

Chapter NR 326

PIERS, BOAT SHELTERS AND SWIM RAFTS IN NAVIGABLE WATERWAYS

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NR 326.01 Purpose. (1) These rules are promulgated under ss. 30.03, 30.12, 30.13, 30.14, 30.15 and 227.11, Stats., in order to provide consistency in the application of ss. 30.12 and 30.13, Stats., to the construction of piers, boat shelters, swim rafts and similar structures on the beds of navigable waterways as aids to navigation.

(2) A secondary purpose of this chapter is to define terms set forth in ss. 30.12, 30.13, 30.133, 30.134, 30.14 and 30.15, Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. Register, August, 1991, No. 428, eff. 9-1-91; CR 01-054; am. Register August 2002 No. 560, eff. 9-1-02.

NR 326.02 Applicability. (1) This chapter shall apply to all piers and boat shelters constructed or maintained by riparians on the beds of navigable waterways for the purpose of providing improved navigation access to those waterways.

(2) The department shall apply this chapter only in response to:

(a) Complaint by a riparian, municipality, or any other person that a pier or boat shelter exists in navigable waters in violation of s. 30.12 or 30.13, Stats.;

(b) Complaint by a riparian that an adjacent riparian's pier or boat shelter interferes with access to navigable water;

(c) Complaint by a riparian or any other person that a pier or boat shelter interferes with rights of navigation;

(d) Request by a riparian for information regarding standards to be applied to pier or boat shelter construction;

(e) Application by a riparian for authority to construct a solid pier, any other pier requiring a permit or a permanent boat shelter under s. 30.12, Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. Register, August, 1991, No. 428, eff. 9-1-91.

NR 326.03 Definitions. (1) "Boat shelter" as defined in s. 30.01 (1c), Stats., means a structure in navigable waters designed and constructed for the purpose of providing cover for a berth place for watercraft, which may have a roof but may not have walls or sides. Such a structure may include a boat hoist.

(2) "Department" means the department of natural resources.

(3) "Impoundment" for purposes of s. 30.134, Stats., means the pool of water created by a dam. "Impoundment" does not include waters upstream of the pool which are raised, but within the original river channel. "Impoundment" includes the entire Mississippi river in Wisconsin.

(4) "Line of navigation" means the 3 foot depth contour or a greater depth contour if required for boats in use or appropriate for use on the waterway, based on the normal summertime low levels on the waterway or summer minimum levels where established by department order.

(5) "Littoral drift" means the sedimentary material which moves in the zone of waves breaking on the shore because of waves and current.

(6) "Ordinary highwater mark" has the definition contained in s. NR 320.03 (4).

(7) "Outlying waters" as defined in s. 29.001 (63), Stats., means Lakes Superior and Michigan, Green Bay, Sturgeon Bay, Sawyer's harbor, and the Fox river from its mouth up to the dam at DePere.

(8) "Pier" as defined in s. 30.01 (5), Stats., means any structure extending channelward from the shore with water on both sides, built or maintained for the purpose of providing a berthing or mooring place for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure may include a boat shelter which is removed seasonally.

(9) "Pierhead line" means a line established in the water adjacent to and roughly parallel to the shoreline under s. 30.13, Stats., by municipalities, and subject to approval by the department, for the purpose of creating uniformity in the length of piers extending from the shoreline into the waterway.

(10) "Riparian" means an owner of land adjacent to navigable waters.

(11) "Similar conveyance" for purposes of s. 30.133, Stats., means any transfer in excess of 2 years. "Similar conveyance" does not include a lease of a marina facility to an operator of the facility.

(12) "Solid pier" means a structure, not allowing for the free flow of water beneath, extending into the water from the shore to serve as an aid to navigation. For the purposes of this chapter, the term solid pier does not include piers that utilize rock filled cribs or similar types and size devices as foundation. Such foundations require permits under s. 30.12, Stats.

(13) "Visually intrusive" means clearly standing out from the shoreline background because of color or reflectivity when viewed from out on the water during the time when leaves are on deciduous trees.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. (1) to (9) to be (2) to (10) and am. (7) and (9), cr. (1) and (11), Register, August, 1991, No. 428, eff. 9-1-91; correction in (6) made under s. 13.93 (2m) (b) 7., Stats., Register January 2002 No. 553; CR 01-054; renum. (3) to (11) to be (4) to (10), (12) and (13), cr. (3) and (11) Register August 2002 No. 560, eff. 9-1-02.

