Wisconsin Wetlands – Regulations and Mitigation

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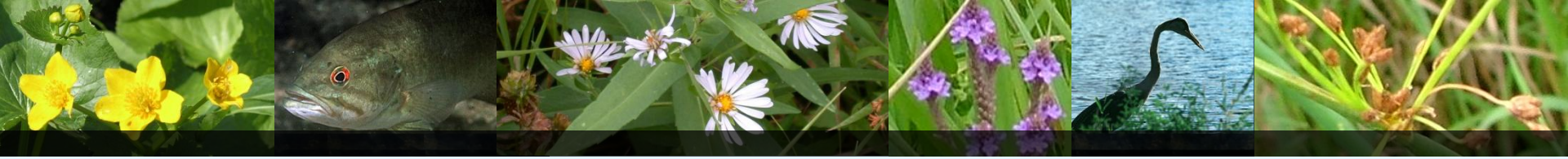
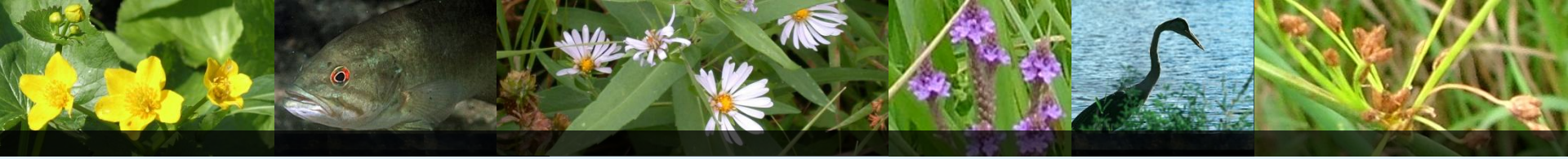


Wetland Legislation

Wisconsin Act 118 - effective July 1, 2012

What's changed:

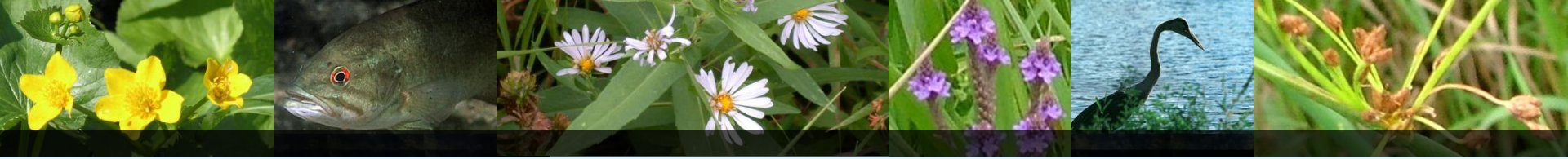
- State wetland permit = Water Quality Certification (WQC)
- All state wetlands are regulated the same
- Permit Process
- Permit Standards, including mitigation



Wetland Legislation

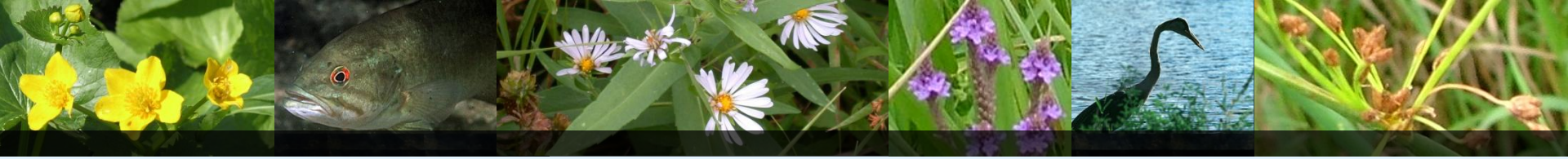
What hasn't changed:

- Definition of wetland
- How wetland boundaries are delineated
- Wetland fill requires state/federal approval
- Mitigation does not guarantee permit



Wetlands - General Permits

- DNR issues category-specific GPs with clear eligibility criteria and conditions
- Fill limit is 10,000 sq. ft. for most GPs
- DNR can prohibit GP in 8 wetland types
- Alternatives analysis remains
- GP standard is projects that result in "minimal environmental wetland impact"



