



TOM TIFFANY

STATE SENATOR • 12TH SENATE DISTRICT

Testimony on Senate Bill 95 Senate Committee on Sporting Heritage, Mining, and Forestry March 9th, 2017

Thank you members of the Senate Committee on Sporting Heritage, Mining, and Forestry for allowing me to testify on Senate Bill 95 (SB 95) related to aquaculture and fish farms.

Fishing is an important part of our state's economy and heritage. Every year almost one million Wisconsinites enjoy fishing in our lakes, rivers, and streams. Without private aquaculture, our state would not be able to meet the demands of sport fishermen, tourist, or commercial fishing operators. Private aquaculture supply live bait to tackle shops, stock our lakes and rivers, and provide grocery stores with locally grown fish.

Aquaculture is a \$5.3 million dollar industry in Wisconsin and supports almost 500 jobs. Unfortunately, the industry has declined in recent years due to burdensome and inconsistent regulation. Representative Felzkowski and I are proposing to regulate aquaculture similar to agriculture as they each grow a product for human consumption. This bill will lead to more consistent and predictable regulation of an important industry. Doing so will allow Wisconsin's aquaculture industry to thrive as the industry has done nationally.

Over the last eight months, we have worked with the Department of Natural Resources, Trout Unlimited, Wisconsin Wetlands Association, and Ducks Unlimited to clarify the intent of the legislation. Through those meetings we were able to build a consensus on many aspects of the bill with the final product matching our intent of allowing regulatory flexibility while continuing Wisconsin's high environmental standards.

I want to thank the committee for allowing me to testify and would ask for your support of Senate Bill 95.

Thank you.

A handwritten signature in black ink that reads 'Tom Tiffany'.

Tom Tiffany
Wisconsin State Senate
12th Senate District



WISCONSIN LEGISLATURE

P.O. Box 7882 • Madison, WI 53707-7882

SB 95 – Regulation of Aquaculture and Fish Farms
Representatives Mary Felzkowski and Rob Stafsholt
Senate Committee on Sporting Heritage, Mining
March 9th, 2017

Thank you for the opportunity to testify today on Senate Bill 95. Senator Tiffany, Representative Stafsholt, and I have introduced this bill to accomplish crucial statutory updates for our aquaculture industry that will add clarity and help foster growth in Wisconsin.

Growing up in northern Wisconsin, we have had experience with aquaculture throughout our lives. These farmers have the same dedication and work ethic as those who plow our fields and raise our cattle; it just happens that they have a different crop – and that is, fish.

Aquaculture is agriculture – that is the key element to SB 95. The clarification of current laws related to aquaculture will provide the consistency that our private fish farmers need to plan for the future and grow their operations in a sustainable way. By aligning state water quality standards with federal law, we will ensure that Wisconsin fish farmers are not at a competitive disadvantage to neighboring states.

Wisconsin already has a \$21 million aquaculture industry with an estimated 2800 private fish farms throughout the state that support almost 500 jobs. Unfortunately, Wisconsin's red tape and burdensome permitting prevent this industry from truly reaching its full potential on the national stage. Health benefits have significantly increased the demand for seafood in the U.S. Currently, 86% of U.S. seafood consumption is imported, leading to a seafood trade deficit of \$10 billion. With the statutory changes in this bill, Wisconsin's aquaculture industry can grow to more broadly meet Wisconsin and U.S. seafood needs as a whole.

We ask for your support of SB 95 and would be happy to answer your questions.

DATE: March 9, 2017
TO: Senate Committee on Sporting Heritage, Mining, and Forestry
FROM: Wisconsin Department of Natural Resources
Mark Aquino, External Services Division Administrator
Pat Stevens, Environmental Management Division Administrator
SUBJECT: 2017 Senate Bill 95 regarding aquaculture

Thank you Chairman Tiffany and Committee members for this opportunity to discuss Wisconsin aquaculture.

Senate Bill 95 addresses three major subject areas for fish farms and the Department of Natural Resources:

1. Access to appropriate genetic strains of fish and fish eggs
2. Maintenance, repair and construction of fish farm facilities
3. Water use reporting and wastewater permitting

Access to appropriate genetic strains of fish and fish eggs

SB 95 provides the department the ability to review viral hemorrhagic septicemia (VHS), invasive bait fish, and the role of genetics in stocking strategies through the administrative rule process. DNR will seek broad stakeholder involvement developing such rules.

