

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request Adoption of Emergency Board Order LF-14-10(E), creation of NR 45.13(lm)(d), establishment of a slow-no-wake zone on a 3,700 ft. stretch of the Wisconsin River (at the "narrows" upstream from WI Dells)

FOR: APRIL, 2010 BOARD MEETING

TO BE PRESENTED BY:
Barbara Wolf

SUMMARY:

Large boats operating at high speeds in the confined Wisconsin River section known as the "narrows" create wave actions that rebound off the stone walls of the river banks. This results in hazardous conditions for operators of canoes and other small boats. The regulation will prohibit boats from going faster than the minimum speed required to maintain stearage (slow-no-wake.) Documentation of boat collisions and capsizings in this stretch of river support the need for regulated speeds. An emergency Rule is being proposed to protect public health and safety for the upcoming high use season. A permanent rule is also being proposed but will not be promulgated in time for the 2010 use season.

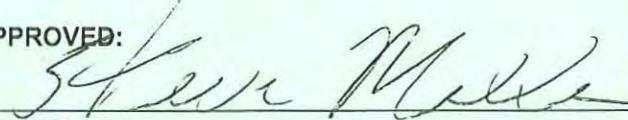
When contacted, all the tour boat operators said their normal practice is to go slowly through the area anyway, so there would be no impact to them on their scheduling. They expressed support for a slow-no-wake regulation because their ability to navigate is often jeopardized by recreational watercraft attempting to jump the wakes of their boats or maneuver around the tour boats at high speeds.

RECOMMENDATION: Adoption of Emergency Rule LF-14-10E

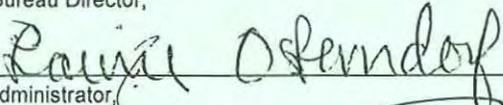
LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input checked="" type="checkbox"/> | Fiscal Estimate Required | Yes | <input type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

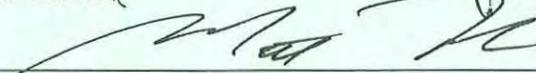
APPROVED:


Bureau Director,

3-22-10
Date


Administrator,

3/23/10
Date


Secretary, Matt Frank

4-7-10
Date

- cc: Laurie J. Ross - AD/8
- Erin Crane - ER/6
- Laurie Osterndorf - AD/8
- Mike Lutz - LS/8
- Barb Wolf - SCR

- Dan Schuller - PR/6
- Steve Miller - LF/6
- Dave Seibert - OE/7
- Linda Haddis - LS/8

CORRESPONDENCE/MEMORANDUM

DATE: March 20, 2010

TO: Members of the Natural Resources Board

FROM: Matt Frank 

SUBJECT: Requesting adoption of Emergency Board Order LF-14-10E to create a slow-no-wake zone on a 0.7 mile stretch of the Lower Wisconsin River at the "Narrows" located upstream of the City of Wisconsin Dells

Rule summary

This provision prohibits motorboats from going faster than slow-no-wake, defined as the minimum speed required to maintain steerage, on an approximately .70 mile long (3,700ft.) stretch of the Wisconsin River at the Dells of the Wisconsin River state natural area (see attached maps). 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.

Purpose of rule

This regulation is intended to improve public safety and help minimize user conflicts. 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. This area is a popular thoroughfare for recreational boating, and also part of the route for tour boats into the scenic Upper Dells with its tall sandstone shoreline and hidden canyons. 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.

Nature of the emergency

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 motorboats 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 part of a permanent rule (authorization for public hearing on ch. NR 45 rule revisions 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.

