

Chapter NR 325

MAINTENANCE, REPAIR AND REMOVAL PROCEDURES FOR BOATHOUSES AND FIXED HOUSEBOATS ON NAVIGABLE WATERWAYS

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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 or fixed houseboats which materially obstruct navigation.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1995, No. 478; emerg. am. eff. 4-19-04; CR 04-063: am. Register April 2005 No. 592, eff. 5-1-05.

NR 325.02 Applicability. These rules apply to boathouses and fixed houseboats that extend beyond the ordinary highwater mark of navigable waterways.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

NR 325.03 Definitions. (1) "Abandoned" means the relinquishment of possession of a boathouse or fixed houseboat by the owner with indications of intent to terminate ownership, which may be evidenced by several factors such as the failure to act to maintain or repair boathouses or fixed houseboats that are in a major state of disrepair.

(2) "Boathouse" means a permanent structure used for the storage of watercrafts and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of structural parts. For purposes of this chapter, the term boathouse does not include shore stations or boathouses which are removed from a waterway on an annual basis.

(3) "Constructed or placed" means:

(a) The original erection of a boathouse or the original placement of a fixed houseboat beyond the ordinary highwater mark of any navigable waterway; or

(b) The building of additions to existing boathouses or existing fixed houseboats; or

(c) The relocation of a boathouse or a fixed houseboat beyond the ordinary highwater mark of any navigable waterway at a location different from its location at the date of this act; or

(d) The conversion of a boathouse or fixed houseboat in a manner to allow permanent or temporary human habitation after December 15, 1979.

(4) "Current value" means the equalized assessed value as determined by s. 70.32, Stats., or, if not assessed, its current fair market value as certified by a competent appraiser using standard real estate appraisal techniques. If assessed, but the assessment for the boathouse or fixed houseboat cannot be separately distinguished from the general property assessment, the current value shall be the current fair market value as set forth above.

(5) "Fixed houseboat" means a structure not actually used for navigation which extends beyond the ordinary highwater mark of a navigable waterway and is retained in place either by cables

attached to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

(5k) "Historic or cultural value" means a structure listed in or determined eligible for listing in the national registry of historical places or in a local municipal historical preservation ordinance by using procedures prescribed by the Wisconsin historical society.

(6) "Major state of disrepair" means a state of damage or deterioration, such that the repair or replacement thereof would exceed 50% of its current value.

(7) "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.

Note: This incorporates the definition at s. 30.01(4m), Stats., and current case law, which requires a watercourse to have a bed and banks, *Hoyt v. City of Hudson*, 27 Wis. 656 (1871), and requires a navigable waterway to float on a regularly recurring basis the lightest boat or skiff, *DeGayner & Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975); *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987).

(8) "Not actually used for navigation" means that, while possibly floatable and maneuverable, the primary purpose is not navigation.

(9) "Ordinary high water mark" means the point on the bank 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 characteristic.

(10) "Tributary of Lake Michigan or Lake Superior" means a named river that flows directly into Lake Michigan or Lake Superior.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. cr. (7k) and (9), eff. 4-19-04; CR 04-063: renum. (7) to be (5k) and am., cr. (7), (9) and (10) Register April 2005 No. 592, eff. 5-1-05.

NR 325.05 Current value. An owner wishing to repair or maintain a boathouse or fixed houseboat shall provide to the department proof of its current value.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

NR 325.06 Repair and maintenance cost. 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 value of the structure prior to performance of the maintenance or repairs.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. am. eff. 4-19-04; CR 04-063: am. Register April 2005 No. 592, eff. 5-1-05.

NR 325.065 Exemption from 50% repair limitation. **History:** Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. r. eff. 4-19-04; CR 04-063: r. Register April 2005 No. 592, eff. 5-1-05.

NR 325.07 Certification procedure for repair and maintenance. (1) Except as provided for in s. NR 325.06, 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 and

shall contain the information set forth in ss. NR 325.05 and 325.09 (1) and (2).

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

(3) The department shall within 60 days issue a certification as requested if the department agrees with the estimates of all needed repair or maintenance costs and finds that all needed maintenance or repairs are less than 50% of the current value.

(4) If the department disagrees with either the cost estimate for all needed maintenance or repairs or the current value it may obtain independent estimates of such cost or current value. The department shall issue the requested certification if the independent estimates for costs of all needed maintenance or repairs and current value are less than 50% of the current value.

(5) Where an existing boathouse or fixed houseboat is owned by a non-riparian, the application for certification shall be made by the riparian owner of the property where the boathouse or fixed houseboat is located, provided the transfer of riparian rights is in compliance with s. 30.133, Stats.

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

(7) The department shall deny requested certification if either the independent or applicant's estimates of costs for all needed maintenance or repairs exceeds 50% of the current value and shall declare the boathouse or fixed houseboat to be in a major state of disrepair. Any owner denied certification may review the denial pursuant to s. 227.42, Stats.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1995, No. 478; emerg. am. (1), renum. (5) to be (6), cr. (5), eff. 4-19-04; CR 04-063: am. (1), renum. (5) to be (7), cr. (5) and (6) Register April 2005 No. 592, eff. 5-1-05.

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 determines 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.

History: Emerg. cr. eff. 4-19-04; CR 04-063: cr. Register April 2005 No. 592, eff. 5-1-05.

