

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES



**GENERAL PERMIT TO PLACE NET PEN STRUCTURES IN  
GREAT LAKES WATER BODIES AND THEIR TRIBUTARIES FOR THE PURPOSE  
OF HOLDING OR REARING FISH FOR NONCOMMERCIAL PURPOSES**

PERMITTEE: The General Public in Wisconsin

PERMIT NO.: GP9-2014-WI (WDNR-GP9-2014)

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

ISSUANCE DATE: XX/XX/2014

EXPIRATION DATE: XX/XX/2019

**GENERAL PERMIT AUTHORIZATIONS:**

In compliance with the provision(s) of Wis. Stats. 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 s. 30.12 or authorization has been granted by the legislature.

Wis. Stats. ss. 30.12(3)(b) requires and authorizes the Department to issue a statewide general permit under s. 30.206 that authorizes a person to place a net pen in a Great Lakes water body or a tributary of a Great Lakes water body for the purpose of holding or rearing fish for noncommercial purposes.

Wis. Stats. s. 30.206(1)(a) requires and authorizes the Department to issue general permits 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-GP9-2014.

**Note:** After the date on which the fish are placed in a net pen authorized by this General Permit, the Department of Agriculture, Trade and Consumer Protection (DATCP) authority to regulate fish farms under Wis. Stats. s. 95.60 does not apply to the fish that are held in the net pen.

**OTHER AUTHORIZATIONS NECESSARY:** WDNR-GP9-2014 authorizations are subject to all applicable terms and conditions specified in this permit. However, **WDNR-GP9-2014 authorizations are provisional and require that project proponents obtain any other local, state or federal permits before any work may proceed.** The Clean Water Act requires that net pens obtain a WPDES permit if they meet the criteria for a concentrated aquatic production facility under 40 C.F.R. 122.24. U.S. Army Corps of Engineers permits are required for projects that affect Section 10 Navigable 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://www2.mvp.usace.army.mil/docs/regulatory/navigable%20waters%20wi.pdf>

**PROJECT DESCRIPTION AND LOCATION:** WDNR-GP9-2014 applies to the placement of a net pen(s) in a Great Lakes water body or a tributary of a Great Lakes water body for the purpose of holding or rearing fish for noncommercial purposes and for a period not to exceed 8 weeks.

The fish held or reared in the net pen must be stocked by the Department or by a person who is in compliance with Wis. Stats s. 29.736.

The fish held or reared in the net pen must be released by the Department or by a person who is in compliance with Wis. Stats. s. 29.736 into the same body of water in which the net pen is placed.

Structures placed in navigable waters are regulated under Wis. Stats. s. 30.12 (1), (2m), (3) and (3m). Any person that intends to construct, place or maintain a net pen(s) in any Great Lakes water body or tributary of a Great Lakes water body that is a 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 Department 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](http://dnr.wi.gov/waterways/about_us/county_contacts.html). **WDNR-GP9-2014 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

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Watershed Bureau Director

\_\_\_\_\_  
Date Permit Signed

<b><u>TABLE OF CONTENTS</u></b>		<b><u>Page(s)</u></b>
<b>SECTION 1</b>	ELIGIBILITY STANDARDS	X-XX
<b>SECTION 2</b>	APPLICATION REQUIREMENTS	XX-XX
<b>SECTION 3</b>	CERTIFICATION & RESPONSIBILITIES	XX-XX
<b>SECTION 4</b>	GENERAL PERMIT CONDITIONS	XX-XX
<b>SECTION 5</b>	FINDINGS OF FACT	XX
<b>SECTION 6</b>	CONCLUSIONS OF LAW	XX
<b>SECTION 7</b>	DEFINITION OF TERMS	XX-XX

### **WDNR-GP9-2014 TERMS AND CONDITIONS**

The following sections describe the general permit authorization procedures implemented by the DNR in WDNR-GP9-2014. Projects must meet all the terms and conditions of this permit to be eligible for coverage under WDNR-GP9-2014.

