



State Senator
Rick Gudex

District 18

December 2, 2015

To: The Senate Committee on Natural Resources and Energy
From: Sen. Rick Gudex
Re: **Senate Bill 315/Assembly Bill 421**

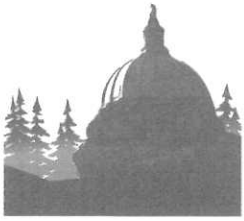
Mr. Chair and members of the committee, thank you for holding this hearing today. Senate Bill 315, known as the “Fish Stick” bill, provides fish crib owners immunity from civil liability suits upon damage or injury involving their wildlife habitat structures. This will apply to property owners who have an approved (permitted) fish crib structure authorized by the Department of Natural Resources (DNR) or those who are exempt from the permit requirement altogether.

First, what are fish cribs? They are a fish habitat structure that is placed on the bed of public waters that improve wildlife habitats. These structures have various designs that include products ranging from sunken devices to fish stick logs. Second, why is this bill necessary? We need to enhance the proliferation of fish cribs in our lakes. Enhancing the placement of fish cribs will improve fish habitats for the wildlife, which will make our waterways more attractive to tourists who bring revenue into Wisconsin. Our society’s litigious nature prevents people from placing these wildlife habitat structures, and this bill’s intention is to ease their concerns and hesitation.

We have two simple amendments to the bill, which have been introduced. We adjusted the language of the original bill draft to include future owners that **maintain** the crib. Permits transfer with the land and exemptions remain after sale, however the original liability protections of the bill extended expressly and only to those who are authorized to place the structure (and those working at their direction). The bill did not expressly provide liability protection to those who maintain it after purchasing the property, and we have remedied that. The second amendment simply extends the liability exemption to property owners that are exempt from the initial permitting process (i.e. the location is not an area of special natural resource interest: ASNRI).

It is important to note that this bill **does not** loosen fish crib structure standards required and enforced by the DNR. Property owners will still need to comply with the DNR’s guidelines for the Fish Stick Program as well as for sunken structures that are outlined in Wisconsin Chapter 30.12 to qualify for the immunity provided by this bill.

Thank you again for giving me this opportunity to speak on behalf of this bill, and I urge your support.



ROB SWEARINGEN

STATE REPRESENTATIVE • 34th ASSEMBLY DISTRICT

Office: (608) 266-7141
Toll-Free: (888) 534-0034
Rep.Swearigen@legis.wi.gov

Room 19 North
P.O. Box 8953
Madison, WI 53708-8953

Testimony on Senate Bill 315
Senate Committee on Natural Resources and Energy
December 2, 2015

I would like to thank Chairman Rob Cowles and the entire Senate Committee on Natural Resources and Energy for allowing me to testify on Senate Bill 315.

Senate Bill 315 was drafted at the request of a local lake association to promote fish habitat on Wisconsin lakes and waterways. The goal of this legislation is to improve fish and wildlife habitat on Wisconsin waterways by removing civil liability from property owners placing Department of Natural Resources (DNR) structures in navigable waters and wetlands.

Under current law, to place a fish crib or various coarse woody habitats into a lake, the property owner must follow all DNR permits to meet all of the appropriate specifications and requirements. My office has been contacted by lake associations and other concerned citizens indicating liability is deterring them from taking advantage of these DNR offered programs. Our proposal will keep the rules and regulations in place for all permit holders, while removing liability if and when the DNR specifications are met. This proposal will continue to protect our environment through DNR permits and specifications while boosting fish habitat statewide.

The Department of Natural Resources along with Trout Unlimited are supportive of our efforts to promote fish and wildlife habitat on Wisconsin waterways and wetlands.

I would like to thank Senator Gudex for all of his help in drafting this legislation. I am hoping for strong bipartisan support for this legislation.



WISCONSIN LAKES

We Speak for Lakes!

4513 Vernon Blvd., Suite 101, Madison WI 53705
608.661.4313 ~ 608.661.4314 fax
info@wisconsinlakes.org

TESTIMONY IN SUPPORT OF 2015 SB315 TO THE SENATE COMMITTEE ON NATURAL RESOURCES AND ENERGY

December 2, 2015 ~Presented by Michael Engleson, Executive Director

Thank you for the opportunity to testify today on SB315. My name is Michael Engleson, Executive Director of Wisconsin Lakes. Wisconsin Lakes is a non-profit conservation organization of primarily individual waterfront property owners, lake associations, and lake districts representing over 80,000 citizens and property owners. On behalf of our members, I am here today to express Wisconsin Lakes' support of this bill.

Encouraging groups and individuals to participate in the management of Wisconsin's lakes and rivers is crucial to successfully protecting and preserving these important natural, cultural, and economic resources. Placement of habitat structures for fish and wildlife is part of that work. By providing explicit liability protection to citizens for those activities when conducted under proper authority, individuals and groups will be more comfortable and therefore more likely to take on this important task.

