



## Assembly Committee on the Environment

### *CR 24-051/NR 320/Waterways Crossings and Structures*

*February, 27, 2025*

Good morning Chair Goeben and members of the Committee. My name is Ben Callan, and I am the Director of the Waterways Program for the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify, for informational purposes, on CR 24-051, related to placing structures and crossings in navigable waterways.

The proposed NR 320 rule eliminates redundancy, provides regulatory clarity, and increases decision-making efficiency through the consolidation of 5 existing administrative rules, last updated nearly 20 years ago. These 5 rules specify exemption, general permit, and individual permit requirements for bridges, culverts, fish and wildlife habitat structures, piers, boat shelters, swim rafts, shoreline erosion control structures including riprap, boat landings, intake and outfall structures, pilings, dry fire hydrants, and other structures.

Several statutory exemptions have been added to chapter 30 since 2005. This rule updates and clarifies exemption installation, design, and location requirements for piers, wharves, seasonal boat shelters, culvert replacements, habitat structures, and rock-riprap shoreline protection. The rule also proposes new exemptions for fish sticks, small temporary structures like scientific monitoring devices, and temporary waterway crossings for forest management activities. Project proponents with activities that meet exempt standards in the proposed rule do not need to contact the Department and may carry out their project.

Chapter 30 directs the Department to issue statewide general permit coverage for structures and crossings under s. 30.206, Wis. Stats. Therefore, previous activity specific general permit standards have been removed, and instead the rule proposes construction and design and location requirement categories that may be incorporated into statewide general permits. These statewide general permits are updated at least every 5 years, providing greater regulatory flexibility into the future.

The proposed NR 320 also incorporates standards for information which may be required to evaluate a project's public interest impacts through an individual permit application. It also identifies coastal site characteristics which may require professional engineering design and modeling for certain shoreline erosion control structures and solid piers proposed to be placed in the Great Lakes and Outlying Waters. The proposed rule incorporates previous legislative updates related to individual permit criteria for certain types of structures, including piers, wharves, and boat shelters. These changes clarify the scope of an individual permit review for applicants and the Waterways Program.

The Waterways Program kicked off rule drafting in Fall 2022. The rule team convened a broad Technical Advisory Committee with stakeholders representing private riparian interests, county, town, and municipal interests, environmental interests, transportation interests, counterpart conservation agency interests, coastal management interests, and Department technical experts on bridges and

culverts, fisheries, and water quality. This TAC met almost monthly through 2023 and developed rule concepts together through engaging policy discussions.

The economic impact analysis was public noticed and later finalized in early 2024. One comment on the economic impact analysis was received. The Department also held public informational hearings on July 30, 2024, and July 31, 2024. In total, 10 people attended the hearings and 2 people provided verbal comments. During the public comment period, the Department received written comments from 7 people or organizations and from the Legislative Council Rules Clearinghouse. Comments received were generally in support of the rulemaking effort and provided both technical recommendations and policy implementation suggestions. One TAC member organization also testified at the Natural Resources Board meeting in September 2024, and the Board unanimously approved the rule.

We believe that the outcome of these efforts is a rule that supports a well-balanced approach to meet the Department's Public Trust responsibilities while ensuring consistency with legislative changes during the past 20 years. The rule provides clarity to regulated stakeholders for projects not requiring permits, identifies the information that may be necessary for Department staff to efficiently evaluate project proposals, and clearly identifies how such information is reviewed during the public interest review to inform the Department's decision-making.

On behalf of the Department of Natural Resources, I would like to thank you for your time today. I would be happy to answer any questions you may have.

## FOX VALLEY RIPARIAN RIGHTS ASSOCIATION

Good morning Chairwoman Goeben and Committee Members,

My name is Stamen Mesec and I serve as Director of Government Affairs for The Welch Group. I am here today representing the Fox Valley Riparian Rights Association alongside Tom Radtke. The Association represents people who live along the waterways in the Fox Valley area who are looking to be good stewards of their property, and the bodies of water they live next to.