Wetlands General Permit Categories

10,000 sq. ft. Limit

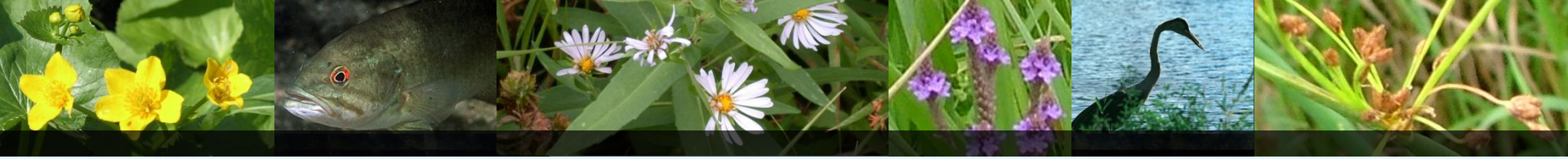
1. Industrial (includes waste disposal sites) — Issued
2. Commercial — Issued
3. Residential — Issued
4. Agricultural
5. Municipal Development
6. Recreational — In development

2 Acre Limit

7. Hazardous Waste Treatment/Disposal
8. Temporary Access/Dewatering

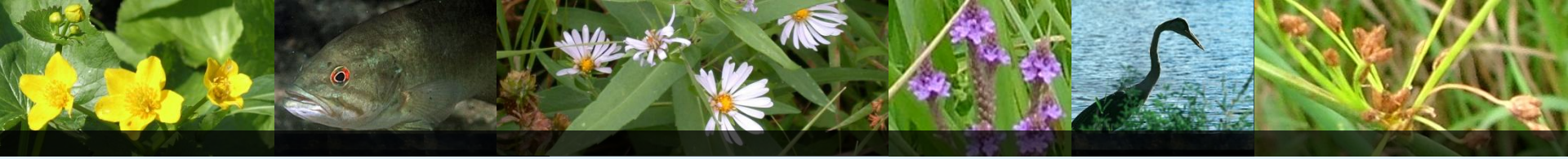
No Limit Specified

9. Utility Construction/Maintenance — In development
10. Municipal Bridge/Culvert Constr/Reconstr/Maint — Issued



Wetlands - Individual Permits

- For projects not authorized by GP
- Pre-application meeting required
- Mitigation required
- Public Notice during permit review
- Practicable Alternatives Analysis required
- Functional Values assessment includes mitigation and other environmental impacts

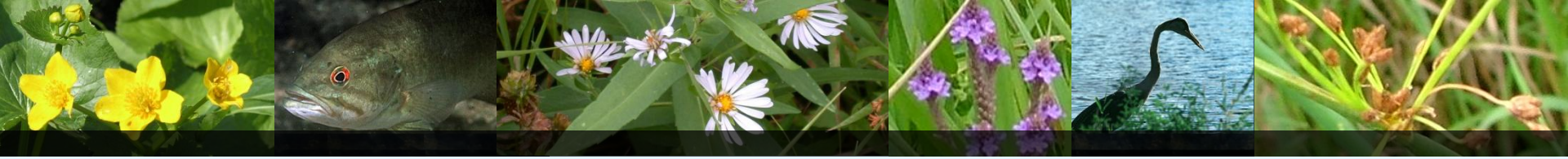


Wetland Compensatory Mitigation

Definitions:

NR350.03: the restoration, enhancement or creation of wetlands expressly for the purpose of compensating for unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved

s.281.36(1), Wis Stats: the restoration, enhancement, creation or preservation of wetlands to compensate for adverse impacts to other wetlands

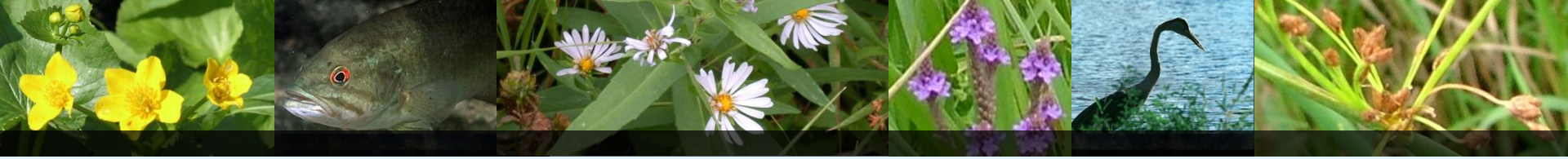


Wetland Compensatory Mitigation

All Wetland IP's now require mitigation!