Regulation of slow-no-wake zones

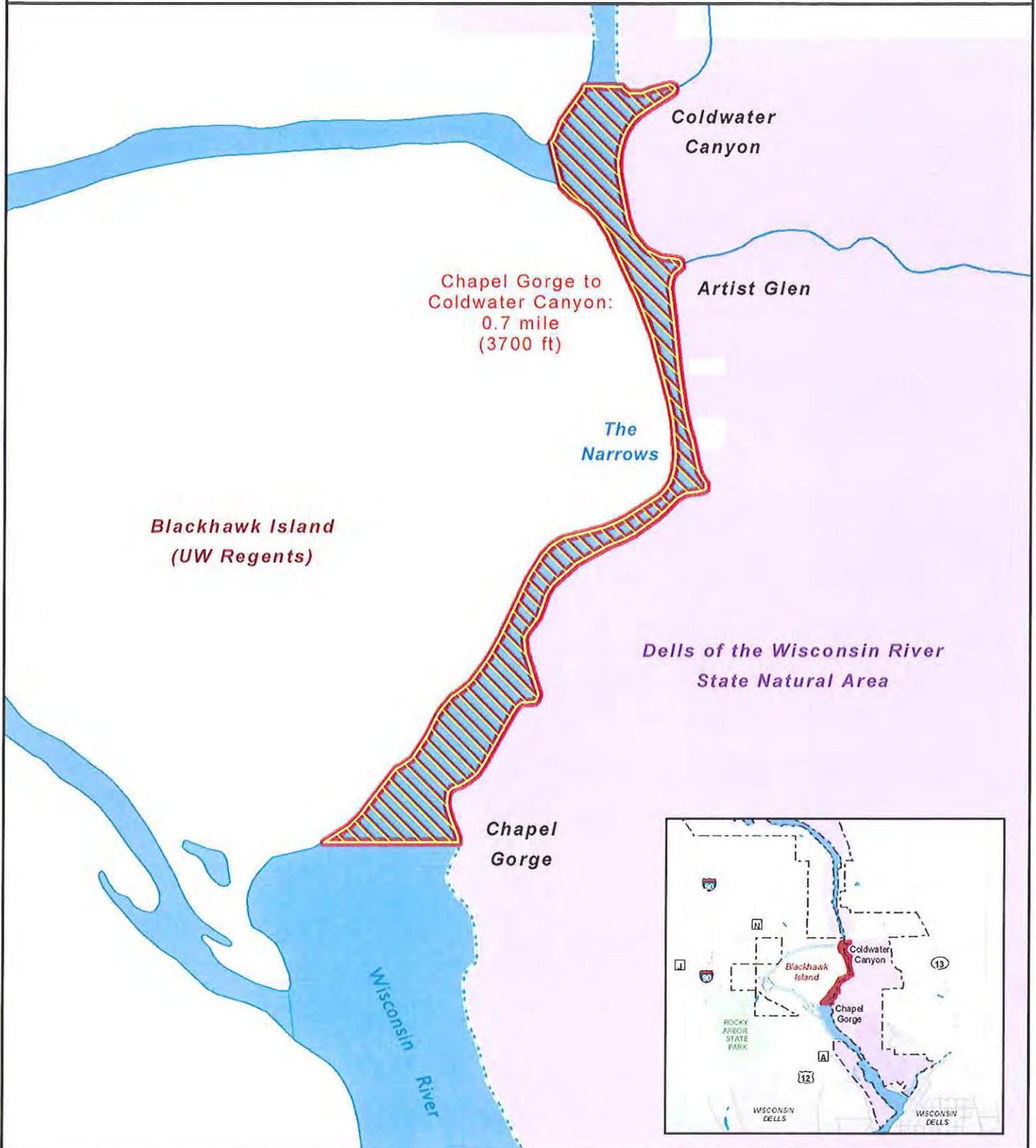
The Wisconsin River in this area is bounded by 4 townships (in Sauk, Columbia, Adams and Juneau Counties) and under section 30.77, Stats., each of these local municipalities or any of the counties *may* enact rules to limit motorboat speed. However, in order for the rules to be enforceable, the rules must be identical and an enforcement agency is needed for the ordinances. To date, there has been local concern, but no formal action to create the slow-no-wake zone. On February 16, 2010, the Wisconsin Dells Council passed a resolution authorizing the mayor to proceed in seeking an emergency ruling to create a no-wake zone in the Narrows of the Wisconsin River. However, the Narrows is not within the city's jurisdiction. As an alternative approach, this rule is being established under state natural area authority which allows for the establishment of use zones (s. 23.28(3), Wis. Stats.). The University property on the west side of the river is also a designated state natural area. Two small privately owned in-holdings are located within the state natural area boundary along this stretch of river on the east side. However, the shoreline frontage is owned by the Department and part of the Dells of the Wisconsin River state natural area, so the slow-no-wake zone applies on that part of the river as well.

