NATURAL RESOURCES BOARD
Minutes

The regular meeting of the Natural Resources Board was held on Wednesday, March 24, 2004, in Room 106, State Department of Agriculture, Trade and Consumer Protection Building, 2811 Agriculture Drive, Madison, WI 53708-8911. The meeting was called to order at 8:39 a.m. All March Board Agenda business was conducted by the Full Board.

PRESENT: Gerald W. O'Brien, Chair
Howard D. Poulson, Vice Chair
Jonathan P. Ela, Secretary
Herbert F. Behnke
Stephen D. Willett

ABSENT: Christine Thomas

ORDER OF BUSINESS

1. Minutes to be approved.
1.A. Full Board Minutes of February 24-25, 2004.

Mr. Poulson MOVED, seconded by Mr. Willett approval of the Full Board Minutes of February, 2004, as presented. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

1.B. Agenda for March 24, 2004.

Secretary Hassett requested that item 3.A.3. INFORMATIONAL ITEM - Presentation of 2004 Registered Laboratory of the Year Awards be moved before 3.A.2.

With those changes Mr. Behnke MOVED seconded by Mr. Poulson, approval of the Agenda for March 24, 2004, as presented. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

2. Ratification of acts of the Department Secretary.
2.A. Real estate transactions.

Mr. Willett MOVED, seconded by Mr. Poulson approval of the Real Estate Transactions, as presented. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3. Operating Committees.
3.A. Air, Waste and Water/Enforcement Committee.
3.A.1. Minutes. There were no Committee minutes for February 2004 since all agenda items were taken up during the Full Board Meeting.

3.A.3. INFORMATIONAL ITEM - Presentation of 2004 Registered Laboratory of the Year Awards.

David Webb, Section Chief, Environmental Science Services, Integrated Science Services Bureau, stated that each year the DNR nominates and identifies two laboratories for the Lab of the Year awards. The 2004 Small Registered Facility Award was presented to the **Village of Boyd Wastewater Treatment Plant Laboratory**. The 2004 Large Registered Facility Award was presented to the **Fontana-Walworth Water Pollution Control Laboratory**.

3.A.2. Adoption of Wis. Admin. Code NR 149.05, proposed FY 2005 laboratory certification fee adjustment.

Greg Pils, Lab Certification Coordinator, Integrated Science Services Bureau proposed the FY 2005 laboratory certification fee adjustment.

Mr. Willett MOVED, seconded by Mr. Ela approval of the proposed the FY 2005 laboratory certification fee adjustment. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B. Land, Management Recreation and Fisheries/Wildlife Committee.

3.B.1. Minutes. There were no Committee minutes for February 2004 since all agenda items were taken up during the Full Board Meeting.

3.B.2. Adoption of the implementation strategy for the Land Legacy Report.

Steve Miller, Director, Facilities and Lands Bureau explained the three goals of the Land Legacy Report. The three goals are establish near–term priorities for natural resource protection efforts; supplement natural resource education efforts and keep citizens connected to nature; and integrate natural resource issues into plans, policies, and programs. There are two phases to the implementation. The first phase covers a three-year period beginning now and to be updated in 2007 based on results from State Outdoor Recreation Plan (SCORP), Comprehensive Wildlife Conservation Plan (CWCP), State Forest Plan (SFP), Basin Plans, and other plans. The plan describes DNR priorities, but is not limited to DNR activities. Internal and external teams developed protection plans. The protection plans are locally focused, unique plans for each legacy place, and describe specific goals and objectives. The first implementation strategy focuses on existing inholdings and has increased emphasis on existing projects such as the Ice Age and North Country Trail, Lower Wolf River Bottom and the Lower Wisconsin Riverway.

Mr. Willett asked if the Department would be assisting the Lower Wisconsin Riverway and if there is an articulation agreement with them.

Mr. Miller stated the Riverway has zoning responsibilities and the Department has land management and acquisition responsibilities. We have a liaison relationship with them. We have a common strategy through the master plan, place increase acquisition for these three projects.
Another strategy is to significantly expand Central Wisconsin Grasslands, Kettle Moraine (KMSF, Mid Kettle, and Southern Kettle Moraine: Whitewater Lake to Turtle Creek), and Scattered Natural Areas around the state.

Mr. O'Brien asked if the Department would like to acquire these lands to protect them.

Mr. Miller stated it would mostly be acquisitions, but could be easements, donations, and cooperative efforts with other partners. We want to protect these sensitive areas from development.

Mr. Willett asked if there was a map that identifies all these sensitive areas.

Mr. Miller stated that the Department would have a list to give to the Board Members.

Mr. Poulson asked if the Department would like to expand boundaries of the Kettle Moraine or just acquire scattered parcels. He also asked what is considered the Turtle Creek Area.

