



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-045

AN ORDER to renumber NR 324.05; to amend NR 324.05 (6); to repeal and recreate NR 324.03 (1), (2) and (4); and to create NR 324.03 (5), 324.10 (3) and 324.13, relating to the regulation of fishing rafts on the Wolf river and its tributaries.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-08-02 RECEIVED BY LEGISLATIVE COUNCIL.

04-29-02 REPORT SENT TO AGENCY.

RS:REL:tlu;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

NO



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Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 30.01 (1p), Stats., defines the term "fishing raft" in part to mean any raft, float or structure that is designed to be used or is normally used for fishing, that is not normally used as a means of transportation on water and that is normally retained in place by means of a permanent or semi-permanent attachment to the shore or the bed of the waterway. Section NR 324.03 (1) is repealed and recreated to define the term "fishing raft" to include a boat. If the intent of the rule provision is to state that *any* boat will be considered to be a fishing raft, then the department should explain the statutory authority for the provision, in light of the statutory requirement that a fishing raft is something that is not normally used as a means of transportation on water. However, if the intent of the provision is to state that a boat is a fishing raft when it is designed to be used or is normally used for fishing, when it is not normally used as a means of transportation on water and when it is normally retained in place by means of a permanent or semi-permanent attachment to the shore or to the bed of a waterway, then the rule should clearly so state.

2. Form, Style and Placement in Administrative Code

a. In the plain language analysis of the rule, the notation "s. NR 324.03 (1)" should be changed to "s. 30.01 (1p), Stats.," the statutory cite for the definition of "fishing raft." Also, in the statement of authorizing statutes, the citation "(6a)" should be replaced by the citation "(6)(a)."

b. In s. NR 324.03 (1), "as used in s. 30.01 (1p), Stats., may include a boat" should be changed to "has the meaning given in s. 30.01 (1p), Stats., and may include a boat."

c. In s. NR 324.03, the repealed and recreated definitions in subs. (2) and (4) and the newly created sub. (5) cause the definitions section of the rule to be out of alphabetical order, since the definition of "Riparian" in the current rule remains as sub. (3). The definitions in s. NR 324.03 should be renumbered to be in alphabetical order. Also, it is suggested that the definition of "Wolf river municipality" be retained, but amended to read "has the meaning given in s. 30.01 (10), Stats."

Report to
Legislative Council Rules Clearinghouse
NR 324, Wis. Adm. Code
Natural Resources Board Order No. FH-17-02

Wisconsin Statutory Authority

ss. 30.10(2), 30.126(5)(j) and (6a) and 227.11(2)(a), Stats., interpreting s. 30.126(5) and (6), Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Fishing rafts have long existed along certain stretches of the Wolf River. In the last 10-15 years, an increasing number of unauthorized structures have been placed along the shoreline. Some owners have registered these nonconforming structures as fishing rafts, to avoid local zoning requirements. A committee consisting of county zoning administrators, Department staff and interested citizens was assembled to explore growing concerns about these nonconforming structures. The outcome of this was the development of a unified Wolf River raft ordinance, which has been passed by a majority of Wolf River townships. The zoning administrators and committee members asked the Department to assist and support their efforts by providing a clearer description of what constitutes a fishing raft. The proposed revisions to ch. NR 324 will:

1. Recognize that registering a structure as a boat does not relieve the owner from also registering the structure as a fishing raft if it meets the definition of s. NR 324.03(1).
2. Provide a clearer definition for fishing rafts to assure that structures more appropriately considered residences or storage sheds do not fall within the definition of a fishing raft.
3. Delete several provisions which are unnecessarily duplicative of statutory language.
4. Modify the requirements for proving riparian status due to court decisions which hold that easements and leases do not establish riparian owner status.
5. Clarify the requirements for seasonal removal from the waterway.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Liesa Nesta, Bureau of Fisheries Management and Habitat Protection - 266-2997
Michael Lutz, Bureau of Legal Services - 267-7456
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on April 9, 2002

Cassidy v. DNR
132 W 2d 153
390 NW 2d 81
(CI App 1986)

deNava v. DNR
140 Wis 2d 213
(CT App 1987)

- Some provisions on easements ground attached

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

The State of Wisconsin Natural Resources Board adopts an order to renumber NR 324.05; to amend NR 324.05(6); to repeal and recreate NR 324.03(1), (2) and (4); and to create NR 324.03(5), 324.10(3) and 324.13 relating to the regulation of fishing rafts on the Wolf river and its tributaries.

