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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Natural Resources and  
Transportation (SC-NRT)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Mike Barman (LRB) (July/2012)



- Caryl Terrell, Madison — Sierra Club - John Muir Chapter
- Karen Etter Hale, Madison — WI Audobon Council and Madison Audobon Society

Registrations Against

- Sandra Verhulst, Arbor Vitae — self

March 11, 2005

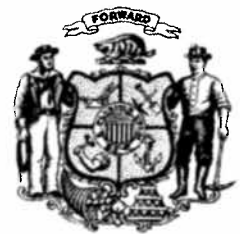
**NO ACTION TAKEN**

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Dan Johnson  
Committee Clerk



# WISCONSIN STATE LEGISLATURE



## Streamlining the Permit Process while Protecting Public Waters

# Proposed Rule on In-Water Boathouses – NR 325

### Summary of Rule Proposal

Minor revisions are proposed to NR 325, the state's rules related to Boathouses and Fixed Houseboats in navigable waters. The revisions clarify a new statutory provision related to Commercial Boathouses built on contaminated lands (brownfields) or blighted areas, provide standards and procedures to qualify for a statutory exception to construction and repair limits, and make some minor housekeeping changes.

Wisconsin Statutes prohibits new construction or placement of a fixed houseboat or boathouse built over the water (sometimes called "wet boathouses"), but there are some exceptions. The rule revisions will help individuals understand if they qualify for an exception, and provide an opportunity to obtain a written certification from DNR, similar to the certification that's currently available for boathouse and fixed houseboat repair.

### Why is this an issue for our waters?

In-water boathouses and fixed houseboats are located in the shallow waters that are critical habitat on our lakes and rivers. They also tend to be very visible to folks who are boating and fishing on waterways.

### Background on Regulations

Historically, the construction of in-water boathouses was considered to be a right of any waterfront property owner. Beginning in 1933, state law prohibited boathouses and other structures in navigable waters due to navigational concerns. In 1949, a state law allowed property owners to apply for a permit to construct a boathouse or fixed houseboat.

Lawmakers began to recognize the increasing loss of habitat and natural scenic beauty of Wisconsin shorelines, and in 1979 they established a law regulating these structures in section 30.121, Wisconsin Statutes, that remains in effect today. Existing boathouses and houseboats that existed in 1979 were allowed to remain, be maintained and repaired with a cost limit of 50% of the value of the structure over its lifetime. New in-water boathouses and fixed houseboats were prohibited beginning with this same 1979 law.

Over the years, changes to the statute have added four exceptions to the repair limit and construction prohibition for boathouses or fixed houseboats. These exceptions are:

- Structures with historic or cultural value
- Single-story structures over an approved waterway enlargement
- Boathouses damaged by wind, vandalism or fire after January 1, 1984
- Commercial boathouses in certain locations

### Existing Rules

NR 325, Wisconsin Administrative Code, was adopted to implement the 1979 law changes. The rule became effective in September 1980 and has been essentially unchanged for the last 24 years. NR 325 establishes a procedure for boathouse owners to contact DNR when they want to do repair and maintenance on their boathouse, and to obtain a written certification from DNR that their project is within the 50% limit.

### What's being proposed?

NR 325 has not been updated to reflect the various statutory exceptions that have been added to the statute over the years. The most recent change to the statute was in February of 2004, when the exception was added to allow construction of new commercial boathouses under certain circumstances.

The purpose of the proposed revisions to NR 325 is to modify the existing rule to reflect the four statutory exceptions. The language establishes standards and clarifies procedures for obtaining certification of boathouse or fixed houseboat repair, and creates a comparable procedure for obtaining certification that a project is eligible for a statutory exception. Some "housekeeping" changes are also proposed, to add greater clarity to some of the rule's definitions and requirements.

### **Issues & Alternatives**

DNR is interested in your input on the proposed rule revisions. We'd also hear any additional ideas you may have, and hear your thoughts on some additional ideas listed here:

- Should all boathouse or fixed houseboat repair and maintenance require a DNR certification, to ensure consistency and accurate tracking? - Currently the rule does not require a certification for the first 10% of repair work.
- Should some minor repair items not be subject to the 50% repair limit? – for example the cost of paint or stain.
- Should the boathouse or fixed houseboat owner submit the names of all prior owners back to 1979, to allow for accurate identification of past repair work?
- Should boathouse or fixed houseboat owners who are not the waterfront property owner have a comparable procedure for obtaining certification of repair and maintenance?
- Should enforcement language be modified to improve procedures for addressing abandoned boathouses or fixed houseboats, and to require compliance with the statute and the rule, not just the 50% repair limit?

