pesticides or other environmental population depressants.

(5) **PROPAGATION AND STOCKING.** Due to habitat changes or other ecological factors, a species may decline to the extent that viable breeding populations are absent. In this event, a reintroduction program would be considered and evaluated to determine potential adverse interactions with other species, and any environmental factors that would negate successful establishment. Wisconsin pledges cooperation with other state and federal agencies in feasible reintroduction programs which require the capture and export of Wisconsin wildlife.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 1.18 Captive birds and mammals. (1) **DEFINITIONS.** (a) "Captive" or "captive" means the state of confinement within a fence, pen, cage, house or similar enclosure.

(b) "Captive game farm birds and mammals" means birds and mammals which were propagated in captivity.

(c) "Wildlife" means birds and mammals which have inhabited and were propagated in a natural environment.

(2) **GENERAL.** (a) Authorized activities involving captive wildlife result in recreational, educational and economic benefits. The department, October, 1982, No. 322

ment, when feasible, will establish joint permit systems with other agencies having jurisdiction of the protected wildlife.

(b) Permits authorizing possession of captive wildlife or captive game farm birds and mammals shall be denied or revoked upon a showing that such possession results in care practices which are not humane, adequate or sanitary.

(c) The department may receive confiscated wildlife and shall render care consistent with standards and guidelines established for captive, protected wildlife.

(3) REHABILITATION. (a) First aid and temporary care administered to orphaned, injured or confiscated wildlife may provide important benefits to the scientific community through knowledge gained during such treatment as well as benefit the wildlife being treated.

(b) Necessary standards for facilities and care shall be established to assure proper care and confinement.

(c) Skunks may not be held under this permit authority.

(d) Wildlife may be destroyed by the department or permittees when there is no hope of successful release to the wild or for cost free use for falconry, wildlife exhibits, propagation, zoos or educational institutions.

(e) The department may not actively engage in a rehabilitation program but provide coordination of referrals to authorized rehabilitators. The department may continue to provide care for confiscated wildlife.

(4) FALCONRY. (a) The use of certain species of raptors for the pursuit and capture of wild animals is a legitimate use of a natural resource which requires skill and dedication on that part of the user and may yield important biological, ecological and other scientific knowledge of predatory birds.

(b) Because of the complexities of the sport, permit applicants will be tested for their knowledge of basic biology, raptor care, literature, laws, and regulations.

(c) Special hunting seasons may be established within the biological limits of the wildlife species to provide recreational opportunities.

(d) When the security of any wild population of raptor is in doubt or in jeopardy, the department shall prohibit the use of wild-trapped birds of that species for falconry.

(e) The use of raptors hatched, raised or rehabilitated in captivity will be encouraged for falconry to reduce the use of wild raptors.

(f) The department will encourage educational efforts to improve the public's knowledge of raptors and monitor the program, particularly regarding the health, care, taking and transfer of raptors.

(5) WILDLIFE EXHIBITS. (a) The use of game farm birds and mammals or wildlife which cannot be released to the wild for advertising or exhibition purposes serves the public interest when the public's general knowledge of wildlife is increased by such use.

(b) Standards for facilities and care shall be reviewed by the department to insure humane and sanitary treatment of captive birds and

mammals and compliance with the animal welfare act of 1966 (P.L. 89-544), as amended.

(c) No exhibited bird or mammal may be released to the wild. Further precaution shall be taken to minimize contact between captive and free-roaming wildlife.

(6) PROPAGATION. (a) Use of propagated game birds, game mammals and raptors contributes to the satisfaction of public demands by providing an alternative to the complete reliance upon wildlife populations. Habitat components beneficial to the survival of wild populations may be protected by private citizens participating in these programs.

(b) The department shall provide housing guidelines and each permittee shall implement control measures which minimize disease and potential threats to wildlife.

(c) The department may authorize the periodic taking of wildlife for breeding purposes.

(7) ENDANGERED AND THREATENED SPECIES. Birds and mammals on the Wisconsin endangered and threatened species list (s. NR 27.03) may be acquired and possessed only by persons possessing a Wisconsin endangered species permit issued under s. 29.415 (6), Stats.

(8) SCIENTIFIC COLLECTION. Except as provided by specific rule or law, all protected wild animals, alive or dead, not listed as endangered or threatened species may be acquired and possessed only by persons possessing a scientific collectors permit issued under s. 29.17, Stats. Such permits shall be issued only if the use of the wild animal provides useful scientific knowledge or educational opportunities in the natural sciences consistent with s. NR 19.11.

(9) VETERINARIANS. Licensed veterinarians providing emergency treatment of wildlife or game farm birds and mammals shall not be required to possess additional department permits.

(10) TEMPORARY POSSESSION. Wildlife is often obtained by citizens attempting to rescue sick, injured or orphaned birds and mammals. Such person shall notify a conservation warden within 24 hours and advise of such possession.