Mr. Miller stated that Turtle Creek is stand alone wildlife area. It's not technically part of the Kettle Moraine, but part of ecosystem. There would potentially be a recommended boundary expansion through acquisitions, land trusts, donated conservation easements, and farmland protection easements.
The fourth strategy is to acquire new large, one of a kind opportunities, which typically involves a small number of landowners. As large forestry corporations are selling their land, the Department is trying to acquire these large parcels of land to protect them.

Mr. Willett stated that the industrial forests are being sold due to the reorganization of the paper industry. The northern part of the state is losing its way of life, economy, and industry. He believes it should not be handled through the Land Legacy program because it's a separate issue. Land Legacy is for pristine areas, not for economy or lifestyle.

Mr. Miller stated he will work with forestry to discuss this issue. It is a huge and expensive undertaking. We are at the whim of the corporations and what they want to do with their lands.
The fifth strategy is developing new possible initiatives, including the Black River (lower), Blue Mounds-Blanchardville Prairie and Savanna, Mississippi River Bluffs, Niagara Escarpment, Rock River-Crawfish River and Western Jefferson County, groundwater recharge areas, and lakes and undeveloped shoreline. The second goal focuses on education and keeping citizens connected to nature. The third goal integrates natural resource issues into plans, policies and programs. The final report will be out for bids by early May and will be available in late summer.

George Meyer, Madison, Wisconsin Wildlife Federation stated they support the Land Legacy Report. He urged the Board to approve the report. This plan will not be able to be carried out if there isn't adequate funding. The Knowles-Nelson Stewardship Fund is the way to fund the Land Legacy report.

Mary Jean Houston, Madison, Nature Conservancy stated the Land Legacy Report is based on science, planning, and public process. Implementation is the key to this program. The Nature Conservancy supports the DNR's vision for the timely implementation of this program.

Mr. Behnke MOVED, seconded by Mr. Willett adoption of the implementation strategy for the Land Legacy Report. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.3. INFORMATIONAL ITEM – Wisconsin's Plan for Species in Greatest Need of Conservation

Signe Holtz, Director, Endangered Resources Bureau stated that a State Comprehensive Wildlife Conservation Plan is an opportunity for funding of "nongame" wildlife conservation and focuses on wildlife species in the state with the greatest conservation need and their habitats. These plans are being developed by every state in the nation and must be submitted by October 1, 2005.

Mr. Poulson stated that it doesn't seem like bird populations such as sparrows are down. He asked what draws their numbers down.

Ms. Holtz stated that the loss of habitat decreases their numbers, especially grassland birds because grasslands are on the decline.

Mr. Willett asked if this would be a statewide land use program.

Ms. Holtz stated the plan fits with Land Legacy and will supplement that report.

Mr. Willett stated he sees importance of what you are doing, but it's important to be careful because the reaction of smart growth hasn't been accepted and it will be viewed negatively by parts of the state.

Ms. Holtz stated the Department would work with external partners to reach local residents

Mr. Ela asked what is the purpose of this report. He asked if there are federal dollars available

Ms. Holtz stated the purpose is to keep these species off the threatened and endangered species list. There are federal dollars available.

Mr. Poulson stated the latest farm program had federal efforts, but we don't know how they are going to function or work. These programs must be user friendly or people won't participate in them. It must be a partnership.

Mr. Willett asked if the Department has met with external partners and made a determination. He stated it's important to include the farm community, forestry community, hunting/fishing groups, bear hunters, and deer hunters, also include not only supporters, but other interest groups like developers, county government, and private agencies.

3.B.4. Adoption of proposed revisions to NR 27.03(3)(a)(1) and NR 10.02(a) to remove the gray wolves from the Threatened Species List and list as a Protected Wild Animal.

Signe Holtz stated that Wisconsin's wolf population has been above 250 for two winter counts or one full year. The Natural Resources Board authorized hearings to secure opinions from the public concerning whether the wolf should be removed from the Endangered Species List in Wisconsin. Ninety-three percent of the public comments supported the delisting of the gray wolf from the threatened species list.

Mr. Behnke asked when the delisting would happen.

Ms. Holtz stated the rule will go to legislator if the Board approves it. I don't know exactly when it will happen.

Mr. Ela asked about the federal delisting process.

Ms. Holtz stated the federal government is going ahead with the Eastern population delisting. It is important to be careful with our management plan. In Wyoming, the legislature decided to list it as a predatory animal that could be shot on sight. The U.S. Fish and Wildlife Service pulled the delisting. The federal listing for the Gray Wolf is threatened.