### **What do YOU think?**

DNR seeks your input on the proposed rules. You can participate in one of several ways.

Fill out a written questionnaire at a public hearing **open house**.

Send comments over the **internet** at

<https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmold=167>

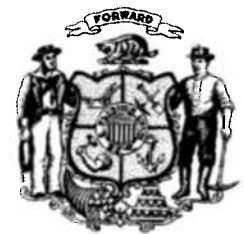
**Testify** at a public hearing (see locations, dates and times by clicking on DNR's page, then on "Permits & Licenses," then "Waterway & Wetlands.")

**Mail** your written comments to Ms. Roberta Lund, DNR-FH/3, P.O. Box 7921, Madison, WI, 53707-7921.

**Comments accepted through August 9, 2004**



# WISCONSIN STATE LEGISLATURE



## Clearinghouse Rule 04-063

### ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 325.065 and 325.13; renumber NR 325.07(5), 325.10 and 325.11; renumber and amend NR 325.08 and 325.12; amend NR 325.01, 325.06(1) and 325.07 (title) and (1); repeal and recreate NR 325.09; and create NR 325.03(7k) and (9), 325.07(5) and 325.08 relating to boathouses and fixed houseboats in navigable waterways.

FH-41-04

#### Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.121 and 227.11(2), Stats.

Statutes interpreted: s. 30.121, Stats.

Explanation of Agency Authority:

The Department has authority under s. 30.121(6), Stats., to promulgate rules necessary to carry out regulation of boathouses and houseboats.

Related Statute or Rule:

The statutory provision for commercial boathouse exception references brownfields defined in s. 560.13(1)(a), Stats., and blighted areas defined in s. 66.1331(3)(a), Stats. The rule refers to "equalized assessed value" as determined by s. 70.32, Stats.

Plain Language Analysis:

The purpose of this rule revision is to modify the existing rule to reflect the exceptions. This rule revision establishes standards and clarifies procedures for obtaining certification of boathouse repair or eligibility for a statutory exception. This order makes some minor changes to existing ch. NR 325 to bring into accordance with the provisions of Act 118 allowing an exception to the limits on over-water boathouses for some commercial boat houses.

Federal Regulatory Analysis:

Any activity that results in a discharge (including deposits and structures) into "waters of the United States" is regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. An Individual Permit from the Corps is required, unless Wisconsin regulates the project in its entirety under chapter 30, Stats., in which case the project is authorized by the Corps under general permits GP-01-WI or GP-LOP-WI. Dredging or discharge into waters declared navigable under Section 10, Rivers and Harbors Act, 1899 is also regulated, and requires an Individual Permit from the Corps.

Comparison with Adjacent States:

**Minnesota** is generally more restrictive and their decision-making criteria are specific. Minnesota requires a permit for construction, reconstruction, relocation, removal, or repair of a boathouse. Permits are only granted if the boathouse is in an area of historic boathouse use, is approved by a resolution of the local government, and was located on public waters prior to January 1, 1997.

**Michigan** is generally less restrictive and their decision-making criteria are more subjective. A general permit is required for construction of a new boathouse, and the applicant is required to minimize the size, use and environmental impacts of the structure.



**Illinois** is generally less restrictive and their decision-making criteria are more subjective. A permit is required to place a structure over any state-owned land or water. Construction in the floodway of rivers, lakes and streams is also regulated.

**Iowa** is generally more restrictive, though their decision-making criteria are subjective. A Sovereign Lands Construction Permit from the Iowa Department of Natural Resources is required. The applicant must analyze the availability of alternatives and measures proposed to prevent, minimize or mitigate adverse impacts to natural resources or public use of the affected area.

Summary of Factual Data and Analytical Methodologies:

The existing rule uses "current equalized assessed value" as determined by s. 70.32, Stats., for determining the value of an existing houseboat or boathouse. If not the structure is not assessed, the fair market value is used as certified by a competent appraiser using standard real estate techniques.

Analysis and Documents supporting determination of Small Business Effect:

Anticipated Private Sector Costs:

Effect on Small Business:

Agency Contact Person: Liesa Nesta, Liesa.Nesta@dnr.state.wi.us, (608) 266-2997

Place where comments are to be submitted and deadline for submission: Ms. Roberta Lund, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than August 9, 2004.