(11) DOG TRIALS AND DOG TRAINING. The use of captive game farm birds and mammals for dog trial and training activities is consistent with sound resource management principles and provides opportunities for hunters to improve their dog handling skills and the dog's performance during periods closed to hunting.

History: Cr. Register, October, 1982, No. 322, eff. 11-1-82; r. (2) (d), cr. (11), Register, April, 1985, No. 352, eff. 5-1-85.

NR 1.20 Growing trees and shrubs. (1) The department shall produce and make available from state-operated nurseries trees and shrubs of suitable species and size to be planted in the state of Wisconsin for forestry and other types of conservation projects. No trees or shrubs intended for private ornamental or landscape planting shall be sold by the department.

(2) The following guidelines shall be adhered to:

(a) No trees or shrubs over 5 years of age or more than once transplanted shall be produced for general distribution by state-operated nurseries.

(b) Species grown shall be limited to trees and shrubs normally used for forestry and wildlife plantings.

(c) No shipment of less than 500 trees will be made to an applicant. However, "wildlife packets", including trees and shrubs and tree packets for windbreaks, shelterbelts and erosion control in quantities of not less than 250 trees or shrubs shall be made available where practicable.

(d) No trees or shrubs shall be made available to commercial or municipal nurseries for lining out stock or other nursery purposes.

(e) Trees may be cut for Christmas tree purposes only where they are a product of plantation thinning. Christmas tree cutting shall not reduce the number of trees below 500 per acre.

(f) Trees and shrubs may be made available free of charge except for the cost of transportation to educational institutions, youth groups (such as 4-H, future farmers, boy scouts and similar vocational or character building organizations), lessors of public hunting and fishing grounds, and state and county agencies and semi-public or nonprofit organizations for planting on public lands or lands open to the public or for research purposes, provided the department is assured the project will have adequate supervision.

(g) All trees and shrubs distributed for planting on privately owned land (except as provided in paragraph (f)) shall be paid for at prices approved by the department.

(h) Free trees and shrubs will be limited to a maximum of 1,000 per year to lessors of public hunting and fishing grounds.

(i) Species inventories exceeding sales and allotments may be sold or traded with other states or the U.S.F.S.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.21 Private forestry. (1) The department shall provide technical forestry assistance on privately owned forest lands in Wisconsin.

(2) The department may enter into agreements, executed by the secretary, with any governmental agency, public or private corporation or private owner to achieve improved forest land management.

(3) The concept of multiple-use of forest lands will be utilized to assure maximum public benefits of wood production, wildlife management, improved watershed protection and recreational use.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.22 Establishment of coniferous plantations. The department shall encourage the establishment and intensive management of coniferous plantations planted with suitable species and spacing. The landowner shall be encouraged to maintain access ways which will aid in the management, diversified use, prevention, detection and suppression of destructive forces which might endanger such plantations

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

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NR 1.23 Fire control cooperation. The department shall assist local governments in fire emergencies whenever possible, utilizing personnel and equipment from the department.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.24 Management of state and county forests. (1) The natural resources board's objective for the management of state forests and other department properties where timber cutting is carried out and county forests is to grow forest crops by using silvicultural methods that will perpetuate the forest and maintain diversified plant and animal communities, protect soil, watersheds, streams, lakes, shorelines and wetlands, in a true multiple-use concept. In the management of the forests, it shall be the goal of the board to insure stability in incomes and jobs for wood producers in the communities in which the state and county forest lands are located, and to increase employment opportunities for wood producers in future years. Whenever possible, large sale contracts shall be for 4 years which will assist wood producers in dealing with uneven demand and prices for their products.

(2) To achieve this objective, sale areas or cutting blocks and timber harvest operations will be planned through an intra-departmental interdisciplinary review process when 10-year plans are developed in cooperation with the affected county to optimize management practices; to recognize the long-term values of preserving the integrity of the soil; to assure the maintenance of water quality; and to achieve multiple objectives of forest land management. Although multiple use shall be the guiding principle on state and county forests, the board recognizes that optimization of each use will not be possible on every acre. Desirable practices include:

(a) Fully utilizing available topographic maps, aerial photographs and soil surveys and combining these with local knowledge or field reconnaissance to ascertain on-the-ground conditions.

(b) Wherever practical, use perennial streams as harvest-cutting boundaries with provision for a streamside management zone to protect stream bank integrity and water quality, and with skidding planned away from these streams and the adjacent streamside management zones.

(c) An appropriate silvicultural system and cutting design should be planned to optimize economic skidding distances, to minimize road densities and unnecessary road construction and for efficient establishment and management of subsequent forest crops.

(d) Cutting boundaries should utilize topographic terrain, ridges, roads and forest type changes where ownership patterns permit and should provide a harvest area size consistent with economical skidding, available logging equipment, silvicultural requirements and other management objectives.

(e) Plan cutting layouts to avoid leaving narrow unmanageable strips of timber susceptible to storm damage and windthrow.