Limiting liability is something that should not be done before rigorously considering the potential consequences. In this case, the risks that accompany such placements are relatively limited. And those making such placement may already have some liability protection under state or federal law if acting on behalf of an organization for which they are volunteering. Significant environmental and public benefits, however, would arise from a healthier fishery and ecosystem, which in turn create more economic benefits through increased recreation and sport on the impacted waters. In this case, the risks incumbent with limiting liability are far outweighed by the benefits to the resource and those who use it.

Wisconsin Lakes therefore recommends passage of SB315.

Wisconsin Lakes is a statewide nonprofit organization with nearly 1,000 members and contributors including individuals, businesses, and lake associations or districts representing more than 80,000 citizens. For over 20 years, Wisconsin Lakes has been a powerful bipartisan advocate for the conservation, protection and restoration of Wisconsin's lake resources.

| | |
|---|--|
| <p>Eligibility Criteria: Projects that do not meet all criteria are not eligible for this general permit. If your project does not qualify for this general permit, you may apply for an individual permit.</p> | |
| <p>Please indicate in the application materials whether you will allow as part of your permit coverage to let new fish sticks sites on the same lake to be afforded coverage under your general permit at a later date.</p> | |
| <p>The project meets the definition of Fish Sticks, as defined in GP6-2013-WI: "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" A copy of GP6-2013-WI can be found at: http://dnr.wi.gov/topic/Waterways/Permits/FishWildlifeGP.html</p> | |
| <p>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)</p> | |
| <p>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 <input type="checkbox"/> 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 <input type="checkbox"/> impact on the riparian property rights of adjacent riparian owners pursuant to Wis. Stats. s. 30.206(1)(am)</p> | |
| <p>The applicant or co-applicant is the riparian owner.</p> | |
| <p>The fish habitat structure must be placed entirely within the riparian zone of interest as determined <input type="checkbox"/> 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.checklist</p> | |
| <p>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</p> | |
| <p>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/swdvl/.</p> | |
| <p>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 <i>opposing</i> shoreline (3 ft. water depth) as defined in Wis. Admin. Code s. NR 326.03(4).</p> | |
| <p>The structure must be placed at least 100 feet away from all of the following:</p> <ul style="list-style-type: none"> • a bridge. • a municipal or commercial marina. • 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. • a publicly accessible boat ramp and piers associated with boat ramps that are solely for | |

| | |
|--|--|
| <p>the purpose of loading and unloading water craft.</p> <ul style="list-style-type: none"> • a designated carry-in only watercraft access point. | |
| <p>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.”</p> | |
| <p>Structures must be securely anchored within 20 ft. waterward or landward from the bank toe.</p> | |
| <p>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.</p> | |
| <p>Installation of fish sticks must consist of one or more of the following:</p> <ul style="list-style-type: none"> • whole <i>live</i> freshly cut tree(s). • whole trees placed between June 15th - October 31st and harvested no earlier than 4 weeks before placement. • whole trees placed before March 1st and harvested between November 1st – February 28th. | |
| <p>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.</p> | |
| <p>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.</p> | |
| <p>If living trees are harvested within 35 feet of a navigable waterway, coverage under GP6-2013-WI is not valid until the applicant follows all applicable local zoning requirements and follows the General Permit posting requirements under Permit Condition 8 “Removal of Live Trees.” A copy of GP6-2013-WI can be found at: http://dnr.wi.gov/topic/Waterways/Permits/FishWildlifeGP.html</p> | |
| <p>To minimize adverse impacts on fish movement, fish spawning, and egg incubation periods, structures may not be placed during the following time periods:</p> <ul style="list-style-type: none"> • 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. <p>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</p> | |
| <p>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.</p> | |
| <p>All temporary sediment control measures must follow all state lighting requirements and cannot <input type="checkbox"/> materially obstruct navigation.</p> | |
| <p>Live, living or growing plants may not be removed unless the removal is exempt under Wis. Stats. s. <input type="checkbox"/> 23.24 (4) or complies with the provisions for waiver of the permit requirement under Wis. Admin. Code s.</p> | |

| | |
|---|--|
| NR 109.06. | |
| Removal of material above the ordinary high water mark is a land grading activity and is not authorized under the general permit. | |
| Dredging under Wis. Stats. s. 30.20(1g) (b) 1. is not allowed for the placement of a fish habitat structure. This 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 | |
| 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. | |
| 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/ | |
| 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. | |