NR 326.04 Pier standards. (1) Except as provided in sub. (2) or (8), piers shall not extend into the water from the shoreline beyond the line of navigation or the length of the boat using the pier unless a need can be demonstrated by the riparian that boats using the pier require a greater depth of water. The depth of water necessary for nonfixed keel sailboats shall be measured with the centerboard or dagger boards raised.

(2) Piers may extend out to any pierhead line.

(3) (a) Solid piers may be permitted under s. 30.12 (2), Stats., only on the following waters:

1. Outlying waters;
2. Harbors connected to outlying waters;
3. Fox river from the DePere dam to Lake Winnebago;
4. Lake Winnebago; and
5. Mississippi river.

(b) Solid piers shall be provided with a sufficient opening to provide for the passage of littoral drift. The opening size shall be

adequate to prevent the deposition of littoral drift considering wave energy, littoral drift supply and near-shore water depths.

(4) A pier shall not totally enclose any portion of a navigable waterway.

(5) Piers shall not unreasonably obstruct navigation or otherwise interfere with public rights in navigable waters.

(6) Piers shall not interfere with the rights of other riparians.

(7) Piers shall not interrupt the free movement of water nor cause the formation of land by deposition of littoral drift upon the bed of the water.

(8) Piers associated with marinas and other similar mooring facilities shall not extend into the water from the shoreline beyond the line of navigation unless a permit is obtained under s. 30.12 (2), Stats. Such marinas shall be open to the public. Use of the facility by the public may be conditioned only on the payment of a reasonable mooring or anchoring fee.

Note: As an example, the use of such an extended pier shall not be conditioned upon membership in a private club or organization, purchase of a parcel or property, or purchase of a boat.

(9) Piers shall not be constructed or maintained with a screen or in any other manner which would trap or accumulate aquatic plants.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81.

NR 326.05 Permits required. Riparians intending to construct solid piers, rock-filled cribs or similar types and size devices used as foundations, piers which extend beyond established pierhead lines, or piers not conforming to s. NR 326.04 (1) or (9), shall apply for permits under s. 30.12 (2), Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81.

NR 326.055 Boat shelter standards. Boat shelters shall comply with the standards in this section.

(1) GENERAL STANDARDS FOR PERMANENT AND SEASONAL BOAT SHELTERS. (a) A boat shelter may be placed and maintained only by a riparian.

(b) A boat shelter may not interfere with public rights and may not have an unreasonable adverse effect on aquatic habitat.

(c) A boat shelter may not interfere with the rights of other riparians and shall comply with the provisions of s. NR 326.07.

(d) A boat shelter shall allow the free movement of water underneath and may not cause formation of land on the bed of the waterway.

(e) A boat shelter shall comply with applicable provisions of any municipal ordinances adopted under s. 30.12 (3) (a) 6. and (c), Stats.

(2) LOCATION AND DESIGN STANDARDS FOR PERMANENT AND SEASONAL BOAT SHELTERS. (a) Except for designations under s. 30.275, Stats., a boat shelter may not be placed in any waterway designated by federal, state or local government as having outstanding scenic values.

(b) A boat shelter may not be visually intrusive as viewed against the shoreline. A seasonal boat shelter which was originally placed prior to September 1, 1991 and which is visually intrusive, but is otherwise in compliance with this section, may continue to be placed seasonally until January 1, 1996. Any seasonal boat shelter placement after January 1, 1996 shall comply with this section.

Note: For example a white shelter viewed against similarly colored structural development on or near the shoreline would comply with this subsection. The same shelter viewed against a naturally vegetated shoreline would not comply.

(c) All boat shelters shall be designed and used exclusively for the berthing of a single watercraft. Any boat shelter originally placed or permitted after September 1, 1991 may not exceed an outside dimension of 12 feet wide by 24 feet long on waters under 1000 acres in size and may not exceed an outside dimension of 14 feet wide by 24 feet long on waters 1000 acres and larger in size. The burden of proving that a boat shelter was placed prior to September 1, 1991 shall be on the owner. A seasonal boat shelter orig-

inally placed prior to September 1, 1991 and which does not comply with this subsection may not be expanded in size.

