

TRIBAL CODE

CHAPTER 27

BOATING SAFETY ORDINANCE

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HISTORY NOTES:

Current Ordinance:

Adopted October 28, 1996, and by Tribal Referendum held on November 21, 1996. Approved by the Superintendent, BIA on December 20, 1996.

Amendments:

Resolution No. 327(99), amended July 12, 1999, Sec.27.401(1), adding “White Sand Lake-Dollard’s Bay (Hwy. H-Boat Landing) as a designated Slow-No-Wake Area, effectively immediately.

Resolution No. 28(03), amended January 27, 2003, Sec. 27.401(1), adding Big Crooked Lake-at the “Narrows” as a designated Slow-No-Wake Area, effectively immediately.

Resolution No. 60(07), amended March 3, 2007, Sec. 27.201 to include through §30.175, Wis. Stats.

Resolution No. 114(08) amended July 21, 2008, Sec. 27.301 (1), hours of 8:00 P.M. or sunset whichever comes first and 10:00 A.M. local time. and Sec. 27.302, hours of 8:00 P.M. or sunset whichever comes first, and 10:00 A.M. local time.

TRIBAL CODE

CHAPTER 27

BOATING SAFETY ORDINANCE

CHAPTER I: GENERAL PROVISIONS

27.101 Purpose.

The purpose of this ordinance is to provide for the protection, enhancement, and management of the Lac du Flambeau Reservation's lakes, streams, and ponds and their shorelines in order to assure present and future use and enjoyment of these resources by tribal members and such others as the Tribe shall permit.

27.102 Authority.

This ordinance is enacted pursuant to Article VI, Section 1(a), (i), and (n) of the Tribe's Constitution.

27.103 Effective Date.

This ordinance shall take effect on the day following adoption by the Lac du Flambeau Tribal Council.

27.104 Abrogation and Greater Restrictions.

Where this ordinance imposes greater restrictions than those contained in other tribal ordinances, codes, or resolutions, the provisions of this ordinance shall govern.

27.105 Interpretation.

In the interpretation and application of the provisions of this ordinance, said provisions shall be held to be minimum requirements, and shall be liberally construed in favor of the Tribe and shall not be deemed a limitation on or a repeal of any other tribal power or authority.

27.106 Severability and Non-Liability.

If any section, provision, or portion of this ordinance is adjudged

unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance will not be affected thereby. The Tribe declares there is no liability on the part of the Tribe, its agencies, or employees, for damages that may occur as a result of reliance upon or conformance with this ordinance. The Tribe, by adoption of this ordinance, does not waive sovereign immunity in any respect.

27.107 Applicability.

This ordinance shall apply to activities undertaken upon the Tribe's reservation. It shall apply to members, non-member Indians and non-members.

27.108 Definitions.

(1) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(2) "Tribal Court" means the Lac du Flambeau Tribal Court.

(3) "Member" means a person enrolled in the Tribe.

(4) "Reservation" means the geographical area within the external boundaries of the Lac du Flambeau Reservation, as surveyed and provided pursuant to Article 1, Clause 3(d) of the Treat of September 30, 1854, 10 Stat. 1109.

(5) "Reservation waters" means all lakes, streams, sloughs, bayous, and marsh outlets which are navigable in fact and which are located within the reservation; lakes which are partly within this reservation are included to the extent of the area within the reservation.

(6) "Indian land" means all land which is held in trust by the United States for the benefit of the Tribe or of a member of the Tribe, and all land owned in fee by the Tribe or a member of the Tribe, such land being within the reservation boundaries defined in subsection (4) above.

(7) "Slow-No-Wake" means that speed at which a boat, jet ski or other self propelled vehicle moves as slowly as possible while still maintaining steering control.

(8) "Water ski" means a boat towing a person using water ski(s), inflatable tube or raft, aquaplane or similar device, or any other towing of a person not in or on another boat.

(9) "Jet ski" means a self propelled aquatic device used to carry one or

more persons.

CHAPTER II: ADOPTION OF STATE BOATING AND SAFETY LAWS

27.201 Adoption of state laws.

State boating laws as found in §30.50 to §30.715, Wis. Stats., are adopted by reference. *Resolution No. 60(07), March 3, 2007.*

CHAPTER III: WATER SKIING & JET SKIS

27.301 Water Skiing Hours.

(1) No person shall water ski or operate any motor-boat towing a person engaged in waterskiing or similar activity between the hours of 8:00 P.M. or sunset whichever comes first and 10:00 A.M. local time.

(2) This subsection does not apply to ski tournaments, competitions, exhibitions, trials, or practices for such events where adequate lighting is provided and such event is duly authorized by the Lac du Flambeau Tribal Council.

27.302 Jet Skiing Hours.

No person shall operate a jet ski between the hours of 8:00 P.M. or sunset whichever comes first, and 10:00 A.M. local time.

CHAPTER IV: CONTROLLED AREAS

27.401 No-Wake Areas.

(1) No wake areas shall include all wild rice beds, all channels, including the channel between Long Interlochen Lake and Flambeau Lake, designated beaches, the Lac du Flambeau Tribal Campground Marine Area, White Sand Lake-Dollard's Bay (Hwy. H-Boat Landing) and Big Crooked Lake-at the "Narrows." Wild rice beds included, but not limited to, are the Sugarbush chain, Wild Rice Lake, Bear River, and Trout River.

