

NHI Data Sharing Guidance and Procedures

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This document clarifies NHI data sharing requirements. Legal interpretations have been provided by DNR legal services.

1.0 Background

The Wisconsin Natural Heritage Inventory (NHI) program is part of an international network of NHI programs that was established by The Nature Conservancy and is currently coordinated by NatureServe, an international non-profit organization. NHI programs focus on locating and documenting occurrences of rare species and natural communities, including state and federal endangered and threatened species. All NHI programs use a standard methodology for collecting, characterizing and managing data, making it possible to combine data at various scales to address local, state, regional and national issues. NHI data include inventory results as well as data contributed by cooperating scientists and collected from museums, herbaria, and published reports.

The DNR's Bureau of Natural Heritage Conservation coordinates Wisconsin's NHI program. NHI data for Wisconsin are used by Bureau and DNR staff for a variety of purposes, including land management, state land master planning, community and conservation planning, and review of public and private activities across the state for potential impacts to endangered resources.

The Bureau of Natural Heritage Conservation's mission is threefold: to work with others to identify, protect and manage native plant and animal species, natural communities and other natural features; to enhance and restore populations and habitats of rare and endangered species; and to promote knowledge, appreciation and stewardship of Wisconsin's native species and ecosystem for present and future generations.

Sharing NHI information with internal and external partners helps further the Bureau's mission by empowering customers and partners to incorporate consideration of endangered resources into their planning and decision making. Additionally, the Bureau has identified building the NHI information system and providing NHI information to partners as one of its core functions. The Bureau invests considerable effort into collecting NHI data and managing the NHI database so that the information will be available and used to protect Wisconsin's biodiversity.

2.0 Data Sharing Approach and Procedures

The Bureau's Endangered Resources Review Program (ERRP) is responsible for coordinating the sharing of NHI information with external partners and customers. The ERRP shares NHI information in a variety of ways:

- *Generalized*, or non-location-specific, NHI information is made available at no cost on the DNR's website and through a variety of hard copy publications and other resources. This information is suitable for basic informational and educational purposes.
- *Detailed*, or location-specific, NHI data are sensitive because of the potential for endangered resources to be harmed, either inadvertently or purposefully, when their exact locations are known. When considering sharing detailed NHI data with external partners or customers, the ERRP must balance the potential conservation benefit to endangered resources with possible risks to those same resources. The ERRP provides detailed NHI data to requesters through four different services:
 - [Endangered Resources \(ER\) Reviews](#) provide an evaluation of potential endangered resources impacts or take of listed species associated with specific proposed development activities and land management projects.

- *One-time Requests* for detailed NHI data do not involve an evaluation of potential take of listed species. Under these requests, a “snapshot” of the data is provided via a hard copy database printout, MS Excel spreadsheet or GIS shapefile for a specific project, task or purpose. One-time requests are typically limited in geographic area or number of records.
- *NHI Data Licenses* allow ongoing or continuous access to detailed NHI data for multiple projects, tasks or purposes, and for a larger geographic scale or number of records. Data are provided through the online NHI Portal or via GIS shapefile. Successful completion of an online training session on data background and interpretation is required of all users.

3.0 Land Ownership Considerations in Sharing of Detailed NHI Data

Per s. 23.27 3(b), Wis. Stats., the Department shares NHI information with an individual or public or private agency for several specific purposes (see Section 4.0). The statute also exempts detailed NHI data from the Wisconsin Open Records Law, because of the sensitivity of the data as well as other concerns. Because of the sensitivity of the data and the Department’s commitment to maintaining the privacy and rights of private landowners, the ERRP considers land ownership carefully when sharing detailed NHI data. Policies in this area are as follows:

1. When NHI data are requested from individual or contiguous properties or non-contiguous properties under the same ownership, it is the Program’s policy to only provide detailed NHI data to the landowner, authorized representative of the landowner, utility representative of the property*, or other party with express permission from the landowner to receive the information.
2. For requests for detailed NHI data for properties involving multiple landowners (typically broader geographic areas) the Program’s policy expressly considers how the data will be used with regard to individual landowners or properties:
 - a. If the requester is proposing to use detailed NHI data to make decisions or take actions with the potential to impact the uses, values, or owners of individual parcels, the Program will provide detailed NHI data only to the landowner, authorized representative of the landowner, utility representative of the property*, other party with express permission from the landowner to receive the information, or to a public entity (e.g., public agency or local unit of government) whose mission includes working to protect the public interest. For an organization to be defined as a “public entity,” the public needs to have an explicit role in the organization (e.g. via election of officials or provision of funding via taxes).
 - b. If the requester is proposing to use detailed NHI data for purposes that are not reasonably expected to impact the uses, values or owners of individual parcels, the requester does not need the permission of landowners in the requested geographic area. Examples of these more general purposes include scientific research projects and broad-scale conservation planning that does not identify or consider individual parcels.

The requester is responsible for identifying which of the above categories is applicable to his or her request.

**A “utility representative of the property” must be employed by the utility company itself. A consultant working on a contract basis for a utility company is not considered a utility representative of the property.*

4.0 Evaluating Requests for Detailed NHI Data

There are six standard criteria that the ERRP uses to evaluate both one-time and frequent requests for detailed NHI data. These criteria reflect the conservation benefits, potential risks, and other considerations associated with sharing of the detailed NHI data:

- 1) The specific purpose(s) for which the data will be used. The request must fall under one of the following specific purposes, according to s. 23.27 3(b), Wis. Stats.:

Research purpose: Research projects will most often use detailed NHI data to answer a specific question or test a specific hypothesis. Research projects of most conservation benefit are those that provide information that furthers conservation of endangered resources in Wisconsin (e.g., a survey of a rare plant's known locations to obtain more information about its habitat requirements or population genetics). Other types of research projects may also be considered (e.g., identifying a rare plant's known locations to avoid inadvertently collecting that plant during a research study). **Requesters in the Research category must include a project proposal or plan of study with this request form.** Project participants may need an Endangered and Threatened Species Permit (<http://dnr.wi.gov/topic/EndangeredResources/permits.html>) for direct work with endangered or threatened species.

Educational purpose: Educational projects of most conservation benefit are those that educate others on the biology, ecology and conservation of endangered resources, the ecosystems that support them, and the processes that maintain those ecosystems. Examples include an upper level conservation biology class using selected NHI data for a class project or landowners wanting to know what rare species may be present on their properties for informational purposes.

Environmental purpose: Environmental projects of most conservation benefit are those that identify areas of greatest conservation potential or areas in need of conservation actions. Examples include consideration of endangered resources in future land use planning for a community, county or region; planning of trail or utility line layouts to avoid sensitive resources; and other activities related to environmental conservation.

Determinations of potential take of Endangered or Threatened Species resulting from a proposed activity are not an authorized use of the detailed NHI data. Only the Department can issue a permit or authorization to allow take of an endangered or threatened species. Persons needing specific information about the potential for a proposed activity to impact endangered or threatened species should instead request a formal Endangered Resources Review by completing the form available at <http://dnr.wi.gov/files/PDF/forms/1700/1700-047.pdf>.

Land management purpose: Land management projects of most conservation value are those that manage or restore habitat that supports endangered resources. Examples might include using information about endangered resources historically and currently present in an area to guide habitat restoration efforts and identifying high conservation value areas to consider in forest management.

Similar authorized purpose: These projects will be similar in nature to the five categories identified above, may be proposed by the user, and must have a conservation objective. Examples may include biological inventories and monitoring.

- 2) The overall benefit of the request to the conservation of endangered resources in Wisconsin. The request should have some concrete benefit to endangered resources conservation in Wisconsin.
- 3) Land ownership considerations related to the proposed use of the data. The request should meet the land ownership considerations specified in this document.
- 4) The format of data access requested and the associated security risk. The data format requested should be appropriate for the scope of the purpose for which the data will be used. The requester must demonstrate that they can maintain the security expectations for the specified data format (see Section 8.0).