George Meyer, Madison, representing the Wisconsin Wildlife Federation (WWF) stated they support delisting of the gray wolf. The program has truly been a success and there has been a substantial increase in the state's wolf population and distribution. The WWF believes in maintaining the population goal for the state at 350 animals. They request that the program do an annual public report on the wolf program, related expenses, and a five-year projection of program costs.

Mr. Willett asked about damage to bear hunting dogs. He asked if these are considered domestic animals and will there be payment of damage to them.

Mr. Meyer stated yes because it will help maintain and build broad support.

Mr. Behnke asked how the WWF arrive at 350 wolves as a goal and if they talked to experts. Some experts believe 350 is too high for the Wisconsin habitat. There are 350 wolves now and that forces a number to stray outside of their habitat. They have been seen in Door County, Appleton, and the Milwaukee area.

Mr. Meyer stated there are differing opinions even among the members of the WWF. Our position is based on discussions with Department staff. We need to have a broader management program.

Eric Koens farmer from Bruce, representing himself, stated that depredations are up. He is happy about state delisting process going forward. It's not a success story for domestic livestock industry. He is not against the wolf, but the population must be controlled so the animals are not in habitat that is unsuitable. The only wolf depredations that are paid for are the verifiable cases. The wolves are causing stress to livestock and the herd health.

Mr. Behnke stated that we would not need legislative approval for furbearer status because it is already in the statute under NR 29.001 (30)

Mr. Andryk stated that doesn't give us authority for a wolf season where we can restrict hunter and trapper numbers in areas of the state through some kind of drawing or preference system.

Mr. Willett MOVED, seconded by Mr. Behnke, adoption of proposed revisions to NR 27.03(3)(a)(1) and NR 10.02(a) to remove the gray wolves from the Threatened Species List and list as a Protected Wild Animal. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.5. INFORMATIONAL ITEM – 2004 Zone T and Earn-a-Buck Herd Control Deer Management Units.

Bill Vander Zouwen, Section Chief, Wildlife and Landscape Ecology, Bureau of Wildlife Management stated that the criterion for Zone T is when a regular season would not bring the population to within 20% of the unit goal. The effectiveness of Zone T in the North October Zone T hunt - 29% of antlerless harvest. In the South October Zone T - 18-19% antlerless harvest and December Zone T - 5-8% of antlerless harvest. The criteria for earn a buck after a third year of Zone T would not bring the population within 20% of goal. Effectiveness of Earn-a-Buck (EAB) harvest: 37% fewer bucks, 102% more antlerless deer, 44% more total harvest, 228% increase in antlerless/buck. How many deer are there? Last April, there were 1.38 million deer, this year with Sex-Age-Kill (SAK) model, 1.7 million. Most people are not in favor of EAB. People have asked if we have given Zone T a fair chance and is EAB justified. EAB units have had Zone T for 2-5 years and units are still way over goal. We must keep EAB for deer management units where it is clear that a longer gun season and free tags will not work. We must keep our promise to the farmers who wanted EAB immediately, but agreed to wait 2 more years for effective relief

Mr. Behnke asked if wolf depredation was factored into SAK and how wolves affect the deer population.

Mr. Vander Zouwen stated that there is a very minor impact by wolves. Another factor to consider is feeding and baiting that would have the opposite affect and increase populations. These two variables are not measured in SAK, but if there was a higher mortality rate because of wolves, we would know by doe/fawn ratios.

Mr. Ela asked if Zone T has worked in some units.

Mr. Vander Zouwen stated that some units do drop out, Zone T estimates are 3 deer per square mile were harvested so it works towards the unit goal. There are 26-27 units in EAB.

David Ladd, Dodgeville, Chair, Big Game Study Committee, Conservation Congress stated there are problems with proposals. In unit 21, Polk County the local wildlife biologist said the unit was close to goal and would not be in Zone T and now it is. There are units that have low goals that should be raised: units 28, 29A, 12, 29B, and 34. There are several other units we feel should not be in Zone T and EAB.

Mr. Willett asked what is the solution and asked if this was the formula he worked on.

Mr. Ladd stated that most all of the units should not go into EAB or T-zone until we have public review. It is the formula we worked on, but there is confusion. They aren't listening to local wildlife biologist

Mr. O'Brien asked Mr. Vander Zouwen if he consulted with local wildlife biologists.

Mr. Vander Zouwen stated that each of the regional wildlife supervisors is on the deer committee who receives recommendation from wildlife biologist. There are also wildlife biologists are on the deer committee.

Mr. Willett asked if the conservation congress doesn't think that the deer population is 1.7 million.

Mr. Ladd stated he believes we need outside audit. He believes the wildlife bureau is doing a good job with CWD issue. He would like the Board to hold off on implementing EAB and Zone T until there is public input. He would like to go over this issue with Mr. Vander Zouwen and Mr. Hauge and come to an agreement.

