

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

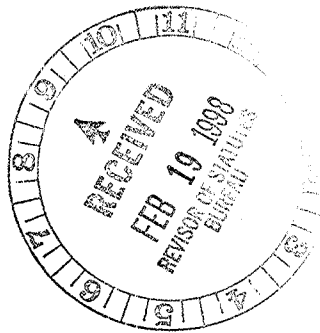
101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

STATE OF WISCONSIN )  
 ) ss  
DEPARTMENT OF NATURAL RESOURCES )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. ER-54-96 was duly approved and adopted by this Department on December 3, 1997. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 16 day of February, 1998



*George E. Meyer*  
George E. Meyer, Secretary

(SEAL)



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
CREATING RULES

The State of Wisconsin Natural Resources Board proposes  
an order to create NR 27.07 relating to notice of receipt of an  
application to incidentally take an endangered or threatened  
species

ER-54-96

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 29.415(6m)(e) and 227.11(2)(a), Stats.  
Statutes interpreted: s. 29.415(6m)(e), Stats.

1995 WISCONSIN ACT 296 establishes authority in the Department of Natural Resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415(6m)(e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure, other than as required by statute, is not limited to mail distribution, but allows other forms of notification, such as electronic mail.

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SECTION 1. NR 27.07 is created to read:

**NR 27.07 INCIDENTAL TAKE APPLICATIONS. (1) PUBLIC NOTIFICATION OF RECEIPT OF AN APPLICATION FOR THE INCIDENTAL TAKE OF ENDANGERED OR THREATENED SPECIES. (a)**  
1. Upon receipt of an application for an incidental take permit, an accompanying conservation plan and an implementing agreement under s. 29.415(6m), Stats., all of which are deemed complete and acceptable to the department, the department shall develop a news release that includes all of the following information.

- a. The name and address of the applicant.
- b. A brief description of the project or activity, including location, and the endangered and threatened species to be affected.
- c. A statement regarding the proposal's potential to cause significant adverse effects to endangered and threatened species, the whole plant-animal community of which they are a part, or the habitat that is critical to its existence.
- d. A brief description of efforts the applicant intends to conduct to minimize and mitigate the impact caused by the taking.
- e. The name and address of a contact within the department who can receive comments and respond to questions.
- f. A date until which the department will accept and consider comments.

2. Notwithstanding subd. 1., but consistent with s.29.415(6m)(e), Stats., when deemed appropriate by the department, any other department notice, including a notice required under another statute or administrative rule,

containing the information in subd.1.a. to f. may be used in addition to a news release.

(b) The department shall distribute the news release or notice to appropriate news media in the vicinity of the proposed taking and to the official state newspaper designated under s. 985.04, Stats.

(c) In addition to distributing the news release or notice under par. (b), the department shall mail, or may otherwise provide the information specified in par. (a) in the manner requested, and consistent with s.29.415(6m)(e), Stats., to the following organizations, at the address or location they provide:

1. University of Wisconsin-Madison, School of Natural Resources;
2. University of Wisconsin-Stevens Point, College of Natural Resources;
3. Sigurd Olson Environmental Institute, Northland College, Ashland;
4. Wisconsin Wildlife Federation;
5. Wisconsin Conservation Congress;
6. Citizens Natural Resources Association of Wisconsin;
7. Wisconsin Society for Ornithology;
8. Wisconsin Woodland Owners Association;
9. Sierra Club-Muir Chapter;
10. Wisconsin Audubon Council;
11. The Nature Conservancy;
12. The Izaak Walton League;
13. Wisconsin Wetlands Association;
14. U.S. Department of the Interior, Fish and Wildlife Service;
15. Wisconsin Paper Council;
16. Wisconsin Association of County Planning Directors;
17. Wisconsin Manufacturers & Commerce;
18. Prairie Enthusiasts;
19. Great Lakes Indian Fish & Wildlife Commission;
20. Milwaukee Public Museum;
21. Madison Audubon Society;
22. Natural Areas Preservation Council;
23. Wisconsin Waterfowl Association;
24. Wisconsin Environmental Decade; and
25. Other organizations or individuals clearly requesting notification of receipt of applications under s.29.415(6m), Stats., by filing a written request with the bureau of endangered resources.

Note: The mailing address for the Bureau of Endangered Resources is Department of Natural Resources P.O. Box 7921, Madison, WI 53707

(2) PUBLIC COMMENT. (a) A minimum of 2 weeks from the date the news release or notice was distributed to news media under sub. (1)(b) or mailed under sub. (1)(c), whichever is later, shall be allowed for the receipt of public comment on the proposed taking.

(b) The department shall consider all public comment on the application if received within the comment period by the bureau of endangered resources by mail or delivered to its offices in Madison, Wisconsin.

(3) PUBLIC RECORD TREATMENT. Any application, conservation plan and implementing agreement submitted under s. 29.415(6m), Stats., shall be available for review at the offices of the bureau of endangered resources in Madison, Wisconsin. Any request for a copy of those documents, shall be considered a public record request and provided subject to payment of copying charges consistent with subch. II, ch. 19, Stats., and rules adopted by the department.

Note: The offices of the bureau of endangered resources are located at 101 South Webster Street, Madison, Wisconsin.

The foregoing rules are approved and adopted by the State of Wisconsin Natural Resources Board on December 3, 1997

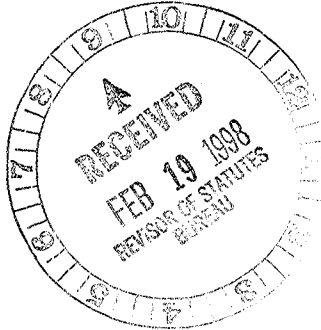
The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro), Stats.

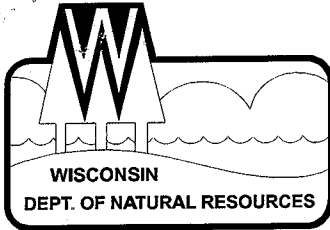
Dated at Madison, Wisconsin 2/16/98

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(SEAL)





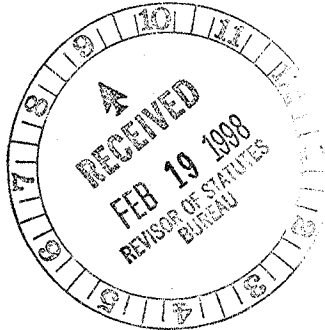
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February 16, 1998

Mr. Gary L. Poulson  
Assistant Revisor of Statutes  
131 West Wilson Street - Suite 800  
Madison, WI



*Gary*  
Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. ER-54-96. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Agriculture and Environmental Resources pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

*George*  
George E. Meyer  
Secretary

Enc.



Quality Natural Resources Management  
Through Excellent Customer Service