Before we lay out our concerns with Clearinghouse Rule 24-051, we'd be remiss not to express appreciation for all the hard work that has gone into this rule. My colleague, Bob Welch, sat on the technical advisory group that was consulted, and shared that the group worked hand in hand with the DNR to make substantive, positive changes to NR 320.

That being said, we're grateful for this opportunity to discuss some of the elements in this proposed rule that we would like to see modified.

I'd like to turn it over to our expert on this subject matter, Tom Radtke, to go into more detail.

# FOX VALLEY RIPARIAN RIGHTS ASSOCIATION

## **Request for Modifications**

*The Fox Valley Riparian Rights Association would like to request the following modifications to the new NR 320 rule.*

### **Boat Shelters**

1 - Section 320.04 (9) (f) and (g) changes length of seasonal boat shelter to 30 feet and the width to 14 feet. These are positive changes, but we would like an allowable length of 35 feet to accommodate the new size of boats that are becoming common on our waters.

2 – Section 320.04 (9) (h) states that a seasonal boat shelter “shall be connected to adjacent land by a pier.” but the Statutes, Chapter 30.12 (1g) (e) allows for placing a shelter “adjacent to the...owner’s pier or wharf or to the shoreline.” The rule should be modified to match the statutes.

3 – Section 320.04 (9) (n) includes restrictions on number and placement of boat shelters that we believe should be removed because they are not called for in the statutes.

4 – The rule does not do anything to alter the current General Permit for permanent boat shelters. We would request that the General Permit match the changes we are requesting for seasonal boat shelters – this has long been the practice.

5 – For boat shelters that need an individual permit, Section 320.06 (f) (2) states that the permit may be issued only if the “permanent or seasonal shelters are on a property that does not include a boathouse over the navigable waterway.” But Chapter 30.12 (3m) (cr) states that the department may not deny the permit based upon “The degree to which adjacent land is developed.” We request that this requirement be removed to conform to the statute.

6 – Grandfather Clause – Currently, structures such as boat shelters and piers are exempt per Chapter 30.12 (1k) if they were in place prior to April, 17<sup>th</sup>, 2012. In Section 320.05 (4) it appears to grandfather in only those structures that comply as of 2025. This section at least needs some clarification.

### **Rip Rap**

7 – Section 320.04 (12) (b) and (c) restrict the placement of Rip Rap and are not in compliance with Chapter 30.12 (1g) (jm) which has no such restrictions. These sections should be removed.

8 – The rule should request that the department’s General Permit for Rip Rap also not contain these restrictions.

9 – Section 320.06 (4) (a) contains a number of mandatory restrictions on Individual Permits for Rip Rap which are also not appropriate. These should be removed from the rule.

10 – Sections 320.11 and 320.12 describe the system that the department uses to assess wave height, erosion intensity, wind exposure, and bank recession for lakes and streams. We think this is questionable science and unnecessarily complicates permit issuance for rip rap. As each foot of shoreline is unique, we suggest scrapping this entire regime and allowing Rip Rap per exemption and general permits, and then treating individual permit applications on a case by case basis.

### **Seawalls**

11 – Section 320.06 (c) creates some very narrow requirements for allowing individual permits to be issued for a seawall. In some circumstances, a seawall is the only option available to a riparian owner who is trying to save their property from erosion. We would request these requirements be removed. We understand that seawall permits will still be granted in a very limited number of circumstances.

### **Pilings**

10 – Section 320.04 (14) (c) creates a setback of 10 feet for a piling, but we would request that the setback be 5 feet. Currently, there is no setback.

11 – Section 320.04 (14) (f) limits pilings to no more than 5 individual piles. We request that number be increased to 8. There is currently no limit on the number of piles.

### **Fish Restrictions**

12 – Section 320.04 (3) (g) restricts construction activity for structures or crossings (bridges) during the spring for most waters and in the fall for trout streams. The spring ban goes from March 1<sup>st</sup> to June 15<sup>th</sup>. This frequently causes delays and adds to project costs. Waivers may be requested, however the current system for granting waivers seems arbitrary.