(d) A boat shelter shall be connected to adjacent uplands by a pier.

(e) A boat shelter may include a roof but may not include walls, sides or equivalent construction. A boat shelter roof shall be pitched not less than 1 foot nor more than 2.5 feet from the roof peak to the bottom of the eaves. Only the size and number of vertical components required to support the watercraft and any roof are permitted.

(f) Storage facilities may only be included above the eaves of a boat shelter.

(g) A boat shelter may include only a single sign necessary to identify the property and may only include lighting essential for safety and mooring.

(h) The number of boat shelters placed adjacent to a property is limited to one permanent and one seasonal shelter or 2 seasonal shelters for the first 100 feet or lesser amount of shoreline frontage. One additional seasonal shelter may be placed for each additional 50 feet of shoreline frontage in common ownership. For the purpose of this subsection, shoreline shall be measured along a straight line connecting points where property lines meet the ordinary high water mark. This subsection shall apply to all permanent shelters and seasonal shelters originally placed after September 1, 1991.

(i) Permanent and seasonal boat shelters shall be placed as close together as practicable at a single location adjacent to each property. Adjacent lots in common ownership shall be considered a single property for the purpose of this subsection.

(3) SEASONAL BOAT SHELTERS. (a) A boat shelter which is completely removed from the waterway between December 1 and April 1 annually and which complies with subs. (1) and (2) and this subsection may be placed by a riparian without a permit from the department.

(b) A seasonal shelter may not extend beyond the line of navigation or an approved pierhead line.

(4) PERMANENT BOAT SHELTERS. (a) A boat shelter which is not removed seasonally as provided in sub. (3) may be authorized by the department upon application by a riparian if the construction complies with subs. (1) and (2) and the requirements of this subsection.

(b) No permit may be granted for a permanent boat shelter constructed after May 3, 1988 if the owner's riparian property also contains a boathouse over navigable waters or within 75 feet of the ordinary high water mark. Each permit issued for a permanent boat shelter shall contain a condition which provides that the permit becomes void if there is any subsequent construction of a boathouse over navigable waters adjacent to the owner's property or within 75 feet of the ordinary high water mark on the owner's property.

(c) A permit may not be granted for a permanent boat shelter to be placed on lakes or flowages of less than 500 acres or on rivers except the Mississippi river, the Wolf river from Lake Butte des Morts to the upstream limits of the village of Fremont, and the Fox river from the DePere dam to Lake Winnebago. For the purpose of this subsection a series of lakes or flowages which have a connection which is commonly navigated by motorized craft and which have a common water level shall be considered a single lake or flowage. Artificial mooring basins and navigation channels and reaches of rivers where water levels are controlled by a dam are considered part of the lake or flowage to which they are connected for the purpose of this subsection.

(d) No more than one permanent boat shelter may be permitted for each riparian property. Contiguous lots in common ownership shall be considered one property for the purpose of this subsection.

(e) A permanent boat shelter may not extend more than 30 feet from the shoreline or to the line of navigation, whichever is less, on rivers named in par. (c) and on waters between 500 and 1000 acres in size and may not extend more than 50 feet from the shoreline or to the line of navigation, whichever is less, on waters 1000 acres and larger in size. For the purpose of this subsection the shoreline shall be established at normal summer low water levels.

(f) Permits for permanent boat shelters may only be granted for locations adjacent to developed shorelines. Developed shorelines are those where there are at least 5 principal structures including at least one on the applicant's property which are located within 500 feet of the proposed shelter site and which are visually intrusive as viewed from a location on the water.

History: Cr. Register, August, 1991, No. 428, eff. 9-1-91.

NR 326.06 Complaints. (1) Upon receipt of a complaint by any municipality or person under s. 30.14, Stats., the department shall investigate the pier, boat shelter, swim raft or related structure mentioned in the complaint to determine if it conforms with applicable provisions of s. 30.12 or 30.13, Stats., and this chapter, and shall provide all known parties with the results of the investigation. The department may request such additional information as may be required from the complainant.

(2) Upon completion of the investigation, the department may conduct a hearing under s. 30.14, Stats.

(3) The burden of proving that a pier, boat shelter or swim raft is in violation of s. 30.12 or 30.13, Stats., and this chapter, is ordinarily on the complainant.