(3) Department properties and county forests shall be zoned and managed primarily for esthetic values in selected areas as identified in the master plan to recognize the importance of scenic values to the economy of the state. When clearcutting can be used to develop specialized

habitat conditions within the forest, i.e., savanna type openings for sharp tail grouse management or is the appropriate silvicultural system, due consideration shall be given to the attainment of biological diversity of the future forest, the development of edge for wildlife, a variety of age classes in future growth and esthetic quality of the area. Clearcutting is a silvicultural system usually applicable to intolerant species and is defined for purposes of this policy as a timber removal practice that results in a residual stand of less than 30 feet of basal area per acre upon completion of a timber sale. Furthermore, as the existing acreage of overmature even-aged stands change, the long-range goal of the board shall be to increase the intensities of professional management on the state and county forests.

(4) Special management practices shall apply to eagle and osprey nesting sites, deer yards, to lake and stream shoreline zones, to sensitive soil types, to springs and important watersheds, to selected esthetically managed roadsides and to land use zones identified in the master plan as managed more restrictive.

(5) Block type plantings of a single species that create a monotype culture within an area shall be discouraged. Plantations shall be established to achieve a more esthetically pleasing appearance and to provide for added diversity of type. Planting will be accomplished by varying the direction of the rows or contouring to create a more natural appearance, planting on the contour, using shallow furrows or eliminating furrows where practical. In planting adjacent to a major roadway, the first rows should be parallel to the roadway to meet esthetic concern and provide game cover. Existing and new plantations will be thinned at the earliest opportunity and periodically thereafter to develop an understory for wildlife habitat and a more natural environment.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

NR 1.30 State park system. (1) State parks shall be classified, as follows, into their most logical employment and greatest usefulness:

(a) *Scenic parks.* Parks having unusual scenic charm and beauty, distinctive landscapes, and particular appeal to nature lovers, and of sufficient size to enable use by large numbers of people without destruction of the qualities essential to their purpose.

(b) *Historical - memorial parks.* Parks of archaeological, memorial and historical significance.

(c) *Roadside parks.* Parks possessing scenic and other park characteristics adjacent to or associated with important state trunk or interstate highways.

(d) *Recreation parks.* Parks which offer the best natural values for recreation, have scenic qualities, and contain water for recreational purposes and are of sufficient size to prevent destruction through overuse.

(e) *Park trails.* Continuous corridors, whether or not associated with a state park or state forest, suitable for hiking, biking, horseback riding, snowmobiling, canoeing or nature study.

(2) No overnight lodging facilities other than designated campgrounds, group camps and staff residences shall be constructed in state parks.

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(3) Archaeological features and historic buildings located in state parks may be restored and preserved.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.31 State-owned islands. The department shall maintain state-owned islands in natural and undisturbed condition consistent with controlled public use on islands suited for recreational purposes. Each state-owned island shall be classified for its most desirable use such as camping or picnicking, or to be maintained in a natural condition. Preference shall be given to aesthetic management and every effort shall be made to maintain forest growth and ground vegetation in as near a natural state consistent with other desirable uses.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.32 Natural areas and scientific areas. (1) The legislature has indicated its intent to acquire, establish and preserve natural areas and scientific areas by creating ss. 15.347 (4), 23.27 and 23.092, Stats. The natural resources board agrees that such areas, by their preservation, protect the state's natural diversity, provide sites for research and environmental education, and serve as benchmarks for assessing and guiding use of other lands in the state.

Note: Section 23.092 (1), Stats., defines "natural areas" and "scientific areas" to include tracts of land or water which have native biotic communities, unique natural features or significant geological or archeological sites. Generally, natural areas are remnant areas which largely have escaped disturbance since settlement or which exhibit little recent disturbance so that recovery has occurred and presettlement conditions are approached. Generally, scientific areas are natural areas of at least statewide significance and useful for education or research.

(2) The department, with the advice and assistance of the scientific areas preservation council, shall:

(a) Conduct inventories of natural areas statewide including department controlled properties.

(b) Recommend for natural resources board approval sites on department properties as scientific areas.

(c) Recommend for natural resources board approval the acquisition of natural areas and designation of appropriate tracts as additions to the scientific areas system.

(d) Manage natural areas and scientific areas to perpetuate the native biotic communities, unique natural features and geological or archaeological sites.

(e) Encourage research and educational use by groups and persons on department controlled scientific areas, consistent with the individual site management guidelines.

(3) Prior to any change in status of a scientific area located on lands owned or controlled by the department, the natural resources board, with the advice of the scientific areas preservation council, shall determine in each instance that:

(a) The site is no longer suitable and no longer needed for the scientific area use for which it was established; or

(b) Other public uses are required due to unavoidable public necessity, but then only after notice to concerned groups and individuals and opportunity for public comment.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82.

NR 1.40 Acquisition of recreational land. (1) In the acquisition of recreational lands, the department shall place principal emphasis on the acquisition of lands in the heavily populated areas of the state and in places readily accessible to such areas.