3.B.6. INFORMATIONAL ITEM – Deer Management Unit Boundary and Goal Reviews

Bill Vander Zouwen, stated the Department is required to do a review every 3 years by administrative code and Voigt case stipulations. The wildlife biologist looked at factors such as agricultural damage, vehicle-deer accident rates, hunter buck harvest success, hunter demand vs. supply for hunters choice permits. There are other factors the code requires us to look at such as disease transmission, carrying capacity, deer viewing interest, forestry impacts, etc. Due to all the issues with deer right now, the Department decided to only deal problem units with intolerable agriculture destruction. There are only four units that will met the criteria: 15, 53, 54A, 73D and will go through the full public process. The timetable for the review is to conduct public hearings in May, rule to the Board in the summer, fall-Board adoption

and legislative review, winter-use of new goals for 2005 quotas. Large units mean more data, better population estimates and better harvest quotas and permit levels. Recommendation: do not change boundaries if you want the SAK to be accurate. Mr. Vander Zouwen handed out report about EAB in Buffalo County.

Mr. Behnke expressed his appreciation of Mr. Vander Zouwen's presentation. The issue is much clearer now. He also stated due to the letters, e-mails, telephone calls regarding EAB in Buffalo County, the question of transfer of EAB tags or exemption for outfitters will probably not be pursued any further.

Ed Harvey, Sheboygan, Vice Chair, Conservation Congress stated there are units that should be split. One example is units 3, 5, 6. He proposed eliminating unit 5 and distributing it among the other units. Other unit where he would like to see boundary changes or possible splits are 29A, 4, 23, 25, 30, 35, 36, 39, 38, 62A, 49A, 51B, 42, 59C, 61, 72, 59B, 59A, 75A, and 68A. These are the changes we would like to add to the Department's proposal.

3.B.6.A. INFORMATIONAL ITEM – Update on CWD Testing

Tom Hauge, Director, Bureau of Wildlife Management, stated there was an article in the newspaper a couple weeks ago that caused some confusion among many people. Dr. Langenberg will explain the screening process in more detail.

Dr. Julie Langenberg, Veterinary Wildlife Health Specialist, Bureau of Wildlife Management stated a new CWD screening test, IDEXX ELISA was added at the Wisconsin Veterinary Diagnostic Laboratory. The USDA approved it in 2003. It has a high throughput and lower cost than other test. It is designed as a screening test (sorting CWD-negative and CWD suspect deer). The USDA/manufacturer requirement is that suspect deer be tested with "Gold Standard" IHC for definitive CWD test result. The IDEXX results for 03-04 wild deer were 9476 deer samples tested. 159 suspects (68 suspects on replicate tests) 46 positive by IHC. The CWD positive results were sent to DNR and shared with hunters. Contrary to press reports, all deer that tested positive by the IHC test were found in areas already known to have CWD present.

Mr. Behnke asked how IDEXX is different from the private laboratory started by Butch Johnson a year ago. He also asked who paid for the tests, how many people paid for the test, and how they obtained the 9,400 samples.

Dr. Langenberg stated it is a similar situation. It was a screening test. All hunters voluntarily had their deer tested. There were no payments made. Before the season started we set goals for CWD surveillance. We identified two other categories of counties: high risk areas where there are CWD positive deer farms and counties where there wasn't 90% confidence from previous year.

3.B.7. Land exchange - Turtle Flambeau Scenic Waters Area, Iron County.

Mr. Willett MOVED, seconded by Mr. Ela, approve the land exchange of 35 acres of state land plus $1,100,000 for 560 acres of land needed for the Turtle Flambeau Scenic Waters Area. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.8. Land acquisition - Willow Flowage Scenic Waters Area, Oneida County.

Mr. Behnke MOVED, seconded by Mr. Poulson, approve the purchase of 364.61 acres of land for $790,000 for the Willow Flowage Scenic Waters Area. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.9. Land exchange and project boundary modification - Willow Flowage Scenic Waters Area, Oneida and Vilas counties.

Mr. Willett MOVED, seconded by Mr. Ela, approve the land exchange and project boundary modifications of 522.5 acres of land for the Willow Flowage Scenic Waters Area.

Mr. Willett stated that Island Lake is developed. It makes sense to exchange this for wilderness property.

Mr. Ela stated it's not exactly the exchange was a no cost transaction since we are losing a valuable asset.

Mr. O'Brien asked how many feet of frontage is the Island Lake property.

Mr. Steffes stated it is about 1,650 feet on Island Lake.

Mr. Behnke asked what the justification for no longer needing this property for conservation purposes.

Mr. Steffes stated that this parcel is not in the boundaries of Northern Highland Forest. Most of lake is developed and there are public landings.

The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.10. Land acquisition - Green Bay West Shores Wildlife Area, Brown County.