**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 net pens 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-GP9-2014 ELIGIBILITY STANDARDS AUTHORIZATION**

Any person who places a net pen(s) in a Great Lakes water body, or a tributary of a Great Lakes water body, to hold or rear fish for noncommercial purposes, 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-GP9-2014. For net pen structures that do not qualify for WDNR-GP9-2014, you may apply for an Individual Permit as outlined in Wis. Stats. s. 30.208(2). Wis. Stats. s. 30.206(3r) authorizes the Department 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-GP9-2014 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 PLACEMENT OF NET PENS IN THE GREAT LAKES OR TRIBUTARIES OF THE GREAT LAKES**

1. The project purpose is the placement of a net pen(s) for holding or rearing fish for noncommercial purposes.
2. A cooperative fish rearing agreement with the Department is required before the placement of fish in any public waterway. This includes the placement of fish in a net pen(s) authorized under this general permit. For information on how to obtain a cooperative fish rearing agreement, contact your fisheries biologist. A list of fisheries biologists can be found at <http://dnr.wi.gov/topic/fishing/people/index.html>.
3. Net pens may only be placed in Great Lakes water bodies or tributaries of Great Lakes water bodies.
4. Net pens may not be located within a public rights feature as described in Wis. Admin. Code s. NR 1.06.
5. There is no limit to the number of times that a person may place a net pen(s) in a Great Lakes water body or a tributary of a Great Lakes water body under the authority of this general permit.
6. A WPDES permit is required if the holding or rearing of fish in net pens authorized under this general permit meets the criteria for a concentrated aquatic production facility under 40 C.F.R. 122.24.
7. The applicant is the riparian owner or if the project location is waterward of the line of navigation (3 foot water depth), the applicant has **notified** the riparian owner of the intention to place a net pen(s) for holding or rearing fish
8. The applicant is the riparian owner or if the project location is landward of the line of navigation (3 foot water depth) in the riparian zone of interest (as determined by one of the methods outlined in Wis. Admin. Code s. NR 326.07), the applicant has **obtained permission** of the riparian owner to place a net pen(s) for holding or rearing fish.
9. If the water is a tributary to a Great Lakes water body, the applicant has obtained permission of the bed owner (who may be the riparian owner) to place a net pen(s) for holding or rearing fish.
10. A net pen(s) for the purpose of holding or rearing fish for noncommercial purposes may be placed for a period not to exceed 8 weeks.
11. The Department must be present when fish are being placed into a net pen(s).
12. The fish held or reared in the net pen(s) must be stocked by the Department or by a person who is in compliance with Wis. Stats s. 29.736.

13. The fish held or reared in the net pen must be released by the Department or by a person who is in compliance with Wis. Stats. s. 29.736 into the same body of water in which the net pen(s) is placed.

14. The placement and location of the net pen(s) and the holding or rearing of fish therein will not materially interfere with navigation, cause environmental pollution as defined in Wis. Stats. s. 299.01(4), or result in significant cumulative adverse environmental impacts, injury or significant adverse impacts to the public rights and interests in the waterway, material injury to the rights or riparian rights of any riparian owner, or adverse impacts to the riparian property rights of adjacent riparian owners, pursuant to Wis. Stats. s. 30.206(1)(ag) and (3r)(a)2.

15. The net pen structure(s) must be placed fully within the riparian lines of the riparian property as determined by one of the methods in Wis. Admin. Code s. NR 326.07, but may be placed or extend water ward beyond the line of navigation (3 ft. water depth).

16. **If possible**, a net pen(s) should not be placed at a location where the area for boating traffic and open water navigation is narrower than 250 ft. A net pen(s) placed in such a location must allow an area for boating traffic and open water navigation at least 150 ft. wide between the waterward side of the net pen(s) and the opposite shore's line of navigation (3 ft. water depth as defined in Wis. Admin. Code s. NR 326.03(4)).

17. The structure must be placed at least 100 feet away from all of the following:

- a) a bridge.
- b) a designated swimming area open to the public and marked by buoys, ropes, or postings along the shore. This includes publicly accessible swimming areas on private land.
- c) a designated carry-in only watercraft access point.
- d) swim rafts.

18. Net pens must be adequately marked with buoys and reflectors or any other visual warning mechanism that is highly visible and that is reflectorized, fluorescent, or lighted.

19. Net pens must be adequately secured or anchored to prevent movement.

20. Any person placing a net pen must, prior to placement, provide written notice to the harbor master or equivalent representative within the local municipality. The notice must include a description of the net pen and a map identifying the exact location.

