

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**



**GENERAL PERMIT TO PLACE FISH HABITAT STRUCTURES
IN NAVIGABLE WATERS**

PERMITTEE: The General Public in Wisconsin

PERMIT NO.: GP6-2013-WI (WDNR-GP6-2013)

ISSUING OFFICE: Waterways & Wetland Protection Section, Bureau of Watershed Management, Water Division, Wisconsin Department of Natural Resources (DNR)

ISSUANCE DATE: 11/11/2013

EXPIRATION DATE: 11/11/2018

GENERAL PERMIT AUTHORIZATIONS:

In compliance with the provision(s) of section 30.12(1) and (2m), no person may place any structure upon the bed of any navigable water unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature through an exemption.

Note: Wis. Stats. s. 30.12(1g)(c) and Wis. Admin. Code ch. NR 323 allow structures that are placed in waters that are not designated as Areas of Special Natural Resource Interest (ASNRI) and that are placed for the specific purpose of improving fish habitat to be exempt from permitting requirements. Wis. Stats. s. 30.12(2m) allows the Department to require that an individual permit or general permit be obtained in lieu of an exemption for activities at certain sites. Work performed in ASNRI designated waters or at a site where the Department requires a permit under Wis. Stats. s. 30.12(2m) may be authorized by this general permit.

The Department has authority to issue general permits under Wis. Stats. s. 30.206(1)(am), that authorize any person in the State of Wisconsin to perform work in accordance with the terms and conditions of the general permit specified below after satisfying all applicable permit terms and conditions. Please refer to the following sections of this permit for the specific eligibility standards, application requirements, certification requirements and responsibilities, conditions, findings of fact, conclusions of law, and definitions required by WDNR-GP6-2013.

OTHER AUTHORIZATIONS NECESSARY: WDNR-GP6-2013 authorizations are subject to all applicable terms and conditions specified in this permit. However, **WDNR-GP6-2013 authorizations are provisional and require that project proponents obtain any other local, state or federal permits before any work may proceed.** U.S. Army Corps of Engineers permits are required for any deposit or removal of material from Section 10 Waters under the Rivers and Harbor Act of 1899. A list of these waters can be found on the U.S. Army Corps of Engineers website at: <http://www.mvp.usace.army.mil>

PROJECT DESCRIPTION AND LOCATION: WDNR-GP6-2013 applies to construction, placement and maintenance of a fish crib, spawning reef, wing deflector, or similar device that is placed on the bed of navigable waters for the purpose of improving fish habitat. Fish habitat structures are regulated under Wis. Stats. s. 30.12 (1), (1g)

(a) and (c), (2m), and (3m). Any person that intends to construct, place or maintain a fish habitat structure in any navigable waterway designated as an Area of Special Natural Resource Interest (ASNRI) or at a site where the Department requires a permit under Wis. Stats. s. 30.12(2m) must comply with all applicable provisions of this general permit.

GENERAL PERMIT COVERAGE: Unless notified by the DNR to the contrary, the effective date of coverage under this general permit is 30 calendar days after a complete notification package has been received by the designated DNR office. A list of offices and addresses to send your complete notification package (based on the county where the project is located) can be found at http://dnr.wi.gov/waterways/about_us/county_contacts.html. **WDNR-GP6-2013 permit coverage is valid for a period of 5 years from the date the department determines the activity is authorized by this general permit or until the authorized activity has been completed, whichever occurs first.** Thereafter, permit coverage terminates unless another complete notification package is submitted to retain coverage under this permit or a reissued version of this permit.

State of Wisconsin Department of Natural Resources
For the Secretary



Watershed Bureau Director



Date Permit Signed

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WDNR-GP6-2013 TERMS AND CONDITIONS

The following sections describe the general permit authorization procedures implemented by the DNR in WDNR-GP6-2013. Projects must meet all the terms and conditions of this permit to be eligible for coverage under WDNR-GP6-2013.

NOTE: The term "you" and its derivatives, as used in this general permit, means the person who submitted and signed the complete notification package for coverage under the General Permit or the person who places fish habitat structures under coverage of this General Permit. The term "the Department" or "this office" refers to the appropriate Wisconsin Department of Natural Resources (DNR) Service Center, DNR Region or Central Office headquarters of the Wisconsin DNR having jurisdiction over the authorized activity or the appropriate official of that office acting under the authority of the Secretary of the Department.

SECTION 1 – WDNR-GP6-2013 ELIGIBILITY STANDARDS AUTHORIZATION

Any person who places fish habitat structures in any lake, outlying water, or navigable stream that is designated as an area of special natural resource interest, or at a site where the Department requires a permit under Wis. Stats. s. 30.12(2m), must meet all of the following standards to be eligible for coverage and authorization under this general permit.