- 5) The geographic extent, elements and fields requested from the NHI database. It is always the Program's policy to provide data only for the geographic area, elements, and individual data fields needed by the requester for the specific purpose authorized. The requester must justify their needs in each of these areas.
- 6) The level of education, training and/or experience of the user(s) in understanding, interpreting and applying data on rare species and habitats. The requester should demonstrate that all users of the NHI data have the capability to understand the data and interpret them correctly.

5.0 Duties of the Data Custodian

Organizations requesting an NHI Data License designate a *Data Custodian* upon approval of their request. The Data Custodian oversees the License and performs the following specific duties:

- Provides general support to authorized NHI data users and serves as the point of contact between the ERRP and the Licensee.
- Disseminates the NHI data to authorized users, assures that users have the most up-to-date NHI data, and recalls outdated NHI data from users and destroys it.
- Maintains an up-to-date record of individuals at the organization who are using or have received NHI data, and what type of data were received.
- Archives data used to support previous decisions according to the Licensee's records retention/disposition policy.
- Ensures that all users of the detailed NHI data have completed training required by the ERRP.
- Ensures that all users of the detailed NHI data adhere to the conditions for data use and protection specified in the NHI Data License.

6.0 Data Sharing Fees

NR 29.04, Wis. Admin. Code, authorizes the Department to charge fees for compiling and providing NHI information to persons requesting that information for one of the authorized purposes listed in the statute. There are two basic categories of fees: an hourly fee, which applies to ER Reviews and One-time Requests for detailed NHI data, and an annual fee, which applies to NHI Data Licenses. Fees for both categories are listed in the table below. The fee schedule below reflects requirements in NR 29.04, Wis. Admin. Code, past Program practices, and the costs and risks involved in sharing detailed NHI data. Note that these fees are subject to change upon approval of updates to NR 29.04, Wis. Admin. Code.

Type of Request	Geographic area	Access mechanism	Fee	Duration of Data Access
ER Reviews	Small geographic area (generally a single site)	Formal ER Review	Hourly basis: \$75/hr	Single request
One-time	Small geographic area and/or number of records	Hard copy/Excel spreadsheet/GIS shapefile	Hourly basis: \$75/hr	Single request
NHI Data License	Any part of up to 4 counties; <i>or species-blind data up to statewide</i>	NHI Portal, GIS shapefile, or both	Annual basis: \$850 per year	One year or any part thereof
NHI Data License	Any part of 5 or more counties, up to statewide access	NHI Portal, GIS shapefile, or both	Annual basis: \$1500 per year	One year or any part thereof

7.0 Fee Waivers or Reductions

Per NR 29.04 (2), Wis. Admin. Code, there are only two specific situations under which fees for NHI data can be waived or reduced. These criteria apply to all services under which NHI information is provided for a fee (ER Reviews, One-time Requests, NHI Data Licenses), and are as follows:

- 1) When a contractual agreement or other mechanism exists by which Department costs are reimbursed, or when an MOU exists under which the Department is obligated to provide NHI information.
- 2) For a research or educational project, when it has been determined that a) such waiver is in the public interest because it furthers the interests of the endangered resources program, and b) the requester has demonstrated that he or she is financially incapable of paying the fee.

To request a waiver or reduction of fees, requesters need to explain in detail how they meet the relevant criteria. Because non-profit designation has to do with an organization's bylaws and goals rather than their financial assets, non-profit status is not a determining factor when assessing an organization's financial capability to pay fees in NR 29.04, Wis. Admin. Code. The ERRP may request financial statements to verify information provided by the requester. Upon receipt of the requested information, the Department will determine whether the criteria have been met and will inform the requester of this determination. Note that this policy applies to all requesters, including private landowners.

8.0 Data Access and Security for NHI Data Licenses

For organizations with an NHI Data License, it is important for the ERRP to have an up-to-date list of data users at the organization in order to ensure that all users are covered by the License and have completed the required training. The organization's Data Custodian is responsible for providing an initial list of users and for updating this list as changes occur.