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SECTION 1. NR 325.01 is amended to read:

**NR 325.01 Purpose.** These rules are promulgated pursuant to ss. 30.121 and 227.11(2)(a) and (b), Stats., in order to establish a valuation program for boathouses and fixed houseboats, to define terms used in s. 30.121, Stats., and other terms necessary to the administration of s. 30.121, Stats., and these rules, and to establish standards and procedures for certification of maintenance and repair costs, certification of eligibility for exceptions, and procedures for the department to use in obtaining removal of abandoned boathouses and fixed houseboats or boathouses which materially obstruct navigation.

SECTION 2. NR 325.03 (7k) and (9) are created to read:

**NR 325.03 (7k)** "Navigable waterway" means any body of water with defined bed and banks, which is navigable under the laws of the state. In Wisconsin, a navigable body of water is capable of floating the lightest boat or skiff used for recreation or any other purpose on a regularly recurring basis.

**(9)** "Ordinary high water mark" 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 characteristics.

SECTION 3. NR 325.06(1) is amended to read:

**NR 325.06 Repair and maintenance cost. (1)** Owners of boathouses or fixed houseboats shall obtain a certification from the department that all needed repair and maintenance costs total less than 50% of the current ~~valuation-value~~ of the structure prior to performance of the maintenance of repairs.

SECTION 4. NR 325.065 is repealed.

SECTION 5. NR 325.07 (title) and (1) is amended to read:

**NR 325.07 (title) Certification procedure for repair and maintenance.** (1) Except as provided for in s. NR 325.06 (2), owners of boathouses or fixed houseboats wishing to perform maintenance or repairs shall request certification that all required maintenance and repairs do not exceed 50% of the current value. The request for certification shall be made to the department ~~district director of the district within which the boathouse or fixed houseboat is located~~ and shall contain the information set forth in ss. NR 325.05 and ~~325.08~~ 325.09(1) and (2).

SECTION 6. NR 325.07 (5) is renumbered to (6).

SECTION 7. NR 325.07 (5) is created to read:

NR 325.07(5) The department certification shall contain a requirement that the boathouse owner record the certification with the register of deeds for the municipality where the boathouse is located, and that the boathouse owner submit an affidavit showing proof of recording prior to commencing repairs.

SECTION 8. NR 325.08 is renumbered to NR 325.10, and as renumbered is amended to read:

**NR 325.10 (title) Maintenance and repair cost certification Certification information.** (1) ~~REQUIRED INFORMATION. Plans or photographs with a locational~~ For certification requests filed pursuant to s. NR 325.07, an application form including plans, photographs and a location sketch shall be prepared by the applicant submitted to the department showing the following information for use ~~by the department.~~

(a) *Location.* The waterway upon which the boathouse or fixed houseboat is located, the legal description of the adjacent property and directions to the site ~~shall be provided.~~

(b) (title) *Owner or lessee.* The ~~owner or lessee's~~ owner's name, address, fire number (if available) and telephone number ~~shall be provided.~~

(c) *Features.* Information about the following features and their state of repair ~~shall be provided as a part of the required certification information:~~

1. Boathouses.
  - a. Foundations.
  - b. Structural framework.
  - c. Siding.
  - d. Roofing.
  - e. Presence and description of living quarters, if any.
2. Fixed houseboats.
  - a. Devices used to secure the fixed houseboat to the bank or bed.
  - b. Floatation devices.
  - c. Superstructure framework.
  - d. Siding.
  - e. Roof.
  - f. Presence and description of living quarters, if any.

(2) STATEMENT OF MAINTENANCE OR REPAIRS. ~~The~~ For certification requests filed pursuant to s. NR 325.07, the applicant shall provide a statement of all needed maintenance or repair items regardless of whether the maintenance or repair will be done within one year of the statement. An estimate of labor and material cost associated with those items shall be submitted. Estimates may be prepared by the applicant

or by a contractor or contractors representing the applicant. Volunteer labor shall be valued at the prevailing minimum wage rate.

(3) CERTIFICATION OF EXCEPTION. For certification requests filed to seek an exception pursuant to s. NR 325.08, an application form including plans, photographs and a location sketch shall be submitted showing the following information:

(a) Location. The waterway upon which the boathouse or fixed houseboat is located, the legal description of the adjacent property and directions to the site.

(b) Owner. The owner's name, address, fire number (if available) and telephone number.

(c) Historic or cultural value. For applications to request an exception under s. 30.121(3g), Stats., documentation to demonstrate that the boathouse or fixed boathouse has been designated as a national, state or local historical landmark.

(d) Single-story boathouse. For applications to request an exception under s. 30.121(3m), Stats., documentation to demonstrate that the waterway enlargement has been authorized by the department, and that the project meets the standards in s. 30.121(3m), Stats.