NOTE: Projects that do not meet all standards are not eligible for this general permit and are therefore excluded from coverage under WDNR-GP6-2013. For fish habitat structure projects that do not qualify for WDNR-GP6-2013, you may apply for an Individual Permit as outlined in Wis. Stats. s. 30.208(2). The department has authority under Wis. Stats. s. 30.206(3r) to require an individual permit in lieu of a general permit if the department has determined that the proposed activity is not authorized under WDNR-GP6-2013 or has conducted an investigation and visited the site and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in Wis. Stats. s. 299.01 (4), or material injury to the riparian rights of any riparian owner.

A. ELIGIBILITY STANDARDS APPLICABLE TO ALL FISH HABITAT PROJECTS

1. The fish habitat structure may be located in an area of special natural resource interest, or within a public rights feature as described in Wis. Admin. Code s. NR 1.06, or at a site where the Department requires a permit under Wis. Stats. s. 30.12(2m).
2. The project purpose is to place a fish habitat structure solely for the purpose of improving fish and wildlife habitat and the placement does not result in significant adverse impacts to the public rights and interests, cause environmental pollution as defined in Wis. Stats. s. 299.01(4), or result in material injury to the riparian rights of any riparian owner pursuant to Wis. Stats. s. 30.206(3r)(a)2., nor does it cause more than minimal adverse environmental impacts, materially interfere with navigation, nor have an adverse impact on the riparian property rights of adjacent riparian owners pursuant to Wis. Stats. s. 30.206(1)(am).
3. The applicant or co-applicant is the riparian owner.
4. The fish habitat structure must be placed entirely within the riparian zone of interest as determined by one of the methods outlined in Wis. Admin. Code s. NR 326.07. Certain habitat structures may be placed waterward of the line of navigation where allowed by activity specific standards contained in this general permit.
5. The riparian owner or the person who places fish habitat structures under coverage of this General Permit must report the placement of the structure to the local Department Fisheries Biologist within 30 days after placement. The report must contain a description of the project and its purpose, the name of the waterway and a map showing where the structure was placed. A list of fisheries biologists can be found at <http://dnr.wi.gov/topic/fishing/people/index.html>.
6. Fish Spawning. To minimize adverse impacts on fish movement, fish spawning, and egg incubation periods, structures **may not be placed** during the following time periods:
 - September 15th through May 15th for all trout streams; and upstream to the first dam or barrier on the Root River (Racine County), the Kewaunee River (Kewaunee County), and Strawberry Creek (Door County). To determine if a waterway is a trout stream, you may use the WDNR website trout maps which can be found at <http://dnr.wi.gov/topic/fishing/trout/streammaps.html>
 - March 1st through June 15th for ALL waters.The regional Department Fisheries Biologist may waive or modify timing restrictions in writing. To find your biologist and request in writing a waiver or modification of fish spawning timing restrictions for your project use the WDNR website at: <http://dnr.wi.gov/topic/fishing/people/index.html>
7. The placement of structures must be conducted in a manner that prevents the collection, removal or dispersal of sediment away from the project site to the maximum extent practicable. Temporary sediment control measures used to accomplish this should be completely removed from the waterbody no more than 24 hours after the project is completed.

8. All temporary sediment control measures must follow all state lighting requirements and cannot materially obstruct navigation.
9. Live, living or growing plants may not be removed unless the removal is exempt under Wis. Stats. s. 23.24 (4) or complies with the provisions for waiver of the permit requirement under Wis. Admin. Code s. NR 109.06.
10. Removal of material above the ordinary high water mark is a land grading activity and is not authorized under this general permit.
11. Dredging under Wis. Stats. s. 30.20(1g) (b) 1., is not allowed for the placement of a fish habitat structure. This general permit does not authorize the **removal** of native bed and bottom material which includes sand, cobble, silt, detritus, and other organic material. Dredging does not include "de minimus" activities
12. A deposit of sand, gravel or stone under Wis. Stats. s. 30.12(1g) (a), may be associated with the placement of a fish habitat structure provided the deposit is limited to the area immediately underneath or within one foot of the structure and is less than 2 cubic yards.
13. Erosion control measures must meet or exceed the technical standards for erosion control approved by the department under Wis. Admin. Code subch. V of ch. NR 151. Any area where topsoil is exposed during construction must be immediately seeded and mulched or ripped to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway. **Note:** These standards can be found at the following website: <http://dnr.wi.gov/topic/stormwater/standards/>.
14. Unless part of a permanent stormwater management system, all temporary erosion and sediment control practices must be removed upon final site stabilization. Areas disturbed during construction or installation must be restored.

B. ELIGIBILITY STANDARDS APPLICABLE TO FISH STICKS. In addition to the standards in Section 1 A, the following standards apply to all fish sticks projects. **Note:** Fish Sticks, as defined in Section 7, means: "a large woody habitat structure that utilizes whole trees that may be grouped or attached together or are not attached together but results in the placement of more than 1 tree per 50 ft. of shoreline. Fish Stick structures are attached to the shore or anchored to the bed or bank, and are partially or fully submerged near the shoreline of a lake".

