

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held Wednesday, September 29, 1999 at Leatham Smith Lodge, 1640 Memorial Drive, Sturgeon Bay, Wisconsin. The meeting was called to order at 8:30 a.m. All September Board Agenda business was conducted by the Full Board.

PRESENT: Trygve A. Solberg, Chair
Neal Schneider, Vice Chair
James E. Tiefenthaler, Jr., Secretary
Herbert F. Behnke
Francis W. Murphy
Howard D. Poulson
Stephen D. Willett

ORDER OF BUSINESS

1. Minutes to be approved.

1.A Full Board Minutes of August, 25, 1999.
Committee of the Whole Minutes of August 25, 1999.

Mr. Tiefenthaler MOVED, seconded by Mr. Schneider, approval of the minutes as presented. When put to a vote, the motion was carried unanimously.

1.B Agenda for September 29, 1999.

There being no changes to the Agenda, Mr. Behnke MOVED, seconded by Mr. Poulson, approval of the September 29, 1999 Agenda as written. The motion was carried unanimously.

2. Ratification of acts of the Department Secretary.

2.A Real estate transactions.

Mr. Willett MOVED, seconded by Mr. Behnke, approval of the real estate transactions, as printed. The motion was carried unanimously.

3. Committee of the Whole.

3.A INFORMATIONAL ITEM - Update on Pollution Prevention in Wisconsin; and presentation of certificates of recognition to participants in the Thermostat Recycling Program.

Lynda Wiese, Director of the Bureau of Cooperative Environmental Assistance, presented this item. She indicated that Governor Thompson had designated the week of September 20 through September 26 as Pollution Prevention Week in Wisconsin. This year's theme was "It's Your Environment -- Make It Mercury Free." Ms. Wiese gave an update of the various happenings around the state, shared information in the newly, completed "State of Pollution Prevention" Report and recognized the Heating, Ventilation and Air Conditioning sector who are partnering with the Department and Milwaukee Metropolitan Sewerage District on a pledge program to educate and recycle thermostats that contain mercury. Certificates of Recognition were awarded to the first heating equipment wholesalers and patches to the contractors who have pledged into the program.

3.B Citizen participation.

There were no appearance requests this month under the general session.

3.C Petition requesting the Department to develop rules to govern sulfide mining in Wisconsin and specifically define the implementation of the mining moratorium law (1997 Wisconsin Act 171). Stan Druckenmiller, Director, Bureau of Endangered Resources, presented this item. The Department received a petition requesting that administrative rules be developed to interpret and implement the mining moratorium law enacted last year. He said the petition is based on the presumption that the Department must have rules in order to “correctly” interpret the mining moratorium law. The petitioners cite a number of specific reasons they believe that rules are necessary, and outlined many of the interpretations they want the rule to establish.

Mr. Druckenmiller recalled for the Board the legislative debate over various versions of a mining moratorium law that occurred in 1997, and which concluded with the April, 1998 enactment of the law. The moratorium law prohibits the Department from issuing a mining permit until a determination is made at the master hearing, based on information provided by the permit applicant and verified by the Department, that any mining operation anywhere in the United States or Canada has operated for at least ten years without causing pollution of ground or surface water from acid drainage at the tailings site or at the mine site, or from the release of heavy metals. The Department must also determine that a mine exists has which has been closed for 10 years without causing such pollution.

In defining pollution, Mr. Druckenmiller continued, the law includes degradation that resulted in any violation of any environmental law as determined by an administrative proceeding, civil action, criminal action or other legal proceeding. This definition also includes the issuance of an order or acceptance of an agreement requiring corrective action or a stipulated fine, forfeiture or other penalty, regardless of a finding or admission of liability.

The moratorium law also stipulates that the Department may not make its determination on these findings unless we determine, based on relevant data from groundwater or surface water monitoring, that the operation has not caused significant environmental pollution, as defined in section 293.01 (4), from acid drainage at the tailings site or at the mine site or from the release of heavy metals (the definition of environmental pollution on page 29 of the green sheet package).

Mr. Druckenmiller indicated that to put this new law into context, the mining moratorium law is part of the state’s suite of mining laws, and as with other determinations, permits, approvals and decisions regarding mining, the moratorium law will be considered by an administrative law judge at the master hearing. The department will make recommendations on all these issues, including the moratorium, and other parties will be able to participate in the hearing process as an equal with the Department. The administrative law judge will make all the required determinations, including compliance with the moratorium law, and make the final decision on the mining permit based on the record of the master hearing.

