

# Natural Waterbody Permits for Fish Farms

*Most need an NR 19 permit to operate in a natural waterbody*

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A 1997 state law requires fish farms operating in natural waterbodies to get a permit from the Department of Natural Resources, as well as register their farm with the Department of Agriculture, Trade and Consumer Protection (DATCP).

**Grandfathering** -- A cut-off date of January 1<sup>st</sup>, 1998 was established and any DATCP-registered fish farm operating in a natural waterbody before then was eligible for a “grandfathered” permit. The initial grandfathered NWB permits were issued for a 10-year period, and did not include any assessment of impacts on plant and wild animal habitat or populations; water quality and quantity in lakes, streams or rivers, threatened or endangered species or their habitats, wetlands and the public’s right to navigate and associated incidents to navigation including fishing, swimming, wading and canoeing. Currently, natural waterbodies cannot be “grandfathered”, as this opportunity ended on January 1<sup>st</sup> 2003”.

**New “Initial” Permits** -- After January 1<sup>st</sup> 1998, farmers who plan to expand facilities into a natural waterbody must obtain an “initial” permit. These “initial” permits are valid for a 10-year period and are strictly limited to freeze out ponds.

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## What is a natural waterbody?

Wisconsin Administrative Code NR 19 defines a natural waterbody as *“any spring, stream, pond, lake or wetland that was historically present in a natural state but may have been physically altered over time except any waterbody that has been permitted by the department under ch. 30 or 31, Stats. or ch. NR 299 water quality certification and not declared public under s. 30.19(5), Stats.”*

Examples of a natural waterbody include:

- Waters that are, or existed as, naturally occurring springs, ponds, or streams;
- Ponds constructed in natural springs, wetlands, streams, ponds, or lakes; and
- Ponds created by damming a stream.

If your pond was built in an area where there was no surface water or wetlands present, then you are not operating in a natural waterbody and do not need an NR 19 permit.

## Are some waterbodies exempt?

If you received a chapter 30 or 31 permit or a NR 299 wetland water quality certification for construction of your pond, and the permit did not declare your constructed pond to be a public waterway, then your pond is considered private and artificial, and you do not need an NR 19 natural waterbody permit. Some examples are:

- Ponds for which you have a Chapter 30 or 31 permit and the pond is considered artificial and private.
- Waterbodies authorized by a Chapter 31.33 dam plan approval on non-navigable streams.
- Ponds constructed in wetlands, and approved with a DNR Wetland Water Quality Certification.

If you are unsure if your pond is exempt from NR 19, we suggest you apply for a natural waterbody permit

and attach a copy of your permit or certification to your application. If DNR determines you are exempt, we will refund your application fee with written confirmation of our determination.

## What are the legal requirements to be eligible for an NR 19 permit?

Not all natural waterbodies may be used as fish farms. Before the DNR can issue an NR 19 permit for someone to use a natural waterbody as a fish farm, all of the following five requirements of state law (s. 29.733, Stats.) must be met:

1. The land next to the waterbody must be owned, leased or controlled by owners of the fish farm.
2. There must be no public access to the waterbody except for fishing by the public for a fee.
3. No substantial public interest exists in the body of water.
4. No public or private rights in the body of water will be damaged.



### 5. The waterbody must be one of the following:

- A **freeze-out pond** defined as a natural, self-contained body of water in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every five years; or
- A **preexisting fish rearing facility** licensed by DNR as a Private Fish Hatchery on January 1, 1998.

## What about an “Initial” permit?

New fish farms in natural waterbodies (i.e. where the owner did not have a DNR private hatchery license on January 1, 1998) are strictly limited to freeze-out ponds. The statute defines freeze-out pond as “a natural, self-contained body of water in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every five years.”

People who want to operate a new fish farm in a freeze-out pond must obtain an Initial Natural Waterbody permit from DNR. A non-refundable application fee of \$500 is required for the initial permit application, and if a permit is issued, it is valid for 10 years..

Applications for “initial” NR 19 permits require DNR biologists to inspect the waterbody to determine if it is a freeze-out pond. In addition, DNR may issue the permit only if “no substantial public interest exists” in the body of water and “no public or private rights in the body of water will be damaged.”

## What about renewing my permit?

Permits are valid for a 10-year period. The Bureau of Fisheries Management will mail reminder letters and renewal application packets to permit holders prior to expiration. Applicants must submit their renewal application at least two months before expiration of the permit. The DNR will renew your permit unless our staff determines that your fish farm has substantially impacted the public interest. The permit renewal application fee is \$50

## What are the “public interests” considered in the decisions to grant or deny my NR 19 permit?

In Wisconsin, navigable lakes and streams are held in trust by the state for the public. This Public Trust Doctrine springs from the Wisconsin Constitution, and it protects citizen rights to use navigable waters for all the incidents of navigation. Navigable waters are defined by the Supreme Court as waters capable of floating a recreational craft of the shallowest draft on an annual, recurring basis such as during spring runoff. Incidents of navigation include such uses as sailing, rowing, canoeing, bathing, fishing, hunting, skating, and other public purposes such as viewing natural scenic beauty.

