



CRITICAL HABITAT AND PUBLIC RIGHTS FEATURES DESIGNATION

Lake Ripley – Jefferson County, Wisconsin

BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Based on the following findings of fact and conclusions of law, and in accordance with s. NR 1.06, Wis. Adm. Code, the Department designates eight specified areas of Lake Ripley in Section 8, Township 06, Range 13 East, Town of Oakland, Jefferson County, as critical habitat and Public Rights Features.

FINDINGS OF FACT

1. Lake Ripley is a 423-acre, glacial kettle lake located in Section 8, Township 06, Range 13 East, in the Town of Oakland in western Jefferson County. The lake is classified as a natural drainage lake fed by streams, groundwater, precipitation, and runoff and drained by an outlet stream. Lake Ripley has 5.62 miles of shoreline, a maximum depth of 44 feet, an average depth of 18 feet, and a volume of 7,561 acre feet. Approximately 34% of the lake's surface area is less than five feet deep, and 41% is greater than 20 feet deep. The lake has extensive shallow areas supporting rooted aquatic plants and a single deep basin near its center. Lake Ripley has many areas that support fish, wildlife, and harbor high-quality plant communities that protect water quality in the lake.
2. Pursuant to s. NR 1.06(1), Wis. Adm. Code, "[t]o fulfill its affirmative duty to protect public trust waters, the department shall assess the state's public trust waters to identify locations of public rights features."
3. The Department proposed a critical habitat designation study on Lake Ripley in 2006. The purpose of the study was to determine whether areas of Lake Ripley met the criteria to be designated as critical habitat and Public Rights Features.
4. The critical habitat designation study was conducted in partnership with the Lake Ripley Management District and the Jefferson County Land and Water Conservation Department (LWCD).
5. Pursuant to s. NR 1.06(5), Wis. Adm. Code, Public Rights Features are fish and wildlife habitat, including specific sites necessary for breeding, nesting, nursery and feeding; physical features of lakes and streams that ensure protection of water quality; reaches of bank, shore or bed that are predominantly natural in appearance (not man-made or artificial) or that screen man-made or artificial features; and navigation thoroughfares or areas traditionally used for navigation during recreational boating, angling, hunting or enjoyment of natural scenic beauty.
6. Pursuant to s. NR 1.06(8), Wis. Adm. Code, Public Rights Features include Sensitive Areas designated under s. NR 107.05(3)(i), Wis. Adm. Code. Sensitive Areas are "areas of aquatic vegetation identified by the department as offering critical or unique fish and wildlife habitat, including seasonal or lifestage requirements, or offering water quality or erosion control benefits to the body of water." s. NR 107.05(3)(i)(1), Wis. Adm. Code.
7. On October 20, 2015, Department staff completed a substrate study on Lake Ripley.

8. Point-intercept aquatic plant surveys were completed on Lake Ripley by Lake Ripley Management District staff using Department approved protocols in 2011, 2015, and 2020. During the point-intercept plant surveys, plants were found at a maximum depth of 16, 15, and 21 feet of water, respectively. Lake Ripley's floristic quality index (FQI) scores from the three surveys were 23.77, 25.92, and 25.94, respectively. The FQI scores consistently rank above the median (21.10) and average (20.00) values for lakes in the Southeast Wisconsin Till Plains ecoregion. There were 17 species of plants sampled in 2011, 19 species sampled in 2015, and 20 species sampled in 2020.
9. On May 2, 2023, a notice that the department identified areas that met the criteria for designation as critical habitat and Public Rights Features was mailed to Lake Ripley riparian owners on the Lake Ripley Management District's distribution list. Pursuant to s. NR 1.06(7)(c), the notice contained "the location and description of the possible public rights features and the basis for its determination that the location[s] [identified are] likely to contain public rights features." The notice included a date for public hearing and information on how to submit public comments. The notice was added to the Department public hearing calendar on May 1, 2023, published in the Cambridge News & Deerfield Independent on May 11, and provided to legislators whose districts include Lake Ripley and the chairpersons of the legislative committees with jurisdiction for natural resource issues on May 9, 2023.
10. A public hearing was held at the Oakland Town Hall on May 18, 2023. There were approximately 45 attendees present at the public hearing. A recording of the public hearing was made available to the public and was disseminated upon request. Public comments were received at the public hearing and written public comments were accepted by the Department through June 30, 2023. At the public hearing, there were 23 hearing appearance forms submitted, 10 in favor of the designation, 2 in opposition, and the remaining forms did not indicate a position or indicated the position was "as interest may appear."
11. In public comments, members of the public asked how the designation may impact permitting requirements for dredging and riprap projects under ch. 30, Wis. Stats., and the Department explained generally that waterway projects are not categorically prohibited in designated areas; however, due to the sensitivity of habitat associated with Public Rights Features, chapter 30 permit applications for waterway projects within these areas may be subject to a higher level of Department review or oversight. If a member of the public is unsure whether a permit is required for a proposed project or has further questions regarding a proposed chapter 30 project, they can contact their local WDNR Water Management Specialist (WMS): <https://dnr.wisconsin.gov/topic/Waterways/contacts.html>
12. In public comments, members of the public asked how the designation may impact permitting requirements for removal of aquatic vegetation under ch. NR 109, Wis. Adm. Code. The Department explained generally that the designation does not prohibit hand pulling or mechanical harvesting of aquatic plants; however, pursuant to s. NR 109.06(2)(b), Wis. Adm. Code, a waiver of permitting requirements is not available for hand-pulling vegetation in the areas designated as sensitive areas. Riparians in these areas may apply for a permit to hand pull vegetation under ch. NR 109, Wis. Adm. Code.
13. The Department has identified eight (8) areas on Lake Ripley as containing critical habitat and Public Rights Features, as shown on the attached Figure 1. Five of the areas are Sensitive Areas under s. NR 107.05(3)(i)(1), Wis. Adm. Code, based on the aquatic vegetation and associated fish and wildlife in these areas and the water quality benefits of these areas to the lake (areas LR-1, LR-2, LR-5, LR-6, and LR-7). The other three areas are designated as Other Critical Habitats for their natural or screened shoreline and/or fish and wildlife habitat values (areas LR-3, LR-4, and LR-8).
14. Pursuant to s. NR 1.06(7)(d), Wis. Adm. Code, the Department finds that the eight areas described above are properly classified as locations containing Public Rights Features.