<u>Methods of Mitigation</u>:

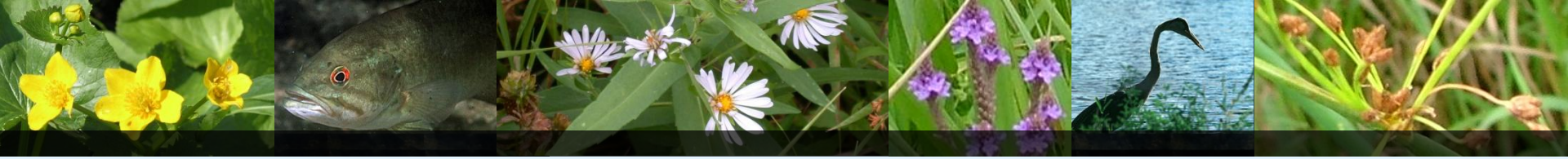
1. **Purchasing credits from an established wetland mitigation bank**
2. **Participating in an In-Lieu Fee program (not yet an option)**
3. **Permittee-Responsible**



Wetland Compensatory Mitigation

Permittee-Responsible Mitigation

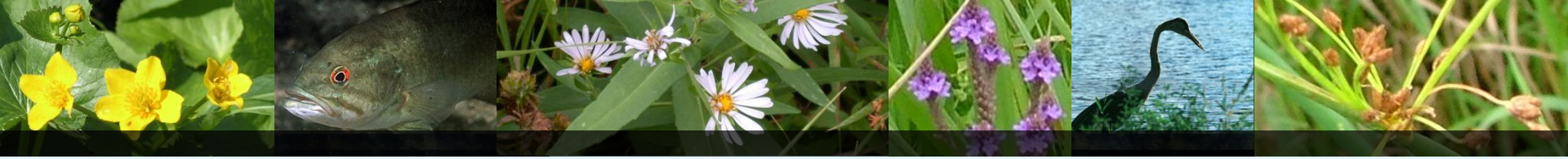
- Specific compensation project done by the landowner as opposed to bank credit purchase
- Must be done within the watershed or within ½ mile of approved wetland impact
- 1.2:1 (credits : acres lost) – will change with Mitigation Guidelines update



Wetland Compensatory Mitigation

Compensation Site Plan Requirements:

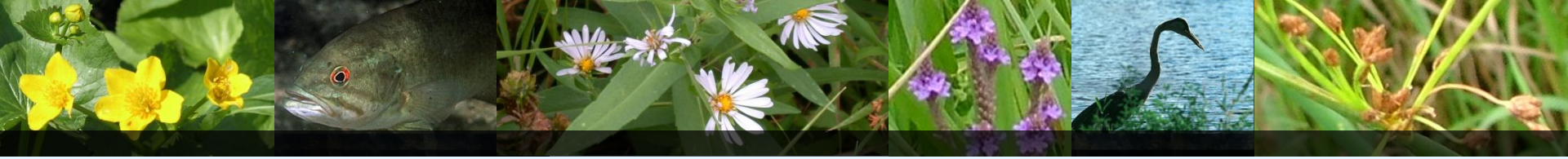
- Goals and objectives
- Performance standards as quantifiable success criteria
- Monitoring plan
- Management plan including maintenance
- Financial assurances to make sure the project is completed as planned
- Permanent protection, typically in the form of a conservation easement, to protect the site in perpetuity



Wetland Compensatory Mitigation

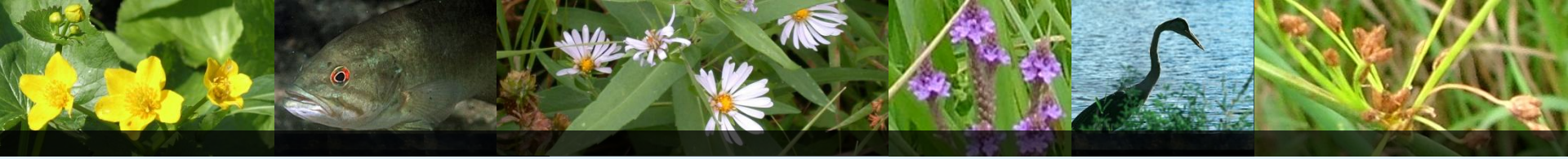
Wetland Mitigation Banking

- **Site developed to sell "credits" from restored wetlands to account for wetland losses elsewhere**
- **Required credit purchase ratio**:
  - 1.2:1 minimum (credits : acres lost) if same watershed or ½ mile, minimum
  - 1.32:1 if different watershed, minimum
  - Ratios will change with Mitigation Guidelines update