(2) No person shall operate a boat, jet ski or other self propelled vehicle in such a fashion as to create a wake in the above described areas.

27.402 No Motor Areas.

(1) No internal combustion engines shall be allowed on any waters designated as Outstanding Tribal Resource Waters less that are 100 acres in size or smaller, or any rivers, creeks and springs designated as Outstanding Tribal Water

Resource. This list includes the following lakes: Black, Cranberry, David, Doud, Eagle, Gene, Lost, Munnomin, Negani, Raven, Reservation Line, Signal, Tank, Thomas, Wigwam and Zee. This list also includes the following rivers, creeks and springs: Big Springs, Johnson Springs, Mishonagon Creek, and Spring Creek.

(2) No person shall operate an internal combustion engine in any of the above described areas.

(3) Authorized Lac du Flambeau Department of Natural Resources personnel may operate an internal combustion engine in the above areas when required to do so in the performance of their duties and responsibilities.

27.403 No Transporting Dangerous Materials.

No boat, automobile, truck, snowmobile, ATV, heavy equipment, dog sled, horse drawn wagon, or other means may be used at any time during the year to transport, carry, ferry or deliver or remove sewage waste, heavy equipment, house construction materials, or home heating fuels across any reservation waters.

CHAPTER V: ENFORCEMENT AND PENALTIES

27.501 Enforcement by Tribal Law Enforcement Personnel.

Any provision of this ordinance may be enforced by tribal law enforcement personnel.

27.502 Enforcement by Great Lakes Indian Fish and Wildlife Commission Wardens.

Conservation wardens of the Great Lakes Indian Fish and Wildlife Commission are hereby empowered to enforce the provisions of this ordinance upon the request of tribal law enforcement personnel.

27.503 Enforcement by Wisconsin Department of Natural Resources Warden.

Conservation wardens and deputy conservation wardens of the Wisconsin Department of Natural Resources are hereby empowered to enforce the provisions of this ordinance upon the request of tribal law enforcement personnel.

27.504 Authority of Law Enforcement Personnel.

(1) Any person authorized to enforce this ordinance may execute and serve warrants and other process issued by the Tribal Court in the same manner as any law enforcement officer of the State of Wisconsin may serve and execute such

state warrants and other process under state law.

(2) Any person authorized to enforce this ordinance may, with or without warrant, enter and inspect activities on Indian land, where the person has probable cause to believe that a provision of this ordinance has been violated.

(3) Any person authorized to enforce this ordinance may issue a citation to a person upon reasonable belief that such person may have violated a provision of this ordinance, and may seize and hold any property needed as evidence or any property authorized to be seized pursuant to the civil remedial forfeiture provisions of this ordinance.

27.505 Civil Remedial Forfeiture of Property.

Any person who, for himself, or herself, or by his/her agent, servant or employee or who as agent, servant or employee of another, violates this ordinance, shall be liable for a civil remedial forfeiture of any property, including construction tools, used in the commission of the violation of this ordinance.

27.506 Civil Remedial Money Penalties.

Any person who, for himself, or herself, or by his/her agent, servant or employee, or who as agent, servant or employee of another, violates this ordinance, shall be liable as follows:

(1) Engaging in activity for which a permit is required without such permit shall result in a money penalty in an amount not to exceed Five Hundred Dollars (\$500.00) for each day during which such activity occurs.

(2) Violation of a provision of a permit issued by the Tribe shall result in a money penalty in an amount not to exceed Two Hundred and Fifty Dollars (\$250.00) for each day during which the violation occurs.

27.507 Parties to a Violation.

(1) Whoever is concerned in the commission of a violation of this ordinance is a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been found to have violated this ordinance.

(2) A person is concerned in the commission of the violation if the person:

- (a) Directly commits the violation;
- (b) Aids and abets the commission of it; or,
- (c) Is a party to a conspiracy with another to violate it or advises, hires, or counsels, or otherwise procures another to commit it.

27.508 Injunctive Relief.

The Tribe may, in addition to the penalties provided in Sections 27.404 and 27.405 of this ordinance, seek to obtain an injunction in any court of competent jurisdiction against any person subject to this ordinance who undertakes activities which have any of the following potential effects:

- (1) Obstruct a stream;
- (2) Impair water quality;
- (3) Disturb or impair fish reproduction; or,
- (4) Create a hazard to public health.

27.509 Condemnation of Property.

The Tribe may seek to remove any structure which is abandoned by its owner of record and which, through use or location is in violation of this ordinance, through institution of a complaint for seizure pursuant to Chapter IV of the Tribal Court Code, Tribal Code, Chapter 80. The Tribe may also seek to remove any structure which is an obstruction to navigation through institution of such a complaint.

27.510 Damages.

The Tribe reserves the right to seek money damages to its resources through any activity, whether authorized by this ordinance pursuant to permit or prohibited, in any court of competent jurisdiction.

27.511 Jurisdiction.

The Tribal Court is hereby authorized and empowered to undertake jurisdiction of any proceeding instituted under this ordinance. Forfeiture proceedings shall be conducted pursuant to Chapter IV of the Tribal Court Code, Tribal Code, Chapter 80.