

The attached guidance entitled “Implementation of 2015 Act 387 changes to s. 30.12 Wis. Stats. Affecting Permanent Boat Shelters” was developed to inform and provide direction for internal staff about the implementation of 2015 Wisconsin Act 387 statutory changes to permanent boat shelter permitting. 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 recent changes to boat shelter permitting statutes with the intent of clarifying permit standards so they can be applied consistently when the Department is required to make permit decisions on proposals for such structures.

This draft guidance was developed by staff from the Department’s Bureau of Watershed Management and has been reviewed internally.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Comments related to this draft guidance document should be provided to Kyle McLaughlin via e-mail at: DNRWYWRZGuidance@wisconsin.gov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 2015 Act 387 changes to s. 30.12 Wis. Stats. Affecting Permanent Boat Shelters

Effective Date: September 1, 2016
Guidance #: 2016-011

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

2015 Act 387 made changes to existing State statutes (s. 30.12 Wis. Stats.) as they relate to the permitting of permanent boat shelters. This guidance identifies those changes and clarifies the permit review process and standards (found in both Statute and Administrative Code) for field staff.

Act 387 changes to s. 30.12 Wis. Stats. - Sections Affected:

1. General Permits found under s. 30.12(3)(a)(6) and s. 30.12(3)(c), Wis. Stats.
2015 Wisconsin Act 387 changed the general permit requirements to place a permanent boat shelter adjacent to a riparian owner's property. These changes removed the restrictions on the general permit (GP) for permanent boat shelters constructed after May 3, 1988, which excluded from the GP circumstances where:
1. The property on which the permanent boat shelter is to be located also contains a boathouse within 75 feet of the ordinary high-water mark. **2.** There is a boathouse over navigable waters adjacent to the owner's property. **3.** The permanent boat shelter extends beyond the waterward end of the owner's pier or the waterward side of the owner's wharf.

In addition, the changes to s. 30.12(3)(c) Wis. Stats specify that the Department may not impose general permit conditions that govern the distance at which a boat shelter may extend from the shore and may not impose general permit conditions based on the degree to which adjacent land is developed. The Department, however, still has the ability to impose general permit conditions that prohibit a boat shelter extending beyond the line of navigation, as defined in s. 30.01(3c), govern the architectural features of boat shelters, and govern the number of boat shelters that may be constructed adjacent to a parcel of land.

2. Individual Permits found under s. 30.12 (3m)(cr), Wis. Stats.
2015 Wisconsin Act 387 added a new statutory subsection relating to individual permit applications for permanent boat shelters. The newly created s. 30.12(3m)(cr), Wis. Stats specifies that the Department may not deny an individual permit for a permanent boat shelter on the basis of: **1.** The distance at which the shelter will extend from the shoreland **2.** The degree to which adjacent land is developed. However, these factors may still be considered in determining whether the proposal meets the standards for issuing an individual permit under s. 30.12(3m)(c). The Department, still has the ability to deny an individual permit for a permanent boat shelter on the basis that the standards in s. 30.12(3m)(c) are not met, or if the boat shelter will extend beyond the line of navigation, as defined in s. 30.01(3c).

Implementation of statutory changes

The creation of the individual permit approval sideboards under s. 30.12 (3m)(cr) changes the Department's ability to deny a permit solely on the bases of the distance

such structures may extend from the shoreline or the level of adjacent shoreland development. However, these factors may continue to be considered in making a permit determination under the standards in s. 30.12(3m)(c). As part of this consideration, the Department also utilizes the standards found in NR 326.055 Wis. Adm. Code when reviewing an individual permit for a permanent boat shelter. The creation of 30.12(3m)(cr) and subsequent sideboards, supersedes some of the existing standards found in the administrative rule making them inapplicable. As a result, landowners are no longer limited to the standards found in NR 326.055(4)(e) Wis. Adm. Code (limiting a boat shelter to extend up to 30' or 50' from the shoreline depending on waterway size) or NR 326.055(4)(f) Wis. Adm. Code (developed shoreline standards) to be eligible to be issued an individual permit.

All other provisions found within NR 326.055 Wis. Adm. Code, other than the ones described above, are applicable when reviewing an individual permit. It is important to note that the Department may continue to consider the location of the proposed permanent boat shelter relative to the line of navigation in our permitting decision as part of the permitting criteria found in s. 30.12(3m)(c) Wis. Stats.

CREATED:

Statewide Policy Team

08/24/2016

Creator, Title

Date

APPROVED:

Section Chief

Date

Policy Management Team approved on _____ (date).