Wetland Mitigation Banks

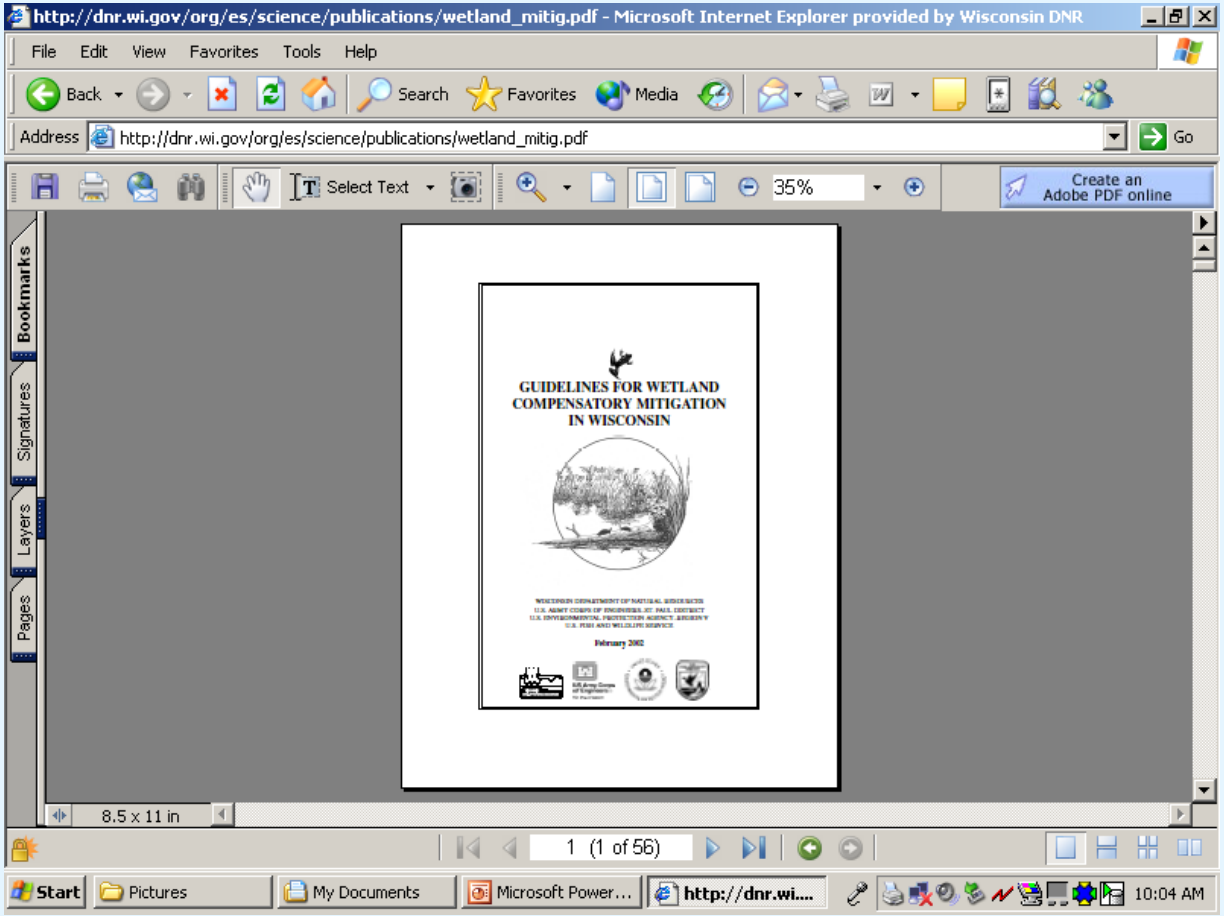
- **Review of new banks done by Interagency Review Team (IRT)**
  - Army Corps (lead), DNR, EPA, NRCS, USFWS
- **Begins with Prospectus**
- **Requires Mitigation Banking Instrument (MBI), including Compensation Site Plan details and legal instrument for selling credits**