1. Fish sticks may only be placed on lakes or flowages, not on streams or rivers. **Note:** the demarcation separating a river and a flowage is spatially defined using the identify tool on the Department's Surface Water Data Viewer which can be found at: <http://dnr.wi.gov/topic/SurfaceWater/swdv/>.
2. If possible, the structure should not be located within an area narrower than 250 feet in width where boating activity is confined. If the structures are placed in an area narrower than 250 feet in width where boating activity is confined, the structure must allow for 150 feet open water navigation from the end of the structure to the line of navigation associated with the *opposing* shoreline (3 ft. water depth) as defined in Wis. Admin. Code s. NR 326.03(4).

3. The location of the structure may not have an adverse impact on the riparian property rights of adjacent riparian owners, may not cause more than minimal adverse environmental impacts, and may not materially interfere with navigation as provided by Wis. Stats. s. 30.206(1)(am).
4. The structure must be placed fully within the riparian zone of interest as defined in Wis. Admin. Code s. NR 326.07, but may extend waterward beyond the line of navigation (3 ft. water depth).
5. The structure must be placed at least 100 feet away from all of the following:
 - a. a bridge.
 - b. a municipal or commercial marina.
 - c. a designated swimming area that is open to the public that is marked by buoys, ropes, or postings along the shore. This includes publicly accessible swimming areas on private land.
 - d. a publicly accessible boat ramp and piers associated with boat ramps that are solely for the purpose of loading and unloading water craft.
 - e. a designated carry-in only watercraft access point.
6. A portion of the structure must be placed within 20 ft. from the bank toe and all elements of the structure may not exceed a maximum waterward distance of 100 ft. from the bank toe. **Note:** Bank toe as defined in Section 7 means, “the break in slope at the foot of a bank where it meets the streambed.”
7. Structures must be securely anchored within 20 ft. waterward or landward from the bank toe.
8. There are no restrictions on the placement distance landward of the bank toe. **Note:** Any placement of structure above the Ordinary High Water Mark (OHWM) may be regulated under local shoreland zoning ordinances. The applicant is responsible for ensuring that the project complies with any local zoning requirements.
9. Installation of fish sticks must consist of one or more of the following:
 - a. whole *live* freshly cut tree(s).
 - b. whole trees placed between June 15th - October 31st and harvested no earlier than 4 weeks before placement.
 - c. whole trees placed before March 1st and harvested between November 1st – February 28th.
10. If whole trees are grouped, attached or anchored together, the resulting structure must include a minimum of 1 tree with a basal diameter of at least 8 inches. If a single tree is used its basal diameter must be at least 8 inches.
11. The removal of living trees above the ordinary high water mark that are harvested within 35 feet of a navigable waterway may be subject to local zoning ordinances which place restrictions on cutting trees in the shoreland zone. The applicant is responsible for ensuring that their project is in compliance with any local zoning requirements.

12. If living trees are harvested within 35 feet of a navigable waterway, coverage under this general permit is not valid until the applicant follows all applicable local zoning requirements and follows the General Permit posting requirements under Section 4, Condition 8 "Removal of Live Trees."

C. ELIGIBILITY STANDARDS APPLICABLE WHEN ADDING NEW STRUCTURE LOCATIONS FOR FISH STICKS PROJECTS ALREADY AUTHORIZED UNDER THIS PERMIT.

Trees have been dropping naturally into Wisconsin lakes since the glaciers receded. And until the last century, trees stayed where they dropped, providing excellent near shore fish habitat. Fallen trees near the shoreline quickly become colonized with invertebrates, which attracts fish and other aquatic species. Fish sticks projects, when compared to other fish habitat treatment types, focus solely on the enhancement of habitat in the near-shore, littoral zone area. These are the areas of lakes that are most susceptible to loss of woody habitat. To aid fish population growth and a long term healthy fishery, incentives to aid enhancement of the near shore area are necessary for Wisconsin lakes. Nearly all fish species utilize near shore large woody habitat for at least one portion of their life cycle, indicating that the addition of fish sticks is a necessary part of the habitat when wood is absent. Fish sticks placed in the near shore area provide benefits to wildlife such as birds, mammals and reptiles, as well as fish populations. Trees in the near shore area add to the complexity that is natural to the area and is reflected in varying substrate types and aquatic plant communities that are rarely seen in deep water areas.

To facilitate lake-wide management efforts under the public trust that will cumulatively restore and enhance fish habitat in the near-shore littoral zone area and result in healthy fish populations, the standards contained in this part of the general permit allow for the option of adding new structure sites to fish sticks projects on the same waterbody already granted coverage under this general permit with no additional permit fees.

To see if coverage for fish sticks that allows adding new structure locations has been issued under this General Permit for a specific waterway, you can ask your local Lake District or group or use the Departments Surface Water Data Viewer found at: <http://dnr.wi.gov/topic/SurfaceWater/swdv/> to view permits issued on your lake.