This is the first time the department has utilized this authority to establish a river use zone. Having the rule enacted by the state under NR 45, Wis. Adm. Code is advantageous in that there can be more consistency throughout the stretch of river, and Department wardens and rangers can enforce the regulation. The slow-no-wake rule will positively impact public safety, and also create an atmosphere conducive to non-motorized boating consistent with the state natural area. There is local support for this rule including the managers of the University of Wisconsin property (Upham Woods) on the west side of the river, and the private property owners on the shoreline within the boundary, and the "Stewards of the Dells" group.

Who will be impacted

Recreational boaters will be most impacted by the regulation as they tend to operate at or near planing speed through parts of the Narrows. The difference in navigating this .70 mile long stretch of the river at typical speed (both planing, and slowing down for turns and approaching boat traffic) and operating at slow-no-wake is less than 5 minutes (timed at 7:25 minutes for slow-no-wake operation and 2:37 at typical speed in an 18 foot motorboat.) The tour boat operators in this area run both traditional tour (cruise) boats and jet boats. When contacted, all of the tour boat operators said their normal practice is to go slowly through the area anyway, so there would be no impact to them on their scheduling of trips. They expressed support for a slow-no-wake regulation because their ability to navigate is often jeopardized by recreational watercraft attempting to jump the wakes of their deep draft boats or trying to maneuver around the larger boats at high speed.

Proposed Slow-No Wake Zone for the The Dells of the Wisconsin River State Natural Area



