



To: Senator Tom Tiffany

From: Brian Vigue, Policy Liaison, Wisconsin Wetlands Association

Re: LRB-1115/P4 relating to: regulation of aquaculture and fish farms, providing an exemption from emergency rule procedures, and granting rule-making authority

Date: February 24, 2017

Thank you for the opportunity to offer our feedback and suggestions on the P4 version of your aquaculture bill. This memo summarizes the feedback we discussed on February 21th and our recommendations on how to address our remaining concerns.

We offer these suggestions to help ensure the final language is consistent with the goals you relayed in our discussion, to refine the language to be consistent with other statutory language, and to improve consistency with federal law. Our aim is help you address industry concerns without harming wetland resources. Our specific recommendations are emphasized in italics below.

1) Changes from P3 – P4. We were pleased to see the elimination of P3 Sections 20 and 21. Those provisions would have harmed wetland resources by creating incentives to locate aquaculture facilities in wetlands and would have been inconsistent with federal requirements.

We support and appreciate the elimination of P3 Sections 20 & 21.

2) Eligibility - Of the 2,500 registered fish farms in the state, only a small number (<350) are commercial operations. Our understanding is that the remainder are privately owned ponds used primarily for personal or recreational use. We are concerned that this bill inadvertently creates incentives for private landowners to establish fish ponds in wetlands or in/near navigable waters.

To ensure the provisions of this bill meet your intent to improve the regulatory climate for existing aquaculture businesses, we recommend adding language to clarify eligibility for the new provisions.

We defer to the Wisconsin Aquaculture Association to suggest language, but offer that you could either define aquaculture to mean a commercial fish farm, or insert the word “commercial” in front of “fish farm” where it appears in the bill.

3) Section 19 directs the Department of Natural Resources to issue a General Permit for discharges that are part of an agriculture *or* aquaculture project if the discharge is less than 10,000 square feet.

We support the establishment of a General Permit for commercial aquacultural activities. Because normal agricultural and aquaculture practices are substantially different, it may be more effective to ask the Department to issue separate GPs (i.e., one for agriculture and one for aquaculture).

4) Section 20 adds expansions of existing aquacultural facilities to the list of projects where WDNR shall limit its wetland permit review to those practicable alternatives that are located at/adjacent to the existing site.

We support this provision but recommend clarifying that it applies to existing commercial aquaculture facilities.

Note that this is one of several areas where this bill establishes equity for the aquaculture industry under state law, but where operators will be subject to different requirements under federal law. In these cases, it may be beneficial to require WDNR to notify the applicant that additional federal permit requirements may apply.

5) Section 21 exempts wetlands “created” for aquaculture purposes from wetland permit requirements if the created wetland is in an area without prior wetland history.

We support the intent of this provision, but recommend changing the language to read “if the discharge is to an artificial wetland created for aquaculture purposes in an area without any prior wetland history.”

This change will make the language in this provision more consistent with other sections of wetland statute and rule.

6) Section 22 creates a new exemption from wetland permit requirements for the construction or maintenance of roads used in fish farms.

We agree that businesses should not be subject to additional regulatory burdens to maintain *existing* roads that were built with proper approvals. We do not support exemption for construction of *new* roads because it creates an incentive to develop in wetlands. With respect to new roads associated with expansions of existing facilities, this proposed exemption is also inconsistent with the provisions proposed under Section 20 which simply and more reasonably calls for a limited review of alternatives.

We support exemptions for maintenance of roads used in aquacultural operations provided that the exemption is limited to commercial facilities, but recommend eliminating the proposed exemption for construction of new roads.

Note that maintenance and construction of roads used in fish farms are not exempt from federal wetland permit requirements.

7) Section 11 exempts the repair and maintenance of aquaculture facilities from Chapter 30 permit requirements. Specifically, no permits would be required for maintenance of facilities connected to navigable waters or within 500’ of the Ordinary High Water Mark. Construction activities in or near flowing navigable waters are particularly sensitive. Permits are the best means available to ensure that best management practices are employed to minimize the risks of harm to public waters.

We recommend eliminating the proposed Chapter 30 exemption.

Note that construction in and near navigable waters is also likely to trigger a federal permit requirement.

Questions about these comments can be directed to WWA Policy Liaison, Brian Vigue at 608-250-9971, brian.vigue@wisconsinwetlands.org.