State Threatened/Endangered Fish Broad Incidental Take Permit/Authorization
WisDOT Guidance

1.0 Purpose

The state threatened/endangered (i.e., listed) fish broad incidental take permit/authorization (BITP/A) was developed jointly by the Wisconsin Department of Natural Resources (DNR) and Wisconsin Department of Transportation (WisDOT) to streamline the incidental take process for in-water construction activities utilizing a cofferdam. Projects may be eligible to use this process to address state-listed fish species impacts if they meet all applicability criteria, including a pre-determined set of minimization and mitigation measures.

This BITP/A can be a time savings to projects as it removes the requirement to prepare a project-specific incidental take conservation plan, and a 30-day incidental take public notice period.

2.0 Applicability

The state-listed fish BITP/A can be used if all following applicability criteria are met:

- DNR identifies through the Endangered Resources Review (ERR) process that an applicable state-listed fish is likely to be present in project area (i.e., presence of suitable habitat).
- In-water work cannot be fully avoided and take of the listed fish may occur, as determined through DNR coordination.
- Potential for listed fish take is only anticipated to result from in-water work utilizing a cofferdam, such as bridge construction or culvert installation/replacement.
- The project can adhere to all minimization and mitigation measures outlined in the BITP/A.

The state-listed fish BITP/A cannot be used if any of the following criteria are met:

- The listed species are blue sucker, black buffalo, river redhorse, paddlefish, or skipjack. These species are larger in size and/or are more mobile and therefore, are exempt from following the protocols within the BITP/A as take of these species is not expected. If suitable spawning habitat is present; however, then standard spawning timing restrictions per species would still apply.
- The project includes in-water activities occurring outside of a cofferdam (e.g., temporary causeways).

If a project cannot be covered by this BITP/A and is likely to result in listed fish take, the project would require an individual incidental take authorization/permit from DNR. A project-specific conservation plan would be developed by WisDOT and coordinated with DNR during project design. A 30-day public notice period is also required.

3.0 Design considerations

- **In-stream restriction dates for cofferdam installation** are based on the specific species' spawning season. WisDOT's contract special provisions should utilize the specific date range provided by the DNR Transportation Liaison in the ERR.
    - **Note:** These dates are unique to the individual listed fish species, and they may differ from the typical in-stream restrictions that are used broadly for other non-listed/common fish. These listed species dates to do not remove/replace/alter other in-stream restriction dates for other fish (or other aquatic species) as required by DNR.

- If a **concrete masonry seal is necessary for the cofferdam dewatering**, coordination should be completed with DNR during design to determine if any additional measures will be necessary to minimize impacts to listed fish.
- If the project will result in **permanent habitat loss**, it is likely that onsite/near site habitat restoration/creation will be incorporated into the project design/construction. This should be addressed as early as possible in the project design to allow time to coordinate with DNR and design the mitigation (Section 5.0 contains more detail on mitigation options).

4.0 Fish biologist

- Fish biologist and fisheries biologist are used interchangeably in the BITP/A and refer to an individual that has professional experience with rare fish identification, and that possesses or can obtain a regulatory removals permit from DNR.
- There are 3 options to fulfill the fish biologist requirement:
    - **(Preferred) WisDOT provides the fish biologist** using one of the consulting firms under the Bureau of Technical Services (BTS) Ecological Services contract.
        - Submit request to dotbiologicalservices@dot.wi.gov. It is strongly recommended to initiate this work order scoping task during design, but minimally allow at least 4 months prior to the need in construction. This will help to ensure consultant availability and enough time to properly scope a work order.
        - The project's special provisions must notify the construction contractor that the fish biologist will be provided by WisDOT and to coordinate the schedule a minimum of 2 weeks in advance of the need.
    - **Construction contractor provides the fish biologist**.
        - WisDOT must include this as a bid item in the project's special provisions.
    - **DNR fisheries biologist** is also a potential option.
        - WisDOT must discuss this option with DNR to determine if DNR fisheries biologist will have availability to serve in this role during construction.
        - Clearly communicate the anticipated timing and duration of cofferdam dewatering, any other complexities associated with the construction schedule, and safety concerns.
        - This option may present a risk to the project's construction schedule if DNR fisheries biologist's availability changes due to workload/staffing. Project teams should weigh this risk carefully before selecting this option.
- The fish biologist must be invited to the preconstruction meeting.
- The fish biologist will be responsible for providing training and general instruction to all individuals working on the project site (e.g., engineers, contractors, consultants) regarding the listed fish requirements (see BITP/A measure #1).