21. A net pen(s) must be placed in a manner that prevents sediment from accreting up-drift or eroding down-drift of the net pen(s) or being transported away from the net pen(s) to the maximum extent practicable.

22. A net pen(s) must be placed in a manner that prevents the collection, removal or dispersal of sediment away from the project site to the maximum extent practicable.
23. Temporary sediment control measures to control erosion, accretion, and dispersal of sediment should be completely removed from the water body no more than 24 hours after the project is completed.
24. 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 riprapped 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/>.
25. All temporary sediment control measures must follow all state lighting requirements and may not materially obstruct navigation.
26. 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.
27. Dredging under Wis. Stats. s. 30.20(1g) (b) 1., is not allowed for the placement of a net pen 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

## **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](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 if you use the paper application process or the application can be submitted 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-GP9-2014. 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 7 or 8 of this General Permit.
  - d. A project diagram that shows all of the following:
    1. Project location relative to the Ordinary High Water Mark (OHWM).
    2. The location of silt fences or any other sediment control devices.
  - e. A description of materials and equipment to be used, and the purpose and need for the placement. **For example, how long fish will be held, and how long the net pen structure will be in place.**
  - f. Maps of the project site that show and identify the location of all the following:
    1. The property lines for the property where the net pen(s) will be placed, the riparian lines on both sides of the property extending from the OHWM to the line of navigation, and the riparian zone area from the OHWM to the line of navigation.
    2. The footprint where the net pen(s) will be placed.
  - g. Photographs that represent existing project site conditions.

### **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-GP9-2014.
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-GP9-2014.
3. You certify that pursuant to Wis. Stats. ss. 30.206(1)(ag) and (3r)(a)2., the placement and location of the net pen and the holding or rearing of fish therein will not materially interfere with navigation, cause environmental pollution as defined in Wis. Stats. s. 299.01(4), or result in significant cumulative adverse environmental impacts, injury or significant adverse impacts to the public rights and interests in the

waterway, material injury to the rights or riparian rights of any riparian owner, or adverse impacts to 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-GP9-2014 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-GP9-2014
4. **Expiration.** This WDNR-GP9-2014 is valid for a period of 5 years from the date of issuance. Any activity that the Department determines is authorized by WDNR-GP9-2014 remains authorized under WDNR-GP9-2014 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-GP9-2014 expired before the activity is completed.
5. **Cooperative Fish Rearing Agreement.** You are responsible for entering into a cooperative fish rearing agreement with Department before the placing fish in net pens in any public waterway. For information on how to enter into a cooperative fish rearing agreement, contact your fisheries biologist. A list of fisheries biologists can be found at <http://dnr.wi.gov/topic/fishing/people/index.html>.
6. **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>
7. **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 the activity is completed.
8. **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.

**9. Permit Compliance.** The Department may modify or revoke coverage of this permit if placement of net pen structures for holding or rearing fish is not carried out in compliance with the terms and conditions of this permit, the terms and conditions of cooperative fish rearing agreement, 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.

**11. 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-GP9-2014 and applicable laws.

**12. 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](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.

**13. 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>

**14. Federal and State Threatened and Endangered Species.** WDNR-GP9-2014 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.

**15. Historic Properties and Cultural Resources.** WDNR-GP9-2014 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.

**16. Preventive Measures.** Measures must be adopted to prevent potential pollutants from entering a wetland or water body. 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 water body 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**.

**17. Property Rights.** This permit does not convey any property rights or interests of any sort or any exclusive privilege. A landowner has the exclusive right to place structures between the OHWM and line of navigation in navigable waters adjacent to his/her land, as determined by one of the methods outlined in Wis. Admin. Code s. NR 326.07 ("riparian zone"). The applicant is responsible for obtaining the riparian owner's consent, permission, or other legal right to place a net pen(s) for holding or rearing fish in a riparian zone adjacent to land not owned by the applicant. This permit does not grant such a right. 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.

**18. 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-GP9-2014.

**19. Reevaluation of Decision.** This office may reevaluate its decision on any authorization under WDNR-GP9-2014 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-GP9-2014.
- b. The applicant fails to comply with the terms and conditions of a cooperative fish rearing agreement with the Department.
- c. The information provided by the applicant in support of the permit application proves to have been false, incomplete, inaccurate, or false
- d. Significant new information surfaces which the Department did not consider in reaching the original public interest decision.