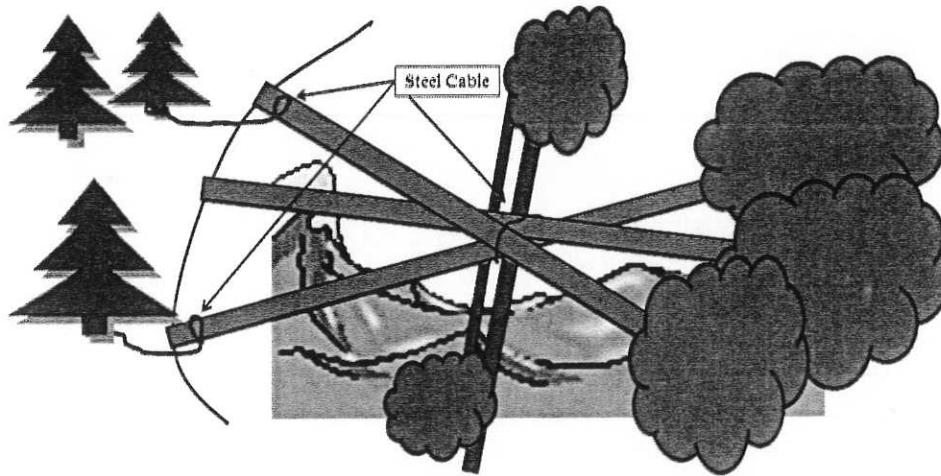
To Apply:

Once your application is complete, submit using the online system, or mail it to the permit intake address based on the county where your project is located. If you have questions or problems filling out or completing the application requirements, contact the Water Management Specialist for your county.

Permit intake addresses and Water Management Specialist contact information can both be found at the following web link: http://dnr.wi.gov/topic/Waterways/about_us/county_contacts.html

Appendix A. Fish Sticks Design Schematics

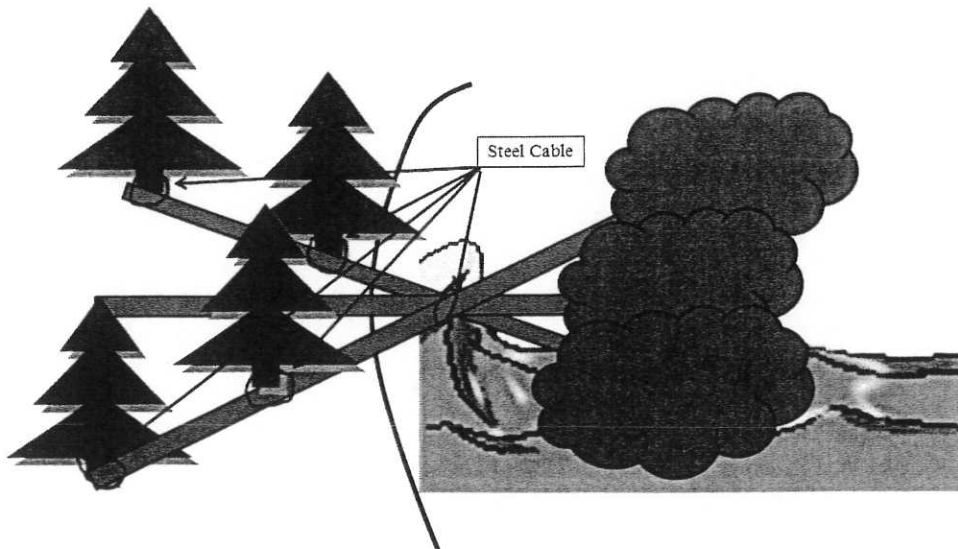
- I. **Low Energy Design** – Used when ice heave or strong winds are not an issue at the placement site
Ice heave action is visible in the form of ice pushed up onto the banks. When in a bay or area not exposed to ice heave, the butt ends of single trees or clusters of trees can be placed at the toe of the bank (edge of the shoreline).