The following are eligibility standards that are applicable when adding additional structure sites to fish sticks projects on the same waterbody that have already been granted coverage under this general permit.

1. An applicant who applies for coverage under this general permit for the placement of fish sticks must indicate in the initial application whether the applicant seeks permit coverage that allows new structure sites that meet the general permit standards to be added and afforded coverage under the same general permit at a later date. **Note:** For additional locations authorized to be covered under an existing general permit, all general permit terms and conditions will apply. General permit conditions are found in Section 4. If a person other than the original applicant for general permit coverage wants to place structures at newly added locations under the existing general permit coverage, the new applicant is responsible for ensuring that the structures at the new additional locations comply with all applicable general permit standards and is responsible and liable for those new structures (See “Liability” under Section 4).

2. An additional permit fee is not required to place structures at additional locations under an existing general permit coverage where the initial applicant was granted permit coverage for additional locations. A person seeking to place additional structures under an existing permit coverage must provide to the Department a request containing all the following:
 - a. The docket or identification number of the initial general permit coverage to which you seek to add new locations.
 - b. First and last name of applicant seeking coverage of new locations.
 - c. Applicant's contact information, including but not limited to, street address, city, state, zip code, telephone, and e-mail.
 - d. A copy of the deed or similar proof of ownership of the site where the activity will occur. If you do not own the site, also include proof of any notice(s) and permission(s) required by Section IA, Standards 2 and 3 of this General Permit.
 - e. Project diagram that shows all the following:
 - i. The location of the project relative to the OHWM and the bank toe.
 - ii. The location of silt fences or any other sediment control devices.
 - iii. A description of materials and equipment to be used for the placement of the fish habitat structure, including the location of the live trees to be used and the purpose and need for the placement.
 - f. Maps of the project site that include all the following:
 - i. Property lines for the property where the project will occur including identification of the riparian zone area from the OHWM to the line of navigation.
 - ii. The location of the proposed fish habitat structure.
 - g. Photographs that represent existing site conditions where the project will occur.
 - h. Signature. The signature on any cover letter submitted for the purpose of applying to be covered under existing general permit coverage will certify that the applicant meets the requirements under Section 3 of this general permit.
3. Permit coverage for additional structure locations terminates 5 years from the issuance date granting coverage for the additional structure locations.

D. ELIGIBILITY STANDARDS APPLICABLE TO FISH CRIBS. In addition to the standards in Section 1 A, the following standards apply to all fish crib projects.

1. Fish cribs must have a minimum of 5 feet of water over the top of the structure. The depth and clearance of the fish cribs must be based on the normal lowest water level condition during a calendar year.
2. Fish cribs must be constructed of biological materials except for any fastening and anchoring devices.
3. The maximum dimensions of a fish crib must be 8 feet tall by 8 feet long by 8 feet wide.
4. Fish cribs may not be placed within 100 feet of swimming beaches or swim rafts.

5. Fish cribs may not be located in soft sediment or muck if the sediment or muck is more than 12 inches deep.
6. Fish cribs may not be placed in locations where the contour of the waterway bed exceeds a slope of 4-foot horizontal to one-foot vertical.
7. Fish cribs must be adequately anchored to prevent movement.

E. ELIGIBILITY STANDARDS APPLICABLE TO SPAWNING REEFS. In addition to the standards in Section 1 A, the following standards apply to all spawning reef projects:

1. Spawning reefs must be constructed of an aggregate of clean, uncrushed gravel and rock 2 to 8 inches in diameter, with approximately 30% of the gravel and rock 2 to 4 inches in diameter and approximately 70% of the gravel and rock 4.1 to 8 inches in diameter.
2. Spawning reefs must be placed in a linear form parallel to the shore.
3. Spawning reefs must be no longer than 100 feet along the shoreline and no wider than 30 feet perpendicular to shore and may not be placed more than 100 feet from shore.
4. Spawning reefs must be placed where water depths range from 0 to 5 feet.
5. Spawning reefs may not be placed in locations where the contour of the waterway bed exceeds a slope of 4-foot horizontal to one-foot vertical.
6. To minimize navigation hazards, a spawning reef must be placed within 100 feet of shore if it is located in water less than 5 feet deep and on a waterway bed with a contour slope less steep than 10:1.
7. Spawning reefs may not be placed in locations with a bottom substrate of less than 90% clean sand. **Note:** This condition prevents spawning reefs placement in locations that already provide natural walleye spawning habitat. Walleye spawning reefs require moderate wave action to keep substrate clean of algae and adequately circulate water for incubating eggs. Natural walleye spawning reefs generally consist of substrate materials 2-8 inches in diameter with rounded edges located in shallow water adjacent to gently sloping shorelines. A predominately sand substrate does not provide natural walleye spawning habitat because sand grains are too small and wave action that allows a 90% sand substrate to accumulate is too gentle to adequately circulate water for incubating walleye eggs.
8. Any person placing a spawning reef must, within 30 days after placement, provide written notice to the president or chair of any lake association, property owners association or Lake District. The notice must include a description of the spawning reef and a lake map identifying the exact location of the reef. The person placing the reef is also responsible for posting a laminated copy of the same map, within 30 days after placement, at all public boat landings on the

waterbody where the reef is located and ensuring that the map remains posted for at least one year.