#### **SECTION 5 – WDNR-GP9-2014 FINDINGS OF FACT**

1. The Department has determined that the project site and project plans meet the standards in WDNR-GP9-2014 to qualify for this General Permit.
2. The placement and location of the net pen and the holding or rearing of fish therein will not materially interfere with navigation, cause environmental pollution as defined in Wis. Stats. s. 299.01(4), or result in significant cumulative adverse environmental impacts, injury or significant adverse impacts to the public rights and interests in the waterway, material injury to the rights or riparian rights of any riparian owner, or adverse impacts to the riparian property rights of adjacent riparian owners, pursuant to Wis. Stats. s. 30.206(1)(ag) and (3r)(a)2.
3. The Department and the applicant have completed all procedural requirements, and the project as permitted will comply with all applicable requirements of WDNR-GP9-2014 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-GP9-2014 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. "Great Lakes water body" has the meaning in 30.01(2m) Wis. Stats. This means Lake Superior or Lake Michigan and includes any bay or harbor that is part of Lake Superior or Lake Michigan.
3. "Concentrated Aquatic Production Facility" has the meaning under 40 C.F.R. 122.24 which is a hatchery, fish farm or other facility that contains, grows, or holds at least one of the following:
  - a. Cold water aquatic animals (including but not limited to the *Salmonidae* family of fish such as trout and salmon) in ponds, raceways, or *other similar structures* which discharge at least 30 days per year. Under 40 C.F.R. 122.24 Appendix C, such a facility (including a net pen) is **not** considered a concentrated aquatic production facility if it is used for less than 20,000 pounds of cold water fish per year or if it feeds less than 5,000 pounds of food per month in the month of maximum feeding.
  - b. Warm water fish species or other water aquatic animals (including but not limited to, the Ameiuride (catfish), Centrarchidae (sunfish), and Cyprinidae (minnows) families of fish) in ponds, raceways, or *other similar structures* which discharge at least 30 days per year. Under 40 C.F.R. 122.24 Appendix C, such a facility (including a net pen) is **not** considered a concentrated aquatic production facility if it is a closed pond(s) that discharges only during periods of excess runoff or if it produce less than 100,000 pounds of aquatic animals per year
4. "De minimus" activity means the dredging of less than 2 cubic yards in a calendar year from a specific water body **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 to remove material.
5. "Department" means the Department of Natural Resources.
6. "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.

7. "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.

8. "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.

9. "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).

10. "Net pen" has the meaning in Wis. Stats s. 30.01(4o) which means an enclosure placed in a body of water and used to hold or rear fish.

11. "Ordinary high water mark" (OHWM) 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.

12. "Public Rights Feature" has the meaning in Wis. Admin. Code s. NR 1.06.

**Note:** "Public Rights Features" means any of the following:

- a. Fish and wildlife habitat, including specific sites necessary for breeding, nesting, nursery and feeding. **Note:** Physical features constituting fish and wildlife habitat include stands of aquatic plants; riffles and pools in streams; undercut banks with overhanging vegetation or that are vegetated above; areas of lake or streambed where fish nests are visible; large woody cover.
- b. Physical features of lakes and streams that ensure protection of water quality. **Note:** Physical features that protect water quality include stands of aquatic plants (that protect against erosion and so minimize sedimentation), natural streambed features such as riffles or boulders (that cause turbulent stream flow and so provide aeration).
- c. Reaches of bank, shore or bed that are predominantly natural in appearance (not man-made or artificial) or that screen man-made or artificial features. **Note:** Reaches include those with stands of vegetation that include intermixed trees, shrubs and grasses; stands of mature pines or other conifer species; bog fringe; bluffs rising from the water's edge; beds of emergent plants such as wild rice, wild celery, reeds, arrowhead.
- d. Navigation thoroughfares or areas traditionally used for navigation during recreational boating, angling, hunting or enjoyment of natural scenic beauty.

**Note:** Physical features indicative of navigation thoroughfares include shallow water areas typically used by wading anglers or areas frequently occupied by regularly repeated public uses such as water shows.

13. "Riparian" means an owner of land adjacent to a navigable waterway.

14. "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.

15. "Watercraft" under Wis. Stats. s. 30.01(7) means any device used and designed for navigation on water.

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