Mr. Behnke MOVED, seconded by Mr. Willett, approve the land purchase of 63.27 acres of land for the Green Bay West Shores Wildlife Area. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.11. Land acquisition - Statewide Habitat Area, Marinette County.

Mr. Ela MOVED, seconded by Mr. Willett, approve the land purchase of 85.57 acres of land for the Statewide Habitat Areas. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.12. Land acquisition - Bibon Swamp Natural Area, Bayfield County.

Mr. Behnke MOVED, seconded by Mr. Poulson, approve the land purchase of 365 acres of land for $225,000 for the Bibon Swamp. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.13. Land acquisition - Pike Wild River, Marinette County.

Mr. Behnke MOVED, seconded by Mr. Willett approve the land purchase of 74.75 acres of land for $253,000 for the Pike Lake River. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.14 Land acquisition - Governor Knowles State Forest, Burnett County.

Mr. Behnke MOVED, seconded by Mr. Willett approve the land purchase of 98.24 acres of land for $216,000 for the Governor Knowles State Forest. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

3.B.15 Easement acquisition - Baraboo Hills Recreation Area, Sauk County.

Mr. Ela MOVED, seconded by Mr. Poulson approve the land easement acquisition on 104.57 acres for $154,000 for the Baraboo Hills Recreation Area. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

4. Committee of the Whole.

A. Citizen Participation.

B. Retirement Resolutions.

1. Michael Cramey
2. Ernest J. Grorich
3. Steven C. Stubenvoll
4. Wayne L. Jeidy

Mr. Poulson MOVED, seconded by Mr. Willett approval the retirement resolutions. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

4.C. Adoption of Emergency Orders FH-13-04(E) through FH-23-04(E) revising Chapters NR1, 300, 320, 325, 326, 328, and 340, creating Chapters NR310, 329, 341, 343, and 345, repealing Chapter NR 322, and repealing and recreating Chapter NR323, pertaining to implementation of 2003 Wisconsin Act 118 which went into effect on February 6, 2004.

Todd Ambs, Administrator, Division of Water stated that Wisconsin has 15,000 lakes, 44,000 miles of perennial streams, 5.3 million acres of wetlands, and 1,100 miles of Great Lakes shoreline. Water is critical to our economy. In fact, our three biggest industries: agriculture, forest products, and our $12 billion tourism industry depend on clean, good quality water. One of the most important things is the public trust doctrine. The doctrine says that our navigable waters are held in trust for all people of this state. Act 118 challenges us to apply those principles in a new way. The revisions to Chapter 30 govern the regulation of activities in Wisconsin's navigable public waters. The legislation establishes a new regulatory framework where activities are either authorized as exemptions; allowed under a general permit through rules adopted by the Department; or reviewed under an individual permit. The three goals of the rule making are speed and consistency, ease of understanding, and public waters protection. The reason this is an emergency is because general permits are needed to avoid delaying thousands of projects with new notice requirement; property owners, consultants and contractors are at risk of unintended violation; and lakes and streams are at risk. Emergency rules work for the applicants, clear standards predictable and consistent outcome, easy to check lists of designated water, general permits, avoid 11th hour recall (permit in lieu of exemption).

Mike Staggs, Director, Bureau of Fisheries Habitat and Management stated there cannot be exemption granted for NR 1 – Waters Designations, which are areas of special natural resources interest. These designations include designated state natural area, designated trout stream, designated outstanding or exceptional resource waters, and an area that possess significant scientific value as identified by the Department. The Department would like to list these scientific value waters in the rule. They include waters harboring endangered or threatened species, wild rice waters, waters used by lake sturgeon, self-sustaining walleye waters in ceded lands, self-sustaining muskellunge waters statewide, state-federal wetlands designation areas, state or federal wild or scenic rivers. There was a clerical error that left out perennial tributaries to trout streams from the list, but an amendment has been handed out to include it in the proposed rule.

Mr. Willett asked if an endangered/threatened species is identified through the permit process, will the Department then require the individual to obtain individual permit. Two examples include the Wolf River and Flambeau River: during permitting process there were endangered species discovered. If the Department had reason to believe, but had not discovered the species could they say the water would be exempt?

Mr. Staggs stated the endangered/threatened species must already be identified and be listed in the Natural Heritage Inventory. The rule states you would have to go get a general permit. It won't require a study. Act 118 does allow the Department to require a permit in lieu of exemptions.

Mr. O'Brien asked if the Board has the list of waters.

Mr. Staggs stated the Board hasn't seen the list. The Board is approving a list that already exists in the Natural Heritage Inventory. The list would be available to the public on the DNR website.

Mr. Behnke asked why limit the self-sustaining Musky and Walleye waters in ceded lands, why not the rest of the state.