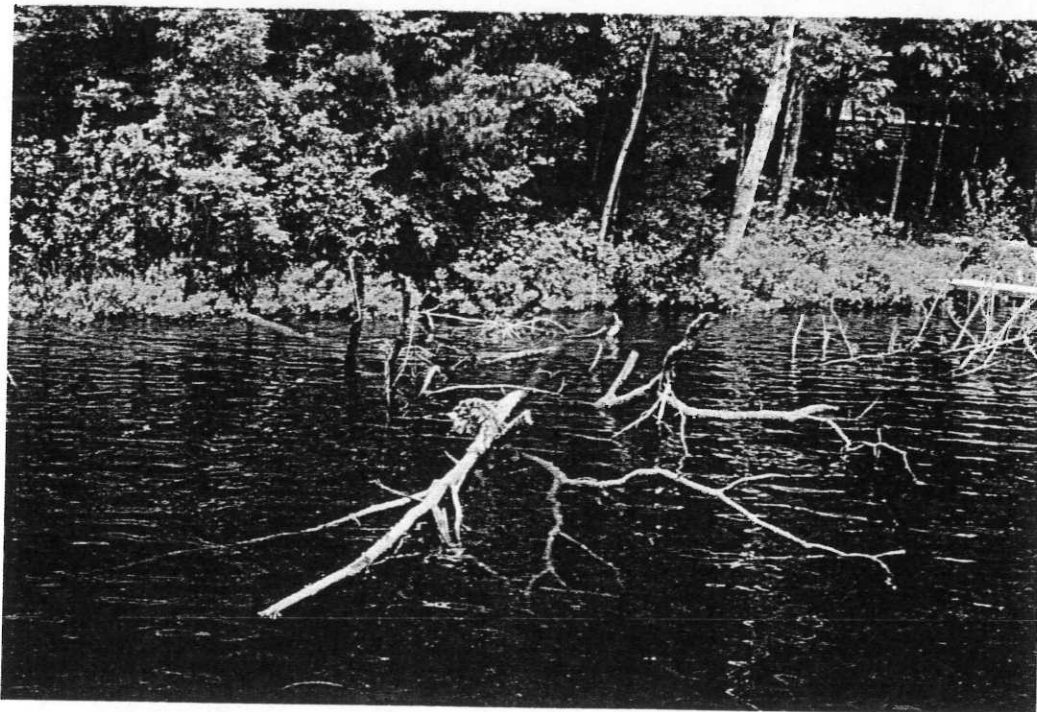
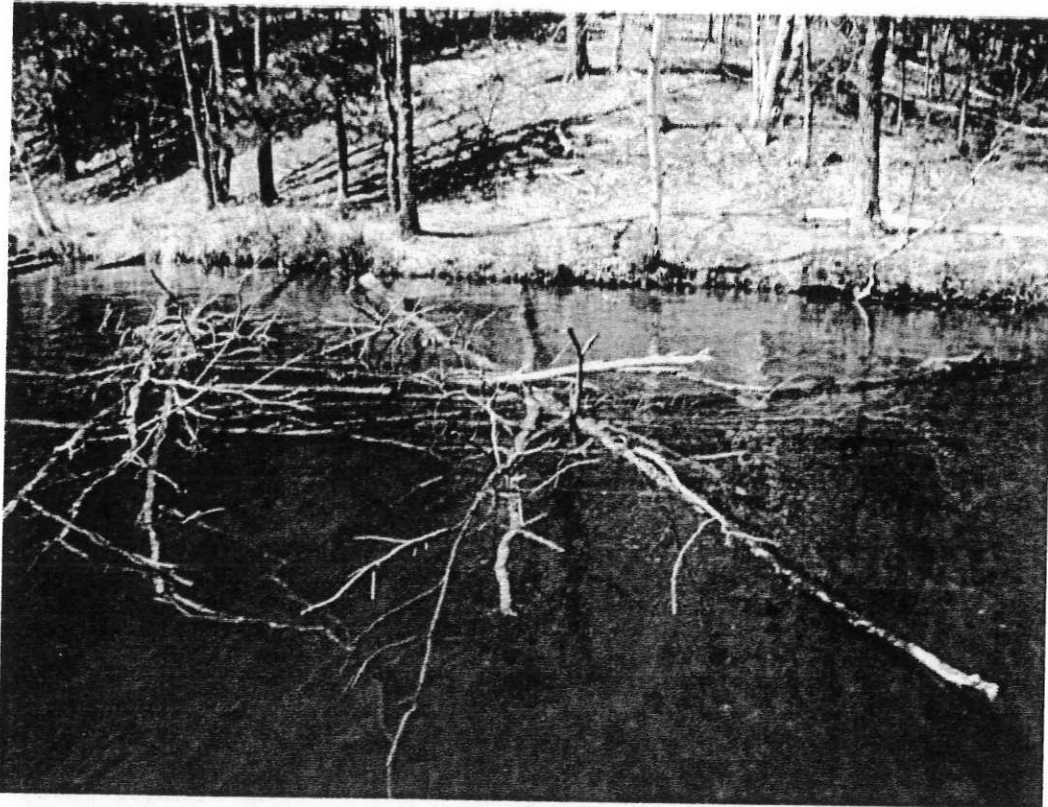


Fish Sticks Low Energy Design

- II. **High Energy Design** – Used when ice heave often occurs on the shoreline.
If ice heave is a concern, single trees or tree structures should be placed with the butt end of the tree pulled 10 to 15 feet landward and cabled directly to a tree. This will help the structure remain in place if ice heave does occur.

High Energy Fish Sticks Design





Certain activities in navigable waters are exempt from needing a permit under chapter 30, Wisconsin Statutes. Using this checklist, you can determine if your project qualifies for an exemption.