Mr. Druckenmiller also updated the Board on the Department’s progress and plans for verifying the moratorium information submitted by Nicolet Minerals in support of their application for the proposed Crandon mine. The three sites proposed by Nicolet Minerals are in Arizona, California and the new Nunavut Province of Canada. Department staff has now visited all three mines and has had extensive discussions with state, federal and local regulators, and where appropriate, with consultants and university researchers. Staff have also toured the sites with mining company officials, and have reviewed the extensive files maintained by the relevant agencies.

Mr. Druckenmiller said that, by necessity, staff has confined their reviews to the materials submitted by Nicolet Minerals, and information available in public files from government agencies and other public institutions.

Mr. Druckenmiller noted that it is the Department's intent to release a complete assessment of Department findings at the time the Draft EIS is published next year. He said the Department does not intend to make recommendations on the required findings until comments are received from public and agency reviewers of the assessment. He said the Department's final recommendations will be in the final EIS. Before the start of the master hearing, Mr. Druckenmiller continued, the Department will forward those recommendations to the administrative law judge who will decide the mining permit. He emphasized that it is important for everyone to know that the administrative law judge will make the ultimate decision about compliance with the moratorium law, and will make that decision only after hearing testimony from DNR staff as well as others who choose to submit relevant testimony. He stated that the recommendations of Department staff are only recommendations. Compliance with all mining laws, including the moratorium law, will rest with the administrative law judge.

Mr. Druckenmiller stated that the Department has considered the petitioners' arguments and concluded that administrative rules are not necessary for the Department to evaluate submittals from mining companies. Nor, are rules necessary for a hearing examiner or administrative law judge to make the necessary findings required by the mining moratorium law.

Mr. Druckenmiller pointed out that the decision to develop administrative rules is solely within the discretion of the Natural Resources Board. The mining moratorium law, he said, does not require the Department to write administrative rules. If the legislature intended that rules be developed, it is the staff's opinion they would have made this desire clear in the law itself. The legislature did, however, include specific provisions for administrative rules in other sections of Wisconsin's mining statutes - and could have easily included the moratorium law in that long list. Mr. Druckenmiller pointed out that the lack of such legislative direction does not mean that the Board can't direct the Department to write rules, but it does mean there is no requirement to do so.

Mr. Druckenmiller said this law is as clear as any other law that the Department implements successfully without administrative rules. He said there are always issues worthy of discussion and disagreement, but he said the Department believes the resolution of those issues can be effectively dealt with by the administrative law judge at the master hearing. He stated that staff think this is basically a better way to deal with any disagreements than attempting to anticipate every situation we may encounter in evaluating any of a thousand different mines that may be put forward as examples under the moratorium law.

Mr. Druckenmiller stated that the petitioners allege that the Department is misinterpreting the law. One important example they cite, he continued, relates to the Department's understanding that one mine can be used as an example of a mine that has been operated for more than 10 years without causing significant environmental pollution as defined in s. 293.01 (4), from acid drainage at the tailings site or at the mine site or from the release of heavy metals, and that a different mine can be used as an example of a mine that has been closed for more than 10 years without causing such pollution. Mr. Druckenmiller said the petitioners state that one mine must meet both tests. He stated that the Department's reading of the law is that two separate mining examples can be used. Further, he said, the Department has a memorandum dated May 4, 1999 from the Legislative Council that addresses this issue. (The Legislative Council provides legal support to the legislature, and advised the legislature during the development of the moratorium law.) The memorandum states, "it appears highly likely that a court would conclude that the mining moratorium law does not require that one mine be used to meet both of the requirements of the law in order for a mining permit to be issued." Mr. Druckenmiller stated that if the Department would write a rule requiring that only one mine be used to meet both tests, as the petitioners ask, the Department would be changing legislative intent contrary to the clear language of the law. Furthermore, the Department believes we would probably lose the inevitable court challenge that would follow.

The petitioners also request that a rule disqualify mine examples that are not in sites of similar geology, hydrology and climate to mine sites in Wisconsin. They point to the three sites submitted by the Nicolet Minerals Company as inappropriate examples because these sites are so different from northern Wisconsin. The staff agrees that these sites are significantly different from potential mining sites in this state. Mr. Druckenmiller stated that the moratorium law simply does not require that example mines be similar in any way except in one regard. The law requires that the example mines be in a sulfide ore body, which, together with its host rock, has a net acid generating potential in the United States or Canada. He said there are no other qualifying requirements that relate to similarity.