(2) A high priority shall be placed on the consolidation and completion of existing projects and new projects shall be initiated only where unusual conditions of quality, location, cost, availability and need exist which justify their establishment and implementation.

(3) All new projects shall be subject to natural resources board approval.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.41 Land acquisition authorization. (1) The following land transactions of the department shall require board approval:

(a) Acquisitions where the purchase price is \$150,000 or more.

(b) Acquisitions where more than 40 acres are outside of an established project boundary.

(c) Acquisitions where the purchase price exceeds the highest appraised value.

(d) Acquisitions by condemnations of land.

(e) Acquisitions by gifts of land to the department.

(f) Acquisitions where improvement values exceed 35% of total appraised value.

(g) Acquisitions of short tenure with substantial increased value.

(h) Sales of state land that are no longer needed for conservation purposes where the value exceeds \$50,000 or where the acreage exceeds 40 acres.

(2) The secretary may approve all other land transactions.

(3) The department shall submit to the board a yearly statistical report on the land control program, including an analysis of the program's status in relationship to the state recreational plan.

(4) The department shall submit to the board at each meeting a report on the status of all options and pending land acquisitions showing the date of each option.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; am. Register, April, 1976, No 244, eff. 5-1-76; r. and recr. Register, November, 1985, No. 359, eff. 12-1-85.

NR 1.415 Policy on redesignation of department land uses. (1) The department shall conduct a periodic review of land use designations in order to determine whether a redesignation will secure better management.

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(2) Each redesignation of land use shall be subject to approval of the board.

History: Cr. Register, November, 1976, No. 251, eff. 12-1-76.

NR 1.42 Acquisition of state forest land. (1) Within established state forest boundaries, the department shall acquire suitable forest lands for the purpose of better blocking, consolidation of ownership and improvement of management possibilities. In the acquisition program, the department shall:

(a) Acquire by purchase or by exchange suitable publicly owned lands.

(b) Acquire by purchase suitable privately owned lands.

(c) Acquire suitable privately owned lands within the forest boundary by exchange for state-owned lands located outside the forest boundary which are no longer needed for conservation purposes.

(2) Outside established state forest boundaries, the department shall acquire lands for forestry purposes only when such lands are needed for specific purposes.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.43 Acquisition of fish and game lands adjacent to water. (1) Lands on certain streams and lakes have been designated for acquisition by the board. Adequate land area, associated with the water, shall be acquired in connection with the acquisition of water frontage for preservation or recreational purposes.

(2) The width of parcels to be acquired on areas adjoining the water shall be based on the management objective of the project, the quality of the water or habitat, the opportunities for scenic enhancement or preservation, the level of public use, and the topography of the area, all with the purpose of protecting the water, the land and the associated flora and fauna.

(3) The boundaries of all land acquisition projects involving water frontage, shall extend a distance of a minimum of 150 feet from the shoreline, except for perpendicular access or where narrower strips of land will provide adequate access and habitat protection due to specific physical conditions, such as the presence of roads, favorable topography or land use conditions.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; am. (3), Register, April, 1976, No. 244, eff. 5-1-76.

NR 1.44 Cooperation with county, town and municipal boards on land acquisition. The department shall inform county, town and municipal boards of proposed boundaries of land purchase projects in their areas. If these boards officially object, they shall be afforded an opportunity for personal appearances to present such objections to the board before a final decision on the proposed acquisition is made.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.45 Disposition of state forest lands. (1) State forest lands and other state-owned islands within state forest boundaries and lands which provide desirable public access to waters may be sold for the following purposes only:

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- (a) To a local unit of government when required for a public use.
 - (b) To others for the purpose of making land adjustments due to occupancy resulting from errors of survey.
 - (c) To convey good quality, arable land.
 - (d) To settle land title disputes.
 - (e) To public utilities and co-operative associations when needed for power and telephone substations, transformers, booster stations and similar installations.
 - (f) To dispose of land no longer needed for conservation purposes.
- (2) State forest lands outside state forest boundaries which the natural resources board determines are no longer necessary for the state's use for conservation purposes shall be disposed of in accordance with the following priorities:
- (a) Sale to or exchange with a unit of government.
 - (b) Sale to others.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.46 Disposition of state fish and game lands. (1) State-owned fish and game management lands may be sold only when the natural resources board determines such lands are no longer necessary for the state's use for conservation purposes and only in accordance with the following priorities:

- (a) Sale to or exchange with another unit of government when the lands to be conveyed are required for another public purpose or the lands received in exchange are required for department project purposes.
- (b) Sale to others.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; r. (2), Register, December, 1983, No. 336, eff. 1-1-84.

NR 1.47 Disposition of state park lands. (1) State-owned lands within state park boundaries shall not be sold or otherwise disposed of.

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(2) State-owned lands outside state park boundaries and not within any other department project which serve no project purpose may be sold when the natural resources board determines such lands are no longer necessary for the state's use for conservation purposes and then shall be disposed of only in accordance with the following priorities:

(a) Sale to or exchange with a local unit of government when required for a public use.