It has been a number of years since VHS rules and policies were first set and a number of policies currently in place, including the role of genetics in stocking strategies, warrant a review. It is always a good policy to regularly review the impacts of existing rules and policies on DNR and our aquaculture partner operations and businesses. Federal, state, tribal and private sector fish farms all have a lot to learn from each other through this process.

We saw tremendous success during the Wisconsin Walleye Initiative when private aquaculture partnered with State hatcheries. Under SB 95, DNR will continue to provide fish to tribal and federal hatcheries as well as private entities. SB 95 encourages private hatcheries to innovate their operations. DNR has experience with setting egg hatching rates. DNR fish and egg agreements going forward would include an estimate on expected returns and allow private hatcheries realizing *higher returns* to use those additional fish elsewhere than just in public waters. The public will benefit by getting the fish returned from eggs provided by the State; if private hatcheries do better than expected through their own innovations and work, the public could benefit from a viable and competitive industry.

Maintenance, repair, and construction of fish farm facilities

Senate Bill 95:

- Allows maintenance and repair of artificial waterbodies used for aquaculture near navigable waterways;
- Defines and allows normal aquacultural activities in artificial wetlands created for aquacultural activities;
- Adds maintenance of aquacultural roads to the exemption for farm, forest, and mining roads in 281.36 (4) (e);
- Requires DNR add aquaculture to the agricultural wetland filling general permit required by 2011 Act 118 for projects affecting up to 10,000 square feet of wetland;
- Limits DNR review of practicable alternatives for wetland projects onsite or adjacent to an existing aquacultural facility consistent with the approach taken in 2011 Act 118 through 2017 Act 387.

Water use reporting and wastewater permitting

- *Water Withdrawals for Aquaculture Purposes* Each person who makes a withdrawal averaging at least 100,000 gallons per day in a thirty-day period must report the withdrawal to the Department. SB 95 eliminates the reporting requirement for fish farms that withdraw water, place it into a DATCP registered aquaculture pond and then use the water for a subsequent purpose. This provision specifies that the subsequent use of that water from the pond would not be a withdrawal and therefore need not be reported.
- *WPDES variances*. This provision specifies that for purposes of issuing variances for fish farms under the Wisconsin's wastewater permitting program (Wisconsin Pollutant Discharge Elimination System program), the Department will follow the same guidance and other information the Environmental Protection Agency uses to review variances. DNR currently follows federal law when we issues variances. Consequently, this provision would not change how we currently process variances.
- *Wastewater Permitting for Concentrated Aquatic Animal Production Facilities*. This provision provides that the Department will include federally required best management practices (BMPs) in a permit for these facilities, and the Department may not include additional conditions except as necessary to meet certain applicable limitations, standards and other provisions. In addition, any conditions issued in a permit must be limited to site specific BMPs to the extent allowed under federal law. Again, we currently follow federal law in determining the application of best management practices, and would continue to do so under this provision.



***Wisconsin Wetlands Association Testimony on SB 95
Presented by Brian Vigue, March 9, 2017***

The Wisconsin Wetlands Association is a statewide, non-partisan, non-profit wetland conservation organization. We envision a state where wetlands are healthy, plentiful, and support ecological and societal needs, and where citizens care for, appreciate, and interact with these natural resources.

Thank you for the opportunity to offer our feedback and suggestions on SB 95, the Fishing for our Future Act. I'd like to begin by expressing our appreciation to Senator Tiffany for reaching out to our organization early on in the bill drafting process with regard to the bill's wetland provisions. We've found the discussions we've had with your office, and your consideration of our concerns, to be very helpful. We believe that the deliberate, collaborative approach you've taken has addressed several wetland policy concerns we had with last session's legislation.

As we've discussed, siting of commercial infrastructure in wetlands can be harmful to the resource and can often be risky for the business owner. This may be particularly true for aquaculture, where the dynamic hydrology inherent to wetlands creates a challenging environment for managing operational water levels and protecting equipment. That said, we also recognize the need for businesses to be able to manage their existing facilities and grow.