(4) Sections NR 326.06 and 326.08 do not limit in any manner the authority of the department to require a permit or bring an enforcement action alleging that a pier, boat shelter or swim raft adversely affects public rights in navigable waters.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. Register, August, 1991, No. 428, eff. 9-1-91; CR 01-054: am. (1), (3) and (4) Register August 2002 No. 560, eff. 9-1-02.

NR 326.07 Riparian rights determinations. (1) In order to determine whether a pier or boat shelter interferes with the rights of an adjacent riparian, the department shall use the method outlined in this subsection which it determines most fully meets the Wisconsin supreme court ruling in *Rondesvedt v. Running*, 19 Wis. 2d 614 (1962), that "... each must have his due proportion of the line bounding navigability and a course of access to it from the shore exclusive of every other owner, and that all rules for apportionment or division are subject to such modification as may be necessary to accomplish substantially this result."

(2) The alternative methods of apportionment include:

(a) *Apportionment of the line of navigation.* The general procedure for the apportionment of the line of navigation is to measure the whole shoreline of the cove or bay and the line of navigation in front of the shoreline and to apportion the line of navigation among the riparians in proportion to the length of their respective holdings on the shoreline. The area of water within which each riparian may place a pier to reach the line of navigation is determined by drawing straight lines between the corresponding points of division on the shoreline and the line of navigation.

(b) *Coterminous riparian rights lines.* Chords are drawn to connect points established at the intersection of each lot line with the ordinary highwater mark. The lines which bisect the angle

formed by adjacent chords are the coterminous riparian rights lines. The extension of the coterminous riparian rights lines to the line of navigation describes the portion of the water within which each riparian may place a pier to gain access to the line of navigation. If the coterminous riparian rights lines intersect before the line of navigation is reached, another method of apportionment will be used.

(c) *Extended lot lines.* Under the extended lot line method the area of water within which each riparian may place a pier to reach the line of navigation is determined by extending the lot lines along the same alignment from the upland to the line of navigation.

(d) *Other method.* Any other method for determining the rights of riparians to gain access to the line of navigation that is compatible with the general rule adopted in sub. (1).

(3) To provide each riparian with sufficient room to place a pier and moor a boat along the common line between adjacent riparians the following technique will be used:

(a) Each riparian shall back their respective pier away from the common line or point of intersection of that line with the line of navigation in proportion to the riparian's share of the 2 adjacent shoreline lengths until sufficient room is provided to moor each riparian's boat at their respective pier and to provide safe maneuvering room for each boat to approach or leave the respective pier.

(b) If a riparian cannot move sufficiently from one side without violating the rule on the other side, then the riparian shall position the pier in that location which best satisfies the rule on both sides and each riparian shall then move far enough to the side regardless of shoreline proportions to afford the necessary clearance.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; reprinted to correct error, Register, May, 1981, No. 305; am. (1), Register, August, 1991, No. 428, eff. 9-1-91.

NR 326.08 Swim rafts. (1) FINDING. The natural resources board finds that near shore areas are the most heavily used areas of a water body and are the most valuable ecological areas. Extensive and large structures on an individual and cumulative basis interfere with the public's ability to use and enjoy near shore areas and affect the growth of aquatic vegetation necessary for fish and wildlife habitat. Accordingly, the natural resources board finds that the use of swim rafts in excess of 200 square feet in surface area or 38 inches in height may interfere with public rights as used in s. 30.13(1m), Stats., and thereby require a permit under s. 30.12, Stats.

(2) EXEMPTIONS. (a) Swim rafts which are pulled onto shore and completely removed from the water on a daily basis or that are placed in swim areas marked and approved pursuant to s. NR 5.09 are exempt from sub. (1).

(b) The height limitation of sub. (1) does not apply to protective covers, diving boards, ladders and slides.

(3) MEASUREMENTS. Calculations to determine the square footage of a swim raft shall include diving boards, ramps, slides and similar accessories.

History: CR 01-054: cr. Register August 2002 No. 560, eff. 9-1-02.

NR 326.09 Impoundment determination. The boundaries of the pool of an impoundment shall be determined at normal summer water levels.

History: CR 01-054: cr. Register August 2002 No. 560, eff. 9-1-02.