Mr. Druckenmiller further stated that the petitioners' argument is that in the staff's many opportunities to testify before various legislative hearings on the then proposed mining moratorium law, Department staff pointed out repeatedly that the law would not help the Department make a better decision on a mine proposed in Wisconsin. Staff argued that because the law would not require a comparison or analysis of technologies that might be used in Wisconsin, the moratorium law would not be relevant to the Department's regulatory review of the Crandon mine. The rebuttal was that staff missed the point - this law was not intended to give DNR more information to judge the mining technologies that might be proposed for Wisconsin mines. The moratorium law, Mr. Druckenmiller said, was intended to test the allegation that there are no mines in sulfide ore bodies that do not cause significant pollution. The enactment of this law was based on this single concept, i.e., to prove that mines do not pollute. The staff does not believe the law was intended to test any other theory beyond the contention that sulfide mining, in general, cannot be carried out without pollution.

Lastly, Mr. Druckenmiller stated, the petitioners argued that our initial reaction to the moratorium law was to prepare administrative rules. It is true that the Department considered rules before a detailed analysis of the need for such rules was done, or what such rules would include. During that time, he said, the reaction to the Department preparing administrative rules was received negatively because it was viewed as a process by which the Department could change the meaning, intent and substance of the law. Mr. Druckenmiller believed that when advocates of the bill had a chance to thoroughly analyze the law, that they realized the limitations inherent in the new statute. He noted that the moratorium law, the product of perhaps the most extensive legislative debate over any bill in recent history, was ultimately a compromise. The legislature narrowed the focus, despite Department concerns, to the question: "are there mines that don't pollute?" They also limited the extent to which unrealistic or unreasonable requirements would be imposed, despite the efforts of those opposed to mining.

Mr. Druckenmiller stated that, "At this point in time, given the fact that the law has not been fully applied yet and that we lack any experience on which to base refinements, any change we might attempt to make through administrative rules would, in effect, alter the carefully constructed compromise fashioned by the legislature. We believe the petitioners are seeking basic changes in the moratorium law they could not accomplish in the legislative process. It is not our role to alter the meaning of laws by adoption of administrative rules, especially with the provisions requested by the petitioners which are so obviously contrary to the plain language of the law. For these reasons, I request that the Board deny the petition."

Rose Gurnoe, said she was representing 1,500 members of HONOR (Honor our Neighbors Origins and Rights) of which 600 reside in Wisconsin. She feels DNR has overridden the intent of the law and by not drafting rules precludes the public from participating in the process. She also spoke in opposition to using two mines to measure pollution. She asked the Board to grant the rules petition and protect Mole Lake Sokaogon's wild rice beds and the pristine Wolf River.

George Rock, a civil engineer from White Lake, asked that Nicolet Minerals show a mine similar to the one being proposed that has not polluted.

Sonny Wreczcki, Rolling Stone Lake, member of the Ainsworth Town Board, expressed concern about the area's water quality and spoke in support of using only one mine for testing.

Dave Blouin, representing the Mining Moratorium Impact Coalition and Sierra Club, stated his disappointment with the Department's recommendation. He asked the Board to direct the Department to address the nine issues in the petition before taking action.

Tom Wilson, Fairchild, representing Wisconsin Stewardship Network and Northern Thunder, asked that the rules be drafted to "refine and interpret the mandate of the law as to effectuate the purpose of the law." He stated that industry should be able to show one test mine to assure Wisconsin citizens this mine will not end up an environmental disaster. (A copy of Mr. Wilson's statement is incorporated in the official Board minutes.)

Apensanhkwat, Chairman of the Menominee Indian Tribe of Wisconsin, spoke in support of the petition for administrative rules. He mentioned that the Tribe has gone on record stating that "if the technology can do this without harming the ecosystem, then we wouldn't stand in the way." He feels the Department is doing everything to help the mining company. "I resent the fact that the DNR is taking a positive roll in helping and assisting the mining interests by taking away a forum in which we can further define what the Legislature didn't debate. Let's be very clear on this, they did not debate defining these areas. It is not just nine; there are many issues."

Ken Fish, representing the Mining Treaty Rights and Mining Impacts, also spoke in support of the petition. He indicated that when the moratorium bill was signed, the Tribe issued a press statement that the Tribe supported administrative rules. He indicated that prior to that Secretary Meyer indicated that "he would begin to work with all the groups for a rule-making process. This has changed over time." Mr. Fish mentioned four major issues since the law's enactment. 1) Whether two example mines, one currently in operation and one now closed, can be sited by a mining firm to meet the law's requirements, or whether a single example mine that meets both the law's requirements must be found in order to satisfy the law; 2) Whether example mines used to meet the moratorium's requirements should be from environments similar to the proposed Crandon mine site; 3) Defining and clarification of terms; technical data, monitoring, net acid generating potential, acid mine generation and other language in the law; and 4) Whether administrative rules should outline procedures of how, when and where to apply the law to the EIS process.

Judy Pubanz, Shawano, representing Protect Our Wolf River, stated that everyone who worked on and supported passage of the moratorium bill into law know that the "intent and the spirit of the moratorium bill was that 'one' mine would meet the requirement of the opening and the closure of a mine. I would like to plead with you on behalf of the people of Wisconsin to consider the importance and the value of our groundwater and of our surface water."