For this reason, we appreciate and support the substantial efforts you've made to ensure that most of the wetland provisions are limited in scope to impacts from expansions of existing facilities or impacts to artificial wetlands. These provisions are both practical and consistent with existing state law.

As noted in our written comments, we recommend two additional refinements to ensure that this bill does not inadvertently create incentives to build in wetlands where viable alternatives are available.

Our first recommendation is to remove the exemption from wetland permit requirements for construction of *new* roads. Our second is to clarify that the intent of this legislation is to support the establishment, operation, and expansion of *commercial* fish farms. On the latter point, our goal is to discourage the establishment or expansion of recreational fish ponds into wetlands. This is important because there are thousands of registered, non-commercial fish farms in Wisconsin. We support the expansion of Wisconsin's aquacultural industry, and

believe that judicious use of an exemption is appropriate to commercial operations only. Our recommendations have been submitted as an attachment to this testimony.

We appreciate the opportunity to provide this testimony today, and we appreciate the collaborative approach employed by Senator Tiffany and representatives from the Wisconsin Aquaculture Association. This is how we prefer to work. To the members of this committee, please consider us a resource and know that we are available to help you and your staff craft policies that protect and restore wetlands while providing a smooth and streamlined process through which our businesses and communities can grow.

Please don't hesitate to contact us with any additional questions or concerns you may have.



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.

Silver Moon Springs, LLC
W4853 HWY 64
Elton, WI 54430

March 9, 2017

Senate Committee on Sporting Heritage, Mining and Forestry

RE: Support for SB 95, the Fishing for Our Future Act

Dear Senators:

My name is Tim Winkel. My family and I own a trout farm in Langlade County called Silver Moon Springs. The farm was built in the early 1950's, and my father bought the farm in 1978. I started working there that same year. My father died in December 2008, and shortly thereafter, trouble with the regulations for the farm started. Over the better part of the last decade we have been working with the DNR, and we still do not have all the permits that the DNR says we need.

The uncertainty and the costs of trying to get all of the permitting from DNR has, to put it mildly, been hell on my family and me. We need certainty and relief from the red tape at the DNR. If we do not do something soon, I do not know how our farm will survive to the next generation.

To give you an idea of the problems we face, I cannot even fix, work on, or improve our raceways without getting a permit from the DNR. The farm, which has been in existence for almost 70 years, is situated on Elton Creek, and uses a dam across the creek to supply some of the water for our raceways. The water from the creek flows through our raceways and is returned to the creek 550 feet downstream.

The original dam was made of wood and began to fall apart in 2007-08. We replaced the dam, and now, for the first time, the DNR wants me to have a permit for the dam and meet certain flow requirements over the dam. We have spent the last 8 years trying to resolve this issue, but cannot reach a conclusion. The last "solution" from the DNR was to pump water from the point where the raceways discharge into the creek back up to the dam so no water is "lost" from the creek. This is not a legitimate option because it would cost me tens of thousands of dollars to do so. A small business like mine simply cannot afford that cost.

The creek next to our farm has never run dry because of the dam, and there are plenty of trout and other aquatic life in the creek. We need good, clean water to raise our fish and we would never do anything to harm the creek. In fact, the water being discharged from our farm is as clean as or cleaner than when it comes in from the creek.

Aquaculture is an important part of this state's economy, and is vital to feeding the state in the future. If we want Wisconsin aquaculture to grow and meet the demand for safe, sustainable, and high quality fish, then we need this bill. When you look at how much feed it takes to raise other protein in our diets, farm raised sea food is by far a much better choice. One pound of feed will result in one pound of fish. That type of result simply cannot be beat.

If this bill passes, it will help give us the tools to stay in business and grow into the future. We need to be able to keep raising good quality fish for our people, and we cannot do that without this bill. Senate Bill 95, the Fishing for Our Future Act, is good for Wisconsin and protects the environment while still allowing our industry to grow and meet the growing demand for fresh, sustainable fish. I hope that you will support this important step forward to letting aquaculture grow in Wisconsin.

Sincerely,

Tim Winkel
Silver Moon Springs, LLC