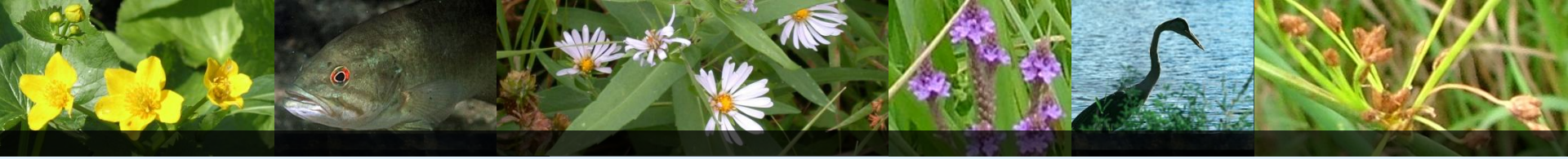


Guidelines for Wetland Compensatory Mitigation Projects and Banking

“Guidelines” Document

Currently being revised to address 2008 federal rule and 2012 state law.

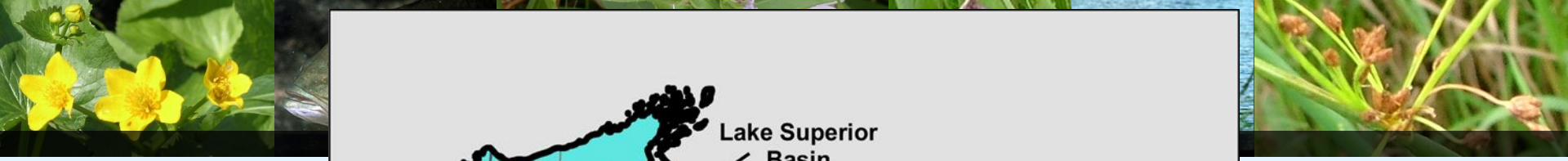




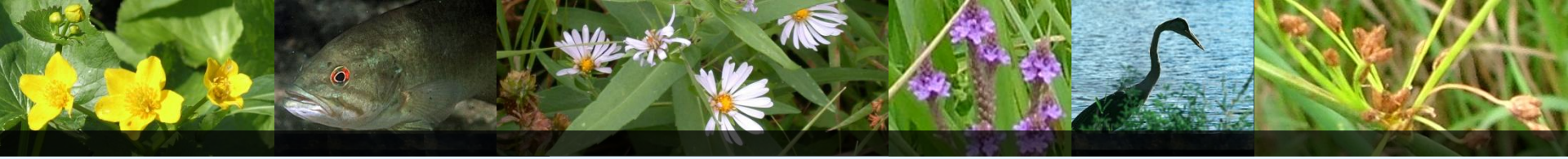
Mitigation Guidelines

Major Changes

- **Watershed Approach**
- **In-Kind Mitigation Preferred**
  - Different community types identified, credit sales from banks will be tracked by type
- **Ratio changes**
  - Increases for bank purchase outside bank service area, out-of-kind, temporal loss



Lake Superior Basin
Lake Superior
Lake Michigan Basin
St. Croix
Upper Wisconsin
Chippewa
Northwestern Lake Michigan
Upper Mississippi Black-Root
Fox
Lake Michigan shoreline detail
Lower Wisconsin
Mississippi River Basin
Southwestern Lake Michigan
Port Washington
Lake Michigan
Rock
Upper Mississippi Maquoketa-Plum
Upper Illinois
Milwaukee
0 3 Miles
Major Basins
HUC-8 Boundaries
County Boundaries
N
W
E
S
0 25 50 100 Miles



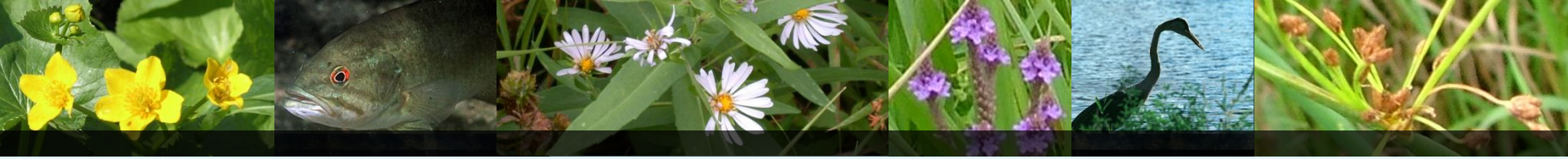
Guidelines Ratio Changes

Bank Credit Purchase Ratios

Impacted Wetland Cover Type	Starting Ratio* (Credits Required : Wetland Acres Impacted)	Reductions to Starting Ratio	
		Within the BSA	In-Kind Compensation
All Community Types	1.7 : 1	- 0.25	- 0.25