Len Pubanz, Shawano, representing Protect Our Wolf River, stated his disappointment with Wisconsin Act 171 (the mining moratorium bill). "When I read about the technologies that are needed to extract this ore body from this particular environment, I was really concerned if the technologies were proven. We need a mine that proves that technology would work in northern Wisconsin. If you go with the interpretation in the memorandum from Secretary Meyer or if you go with the interpretation from the Crandon Mining Company as illustrated by their three example mines, none of the technologies are proven and the mining moratorium bill, in my opinion, was a wasted effort.The mining bill assumes that a mine does have a capability of producing pollution. The three example in their natural condition and their natural characteristics do not have this characteristic. They're in a permafrost area, they're in a desert where there is little rain, so they don't prove any of the technologies."

Mr. Tiefenthaler clarified that the Board is being asked to vote on the petition, not the mining moratorium bill.

Secretary Meyer commented that as debate on the mining moratorium bill progressed, it became evident that the bill was not going to be very helpful to the Department. "It didn't get at the issue of technologies which both you (Pubanz) and Apensanhkwat so eloquently have discussed. But I can tell you this, that is ultimately what we are concerned about. In this setting, is there technology that is going to protect the environment, and in fact, that is what we are investigating regardless of the mining moratorium bill. We are working to see whether, in other locations, this kind of technology has worked. We're getting at what your basic concern is and that will be very specifically addressed in the Draft Environmental Impact Statement."

Linda Sturnot, Franklin, member of the Mining Impact Coalition of Wisconsin, Sierra Club and the Great Lakes Women's Leadership Network, spoke on behalf of the 1,380 citizens who signed the petition requesting the Department to adopt rules to govern the Mining Moratorium Law and to request the Board to recommend public hearings so Wisconsin citizens can have input on how the law should be interpreted.

Bonnie Mayer, West Allis, member of the Sierra Club, HONOR, the Mining Moratorium Coalition, said she was surprised at the compromises that resulted in an interpretation to allow two or more mines could be used for testing. She urged the Board to direct the Department to draft rules and hold public hearings.

Claire Vanderslice of Grafton urged the Board to approve the petition and direct DNR to draft rules and hold public hearings.

John Mutter of Shawano spoke in support of using one mine for testing; feels it would be a waste of time to bring an example of a sulfide ore mining operation that was not similar to the proposed Crandon mine. He said the intent of the moratorium was to protect the Wolf River by showing a similar mine that had a 20-year history of operating, that is, at least 10 years of operation and 10 years of reclamation. He urged the Board to recommend promulgating the mining moratorium law.

Billy Stern, Madison, representing GREEN (Grassroots Environmental Effectiveness Network), feels if the law was so clear, there would not have been a petition and additionally, if the Legislature would have addressed questions in the petition, the Law would read differently. He spoke in support of a similar "one" mine test example. He urged the Board to direct the Department to respond to the issues in the petition, promulgate rules to prevent arbitrary and capricious decision-making by DNR staff, and fiscal responsibility now before huge resources are spent by the mining company and the state of Wisconsin. Mr. Stern also distributed copies of a statement from Keith Reopelle of Wisconsin's Environmental Decade, a copy of which is incorporated in the official Board minutes.

Chairman Solberg called attention to two letters the Board received from Ray Anderson, Herb Buettner, Mona Campbell, and the Crandon City Council.

Mr. Behnke MOVED that the Board defer action until the Department responds to questions brought forth during the public comment period. Mr. Tiefenthaler seconded the motion. Secretary Meyer responded that the Department did address ones that were brought up most often by members of the public such as the geologic issue and the issue on one versus two mines. He said the Department would prepare a response on the remaining issues in the petition.

Mr. Tiefenthaler asked for Secretary Meyer's comments on why the Department changed its position on drafting rules. Mr. Meyer stated that, despite what the Board heard today, the Department previously heard from environmental organizations, Tribal representatives and the mining company that they did not want rules. They voiced concern that administrative rules could possibly change the meaning of the law. Mr. Meyer said he was advised by staff that

Wisconsin has laws in place that already address the kinds of issues currently being raised and that the kinds of things being proposed in the petition would change the meaning of current law.

There was a consensus of the Board that the item would be deferred to the December Board meeting to accommodate Board member conflicts with the meeting in October. When put to a vote, the motion was carried unanimously.