F. ELIGIBILITY STANDARDS APPLICABLE TO WING DEFLECTORS. In addition to the standards in Section 1 A, the following standards apply to all wing deflector projects:

1. Design and placement of wing deflectors must follow the recommendations in *Guidelines for Management of Trout Stream Habitat in Wisconsin* by Ray J. White and Oscar M. Brynildson. **Note:** Copies of these publications may be downloaded at <http://digital.library.wisc.edu/1711.dl/EcoNatRes.DNRBull39>. Hard copies can be requested by contacting the local department fisheries biologist or your public library. A list of fisheries biologists can be found at <http://dnr.wi.gov/topic/fishing/people/index.html>.
2. Wing deflectors may only be placed in navigable streams that are less than 5 feet wide measured from ordinary high water mark to ordinary high water mark.
3. Wing deflectors may not extend more than 25% across the stream width measured from ordinary high water mark to ordinary high water mark.

G. ELIGIBILITY STANDARDS APPLICABLE TO TREE DROPS. In addition to the standards in Section 1 A, the following standards apply to all tree drop projects:

1. Tree drops may only be placed in lakes or flowages.
2. Tree drops must consist of fresh cut live trees having a minimum basal diameter of 12 inches.
3. Tree drops must be securely anchored to the shore at intervals no less than 50 feet apart. **Note:** Local zoning ordinances may place restrictions on cutting trees in the shoreland zone. The riparian is responsible for ensuring that their tree drop project is in compliance with any local zoning requirements.

H. ELIGIBILITY STANDARDS APPLICABLE TO HALF-LOGS. In addition to the standards in Section 1 A, the following standards apply to all half-log projects:

1. Half-logs must be constructed from green logs with a minimum diameter of 10 inches. Spacers may not exceed 12 inches in height.
2. Half-logs must be placed where the bottom substrate composition consists of sand or gravel, or both.
3. Half-logs may not be placed in water deeper than 5 feet.
4. Half-logs placed in lakes and flowages may not be located more than 100 feet from shore or within 100 feet of a swim raft.

SECTION 2: WDNR-GP6-2013 APPLICATION REQUIREMENTS FOR COVERAGE

You are required to comply with the following application requirements:

1. After you have carefully confirmed that your project(s) meet(s) the purpose and all the terms and conditions of this permit, you must submit a *complete application package*, outlined in item 5 below, to the Department. The complete application package should be received a minimum of 30 calendar days before the desired project start date. DNR offices for paper application submittal can be found at http://dnr.wi.gov/topic/Waterways/about_us/county_contacts.html

NOTE: The Department will forward a copy of your application package to the U.S. Army Corps of Engineers for their review and determination regarding federal permit requirements and coverage.

2. Unless notified by the Department to the contrary, the effective date of coverage under this permit is 30 calendar days after the designated DNR office receives a complete application package.

3. The Department may request that you provide additional information necessary to verify compliance with the terms and conditions of this permit. The Department may make a request for additional information one time during the 30-day period. If the department makes a request for additional information, the 30-day period is paused on the date the person applying for authorization receives the request for additional information. The clock remains paused until the date on which the department receives the information, at which point the clock resumes from the point it was initially stopped.

4. The Department may determine the project is not eligible for this general permit and require that the project be reviewed through the individual permit process outlined in Wis. Stats ch. 30.

5. Three (3) copies of the application must be submitted on forms supplied by the Department or electronically using the Internet-based application process. A complete application package must include all of the following information:

- a. A Complete Application form certifying that the project meets the terms and conditions of WDNR-GP6-2013. This form can be found at <http://dnr.wi.gov/permits/water/>.
- b. The appropriate application fee.
- c. A copy of the deed or similar proof of ownership of the site where the activity will occur. If you do not own the site, also include proof of any notice(s) and permission(s) required by Section IA, standards 3 and 4 of this General Permit.
- d. A project diagram that shows all of the following:
 1. The location of the project relative to the OHWM.
 2. The location of silt fences or any other sediment control devices.
- e. A description of materials and equipment to be used for the placement of the fish habitat structure, and the purpose and need for the placement. Include the location of the live trees to be placed (if applicable).
- f. Maps of the project site that show all of the following:
 1. The location of the property lines for the property where the project will occur including identification of the riparian zone area from the OHWM to the line of navigation.
 2. The location of the placement of the fish habitat structure.

- g. Photographs that represent existing site conditions where the project will occur.
- h. Three copies of the complete application package if you use the paper application process rather than the electronic Internet application process.