FH-17-02

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 30.10(2), 30.126(5)(j) and (6a) and 227.11(2)(a), Stats.
Statutes interpreted: s. 30.126(5) and (6), Stats.

statutory
This rule change is designed to deal with attempts by some individuals on the Wolf river to avoid floodplain/shoreland zoning restrictions by registering what for all practical purposes is a temporary residence as a fishing raft. Others have tried to avoid the fishing raft restrictions by registering their structure as a boat. This rule will recognize that registering a structure as a boat does not relieve the owner from also registering the structure as a fishing raft if it meets the definition of s. NR 324.03(1). The rule also creates standards for fishing rafts to assure that structures more appropriately considered residences or storage sheds do not fall within the definition of a fishing raft. The rule deletes several provisions which are unnecessarily duplicative of statutory language. The rule also modifies the requirements for proving riparian status due to court decisions which hold that easements and leases do not establish riparian owner status, and clarifies the requirements for seasonal removal.

SECTION 1. NR 324.03(1), (2) and (4) are repealed and recreated to read:

NR 324.03(1) "Fishing raft", as used in s. 30.01(1p), Stats., may include a boat.

(2) "From the waterway" for the purposes of s. 30.126(5)(f), Stats., and this chapter, means above and landward of the ordinary high water mark.

alphabetically
Rip-
(4) "Normally retained in place by means of a permanent or semi-permanent attachment to the shore or the bed of the waterway", for purposes of s. 30.01(1p), Stats., and this chapter, means a placement waterward of the ordinary high water mark and on the water for a minimum of 14 consecutive days in each year.

SECTION 2. NR 324.03(5) is created to read:

NR 324.03(5) "Ordinary high water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic. And where the bank or shore at any particular place is of such character that it is impossible or difficult to ascertain where the point of ordinary high water mark is, recourse may be had to

other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below the ordinary high water mark.

SECTION 3. NR 324.05 is renumbered NR 324.05(intro.), (1) to (6) and NR 324.05(6), as renumbered, is amended to read:

NR 324.05(6) Written permission from the riparian owner of the site at which the ~~rafts~~ raft is to be located ~~to anchor or moor a fishing raft~~ or proof of riparian ownership such as a copy of a deed, ~~lease, easement~~ or tax ~~receipt~~ statement.

SECTION 4. NR 324.10(3) is created to read:

NR 324.10(3) No owner may maintain a fishing raft which exceeds 512 square feet, has any length or width greater than 32 feet or has a maximum height from the deck to the uppermost roof line greater than 11 feet. An owner may maintain but not expand any fishing raft in violation of this paragraph if the fishing raft was registered prior to January 1, 2001.

SECTION 5. NR 324.13 is created to read:

NR 324.13 Non-compliance. Any structure placed or maintained below or beyond the ordinary high water mark on the Wolf river and its tributaries from the Shawano dam downstream to Lake Poygan which does meet the definition of a fishing raft requires authorization under ch. 30, Stats., and is subject to all applicable zoning regulations.

not necessary?

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on _____.