Mr. Staggs stated that when you cross the ceded lands you find an additional value added because of an interest in the tribes that are sovereign governments.

Mr. Willett asked if tribes have the power to issue permits in ceded territories.

Mike Cain, DNR Attorney stated they can adopt regulations, but usually they do not adopt regulations within the reservations boundaries. The state has jurisdiction on ceded territories for these kinds of regulations.

Mr. Willett asked how many waters in the ceded area do not qualify for Musky and Walleye.

Mr. Staggs stated approximately 860 Walleye waters and 300-400 Musky waters in the ceded territories.

Mr. Willett asked if we have Outstanding Resource Waters (ORW) and Exceptional Resource Waters (ERW), why do you need another provision since these ratings cover the pristine waters of the state. What is the purpose of including naturally reproducing Musky and Walleye waters in the category of scientific value?

Mr. Staggs stated that ORW and ERW don't cover all the categories of water. Including Musky and Walleye waters protects the resource that don't fall in the ORW and ERW categories.

Mr. Willett stated that doesn't justify saying ORW and ERW classifications can determine regulatory purposes for Musky and Walleye waters.

Mr. Staggs stated the Department isn't trying to justify it under the ORW and ERW categories. We are justifying it under the significant scientific value to the state and tribes categories.

Mr. Behnke explained that ORW and ERW are already considered the clean waters of the state, but Walleyes and Muskies can live in unclean waters. We want to protect them too.

Mr. Willett stated it's not an issue of protection. The issue is what type of permit are they exempt from. The permit process is about having a system that you don't need to have a specific permit. He asked what is the scientific justification that someone would need a individual permit.

Mr. Ambs stated we believe there is significant scientific value in self-sustaining Musky and Walleye populations on ceded lands for two reasons: it is significant to maintain those self-sustaining populations and because those populations are maintained on ceded lands that belong to another nation. There are some questions to ask. Should it be on the list for emergency rule and will it become a permanent rule? It will go out for public hearing at that point. It can be discussed or debated.

Mr. Staggs explained the public rights features and the reasons why this is a reasonable way to approach the location standards. Act 118 gives the Department the authority to establish locational standards for rules relating to individual exemptions. The reason for that is to prevent significant adverse impacts. Public rights features are lakes with sensitive areas and Land Legacy named waters. It would apply to pier, dredging and culvert exemptions. Rather than having to wait for a case by case basis, there would be a list of waters. There is a process already in place for trout streams.

Mr. Ambs added that there are very few lakes designated as sensitive or Land Legacy. The question becomes what do we do with the rest of the waters of the state. There are not going to be a lot of culvert and dredging requests. The piers are the majority of the requests. The landowners must ask some basic questions themselves. Are you putting it on fish spawning, native aquatic plants, or where there hasn't been a pier before? It's the new piers that we are concerned with.

Mr. Willett asked how do we reconcile doing that when we passed ORW and ERW we stated that those designations would not be used for regulatory purposes.

Mr. Ambs stated that we now must follow what Act 118 says is regulatory now.

Mr. Staggs explained an example of how the process will work. The first step is to review rule standards and see if the waterway is on the protected list. If the activity meets the standards and the waterway is not listed, then the project can go ahead. The web site is where most of the information is available.

Mary Ellen Vollbrecht, Section Chief, Rivers and Habitat Protection, Bureau of Fisheries Habitat and Management explained additional rules NR 300 and NR 310 procedures, fees, and timelines, NR 320 bridges and culverts, NR 323 habitat structures, NR 325 boat houses, 326 piers and related structures, NR 328 riprap, NR 329 miscellaneous structures, and 341 grading.

Mr. Behnke asked if grading was a permitted procedure now.

Ms. Vollbrecht stated that for grading of 10,000 square feet or more on all waters the bank is 75 ft or where the slope becomes less than 12%. Act 118 gives the Department the authority to define banks for priority navigable waters are 300 ft or where the slope is less than 10%. Grading must be 10,000 ft or more to require a general permit. Priority navigable waters are all waters in the special natural resource interest, public rights features, and lakes less than 50 acres.

Mr. Ela asked if someone has an area under 10,000 sq ft. they do not need a state grading permit, but they must meet construction runoff standards.

Ms. Vollbrecht stated that for other provisions of local laws, yes. NR 341 is not part of today's package. It will be presented at the April Board meeting. She went on to explain NR 343 – ponds and artificial waterways and NR 345 – dredging.

Mr. Behnke asked since the construction of new boathouse has been prohibited for 35 years, does Act 118 permit the construction of new boathouses.

Ms. Vollbrecht stated no it does not except for a few limited exceptions of a boathouse over an individual slip or commercial boathouse over an artificial enlargement in a lighted or Brownsfields area on the Great Lakes.

