

Publication Date: May 20, 2010
Effective Dates: May 20, 2010 through October 16, 2010

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES - # LF-14-10E

The State of Wisconsin Natural Resources Board proposes an order to create NR 45.13 (1m) (d) relating to the establishment of a slow-no-wake zone on the Wisconsin River at the Dells of Wisconsin River state natural area.

1. Statutes interpreted: s. 23.28(3), Stats.
2. Statutory authority: ss. 23.28(3), 227.11(2)(a), and 227.24, Stats.
3. Explanation of agency authority to promulgate the proposed rule under statutory authority: Since this area is part of a state natural area, authority for the creation of the slow-no-wake area comes from s. 23.28(3), Stats., which authorizes the state to control uses in designated state natural areas.
4. Related statute or rule: ss. 30.66(1) and 30.77, Stats.
5. Plain language analysis: This provision prohibits motorboats from going faster than slow-no-wake, defined as the minimum speed required to maintain steerage, on an approximately 0.7 mile long stretch of the Wisconsin River at the Dells of the Wisconsin River state natural area. Currently no fixed speed limit exists on this stretch of the Wisconsin River other than “reasonable and prudent speed” and the general laws that regulate 1) speed of personal watercraft in the vicinity of other boats, and 2) the speed of boats towing persons within defined distances of anchored and occupied boats.

This regulation is intended to improve public safety and help minimize user conflicts.

In the last few years, the conservation warden for the area has received a number of complaints from boat operators regarding the user conflict of high speed recreational boats operating close to the larger and less maneuverable tour boats. Accidents and near misses have been documented in this stretch of the river. This rule is also being advanced as a permanent rule (authorization for public hearing approved at March 16, 2010 NRB meeting) but will not be promulgated in time for this summer’s heavy use season. In order to minimize the potential for accidents during the 2010 season, this is being advanced as an emergency rule.

6. Summary of, and comparison with existing or proposed federal regulation: The Wisconsin River above the Kilbourne Dam is not a designated federal water and there are no federal boating laws that impact that portion of the river.

7. Comparison with rules in adjacent states:

Slow-no-wake regulation in neighboring states

Illinois- Any political subdivision of IL may adopt an ordinance or local law relating to operation and equipment of vessels if the provisions are not inconsistent with the provisions of the Boat Registration and Safety Act and the regulations issued there under. 625 Illinois Compiled Statutes § 45/8-1.

Iowa- Any subdivision of the state may adopt an ordinance or local law relating to the operation or equipment of vessels, so long as it is not inconsistent with the Iowa Code Water Navigation Regulations Chapter and the rules adopted by the Natural Resource Commission. Iowa Code § 462A.17.

Michigan- The Department of Natural Resources may regulate the operation of vessels on waters of the state. The Department may initiate investigations into the need for special local rules or a local political subdivision request investigation. If the Department determines that special rules are needed then it submits an ordinance to the local political subdivision in which the water body is located. The political subdivision then approves or denies the ordinance. Michigan Compiled Laws 324.80108.

Minnesota- A political subdivision may adopt regulations that are not inconsistent with MN Statutes Water Safety, Watercraft, And Watercraft Titling Chapter and the rules of the Commissioner of Natural Resources relating to the use of waters of the state that are wholly or partly within the territorial boundaries of a county or entirely within the boundaries of a city. Minnesota Statute § 86B.201.

8. Summary of factual data and analytical methodologies: On this heavily used stretch of river, high speed operation of boats create wave actions that rebound off the walls of the river banks creating a dangerous situation for canoes and other small boats. While the depth of the river allows the passage of large vessels, and the area is used regularly by tour boats holding upwards of 200 passengers, it is less than 100 feet wide from shore to shore in spots with meanders that provide limited sight lines for oncoming boat traffic. The addition of jet boat tours in recent years, along with the existing cruising tour boats, high speed recreational watercraft, canoes and kayaks has created user conflicts and a potentially dangerous situation that can best be handled by imposing a speed limit on boats traveling through this stretch of the river.

Seventeen reportable accidents* occurred on this stretch of the Wisconsin River from 2001-2007. Of the 17 reportable accidents, contributing factors were summarized by the following:

A "reportable" boat incident is any incident (regardless of the number of boats involved) which results in loss of life, injury that requires medical treatment beyond first aid, boat or property damage in excess of \$2,000, or complete loss of a boat.

- 8 were caused by a collision with another boat or person being towed by the boat,
- 4 listed excessive speed as a cause,
- 5 were caused by a collision with shore or fixed object,
- 2 were caused by large boat wakes, and
- 1 accident involved excessive alcohol use.

There was not a discernable pattern in the accident frequency except that the majority of the accidents occurred on the weekend.

On Wednesday, August 6, 2008 and Saturday, August 28, 2008, wardens surveyed the frequency of use during the peak summer season (Memorial Day to Labor Day) for 8 hours during 2 four-hour blocks of time. The block of time for the observational survey was from 12:00 PM to 4:00 PM each day. On the weekday (Wednesday) during the survey, approximately 1,162 people passed through the Narrows in boats. On the weekend (Saturday) during the survey approximately 1,323 people passed through the narrows in some type of watercraft. The survey did reveal some surprising facts with regard to type of boats; on the weekday the most common type of boat to pass through the Narrows was a pontoon or small boat of open construction. During the weekend, the most common boat to pass through the Narrows was a Personal Watercraft (PWC). One fact was that more people passed through the narrows in tour boats than any other type of boat. Sixty five percent of all of the people that passed through the narrows were on large high capacity tour boats whether it was a jet tour boat or a large cabin cruising commercial vessels. While not a lengthy observational period, this gives an indication of the level of activity on a given weekday and a weekend day. Based on this data, it is estimated that on a typical weekday, there may be approximately 23 boats moving through the narrows in an hour; on the weekend, 34 boats moving through the narrows every hour.

9. Agency contact person: Barbara Wolf, 3911 Fish Hatchery Rd., Fitchburg, Wi. 53711. Phone 608-273-6277.
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SECTION 1. NR45.13(1m)(d) is created to read:

NR45.13(1m)(d) No person may operate a boat at a speed greater than slow-no-wake as defined in 30.50(12) Stats. in the waters of the Wisconsin River within the designated state natural areas from Coldwater Canyon (N43° 39' 30.71") downstream approximately 3,700 feet to the area known as Chapel Gorge (N43° 38' 47.1").

SECTION 2. FINDING OF EMERGENCY. The Department of Natural Resources finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is: Based on information received by the Department, user conflicts are increasing. Failure to enact this rule could lead to additional boating accidents and potential for injury during the upcoming high use season.

SECTION 3. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24, Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 28, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN DNR
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)