Your proposed **tree drop** is eligible for an exemption if your project will meet all the following conditions:

- The tree drop may not be located in an area of special natural resource interest (ASNRI) or within a public rights feature (PRF) – see the Designated Waters Search on DNR's website to determine if your waterway is an ASNRI, PRF or has another special designation.
- The tree drop may be placed and maintained only by a riparian
- The tree drop shall be placed entirely within the riparian's zone of interest.
- The tree drop must be placed solely for the purpose of improving fish habitat.
- The riparian shall report the placement of the structure to the local department fisheries biologist within 30 days after placement. The report shall contain a description of the project and its purpose, the name of the waterway and a map showing where the structure was placed.
- A deposit of sand, gravel or stone may be associated with the placement of a tree drop provided the deposit is limited to the area immediately underneath or within one foot of the structure and is less than 2 cubic yards.
- Dredging is not allowed for the placement of a tree drop.
- To protect fish habitat during spawning seasons, the tree drop may not be placed during the following time periods:
 - (a) For trout streams and perennial tributaries to trout streams, September 15 through May 15.
 - (b) For all waters not identified in (a) and south of State Highway 29, March 15 through May 15.
 - (c) For all waters not identified in (a) and north of State Highway 29, April 1 through June 1.
- Tree drops may only be placed in lakes or flowages.
- Tree drops shall use live trees having a minimum diameter of 12 inches at the base.
- Tree drops shall 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.
- Proper erosion control measures shall be used during installation (to prevent soils from eroding into the waterway), removed after work is complete, and any disturbed areas restored.

If your project does not meet all of these conditions, submit a permit application to the Department.

If you have any questions about whether you meet these conditions, you may request an Exemption Determination from DNR. Obtain Form 3500-107, "Chapter 30 Exemption Determination Request" from a DNR service center or visit the website <http://dnr.wi.gov/org/water/fhp/waterway/permits/exemptionrequest.pdf> or search for it on our website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits." Complete the form and submit it to the DNR office identified on the form.

DRAWINGS OF PROPOSED ACTIVITY SHOULD BE PREPARED IN ACCORDANCE WITH SAMPLE DRAWING

Location Sketch (Indicate scale.) Show route to project site: include nearest main road and crossroad.

TREE DROPS
SAMPLE DRAWING

Proposed Materials

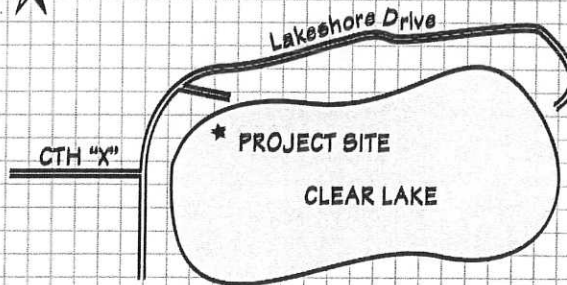
Full-size trees (50-70'), preferably maple

Full-size tree that was already falling into the lake

1/4" steel cable - anchor downed tree to stump or post

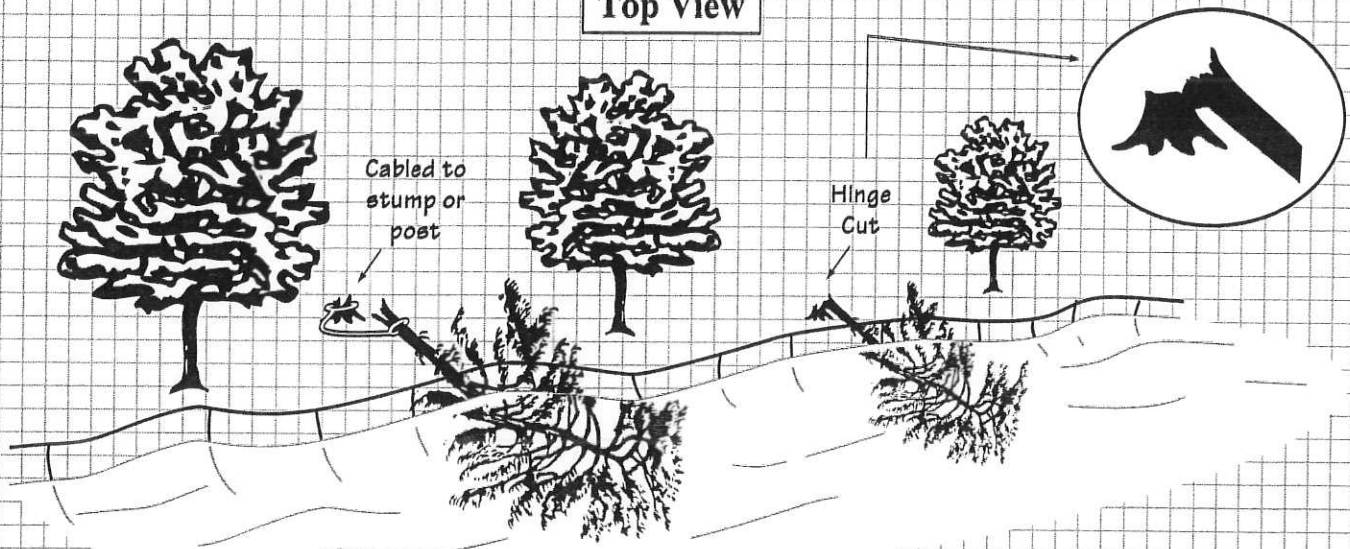
N 1" = 1/4 mi.