The rules contained herein 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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FH-17-02

Legislative Council Rules Clearinghouse Number 02-045

Subject of Rules Regulation of fishing rafts
on the Wolf River and its tributaries

Date of Transmittal to Presiding Officers August 28, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 324, Wis. Adm. Code
Regulation of fishing rafts on the Wolf River and its tributaries

Board Order No. FH-17-02
Clearinghouse Rule No. 02-045

Statement of Need

The Wolf River and its tributaries offer a unique tradition of fishing from floating rafts primarily during the spring walleye run. This tradition has been in place quite possibly dating back to the 1930's or 1940's. In 1983, the current raft law was created that authorized raft fishing on the Wolf River and its tributaries. At that time, the focus of this law was directed at controlling litter, requiring seasonal removal, landowner conflicts and registration of floating rafts with the local unit of government. This law worked well for these issues. New problems and issues have become apparent since the 1983 law.

In the year 2000, due to misuse of the current law, a citizen committee was assembled to explore and discuss these new problems. The problem was identified as permanent habitable structures being built in the floodway of the Wolf River shoreline and the owners securing a raft permit, which is clearly an unintended use of the raft law. By securing a raft permit, an owner of a shoreline structure would be able to avoid applicable county zoning laws. This citizen committee concurred with the assessment of the problem and the need for minor regulation changes to the raft laws. This committee also wanted the program to remain the responsibility of the local units of government, i.e., villages, city and townships, with the state as a partner. The consensus of the committee clearly indicated that issuing a raft permit to only those structures that are floating fishing rafts is the best way of handling this situation. It is not the intent of this code to limit or restrict the number of fishing rafts or future rafts; rather it is to set forth a uniform set of requirements.

The proposed revisions clarify or establish that fishing rafts:

1. May not exceed 512 square feet, with no maximum dimension being longer than 32 feet.
2. May not have a maximum height from the deck to the peak of the roofline greater than 11 feet.
3. Must be stored completely above (landward) of the ordinary high water mark during the period from October 31 to March 1.
4. Must be placed into the waterway, located or extending beyond or below (waterward) of the ordinary high water mark for a period of not less than 14 continuous days and nights on an annual basis.

The proposed revisions further confirm that the local unit of government remains responsible for administration and enforcement of the raft permit program. The code also provides flexibility to the various units of government to make decisions relating to individual situations. A definition of ordinary high water mark is also added.

Modifications as a Result of Public Hearing

No modifications were made as a result of the public hearing. The Natural Resources Board adopted a modification that revised s. NR 324.10(4) to clarify that registering a fishing raft as a boat does not exempt it from applicable zoning regulations.

Appearances at the Public Hearing and Their Position

In support:

Michael Ubl, Chairman, Town of Liberty, W9976 Allcan Road, New London, WI 54961
David Looker, 1325 Wolf River Drive, Fremont, WI 54940
Tim Roach, 410 S. Walnut Street, Appleton, WI 54911
Todd Close, Walleyes for Tomorrow, E9417 County Road T, New London, WI 54961
Michael Young, P.O. Box 217, Shiocton, WI 54170
Ozzie Radtke, 1501 Algoma Street, New London, WI 54961
Kevin T. Pashen, 1140 S. Oakland, Green Bay, WI 54304
Steven Sullivan, 1000 Shiocton Street, New London, WI 54961
King Pharr, 1015 West Millard, New London, WI 54961
John C. Faucher, P.O. Box 283, New London, WI 54961
Haze Diemel, W7644 County Road F, Shiocton, WI 54170
Norman Blohm, N8661 Lawn Road, Seymour, WI 54165
Willis Timm, 2130 Irish Road, Neenah, WI 54956

In opposition:

Thomas R. Pascher, 715 S. Pearl Street, New London, WI 54961

As interest may appear:

Tom Kiz, 1918 Peshy Road, New London, WI 54961
Gilbert Krueger, 206 E. N. Water Street, New London, WI 54961
Tom Schmitt, 316 W. Laura Street, New London, WI 54961
Randy Moeller, E8463 Cutoff Road, New London, WI 54961
Kevin Bolssen, N2825 U.S. Highway 45, Hortonville, WI 54944
Harry Kachur, Assoc. Director, Wisconsin Wildlife Federation, W7143 FL 2, Menasha, WI
Ernie Flunker, Supv., Town of Caledonia, N294 Martin Road, Fremont, WI 54940
Dennis Moeller, E8413 Cutoff Road, New London, WI 54961
Dave Rosenfeldt, 811 Harding, Waupaca, WI 54981

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

No new or additional compliance or reporting requirements for small businesses are imposed, nor are any design or operational standards proposed to be revised by these changes. The rule changes will not have a significant impact on a substantial number of small businesses and, therefore, a final regulatory flexibility analysis is not required.