Permittee-Responsible Ratios

		Reductions to Starting Ratio	
Impacted Wetland Cover Type	Starting Ratio* (Credits Required : Wetland Acres Impacted)	No Temporal Loss	In-Kind Compensation
Herbaceous and Shrub/Scrub	1.7 : 1	- 0.25	- 0.25
Forested	1.95 : 1	- 0.50	

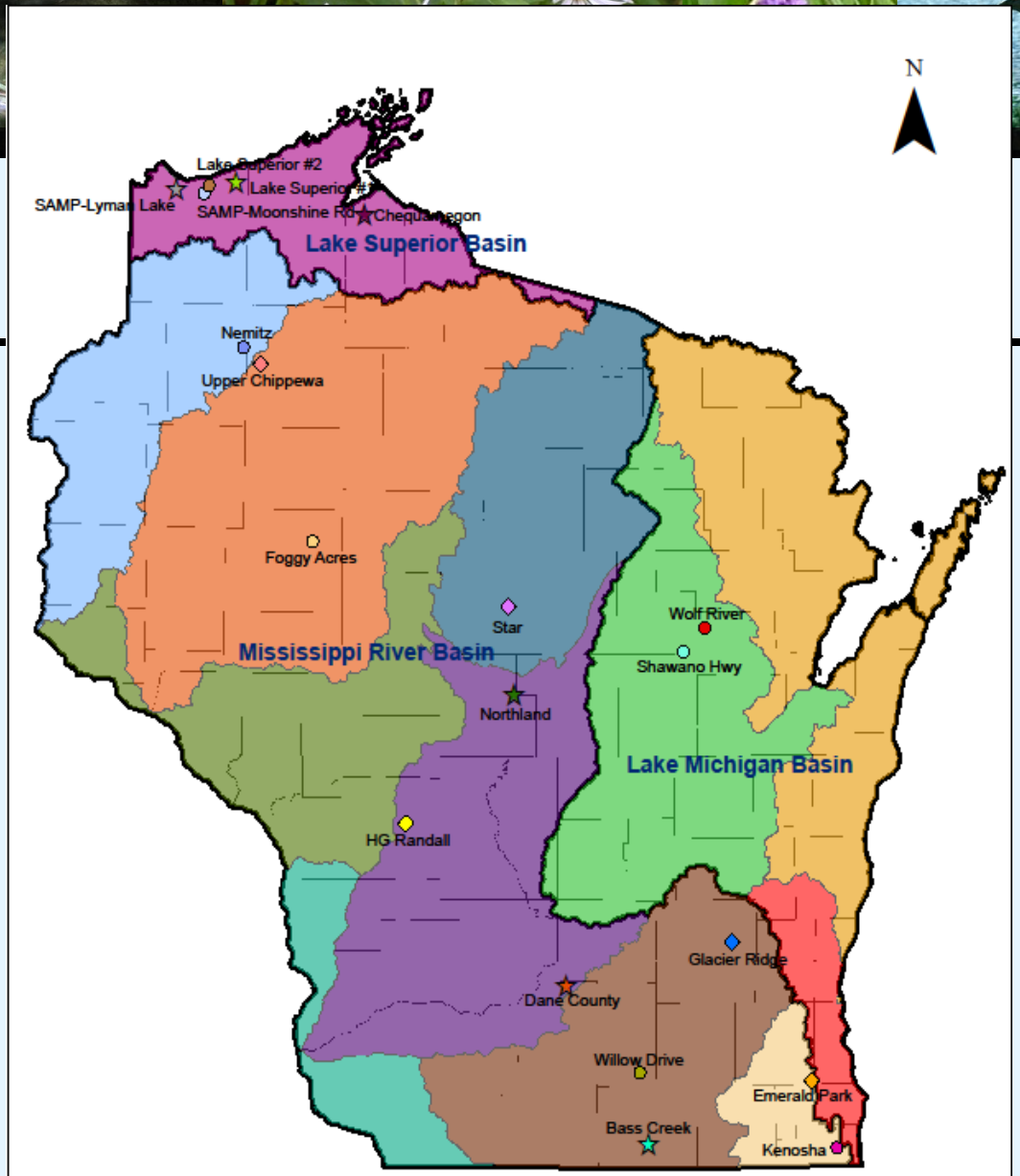


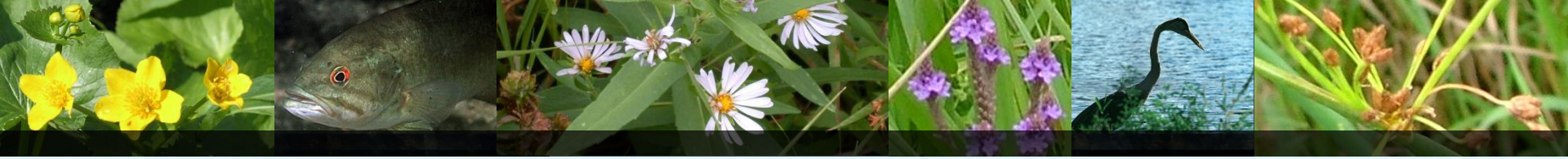
Wetland Mitigation Banks

- **Credit amounts based on method of bank establishment**

Range of Credit Ratio	Typical Credit Ratio	Method
Up to 1.0 : 1	1.0 : 1	Restoration via Re-establishment
Up to 1.0 : 1	1.0 : 1	Restoration via Rehabilitation
Up to 1.0 : 1	0.75 : 1	Enhancement
Up to 1.0 : 1	0.5 : 1	Creation
Up to 0.25 : 1	0.25 : 1	Buffer
Up to 0.125 : 1	0.125: 1	Preservation

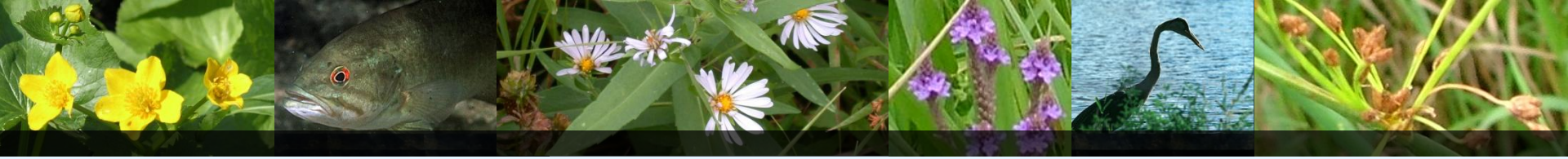
- **Credits released as site develops**


N
Lake Superior #2
Lake Superior #1
SAMP-Lyman Lake
SAMP-Moonshine Rd