3.D INFORMATIONAL ITEM - Northern Initiatives annual report (Item 3.D, Minutes of August 25, 1999)

Bill Smith, Dave Daniels and John Gozdziński of the Northern Region presented this item. In September of 1995, the Board a strategic guide for DNR management in northern Wisconsin in the next decade 1996-2006. It was decided at that time to return to the Board on annual basis to report on the progress of implementing portions of the strategic guide.

Visions and Results

Northern Alliance

Since 1995, Northern Region staff have been providing customer service to county zoning administrators, lake district associations and the public at large. Technical assistance to county zoning staff and the public as local county shoreland zoning ordinances are being reviewed and redrawn. The Northern Lakes and Shorelands team has conducted outreach to riparian owners, local governments, business owners and school groups to increase understanding and involvement on the Department's lakes and shorelands. Videos, updated and new brochures have been produced and distributed to reach new shoreland property owners on conducting sensitive development on their land. Shoreland demonstration projects are being launched across the region in the Waters program to bring together the public and private sector in devising methods of sensitive development on lake shorelands.

The Natural Resources Board approved a limited project aimed at protecting wild lakes and shorelands from purchase and development. The purchase of Evelyn Lake (55-acre wild lake) in Iron County has been accomplished, and staff continue to work with lake associations, zoning officials and others to protect through easement, best management practices, and education to recognize and enhance these critical pieces of habitat. Another purchase was made recently by the Nature Conservancy was Caroline Lake in Ashland County.

The Northern Rivers initiative project is an outgrowth of the Lakes and Shorelands projects aimed at protecting rivers and streams.

Land use strategies that are evolving include the need for collaborative efforts between the state, federal, county and private lands for best stewardship and planning. Staff remain ready to work with non-profit organizations, the Paper Council, the Governor's Forestry Council and local governments.

Northern Education

Outreach to local school districts and Cooperative Educational Service Administrations has highlighted the Department's Master Planning projects, Lakes and Shorelands projects, Project Loon Watch, and the Northern Rivers Initiative. Staff cooperated in developing this year's Project Loon Watch Poster and contributed funding for its printing and education.

The Northern Distance Learning Network in cooperation with UW-Extension, the Technical College system and local school districts has been assembled to provide education outreach via closed circuit fiber optic TV and voice communication. Staff are working with these organizations to explore using this new technology to provide in-class educational programs for students and adult classes.

Northern Economy

Efforts have been focused on working with and cooperating among local chambers of commerce and others interested in further developing the state's tourism-based economy in the north. This has included working with special interest groups in establishing local bike and hiking trails, providing facilitation and organization to groups seeking to work together for economic development, providing technical assistance in trails mapping and signs, assisting to show where trail opportunities may fit into the larger trail networks of local, county, state and federal trails, and fostering local business round tables that assist clarifying local goals and objectives for economic development.

The Region's Business Sector Specialist is working with the wood products industry in providing methods of outreach from Department programs and staff to the regulated industries. The Land Recycling program is working to develop outreach strategies to communities in the north where Brownfield opportunities may occur.

Northern Recreation

The focus has been on devising approaches to ease user conflicts on northern waters. A video has been produced and distributed to foster understanding among personal watercraft users and others and focuses on courteous use of personal watercraft on northern waters.

For the Future

By this fall, staff working on Northern Initiatives projects will be asked to review and reassess the Strategic Guide. This will be in advance of anticipated Northern Initiatives "Listening Sessions" this fall and winter to discuss with the Public any mid course corrections that may be necessary. The Regional Management Team will pursue developing a communications plan to more effectively reach the Region's largely rural area. Staff will explore with the public the possibility of developing strategies that are proactive to address trails, parks, hunting and fishing and user conflicts. The goal is to concentrate on what state facilities have to offer and what the private sector may have to offer in a complementary fashion. Work will continue to develop and enhance partnerships in the north on a range of resource management issues.

Mr. Willett expressed concerns about rising land values in northern Wisconsin and also some of the restrictions that preclude property owners from expanding their cabin homes.

3.E INFORMATIONAL ITEM - Review of Great Lakes commercial fishing quotas.

Bill Horns, Great Lakes Fisheries Specialist, presented this item. He recalled that in October of 1998 the Natural Resources Board asked for an annual review of harvest limits for all commercial fish species in the Wisconsin waters of Lake Michigan or Lake Superior. In response to that request, Fisheries Management has prepared the following overview.

Although the Department holds the authority to set harvest limits, the Commercial Fishing Boards for Lake Michigan and Lake Superior are now required by statute (1997 Wisconsin Act 189) to recommend species harvest limits, and the Department is required to give due consideration to those recommendations.