Fire Number N3862



Project Plans. (Include top view and typical cross sections. Clearly identify features and dimensions or indicate scale.) Use additional sheets if necessary.

Top View



Downed tree -
Hinge-Cut

Cross Section



Certain activities in navigable waters are exempt from needing a permit under chapter 30, Wisconsin Statutes. Using this checklist, you can determine if your project qualifies for an exemption.

Your proposed **fish crib** is eligible for an exemption if your project will meet all the following conditions:

- The fish crib may not be located in an area of special natural resource interest (ASNRI) – see the Designated Waters Search on DNR’s website to determine if your waterway is an ASNRI or has another special designation.
- The fish crib may be placed and maintained only by a riparian, and shall be placed entirely within the riparian’s zone of interest.
- The fish crib must be placed solely for the purpose of improving fish habitat.
- The riparian shall report the placement of the structure to the local department fisheries biologist within 30 days after placement. The report shall contain a description of the project and its purpose, the name of the waterway and a map showing where the structure was placed.
- A deposit of sand, gravel or stone may be associated with the placement of a fish crib provided the deposit is limited to the area immediately underneath or within one foot of the structure and is less than 2 cubic yards.
- Dredging is not allowed for the placement of a fish crib.
- To protect fish habitat during spawning seasons, the fish crib may not be placed during the following time periods:
 - (a) For trout streams and perennial tributaries to trout streams, September 15 through May 15.
 - (b) For all waters not identified in (a) and south of State Highway 29, March 15 through May 15.
 - (c) For all waters not identified in (a) and north of State Highway 29, April 1 through June 1.
- Fish cribs shall have a minimum of 5 feet of water over the top of the structure. The depth and clearance of the fish cribs shall be based on the normal lowest water level condition in a calendar year.
- Fish cribs shall be constructed of biological materials, with the exception of fastening and anchoring devices.
- The dimensions of a fish crib shall be no larger than 8 feet tall by 8 feet long by 8 feet wide.
- Fish cribs may not be placed within 100 feet of swimming beaches or swim rafts.
- Fish cribs may not be located in soft sediment or muck that is greater than 12 inches in depth.
- Fish cribs may not be placed where the bottom contour of the waterway exceeds a slope of 4-foot horizontal to one-foot vertical.
- Proper erosion control measures shall be used during installation (to prevent soils from eroding into the waterway), removed after work is complete, and any disturbed areas restored.

If your project does not meet all of these conditions, submit a permit application to the Department.

If you have any questions about whether you meet these conditions, you may request an Exemption Determination from DNR. Obtain Form 3500-107, “Chapter 30 Exemption Determination Request” from a DNR service center or visit the website <http://dnr.wi.gov/org/water/fhp/waterway/permits/exemptionrequest.pdf> or search for it on our website at www.dnr.wi.gov under the topic “Waterway and Wetland Permits.” Complete the form and submit it to the DNR office identified on the form.

DRAWINGS OF PROPOSED ACTIVITY SHOULD BE PREPARED IN ACCORDANCE WITH SAMPLE DRAWING

Location Sketch (Indicate scale.) Show route to project site: include nearest main road and crossroad.

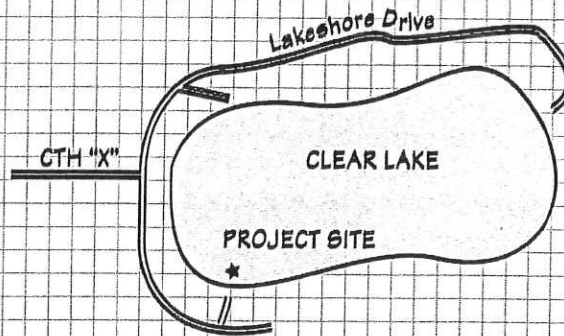
FISH CRIBS 1 of 2
SAMPLE DRAWING

Proposed Materials

- 40-6" to 8" diameter 8' green hardwood logs
- 8-1/2" x 8" polyethelene rods
- 40 maple branches
- 8 concrete blocks
- Nylon rope

N 1" = 1/4 ml.