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 all of 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. Application of a new or replacement layer of roofing or

siding that does not increase the usable space within the boathouse or fixed houseboat may not be considered expansion.

(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 permanently attached to the boathouse or fixed houseboat 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 all of 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 wall, or roof, or permanently attached deck, walkway, railing or pier that was 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.** A commercial boathouse shall meet all the requirements of s. 30.121 (3w), Stats., to be eligible for an exception.

Note: Section 30.121 (3w), Stats., provides that a person may construct, repair, or maintain a boathouse if all of the following apply:

(a) The boathouse is used exclusively for commercial purposes.

(b) The boathouse is located on land zoned exclusively for commercial or industrial purposes or the boathouse is located on a brownfield, as defined in s. 238.13 (1) (a), Stats., or in a blighted area, as defined in s. 66.1331 (3) (a), Stats.

(c) The boathouse is located within a harbor that is being operated as a commercial enterprise or is located on a river that is a tributary of Lake Michigan or Lake Superior.

(d) The person has been issued any applicable individual permits under this chapter and is in compliance with any applicable general permitting requirements under this subchapter.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. r. and recr. eff. 4-19-04; CR 04-063: r. and recr. Register April 2005 No. 592, eff. 5-1-05.

NR 325.10 Certification information. (1) REQUIRED INFORMATION. For certification requests filed pursuant to s. NR 325.07, an application form including plans, photographs and a location sketch shall be submitted to the department showing the following information.

Note: Application forms are available at department service centers and on the department's website at <http://dnr.wi.gov> under the topic "Waterway and Wetland Permits."

(a) **Location.** The location of the boathouse or fixed houseboat, including the name of the waterway, property address, fire number (if different), legal description, and directions to the property.

(b) **Owner.** The name, mailing address, and telephone number of the owner of the boathouse or fixed houseboat.

(c) **Prior work.** Information to identify prior repair and maintenance work on a boathouse or fixed houseboat, and to allow the department to identify certifications issued for prior work. This information may include receipts from purchase of materials or payment of contractors, copies of past department certifications, or a list of the first and last names of all prior owners of the boathouse or fixed houseboat, back to 1979.

(d) **Features.** Information about the following features and their state of repair:

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. Floation devices.
 - c. Superstructure framework.
 - d. Siding.
 - e. Roof.
 - f. Presence and description of living quarters, if any.

(2) STATEMENT OF MAINTENANCE OR REPAIRS. 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. Donated or re-used material shall be valued at the prevailing market 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 location of the boathouse or fixed houseboat, including the name of the waterway, property address, fire number (if different), legal description and directions to the property.
- (b) *Owner.* The name, mailing address and telephone number of the owner of the boathouse or fixed houseboat.
- (d) *Historic or cultural value.* For applications to request an exception under s. 30.121 (3g), Stats., documentation to demonstrate that the boathouse or fixed houseboat has historic or cultural value.
- (e) *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.
- (f) *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 (3r), Stats., and s. NR 325.09.
- (g) *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.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. renum. from NR 325.08 and am., eff. 4-19-04; CR 04-063: renum. from NR 325.08 and am. Register April 2005 No. 592, eff. 5-1-05.

NR 325.11 No permit necessary. No permit is necessary pursuant to s. 30.12, Stats., for the maintenance and repair of boat-houses and fixed houseboats.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. renum. from NR 325.10, eff. 4-19-04; CR 04-063: renum. from NR 325.10 Register April 2005 No. 592, eff. 5-1-05.

NR 325.12 Removal procedure for abandoned boat-houses or fixed houseboats. (1) Upon complaint or upon its own motion the department shall initiate the process set forth in s. 31.187, Stats., for the removal of abandoned boathouses or fixed houseboats.

(2) The department prior to removal shall issue a 60 day notice to the owner of the boathouse or fixed houseboat if the owner can be reasonably ascertained.

(3) If the owner cannot be determined, the department shall publish a class 3 notice pursuant to ch. 985, Stats.

(4) After the 60 day period of notification to the owner or one week after the last insertion pursuant to ch. 985, Stats., has passed, the department shall remove abandoned boathouses or fixed houseboats.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; emerg. renum. from NR 325.11, eff. 4-19-04; CR 04-063: renum. from NR 325.11 Register April 2005 No. 592, eff. 5-1-05.

NR 325.13 Enforcement. (1) Upon complaint or upon its own motion, the department may order the removal of boat-houses 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.

(2) Noncompliance with the provisions of s. 30.121, Stats., this chapter or any conditions of a certification issued by the department, constitutes a violation and may result in a forfeiture. The department may seek abatement of any activity in violation of s. 30.121, Stats.

(3) When an after-the-fact application has been filed with the department, the department shall follow the procedures in ch. NR 301 for violations.

(4) Any violation of these rules shall be treated as a violation of the statutes they interpret or are promulgated under.

(5) No person may repair, maintain or construct a boathouse or fixed houseboat in a navigable waterway if the activity is not eligible for a certification or otherwise authorized under this chapter.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. renum. from NR 325.12 and am., eff. 4-19-04; CR 04-063: renum. from NR 325.12 and am. Register April 2005 No. 592, eff. 5-1-05.