15. Pursuant to s. NR 1.06(6), Wis. Adm. Code, the Department based its identification of Public Rights Features on factual information obtained from reputable sources, including but not limited to data collected during lake point-intercept plant surveys completed by the Lake Ripley Management District, historical fish surveys, Natural Heritage Inventory reports, the Wisconsin Wetlands Inventory, a substrate survey, and information from Department staff and the Lake Ripley Management District.
16. The Department has completed all procedural requirements of s. 1.11(2), Wis. Stats., and ch. NR 150, Wis. Adm. Code, for this action. The Department has considered the impacts on the natural and human environment and alternatives to the action and has provided opportunities for public disclosure and comment. The Department has determined that its review of the proposed action constitutes an integrated analysis action under s. NR 150.20(2), Wis. Adm. Code.
17. In March 2024, the Lake Ripley Critical Habitat Report was finalized by the Department with the support of the LWCD and the Lake Ripley Management District. In accordance with s. NR 1.06(9), Wis. Adm Code, the report may be accessed by requesting a copy from the Regional Lakes Coordinator (Arthur.Watkinson@wisconsin.gov) or by visiting the DNR website at <https://dnr.wisconsin.gov> and searching "Critical Habitat Areas." You may access the report by clicking on the link, "Critical Habitat Designation." The report may be found under "Lake Ripley, Jefferson County – Critical Habitat Designation." The designated areas may also be found on the DNR's Surface Water Data Viewer, which may be found by visiting the DNR website and searching "Surface Water Data Viewer."

CONCLUSIONS OF LAW

1. The Department has authority pursuant to s. NR 1.06, Wis. Adm. Code, to identify public rights features.
2. The Department has complied with s. NR 1.06, Wis. Adm. Code, in identifying public rights features on Lake Ripley.
3. The Department has complied with the Wisconsin Environmental Policy Act, s. 1.11, Wis. Stats.
4. The Department concludes that the eight areas identified on the attached Figure 1 meets the criteria to be designated as Public Rights Features under s. NR 1.06, Wis. Adm. Code.
5. The Department concludes that five of the designated areas (areas LR-1, LR-2, LR-5, LR-6, and LR-7) identified on the attached Figure 1 meets the criteria to be designated as Sensitive Areas under s. NR 107.05(3)(i)(1), Wis. Adm. Code.

ORDER OF DESIGNATION

IT IS THEREFORE ORDERED THAT the areas of Lake Ripley identified by the Department on Figure 1 are hereby designated as critical habitat and Public Rights Features.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 days after the

decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to s. 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. A petition for a contested case hearing must follow the form prescribed in s. NR 2.05(5), Wis. Adm. Code, and must include the following information:

1. A description of the agency action or inaction which is the basis for the request;
2. The substantial interest injured or threatened with injury by the agency action or inaction;
3. Evidence of legislative intent that the interest is to be protected;
4. An explanation of how the injury to the person requesting the hearing is different in kind or degree from injury to the general public caused by the agency action or inaction;
5. That there is a dispute of material fact, and what the disputed facts are; and
6. The statute or administrative rule other than s. 227.42, Stats., which accords a right to a hearing.

The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review.

This notice is provided pursuant to s. 227.48(2), Wis. Stats.

Dated at South Central Region Headquarters, Wisconsin on 05/21/2024

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By:



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Regional Lakes Coordinator
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Lake Ripley Critical Habitat



Figure 1: Locations of the 8 designated Public Rights Features on Lake Ripley. LR-1, LR-2, LR-5, LR-6, and LR-7 are designated as Sensitive Areas.