The use of harvest limits is one of three defining features of the management of commercial fishing in Wisconsin. The others are limited entry and individual transferable quotas. All the major commercial species in Lake Michigan are subject to harvest limits, but in Lake Superior harvest limits have been established only for lake trout and have not been established for whitefish, chubs, herring, or smelt. Under Wisconsin's limited entry system, the commercial harvest of fish is currently limited to 10 licensed fishers on Lake Superior and 94 licensed fishers on Lake Michigan. Limited entry protects fishers from unrestrained competition and simplifies the regulation of the fishery. For those species for which harvest limits are established, the allowable harvests are allocated among licensed fishers through the specification of individual transferable quotas, which are expressed as percentages of the total annual allowable harvest. Individual transferable quotas allow each commercial fishing operation to be conducted at the time most convenient for the individual fisherman, free of pressure to race for the limited harvest.

All commercial and sport fishing rests on the premise that there is a harvestable surplus in the adult population. That is, that some adult fish can be harvested annually without diminishing the ability of the population to sustain the same level of reproduction. At one time, fisheries scientists cultivated the idea that with sufficient information it would be possible, for any particular fish population, to define a "maximum sustainable yield", the maximum amount that could be taken annually without threatening the population. In more recent years, that notion has been discredited. Recently the National Research Council, noting that many populations of marine organisms have been severely over-fished, recommended a conservative approach.

The establishment of harvest limits in Wisconsin involves consideration of several things. Some of these include the abundance of harvestable fish, the number of young fish available for recruitment into the harvestable population, the incidental harvest of non-target species by the commercial fishery and claims on the fish population by sport or tribal fishers or by commercial fishers in adjoining states.

In Wisconsin there is no single method for deriving harvest limits. The only general statement that can be made is that adult population size and annual reproduction are monitored to the best of our ability and efforts are made to increase or cut harvest limits in response to trends. The attached table summarizes harvest limits in Lake Michigan and Green Bay in recent years. In Lake Superior the only species for which we have established harvest limits is lake trout. Because the derivation of harvest limits varies from one species to the next, it may be most helpful simply to summarize the status of each species and to briefly discuss methods and considerations used to set quotas in each case.

Lake trout from Lake Superior. Lake trout is the only species subject to harvest limits in Wisconsin waters of Lake Superior. In February of 1997 the NRB adopted an annual harvest limit of 56,800 lake trout for tribal commercial and home-use fishers and 7,140 for state-licensed commercial fishers. Those harvest limits were established to conform with the 1995 State-Tribal Lake Superior Agreement. That document specifies an overall harvest ceiling of 104,400 lake trout to be split among state-licensed commercial fishers (7,140), tribal commercial and home-use fishers (56,800), sport fishers (37,660), and state and tribal biologists for assessment purposes (2,800). The harvest ceiling had been recommended by a technical working group made up of state, tribal and federal biologists. The current Agreement, signed in 1996, calls for a new harvest ceiling to be instituted after five years. An inter-jurisdictional effort, initiated by the Chairman of the Lake Superior Technical Committee and funded through the Great Lakes Fish and Wildlife Restoration Act, is now underway to review lakewide lake trout modeling methods and provide an improved basis for the computation of acceptable harvest levels.

The lake trout population in Lake Superior is continuing to recover, and it may in the future be possible to increase the harvest limits. However, because Department recommendations in this area are dictated by terms of the negotiated agreement with the tribes, we do not expect to change the harvest limits before the year 2001.

Whitefish from Lake Michigan. The current harvest limit of 2,470,000 pounds was adopted by the NRB in February of this year. The harvest limit for whitefish is derived using a computer program developed by the Michigan DNR called the SAP (Stock Assessment Package). The program requires data that we collect on a routine basis. It develops a “yield per recruit” model, a model that expresses the harvest (yield) per fish entering the fishable population (referred to as a “recruit”) as a function of the fishing mortality rate. The computer program then estimates the level of harvest such that the yield per recruit is near its maximum, but allows a safe margin of error. We subtract the expected harvest by commercial fishers in Michigan waters of northern Green Bay, and allocate the remainder to Wisconsin fishers as the annual harvest limit. This practice is based on our belief that Michigan fishers harvest whitefish from the North/Moonlight Bay spawning population, the fish that support our fishery. Michigan biologists dispute this assumption, and therefore have been unwilling to recommend additional restrictions on their fishery. In order to help resolve this dispute, we have asked the Lake Michigan Committee to establish an external task force of experts to address the biological issues in dispute. Another important issue in the debate about the harvest limit for whitefish is always the incidental mortality of lake trout and salmon, which has declined significantly in the last decade, primarily because of increased use of entrapment gear in place of gill nets.

We believe that the whitefish population remains healthy. We will continue to collect and analyze data on the whitefish population, but do not expect to recommend any change to the harvest limit before late in the year 2000, which would allow any new harvest limit to be implemented in time for the 2001-2002 commercial fishing season.