(b) Exchange with others to consolidate state ownership within a park boundary.

(c) Sale to others.

(3) Restrictions may be imposed on lands disposed of to insure aesthetic park settings or compatible adjacent land uses.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.48 Leasing department lands. (1) No leases for private use shall be executed, extended or renewed.

(2) The secretary may execute leases for public use or public benefit, including leases of department houses to department employes as a condition of employment for the benefit and convenience of the department.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, January, 1978, No. 265, eff. 2-1-78.

NR 1.483 Leasing department tower sites for telecommunications systems. (1) This rule establishes department policy regarding leasing of department tower sites to others for telecommunications systems not presently installed at department tower sites. These provisions apply to all nondepartment telecommunications users.

(2) For the purposes of this section:

(a) "Telecommunications system" means the components necessary to form a single functioning communications system at a tower site. Basic components of a telecommunications system include one equipment cabinet, one antenna, and one transmission line connecting the two.

(b) "Tower site" means any department radio tower or lookout tower and the grounds in the vicinity of it. A tower site may or may not include a department transmitter building.

(3) The department will only consider a request to install a telecommunications system at a department tower site if it meets one of the criteria set forth in sub. (4). The department may reject a request to install a telecommunications system at a department tower site for any reason, including technical, legal or environmental problems associated with the request, or if granting the request could conflict with future department needs.

(4) The department will only consider a request to install a telecommunications system at a department tower site if the request is for a telecommunications system which is a:

(a) State of Wisconsin telecommunications system providing necessary communications between a state of Wisconsin agency and its employes, provided it meets the following criteria:

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1. The specific equipment to be installed and the system it ties into are state-owned; and

2. The licensee, as defined in the station authorization granted by the federal communications commission, must be the state of Wisconsin; and

3. Communications must be between state employees conducting state business; or

(b) State of Wisconsin telecommunications system providing non-commercial broadcast services to the citizens of Wisconsin, provided it meets the following criteria:

1. Both the specific equipment to be installed and the system it ties into must be state-owned; and

2. The licensee, as defined in the station authorization granted by the federal communications commission, must be the state of Wisconsin; and

3. All programming must be noncommercial and must be available to the public without charge; or

(c) Telecommunications system owned by governmental entities other than the state of Wisconsin providing necessary public safety communications between a governmental entity and its employees, provided it meets the following criteria:

1. Both the specific equipment to be installed and the system it ties into must be owned by a unit of local government or the federal government; and

2. The licensee, as defined in the station authorization granted by the federal communications commission or the interagency radio administrative council, must be a governmental body; and

3. Communications must be between government employees conducting government business.

(5) If the department approves a request to install a telecommunications system at a tower site, it shall enter into a written lease with the requester. The department shall draft the lease.

(6) Lease charges shall be as follows:

(a) No charge for a lease meeting criteria in sub. (4) (a) or (b).

(b) \$25 per month for a lease meeting criteria in sub. (4) (c).

(7) Fees received from telecommunications site leases shall be used to offset, in part, the statewide costs involved in maintaining telecommunications tower site.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

NR 1.485 Granting easements. (1) Each conveyance across state lands for a right-of-way for public or private roads, public utility lines, other public purposes, or for flowage rights where such use does not conflict with the planned development by the department, may be granted by the department, but shall be presented to the board for approval if

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unusual circumstances or material impairment of project values are involved.

(2) A complete record of such conveyances shall be maintained by the department.

(3) Compensation shall be determined by appraisal. The loss of any project values shall be considered in establishing the value of such easement.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.49 Trespass. (1) The natural resources board may cure unintentional trespasses by purchase or sale where practicable subject to state laws relating to purchase, sale, lease or exchange of lands not withstanding any other provisions of ch. NR 1.

(2) Improvements may be removed and any trespass terminated, or legal eviction action may be taken, where a trespasser on state-owned land under the jurisdiction of the department of natural resources has been found by the natural resources board to have been guilty of willful, intentional or negligent conduct with respect to such trespass.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.50 Policy on issuance of environmental pollution orders.

(1) **DEFINITIONS.** (a) "Department" means the department of natural resources.

(b) "Board" means the natural resources board.

(c) "Air pollution" means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

(d) "Water pollution" includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(e) "Rule" means a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing), of general application and having the effect of law, issued by the department to implement, interpret or make specific legislation enforced or administered by the department or to govern the organization or procedure of the department.

(f) "General orders" of the department are rules and mean orders issued by the department applicable throughout the state for the construction, use and operation of practicable and available systems, methods and means for preventing and abating environmental pollution.

(g) "Special orders" of the department mean orders issued by the department applicable to and directing specific persons to secure operating results in the control of environmental pollution within the time or times prescribed in the orders.

(h) "Emergency orders" of the department mean temporary orders issued by the department under emergency conditions of environmental pollution.

(2) **RULES.** Rules and general orders shall be adopted in accordance with the provisions of ch. 227, Stats. The notice of hearing on each rule requiring a hearing shall include the express terms or an informative summary of the proposed rules.

