

The attached guidance entitled “Implementation of 2011 Wis. Act 167 and 2015 Wis. Act 387 changes to s. 30.121 Wis. Stats. Affecting Boathouses Constructed over Navigable Waterways” was developed to inform and provide direction for internal staff about the implementation of 2011 Wis. Act 167 and 2015 Wisconsin Act 387 statutory changes to the certification and exception review process for maintenance and repair of boathouses constructed over navigable waterways. This guidance document may also be useful for external stakeholders, including private riparian landowners and their consultants, to help make project planning decisions.

The Department is proposing a summary of changes to boathouse maintenance and repair statutes with the intent of clarifying the standards which need to be met during the boathouse maintenance and repair certification process so such standards can be applied consistently by the Department during project review.

This draft guidance was developed by staff from the Department’s Bureau of Watershed Management and has been reviewed internally. The Department is now soliciting comments from external stakeholders. Once the 21 day notice period is complete, the Department will consider all comments, revise the guidance if needed, and make a copy of the final guidance available to the appropriate internal and external stakeholders.

Comments related to this draft guidance document should be provided to Kyle McLaughlin via e-mail at: DNRWYWRZGuidance@wisconsin.gov



BUREAU OF WATERSHED MANAGEMENT PROGRAM GUIDANCE

Waterway and Wetland Protection

Implementation of 2011 Wis. Act 167 and 2015 Wis. Act 387 changes to s. 30.121 Wis. Stats. Affecting Boathouses Constructed over Navigable Waterways

**Effective Date: September 1, 2016
Guidance #: 2016-012**

Notice: This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

APPROVED:

Pam Biersach, Director
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Date

Statement of Problem Being Addressed

2011 Wis. Act 167 and 2015 Wis. Act 387 made changes to existing State statutes (s. 30.121 Wis. Stats.) as they relate to the maintenance and repair of boathouses located over navigable waterways. This guidance identifies those changes and clarifies the permit review process and standards (found in both Statute and Administrative Code) for field staff.

Summary of Guidance

2011 Wis. Act 167 made several statutory changes to Chapter 30, Wis. Stats. The Act created Wis. Stat. s. 30.121(1), which define (for purposes of the boathouse statute) “maintain” and “repair” to include replacing structural elements. The Act also created an additional exception to the regulation of “wet” boathouses and fixed houseboats under s. 30.121, Wis. Stats. The exception, s. 30.121(3c), allows repair and maintenance of any boathouse that was in existence on December 16, 1979, to exceed the 50% of equalized assessed value limitation contained in s. 30.121(3), subject to certain restrictions. The boathouse owner must apply for and obtain certification from DNR that: (1) the boathouse or fixed houseboat was in existence prior to December 16, 1979; (2) the repairs and maintenance do not affect the size, location, or configuration of the boathouse; and (3) the repairs and maintenance do not result in the boathouse being converted into living quarters. This new exception grandfathers in compliant boathouses even if repairs had previously reached the 50% limitation.

2015 Wis. Act 387 made statutory changes to the following items:

- the definition of a boathouse under s. 30.01(1d), Wis. Stats.;
- added “foundations” to the list of structural elements subject to maintenance and repair limitations;
- removed the prohibition on boathouse reconfiguration for boathouses subject to the s. 30.121 (3c), Wis. Stats., exception (provided such reconfiguration does not result in a floor over a wet bay of the boathouse); and,
- expanded the commercial boathouse exception under s. 30.121(3w)(c), Wis. Stats., to allow expansion, repair, or maintenance of a commercial boathouse located on outlying waters.

S. 30.121, Wis. Stats. Regulation of boathouses and fixed houseboats. Exceptions for Certain Boathouses

The statutory boathouse exceptions discussed in this guidance apply only to a boathouse as defined in s. 30.01(1d), Wis. Stats.: *“a structure with one or more walls or sides that has been used for one or more years for the storage of watercraft and associated materials, regardless of the current use of the structure.”* This means that only repairs or maintenance (which includes replacement of structural elements under s. 30.121(1), Wis. Stats.) to a structure which has been used at some time for at least one year to store watercraft and associated materials may be authorized under the exceptions. No portion of a boathouse may be converted into living quarters, but living quarters that are documented to have existed since December 16, 1979 do not affect certification eligibility.