We are requesting that the rule be amended to add an appeals process for waiver decisions. If appealed the department would have to do the following:

- 1 – Conduct an onsite visit
- 2 – Determine if fish spawning is actually occurring in the vicinity of the bridge
- 3 – Determine if the fish spawning will be occurring when the project is underway
- 4 – Determine if the project will in fact interfere with the spawning

The waiver must be granted if those answers make clear that there would be minimal interference with the fish spawning from the construction activity.

*The Fox Valley Riparian Rights Association thanks you for your consideration of these requested modifications to the rule. If you have any questions, please contact our representatives at The Welch Group.*



To: Assembly Committee on Environment  
From: Wisconsin Realtors Association  
Re: Clearinghouse Rule 24-051; NR 320  
Date: February 27, 2025

Chair Goeben, members of the Committee, thank you for the opportunity to provide testimony on behalf of the Wisconsin Realtors Association regarding the proposed language in NR 320.

We appreciate the effort that DNR made to engage stakeholders in the rulemaking process and the hard work staff put into this draft. However, there are a few provisions that we feel either exceed statutory authority, conflict with state statute, or could result in excessive restrictions on the reasonable use of waterfront property. We feel the following changes will make the rule better align with DNR's statutory authority.

**Boat Shelters**

1. § NR 320.04(9)(h) states that a seasonal boat shelter “shall be connected to adjacent land by a pier...” This language should be deleted because it conflicts with the statutory authority in Wis. Stat. § 30.12(1g)( e), which allows placing a shelter “adjacent to the ...owner’s pier or wharf or to the shoreline.”
2. § NR 320.06(4)(f)2. applies to a boat shelter that needs an individual permit and states that a permit may be issued only if the “permanent or seasonal shelters are on a property that does not include boathouse over the navigable waterway.” This language should be deleted because it conflicts with Wis. Stat. § 30.12(3m)(cr) which prohibits the department from denying the permit based on the “degree to which adjacent land is developed.”

**Riprap.**

3. § NR 320.04(12) should be deleted because it restricts the location of exempt riprap to only moderate or high energy sites. This exceeds the statutory authority governing exemptions in Wis. Stat. § 30.12(1g).

**Individual Waterways Permits**

4. § NR 320.06(3)(d) includes language restricting a structure from interrupting the free movement of water. This language should be deleted or clarified to ensure the proposed rule may not be used to categorically exclude solid piers, which would violate Wis. Stat. § 30.12(3m)(d)2.
5. § NR 320.06(6) sets forth individual permitting criteria, which should be limited to location, design, construction and modifications as set forth in Wis. Stat. § 30.12(3m)(cm). The language inviting DNR review of the need for the proposed structure should be deleted.
6. § NR 320.06(6)(a) limits waterway projects to certain purposes to conduct specifically identified activities under ch. 30, Stats. This should be deleted. The statute generally authorizes the placement of structures as long as they are appropriately exempted or permitted and does not invite DNR to make a policy judgment on the purpose of a waterway project.
7. § NR 320.06(6)(c) should be deleted because it directs an applicant to “reduce” public interest impacts, impermissibly suggesting an applicant must propose the least impactful design among possible alternatives. This is inconsistent with the statutory standard in Wis. Stat. 30.12(3m)(c)1., which is to prevent detriment to the public interest.

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8. § NR 320.06(4)(e)6. contains activity-specific location standards that impermissibly consider the effect of local ordinances and should be deleted.

9. § NR 320.06(4)(e)8. uses the number of boat slips available for an exemption as a standard baseline for what is permissible in an individual permit. This language should be deleted because exemptions and individual permits are reviewed under two different standards.

**Individual Waterway Permits placed on Great Lakes and Outlying Waters and all solid piers**

10. § NR 320.06(7) contains language creating a presumption that a site-specific design engineering, modeling, or geotechnical analysis is required just because a structure is proposed to be placed on Great Lakes, Outlying Waters, or is proposed to be a solid pier. That language should be deleted because these requirements should be a site-specific determination only where there is a legitimate need for an analysis to perform a public interest test, not simply because of the water body or general type of structure proposed.

Thank you again for your time.

If you have any questions, please reach out to me at:

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