

**NATURAL RESOURCES BOARD**  
**Conference Call**  
**Minutes**

A special meeting of the Natural Resources Board via telephone conference call was held Tuesday, March 8, 2005, in Room 774B of the State Natural Resources Building (GEF 2), 101 South Webster Street, Madison, Wisconsin.

The meeting was called to order by Chairman Gerald O'Brien at 3:00 p.m.

**Participating Board Members:**

Gerald M. O'Brien, Chair (Lake Havasu City, AZ)  
Jonathan P. Ela, Secretary (Washington D.C.)  
Herbert F. Behnke (Shawano)  
Christine L. Thomas (Stevens Point)  
John Welter (Eau Claire)

**Absent**

Howard D. Poulson, Vice-Chair  
Stephen D. Willett

**Order of Business**

1. Adoption of requested modification to FH-39-01 related to shore erosion control structures (NR 328) and FH-36-04 Natural Resources Board policies on protection and management of public waters (NR 1) as well as germane modification to FH-37-04 related to procedures and timelines for public waters decisions (NR310). (Mary Ellen Vollbrecht, 15 minutes.)

**Todd Ambs**, Administrator, Division of Water stated there was a request from the senate for modifications generally agreed to by stakeholders and legislative committees. The assembly also requested some unspecified modifications of NR 105 and NR 106. Specifically there are issues that Speaker Gard has raised. His staff has raised concerns relative to clarity and accountability of the rules. As it relates to clarity and accountability to the rule we are happy to talk about that as well as any issues relative to meeting the legislative intent of the law in this rule package. The Department has already achieved a great deal of streamlining in the permits. Last year, during the emergency rule package, 10% of the activities were exempt, 36% were general permit. There are 30 some percent general permits in the permanent rule package. During site visits around the state, we found 100% compliance with exemptions and 80% compliance with general permits.

**Mary Ellen Vollbrecht**, Section Chief, Rivers and Habitat Protection, Fisheries Management and Habitat Protection Bureau stated that the changes to NR 328 were because people didn't feel like they had enough experience with biological shore erosion control. They felt that if there was still significant shore erosion after biological controls were put in place that should qualify for a general permit as opposed to an individual permit. The senate and the assembly specifically requested this change. The changes to NR 1 waters designations notes stating, new and existing piers may be exempt in areas with public rights features under s. 30.13, Stats., as set forth in ch. NR 326.

**Mr. Behnke** asked if this is an area that Speaker Gard is objecting to.

**Mr. Ambs** stated no we haven't heard an objection to what's in NR 1 and what may be in the pier rule.

**Ms. Vollbrecht** stated that the legislative staff is present is confirming that this is not an issue for the speaker. She went on to explain a correction to NR 1.06(2). There are concerns from the speaker about NR 1.05(4)(a) not having a definition for special concern species. The Board directed the Department to use existing inventories of species of special concern. The reason to having "species of special concerns" on this list is to avoid their becoming endangered or threatened. The change to NR1.05(7) states that the department shall report to the chairs of the standing natural resource committees of the Legislature and to the co-chairs of the joint committee for review of administrative rules in July of each year the aquatic-dependent species of special concern that may added or removed from the state's list and those bodies of water that may be impacted by the addition or removal of those species. The department will notify the chairs of the standing natural resource committees of the Legislature and to the co-chairs of the joint committee for review of administrative rules in January of those bodies of water that have been added to or removed from the consolidated list of areas of special natural resource interest as required in NR1.05(6) that result from identification of special concern species. This notification shall be included in an annual report on waterway and wetland permit program performance that is provided to all members of the legislature and the clerk of each county.

**Mr. Welter** asked if there will be two reports per year to legislature and one will be limited report to committee chairs in July. The second report will be in January and will go to all members of the legislature.

**Ms. Vollbrecht** stated that is correct and it will be done in conjunction with the annual report.

**Mr. Ela** asked if there are established procedures for what sort of review would take place between July and January or is this new territory.

**Ms. Vollbrecht** stated there are established procedures and scientific protocol for the review of data.

**Laurie Osterndorf**, Administrator, Division of Land stated the aquatic species that pertain to this rule will be overlaid onto the bodies of water in the state. There is a lag time to allow staff to do that.

**Ms. Vollbrecht** stated by the time the Endangered Resources has done and compiled survey work and then for Fish and Habitat to add it to the areas of special natural resource interest and put it up on the website so the public can use it.

**Mr. Ela** asked if the July 1<sup>st</sup> deadline the existing date that Endangered Resources makes their findings known to other units within the Department.

**Ms. Osterndorf** stated that it is usually continually updated.

**Signe Holtz**, Director, Endangered Resources Bureau stated that they try to continually updated, but they do an exchange of data with other states in July.

**Mr. Ambs** stated it is an additional notification to let the public know what's happening. The notification will underscore that it's a very scientific process and not many aquatic species are added annually.

**Mr. Welter** asked if the Department adds body of water to the list of waters is that subject to be reviewed by JCRAR.

**Ms. Vollbrecht** stated that the Department had built in reporting requirements and notice requirements for the regulated communities so they can see whether there is something new on the list.

**Mr. O'Brien** asked what is the review process and does it come before the Board for review.

**Ms. Vollbrecht** stated that the individual waters do not come back before the Board. The list of waters is available on the web.

**Mr. Behnke** asked if both committees of the legislature have approved the changes.

**Ms. Vollbrecht** stated that some have been including NR 328 and the two notes to NR 1 have been agreed upon. The species of special concern language was just developed in the last few days in response to concerns since the assembly action last week.

**Mr. Ambs** stated we are attempting to address both concerns now.

**Mr. Behnke** asked if their concerns have been satisfied. Speaker Gard called him yesterday and he was concerned about lack of identity of waters, number of waters, and the clarity and accountability of the rules.

**Mr. Ambs** stated that the only specific concern that was communicated to us from the speaker's office was in the area of better understanding on clarity on the species of special concern and clarity and accountability for the process of identifying the waters.

**Mary Schlaefer**, Executive Assistant stated the Secretary's office has been communicating with the Speaker's office and the Speaker is aware of the modifications that are being presented to Board today and he is comfortable with Board's process and passing these modifications.

**Mr. Behnke MOVED, seconded by Mr. Ela adoption of requested modification to FH-39-01 related to shore erosion control structures (NR 328) and FH-36-04 Natural Resources Board policies on protection and management of public waters (NR 1) as well as germane modification to FH-37-04 related to procedures and timelines for public waters decisions (NR310).**

**Mr. Ela** asked if the modifications to NR 310 were the same as the list passed in December.

**Ms. Vollbrecht** stated it is the same except for one change that the Secretary may extend the evaluation.

**Ms. Schlaefer** stated that the Speaker is comfortable with this proceeding, but that doesn't mean the Speaker agrees that those are all of the modifications necessary. There may be a proposal for further modifications, but to get the rules moving to meet the timeline and getting them to the legislature he's comfortable with the process.

**Mr. Behnke** asked if further concerns will be addressed after the adoption of this rule.

**Ms. Schlaefer** stated that was correct.

**A roll call vote was taken and the motion passed unanimously by all members present. Mr. Poulson and Mr. Willett were absent.**