Often, users of detailed NHI data at an organization need to present or distribute the data to other parties *within* the licensed organization as part of their work. This is permitted, provided that these other parties are informed of and directed to comply with the conditions of the NHI Data License, *and* products such as printouts, maps and tables developed for internal use that contain detailed NHI data include a clearly visible confidentiality notice.

If an organization wishes to communicate NHI data to parties *outside* of the organization (external partners, clients, the general public, etc.), the organization must have express permission from the ERRP to release detailed NHI data, or the NHI data must be generalized. The NHI data may be generalized in one of two ways: 1) by generalizing the element's *location* to a precision no finer than the Public Land Survey System (PLSS) town/range level, or 2) by generalizing the element's *identity* to taxonomic group at the section level. For example, an organization could either say that [*name of rare bird species*] is present in a certain town/range, or that a *rare bird species* is present in a certain section. The exception to these two ways of generalizing NHI data is for elements determined by the NHI Program to be especially vulnerable to disturbance or collection. These elements must only be presented to County level as described in the document "*Sensitive Species, Natural Communities & Natural Features on the Wisconsin Natural Heritage Inventory Working List.*"

The ERRP's basic expectations for secure NHI data access and storage for the various formats in which detailed NHI data can be provided are as follows.

- Hard copy printouts and maps: must be marked as confidential; cannot be photocopied, scanned, digitized, otherwise reproduced, or disseminated to anyone beyond the initial requester without express permission from the ERRP; and, must be destroyed upon completion of the authorized use of the data.

- MS Excel spreadsheets: must be marked as confidential; may not be altered or tampered with; may not be disseminated to anyone beyond the initial requester without express permission from the ERRP; and, must be destroyed upon completion of the authorized use of the data.
- NHI Portal: Each user will have a unique username and password to access the external NHI Portal. Usernames and passwords must be kept secure and must not be shared. Users are responsible for maintaining the confidentiality of the password and account, and for all activities that occur under their password or account. Users agree to notify the ERRP immediately of any unauthorized use of their password or account or any other breach of security. Users agree to ensure that they exit from their account at the end of each session. Data downloaded or printed from the Portal must be marked and treated as confidential and must be kept secure according to the requirements for hard copy data or MS Excel spreadsheets. Access to the NHI Portal will be terminated by the ERRP upon expiration of the agreement or completion of the authorized use of the data, whichever occurs first.
- GIS shapefiles: Data must be accessed via a GIS layer stored on the organization's local network. NHI data must not be duplicated or downloaded to local drives/computers or other media except as needed to provide secure access to authorized users. NHI data must not be edited or integrated into other datasets and must be maintained as a separate layer.

9.0 Mutual Data Sharing

It is the ERRP's expectation when sharing detailed NHI data that any new or updated records of rare species, natural communities or natural features obtained using the NHI data be provided back to Wisconsin's NHI program. This mutual data sharing helps ensure the continued accuracy and completeness of Wisconsin's NHI database.

10.0 Appendix: Laws Related to the ERRP and Sharing of NHI Data

s. 29.604, Wis. Stats., Wisconsin Endangered Species Act
<http://www.legis.state.wi.us/statutes/Stat0029.pdf>

s. 29.563(11), Wis. Stats., Endangered Species Permit fees
<http://www.legis.state.wi.us/statutes/Stat0029.pdf>

s. 23.27(3), Wis. Stats., Natural Heritage Inventory Program
<http://www.legis.state.wi.us/statutes/Stat0023.pdf>

ss. 19.31-19.39, Wis. Stats., Wisconsin Open Records Law
<http://www.legis.state.wi.us/statutes/Stat0019.pdf>

Ch. NR 27, Wis. Admin. Code, Endangered and Threatened Species
<http://www.legis.state.wi.us/rsb/code/nr/nr027.pdf>

Ch. NR 29, Wis. Admin. Code, Endangered Resources Information Fees
<http://www.legis.state.wi.us/rsb/code/nr/nr029.pdf>