5.0 Mitigation for permanent habitat loss

- The BITP/A requires mitigation for permanent habitat loss (BITP/A measure #12). Typically, this is an area calculation of stream bed loss. Examples of permanent habitat loss include, but are not limited to, placement of fill or riprap, construction of new bridge piers or abutments, construction of new culverts, or extension of existing culverts.
    - The water column habitat loss (e.g., volume of water taken up by a bridge pier) is generally not included in the permanent habitat loss mitigation calculation.
- Mitigation for all permanent habitat loss must be coordinated with the DNR Transportation Liaison and the Endangered Resources (ER) Transportation Liaison during project design. The ER Transportation Liaison must provide final approval on the mitigation. WisDOT initiates all mitigation discussions with DNR for consultant-designed projects.
- Onsite habitat restoration/creation is the preferred mitigation option, followed by near site habitat restoration/creation. Replacement ratios are discussed in detail in BITP/A measure #12.
- If onsite/near site habitat restoration/creation is not possible, alternative mitigation measures, including a mitigation payment, may be considered.
    - Coordinate with the BTS Ecologist to understand mitigation payment process and limitations.
    - Discuss all alternative mitigation measures with the WisDOT Project Manager and Region Environmental Coordinator (REC) prior to proposing an alternative mitigation measure to DNR.
- Region project teams are responsible for fulfilling all mitigation requirements.

6.0. Let contract special provisions

- Standardized special provisions are currently being developed for the state-listed fish BITP/A. Until they are available, project teams must develop project-specific special provision (SPV) articles to fulfill the requirements of the BITP/A in construction.
- Project teams must carefully review the BITP/A requirements to ensure that necessary elements are developed into clear contract language. Copy/pasting the language directly from the BITP/A may not be appropriate for all measures.
- The article should be written to relay the relevant exceptions to the contractor to allow them to develop their bid. Some BITP/A measures are specific to project design considerations and should not be included in the SPV as written.
- For example, permanent habitat loss mitigation (BITP/A measure #12) must be evaluated and coordinated in design. As appropriate, habitat restoration/creation plans will be incorporated into the overall project plan set and special provisions.
- Ensure that special provision language includes:
    - Specific in-stream restriction dates for cofferdam installation during the listed fish spawning period (see section 3.0 in this guidance document for details). This restriction should be included in the prosecution and progress article of the project special

provisions. Ensure that any other non-listed/common fish (or aquatic species) instream restriction dates are also clearly stated.

- Who is responsible for providing the fish biologist (WisDOT or contractor). Ensure that if the contractor will be providing the fish biologist, that the SPV contains sufficient detail regarding professional expertise and the DNR regulatory removals permit requirements.
- A statement that WisDOT Construction Engineer leads any necessary coordination with DNR during construction.
- A description of acceptable, clean material that the contractor may use to fill gaps in cofferdam if needed (e.g., sand, ground corn).
- A requirement for the slow/gradual removal of the cofferdams to allow sediment to settle out of the water column.

7.0 DNR coordination/approvals

- Review the details of the BITP/A to understand when the DNR Endangered Resources Transportation Liaison coordination and approval is required prior to proceeding. WisDOT staff are responsible for initiating and leading any coordination with DNR regarding elements of the BITP/A implementation. This may be the WisDOT Project Manager, Construction Engineer, REC and/or Stormwater and Erosion Control Engineer (SWECE).
- The fish biologist is given some discretion for decision making without DNR's direct involvement/approval during the dewatering recovery effort (e.g., BITP/A measure #8, determining when the removal effort is considered sufficient).
- Some decisions require approval by the fish biologist and the DNR Endangered Resources Transportation Liaison (e.g., BITP/A measure #6 C, alternative method proposed by the contractor to protect the pump inlet).
- WisDOT must ensure that the final report (BITP/A measure #9) is prepared by the fish biologist and submitted to DNR within 60 days of fish removals. WisDOT must retain a copy of the report in the project file.

8.0 Examples of pump inlet protection

Photos showing previously utilized pump inlet protection as described in BITP/A measure #6.