(3) **SPECIAL ORDERS.** (a) *Water pollution.* Special orders shall be issued by the department only after a hearing held for the purpose of ascertaining whether such orders are necessary for controlling or abating environmental pollution. Each proposed special order shall be served upon the persons affected thereby together with the notice of hearing thereon. The notice of hearing shall also be published as a class 1 notice in a newspaper having wide distribution in the area. Not less than 10 days notice specifying the time and place of the hearing shall be given by the department. The hearing shall be conducted in accordance with and be governed by ch. 227, Stats. After the hearing, the proposed special order may be set aside or it may be modified, amended or affirmed in whole or in part and a special order issued accordingly.

(b) *Air pollution and solid waste.* 1. In issuing special orders for air pollution and solid waste the department may follow the procedure set forth in par. (a) or

2. The department may serve on alleged violators a notice of alleged violation specifying the statute or rule allegedly violated and findings of fact on which the violation is based. An order shall accompany said notice. The order shall become effective unless the person named in the order requests in writing a hearing within 10 days of the service of the order. If a hearing is requested, the order shall be suspended. After the hearing is closed, the department shall affirm, amend or rescind the order.

(4) **EMERGENCY ORDERS.** Emergency orders may be issued by the department without a hearing whenever the department determines that a condition of imminent or actual water or air pollution exists which requires immediate action. The emergency orders shall specify the time and place of hearing thereon, not more than 24 hours after service of the order on the persons affected thereby in the case of air pollution, and as soon as practicable but not more than 20 days after service of the order on the persons affected thereby in cases of water pollution. Before the close of the hearing, and not more than 24 hours after the commencement thereof, the board, in air pollution cases, shall affirm, modify or set aside the emergency order or issue a special order. In the case of water pollution the department shall modify or rescind the temporary emergency order or issue a special order after the close of the hearing.

(5) **NOTICES.** All notices given by the department hereunder shall be served personally or by mail, and shall be deemed to have been served upon deposit in the United States mails addressed to the last known address of the person to whom addressed, with postage prepaid thereon. All petitions and notices to the department shall be served by delivery thereof to the Department of Natural Resources, Pyare Square Building, 4610 University Avenue, Madison, Wisconsin 53701.

Note: The Department of Natural Resources is located at 101 S. Webster St., Madison, Wis. 53702.

History: Cr. Register, February, 1971, No. 194, eff. 3-1-72.

NR 1.51 Management of state wildlife areas. Section 23.09 (2) (d) 3., Stats., provides legislative authority and direction for the acquisition and management of wildlife areas. The primary purpose as stated in this statute is to provide "areas in which any citizen may hunt, trap or fish". Section 23.11 (1), Stats., provides for the general care, protection and supervision of state lands. Section 23.30, Stats., deals with the provisions of the outdoor recreation program.

(1) In order to fulfill the statutory charge of providing public hunting and trapping on wildlife areas, the quality of their wildlife habitat must be maintained or developed. However, this is not to be construed as authority for exclusive single-purpose management of entire properties. Wildlife habitat needs and public hunting objectives shall receive major consideration in management planning for wildlife areas; however, fishery, forestry, wild resource and outdoor recreational objectives will be accommodated when they are compatible and do not detract significantly from the primary objective.

(2) The concept of a general user fee to fund operational activities on wildlife areas which require maintenance to keep them safe, functional and attractive is endorsed.

(3) The following uses will be accommodated on wildlife areas in accord with the priorities and constraints of practical and scientific wildlife management principles and obligations:

(a) *Public hunting and trapping.* The primary use on all designated wildlife areas shall be hunting and trapping. Legislation and regulations are encouraged to limit numbers of participants utilizing state land where necessary to insure opportunities for a quality recreational experience. The use of closed areas and/or refuges is endorsed to provide wildlife with required sanctuary from hunting and to protect property.

(b) *Scientific study.* Relatively undisturbed biological systems on wildlife areas provide a unique opportunity for scientific research on natural or near-natural systems. Since a thorough knowledge of wildlife ecology is the basis of a sound wildlife management program, the designation of suitable tracts as scientific areas is encouraged.

(c) *Compatible open-space uses.* Open-space pedestrian uses, including hiking, nature study, wildlife viewing and cross-country skiing are generally compatible with the primary purpose of wildlife areas. These activities will be accommodated but may have to be limited in time and location to avoid interference with wildlife production or survival and public hunting or trapping.

(d) *Camping.* Limited primitive camping may be permitted on wildlife areas. Camping should not be encouraged nor will developments be undertaken to service campers except at locations designated in the property master plan.

(e) *Off-road vehicles.* Unrestricted use of off-road vehicles, including snowmobiles, will not be permitted on wildlife areas. Agreements may be made with counties, other municipalities, or private clubs for the use and maintenance of designated trails or areas where such use will not be detrimental to wildlife or conflict with public hunting.