Chequamegon
Lake Superior Basin
Nemitz
Upper Chippewa
Foggy Acres
Star
Wolf River
Shawano Hwy
Mississippi River Basin
Northland
Lake Michigan Basin
HG Randall
Glacier Ridge
Dane County
Willow Drive
Emerald Park
Bass Creek
Kenosha
Wetland Mitigation Banks
Approved Mitigation Banks
Approved Mitigation Banks with Credits for Sale
Proposed Mitigation Banks
0 15 30 60 Miles



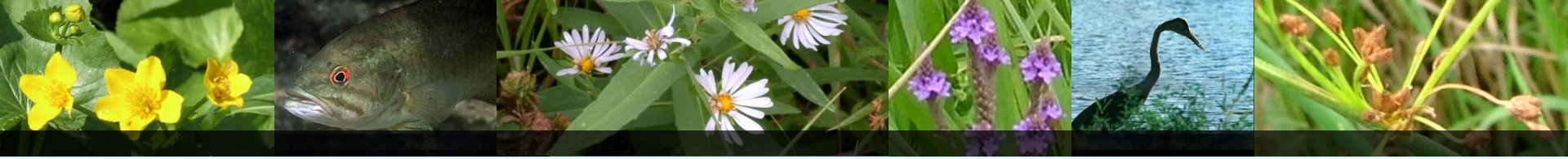
Selecting a Suitable Mitigation Site

- Preferred community types are "in-kind" with the wetland being impacts
- If in-kind is not possible, preference is for wetland types with greatest historic loss within the watershed, such as forested wetlands and sedge meadows
- Buffers should be included – prefer a minimum of 100 feet (if possible)
- Discourage creation of ponds or open water habitats
- Mitigation sites cannot be part of a stormwater management plan