SECTION 3: WDNR-GP6-2013 CERTIFICATION AND RESPONSIBILITIES

The applicant certifies and agrees to the following:

1. You agree to be the responsible party that supervises and oversees all aspects of the project to ensure compliance with the terms and conditions of WDNR-GP6-2013.
2. Upon submittal of a complete application package to DNR, you have certified that the project will be conducted in compliance with all the terms and conditions of WDNR-GP6-2013.
3. You certify that pursuant to Wis. Stats. ss. 30.206(1)(am) and (3r)(a)2., the placement of fish habitat structures will not result in significant adverse impacts to the public's rights and interest in the waterway, environmental pollution as defined by Wis. Stats. s. 299.01(4), material injury to the riparian rights of any riparian owner, more than minimal adverse environmental impacts, material interference with navigation, and will not have an adverse impact on the riparian property rights of adjacent riparian owners.

SECTION 4: WDNR-GP6-2013 GENERAL PERMIT CONDITIONS

The applicant agrees to comply with the following conditions:

1. **Application.** You must submit a complete application package to the Department as outlined in Section 2 of this general permit. If requested, you must furnish to the Department within a reasonable timeframe any information the Department needs to verify compliance with the terms and conditions of this permit.
2. **Certification.** Acceptance of general permit WDNR-GP6-2013 and efforts to begin work on the activities authorized by this general permit signifies that you have certified the project meets all eligibility standards outlined in Section 1 of this permit and that you have read, understood and agreed to follow all terms and conditions of this general permit.
3. **Project Plans.** This permit does not authorize any work other than the work that is specifically described in the notification package and plans submitted to the Department and that you certified is in compliance with the terms and conditions of WDNR-GP6-2013
4. **Expiration.** This WDNR-GP6-2013 is valid for a period of 5 years from the date of issuance. Any activity that the Department determines is authorized by this WDNR-GP6-2013 remains authorized under WDNR-GP6-2013 for a period of 5 years from the date of the Department's determination or until the activity is

completed, whichever occurs first, regardless of whether WDNR-GP6-2013 expired before the activity is completed.

5. **Other Permit Requirements.** You are responsible for obtaining any other state permits and any other permits or approvals that may be required for your project by local zoning ordinances and the U.S. Army Corps of Engineers (USACE) before starting your project. To locate the USACE staff responsible for review projects in Wisconsin please visit <http://www.mvp.usace.army.mil/Missions/Regulatory.aspx>

6. **Project Start.** You must notify the Department using the information provided on the confirmation of coverage letter you receive before starting any activity and again not more than 5 days after each activity is completed.

7. **Permit Posting.** You must post a copy of this permit at a conspicuous location on the project site for at least 5 days prior to the project starting, and the copy must remain posted on the project site at least five days after the project is complete. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.

8. **Removal of Live Trees.** If your project includes removing live trees above the ordinary high water mark that are harvested within 35 feet of the OHWM of a navigable waterway and that removal is subject to local zoning ordinances, you must post a copy of your shoreland zoning permit at a conspicuous location on the project site for at least 5 days prior to the project starting, and the copy must remain posted on the project site at least 5 days after the project is complete.

9. **Permit Compliance.** The Department may modify or revoke coverage of this permit if placement of fish habitat structures is not carried out in compliance with the terms and conditions of this permit, or if the Department determines the project will be detrimental to the public interest. Any act of noncompliance with this permit constitutes a permit violation and is grounds for enforcement action. Additionally, if any conditions of this permit are found to be invalid or unenforceable, authorization for all activities to which that condition applies is denied.

10. **Project Completion.** *Within one week* of project completion you must submit to the Department a statement certifying that the project is in compliance with all the terms and conditions of this permit and photographs of the work authorized by this permit. *Within one month* of the project completion you must report the placement of the structure to the local Department Fisheries Biologist. The report must contain a description of the project and its purpose, the name of the waterway and a map showing where the structure was placed. A list of fisheries biologists can be found at <http://dnr.wi.gov/topic/fishing/people/index.html>

11. **Project Inspection Required for Fish Sticks and Tree Drops.** Within 10 days after the first ice out period that occurs post installation, the applicant is responsible for monitoring the project to ensure that the structure continues to remain securely anchored (if required). Any dislodging of structures from the project area must be immediately corrected by replacing and reanchoring according to the general permit standards.

12. Project maintenance. After initial installation the structure cannot be removed without written authorization from the Department.

13. Site Access. Upon reasonable notice, you must allow access to the site to any Department employee who is investigating the project's construction, operation, maintenance or compliance with the terms and conditions of WDNR-GP6-2013 and applicable laws.

14. Erosion and Sediment Control Practices. The project site must implement erosion and sediment control measures that adequately control or prevent erosion, and prevent damage to waterways and wetlands as outlined in Wis. Admin. Code s. NR 151.11(6m). These standards can be found at the following website: http://dnr.wi.gov/topic/Stormwater/standards/const_standards.html. Any area where topsoil is exposed during the project should be immediately seeded and mulched to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway.

