

## **Attachment to the DNR/DOT Cooperative Agreement**

Memorandum of Understanding  
by and between the  
Wisconsin Department of Natural Resources (DNR)  
and the  
Wisconsin Department of Transportation (DOT)  
on  
**Aquatic Connectivity at Road-Stream Crossings**

### **I. Purpose**

DNR and DOT recognize the importance of aquatic connectivity (ACONN). This attachment formalizes a mutual departmental commitment to efficiently and consistently address aquatic connectivity at road-stream crossings on WisDOT administered transportation activities subject to the DNR/DOT Cooperative Agreement (COA) to protect the public interest regarding natural resources while providing a safe, economical and efficient transportation system. ACONN is defined as the transfer of matter, energy and organisms by water within and between all components of the stream ecosystem and floodplain. This attachment uses the term ACONN, which is synonymous with aquatic organism passage.

### **II. Background**

Historically, culverts have not been designed to provide ACONN accommodations. Rather, culverts were primarily designed to efficiently pass water while protecting the roadway. This practice has, at times, caused unintentional physical, biological and ecological impacts at road-stream crossings, including fragmented species populations, limited access to habitats needed at various life stages (such as spawning), loss of genetic diversity, and decreased carrying capacity of the system. Healthy, self-sustaining fisheries and aquatic organism populations are important to natural ecosystems as well as Wisconsin's economy and recreational opportunities. Additionally, crossings designed to provide for aquatic connectivity are typically more flood resilient and may require less maintenance, such as debris removal.

Protection of waterways is governed by the Public Trust Doctrine found in the Wisconsin Constitution. The State of Wisconsin is responsible for protecting the public interest, including public rights features, in navigable waterways as defined in case law and as outlined in the following state statutes and administrative code: Wis. Stat. ch. 30, Wis. Stat. ch. 281 and Wis. Admin. Code ch. NR 320.

The Wisconsin Constitution, Art. IX, §1 (commonly known as the “Public Trust Doctrine”), which states:

The state shall have concurrent jurisdiction on . . . the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.

and §30.2022 (4), Wis. Stats., which states:

(1) Activities affecting waters of the state . . . that are carried out under the direction and supervision of the department of transportation in connection with highway, bridge, or

other transportation project design, location, construction, reconstruction, maintenance, and repair are not subject to the prohibitions or permit or approval . . . However, at the earliest practical time prior to the commencement of these activities, the department of transportation shall notify the department [DNR] of the location, nature, and extent of the proposed work that may affect the waters of the state.

(2) The exemption under sub. (1) does not apply unless the activity is accomplished in accordance with interdepartmental liaison procedures established by the department and the department of transportation for the purpose of minimizing the adverse environmental impact, if any, of the activity.

### III. **Coordination and Implementation Process**

The procedures outlined below should be followed to provide consistency when applied in conjunction with the liaison procedures and principles that are outlined in the COA.

#### a. **Project Scoping and Initial Project Planning**

DOT should coordinate with DNR early on projects with waterway crossings to identify potential ACONN concerns prior to finalizing scope and budget.

During scoping and initial project planning, DOT will review and consider site conditions at waterway crossings along the project to evaluate potential ACONN concerns and accommodation needs. DOT may use existing tools, such as databases or tracking systems, and consult with region environmental staff and DNR transportation liaisons to determine potential concerns. Example site considerations may include:

- Special waterway designations, such as outstanding or exceptional resource waters (ORW or ERW), wild rice waters, priority navigable waters (PNW), or areas of special natural resource interest (ASNRI), including trout waters
- Presence of endangered, threatened or other listed species
- Other site-specific considerations identified through coordination with DNR

DOT should coordinate with DNR early if preliminary screening indicates potential ACONN concerns, or if there are uncertainties or questions, as ACONN accommodations can affect project scope and budget. This may occur before the Initial Review Letter is requested.

DNR will review internal resources, consult with resource experts and evaluate site conditions to provide recommendations for addressing ACONN.

#### b. **DNR Project Review and Continued Coordination**

When requesting a DNR Initial Review Letter, DOT will include the findings of the preliminary screening for ACONN accommodations (including any crossings previously discussed with DNR during scoping). DOT should include any pertinent data already collected to help DNR develop timely recommendations.

DNR will review the request per the Cooperative Agreement, including the results of the preliminary screening and any crossings scoped for replacement. DNR may also review ACONN accommodations for other crossings within the project limits. DNR will communicate the results and recommendations of their review in the initial review letter or other correspondence. Additionally, the transportation liaison will identify why ACONN accommodations are needed and/or request additional information, when

October 2021

necessary. If there is disagreement, DNR and DOT agree to communicate the differences and come to a mutual resolution. Project coordination will continue as described in the cooperative agreement.

**c. DOT Design Process**

DOT will evaluate the road-stream crossings, with consideration for the recommended ACONN accommodations provided by DNR, to determine the appropriate structure type, geometry and placement. If DOT determines that it is not feasible to implement the DNR recommendations within project plans, DOT shall provide justification as early as possible in project development as to why recommendations cannot be fully incorporated. If there is disagreement, DNR and DOT agree to communicate the differences and come to a mutual resolution.

DOT will continue coordination of the agreed upon ACONN accommodations throughout the project development process and into final design.

Upon development of the construction contract documents, DOT shall clearly identify the ACONN accommodation commitments to minimize the likelihood of unintended field adjustments during construction.

**d. Construction**

During construction, DOT shall ensure that ACONN accommodations are implemented as agreed upon between agencies. DOT construction leaders should clearly communicate the intended ACONN accommodations and other environmental commitments as identified in the construction contract documents to minimize the likelihood of unintended field adjustments.

**IV. Commitments**

**a. Policy Development**

Both agencies, in coordination with one another, shall develop and maintain policy and guidance for their staff for implementation of this Attachment.


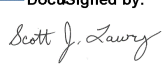
**b. Training**

Both agencies, in coordination with one another, shall be responsible for training their staff on appropriate implementation of this Attachment.

**c. Post Construction Evaluation**

DOT and/or DNR may review various road-stream crossings designed with ACONN accommodations to determine if the design and environmental goals were met. The review may outline what design or construction changes, if any, are recommended for future projects to more effectively or efficiently provide for ACONN accommodations.

**V. Signatures**

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Greg Pils, Bureau of Environmental Analysis & Sustainability Director Wisconsin Department of Natural Resources	Date
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Scott Lawry, P.E., Bureau of Technical Services Director Wisconsin Department of Transportation	Date