(e) Damaged boathouse. For applications to request an exception under s. 30.121(3r), Stats., documentation to demonstrate that the project meets the standards in s. 30.121(3w), Stats., and s. NR 325.09.

(f) Commercial boathouse. For applications to request an exception under s. 30.121(3w), Stats., documentation to demonstrate that the project meets the standards in s. 30.121(3w), Stats., and s. NR 325.09.

SECTION 9. NR 325.08 is created to read:

**NR 325.08 Certification procedure for exceptions.** (1) Owners wishing to repair or maintain a boathouse or fixed houseboat pursuant to s. 30.121(3g), Stats., construct, repair or maintain a single-story boathouse pursuant to s. 30.121(3m), Stats., repair or reconstruct a boathouse pursuant to s. 30.121(3r), Stats., or construct, repair or maintain a boathouse pursuant to s. 30.121(3w), Stats., shall request certification that the proposed activity is eligible for an exception. The request for certification shall be made to the department and contain the information in ss. NR 325.09 and 325.10.

(2) The department shall review the information submitted by the applicant for certification, and shall inspect the boathouse or fixed houseboat or the site of the proposed boathouse.

(3) The department shall within 60 days issue a certification as requested, if the department agrees that the proposed activity is eligible for a statutory exception.

(4) The department shall within 60 days deny certification if the department determines that the proposed activity does not meet the requirements of s. 30.121, Stats., and this chapter to be eligible for an exception. Any owner denied certification may review the denial pursuant to s. 227.42, Stats.

SECTION 10. NR 325.09 is repealed and recreated to read:

**NR 325.09 Standards.** (1) MAINTENANCE. In addition to the requirements of s. 30.121(3), Stats., repair and maintenance of existing boathouses and fixed houseboats shall meet the following conditions:

(a) Repair and maintenance is limited to the 3-dimensional envelope of the existing boathouse or fixed houseboat. No expansion of the boathouse or fixed houseboat in any direction is allowed.

(b) Repair and maintenance may not include any change in roof pitch or addition of decks, walkways, railings or other architectural features.

(c) Decks, walkways, railings or piers that are attached or adjacent to the boathouse or fixed boathouse shall be considered part of the boathouse or fixed houseboat, and shall be subject to the repair limitations of s. 30.121(3), Stats.

(2) DAMAGED BOATHOUSE. In addition to the requirements of s. 30.121(3r), Stats., repair or reconstruction of a damaged boathouse shall meet the following conditions to be eligible for an exception:

(a) The boathouse owner shall demonstrate that the boathouse was damaged by violent wind, vandalism or fire. Documentation shall include photographs that depict the boathouse before and after the damage.

(b) The boathouse owner shall demonstrate that the damage occurred after January 1, 1984.

(c) Repair and reconstruction is limited to the specific portions of the boathouse that were damaged. Any other proposed work on the boathouse that is not related to specific damage caused under pars. (a) and (b) is subject to the limitations of s. 30.121(3), Stats., the procedures of s. NR 325.07 and the standards in sub. (1).

(3) COMMERCIAL BOATHOUSE. In addition to the requirements of s. 30.121(3w), Stats., a commercial boathouse shall meet the following conditions to be eligible for an exception.

(a) The boathouse may not be located over natural navigable waters, and may only be located over an artificial waterway enlargement authorized under s. 30.19, Stats.

(b) The boathouse may only be located on a Great Lakes waterbody or on a riverfront property that is within 2 miles of and tributary to a Great Lakes waterbody.

(c) The boathouse may only be located landward of an existing bulkhead line.

(d) The bulkhead line shall have been established prior to January 1, 1970.

SECTION 12. NR 325.10 and 325.11 are renumbered to NR 325.11 and 325.12, respectively.

SECTION 13. NR 325.13 is repealed.

SECTION 14. NR 325.12 is renumbered to NR 325.13, and as renumbered is amended to read:

**NR 325.13 (title) ~~Removal procedure for disrepaired or obstructing boathouses or fixed houseboats~~ Enforcement.** Upon complaint or upon its own motion the department shall order the removal of boathouses or fixed houseboats which materially obstruct navigation or are in a major state of disrepair pursuant to the provisions of s. 30.03(4)(a), Stats. Forfeitures and abatement for violations of s. 30.121, Stats., and this chapter may also be prosecuted by the department pursuant to the provisions of ss. 23.50, 23.79 and 30.03 (2), Stats.

SECTION 15. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 16. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)