15. Invasive Species. To stop the spread of invasive species and viruses from one navigable waterway to another navigable waterway, all equipment or portions of equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, must be decontaminated for invasive species and viruses before and after use **or** prior to use within another navigable waterway. Follow the most recent Department approved washing and disinfection protocols and Department approved best management practices to avoid the spread of invasive species as outlined in Wis. Adm. Code ch. NR 40. These protocols and practices can be found on the Department website at <http://dnr.wi.gov/topic/Invasives/bmp.html> Keyword: "equipment operator" or "invasive bmp" and at <http://dnr.wi.gov/topic/Invasives/documents/EquipOper.pdf>

16. Federal and State Threatened and Endangered Species. WDNR-GP6-2013 does not affect the DNR's responsibility to ensure that all authorizations comply with Section 7 of the Federal Endangered Species Act, Wis. Stats. s. 29.604, and applicable State Laws. The project must either avoid impacts to endangered or threatened species in accordance with Wis. Stats. s. 29.604, or receive an incidental take authorization under Wis. Stats s. 29.604. No Department authorization under this permit will be granted for projects found not to comply with these laws. No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation as identified under the Federal Endangered Species Act or State law or both, or that is likely to destroy or adversely modify the critical habitat of a species as identified under the Federal Endangered Species Act.

17. Historic Properties and Cultural Resources. WDNR-GP6-2013 does not affect the DNR's responsibility to ensure that all authorizations comply with Section 106 of the National Historic Preservation Act and Wis. Stats. s. 44.40. No Department authorization under this permit will be granted for projects found not to comply with these laws. The project must avoid impacts to archaeological sites or historic structures and is subject to Departmental and Wisconsin Historical Society review and approval before authorization under this general permit is valid. Information on the location and existence of historic resources can be obtained from the State

Historic Preservation Office and the National Register of Historic Places. If cultural, archaeological, or historical resources are unearthed **during** activities authorized under this permit, work must be stopped immediately and the State Historic Preservation Officer must be contacted for further instruction.

18. Preventive Measures. Measures must be adopted to prevent potential pollutants from entering a wetland or waterbody. Construction materials and debris, including fuels, oil, and other liquid substances, may not be stored in the construction work area in a manner that would allow them to enter a wetland or waterbody as a result of spillage, natural runoff, or flooding. In addition, biodegradable hydraulic fluid should be used in equipment that is operated below the Ordinary High Water Mark. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, minimize any contamination resulting from this spill, and immediately notify the State Duty Officer at **1-800-943-0003**.

19. Property Rights. This permit does not convey any property rights of any sort or any exclusive privilege. The permit does not authorize any injury or damage to private property, any invasion of personal rights, or any infringement of federal, state or local laws or regulations.

20. Limits of State Liability. In authorizing work, the State Government does not assume any liability, including for any of the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the State in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this WDNR-GP6-2013.

21. Reevaluation of Decision. This office may reevaluate its decision on any authorization under WDNR-GP5-2013 at any time the circumstances warrant and may suspend, modify or revoke any previously authorized activity. Suspension, modification or revocation may result in enforcement action. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The applicant fails to comply with the terms and conditions of WDNR-GP6-2013.
- b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate, or false
- c. Significant new information surfaces which the Department did not consider in reaching the original public interest decision.

SECTION 5: WDNR-GP6-2013 FINDINGS OF FACT

1. The Department has determined that the project site and project plans meet the standards in WDNR-GP6-2013 to qualify for this General Permit.
2. The proposed project will not cause more than minimal adverse environmental impacts, will not materially interfere with navigation, and will not have an adverse impact on the riparian property rights of adjacent riparian owners pursuant to Wis.

Stats. s. 30.206(1)(am), nor result in significant adverse impacts to the public rights and interest, cause environmental pollution as defined in Wis. Stats. s. 299.01(4), or result in material injury to the riparian rights of any riparian owner pursuant to Wis. Stats. s. 30.206(3r)(a)2., if completed in accordance with this permit.

3. The Department and the applicant have completed all procedural requirements, and the project as permitted will comply with all applicable requirements of WDNR-GP6-2013 and Wis. Admin. Code chs. NR 102, 103, 150, 299, and 310.

SECTION 6: WDNR-GP6-2013 CONCLUSIONS OF LAW

1. The Department has authority under Wis. Stats. ch. 30 to issue a permit for the completion of this project.
2. The Department has complied with Wis. Stats. s. 1.11.

SECTION 7: WDNR-GP6-2013 DEFINITION OF TERMS

You accept the following definitions for use with this general permit:

1. "Area of special natural resource interest" has the meaning in Wis. Stats. s. 30.01 (1am) and as identified by the department in Wis. Admin. Code s. NR 1.05.