Perch from Lake Michigan. This fishery was closed in 1995 following several consecutive years of very poor natural reproduction. The SAP program is also used with yellow perch on Lake Michigan. The situation is different in significant ways from that of whitefish: 1) Yellow perch reproduction seems to be more erratic; a large adult population of fish may be the result of a few good years of reproduction scattered among a larger number of years of poor reproduction. This calls into question one of the assumptions of the SAP program, the expected continuation into the near future of recent average annual recruitment. It also elevates the importance of data on annual abundance of young of year yellow perch. 2) Yellow perch are shared between sport and commercial fishers. We have adopted an allocation goal of splitting the long run harvest 50/50 (by number) between sport and commercial fishers. 3) The stock structure of this population is not well understood. We know that we share this population with Illinois, but we do not know if the fish in Illinois and Wisconsin waters should be considered as a separate stock from those in Indiana waters. Currently, biologists from all four states on Lake Michigan are working with federal biologists and with scientists from several Universities in a inter-jurisdictional Yellow Perch Task Group established by the Lake Michigan Committee to attempt to understand the causes behind the recent decline, and to monitor a recovery when it occurs.

Although reproduction in 1998 was significantly better than in the preceding years, it was apparently poor again in 1999, so we do not expect to recommend any increase in the harvest limit for the next commercial fishing year. Our biologists will work with the Yellow Perch Task Group to develop biological criteria for resuming commercial harvests. The Department’s Lake Michigan Fisheries Team has recommended that any resumption of commercial harvest be coordinated with the other states on Lake Michigan and that no harvest be allowed until the work of the Commercial Fishing Task Force is completed and enforceable regulations are adopted.

Perch from Green Bay. The current harvest limit of 200,000 pounds was adopted by the NRB in 1997. For Green Bay, as for Lake Michigan, we have adopted the allocation goal of splitting the long run harvest equally between sport and commercial fishers. The Green Bay yellow perch population is distinct from that in Lake Michigan. Because it is somewhat isolated and because Wisconsin does not share management authority over it with any other state, Brian Belonger, our yellow perch biologists stationed in Peshtigo, has been able to develop what is probably the best

fisheries database and population model on the Great Lakes. He uses a state-of-art age-structured population model developed in consultation with Dr. Carl Walters of the University of British Columbia. Data from Green Bay are also considered by the Yellow Perch Task Group as they attempt to understand and monitor yellow perch population fluctuations in both Green Bay and Lake Michigan.

In Green Bay, like southern Lake Michigan, 1998 was a relatively good year for yellow perch reproduction but 1999 has been a poor one. We have no current plans to recommend a change in the harvest limit.

Chubs from Lake Michigan. The Current harvest limit of 3,600,000 pounds was adopted by the NRB in 1991. Past harvest limits have not been derived from mathematical models of the population, but have followed trends in lakewide abundance. We do not have as much detailed data on the lakewide chub population as we do for some other species., but we benefit from information available from other agencies doing similar chub assessment work on the lake, including Illinois Department of Conservation and the Great Lakes Science Center of the USGS. The lakewide chub population is shared by all four states. Currently the chub population is still extremely abundant, although an apparent failure to produce a strong year class in recent years is a concern, and has resulted in a noticeable decline in the lakewide biomass as measured by the Great Lakes Science Center in its annual lakewide survey. At this point the harvest limits exceed harvests in both the northern and southern chub fishing zones.

Although reproduction in recent years has been poor, there are some indications that reproduction in the winter of 1998/1999 was better than in the preceding years. We do not at this time recommend changing the harvest limit, but will continue to monitor the population and respond to new information as it becomes available.

Smelt from Lake Michigan and Green Bay. The current harvest limit of 1,000,000 pounds was adopted by the NRB in June of this year. In setting the new harvest limit, the Department initially recommended reducing the harvest limit in proportion to the lakewide decline in smelt abundance since 1991 when the previous limit was established. This approach may in the long run be the best for setting harvest limits; in a recent report the National Research Council states, "Management procedures by which the allowable catch is set as a constant fraction of biomass (used for many U.S. fisheries) generally perform better than many alternative procedures."

The Department is committed to reviewing the current harvest limit following completion by the Great Lakes Science Center of the 1999 lakewide forage survey, with the objective of setting a value that reflects the lakewide decline in smelt abundance since the establishment of the current limit in 1991.

Menominee (round whitefish). The current harvest limit of 75,000 pounds has been in effect since 1989. The annual reported harvest is small (under 5,000 pounds reported in the 1998-99 fishing year), so we do not invest time and effort in modeling this population, or in adjusting the harvest limit.