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RENUMBERING AND AMENDING, REPEALING AND RECREATING, AND CREATING RULES

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FH-17-02

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 30.10(2), 30.126(5)(j) and (6)(a) and 227.11(2)(a), Stats.
Statutes interpreted: s. 30.126(5) and (6), Stats.

This rule change is designed to deal with attempts by some individuals on the Wolf river to avoid floodplain/shoreland zoning restrictions by registering what for all practical purposes is a temporary residence as a fishing raft. Others have tried to avoid the fishing raft restrictions by registering their structure as a boat. This rule will recognize that registering a structure as a boat does not relieve the owner from also registering the structure as a fishing raft if it meets the definition of s. 30.01(1p). The rule also provides a clearer definition for a fishing raft to assure that structures more appropriately considered residences or storage sheds do not fall within the definition of a fishing raft. The rule also modifies the requirements for proving riparian status due to court decisions which hold that easements and leases do not establish riparian owner status, and clarifies the requirements for seasonal removal.

SECTION 1. NR 324.03 is repealed and recreated to read:

NR 324.03 Definitions. (1) "Fishing raft" has the meaning given in s. 30.01(1p), Stats., and may include a boat when it is not normally used as a means of transportation on water and when it is normally retained in place by means of a permanent or semi-permanent attachment to the shore or to the bed of a waterway.

(2) "Flotation device" has the meaning given in s. 30.01(1t), Stats.

(3) "From the waterway" for the purposes of s. 30.126(5)(f), Stats., and this chapter, means above and landward of the ordinary high water mark.

(4) "Normally retained in place by means of a permanent or semi-permanent attachment to the shore or the bed of the waterway", for purposes of s. 30.01(1p), Stats., and this chapter, means a placement waterward of the ordinary high water mark and on the water for a minimum of 14 consecutive days in each year.

(5) "Ordinary high water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is impossible or difficult to ascertain where the point of ordinary high water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below the ordinary high water mark.

(6) "Wolf river municipality" has the meaning given in s. 30.01(10), Stats.

SECTION 2. NR 324.05 is renumbered NR 324.05(intro.) and (1) to (6) and sub. (6), as renumbered, is amended to read:

NR 324.05(6) Written permission from the riparian owner of the site at which the ~~rafts~~ raft is to be located to anchor or moor a fishing raft or proof of riparian ownership such as a copy of a deed, lease, easement or tax receipt statement.

SECTION 3. NR 324.10(3) and (4) are created to read:

NR 324.10(3) No owner may maintain a fishing raft which exceeds 512 square feet, has any length or width greater than 32 feet or has a maximum height from the deck to the uppermost roof line greater than 11 feet. An owner may maintain but not expand any fishing raft in violation of this paragraph if the fishing raft was registered prior to January 1, 2001.

(4) Registering a fishing raft as a boat does not exempt it from any state or local fishing raft regulations or applicable zoning regulations.

SECTION 4. NR 324.13 is created to read:

NR 324.13 Non-compliance. Any structure placed or maintained below or beyond the ordinary high water mark on the Wolf river and its tributaries from the Shawano dam downstream to Lake Poygan which does not meet the definition of a fishing raft requires authorization under ch. 30, Stats., and is subject to all applicable zoning regulations. Structures not meeting the definition of a fishing raft due solely to not being placed for at least 14 consecutive days in any given year may still be registered as a fishing raft provided the inability is due to extenuating circumstances such as low water and the owner receives a variance from the appropriate Wolf river municipality.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on August 14, 2002.

The rules contained herein 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.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)