Mr. O'Brien asked if someone wanted to do something that's allowed under the general permit, what is the procedure.

Ms. Vollbrecht stated the applicant would complete the short form. The Department has 30 days to decide or you can go ahead with project.

Mr. Ambs thanked everyone responsible for getting this packet before the Board. Liesa Nesta, Mary Ellen Vollbrecht, Mike Staggs, Mike Cain and many others who worked weekends and evenings, nonstop since this law passed.

Mr. Ela asked what is the timetable for coming back to the Board with permanent rules and what is the direct impact on staff over the long haul.

Mr. Ambs stated that it depends on the rule. In the case of grading, it will be in April. Others will be staggered over the coming months. We would like to send it over to the legislature shortly after the first of the year so the permanent rules are in place for the 2005-construction season. He stated that we hope to achieve this with current staff.

Mr. O'Brien stated that the Board has been briefed individually by the staff in the days before this meeting.

George Meyer, Madison, Wisconsin Wildlife Federation asked the Board members to "Keep the Promise". One of the key areas identified as "areas of special natural resource interest" are "navigable waters having self-sustaining populations of walleyes located in the ceded territory." We ask that you also place "navigable waters having self-sustaining populations" outside the ceded territory on the NR 1.05 list of area of special natural resource interest. In addition, he stated

that self-sustaining population of large and small mouth bass are equally important and should be added to the NR 1.05 list of areas of special natural resource interest. There is a flaw in the DNR's list of special interest waters that it does not include those waters that the Legislature itself considered special enough to name them "priority navigable waters" under section 30.19 (1b) (c), WI statutes.

Lisa MacKinnon, Madison, 1000 Friends of Wisconsin stated that as stated by Mr. Meyer there is a concern that this legislation threatened to undermine current protection of Wisconsin's waters and the public trust in those waters. She recommend that the Natural Resources Board modify the proposed rules to include "priority navigable waterways", self-sustaining populations of walleyes located outside the ceded territory of the state, and all self-sustaining large and small mouth bass waters in the definition of "areas of special natural resource interest."

Eugene Roark, Madison, Wisconsin Wetlands Association voiced his concerns about the wetlands that are inseparable from lakes and streams. It is essential habitat for fish and waterfowl. We concur with statements made up until now. We hoped the bill would be dropped or modified, but it passed. The promises about natural resources should be kept. He promoted tourism during my career and fishing is an essential part of our tourism. We need to protect not only fish in ceded territories, but also large and small mouth bass. This bill could result in deterioration of employment because of the drop in tourism. We hope you adopt the emergency rules now and strength them in permanent rules. The surveyors are out and bulldozers are poised.

Jennifer Giegerich, Madison, Wisconsin Public Interest Research Group asked the Board to expand the list of "areas of special natural resource interest" to include any waterway deemed important enough for the Legislature to designate as a "priority navigable waterway". She also asked the Board to pass the rules today.

Dale Arenz, Delafield, Wisconsin Waterfowl Association stated his group ~~as~~ has restored 35 wetlands in past 5 years and 17 wetlands this year. We are vitally concerned that the Board protect our wetlands. Please adopt emergency rules. Don't wait too long. The builders are waiting. The water that comes out of marshes is Wisconsin's clean water.

William O'Connor, Madison, Wisconsin Association of Lakes stated that Act 118 represents shift in state water policy. Our organization is concerned with the "act now, look later" provisions of the act. It is critical that the Board act on these rules now. We will have a situation where statutes will allow these exemptions. We are concerned about the window of time if you don't act now. These rules are put together in haste. There has been inadequate review, but the package must be approved today. They will need to be improved.

Caryl Terrell, Madison, Sierra Club stated her organization ~~is~~ bitterly opposed the Job Creation Act, but it is now in affect. We are relying on the promises of the authors of the law. The NRB has a crucial role in passing these emergency rules. We support the rules, but we would like to see additions: tributaries to trout streams. She recommended the Board to modify rules to include navigable waterways, all self sustaining walleye lakes and all self-sustaining large and small mouth bass waters. It is important that the NRB move forward now. It is not fair to property owners to not know what the rules. Please keep the promise and put these rules in place before the construction season starts.

Mr. O'Brien asked how many more lakes would be protected outside of ceded areas if we included walleye, and large and small mouth bass.

Mr. Staggs stated we don't have those numbers. Large and small mouth bass are reproducing naturally already in most waters. It would be a large percentage of waters.

Ms. Terrell stated the public doctrine and our laws require the DNR to protect fish and wildlife habitat. It doesn't say "except for".

Mr. Behnke suggested that when permanent rule comes before the Board we consider those waters outside the ceded territories.