DNR Ownership
 UW Regents Ownership

Proposed Slow/
No Wake Zone



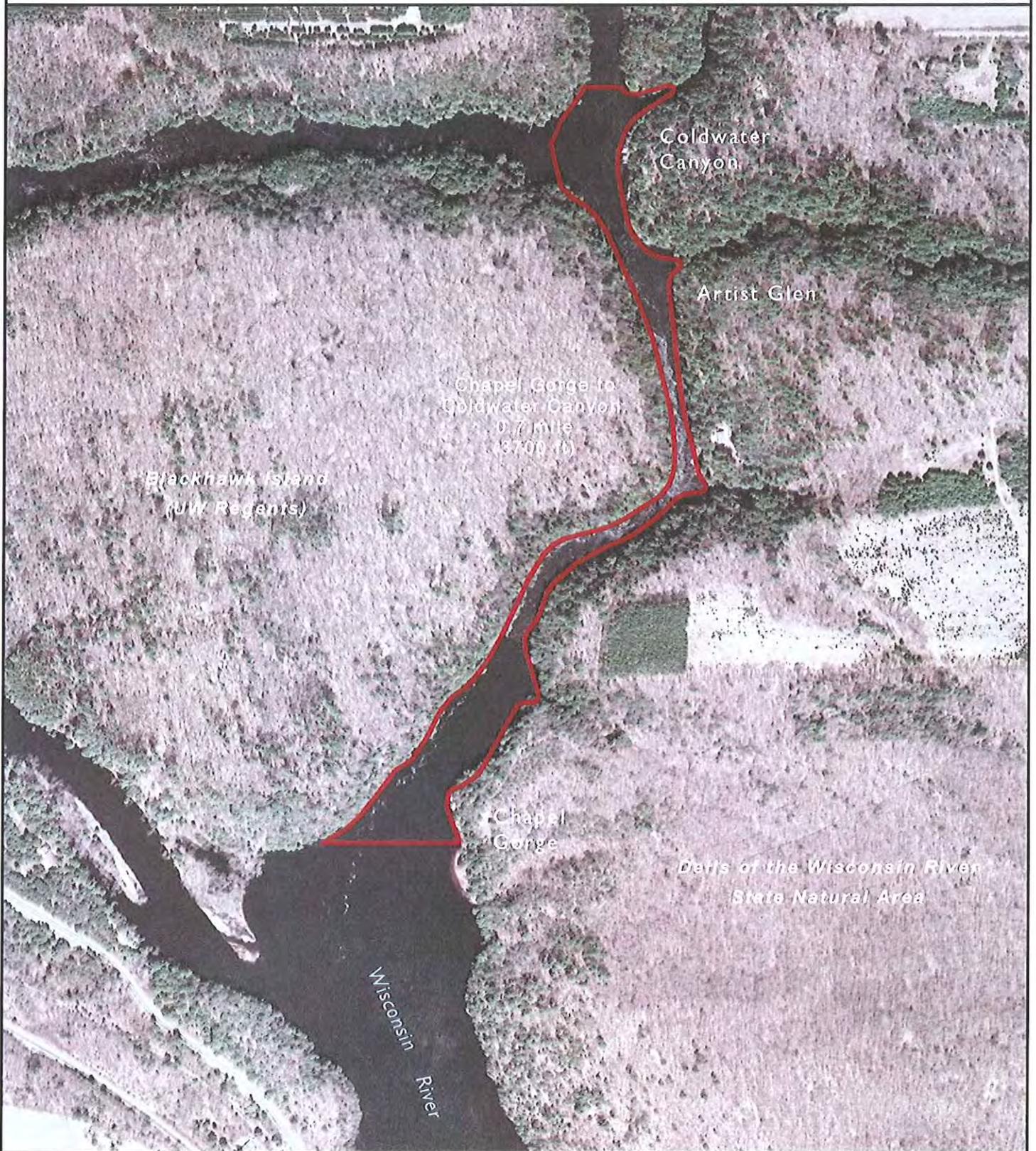
0 500 ft

STATE OF WISCONSIN
DEPT. OF NATURAL RESOURCES



Bureau of Facilities and Lands
March 19, 2010

Proposed Slow-No Wake Zone for the The Dells of the Wisconsin River State Natural Area



 Proposed Slow/No Wake Zone



0 500 ft

STATE OF WISCONSIN
DEPT. OF NATURAL RESOURCES



Bureau of Facilities and Lands
March 19, 2010

Fiscal Estimate — 2009 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number LF-14-10E

Subject

Emergency rule for the establishment of a slow-no-wake zone on the Wisconsin River at the Dells of the Wisconsin River state natural area

Fiscal Effect

- State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

- Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

20.370 (1)(my) and 20.370 (1)(mu)

Assumptions Used in Arriving at Fiscal Estimate

The rule package prohibits motorboats from going faster than slow-no-wake on an approximately 0.70 mile stretch of the Wisconsin River at the Dells of the Wisconsin River state natural area.

Fiscal Effect

The Department will incur one-time costs of approximately \$750 for the purchase and placement of signs at the start and end of the slow-no-wake stretch. This will be done by existing FTE staff, within regularly scheduled work hours. These costs would be funded with federal Coast Guard and state segregated boating funds.

No additional enforcement costs are anticipated. The level of enforcement on the river by the conservation wardens will remain the same.

Long-Range Fiscal Implications

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 03-22-10

Fiscal Estimate — 2009 Session

**Page 2 Assumptions Narrative
Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number LF-14-10E

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number LF-14-10E

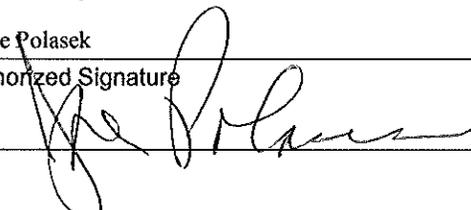
Subject
 Emergency rule for the establishment of a slow-no-wake zone on the Wisconsin River at the Dells of the Wisconsin River state natural area

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 \$750 for purchase and placement of signage

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes	\$	\$ -	
(FTE Position Changes)	(FTE)	(- FTE)
State Operations — Other Costs		-	
Local Assistance		-	
Aids to Individuals or Organizations		-	
Total State Costs by Category	\$	\$ -	
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR	\$	\$ -	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 03-22-10

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to create NR45.13(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.

LF-14-10E

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 part of a permanent rule (authorization for public hearing on ch. NR 45 rule revisions, 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. Barbara.Wolf@wi.gov

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 in this river segment 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 _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN DNR
DEPARTMENT OF NATURAL RESOURCES

By _____
Matt Frank, Secretary

(SEAL)