(f) *Horses.* Indiscriminate horseback riding will not be permitted on wildlife areas. Use of horses may be permitted on designated trail systems, specific dog trial and training areas and in other areas where such use will not unduly damage wildlife habitat or conflict with wildlife production and public hunting.

(g) *Special use permits.* Special use permits may be authorized for outdoor recreational activities such as organized youth group camping, dog trials, etc., but only where such activities do not conflict with each other and where they are compatible with the primary purpose of the property. Sites where such activities are to be permitted and the facilities required shall be designated in the property master plan.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 1.70 Policy on education. (1) Wisconsin has a unique abundance of varied and high quality natural resources. The successful stewardship of those resources is largely dependent upon enlightened and responsible decision-making by Wisconsin citizens, government and private interests. The department recognizes the need to develop a coordinated environmental education program. Education is the foundation of effective resource management and environmental protection activities. Natural resources protection and management goals can be more readily achieved and sustained by incorporating education elements in depart-

ment functions and philosophies. An active educational program is necessary to encourage incorporation of education into department programs, to inform citizens on natural resources issues and to develop alternative solutions to natural resources problems.

(2) Effective environmental education will result in better understanding of the operations and programs of the department and will help meet management goals. The goal of the department's environmental education program is to assist in developing a citizenry that:

- (a) Is aware of Wisconsin's natural resources;
- (b) Understands resource use issues, limits, capabilities and problems;
- (c) Analyzes and evaluates personal and public values that affect resource management; and
- (d) Acquires the individual and collective skills and purpose to act responsibly in using natural resources in work and leisure.

(3) The department shall assist Wisconsin educational institutions at all grade and age levels by:

- (a) Making available supplemental services, education materials, expertise of department employes and volunteers, and facilities and properties;
- (b) Cooperating and coordinating with the department of public instruction, university of Wisconsin-system, Wisconsin board of vocational, technical and adult education in assisting teachers, administrators and others interested in education in understanding the importance of their role in environmental education and in obtaining knowledge, skills and materials in this instructional area.

(4) Department education programs shall follow agency policies, management directives and guidelines. Educational programs should be a means of achieving management goals and objectives; should complement and be consistent with agency priorities; and should focus on the areas of natural resource management and environmental protection. To implement its educational policy, the department shall:

- (a) Designate the bureau of information and education as agencywide coordinator of environmental education activities.
- (b) Create a department education committee, appointed by the secretary, to advise the secretary on environmental education matters.
- (c) Actively cooperate with private, state and federal agencies and organizations with existing or potential interest in environmental and conservation education.
- (d) Consider and incorporate education elements into annual and long-range program plans and budgets.
- (e) Consider environmental education skills and interest in the recruitment, training, promotion and assignment of department employes.
- (f) Delineate environmental education responsibilities in position descriptions.

(g) Incorporate additional and broadened environmental education elements in department subprograms.

(h) Incorporate environmental education elements in property and facility acquisition, development and programming.

(i) Utilize the MacKenzie environmental education center and youth camps and facilities for environmental education programming.

(j) Identify teachers and selected adult groups as primary audiences to maximize program impact.

(k) Encourage involvement with volunteer, school, youth, special interest and adult groups.

(l) Develop written and audio-visual materials, supplies and aids necessary to accomplish program goals.

History: Cr. Register, October, 1983, No. 334, eff. 11-1-83.

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 pub-

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lic 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, section 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;

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(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 (3) to grant or deny the petition.

(b) If a hearing is requested, the department shall hold the hearing as a class I 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 (3).

(2) "Adequate access" is defined in section 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.

Register, September, 1980, No. 297

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.

(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.

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(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; renum. 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 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.

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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) 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.

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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 such as hunting, canoeing, hiking, snowshoeing, and nature study), directly or indirectly, by helping to maintain water quality and providing wildlife habitat. To some people and cultures certain wetlands provide an important part of their economic base and/or contribute to their cultural heritage.

4. Scarcity of wetland type. Certain wetland types (e.g., fens, wild rice lakes) which are statewide or regionally scarce possess special resource significance. Scarcity or rareness depends on the frequency of occurrence of the type, the area of the type in existence prior to settlement, the historical conversion of the type and its resultant degree of destruction, and the amount of similar habitat in the present landscape of the region.

5. Aquatic study areas, sanctuaries and refuges. Through various local, state and federal actions, large areas of the nation's wetlands have been designated and preserved by public agencies for scientific study, and the protection of aquatic and terrestrial habitats. Many public and private groups have also established sanctuaries and refuges in wetlands.

6. The ecosystem concept in a regional context. The previous sections suggest that wetlands may not only have important functions within their boundaries, but may also interact with ecosystems of the surrounding region. The potential impact of wetland modification may influence distant wetlands if they are structurally and functionally related in the region. Similarly, the functions and values of any wetland may be affected by other existing and potential water resource activities in the region. Therefore, consideration should be given to those impacts which are shown to be of regional concern.