Note: "Area of special natural resource interest" means any of the following:

- a. A state natural area designated or dedicated under Wis. Stats. ss. 23.27 to 23.29.
- b. A surface water identified as a trout stream by the department in Wis. Admin. Code s. NR 1.02(7).
- c. A surface water identified as an outstanding or exceptional resource water under Wis. Stats. s. 281.15.
- d. An area that possesses significant scientific value, as identified by the department in Wis. Admin. Code s. NR 1.05.

Note: Wis. Admin. Code s. NR 1.05 (4) includes wild rice waters as identified in a written agreement between the department and the Great Lakes Indian Fish and Wildlife Commission.

2. "Bank cover" means a man-made structure composed of biological or inert materials designed to provide overhanging cover habitat for fish in streams.

3. "Bank toe" means the break in slope at the foot of a bank where it meets the streambed.

4. "Biological materials" means living or organic materials that are biodegradable such as native grasses, sedges, forbs, shrubs and trees; live stakes and posts; non-treated wood; jute netting; fiber rolls and mats; logs; and branches.

5. "De minimus" activity means the dredging of less than 2 cubic yards in a calendar year from a specific waterbody **or** disturbance of bottom material during the manual removal of aquatic plants that meet the requirements of Wis. Admin. Code s. NR

109.06 (2). **Note:** Where the bed material is privately owned, the permission of the property owner is required.

6. "Department" means the Department of Natural Resources.

7. "Dredged material" means any material removed below the Ordinary High Water Mark (OHWM) or from the bed of a navigable waterway by dredging. The bed of a navigable waterway extends landward to the OHWM.

8. "Dredging" means any part of the process of the removal or disturbance of material from below the OHWM or from the bed of a navigable waterway, transport of the material to a disposal, rehandling or treatment facility; treatment of the material; discharge of carriage or interstitial water; and disposal of the material. For the purpose of Ch. 30, Stats., dredging does not include "de minimus" activities.

9. "Fish crib" means a man-made 3-dimensional habitat structure composed of biological or inert materials designed specifically to attract and concentrate fish.

10. "Fish Sticks" means a large woody habitat structure that utilizes whole trees that may be grouped or attached together or are not attached together but result in the placement of more than 1 tree per 50 ft. of shoreline. Fish Stick structures are attached to the shore or anchored to the bed or bank, and are partially or fully submerged near the shoreline of a lake. Fish sticks do not include things like log(s) placed parallel to shore used as seawalls (as defined in Wis. Admin. Code s. NR 328.03(23)), weirs, fish cribs, lunkers, cross channel logs, deflectors, root wads, sweeper trees, telephone poles, brush bundles attached to other existing structures, etc. **Note:** Whole trees must include crowns and branches.

11. "Half-log" means a man-made structure composed of a log sawed lengthwise and anchored flat side down to the bottom of a lake or stream using steel rods for the purpose of providing habitat for fish.

12. "Inert materials" means those materials that slowly degrade, such as chemically treated wood, stone, stainless and galvanized steel, plastics and synthetic polymers.

13. "Line of navigation" means the depth contour where the water is 3 feet deep at its maximum depth based on the normal summertime low levels on the waterway or summer minimum levels where established by department order. **Note:** Where a municipality has adopted an ordinance establishing a municipal pierhead line authorized under s. 30.13, Stats., the line of navigation is the municipal pierhead line.

14. "Navigable waterway" means any body of water with a defined bed and banks that is navigable under Wisconsin law. In Wisconsin, a body of water is navigable if it is capable of floating on a regularly recurring basis the lightest boat or skiff used for recreation or any other purpose. This incorporates the definition at Wis. Stats. s. 30.01(4m), and current case law, which requires a watercourse to have a bed and banks, *Hoyt v. City of Hudson*, 27 Wis. 656 (1871), and requires a navigable waterway to float on a regularly recurring basis the lightest boat or skiff, *DeGayner & Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975); *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987).

15. "Ordinary high water mark" means the point on the banks or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognizable characteristic.
16. "Riparian" means an owner of land abutting a navigable waterway.
17. "Similar device" under s. 30.12 (1g) (c), Stats., means a man-made structure composed of biological or inert materials designed specifically for the purpose of providing habitat for fish, including but not limited to tree drops, half-logs and brush bundles.
18. "Spawning reef" means an expanse of rock below the surface of the water used by fish for spawning.
19. "Stabilize" means the process of making a site steadfast or firm, minimizing soil movement by the use of practices such as mulching and seeding, sodding, landscaping, paving, graveling or other appropriate measures.
20. "Tree drop" means a man-made structure created by a tree placed into the water for the purpose of providing habitat for fish.
21. "Wing deflector" means a man-made structure composed of biological or inert materials placed in streams to deflect stream flow and modify stream channels for the purpose of providing habitat for fish.
22. "Watercraft" under Wis. Stats. s. 30.01(7) means any device used and designed for navigation on water,