Other species. In addition to the quota species listed above, commercial fishers are offered a contract/permit to harvest incidentally caught rough and detrimental fish, defined specifically as bullheads, burbot, catfish, gizzard shad, suckers, white bass, and white perch. Under that contract/permit, an individual's harvest of those species (in aggregate) may not exceed his/her combined individual harvest limit for all quota fish species.

F. Retirement resolutions.

1. Carol Bernier.
2. Evelyn Kois.

Mr. Schneider MOVED, seconded by Mr. Tiefenthaler, approval of the retirement resolutions as presented. The motion was carried unanimously.

4. Board Members' Matters.

4.A Lower Wolf River Basin.

Mr. Behnke noted that the Department is in the process of reviewing master plans for several properties with the Lower Wolf River Basin. He requested that the Department establish a feasibility study green sheet on the Lower Wolf River Basin and submit to the Board for discussion.

4.B Depradation monies.

Mr. Poulson asked for clarification of budget discussions in the legislature with regard to depradation monies. Secretary Meyer stated that the Department requested \$70,000 which was not approved. He said the staff is now looking internally to see if there are monies that can be reallocated for that purpose.

4.C Nonpoint issues.

Mr. Poulson called attention to materials he recently sent to Board Members and Secretary Meyer regarding an interview one of his staggers had on nonpoint issues. He urged everyone to review this material.

5. Special Committees' Reports.

There were no Special Committees' Reports this month.

6. Operating Committees' Reports.

6.A Air, Waste and Water/Enforcement Committee.

6.A-1 Minutes of August 25, 1999.

Mr. Willett MOVED, seconded by Mr. Poulson approval of the minutes. The motion was carried unanimously.

6.A-2 Adoption of Emergency Order RR-23-99(E) - creation of Chapter NR 746, Wis. Adm. Code, pertaining to classification of sites with petroleum contamination.

There being no presentation or discussion of this item, Mr. Willett MOVED adoption of the emergency order as presented. Mr. Poulson seconded the motion. The motion was carried unanimously.

6.B Land Management, Recreation and Fisheries/Wildlife Committee.6.B-1 Minutes of August, 25, 1999.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, approval of the minutes as presented. The motion was carried unanimously.

6.B-2 Approval to establish the Nicolet State Trail, Oconto and forest Counties; the White River State Trail, Walworth and Racine Counties; and the Cattail State Trail, Polk and Barron Counties; and approval to purchase 907.89 acres of land from the Department of Transportation.

Dick Steffes of the Bureau of Facilities and Lands, explained the proposal to purchase 907.89 acres consisting of three railroad grades from Wisconsin DOT for \$55,477. Value of the 907.89 acres at market prices would be about \$900,000. Mr. Steffes said the Department will work with the counties to assist with development and management of these trails.

Mr. Behnke MOVED, seconded by Mr. Schneider approval of the establishment and acquisition of these proposed trails. The motion was carried unanimously.

6.B-3 Killsnake Wildlife Area land exchange - Calumet County.

Mr. Steffes explained that the Department proposes to exchange 78.62 acres valued at \$70,800 for 101.0 acres valued at \$70,700 from Riesterer and Schnell Properties, Inc. The state land being traded is part of the Glacial Habitat Restoration Area in Dodge County. The Department plans to retain an easement on the property (about 24.8 acres), and the remainder is no longer needed for conservation purposes. Since the properties are closely valued, no cash payment will be made.

Mr. Behnke MOVED, seconded by Mr. Schneider, approval of the land exchange as presented. The motion was carried unanimously.

6.B-4 Update on the Green Bay to Greenleaf Trail acquisition proposal.

Mr. Behnke asked for a brief update on the status of the Green Bay to Greenleaf Trail acquisition. Mr. Steffes indicated that the Joint Finance Committee decided not to take action until the Federal Surface Transportation Board takes action on a petition signed by individuals opposing the establishment of this trail. Mr. Steffes said it was his understanding there have been staff reductions at the Surface Transportation Board and he was concerned about the time it may take to get a ruling from the Transportation Board.

7. Department Secretary's Matters.7.A Request from the Assembly Natural Resources Committee for modifications to Order AM-37-98, revision of Chapter NR 410, Wis. Adm. Code, pertaining to Air Pollution Construction Permit Fees (adopted by NRB January 1999) (Item 7.B, Minutes of April 28, 1999).

Secretary Meyer reviewed his memo to the Board asking approval to delay the effective date for revisions to Chapter NR 410 to be July 1 of 2000, as requested by the Assembly Committee on Natural Resources. (A copy of the memo is incorporated in the official Board minutes.) Mr. Willett MOVED, seconded by Mr. Poulson, approval to provide an effective date of July 1, 2000. The motion was carried unanimously.

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The meeting was adjourned at 11:30 a.m.