The statutory subsection that limits the cost of maintenance and repair to 50% of the equalized assessed value of the boathouse or fixed houseboat under s. 30.121(3), Wis. Stats., does not apply in any of the following situations:

- If the boathouse was in existence on December 16, 1979 and the repairing or maintaining does not affect the size, or location of the boathouse, the work does not result in the boathouse being converted into living quarters, and the work does not involve the placement of a floor over a wet bay in the boathouse. See s. 30.121(3c), Wis. Stats.
- If the boathouse or fixed houseboat has historic or cultural value, as determined by the state historical society or a local county historical society established under s. 44.03. (This is the only exception that also applies to fixed houseboats.) See s. 30.121(3g), Wis. Stats.
- If the boathouse is single-story, completely covers an authorized waterway enlargement, does not extend waterward of the ordinary high water mark as it existed before the authorized enlargement was constructed, and living quarters or plumbing fixtures are not constructed in the boathouse. See s. 30.121(3m), Wis. Stats. (note: this section also allows the construction of a boathouse that meets the requirements of this subsection).
- If the boathouse was damaged by violent wind, vandalism or fire and if the damage occurs after January 1, 1984. See s. 30.121(3r), Wis. Stats. (note: this section also allows the construction of a boathouse that meets the requirements of this subsection).
- If an authorized commercial boathouse is: (1) used exclusively for commercial purposes; (2) is located on land that is either zoned exclusively for commercial/industrial purposes, is a brownfield, or is in a blighted area, and (3) is

located within any of the following areas: within a harbor that is being operated as a commercial enterprise, on a river that is a tributary of Lake Michigan or Lake Superior, or on an outlying water and the work is limited to the expansion, repair, or maintenance of an existing boathouse (note: construction as well as repairs and maintenance, and expansion is allowed under s. 30.121(3w), Wis. Stats.)

- If a boathouse is listed on the national register of historic places in Wisconsin or the state register of historic places. See s. 30.121(5), Wis. Stats. Note that s. 30.121(3) and (3c) (the 50% provision and the removal of the 50% provision) do not apply to boathouses listed on these registers, and so no certification is required.

Application Review and Certification Process

The riparian owner of any existing boathouse extending beyond the ordinary high-water mark of any navigable waterway may request certification that the proposed repair or maintenance is eligible for an exception. The request for certification of an exception shall be made to the department following the procedure outlined in s. NR 325.08, Wis. Adm. Code. The boathouse certification exception includes a fee comparable to the individual permit fee. It is important to note that statutory changes may have made portions of Ch. NR 325, Wis. Adm. Code no longer applicable to the Department's boathouse certification/exception review process. Field staff should work closely with policy staff for clarification on matters where questions arise. Where statute is in direct conflict with the language in administrative code, the statute is to be followed.

Required application information includes: the certification application form, boathouse plans/drawing, photographs, a location sketch, list of proposed repairs, documentation that the boathouse was used for one or more years for the storage of watercraft and associated materials, and documentation to demonstrate the boathouse qualifies for an exception. The documentation required for to prove an exception applies may include dated photographs, dated aerial photography, tax records, certified surveys, certified documents from a certified assessor, signed historical society documentation, or similar documents.

If no documentation can be provided we must rely on the signature block where the landowner certifies that the boathouse was placed on or before December 16, 1979. In that case, it is prudent to review any available boathouse files in the office or any historical aerial photos, or both. When reviewing maps or files, staff should verify the size, location and configuration of the boathouse and associated docks. If it appears that there is a discrepancy between the information provided in the application and the information available in the historical photos or boathouse files, the boathouse may not be eligible for the exception certification.