(4) STATEMENT OF POLICY. (a) The board is concerned with the continuing reduction in the quantity and quality of wetlands in this state. A

large percentage of Wisconsin's wetlands have been altered or destroyed in the years since settlement. It is the policy of the natural resources board that wetlands shall be preserved, protected and managed to maintain, enhance or restore their values in the human environment.

(b) It is in the public interest that department decisions which lead to alteration of or effects on wetlands under its jurisdiction or control are based on the intent to preserve, protect and manage them for the maintenance or enhancement of their values.

(c) "Wetland" as defined in s. 23.32 (1), Stats., means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

(d) It is the intention of the natural resources board that where the term "wetland" appears in a rule promulgated by the department and the rule does not contain a specific definition, the definition of "wetland" in this section shall apply.

(5) GENERAL STANDARDS TO BE APPLIED IN DECISIONS AFFECTING WETLANDS. (a) *Department regulatory actions.* The department shall consider proposals which require its approval with the presumption that wetlands are not to be adversely impacted or destroyed and that the least overall adverse environmental impact shall result. Therefore, the department shall give primary consideration to reasonable alternatives, including the alternative of denying the requested approval, that avoid adverse impacts on wetlands and that result in the least overall adverse environmental impact. When all reasonable alternatives necessarily result in adverse impacts on wetlands, the proposed activity shall be conducted in a manner which minimizes the loss of wetlands and the loss of functions which those wetlands may serve with respect to related wetlands and other waters of the state both in and outside the proposed area of use, and which results in the least overall adverse environmental impact. Where consistent with its existing authority, the department shall require that sponsors of actions affecting wetlands convincingly demonstrate that their proposals:

1. Need to be located in or adjacent to the wetland(s) in question,
2. Are technically, economically and environmentally feasible, and
3. Meet other applicable criteria as provided by law.

(b) *Department management actions.* The department shall select resource management techniques which enhance wetland values with no significant or irreversible adverse effects. Actions shall be limited to those specifically required to meet the objectives enumerated in sub. (2) (d).

(6) IMPLEMENTATION. (a) In making a regulatory decision where adverse wetland impacts may result, and where its existing authority allows, the department shall evaluate the proposed action and all reasonable alternatives, including the alternative of no action, through consideration of the wetland values enumerated in sub. (3) (b). In its evaluation, the department shall also consider:

1. The potential reversibility or irreversibility of wetland impacts which would result from implementation of proposed actions;

2. The potential impacts of proposed actions on other scarce natural resources in and outside the proposed area of use;

3. The effects of the use of non-wetland areas, which may alter adversely the biological, hydrological, physical or chemical characteristics of wetlands and other waters of the state in and outside the proposed area of use;

4. The presence or absence of physical alterations resulting from human activity;

5. Other existing or potential uses of wetlands in the region; and

6. The cumulative effects on wetlands of piecemeal alterations.

(b) The department shall conduct its resource management activities in a manner consistent with sub. (5) (b).

(c) The department's land acquisition program shall place special emphasis on obtaining wetlands that provide quality fish and wildlife habitat, particularly for threatened or endangered species; that significantly affect the maintenance or improvement of water quality; that have special value as scientific or natural areas; or that are imminently threatened with extensive alteration or destruction.

(d) The department's enforcement activities shall include steps to assure, to the fullest extent practicable, the restoration of wetlands which were unlawfully altered.

(e) In its liaison activities with federal, local and other state agencies and in the absence of regulatory authority, the department shall strongly recommend avoidance of wetland areas and concur with their use or alteration only when necessary to minimize the overall environmental impacts of a proposal. In such cases, the recommended amount of wetland use or alteration shall be held to the minimum.

(f) The department, in evaluating the wetland effects of proposed actions, shall not recognize the conveyance of land (or other consideration) to local units of government, the state of Wisconsin or the federal government as off-setting the adverse impacts of the proposal and shall only consider the net effects of the action by itself.

(g) The department shall ensure that its proposals for administrative rules and for legislation include appropriate provisions, consistent with this rule, except as otherwise provided by law.

(h) The department shall cooperate with appropriate governmental units, the public and private groups to further the protection and enhancement of wetlands and to provide opportunities for education on wetland values and ecology.

(i) For its activities subject to the requirements of this rule, the department shall establish procedures, within the existing decision-making framework, to cause evaluations to be made and decisions rendered in accordance with the standards described in sub. (5). The department shall also take steps to ensure that its decisions altering or affecting wetlands are documented and available for review. The department shall, in selecting a course of action, indicate how impacts on wetlands were considered in the decision-making process.

(7) **MONITORING AND REPORTING.** The board intends that the department shall evaluate and monitor its own progress in achieving the objectives of this rule and shall establish procedures, subject to board approval, for reporting such progress to the board.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; r. and recr. Register, January, 1980, No. 289, eff. 2-1-80; am. (4) (c) and cr. (4) (d), Register, June, 1984, No. 342, eff. 7-1-84.