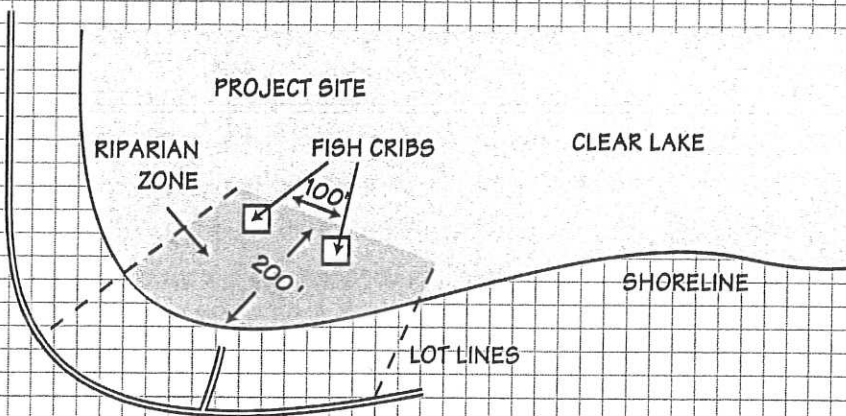
Fire Number N3062



Project Plans. (Include top view and typical cross sections. Clearly identify features and dimensions or indicate scale.) Use additional sheets if necessary.

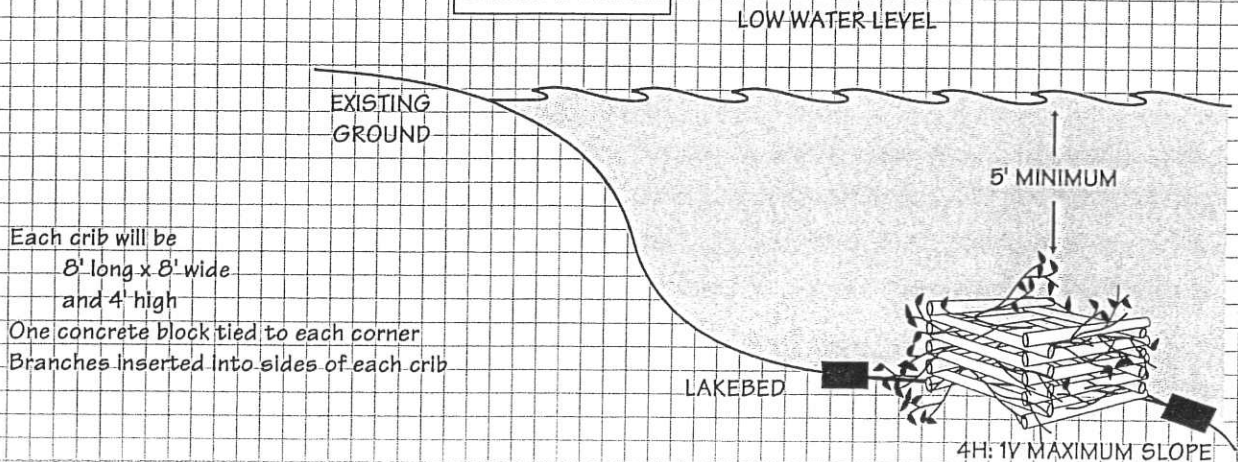
N 1" = 230'

Top View



1" = 8'

Cross Section



Each crib will be 8' long x 8' wide and 4' high
One concrete block tied to each corner
Branches inserted into sides of each crib

DRAWINGS OF PROPOSED ACTIVITY SHOULD BE PREPARED IN ACCORDANCE WITH SAMPLE DRAWING

Location Sketch (Indicate scale.) Show route to project site: include nearest main road and crossroad.

FISH CRIBS 2 of 2
SAMPLE DRAWING

Proposed Materials

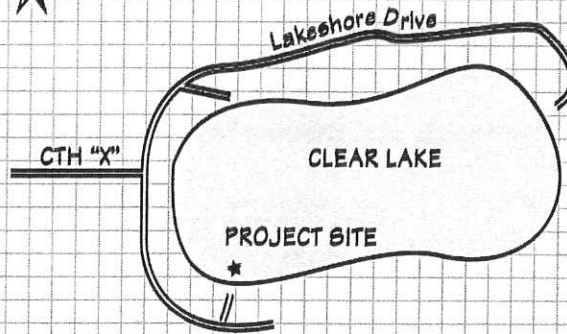
20-6" to 8" diameter 8' greenhardwood logs

4-1/2"x 6" polyethylene rods or 1/2" to 3/4" diameter nylon rope (30 feet)

6 to 8 large concrete blocks

N
1" = 1/4 ml.