The required plans and drawings must show that the maintenance and repair does not affect the size of the boathouse and maintains the original dimensions of the boathouse. Additions that are not pre-existing, including but not limited to piers, rafts, diving platforms, slides, etc. are not allowed to be constructed as that would change the size of the boathouse.

Repairs and maintenance certified by the Department may not change the dimensions of the boathouse. However, structural elements listed in s. 30.121(1), Wis. Stats., and architectural features referenced in s. NR 325.09(b), Wis. Adm. Code may be reconfigured provided the 3-dimensional envelope of the boathouse is not changed, and the reconfigurations do not result in a floor over a wet bay of the boathouse. Structural elements include (but are not limited to) roofs, doors, walls, windows, beams, porches, floors, and foundations. Architectural features include (but are not limited to) decks, walkways, railings, or piers.

When reviewing a boathouse certification request, in order to ascertain if the request meets a statutory exception, architectural features and structural elements are to be treated similarly:

- The type of material may change, but not the size or location of the boathouse.
- Repairs may include replacing structural elements including roofs, doors, walls, window, beams, porches, floors and foundations.
- Reconfigurations of structural elements and architectural features that may be considered include those that have little to no effect on the boathouse's overall impact to the public interest.

2015 Wis. Act 387 modified s. 30.121(3c), Wis. Stats., and allows reconfiguration of the boathouse as part of repair and maintenance. Examples of allowable reconfigurations may include:

- changing the location or size of previously existing windows or doorways, or
- converting a boathouse from a 2-bay boathouse to a single bay boathouse (i.e., 2-doors to 1, separated stall to unseparated stall, etc.).

Reconfigurations resulting in the addition of structural elements which were not previously in place may be considered under a boathouse certification provided they do not have any impact on the public interest. Examples of such reconfigurations that are not likely to affect the public interest in navigable waterways may include:

- the addition of an interior wall over an existing floor in the boathouse, or

- the addition of railings, support beams, or posts within the interior of the boathouse.

Examples of reconfigurations that may impact natural scenic beauty (a public interest consideration) could include reconfigurations that place additional exterior windows, doorways, or railings not presently in existence. Additionally, any reconfigurations that affect the size or location of the boathouse would not be allowed. For example a proposal to convert the roofline of the structure from a peaked roof to a flat roof would not be allowed since such a reconfiguration would affect the size or location of the boathouse.

2015 Wis. Act 387 modified s. 30.121(1), Wis. Stats., and expanded the structure elements that can now be repaired or maintained under a boathouse certification. Foundations are now able to be repaired or maintained. For example, an applicant may request to remove a concrete block foundation and replace with a poured wall foundation or driven pilings. A conversion from a poured wall or block foundation to pilings is not likely to result in a change in boathouse size or location, and may even result in less total impact on the lake bed and provide better water flow through the structure. Conversely, if a boathouse currently has a driven piling foundation and is proposed to be changed to a concrete-block or poured wall foundation, this may result in a change in boathouse size or location and would not be allowed. Such a proposal may also impact the public interest by covering additional lake or stream bed habitat

Through the boathouse certification process, if foundations are proposed to be replaced, a detailed narrative describing the work plan to remove/dispose/rebuild the foundation may be requested by the Department to ensure that adequate protections (turbidity curtain, debris netting, etc.) are proposed to be in place in order to avoid the deposition of demolition/construction debris into the waterway.

The department shall review the information submitted by the applicant and issue or deny a certification within 60 days. Issuing a certification that is valid for 3-5 years and that includes maintenance within that period will limit the number of times the applicant must seek approval.

Definitions

“Boathouse” means a structure with one or more walls or sides that has been used for one or more years for the storage of watercraft and associated materials, regardless of the current use of the structure.

“Fixed houseboat” means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

In this s. 30.121, the terms "maintain" and "repair" include replacing structural elements, including roofs, doors, walls, windows, beams, porches, floors, and foundations.

CREATED:

Statewide Policy Team

08/30/2016

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Date

APPROVED:

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Date

Policy Management Team approved on _____ (date).