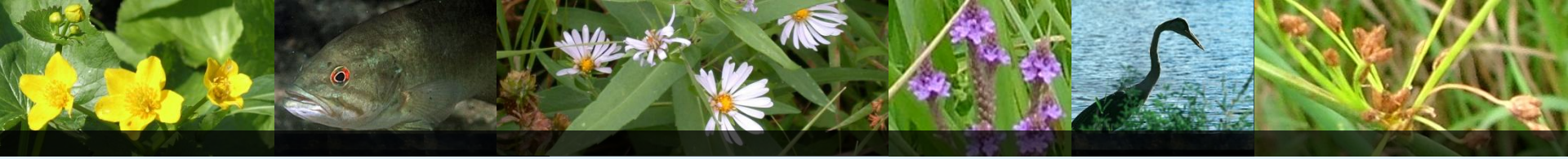
Selecting a Suitable Mitigation Site

- The site chosen contains drained hydric soils
- The site chosen is not too small and fits into the ecological landscape; generally these sites are contiguous with existing wetland resources or where aquatic resources previously existed
- The site chosen has a good potential to maximize functional lift or otherwise provide functional gains over existing conditions
- Ditches, tiles, and other features which impact hydrology are contained within the property boundaries and can be manipulated without negatively impacting neighboring properties
- The site is not likely to receive continual inputs of undesirable vegetative species (invasive, non-natives).
- Upland buffers provide adequate wetland protection from adjacent present and future land uses.



Selecting a Suitable Mitigation Site

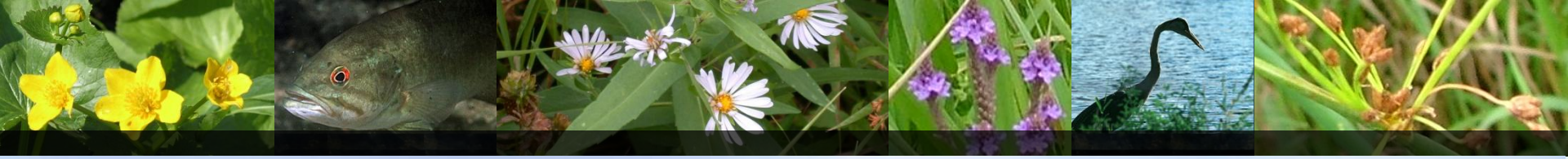
- **The work proposed will not result in an adverse impact to federal or state endangered, threatened, or special concern species.**
- **The work proposed will not threaten or degrade high quality upland habitat, such as prairie remnants and oak savannas.**
- **The site offers the opportunity to provide or enhance wetland functions and services as well as ecological or hydrological functions and services missing in the surrounding landscape or watershed**
- **The site has a suitable reference wetland that can be used to assess the predicted final product of the compensation site**
- **The site will not require long-term structural maintenance to sustain targeted community types, functions and services.**

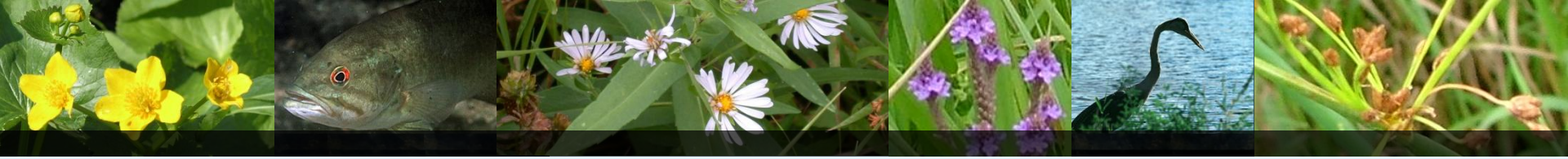


Wetland Compensatory Mitigation

Good Restoration Practices

- Remove fill
- Fill ditches
- Remove tiles
- Remove alluvium
- Restore adequate upland buffers
- Control invasive plants
- Reestablish original contours





Wetland Regulations & Mitigation

For More Information:

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DNR Website:

http://dnr.wi.gov/topic/wetlands