Fire Number N3862

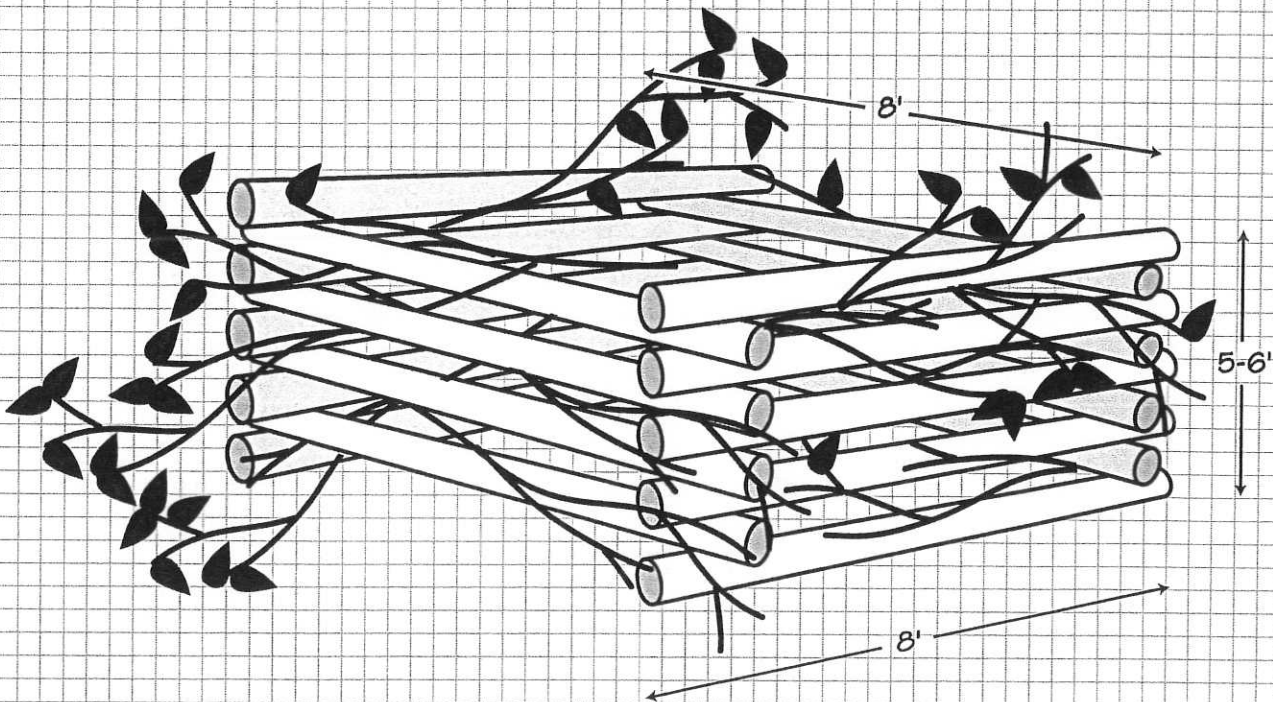


Note: Contact your local Fisheries Biologist if you need a copy of the map for your lake.

Project Plans. (Include top view and typical cross sections. Clearly identify features and dimensions or indicate scale.)
Use additional sheets if necessary.

N
1" = 4'

Cross Section





Fish cribs placed on area lakes

By Michael Crusan **CONNECT**

Posted: Mar 15, 2013 5:17 PM CDT

Menomonie (WQOW) - They may look like "Lincoln Logs" or piles of brush scattered randomly on some local lakes, but fish cribs are made to improve your fishing results.

"We put out between 10 and 15 every year," says Chairman of Fish Cribs for the Dunn County Fish and Game Club David Pechmiller.

They may look like stacked bonfire wood, but for some building these log fish cribs is an annual tradition.

"It's quite a procedure. We have to cut the logs first and then we gotta go drill the holes. Then we gotta bring them out here and put them up," says Pechmiller.

All this hard work finally pays off when you drop a line in the lake.

"With Lake Menomin being as flat as it is and no natural structure, the fish cribs really help," says Fisherman Derek Luther.

The cribs are cozy and I can see why the fish like them so much. But there's a little more to these cribs than just the creature comforts.

"The small fish, whether it's a small Bluegill or Crappie or Walleye or Bass, they need some place to live and be protected from predators. The cribs offer that protection," says DNR District Fisheries Supervisor Bob Hujik.

Where bait fish linger, big feeders can be found nearby.

"You want to get right up by a crib and kind of fish the outsides of it," says Luther.

But finding the cribs after they sink in the spring can be tricky.

"Some of the clubs will provide GPS coordinates to anybody who asks. Other smaller clubs on smaller lakes, they put them in and you have to find them on your own," says Hujik.

That is, if they sink.

"One year we didn't have enough weight in them and they went down by the darn, I guess three of them did. So that was quite a procedure getting them back out," says Pechmiller.

For the cribs that do settle into place, it certainly increases your odds of reeling in a bite.

"I don't think there's a guaranteed way of getting fish, but it's a great bonus that's for sure," says Pechmiller.

Most cribs are built and sunk by fish and game clubs and require permits from the DNR.