Mary Jane Houston, Madison, The Nature Conservancy stated she supports approval of emergency rules. The Nature Conservancy is about partnerships. The resources can be protected while fostering economic growth. Her outstanding concern is that after we identify list, we may risk other habitats that are beautiful that don't make the list. Please remember economic growth includes outdoor tourism. She remains concerned that the legislation

Denny Caneff, Madison, The River Alliance urged the Board to pass the emergency rules before you today. The act isn't good for landowners and recreation users. He is disappointed there isn't a job count in the rule package.

Gary Deschane, Madison, Wisconsin Builders Association stated that ½ million people earn a living in the building industry. He complimented Todd Ambs and his staff for the work they have done to develop the rule package. There were two promises that were made and both promises need to be kept. He asked for time to evaluate rule package. He asked if it is consistent with Gov. Doyle and the legislature wanted. He asked if it was the Governor's and the legislature's intent to provide no regulatory relief on 50% of the waters of the state. These questions need to be resolved before the rules are passed. This is a program where speed and consistency haven't been the hallmark and that is what the legislature is looking for.

Mr. Ela asked if Mr. Deschane was briefed on rule and what are the implications if we waited until April to vote on the rules.

Mr. Deschane stated he first saw the rules approximately a week ago. The implications for my industry from our initial review is these will slow the process down rather than speed it up. For example, storm water ponds. It's our understanding that most ponds aren't eligible for general permit and will need individual permit.

Melissa Scanlan, Madison, Midwest Environmental Advocates, Inc. asked the Board to move with lightening speed to pass the emergency rules. She asked that all navigable waters having self-sustaining populations of walleye, large and small mouth bass, and all priority navigable waterways be protected.

Mr. Ela congratulated the staff for a fantastic effort and said he gladly supports the rule package. There have been contacts with legislative leaders who worked on the bill and there is a strong feeling at the capitol to give them time to review the rules. He has spoken with Senator Panzer about where we might go with this. They agreed that it would be best to defer a vote for 10-14 days so the legislature can review the rule package. He stated we do not want a fight with the legislature and go through rule suspensions.

Mr. Ela MOVED, seconded by Mr. Willett to defer vote until special board meeting by telephone on April 6th at 9:00 a.m. pending Board Member, Christine Thomas' schedule. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

Mr. Ela asked if we decided to include other waters of headwaters of trout stream.

Mr. Ambs stated that it was a clerical error that trout streams were left off. All parties were briefed on the trout streams inclusion. The legislature understands that it is included in the rule package.

Mr. Ela MOVED, seconded by Mr. Poulson to include the language on tributary trout streams that was left off due to a clerical error. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

~~C. Request for authorization for public hearing on permanent rule order FH-24-04 to create Chapter NR 341, pertaining to grading on the banks of navigable waterways. (Todd Ambs, 30 minutes).~~

5. Board Members' Matters.

5.A. Request to U.S. Fish and Wildlife Service to begin process of modifying waterfowl hunting zones.
ADDITION TO AGENDA

Mr. Behnke MOVED, seconded by Mr. Willett to send a letter to U.S. Fish and Wildlife Service to begin process of modifying waterfowl hunting zones. The motion was carried unanimously by those members present. (Ms. Thomas was absent).

Mr. Behnke MOVED, seconded by Mr. Willett to direct the Department to immediately implement the formal procedure to file a letter with the U.S. Fish and Wildlife Service and to send it immediately. The motion carried unanimously by those members present. (Ms. Thomas was absent).

Mr. Ela asked the Department to give an informational briefing on the Green Tier Legislation within the next couple of months.

6. Special Committees' Reports.
None.

7. Department Secretary's Matters.

7.A. DONATION - $5,333.00 to fund turkey trapping and relocation to help expand the turkey population Northern Region of Wisconsin.

Mr. Willett MOVED, seconded by Mr. Behnke to approve a donation of $5,333.00 to fund turkey trapping and relocation to help expand the turkey population Northern Region of Wisconsin. The motion carried unanimously by those members present. (Ms. Thomas was absent).

7.B. DONATION - $5000 TO THE Trumpeter Swan Fund from Windway Foundation, Inc. to monitor Trumpeter Swan Breeding activities in Wisconsin.

Mr. Poulson MOVED, seconded by Mr. Ela to approve a donation of $5000 TO THE Trumpeter Swan Fund from Windway Foundation, Inc. to monitor Trumpeter Swan Breeding activities in Wisconsin The motion carried unanimously by those members present. (Ms. Thomas was absent).

7.C. PRESENTATION – Acknowledge Charter Media and Time Warner Cable for their donation of air time for public service announcements about the Year of Wisconsin Forestry.
DEFFERED FROM THE AGENDA

The meeting adjourned at 3:50 p.m.