The Wisconsin Supreme Court has also held that the public’s rights to water quality and quantity are protected in part to assure the protection of fish and wildlife including reptiles, amphibians and birds and their spawning, feeding and resting habitat.

## How does the DNR determine if substantial public interests exist?



great blue heron

Once the department has received your permit application and the appropriate permit fee, DNR regional staff will inspect your fish farm to verify if the pond meets the legal requirements outlined above. In determining whether there are substantial public interests in the natural waterbody, the DNR is required to consider the following factors in accordance with state law (NR 19.74 Wis. Adm. Code):

- Plant and wild animal habitat or plant and wild animal populations affected;
- Threatened or endangered species or their habitat present;
- Water quality related functional values or uses of wetlands identified in s. NR 103.03 Wis. Adm. Code.
- Surface water quality standards identified in Chs. NR 102, NR 104, NR 105, NR 106 and NR 107 and minimum water quantity requirements identified in s. 31.02, Stats.
- The public’s right to navigate and associated incidents to navigation.

## What’s the process?

Before deciding to approve or deny your “initial” permit, DNR is required to either 1) schedule a contested case hearing before an administrative law judge or 2) publish a public notice stating the DNR will proceed without a hearing if no substantial written objections to the issuance of the permit is received within 30 days after publication of the notice.

If you believe your fish farm might not be eligible for a Natural Waterbody Permit, we suggest you contact the DNR immediately so we can explore alternatives. If you believe your fish farm meets all of these requirements, you should submit a permit application as soon as possible in order to comply with state laws.

### What other DNR permits do I need?

Some fish farm operations may require other DNR environmental permits. Examples of some activities requiring permits are:

- Alterations in or near navigable waterways and wetlands;
- Dredging natural lakes and streams;
- Installing high capacity wells; and
- Discharging effluent from some fish farm facilities depending on fish production. For more information, see DNR Publication #FH-059, “Environmental Permits for Fish Farms”.

## How do I apply for a permit?

If your fish farm pond is a natural waterbody, and is not exempt as a private and artificial pond, you need to complete Natural Waterbody Permit Application Form #3600-227. A separate permit is needed for each waterbody, unless the waterbodies are located on contiguous parcels of property under one ownership or leasehold, in which case one application may be used.

It may take some time for DNR to process your permit, so apply early and submit a complete application. To enable us to review your application quickly and thoroughly, please attach the following to the form:

- Location sketch or map showing location of your project;
- Copy of deed, lease, land contract showing that you own or control all the land around the waterbody;
- Copy of the plat book and of any easements showing any public access to the fish farm;
- Diagram of the fish farm waterbody(s) showing dimensions of pond(s), raceways or tanks; and
- Copy of any DNR permit or approval for pond construction.
- For an Initial NR 19 Permit – Documentation to show the natural waterbody is a "freeze-out pond."
- For a Transfer of NR 19 Permit – Photocopy of the previous owner's NR 19 permit, and documentation to show change of ownership.
- Photocopy of DATCP Fish Farm Registration from current or previous year.

To submit your application:

- ⇒ Enclose a \$50 fee for a "renewal" permit if your farm was previously permitted.
- ⇒ Enclose a \$100 fee for a "transfer" permit if recently purchased a farm with a natural waterbody permit.
- ⇒ Enclose a \$500 fee if you started after January 1, 1998 and are applying for an "initial" natural waterbody permit;
- ⇒ Mail or deliver the application to:  
Bureau of Fisheries Management –Natural Waterbody Permits  
P.O. Box 7921  
Madison, WI 53707-7921

### **GETTING THE FORMS AND SUBMITTING YOUR NR 19 PERMIT APPLICATION**

*Application forms and more information are available on our website:*

[www.dnr.state.wi.us/org/water/fhp/fish/aquaculture/envperm.htm](http://www.dnr.state.wi.us/org/water/fhp/fish/aquaculture/envperm.htm)

*or contact the DNR Fish Farm Environmental Permit Coordinator in your region of the state to obtain application materials.*

#### **South Central Region:**

Scot Stewart  
3911 Fish Hatchery Road  
Fitchburg, WI 53711  
608-273-5967  
richard.stewart@wisconsin.gov

#### **Southeast Region:**

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